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E&C/OI: Team

April 18, 2025

MEMORANDUM TO: Christopher Abbott
Deputy Assistant Secretary
for Policy and Negotiations,
performing the non-exclusive functions and duties
of the Assistant Secretary for Enforcement and Compliance

FROM: Elizabeth Eastwood
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Affirmative Determination of Sales at Less-Than-Fair-Value in the Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules from Cambodia

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I. SUMMARY

The U.S. Department of Commerce (Commerce) determines that Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules (solar cells) from Cambodia are being, or are likely to be, sold in the United States at less-than-fair-value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is April 1, 2023, through March 31, 2024.

After analyzing the record and a comment submitted by interested parties, we made one change to the *Preliminary Determination*[1] with respect to the cash deposit rate applied to all-other producers and exporters, and Hounen Solar Inc. Co. Ltd. (Hounen) and Solar Long PV Tech Cambodia Co. (Solar Long), the two mandatory respondents in this investigation, whose estimated weighted-average dumping margins are based on adverse facts available (AFA). We received a single comment from Solarspace New Energy (Cambodia) Co., Ltd (Solarspace), a producer and exporter of solar cells from Cambodia, which was not selected as a mandatory respondent:

Comment: Calculation of the All-Others Rate

[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Cambodia: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 89 FR 96226 (December 4, 2024) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

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We recommend no change to the calculation of the estimated weighted-average dumping margin for all other producers and exporters, *i.e.*, the all-others rate. We recommend that you approve the position described in the "Discussion of the Issue" section of this memorandum.

II. BACKGROUND

On December 4, 2024, Commerce published in the *Federal Register* its *Preliminary Determination*.[2] On December 23, 2024, Solarspace submitted a hearing request to address the issues raised in case and rebuttal briefs.[3] On January 17, 2025, Solarspace timely submitted a case brief.[4] On January 24, 2025, the petitioner[5] submitted its rebuttal brief.[6] On February 25, 2025, Solarspace withdrew its requests for a hearing.[7] The deadline for the final determination of this investigation is April 18, 2025.

With the *Preliminary Determination*, Commerce issued a preliminary scope memorandum to address all remaining scope-related comments and provided interested parties with an additional opportunity to submit scope comments.[8] On December 27, 2024, Commerce received a post-preliminary determination scope case brief from JA Solar USA Inc. and JA Solar Vietnam Company Limited (collectively, JA Solar) regarding numerous products and scope-related issues.[9] On January 3, 2025, Commerce received a scope rebuttal brief from the petitioner.[10] For further details, *see* the Final Scope Decision Memorandum, issued concurrently with this memorandum.[11] The products covered by this investigation are solar cells from Cambodia. For a full description of the scope of this investigation, *see* Appendix I of the accompanying *Federal Register* notice.

III. CHANGES SINCE THE *PRELIMINARY DETERMINATION*

Because of changes made in the companion countervailing duty (CVD) investigation, we made the following change from the *Preliminary Determination*:

- We updated the amount of the export subsidy offset based on the final determination of the companion countervailing duty (CVD) investigation. The export subsidy offset adjusts the estimated weighted-average dumping margin to determine the cash deposit

[2] *See Preliminary Determination*, 89 FR at 96226.
[3] *See* Solarspace's Letter, "Request for Hearing," dated December 23, 2024.
[4] *See* Solarspace's Letter, "Solarspace--Case Brief," dated January 17, 2025, (Solarspace's Case Brief).
[5] The petitioner is the American Alliance for Solar Manufacturing Trade Committee.
[6] *See* Petitioner's Letter, "Rebuttal Brief," dated January 24, 2025, (Petitioner's Rebuttal Brief).
[7] *See* Solarspace's Letter, "Withdrawal of Hearing Request," dated February 25, 2025.
[8] *See* Memorandum, "Preliminary Scope Decision Memorandum," dated May 1, 2024.
[9] *See* JA Solar's Letter, Scope Case Brief, dated December 27, 2024.
[10] *See* Petitioner's Letter, "Rebuttal Scope Brief," dated January 3, 2025.
[11] *See* Memorandum, "Final Scope Issues and Decision Memorandum," dated concurrently with this memorandum (Final Scope Decision Memorandum).

