

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

SOLARWORLD AMERICAS, INC.,
Plaintiff-Cross-Appellant

v.

UNITED STATES,
Defendant-Appellee

DEPARTMENT OF COMMERCE,
Defendant

v.

TRINA SOLAR (U.S.) INC.,
Defendant

**YINGLI GREEN ENERGY HOLDING COMPANY
LIMITED, YINGLI GREEN ENERGY AMERICAS,
INC., YINGLI ENERGY (CHINA) CO., LTD.,
BAODING TIANWEI YINGLI NEW ENERGY
RESOURCES CO., LTD., BEIJING TIANNENG
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., HAINAN YINGLI NEW ENERGY RESOURCES
CO., LTD., SHENZHEN YINGLI NEW ENERGY
RESOURCES CO., LTD., CANADIAN SOLAR, INC.,
CANADIAN SOLAR (USA), INC., CANADIAN SOLAR
MANUFACTURING (CHANGSHU), INC.,
CANADIAN SOLAR MANUFACTURING**

**(LUOYANG), INC., CANADIAN SOLAR
INTERNATIONAL LIMITED, BYD (SHANGLUO)
INDUSTRIAL CO., LTD., SHANGHAI BYD CO.,
LTD.,**
Defendants-Appellees

**CHANGZHOU TRINA SOLAR ENERGY CO., LTD.,
TRINA SOLAR (CHANGZHOU) SCIENCE &
TECHNOLOGY CO., LTD., YANCHENG TRINA
SOLAR ENERGY TECHNOLOGY CO., LTD.,
CHANGZHOU TRINA SOLAR YABANG ENERGY
CO., LTD., TURPAN TRINA SOLAR ENERGY CO.,
LTD., HUBEI TRINA SOLAR ENERGY CO., LTD.,**
Defendants-Appellants

2019-1591, 2019-1593

Appeals from the United States Court of International
Trade in Nos. 1:16-cv-00132-CRK, 1:16-cv-00134-CRK,
1:16-cv-00135-CRK, Judge Claire R. Kelly.

Decided: June 24, 2020

TIMOTHY C. BRIGHTBILL, Wiley Rein, LLP, Washington,
DC, argued for plaintiff-cross-appellant. Also represented
by TESSA V. CAPELOTO, DOUGLAS C. DREIER, LAURA EL-
SABAAWI, USHA NEELAKANTAN, STEPHEN JOSEPH
OBERMEIER, JOHN ALLEN RIGGINS, ADAM MILAN TESLIK,
MAUREEN E. THORSON, ENBAR TOLEDANO.

NEIL R. ELLIS, 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

SOLARWORLD AMERICAS, INC. v. UNITED STATES

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Yingli New Energy Resources Co., Ltd., Beijing Tianneng 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., Hainan Yingli New Energy Resources Co., Ltd., Shenzhen Yingli New Energy Resources Co., Ltd., Canadian Solar, Inc., Canadian Solar (USA), Inc., Canadian Solar Manufacturing (Changshu), Inc., Canadian Solar Manufacturing (Luoyang), Inc., Canadian Solar International Limited. Also represented by SHAWN MICHAEL HIGGINS.

CRAIG A. LEWIS, Hogan Lovells US LLP, Washington, DC, for defendants-appellees BYD (Shangluo) Industrial Co., Ltd., Shanghai BYD Co., Ltd.

TARA K. HOGAN, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, argued for defendant-appellee United States. Also represented by JOSEPH H. HUNT, REGINALD THOMAS BLADES, JR., JEANNE DAVIDSON; BRENDAN SASLOW, MERCEDES MORNO, Office of the Chief Counsel for Trade Enforcement & Compliance, United States Department of Commerce, Washington, DC.

JONATHAN FREED, Trade Pacific PLLC, Washington, DC, argued for defendants-appellants. Also represented by ROBERT GOSSELINK.

Before PROST, *Chief Judge*, DYK and O'MALLEY, *Circuit Judges*.

DYK, *Circuit Judge*.

Defendants Changzhou Trina Solar Energy Co., Ltd. et al. ("Trina") appeal decisions of the United States Court of International Trade ("CIT") regarding the first

administrative review of an antidumping duty order on crystalline silicon photovoltaic cells from the People's Republic of China ("PRC" or "China"). Plaintiff SolarWorld Americas, Inc. ("SolarWorld") cross-appeals. We affirm in part, vacate in part, and remand.

BACKGROUND

"Dumping occurs when a foreign firm sells a product in the United States at a price lower than the product's normal value." *Home Prod. Int'l, Inc. v. United States*, 633 F.3d 1369, 1372 (Fed. Cir. 2011). The Tariff Act of 1930, codified at 19 U.S.C. § 1202 et seq., authorizes the government to impose on dumped products "an antidumping duty . . . in an amount equal to the amount by which the normal value exceeds the export price" of the products. 19 U.S.C. § 1673. "For exporters based in market economy . . . countries, [the normal value] is generally the price at which the firm sells the product in its home market." *Home Prod.*, 633 F.3d at 1372 (citing 19 U.S.C. § 1677b(a)(1)(B)(i)). Where the exporter is located in a non-market economy, "the default rule is that [the normal value] is calculated based on a factors-of-production analysis whereby each input is valued based on data from a surrogate [market economy] country." *Id.* (citing 19 U.S.C. § 1677b(a)(1)(B)(ii)). The government is required to separately determine a weighted average dumping margin for "each known exporter and producer," unless "not practicable." See 19 U.S.C. § 1677f-1(c).

On December 7, 2012, the Department of Commerce ("Commerce") issued an antidumping duty order on crystalline silicon photovoltaic cells from China. On February 4, 2015, Commerce initiated the first administrative review of this antidumping duty order, covering the period December 1, 2013, through November 30, 2014 ("Period of Review"). Included as mandatory respondents in this review were Trina, Yingli Green

Energy Holding Company Limited et al. (“Yingli”), and BYD (Shangluo) Industrial Co., Ltd. et al. (“BYD”). Commerce published its final determination (“Final Results”) on June 13, 2016.

SolarWorld, Trina, Yingli, and BYD brought suit against the government in the CIT, each challenging aspects of Commerce’s Final Results under 19 U.S.C § 1516a(a)(2). SolarWorld, a domestic producer, argued that the antidumping duty rates were too low. Trina, Yingli, and BYD, foreign producers, argued that their antidumping duty rate was too high. After remands on October 18, 2017, and May 18, 2018, the CIT sustained Commerce’s determinations on December 13, 2018. Commerce calculated a dumping margin of 6.55% for Trina, 0% for Yingli, and 8.52% for BYD.

SolarWorld, Trina, and BYD appeal. We describe the particular challenges to the antidumping determinations and the CIT’s rulings below. We have jurisdiction under 28 U.S.C. § 1295(a)(5).

DISCUSSION

We review the CIT’s decision to sustain Commerce’s final results and its remand redeterminations de novo. *See U.S. Steel Corp. v. United States*, 621 F.3d 1351, 1357 (Fed. Cir. 2010). We will affirm Commerce unless its decision is “unsupported by substantial evidence on the record, or otherwise not in accordance with law.” 19 U.S.C. § 1516a(b)(1)(B)(i).

I

We first address Trina’s argument that Commerce overstated its dumping duty by using Thai import data to value Trina’s nitrogen input.

Where an exporter is from a non-market economy (here, China), 19 U.S.C. § 1677b(c)(1) directs Commerce to

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