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DEPARTMENT OF COMMERCE

International Trade Administration

[C-122-868, C-560-834, C-552-826]

Utility Scale Wind Towers from Canada, Indonesia, and the Socialist Republic of Vietnam:
Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Orders

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

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), Commerce is issuing countervailing duty orders on utility scale wind towers (wind towers) from Canada, Indonesia, and the Socialist Republic of Vietnam (Vietnam). In addition, Commerce is amending its final determination with respect to wind towers from Canada to correct ministerial errors.

DATES: Applicable [insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Moses Song at (202) 482-7885 or Tyler Weinhold at (202) 482-1121 (Canada); Alex Wood at (202) 482-1959 (Indonesia); and Davina Friedmann at (202) 482-0698 (Vietnam); AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 705(a), 705(d), and 777(i)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(c), on July 6, 2020, Commerce published its affirmative final determinations that countervailable subsidies are being provided to producers and exporters

of wind towers from Canada, Indonesia, and Vietnam.¹ In the investigations of wind towers from Canada and Indonesia, an interested party to each investigation submitted a timely filed allegation on the respective records that Commerce made certain ministerial errors in the final countervailing duty determinations on wind towers from Canada and Indonesia. Section 705(e) of the Act and 19 CFR 351.224(f) define ministerial errors as errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which Commerce considers ministerial. We reviewed the allegations and determined that we made certain ministerial errors in the final countervailing duty determination on wind towers from Canada, and further determined that we did not make ministerial errors in the final countervailing duty determination on wind towers from Indonesia. *See* “Amendment to the Final Determination” section below for further discussion.

On August 19, 2020, the ITC notified Commerce of its affirmative final determination that pursuant to sections 705(b)(1)(A)(i) and 705(d) of the Act, that an industry in the United States is materially injured by reason of subsidized imports of subject merchandise from Canada, Indonesia, and Vietnam.²

Scope of the Orders

The merchandise covered by these orders is wind towers from Canada, Indonesia, and Vietnam. For a complete description of the scope of these orders, *see* the appendix to this notice.

¹ *See Utility Scale Wind Towers from Canada: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 85 FR 40245 (July 6, 2020) (*Canada Final Determination*); *Utility Scale Wind Towers from Indonesia: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 85 FR 40241 (July 6, 2020) (*Indonesia Final Determination*); and *Utility Scale Wind Towers from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination and Negative Determination of Critical Circumstances*, 85 FR 40229 (July 6, 2020) (*Vietnam Final Determination*).

² *See* ITC’s Letter, “Notification of ITC Final Determinations,” dated August 19, 2020 (ITC Notification Letter).

Amendment to the Final Determination

On July 6, 2020, Marmen Inc., Marmen Énergie Inc., and cross-owned affiliate Gestion Marmen (collectively, Marmen) timely alleged that the *Canada Final Determination* contained certain ministerial errors and requested that Commerce correct such errors.³ On July 15, 2020, the petitioner filed rebuttal comments.⁴

Commerce reviewed the record and on August 5, 2020, agreed that a certain error referenced in Marmen’s allegation constituted a ministerial error within the meaning of section 705(e) of the Act and 19 CFR 351.224(f).⁵ Commerce found that another error alleged in Marmen’s submission did not constitute a ministerial error. Commerce found that it made an error in calculating Marmen’s sales denominator used in the *Canada Final Determination* by inadvertently excluding Marmen’s sales to Marmen Energy Co. (*i.e.*, an affiliate of Marmen).⁶ Pursuant to 19 CFR 351.224(e), Commerce is amending the *Canada Final Determination* to reflect the correction of the ministerial error described above. Based on this correction, the subsidy rate for Marmen decreased from 1.18 percent *ad valorem* to 1.13 percent *ad valorem*.⁷ Because we based the all-others rate on Marmen’s *ad valorem* subsidy rate,⁸ the correction described above also applies to the all-others rate. As a result, the all-others rate determined in the *Canada Final Determination* also decreased from 1.18 percent *ad valorem* to 1.13 percent *ad valorem*.⁹

³ See Marmen’s Letter, “Utility Scale Wind Towers from Canada: Ministerial Error Comments,” dated July 6, 2020.

⁴ The petitioner to these investigations is the Wind Tower Trade Coalition, whose individual members are Arcosa Wind Towers Inc. and Broadwind Towers, Inc. See Petitioner’s Letter, “Utility Scale Wind Towers from Canada: Response to Marmen’s Ministerial Error Allegation,” dated July 15, 2020.

⁵ See Memorandum, “Countervailing Duty Investigation on Utility-Scale Wind Towers from Canada – Allegation of Ministerial Errors in the Final Determination,” dated August 5, 2020 (Ministerial Error Memorandum) at 2-5.

⁶ *Id.* at 5-7.

⁷ *Id.* at 5.

⁸ See *Canada Final Determination*, 85 FR at 40246.

⁹ See Ministerial Error Memorandum.

On July 7, 2020, PT Kenertec Power System (Kenertec) timely alleged that the *Indonesia Final Determination* contained certain ministerial errors and requested that Commerce correct such errors.¹⁰ On July 13, 2020, the petitioner filed rebuttal comments.¹¹ Commerce reviewed the record and on August 7, 2020, determined that Kenertec's allegations did not constitute ministerial errors within the meaning of section 705(e) of the Act and 19 CFR 351.224(f).¹² Accordingly, Commerce is not amending the *Indonesia Final Determination* to reflect the alleged ministerial error.

