Barcode:4750486-02 A-552-841 INV - Investigation

A-552-841
Investigation
Public Document
E&C/OIII: LRL/DC

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 the Socialist Republic of Vietnam and Final Affirmative Determination of Critical Circumstances, in Part

I. SUMMARY

The U.S. Department of Commerce (Commerce) determines that crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells), from the Socialist Republic of Vietnam (Vietnam) 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 October 1, 2023, through March 31, 2024.

As a result of our analysis and consideration of comments submitted by interested parties, we have made certain changes to the *Preliminary Determination*.[1] 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 have received comments from the American Alliance for Solar Manufacturing Trade Committee (the petitioner), mandatory respondents JA Solar Vietnam Co. Ltd (JA Solar) and Jinko Solar (Vietnam) Industries Company Limited, Jinko Solar (U.S.) Inc., and Jinko Solar (U.S.) Industries Inc. (collectively, Jinko), foreign producers and

[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part, and Postponement of Final Determination and Extension of Provisional Measures*, 89 FR 96219 (December 4, 2024) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

exporters of the subject merchandise Boviet Solar Technology Co., Ltd. (Boviet), Vietnam Sunergy Joint Stock Company (VSUN), and Trina Solar Energy Development Company Ltd. (Trina Solar):

Comment 1: Surrogate Value (SV) for Solar Glass Inputs
Comment 2: SV for Aluminum Frame Inputs
Comment 3: SV for Silver Paste Inputs
Comment 4: SV for 1500V Junction Box Inputs
Comment 5: SV for Glue and/or Silicon Sealant Inputs
Comment 6: SV for Solder and Welding Wire Inputs
Comment 7: SV for Jinko's Polysilicon and Wafers Inputs
Comment 8: SV for Jinko's Ethylenediaminetetraacetic Acid Inputs
Comment 9: SV for Jinko's Dust Free Cloth Inputs
Comment 10: SV for Jinko's Trimethyl Aluminum Inputs
Comment 11: SV for Jinko's Label Inputs
Comment 12: SV for Labor Inputs
Comment 13: SV for Ocean Freight
Comment 14: SV for Marine Insurance
Comment 15: SV for Truck Freight
Comment 16: SV for Brokerage and Handling (B&H) for JA Solar
Comment 17: SV for Domestic Inland Insurance for Jinko
Comment 18: Valuation of the Market-Economy Purchase Price for JA Solar's Purchases of Polysilicon
Comment 19: Polysilicon Byproduct and Scrap Offsets for JA Solar
Comment 20: By-Product Offsets for Jinko
Comment 21: Polysilicon as a Byproduct and Input for Jinko
Comment 22: Selection of Surrogate Financial Statements
Comment 23: Deduction of Domestic Warehousing from U.S. Price for JA Solar
Comment 24: Deduction of Rebate Expense from U.S. Price for JA Solar
Comment 25: Minor Corrections to the JA Solar's Reported Control Numbers (CONNUMs)
Comment 26: Minor Corrections to the Response Presented at Verification
Comment 27: Correct Application of the Cohen's *d* Test
Comment 28: Treatment of Boviet as a Voluntary Respondent
Comment 29: Critical Circumstances Determination and Methodology for Separate Rate Respondents

II. BACKGROUND

On December 4, 2024, Commerce published the *Preliminary Determination* in this investigation and issued an *Amended Preliminary Determination* on January 2, 2025.[2] From December 2, 2024 through December 6, 2024, Commerce conducted a verification of JA Solar's factors of

[2] *See Preliminary Determination*; *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the Socialist Republic of Vietnam: Amended Preliminary Determination of Less-Than-Fair-Value Investigation*, 90 FR 85 (January 2, 2025) (*Amended Preliminary Determination*) (for ease of reference, collectively referred to as *Preliminary Determination*).

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

production (FOPs) in Hanoi, Vietnam.[3] Commerce conducted a verification of Jinko's FOPs in Hanoi, Vietnam, from December 9, 2024 through December 13, 2024.[4] Commerce conducted a verification of JA Solar's constructed export price (CEP) sales at its U.S. headquarters in San Jose, California from January 22, 2025, through January 24, 2025,[5] and a verification of Jinko's constructed CEP sales made by its US sales affiliate, Jinko Solar (U.S.) Inc. (Jinko Solar USA), at its office in Campbell, California from January 27, 2025, through January 28, 2025.[6]

On March 7, 2025, Commerce received case briefs from Boviet, JA Solar, Jinko, the petitioner, and VSUN.[7] In addition, we received a letter in *lieu* of case brief from Trina Solar.[8] Commerce received rebuttal briefs from JA Solar, Jinko, and the petitioner on March 19, 2025.[9] On March 20, 2025, Commerce issued a memorandum to the file clarifying the record with respect to an outstanding issue regarding the interpretation services provided at verification and establishing a schedule for parties to comment.[10] On March 21, 2025, the petitioner submitted a response to the Interpreter Memorandum, which acknowledged that one issue identified in its case brief was now rendered moot.[11] Based on the acknowledgement that the issue briefed is considered moot, we have not addressed the issued regarding verification interpretation, or the rebuttal comments received on this issue, in the "Discussion of Issues" section below.

III. FINAL AFFIRMATIVE DETERMINATION OF CRITICAL CIRCUMSTANCES, IN PART

In the *Preliminary Determination*, in accordance with section 733(e) of the Act and 19 CFR 351.206, Commerce found that critical circumstances exist with respect to the non-selected companies eligible for a separate rate,[12] and the Vietnam-wide entity, and that critical circumstances did not exist with respect to JA Solar and Jinko.[13]

---

[3] *See* Memorandum, "Verification of the Sales and Factors of Production Questionnaire Responses of JA Solar Vietnam Co. Ltd (JAVN) and JA Solar USA, Inc. (JA Solar US) (collectively, JA Solar)," dated February 24, 2025 (JA Solar's Verification Report).
[4] *See* Memorandum, "Verification of Jinko Solar (Vietnam) Industries Co. Ltd.," dated February 24, 2025 (Jinko's Verification Report).
[5] *See* JA Solar's Verification Report.
[6] *See* Jinko's Verification Report.
[7] *See* Boviet's Letter, "Case Brief," dated March 7, 2025 (Boviet's Case Brief); JA Solar's Letter, "Case Brief," dated March 7, 2025 (JA Solar's Case Brief); Jinko's Letter, "Jinko's Case Brief," dated March 7, 2025 (Jinko's Case Brief); Petitioner's Letter, "Petitioner's Case Brief," dated March 7, 2025 (Petitioner's Case Brief); and VSUN's Letter, "VSUN Case Brief," dated March 7, 2025 (VSUN's Case Brief).
[8] *See* Trina Solar's Letter, "Letter in Lieu of Case Brief," dated March 7, 2025.
[9] *See* JA Solar's Letter, "Rebuttal Brief," dated March 19, 2025; *see also* Jinko's Letter, "Rebuttal Brief," dated March 19, 2025; Petitioner's Letter, "Petitioner's Rebuttal Brief," dated March 19, 2025 (Petitioner's Rebuttal Brief).
[10] *See* Memorandum, "Clarification Regarding Verification of Jinko (Vietnam) Industries Co. Ltd.," dated March 20, 2025 (Interpreter Memorandum).
[11] *See* Petitioner's Letter, "Response to Interpreter Memorandum," dated March 21, 2025 (Petitioner's Response to the Interpreter Memorandum).
[12] The non-selected separate-rate entities are: Blue Moon Vina Co., Elite Solar Technology (Vietnam) Company Limited, Letsolar Vietnam Company Limited, Mecen Solar Vina Co., Ltd., Nexuns Vietnam Company Limited, Trina Solar Energy Development Company Ltd., and Vietnergy Co., Ltd. and Tainergy Tech Co., Ltd. (collectively, Vietnergy).
[13] *See Preliminary Determination*, 89 FR at 96219, and accompanying PDM at 32-36.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

Section 735(a)(3) of the Act provides that Commerce will determine that critical circumstances exist in an LTFV investigation if: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at LTFV and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period. Further, 19 CFR 351.206(h)(2) provides that imports must increase by a least 15 percent during a "relatively short period" to be considered "massive" and 19 CFR 351.206(i) defines the "relatively short period" as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later.[14] However, the regulation also provides that, if Commerce finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, Commerce may consider a period of not less than three months from that earlier time.[15]

In the *Preliminary Determination*, we noted that there is a current order on solar cells from the People's Republic of China, which has involved several segments concerning circumvention in Vietnam.[16] As a result, Commerce found that there is a history of injurious dumping of solar cells pursuant to section 733(e)(1)(A)(i) of the Act.[17] No party commented on this preliminary finding and, thus, we continue to find that there is history of injurious dumping of solar cells pursuant to section 733(e)(1)(A)(i) of the Act.

Further, we found, pursuant to section 733(e)(1)(A)(ii) of the Act, that importers had, or should have had, knowledge that exporters of subject merchandise from Vietnam were dumping and that there was likely to be material injury by reason of such sales.[18] Specifically, the preliminary dumping margins for JA Solar, Jinko, the non-selected separate-rate entities, and the Vietnam-wide entity were 53.30 percent, 71.85 percent, 60.02 percent, and 271.28 percent, respectively, all of which exceed the threshold of 25 percent, and thus, are sufficient to impute knowledge of dumping.[19] Additionally, because the International Trade Commission (ITC) preliminarily found a reasonable indication that an industry in the United States was materially injured by imports of solar cells from Vietnam,[20] we preliminarily determined that importers knew or should have known that there was likely to be material injury by reason of sales of solar cells at LTFV.[21]

For the final determination, the margins calculated for JA Solar, Jinko, the non-selected separate-rate entities, and the Vietnam-wide entity are 59.45 percent, 125.91 percent, 83.53 percent, and 271.28 percent, respectively, all of which exceed the threshold of 25 percent, and thus, are sufficient to impute knowledge of dumping. As no party provided comments on the preliminary

---

[14] *See* 19 CFR 351.206(i).
[15] *Id.*
[16] *See Preliminary Determination* PDM at 33.
[17] *Id.*
[18] *Id.*
[19] *Id. See Preliminary Determination*, 89 FR at 96220, for the rates applicable to JA Solar and the Vietnam-wide entity; *see also Amended Preliminary Determination*, 90 FR at 85, for the rates applicable to Jinko and the non-selected separate-rate entities.
[20] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Cambodia, Malaysia, Thailand and Vietnam; Determinations*, 89 FR 50633 (June 14, 2024).
[21] *See Preliminary Determination* PDM at 32-36.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

findings regarding material injury, on the basis of the ITC's preliminary finding, we continue to find that importers knew or should have known that there was likely to be material injury by reason of sales of solar cells at LTFV. Therefore, we continue to find, pursuant to section 733(e)(1)(A)(ii) of the Act, that importers had, or should have had, knowledge that exporters were dumping and that there was likely to be material injury by reason of such sales.

Finally, to determine whether there was a massive surge of imports with respect to Jinko and JA Solar, Commerce solicited import quantity and value information from each respondent and used a comparison period starting May 2024 (*i.e.*, the month after the Petition was filed) and ending with October 2024 (*i.e.*, the most recent month for which Commerce has shipment data on the record), compared to a base period with the same number of months, ending in the month the Petition was filed (*i.e.*, November through April 2024), and preliminarily determined that there was not a massive surge in imports from either respondent of more than 15 percent, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(h)(2) and, thus, preliminarily determined that critical circumstances do not exist for Jinko and JA Solar. To determine whether there was a massive surge of imports with respect to the non-selected separate rates respondents, we applied our practice to examine the volume of shipments reported in country-wide import data from Vietnam sourced from GTA, less the sum total of shipment volume reported by both respondents, in the same base and comparison periods. This analysis reflected that there was a massive surge in imports of more than 15 percent, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(h)(2) and, thus, preliminarily determined that critical circumstances exist for the non-selected separate rates respondents, in accordance with section 733(e) of the Act and 19 CFR 351.206.[22]

As discussed in Comment 29, below, we have revised our analysis regarding the massive surge of imports with respect to JA Solar, Jinko, and the non-selected separate rates respondents for the final determination. First, with respect to the base and comparison periods examined, Commerce will normally revise its preliminary analysis for the final determination where respondent parties continue to submit information up to (or through) the month of first suspension (*i.e.*, the month of publication of the preliminary determination and issuance of resulting cash deposit instructions) to include the additional monthly totals in the comparison period (and add the equivalent monthly data in the mirror base period). In this case, both JA Solar and Jinko continued to provide monthly import totals to allow for this revised analysis.. Thus, we have revised our analysis of massive imports to examine an eight-month base period of September 2023 through April 2024 and a comparison period of May 2024 through December 2024, consistent with our practice.[23]

---

[22] *Id.*

[23] *See, e.g.*, *Certain Paper Shopping Bags from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Critical Circumstances Determination*, 89 FR (May 24, 2024), and accompanying Issues and Decision Memorandum (IDM); and *Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Critical Circumstances Determination*, 86 FR 1936 (January 11, 2021), and accompanying IDM. While the petitioner cites to prior Commerce determinations where it has limited the comparison period to end in the month where suspension first began (*i.e.*, the date of publication in the *Federal Register* of the preliminary determination of the companion CVD determination), we note that Commerce has not been consistent in this practice. However, regardless of whether a five-month period (reflecting the period between the Petition and CVD suspension), six month (the range used in the *Preliminary Determination*), or eight month

Further, as also discussed below in Comment 29, we have revised our analysis to disregard country-wide trade data in analyzing whether a surge exists for separate rate respondents, as the country-wide import data from Vietnam under HTSUS 8541.42.0010 and 8541.43.0010 is inclusive of the many of the products explicitly excluded from the scope, and import totals may also be include merchandise subject to the AD order on solar cells from China because of affirmative findings of circumvention. Consistent with practice, we have used the sum of the respondents' export totals as a proxy for the separate rates respondents' experience, consistent with the methodology applied in the preliminary determination of the companion CVD case, as well as the corresponding investigation on solar cells from Thailand.

Therefore, for the final determination, Commerce revised the analysis to use an -eight-month comparison period starting May 2024 (*i.e*., the month after the Petition was filed) and ending with December 2024 (*i.e*., the month of the *Preliminary Determination*), compared to a base period with the same number of months, ending in the month the Petition was filed (*i.e*., September through April 2024), and determine that there was not a massive surge in imports from either mandatory respondent or by the separate rate respondents (based on the combined experience of Jinko and JA Solar) of more than 15 percent, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(h)(2) and, thus, determine that critical circumstances do not exist for Jinko and JA Solar or the separate rate respondents.

In the *Preliminary Determination*, for the Vietnam-wide entity, we relied on AFA to preliminarily find that there were massive imports for the Vietnam-wide entity, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(c)(2)(i).[24] No party commented on this finding, and we continue to find that imports were massive and critical circumstances exist for the Vietnam-wide entity.

IV. CHANGES SINCE THE *PRELIMINARY DETERMINATION*

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

JA Solar

- We made changes to JA Solar's CONNUMs to account for minor corrections presented at verification.[25]

(reflecting a range through the December 2024 month of first AD suspension) is used, the result of the analysis is the same for both respondents and the separate-rate companies. The Department began the suspension of liquidation for entries of subject merchandise from Vietnam on October 4, 2024. *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination With Final Antidumping Duty Determination*, 89 FR 80866, 80868 (October 4, 2024).

[24] *Id.*

[25] *See* Memorandum, "Final Analysis Memorandum for JA Solar Vietnam Co. Ltd (JAVN) and JA Solar USA, Inc. (JA Solar US) (collectively, JA Solar)," dated concurrently with this memorandum (JA Solar Final Analysis Memorandum) at 3 and Attachment 1, "JA Solar SAS Log"; *see also* Comment 25 of this Memorandum.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

- We revised the U.S. sales database to eliminate certain observations for products which were not produced in Vietnam.[26]
- We revised the calculation of JA Solar's B&H expense to apply separate rates for imports and exports, as stated in the *Preliminary Determination*.[27]
- We revised the U.S. database to account for JA Solar's reported warehousing expenses.[28]
- We revalued JA Solar's market economy (ME) purchases of polysilicon to account for the weighted-average value of all of its ME purchases of polysilicon, as reported in Exhibit D-8 of JA Solar's Section D response.[29]
- We also adjusted the value of JA Solar's ME purchases of polysilicon to account for adjustments for freight.[30]
- We adjusted JA Solar's margin calculations to take into account reported rebates that had been accrued for the POI but not paid during the POI.[31]
- We made changes for the following SVs: junction box, glue/silicon sealant, solder and welding wire, labor, ocean freight, marine insurance, truck freight, and B&H.[32]

Jinko

- As discussed in the verification report,[33] we have incorporated all nine of Jinko's minor corrections.[34]
- As mentioned in Comment 20, we denied certain by-product offsets.
- As discussed in Comment 14, we calculated marine insurance from the transfer price between Jinko and Jinko's U.S. entities and not the resale price between the Jinko U.S. entity and their customers (the gross unit price).
- Commerce has continued to value coating glass exclusive of Malaysian data consistent with Comment 1, but for the final determination, it will be valued with the Indonesian import price under HS 7007.19.9000.
- Consistent with the discussion in Comment 7, Commerce has valued Jinko's polysilicon SVs to reflect the AUV of Indonesian HS 2804.61.00. However, since the byproduct AUVs cannot be valued more than the input themselves which is a weighted average of ME purchases and the AUV of the import price of HS 2804.61.00, certain polysilicon SVs for Jinko should all be valued the same.
- Commerce will use the full SV value for polycrystalline silicon, which reflects the Indonesian import value of HS 2804.61.00.[35]

---

[26] *See* JA Solar Final Analysis Memorandum at 3, and Attachment 1; *see also* Comment 26 of this Memorandum.
[27] *Id.*; *see also* Comment 16 of this memorandum.
[28] *Id.* at 3-4, and Attachment 1; *see also* Comment 23 of this memorandum.
[29] *See* JA Solar Final Analysis Memorandum at 4-5 and Attachment 1; *see also* Comment 18 of this memorandum.
[30] *See* JA Solar Final Analysis Memorandum at 5 and Attachment 1; *see also* Comment 18 of this memorandum.
[31] *See* JA Solar Final Analysis Memorandum at 5 and Attachment 1; *see also* Comment 24 of this memorandum.
[32] *See* JA Solar Final Analysis Memorandum at 5 and Attachment 3; *see also* Comments 4, 5, 6, 12, 13, 14, 15, and 16 of this memorandum.
[33] *See* Memorandum, "Verification of Jinko Solar (Vietnam) Industries Co. Ltd," dated February 24, 2025 (Verification Report)
[34] *See* Memorandum, "Jinko's Final Analysis Memo" dated concurrently with this memorandum (Jinko's Final Analysis Memo), at 2-4.
[35] *See* Jinko's Final Analysis Memo at 8-9.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

- As mentioned in Comment 13, we revised the calculation for ocean freight to exclude routes that Jinko did not use.
- As discussed in Comment 14, Commerce has changed Jinko's marine insurance SV to reflect petitioner's computers/electronics and the added all-risk rate.
- As discussed in Comment 4, Commerce has changed Jinko's 1500V junction box SV to reflect the petitioner's import price data of HS 8544.60.11.
- We based Jinko's labor rate on the 2023 labor rate reported by the International Labor Organization Department of Statistics (ILOSTAT), as submitted by JA Solar.[36]
- As explained Comment 7, Commerce has valued Jinko's polysilicon wafer to reflect the AUV of Indonesian import price under HS 3818.00.00.
- As discussed in Comment 5, Commerce has changed Jinko's glue SVs to reflect Indonesian import prices under HS 3506.91.10.
- As explained in Comment 8, Commerce has valued Jinko's Ethylenediaminetetraacetic Acid SV to reflect the AUV of Indonesian HTS 2922.49.
- As discussed in Comment 10, Commerce has valued Jinko's Trimethyl Aluminum SV to reflect the AUV of Indonesian HTS 2931.90.90.
- As discussed in Comment 9, Commerce has valued Jinko's dust free cloth SV to reflect the AUV of Indonesian HTS 6307.10.90.
- As discussed in Comment 6, Commerce has valued Jinko's welding wire and solder wire to reflect the AUV of Indonesian import price under HS 8311.30.91. As discussed in Comment 15, Commerce has corrected Jinko's truck freight SV.

V. DISCUSSION OF THE ISSUES

Comment 1: SV for Solar Glass Inputs

JA Solar's Case Brief

The following is a verbatim summary of arguments submitted by JA Solar. For further details, *see* JA Solar's Case Brief at 5-23.

> Commerce must revise its *Preliminary Determination* to use PVinsights data as the surrogate value (SV) for solar glass in the final determination. PVinsights is the best available information on the record because it is not only specific to the solar glass input but also specific to the 2.0 mm thick solar glass consumed by JA Solar. In contrast, the Indonesian HS import data selected by Commerce in the *Preliminary Determination* covers an overly inclusive range of glass products not specific to solar module production, such as cell phone glass protectors. Commerce also unlawfully excluded the Malaysian imports from the HS data, which are 95 percent of the HS data, based on a countervailing duty (CVD) determination issued by a foreign government without any factual analysis. As a result, the remaining five percent data representing an overinclusive range of glass products and also consisting of aberrational values and inapplicable entries with weight below a minimum glass pane of 12.81 KG, were used to evaluate the solar glass in

[36] *See*, *e.g.*, Jinko's Letter, "Jinko's First Surrogate Value Comments," dated October 11, 2024 (Jinko's First SV Comments), at Exhibit 3.

respondents' solar module production. Thus, Commerce must use the PVinsights data as the SV for solar glass in the final determination. If Commerce continues to select the HS data, Commerce must include the Malaysian imports in the HS data because the Indian CVD determination does not support such exclusion and because without the 95 percent Malaysian imports data, the rest of the HS data are aberrational and inapplicable to JA Solar's consumed glass. Then, Commerce must also exclude the aberrational values and data entries with weight below a minimum glass pane of 12.81 KG to accurately assess the solar glass input.

Jinko's Case Brief

The following is a verbatim summary of arguments submitted by Jinko. For further details, *see* Jinko's Case Brief at 6-29.

In the *Preliminary Determination*, Commerce valued solar glass based on data in Indonesia 8-digit HS 7007.19.90. The parties agree with this HS country and subheading selection. However, in using these data, Commerce excluded glass exported from Malaysia to Indonesia from the SV buildup because "in 2020, India's Directorate General of Trade Remedies recently imposed a five-year measure on PV glass from Malaysia following a final affirmative finding that Malaysian producers of the precise input in question glass received countervailable subsidies." As a result, merely 13,217 kg of glass, with an average unit value of $4.85/kg were used as the SV. If Malaysia data (250,868 kg) had been included, the AUV would be $0.79/kg.

In the final determination, Commerce should include Malaysia data in its SV analysis, since such data is reliable (subsidy is quantified at 10 percent of value) and corroborated by PV Insights data, USITC cost analysis, and other record evidence. Moreover, Commerce should exclude shipments of HS 7007.19.90 glass into Indonesia from multiple countries, which cannot possibly be commercial shipments of solar glass based on their miniscule quantities and aberrationally high prices. Thus, Commerce should value solar glass at $0.59/kg, based on non-aberrational data in HS 7007.19.90 data for Indonesia.

Alternatively, even if Commerce continues to exclude Malaysia imports from the SV data, it should limit the SV calculation to exports from the United Kingdom (10,469 kg, $11,238, $1.07/kg AUV), since imports from the other remaining countries (2,764 kg; $53,006; $19.18 AUV) cannot possibly consist of commercial quantities of glass for solar modules. Thus, solar glass should be valued at $1.07/kg, based on UK exports to Indonesia during the POI.

Boviet's Case Brief

The following is a verbatim summary of arguments submitted by Boviet. For further details, *see* Boviet's Case Brief at 4-17.

In the *Preliminary Determination*, Commerce improperly removed glass imports from Malaysia into Indonesia, claiming the record supported a finding that there

was reason to believe or suspect the imports were subsidized and thus it is Commerce's practice to remove them. However, this is actually contrary to Commerce's normal practice. A "reason to believe or suspect" must be established by "particular, specific, and objective evidence." *China National Machinery Import & Export Corporation. v. United States*, 264 F. Supp. 2d 1229, 1239 (CIT 2003) (*China National Machinery I*). For import statistics, Commerce has only two specific practices for removing imports from a particular country for "reason to believe or suspect" they are subsidized and otherwise Commerce has refused to find imports are subsidized. Commerce's two practices to remove imports are when Commerce itself in its own investigations has made a decision that the country offers broadly available export subsidies or when the surrogate country itself has an AD/CVD Order against it for a particular HS number. Neither of these practices are present here.

Commerce's finding that it has reason to believe or suspect the Indonesian glass import data from Malaysia is subsidized is based solely on the 2020 decision from the India Directorate General of Trade Remedies placing countervailing duties on glass from Malaysia. There is no U.S. finding that the Malaysian glass industry or exports are subsidized. There is no Indonesian finding that the Malaysian glass industry or exports are subsidized. Further, there is no particular, specific, and objective evidence that Malaysian imports of glass into Indonesia were subsidized during the POI. The U.S. and Indonesia have not made such a finding, and the Indian investigation is disconnected in time and place from the facts at hand. Further, the PV Insights POI solar glass prices corroborate that the Malaysian imports are not subsidized - *i.e.*, are not lower than world market prices.

If Commerce nonetheless maintains that it must remove the Malaysian glass imports from the Indonesian dataset, then the resulting Indonesian dataset is not reliable and cannot be relied upon. After disregarding Malaysia, Indonesia only imported 13,217 kg of glass in the POI. This is less than a container load and not enough for even one commercial shipment to a solar panel manufacturer. This is not a commercial quantity. *Shanghai Foreign Trade Enterprises Co., Ltd. v. United States*, 318 F. Supp. 2d 1339 (CIT 2004) (where Commerce erred in failing to establish that the import value relied on was based on a statistically or commercially significant quantity). The lack of commercial quantity in this pared down dataset is even more striking when considering it on a monthly basis by exporter, where there were imports of tiny amounts, even 1 KG. Relying on imports into Indonesia that could not be used in commercial production does not fulfil the statutory objective. *Nation Ford Chemical Company v. United States*, 166 F.3d 1373, 1377 (CAFC 1999) (discussing that while Commerce does not have to perfectly duplicate the production experience of the Chinese manufacturer, Commerce should rely on the surrogate value that "most accurately represents the fair market value of {the respective input} in a hypothetical market-economy"). Therefore, Commerce must rely on an alternative surrogate value, PV Insights. Commerce has relied upon PV Insights as a reliable and specific benchmark in numerous countervailing reviews for the precise same input, solar glass. Indeed, Commerce has relied upon this source because it was more specific than export or import statistics. Relying on PV Insights also follows the same precedent as relying on Bloomberg non-China prices

> for other solar inputs in numerous antidumping reviews. Thus, according to Commerce itself, an international benchmarking source for particular solar inputs is a reliable surrogate value source. PV Insights is the best available information, it is most specific to solar glass, reliable, publicly available, and otherwise fulfills Commerce's requirements for a surrogate value.

Petitioner's Rebuttal Brief

We note that we requested that interested parties provide a public, executive summary for each issue raised in their case and rebuttal briefs. *See Preliminary Determination*, 89 FR at 96221. Therefore, because the executive summary in the Petitioner's Rebuttal Brief contains business proprietary information (BPI), we have redacted that content herein. The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* the Petitioner's Rebuttal Brief at 9-21.

> To value the respondent's solar glass, in the Preliminary Determination, {Commerce} relied on Indonesian imports under Harmonized Tariff Schedule (HS) 7007.19.90 (Toughened (Tempered) Safety Glass, Not Suitable For Incorporation In Vehicles, Aircraft, Spacecraft Or Vessels: Toughened (Tempered) Safety Glass Suitable For Oth Machinery). Additionally, because Petitioner demonstrated that Malaysian exports of PV glass are subsidized, {Commerce} excluded imports into Indonesian from Malaysia under HS 7007.19.90 in calculating the AUV to be used. All parties agreed that HS 7007.19.90 is the correct classification for imports of solar glass, such as the glass used by respondents, and both mandatory respondents even argued for the use of HS 7007.19.90 to value their glass inputs. However, respondents take issue with the exclusion of the imports from Malaysia, arguing {Commerce} may not rely on a third-countries subsidy finding to exclude the data, that the excluded data results in an aberrational surrogate value, and that {Commerce} should instead use the PVinsights glass data. Each of the respondents' arguments should be rejected.
>
> {Commerce} will reject any prices that it has "reason to believe or suspect" may be subsidized. Believing or suspecting a subsidy exists does not require a formal investigation, merely "substantial, specific, and objective evidence which could reasonably interpreted to support a suspicion that the prices . . . were distorted."
>
> The Indian subsidy determination on solar glass from Malaysia is a reasonable basis to believe or suspect that Malaysian producers of solar glass received countervailable subsidies. Respondents do not point to any objective evidence that the Indian government's final subsidy determination is flawed in any way, nor do they articulate the logic behind how {Commerce} can only rely on its own subsidy determinations but can also exclude surrogate value data due to antidumping orders in other countries. Respondents also fail to provide evidence that any of the other import data are distorted or otherwise aberrational, and their arguments are entirely speculative in nature or rely on non-contemporaneous data for third countries not at a level of economic development comparable to Vietnam.

> Finally, {Commerce} cannot use the PVinsights data to value the respondents' glass inputs. The data is proprietary in nature, and {Commerce} has an established practice that it will only use publicly available information on the public record of the proceeding. Moreover, none of the data in the PVinsights data is useable because it is for non-market economies, countries receiving generally available export subsidies, countries not at a level of economic development comparable to Vietnam, countries…, or a combination of some or all of these reasons.

JA Solar's Rebuttal Brief

The following is a verbatim summary of arguments submitted by JA Solar. For further details, *see* JA Solar's Rebuttal Brief at 46.

> JA Solar supports the proposal of Jinko to utilize PVinsights as the source for solar glass inputs, and clarifies that the post-preliminary determination by Commerce in the companion countervailing duty proceeding also utilized this source to value solar glass inputs and deemed it to be the "most specific" source.

Commerce's Position: Consistent with the *Preliminary Determination*, Commerce continues to find that it appropriately excluded Malaysian import data from the solar glass SV. Commerce also continues to find that the Indonesian AUV, with Malaysian data excluded, is the best available information by which to value solar glass. Commerce also finds that there are data quality concerns with the other proffered source, the PVInsights data, such that it is not the "best available information."

In administrative proceedings that involve a non-market economy (NME) country such as China, Commerce calculates the normal value (NV) of the subject merchandise by selecting surrogate data from one or several ME countries that Commerce determines constitute the "best available information" in the record.[37] Section 773(c)(4) of the Act further directs Commerce to use, to the extent possible, the prices or costs of FOPs in one or more ME countries that are *at a level of economic development comparable* to that of the NME country, and that are *significant producers of comparable merchandise*. With the overarching purpose of the Tariff Act to calculate margins as accurately as possible in mind,[38] courts have interpreted the "best available information" standard to require Commerce to "select, from the information before it, the best data for calculating an accurate dumping margin."[39] Still, courts have also recognized that Commerce has "broad discretion to determine the best available information,"[40] and "there is no requirement that the data be perfect."[41]

In selecting the surrogate country and SVs, Commerce's practice is to: (1) compile a list of countries at a comparable level of economic development to the subject NME country based on per capita GNI; (2) ascertain which of the listed countries produce comparable merchandise to

[37] *See* section 773(c)(1) of the Act.
[38] *See Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (CAFC 1990).
[39] *See Seah Steel Vina Corp. v. United States*, 950 F.3d 833, 842 (CAFC 2020) (quoting *Dorbest Ltd. v. United States*, 462 F. Supp. 2d 1262, 1268 (CIT 2006)).
[40] *See QVD Food Co., Ltd. v. United States*, 658 F.3d 1318, 1323 (CAFC 2011).
[41] *Home Meridian Int'l Inc. v. United States*, 772 F.3d 1289, 1296 (Fed. Cir. 2014).

the subject merchandise; and (3), evaluate the quality of the data from these countries.[42] Commerce aggressively pursues the use of the "best information available" to value the FOPs in a NME proceeding at all times.[43]

When evaluating SV data, Commerce considers several factors including whether the SV data is publicly available, contemporaneous with the POI, representative of broad-market averages, tax and duty-exclusive, and specific to the input.[44] There is no hierarchy among these criteria. Commerce carefully considers the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing the FOPs.[45] Commerce must weigh the available information with respect to each input value and make a product-specific and case-specific decision as to what constitutes the "best" available SV for each input.[46]

The PVInsights Data

We disagree with JA Solar's and Jinko's argument that Commerce should value solar glass using the PVInsights data because it: (1) is the only data on the record which accurately reflects the actual market price of solar glass and more specifically the 2.0 mm thick solar glass; (2) has been frequently relied on by Commerce in previous proceedings; and (3) does not suffer from the over-inclusiveness and inaccuracy flaws in the alternative HS data.[47] We address these arguments in turn.