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rates, as explained in the "Adjustments to Cash Deposit Rates for Export Subsidies" section below.

IV. ADJUSTMENTS TO CASH DEPOSIT RATES FOR EXPORT SUBSIDIES

In an LTFV investigation where there is a concurrent CVD investigation, it is Commerce's normal practice to calculate the cash deposit rate for each exporter or producer by adjusting the exporter's or producer's estimated weighted-average dumping margin to account for export subsidies found for the exporter or producer in the concurrent CVD investigation. Doing so is in accordance with section 772(c)(1)(C) of the Act, which states that U.S. price "shall be increased by the amount of any countervailing duty imposed on the subject merchandise...to offset an export subsidy." In the final determination of the companion CVD investigation of solar cells from Cambodia, Commerce determined that producers and exporters of solar cells from Cambodia benefitted from certain subsidy programs that are contingent upon export.[12] For the final determination of this investigation, Commerce determined the cash deposit rate for each exporter or producer by adjusting the estimated weighted-average dumping margin by the amount of export subsidies determined in the companion CVD investigation.[13]

The adjustment to the estimated weighted-average dumping margin for each exporter or producer will be made only when CVD measures are in force, or until the cash deposit requirements for a given exporter or producer are updated.

V. DISCUSSION OF THE ISSUE

Comment: Calculation of the All-Others Rate

Solarspace's Comments:

The following is a verbatim summary of arguments submitted by Solarspace (internal citations omitted). For further details, *see* Solarspace's Case Brief at 5-6.

> The non-selected company rate all-others rate of 125.73% was not determined using a reasonable methodology. Commerce determined the rate on the basis of {AFA} – using the most prejudicial information available. Thus, the rate fails to reasonably reflect the potential dumping margins for the solar industry in Cambodia. Commerce did not find, and the record does not reflect, that the costs and prices of the overall industry support such a high antidumping duty rate. Solarspace and the companies covered by the all-others rate are not affiliated with or responsible for the mandatory respondents' conduct. Thus, Commerce allowed the AFA rates to inflate the all-others rate to a level substantially higher than corresponding all-others rates in the parallel investigations of crystalline silicon photovoltaic cells from Malaysia and Thailand.

[12] *See* unpublished *Federal Register* notice for "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Cambodia: Final Affirmative Countervailing Duty Determination," signed April 18, 2025.
[13] *See Preliminary Determination* PDM at 10 for Commerce's explanation on the preliminary adjustments to cash deposit rates for export subsidies.

> Commerce has an obligation to calculate dumping margins as accurately as possible and that margins of dumping selected by Commerce should reflect the economic circumstances and potential dumping margins for non-investigated exporters or producers. Accordingly, in the final determination, Commerce should use a reasonable method to calculate an all-others rate that reflects the economic reality of the industry in Cambodia.

Petitioner's Rebuttal Comments:

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* Petitioner's Rebuttal Brief at 1-2.

> {Commerce} should continue to calculate the all-others rate by averaging the rates received by mandatory respondents, Hounen and Solar Long. Solarspace's claim that {Commerce} cannot use the "expected method" for calculating the all-others rate (*i.e.*, taking a weighted average of the rates of mandatory respondents that received a zero or *de minimis* rates, or rates calculating using {AFA} when both mandatory respondents receive AFA rates is patently incorrect. As an initial matter, {Commerce's} ability to calculate the all-others rate by taking a simple average of two rates calculated using AFA has been upheld by the U.S. Court of Appeals for the Federal Circuit (Federal Circuit). Furthermore, in this investigation, Commerce's} methodology for calculating the all-others rate is reasonable. First, because there is no practical difference between the "weighted average" and "simple average" of two AFA rates, {Commerce's} use of a "simple average" of Hounen and Solar Long's dumping margins to calculate the all-others rate is not a deviation from the expected method. Second, because Hounen and Solar Long's proprietary information has been removed from the record, {Commerce} must necessarily take a simple average of Hounen and Solar Long's dumping rates to calculate the all-others rate.[14] Finally, Solarspace has failed to identify any record information that suggests the all-others rate as currently calculated is not representative of non-selected respondents. To the contrary, mandatory respondents are presumed to be representative of non-selected respondents,[15] and Hounen and Solar Long's decision to stop cooperating with the investigation suggest that their investigation suggest that their dumping margins actually exceeded the dumping rate alleged in the petition.[16]

