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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 in the Less-Than-Fair-Value Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Malaysia

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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 Malaysia 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 comments submitted by interested parties, and based on our findings at verification, we made certain changes to the *Preliminary Determination*[1] with respect to the weighted-average dumping margin calculations for Hanwha Q Cells Malaysia Sdn. Bhd (Hanwha Q Cells) and Jinko Solar Technology Sdn. Bhd. (Jinko Solar or JST), the mandatory respondents subject to this investigation. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a complete list of the issues for which we received comments from interested parties:

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[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Malaysia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extensions of Provisional Measures*, 89 FR 96207 (December 4, 2024) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM); *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Malaysia: Amended Preliminary Determination of the Less-Than-Fair-Value Investigation*, 90 FR 601 (January 6, 2025) (*Amended Preliminary Determination*), and accompanying memorandum, "Analysis of Ministerial Error Allegation in the Preliminary Determination," dated December 30, 2024 (Ministerial Error Memorandum).

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Comment 1: Whether Commerce Should Continue to Adjust Jinko Solar's Indirect Selling Expenses (ISE) Ratio Calculation
Comment 2: Whether Commerce Should Deduct Section 201 Duties from Jinko Solar's Constructed Export Price (CEP)
Comment 3: Whether Commerce Should Deduct Certain Movement Expenses from Jinko Solar's CEP
Comment 4: Whether Commerce Should Assign Jinko Solar's Weighted-Average Dumping Margin to Jinko Solar Malaysia Sdn. Bhd. (JSM)
Comment 5: Whether Commerce Should Apply the Cohen's *d* Test to Calculate Jinko Solar's Weighted-Average Dumping Margin
Comment 6: Whether Commerce Should Increase Jinko Solar's Reported Total Cost of Manufacturing (TOTCOM)
Comment 7: Whether Commerce Should Revise the Market Price of Aluminum Frames
Comment 8: Whether Commerce Should Add Certain Expenses Booked by JSM in Fiscal Year (FY) 2023 to the General and Administrative Expense (G&A) Ratio
Comment 9: Whether Commerce Should Increase Jinko Solar's TOTCOM to Incorporate Retrenchment Benefits
Comment 10: Whether Commerce Should Include All Foreign Exchange-Related Gains and Losses in the Net Financial Expenses
Comment 11: Whether Commerce Should Impute Interest on Interest-Free Loans from Affiliated Parties

II. BACKGROUND

On December 4, 2024, Commerce published the *Preliminary Determination*.[2] On December 9, 2024, the American Alliance for Solar Manufacturing Trade Committee (the petitioner) and Jinko Solar alleged that Commerce made significant ministerial errors in calculating Jinko Solar's preliminary estimated weighted-average dumping margin.[3] After analyzing the allegations, Commerce issued the *Amended Preliminary Determination*.[4]

With the *Preliminary Determination*, Commerce issued the Preliminary Scope Memorandum to address scope-related comments.[5] On December 27, 2024, JA Solar USA Inc. and JA Solar Vietnam Company Limited (collectively, JA Solar) submitted a case brief regarding the scope of the investigation.[6] The petitioner submitted a rebuttal scope-related case brief on January 3,

[2] *See Preliminary Determination*.
[3] *See* Jinko Solar's Letter, "Jinko Request to Correct Ministerial Error," dated December 9, 2024; *see also* Petitioner's Letter, "Ministerial Error Allegation," dated December 9, 2024.
[4] *See Amended Preliminary Determination*.
[5] *See* Memorandum, "Preliminary Scope Decision Memorandum," dated November 27, 2024 (Preliminary Scope Memorandum).
[6] *See* JA Solar's Letter, "Scope Case Brief," dated December 27, 2024.

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2025.[7] For further details, *see* Final Scope Decision Memorandum.[8] The products covered by this investigation are solar cells from Malaysia. For a full description of the scope of this investigation, *see* Appendix I to the accompanying *Federal Register* notice.

On December 13, 2024, the petitioner submitted comments in advance of Commerce's verification of JinkoSolar (U.S.) Inc. (Jinko Inc.), and Jinko Solar (U.S.) Industries Inc. (Jinko Industries) (collectively, Jinko Solar's U.S. entities).[9] From December 19 through 20, 2024, Commerce conducted verification of Jinko Solar's U.S. entities in Campbell, California.[10] Between January 13 and 17, 2025, Commerce conducted verification of Jinko Solar's sales responses in Penang, Malaysia.[11] From December 16 through 17, 2024, Commerce conducted verification of Hanwha Q Cells and Hanwha Q Cells America, Inc.'s questionnaire responses in Irvine, California.[12] Between January 20 and 24, 2025, Commerce conducted verification of Hanwha Q Cells' sales responses in Cyberjaya, Malaysia.[13]

Between January and 24, 2025, Commerce conducted verification of Jinko Solar's cost response in Penang, Malaysia.[14] From January 13 through 17, 2025, Commerce conducted verification of Hanwha Q Cells' cost response in Selangor Darul Ehsan, Malaysia.[15] Between February 12 and 14, 2025, Commerce verified the further manufacturing cost response of Hanwha Q Cells.[16]

On February 19, 2025, we received a case brief regarding sales-related issues from Jinko Solar, and a letter in lieu of a sales-related case brief from Toenergy Solar Sdn. Bhd.[17] On February 24, 2025, we received a sales-related rebuttal brief from the petitioner.[18] On March 31, 2025, we received case briefs regarding cost-related issues from Jinko Solar and the petitioner, as well as a

[7] *See* Petitioner's Letter, "Petitioner's Rebuttal Scope Brief," dated January 3, 2025.
[8] *See* Memorandum, "Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Cambodia, Malaysia, Thailand, and the Socialist Republic of Vietnam: Final Scope Decision Memorandum," dated concurrently with this memorandum (Final Scope Decision Memorandum).
[9] *See* Petitioner's Letter, "Constructed Export Price Pre-Verification Comments," dated December 13, 2024.
[10] See Memorandum, "Verification of the Questionnaire Responses of Jinko Solar U.S. Entities," dated February 5, 2025 (Jinko Solar CEP Verification Report).
[11] *See* Memorandum, "Verification of the Questionnaire Responses of Jinko Solar," dated February 5, 2025.
[12] *See* Memorandum, "Verification of the Questionnaire Responses of Hanwha Q Cells," dated February 3, 2025.
[13] *See* Memorandum, "Verification of the Questionnaire Responses of Hanwha Q Cells," dated February 3, 2025.
[14] *See* Memorandum, "Verification of the Cost Response of Jinko Solar Technology Sdn. Bhd.," dated March 20, 2025 (Jinko Solar's Cost Verification Report).
[15] *See* Memorandum, "Verification of the Cost Response of Hanwha Q CELLS Malaysia Sdn. Bhd.," dated March 20, 2025.
[16] *See* Memorandum, "Verification of the Cost Response of Hanwha Q CELLS Malaysia Sdn. Bhd.," dated March 21, 2025.
[17] *See* Jinko Solar's Letter, "Jinko's Sales-Related Case Brief," dated February 19, 2025 (Jinko Solar's Sales Case Brief); *see also* Toenergy's Letter, "Letter in Lieu of Case Brief," dated February 19, 2025.
[18] *See* Petitioner's Letter, "Sales Rebuttal Brief," dated February 24, 2025 (Petitioner's Sales Rebuttal Brief).

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letter in lieu of case brief from Hanwha Q Cells.[19] On April 4, 2025, we received cost-related rebuttal briefs from Jinko Solar and the petitioner.[20]

III. CHANGES SINCE THE *PRELIMINARY DETERMINATION*

Based on the review of the record, comments received from interested parties, and findings at verification, we made the following changes from the *Preliminary Determination*:

Hanwha Q Cells

- We incorporated into Hanwha Q Cells' dumping margin calculations the minor corrections it presented at the sales verifications.[21]
- We incorporated into Hanwha Q Cells' dumping margin calculations the minor corrections it presented at the cost and further manufacturing verifications.[22]

Jinko Solar

- We revised Jinko Solar's CEP calculations to remove the deduction of section 201 duties paid during the POI. *See* Comment 2, below, for further discussion.[23]
- We incorporated into Jinko Solar's dumping margin calculations the minor corrections it presented at verification.[24]
- We reversed the unreconciled cost difference adjustment to Jinko Solar's cost of manufacturing.[25]
- We increased Jinko Solar's reported costs to include retrenchment costs.[26]
- We revised Jinko Solar's financial expense rate to incorporate the minor correction presented at the cost verification and include certain items in the numerator of the calculation.[27]

[19] *See* Jinko Solar's Letter, "Jinko's Cost-Related Case Brief," dated March 31, 2025 (Jinko Solar's Cost Case Brief); *see also* Petitioner's Letter, "Case Brief on Cost Issues," dated March 31, 2025 (Petitioner's Cost Case Brief); and Hanwha Q Cells' Letter, "Hanwha Q CELLS Malaysia Sdn. Bhd.'s Letter in Lieu of Case Brief," dated March 31, 2025.
[20] *See* Jinko Solar's Letter, "Jinko's Reply to Petitioner's Cost Case Brief," dated April 4, 2025 (Jinko Solar's Cost Rebuttal Brief); *see also* Petitioner's Letter, "Rebuttal Brief on Cost Issues," dated April 4, 2025 (Petitioner's Cost Rebuttal Brief).
[21] *See* Memorandum, "Final Calculation Memorandum for Hanwha Q Cells," dated concurrently with this memorandum, at 2-3.
[22] *See* Memorandum, "Cost of Production and Constructed value Calculation Adjustments for the Final Determination - Hanwha Q Cells Malaysia Sdn. Bhd.," dated concurrently with this memorandum, at 1-2.
[23] *See* Memorandum, "Final Calculation Memorandum for Jinko Solar," dated concurrently with this memorandum, at 7.
[24] *Id.*
[25] *See* Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Jinko Solar Technology Sdn. Bhd.," dated concurrently with this memorandum (Jinko Solar Final Cost Memorandum).
[26] *Id.*
[27] *Id.*

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IV. AFFILIATION AND SINGLE ENTITY TREATMENT

As discussed below, Jinko Solar argues that Commerce should assign its weighted-average dumping margin to JSM.[28] Nonetheless, Jinko Solar does not argue, and does not identify record evidence substantiating, that Commerce should revise its preliminary finding that Jinko Solar and JSM are not a single entity within the meaning of 19 CFR 351.401(f).[29] Accordingly, we continue to determine that Jinko Solar and JSM are affiliated within the meaning of section 771(33)(F) of the Act, but are not a single entity for the purposes of this investigation.[30]

V. DISCUSSION OF THE ISSUES

Comment 1: Whether Commerce Should Continue to Adjust Jinko Solar's ISE Ratio Calculation

Jinko Solar's Sales Case Brief:

The following is a verbatim summary of an argument submitted by Jinko Solar. For further details, *see* Jinko Solar's Sales Case Brief at 3-5.

> {Commerce} should reverse its preliminary decision to increase Jinko's ISE ratio. First, the record shows that certain income realized by JinkoSolar (U.S.) Inc. {(Jinko Inc.)} constitutes payment by Jinko Solar (U.S.) Industries Inc. {(Jinko Industries)} to Jinko Inc. for services performed by Jinko Inc. on behalf of Jinko Industries. These expenses have been separately reported and are already captured in the reported ISE ratio. Thus, the income reported by Jinko Inc. for payment received from Jinko Industries and the expenses incurred by Jinko Industries for the payment made to Jinko Inc. net to zero. If {Commerce} removes Jinko Inc{.}'s income received from Jinko Industries in the ISE calculation, it also should remove expenses incurred by Jinko Industries for payment to Jinko Inc. for the services received. Second, {Commerce} should not add to ISE certain expenses in certain accounts because the record clearly shows these expenses are related to non-subject merchandise.

Petitioner's Sales Rebuttal Brief:

The following is a verbatim summary of an argument submitted by the petitioner (internal citations omitted). We note that we requested that interested parties provide a public, executive summary for each issue raised in their briefs. *See Preliminary Results*, 89 FR at 96209. Therefore, because the executive summary in Petitioner's Sales Rebuttal Brief contains business proprietary information (BPI), we have redacted that content herein. For further details, *see* Petitioner's Rebuttal Brief at 3-5.

[28] *See* Comment 4, *infra*; *see also* Jinko Solar Sales Case Brief at 10.
[29] *See Preliminary Determination* PDM at 5; *see also* Memorandum, "Preliminary Affiliation and Collapsing Memorandum," dated November 27, 2024 (Preliminary Affiliation and Collapsing Memorandum).
[30] *See* Preliminary Affiliation and Collapsing Memorandum.