First, as stated earlier, the Act directs Commerce to value FOPs based on the prices or costs of FOPs in one or more ME countries that are *at a level of economic development comparable* to that of the NME country, and that are *significant producers of comparable merchandise*.[48] Early on in the investigation, Commerce issued its surrogate country list, which included Indonesia, Jordan, the Philippines, Egypt, Morocco, and Sri Lanka as potential surrogate countries based on economic comparability.[49] Further, in the *Preliminary Determination*, Commerce determined that only Indonesia, Morrocco, and the Philippines were producers of comparable merchandise,[50] and all three met the additional criterion of being significant producers of comparable merchandise.[51]

While the PVInsights provides pricing data for solar glass of a 2.0 mm thickness, it only provides data for China, non-China, Malaysia, Thailand, Vietnam, and Worldwide.[52] Thus it is only "usable" in that it is specific to the input in question. Indeed, it does not provide data for the

---

[42] *See Jiaxing Bro. Fastener Co. v. United States*, 961 F. Supp. 2d 1323, 1328 (CIT 2014) (citing Policy Bulletin 04.1); *see also See* Memorandum, "List of Surrogate Countries for Antidumping Investigations and Reviews from the Socialist Republic of Vietnam (Vietnam)," dated August 27, 2024 (Surrogate Country List).
[43] *See Clearon Corp. v. United States*, 38 CIT 1122, 1140 (2014).
[44] *See, e.g., Certain Activated Carbon from the People's Republic of China; 2010-2011; Final Results of Antidumping Duty Administrative Review*, 77 FR 67337 (November 9, 2012), and accompanying IDM at 8.
[45] *See* Policy Bulletin 04.1.
[46] *Id.*
[47] *See* JA Solar' Case Brief at 5, Jinko's Case Brief at 13-17; *see also* JA Solar's Rebuttal Brief at 4.
[48] *See* section 773(c)(4) of the Act.
[49] *See* Surrogate Country List at 2.
[50] *See Preliminary Results* PDM at 11.
[51] *Id.*
[52] *See, e.g.,* Jinko's Letter, "Submission of New Factual Information," dated November 6, 2024, at Exhibit 1.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

countries that are economically comparable to Vietnam, *i.e.*, Indonesia, Jordan, the Philippines, Egypt, Morocco, or Sri Lanka.[53] In addition, the PVInsights data does not identify the economically comparable countries that represent significant producers of the subject merchandise, *i.e.*, Indonesia, Morrocco, and the Philippines.[54]

Nor is the PVInsights data publicly available, one of the criteria Commerce uses to evaluate data quality in SV submissions. Despite JA Solar's contention that the PVInsights data is publicly available because anyone can pay a subscription fee to access it, the phrase "publicly available" reasonably means "on the public record."[55] This interpretation also aligns with 19 CFR 351.105(a) that explains there are four categories of information in an antidumping or countervailing duty proceeding, two of which are "public" and "business proprietary," *i.e.*, BPI.[56] Consistent with our practice, we find that the PVInsights data is not publicly available.[57] JA Solar did not provide the PVInsights data publicly but rather designated it for BPI treatment, and no party argues that Commerce's treatment of it as such is improper. Similarly, JA Solar's contention that Commerce has previously accepted confidential pricing is also inapposite because in that case, there was no risk of disclosing BPI by using the confidential pricing information unlike in the present case.[58]

Further, Commerce's use of PVInsights data in past proceedings does not require it use PVInsights now as long as there is a reasonable explanation its determination.[59] To the extent that parties point to the use of PVInsights data in countervailing duty proceedings,[60] those citations are inapposite because there are different considerations in CVD proceedings as opposed to AD proceedings.[61] Indeed, in CVD determinations, Commerce evaluates datasets such as PVInsights in the context of measuring the adequacy of remuneration and looks to determine whether prices are consistent with market principles and reflective of a world-market price.[62] In an LTFV proceeding, however, Commerce must derive values for specific inputs from a country that is *economically comparable* to the NME country and that is a *significant*

---

[53] *See* Memorandum, "List of Surrogate Countries for Antidumping Investigations and Reviews from the Socialist Republic of Vietnam (Vietnam)," dated August 27, 2024.
[54] *See, e.g.*, Jinko's Letter, "Surrogate Countries Comments," dated September 25, 2024 at 5.
[55] *See* Final Results of Redetermination Pursuant to Court Order, *Jinko Solar Import and Export Co., Ltd., et. al v. United States*, Court No. 22-00219, Slip Op. 24-53 (CIT May 1, 2024), dated August 29, 2024 (*Jinko Solar* Final Remand).
[56] *See* 19 CFR 351.105(a).
[57] *See generally Jinko Solar* Final Remand.
[58] *See* Memorandum, "Preliminary Surrogate Value Memorandum," dated September 12, 2024, at 6 ("However, as the underlying information reflects public information and lists rates for a variety of freight routes from China to the US, not only the routes used in the calculation, and the resulting SV reflects an average of information used and reference thereto does not risk disclosure of proprietary routing information, we have treated the underlying Drewery freight quote source, as well as the $0.299 USD/Kg ocean freight SV as public information.").
[59] *See Corus Staal BV v. United States*, 30 C.I.T. 1040, 1046, fn. 6 (2006) (citing *Viraj Forgings, Ltd. v. United States,* 350 F. Supp. 2d 1316, 1324 (CIT 2003)).
[60] JA Solar, Jinko, and Boviet all appear to make this argument in their case briefs.
[61] *See JA Solar International Ltd. v. United States*, 606 F. Supp. 3d 1370, 1373 (CIT 2022) ("In an AD proceeding, Commerce determines the export price of the subject merchandise and assigns sales of that merchandise to the party who sets the export price for the purpose of calculating that party's AD margin."); *cf. Kiswok Indus. Pvt. Ltd. v. United States*, 28 C.I.T. 774, 780 (2004) (citing *Zenith Radio Corp. v. United States*, 437 U.S. 443, 455-56 (1978) ("The countervailing duty was intended to offset the unfair competitive advantage that foreign producers would otherwise enjoy from export subsidies paid by their governments.")).
[62] *See* 19 CFR 351.511.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

producer of comparable merchandise.[63] Thus, datasets that could be appropriate in CVD proceedings may not, as is the case here, be appropriate in LTFV proceedings. As stated earlier, specificity to the input in question is one of many considerations Commerce evaluates in determining what constitutes the "best available information" to value an FOP, but there are other considerations that make the PVInsights data unreliable as explained in detail.

The petitioner points to a number of additional reasons why the PVInsights data is not usable for the purposes of our antidumping duty investigation,[64] noting for example, that in 2020, Bernreuter Research, a well-respected polysilicon market researcher, published an article explaining that PVInsights' polysilicon spot price index had lost its relevance.[65] It is beyond the scope of this investigation to evaluate the data collection, analytical methodology and biases of PVInsights, given that, as explained in detail above, the data is not public and does not pertain to countries at a comparable level of economic development as Vietnam.

Further, we disagree with Boviet that the information from PVInsights corroborates that the Malaysian glass value into Indonesia is not artificially low *i.e.*, that there is no objective evidence that the exports were actually subsidized. Because we have determined that the PVInsights data is not useable for the purposes of this investigation because the data is not publicly available and does not pertain to countries at a comparable level of economic development as Vietnam, it is irrelevant that the Malaysian import value into Indonesia closely mirrors the PVInsights solar glass prices for the POI for all countries/regions because to accept such an argument is tantamount to choosing an SV on the basis of price. In addition, we have explained above that we do not select or analyze potential SVs on the basis of their value, whether that value is high, or low, or in some relationship to another value.

For these reasons we disagree with JA Solar, Jinko, and Boviet that the PVInsights data is usable for purposes of valuing the solar glass input.

Exclusion of Malaysian Import Data

We disagree with JA Solar, Jinko, and Boviet that our decision in the *Preliminary Determination* to exclude Malaysian solar glass data from the solar glass imports into Indonesia was in error. Rather, we agree with the petitioner that it was appropriate to exclude certain import data in valuing glass inputs because, relying on a third-country CVD determination, we have determined that a "particular instance of subsidization occurred" with respect to those price values, in accordance with section 773(c)(5) of the Act, as amended by the Trade Preferences Extension Act of 2015 (TPEA).[66]

---

[63] *See* section 773(c)(4) of the Act.
[64] *See* Petitioner's Rebuttal Brief at 20.
[65] *Id.* (citing Petitioner's Final Rebuttal SV Submission at Exhibit 3).
[66] The legislative history to the pre-TPEA version of the statute similarly provided that, when valuing factors of production, "Commerce shall avoid using any prices which it has reason to believe or suspect may be ... subsidized." H.R. Rep. No. 100-576, at 590–91 (1988) (Conf. Rep.).

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

The respondents do not challenge that Commerce's interpretation of the statute here is unlawful.[67] Rather, the respondents challenge that the evidence on the record does not support that the Malaysian import data is tainted by subsidization.[68] However, we disagree with JA Solar's assertion that the facts on the record do not support Commerce's reliance on the Indian CVD determination in excluding the Malaysian glass data because the facts of the Indian investigation do not apply to the current case. Our decision was based upon the fact that on December 11, 2020, the Government of India (GOI) published the results of a subsidy investigation concerning imports of "textured tempered glass whether coated or uncoated from Malaysia" during the period of investigation April 2018 - March 2019.[69] In its determination, the GOI found that the sole mandatory respondent, Xinyi Solar (Malaysia) Sdn. Bhd. (Xinyi Solar (Malaysia)), received subsidies of 9.71 percent.[70] The HTS subheading 7007.19.90 in the GOI determination matches the HTS subheading used in this investigation for solar glass, and which parties have agreed is inclusive of solar glass prices.[71]

Further, the GOI finding was dated December 11, 2020, and was in effect for five years after its issuance, and therefore, covers the POI of this investigation.[72] Thus, contrary to JA Solar's assertion, Commerce does have a factual basis to conclude that the Malaysian glass exports during the POI of this case, October 2023 to March 2024, were subsidized.

Additionally, the Indian CVD determination states that the product under consideration shall have a thickness "not exceeding 4.2 mm."[73] The decision states further that "{t}he glass of thickness 3.2 mm and 4 mm is generally used in Solar 4 Photovoltaic Panels and Solar Thermal applications as per the current trend."[74] This statement demonstrates that the determination is not

---

[67] *See* JA Solar Case Brief at 21 ("JA Solar is not arguing that Commerce may never rely on third country sources as evidence of export subsidies . . ."); *see also* Jinko Case Brief at 18 ("However, the fact that the Department has the discretion to exclude certain data does not mean that the statutory authority applies to this case, or that rejecting Malaysia data in this case leads to a decision supported by substantial evidence.").

[68] Boviet's case brief appears to challenge Commerce's decision as inconsistent with its practice, but for reasons explained below, Boviet's argument is inapposite and misstates our practice. *See Fuyao Glass*, 27 CIT at 1904 ("We found that, where the facts developed in U.S. *or third-country CVD findings* . . .") (quoting *Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China*, 67 FR 6482 (February 12, 2002), and accompanying IDM at 11). For example, Boviet provided a number of examples where Commerce declined to disregard imports as subsidized. Boviet Case Brief at 7. According to Boviet, in *Barium Carbonate*, Commerce explained that "a decision to disregard prices from a particular country in determining a surrogate value for factor inputs has in the past been based on a reason to believe or suspect that exporters in that country may be subsidized. In such cases, we have relied on information generally available to the Department at the time. That information has typically been the result of final countervailing duty determinations." We note that Commerce explains that the information has "typically" been the result of final countervailing duty determinations. In this case, India made and published a valid countervailing duty determination, and there is no evidence on the record to oppose it.

[69] *See* Petitioner's Final SV Submission at Exhibits 39, "Memorandum from B.B. Swain, Special Secretary & Designated Authority, Directorate General of Trade Remedies, *Final Finding in Countervailing Duy/Anti-Subsidy Investigation Concerning Imports of Textured Tempered Glass Whether Coated or Uncoated from Malaysia* (December 11, 2020)" (GOI Malaysian Glass Determination).

[70] *See* Petitioner's Final SV Submission at Exhibit 39, GOI Malaysian Glass Determination at 55.

[71] *Id.*

[72] *See* GOI Malaysian Glass Determination; *see also* JA Solar's Case Brief at 22.

[73] *See* Petitioner's Final SV Submission at Exhibit 39; *see also* GOI Malaysian Glass Determination, at page 5.

[74] *Id.*

limited to a thickness 3.2 mm and 4 mm and would include the type of solar glass JA Solar consumed, again contrary to JA Solar's assertion that the GOI determination is not applicable.[75]

Thus, while JA Solar may be correct that Commerce cannot exclude SV data without sufficient evidence on the record, we find that the evidence on the record supports that the Malaysian import data is tainted by particular instances of subsidization. Additionally, given that the GOI determination was a final determination, Commerce has "proven, hard facts" on the record to corroborate finding that Malaysian import data was tainted by subsidization.[76] Further, as the CIT has recognized "Congress thus tasked Commerce to avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices when valuing FOPs."[77] In determining whether a price is subsidized, the courts have made clear that the statute's drafters did not "intend for Commerce to conduct a formal investigation . . . but rather intend{ed} that Commerce base its decision on information generally available to it at the time."[78]

In addition, JA Solar's misinterprets *China National Arts & Crafts*, and in any event, it is distinguishable from the present case.[79] In *China National Arts & Crafts*, Commerce, in a preliminary determination, disregarded import data from certain countries because of the *possibility* that such imports were benefiting from export subsidies.[80] The CIT, in holding that such a decision was impermissible, held that Commerce had unlawfully expanded its practice:

> Commerce's discretionary practice of excluding surrogates determined to provide subsidies has expanded two-fold from its inception. First, Commerce decided to exclude surrogates determined to provide subsidies to any industry, assuming that those subsidies benefited other unrelated industries. Second, Commerce made a logical leap from that tenuous platform to exclude surrogates which may possibly provide export subsidies, without any proven, hard facts to corroborate the "finding" of subsidies. No final determination of subsidies was made for any textile industry in Indonesia, Malaysia or the Philippines, nor are there any final determinations outstanding that subsidies exist in any industry in those countries.[81]

In the present case, Commerce is not just excluding data in which a country provided subsidies to any industry, and assuming that those subsidies benefited the solar glass industry. Rather, Commerce has evidence on the record, the GOI determination, that the Malaysian solar glass industry, specifically, is being subsidized. Indeed, the GOI determination covers the exact same product as the input in question. Similarly, Commerce has "hard, proven facts" on the record to support its exclusion of Malaysian import data because the GOI determination is a final determination, not a preliminary determination. Thus, Commerce's decision in the present case

---

[75] *See* JA Solar's Case Brief at 22 (citing Petitioner's Final SV Submission at Exhibit 39, page 5; and Verification Exhibit VE-25, at 36, 50; and JA Solar's SDQR at Exhibit SD-4).
[76] *See China National Arts & Crafts Import & Export Corp. v. United States*, 771 F. Supp. 407, 413 (CIT 1991).
[77] *See Shenzhen Xinboda Indus. Co. v. United States*, 456 F. Supp. 3d 1272, 1289 (CIT 2020) (citing *Nation Ford Chem Co. v. United States*, 166 F.3d 1373, 1378 (Fed. Cir. 1999)) (internal quotation marks omitted).
[78] *See Jiangsu Zhongji Lamination Materials Co., Ltd. v. United States*, 396 F. Supp.3d 1334, 1347 (CIT 2019); *see also CS Wind Vietnam Co., Ltd. v. United States*, 832 F.3d 1367, 1374 (CAFC 2016).
[79] *Id.*
[80] *Id.*
[81] *Id.*

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

does not run afoul of the holding in *China National Arts & Crafts*. Indeed, the facts on this record address the concerns of the *China National Arts & Crafts* court.

Similarly, JA Solar's reliance on *Nation Ford* is also misplaced. In *Nation Ford*, the CIT assessed whether Commerce properly included Indian import prices in calculating the SV of aniline, an input in subject merchandise.[82] The domestic industry had argued that import data should not be used because there was evidence of subsidization, specifically India's Advance License Program which Commerce had previously found benefited Indian producers when the aniline was used to manufacture the subject merchandise.[83] In holding that Commerce's reliance on import data was reasonable, the CIT first found that "{w}hile the program may have reduced the end export price of Indian sulfanilic acid, it did not affect the basic value of the imported aniline."[84] The CIT then reasoned that:

> Commerce may conclude that a program conferred different levels of benefit during different administrative reviews, even among reviews of the same countervailing duty order. In some reviews, it may conclude that the program conferred no countervailable benefit at all. For that reason, factual findings in past determinations, while often relevant, are not binding in subsequent cases.[85]

Unlike in *Nation Ford*, here the evidence of subsidization goes directly to the basic value of solar glass. The GOI determination found that the solar glass industry in Malaysia—not some other industry that indirectly affects the solar glass industry—benefited from subsidies.[86] Thus, the *Nation Ford* court's concern has been readily addressed by information on our current record. Similarly, unlike in *Nation Ford*, the GOI determination applied for five years and covered the POI of this investigation such that Commerce has a factual basis to conclude that the Malaysian glass exports during the POI of this case, October 2023 to March 2024, were subsidized.

In any event, the *Nation Ford* and *China National Arts & Crafts* decisions were issued before the 2015 TPEA amendment to the Tariff Act such that the Act as amended currently governs. Further, the TPEA codified the intention that Commerce need not engage in a formal investigation but rather that "Commerce base its decision on information generally available to it at the time," such that Commerce can rely on the GOI determination that has been put on the record of this investigation.[87]

Still, JA Solar points to a number of cases where the Courts found that Commerce made conclusions that a subsidy exists without pointing to specific evidence that the subsidy at issue exists.[88] JA Solar's citation to those cases, again, is misplaced. In *Luoyang Bearing Factory v. United States*, the Court found Commerce's exclusion of certain data was unsupported because the countervailing duty determinations Commerce pointed to *did not include* the product at issue

---

[82] *See Nation Ford Chem. Co. v. United States*, 985 F. Supp. 133, 134-35 (CIT 1997).
[83] *Id.* at 135.
[84] *Id.* at 138.
[85] *Id.*
[86] *See generally* Petitioner's Final SV Submission at Exhibit 39.
[87] *See Jiangsu Zhongji Lamination Materials Co., Ltd. v. United States*, 396 F. Supp.3d 1334, 1347 (CIT 2019); *see also CS Wind Vietnam Co., Ltd. v. United States*, 832 F.3d 1367, 1374 (CAFC 2016).
[88] *See, e.g.*, *Luoyang Bearing Factory v. United States*, 259 F. Supp. 2d 1357, 1364 (CIT 2003); and *Fuyao Glass Industry Group Company v. United States*, 27 CIT 1892, 1903–05 (2003)

in that case.[89] Here, the GOI determination is specific to the solar glass input down to the HTS subheading. The Court in *Fuyao Glass*, similarly had concerns that the evidence cited to by Commerce did not indicate: (1) specific sectors, producers, or products that were eligible for the subsidies Commerce relied upon; (2) that the subsidies were in place during the POI of the investigation; and (3) that there even were subsidies.[90] Again, in the present case, Commerce has evidence to speak to all three concerns. The GOI determination indicates the exact industry that produces the input in question to the exact country, Malaysian solar glass producers, and found that they benefit from countervailable subsidies. The GOI determination is in effect for five years after its publication which covered the POI of this investigation.

Therefore, we disagree that Commerce's decision with respect to the exclusion of Malaysian glass from the Indonesian import data was not supported by specific evidence.

Finally, JA Solar, without any factual or legal support, "observes" that the GOI determination suggests that the GOI assessed countervailing duties on glass exports from Malaysia regardless of the country of origin, so that glass produced in another country and reexported through Malaysia would be deemed to be subsidized.[91] We note that it is a party's responsibility to build an adequate record for Commerce to make a decision.[92] Therefore, without record evidence, JA Solar's unsupported contention that India assessed countervailing duties on glass exports from Malaysia regardless of the country of origin is unpersuasive.

Boviet presents similar arguments and claims that Commerce has declined to find import statistics were distorted even when numerous U.S. government agencies had reported that a country's import statistics are artificially inflated, finding it was not specific and objective evidence.[93] Boviet's reliance on *Jianxing Brother Fastener Co.*, is misplaced. In *Jianxing Brother Fastener Co.*, Commerce found that the series of reports only indicated general concerns as to practices of Thai customs officials, but that there was no evidence these concerns had any impact on the specific import data in question.[94] Thus, *Jianxing Brother Fastener Co.*, like the other cases cited to by respondents, is distinguishable from the present case because here we have record evidence that the specific input in question, and as a result, the import data in question, is being subsidized.

Boviet also asserted that in selecting surrogate financial statements, Commerce will only disregard a statement as subsidized if the statement shows actual receipt of the same exact subsidies that Commerce itself has found are countervailable in that country.[95] Boviet's citation to *Glass Wine Bottles from China* mischaracterizes Commerce's decision in that investigation. First, in *Glass Wine Bottles from China*, Commerce was evaluating whether to reject an entire country as a potential surrogate country based on a note in a financial statement, stating that the

---

[89] *See Luoyang Bearing Factory*, 259 F. Supp. 2d at 1364.
[90] *See Fuyao Glass*, 27 CIT at 1904-05.
[91] *See* JA Solar's Case Brief at 22-23 (citing Petitioner's Final SV Submission at Exhibit 39).
[92] *See QVD Food Co., Ltd. v. United States*, 658 F.3d 1318, 1324 (Fed. Cir. 2011) (holding that parties, not Commerce, have the burden of building the record).
[93] *Id.* (citing *Jiaxing Brother Fastener Co. v. United States*, 380 F. Supp. 3d 1343, 1357 (CIT 2019)).
[94] *See Jianxing Brother Fastener*, 380 F. Supp. 3d at 1357.
[95] *Id.* (citing *Certain Glass Wine Bottles from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, in Part, 90 FR 76 (January 2, 2025), and accompanying IDM).

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

company had received electricity subsidies, despite there being no subsidy finding by Commerce or any country. In the present case, however Commerce has a GOI final determination.[96] Moreover, there was no subsidy determination to support the finding of a subsidy. The subsidy in question also related to electricity, a universal input that covers a broad range of products, whereas in the present case, the GOI determination concerns the exact input that is in question.[97] In any event, Commerce in *Glass Wine Bottles from China*, stated explicitly that it is within Commerce's discretion to determine which data represents the best available information for determining SVs. Commerce also reiterated its practice that "when there is evidence of a potential subsidy, but Commerce has not previously found the particular program to be countervailable, Commerce does not *per se* reject the data in question,"[98] rather it employs a reason to suspect standard, which it has done in this case, as modified by the TPEA.[99]

Jinko made similar arguments with one additional argument attempting to discredit Commerce's determination based on the amount of the subsidy at issue. It cites to *Mid Continent Steel & Wire, Inc. v. United States*, for the proposition that Commerce may overlook the effect of the GOI determination by simply adding the subsidy rate calculated by the GOI to the Malaysian import data. In *Mid Continent Steel & Wire, Inc. v. United States*, the CAFC found no error in Commerce's selection of one company's financial statements over another where there was evidence of subsidization amounting to 0.01% of the company's overall total revenue during the POI. It reasoned that the subsidy was insignificant to any profit calculation such that even if Commerce did not address the subsidy, it could not have affected the choice of one company over another. Here, however, the subsidy rate calculated is 9.71 percent for the sole company under investigation. Jinko does not address why its suggested alternative of using the calculated GOI subsidy rate or all-others rate would resolve the reliability concerns that Commerce has. Similarly, Jinko's other alternatives do not constitute the best available information. As explained in detail above, the PVInsights data and the Malaysian import data are unreliable for purposes of SV calculation such that they cannot be used for corroboration. As we explain in detail below, using only the United Kingdom import data would create an exceptionally small pool of sales.

Sufficiency of the Remaining Data

We disagree with Jinko's contention that Commerce should also exclude small-quantity shipments of high-priced merchandise from HS 7007.19.90. Jinko speculates, without evidentiary support or reasoning,[100] that these small shipments cannot possibly be solar glass, imported into Indonesia from multiple countries. We also disagree with Jinko's alternative argument that if Commerce does exclude Malaysia, it should limit the SV to exports from the United Kingdom, since imports from other countries cannot possibly consist of commercial quantities of glass for solar modules.

---

[96] *See Glass Wine Bottles from China* IDM at 16.
[97] *Id.*
[98] *Id.* at 12.
[99] *Id.* as 12-13.
[100] *See OSI Parms., LLC v. Apotex Inc.*, 939 F.3d 1375, 1372 (CAFC 2019) ("Mere speculation is not substantial evidence.").

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

Jinko summarizes the aforementioned data sources it presents,[101] and concludes that Commerce should value solar glass at $0.46/kg based on the PVInsights data,[102] because it would be consistent with Commerce's reliance on PVInsights to value solar glass in multiple prior proceedings, based on its recognition that PVInsights data is reliable and more representative of the actual value of solar glass than less specific HS data.[103] If Commerce decides not to rely on PVInsights data because the underlying data was submitted as BPI, Jinko contends that Commerce should value solar glass at $0.59/kg based on HS imports into Indonesia from Malaysia and the UK. Jinko maintains that relying on this data is appropriate because: (1) Malaysia data should not be excluded from the analysis, for the reasons discussed above; and (2) small quantity shipments in 41-line items should be excluded from the analysis because their miniscule shipment size and high price confirms that they are not solar glass panels. Jinko notes that these small quantity shipments are characterized by widely fluctuating, aberrational prices for each shipment. Jinko maintains that the Federal Circuit has affirmed Commerce's "longstanding 'administrative practice with respect to aberrational data . . . 'to disregard small-quantity import data {from the primary surrogate country} when the per-unit value is substantially different from the per-unit values of the larger quantity imports of that product from other {potential surrogate} countries.'"[104]

In short, Jinko claims that the following evidence on the record supports its contention that Commerce should value coated tempered glass at no greater than $0.59/kg based on an analysis of the non-aberrational data included in Indonesia HS 7007.19.9000: a.) the purchase and use of solar glass during the POI;[105] b.) the module cost structure established during the ITC proceeding,[106] and in Jinko's cost response;[107] the HS import data into Indonesia for HS 7007.19.90;[108] PVInsights data and the numerous court cases supporting the use of such data;[109]

---

[101] *Id.* at 23-24.
[102] *Id.* at 24.
[103] *Id.*
[104] *Id.* at 25-29 (citing *SolarWorld Americas, Inc. v. United States*, 962 F.3d 1351, 1357-59 (CAFC 2020) (*SolarWorld)*; and *Risen Energy Company, Ltd. v. United States*, 569 F. Supp. 3d 1315 (CIT 2022) (*Risen Energy I*); *Best Mattresses International Company Limited v. United States*, 622 F. Supp. 3d 1347 (CIT 2023); *Risen Energy Company, Ltd. v. United States*, 611 F. Supp. 3d 1384 (CIT 2022) (*Risen Energy II*); *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of the First Administrative Review of the Antidumping Duty Order*, 76 FR 77772 (December 14, 2011) at IDM; *Hebei Metals & Minerals Import & Export Corporation v. United States*, 28 CIT 1185, 1197–200 (2004); *Notice of Final Determinations of Sales at Less Than Fair Value: Steel Wire Rope from India and the People's Republic of China; Notice of Final Determination of Sales at Not Less Than Fair Value: Steel Wire Rope from Malaysia,* 66 FR 12759 (February 28, 2001); *Ancientree Cabinet Co. v. United States*, 532 F. Supp. 3d 1241, 1253-55 (CIT 2021); and *Jacobi Carbons AB v. United States*, 422 F. Supp. 3d 1308, 1312 (CIT 2019) (*Jacobi Carbons*); *Qingdao Qihang Tyre Company v. United States*, 308 F. Supp. 3d 1329, 1347-49 (CIT 2018)).
[105] *See* Jinko's Case Brief at 7-9.
[106] *Id.* at 9-11 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from, Cambodia, Malaysia, Thailand and Vietnam*, Inv. Nos. 701-TA-722-725 and 731-TA-1690-1693 (P), Pub. No. 5516 (June 2024) (ITC Report) at I-13 trough I-19 ("The Product"), attached to JA Solar's Letter, "Final Surrogate Value Rebuttal Comments," dated (November 18, 2024), at Exhibit 4).
[107] *Id.* at 11 (citing Jinko's SDQR at Exhibits SD-4A.4 and SD-2R.2; and the ITC Report at Page 19).
[108] *Id.* at 12-13, and Attachment I.
[109] *Id.* at 13-17 (citing *CS Wind Vietnam Co. v. United States*, 971 F. Supp. 2d 1271, 1279 (CIT 2014); *see also Xinjiamei Furniture (Zhangzhou) Co. v. United States*, 37 CIT 308, 317 (2013); *Peer Bearing Co.-Changshan v. United States*, 35 CIT 1626, 1644 (2011); *Itochu Building Products Company v. United States*, 39 ITRD 1522 (CIT

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

a discussion of the Indian subsidy decision regarding tempered glass from Malaysia;[110] and, Romania import data submitted by the petitioner and Turkish import data submitted by Jinko.[111]

As a general matter, and as the petitioner points out, Commerce does not have a general practice of omitting import values "merely because they were the product of a small quantity of imported goods."[112] Rather, Commerce *may* disregard small import values where they are distortive or aberrational.[113] As the CIT explained in *Ancientree Cabinet Co.*, "{t}he proposition that small import volume *may indicate* that the data relied upon is aberrational is not the same as the proposition that a small import volume *makes* the data aberrational."[114] In any event, "Commerce need not duplicate respondent's exact production experience,"[115] it need only to use a SV that is representative of the NME country's situation *as is feasible*.[116] Thus, Commerce must adequately address the commercial significance of the quantities underlying its selected SVs, *i.e.,* Commerce cannot summarily discard alternatives as flawed without evaluating the reliability of its selection.[117]

Typically, Commerce will evaluate commercial significant by analyzing whether the small quantity import data leads to an aberrational AUV compared to other potential surrogate countries.[118] However, as stated earlier, it is interested parties' responsibility to create an adequate record on which Commerce can make a determination.[119] Thus, if the respondents fail

---

2017); *Coalition of American Manufacturers of Mobile Access Equipment v. United States*, No. 22-00152, 2024 WL 2796654, at *9 (CIT May 31, 2024); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, and Rescission in Part; 2021*, 88 FR 88575 (December 22, 2023), and accompanying PDM at 22; *Changzhou Trina Solar Energy Co. v. United States*, No. 17-00246, 2020 WL 4464251, at *6 (CIT August 4, 2020); and, *Redetermination Pursuant to Court Remand Order in Changzhou Trina Solar Energy Co., Ltd. v. United States*, Consolidated Court No. 17-00246, Doc 93 at 20 (March 2, 2020)).

[110] *Id.* at 17-22 (citing Petitioner's Surrogate Value Submission at Exhibit 38, "*Final Finding in Countervailing Duty/Anti-Subsidy Investigation Concerning Imports of Textured Tempered Glass Whether Coated or Uncoated from Malaysia*, F. No. 6/13/2019-DGTR, Indian Ministry of Commerce & Industry, Department of Commerce, Directorate General of Trade Remedies (March 3, 2021)).

[111] *Id.* at 22-23.

[112] *See Ancientree Cabinet Co. v. United States*, 532 F. Supp. 3d 1241, 1253 (CIT 2021); *see also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 3987 (January 22, 2009), and accompanying IDM at Comment 7; *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008), and accompanying IDM at Comment 9; *Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 47587 (August 14, 2008), and accompanying IDM at Comment 4; *see also* Final Results of Remand Redetermination pursuant to *SolarWorld Americas, Inc. v. United States*, 273 F. Supp. 3d 1254 (CIT 2017) (January 18, 2018) at 25 (citing *Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Results of New Shipper Review; 2012-2013*, 80 FR 41476 (July 15, 2015), and accompanying IDM at Comment 11.D).

[113] *Id.* (citing *Sichuan Changhong Elec. Co. v. United States*, 460 F. Supp. 2d 1338, 1356 (CIT 2006)).