Countervailing Duty Orders

On August 19, 2020, in accordance with sections 705(b)(1)(A)(i) and 705(d) of the Act, the ITC notified Commerce of its final determination in these investigations, in which it found that an industry in the United States is materially injured by reason of subsidized imports of wind towers from Canada, Indonesia, and Vietnam.¹³ Therefore, in accordance with section 705(c)(2) of the Act, Commerce is issuing these countervailing duty orders. Because the ITC determined that imports of wind towers from Canada, Indonesia, and Vietnam are materially injuring a U.S. industry, unliquidated entries of such merchandise from Canada, Indonesia, and Vietnam, entered or withdrawn from warehouse for consumption, are subject to the assessment of countervailing duties.

Therefore, in accordance with section 706(a) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, countervailing duties for all relevant entries of wind towers from Canada, Indonesia, and

¹⁰ See Kenertec's Letter, "Utility Scale Wind Towers from Indonesia: Ministerial Error Allegation," dated July 7, 2020.

¹¹ See Petitioner's Letter, "Utility Scale Wind Towers from Indonesia: Response to Kenertec's Ministerial Error Comments," dated July 13, 2020.

¹² See Memorandum, "Countervailing Duty Investigation of Utility Scale Wind Towers from Indonesia: Allegations of Ministerial Errors in the Final Determination," dated August 7, 2020 at 3-7.

¹³ See ITC Notification Letter.

Vietnam, which are entered, or withdrawn from warehouse, for consumption on or after December 13, 2019, the date of publication of the *Preliminary Determinations*,¹⁴ but will not include entries occurring after the expiration of the provisional measures period and before the publication of the ITC's final injury determination under section 705(b) of the Act, as further described below.

Critical Circumstances

On July 30, 2020, the ITC found that critical circumstances do not exist with respect to imports of subject merchandise from Indonesia.¹⁵ In light of the ITC's negative critical circumstances determination on imports of wind towers from Indonesia, we will instruct CBP to lift suspension and to refund any cash deposits made to secure the payment of estimated countervailing duties with respect to entries of wind towers from Indonesia, entered or withdrawn from warehouse, for consumption on or after September 14, 2019 (*i.e.*, 90 days prior to the date of publication of the *Indonesia Preliminary Determination*), but before December 13, 2019 (*i.e.*, the date of the publication of the *Indonesia Preliminary Determination*).

Suspension of Liquidation and Cash Deposits

In accordance with section 706 of the Act, Commerce will instruct CBP to reinstitute the suspension of liquidation of wind towers from Canada, Indonesia, and Vietnam, as described in the appendix to this notice, effective on the date of publication of the ITC's notice of final determination in the *Federal Register*, and to assess, upon further instruction by Commerce,

¹⁴ See *Utility Scale Wind Towers from Canada: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 68126 (December 13, 2019) (*Canada Preliminary Determination*); *Utility Scale Wind Towers from Indonesia: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 68109 (December 13, 2019) (*Indonesia Preliminary Determination*); and *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 68104 (December 13, 2019) (*Vietnam Preliminary Determination*) (collectively, *Preliminary Determinations*).

¹⁵ See the ITC's News Release 20-078 (https://www.usitc.gov/press_room/news_release/2020/er0730111614.htm).

pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rates below for the subject merchandise. On or after the date of publication of the ITC's final injury determination in the *Federal Register*, CBP must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the rates noted below. The all-others rate applies to all producers or exporters not specifically listed below.

Canada	
Company	Subsidy Rate (percent)
Marmen Inc., Marmen Énergie Inc., and Gestion Marmen Inc. ¹⁶	1.13
All Others	1.13

Indonesia	
Company	Subsidy Rate (percent)
PT Kenertec Power System ¹⁷	5.90
All Others	5.90

¹⁶ See *Canada Final Determination*, 85 FR at 40246; see also Ministerial Error Memorandum at 5.

¹⁷ See *Indonesia Final Determination*, 85 FR at 40242.

Vietnam	
Company	Subsidy Rate (percent)
CS Wind Vietnam Co., Ltd. (a.k.a. CS Wind Tower Co., Ltd.) ¹⁸	2.84
All Others	2.84

Provisional Measures

Section 703(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months. In the underlying investigations, Commerce published the *Preliminary Determinations* on December 13, 2019. As such, the four-month period beginning on the date of the publication of the *Preliminary Determinations* ended on April 10, 2020. Furthermore, section 707(b) of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination.

Therefore, in accordance with section 703(d) of the Act, we instructed CBP to terminate the suspension of liquidation and to liquidate, without regard to countervailing duties, unliquidated entries of wind towers from Canada, Indonesia, and Vietnam, entered, or withdrawn from warehouse, for consumption, on or after April 11, 2020, the date on which the provisional measures expired, until and through the day preceding the date of publication of the ITC's final injury determination in the *Federal Register*. Suspension of liquidation will resume on the date of publication of the ITC's final determination in the *Federal Register*.

Notification to Interested Parties

This notice constitutes the CVD orders with respect to wind towers from Canada, Indonesia, and Vietnam, pursuant to section 706(a) of the Act. Interested parties can find a list of CVD orders currently in effect at <http://enforcement.trade.gov/stats/iastats1.html>.

¹⁸ See *Vietnam Final Determination*, 85 FR at 40230.

These orders are issued and published in accordance with section 706(a) of the Act and
19 CFR 351.211(b).

Dated: August 20, 2020

/S/ Jeffrey I. Kessler

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

Appendix

Scope of the Orders

The merchandise covered by these orders 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.

Merchandise covered by these orders 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 these orders is dispositive.

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