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> Jinko {Solar}'s claim that certain expenses should be excluded from its U.S. {ISE} ratio calculation is wholly unsubstantiated. There isn't a single piece of evidence in Jinko {Solar}'s original Section C questionnaire response or in any of its subsequent supplemental questionnaire responses that supports the company's argument. Moreover, while the company specifically cites Exhibit VE-14, {BPI}. {Commerce} should reject Jinko {Solar}'s eleventh hour attempt to revise the record for this investigation and disregard the company's argument as untimely submitted new factual information.

Commerce's Position: In its BCQR, Jinko Solar calculated per-unit U.S. ISE (INDIRSU) by multiplying each sale's gross unit price by an ISE ratio.[31] In the *Preliminary Determination*, we added certain expenses to Jinko Solar's ISE ratio calculations, and removed certain previously-included expense offsets (*i.e.*, revenues) from the calculations, because the record evidence is ambiguous as to whether the expenses pertained to the production or sale of subject merchandise.[32] For this final determination, we find that the record does not support excluding these expenses, or including these revenues. Consequently, we continue to apply the adjusted ISE ratio to calculate Jinko Solar's INDIRSU that we utilized at the preliminary determination.

In establishing CEP, Commerce deducts INDIRSU from gross unit price in accordance with section 772(d)(1)(D) of the Act. Specifically, section 772(d)(1) of the Act provides that Commerce shall reduce CEP by:

> the amount of any of the following expenses generally incurred by or for the account of the producer or exporter, or the affiliated seller in the United States, in selling the subject merchandise (or subject merchandise to which value has been added)
>
> (A) commissions for selling the subject merchandise in the United States;
> (B) expenses that result from, and bear a direct relationship to, the sale, such as credit expenses, guarantees and warranties;
> (C) any selling expenses that the seller pays on behalf of the purchaser; and
> (D) any selling expenses not deducted under subparagraph (A), (B), or (C).

The SAA explains that Commerce need not use a specific calculation methodology for calculating ISE, and merely states that ISE "would be incurred by the seller regardless of whether the particular sales in question are made, but reasonably may be attributed (at least in part) to such sales."[33] Additionally, the U.S. Court of International Trade (CIT) has stated that Commerce has wide discretion in the methodology that it uses to calculate ISE, because "{t}he

[31] *See* Jinko Solar's Letter, "Jinko Response to Sections B and C Questionnaire," dated August 20, 2024 (BCQR), at Exhibit C-28.
[32] *See* Memorandum, "Preliminary Calculation Memorandum for Jinko Solar," dated November 27, 2024 (Jinko Solar Preliminary Calculation Memorandum), at 5.
[33] *See* Statement of Administrative Action Accompanying the Uruguay Rounds Agreement Act, H.R. Doc. 103-316, Vol. 1 (1994) (SAA), at 824.

statute does not define '{ISE}.'"[34] The CIT has also explained that, "{l}ike the statute, Commerce's regulations are entirely silent as to how Commerce is to calculate {ISE}" and, thus, Commerce has "great discretion as to the methodology used in the calculation of {ISE}."[35] Similarly, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) has noted that "{t}he statute is ambiguous, as the statute does not define the 'selling expenses' within subsection D" of section 772(d)(1) of the Act."[36]

In the instant investigation, no parties dispute Commerce's use of an ISE ratio to calculate INDIRSU. Similarly, Jinko Solar does not challenge Commerce's preliminary finding that the record is ambiguous as to whether the expenses pertained to production of subject merchandise. Rather, Jinko Solar argues that, because the above-referenced revenues offset expenses related to inter-company services reported in the ISE ratio, Commerce should either include the revenues in the ISE ratio's numerator, or remove the corresponding expenses from the numerator.[37] Moreover, Jinko Solar argues, the ISE denominator is net of inter-company transactions.[38] Jinko Solar further states that Commerce should remove the expenses that it added to the ISE ratio in the *Preliminary Determination*.[39] We disagree with Jinko Solar. For an analysis of the BPI underpinning our findings, *see* Jinko Solar Final Calculation Memorandum.

Regarding the inter-company services revenues, for the reasons discussed in the Jinko Solar Final Calculation Memorandum, we determine that the record does not support finding that the revenues, and underlying expenses, pertained to the production or sale of subject merchandise during the POI. Additionally, as discussed in the Jinko Solar Final Calculation Memorandum, we find that the record does not tie Jinko Industries' inter-company services payments to Jinko Inc.'s performance of inter-company services. Further, as discussed in the Jinko Solar Final Calculation Memorandum, we find that the record does not demonstrate that Jinko Solar's removal of inter-company services fees from the ISE ratio denominator included, in fact, the above-referenced inter-company service fees. We therefore find no basis upon which to revise our treatment of these revenues. Accordingly, we continue to exclude the inter-company services revenues from Jinko Solar's ISE ratio.

Furthermore, for the reasons discussed in the Jinko Solar Final Calculation Memorandum, we continue to add certain other expenses to Jinko Solar's ISE ratio. We disagree with Jinko Solar that "the record clearly shows these expenses are related to non-subject merchandise."[40] While Jinko Solar cite to information provided at verification to substantiate the above contention, we

[34] *See Heveafil Sdn. Bhd., and Filati Lastex Sdn. Bhd. v. United States*, Slip Op. 01-22 (CIT February 27, 2001); *see also DuPont Teijin Films China Ltd. v. United States*, 7 F. Supp. 3d 1338, 1352 (CIT 2013) ("Commerce is not obligated by statute to calculate {the ISE ratio} in any particular way.").
[35] *See United States Steel Corp. v. United States*, 712 F. Supp. 2d 1330, 1337 (CIT 2010) (citing *NSK Ltd. v. United States*, 358 F. Supp. 2d 1276, 1290-91 (CIT 2005)); *see also Timken Co. v. United States*, 209 F. Supp. 2d 1373, 1381 (CIT 2002) ("Indeed, this court has previously underscored – in the context of calculating {ISE} – that '{b}oth {section 772(d)}, the relevant statute, and the regulation, 19 {CFR} 351.401(g), give little direction on allocation methodology, and thus Commerce enjoys discretion in choosing its methodology.'")).
[36] *See Micron Tech. Inc. v. United States*, 243 F.3d 1301, 1308 (Fed. Cir. 2001).
[37] *See* Jinko Solar's Sales Case Brief at 4-5.
[38] *Id.* at 4.
[39] *Id.* at 5.
[40] *See* Jinko Solar's Sales Case Brief at 2.

find this evidence unpersuasive. Absent any compelling evidence tying these expenses to non-subject merchandise, we continue to incorporate these expenses into Jinko Solar's ISE ratio.[41]

Based on the above factors, and the analysis of business proprietary record information conducted in the Jinko Solar Final Calculation Memorandum, we decline to revise the Jinko Solar ISE ratio calculated in the *Preliminary Determination*. Consequently, we continue to calculate Jinko Solar's per-unit INDIRSU using the ISE ratio reported in the Jinko Solar Preliminary Calculation Memorandum.[42]

Finally, we decline to find that Jinko Solar's arguments constitute untimely submitted new factual information. The petitioner argues that Jinko Solar's explanation[43] for the expenses at issue "is both completely unsubstantiated and appears to be untimely new factual information."[44] While we agree that the record does not substantiate Jinko Solar's arguments, we do not find that the arguments themselves constitute new factual information. At verification, Commerce reviewed documentation regarding Jinko Solar's INDIRSU and ISE ratio information submitted to the case record.[45] As discussed above, and in the Jinko Solar Final Calculation Memorandum, the record evidence, including the documentation reviewed at verification, does not tie the expenses to production of non-subject merchandise. However, no parties demonstrate that Jinko Solar's arguments constitute factual information within the meaning of 19 CFR 351.102(b)(21), or that the arguments are, in fact, untimely filed. Accordingly, we decline to remove the arguments from the case record.

Comment 2: Whether Commerce Should Deduct Section 201 Duties from Jinko Solar's CEP

Jinko Solar's Sales Case Brief:

The following is a verbatim summary of an argument submitted by Jinko Solar. For further details, *see* Jinko Solar's Sales Case Brief at 5-9.

> In the *Preliminary Determination*, {Commerce} erroneously deducted the reported 201 duties from Jinko {Solar}'s U.S. sales prices when calculating Jinko {Solar}'s dumping margin. We believe this deduction was an unintended error because {Commerce} has a 20-year-old established practice that 201 duties should not be deducted from the U.S. price. Thus, in the {final determination}, {Commerce} should correct its error in the preliminary margin calculation by not deducting Section 201 duties from U.S. price.

No other interested party commented on this issue.

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[41] *See Preamble*, 62 FR 27296, 27351 (May 19, 1997) ("the coverage of section 772(d)(1) is limited to those expenses incurred in connection with a sale in the United States"); *see also Micron Tech.*, 243 F.3d at 1309 (sustaining Commerce's decision to exclude expenses that did not arise out of the sale of subject merchandise in the United States).
[42] *See* Jinko Solar Preliminary Calculation Memorandum at 5.
[43] Jinko Solar's explanation of the source of the expenses is BPI. *See* Jinko Solar's Sales Case Brief at 5.
[44] *See* Petitioner's Sales Case Brief at 4.
[45] *See* Jinko Solar CEP Verification Report at 9 and Exhibit VE-14.

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Commerce's Position: In the *Preliminary Determination*, we deducted Jinko Solar's section 201 duty payments from its CEP. Jinko Solar argues that this deduction was erroneous, and that Commerce should reverse this deduction for the purposes of the final determination.[46] We agree with Jinko Solar that this deduction was an inadvertent error, and we have revised its dumping margin calculations to remove the deduction of section 201 duty payments.[47]

Commerce's practice is to distinguish section 201 duties from other (*e.g.*, section 232) duties deducted, pursuant to section 772(c)(2)(A) of the Act, from export prices (EPs) or CEPs.[48] No parties argue, or identify record evidence indicating, that Commerce should reverse its prior determinations that section 201 duties are not "United States import duties" within the meaning of section 772(c)(2)(A) of the Act.[49] We therefore find that the record evidence does not support deducting section 201 duties from Jinko Solar's CEP for the purposes of this final determination.

Comment 3: Whether Commerce Should Deduct Certain Movement Expenses from Jinko Solar's CEP

Jinko Solar's Sales Case Brief:

The following is a verbatim summary of an argument submitted by Jinko Solar (internal citations omitted). For further details, *see* Jinko Solar's Sales Case Brief at 9.

> In the *Preliminary Determination*, {Commerce} offset Jinko {Solar}'s {U.S.} sale price by certain additional expenses related to demurrage, examination, bonded truck freight and bonded warehousing/{foreign-trade zone} warehousing expenses, treating them as movement expenses that are ordinarily deducted from the {U.S.} sales price. However, these expenses were not foreseeable at the time of shipment and therefore not incurred in the ordinary course of trade. These expenses are not normal business expenses, and deducting these expenses effectively penalizes Jinko {Solar}. In the {final determination}, {Commerce} should not deduct these expenses when computing Jinko {Solar}'s {U.S.} net price because such charges are extraordinary in nature, were not foreseeable at the time of sale and were not incurred in the ordinary course of trade.

Petitioner's Sales Rebuttal Brief:

The following is a verbatim summary of an argument submitted by Petitioners (internal citations omitted). For further details, *see* Petitioner's Sales Rebuttal Brief at 2-3.

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[46] *See* Jinko Solar's Sales Case Brief at 5.
[47] *See* Jinko Solar Final Calculation Memorandum.
[48] *See Light-Walled Rectangular Pipe and Tube from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018-2019*, 86 FR 11230 (February 24, 2021), and accompanying IDM at Comment 1; *see also Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman: Final Results of Antidumping Duty Administrative Review; 2018–2019*, 86 FR 18513 (April 9, 2021), and accompanying IDM at Comment 1 (citing *Wheatland Tube v. United States*, 495 F.3d 1355, 1366 (Fed. Cir. 2007) ("{s}ection 201 safeguard duties are…unlike normal customs duties.")).
[49] *See, e.g.*, *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 69 FR 32492 (June 10, 2004), and accompanying IDM at Comment 1.

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> {Commerce} correctly deducted various movement and storage expenses from Jinko {Solar}'s U.S. price. The statute requires that {Commerce} reduce U.S. price by certain expenses incident to delivering the subject merchandise, including the types of expenses at issue here. Jinko {Solar} has failed to present any legal or factual basis for excluding these expenses from the dumping calculation in light of this statutory directive. Nonetheless, Jinko {Solar} asserts that these expenses should be excluded because they were extraordinary and unforeseeable; yet, Jinko {Solar} was aware of the risk of incurring these expenses and "commonly negotiated provisions" in its contracts to address them. The record affirmatively demonstrates that the expenses were foreseeable. The record likewise demonstrates that these expenses were not infrequent, as Jinko {Solar}'s data shows that the expenses were an ordinary and common part of the sales process. Accordingly, {Commerce} should continue to deduct these expenses from U.S. price.