[114] *Id.* (quoting *Xinjiamei Furniture (Zhangzhou) Co. v. United States*, 37 C.I.T. 308, 316 (2013)) (emphasis in original).

[115] *See Nation Ford Chem.*, 166 F.3d at 1377.

[116] *Id.*

[117] *See Jacobi Carbons AB v. United States*, 313 F. Supp. 3d 1344, 1361 (CIT 2018); *see also Shanghai Foreign Trade Enters. Co. v. United States*, 318 F. Supp. 2d 1339, 1342 (CIT 2004).

[118] *See Shakeproof Assembly Components Div. of Ill. Tool Works, Inc. v. United States* 59 F. Supp. 2d 1354, 1360 (CIT 1999).

[119] *See QVD Food*, 658 F.3d at 1324.

to provide data for Commerce to adequately determine an SV, Commerce has no choice but to make its ultimate decision based on a limited record.[120]

For reasons described in detail above, Commerce finds that the PVInsights data is unreliable and therefore cannot be used. Thus, the respondents' arguments requesting that Commerce use either the PVInsights data or some combination of data that includes PVInsights data are unpersuasive. As detailed above, Commerce similarly finds that the respondents' arguments regarding inclusion of the distortive Malaysian import data are unpersuasive.

There is also no import data from other potential surrogate countries that would enable Commerce to analyze whether the Indonesia SV for solar glass is aberrational (with the Malaysian import data excluded, and with the PVInsights data being unreliable).[121] Thus, Commerce cannot perform an aberrancy or commercial significance analysis comparing the resulting Indonesia SV with other potential surrogates, and to that extent, Jinko's reliance on *SolarWorld* is unavailing. As a result, Commerce must make its determination based on the remaining data available after excluding the PVInsights data and the Malaysian import data.[122] On the limited record we have before us, we determine that the remaining solar glass SV data is not aberrational.[123]

We agree with the petitioner that the respondents have not provided any evidence demonstrating that the remaining values in the import data, or the remaining data as a whole, are aberrational, and, as such, the respondents' observations are speculative and predicated exclusively on the assumption that the AUVs are too high. First, the record shows that the quantity of imports exclusive of Malaysia is a commercial quantity because the remaining data, using respondents' reported solar glass weights, accounts for enough solar glass to produce more than 1000 solar modules.[124] In addition, because there is no requirement that the imports in a selected HS category match the respondents' inputs exactly,[125] we agree with the petitioner that the presence of low-quantity or low-weight line items in an HS category does not indicate that the merchandise is unlike the subject merchandise of this case because smaller solar modules can use the exact same type of glass as a large module.

Similarly, Jinko's discussion of the ITC preliminary injury report is inapposite. As the petitioner noted there is no indication that these costs per watt or their percentage of the total module cost

---

[120] *See Baoding Mantong Fine Chem. Co. v. United States*, 222 F. Supp. 3d 1231, 1248 (CIT 2017).
[121] Interested parties submitted Romanian import data as well as Turkish import data, however, these countries are not economically comparable to Vietnam and do not appear on the surrogate country list Commerce relied upon in determining the appropriate surrogate country. Therefore, for the same reason we did not consider the PVInsights data we cannot consider these substitutes. *See* section 773(c)(4) of the Act. In any event, the Romanian and Turkish data have other issues in that they are not contemporaneous with the POI in this case and all sources of the prices are for either NMEs or countries not at a level of economic development comparable to Vietnam said.
[122] *Id.* at 1248 ("Baoding Mantong did not submit such a wider set of data for the record during the review, leaving Commerce to consider the question of whether the surrogate price was aberrational, and to make its ultimate decision, from a limited record.").
[123] *See Ancientree*, 532 F. Supp. 3d at 1254-55 (citing *Baoding Mantong Fine Chem.*, 222 F. Supp. 3d at 1247-48).
[124] *See* Jinko's Case Brief at 8 (citing Jinko's SDQR at Exhibit SD12A; JA Solar's Case Brief at 12 (citing JA Solar's Verification Report at Exhibit25). *See also* Petitioner's Rebuttal Brief at 14.
[125] *See Nation Ford Chemical*, 166 F.3d at 1377.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

are reflective of producers of solar cells/modules in Vietnam or Indonesia; therefore, we agree that it is meaningless to apply these cost ratios to Jinko's own costs.

In conclusion, we have explained in detail above why it is not appropriate to value solar glass using PVInsights data. We have also explained in detail why it is appropriate to remove the Malaysia data. Lastly, we have explained in detail why it is inappropriate to remove the small-quantity, high-value data that Jinko considers "aberrational." For these reasons, we continue to value solar glass using the imports into Indonesia under HS 7007.19.90, adjusted to remove imports from Malaysia for the purposes of this final determination.

Comment 2: SV for Aluminum Frame Inputs

Petitioner's Case Brief

The petitioner's case brief contained an executive summary accompanying its request to change certain SVs to generally align with its preferred source, but did not include distinct summaries for each SV change requested (though individual SV arguments were individually-rebutted and we have broken each into a distinct issue for the purposes of this memorandum). We provide the petitioner's general summary here in the first instance, but do not repeat it for each SV-related issue affirmatively briefed by the petitioner below. For the petitioner's arguments on this specific issue, *see* Petitioner's Case Brief at 10-21.

> In the *Preliminary Determination*, where Petitioner's and respondents' suggested valuations of inputs differed, {Commerce} defaulted to the respondents' suggested surrogate values (SVs). {Commerce} explained that it was "unable to provide full scrutiny" to each factor of production (FOP) and the suggested surrogates but concluded that "the majority of the differences {in suggested SVs} reflected equally ambiguous options in terms of specificity." Thus, "based on the premise that the respondent has the best knowledge of its own inputs," unless Petitioner specifically argued for a valuation in its comments in advance of the *Preliminary Determination*, {Commerce} accepted and used the respondents' SVs.
>
> {Commerce} is required to rely on the best available information in selecting SVs. For many FOPs, the SVs proposed by Petitioner are based on substantial record evidence and are the most specific to the respondents' inputs. Moreover, to the extent that {Commerce} believes that the record of the investigation is ambiguous as to the correct valuation for any of the respondents' FOPs, {Commerce} should select Petitioner's proposed SV. As the respondents are the ones in control of their books and records, not Petitioner, it is incumbent on the respondent to provide adequate information to allow {Commerce} to confidently select valuations.

JA Solar's Rebuttal Brief

The following is a verbatim summary of arguments submitted by JA Solar. For further details, *see* JA Solar's Rebuttal Brief at 32-41.

> Petitioner suggests that Commerce utilize a basket HTS code representing parts of semiconductor devices and solar modules to value JA Solar's inputs of extruded

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

> aluminum for solar frames. In contrast, JA Solar proffered information from the same HS code utilized by Commerce to value extruded aluminum for solar frames in numerous prior proceedings, which has also been affirmed by the court. In addition, the value proposed by Petitioner is highly aberrational and vastly exceeds the value of a completed solar panel. Petitioner argues that Customs Rulings support Commerce's selection of this HTS. The Customs Rulings referenced by Petitioner, however, relate to different merchandise imported in different condition than the extruded aluminum solar frame components utilized by JA Solar. Petitioner's proposal is also belied by their own submissions, as in a concurrent investigation on solar cells and modules Petitioner argued that the very same HS heading proposed by JA Solar, HTS 7604.21, was the correct code to value inputs of aluminum extrusions for solar frames. Commerce must, therefore, reject Petitioner's aberrational and unsupported proposed HS code.

Jinko's Rebuttal Brief

Jinko's Rebuttal Brief contained an executive summary generally addressing its rebuttal to the petitioner's affirmative arguments regarding certain SVs, but did not include distinct summaries accompanying each rebuttal SV argument. We provide Jinko's general summary here in the first instance, but do not repeat it for each SV-related issue, below. The following is a verbatim summary of arguments submitted by Jinko. For further details, *see* Jinko's Rebuttal Brief at 3-11.

> In its *Preliminary Determination* Commerce carefully considered, and expressly rejected, Petitioner's argument that these inputs should be valued by relying on HS subheadings which Commerce had carefully considered, and expressly rejected, in multiple prior solar proceedings. Petitioner's proposals lead to absurd results, in which the value of these inputs exceed the actual cost of producing solar modules. Jinko and JA Solar have placed on the record substantial evidence corroborating Commerce's surrogate value selections, while Petitioner's choices are supported solely by CBP classification decisions. However, Commerce and the courts have expressly discounted the significance of CBP classification principles in determining surrogate values. Surrogate values are intended to be reasonably accurate approximations of actual costs; CBP classification's purpose does not share this paramount concern. Moreover, Petitioner's proposed HS choices are not limited to subject aluminum frames, polysilicon, and wafers, but include products (*e.g.*, parts of semi-conductors, polysilicon not used for solar panels and other articles of gold) which have nothing to do with these solar panel inputs. For these reasons, Commerce has consistently rejected the HS subheadings proposed by Petitioner, and since Petitioner fails in its attempt to distinguish Commerce's practice, Commerce should follow its longstanding practice and affirm its *Preliminary Determination*.

Commerce's Position: We disagree that we should value aluminum frames for the purposes of the final determination using its proposed HS category of HS 8541.90, "Semiconductor Devices, Other, Parts," rather than the HS category that we used in the *Preliminary Determination* of HS 7604.21.90, "Aluminum bars rods and profiles, Alloyed, Hollow Profiles, Other Hollow Profiles."

As explained in the *Preliminary Determination*, Commerce's practice when selecting the "best available information" for valuing the FOPs, in accordance with section 773(c)(1) of the Act, is to use, to the extent practicable, SVs which are publicly available, product-specific, representative of a broad market average prices, tax-exclusive, and contemporaneous with the POI.[126] Where interested parties' suggested SVs of interested parties differed, in the *Preliminary Determination*, we generally concluded that the differences "reflected equally ambiguous options in terms of specificity," but that "respondents' suggested SVs generally appeared to be appropriate and consistent with the HTS category utilized in prior solar cells proceedings of other orders."[127]

Record evidence supports that HS 7604.21.90 is more specific to the aluminum frames at issue. In explaining why we rejected the petitioner's preferred HS category in the *Preliminary Determination*, we noted that HS 8541.90 represents a catch all category, "Other - Parts" related to semiconductors,[128] and as a result contains price data for imports of a broad basket of unrelated, non-specific, semiconductor parts unlike solar frames into Indonesia."[129] Focusing on the characteristics of the solar frames used in the subject merchandise, we explained that, "HS 7604.21.90 contains hollow alloyed aluminum profiles plainly more specific to aluminum alloy frames in question and, this subcategory has been identified as the appropriate HS source in other solar proceedings and reflects the HS category under which respondents import the input."[130]

Still, the petitioner argues that Commerce should classify solar frames under HS 8541.90 because U.S. Customs Rulings N301481 and N299961 did so in the past.[131] The petitioner notes that both U.S. Customs Rulings classify the solar frames under HS 8541.90, because they are sold and imported as a kit specifically for solar cells and modules. The petitioner claims that once the extrusions are purposefully made for a product (*i.e.*, cut to length, punched, *etc.*) and sold as a complete kit exclusively for use in that product, they cease to be indiscriminate and undefined extrusions and are transformed into parts of that product (*i.e.*, 8541.90 covers parts of solar modules). Thus, the petitioner argues that the inputs JA Solar and Jinko used constitute kits.[132]

Record evidence does not support the petitioner's contention that pieces of aluminum extrusions used by the respondents that are "cut to length and punched" constitute kits. JA Solar provided photos and technical drawings of these frames.[133] None of these drawings represent anything but individual pieces of varying sizes and lengths, nor do the drawings show that these pieces were sold exclusively for the use in a kit.[134] Further, there is no reason to believe or expect that such

---

[126] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China*, 71 FR 16116 (March 30, 2006) (*Artist Canvas from the PRC*), and accompanying IDM at Comment 2.

[127] *See* Memorandum, "Preliminary Surrogate Value Memorandum," dated November 27, 2024, at 5. Commerce did give more fulsome scrutiny to solar glass, aluminum frames, polysilicon and polysilicon byproducts, as well as ocean freight and surrogate financial ratio sources. *Id.* at 6.

[128] *Id.*

[129] *Id.*

[130] *Id.* (citing JA Solar's Pre-Preliminary Comments and Jinko's Pre-Preliminary SV Comments).

[131] *See* Petitioner's Case Brief at 12.

[132] *Id.* at 12-13 (citing JA Solar's SDQR at Exhibit SD-4, and Jinko's SDQR at Exhibit 10.3d-2).

[133] *See* JA Solar's SDQR at Exhibit SD-4, "Frames."

[134] *Id.*

merchandise constitutes a kit for antidumping duty purposes, despite the fact that the box identifies the quantity of profiles in sets.[135] Jinko similarly provides sample purchase documents for its aluminum frames,[136] and these goods are described as solar module aluminum frames, with a given size.[137] There is no evidence of a kit, and, even if we considered it a kit, we disagree that an HS number applicable to semiconductor devices or parts thereof reflects the appropriate classification for an extruded aluminum kit. In addition, Commerce is not bound by CBP rulings classifying solar frames under HS category 8541.90.0000.[138] To the extent that the petitioner would like Commerce to give some probative value to the CBP rulings, then Commerce must also give probative value to its own decisions and the decisions of the CIT. Indeed, the respondents point to a long list of cases where Commerce valued aluminum frames in the HS subheading for hollow aluminum products,[139] and where the CIT has consistently upheld the use of HS 7604.21.90 to value aluminum frames based on an evaluation of record evidence, rather than following CBP rulings classifying aluminum frames in basket subheadings which primarily consist of other products (*e.g.*, "other articles of aluminum" in HS 7616 or "other parts of diodes" in HS 8541.90).[140] On this balance, and in light of the evidence on the record, we do not find the CBP rulings to be persuasive.

Further, we disagree that because the petitioner provided evidence that certain solar frames and/or solar profiles have been shipped under HS subheading 8541.90,[141] Commerce must conclude that these solar frames and profiles definitively constitute semiconductor devices or parts thereof, or that 8541.90 definitively reflects the appropriate HTS category to value such inputs. The mere existence of imports of frames in this category is not dispositive in determining whether the basket category reflects the appropriate HS category in which to value said inputs in every country. Indeed, as the petitioner admits, it is only in certain instances that aluminum

---

[135] *See* JA Solar's SDQR at exhibit SD-4, "Frames."
[136] *See* Jinko's SDQR at Exhibit 19.3d-2.
[137] *Id.*
[138] *See Novosteel SA v. United States*, 284 F.3d 1261, 1270 (Fed. Cir. 2002) ("{R}eference to an HTSUS number is not dispositive about the scope of an antidumping or countervailing-duty order."); *see also Koyo Seiko Co. v. United States*, 955 F. Supp. 1532, 1540 (CIT 1997) ("{C}ourts have consistently held that customs tariff classifications do not govern antidumping determinations with respect to class or kind.").
[139] *See* Jinko's Rebuttal Brief at 5-7 (citing: *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; 2018-2019*, 86 FR 58871 (October 25, 2021) (China Solar I, AR 7), and accompanying IDM at Comment 7, pages 43-44; *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; 2016-2017*, 84 FR 36886 (July 30, 2019) (China Solar I, AR 5), and accompanying IDM at Comment 8, page 28*; 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; 2013-2014,* 81 FR 39905 (June 20, 2016) (China Solar I, AR 2) and accompanying IDM at Comment 8, pages 23-27; and *Canadian Solar International Ltd. v. United States*, 378 F. Supp. 3d 1292, 1308 (CIT 2019)).
[140] *Id.* at 7-8 (citing *e.g.*, *China Solar I, AR 8* IDM at 28 ("HS description {7616} does not refer to anything similar to aluminum profiles that were further processed into frames."); China Solar I, AR 7, IDM, at 43-44 and China Solar I, AR 5, IDM at 33 ("Commerce is not bound by CBP rulings regarding U.S. imports when selecting import values from surrogate countries but, instead, must select the best available information on the record to value the FOP."); *Solar International Ltd. v. United States*, 378 F. Supp. 3d 1292, 1308 (CIT 2019) ("Commerce's task is not to classify the solar frame inputs for customs purposes, but to select the best available information to value the FOPs in question. . . . *SolarWorld* fails to proffer evidence detracting from Commerce's conclusion that the frames are more similar to the goods under HS 7604 than any other data on the record.")).
[141] *See* Petitioner's Case Brief at 15-17.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

frames are imported under HS 8541.90. Thus, the petitioner's argument is merely a disagreement with how Commerce chose to weigh the evidence before it, and not a reason for Commerce to reverse an otherwise reasonable decision.[142]

Similarly, we disagree that because the explanatory notes for the chapter from both the World Customs Organization and the HTSUS exclude aluminum profiles from certain subheadings of Chapter 76, provided that they have not thereby assumed the character of articles or products of other headings,[143] means that these profiles were finished specifically for solar modules, thereby assuming the character of articles of other headings (*i.e.*, parts of solar modules), and thus should be classified under HS 8541.90. Even if we were to find this line of argument persuasive, and we do not, it still does not demonstrate why and how these profiles represent either semiconductor devices or parts thereof. Conversely, the respondents have demonstrated that HS 7604.21.90 is more specific and record evidence, along with Commerce's past determinations, support this finding.

However, to be clear we have not rejected the petitioner's proposed HS category because it is a basket category. As the petitioner noted, Commerce used basket categories to value 15 inputs into the production of subject merchandise in this case: Additive - Polishing; Additive - Texturing; Cleaning additives and agents; Detergent; Glue; Jinko's 1000V Junction Boxes; Junction Box Scrap; Nitrous Oxide; Aluminum Paste; PET Belt; Plastic Board; Screen Frame; Silicon Sealant; TMA; and Slicing wire. As we explained above, the basis to reject the petitioner's preferred HS subheading lies in that the petitioner failed to demonstrate how aluminum frames are best valued by an HS category which consists of a basket of semiconductor devices or parts thereof, *as opposed to* hollow alloy profiles of aluminum where the frames in question are plainly extruded aluminum profiles and the 8541.90 category is a broad basket of many different and potentially high valued products. Therefore, for the purposes of the final determination, we continue to values aluminum frames using HS category HS 7604.21.90, "Aluminum bars rods and profiles, Alloyed, Hollow Profiles, Other Hollow Profiles."

We agree with JA Solar's argument that its selected HS category has been used in numerous prior proceedings, which have also been affirmed by the court.[144] We note that JA Solar pointed out

---

[142] *See OTR Wheel Eng'g, Inc. v. United States*, 901 F.Supp.2d 1375, 1380 (CIT 2013) ("{T}he {C}ourt will not re-weigh the evidence presented to Commerce, and will uphold Commerce's determination provided it chooses from among the range of possible reasonable conclusions based on the record.").

[143] *Id.* at 17-18.

[144] *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 21, 2022), and accompanying IDM at 32–34, citing *Jiangsu Jiasheng Photovoltaic Technology Co., Ltd. v. United States*, 28 F. Supp. 3d 1317, 1335-38 (CIT 2014)); *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; 2017- 2018,* 85 FR 62275 (September 28, 2020), and accompanying IDM at 42-44; *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; 2016-2017*, 84 FR 36886 (July 24, 2019), and accompanying IDM at 2729; *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; 2015-2016*, 83 FR 35616 (July 11, 2018), and accompanying IDM at 24–27; *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of*

that the petitioner's proposed HS value is very high, but we disagree that the value of the proposed surrogate was a factor in our concerns. We agree with JA Solar that the referenced Customs Rulings do not support the application of the petitioner's proposed HS category to the input used to product the subject merchandise, not because the merchandise at issue in the Custom's Rulings was in a different form than the merchandise used to product solar frames, but because the petitioner ultimately failed to demonstrate that the solar frames at issue represented semiconductor devices or parts thereof. For these reasons, we continue to value solar frames as we did in the *Preliminary Determination* rather than use the SV that the petitioner proposes.

In short, as Jinko contends, we determine that "the critical question is whether the methodology used by Commerce is based on the best available information and establishes the antidumping margins as accurately as possible."[145] We note that Jinko cited numerous court cases in support of Commerce's use of the best information available,[146] whether the data was public or proprietary, as long as it is reliable.[147] However, we disagree with Jinko that, in this case, we have been driven by the price level of any one factor valuation method. As noted above, the petitioner failed to demonstrate that the solar frames at issue represent semiconductor devices or parts of semiconductor devices. For this reason, the pricing anomalies laid out in Jinko's discussion are not relevant to the selection of the appropriate SV for solar frames. As a result, we have not analyzed or discussed them in detail.

Thus, for the reasons explained above, we continue to value solar frames for the final determination using HS 7604.21.90, as we did in the *Preliminary Determination*.

Comment 3: SV for Silver Paste Inputs

Petitioner's Case Brief

The petitioner did not submit a distinct executive summary to accompany its affirmative arguments regarding this specific value in its case brief; for the petitioner's general executive summary regarding SV issues, *see* Issue 2, above. For the petitioner's arguments on this issue, *see* Petitioner's Case Brief at 25-27.

JA Solar's Rebuttal Brief

The following is a verbatim summary of arguments submitted by JA Solar. For further details, *see* JA Solar's Rebuttal Brief at 41-42.

Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015, 82 FR 29033 (June 20, 2017), and accompanying IDM at 35-38; *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part,* 77 FR 63791 (October 17, 2012), and accompanying IDM; *see also* JA Solar's Letter, "Submission of New Factual Information," dated November 6, 2024, at Exhibit 6.

[145] *See* Jinko's Rebuttal Brief at 9 (citing *SolarWorld*, *Risen Energy I*; and *Ancientree Cabinet Co. v. United States,* 532 F. Supp. 3d 1241, 1253–55 (CIT 2021) (*Ancientree*)).

[146] *Id.* at 9-11 (citing, *e.g.*, *SolarWorld*, *Risen Energy I, Ancientree, Jacobi Carbons, CS Wind Vietnam Co. v. United States*, 971 F. Supp. 2d 1271, 1279 (CIT 2014)).

[147] *Id.*

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

> Petitioner's proposed HS code for valuing inputs of silver paste covers jewelry of silver and gold, whereas JA Solar's proposed HS code covers silver used in industrial applications. Gold has also been found to be 80 times more expensive than silver in the context of this proposed HS code, rendering the use of an HS code containing data for both materials unusable.

Jinko's Rebuttal Brief

Jinko did not submit a distinct executive summary to accompany its arguments regarding this specific value in its rebuttal brief; for Jinko's general executive summary regarding SV arguments, *see* Issue 2, above. For Jinko's arguments on this issue, *see* Jinko's Rebuttal Brief at 20-23.

Commerce's Position: We disagree that we should value silver paste for JA Solar and Jinko using HS 7115.90.10, "Articles {not elsewhere specified or included (Nesoi)}, of precious metal or of metal clad with precious metal: other articles of precious metal of gold or silver," rather than HS 7106.92, "Silver (including silver plated with gold or platinum), unwrought or in semi-manufactured forms, or in powder form: Semi manufactured," as suggested by the respondents and used for the *Preliminary Determination*.

We also disagree that HS 7115.90.10 more closely matches the input that JA Solar and Jinko use in the production of subject merchandise,[148] because it contains silver and a variety of other chemicals,[149] because, by definition, provided above, this HS category includes articles of gold or silver. For the reasons explained below, we disagree that two separate Customs rulings that the petitioner placed on the record demonstrate that the appropriate classification of silver paste for use in solar cells/modules is under the six-digit HS subheading 7115.90.[150]

The petitioner disagrees that Jinko's contention that Commerce rejected the use of HS 7115.90.10 in previous solar cell cases[151] is relevant, explaining that determinations at issue were based on different records than the current proceeding. The petitioner maintains that the respondents have not justified their preferred valuation, but request Commerce to rely on determinations from different proceedings with different facts.[152] The petitioner claims that there is no evidence on the record: 1) that the SV for Indonesian HS 7115.90.10 is skewed by the inclusion of gold articles;[153] 2) of the values of gold and silver during the POI (especially for Indonesia);[154] or 3) that HS 7115.90.10 covers articles such as "toys, figurines, ornaments, cups, money clips, and other such items."[155] Finally, the petitioner claims that HS 7106.92 is not specific to silver paste, but to the primary form of one ingredient of the silver paste.[156] The petitioner maintains that HS 7106.92 covers unwrought silver or silver in a powder semi-

[148] *See* Petitioner's Case Brief at 25.
[149] *Id.*
[150] *Id.* at 26 (citing Petitioner's Final SV Submission at Exhibit 21).
[151] *Id.* (citing Jinko's SDQR at Attachment 1 (pages 20-21)).
[152] *Id.* at 26.
[153] *Id.*
[154] *Id.*
[155] *Id.* at 26-27.
[156] *Id.* at 27.

manufactured form.[157] The petitioner states that the silver paste is not "semi-manufactured," as claimed by Jinko,[158] but was fully finished merchandise sold to Jinko is fully manufactured and not in some intermediate step of production.[159] The petitioner explains that silver that has been powdered, mixed with other ingredients, and subjected to a full manufacturing process, cannot be considered "semi-manufactured" or "unwrought."[160] For this reason the petitioner argues that the respondents failed to show how the silver paste is appropriately this classified under HS 7106.92.

The petitioner states that the lack of specific evidence on the record that Indonesian import data for HS 7115.90.10 is skewed by the inclusion of gold articles, the value of gold, or articles such as "toys, figurines, ornaments, cups, money clips, and other such items", necessarily forecloses on any conclusion that the SV is inclusive of and the resulting average unit value (AUV) is distorted by, imports of such products.[161] We disagree. The definition of HS 7115 is "Other articles of precious metal or of metal clad with precious metal;" thus, no record evidence needs to be provided to support the reasonable conclusion that the category includes articles of various precious metals, including those other than silver. In addition, the HS category 7115.90.10, is a subcategory of HS 7115.90 "other," any other subcategory of HS 7115. Therefore, HS 7115.90.10 by definition, regardless of record evidence, includes a broad basket of items including, but not exclusive to, those of or clad with silver.

We also disagree that HS 7106.92 is not appropriate to value silver paste because it is not specific to silver paste, but to the primary form of one ingredient of the silver paste. As the petitioner explains, HS 7106.92 covers unwrought silver or silver in a powder semi-manufactured form.[162] The petitioner argues that silver that has been powdered, mixed with other ingredients, and subjected to a full manufacturing process, cannot be considered "semi-manufactured" or "unwrought."[163] The record is ambiguous as to the meaning of the term "manufactured" in this instance, because neither JA Solar nor Jinko produce silver paste. As a consequence, we have no way to observe or verify the manufacturing process. But, as a "paste," silver paste represents a mixture of silver and other chemicals, but not an "article of precious metal or of metal clad with precious metal: other articles of precious metal of gold or silver."

JA Solar points out that HS 7115.90.10 represents jewelry, not industrial paste, and is classified under "Sub-Chapter III Jewelry, Goldsmiths' and Silversmiths' Wares and Other Articles" in the Harmonized Schedule.[164] JA Solar points out that industrial silver paste is not an "article of precious metal," and therefore has no place in the sub-chapter including "jewelry, goldsmiths' and silversmiths' wares." Rather, JA Solar proposes HS 7106.92, which is included in the "Sub-

[157] *Id.*
[158] *Id.* (citing Jinko's SDQR at Attachment 1 (pages 20-21)).
[159] *Id.* at 27.
[160] *Id.*
[161] *See* Petitioner's Case Brief at 26.
[162] *Id.* at 27.
[163] *Id.*
[164] *See* JA Solar's Rebuttal Brief at 42, citing JA Solar Final SV Submission at Exhibit 6. (However, Exhibit 6 of that document is entitled "Petitioners SV Submission," whereas Exhibit 8 is entitled "Solar I AR 2020-2021 Valuation Memorandum," which reflects the relevant submission discussing Commerce's decision to reject HS 7115.90.10 in favor of HS 7106.92 in that case.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

Chapter II Precious Metals and Metals Clad with Precious Metal."[165] Specifically, HS 7106 is defined as "Silver (including silver plated with gold or platinum), unwrought or in semi-manufactured forms, or in powder form,"[166] and includes separate sub-categories for powder, unwrought items, and semi-manufactured items.[167] JA Solar notes that this HS code is more applicable to industrial paste composed of silver than is a subheading relevant for articles of jewelry.

JA Solar asserts that HS 7115.90.10 is inappropriate to value industrial silver paste because it includes the value of gold articles, which are dozens of times more valuable than silver, as Commerce found in the most recent applicable *Solar I* determination.[168]

Jinko contends that the silver paste it uses to produce modules in this investigation is the same as the silver paste that Jinko and other companies used in annual reviews of the China antidumping duty order. In *China Solar AR8* and *AR9*, Commerce compared the relative merits of HS 7106.92 and 7115.90.10 and concluded that HS 7106.92 was more specific to the silver paste used by the respondent.[169] The petitioner asserts that such decisions are of limited relevance because those determinations were based on different records than the current proceeding. Though we agree generally with the principle that SV decisions must be made based on the merits and record of each proceeding, and it would be inappropriate to base SV selection solely on the basis of what was selected in a prior case, we disagree that such decisions have no relevance nor that the relevant facts are dissimilar. Where Commerce previously considered the treatment of nearly identical information for the same purpose to value the same input retains considerable probative value across cases, regardless of discernable case-specific facts otherwise. Here, the fact that Commerce has previously considered precisely the issues identified herein in selecting the appropriate SV for silver paste and determined that HS 7106.92 reflects the most appropriate subheading is instructive, and therefore, we continue to value the silver paste using Indonesian import data for HS 7106.92.

Comment 4: SV for 1500V Junction Box Inputs

Petitioner's Case Brief

The petitioner did not submit a distinct executive summary to accompany its affirmative arguments regarding this specific value in its case brief; for the petitioner's general executive summary regarding SV issues, *see* Issue 2, above. For the petitioner's arguments on this issue, see Petitioner's Case Brief at 27-28.

---

[165] *Id.*
[166] *Id.*
[167] *Id.*
[168] *See* JA Solar's Rebuttal Brief at 42 (citing JA Solar Final SV Submission at Exhibit 8, "Solar I AR 2020-2021 Factor Valuation Memorandum" Pages 2 and 3 state, "While the petitioner argued that Commerce should value silver paste using Malaysian import prices under HTS 71159010 (Other articles of precious metal or of metal clad with precious metal, of gold or silver), this is a broad HTS category that covers gold which is approximately 80 times more expensive than silver. Also, the input that we needed to value is industrial silver paste, not an article of precious metal.").
[169] *See* Jinko's Rebuttal Brief at 20-22 (citing *China Solar AR9* IDM at Comment 8, at 26; and *China Solar AR 8* IDM, Comment 6, at 30-31).

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

JA Solar's Rebuttal Brief

The following is a verbatim summary of arguments submitted by JA Solar. For further details, *see* the JA Solar's Rebuttal Brief at 42-44.

> Petitioner's proposed HS code to value JA Solar's junction boxes contains numerous examples of highly aberrational data points that skew the resulting SV, and is therefore unusable. Instead, Commerce should utilize the six-digit HS code provided by JA Solar.

Jinko's Rebuttal Brief

The following is a verbatim summary of arguments submitted by Jinko. For further details, *see* Jinko's Rebuttal Brief at 23.

> Regardless of whether Commerce affirms its *Preliminary Determination* as to how these inputs should be valued, Commerce should remove from the analysis small volume and aberrational high-priced data.

Commerce's Position: In the *Preliminary Determination*, we valued both respondents' reported consumption of 1500 volt (or higher) junction box inputs using Indonesian price data for imports under HS 8544.60 (Other electric conductors, for a voltage exceeding 1,000 V).

