



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-552-826]

Utility Scale Wind Towers from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination and Negative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of utility scale wind towers (wind towers) from the Socialist Republic of Vietnam (Vietnam).

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Davina Friedmann, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0698.

SUPPLEMENTARY INFORMATION:

Background

On December 13, 2020, Commerce published the *Preliminary Determination* of the countervailing duty (CVD) investigation, which aligned the final determination in this CVD investigation with the final determination in the companion antidumping duty (AD) investigation of utility scale wind towers from Vietnam.¹ On February 11, 2020, Commerce published its

¹ See *Utility Scale Wind Towers from the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR

Preliminary Determination of Critical Circumstances in which we found that no critical circumstances exist for CS Wind or for all other producers or exporters for imports of wind towers from Vietnam.²

A summary of the events that occurred since Commerce published the *Preliminary Determination*, as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum, which is hereby adopted by this this notice.³ The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Period of Investigation

The period of investigation is January 1, 2018 through December 31, 2018.

Scope of the Investigation

The merchandise covered by this investigation is utility scale wind towers from Vietnam. For a complete description of the scope of this investigation, *see* Appendix I.

68104 (December 13, 2019) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (Preliminary Decision Memorandum).

² *See Utility Scale Wind Towers from Canada, Indonesia, and the Socialist Republic of Vietnam; Countervailing Duty Investigations: Preliminary Determinations of Critical Circumstances*, 85 FR 7724 (February 11, 2020) (*Preliminary Determination of Critical Circumstances*).

³ *See* Memorandum, “Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Utility Scale Wind Towers from the Socialist Republic of Vietnam,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Scope Comments

As stated in the *Preliminary Determination*, no interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice*.⁴ Accordingly, the scope of the investigation remains the same as it appeared in the *Initiation Notice*. See Appendix I of this notice.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues that parties raised is attached to this notice as Appendix II.

Methodology

Commerce conducted this investigation in accordance with section 701 of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, Commerce determines that there is a subsidy, *i.e.*, a financial contribution by an “authority” that gives rise to a benefit to the recipient, and that the subsidy is specific.⁵ For a full description of the methodology underlying our final determination, *see* the Issues and Decisions Memorandum.

Verification

As provided in section 782(i) of the Act, in February 2020, we conducted verification of the information reported by the mandatory respondent, CS Wind Vietnam Co. Ltd. (CS Wind), for use in Commerce’s final determination. We used standard verification procedures, including

⁴ See *Utility Scale Wind Towers from Canada, Indonesia, and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations*, 84 FR 38216 (August 6, 2019) (*Initiation Notice*).

⁵ See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

examination of relevant accounting records, and original source documents provided by CS Wind.⁶

Changes Since the *Preliminary Determination*

Based on our review and analysis of the comments received from parties and the results of verification, we made certain changes to the subsidy rate calculations for CS Wind. For a discussion of these changes, *see* the Issues and Decision Memorandum.

Final Negative Determination of Critical Circumstances

In accordance with section 703(e)(1) of the Act and 19 CFR 351.206, Commerce preliminarily determined that critical circumstances did not exist with respect to imports of wind towers from Vietnam because section 703(e)(1)(B) of the Act was not met (*i.e.*, U.S. imports did not increase by 15 percent from the base to the comparison period).⁷ Our final determination remains unchanged. Accordingly, pursuant to section 705(a)(2) of the Act, we find that critical circumstances do not exist with respect to imports of wind towers from Vietnam. For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Issues and Decision Memorandum.

All-Others Rate

We continue to assign the countervailable subsidy rate calculated for CS Wind as the all-others rate applicable to all exporters and/or producers not individually examined.⁸

⁶ *See* Commerce Letter, "Countervailing Duty Investigation of Utility Scale Wind Towers from the Socialist Republic of Vietnam," dated March 18, 2020.

⁷ *See Preliminary Determination of Critical Circumstances.*

⁸ *See Preliminary Determination.*

Final Determination

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated an individual rate for CS Wind. We determine the total estimated net countervailable subsidy rate to be:

Producer/Exporter	Subsidy Rate
CS Wind Vietnam Co., Ltd. (a.k.a. CS Wind Tower Co., Ltd.) ⁹	2.84 percent
All Others	2.84 percent

Disclosure

We intend to disclose to parties in this proceeding the calculations performed for this final determination within five days of the date of public announcement of our final determination, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination*, and pursuant to sections 703(d)(1)(B) and (d)(2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of subject merchandise, as described in the scope of the investigation section, that were entered or withdrawn from warehouse, for consumption, on or after December 13, 2019, the date of publication of the *Preliminary Determination* in the *Federal Register*. In accordance with section 703(d) of the Act, we will instruct CBP to discontinue the suspension of liquidation for countervailing duty (CVD) purposes for subject merchandise entered, or withdrawn from warehouse, on or after April 11, 2020 but to continue the suspension of liquidation of all entries from December 13, 2019 through April 10, 2020.

⁹ See Issues and Decision Memorandum at Section III for additional information.

If the U.S. International Trade Commission (the ITC) issues a final affirmative injury determination, we will issue a CVD order, reinstate the suspension of liquidation under section 706(a) of the Act, and require a cash deposit of estimated countervailing duties for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. Because the final determination in this proceeding is affirmative, in accordance with section 705(b) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of wind towers from Vietnam no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that material injury or threat of material injury does exist, Commerce will issue a CVD order directing CBP to assess, upon further instruction by Commerce, countervailing duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the “Continuation of Suspension of Liquidation” section.

Notification Regarding Administrative Protective Orders

In the event the ITC issues a final negative injury determination, this notice serves as the only reminder to parties subject to an APO of their responsibility concerning the destruction of

proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: June 29, 2020.

Jeffrey I. Kessler,
Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation consists of certain wind towers, whether or not tapered, and sections thereof. Certain wind towers support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.*, where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.*, flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with nonsubject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof, unless those components are shipped with the tower sections.

Further, excluded from the scope of the antidumping duty investigations are any products covered by the existing antidumping duty order on utility scale wind towers from the Socialist Republic of Vietnam. *See Utility Scale Wind Towers from the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 78 FR 11150 (February 15, 2013).

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7308.20.0020 or 8502.31.0000. Wind towers of iron or steel are classified under HTSUS 7308.20.0020 when imported separately as a tower or tower section(s). Wind towers may be classified under HTSUS 8502.31.0000 when imported as combination goods with a wind turbine (*i.e.*, accompanying nacelles and/or rotor blades). While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Clarification of Respondent
- IV. Scope of the Investigation
- V. Changes from the Preliminary Determination
- VI. Final Negative Determination of Critical Circumstances
- VII. Discussion of the Issues
 - 1: Unreported Affiliated Supplier
 - 2: Import Duty Exemptions on Raw Materials for Exporting Goods Program
 - 3: Provision of Utilities for LTAR
 - 4: Provision of Electricity for LTAR
 - 5: Land-Use Rights for LTAR
 - 6: Entered Value Adjustment
 - 7: Excessive Indirect Tax Exemptions on Exports
 - 8: Income Tax Preferences Under Chapter V of Decree 24
 - 9: Import Duty Exemptions on Imports of Equipment and Machinery to Create Fixed Assets
 - 10: Non-Verification of the Government of Vietnam
- VIII. Recommendation

[FR Doc. 2020-14528 Filed: 7/2/2020 8:45 am; Publication Date: 7/6/2020]