Commerce's Position: In both the *Preliminary Determination* and this final determination, Commerce has based the estimated weighted-average dumping margin for each of the mandatory respondents, Hounen and Solar Long, entirely under section 776 of the Act. Therefore, we

[14] *See* Memorandum, "Removal of BPI from the Record," dated November 27, 2024.
[15] *See Albemarle Corp. v. United States*, 821 F.3d 1345, 1353 (Fed. Cir. 2016); *Changzhou Hawd Flooring Co., v. United States*, 848 F.3d 1006, 1012 (Fed. Cir. 2017); *PrimeSource Building Prods., Inc, v. United States*, 581 F. Supp. 3d 1331, 1337-38 (CIT 2022) (*PrimeSource I*).
[16] *See PrimeSource Building Prods., Inc. v. United States*, 111 F.4th 1320, 1328-35 (Fed. Cir. 2024) (*PrimeSource II*) at 1333.

continue to determine the estimated weighted-average dumping margin for all-other producers and exporters (*i.e.*, the all-others rate) in accordance with sections 735(c)(5)(A) and 735(c)(5)(B) of the Act.

Specifically, in the *Preliminary Determination*, we stated

> In cases where no estimated weighted-average dumping margins other than zero, de minimis, or those determined entirely under section 776 of the Act have been established for individually examined companies, in accordance with section 735(c)(5)(B) of the Act, Commerce typically calculates a simple average of the dumping margins alleged in the petition, and applies the results as the estimated weighted-average dumping margin for all other producers and exporters not individually examined.
>
> In the Petition, the American Alliance for Solar Manufacturing Trade Committee (the petitioner) alleged a single estimated dumping margin for Cambodia, 125.37 percent. Therefore, consistent with our practice, for the all-others rate in this investigation, the simple average of the dumping margins alleged in the Petition is 125.37 percent.[17]

Following statutory guidance, because the estimated weighted-average dumping margins for the two mandatory respondents, Hounen and Solar Long, are based entirely on AFA, we continue to find that applying the simple average of the dumping margins alleged in the Petition as the all-others rate is reasonable and appropriate.[18]

Solarspace alleged that the dumping margin in the Petition is not representative of exporters' pricing behavior in the U.S. market, and, thus, the dumping margin alleged in the Petition is inappropriate and not reliable to use as the all-others rate. However, Solarspace provided no record evidence supporting its allegation. Further, Solarspace improperly reverses the burden in its argument that Commerce has not explained why the all-others rate would be "reasonably reflective of potential dumping margins."[19] As explained in the *Preliminary Determination*, Commerce reviewed the adequacy and accuracy of the information in the Petition, identified no inaccuracies or discrepancies with respect to the information at issue, and found the dumping margin alleged in the Petition to be reliable.[20]

When all of the estimated weighted-average dumping margins for the investigated, *i.e.*, mandatory, respondents are zero, *de minimis* or based entirely on facts available, Solarspace argues that "Commerce 'may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated

[17] *See Preliminary Determination*, 89 FR at 96227 (internal citations omitted).
[18] *See Preliminary Determination*; *see also* Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties, Vol II" dated April 24, 2024 (Petition).
[19] *See* Solarspace Case Br. at 12; *see also PrimeSource Bldg. Prod., Inc. v. United States*, 111 F.4th 1320, 1331 (Fed. Cir. 2024).
[20] *See Preliminary Determination* PDMat 9.

weighted average dumping margins determined for the exporters and producers individually investigated."[21] Solarspace also notes[22] that the SAA provides that:

> Section 219(b) of the bill adds new section 735(c)(5)(B) which provides an exception to the general rule if the dumping margins for all of the exporters and producers that are individually investigated are determined entirely on the basis of the facts available or are zero or *de minimis*. In such situations, Commerce may use any reasonable method to calculate the all others rate. The expected method in such cases will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available, provided that volume data is available. However, if this method is not feasible, or if it results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers, Commerce may use other reasonable methods.[23]