The petitioner argues that Commerce should value the relevant inputs using import price data under a narrower 8-digit subheading of the category used in the *Preliminary Determination*, *i.e.*, HS 8544.60.11 (Other electric conductors, for a voltage exceeding 1,000 V: cables insulated with plastic, of a voltage greater than 1Kv (1,000 volts) but less than 36Kv (36,000 volts) with a diameter of the cable as less than 22.7 mm).[170] The petitioner cites to record evidence submitted by both parties which shows that their junction box inputs of this voltage are insulated with plastic and within the diameter specified.[171] We have reviewed the record, and agree that the information submitted by the respondents reflects 1500v or higher junction box inputs insulated with plastic and of the diameter specified in 8544.60.11 and, as such, the 8-digit HS subheading identified by the petitioner reflects a more specific source for the FOPs in question.[172]

Though neither respondent party contests the relative specificity imparted by 8544.60.11, both argue that the narrower subheading contains numerous examples of highly aberrational data points, which should either be removed or found to render the dataset unusable. Alternatively, they argue we should continue to use the six digit dataset, which contains these purportedly aberrational datapoints, but the broader dataset presumably "smooths" such aberration and is nevertheless sufficiently specific to the inputs themselves. However, we note that the respondents have not provided any evidence that the remaining values in the import data for HS 8544.60.11 are aberrational. While they cite to cases where Commerce disregarded small-quantity import data which it found to be comparatively distortive, in each of the cases

[170] *See* Petitioner's Final SV Submission at Exhibit 3-F.
[171] *See* Petitioner's Case Brief at 27-28, citing Jinko's SDQR at Exhibit SD-18 and Exhibit SD-19.5a and JA Solar SDQR at Exhibit SD-4.
[172] *Id.*

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

identified, Commerce required that the parties provide substantial support for determining specific data is aberrational within a dataset such that it justifies removal.[173]

Specifically, Commerce's practice establishes that evidence of a high or low AUV does not necessarily establish that data is unreliable, distorted, or misrepresentative. Commerce's determinations which found a SV source aberrational on the whole, or constituent data thereof to be aberrational and removed from the dataset, have relied upon extensive analysis of such prices in comparison to other market values on the record (*e.g.*, prices substantially different from the per-unit values of the larger quantity imports of that product from other potential surrogate countries, historical price data from the same source in prior segments, specific corroborative evidence which demonstrates that constituent data is non-specific to the input and/or dissimilar from and distortive of the products otherwise classified in the category, *etc.*).[174] Commerce's practice has established that the burden is on interested parties to provide such information in support of any claims of aberrationality, and explicitly holds that the mere existence of higher (or lower) prices alone is insufficient to support any such claim absent compelling corroborative evidence.[175] Here, neither respondent party cites to any record evidence in support of its claims that import data for HS 8544.60.11 nor any constituent line items are distortive or non-representative, aside from pointing to the existence of higher prices alone. In accordance with our practice, we find this insufficient to deem the dataset unusable, nor compel removal of constituent line items.

---

[173] *See*, *e.g.*, *Solar World,* 962 F.3d at 1357-1359 (affirming Commerce's longstanding administrative practice with respect to aberrational data… "to disregard small-quantity import data {from the primary surrogate country} when the per-unit value is substantially different from the per-unit values of the larger quantity imports of that product from other {potential surrogate} countries."), *Risen Energy II*, 611 F. Supp. 3d at 1389 (CIT 2022) ("Commerce disregards 'small quantity import data . . . when the per-unit value is substantially different from the per-unit values of the larger quantity imports of that product from other potential surrogate countries.'"), and *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of the First Administrative Review of the Antidumping Duty Order*, 76 FR 77,772 (December 14, 2011) (*Citric China AR1*) at IDM ("If a party presents sufficient evidence to demonstrate a particular SV is aberrational, and therefore unreliable, the Department will examine all relevant price information on the record, including any appropriate benchmark data, in order to accurately value the input in question.").

[174] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 3987 (January 22, 2009) (*TRBs 2009 AR*), and accompanying IDM at Comment 7, *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008), and accompanying IDM at Comment 9; *Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 47587 (August 14, 2008), and accompanying IDM at Comment 4); and *Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Results of New Shipper Review; 2012-2013*, 80 FR 41476 (July 15, 2015) (*MLWF China*), and accompanying IDM at 11.D ("The underlying rationale is that "{w}hen determining whether data are aberrational, {the Department} has found that evidence of a high or low AUV does not necessarily establish that GTA data for the suspect countries are unreliable, distorted or misrepresentative. Rather, interested parties must provide specific evidence showing whether the value is aberrational.").

[175] *Id*. *See also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017–2018,* 85 FR 7531 (February 10, 2020) (*Solar Cells from China 17-18*), and accompanying IDM at Comment 2.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

Thus, for this final determination, Commerce valued Jinko and JA Solar's junction boxes containing a voltage of 1,500v using Indonesian import prices under HS 8544.60.11.[176]

Comment 5: SV for Glue and/or Silicon Sealant Inputs

Petitioner's Case Brief

The petitioner did not submit a distinct executive summary to accompany its affirmative arguments regarding this specific value in its case brief; for the petitioner's general executive summary regarding SV issues, *see* Issue 2, above. For the petitioner's arguments on this issue, see Petitioner's Case Brief at 30-31.

JA Solar's Rebuttal Brief

The following is a verbatim summary of arguments submitted by JA Solar. For further details, *see* JA Solar's Rebuttal Brief at 44-45.

> Petitioner's proposed HS code to value glue inputs is applicable only to glue used in the assembly of touch-screen devices, and is therefore inapplicable for use as a surrogate for JA Solar's inputs of glue for solar modules, which are decidedly not touch-screen. Instead, Commerce should utilize a basket provision for glue, which is more appropriate for industrial glues such as those utilized by JA Solar.

Jinko's Rebuttal Brief

The following is a verbatim summary of arguments submitted by Jinko. For further details, *see* Jinko's Rebuttal Brief at 26-27.

> Petitioner has not submitted sufficient evidence supporting its claimed SVs. These claims are based on speculative assertions as to the nature of the inputs. Moreover, regardless of whether Commerce affirms its *Preliminary Determination* as to how these inputs should be valued, Commerce should remove from the analysis small volume and aberrational high-priced data.

Commerce's Position: Upon review of the record, we agree with the petitioner that Indonesian price data for imports categories under Indonesian HS subcategory 3506.91.10 ("Prepared glues and other prepared adhesives, not elsewhere specified or included; products suitable for use as glues or adhesives, put up for retail sale as glues or adhesives, not exceeding a net weight of 1 kg: Other - Optically clear free-film adhesives and optically clear curable liquid adhesives of a kind used solely or principally for the manufacture of flat panel displays or touch-sensitive screen panels") reflects the most specific information to value solar cell/module glue, in contrast to the import prices in HS 3506.91, HS 3506.91.90 and HS 3214.90, that were used in the *Preliminary Determination*. Specifically, HS 3506.91.90 represents an "Other" category, and constitutes the only eight-digit subheading under the six-digit HS for prepared glues and other prepared adhesives, aside from HS 3506.91.10 covering adhesives used in the manufacture of

[176] *See* Jinko's Analysis Memo at 8-9.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

screen/panels/displays. Thus, HS 3506.91.90 is necessarily defined as all other prepared adhesives not used in the manufacture of screen/panels/displays.

For the *Preliminary Determination*, we valued respondents' non-silicon glue (W_GLUE) inputs inconsistently, using the six-digit HS 3506.91 inclusive of both screen/panel/display glue and non-screen/panels/display for Jinko's inputs, and the eight digit HS 3506.91.90 "Other" non-screen/panel/display category for JA Solar's identically-described FOP. For Jinko's silicon glue (M_SILICON_GLUE) inputs, we valued these with the HS 3506.91.90 "Other" category (as identified to be appropriate for Jinko), but valued JA Solar's silicone sealant inputs (M_SILISELAT) using Indonesian price data for imports under HS 3214.90 (Nonrefractory Surfacing Preparations For Facades, Indoor Walls, Floors, Ceilings Or The Like). While this reflected an inconsistency between the SV selected for similar inputs between respondents, the HS was identified to be appropriate by JA Solar and consistent with JA Solar's reporting of this input as a sealant and not as an adhesive or glue (and the AUV of the SVs reflected negligible difference between the two). Thus, Commerce preliminarily valued all glue/sealant inputs using a category which explicitly did not include screen/panel/display glue (except for one instance where we used the six-digit category which partially included such products). For the final determination, the petitioner argues that the appropriate SV is HS 3506.91.10 subcategory specific to optically clear free-film adhesives and optically clear curable liquid adhesives of a kind used solely or principally for the manufacture of flat panel displays or touch-sensitive screen panels, as these reflect the most similar inputs into solar panel production, which plainly necessitate glues which adhere panels to frames of the same or similar type as displays or touch screens.

We agree that price data for imports under HS 3506.91.10, consisting of optically clear film and liquid adhesive products used solely or principally for the manufacture of flat panel displays or touch-sensitive screen panels, is more specific to the inputs in question, silicon and non-silicon glues and sealants used in the manufacture of solar panels, than import prices for products under the HS 3506.91.90 subheading. The import prices for products under the HS 3506.91.90 subheading represent a relatively broader basket of all adhesives other than those used solely or principally for the manufacture of flat panel displays or touch-sensitive screen panels. Though Jinko and JA Solar claim that the category does not reflect their inputs as it covers only glue used in the manufacture of touch screens (omitting that it also covers display panels) which solar glass panels are not, stating that their glue inputs reflect a broader, more general type of glue, the record is ambiguous as to the validity of the latter assertion. Namely, record evidence of the input specifications and photos provided do not identify physical or end use specifications to allow disambiguation.[177] Further, though the end use may not be identical, Commerce need not rely on a perfect match, but only on the best available information.[178] We conclude that glues/adhesives used in the manufacture of touch screens and display panels are comparable to glues used to adhere glass panels in a comparable assembly process for solar modules, and thus offer a greater level of specificity to the SV in consideration of the input than a basket HS category which reflects all other types of glues. Therefore, because HS 3506.91.90 is a basket category potentially inclusive of various types of adhesives substantially dissimilar to the one used by the respondents and HS 3506.91.10 reflects adhesives used for comparable assembly

[177] *See* JA Solar's Letter, "Supplemental Section C-D Questionnaire Response," dated October 28, 204 (SCDQR) at Exhibit SD-4 and Jinko's SDQR at Exhibit SD-18.
[178] *See Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (CAFC 2003).

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

purposes, we valued W_GLUE, M_SILICON_GLUE, M_SILISELAT using HS category HS 3506.91.10 for the final determination.

Though Jinko argues that Commerce should remove certain constituent line items from this data, purporting that the prices of such imports are aberrational, Jinko fails to support its claims with record information, instead citing only to the existence of higher price alone as basis for the requested removal. As discussed above, Commerce declines to further examine any such unsupported claims, consistent with its long-standing practice,[179] and we have used the complete SV dataset, as submitted.[180]

Comment 6: SV for Solder and Welding Wire Inputs

Petitioner's Case Brief

The petitioner did not submit a distinct executive summary to accompany its affirmative arguments regarding this specific value in its case brief; for the petitioner's general executive summary regarding SV issues, *see* Issue 2, above. For the petitioner's arguments on this issue, see Petitioner's Case Brief at 32-34.

JA Solar's Rebuttal Brief

The following is a verbatim summary of arguments submitted by JA Solar. For further details, *see* the JA Solar's Rebuttal Brief at 45-46.

> Petitioner's proposed HS code for valuing solder wire encompasses a variety of higher value solders which differ in use and chemical composition from the solder used by JA Solar. Commerce should therefore use HS 8311.30 to value solder, as this code is much more closely reflective of the actual value of the specific solder used by JA Solar.

Jinko's Rebuttal Brief

The following is a verbatim summary of arguments submitted by Jinko. For further details, *see* Jinko's Rebuttal Brief at 27-28.

> Regardless of whether Commerce affirms its *Preliminary Determination* as to how these inputs should be valued, Commerce should remove from the analysis small volume and aberrational high-priced data.

Commerce's Position: We agree with the petitioner's contention that Commerce should value solder and welding wire using Indonesian HS 8311.30.91 covering "Coated Rods And Cored Wire, Of Base Metal, For Soldering, Brazing Or Welding By Flame In Rolls."

---

[179] *See*, *e.g.*, *Solar World* 962 F.3d at 1359, *Risen* 611 F. Supp 3d at 1389, *TRBs 2009 AR* IDM at Comment 7, and *MLWF China* IDM at 11.D.
[180] See Jinko's Final Analysis Memo at 8-9.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

As the petitioner notes, the six-digit HS 8311.30 category, agreed upon by all parties as the appropriate general heading, and suggested by the respondents as the appropriate surrogate and used in the preliminary calculation, is inclusive of four 8-digit subheadings, 8311.30.21 and 8311.30.29 (reflecting cored wire of alloy steel for soldering, brazing, welding by flame, containing, by weight, at least 4.5% carbon content and 20% chromium content, in wire (for .21) or in rolls (for .29)) and 8311.30.91 and 8311.30.99 (reflecting cored wire of base metal steel for soldering, brazing, welding by flame, in rolls (.91) or in rods (.99)). The petitioner notes that neither 8311.30.21 nor 8311.30.29 apply to the respondents' inputs as they contain alloy steel specifications which the proprietary record evidence provided by each respondent reflects do not meet the chemical standards for alloy steel. Thus, the inputs must necessarily fall into the base metal categories of 8311.30.91 and 8311.30.99, with the latter not applicable because the same documentation reflects the inputs do not reflect the form identified for products properly classified under that category.[181] Accordingly, HTS 8311.30.91 is the only category that can apply to the inputs in question.

JA Solar, in contrast, argues that this HS category includes some higher value solders which differ in use and chemical composition from the solder used by JA Solar,[182] and, as a result, JA Solar argues that HS 8311.30, "Coated Rods And Cored Wire, Of Base Metal, For Soldering, Brazing Or Welding By Flame," is much more closely reflective of the actual value of the specific solder used by JA Solar. Jinko proposes that, if Commerce agrees with and uses Petitioner's proposed HS category, it should exclude from the analysis two separate line items of low quantity and/or high-priced data. Notably, neither party contests the accuracy of the petitioner's analysis. We agree that, based on the information on the record in consideration of the detail identified for each 8-digit subheading for HS 8311.30, indeed reflects that the input in question must necessarily be included within the narrower 8311.30.91 category proposed by the petitioner. Though Jinko argues that Commerce should remove certain constituent line items from this data, purporting that the prices of such imports are aberrational, Jinko fails to support its claims with record information, instead citing only to the existence of higher price alone as basis for the requested removal.

As discussed above, Commerce declines to further examine any such unsupported claims, consistent with its long-standing practice,[183] and we have used the complete SV dataset, as submitted.[184] Similarly, JA Solar does not provide any argument that HS 8311.30 reflects a more-specific surrogate, citing only to the fact that the resulting AUV of the broader heading more closely reflects the actual value of its inputs due to the potential inclusion of higher valued solder wire in the narrower category containing multiple base metals. Even presuming this supposition is accurate, JA Solar provides no support for its contention that the value of its input is better reflected by a category diluted by import prices of non-specific products.

Therefore, for the final determination, we changed the SV of solder and welding wire from Indonesian price data for imports under HS 8311.30 to the more-specific subheading of HS 8311.30.91 for the final determination.

---

[181] *See* JA Solar SCDQR at Exhibit SD-4; Jinko SDQR at Exhibit SD-19.20.
[182] *See* JA Solar's Rebuttal Brief at 4.
[183] *See*, *e.g.*, *Solar World* 962 F.3d at 1359, *Risen* 611 F. Supp 3d at 1389, *TRBs 2009 AR* IDM at Comment 7, and *MLWF China* IDM at 11.D.
[184] *See* Jinko's Final SV Memo at 8-9.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

Comment 7: SV for Jinko's Polysilicon and Wafers Inputs

Petitioner's Case Brief

The petitioner did not submit a distinct executive summary to accompany its affirmative arguments regarding this specific value in its case brief; for the petitioner's general executive summary regarding SV issues, *see* Issue 2, above. For the petitioner's arguments on this issue, see Petitioner's Case Brief at 22-24.

Jinko's Rebuttal Brief

Jinko did not submit a distinct executive summary to accompany its arguments regarding this specific value in its rebuttal brief; for the Jinko's executive summary regarding SV rebuttal arguments, *see* Issue 2, above. For further details, *see* Jinko's Rebuttal Brief at 15-20.

Commerce's Position: In the *Preliminary Determination*, we valued both respondents' reported consumption of NME-sourced solar-grade polycrystalline silicon FOPs and solar-grade wafer FOPs using Bloomberg market price data. For both FOPs, the petitioner argues that Commerce should disregard the Bloomberg data and instead rely on Indonesian price data for imports under HS 2804.61 (Silicon, Containing By Weight Not Less Than 99.99% Of Silicon: Silicon Containing By Weight Not Less Than 99.99 % Of Silicon) for polysilicon, and Indonesian price data for imports under HS 3818.00 (Chemical Elements Doped For Use In Electronics, In The Form Of Discs, Wafers Or Similar Forms; Chemical Compounds Doped For Use In Electronics: Size: length 182.3mm*width 182.3mm*thickness 120-125um). The petitioner argues that the Indonesian import price data reflect sufficiently input-specific 6-digit subheadings, are sourced from the primary surrogate country (*i.e.* Indonesia), and are otherwise consistent with Commerce's preferences for contemporaneous, tax free, broad market averages, in contrast to the Bloomberg information, which is a world-average price likely inclusive of Chinese prices. We have reviewed the record and agree that Bloomberg data does not reflect an appropriate SV source and, as a result, the Indonesian import prices under the HS subheadings identified by the petitioner reflect the most-specific and best available sources to value the FOPs in question consistent with Commerce's SV methodology.

Commerce values FOPs "based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority" in accordance with section 773(c)(1) of the Act.[185] Commerce determines the best available information for valuing FOPs by considering the extent to which the available SVs are product-specific, representative of a broad-market average, publicly available, contemporaneous with the period under consideration, and tax and duty exclusive.[186] Commerce has a strong preference to value all FOPs in a single surrogate country pursuant to 19

[185] *See* section 773(c)(1) of the Act; and *Qingdao Sea-Line Trading Co. v. United States,* 766 F.3d 1378, 1386 (CAFC 2014) *(Qingdao Sea-Line)*("Commerce has broad discretion to determine what constitutes the best available information, as this term is not defined by statute.").
[186] *See First Administrative Review of Certain Polyester Staple Fiber from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 1336 (January 11, 2010), and accompanying IDM at Comment 1.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

CFR 351.408(c)(2) and only resorts "to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable."[187]

Having reviewed the record and considered parties' comments, we have re-evaluated the Bloomberg data and determine that it does not sufficiently comport with our stated preferences concerning data quality for a number of reasons. As an initial matter, the respondents' proffered data does not state and provide sufficient support for the methodology used to determine pricing; in fact, it does not even show which country or countries' price data was used. Thus, Commerce cannot confirm the validity of the data's prices nor determine whether the prices are representative of a broad market average or determine whether they are tax- and duty-exclusive.

The Bloomberg data reflect a world-average price that is inclusive of NME prices, and are not broad-market averages from the primary surrogate.[188] Such global prices may be inclusive of prices from non-market economies or prices from countries that provide generally available export subsidies, and thus are inconsistent with Commerce's longstanding practice to select the best available information to value the respondents' FOPs, pursuant to section 773(c)(1) of the Act. The respondents note that the Bloomberg data reports that the average price for polysilicon (from an unknown source country or countries) during the POI is $8.84/kg, and the record otherwise reflects that the average price of monocrystalline Chinese polysilicon during the POI was $9.73/kg, which is extremely close to the Bloomberg data.[189] While this assertion is speculative, the data itself, as submitted to the record, provides no ability to further scrutinize the constituent information: both respondents provided only Microsoft Excel worksheets of prepared data, without identifying marks, and provided no source data or information on the methodology used.[190]

In contrast, Indonesian import data for HS 2804.61 and 3818.00 subheadings, satisfy each of Commerce's criteria for contemporaneity, public-availability, product-specificity, broad market average representation, and free from taxes or duties.[191] Jinko does not substantively contest that the import data do not satisfy Commerce's criteria, nor does it make a substantive argument that the data contain aberrational data or are insufficiently specific to value the inputs. Jinko only notes a passing reference to the Bloomberg data reflecting commercially reasonable prices for these inputs, in contrast to the import data in the HS categories which Jinko asserts contain products other than solar grade polysilicon and wafers.[192]

---

[187] *See Jiaxing Brother Fastener Co. v. United States*, 11 F. Supp. 3d 1326, 1332-33 (CIT 2014) (*Jiaxing Brother*) (quoting *Sodium Hexametaphosphate from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 59375 (September 27, 2012), and accompanying IDM at Comment I).
[188] *See* Jinko's SDQR at 18.
[189] *See* Petitioner's Case Brief at 24, *see also* Jinko's First SV Comments at Exhibit 2G.
[190] *See* JA Solar's SV Rebuttal Comments at Exhibit SVR-11; *see also* Jinko's Letter, "Jinko's Final 30-Day Surrogate Value Comments," dated November 6 at Exhibit 2B.
[191] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004).
[192] *See* Jinko's Rebuttal Brief at 18.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

Rather, Jinko primarily relies on citations to Commerce's longstanding, consistent practice of relying on market prices, rather than HS data, to value polysilicon and wafers in prior proceedings regarding solar cells and modules. Commerce has indeed previously explained that the constituent imports within the HS subheadings at issue significantly differ from the silicon purity level required for wafers used to manufacture solar cells and has used market price sources in the alternative.[193] However, if the respondents fail to provide data for Commerce to adequately determine a SV, as is the case here, Commerce has no choice but to make its ultimate decision based on a limited record.[194] Indeed as identified above, there are glaring deficiencies with the worksheets the respondents submitted purporting to reflect Bloomberg prices. The respondents' proffered data are not sourced from the primary surrogate, are not able to exclude prices from non-market economies or countries with generally-available subsidies, and are unaccompanied by source information that could even corroborate the claim that such prices in fact reflect the most accurate solar grade input prices, as claimed. It is the respondents' responsibility to build an adequate record, and they have not done so here such that Commerce can make a determination as to whether their arguments have merit.

Moreover, the language Jinko identifies where Commerce has used market prices in prior proceedings over import data under the same or similar subheadings focuses on the relative advantage in specificity, but is notably absent any finding which identifies the use of import data from the HS subheadings as an inappropriate or non-specific source. Indeed, Jinko makes no claim that HS 2804.61 and 3818.00 are not appropriate or specific sources, instead only asserting that the AUVs are not commercially reasonable prices, but lacking any further information substantiating that the data are not representative or distortive. Accordingly, we do not find Bloomberg data to be an appropriate SV source to value the polysilicon and wafer inputs on the record, and thus Indonesian imports under HS 2804.61.00 and HS 3818.00.00 reflect the best available information on the record for valuing polysilicon and polysilicon wafers, respectively.[195]

Comment 8: SV for Jinko's Ethylenediaminetetraacetic Acid Inputs

Petitioner's Case Brief

The petitioner did not submit a distinct executive summary to accompany its affirmative arguments regarding this specific value in its case brief; for the petitioner's general executive summary regarding SV issues, *see* Issue 2, above. For the petitioner's arguments on this issue, *see* Petitioner's Case Brief at 29.

Jinko's Rebuttal Brief

The following is a verbatim summary of arguments submitted by Jinko. For Jinko's arguments on this issue, see Jinko's Case Brief at 25-26.

---

[193] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015*, 82 FR 29033 (June 20, 2017), and accompanying IDM at 31-32.
[194] *See Baoding Mantong Fine Chem. Co. v. United States*, 222 F. Supp. 3d 1231, 1248 (CIT 2017).
[195] *See* Jinko's Final Analysis Memo at 8-9.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

> The petitioner has not submitted sufficient evidence supporting its claimed SVs. These claims are based on speculative assertions as to the nature of the inputs. Moreover, regardless of whether Commerce affirms its *Preliminary Determination* as to how these inputs should be valued, Commerce should remove from the analysis small volume and aberrational high-priced data.

Commerce's Position: In the *Preliminary Determination*, we valued Jinko's reported ethylenediaminetetraacetic acid (EDTA) FOP using Indonesian price data for imports under HS 2916.15, as suggested by the respondent as the appropriate HS category, covering "Oleic, linoleic or linolenic acids, their salts and esters."[196] Based on a Customs ruling, the petitioner asserts that EDTA is, by definition, not an oleic acid, linoleic acid, linolenic acid, or one of their salts or esters.[197] The petitioner claims that Jinko did not place any support information for its HS classification on the record of the investigation,[198] thus the petitioner asserts that the appropriate SV for this input is Indonesian price data for imports under HS 2922.49 ("Oxygen-function amino-compounds: Amino-alcohols, other than those containing more than one kind of oxygen function, their ethers and esters; salts thereof").[199] Jinko in turn, disagreed with the petitioner's statement that EDTA is not an oleic acid, linoleic acid, linolenic acid, or one of their salts or esters, citing Jinko's SDQR at Exhibit SD-18. An examination of Exhibit SD-18, which consists of an Excel chart providing the name, detailed description, supporting documentation, HS code, and HS description of Jinko's proposed SVs, shows that Jinko's complete detailed description for EDTA, is: Ethylenediaminetetraacetic acid level: 100%. Jinko provides no further description or supporting documentation regarding this chemical. Although Jinko suggested that we value EDTA using HS 291615, "Oleic, Linoleic Or Linolenic Acids, Their Salts And Esters," it did not provide any information on the record showing that EDTA is an oelic, linoleic or linolenic acid, or one of their salts and esters.

The petitioner placed information on the record showing that Customs classified EDTA under HS 2922.49.[200] Thus, HS 2916.15, used in the *Preliminary Determination,* by definition, excludes EDTA, and instead covers other types of acids which do not include EDTA. Therefore, for the final determination, we are valuing Jinko's EDTA inputs using Indonesian price data for imports under HS 2922.49. Though Jinko argues that Commerce should remove certain constituent line items from this data, purporting that the prices of such imports are aberrational, Jinko fails to support its claims with record information, instead citing only to the existence of higher price alone as basis for the requested removal. As discussed above, Commerce declines to further examine any such unsupported claims, consistent with its long-standing practice,[201] and has used the complete SV dataset, as submitted.[202]

---

[196] *See* Jinko's Preliminary Analysis Memo at Attachment 1.
[197] *See* Petitioner's Case Brief at 29 (citing Petitioner's Final SV Submission at Exhibit 26, "Customs Ruling NY 855151: Ethylenediaminetetraacetic Acid (EDTA)," dated August 31, 1990).
[198] *See* Petitioner's Case Brief at 29.
[199] *Id.*
[200] *See* Petitioner's Final SV Submission at Exhibit 26.
[201] *See*, *e.g.*, *Solar World* 962 F.3d at 1359; *Risen* 611 F. Supp 3d at 1389; *TRBs 2009 AR* IDM at Comment 7; and *MLWF China* IDM at Comment 11.D.
[202] *See* Jinko's Final Analysis Memo at 8-9.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

Comment 9: SV for Jinko's Dust Free Cloth Inputs

Petitioner's Case Brief

The petitioner did not submit a distinct executive summary to accompany its affirmative arguments regarding this specific value in its case brief; for the petitioner's general executive summary regarding SV issues, *see* Issue 2, above. For the petitioner's arguments on this issue, *see* Petitioner's Case Brief at 28-29.

Jinko's Rebuttal Brief

The following is a verbatim summary of arguments submitted by Jinko. For further details, *see* Jinko's Rebuttal Brief at 25.

> Regardless of whether Commerce affirms its *Preliminary Determination* as to how these inputs should be valued, Commerce should remove from the analysis small volume and aberrational high-priced data.

Commerce's Position: In the *Preliminary Determination*, we valued Jinko's reported consumption of dust free cloths (described as "polyester fiber material, composed with 100% polyester")[203] input using Indonesian price data for imports under HS 6307.10 (Floorcloths, Dishcloths, Dusters And Similar Cleaning Cloths). The petitioner argues that the more specific Indonesian imports under HS subheading 6307.10.90 (Woven, of other than felt) should be used, as other 8-digit headings under 6307.10 are necessarily exclusive of the input. Specifically, the other Indonesian imports subheadings under HS 6307.10 are HS 6307.10.10 (Nonwoven, of other than felt) and HS 6307.10.20 (Of felt), and the record reflects that the inputs in question are made of polyester. Thus, because they are not made of felt and Jinko makes no claim that they are not woven, the petitioner asserts that the "Woven, of other than felt" heading of 6307.10.90 necessarily narrows the basket of merchandise included within all Indonesian imports subheadings under 6307.10 to the input itself and most-similar such merchandise. Jinko argues that, in the absence of any evidence supporting the petitioner's claim that polyester material cannot be nonwoven material, Commerce should affirm its preliminary decision to value these dust free clothes in the 6-digit HS subheading and, should Commerce disagree and use the petitioner's suggested 8-digit heading, should remove quantity and/or high-priced data specified.[204]

We have reviewed the record and agree that the products included in the HS 6307.10.20 (Of felt) subheading (and necessarily included as a component of the HS 6307.10 data used for the *Preliminary Determination*) do not reflect an appropriate category for cloths made of polyester which is, by definition, not felt. However, we do not agree with the petitioner that the lack of a specific statement that the cloths are woven to reflect any kind of determinative basis to find the HS 6307.10.10 (Nonwoven, other than felt) category to be non-specific. The presumption underlying this assertion, *i.e.*, that polyester cloth is necessarily a woven cloth and cannot be unwoven, is not inherent in the definition of polyester and not otherwise established by any

[203] *See* Jinko's SDQR at Exhibit SD-18.
[204] *See* Jinko's Rebuttal Brief at 25 and Attachment 1.

documentation on the record. Rather, the record is ambiguous as to whether or not the input is woven. In the absence of information regarding whether or not the input is woven, both the HS 6307.10.10 and HS 6307.10.90 categories could be found reasonably specific, and combined import data for both categories used as a potential surrogate. However, though the record contains detail on the Indonesian tariff schedule to allow for such arguments between the subheadings, it does not contain raw SV data for HS 6307.10.10, so any such valuation is not a viable alternative based on the existing record. Instead, the record only presents a choice between the other 8-digit category for woven non-felt cloth, which may be the most accurate, or the six-digit category which includes all products which may be more specific (woven and unwoven cloths) but also one which is definitively non-specific (felt cloth). In consideration of these factors, we determine that Indonesian prices for imports under HS subheading 6307.10.90 (Woven, of other than felt) identified by the petitioner reflects the most appropriate source to value the dust free cloth input, as it reflects the only option which does not definitively include non-specific merchandise.

Although Jinko argues that the aberrationally high priced sales data with this HS classification should be removed when calculating the AUV of the SV, as discussed above, respondents failed to cite to any record evidence in support of its claims that import data for HS 6307.10.90 nor any constituent line items are distortive or non-representative, aside from pointing to the existence of higher prices alone.[205] Thus, Commerce has changed the surrogate used to value this input and instead valued Jinko's dust free cloth using Indonesian price data for imports under HS 6307.10.90 for the final determination.[206]

Comment 10: SV for Jinko's Trimethyl Aluminum Inputs

Petitioner's Case Brief

The petitioner did not submit a distinct executive summary to accompany its affirmative arguments regarding this specific value in its case brief; for the petitioner's general executive summary regarding SV issues, *see* Issue 2, above. For the petitioner's arguments on this issue, *see* Petitioner's Case Brief at 31-32.

Jinko's Rebuttal Brief

The following is a verbatim summary of arguments submitted by Jinko. For further details, *see* Jinko's Rebuttal Brief at 25.

> Regardless of whether Commerce affirms its *Preliminary Determination* as to how these inputs should be valued, Commerce should remove from the analysis small volume and aberrational high-priced data.

[205] *See* Memorandum, "Issues and Decision Memorandum for the Final Results of the 2017-2018 Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China," dated September 28, 2020 at 20-24 (*Solar Cells from China* IDM).
[206] *See* Jinko's Final Analysis Memo at 8-9.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

Commerce's Position: In the *Preliminary Determination*, we valued Jinko's reported consumption of Trimethyl Aluminum (TMA) (Trimethylaluminum, Concentration >=99.5%)[207] inputs using Indonesian price data for imports under HS 2931.90 (Organo-Inorganic Compounds, Nesoi: Other Organo-Inorganic Compounds Other Than Hs 2931.10.10 To 2931.90.50). The petitioner argues that the more-specific price data for Indonesian imports under the eight-digit HS subheading 2931.90.90 should be used, as other 8-digit headings under 2931.90 are necessarily exclusive of the input.

Specifically, the petitioner notes that Jinko and the petitioner agree that TMA is properly classified under HS 2931.90, and the compound is necessarily further categorized under one of the four subheadings under HS 2931.90, which are: 2931.90.41 (Organoarsenic Compounds, In Liquid Form), HS 2931.90.49 (Organoarsenic Compounds, Other Than In Liquid Form), HS 2931.90.50 (Dimethyltin Dichloride), and HS 2931.90.90 (Other Organo-Inorganic Compounds Other Than HS 2931.10.10 To 2931.90.50). The petitioner notes that TMA is an organoaluminium compound, definitionally not an organoarsenic compound or dimethyltin dichloride,[208] and thus HS 2931.90.41, 2931.90.49, and 2931.90.50 subheadings are necessarily exclusive of the input and HS 2931.90.90, which is an all other category not exclusive to the input, thus reflects a more specific SV source to the input compared to the six-digit heading used in the *Preliminary Determination* by virtue of excluding products which cannot reflect the input.