Commerce's Position: In the *Preliminary Determination*, we found that the above-referenced movement expenses "were not temporary, unanticipated, or extraordinary during the POI."[50] Accordingly, we preliminarily deducted these expenses from Jinko Solar's CEP.[51] For this final determination, we continue to deduct these expenses from Jinko Solar's CEP. For a discussion of the BPI underlying this determination, *see* Jinko Solar Final Calculation Memorandum.

Section 772(c)(2)(A) of the Act explains that Commerce shall reduce the respondent's CEP by:

> the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties, which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States.

The purpose of such reductions is "to achieve a 'fair 'apples-to-apples' comparison' between U.S. price and foreign market value 'at a similar point in the chain of commerce.'"[52] Section 772(c)(2)(A) of the Act provides Commerce significant discretion to reduce the respondent's CEP to achieve this objective. Specifically, the Federal Circuit has held that the phrase "'attributable to' describes a loose associative relationship," and that "'{i}ncident to' commonly means 'contingent upon or related to something else."[53] In *Florida Citrus*, the Federal Circuit determined that "Congress' use of the inclusive term 'any' in front of 'import duties' indicates that the adjustment should account for the entire universe of import duties," and that "{d}rawback refunds are contingent upon and related to importing merchandise because they cannot be claimed without first importing merchandise and paying…duties."[54] Similarly, we find that Congress' use of the term "any" in front of "additional costs, charges, or expenses" indicates that the reductions under section 772(c)(2)(A) of the Act should account for the entire universe of adjustments "incident to bringing the subject merchandise from the original place of

[50] *See* Jinko Solar Preliminary Calculation Memorandum at 4-5. The nature of these expenses is BPI.
[51] *Id.*; *see also Preliminary Determination* PDM at 14.
[52] *See Florida Citrus Mutual v. United States*, 550 F.3d 1105, 1110 (Fed. Cir. 2008) (*Florida Citrus*) (citing *Torrington Co. v. United States*, 68 F.3d 1347, 1352 (Fed. Cir. 1995)).
[53] *Id.*, 68 F.3d at 1110-11.
[54] *Id.*, 68 F.3d at 1111.

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shipment in the exporting country to the place of delivery in the United States."[55] Likewise, we find that the movement expenses in question are contingent upon and related to (*i.e.*, incident to) bringing the subject merchandise from the original place of shipment in the exporting country (*i.e.*, Malaysia) to the place of delivery in the United States (*i.e.*, the first unaffiliated customer). As discussed in Jinko Solar Final Calculation Memorandum, we find that Jinko Solar incurred the above-referenced movement expenses after export from Malaysia, and prior to delivery in the United States, and that it incurred these expenses to sell subject merchandise to unaffiliated U.S. customers. Thus, these expenses are properly considered "any additional costs, charges, or expenses… incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States," as described in section 772(c)(2)(A) of the Act.

We disagree with Jinko Solar's argument that the expenses were "extraordinary in nature, were not foreseeable at the time of sale and were not incurred in the ordinary course of trade."[56] We note that Jinko Solar previously stated that it "is not claiming that these sales are outside of the ordinary course of trade."[57] Moreover, as discussed in Jinko Solar Final Calculation Memorandum, the record evidence demonstrates that the expenses were, in fact, neither extraordinary nor unforeseeable during the POI. Finally, Jinko Solar identifies no provision of the Act or Commerce's regulations distinguishing these expenses from those normally deducted from CEP under section 772(c)(2)(A) of the Act.

Based on the above factors, for the purposes of this final determination, we continue to deduct the movement expenses in question from Jinko Solar's CEP, in accordance with section 772(c)(2)(A) of the Act.

Comment 4: Whether Commerce Should Assign Jinko Solar's Weighted-Average Dumping Margin to JSM

Jinko Solar's Sales Case Brief:

The following is a verbatim summary of an argument submitted by Jinko Solar. For further details, *see* Jinko Solar's Sales Case Brief at 10.

> The {a}ntidumping {d}uty {(AD)} rate for Jinko {Solar} should also be assigned to {JSM} since subject merchandise supplied by JSM was sold by Jinko {Solar's U.S.} entities to unaffiliated U.S. customers during the POI.

No other interested party commented on this issue.

Commerce's Position: In the *Preliminary Determination*, we calculated weighted-average dumping margins for the two individually-examined respondents in this investigation (*i.e.*, Hanwha Q Cells and Jinko Solar), and assigned to certain non-responsive companies a rate based

[55] *See* section 772(c)(2)(A) of the Act.
[56] *See* Jinko Solar's Sales Case Brief at 9.
[57] *See* Jinko Solar's Letter, "Jinko Response to Supplemental Sections B and C Questionnaire," dated October 15, 2024, at 16.

entirely upon adverse facts available (AFA).[58] Moreover, we assigned Jinko Solar's weighted-average dumping margin to all other producers and exporters because it was the only rate that was not zero, *de minimis*, or based entirely on facts otherwise available.[59] We did not select JSM for individual examination in this investigation, did not assign to it a rate based on AFA, and did not collapse it and Jinko Solar into a single entity.[60] Thus, we preliminarily assigned the all-others rate (*i.e.*, Jinko Solar's weighted-average dumping margin) to JSM.

As discussed above, we continue to find that Jinko Solar and JSM are not a single entity for the purposes of this investigation.[61] Moreover, we have neither individually examined JSM in this investigation, nor determined that it warrants assignment of a rate based on AFA. While it notes that JSM supplied subject merchandise reported in the U.S. sales database, Jinko Solar identifies no statutory, regulatory, or precedential basis upon which to assign its weighted-average dumping margin to JSM. Accordingly, we continue to assign the all-others rate to JSM.

Comment 5: Whether Commerce Should Apply the Cohen's *d* Test to Calculate Jinko Solar's Weighted-Average Dumping Margin

Jinko Solar's Sales Case Brief:

The following is a verbatim summary of an argument submitted by Jinko Solar. For further details, *see* Jinko Solar's Sales Case Brief at 10-22.

> In the {final determination}, Commerce should calculate Jinko {Solar}'s dumping margin by applying the {average-to-average (A-to-A)} method to all sales. In the *Preliminary Determination*, Commerce applied a differential pricing analysis for determining whether application of the {average-to-transaction (A-T)} method is appropriate, based on the Cohen's *d* test. Commerce should not apply the Cohen's *d* test to Jinko {Solar}'s U.S. sales or otherwise resort to A-T comparison methodology for certain sales in the {final determination} because:
>
> (1) Commerce's differential pricing methodology in the *Preliminary Determination* fails to provide any analysis as to these threshold preconditions for applying the Cohen's *d* test – numerosity of data, normality of distribution and homogeneity of variances, and in fact, Jinko {Solar}'s U.S. sales data fail to satisfy the first, second and third preconditions.
>
> (2) Commerce has provided no explanation at all – much less, one that would justify its departure from the teachings in the statistical literature - regarding the calculation of the Cohen's *d* coefficient. Therefore, in the {final determination}, {Commerce} must use, in the denominator for each Cohen's *d* calculation, either: (i) the standard deviation for the entire CONNUM-specific universe of U.S. sales;

[58] *See Preliminary Determination*, 89 FR at 96208.
[59] *Id.*
[60] *See Preliminary Determination* PDM; *see also* Preliminary Affiliation and Collapsing Memorandum.
[61] *See* section V, *supra*.

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> or (ii) the weighted average pooled standard deviations for the test and comparison groups of export sales; and
>
> (3) Commerce uses the Cohen's *d* test to identify differences in prices, for comparable merchandise, that are "significant." This test, however, results in arbitrary determinations as to what price differences are or are not significant.
>
> For these reasons, Commerce should not apply Cohen's *d* in the {final determination} and should calculate Jinko {Solar}'s dumping margin by applying the A-to-A method to all sales. Moreover, {Commerce} improperly relied on a simple average methodology to calculate the denominator of its Cohen's *d* analysis. If {Commerce} continues to rely on Cohen's *d,* the Department should calculate the Cohen's *d* denominator based on either: (i) the standard deviation for the entire CONNUM-specific universe of U.S. sales; or (ii) the weighted average pooled standard deviations for the test and comparison groups of export sales.

Petitioner's Sales Rebuttal Brief:

The following is a verbatim summary of an argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner's Sales Rebuttal Brief at 8-13.

> {Commerce}'s application of the Cohen's *d* test is supported by the record of this investigation and is consistent with the agency's established practice and court precedent. {Commerce} has routinely rejected the arguments raised by Jinko {Solar} with respect to the agency's use of the Cohen's *d* test. Further, contrary to Jinko {Solar}'s claims, {Commerce}'s use of the Cohen's *d* test in this proceeding is not inconsistent with recent judicial precedent. Jinko {Solar} relies heavily on two Federal Circuit opinions that remanded {Commerce}'s determinations for further explanation regarding {Commerce}'s application and use of the Cohen's *d* test. Jinko {Solar} fails to disclose that, in both cases, {Commerce} has not changed its initial determination, but rather provided further explanation, and that further explanation has been upheld by the {CIT}. Finally, {Commerce} maintains significant discretion when conducting complex and technical {AD} analyses, and Jinko {Solar} fails to explain how the agency's continued use of the Cohen*'s d* test is unreasonable or outside the bounds of that discretion.

Commerce's Position: For this final determination, we continue to apply the Cohen's *d* test as part of the differential pricing analysis in the dumping margin calculations.

As an initial matter, we note that nothing in section 777A(d) of the Act mandates how Commerce measures whether there is a pattern of prices that differ significantly, or explains why the A-to-A method cannot account for such differences. As explained in the *Preliminary*

Determination, Commerce has applied the Cohen's *d* test in its differential pricing analysis in various other proceedings.[62]

In carrying out the statutory objective, Commerce determines whether "there is a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and…explains why such differences cannot be taken into account using {the A-A comparison method}."[63] Commerce finds that the purpose of section 777A(d)(1)(B) of the Act is to evaluate whether the A-to-A method is the appropriate method to determine if, and to what extent, a given respondent is dumping the subject merchandise in the U.S. market.[64]

Jinko Solar raises three issues regarding Commerce's application of the Cohen's *d* test. First, Jinko Solar argues that its U.S. sales do not satisfy three statistical criteria necessary for Commerce to use the Cohen's *d* test. Additionally, Jinko Solar argues that Commerce must revise the denominator that it uses in its Cohen's *d* test calculations. Jinko Solar further argues that Commerce's use of the Cohen's *d* test to identify significant price differences creates arbitrary determinations that render use of the test unreasonable. We address each issue in turn.

The Statistical Criteria

As an initial matter, the Federal Circuit's findings in *Stupp II* did not require Commerce to change its application of the Cohen's *d* test.[65] The Federal Circuit did not find that Commerce's use of the Cohen's *d* test is unlawful. Specifically, in *Stupp II*:

> {Plaintiff} challenges Commerce's use of the 0.8 cutoff for determining whether particular results "pass" the Cohen's *d* test. {Plaintiff} has two arguments: First, {plaintiff} argues that Commerce's selection of the 0.8 cutoff was arbitrary. Second, {plaintiff} argues that Commerce's application of the 0.8 cutoff in this case was unsupported by evidence because Professor Cohen's suggestion that "0.8 could be considered a 'large' effect size" was limited to comparisons involving data that met certain restrictive conditions — "in particular, that the datasets being compared

[62] *See Preliminary Results* PDM at 9-10; *see also, e.g.*, *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 17146 (April 1, 2018), and accompanying IDM at Comment 8; *Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 76517 (November 30, 2020), and accompanying IDM at Comment 4; and *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 32937 (June 10, 2015), and accompanying IDM at Comments 1 and 2; *see also Koyo Seiko Co. v. United States*, 20 F.3d 1156, 1159 (Fed. Cir. 1994) ("The purpose of the {AD} statute is to protect domestic manufacturing against foreign manufacturers who sell at less than fair market value. Averaging U.S. prices defeats this purpose by allowing foreign manufacturers to offset sales made at {LTFV} with higher priced sales. Commerce refers to this practice as 'masked dumping.' By using individual U.S. prices in calculating dumping margins, Commerce is able to identify a merchant who dumps the product intermittently - sometimes selling below the foreign market value and sometimes selling above it. We cannot say that this is an unfair or unreasonable result." (internal citations omitted)); and *Apex Frozen Foods Private Limited v. United States*, 37 F. Supp. 3d 1286, 1302 (CIT 2014).

[63] *See* section 777A(d)(1)(B) of the Act.

[64] *See* 19 CFR 351.414(c)(1).

[65] *See* Jinko Solar's Sales Case Brief at 11-16 (citing *Stupp v. United States*, 5 F.4th 1341 (Fed. Cir. 2021) (*Stupp II*)).