We disagree with Solarspace's conclusion that the "SAA created a limited exception, however, when Commerce calculates both zero and total AFA rates – and only zero and total AFA rates – for mandatory respondents,"[24] otherwise, "Commerce must use a different methodology."[25] The SAA addresses the situation where the rates for the investigated companies "are determined entirely on the basis of the facts available ***or*** are zero ***or*** de minimis," and under that situation, the "expected method {} will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available"[26] First, the statute, not the SAA, creates the exceptional situation where the estimated weighted-average dumping margins are zero ***or*** *de minimis* ***or*** based entirely on facts available.[27] Second, in that exceptional situation, the statute provides that Commerce "may use any reasonable method" to determine the all-others rate, "including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated."[28] The SAA mirrors the text of the statute, adding that for the "reasonable method," the "expected method {} will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available, provided that volume data is available."[29] Nothing in the statute precludes Commerce from possibly weight averaging the rates for the mandatory respondents under the exceptional situation, whether the rates are all zero or de minimis, ***or*** whether all of the rates are based entirely on facts available, ***or*** whether the rates are some combination of zero, *de minimis*, and based on total facts available. Accordingly, we find meritless Solarspace's conclusion that use of the expected method is limited to the situation where there is a combination of zero and *de minimis* rates along with rates that are based on total facts available.

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[21] *See* Solarspace Case Brief at 8 (quoting section 735(c)(5)(B) of the Act)).
[22] *Id*. at 8-9.
[23] *See* Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, vol. 1 (1994) (SAA).
[24] *See* Solarspace Case Brief at 8.
[25] *Id.* at 9 (referencing the SAA at 873).
[26] *See* SAA at 873 (emphasis added).
[27] *See* section 735(c)(5)(B) of the Act.
[28] *Id.*
[29] *See* SAA at 873.

Solarspace's argument that Commerce was unreasonable in calculating the all-others rate is misplaced. Solarspace cites *Changzhou Wujin*,[30] in which the Federal Circuit found Commerce's calculation of the all-others rate inappropriate because Commerce "cherry-picked the single data point that would have the most adverse effect possible on cooperating voluntary respondents, in a situation where there was no need or justification for deterrence."[31] However, we note that that the fact pattern in this instant investigation is fundamentally different than that of the underlying investigation and redeterminations in *Changzhou Wujin*. First, the situation in *Changzhou Wujin* involves the calculation of a "separate rate" for two specific separate-rate, non-investigated companies, not for all other producers and exporters. Solarspace itself states that in *Changzhou Wujin* Commerce calculated the separatee rate by simple averaging a "hypothetical AFA rate" and a *de minimis* rate because this "gave the most adverse margin possible" and is necessary to deter noncooperating respondents."[32] Here, we calculated the all-others rate based on information on the record, there was no use of a "hypothetical AFA rate" and further there are no individually calculated rates (*i.e.*, rates calculated using the respondents' data) either *de minimis* or otherwise for the mandatory respondents. Further, in the instant investigation, Commerce has not "cherry picked the single data point that would have the most adverse effect possible on the cooperating voluntary respondents."[33] As for the *Preliminary Determination*, the record for this information includes only a single data point, *i.e.*, the one dumping margin alleged in the Petition, on which Commerce may rely for its final determination. As such, we calculated the all-others rate based on the single dumping margin alleged in the Petition in accordance with sections 735(c)(5)(A) and 735(c)(5)(B) of the Act and our prior practice.[34]

Solarspace's reliance on the *Linyi Chengen* opinions is also inapposite. Underlying those opinions, the separate rate was calculated using a simple average of an AFA rate and an individually calculated rate specifically because Commerce found that a zero-percent margin calculated for the individually-investigated respondent would not be reasonably reflective of dumping margins for the separate rate companies.[35] Further, the *Linyi Chengen* opinions have been appealed to the Federal Circuit.[36] We note that the investigation underlying the *Linyi Chengen* opinions follow a different fact pattern involving an individually calculated rate, and is not appropriate in this instant. Here, as stated above, we have no individually calculated rates as the estimated weighted-average dumping margins for each of the mandatory respondents in this investigation was determined entirely under section 776 of the Act. In a proceeding more similar to the facts in this investigation, *Primesource II*, the Federal Circuit upheld Commerce's calculation of an all-others rate equal to the AFA rate that was applied to the mandatory respondents.[37]