We agree with the petitioner's analysis which reflects HS 2931.90.90 to be a more appropriate surrogate to value the input in question than the Indonesian price data under HS 2931.90 used in the *Preliminary Determination*. Jinko does not contest that this reflects a more accurate heading, and we note that the appropriateness of using Indonesian price data for imports under HS 2931.90.90 is further confirmed by the fact that we used this same source to value the NME purchase component of the weighted-average ME purchase SV for JA Solar (based on JA Solar's identification of this subheading as the appropriate source). Although Jinko argues that the aberrationally high-priced sales data with this HS classification should be removed when calculating the AUV of the SV, as discussed above, Jinko failed to cite to any record evidence in support of its claims that import data for HS 2931.90.90 nor any constituent line items are distortive or non-representative, aside from pointing to the existence of higher prices alone. As discussed above, Commerce declines to further examine any such unsupported claims, consistent with its long-standing practice,[209] and we have used the complete SV dataset, as submitted. [210]

Comment 11: SV for Jinko's Label Inputs

Jinko's Case Brief

The following is a verbatim summary of arguments submitted by Jinko. For further details, *see* Jinko's Case Brief at 60-61.

---

[207] *See* Jinko's SDQR at Exhibit SD-18 and SD-19.3.
[208] *See* Petitioner's Final SV Submission at Exhibit 47.
[209] *See*, *e.g.*, *Solar World* 962 F. 3d at 1359; *Risen* 611 F. Supp 3d at 1389; *TRBs 2009 AR* IDM at Comment 7; and *MLWF China* IDM at 11.D.
[210] *See* Jinko's Final Analysis Memo at 8-9.

> In the Final Determination, Commerce should make two corrections with respect to Jinko's reported label FOPs:
>
> (1) Commerce should implement Jinko's minor corrections accepted by Commerce at verification with respect to the reported label weights in Jinko's FOP database, and thereby revise the reported weights previously reported, in accordance with the verified minor corrections; and
>
> (2) In the *Preliminary Determination*, Commerce erred in valuing Jinko's reported P_M_LABEL using HS 4821.90. This HS code is not correct. While Jinko originally proposed HS 4821.90 for its P_M_LABEL, Jinko subsequently corrected its reporting error and established that the correct Jinko classification for its P_M_LABEL was 3919.90.99. Therefore, Commerce should correct its preliminary error and apply the correct 3919.90.99 to Jinko's P_M_LABEL.

No other interested party commented on this issue.

Commerce's Position: As stated in the verification report,[211] at verification, Jinko reported a minor correction with regard to the label weights reported in Jinko's FOP database. We reviewed the information presented regarding the error and evaluated the necessary change and accepted the notification of necessary minor correction to the record. No interested party identified any opposition to the acceptance of the minor correction nor argued that Commerce should not correct for the change identified nor implement an alternative correction. Therefore, we have revised the label weight allocation for label inputs from that reported in the FOP database within the margin program to implement the minor correction identified.[212]

Further, Commerce agrees that the correct HS classification for self-adhesive PET labels (P_M_LABEL, described as self-adhesive polyethylene terephthalate (PET) labels in sheets) is 3919.90.99 (Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls, other, other and has amended its calculation to use Indonesian price data under this subheading, as submitted by Jinko, in the final determination. Our use of price data for imports under HS 4821.90 (paper or paperboard labels of all kinds, whether or not printed), reflected Jinko's initial identification of this as the appropriate category for these packing inputs; however we failed to notice that Jinko updated this information in its final SV submission and confirmed the labels were made of PET and not paper).[213] No party since contested the appropriateness of this subheading either for the *Preliminary Determination* or in the case briefing stage, and we confirm that this reflects an appropriate SV for the packing inputs. Accordingly, we have updated the SV to reflect Jinko's identification of this HS subheading as the most-specific SV consistent with its verified reporting.[214]

---

[211] *See* Jinko's Verification Report at 3.
[212] *See* Jinko's Final Analysis Memo at 8-9.
[213] *See* Jinko's Letter, "Jinko Correction of Clerical Error in SV Submission," dated November 13, 2024 at Exhibits One and Three.
[214] *See* Jinko's Analysis Memo at 8-9.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

Comment 12: SV for Labor Inputs

Petitioner's Case Brief

The petitioner did not submit a distinct executive summary to accompany its affirmative arguments regarding this specific value in its case brief; for the petitioner's general executive summary regarding SV issues, *see* Issue 2, above. The petitioner did not submit a case brief with an executive summary. For the petitioner's arguments on this issue, see Petitioner's Case Brief at 34-37.

JA Solar's Rebuttal Brief

The following is a verbatim summary of arguments submitted by JA Solar. For further details, *see* JA Solar's Rebuttal Brief at 46-49.

> Petitioners suggest a potential alternative labor source while misleading Commerce as to the credibility of that source. Petitioner claims that wage data from the Central Bank of Indonesia are "more contemporaneous" than the ILOSTAT data upon which Commerce relied in the *Preliminary Determination*, when in reality record information confirms that this source represents data for only one month of the POI, and also represents projected data rather than actual tabulated data by a government agency. Commerce should therefore decline to utilize this proposed source."

Jinko's Rebuttal Brief

The following is a verbatim summary of arguments submitted by Jinko. For further details, *see* Jinko's Rebuttal Brief at 27-32.

> Labor – Commerce should reject Petitioner's suggestion to use CBI data, and instead, should continue to use its preferred ILOSTAT labor source in the final determination. Commerce's Labor Methodologies clearly states a preference to value labor costs based on industry-specific labor rates from the primary surrogate country and that the "Manufacturing" labor cost from the International Labor Organization's Yearbook of Labor Statistics (*i.e.*, ILOSTAT) is the preferred source for such rates. In contrast, Petitioner's proposal asks Commerce to rely on an amalgamation of data from three sources that allows Petitioner to cherry pick an unreasonably high labor rate. Moreover, Petitioner has not explained how the CBI creates its data, how the data should be interpreted, or how the CBI data are verified (*e.g.*, there are no website printouts, brochures, codebooks, *etc.*). Finally, Petitioner's suggestion that CBI data are more contemporaneous than ILOSTAT data is wrong.

Commerce's Position: In the *Preliminary Determination,* Commerce valued respondents' labor data from Jinko's submission of Indonesian monthly wage data in the Manufacturing sector during 2023, as reported in the International Labor Organization's Yearbook of Labor Statistics (ILOSTAT), which reflects Commerce's preferred source for labor wage rates. The petitioner proposes a labor rate reported by the Central Bank of Indonesia (CBI), inclusive of additional cost of labor information from an additional source and converted to an hourly wage using a

denominator sourced from ILOSTAT. The petitioner argues that Commerce should utilize its constructed labor rate for the final determination on the grounds that the data is more industry specific, more contemporaneous, and more inclusive of non-wage costs of labor, compared to the ILOSTAT Labor data. Jinko and JA Solar argue that Commerce should use ILOSTAT data to value respondents' labor SV because it is Commerce's preferred source, reliable, contemporaneous, and representative of solar cell surrogate costs. As discussed below, we find both sources reflect usable SV information, but we have concerns with the petitioner's use of supplementary data and the use of ILOSTAT hourly wage presumptions for non-ILOSTAT sources which outweigh any claimed advantage in contemporaneity or inclusiveness of cost of labor, and thus continue to use the ILOSTAT preferred source. However, we have changed the specific value to use the ILOSTAT plant and manufacturing hourly wage data provided to the record by JA Solar, which reflects a slightly less-broad sector than the preliminary SV reported on a wage per hour basis which needs no conversion.

As stated in *Labor Methodologies*, Commerce prefers to value labor costs from the International Labor Organization's Yearbook of Labor Statistics (ILOSTAT).[215] Indeed, Commerce has consistently selected ILOSTAT Indonesia data to value labor in prior antidumping duty proceedings concerning orders on products from Vietnam.[216] The petitioner argues that there is precedent for Commerce to value labor using CBI labor data over ILOSTAT Labor, and thus, Commerce should value CBI labor data over ILOSTAT labor data in this instant investigation.[217] However, in the prior case cited by the petitioner, Commerce chose CBI data over ILOSTAT data because the CBI data was contemporaneous, while the ILOSTAT data submitted to the record was not.[218] Thus, that case was dissimilar from this instant investigation because in this case, the ILOSTAT data is partially contemporaneous with the POI, as is CBI data.

---

[215] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factors of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*).

[216] *See Certain Paper Shopping Bags from the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Sales at Less Than Fair Value 89 FR 321* (January 3, 2024), and accompanying PDM; unchanged in *Certain Paper Shopping Bags from the Socialist Republic of Vietnam: Final Affirmative Determination of Sales at Less Than Fair Value*, 89 FR 45839 (May 24, 2024); *see also Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review*, 89 FR 76081 (September 17, 2024), unchanged in *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review* 89 FR 53043 (June 25, 2024); *Certain Paper Plates from the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Critical Circumstances, in par*t, 89 FR 72375 (September 5, 2024); unchanged in *Certain Paper Plates from the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, (90 FR 8265) (January 28, 2025); *Boltless Steel Shelving Units Prepackaged for Sale from the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 88 FR 83392 (November 29, 2023), unchanged in *Boltless Steel Shelving Units Prepackaged for Sale from the Socialist Republic of Vietnam: Final Affirmative Determination of Sales at Less Than Fair Value* 89 FR 28743 (April 19, 2024); and *Paper File Folders from the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 88 FR 31488 (May 17, 2023); unchanged in *Paper File Folders from the Socialist Republic of Vietnam: Final Affirmative Determination of Sales at Less Than Fair Value*, 88 FR 69130 (October 5, 2023).

[217] *See Aluminum Extrusions from the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 89 FR 83075 (May 7, 2024), and accompanying PDM.

[218] *See Aluminum Extrusions from the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 89 FR 38075 (May 05, 2024), and accompanying IDM, unchanged in the final, *Aluminum Extrusions from the Socialist Republic of Vietnam: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part,* 89 FR 80530 (October 3, 2024).

The petitioner further contends that its labor calculation is more reflective of the full costs of labor, not just wages. To achieve this purportedly more inclusive labor rate, the petitioner adds in certain items sourced from Papaya Global. Specifically, in Tab 5-D of its Final SV Submission, the petitioner submits what appears to be a printout from the Papaya Global website as support for the employer tax calculation of the labor SV. However, there is no precedent for using the Papaya Global data source as part of an SV calculation in prior Commerce proceedings, nor is there sufficient support on this record for how the data is gathered. .

The petitioner argues that Commerce should choose its data over ILOSTAT data because the former data is more contemporaneous than the ILOSTAT labor data. The respondents' data covers calendar year 2023, and thus only covers three months of the POI.[219] For the CBI data, the petitioner states in its case brief that the Indonesian government publishes salary data every year in February and August, which covers previous three months. As the respondents argued, since the CBI data was published in February 2024, it likely only covers one additional month (January) of the POI as compared to the ILOSTAT data. As the respondents also noted in their brief, assuming this publishing schedule is accurate, and the data were published in February 2024, it would ostensibly mean the data covers November 2023, December 2023, January 2024, and possibly February 2024. Thus, the CBI data likely only covers three months of the 6-month POI and, to the extent that it does reflect more contemporaneous data, provides only a month of additional data.

Further, the petitioner's labor value reflects monthly wages which need to be converted to hourly wages for use as an SV. To accomplish this, the petitioner uses the average hours per month conversion sourced from ILOSTAT. While the ILOSTAT presumption may be accurate for the surveys used for ILOSTAT's own data, there is no support that they are accurate presumptions for data from other sources.

Therefore, we find that additional one or two months of contemporaneity of part of the petitioner's data does not outweigh the complications which arise from the fact that the petitioner's labor data is derived from an amalgam of three different sources, and similarly does not outweigh partially contemporaneous labor data from Commerce's preferred surrogate labor value source.[220] Thus, we continue to utilize ILOSTAT as the source of the labor SV, but note that, in researching this issue, we identified ILOSTAT wage rate data submitted by JA Solar in its initial SV response that reflects a more suitable source than the data submitted by Jinko and used in the *Preliminary Determination*.[221] Specifically, JA Solar's submission reflects data derived from the same survey, but which is reported on an hourly basis (and thus does not need to utilize a conversion which uses presumed and not actual hours), and which reports wages for the occupation of "Plant and machine operators, and assemblers," which is more specific to solar cell production labor than the monthly survey reflecting wages more generally in the "Manufacturing" sector.[222] As such, we have changed the labor SV for the final determination to use the ILOSTAT data submitted by JA Solar.[223]

---

[219] *See* JA Solar's First SV Submission at Exhibit 1 (tab "Labor").
[220] *See, Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2016-2017, 84 FR 5053 (February 20, 2019), and accompanying IDM at Comment 2.
[221] *See* JA Solar's First SV Submission at Exhibit 1 (Labor tab).
[222] *Id.*
[223] *See* Jinko's Final Analysis Memo at 8-9.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

Comment 13: SV for Ocean Freight

JA Solar's Case Brief

The following is a verbatim summary of arguments submitted by JA Solar. For further details, *see* JA Solar's Case Brief at 29-33.

> Commerce must revise its *Preliminary Determination* to only use the ocean freight quotes submitted by JA Solar. Petitioner's ocean freight rates consist of either extremely outdated or unreliable rates. Twenty-eight of the thirty quotes submitted by Petitioner are stale quotes from four years prior to the period of investigation (POI) that were entered into Descartes long ago, while JA Solar's rates represent ocean freight quotes first entered into Descartes during the POI. The Petitioner's remaining two quotes conflict with each other and therefore are unreliable.

Jinko's Case Brief

The following is a verbatim summary of arguments submitted by Jinko. For further details, *see* Jinko's Case Brief at 30-43.

> In the final determination, Commerce should rely on rates published by Descartes during the POI. Alternatively, Commerce should rely on all Descartes rates placed on the record by Petitioner and respondents to calculate a surrogate value for ocean freight based on the most complete information available on the record. In its *Preliminary Determination*, Commerce valued ocean freight using "publicly-available international freight values based on available Descartes data as provided by the petitioner" and expressly rejected all competing Descartes data submitted by respondents. Commerce's rationale for rejecting respondents' rate quotes is factually inaccurate and grounded on false assumptions. Specifically, respondents' data contained the same level of source documentation as the Petitioner's data. Moreover, Commerce's conclusion that Petitioner's data was more representative than respondents' data is not supported by substantial evidence.
>
> Thus, because the rates submitted by respondents are as reliable as Petitioner's rates, in its final determination, if Commerce decides to rely on all Petitioner's rates (regardless of contemporaneity), Commerce must also include in its average ocean freight SV calculation the Descartes data submitted by Jinko.

Petitioner's Rebuttal Brief

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* the Petitioner's Rebuttal Brief at 21-23.

> In the *Preliminary Determination*, {Commerce} valued ocean freight using Petitioner's data exclusively. {Commerce} *Preliminary Determination* explained in detail why Petitioner's data represents the best available information with which to value this movement expense. Jinko's and JA Solar's arguments against

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

> Petitioner's submitted ocean freight data do not undermine or detract from this conclusion.

Commerce's Position: In the *Preliminary Determination*, Commerce relied on the petitioner's Descartes ocean freight price quotes for solar cells from Vietnam. Jinko and JA Solar argue that their ocean freight SV data, which covers a variety of merchandise, but predominantly computers and electronics, is more accurate than the petitioner's SV data because the respondents' data reflects all the ocean routes Jinko and JA Solar used, unlike the petitioner's data, and is contemporaneous with the POI, unlike the petitioner's data.[224] The petitioner argues that Commerce should continue to use its ocean freight data because it is contemporaneous and it is the only available ocean freight data that is an exact match of subject merchandise (*i.e.*, solar cells), unlike respondents' data which is, at best, a mix of comparable and non-comparable merchandise. After reviewing the record, for the final determination, we continue to use the petitioner's ocean freight data. The ocean freight data that the petitioner provided was in effect during the POI, represents multiple price points, includes Jinko and JA Solar's trade routes, and are an exact match for subject merchandise. Thus, Commerce continues to find that the data submitted by the petitioner provides the best available information to value ocean freight. However, for the final determination, we removed shipping routes from the petitioner's data that JA Solar and Jinko did not use from the surrogate ocean freight calculation.

In determining what constitutes the best available information for valuing an FOP, including ocean freight, in accordance with section 773(c)(1)(B) of the Act, Commerce considers whether the SV is: (1) publicly available; (2) contemporaneous with the POI; (3) representative of a broad market average; (4) tax and duty exclusive; and (5) specific to the inputs being valued.[225] While there are instances in which product specificity may not be an overriding concern, for the purposes of ocean freight, the type of product shipped has an impact far greater than the date it may be shipped or the route used. As an initial matter, Commerce considers both the petitioner's and respondents ocean freight rates to be contemporaneous, despite the respondents' argument to the contrary. Jinko and JA Solar explain that most of the petitioner's rates were published prior to the POI and are thus not contemporaneous based on petitioner's Tariff Line Items (TLIs). TLIs tie merchandise (*e.g.* merchandise in transit) to their proper HS codes to ensure that the expenses associated with the tariffs, services and other expenses for a shipment are calculated accordingly. However, Jinko and JA Solar also provided TLIs that came into effect before the POI. Given that the ocean freight data submitted by JA Solar, Jinko, and the petitioner all contain TLIs within and outside the POI, it is unclear how the respondents' rates are contemporaneous, but the petitioner's rates are not contemporaneous. As the petitioner explains:

> {o}f the 18 TLIs submitted by Petitioner, 16 were published in November 2019, while two were published during the POI. In contrast, of the five TLI's initially submitted by JA Solar, four were published before any of Petitioner's and only one was published within the POI. Of the additional 11 TLIs submitted by Jinko, seven

[224] *See* Jinko's Case Brief at 30-39 and JA Solar's Case Brief at 29-34.
[225] *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews*, 74 FR 11349 (March 17, 2009), and accompanying IDM at Comment 2.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

were published within the POI and four were published outside the POI, one dating back as far as 2011.[226]

The petitioner is correct in pointing out that there is no record evidence indicating that the "Filing Date" preceding the POI "shipping date" stated in the Descartes data sheet invalidates or illegitimizes the stated rate for the POI "shipping date." In other words, there is no indication that the "Filing Date" has a certain expiry period (or that a rate with a "Filing Date" preceding the POI is inapplicable during the POI). It is conceivable that a Descartes rate established at a point in time prior – or even substantially prior – to the POI, can serve as a viable rate during the POI or even today, if the rate is available and searchable on the Descartes website. The petitioner provided search results for each month of the POI for solar cells from Vietnam shipped to the United States.[227] We find that these ocean freight data to be contemporaneous with the POI, and do not find contemporaneity an issue that would disqualify petitioner's ocean freight rate from consideration.

The petitioner's freight data also provides freight rates for cargo that is an exact match to subject merchandise, while the respondents provide data with only some of the merchandise comparable to subject merchandise. For example, in Jinko's Haiphong to New York route a more detailed list emerges of "mixed commodities" and "general commodities," such as bags, metal products, shoes, soy sauce, electronics, plastic items, and farming nets." Further, Jinko's Haiphong to Los Angeles route includes a "mixed load of rubber, article of leather; saddlery and harness, travel goods, handbags and similar containers, electronic machinery and equipment, and "articles of animal gut, other than silkworm gut."[228] While it is correct that some products are comparable to subject merchandise, such as the electronics, clearly, farming nets and soy sauce are not comparable. Thus, it is clear that the petitioner's ocean freight data based on shipping rates for solar panels is more specific to the subject merchandise than the respondents' data that contains a mix of merchandise that is non-comparable and comparable to subject merchandise for the purposes of valuing ocean freight.

In analyzing surrogate specificity for ocean freight rates, Commerce must also consider trade routes that are representative of the mandatory respondent's experiences. Thus, it is Commerce's practice to select ocean freight SV data that are specific to the port combinations a respondent uses for its shipments of merchandise under consideration.[229] Although the petitioner's data are not an exact match to Jinko and JA Solar's ocean shipping routes (the data

---

[226] *See* Petitioner's Letter, "Final Surrogate Value Rebuttal Submission," dated November 18, 2024 at 25-26 (Petitioner's SV Rebuttal).
[227] *See* Jinko's Letter, "Jinko 30-Day Rebuttal Factual Information," dated November 13, 2024 at Exhibits OC-1B (Petitioner rates) and OC1E (Jinko rates) (Jinko's 30-day Rebuttal), *see also* Petitioner's SV Rebuttal at Exhibit 11-B.
[228] *See* Jinko's 30-day Rebuttal at Exhibit OC1E.
[229] *See, e.g., Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; and Final Determination of No Shipments*; 2019-2020, 86 FR 73731 (December 28, 2021), and accompanying IDM at Comment 8; *and Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China*, 68 FR 47538 (August 11, 2003), and accompanying IDM at Comment 11.

does not cover each ocean freight route JA Solar and Jinko used), the petitioner's data does capture some of Jinko and JA Solar's ocean shipping routes.[230]

To address respondents' concerns that the petitioner's data does not exclusively cover trade routes that the respondents utilized when selling subject merchandise to the United States, Commerce has removed from the calculation trade routes that the respondents did not use, which has not measurably impacted the SV, and demonstrates that the difference in product specificity between the respondents' and the petitioner's data trumps the difference in route specificity between the respondents' and the petitioner's data. However, Commerce does acknowledge that the respondents' freight data are more representative of a broad market average than the petitioner's data, since respondents' data captures all of their respective trade routes, while the petitioner's data only captures some of them, which is an important consideration in SV selection. Commerce previously defined "broad market average" to mean a coverage of range of prices.[231] However, the concerns that the respondents contend exist in petitioner's proffered data *i.e.* representativeness and specificity as to shipping route, still do not outweigh the lack of specificity in the respondents' proffered data. Thus, for the ocean freight SV, Commerce finds that despite the limited trade routes and freight rates in the petitioner's proffered data, its exact match to the subject merchandise makes it the best available information to value ocean freight. Indeed, shipping rates appear to be tied more to the product transported than the shipping route used or date shipped.

The respondents cite *Mobile Access Equipment from China*[232] and a CIT decision[233] as support for their assertion that if we do not utilize respondents' data to value ocean freight, we should at least average the rates that the respondents and petitioner provided. However, this instant investigation is dissimilar to *Mobile Access Equipment from China* and the CIT decision because in those cases, Commerce did not have freight rates for the exact merchandise in question such that averaging freight rates was necessary.[234] In contrast, in this instant investigation, the petitioner provided ocean freight SV rates with an exact match to the subject merchandise, whereas Jinko and JA Solar submitted rates that reflect a mix of comparable and non-comparable merchandise. Since rates that reflect exact matches to subject merchandise constitute better information than rates that reflect a mix of comparable and non-comparable merchandise, and since the other factors fall short in overcoming this deficiency in the respondents' data, and since the ocean freight data that the petitioner provided covers the POI, represents multiple price points, includes Jinko and JA Solar's trade routes, and are an exact match of subject merchandise, Commerce continues to only use the Descartes data provided by the petitioner for

---

[230] *See* Jinko's 30-day Rebuttal at Exhibits OC-1B (Petitioner rates) and OC1E (Jinko rates), *see also* Petitioner's Final SV Submission at Exhibit 11-B; and JA Solar's Final SV Submission at Exhibit 1 (tab - Ocean Freight).
[231] *See, e.g., Fish Fillets from Vietnam NSR* IDM at Comment 1; *Fresh Garlic from the People's Republic of China: Final Results and Final Rescission, In Part, of New Shipper Reviews*, 74 FR 50952 (October 2, 2009), and accompanying IDM at Comment 5; and *Third Administrative Review of Frozen Warmwater Shrimp from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 46565 (September 10, 2009)*, and* accompanying IDM at Comment 3.
[232] *See Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 2022-2023, 89 FR 88730 (November 8, 2024) (*Mobile Access Equipment from China*), and accompanying IDM at Comment 6.
[233] *See Fuyao Glass Industry Group Co., Ltd. v. United States* Slip OP. 03-169 (CIT December 18, 2003).
[234] *See Mobile Access Equipment from China*.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

the final determination, with the routes not used by JA Solar and Jinko removed from the SV calculation.[235]

Comment 14: SV for Marine Insurance

Petitioner's Case Brief

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* Petitioner's Case Brief at 49-56.

> For the final determination, {Commerce} should value the respondents' marine insurance expenses, as applicable, using the marine insurance rates of P.A.F. Insurance Services LLC (PAF). Specifically, marine insurance should be valued using the rate for international shipments of fragile goods with the addition of all risk coverage.
>
> {Commerce} valued marine insurance for the *Preliminary Determination* using JA Solar's suggested surrogates, sourced from PT. Asuransi Tokio Marine Indonesia and Shipco Transport. However, these sources do not reflect shipments of like goods between Vietnam and the United States. Tokio Marine is an *Indonesian* provider of marine insurance, and the record is unclear what routes the rate for Shipco Transport reflects.
>
> The PAF rate is far superior. Not only does it reflect shipments of merchandise comparable to solar cells from Vietnam to the United States, but Commerce has used this source of marine insurance in other proceedings, dating back to at least 2016.

JA Solar's Rebuttal Brief

The following is a verbatim summary of arguments submitted by JA Solar. For further details, *see* JA Solar's Rebuttal Brief at 50-54.

> Petitioner argues that Commerce should utilize the information from P.A.F. Insurance Services LLC to value marine insurance. This information is unusable, however, because the proposed marine insurance quotes apply only to shipments of merchandise that are not destined for the United States or Canada, and instead relates exclusively to shipments between other third countries.
>
> Petitioner also incorrectly asserts that Commerce normally does not use marine insurance quotes from the chosen surrogate country. Not only do Commerce's regulations specify that Commerce's preference is to use surrogate values sourced from within a single surrogate country, but Commerce's past practice also supports the selection of marine insurance SV data sourced directly from the chosen surrogate country. Commerce should therefore reject Petitioner's erroneous assertions and invalid proposed marine insurance SV source.

[235] *See* Jinko's Final Analysis Memo at 8-9.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

Jinko's Rebuttal Brief

The following is a verbatim summary of arguments submitted by Jinko. For further details, *see* Jinko's Rebuttal Brief at 33-40.

> Commerce should reject Petitioner's suggestions and instead continue using the PT. Asuransi Tokio Marine Indonesia and Shipco marine insurance values it relied on in the *Preliminary Determination*. PT Asuransi Tokio Marine Indonesia & Shipco Transport rates are the only US-exclusive rates on the record, which are contemporaneous with the POI, from the primary surrogate country, specific to the merchandise based on the detailed category definitions identified in Shipco data and consist of US-exclusive rates. In contrast, the PAF "INTERNATIONAL Shipments (Outside US & Canada)" rates are ambiguous, at best, with respect to (1) the destinations covered, (2) the correct goods category for solar panels, and (3) the appropriate add-ons or deductions that should be applied to the "basic coverage." Finally, if Commerce makes any changes in its Final Determination, Commerce must apply the surrogate value to the correct database field (*i.e.*, transfer price (VNUSPRICEU), rather than gross unit price (GRSUPRU)) because the transfer price between Jinko Vietnam and Jinko's U.S. entities is the value basis for which marine insurance was incurred by Jinko, not Jinko US entities' resale price."

Commerce's Position: For the *Preliminary Determination*, Commerce valued the respondents' marine insurance using a rate from both PT Asuransi Tokio Marine Indonesia (Asuransi) and Shipco Transport (Shipco). The respondents argue that we should continue to use Asuransi as the marine insurance SV source, since it is the only source that offers a rate exclusively from Indonesia to the United States, it accurately reflects subject merchandise, it is contemporaneous, and also accurately captures the expenses associated with marine insurance for the respondents' trade destinations. In contrast, the petitioner argues that Commerce should use the PAF rate to value the respondents' marine insurance, because it more specifically pertains to subject merchandise (*i.e.* computers and electronics and not general merchandise), the rate covers routes from Vietnam to the United States, which it argues is superior to routes from Indonesia to the United States, the rate is contemporaneous with the POI, and PAF is a source Commerce often uses to value marine insurance.

We agree with the petitioner that we inadvertently did not consider the PAF rate for purposes of the *Preliminary Determination* and we have thus considered it for the final determination. We agree that PAF is an often used and suitable source and that for the reasons discussed below, we have used PAF to value the respondents' marine insurance, rather than the Asuransi and Shipco rates used for the *Preliminary Determination*.[236] Specifically, we have used the rate associated with the computer and electronics category, and the corresponding all-risk coverage rate, and have not added the additional charge related to insuring the goods as "fragile."

Jinko argues that for the final determination, Commerce should utilize the Shipco and Asurani rates to value marine insurance. Jinko explains that Shipco and Asurani represent better sources

[236] *See 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; 2018– 2019* 86 FR 58871 (October 25, 2021), and accompanying IDM at Comment 8.

to value marine insurance, because the Shipco and Asurani rates are the only "US-exclusive rates on the record." Jinko argues that the petitioner's PAF marine insurance rates are less specific to subject merchandise shipped from Indonesia or Vietnam to the United States because the petitioner's source only includes "international shipments (outside US & Canada)." Thus, the PAF rate is not specific to the United States, which makes the rate less specific as an SV for subject merchandise sent from Vietnam to the United States than a rate that is specific to the United States. Jinko also argues that the Shipco and Asurani rates are better because they represent Indonesian prices, which reflect data from the surrogate country, as opposed to the petitioner's rates, which reflect Vietnamese rates.

Jinko argues that the petitioner's rates are not more specific to the subject merchandise, because there is no evidence within the "PAF classifications" to support the classification of solar cells and modules as fragile, which artificially inflates the respondents' marine insurance SV. Jinko argues that documentation on the shipping challenges of solar cells does not demonstrate that the goods should be classified as "fragile," and should thus not have the higher risk level, and premium insurance rate reflecting the fragile category. Indeed, Jinko highlights the documentation that the petitioner submitted shows a blank drop-down for insurance item categories, which demonstrates that the petitioner could not retrieve PAF's recommended category for the solar cells for which we are determining a representative marine insurance rate.[237] Jinko adds that there is also no record evidence that subject merchandise should be classified under computers/electronics, the petitioner's second preferred category to classify the subject merchandise. Thus, Jinko concludes that because the record is ambiguous in supporting the petitioner's fragile classification, the Shipco and Asurani rates that offer a rate for "general merchandise" is better. Jinko also argues that the record is ambiguous as to the level of coverage appropriate for the PAF rate, which makes the PAF source less reliable and specific than the Shipco and Asurani sources. However, Jinko does not adequately explain how the ambiguity concerning the classification of subject merchandise as general merchandise compared to electronic goods makes PAF less accurate compared to the deficiencies in the Shipco and Asurani's data.

Jinko also argues that for the final determination, Commerce must amend Jinko's surrogate marine insurance calculation to reflect that the rate is based on the transfer price between Jinko and Jinko's U.S. entities and not the resale price between the Jinko U.S. entity and their customers. We agree that it is appropriate to apply the SV for marine insurance to the transfer price between Jinko and Jinko's U.S. entities for the final determination and not the resale price between the Jinko U.S. entity and their customers because the transfer price is the basis upon which Jinko incurred marine insurance.[238]

Shipco's marine insurance SV is deficient for several reasons. Shipco uses the less specific category "General Merchandise," when the more appropriate category, electronics, was available.[239] Further, the premium is predicated upon unrealistic market assumptions, such as unrealistically low shipment values and freight expenses, and a single quote that is not a broad market average. For example, to calculate the Shipco rate, JA Solar utilized only one invoice in Shipco's "Cargo Insurance Calculator," and failed to demonstrate how this invoice is a market

[237] *See* Jinko's Case Brief at 35 *see also* Jinko's First SV Submission at Exhibit 10 at 3.
[238] *See* Jinko's Final Analysis Memo at 8-9.
[239] *See* JA Solar's Letter, "Surrogate Value Comments," at 2 in Exhibit SV-6.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

average or an average invoice for JA Solar, especially since it appears that JA Solar's actual average invoice price is much higher.[240] Further, this search parameter used a $2,500 freight expense, which is not representative of the parameters used for the ocean freight SV otherwise used..[241] Since sales value and freight cost both impact the insurance premium rate, and since these factors are not representative of JA Solar's experience, we find that the calculated insurance premium rate is not representative for JA Solar, especially since it is a singular calculation that does not necessarily represent a broad market average. Further, the marine insurance type and coverage, associated with the 0.15% Shipco rate is not clear. It is also unclear whether the rate covers merchandise specific or comparable to subject merchandise.