> had roughly the same number of data points, were drawn from normal distributions, and had approximately equal variances." According to {plaintiff}, none of those conditions were satisfied in this case.[66]

The Federal Circuit dismissed the first argument (*i.e.*, that the 0.8 threshold was arbitrary) because it had already spoken to that question in *Mid Continent III*:[67]

> We addressed the crux of {plaintiff's} first argument in our decision in {*Mid Continent III*}…. We held that "the 0.8 standard is 'widely adopted' as part of a 'commonly used measure' of the difference relative to such overall price dispersion…. {I}t is reasonable to adopt that measure where there is no better, objective measure of effect size."[68]

Concerning the plaintiff's second argument, the Federal Circuit held:

> We agree that there are significant concerns relating to Commerce's application of the Cohen's *d* test in this case and, more generally, in adjudications in which the data groups being compared are small, are not normally distributed, and have disparate variances. Our concerns raise questions about the reasonableness of Commerce's use of the Cohen's *d* test in {LTFV} adjudications, warranting further supporting explanation from {Commerce}.[69]

Accordingly, the Federal Circuit remanded the issue to Commerce, directing it:

> to explain whether the limits on the use of the Cohen's *d* test prescribed by Professor Cohen and other authorities were satisfied in this case or whether those limits need not be observed when Commerce uses the Cohen's *d* test in {LTFV} adjudications. In that regard, we invite Commerce to clarify its argument that having the entire universe of data rather than a sample makes it permissible to disregard the otherwise-applicable limitations on the use of the Cohen's *d* test.[70]

The Federal Circuit was concerned that:

> Commerce's application of the Cohen's *d* test to data that do not satisfy the assumptions on which the test is based may undermine the usefulness of the interpretive cutoffs. In developing those cutoffs, including the 0.8 cutoff, Professor Cohen noted that "we maintain the assumption that the populations being compared are normal and with equal variability, and conceive them further as equally numerous."[71]

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[66] *See Stupp II*, 5 F.4th at 1356 (internal citations omitted).
[67] *See Mid Continent Steel & Wire, Inc. v. United States*, 940 F.3d 662, 673 (Fed. Cir. 2019) (*Mid Continent III*).
[68] *See Stupp II*, 5 F.4th at 1356-57 (internal citations omitted).
[69] *Id.*, 5 F.4th at 1357.
[70] *Id.*, 5 F.4th at 1360.
[71] *Id.*, 5 F.4th at 1357 (citing Cohen, Jacob, *Statistical Power Analysis for the Behavior Sciences*, (1988) (*Cohen*), at 21).

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> While Commerce is correct that it does not "sample" data, that observation does not address the fact that Professor Cohen derived his interpretive cutoffs under the assumption of normality. Nor does it address {plaintiff's} representation that Commerce's analysis in this case violated Professor Cohen's other assumptions, homogeneity-of-variances and the number of observations being compared…. Violating those assumptions can subvert the usefulness of the interpretive cutoffs, transforming what might be a conservative cutoff into a meaningless comparator.[72]

In *Stupp II*, based on the panel's understanding that Dr. Cohen established his proposed thresholds (including the large, 0.8 threshold) using the three statistical criteria, the Federal Circuit concluded that an analysis which is dependent on those thresholds would require data which would also satisfy those three statistical criteria. The plaintiff asserted that its sale price data in the test and comparison groups used in the Cohen's *d* test did not meet those three statistical criteria. Accordingly, the Federal Circuit remanded the issue for Commerce to explain whether the plaintiff's sale prices meet these statistical criteria, or to explain whether it is permissible to disregard the statistical criteria in its application of the Cohen's *d* test.

Likewise, Jinko Solar contends that its sale prices do not meet the three statistical criteria.[73] Therefore, Jinko Solar argues, Commerce should not use the Cohen's *d* test as part of the differential pricing analysis, and, should apply the A-to-A method to calculate the weighted-average dumping margins in the final determination of this investigation.[74]

Commerce finds that the academic literature,[75] and specifically *Cohen*, does not support the proposition that Dr. Cohen developed the thresholds to interpret his *d* coefficient of effect size using the assumptions of normality, similarity of variances, and sufficient number of observations. Dr. Cohen proposed his small, medium, and large thresholds as a convention, and he expected that, while "arbitrary," the thresholds "will be found to be reasonable by reasonable people."[76] The actual numerical values for Dr. Cohen's proposed thresholds (*i.e.*, 0.2, 0.5, and 0.8 for small, medium, and large effects, respectively) were not based on calculated results or statistical analyses, but were threshold numbers that Dr. Cohen proposed because he considered that they will be found reasonable by others.[77] Having reviewed Dr. Cohen's text, we find no

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[72] *Id.*, 5 F.4th at 1360.
[73] *See* Jinko Solar's Sales Case Brief at 16-19.
[74] *Id.* at 19.
[75] *See* Jinko Solar's Letter, "Jinko Solar's Submission of Factual Information re: Differential Pricing Analysis," dated October 28, 2024. This submission includes at Exhibit 1: *Cohen*; Exhibit 2: Grissom, Robert J. and Kim, John J., *Effect Sizes for Research: Univariate and Multivariate Applications* (2012) (*Grissom*); Exhibit 4: Coe, Robert, It's the Effect Size, Stupid: What Effect Size Is and Why It Is Important, paper presented at the Annual Conference of the British Educational Research Association (September 2002) (*Coe*); Exhibit 5: Lane, David M., *Introduction to Statistics: Online Edition* (*Lane*); Exhibit 6: Algina, James, Keselman, H.J., and Penfield, Randall D., "An Alternative to Cohen's Standardized Mean Difference Effect Size: A Robust Parameter and Confidence Interval in the Two Independent Groups Case," *Psychological Methods*. (2005), (10(3) 317-28) (*Algina*); and Exhibit 7: Ellis, Paul D., *The Essential Guide to Effect Sizes: Statistical Power, Meta-Analysis, and the Interpretation of Research Results* (2010) (*Ellis*).
[76] *See Cohen* at 13.
[77] *See Mid Continent III*, 940 F.3d at 673 ("{T}he 0.8 standard is 'widely adopted' as part of a 'commonly used measure' of the difference relative to such overall price dispersion; and it is reasonable to adopt that measure where

basis to conclude that the statistical criteria, which raised concerns before the Federal Circuit in *Stupp II*, were part of Dr. Cohen's selection of these proposed conventions.

The purpose of the statistical criteria is to determine whether the analysis' results (*e.g.*, the mean), which are based on sampled data, are representative of the results if the analysis had been based on the full population of data. The role of the statistical criteria (*i.e.*, normality, variance, and number of observations) is to be part of the analysis to determine the "reliability of {the} sample results."[78] Commerce's application of the Cohen's *d* test, including Dr. Cohen's large, 0.8 threshold, does not require addressing the statistical criteria. Specifically, because the prices used in the Cohen's *d* test include all prices of comparable merchandise for the test and comparison groups, there is no role for the statistical criteria to examine whether the calculated results are reliable and representative of the results if calculated on the full populations of data. The calculated results represent the full data population (*i.e.*, POI-specific sales).

Dr. Cohen presents the concept of a "power analysis,"[79] which tests the null hypothesis to determine whether a phenomenon in a population exists based on sample data.[80] In Commerce's Cohen's *d* test, the "phenomenon" is the difference in prices between the test and comparison groups, and the null hypothesis is that the difference in prices is equal to zero (*i.e.*, the groups report identical prices). Rejection of the null hypothesis indicates a non-zero difference in the prices between the two groups.

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there is no better, objective measure of effect size…. We agree with the {CIT} that this rationale adequately supports Commerce's exercise of the wide discretion left to it under {section 777A(d)(1)(B) of the Act}."); *see also Certain Steel Nails from Taiwan: Final Determination of Sales at Less Than Fair Value*, 80 FR 28959 (May 20, 2015), and the accompanying IDM at 25-26 ("In 'Difference Between Two Means,' the author states that 'there is no objective answer' to the question of what constitutes a large effect. Although {respondent} focuses on this excerpt for the proposition that the 'guidelines are somewhat arbitrary,' the author also notes that the guidelines suggested by Cohen as to what constitutes a small effect size, medium effect size, and large effect size 'have been widely adopted.' The author further explains that Cohen's *d* is a 'commonly used measure{}' to 'consider the difference between means in standardized units.'" (quoting *Lane* at 1-2)); and *Stupp II*, 5 F.4th at 1357 ("We held that 'the 0.8 standard is 'widely adopted' as part of a 'commonly used measure' of the difference relative to such overall price dispersion…. {I}t is reasonable to adopt that measure where there is no better, objective measure of effect size.'" (internal citations omitted)).

[78] *See Cohen* at 6.

[79] *Id.* at 1 (Dr. Cohen's purpose is "to provide a self-contained comprehensive treatment of statistical power analysis from an 'applied' viewpoint" where the "power of a statistical test is the probability that it will yield statistically significant results.").

[80] *Id.* at 1 (In general, the result that is sought is based on a test of the null hypothesis, *e.g.*, "the hypothesis that the phenomenon to be demonstrated is in fact absent" but whereas a researcher "typically hopes to 'reject' this hypothesis and thus 'prove' that the phenomenon in question is in fact present." (internal citation omitted)) and 4 ("*The power of a statistical test of a null hypothesis is the probability that it will lead to the rejection of the null hypothesis*, *i.e.*, the probability that it will result in the conclusion that the phenomenon exists." (emphasis in the original)).

A power analysis is dependent on three parameters: (1) the significance criterion;[81] (2) the reliability of the sampled data;[82] and (3) the effect size.[83] The first two parameters of the power analysis, the significance criterion and the reliability of the sampled data, evaluate whether the results based on sampled data reliably represent the phenomenon in the full population of data.[84] This "statistical inference" is dependent on the probability of rejecting a true null hypothesis (*i.e.*, significance criterion), the sample size, and, for the difference of the means analysis, the shape of the population distribution (*i.e.*, normality and variance).[85] In Commerce's Cohen's *d* test, statistical inferences are not relevant to determine whether the results of the analysis are representative because each test and comparison group include all of the respondent's prices of comparable merchandise during the POI that are used to calculate the weighted-average dumping margin for the respondent.

The effect size is the "*degree* to which the phenomenon is present in the population,"[86] where the "larger this value, the greater the *degree* to which the phenomenon under study is manifested."[87] In the Cohen's *d* test, if the null hypothesis is rejected, then the result of the analysis is that the prices differ by some non-zero amount. The effect size measures the extent to which the prices differ between the two groups.

"To this point, the {effect size} has been considered quite abstractly as a parameter which can take on varying values (including zero in the null case). In any given statistical test, it must be indexed or measured in some defined unit appropriate to the data, test, and statistical model employed."[88] Dr. Cohen prompts the researcher to respond to the question, "How large an effect do I expect *exists in the population*?"[89] "{The researcher} may initially find it difficult to answer the question even in general terms, *i.e.*, 'small' or 'large,' let alone in terms of the specific {effect size} index demanded."[90] The answer to such a question may depend upon resources available to the researcher. Alternatively, Dr. Cohen proposed:

> *as a convention*, {effect size} values to serve as operational definitions of the qualitative adjectives 'small,' 'medium,' and 'large.' This is an operation fraught

[81] *Id.* at 4 ("{T}he significance criterion represents the standard of proof that the phenomenon exists, or the risk of mistakenly rejecting the null hypothesis." "{I}t is the rate of rejecting a true null hypothesis," *e.g.*, a Type I error.)
[82] *Id.* at 6 ("The reliability (or precision) of a sample value is the closeness with which it can be expected to approximate the relevant population value. It is necessarily an estimated value in practice, since the population value is generally unknown. Depending upon the statistic in question, and the specific statistical model on which the test is based, reliability may or may not be directly dependent upon the unit of measurement, the population value, and the shape of the population distribution. However, it is *always* dependent upon the size of the sample." (emphasis in the original)).
[83] *Id.* at 9-10 (the "effect size {means} 'the *degree* to which the phenomenon is present in the population,' or 'the degree to which the null hypothesis is false.'" (emphasis in the original)).
[84] *Id.* at 1-2 (One cannot ignore "the necessarily probabilistic character of *statistical inference*" and that the "{r}esults from a random sample drawn from a population will only approximate the characteristics of the population." (emphasis added)).
[85] *Id.* at 19-20.
[86] *Id.* at 9 (emphasis in original); *see also Ellis* at 4-5 ("An effect size refers to the magnitude of the result as it occurs, or would be found, in the population.").
[87] *See Cohen* at 10 (emphasis in original).
[88] *Id.* at 11.
[89] *Id*. at 12 (emphasis added) and at 20-21.
[90] *Id.*

> with many dangers: The definitions are arbitrary, such qualitative concepts as 'large' are sometimes understood as absolute, sometimes as relative; and thus they run a risk of being misunderstood.[91]

Nonetheless, Dr. Cohen emphasizes that "{a}lthough arbitrary, the proposed conventions will be found to be reasonable by reasonable people."[92]

Dr. Cohen presents the layout of his presentation of effect size as a component of a power analysis:

> Each of the Chapters 2-10 will present in some detail the {effect size} index appropriate to the test to which the chapter is devoted. Each will be translated into alternative forms, the operational definitions of 'small,' 'medium,' and 'large' will be presented, and examples drawn from various fields will illustrate the test. This should serve to clarify the {effect size} index involved and make the methods and tables useful in research planning and appraisal.[93]

Specifically, as "seen in Chapter 2, the {effect size} index for *differences between population means* is standardized by division by the common within-population standard deviation (σ)."[94] Thus, Dr. Cohen's *d* coefficient is a standardized, unitless ratio of the difference in the means divided by some measure of the dispersion of the data,[95] all of which represent a phenomenon in the population.