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[30] *See* Solarspace Case Brief at 10 (citing *Changzhou Wujin Fine Chem. Factory Co., Ltd. V. United States*, 701 F.3d 1367 (Fed. Cir. 2012) (*Changzhou Wujin*)).
[31] *Id*.
[32] *Id*.
[33] *See Changzhou Wujin*, 701 F.3d at 1379.
[34] *See Dioctyl Terephthalate from Poland: Final Affirmative Determination of Sales at Less Than Fair Value,* 90 FR 14117 (March 28, 2025) (*DOTP from Poland*); *see also Thermal Paper from Spain: Final Determination of Sales at Less Than Fair Value*, 86 FR 54162 (September 30, 2021) (*Thermal Paper from Spain*).
[35] *See Linyi Chengen Imp. & Exp. Co. v. United States*, 487 F. Supp. 3d 1349 (CIT 2020) (*Linyi Chengen I*); *Linyi Chengen Imp. & Exp. Co. v. United States*, 539 F. Supp. 3d 1269 (CIT 2021) (*Linyi Chengen II*).
[36] *See Linyi Chengen Imp. & Exp. Co. v. United States*, 658 F. Supp. 3d 1347 (CIT 2023), appeal docketed, No. 2024-1258-1259 (Fed. Cir. December 14, 2023).
[37] *See PrimeSource II*, 111 F. 4th at 1328-29.

We disagree with Solarspace's claims that Commerce has inflated the all-others rate to a level substantially higher than the corresponding all-others rates in these parallel investigations.[38] Solarspace' apparent solution is that Commerce should use the estimated weighted-average dumping margins calculated in the parallel investigations of solar cells from Malaysia and Thailand to determine the all-others rate for the final determination in this investigation.[39] However, we disagree with Solarspace's argument to utilize the all-other rates in the concurrent investigations of solar cells from Malaysia and Thailand. Solarspace provides no legal or record factual evidence to support the claim that the all-others rate for Cambodia is "inflated." Seemingly, the only evidence lies in the fact that the Cambodian all-others rate is greater than the all-others rates in investigations of solar cells from Malaysia or Thailand. We find Solarspace's reasoning unpersuasive. Further, Solarspace failed to explain, based on record evidence, that the dumping behavior of all-other producers and exporters in Malaysia or Thailand are more representative than information on the record of the Cambodian investigation concerning the behavior of producers and exporters in Cambodia. The economies in Malaysia, Thailand, and Cambodia host different industries, products and economic conditions, and Solarspace provides no evidence or argument why Commerce should disregard the record information concerning the Cambodian solar cells industry.

In this final determination, because the estimated weighted-average dumping margins for the mandatory respondents are each zero, *de minimis* or based on total AFA, we continue to find that our calculation of the all-others rate is appropriate and consistent with section 735(c)(5)(B) of the Act and our practice.[40] Unchanged from the *Preliminary Determination*,[41] for this final determination, we continue to calculate the simple average of the dumping margins alleged in the Petition, a rate of 125.37 percent, as the estimated weighted-average dumping margin for all-other producers and exporters.

[38] *See* Solarspace Case Brief at 5-6.
[39] *Id*. at 13.
[40] *See DOTP from Poland* and *Thermal Paper from Spain*.
[41] *See Preliminary Determination*, 89 FR at 96227.

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VI. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above position. If this recommendation is accepted, we will publish the final determination of the investigation and the final estimated weighted-average dumping margins in the *Federal Register* and will notify the U.S. International Trade Commission of our determination.

☒	☐
Agree	Disagree

4/18/2025

X

Signed by: CHRISTOPHER ABBOTT
Christopher Abbott
Deputy Assistant Secretary
for Policy and Negotiations
performing the non-exclusive functions and duties
of the Assistant Secretary for Enforcement and Compliance

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