While the Shipco and Asurani rates may better reflect the U.S. trade routes, the other factors that make PAF marine insurance more specific and accurate, such as product specificity, make PAF marine insurance overall the best available information to value the marine insurance surrogate than Shipco and Asurani. We have determined to value marine insurance using the PAF rate for shipping computers and electronics. The courts have recognized that when selecting SVs, "'product specificity' logically must be the primary consideration in determining 'best available information'" because "{i}f a set of data is not sufficiently 'product specific, 'it is of no relevance whether or not the data satisfy the other {surrogate value selection} criteria set forth in Policy Bulletin 04.1."[242] It stands to reason that more expensive products at a basic level would carry higher insurance premiums than a broader generalized batch of products, The instructions provided by PAF for selecting a marine insurance rate from its table of rates also highlight the importance of specificity. Specifically, PAF notes that:

> The Insurance companies groups items into categories according to the risk level associated with those items. Higher risk categories have higher insurance rates and different deductibles. The rates for every category are listed in the tables below.[243]

Given that insurance rates are based on the product and associated risk level, we believe it is important to use a marine insurance rate that is as specific as possible to the subject merchandise. The "General Merchandise" category is not specific to a particular product but appears to be a catch-all category. Of the other available categories,[244] "Computer/Electronics" is most applicable to solar modules (there is not a separate category for solar cells and solar modules). Indeed, solar cells/modules are classified under Harmonized Tariff Schedule Chapter 85 ("Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such

---

[240] *Id*.
[241] *Id*.
[242] *See Taian Ziyang Food Co. v. United States*, 783 F. Supp. 2d 1292, 1330 (CIT 2011); *see also Qingdao Sea-Line Trading Co. v. United States,* 766 F.3d 1378, 1386 (CAFC 2014), 766 F.3d at 1386 (finding Commerce is justified where it treats product-specificity as a "more important factor" than other criteria); *Ad Hoc Shrimp Trade Action Comm*., 618 F.3d at 1320 (affirming selection of "product-specific data" as "best available information"); and *Certain Steel Threaded Rod from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2014-2015, 81 FR 83800 (November 22, 2016), and accompanying IDM at 8 (relying on Bulgaria as the primary surrogate country because it has greater specificity).
[243] *See* Jinko's First SV Comments at Exhibit 10.
[244] The categories are new or used machinery, household goods, fragile goods, fine arts, motorcycles, precision instruments, chemicals/hazardous materials, steel sheets, coils, & bars, branded goods, non-perishable food, bottled beverages, bottled products/non beverage, frozen foods (excluding meat), frozen meats, yachts, and jewelry).

articles"). Solar modules, computers, and electronics have multiple components which control the flow of electrical current passing through the device. Some of the components in these devices are similar in composition (*e.g.*, solar cells and silicon chips). Given these similarities we believe a solar module's vulnerability to damage (and therefore the risk of loss) is more similar to that of computers and electronics than to any of the other categories listed in the PAF marine insurance rate table (*e.g.*, fine arts, frozen meats, jewelry). Thus, we find it reasonable to conclude that the category of goods that best describes what is being shipped (solar cells and solar modules) is "Computer/Electronics." Further, given the fragility of computers and electronics, we determine it is appropriate to add on the "all-risk" rate to the marine insurance calculation.

Thus, Commerce has used the PAF rate for the final determination to value the respondents' marine insurance, since it is more specific to subject merchandise than the Asurani and Shipco rates, is contemporaneous, covers routes from Vietnam to the United States, represents a broad market average, is commercially representative, and because the PAF source is a reliable source used by Commerce in prior proceedings. However, for the final determination, Commerce has calculated the SV marine insurance rate on the transfer price between Jinko and Jinko's U.S. entities, as noted above.[245]

Comment 15: SV for Truck Freight

Petitioner's Case Brief

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* the Petitioner's Case Brief at 44.

> {Commerce} valued truck freight in Indonesia using the data sourced from the World Bank's publication *Doing Business in Indonesia 2020*, which was agreed upon by all parties to be the best available information. While Jinko's, JA Solar's, and Petitioner's calculations of the SV differed, it appears that {Commerce} intended to use Petitioner's calculation of truck freight. However, the domestic truck freight rate assigned to both respondents differed from the result of Petitioner's calculation. The correct rate, as calculated by Petitioner is 0.000608 USD/kg/km, which is consistent with the record and {Commerce's} consistent calculation of truck freight using the *Doing Business* report. Accordingly, {Commerce} should use this rate to value truck freight for imports and exports in Indonesia for the final determination.

JA Solar's Rebuttal Brief

The following is a verbatim summary of arguments submitted by JA Solar. For further details, *see* JA Solar's Rebuttal Brief at 50.

> JA Solar and Petitioner propose the same data source and the same inflator for this proposed SV, and unsurprisingly arrive at the same resulting SV up to five decimal

[245] *See* Jinko's Final Analysis Memo at 8-9.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

> places. Commerce, therefore, has no need to revise this SV in the final determination.

Jinko's Rebuttal Brief

The following is a verbatim summary of arguments submitted by Jinko. For further details, *see* Jinko's Rebuttal Brief at 40.

> Commerce should ignore Petitioner's facially absurd argument with respect to Jinko's truck freight surrogate value. Petitioner's claim that Commerce's preliminary decision should be modified is based on nothing more than a rounding to the fourth decimal point when entering the surrogate value into Commerce's SV Spreadsheet for Jinko. In fact, Commerce already applied the value Petitioner is proposing in its brief. Thus, Commerce should simply apply the same value as it already used in the *Preliminary Determination* to calculate Jinko's truck freight.

Commerce's Position: The petitioner is correct that though we used the SV source for truck freight, agreed upon by all parties, we did not consistently apply the most accurate, inflated, calculation of that value as submitted by the petitioner between respondents. The respondent parties are correct that this discrepancy at the fourth decimal place is practically no different than simple rounding and has no actual impact on the margin. Nevertheless, the petitioner is correct that our application is inconsistent and, as they choose to identify this as an error for correction and we confirm that it indeed reflects a discrepancy, we are obligated to correct for the error identified. Therefore, we have revised the truck freight SV for each respondent to reflect an AUV of $0.000608 USD per kilogram per kilometer.[246]

Comment 16: SV for Brokerage and Handling for JA Solar

Petitioner's Case Brief

The following is a verbatim summary of arguments submitted by the petitioner. For further details, see the Petitioner's Case Brief at 48-49.

> For foreign brokerage and handling {Commerce} correctly adopted Petitioner's calculation of the per-kg brokerage and handling rates for imports and exports, as sourced from *Doing Business in Indonesia 2020*. Those values were $0.02850/kg for exports and $0.04282/kg for imports, yet {Commerce} applied a brokerage and handling SV of $0.02729/kg to JA Solar. This appears to be an inadvertent error, and Commerce should correct it for the final determination.

JA Solar's Rebuttal Brief

The following is a verbatim summary of arguments submitted by JA Solar. For further details, *see* JA Solar's Rebuttal Brief at 49-50.

---

[246] *See* Petitioner's Final SV Submission at Exhibit 1 (tab "Indonesia Truck Freight"); *see* also JA Solar's Letter, "JA Solar Final SV Submission" at Exhibit 1 (tab "TRUCK"); and Jinko's Letter, "Jinko 1st SV Submission," at Exhibit 6A, all dated November 6, 2024.

> Petitioner erroneously claims that Commerce "does not differentiate between brokerage and handling for imports and brokerage and handling for exports" in the *Preliminary Determination* for JA Solar and that Commerce "should revise the brokerage and handling SVs assigned to JA Solar. . ." The import data on the record of this proceeding, however, are presented on a cost-insurance-freight (CIF) basis and thus require no adjustment based on the specific language of Commerce's Policy Bulletin 10.2. Indeed, Commerce has contemplated this exact question and has determined that Indonesian import statistics provided on a CIF basis do not require any additional brokerage and handling charges added to normal value.
>
> In addition to Commerce's explicit declaration regarding its normal practice, Petitioner's suggested revision fails because the record does not support such a revision. Commerce should therefore reject Petitioner's suggested revision, which is counter to Commerce's normal practice and would improperly assign expenses to JA Solar's normal value.

Commerce's Position: We agree that we did not consistently apply the petitioner's correctly inflated B&H SV to JA Solar in the preliminary calculation, and we have applied the $0.02850/kg export B&H value, consistent with the value otherwise applied to Jinko, in the final determination. The petitioner otherwise infers that there was an issue regarding proper application of the import B&H value, but we agree with JA Solar that there is no actual discrepancy identified, nor is one appropriate. Though the import brokerage value is necessary to adjust JA Solar's ME polysilicon purchases on the same basis as the SV, there were no other expenses to which the import SV applies and, thus, no issue to address.[247]

We agree with JA Solar that the petitioner's suggested addition of import B&H to all inputs for the determination of SV would double count the B&H expenses included in the Indonesian SVs which are recorded on a CIF basis,[248] and are totally inappropriate for inputs that were sourced in Vietnam. As JA Solar explained, import B&H are not required in the NV buildup based on Commerce's normal practice for CIF import data. In addition, we agree with JA Solar that Commerce cannot assign import B&H expenses to inputs sourced locally in Vietnam, and because Commerce's normal practice does not incorporate this methodology for CIF data, no such information exists on the record. Thus, we followed our standard practice and did not assign B&H to the determination of SVs for JA Solar's domestically produced inputs for this final determination.

Comment 17: SV for Domestic Inland Insurance for Jinko

Petitioner's Case Brief

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* the Petitioner's Case Brief at 46-48.

---

[247] *See Preliminary Determination* PDM at 30; *see also* Preliminary Analysis Memorandum at 3, and Attachment 1, "JA Solar SAS Log;" and Attachment3, "Revised SV Worksheet."
[248] *See* JA Solar's Rebuttal Brief at 49, citing Policy Bulletin 10.2.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

> Commerce relied upon an inland insurance rate from PT. Cheil Jedang Indonesia to value Jinko's domestic inland insurance expense. For the final determination, Commerce should rely on the PAF data, as the Cheil Jedang data are flawed. The Cheil Jedang rate is more than a decade old, received third hand, without provenance, and reflects the expenses of a respondent in one of Commerce's proceedings. It is also unclear from where and whom that insurance was sourced, whether the rates were provided at arm's length, or if they are even accurate. However, if Commerce continues to use the Cheil Jedang data, it must modify its calculation. Despite stating that it intended to inflate the insurance rate, Commerce did not do so. If it continues to use this rate for the final determination, Commerce should inflate it using Indonesia's producer price index (PPI) and the period from which the data cover, July 2012 through June 2013."

Jinko's Rebuttal Brief

The following is a verbatim summary of arguments submitted by Jinko. For further details, *see* Jinko's Rebuttal Brief at 41-44.

> Petitioner argues that Commerce should either: (1) rely on PAF marine insurance rates; or (2) inflate the PT. Cheil Jedang Indonesia inland insurance value. Both suggestions are without merit. First, in the *Preliminary Determination*, Commerce correctly reasoned that the rate derived from PT. Cheil Jedang Indonesia and CJ America is the "only source on the record" to value domestic inland insurance. Because this rate is on the record, Petitioner's suggestion to use a rate from PAF for marine insurance, instead of actual inland insurance, makes no sense and should be rejected without any further consideration. Second, Commerce's well-established practice is to not inflate or deflate insurance rates, including not inflating the same Cheil Jedang rate used in prior proceedings. Because the surrogate rate being applied to calculate inland insurance in this case is a surrogate percentage of gross unit price, an inflator is not necessary, or appropriate, and Commerce should continue to use an uninflated rate of 0.0459% to value Jinko's inland insurance in the final determination.

Commerce's Position: In the *Preliminary Determination*, Commerce used the uninflated inland insurance rate from PT. Cheil Jedang Indonesia (Jedang) to value Jinko and JA Solar's domestic inland insurance. The petitioner argues that for the final determination, Commerce should value Jinko and JA Solar's domestic inland insurance with a marine insurance rate from PAF. The petitioner argues that Jedang is an inferior source because it is a rate from 2014 with "unknown provenance," questionable accuracy, a single source, and not a "broad market average.". The petitioner also argues that Commerce should inflate the inland insurance value to be contemporaneous. Jinko argues in its rebuttal brief that it is not Commerce's practice to inflate inland insurance as a percentage because the value is a percentage of gross unit price, and that Commerce should continue to value domestic inland insurance using Jedang rate.[249]

[249] *See Certain Steel Nails from the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination and Extension of Provisional Measures*, 79 FR 78058 (December 29, 2014), and accompanying IDM at 20, unchanged in *Certain Steel Nails from the Socialist Republic*

Given that a marine insurance rate is not representative of an inland freight insurance rate, and that a suitable inland freight rate that has been accepted in prior proceedings is on the record, Commerce continues to value the respondents' inland freight insurance with Jedang's rate.[250] Further, Commerce also continues to use the uninflated rate, which is based on a percentage of gross unit price, and not a price which can be inflated, consistent with Commerce's practice.[251]

---

of Vietnam: Final Determination of Sales at Less Than Fair Value 80 FR 29622 (May 22, 2015); *see also Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, and Rescission, in Part;* 2015–2016, 82 FR 42281 42281 (September 7, 2017), and accompanying IDM at 29, unchanged in *Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015–2016*., 83 FR 11690 (March 16, 2018); *Common Alloy Aluminum Sheet from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Partial Recission of Antidumping Administrative Review, Preliminary Determination of No Shipments, and Preliminary Successor-In-Interest Determination*; 2018-2020, 86 FR 120 (June 25, 2021), and accompanying PDM at 25, unchanged in *Common Alloy Aluminum Sheet from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, Final Successor-In-Interest Determination, and Final Determination of No Shipments; 2018-2020*, 86 FR 74066; and *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Antidumping Administrative Review, and Preliminary Determination of No Shipments; 2018-2019*, 86 FR 76 (April 22, 2021), and accompanying PDM at 28, unchanged in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Changed Circumstances Reviews, and Revocation of the Antidumping and Countervailing Duty Orders, in Part*, 86 FR 71615 (December 17, 2021).

[250] *See also Common Alloy Aluminum Sheet from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Partial Recission of Antidumping Administrative Review, Preliminary Determination of No Shipments, and Preliminary Successor-In-Interest Determination*; 2018-2020, 86 FR 120 (June 25, 2021), and accompanying PDM at 25, unchanged in *Common Alloy Aluminum Sheet from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, Final Successor-In-Interest Determination, and Final Determination of No Shipments; 2018-2020*, 86 FR 74066.

[251] *See Certain Steel Nails from the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination and Extension of Provisional Measures*, 79 FR 78058 (December 29, 2014), and accompanying PDM at 20, unchanged for in *Certain Steel Nails from the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 80 FR 29622 (May 22, 2015); *see also Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, and Rescission, in Part;* 2015–2016, 82 FR 42281 42281 (September 7, 2017), and accompanying PDM at 29, unchanged in *Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015–2016*, 83 FR 11690 (March 16, 2018), *Common Alloy Aluminum Sheet from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Partial Recission of Antidumping Administrative Review, Preliminary Determination of No Shipments, and Preliminary Successor-In-Interest Determination; 2018-2020*, 86 FR 120 (June 25, 2021), and accompanying PDM at 25, unchanged in *Common Alloy Aluminum Sheet from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, Final Successor-In-Interest Determination, and Final Determination of No Shipments; 2018-2020*, 86 FR 74066 ; and *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Antidumping Administrative Review, and Preliminary Determination of No Shipments; 2018-2019*, 86 FR 76 (April 22, 2021), and accompanying PDM at 28, unchanged in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Changed Circumstances Reviews, and Revocation of the Antidumping and Countervailing Duty Orders, in Part*, 86 FR 71615 (December 17, 2021).

Comment 18: Valuation of the Market-Economy Purchase Price for JA Solar's Purchases of Polysilicon

JA Solar's Case Brief

The following is a verbatim summary of arguments submitted by JA Solar. For further details, *see* JA Solar's Case Brief at 29.

> Commerce erroneously used the price of one example purchase of JA Solar's market economy polysilicon as the SV for polysilicon in the *Preliminary Determination*. Commerce must correct this number and use the average price of all market economy purchases in the final determination.

Petitioner's Rebuttal Brief

We note that we requested that interested parties provide a public, executive summary for each issue raised in their case and rebuttal briefs. *See Preliminary Results*, 89 FR at 96221. Therefore, because the executive summary in the Petitioner's Rebuttal Brief contains business proprietary information (BPI), we have redacted that content herein. The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* the Petitioner's Rebuttal Brief at 46-50.

> Petitioner agrees with JA Solar that {Commerce} applied an incorrect value to its market economy purchases of polysilicon. However, JA Solar is incorrect as to what the corrected price of the market economy polysilicon should be. Based on the terms of sale, {Commerce} should… to arrive at a delivered price for the market-economy purchased polysilicon. JA Solar purchased its market economy polysilicon on… According to the Incoterms, this means the transfer of risk occurred from seller to buyer…. {Commerce}, in determining the value of polysilicon for the preliminary calculations,… to the purchase price of polysilicon. Thus, while JA Solar is correct {Commerce} should start with its specified price, {Commerce} must also… to arrive at a delivered price for the input, in accordance with its practice.

Commerce's Position: We agree with both the petitioner and JA Solar that we erroneously valued JA Solar's market-economy purchases of polysilicon using the sample purchase price provided in Exhibit D-5, "Market-Economy Purchase Documents," rather than the weighted-average value of all ME purchases provided in Exhibit D-8, "Market-Economy Purchases Spreadsheet." Therefore, we have revised the margin calculations for the final determination to value JA Solar's ME purchases of polysilicon using the weighted-average value of all ME purchases of polysilicon reported in Exhibit D-8 of JA Solar's DQR.[252]

[252] *See* JA Solar's DQR at Exhibit D-8, and Memorandum, "Final Analysis Memorandum for JA Solar Vietnam Co. Ltd.," dated concurrently with this memorandum (JA Solar's Final Analysis Memorandum) at Attachment 3, "Revised SV Worksheet."

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

We also agree with the petitioner's claim that, consistent with Commerce's practice,[253] we should value JA Solar's ME purchases of polysilicon on a delivered basis, as we did for JA Solar's NME purchases. Therefore, we revised our calculation of JA Solar's ME purchase of polysilicon to add the following freight expenses to the ME price, accounting for transportation from the foreign country to the factory gate: ocean freight, marine insurance, domestic B&H, and foreign inland freight.[254]

Comment 19: Polysilicon Byproduct and Scrap Offsets for JA Solar

JA Solar's Case Brief

The following is a verbatim summary of arguments submitted by JA Solar. For further details, *see* JA Solar's Case Brief at 34-37.

> Commerce's byproduct calculations in the *Preliminary Determination* for the bottom polysilicon and polysilicon scrap generated by JA Solar NE Vietnam Company Limited (JANE) were incorrect. Commerce must follow its practice and grant offsets to the total production quantity of both byproducts during the POI in the final determination.

Petitioner's Rebuttal Brief

We note that we requested that interested parties provide a public, executive summary for each issue raised in their case and rebuttal briefs. *See Preliminary Results*, 89 FR at 96221. Therefore, because the executive summary in the Petitioner's Rebuttal Brief contains business proprietary information (BPI), we have redacted that content herein. The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* the Petitioner's Rebuttal Brief at 50-52.

> JA Solar argues that {Commerce} should grant a by-product offset for the amount of by-product polysilicon and bottom polysilicon produced during the POI. However, {Commerce's} preliminary finding that JA Solar was only entitled to a by-product offset for the amount of scrap polysilicon and bottom polysilicon… by JA Solar's affiliate, JA Solar NE Vietnam Company Limited (JANE), was in accordance with its practice. {Commerce's} practice is to only grant a by-product offset for the amount of the by-product sold or reintroduced into production during the POI. The amount produced during the POI is the upper limit of this offset, not the offset itself. This is made explicit in the initial questionnaire. Here, … indicates that the appropriate offset is…, as {Commerce} correctly concluded for the *Preliminary Determination*.

---

[253] *See* Import Administration Policy Bulletin 10.2, Inclusion of International Freight Costs When Import Prices Constitute Normal Value (November 1, 2010) at 1; *see also, e.g.*, *Cast Iron Soil Pipe Fittings from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part*, 83 FR 33205 (July 17, 2018), and accompanying IDM at Comment 3.
[254] *See* JA Solar's Final Analysis Memorandum at Attachment 1.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

Commerce's Position: We agree with the petitioner that we calculated JA Solar's byproduct offset correctly in the *Preliminary Determination*. Our questionnaire explains that "by-product/co-product offsets are only granted for merchandise that is either sold or reintroduced into production during the POI, up to the amount of that by-product/co-product actually produced during the POI."[255] The questionnaire also provided complex instructions for the company to report by-products produced, sold, and re-introduced into production.[256] JA Solar reported the quantity of polysilicon scrap and polysilicon scrap produced, sold, and reintroduced into production in its Section D response.[257] In a supplemental questionnaire, Commerce asked JA Solar to revise the calculation of its by-product offsets to reflect Commerce's policy granting offsets for only for by-products that are either sold or reintroduced into production during the POI, up to the amount of that by-product actually produced during the POI.[258]

It is Commerce's longstanding practice to limit the byproduct offset by the amount of the by-product that is either sold or reintroduced into production during the POI. The petitioner provided three cases outlining Commerce's longstanding practice. In *R-125 from China*, Commerce explained that:[259]

> Commerce's practice is to only grant by-product offsets "for merchandise that is either sold or reintroduced into production during the POI, up to the amount of that by-product/co-product actually produced during the POI."[260] Accordingly, to be eligible for a by-product offset, a respondent must provide evidence to substantiate: (1) the quantity of the by-product it generated from the production of subject merchandise during the POI; and (2) that the by-product has commercial value.[261]

In *R-125 from China*, Commerce explained further:

> Commerce finds that this methodology ensures the accuracy of Commerce's dumping calculations. Specifically, providing the production quantity is important because, in considering a by-product offset, Commerce examines whether the by-product was produced from the quantity of the FOPs reported and whether the respondent's production process for the merchandise under consideration actually generated the amount of the by-product claimed as an offset. Commerce has stated that "{s}crap sold but not produced during the POI should not be included within the scrap offset because it would be unreasonable to offset the cost during the POI

---

[255] *See* JA Solar's Initial Questionnaire at pages D-9 – D-10.
[256] *Id.*
[257] *See* JA Solar's DQR at Exhibit D-9, "By-product Inventory Movement," and Exhibit D-10.2, "Sales Invoice of Polysilicon Scraps."
[258] *See* Commerce's Letter, "First Section ACD Supplemental Questionnaire," dated October 3, 2024 (JA Solar's First Supplemental Questionnaire), at 17.
[259] *See Pentafluoroethane (R-125) from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 87 FR 1117 (January 10, 2022) (*R-123 from China*), and accompanying IDM at Comment 3D (*R-125 from China* IDM)
[260] *See* JA Solar's Initial Questionnaire at pages D-9 - D-10.
[261] *See R-125 from China* IDM at Comment 3D (citing *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review and Final Results of the New Shipper Review; 2012-2013*, 80 FR 4244 (January 27, 2015)(*TRBs from China*), and accompanying IDM at Comment 3).

> for scrap produced prior to the POI."[262] Furthermore, Commerce's practice ensures that a respondent does not receive a by-product offset for products generated in the production of non-subject merchandise.

We agree with the petitioner that the by-product offset is stated to be for the amount of the by-product sold or reintroduced into production during the POI, so that the amount produced during the POI is the upper limit of this offset, not the offset itself.[263] We agree with the petitioner's explanation that, if the amount of scrap produced during the POI is greater than the quantity sold or reintroduced into production during the POI, provided all other preconditions of granting an offset are met, the offset is limited to the quantity sold or reintroduced.[264] Conversely, if the amount of the by-product sold or reintroduced into production during the POI is greater than the quantity produced during the POI, the offset is the quantity produced.[265]

An examination of JA Solar's supplemental response reflects that JA Solar reported consistent with Commerce's practice: the revised FOP database reflects JAVN's and JANE's polysilicon scrap produced and reintroduced into production during the POI, capped to the amount of production. Therefore, for this final determination, we continue to determine the polysilicon and bottom polysilicon by-product scrap as we did in the *Preliminary Determination*.

Comment 20: By-Product Offsets for Jinko

Petitioner's Case Brief

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* the Petitioner's Case Brief at 74-76.

> Commerce granted Jinko by-product offsets for the *Preliminary Determination*. Commerce incorrectly stated that Jinko had reported them sold or reintroduced into production. Commerce's statement is contrary to explicit statements from Jinko. Commerce will not grant offsets where the respondent has not provided evidence of commercial value. Indeed, for other by-products with the same circumstances, Commerce correctly denied the offsets. Commerce should reverse its decision with respect to these by products for the final determination and deny Jinko an offset for these by-products.

Jinko's Rebuttal Brief

The following is a verbatim summary of arguments submitted by Jinko. For further details, *see* Jinko's Rebuttal Brief at 45.

---

[262] *See R-125 from China* IDM at Comment 3D (citing *Notice of Final Determination of Sales at Less Than Fair Value: Circular Welded Carbon Quality Steel Pipe from the Sultanate of Oman*, 77 FR 64480 (October 22, 2012), and accompanying IDM at Comment 3).
[263] *See* Petitioner's Rebuttal Brief at 51.
[264] *Id.*
[265] *Id.*

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

> Commerce should reject Petitioner's suggestion to deny byproduct offsets for M_MODULE_SCRAP and M_CELL_SCRAP. However, even if it accepts Petitioner's suggestion, Commerce should continue to grant a byproduct offset for C_CELL_SCRAP, even if it denies an offset for M_CELL_SCRAP. Commerce should not inadvertently deny the offset for C_CELL_SCRAP; the record is clear that Jinko demonstrated that it sold C_CELL_SCRAP during the POI.

Commerce's Position: In the *Preliminary Determination,* Commerce granted Jinko by-product offsets for module and cell scrap. The petitioner argues that Commerce contravened policy by granting these offsets because Jinko did not sell or reintroduce into production for solar cells either byproduct during the POI, which is necessary to demonstrate to justify granting the by-product offset. Jinko argues that it provided sufficient support that some of its cell scrap was sold, and that a byproduct offset is warranted for one of its types of cell scrap. After reviewing the record, Commerce has determined that the record has insufficient support to grant the requested by-product offsets for MODULE_SCRAP and M_CELL_SCRAP and, as such, we denied offsets for these products in the final determination. However, we granted a byproduct offset for C_Cell _Scrap, and continue to grant a byproduct offset for C_Wafer_Scrap and Polysilicon scrap.

In the event that a respondent wishes to claim a by-product offset, it has the obligation to demonstrate its eligibility for said offset.[266] As reflected in Commerce's Initial Questionnaire, Commerce's practice is to only grant by-product offsets "for merchandise that is either sold or reintroduced into production during the… POI, up to the amount of that by-product/co-product actually produced during the…POI."[267] Accordingly, to be eligible for a by-product offset, a respondent must provide evidence to substantiate: (1) the quantity of the by-product it generated from the production of subject merchandise during the POI; and (2) that the by-product has commercial value. To that end, Commerce requested in the Initial Questionnaire that Jinko "{p}rovide production records demonstrating production of each by-product/co-product during one month of the POI," and, "{i}f sold, provide evidence of the sales."[268] Commerce's policy is to avoid double counting by offsetting the cost of production by the value of recycled inputs when a respondent demonstrates that the cost of its recycled inputs is already accounted for elsewhere.[269,270]

---

[266] *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review and Final Results of the New Shipper Review*; 2012-2013, 80 FR 4244 (January 27, 2015) (*TRBs from China 12-13*), and accompanying IDM at Comment 3; *Utility Scale Wind Towers from the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 77 FR 75984 (December 26, 2012), and accompanying IDM at Comment 2 ("CSWG has not provided a meaningful way of allowing {Commerce} to determine a reasonable aluminum scrap offset and the burden rests with the respondents to substantiate by-product offsets by providing {Commerce} with sufficient information to support their claims…"); *R-125 from China* IDM at Comment 3D; and *Evonik Rexim Pharmaceutical v. United States*, 253 F. Supp. 3d at 1377 (CIT 2018) ("{T}he burden of substantiating any by-product offset falls to the respondent, who must present Commerce with sufficient information to support claims for the offset.").
[267] *See* Commerce's Letter, "Request for Information," dated July 5, 2024 (Jinko's Initial Questionnaire), at D-9.
[268] *See* Jinko's Initial Questionnaire at D-9 and D-10.
[269] *See Tianjin Wanhua Co. v. United States*, 179 F. Supp. 3d 1062, 1071 (CIT 2016).
[270] *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review and Final Results of the New Shipper Review; 2012-2013, 80 FR 4244* (January 27, 2015), and accompanying IDM at Comment 3.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

In support of the claimed offsets, Jinko submitted documentation pertaining to the production and sales quantity of the by-products produced during the POI.[271] However, Jinko's documentation shows that Jinko did not sell byproducts M_MODULE_SCRAP and M_CELL_SCRAP during the POI.[272] Thus, granting Jinko an offset for byproducts M_MODULE_SCRAP and M_CELL_SCRAP is not warranted. However, in its Section D response, and during verification, Jinko provided evidence that Jinko sold and reintroduced a cell production stage wafer and cell scrap, as well as polysilicon scrap during the POI.[273] Thus, for the final determination, Commerce continues to grant Jinko a byproduct offset for these three by-products reported, but will continue to deny others, including module production stage module and cell scrap..

Comment 21: Polysilicon as a Byproduct and Input for Jinko

Jinko's Case Brief

The following is a verbatim summary of arguments submitted by Jinko. For further details, *see* Jinko's Case Brief at 55-60.

> Commerce should value Jinko's recycled polysilicon byproduct *(i.e.*, BYPRODUCT_RE_POLYSILICON) using the same surrogate value as it used to value the corresponding input recycled polysilicon (*i.e.*, P_RE_POLYSILICON). Specifically, Commerce should value BYPRODUCT_RE_POLYSILICON using Bloomberg price data for polysilicon because it has recognized that Bloomberg price data are the best available source for valuing recycled polysilicon. In the *Preliminary Determination*, Commerce wrongly inferred that Jinko's reported "BYPRODUCT_RE_POLYSILICON" was the same as JA Solar's reported "W_POLYSILICON_SCRAP" and "W_BOTTOM_POLYSILICON." As explained in Commerce's verification report, the BYPRODUCT_RE_POLYSILICON reported by Jinko is in fact the same as its reported P_RE_POLYSILICON. Thus, consistent with Commerce's past practice in multiple solar antidumping proceedings, Commerce should conclude that recycled polysilicon raw material and recycled polysilicon by-product are identical products, and therefore, should value Jinko's reported BYPRODUCT_RE_POLYSILICON using the Bloomberg price data used to value P_RE_POLYSILICON.

Petitioner's Rebuttal Brief

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* the Petitioner's Rebuttal Brief at 55-57.

> For the final determination, {Commerce} should continue to value Jinko's polysilicon scrap by-product using Indonesian import data for HS 2804.69.00, as this constitutes the best available information for valuing this by-product.

[271] *See* Jinko's DQR at 16-17, and Exhibits D-8A, D-9-C and 9D, and D-8B to D-8D.
[272] *Id*. at Exhibit D-8A.
[273] *See* Jinko's DQR at Exhibit D-8A;*see also* Jinko's Verification Report at 45.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

> Specifically, Indonesian HS 2804.69.00 covers "Silicon, Containing By Weight Less Than 99.99% Of Silicon: Silicon Containing By Weight Less Than 99.99 % Of Silicon." {Commerce} has previously recognized that HS 2804.69 is the appropriate HS for valuing polysilicon-related scrap where such scrap "consists of silicon of a purity less than 99.99 percent . . . ." The appropriate valuation for a by-product is at the time it leaves the production line, not when it is reintroduced into production. While the reintroduced polysilicon may be 99.9999% purity at the point it is reintroduced into production, the byproduct polysilicon is not as pure when it exits production since Jinko admits that the byproduct polysilicon must undergo an acid washing treatment to remove oxides and impurities. Polysilicon that is already 99.9999% pure would not need to undergo such treatment, indicating that the by-product is not solar grade polysilicon upon its exit from production.