For an analysis based on the difference of the means, Dr. Cohen proposed that numerical thresholds define a small, medium, and large effect, *i.e.*, 0.2, 0.5, and 0.8 respectively.[96] As discussed above, these numerical thresholds are arbitrary, but Dr. Cohen expected that they would be found reasonable by reasonable people.[97] Indeed, these thresholds have been "widely adopted," as recognized in *Mid Continent III*,[98] and "Cohen's cut-offs provide a good basis for interpreting effect size and for resolving disputes about the importance of one's results."[99] Further, the academic literature provides no evidence that the values themselves, or their use, are dependent on statistical analysis or the application of the statistical criteria, as argued by the plaintiff in *Stupp II*. Indeed, their usefulness is based on their acceptance within the academic community.

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[91] *Id.* (emphasis in original).
[92] *Id.* at 13.
[93] *Id.* at 13-14.
[94] *Id.* at 11 (emphasis added) and 20 ("σ = the standard deviation of either population (since they are assumed equal).").
[95] *Id.* at 21 ("Since both numerator and denominator are expressed in scale units, these 'cancel out,' and *d* is a pure number (here a ratio), freed of dependence upon any specific unit of measurement.").
[96] *Id.* at 24-27.
[97] *See Ellis* at 41 ("Cohen's effect size classes have two selling points. First, they are easy to grasp. You just compare your numbers with his thresholds to get a ready-made interpretation of your result. Second, although they are arbitrary, they are sufficiently grounded in logic for Cohen to hope that his cut-offs 'will be found to be reasonable by reasonable people.'" (internal citation omitted)).
[98] *See Mid Continent III*, 940 F.3d at 673.
[99] *See Ellis* at 40.

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Dr. Cohen provided different approaches to illustrate his proposed small, medium, and large effect size thresholds. Dr. Cohen's first approach is based on the concept of "percent non{-}overlap," where Dr. Cohen posits:

> If we maintain the assumption that the populations being compared are normal and with equal variability, and conceive them further as equally numerous, it is possible to define measures of non{-}overlap (U) associated with *d* which are intuitively compelling and meaningful.[100]

For the percent non-overlap, Dr. Cohen conceives two bell curves (*i.e.*, two normal distributions) where the difference in the means is the difference between the peaks of each bell curve.[101] The area underneath one bell curve that is not underneath the second bell curve is the percent non-overlap. The purpose of Dr. Cohen's assumptions (*i.e.*, that each population is normally distributed, with equal variances and numerosity (rather than a probability function)) is to permit the calculation of the area of the non-overlap of the two bell curves. A normally distributed bell curve is defined by a specific probability function, which, when the variance of the bell curve is known, allows for the calculation of the area underneath that curve. Likewise, when two bell curves are placed over one another, and both bell curves are normally distributed with equal variances, then the percent non-overlap, just like the percent overlap (*i.e.*, the area common under both curves) can be calculated. The assumptions of normality and homoscedasticity are required to enable the calculation of the percentage (*i.e.*, area) of non-overlap as one approach to illustrate different effect size values.[102] These limitations do not apply to Dr. Cohen's development of his proposed thresholds themselves. The percent non-overlap does not define the small, medium, or large thresholds, but only serves to illustrate in a very understandable visual presentation of the difference in two groups of data which represent different degrees of effect size.[103]

Dr. Cohen's second approach is to provide "operational definitions" to illustrate small, medium, or large effects. The first is an observational description, where, for example, a "medium effect size is conceived as one large enough to be visible to the naked eye,"[104] and a large difference is "grossly perceptible."[105] To illustrate these operational definitions, Dr. Cohen provides real-life

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[100] *See Cohen* at 21.

[101] We note that, because Dr. Cohen's assumptions to calculate the non-overlap of the two curves require normal distributions and equal variances, the areas underneath each curve are equal, and the only difference between the two curves is the mean of each normal distribution.

[102] *Id.* at 22 and Table 2.2.1 (which presents the percent non-overlap for various values of the Cohen's *d* coefficient. For example, for $d = 0$, the percent non-overlap is 0.0 percent, *i.e.*, the bell curves lie completely on top of each other. For $d = 0.8$, the percent non-overlap is 47.4 percent, *i.e.*, almost half of the area under each of the bell curves is not common to both distributions).

[103] Similar to the measure of the percent non-overlap, we note that the Federal Circuit also raised the measure of the "percentile standing." *See Stupp II*, 5 F.4th at 1358 (quoting *Grissom* at 66 ("When the distribution of scores of a comparison population is not normal, the usual interpretation of a d_G or *d* in terms of estimating the *percentile standing* of the average-scoring members of another group with respect to the supposed normal distribution of the comparison group's scores would be." (emphasis added)). As with the measure of the percent non-overlap, the calculation of the percentile standing is dependent on the normal distribution and equal variances of the two groups to permit the calculation of the areas beneath the bell curves. *See Grissom* at 62.

[104] *See Cohen* at 26.

[105] *Id.* at 27.

situations where small, medium, and large effect sizes exist. These involve the differences in the intelligence quotients (IQs) of various groups of people, or the differences in the heights of various ages of teenage girls.[106] These illustrative examples do not link Dr. Cohen's thresholds with the statistical criteria, as the 0.8 effect, which has been observed is for the population of, for example, all doctor of philosophy (Ph.D.) holders and college freshmen. Certainly, when the data on the IQs of these two groups of people were collected, it was not collected from everyone who met those group definitions, but it would have been collected from a selected sample from each group. The results of the analysis would have been calculated based on the sampled data from each group, and, through statistical inferences, the representativeness of those results for the entire populations would have been determined. If the statistical analysis of the sampled data demonstrated that the sample-based results are representative of the population, then the sample-based results would be applied to the entire populations of Ph.D. holders and college freshmen. This use of statistical inference, however, is necessary to ensure that the sample is representative of the full universe of data, but it was not part of Dr. Cohen's proposed small, medium, and large thresholds, which are numerical values that have been widely accepted in the academic community.

It is important to note that Dr. Cohen's assumptions required to calculate the percent non-overlap is the source of the following quote by the Federal Circuit in *Stupp II*:

> Commerce's application of the Cohen's *d* test to data that do not satisfy the assumptions on which the test is based may undermine the usefulness of the interpretive cutoffs. In developing those cutoffs, including the 0.8 cutoff, Professor Cohen noted that "*we maintain the assumption that the populations being compared are normal and with equal variability, and conceive them further as equally numerous*."[107]

As discussed above, the assumptions which the Federal Circuit links with Dr. Cohen's development of his proposed thresholds properly relate to the calculation of the percent non-overlap, not with Dr. Cohen's 0.2, 0.5, and 0.8 numerical thresholds for small, medium, and large effects, respectively. Dr. Cohen realized that his proposed thresholds were arbitrary, and foresaw that these thresholds may be questioned, but believed that they would be found to be reasonable by reasonable people. Indeed, in practice, Dr. Cohen's thresholds have been widely accepted, and the Federal Circuit has also accepted that these thresholds are not arbitrary and unreasonable:

> {T}he 0.8 standard is "widely adopted" as part of a "commonly used measure" of the difference relative to such overall price dispersion; and it is reasonable to adopt that measure where there is no better, objective measure of effect size.[108]

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[106] For example, a large effect "is represented by the mean IQ difference estimated between holders of the Ph.D. degree and typical college freshmen, or between college graduates and persons with only a 50-50 chance of passing in an academic high school curriculum. These seem like grossly perceptible and, therefore, large differences, as does the mean difference in height between 13- and 18-year-old girls, which is of the same size ($d = 0.8$)." *See Cohen* at 27 (internal citation omitted).

[107] *See Stupp II*, 5 F.4th at 1357 (quoting *Cohen* at 21) (emphasis added).

[108] *See Mid Continent III*, 940 F.3d at 673 (internal citation omitted).

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The statistical criteria at issue in *Stupp II* are not relevant to Commerce's use of the Cohen's *d* test. As presented in the academic literature, Dr. Cohen's development of his effect size thresholds was not based on the statistical criteria. Further, because the sale prices used in Commerce's Cohen's *d* test encompass the full universe of sale prices for each test and comparison group,[109] the parameters calculated based on the test and comparison groups are not estimates of the population values, but are the actual values of the population parameters; therefore, statistical inference is not relevant to the calculations performed in Commerce's Cohen's *d* test. Accordingly, we find no evidence to support Jinko Solar's arguments that Commerce must account for the statistical criteria when it uses the Cohen's *d* test.

Moreover, the Cohen's *d* test is only one part of Commerce's differential pricing analysis, which also includes the ratio test and the meaningful difference test. The Cohen's *d* test determines whether prices differ significantly, the ratio test determines whether there is a pattern, and the meaningful difference test determines whether the A-to-A method can account for the price differences in the respondent's pricing behavior in the U.S. market. In *Stupp III*, based on that further explanation, the CIT affirmed Commerce's use of the Cohen's *d* test.[110]

Nothing in Jinko Solar's Case Brief demonstrates that Dr. Cohen developed his thresholds based on the assumptions of normality, similarity of variances, and sufficient number of observations. In *Stupp II*, the Federal Circuit remanded this issue and provided "Commerce an opportunity to explain whether the limits on the use of the Cohen's *d* test prescribed by Professor Cohen and other authorities were satisfied in this case or whether those limits need not be observed when Commerce uses the Cohen's *d* test in {LTFV} adjudications."[111] The statistical criteria were neither part of Dr. Cohen's development of his proposed thresholds, nor relevant to Commerce's calculations of the Cohen's *d* coefficient, as those calculations include the full universe of prices in each of the test and comparison groups. Thus, no statistical inferences are required to establish that the calculated results represent the actual parameters, including the effect size, of the full populations of prices.[112] Consequently, in accordance with our practice and prior precedent, we continue to apply the Cohen's *d* test, in the same manner as in the *Preliminary Determination*, for the final determination of this investigation.

Similarly, Jinko Solar's reliance on certain opinions (*i.e.*, *NEXTEEL, SeAH I*, and *SeAH II*) is misplaced.[113] In *NEXTEEL*, the Federal Circuit did not find that Commerce's use of the Cohen's *d* test is unlawful, or that the statistical criteria must be addressed as part of the Cohen's *d* test; rather, relying on *Stupp II*, the Federal Circuit remanded Commerce's decision for further

[109] As noted above, the sale prices in each test and comparison group encompass all the sale prices of comparable merchandise during the POI to each purchaser, region or time period, and these sale prices encompass all of the U.S. prices which are the basis for the calculation of the respondent's weighted-average dumping margin.
[110] *See Stupp Corp. v. United* States, 619 F. Supp. 3d 1314 (CIT 2023) (*Stupp III*), appeal docketed Federal Circuit No. 2023-1663 (March 27, 2023); *see also SeAH Steel Corp. v. United States*, 619 F. Supp. 3d 1309 (CIT 2023) (denying motion for reconsideration despite arguments that *Stupp II* applied).
[111] *See Stupp II*, 5 F.4th at 1360.
[112] We note that much of Commerce's explanation above was before the CIT when it sustained Commerce's redetermination in *Stupp III*.
[113] *See* Jinko Solar's Sales Case Brief at 15-16 (citing *NEXTEEL Co. v. United States*, 28 F.4th 1226 (Fed. Cir. 2022) (*NEXTEEL*); *SeAH Steel Corp. v. United States*, 539 F. Supp. 3d 1341 (CIT 2021) (*SeAH I*); and *SeAH Steel Corp. v. United States*, 589 F. Supp. 3d 1288 (CIT 2022) (*SeAH II*)).

explanation or reconsideration of the statistical criteria. In a decision that is now final and conclusive, the CIT upheld Commerce's redetermination on remand in *NEXTEEL II*, inclusive of Commerce's application of the Cohen's *d* test.[114]

In *SeAH I*, the CIT did not find that Commerce's use of the Cohen's *d* test was unlawful or that the statistical criteria must be addressed.[115] Moreover, in Commerce's redetermination, the issue concerning the application of the differential pricing analysis, including the Cohen's *d* test, was rendered moot as a result of changes in calculations following reconsideration of another issue.[116] Thus, Commerce did not provide a further explanation that that the statistical criteria are not relevant for its application of the Cohen's *d* test.

