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**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A-122-867]

**Utility Scale Wind Towers From Canada: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances**

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

**SUMMARY:** The Department of Commerce (Commerce) determines that imports of utility scale wind towers (wind towers) from Canada are being, or are likely to be, sold in the United States at less than fair value (LTFV) for the period of investigation July 1, 2018 through June 30, 2019.

**DATES:** Applicable July 6, 2020.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Heaney, 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) 482-4475.

**SUPPLEMENTARY INFORMATION:**

**Background**

On February 14, 2020, Commerce published in the *Federal Register* the *Preliminary Determination* of sales at LTFV of wind towers from Canada, in which we also postponed the final determination until June 29, 2020.<sup>1</sup> We invited interested parties to comment on the *Preliminary Determination*. 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.<sup>2</sup>

**Scope of the Investigation**

The product covered by this investigation is wind towers from

Canada. For a full description of the scope of this investigation, see the “Scope of the Investigation” in Appendix I of this notice.

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs submitted by parties in this investigation are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is attached to this notice as Appendix II. 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.

**Verification**

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), Commerce normally verifies information relied upon in making its final determination; however, we were unable to conduct verification in this investigation.<sup>3</sup> Pursuant to section 776(a)(2)(D) of the Act, in situations where information has been provided but the information cannot be verified, Commerce will use “facts otherwise available” in reaching the applicable determination. Accordingly, we have relied on facts available in making our final determination.

**Changes Since the Preliminary Determination**

Based on our analysis of the comments received, we have made certain changes to the margin calculation for the respondent. For a discussion of these changes, see the “Margin Calculations” section of the Issues and Decision Memorandum.

**All-Others Rate**

Section 735(c)(5)(A) of the Act provides that the estimated weighted-average dumping margin for all other producers and exporters not individually investigated shall be equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding rates that are zero, *de minimis*, or determined entirely under section 776 of the Act. Marmen Inc., Marmen Énergie Inc., and Marmen Energy Co. (collectively, the Marmen Group) is the only respondent for which Commerce calculated an estimated weighted-average dumping margin that is not zero, *de minimis*, or based entirely on facts otherwise available. Therefore, for purposes of determining the all-others rate, and pursuant to section 735(c)(5)(A) of the Act, we are using the estimated weighted-average dumping margin calculated for the Marmen Group, as referenced in the “Final Determination” section below.

**Final Negative Determination of Critical Circumstances**

In accordance with section 733(e)(1) of the Act and 19 CFR 351.206, we preliminarily determined that critical circumstances did not exist with respect to imports of wind towers from Canada because section 773(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). Our final determination remains unchanged. Accordingly, pursuant to section 735(a)(3) of the Act, we find that critical circumstances do not exist with respect to imports of wind towers from Canada. For a full description of the methodology and results of Commerce’s critical circumstances analysis, see the Issues and Decision Memorandum.

**Final Determination**

The final estimated weighted-average dumping margins are as follows:

Exporter or producer	Weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offset) (percent) <sup>4</sup>
Marmen Inc./Marmen Energie Inc .....	4.94	4.94

<sup>1</sup> See *Utility Scale Wind Towers from Canada: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures*, 85 FR 8562 (February 14, 2020) (*Preliminary Determination*),

and accompanying Preliminary Decision Memorandum.

<sup>2</sup> See Memorandum, “Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Utility Scale Wind Towers from Canada,” dated concurrently with, and hereby

adopted by, this notice (Issues and Decision Memorandum).

<sup>3</sup> See Memorandum, “Antidumping Duty Investigation of Utility Scale Wind Towers from Canada—Cancellation of Verification,” dated April 10, 2020.

Exporter or producer	Weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offset) (percent) <sup>4</sup>
All Others .....	4.94	4.94

**Disclosure**

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

**Continuation of Suspension of Liquidation**

In accordance with section 735(c)(1)(B) of the Act, for this final determination, we will direct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of wind towers, as described in Appendix I of this notice, which are entered, or withdrawn from warehouse, for consumption on or after February 14, 2020, the date of publication in the **Federal Register** of the affirmative *Preliminary Determination*.

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), we will instruct CBP to require a cash deposit for such entries of merchandise equal to the estimated weighted-average dumping margin as follows: (1) The cash deposit rate for the company listed in the table above will be equal to the company-specific estimated weighted-average dumping margin identified for that company in the table; (2) if the exporter is not a company identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

<sup>4</sup> In the companion countervailing duty (CVD) investigation, Commerce calculated a 0.00 percent export subsidy rate for the Marmen Group and for all other producers and exporters. See unpublished **Federal Register** notice titled “Utility Scale Wind Towers from Canada: Final Affirmative Countervailing Duty Determination and Negative Determination of Critical Circumstances,” dated concurrently with this notice, and accompanying Issues and Decision Memorandum. As the final cash deposit rate for estimated antidumping duties for all other exporters and producers is based on the Marmen Group’s final rate, we further find that no export subsidy adjustment is warranted to the all-others’ estimated weighted-average dumping margin.