Commerce's Position: We agree with Jinko that Jinko's recycled polysilicon byproduct (*i.e.*, BYPRODUCT_RE_POLYSILICON) should be assigned the same SV as the corresponding input recycled polysilicon (*i.e.*, P_RE_POLYSILICON). Jinko argues that the polysilicon FOPs consist of a purchased and recycled polysilicon input, as well as an offset amount intended to prevent overreporting of the FOP input when recycled polysilicon is reused in the production process.[274] In other words, Jinko argues that these two FOPs reflect the same reported recycled polysilicon – "one field is for the reported input and one field is for the reported corresponding offset."[275] Jinko provided a flow chart and a description of the production process of the two FOPs as support that Jinko's recycled polysilicon byproduct should be assigned the same SV as the corresponding input recycled polysilicon.[276] Jinko also provided a detailed declaration that the recycled polysilicon is "produced as a by-product during ingot and wafer making stages of production," and that this polysilicon by-product is reintroduced into production after going through a washing process that "does not impact the nature and purity of the silicon material."[277] At verification, Commerce confirmed that the quantities being reported for both of these FOPs reflect the same reported recycled polysilicon quantities. Jinko also stated that this byproduct is only introduced into production "after going through an acid washing treatment that only removes oxides and impurities on the surface but does not affect the nature and purity of the silicon material."[278]

The petitioner argues that if the byproduct polysilicon was the same polysilicon used as an input in production, then there "would be no need to have a process done to it to remove impurities."[279] The petitioner argues that the presence of impurities dilutes the polysilicon, which would make a 99.9999% polysilicon purity unrealistic.[280] Thus, the petitioner suggests using Indonesian import data for HS 2804.69.00, which covers "Silicon, Containing By Weight Less Than 99.99% Of Silicon: Silicon Containing By Weight Less Than 99.99 % Of Silicon."[281] However, Jinko explains that "recycled polysilicon which is reintroduced into the furnace

---

[274] *See* Commerce's Letter, "Verification of Jinko Solar (Vietnam) Industries Co. Ltd.," dated February 24, 205 at 41-42.
[275] *See* Jinko's Case Brief at 57-58.
[276] *See* Jinko's SD1 Q10-17 at Exhibit SD-12A; *see id.* at Exhibits SD-16.3 and SD-16.4.
[277] *Id* at Exhibit SD-19.12a.
[278] *See* Jinko's Case Brief at 57.
[279] *See* Petitioner's Case Brief at 56.
[280] *Id*.
[281] *See* Petitioner's First SV Submission at Exhibit 1-B.

containing silicon is at or above a silicon purity level of 99.9999% and introducing recycled polysilicon into the production process is no different than introducing purchased polysilicon into the production process."[282] As reported by Jinko and reviewed at verification, the process for incorporating recycled polysilicon and raw solar-grade polysilicon into production is the same, and Commerce has an established practice to value by-product reintroduced as solar grade using the same surrogate as the virgin pure solar-grade input.[283] Consequently, we have determined to value Jinko's recycled polysilicon byproduct that is reintroduced into solar cell and wafer production using the same SV as the corresponding input for NME purchases of pure solar grade polysilicon and recycled solar-grade polysilicon, which – based on our change in Comment 7, above – reflects price data for imports under HS 2804.61.00.[284]

Comment 22: Selection of Surrogate Financial Statements

JA Solar's Case Brief

The following is a verbatim summary of arguments submitted by JA Solar. For further details, *see* JA Solar's Case Brief at 24-29.

> In the *Preliminary Determination*, Commerce wrongly constructed the surrogate financial ratios partially using financial statements of PT Sat Nusapersada Tbk (Satnusa) because Satnusa is not a producer of comparable merchandise and is merely an assembler of unrelated products such as cell phones. Commerce must therefore reject these financial statements in the final determination. Alternatively, if Commerce continues to use Satnusa's financial statements, Commerce must adjust these financial statements to account for the large amount of revenues and expenses generated from toll assembly services.

Jinko's Case Brief

The following is a verbatim summary of arguments submitted by Jinko. For further details, *see* Jinko's Case Brief at 43-55.

> In its final determination, Commerce should reject the PT Sat Nusapersada statement because of its receipt of countervailable subsidies, and in its place, it should rely on the statement of PT Jembo Energindo (PT Jembo) submitted by Jinko.
>
> First, the financial statement of PT Sat Nusapersada should be rejected because of its receipt of countervailable subsidies. Specifically, the record in this investigation contains substantial evidence that PT Sat Nusapersada received countervailable subsidies in the form of an exemption from import duties on capital goods, and an exemption from import duties due to its presence in a duty-free zone. This

[282] *See* Jinko's SD1 at 14.
[283] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015*, 82 FR 29033 (June 20, 2017), and accompanying IDM at 31-32.
[284] *See* Jinko's Final Analysis Memo at 8-9.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

documentation includes direct communication with PT Sat Nusapersada confirming its use of the benefit, and direct communication with Batam Free Trade Zone Administrators confirming that the benefit was in effect during the POI. Because Commerce has expressly concluded that the benefits which PT Sat Nusapersada received from the GOI constitute a countervailable subsidy, coupled with the existence of a non-subsidized statement upon which Commerce relied in its *Preliminary Determination*, Commerce is required to follow its own longstanding, consistent practice and remove the PT Sat Nusapersada financial statement from its financial-ratio analysis.

Second, Commerce should rely on the financial statement of PT Jembo Energindo in the final determination. The record contains substantial evidence as to the comparability between solar panels and PT Jembo's products in accordance with Commerce's three-part comparability test:

(1) the end-use of PT Jembo's cables and solar panels – energy storage and energy transport – matches the end-use of Jinko's subject merchandise;
(2) PT Jembo's cable manufacturing operation uses machinery that is comparable to machinery used in solar manufacturing; and
(3) PT Jembo produces solar modules and panels through its subsidiary, PT Jembo Energindo.

Even if Commerce were to conclude that one component of its three-part comparability test has not been completely satisfied, it should include PT Jembo in its ratio calculation.

Petitioner's Rebuttal Brief

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* the Petitioner's Rebuttal Brief at 31-46.

In the *Preliminary Determination*, { Commerce} used Petitioner's calculations of the surrogate financial ratios using the financial statements of PT. Sat Nusapersada Tbk (Satnusa) and PT. Tera Data Indonesia Tbk (Tera Data), both of which produce comparable merchandise. Respondents present no reasonable alternative to these companies, nor do they identify any actual deficiencies with the financial statements of Satnusa.

Jinko's main argument against Satnusa is that it allegedly received countervailable subsidies. However, the financial statements do not demonstrate receipt of any subsidies, much less countervailable ones. {Commerce} does not go behind the information contained in the financial statements; it only relies upon the information contained within them. Thus, {Commerce} cannot find that Satnusa's financial statements are distorted by countervailable subsidies. Further, the programs Jinko alleges were used by Satnusa have never been countervailed by {Commerce}, and {Commerce} determinations cited by Jinko are inapplicable to Satnusa. Moreover, all other information provided by Jinko is not contemporaneous with the period covered by the financial statements, and thus does

not demonstrate that subsidies are contained therein. JA Solar's arguments allege that Satnusa is mainly an assembler of merchandise. However, {Commerce} often uses financial statements of companies that are not solely dedicated to the production of identical or comparable merchandise, as long as such production is significant. And, Satnusa's assembly activities, in addition to the production of comparable merchandise, are comparable to the assembly of solar modules performed by respondents. However, if {Commerce} declines to use Satnusa's financial statements, it should replace them with the financial statements of PT. Sky Energy Tbk, a producer of identical merchandise.

{Commerce} cannot use the financial statements of Tata Power Solar Systems LLC (Tata) and PT Jembo Cable Company Tbk/PT. Jembo Energindo (Group) (collectively, Jembo Cable). Tata is a company located in India, which is not a potential surrogate country and not comparable in economic development to Vietnam. Thus, its financial statements cannot be used since there are other viable financial statements within the primary surrogate country. Jembo Cable's financial statements are likewise unusable because the vast majority of its merchandise (>96%) is not comparable to the subject merchandise. Based on {Commerce's} three prong test, the record demonstrates that Jembo Cables' main production (*i.e.*, of various types of cables) is dissimilar to subject merchandise in terms of physical characteristics, end uses, and production processes.

Commerce's Position: In the *Preliminary Determination*, Commerce included PT Sat Nusapersada Satnusa's (Satnusa) financial data in the surrogate financial ratio. The respondents argue that for the final determination, Commerce should not include Satnusa's financial data in the surrogate financial ratio because Satnusa allegedly received countervailable subsidies and is not a producer of merchandise comparable to subject merchandise. The petitioner argues that Commerce should include Satnusa's financial data in the surrogate financial ratio in the final determination, because there is insufficient evidence that Satnusa received countervailable subsidies on solar cells and because Satnusa is a producer of goods comparable to solar cells. After reviewing the record, Satnusa's 2023 financial statements are originally in or completely translated into English, publicly available, contemporaneous with the POI, sufficiently detailed, and are from a company that is a producer of comparable subject merchandise. Thus, for the final determination, Commerce continues to use Satnusa and PT. Tera Data Indonesia Tbk (PT Tera)'s' financial data as part of the respondents' SV financial ratios because they comprise the best available information.[285]

In selecting SVs for FOPs, section 773(c)(1) of the Act instructs Commerce to select "the best available information" from the appropriate ME country to value FOPs. Commerce normally will use publicly available information to value FOPs, pursuant to 19 CFR 351.408(c)(1). In determining the suitability of SVs, we carefully consider the available evidence with respect to the particular facts of each case and evaluate the suitability of each source on a case-by-case basis. Accordingly, when examining the merits of financial statements on the record, we do not have an established hierarchy that automatically gives certain characteristics (*i.e.*,

[285] *See* Memorandum, "Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from Vietnam: Final Results Surrogate Valuation Memorandum," dated concurrently with this memorandum.

contemporaneity or specificity) more weight than others. Rather, we must weigh available information with respect to each situation and make a product-and case specific decision as to what constitutes the "best available information." Furthermore, the Courts have recognized the wide discretion given to Commerce in selecting the best SVs on the record.[286] In calculating surrogate financial ratios, it is Commerce's practice, in accordance with 19 CFR 351.408(c)(4), to use nonproprietary complete financial statements showing a profit, contemporaneous with the data used to calculate production factors, gathered from producers of identical or comparable merchandise in the surrogate country.[287]

Despite Jinko and JA Solar's arguments, Commerce considers Satnusa a producer of comparable merchandise. Jinko and JA Solar argue that Satnusa is a "high technology" manufacturer that produces printed circuit boards, electronic components, semiconductors, and final assembly of "hi-tech" devices, which are not merchandise comparable to subject merchandise.[288] JA Solar listed Satnusa's website as evidence that Satnusa does not produce comparable merchandise. However, as the petitioner argues, Satnusa's website describes the production of printed circuit boards and the manufacture of hi-tech products from components, [289,] which is merchandise that Commerce has found comparable to subject merchandise in other solar cell cases, and Commerce used their financial statements as part of the calculation of the surrogate financial ratios.[290] Indeed, in a previous case solar cells case from China, another NME country, we detail our analysis that circuit board producers manufacture comparable merchandise stating:

> we continue to find manufacturers and assemblers of electronic components and circuit boards to be producers of merchandise comparable to solar cells and solar modules. Specifically, as noted in the investigation of this proceeding, both circuit boards and merchandise under consideration are manufactured from similar processes, which involve putting together a variety of sensitive components onto a single base or board using both robotics and manual labor, using similar inputs (*i.e.*, silicon base materials and various types of joining parts).[291]

---

[286] The CIT has held that, "when Commerce is faced with the decision to choose between two reasonable alternatives and one alternative is favored over the other in their eyes, then they have the discretion to choose accordingly." *FMC Corporation v. United States*, 27 CIT 240, 251 (February 11, 2003), *aff'd FMC Corp. v. United States*, 87 F. App'x 753 (Fed. Cir 2004) (citation omitted).

[287] *See Silicon Metal from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 1592 (January 12, 2010), and accompanying IDM at 36; *see also Dorbest Ltd. v. United States*; 604 F.3d 1363, 1374 (CAFC 2010).

[288] *See* Petitioner's First SV Submission at Exhibit 16-B and 16-D.

[289] *Id.* at Exhibit 16-C.

[290] *See 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 Results of No Shipments*, 83 FR 35616 (July 27, 2018), and accompanying IDM at Comment 10.

[291] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791 (October 17, 2012), and accompanying IDM at Comment 2.

Thus, Commerce continues to determine that Satnusa is a producer of comparable merchandise, and that Satnusa's financial statements should be included in the surrogate financial ratio calculation.[292]

Additionally, the respondents argue that Satnusa's costs are also not representative of a producer of comparable merchandise, because Satnusa is an assembly service provider, which is not comparable to the operations of a solar cell producer, and thus Commerce should disqualify Satnusa's financial statements from the surrogate financial ratio calculation. However, Commerce agrees with the petitioner that since the majority (56%) of Satnusa's revenue in 2023 came from the production and sale of comparable merchandise, this discredits the assertion that Satnusa's assembling services distort Satnusa's financial statements to be unusable for the purposes of calculating the surrogate financial ratios.[293] In fact, the CIT has stated that Commerce is not required under the law to select financial statements from a producer that primarily produces comparable merchandise, but is required only to gather information from producers of identical or comparable merchandise in the surrogate country.[294] Indeed, as mentioned above, the assembly of high tech equipment, is representative of the experience of a producer of comparable merchandise to the extent that both sets of producers incur costs related to assembly services.

We continue to find that Satnusa's financial statements are reliable to calculate surrogate financial ratios in this investigation, and that record evidence does not sufficiently demonstrate that Satnusa benefited from countervailable subsidies. Section 773(c)(5) of the Act, provides that "{i}n valuing the factors of production under paragraph (1) for the subject merchandise, the administering authority may disregard price or cost values without further investigation if the administering authority has determined that broadly available export subsidies existed or particular instances of subsidization occurred with respect to those price or cost values.…" Hence, Commerce may disregard certain costs if it has determined that particular instances of subsidization occurred with respect to those costs.

The respondents allege that Satnusa and its subsidiaries benefitted from countervailable subsidies and should be excluded from the SV calculation. Jinko submitted an excerpt from Satnusa's website indicating that Satnusa benefits from value added import and export tax exemptions.[295] Jinko also submitted an excerpt from Satnusa's 2023 Sustainability report showing that the company is located in a Free Trade Zone.[296] In addition, Jinko provided a statement from an Investor Relations Sub-Head at Satnusa, who said that all companies in Batam obtain "free import/export duties on raw materials and equipment."[297] Another employee at the company confirmed this saying that Satnusa "does not pay import duties on raw materials, machinery, or equipment used in manufacturing. This exemption has indeed been applicable over the past two years as noted on our company website."[298] However, we find no specific mention of the

---

[292] *See* Memorandum "IDM for the Final Results of the 2015-2016 Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China," dated July 11, 2018 at 45.
[293] *See* Petitioner's Pre-Prelim Comments at 32 and Exhibit 1.
[294] *See NTSF Seafoods Joint Stock Co. v. United States*, 487 F. Supp. 3d 1310, 1313 (CIT 2020).
[295] See Jinko Final SV Rebuttal at Exhibit 2H at 2.
[296] *Id.* at Exhibit 2J at 5.
[297] *Id.* at Exhibit 2N at 2.
[298] *Id.* at Exhibit 2G at 2.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

Government of Indonesia or the import duty exemption program in Satnusa's financial statements. Moreover, in order to determine whether a surrogate producer benefited from such programs, Commerce reviews information such as investment promotion certificate numbers and descriptions of the benefit which are typically noted in the financial statements, of which the record lacked evidence of both of these items.[299]

In addition, we agree with the petitioner that the customs duty exemption programs previously found to be countervailable referenced by Jinko were applicable to companies located in bonded zones,[300] while Satnusa is located in a Free Trade Zone, which is different under Indonesian law.[301] Thus, we determine that the respondents provided insufficient evidence that Satnusa received countervailable subsidies, or that Satnusa's financial statements are distorted for the purposes of use in calculation of the surrogate financial ratio.

As mentioned during the *Preliminary Determination*, Commerce "cannot go behind the financial statement to determine the appropriateness of including these items in the financial ratio calculations, it is Commerce's practice to look to information in each particular financial statement to determine the possible nature of the activity generating the income or expense to see if a relationship exists between the activity and the general operations of the company."[302] Thus, Commerce cannot "go behind" the financial statements and ascribe countervailable subsidies to the financial statements. Moreover, our analysis of whether the producer of the financial statements received "a countervailable subsidy cannot be, nor is it intended to be, a full investigation of the subsidy program in question …."[303] Indeed, as the petitioner mentioned, it is Commerce's practice to decline to use financial statements for subsidies only when there is "explicit evidence of determined countervailable subsidies."[304] This decision is consistent with Commerce's practice and precedent. For example, in *Mobile Access Equipment from China*, we declined to refuse to include a company's financial statements to calculate surrogate financial ratios due to a lack of explicit evidence that the company received countervailable subsidies and that these subsidies distorted the financial statements. In that case, we state:

> Dingli also argues that Tumosan Traktor's 2022 financial statements are distorted by benefits received from the Turkish government under two countervailable

---

[299] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 77323 (December 14, 2015), and accompanying IDM at Comment 3; *see also Certain Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013), and accompanying IDM at Comment 2.

[300] *See* Jinko's Case Brief at 45-46 (citing *Mattresses from Indonesia: Preliminary Negative Countervailing Duty Determination and Alignment of Final Determination With the Final Antidumping Duty Determination*, 89 FR 57 (January 2, 2024), and accompanying PDM at 10-12, unchanged in *Mattresses From Indonesia: Final Negative Countervailing Duty Determination*, 89 FR 59050 (July 7, 2024).

[301] *See* Petitioner's Final SV Submission at Exhibit 50.

[302] *See Certain New Pneumatic Off-the-Road Tires Final Results of 2008-2009 Antidumping Duty Administrative Review, 76 FR 22871* (April 25, 2011), and accompanying IDM at Comment 11 (Pneumatic Tires); *see also*, *e.g.*, *Wooden Bedroom Furniture from the People's Republic of China: Final Results and Final Rescission in Part*, 76 FR 49729 (August 11, 2011) (*Wooden Bedroom Furniture*), and accompanying IDM at Comment 19.

[303] *See Ashley Furniture Industries LLC v. United States*, Court No. 21-00283, slip op. 24-147 (CIT 2024), at 28-29 (quoting *GGB Bearing Tech. (Suzhou) Co. v United States*, 279 F. Supp. 3d 1233, 1239 (CIT 2017)).

[304] *See Certain Steel Racks and Parts Thereof from the People's Republic of China*, 89 FR 25235 (April 10, 2024), and accompanying IDM at Comment 1 (quoting *Shenzhen Xinboda Industrial Co., Ltd. v. United States,* 494 F. Supp. 3d 1347, 1350 (CIT 2021)).

> subsidy programs, ETFET and BITT. Dingli argues that a declaration of a Turkish consultant confirms that, because Tümosan Traktor is a member of exporters' associations and has an industrial registry certificate (which are requirements to benefit from the ETFET and BITT programs), Tumosan Traktor most likely benefited from these two programs when exporting its goods.
>
> We do not find Dingli's arguments persuasive. Dingli does not point to any explicit evidence in Tumosan Traktor's 2022 financial statements showing that the company benefitted from any countervailable subsidy - Tumosan Traktor's 2022 financial statements do not name any subsidy programs from which it benefited during fiscal year 2022, nor list any subsidies received in any line item of the financial statements or in the accompanying explanatory notes.[305]

Because Satnusa's financial statements do not indicate that the company received subsidies Commerce has previously found to be countervailable, nor is there record evidence that Satnusa's financial statements are distorted by countervailable subsidies, we find insufficient evidence to exclude Satnusa's financial statements from the surrogate financial ratio calculation.

Still the respondents argue that Commerce needs only "reason to believe or suspect" that a company is receiving countervailable duties to warrant excluding that company's financial statements from the surrogate financial ratio calculation. In other words, when Commerce has reason to believe or suspect that a company may have received countervailable subsidies, financial ratios derived from that company's financial statements may not constitute the best available information with which to calculate surrogate financial ratios.[306] Consequently, Commerce does not rely on financial statements that contain references to programs it previously found to be countervailable when there are other sufficiently reliable and representative data on the record for purposes of calculating surrogate financial ratios.[307] However, the CIT held that the "reason to believe or suspect" standard still requires that "the agency point{} to substantial, specific, and objective evidence in support of its suspicion," and is only a lower threshold than "what is required to support a firm conclusion."[308] Since the evidence is not objective, specific or seen in Satnusa's financial statements that Satnusa received countervailable subsidies during the POI (*e.g.* the name of the export and import subsidy program for Indonesian companies in bonded zones that Commerce determined was countervailable), we do not have reason to believe or suspect that the company received countervailable subsidies. Thus, there is not sufficient reason and evidence to exclude the Satnusa's financial statements from the surrogate financial ratio calculation.

Finally, JA Solar argues that if Commerce uses Satnusa's financial statements as part of the surrogate financial ratio calculation, it should revise the calculations to exclude revenues and

---

[305] *See Mobile Access Equipment* IDM at Comment 2; *see also Certain Tool Chests and Cabinets from the Socialist Republic of Vietnam: Final Affirmative Determination of Sales at Less Than Fair Value* 83 FR 15361 (April 10, 2018), and accompanying IDM at 14.
[306] *See Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review*; 2014-2015, 82 FR 17634 (April 12, 2017), and accompanying IDM at Comment 1.
[307] *Id*. at 11.
[308] *See China National Machinery I*, 264 F. Supp. 2d at 1239 (CIT 2003).

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

expenses allegedly associated with assembly services to "allocate expenses based on the proportion of revenues and costs for production and assembly."[309] However, JA Solar presented insufficient evidence to justify making this adjustment. As the petitioner explained, we typically do not make changes to surrogate financial ratios without specific and objective evidence that the changes are fully corroborated by information contained in the financial statements. This is to avoid "introduce{ing} unintended distortions into the data rather than achieving greater accuracy.[310] Additionally, as previously mentioned, Commerce does not "go behind the information contained in the surrogate financial statements, it can only base its determination on the information as contained therein."[311]

Moreover, using PT Tera and Satnusa's financial statements in this investigation is consistent with Commerce's preference for using multiple financial statements to determine surrogate financial ratios.[312] Using multiple financial statements allows Commerce to average the factory overhead, SG&A, and profit ratios and, thus, to normalize any potential distortions that may arise from using financial statements of a single producer. Thus, by using the average of multiple surrogate companies, we arrive at a broader-based surrogate valuation that minimizes the particular circumstances of any one producer. This is consistent with section 773(c)(3)(D) of the Act, which stipulates that when calculating NV, Commerce should use representative capital costs.[313] Given the above, we find that PT Tera and Satnusa 2023 and 2022 financial statements constitute the best available information on the record for calculating surrogate financial ratios, because they are nonproprietary complete financial statements showing a profit before taxes, do not contain subsidies or a qualified opinion, are contemporaneous, and because they are producers of comparable merchandise in the primary surrogate country. Therefore, PT Tera and Satnusa's financial statements best satisfy all of Commerce's criteria pursuant to section 773(c)(1) of the Act and have been used for the final determination.[314]

Comment 23: Deduction of Domestic Warehousing from U.S. Price for JA Solar

Petitioner's Case Brief

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* the Petitioner's Case Brief at 65-68.

> JA Solar reported incurring a warehousing expense from a third-party located in Vietnam on its POI U.S. sales. However, upon request to report this expense, JA Solar refused to include a field in its U.S. sales listing reporting the associated expense or identifying sales that incurred such an expense, because it believed the

[309] *See* JA Solar Case Brief at 28.
[310] *See*, *e.g.*, *Wooden Bedroom Furniture* IDM at 35.
[311] *See Pneumatic Tires* IDM at comment 18F; *see also Wooden Bedroom Furniture* IDM at 35.
[312] *See Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 42314 (June 29, 2016), and accompanying IDM at Comment 30.
[313] *Id.; see also Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 34082 (June 13, 2005), and accompanying IDM at Comment 5.
[314] *See Certain Quartz Surface Products from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances*, 84 FR 23767 (May 23, 2019), and accompanying IDM at Comment 11, and *see also* Jinko's Final Analysis Memo at 8-9.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

> expense to be captured by selling, general and administrative expenses (SG&A). Despite JA Solar's lack of cooperation, {Commerce} stated that it would deduct foreign warehousing expenses from JA Solar's U.S. price. However, in the preliminary calculations for JA Solar, {Commerce} did not deduct the foreign warehousing expense.
>
> For the final determination, {Commerce} should ensure that this expense is deducted from U.S. price. Foreign warehousing is properly deducted from U.S. price as a movement expense where that warehousing is sourced from an unrelated party. {Commerce} has deducted this expense in other non-market economy proceedings. This expense is also regularly deducted from U.S. price in market economy dumping proceedings, and not included as part of indirect selling expenses or G&A. Moreover, there is no record evidence that foreign warehousing expenses are not captured in the SG&A surrogate financial ratio, as alleged by JA Solar. Foreign warehousing sourced from an unaffiliated party is a direct expense on JA Solar's POI U.S. and should be treated as such.

JA Solar's Rebuttal Brief

The following is a verbatim summary of arguments submitted by JA Solar. For further details, *see* JA Solar's Rebuttal Brief at 54-59.

> Petitioner mistakenly contends that JA Solar withheld information by failing to identify sales receiving warehouse services in Vietnam, and suggests that Commerce apply *de facto* partial AFA to JA Solar by assigning warehousing expenses to all JA Solar U.S. sales. In reality, JA Solar provided this exact information in its Supplemental Section C Response, identifying in a separate column in its sales database each sale that incurred warehousing services in Vietnam. Nonetheless, record evidence confirms Commerce's decision in the *Preliminary Determination* to exclude these expenses from JA Solar's normal value calculation because these warehousing expenses are captured within JA Solar's SG&A expenses and are thus properly accounted for within Commerce's calculated surrogate financial ratios. Nonetheless, in the final determination Commerce cannot use the farcical warehousing SV provided by Petitioner, which presumes that JA Solar stores its solar panels in one flat layer on the warehouse floor like floor tiles or puzzle pieces, rather than using all three physical dimensions. Petitioner's laughable assumption results in an SV that overstates the warehousing expense when calculated using volume by more than 75 times by value.

Commerce's Position: The petitioner correctly notes that we inadvertently failed to include the programming language to deduct JA Solar's domestic warehousing expense and apply it to the margin calculations in the *Preliminary Determination*. As the petitioner noted in its case brief, JA Solar reported that it incurred domestic warehousing expenses in Vietnam from an NME provider for U.S. sales during the POI.[315] JA Solar argued that these warehousing expenses are booked withing the selling, general, and administrative expenses of JA Solar Vietnam Company

[315] *See* JA Solar's CQR at page C-25; *see also* JA Solar's 1st SQR at 14-15.

Limited (JAVN),[316] and therefore, captured within the surrogate financial rations determined by Commerce.[317] JA Solar argued further that, "{b}ecause the separate listing of warehousing expenses incurred in Vietnam would represent both double-counting of an expense already captured within SG&A and because Commerce's statute and practice indicate that Commerce would not deem any reported values to reliably reflect fair value, JA Solar is not including this field in its revised U.S. sales database."[318]

An examination of JA Solar's audited financial statements shows that JAVN reported warehouse rent expenses in the notes to the financial statements.[319] In contrast, an examination of the surrogate financial statements used to determine the surrogate financial ratios shows that neither PT. Sat Nusapersada Tbk nor PT. Tera Data Indonusa Tbk recorded any warehousing expenses at all.[320] As a result, JA Solar's claim that deducting domestic warehousing expenses from gross unit price would double count the adjustment is not accurate. Because domestic warehousing expenses are not included in the surrogate financial statements, and hence in the surrogate financial ratios, they are not included in JA Solar's margin calculations at all. Therefore, because JA Solar incurred domestic warehousing expenses, as demonstrated in its audited financial statements, we adjusted the margin calculations for the final determination.[321]

We disagree that JA Solar failed to identify the specific U.S. sales to which domestic warehousing applied. An examination of JA Solar's Section C database shows that it reported a field for warehousing expenses in the domestic market (DWAREHSU), indicating which sales were warehoused. Therefore, we applied domestic warehouse expenses to all of JA Solar's applicable U.S. sales using the SV sourced from Statista and Jakarta Jive, and calculated using JA Solar's publicly-available module size (measured in watts per square meter), as recommended by the petitioner.[322] We declined to base this adjustment on the petitioner's calculations of warehousing costs in Indonesia on a per-square-meter basis, because, as the petitioner noted, the area of JA Solar's solar modules is not known.[323]

Comment 24: Deduction of Rebate Expense from U.S. Price for JA Solar

Petitioner's Case Brief

We note that we requested that interested parties provide a public, executive summary for each issue raised in their case and rebuttal briefs. *See Preliminary Results*, 89 FR at 96221. Therefore, because the executive summary in the Petitioner's Case Brief contains business proprietary information (BPI), we have redacted that content herein. The following is a verbatim

[316] *See* JA Solar's 1st SQR at 15.
[317] *Id.*
[318] *Id.*
[319] *See* JA Solar's Letter, "Section A Response," dated August 9, 2024 (AQR), at Exhibit A-6, "JAVN Audit Report of 2022," Notes to the Financial Statements at Note 6, "Prepaid Expenses," and Exhibit A-7, "JAVN Audit Report of 2023," Notes to the Financial Statements at Note 6, "Prepaid Expenses."
[320] *See, e.g.*, Petitioner's Letter, "Petitioners' Comments in Advance of the Preliminary Determination," dated November 18, 2024 (Petitioner's Pre-Prelim Comments), at Exhibit 1, "PT Satnusa Financial Ratio Calculations," and Exhibit 3, "PT Tera Data Financial Ratio Calculations."
[321] *See* the JA Solar's Final Analysis Memorandum at 4, and Attachment 1.
[322] *See* Petitioner's Case Brief at 68 (citing Petitioner's Final SV Submission at Exhibits 17-18).
[323] *See* Petitioner's Final SV Submission at 10.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

summary of arguments submitted by the petitioner. For further details, *see* the Petitioner's Case Brief at 68-70.

> JA Solar reported that it incurred rebate expenses for certain sales of subject merchandise on U.S. sales during the POI. Specifically, JA Solar stated that it had a "Rebate Rewards Program with…," and JA Solar claims to have reported the rebate expenses, although it claimed that the rebates for neither year had yet been paid. In its response to Commerce's supplemental questionnaire, JA Solar confirmed that it reported rebate expenses incurred on POI sales, although it again stated rebates for 2023 and 2024 had not yet been paid. Accordingly, {Commerce} correctly… However, JA Solar failed to… For the final determination, {Commerce} should ensure that these expenses are accounted for.

JA Solar's Rebuttal Brief

The following is a verbatim summary of arguments submitted by JA Solar. For further details, *see* JA Solar's Rebuttal Brief at 59-60.

> Contrary to Petitioner's assertion, JA Solar complied fully with Commerce's request for information regarding its rebate expenses incurred during and after the POI. Because JA Solar incurred no actual rebate expenses during the POI, Commerce was correct in not deducting any rebate accruals for expenses that have not yet occurred. If Commerce deducts these non-incurred expenses in the final determination, Commerce's calculation must be limited by the evidence on the record regarding the customers and sales subject to rebate agreements.

Commerce's Position: We agree with JA Solar that it complied fully with Commerce's request for information regarding its rebate expenses incurred during and after the POI. Commerce's first supplemental questionnaire noted that "page C-24 of the CQR states that JA Solar had not paid the calculated rebates for 2023 at the time that it filed the Section C response."[324] In addition, we instructed JA Solar to revise its Section C database to include any rebates had been paid since JA Solar filed its Section C response or explain why that is not possible.[325] JA Solar complied with this request.[326] JA Solar explained that it had already reported the calculated rebates for 2023 based on the rebate schedule of the agreement in Exhibit C-1 {*sic*}of the Section C Response.[327] An examination of the Section C response shows that JA Solar provided this agreement in Exhibit C-5 of the CQR, "Rebate Agreement." In its Section C response, JA Solar reported that the rebates for 2023 had not been paid. In its supplemental questionnaire response, JA Solar explained again that the rebates had not been paid, and the rebates for 2024 had not been finalized.[328] As a consequence, JA Solar did not include rebates on its revised Section C database. Nevertheless, JA Solar acknowledges that there were rebates applicable to U.S. sales during the POI,[329] and it explains that "in the event that Commerce determines to

[324] *See* JA Solar's 1st SQR at 11.
[325] *Id.*
[326] *See* JA Solar's 1st SQR at 13.
[327] *Id.*
[328] *Id.*
[329] *See* JA Solar's Rebuttal Brief at 69.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

make any adjustment for accrued - but not paid - rebate expenses, such adjustment must be based on record information."[330]

We agree with the petitioner that we should make an adjustment to U.S. price based on the accrued rebates, consistent with our practice. The petitioner points out that in the investigation of *Fresh Atlantic Salmon from Chile*, Commerce found that the respondent made accruals for anticipated rebates to be paid to one of its customers during the POI.[331] Although Commerce found no evidence that the respondent had paid these to the customer, it determined that the respondent had not reversed the accruals by the time of verification.[332] Therefore, Commerce determined that the company's books indicated that the respondent anticipated that such payments would be made.[333] As a result, Commerce made an adjustment for the amount of the unreported accrued rebates.