Finally, we note that, in *Marmen*, Commerce further explained that, applying the Cohen's *d* test to a population, rather than a sample, sufficiently negates the relevance of the statistical criteria and questionable understanding about Dr. Cohen's thresholds raised in *Stupp II*.[117] The CIT sustained Commerce's redetermination, and held that Commerce's application of the Cohen's *d* test to determine whether there was a significant pattern of differences was reasonable.[118]

Cohen's *d* Test Denominator

We disagree with Jinko Solar's argument that Commerce must revise its Cohen's *d* test calculation methodology. Regarding the concerns expressed in *Mid Continent IV*, the Federal Circuit stated that "Commerce needs a reasonable justification for departing from what the acknowledged literature teaches about Cohen's *d*."[119] Thus, the Federal Circuit remanded the issue, stating that "Commerce must either provide an adequate explanation for its choice of simple averaging or make a different choice, such as use of weighted averaging or use of the standard deviation for the entire population."[120] However, the Federal Circuit did not find that Commerce's use of a simple average to calculate the denominator of the Cohen's *d* coefficient was unlawful, and Commerce continues to use a simple average in the final determination of this investigation. We note that, in a recent court decision in this matter, the CIT upheld Commerce's use of simple averaging to calculate the denominator of the Cohen's *d* coefficient.[121]

Dr. Cohen presented effect size as part of his concept of power analysis,[122] where effect size is one element of Dr. Cohen's power analysis and represents "the degree to which the phenomenon

[114] *See NEXTEEL Co. v. United States*, 676 F. Supp. 3d 1345 (CIT 2023) (*NEXTEEL II*).
[115] *See SeAH I*, 539 F. Supp. 3d at 1351.
[116] *See SeAH II*, 589 F. Supp. 3d at 1293 ("SeAH agrees with Commerce that the differential pricing analysis has been rendered moot because without the particular market situation adjustment, the dumping margin for SeAH would be *de minimis* regardless of which comparison method is used by Commerce." (internal citations omitted)).
[117] *See Marmen Inc. v. United States*, 627 F. Supp. 3d 1312 (CIT 2023) (appeal docketed).
[118] *Id.*
[119] *See Mid Continent Steel & Wire, Inc. v. United States*, 31 F.4th 1367, 1381 (Fed. Cir. 2022) (*Mid Continent IV*).
[120] *Id.*
[121] *See Mid Continent Steel & Wire, Inc. v. United States*, 680 F. Supp. 3d 1346 (CIT 2024) (*Mid Continent V*), appeal docketed Federal Circuit No. 2024-1556 (March 11, 2024).
[122] *See Cohen* at 1 ("The purpose of this book is to provide a self-contained comprehensive treatment of statistical power analysis from an 'applied' viewpoint.").

is present in the population."[123] In Dr. Cohen's general formulation of "the effect size (ES) we wish to detect," he defines the "*d*" coefficient as the "standardizing of the raw effect size as expressed in the measurement unit of the dependent variable {*i.e.*, the difference in the means} by dividing it by the (common) standard deviation of the measures in their respective populations, the latter also in the original measurement unit."[124] Mathematically, Dr. Cohen expressed the effect size as,

$$d = \frac{m_A - m_B}{\sigma}$$

for a one-tailed case, or as

$$d = \frac{|m_A - m_B|}{\sigma}$$

for a two-tailed case,[125] where m_A and m_B are the "population means" and σ is "the standard deviation of either population (since they are assumed equal)."[126] Dr. Cohen repeated this definition of effect size for a population in his discussion of the "power tables," where "σ is the common within-population standard deviation (*i.e.*, $\sigma_A = \sigma_B = \sigma$)."[127] Thus, the common within-population standard deviation is defined in the academic literature as equal to the standard deviation of population A or the standard deviation of population B, which are equal.

In Dr. Cohen's general formulation of effect size, the denominator of the ratio, *i.e.*, the "standard deviation," is the standard deviation of population A or the standard deviation of population B, which are assumed to be identical. Thus, when the standard deviations of population A and population B are equal, either of the standard deviations of the two populations is used as the denominator. However, when the standard deviations of population A and population B are not equal:[128]

> the definition of *d* will be slightly modified. Since there is no longer a common within-population σ, *d* is defined as above (formulas (2.2.1) and (2.2.2)), but instead of σ in the denominator, the formula requires the root mean square of σ_A and σ_B, that is, the square root of the mean of the two variances:
>
> $$\sigma' = \sqrt{\frac{\sigma_A^2 + \sigma_B^2}{2}}$$

In other words, when the standard deviations of the two populations are not equal, then the denominator of the effect size should be the simple average of the two, unequal standard deviations of population A and population B. In this scenario, there is no common within-population standard deviation. Moreover, unlike a common within-population standard deviation where one of the population standard deviations is used as the denominator, the denominator in this scenario is defined as the root mean square, *i.e.*, the simple average, of the

[123] *Id.* at 9.
[124] *Id.* at 20.
[125] *Id.* (equations 2.2.1 and 2.2.2, respectively).
[126] *Id.*
[127] *Id.* at 27.
[128] *Id.* at 43-44 and equation 2.3.2.

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standard deviations of population A and population B.[129] Throughout *Cohen*, when the standard deviations of the two populations are known, the denominator of the effect size is either the common population standard deviation when the standard deviations of the two populations are equal,[130] or the root square mean of the two standard deviations when the standard deviations of the two populations are unequal.[131]

Consistent with Dr. Cohen's general formulation of effect size based on means and standard deviations of two populations, Dr. Ellis recognized that:

> {t}he best way to measure an effect is to conduct a census of an entire population but this is seldom feasible in practice. Census-based research may not even be desirable if researchers can identify samples that are representative of broader populations and then use inferential statistics to determine whether sample-based observations reflect population-level parameters.[132]

However, given Dr. Cohen's general formulation of effect size and the *d* coefficient where the denominator of the ratio was defined as the "standard deviation," Dr. Ellis observed:

> {t}he only tricky part in this calculation is figuring out the population standard deviation. If this number is unknown, some approximate value must be used instead. When he originally developed this index, Cohen (1962) was not clear on how to solve this problem, but there are now at least three solutions. These solutions are referred to as Cohen's *d*, Glass's delta or Δ, and Hedges' *g*. As we can see from the following equations, the only difference between these metrics is the method used for calculating the standard deviation:

$$Cohen's\ d = \frac{M_1 - M_2}{SD_{pooled}}$$

$$Glass's\ \Delta = \frac{M_1 - M_2}{SD_{control}}$$

$$Hedges'g = \frac{M_1 - M_2}{\mathrm{SD}\ *_{pooled}}$$

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[129] *Id.* at 44-45 ("Note that this value is not the standard deviation of either the population of men workers or that of women workers, but the root mean square of their respective population standard deviations, σ' (formula (2.3.2))."). [130] *Id.* at 20 and 27.

[131] *Id.* at 44, 60 ("The inequality of population σ values results only in a standardization of the difference in population means by the root mean square of the population variances (formula (2.3.2)) instead of the common population standard deviation."), 61 ("Since she is assuming that $\sigma_S^2 \neq \sigma_C^2$, the standardizing unit cannot be the common within-population standard deviation, but is instead the square root of the mean of the two variances, *i.e.*, $\sqrt{(\sigma_S^2 + \sigma_C^2)/2}$ (formula (2.3.2))."), 63 ("Note that d_4' is simply the m_P - m_C difference, standardized by the common within-population standard deviation (or, if $\sigma_P^2 \neq \sigma_C^2$, their root mean square, σ', formula (2.3.2))."), and 65 ("where σ is either the common population standard deviation or σ' from formula (2.3.2).").

[132] *See Ellis* at 5.

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> Choosing among these three equations requires an examination of the standard deviations of each group.[133]

Thus, when the standard deviations of the two populations are unknown, Dr. Ellis and other academic authors provide alternatives with which to estimate the denominator of the effect size. As noted in the equations above, Dr. Ellis provides different formulations for the "pooled standard deviation" as an estimate for the denominator of the effect size:

For Cohen's *d*:[134]

$$SD_{pooled} = \sqrt{\frac{\sum(X_A - \bar{X}_A)^2 + \sum(X_B - \bar{X}_B)^2}{n_A + n_B - 2}}$$

For Hedges' *g*:[135]

$$SD *_{pooled} = \sqrt{\frac{(n_A - 1)SD_A^2 + (n_B - 1)SD_B^2}{n_A + n_B - 2}}$$

In each of these equations, the variable *n* represents the sample size of each group of data.

When based on sampled data, Dr. Cohen stated that "{g}enerally, we can define the effect size *in the sample* (ES_s) using sample statistics in the same way as we define it for the population, and a statistically significant ES_s is one which exceeds an appropriate criterion value."[136] Dr. Cohen also provides an estimation of effect size when the analysis is based on sampled data:[137]

> {a}ccordingly, we redefine our ES index, *d*, so that its elements are sample results, *rather than population parameters*, and call it d_s. For all tests of the difference between means of independent samples,
>
> $$d_s = \frac{\bar{X}_A - \bar{X}_B}{s}$$
>
> where $\bar{X}_A$ and $\bar{X}_B$ = the two sample means, and
> s = the usual pooled within sample estimate of the population standard deviations, that is,
>
> $$s = \sqrt{\frac{\sum(X_A - \bar{X}_A)^2 + \sum(X_B - \bar{X}_B)^2}{n_A + n_B - 2}}$$

The equation to estimate the denominator of the effect size based on sampled data, the "pooled" standard deviation, is identical to that included by Dr. Ellis for the Cohen's *d* coefficient, *i.e.*, the

[133] *Id.* at 10.
[134] *Id.* at 26.
[135] *Id.* at 27.
[136] *See Cohen* at 17 (emphasis in the original).
[137] *Id.* at 66-67 and equations 2.5.1 and 2.5.2 (emphasis added).

"pooled standard deviation." This is not the equation which Commerce uses in the Cohen's *d* test because it is based on the use of sampled data; Commerce's analysis encompasses the full population of data (*i.e.*, sale prices) and, thus, it is appropriate for Commerce to use Dr. Cohen's simple average of the standard deviations of the test and comparison groups.

Commerce recognizes that in prior proceedings, we used the term "pooled standard deviation" to denote the denominator of the "Cohen's *d* coefficient" used in the Cohen's *d* test. We clarify that our reference to a "pooled standard deviation" is not consistent with the use of that term in the academic literature and may have caused confusion. The "pooled standard deviation," as used by the academic authors, references some of the approaches to estimate the denominator of the effect size based on the actual standard deviations of the populations when such actual values are not known. Commerce has not used the "pooled standard deviation" as the term is meant in the academic literature to calculate the denominator of the Cohen's *d* test. Rather, Commerce has used the simple average of the actual standard deviations of the populations of the test and comparison groups as set forth in Dr. Cohen's equation 2.3.2. Commerce notes that if the two standard deviations are equal, then *Cohen* equation 2.3.2 simplifies into the identity $\sigma' = \sigma_A = \sigma_B = \sigma$, as used in Dr. Cohen's initial formulation of effect size in *Cohen* equations 2.2.1 and 2.2.2.

In sum, the academic literature allows for Commerce's use of the simple average, *i.e., Cohen* equation 2.3.2, as the denominator of the effect size, *i.e.*, the Cohen's *d* coefficient, when the actual standard deviation of each population is known and they are unequal. Commerce's calculation of the effect size in the Cohen's *d* test is based on the full population of sale prices of comparable merchandise to a given purchaser, region, or time period, and the full population of all other sale prices of comparable merchandise (*i.e.*, the test and comparison groups, respectively).[138] Accordingly, Commerce's calculation of the Cohen's *d* coefficient is based on the actual means and standard deviations of the test and comparison groups. Commerce's calculation of the Cohen's *d* coefficient is not based on sampled data, and there is no estimation of the actual mean and standard deviation of the test group and of the comparison group. The academic literature provides for the use of a weighted average as a possible approach when estimating the denominator of the effect size when the actual standard deviations are not known, which is not the situation with Commerce's application of the Cohen's *d* test. Therefore, the academic literature allows for the use of the simple average to calculate the denominator of the effect size, and it does not necessarily require the use of a weighted average.[139]

Moreover, Commerce's use of the simple average of the standard deviations of two full populations as the denominator of the Cohen's *d* coefficient is reasonable because these standard deviations are equally reliable. In his presentation of the parameters of the statistical power analysis, Dr. Cohen describes the "reliability of sample results and sample size":

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[138] *See Mid Continent IV*, 31 F.4th at 1378 ("Indeed, in each test-group/comparison-group pair, the test and comparison groups together make up 'the entire universe, *i.e.*, population, of the available data,' because for each test group, the comparison group is all other sales data." (internal citation omitted)).