To determine the cash deposit rate, Commerce normally adjusts the estimated weighted-average dumping margin by the amount of export subsidies determined in a companion CVD proceeding when CVD provisional measures are in effect. Accordingly, where Commerce makes an affirmative determination for export subsidies, Commerce offsets the calculated estimated weighted-average dumping margin by the appropriate rate(s). In this case, we have not found export subsidies for any respondents. Therefore, we are not instructing CBP to collect cash deposits based upon the estimated weighted-average dumping margin adjusted for export subsidies.

**International Trade Commission Notification**

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because Commerce’s final determination is affirmative, in accordance with section 735(b)(2) 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, or sales (or the likelihood of sales) for importation of wind towers from Canada no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping 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**

This notice serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance

with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

**Notification to Interested Parties**

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) 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.

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. Scope of the Investigation
- IV. Margin Calculations
- V. Final Negative Determination of Critical Circumstances
- VI. Adjustment for Countervailed Export Subsidies
- VII. Discussion of the Issues
  - Comment 1: Steel Plate Costs Smoothing
  - Comment 2: Use of Amended Financial Statements
  - Comment 3: Rejection of New Information
  - Comment 4: Average-to-Transaction Comparison Method
  - Comment 5: Non-Verification of Marmen Group's Data
  - Comment 6: Date of Sale
  - Comment 7: The Marmen Group's Sales of Completed Wind Towers or Wind Tower Sections
  - Comment 8: Adverse Facts Available (AFA)
- VIII. Recommendation

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-560-834]

### Utility Scale Wind Towers From Indonesia: Final Affirmative Countervailing Duty Determination and Final Affirmative 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 Indonesia. The period of investigation is January 1, 2018 through December 31, 2018.

**DATES:** Applicable July 6, 2020.

**FOR FURTHER INFORMATION CONTACT:** Alex Wood or Melissa Kinter, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of

Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-1959 or (202) 482-1413, respectively.

### SUPPLEMENTARY INFORMATION:

#### Background

On December 13, 2019, 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 tower from Indonesia.<sup>1</sup>

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, are discussed in the Issues and Decision Memorandum.<sup>2</sup> 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 <http://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/index.html>. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

#### Scope of the Investigation

The product covered by this investigation is wind towers from Indonesia. For a complete description of the scope of the investigation, see Appendix I.

#### Scope Comments

In accordance with the preamble to Commerce's regulations,<sup>3</sup> the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).<sup>4</sup> No interested party commented on the scope of the

<sup>1</sup> See *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) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

<sup>2</sup> See Memorandum, "Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Utility Scale Wind Towers from Indonesia," dated concurrently with, and hereby adopted by this notice (Issues and Decision Memorandum).

<sup>3</sup> See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

<sup>4</sup> See *Utility Scale Wind Towers from Canada, Indonesia, and the Socialist Republic of Vietnam:*

investigation as it appeared in the *Initiation Notice*. Therefore, Commerce has made no changes to the scope of this investigation since the *Preliminary Determination*.

### 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.<sup>5</sup> For a full description of the methodology underlying our final determination, see the Issues and Decision Memorandum.

### Verification and Use of Facts Otherwise Available

Commerce normally verifies information relied upon in making its final determination, as provided in section 782(i) of the Act. In March 2020, we conducted verification of the information submitted by the Government of Indonesia and the mandatory respondent, PT Kenertec Power System (Kenertec), for use in Commerce's final determination. We used standard verification procedures, including an examination of relevant accounting records and original source documents provided by the respondents.<sup>6</sup> For the reasons discussed in the Issues and Decision Memorandum, we concluded verification early.

Pursuant to section 776(a)(2)(D) of the Act, in situations where information has been provided but the information has cannot be verified in accordance with

*Initiation of Countervailing Duty Investigations*, 84 FR 38216 (August 6, 2019) (*Initiation Notice*).

<sup>5</sup> 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.

<sup>6</sup> For discussion of our verification findings, see the following memoranda: Memorandum, "Verification of the Questionnaire Responses of the Government of Indonesia," dated April 1, 2020 and Memorandum, "Verification of PT Kenertec Power System's Questionnaire Responses," dated March 30, 2020; see also Memorandum, "Antidumping and Countervailing Duty Investigations of Utility Scale Wind Towers from Indonesia: Early Conclusion of Verifications," dated March 27, 2020.