The situation in *Fresh Atlantic Salmon from Chile* differs marginally from the instant situation in that, in *Fresh Atlantic Salmon from Chile*, the respondent at issue did not cooperate; here, JA Solar fully cooperated with all requests for information and followed our reporting instructions. Thus, we agree with JA Solar that any adjustment should be based on record information.

JA Solar proposes the rate of rebate specified in the contract with the customer applicable during the sales period, which would be appropriate, but we note that the initial reporting contained the specific amount accrued for these sales and, thus, we have made an adjustment to U.S. price that reflects the rebates reported in its initial sales database for the applicable transactions.[334]

Comment 25: Minor Corrections to the JA Solar's Reported CONNUMs

Petitioner's Case Brief

We note that we requested that interested parties provide a public, executive summary for each issue raised in their case and rebuttal briefs. *See Preliminary Results*, 89 FR at 96221. Therefore, because the executive summary in the Petitioner's Case Brief contains business proprietary information (BPI), we have redacted that content herein. The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* the Petitioner's Case Brief at 49-65.

> At verification, JA Solar revealed, as part of its minor corrections, that it had improperly reported field… for… product codes in its U.S. sales listing, leading to an incorrect control number (CONNUM) being reported for those sales. This correction was not minor, affected a…, and there is…. As a result, {Commerce} should find that this error was not minor, reject JA Solar's correction, and apply partial adverse facts available (AFA) to the affected sales for the final determination.

---

[330] *Id.*
[331] *See* Petitioner's Case Brief at 69 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon From Chile*, 63 FR 31411, 31425 (June 9, 1998)).
[332] *Id.*
[333] *Id.*
[334] *Id.*; *see also* JA Solar's Final Analysis Memorandum at 4.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

> {Commerce} may accept or reject corrective information at verification, but it is not required to do so when the need for finality outweighs the need for accuracy. Minor corrections are defined similarly to ministerial errors, and they are not methodological changes. At verification, {Commerce} will determine whether a revision was "significant" and/or "systemic." In either case, that revision will be rejected. {Commerce} has explained that corrections are not "minor" when they impact a large quantity of sales or have a significant impact on the margin. Further, "the fact that {a} respondent {} did not notice the effect of an omission of such magnitude on their response" can call into question the care it took in preparing its reporting.
>
> Here, JA Solar's mistake is not minor and should be rejected. JA Solar submitted… revisions to its product characteristics and CONNUM. These errors affected… These mistakes were the result of carelessness and inattentiveness, which the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) has consistently ruled is a trigger for the application of AFA.
>
> Because of its failure to cooperate to the best of its ability, {Commerce} should apply partial AFA to the sales with incorrectly reported CONNUMs. As partial AFA, {Commerce} should apply the highest non-aberrational margin to the misreported U.S. sales. The Courts have recognized that {Commerce} may apply such a rate where it is reasonable based on the record and considers the level of culpability for the noncooperating party.

JA Solar's Case Brief

The following is a verbatim summary of arguments submitted by JA Solar. For further details, *see* JA Solar's Case Brief at 38.

> JA Solar submitted minor corrections for both the Vietnam verification and the CEP verification which Commerce accepted. Commerce should either make necessary adjustments to the databases or request JA Solar to do so.

Petitioner's Rebuttal Brief

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* the Petitioner's Rebuttal Brief at 52-54.

> JA Solar argues that {Commerce} accepted its minor corrections at the Vietnam and constructed export price (CEP) verifications of it and its U.S. affiliates. It concludes that {Commerce} should therefore either make the resulting adjustments itself, or allow JA Solar to do so. JA Solar's correction to its control numbers (CONNUMs) is not minor. For the reasons detailed in Petitioner's case brief, the appropriate course of action is to apply a partial AFA to JA Solar's sales affected by the error revealed at verification.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

JA Solar's Rebuttal Brief

The following is a verbatim summary of arguments submitted by JA Solar. For further details, *see* JA Solar's Rebuttal Brief at 8-30.

> Commerce must reject Petitioner's request to reject JA Solar's minor corrections and apply AFA. JA Solar's minor correction reverting one CONNUM field in its second sales database back to the correct designation provided in its first sales database is not new factual information, but merely identification, based on considerable existing record evidence, of the correct CONNUMs for the second, revised sales database. JA Solar's mislabeling of one CONNUM field for certain product codes in the second database is isolated and limited in nature, and has no material effect on the resulting margin calculation, the underlying U.S. transaction-specific sales data for any individual sale or the correctly reported CONNUM-specific FOP data. JA Solar provided correct CONNUMs in its initial sales database, and the product codes on which the CONNUMs are based for its sales remained unchanged in the final sales database. Therefore, JA Solar's minor correction merely correlated product codes with the CONNUMs that were correctly reported in the initial database. Furthermore, the product code itself contains the necessary information to correctly assign the CONNUM for each sale, a solution so simple that Commerce identified and implemented a strategy based on this very premise in the *Preliminary Determination*. Commerce therefore has correctly accepted JA Solar's minor corrections.
>
> Moreover, Commerce must meet specific requirements in order to apply AFA, as Petitioner suggests. Commerce must first find that the necessary information is not on the record of the proceeding, which it is. Commerce must then find that JA Solar withheld information requested by Commerce, failed to provide the information by the applicable deadlines or in the form and manner requested, significantly impeded the proceeding or provided information that cannot be verified, which JA Solar did not.4 If Commerce identified a deficiency in the record (of which there were none), Commerce is also required by the statute to identify the deficiency and provide JA Solar an opportunity to remedy the deficiency. Further, JA Solar acted to the best of its ability and has been a cooperating respondent throughout the investigation. Commerce must, therefore, reject Petitioner's baseless argument for the application of AFA against JA Solar.

Commerce's Position: We disagree that we should determine that the minor corrections that JA Solar reported at verification with respect to its CONNUM classifications were not minor. JA Solar inadvertently misreported one product characteristic, total power output (TOTPOWRU), applicable to certain product codes, and, as a result, the erroneous TOTPOWRU code changed the CONNUM designations in its updated U.S. sales database submitted in its supplemental response and used for the preliminary margin programming.[335] Further, the scope of the error reflected a mis-coding of a single variable which is easily correctable (needing only language to

[335] *See* JA Solar's Letter, "Minor Corrections Prior to Verification," dated December 4, 2024 (JA Solar's Minor Corrections).

recode two digits in the CONNUM string for a number of CONNUMs). Moreover, record evidence demonstrates that the total power output is embedded in the product code.[336] There is no indication of, or reason to suspect that, the misreporting was intentional and/or reflected an attempt to manipulate the preliminary margin or reflected a lack of cooperation thereof. In addition, the correction of the error did not derive from the presentation of new factual information.

A close analysis of the product code (PRODCODU) and CONNUMU designations in JA Solar's first and second databases reveals that JA Solar's minor corrections reverted to the CONNUM designations that JA Solar reported in its initial questionnaire response and Section C database.[337] In other words, JA Solar reported its TOTPOWRU codes properly in its initial questionnaire response, and the error was contained in only the supplemental response.[338] The revised TOTPOWRU designations are correct, as initially reported and identified by the minor corrections, and the petitioner has not challenged their accuracy.[339] In addition, the power designations were correctly reported in both of JA Solar's FOP databases.[340]

Therefore, because these changes represent a nominal change to one product characteristic, and served to re-instate the CONNUMs originally reported in JA Solar's original database, and accurately reflect the TOTPOWRU of the merchandise, we have used JA Solar's revised CONNUMs in the final determination and we have not determined JA Solar's dumping margin on the basis of AFA.[341]

Comment 26: Minor Corrections to the Response Presented at Verification

JA Solar's Case Brief

The following is a verbatim summary of arguments submitted by JA Solar. For further details, *see* JA Solar's Case Brief at 46.

> JA Solar submitted minor corrections for both the Vietnam verification and the CEP verification which Commerce accepted. Commerce should either make necessary adjustments to the databases or request JA Solar to do so.

Jinko's Case Brief

The following is a verbatim summary of arguments submitted by Jinko. For further details, *see* Jinko's Case Brief at 5.

---

[336] *See* JA Solar's AQR at page 29.
[337] *See* JA Solar's Final Analysis Memorandum, at 3 and Attachment 4.
[338] *Id. See also* JA Solar's CQR at Exhibit C-1, "Sales Database."
[339] *See, e.g.,* the Mechanical Diagrams included in Memorandum, "Verification of the Sales and Factors of Production Questionnaire Responses of JA Solar Vietnam Co. Ltd (JAVN) and JA Solar USA, Inc. (JA Solar US) (collectively, JA Solar)," dated February 24, 2025, Verification Exhibits VE-12 through VE-17.
[340] *See* JA Solar's DQR at Exhibit D-1, and JA Solar's SCDQR at Exhibit SD-1.
[341] *See* JA Solar's Final Analysis Memorandum, at 3 and Attachment 1.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

> In the final determination, Commerce should make certain adjustments to the indirect selling expense (ISE) ratio for Jinko, based on the minor corrections accepted at verification. Thus, Commerce should ensure that both the cost of goods sold and warranty expenses are excluded from the Final Determination ISE ratio applied to Jinko's sales.

Petitioner's Rebuttal Brief

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* the Petitioner's Rebuttal Brief at 54-55.

> At the CEP verification, Jinko presented {Commerce} with certain corrections to its calculation of the indirect selling expense (ISE) ratio for its U.S. affiliates, Jinko Solar (U.S.) Industries Inc. (Jinko Solar US Industries) and Jinko Solar (U.S.) Inc. (Jinko Solar US) (collectively, Jinko Solar U.S. Affiliates). If {Commerce}determines that it is appropriate to accept these corrections and modify Jinko's U.S. ISE ratio calculations for the final determination, it must also modify the ISE ratio to include the other expenses corrected at verification are to be included in the ratio.

Commerce's Position: As explained in Comment 25 above, we made the corrections to JA Solar's CONNUM designations as presented in the minor corrections prior to the Vietnam Verification.[342] We also revised the U.S. sales database to remove the observations which included cells that were not produced in Vietnam.[343] Further, we also made changes to the margin calculation for Jinko to implement all of the minor corrections found in the Vietnamese and U.S. verifications, which includes all revisions appropriate to ISE, the label weight change discussed above in Comment 11, as well as limited transaction-specific expense modifications to reported credit expense, inventory carrying costs, rebates and logistics expenses.[344]

Comment 27: Correct Application of the Cohen's *d* Test

JA Solar's Case Brief

The following is a verbatim summary of arguments submitted by JA Solar. For further details, *see* JA Solar's Case Brief at 37.

> The record in this proceeding does not support Commerce's use of the Cohen's *d* test and would not support any method other than the average-to-average method in the final determination.

---

[342] *See* Comment 25 above, "Minor Corrections to the JA Solar's Reported CONNUMs."
[343] *See* JA Solar's Verification Report at 3, and Verification Exhibit CVE - 1, "Minor Correction." *See also* JA Solar Final Analysis Memorandum at 3, and Attachment 1, "SAS Log."
[344] *See* Jinko's Verification Report at 3-8, and Verification Exhibit VE-1, "Minor Corrections," covering the Vietnam verification, and Verification Exhibit CVE-1, "Minor Corrections," covering the CEP verification. *See also* Jinko Final Analysis Memorandum at 8-9, and Attachment 1, "SAS Log."

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

Jinko's Case Brief

The following is a verbatim summary of arguments submitted by Jinko. For further details, *see* Jinko's Case Brief at 62-72.

> In the final determination, Commerce should continue to calculate Jinko's dumping margin by applying the A-to-A method to all sales. In the *Preliminary Determination*, Commerce applied a differential pricing analysis for determining whether application of the A-T method is appropriate, based on the Cohen's *d* test. Commerce should not apply the Cohen's *d* test to Jinko's U.S. sales or otherwise resort to A-T comparison methodology for certain sales, if applicable, in the final determination because:
>
> > (1) 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. It has failed to determine whether the following three preconditions for relying on the Cohen's *d* test exist: (1) are there an adequate number of observations on which the test is performed ("numerosity of data"); (2) is the distribution of the data normal ("normality of distribution"); and (3) are the variances of the test and comparison groups reasonably homogeneous ("homogeneity of variances").
> >
> > (2) 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; and
> >
> > (3) Commerce improperly relied on a simple average methodology to calculate the denominator of its Cohen's *d* analysis. If Commerce continues to rely on the Cohen's *d* test, Commerce 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.
>
> For these reasons, Commerce should not apply the Cohen's *d* test in the final determination and should continue to calculate Jinko's dumping margin by applying the A-to-A method to all sales.

Petitioner's Rebuttal Brief

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* Petitioner's Rebuttal Brief at 57-63.

> {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 with

> respect to the agency's use of the Cohen's *d* test. Further, contrary to Jinko's claims, {Commerce's} use of the Cohen's *d* test in this proceeding is not inconsistent with recent judicial precedent. Jinko 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 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 Court of International Trade (CIT). Finally, {Commerce} maintains significant discretion when conducting complex and technical antidumping duty analyses, and Jinko 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: We disagree with the JA Solar and Jinko on this issue and continue to apply our standard differential pricing methodology.

Specifically, JA Solar claims that, "the record in this proceeding does not support Commerce's use of the Cohen's *d* test and would not support any method other than the average to-average method in the final determination."[345] However, JA Solar did not provide any record evidence to support this claim, or to demonstrate how the methodology distorts the margin. As a result, we did not evaluate JA Solar's arguments any further.

Jinko noted that in the *Preliminary Determination*, Commerce relied on the average-to-average (A-A) calculation methodology because there was no meaningful difference between Jinko's margins calculated based on the A-A methodology and the average-to-transaction (A-T) methodology. Jinko explained that the margins for the final determination may change, and the revised margin may result in a meaningful difference between the A-A and the A-T methodology. If so, Jinko argues that Commerce should continue to rely on the A-A methodology because, according to Jinko, the Cohen's *d* methodology does not conform to law. Jinko argues further that Commerce should not apply the Cohen's *d* test to Jinko's U.S. sales or otherwise resort to A-T comparison methodology if a meaningful difference does exist when calculating Jinko's dumping margin in the final determination. In other words, Jinko only challenged the lawfulness of the Cohen's *d* test should Commerce find a meaningful difference and rely on the A-T methodology for the final results.[346] For this final determination, we continue to find that there is no meaningful difference between the A-A and the A-T methodology and continue to utilize the A-A methodology in calculating Jinko's margin for this final determination. As such, Jinko's arguments regarding the lawfulness of the *Cohen's d* test are moot.

---

[345] *See* JA Solar's Case Brief at 37.

[346] *See* Jinko's Case Brief at 64 ("As discussed below, the Department should not apply the Cohen's *d* test to Jinko's U.S. sales or otherwise resort to A-T comparison methodology *if a meaningful difference does exist when calculating Jinko's dumping margin in the Final Determination.*") (emphasis added); *see also* Jinko's Case Brief at 63 ("In the event that the Department accepts certain Jinko arguments and reduces Jinko's margin for the reasons discussed in this Case Brief, Jinko's revised margin may result in a meaningful difference between A-A and A-T. *If so*, the Department should rely on A-A since its Cohen's *d* methodology does not conform to law.") (emphasis added).

Comment 28: Treatment of Boviet as a Voluntary Respondent

Boviet's Case Brief

The following is a verbatim summary of arguments submitted by Boviet. For further details, see Boviet's Case Brief at 17-21.

> Commerce agreed that Boviet requested to be a voluntary respondent and timely provided all questionnaire responses. {Section 782 of the Act} holds that even when Commerce has limited the number of respondents examined, Commerce shall establish an individual margin for any exporter or producer not initially examined if the company timely files questionnaire responses and additional individual examination would not be "unduly burdensome." While Commerce stated that it was unduly burdensome to review Boviet, Commerce failed to support this decision with substantial evidence. Commerce's examination of the (section 782 (a)(2) of the Act} factors was merely conclusory. Commerce referred to "the volume and complexity of the information" but did not actually explain any particularities of this complexity. Commerce is very familiar with the product, having conducted twelve reviews of the same precise product. Commerce is also very familiar with Boviet, who was a mandatory respondent in the recent antidumping circumvention inquiry of Vietnam under the China Order. While a circumvention investigation is not precisely the same as a normal antidumping investigation, the inquiries substantially overlap and Commerce has already examined Boviet's affiliations, production process, calculated a normal value and sales value, conducted a value and sales reconciliation, and verified Boviet. Thus, Commerce was very familiar with not only this product, but with the very company, Boviet, requesting individual review of the same product already investigated. With respect to the volume of information, Commerce only issued one supplemental questionnaire each to JA Solar and Jinko during this investigation. Further, these two companies were not even investigated in the recent Vietnam circumvention inquiry, so Commerce was less familiar with these companies compared to Boviet and there would have been less need for supplemental questions."
>
> Accordingly, Commerce's explanation as to why it could not examine a voluntary respondent was not supported by substantial evidence. Moreover, essentially, Commerce's interpretation of the voluntary respondent statute rendered it a nullity in this case. Commerce should have, and still should, individually examine Boviet as a voluntary respondent and should have calculated a margin based upon its submissions and lawfully selected surrogate values.

Petitioner's Rebuttal Brief

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* the Petitioner's Rebuttal Brief at 66-68.

> Where {Commerce} limits the number of respondents selected for individual examination, it may select additional voluntary respondents, provided that their examination would not prove unduly burdensome and would not inhibit the timely

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

> completion of the proceeding. An analysis of the four factors used to determine whether the examination of a voluntary respondent would prove unduly burdensome demonstrates that accepting Boviet as a voluntary respondent in this investigation is simply not feasible.

Commerce's Position: We disagree with Boviet that Commerce should have individually examined Boviet as a voluntary respondent and calculated a company-specific margin for it in the final determination. Section 777A(c)(2) of the Act states:

> If it is not practicable to make individual weighted average dumping margin determinations under paragraph (1) because of the large number of exporters or producers involved in the investigation or review, the administering authority **may** determine the weighted average dumping margins for a reasonable number of exporters or producers by limiting its examination to-
>
> > (A) a sample of exporters, producers, or types of products that is statistically valid based on the information available to the administering authority at the time of selection, or
> >
> > (B) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined.

In the respondent selection memorandum, Commerce addressed the number of exporters or producers involved in the investigation and whether it constituted a large number.[347] Commerce first noted that the petition identified 50 exporters or producers of solar cells from Vietnam, and that 12 exporters or producers submitted quantity and value questionnaire responses. Commerce then stated:

> While section 777A(c)(2) of the Act does not define a "large number of exporters or producers," we find that the number of exporters and producers included in the petition constitutes a large number. Accordingly, we conclude that it would not be practicable in this investigation to examine each known exporter and producer individually and determine an individual weighted-average dumping margin for each. Examining all known exporters and producers would require significant resources because it would require Commerce to analyze each company's corporate structure, accounting and selling practices, and production information.[348]

In addition to this investigation, antidumping duty (AD)/Countervailing Duty (CVD) Operations Office III (*i.e.*, the office to which this investigation is assigned) was currently conducting numerous concurrent AD and CVD proceedings.[349] Further, because this is an investigation, verification was mandatory; thus, regardless of any supposed familiarity Commerce may have had with Boviet, Commerce would have to use significant resources and time that it did not have to verify Boviet's responses submitted.[350] The complexity of the above factors, combined with

---

[347] *See* Memorandum, "Respondent Selection," dated July 3, 2024, at 3-4.
[348] *Id.*
[349] *Id.*
[350] *See* section 782(i)(1) of the Act.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

overlapping statutory deadlines of other AD and CVD proceedings, as well as Office III's additional workload, placed a significant constraint on the number of analysts that could be assigned to this case and, thus, limited the number of respondents Commerce could reasonably examine. Moreover, because of the significant workload throughout Enforcement and Compliance, Office III did not anticipate receiving any additional resources to devote to this investigation. In light of the large number of known exporters or producers of solar cells from Vietnam, Commerce's resource constraints and practical considerations, and after careful consideration, we found that it was not practicable to individually examine all known exporters or producers of solar cells from Vietnam as directed by section 777A(c)(1) of the Act.[351]

Commerce then explained that, in this investigation, it was selecting respondents accounting for the largest volume of subject merchandise that could be reasonably examined, and that doing so was consistent with section 777A(c)(2)(B) of the Act.[352] When Commerce limits the number of exporters and producers examined in an investigation, section 782(a) of the Act directs Commerce to establish an individual weighted-average dumping margin for any exporter or producer not initially selected for individual examination that voluntarily submits the information requested from mandatory respondents, if: (1) the information is submitted by the due date specified for exporters or producers initially selected for examination; and (2) the number of exporters and producers subject to the investigation or review is not so large that any additional individual examination of such exporters and producers would be unduly burdensome and inhibit the timely completion of the investigation.[353] In determining whether it would be unduly burdensome to examine a voluntary respondent, Commerce may consider: (1) the complexity of the issues or information presented in the proceeding, including questionnaires and any responses thereto; (2) any prior experience of Commerce in the same, or a similar, proceeding; (3) the total number of investigations or reviews being conducted by Commerce; and (4) such factors relating to the timely completion of those investigations and reviews as Commerce considers appropriate.[354]

Boviet has presented no arguments that Commerce's determination was inconsistent with the statute. Boviet argues that the "product is not at all new to Commerce. Commerce is in the twelfth review of the China Order of the same precise product. Critically, Commerce has reviewed Boviet before."[355] However, the resources needed to calculate a company-specific dumping margin are not dependent simply upon Commerce's familiarity with the product. Calculating a company-specific dumping margin, regardless of the number of reviews done for the product, requires Commerce to fully examine its questionnaire responses, issue (where applicable) supplemental questionnaires and analyze the responses, conduct a verification, prepare a company-specific computer program to calculate a weighted-average dumping margin, and issue associated analysis memoranda. In addition, novel issues may arise that require analysis. In *Welded Pipe from Korea*, a party that submitted a voluntary response argued that Commerce should have calculated a company-specific rate for it; however, Commerce cited to such factors as its basis for determining it did not have the resources to calculate a company

[351] *Id*.
[352] *Id*. Internal citations omitted.
[353] *See* section 782(a)(1)(A) and (B) of the Act.
[354] *See* section 782(a)(2) of the Act.
[355] *See* Boviet's Case Brief at 19.

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

specific margin for the voluntary respondent.[356] Those same factors are present here with respect to Boviet.

With respect to Commerce's current resource constraints, Commerce's examination of the two selected mandatory respondents has required significant resources, as the issues presented in this investigation are complex, and the information submitted by the mandatory respondents has been voluminous. In fact, the supporting documentation for this case, an especially complex one given the numerous FOPs, covered over a thousand pages, resulting in hundreds of pages of briefs identifying over 30 distinct issues for Commerce to address in the final determination. The significant resources involved prohibit the examination of an additional respondent without the imposition of undue burden.

Thus, because Commerce found that it was not practicable to examine more than two respondents in this investigation, and because of the complexity of the issues presented in this investigation and the resources necessary to examine additional companies, we find that individual examination of Boviet would have been unduly burdensome and would inhibit the timely completion of the investigation. For these reasons, we have not calculated an individual weighted-average dumping margin for Boviet.

Comment 29: Critical Circumstances Determination and Methodology for Separate Rate Respondents

VSUN's Case Brief

The following is a verbatim summary of arguments submitted by VSUN. For further details, *see* VSUN's Case Brief at 2-12.

> In the final determination, Commerce must revise its critical circumstances determination, and the methodology used for the non-selected separate-rate entities. In the *Preliminary Determination*, Commerce calculated the volume of shipments for the non-selected separate-rate entities by subtracting the respondent import volumes from the Global Trade Atlas (GTA) data. Commerce, however, was inconsistent in its treatment of the residual calculation of the surge with its concurrent practice in the parallel Thailand investigation. In its Thailand critical circumstances analysis, Commerce rejected using the GTA data reasoning that these data would also include merchandise not subject to the investigation. Similarly, in this case, the GTA data may also include merchandise subject to the AD order on China because of Commerce's affirmative finding of circumvention. Commerce, therefore, must revise its preliminary affirmative critical circumstances determination. If Commerce were to revise its methodology, it would find no increase in volume or value of 15 percent or more for the non-selected separate-rate entities as evidenced by the fact that Commerce reached negative critical circumstances determinations for both mandatory respondents.

[356] *See Large Diameter Welded Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2021-2022*, 88 FR 71826 (October 18, 2023) (*Welded Pipe from Korea*), and accompanying IDM at Comment 7.

Petitioner's Rebuttal Brief

The following is a verbatim summary of arguments submitted by the petitioner. For further details, *see* the Petitioner's Rebuttal Brief at 63-66.

> VSUN alleges that {Commerce} inappropriately found critical circumstances for it and the other separate rate respondents by relying upon Global Trade Atlas data containing non-subject merchandise. VSUN further claims that this approach was rejected by {Commerce} in the companion Thai investigation, and VSUN should therefore be afforded the mandatory respondents' negative critical circumstances determination. However, {Commerce} has a long-standing practice to determine whether imports were massive for the non-individually-examined respondents by using GTA data net of the mandatory respondents' shipment data. Moreover, VSUN's allegation that the GTA data contained non-subject merchandise is untimely. VSUN only now raises this issue in its case brief when it was afforded ample opportunity to raise the issue following Petitioner's allegation of critical circumstances. {Commerce} has routinely rejected such late arguments. If VSUN wanted {Commerce} to rely on an alternative methodology to determine whether critical circumstances existed for VSUN, it could have raised this issue within the time limits for rebuttal information, or even provided its own shipment data to the respondent. VSUN should not be allowed to piggy-back off the mandatory respondents' critical circumstances determination, when it has put forth no effort until now to dispute the methodology and findings, despite being well aware of {Commerce's} practice with respect to this issue.

Commerce's Position: As VSUN correctly notes, the methodology applied in our preliminary analysis for whether a surge of massive imports exists for the separate rate companies was inconsistent with that applied in the similar analysis applied to all other importers in the corresponding investigation in Thailand. We note that this was also inconsistent with that applied in the companion CVD investigation of solar cells from Vietnam. In each of those cases, Commerce did not utilize its "standard" methodology to use country-wide data less respondent's monthly shipments as a proxy for the non-reviewed respondents, but instead disregarded the country-wide data, citing concerns that such data may be distortive because it is inclusive of merchandise found to be subject to the Chinese order on the same merchandise pursuant to Commerce's prior anticircumvention findings, and instead used the combined amount of the respondents' shipments as a proxy for the shipments from non-reviewed respondents. However, in our *Preliminary Determination* we applied the standard methodology using the trade data sourced from GTA and did not consider the impact of the circumvention rulings on the usability of such data. We confirm that this was not a decision made in consideration of any such issues with the data or informed by our actions in the companion case, and we have reexamined the methodology used for the final determination.

We agree with VSUN that it is inappropriate to use the GTA data for HS categories 8541.42 and HS category 8541.43 as we did in the *Preliminary Determination*.[357] HS category 8541.42

[357] *See* Memorandum, "Preliminary Critical Circumstances Analysis Memorandum," dated November 27, 2024, at tab TDA, Ja Solar, Jinko.

contains includes photovoltaic cells not assembled in modules or made up into panels, and has two subcategories of merchandise: (1) Crystalline silicon photovoltaic cells of a kind described in statistical note 10 to this chapter; and (2) Other. HS category 8541.43 contains photovoltaic cells assembled in modules or made up into panels and has two subcategories of merchandise: (1) Crystalline silicon photovoltaic cells of a kind described in statistical note 10 to this chapter; and (2) Other. Statistical Note 10, which applies to both HS numbers, states:

> For the purposes of statistical reporting numbers 8541.42.0010 and 8541.43.0010, the term "crystalline silicon photovoltaic cells" means crystalline silicon photovoltaic cells of a thickness equal to or greater than 20 micrometers, having a p/n junction (or variant thereof) formed by any means, whether or not the cell imported under statistical reporting number 8541.42.0010 (or subassemblies thereof imported under statistical reporting number 8541.43.0010) has undergone other processing, including, but not limited to, cleaning, etching, coating, and/or addition of materials (including, but not limited to, metallization and conductor patterns) to collect and forward the electricity that is generated by the cell. Such cells include photovoltaic cells that contain crystalline silicon in addition to other photovoltaic materials. This includes, but is not limited to, passivated emitter rear contact cells, heterojunction with intrinsic thin-layer cells, and other so-called hybrid cells.

An examination of the products covered by these two categories in consideration of the scope of the investigation, including the considerable list of exclusions of products not intended for coverage under the scope but which are generally classifiable under these subheadings, it is clear that these two HS categories include merchandise that is not covered by this investigation. Further, as noted in the companion CVD and Thailand investigations, Commerce's prior circumvention findings establish that a substantial amount of imports into the United States from Vietnam under these headings may reflect merchandise subject to the Chinese order.[358] It is our practice to disregard country-wide data in such circumstances and instead rely on the sum of shipment information submitted by the respondents for the massive imports analysis with respect to all other or separate rates entities.[359] Thus, the plain facts and the principle of consistency and fairness in applying the same conclusion in consideration of the identical facts compel that we

---

[358] *See, e.g.*, *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination With Final Antidumping Duty Determination*, 89 FR 80866 (October 4, 2024), and accompanying IDM at 8 (citing *Antidumping and Countervailing Duty Orders on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Scope Determination and Final Affirmative Determinations of Circumvention With Respect to Cambodia, Malaysia, Thailand, and Vietnam*, 88 FR 57419 (August 23, 2023)).

[359] *See Common Alloy Aluminum Sheet from India: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 85 FR 49631 (August 14, 2020), and accompanying PDM at 6-7, unchanged in *Common Alloy Aluminum Sheet from India: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 86 FR 13285 (March 8, 2021), and accompanying IDM at 3-4; *see also Citric Acid and Certain Citrate Salts from Columbia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Critical Circumstances Determination Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 791 (January 8, 2018), and accompanying PDM at 10, unchanged in *Citric Acid and Certain Citrate Salts from Columbia: Affirmative Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 83 FR 23002 (June 5, 2018).

disregard any country-wide data as distortive and not use this information in evaluating whether a surge of imports exists for the separate rate entities, consistent with Commerce's determinations otherwise.

Accordingly, we have revised our analysis for the separate-rate companies, as discussed above, and in the corresponding Final Critical Circumstances memorandum and find that critical circumstances do not exist for the separate rates-entities. Specifically, in making our final critical circumstances finding, we analyzed the sum of shipment data submitted by JA Solar and Jinko as a proxy for the experience of the separate-rate respondents.[360] In determining whether imports of subject merchandise were "massive" for the non-individually examined separate-rate companies, we compared import volumes of solar cells during the base and comparison period and did not find a massive surge of imports within the meaning of section 733(e)(1) of the Act.[361]

Finally, we disagree that Commerce should reject VSUN's arguments regarding critical circumstances because it did not raise such issues prior to the case brief.[362] The petitioner cited two instances where parties raised the issue of seasonality for the first time in their case briefs.[363] These examples are not similar to VSUN's comments on Commerce's methodology. VSUN did not raise any new issues or arguments, but rather provided comments on Commerce's methodology for determining critical circumstances in the *Preliminary Determination*,[364] and comparing that methodology with the methodology used in *Solar Cells from Thailand*.[365] Therefore, for the purposes of this final determination, we have not disregarded VSUN's critical circumstances arguments.

---

[360] *See* Memorandum, "Final Critical Circumstances Analysis Memorandum," dated concurrently with this memorandum, at 1-2 and Attachment, at tabs JA Solar and Jinko.
[361] *Id.*
[362] *See* Petitioner's Case Brief at 65-66.
[363] *Id.* at footnote 245 (citing *VSE from China* and *R-125 from China*).
[364] *See* VSUN's Case Brief at 3-8.
[365] *Id.*

Filed By: Laurel Lacivita, Filed Date: 4/21/25 4:32 PM, Submission Status: Approved

VI. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination of this investigation in the *Federal Register* and will notify the ITC of our determination.

☒	☐
Agree	Disagree

X

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