[139] We recognize that the CIT remanded some of the explanation above for Commerce to provide further explanation or reconsideration. *Mid Continent Steel & Wire, Inc. v. United States*, 680 F.Supp.3d 1346 (CIT 2024). We note that the CIT's decision was issued as part of ongoing litigation that has not reached a final judgment on this issue, and that the explanation has not yet been presented before the Federal Circuit. Moreover, the decision is not binding. *See Algoma Steel Corp. v. United States*, 865 F.2d 240 (Fed. Cir. 1989).

> The reliability (or precision) of a sample value is the closeness with which it can be expected to approximate the relevant population value. It is necessarily an estimated value in practice, since the population value is generally unknown. Depending upon the statistic in question, and the specific statistical model on which the test is based, reliability may or may not be directly dependent upon the unit of measurement, the population value, and the shape of the population distribution. However, it is *always* dependent upon the size of the sample.[140]

Dr. Cohen further notes that:

> The nature of the dependence of reliability upon n {*i.e.*, sample size} is obvious from the illustrative formulas, and, indeed, intuitively. The larger the sample size, other things being equal, the smaller the error and the greater the reliability or precision of the results.[141]

Indeed, when Dr. Cohen defines the four parameters of statistical inference, "sample size (n)" represents the reliability of the sample results.[142] Accordingly, the sample size is a gauge of the reliability of sample results as part of Dr. Cohen's power analysis. The larger the sample size relative to the population, the more reliable the sample results.

Where sample sizes are equal in size, the estimated standard deviation for each of the sampled groups also has the same "reliability (or precision) of a sample value {which} is the closeness with which it can be expected to approximate the relevant population value."[143] Consequently, a simple average of the standard deviations of the two groups is appropriate because the reliability of each value of the standard deviation is equal. In other words, when the sample sizes of the two groups are equal, then the reliability of the estimates of the standard deviations are the same, and it is appropriate to give equal weights, *i.e.*, a simple average, when averaging the two standard deviations to calculate the denominator of the Cohen's *d* coefficient.

In contrast, "when the sampled groups have unequal sizes {*i.e.*, $nA \neq nB$}, the cited literature uniformly teaches use of a pooled standard deviation estimate that involves weighted averaging."[144] With the weighted average, the standard deviation of the group with the larger sample size (*i.e.*, sales volume) is given more weight than the group with the smaller sample size.[145] If the sample size of group A is larger than the sample size of group B, then the reliability of the standard deviation of group A will be greater than the reliability of group B. In such a situation, the standard deviation of group A has more reliability and is given more weight than the standard deviation of group B when calculating the denominator of the Cohen's *d* coefficient. Because the group with the larger sample size has greater reliability, the weights reflect the relative reliability of the standard deviations from the two groups.

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[140] *See Cohen* at 6 (emphasis in original).
[141] *Id*. at 7.
[142] *Id*. at 14 ("Four parameters of statistical inference have been described: power, significance criterion (a), sample size (n), and effect size (ES).").
[143] *Id.* at 6.
[144] *See Mid Continent IV*, 31 F.4th at 1378 (referencing *Cohen* at 67; *Ellis* at 26-27; and *Coe* at 6).
[145] *See, e.g.*, *Coe* at 6 (equation 4).

In Commerce's application of the Cohen's *d* test, Commerce uses the full populations of data, *i.e.*, all prices of comparable merchandise to a given purchaser, region, or time period (*i.e.*, the test group) and all prices of comparable merchandise to all other purchasers, regions, or time periods (*i.e.*, the comparison group). As a result, the standard deviations calculated for the test and comparison groups each have a reliability of 100 percent, *i.e.*, "the closeness with which {the calculated value} can be expected to approximate the relevant population value."[146] In other words, the reliability of the calculated standard deviations based on the full population of sale prices to each group is identical. Because the reliability of the standard deviations based on full populations is equal, to calculate the denominator of the Cohen's *d* coefficient, Commerce finds that it is reasonable to weight these standard deviations equally, *i.e.*, a simple average, as presented in Dr. Cohen's equation 2.3.2, just as when the reliability is equal for standard deviations based on sampled data with equal sample sizes.

Reasonableness of the Cohen's *d* Test

We disagree with Jinko Solar that Commerce's determination of the significance of price differences is arbitrary and unsupported by substantial evidence.[147] As an initial matter, Jinko Solar neither identifies record evidence, nor provides citations to previous determinations, demonstrating that using the Cohen's *d* test to determine the significance of price differences produces arbitrary results. Rather, the *Preliminary Determination* describes Commerce's meticulous application of the Cohen's *d* test using significance thresholds that "provide a good basis for interpreting effect size and for resolving disputes about the importance of one's results."[148] Moreover, Dr. Cohen expected that his proposed significance thresholds (*i.e.*, 0.2, 0.5, and 0.8 for small, medium, and large effects, respectively) would be found reasonable by reasonable people.[149]

Jinko Solar notes that the Federal Circuit, in *Stupp II*, found that "reasonableness" is the standard for reviewing Commerce's differential pricing analysis and the "components of that methodology."[150] Jinko Solar contends that any practice "biased towards generating positive findings and inflating dumping margins cannot be considered reasonable" and is "arbitrary, capricious, and unfair."[151] Nonetheless, the CIT subsequently found upon remand, in *Stupp III*, that Commerce's use of the Cohen's *d* test, including the 0.8 significance threshold, is reasonable.[152] Further, the CIT found that Commerce "adequately explained how its {differential pricing analysis} is reasonable," in accordance with the Federal Circuit's remand instructions in *Stupp II*, and that "Commerce's remand results are supported by substantial evidence."[153] We find that the instant record lacks any evidence or arguments that distinguish it

[146] *See Cohen* at 6.
[147] *See* Jinko Solar's Sales Case Brief at 21-22.
[148] *See Preliminary Results* PDM at 9-11; *see also Ellis* at 40.
[149] *See Certain Softwood Lumber Products from Canada: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Administrative Review, and Final Determination of No Shipments; 2022*, 89 FR 67067 (August 19, 2024), and accompanying IDM at Comment 16 (citing *Ellis* at 41).
[150] *See* Jinko Solar's Sales Case Brief at 15, n.35 (citing *Stupp II*, 5 F.4th at 1354).
[151] *Id.* at 15.
[152] *See Stupp III*, 619 F. Supp. 3d at 1328.
[153] *Id.*

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from the record underlying *Stupp III*. Accordingly, we find that the Commerce's application of the Cohen's *d* test to determine the significance of price differences is reasonable.

Summary

For the reasons discussed above, we disagree with Jinko Solar's arguments regarding the use of the Cohen's *d* test in the differential pricing analysis. We determine that use of the Cohen's *d* test is reasonable, and in accordance with the "tremendous deference" afforded to Commerce "in identifying, selecting{,} and applying methodologies to implement the dictates set forth in the governing statute."[154] Consequently, we continue to apply the Cohen's *d* test as part of the differential pricing analysis in Jinko Solar's dumping margin calculations.[155]

Comment 6: Whether Commerce Should Increase Jinko Solar's Reported TOTCOM

Jinko Solar's Cost Case Brief:

The following is a verbatim summary of an argument submitted by Jinko Solar. For further details, *see* Jinko Solar's Cost Case Brief at 3-5.

> {}In the *Preliminary Determination*, Commerce erred in increasing Jinko {Solar}'s reported TOTCOM to account for alleged unreconciled cost differences. In fact, Jinko {Solar} fully reconciled the cost difference, and these costs should be removed from Jinko {Solar}'s POI TOTCOM, since they relate either to non-subject merchandise or to costs already reported in the sales database (packing labor and materials). Thus, Commerce should reverse its *Preliminary Determination* and *not increase* Jinko {Solar}'s TOTCOM in the Final Determination (emphasis in original).

No other interested party commented on this issue.

Commerce's Position: We agree with Jinko Solar and have reversed the unreconciled difference adjustment made in the *Preliminary Determination*. In the *Preliminary Determination*, we increased Jinko Solar's reported costs by an unreconciled difference between the POI TOTCOM of the merchandise under consideration (MUC) in the cost reconciliation and the extended TOTCOM in the cost database because Jinko Solar provided a brief explanation of the difference, but did not provide a schedule of the reconciling items.[156] However, while preparing for verification, we found the schedule showing the reconciliation between the two amounts.[157] As discussed in the Cost Verification Report, because Jinko Solar demonstrated and we verified the unreconciled difference between the POI COM of MUC in the cost reconciliation and the extended TOTCOM in the cost database related to third country control numbers

[154] *See Fujitsu General Limited v. United States*, 88 F.3d 1034, 1039 (Fed. Cir. 1996).
[155] *See* Jinko Solar Final Calculation Memorandum.
[156] *See* Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Jinko Solar Technology Sdn. Bhd.," dated November 27, 2024, at 2-3.
[157] *See* Jinko Solar's Letter, "Jinko Supplemental Section D Questions 16-22 Response," dated November 13, 2024, at Exhibit SD-17.7.

(CONNUMs), non-prime products, and packing cost, the adjustment made in the *Preliminary Determination* is no longer warranted.[158]

Comment 7: Whether Commerce Should Revise the Market Price of Aluminum Frames

Jinko Solar's Cost Case Brief:

The following is a verbatim summary of an argument submitted by Jinko Solar. For further details, *see* Jinko Solar's Cost Case Brief at 5-8.

> {}In the *Preliminary Determination*, Commerce based the market value of aluminum frames on Harmonized Tariff Schedule (HTS) 7610.90.9900 data, resulting in a value of {5.12 U.S. dollars (USD) per kilogram (KG)}. Commerce should have valued aluminum frames at {3.88 USD per KG}, based on HTS 7604.21.90 data, since: (1) aluminum frames for solar panels are not parts of structures, which are classified in HTS 7610.90.99; and (2) HTS 7604.21.90 data has been used by Commerce to value aluminum frames in multiple prior Commerce proceedings.

Petitioner's Cost Rebuttal Brief:

The petitioner did not provide the requested executive summary regarding its cost rebuttal brief. The petitioner's argument may be found at pages 2-4 of Petitioner's Cost Rebuttal Brief.

Commerce's Position: We agree with the petitioner and have continued to use the weighted-average unit value (AUV) of Malaysian imports under HTS 7604.21.9000 and HTS 7610.90.9900 to determine the proxy market price for aluminum frames. Commerce's decision to utilize the weighted-average AUV calculated using both HTS numbers reflects Commerce's experience analyzing solar panels and record evidence which demonstrates how Jinko Solar itself classifies its imported aluminum frames for Malaysian customs purposes. While Commerce has previously relied solely on HTS number 7604.29.9001 to value aluminum frames consumed in the production of solar cells,[159] section 773(f)(2) of the Act directs Commerce to determine the market price value by using "information available as to what the amount would have been if the transaction had occurred between persons who are not affiliated" when analyzing whether transactions between affiliated parties reflect arm's-length pricing. Indeed, in *Canadian Solar Int'l Ltd.*, even though the CIT upheld Commerce's use of HTS 7604.29.9001 to value aluminum frames, the CIT stated that, in the underlying proceeding, HTS 7604.29.9001 was the best information available and that Commerce found no evidence on the record to contradict a determination that HTS 7604.29.9001 was the best information available in that proceeding.[160]

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[158] *See* Jinko Solar's Cost Verification Report at 10-11; *see also* Jinko Solar Final Cost Calculation Memorandum.
[159] *See, e.g.*, *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2019-2020*, 87 FR 38379 (June 28, 2022), and accompanying IDM at Comment 7.
[160] *See Canadian Solar Int'l Ltd. V. United States*, 378 F. Supp. 3d 1292, 1308 (CIT 2019) (explaining that "Trina sufficiently demonstrated that the aluminum frames in question are non-hollow, aluminum profiles, and that Commerce found no evidence on the record to contradict this description" and that "Commerce's determination that HTS 7604 is more specific that the available alternatives on the record is supported by substantial evidence.").

In the current proceeding, record evidence demonstrates that, despite Commerce's previous determinations concerning the propriety of using HTS 7604.29.9001, imports into Malaysia under HTS 7610.90.9900 are also a suitable proxy market value because Jinko Solar itself classifies its aluminum frame imports under HTS 7610.90.9900.[161] Moreover, we are not persuaded by Jinko's argument that HTS 7610.90.9900 is a basket subheading which covers multiple sophisticated products with a value per-kilogram greater than aluminum frames because, as noted by the petitioner, HTS 7604.21.9000 is also a basket category of other aluminum profiles.[162] Thus, because Commerce's previous determinations and record evidence support the use of both HTS numbers to determine a market price for aluminum frames, we have continued to use the weighted-average AUV's of Malaysian inputs as a proxy for market price.[163]

Comment 8: Whether Commerce Should Add Certain Expenses Booked by JSM in FY 2023 to the G&A Ratio

Petitioner's Cost Case Brief:

The following is a verbatim summary of an argument submitted by the petitioner. For further details, *see* Petitioner's Cost Case Brief at 3-4.

> Jinko {Solar} sold subject merchandise in the U.S. market during the {POI} sourced from JSM. JSM ceased operations before the POI but nevertheless incurred certain {G&A} expenses during the POI. These expenses benefited JST. Under {Commerce}'s practice, JSM's FY 2023 G&A expenses should be added to the JST's G&A expenses.

Jinko Solar's Cost Rebuttal Brief:

The following is a verbatim summary of an argument submitted by Jinko Solar. For further details, *see* Jinko Solar's Cost Rebuttal Brief at 2-4.

> {}Because Commerce already has concluded that JSM and JST are not a single entity, there is simply no rationale for collapsing JSM's G&A expenses with JST's reported costs. They are separate companies. Thus, consistent with its practice, if at all, G&A should be applied separately to each company – JSM and JST. On the other hand, if Commerce were to collapse JSM and JST in the {f}inal {d}etermination for purposes of G&A expenses, Commerce also would need to revise its sales matching analysis to ensure a proper collapsed matching of sales to costs for both JST and JSM because during the POI, the U.S. sales database (consisting of {Jinko Solar's U.S. entities'} resales) included sales of subject merchandise produced by JSM. In other words, Commerce cannot selectively

[161] *See* Jinko Solar's Letter, "Jinko's Supplemental Section D Questions 1-15 Response," dated November 12, 2024 (DSQR 1) at 6.
[162] *See* Petitioner's Cost Rebuttal Brief at 4.
[163] *See* Jinko Solar's Final Cost Calculation Memorandum.

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collapse JSM and JST G&A expenses but then ignore collapsing for sales matching purposes.

Commerce's Position: We have continued to calculate Jinko Solar's G&A expense rate using the financial information of Jinko Solar solely and have not included any expenses incurred by JSM. Commerce's well-established practice is to calculate company-specific G&A expense rates and to apply resultant company-specific G&A expense rates to the producing company's CONNUM-specific manufacturing costs.[164] In this proceeding, even though Jinko Solar reported that it had sales of MUC which it had sourced from JSM prior to the POI, Jinko Solar was the sole producing entity throughout the POI.[165] Indeed, Commerce explained in the *Preliminary Determination* that JSM's lack of production facilities throughout the POI was the determinative factor in preliminarily determining not to treat Jinko Solar and JSM as a single entity despite their affiliation.[166] Also, while Commerce has included administrative expenses incurred by an affiliated company on behalf of the producing entity in the producing entity's net G&A expenses in cases where both companies are included in the consolidated financial statements,[167] we determine that record evidence does not support the petitioner's assertion that JSM incurred administrative expenses which benefited Jinko Solar because a note to JSM's FY 2023 audited financial statements indicates that the expenses included in the administrative expense line item of JSM's audited FY 2023 financial statements are not the type of expenses that Commerce includes in the calculation of net G&A expenses.[168] Therefore, because JSM did not have any production during the POI and record evidence does not indicate that JSM incurred administrative expenses for the benefit of Jinko Solar, we have continued to calculate Jinko Solar's G&A expense rate using Jinko Solar's financial information solely.

Comment 9: Whether Commerce Should Increase Jinko Solar's TOTCOM to Incorporate Retrenchment Benefits

Petitioner's Cost Case Brief:

The following is a verbatim summary of an argument submitted by the petitioner (internal citations omitted). We note that we requested that interested parties provide a public, executive summary for each issue raised in their briefs. *See Preliminary Results*, 89 FR at 96209. Therefore, because the executive summary in Petitioner's Cost Case Brief contains BPI, we have redacted that content herein. For further details, *see* Petitioner's Cost Case Brief at 4-6.

> Jinko {Solar} inappropriately classified its "retrenchment benefits" expenses as G&A expenses and {BPI} the reported costs. Jinko {Solar}'s trial balance and

[164] *See, e.g.*, *Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value*, 73 FR 33985 (June 16, 2008), and accompanying IDM at Comment 11 (explaining that, in cases involving collapsed entities, Commerce calculates producer-specific G&A expense rates using each company's own financial information, and applies the resultant G&A expense rate to the companies' respective per-unit COM amounts).
[165] *See* Jinko Solar's Letter, "Jinko Section A Questionnaire Response," dated July 26, 2024 (AOQR), at 2 and 6.
[166] *See* Preliminary Affiliation and Collapsing Memorandum at 6.
[167] *See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 35248 (June 12, 2013), and accompanying IDM at Comment 9.
[168] *See* AOQR at Exhibit A-13c, Note 16.

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> reconciliation of the trial balance to the income statement indicate that its classification {BPI} costs in question is not appropriate and inconsistent with Jinko's financial statements. The "retrenchment benefits" should therefore be treated as part of the cost of manufacturing(COM).

No other interested party commented on this issue.

Commerce's Position: We agree with the petitioner that the full cost of retrenchment benefits paid by Jinko Solar during the POI should be included in the calculation of Jinko Solar's COM. Jinko Solar incurred retrenchment costs during the POI.[169] While Jinko Solar reported that it had treated the retrenchment costs as either overhead or G&A expenses and record evidence confirmed that a portion of the retrenchment costs had been included in overhead,[170] we determined that Jinko Solar had not included the remaining portion of the retrenchment costs in its calculation of net G&A expenses. Thus, because record evidence demonstrates that Jinko Solar records retrenchment costs as part of its cost of goods sold (COGS) in the normal course of business and Jinko Solar submitted a schedule which broke down the retrenchment expenses by month, we have adjusted Jinko Solar's total POI COM to include the applicable retrenchment costs. We note that, because the retrenchment costs pertain to Jinko Solar's total POI COM, we calculated the adjustment rate by using Jinko Solar's total POI COM.[171]

Comment 10: Whether Commerce Should Include All Foreign Exchange-Related Gains and Losses in the Net Financial Expenses

Petitioner's Cost Case Brief:

The following is a verbatim summary of an argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner's Cost Case Brief at 6-9.

> At the cost verification, Jinko {Solar} claimed that it "omitted the net exchange gains/losses from the calculation of its financial expense rate." In the final determination, {Commerce} should ensure that it follows its practice that gains and losses on foreign exchange swaps, options, and other derivatives related to the company's management of its foreign currency exposure are included in the net financial expenses.
>
> {Commerce} should make certain adjustments to Jinko {Solar}'s interest expense calculation to be consistent with the record and agency practice.

Jinko Solar's Cost Case Brief:

The following is a verbatim summary of an argument submitted by Jinko Solar. For further details, *see* Jinko Solar's Cost Case Brief at 2-3.

[169] *See* DSQR 1 at 20.
[170] *Id.*
[171] *See* Jinko Solar's Final Cost Calculation Memorandum.

> {}Consistent with Commerce's verification findings, Commerce should use the reduced financial expense rate, submitted by Jinko {Solar} as a minor correction, to calculate Jinko {Solar}'s margin in the final determination.

Jinko Solar's Cost Rebuttal Brief:

The following is a verbatim summary of an argument submitted by Jinko Solar. For further details, *see* Jinko Solar's Cost Rebuttal Brief at 4-5.

> {}Provided Commerce accepts {the petitioner's} argument to adjust Jinko {Solar}'s revised net financial expenses calculations to include the two items identified in its brief, Commerce must also accept Jinko {Solar}'s minor correction, in which Jinko {Solar} noted that it inadvertently omitted the net exchange gains/losses from the calculation of its financial expense rate.

Petitioner's Cost Rebuttal Brief:

The petitioner did not provide the requested executive summary regarding its cost rebuttal brief. The petitioner's arguments may be found at pages 1-2 of Petitioner's Cost Rebuttal Brief.

Commerce's Position: We agree with both the petitioner and Jinko Solar, and have revised Jinko Solar's financial expense rate calculation to include all foreign exchange gains and losses in net financial expenses and to adjust the COGS denominator. Commerce's well-established practice is to include the entire amount of net foreign exchange gains and losses in the calculation of net financial expenses (*i.e.*, the numerator of the financial expense rate calculation).[172] Moreover, Commerce has explained that it includes the gains and losses attributable to items such as currency swaps and currency future swaps in the calculation of net financial expenses because such items are used by entities to manage foreign exchange exposure and thus pertain to overall cash management.[173] Accordingly, we have revised the calculation of Jinko Solar's net financial expenses to include the net exchange gains and losses identified by Jinko Solar in the minor corrections presented on the first day of the cost verification as well as the additional items referenced by the petitioner in its case brief. Additionally, because Commerce calculates per-unit financial expense by applying the financial expense rate to a total COM amount which does not include certain costs, we have adjusted the COGS amount used in the denominator in the financial expense rate calculation to exclude these costs.[174]

[172] *See, e.g.*, *Large Diameter Welded Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 84 FR 6374 (February 27, 2019), and accompanying IDM at Comment 10.
[173] *See, e.g.*, *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Sixteenth Administrative Review*, 76 FR 15291 (March 21, 2011), and accompanying IDM at Comment 19.
[174] *See, e.g.*, *Polytetrafluoroethylene Resin from India: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 48594 (September 26, 2018), and accompanying IDM at Comment 11; *see also* Jinko Solar's Final Cost Calculation Memorandum.

Comment 11: Whether Commerce Should Impute Interest on Interest-Free Loans from Affiliated Parties

Petitioner's Cost Case Brief:

The following is a verbatim summary of an argument submitted by the petitioner (internal citations omitted). For further details, *see* Petitioner's Cost Case Brief at 8-9.

> Jinko {Solar}'s consolidated financial statements state that "{b}alances due to related parties are interest-free, not collateralized, and have no definitive repayment terms." Thus, under transactions disregarded rule, {Commerce} should impute interest expense on these loans using an applicable lending rate in the market under consideration and add that interest expense to the reported interest expenses. {Commerce} can calculate the appropriate balance and interest rate from Jinko {Solar}'s consolidated financial statements.

Jinko Solar's Cost Rebuttal Brief:

The following is a verbatim summary of an argument submitted by Jinko Solar. For further details, *see* Jinko Solar's Cost Rebuttal Brief at 5-8.

> –{}While Jinko {Solar} does not dispute Commerce's general practice with respect to application of the transactions disregarded rule, there is no justification to impute interest (and thereby increase JSM's INTEX ratio) in this case based on a vague statement in JSM's parent company's (Jinko Solar Holding) financial. Commerce's practice is to calculate a respondent's financial expense ratio based on the audited financial statements of the highest level of consolidation available. The purpose of relying on the highest level of consolidation is to avoid Commerce having to consider inter-company financing when calculating an INTEX ratio. Based on this practice, there is no reason to take the additional step to impute credit based on the noted affiliate transactions at that level. Moreover, {the petitioner's} cherry-picked data from Jinko Solar Holdings financial does not support the increase {the petitioner} is proposing because (1) it is not related to financing, and (2) the increase based on imputed interest does not consider the other corresponding decreases to imputed interest that would need to be considered. Thus, {the petitioner's} argument must be rejected.

Commerce's Position: For the final determination, we have not included imputed interest in Jinko Solar's reported financial expenses. The petitioner argues that Commerce should impute interest expense on certain items reported under a note to Jinko Solar Holding's consolidated financial statements that states that balances due to related parties are interest-free, not collateralized, and have no definitive repayment terms.[175] This note to the consolidated financial statements is titled "Related Party Transactions and Balances" and the two items specified by the

[175] *See* Petitioner's Cost Case Brief at 8.

petitioner relate to "Notes Payable" and "Other Payables" balances.[176] While Commerce has imputed interest in previous cases, it has been with the intention of matching the interest rates or terms with existing market conditions.[177] In this case, the notes to Jinko Solar's consolidated financial statements also state that notes receivable and payable are typically non-interest bearing and have maturities of less than one year.[178] Thus, there is no record evidence that the terms of Jinko Solar's transactions with these affiliates are different than those with unaffiliated parties. Therefore, we find there is no basis to impute interest on these transactions.

VI. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If accepted, we will publish the final determination of this investigation and the weighted-average dumping margins in the *Federal Register*.

☒ Agree ☐ Disagree

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

[176] *See* Jinko Solar's Letter, "Jinko First Supplemental Section A Response," dated September 17, 2024 (ASQR) at Exhibit 9B (p. F-64, note 26, note 26(a), line items "Notes payables due to related parties" and "Other payables due to related parties").
[177] *See Certain Steel Nails from Taiwan: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review; 2016-2017*, 84 FR 11506 (March 27, 2019), and accompanying IDM at Comment 8.
[178] *See* Jinko Solar's ASQR at Exhibit 9B (p. F-15, note "g").

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