



A-122-867  
Investigation  
**Public Document**  
E&C/OVI: PW

February 4, 2020

**MEMORANDUM TO:** Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

**FROM:** James Maeder  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Decision Memorandum for the Preliminary Determination in the  
Less-Than-Fair-Value Investigation of Utility Scale Wind Towers  
from Canada

---

## I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that 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), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

## II. BACKGROUND

On July 9, 2019, Commerce received an antidumping duty (AD) petition covering imports of wind towers from Canada, which was filed in proper form by the Wind Tower Trade Coalition (the petitioner).<sup>1</sup> Commerce initiated this investigation on July 29, 2019.<sup>2</sup>

In the *Initiation Notice*, we stated that we intended to select respondents for Canada based on U.S. Customs and Border Protection (CBP) data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) numbers. On July 22, 2019, we released CBP data on imports of wind towers from Canada under administrative protective order (APO) to all parties with access to information protected by APO.<sup>3</sup> On August 19, 2019, we

---

<sup>1</sup> See Petitioner’s Letter, “Petitions for the Imposition of Antidumping and Countervailing Duties on Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam,” dated July 9, 2019 (Petition).

<sup>2</sup> See *Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations*, 84 FR 37992 (August 5, 2019) (*Initiation Notice*).

<sup>3</sup> See Memorandum, “Utility Scale Wind Towers from Canada: Release of Customs Data from U.S. Customs and Border Protection,” dated July 22, 2019.



selected Marmen Énergie Inc. (Marmen Énergie) and Marmen Inc. as mandatory respondents.<sup>4</sup> Also on August 19, 2019, we issued the initial AD questionnaire to Marmen Énergie and Marmen Inc.<sup>5</sup>

In the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of wind towers to be reported in response to Commerce's initial AD questionnaire.<sup>6</sup> In August 2019, Dongkuk S&C Co., Ltd. (Dongkuk), a Korean producer of wind towers, Marmen Inc., Marmen Énergie, and Marmen Energy Co. (Marmen Energy),<sup>7</sup> and the petitioner submitted comments regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes;<sup>8</sup> these same parties also submitted rebuttal comments.<sup>9</sup>

On August 23, 2019, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of wind towers from Canada.<sup>10</sup>

From September through October 2019, the Marmen Group submitted timely responses to sections A through D of the initial AD questionnaire, *i.e.*, the sections relating to general information, home market sales, U.S. sales, and cost of production (COP)/constructed value (CV), respectively.<sup>11</sup> From October through December 2019, the Marmen Group responded to our supplemental questionnaires.<sup>12</sup>

---

<sup>4</sup> See Memorandum, "Less-Than-Fair-Value Investigation of Utility Scale Wind Towers from Canada: Respondent Selection," dated August 19, 2019 (Respondent Selection Memorandum).

<sup>5</sup> See Commerce's Letter, dated August 19, 2019 (initial AD questionnaire).

<sup>6</sup> See *Initiation Notice*.

<sup>7</sup> Marmen Inc. and Marmen Énergie are collectively hereafter referred to as the Marmen Group. As noted in the "Collapsing and Affiliation" Section, we have preliminarily collapsed Marmen Inc. and Marmen Énergie.

<sup>8</sup> See Dongkuk's Letter, "Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Comments on Product Characteristics and Model Match Methodology," dated August 19, 2019; the Marmen Group's Letter, "Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Product Characteristic Comments," dated August 19, 2019; and Petitioner's Letter, "Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Comments on Product Matching Characteristics," dated August 20, 2019.

<sup>9</sup> See Dongkuk's Letter, "Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Rebuttal Comments on Product Characteristics and Model Match Methodology," dated August 29, 2019; the Marmen Group's Letter, "Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Rebuttal Product Characteristics Comments," dated August 29, 2019; and Petitioner's Letter, "Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Rebuttal Comments on Product Matching Characteristics," dated August 29, 2019.

<sup>10</sup> See *Utility Scale Wind Towers from Canada, Indonesia, Korea, and Vietnam*, 84 FR 45171 (August 28, 2019).

<sup>11</sup> See the Marmen Group's Letters, "Utility Scale Wind Towers from Canada: Section A Response," dated September 13, 2019 (the Marmen Group's AQR); and "Utility Scale Wind Towers from Canada: Sections B, C, and D Response," dated October 11, 2019 (the Marmen Group's BCDQR).

<sup>12</sup> See the Marmen Group's Letters, "Utility Scale Wind Towers from Canada: Supplemental Section D Response," dated December 6, 2019 (the Marmen Group's SDQR); "Utility Scale Wind Towers from Canada: Supplemental Sections A, B, and C Response," dated December 11, 2019 (the Marmen Group's SABCQR); "Utility Scale Wind Towers from Canada: Response to Question 14.g of the Supplemental Section Questionnaire," dated December 13, 2019; and "Utility Scale Wind Towers from Canada: Response to Questions 24 and 29 of the Supplemental Sections A, B, and C Questionnaire," December 13, 2019.

On November 19, 2019, the petitioner requested that the date for the issuance of the preliminary determination in this investigation be extended until 190 days after the date of initiation.<sup>13</sup> Based on the request, and pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), on December 3, 2019, Commerce published in the *Federal Register* a postponement of the preliminary determination by 50 days, until no later than February 4, 2020.<sup>14</sup>

On December 13, 2019, the petitioner filed a critical circumstances allegation.<sup>15</sup> On December 23, 2019, the Marmen Group filed comments on the petitioner's CC Allegation.<sup>16</sup> Between December 2019, and January 2020, the Marmen Group provided requested critical circumstances data.<sup>17</sup>

In January 2020, the petitioners and the Marmen Group requested that Commerce postpone the final determination, and the Marmen Group also requested that provisional measures be extended.<sup>18</sup>

We are conducting this investigation in accordance with section 733(b) of the Act.

### III. PERIOD OF INVESTIGATION

The period of investigation (POI) is July 1, 2018 through June 30, 2019. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was July 2019.<sup>19</sup>

### IV. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,<sup>20</sup> the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, scope.<sup>21</sup> We did not receive comments concerning the scope as it appeared in the *Initiation Notice*. For a full description of the scope of this investigation, *see* this memorandum's accompanying *Federal*

---

<sup>13</sup> See Petitioners' Letter, "Utility Scale Wind Towers from Canada: Request to Postpone Preliminary Determination," dated November 19, 2019.

<sup>14</sup> See *Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 84 FR 66151 (December 3, 2019).

<sup>15</sup> See Petitioner's Letter, "Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Critical Circumstances Allegations," dated December 13, 2019 (CC Allegation).

<sup>16</sup> See the Marmen Group's Letter, "Utility Scale Wind Towers from Canada: Response to Petitioner's "Critical Circumstances" Allegations," dated December 23, 2019.

<sup>17</sup> See, *e.g.*, the Marmen Group's Letter, "Utility Scale Wind Towers from Canada: Response to Quantity and Value Questionnaire," dated December 23, 2019.

<sup>18</sup> See tPetitioner's Letter, "Utility Scale Wind Towers from Canada, Indonesia, Republic of Korea and Socialist Republic of Vietnam: Request to Postpone Final Determination," dated January 17, 2020 (the Petitioner's Postponement Request); the Marmen Group's Letter, "Utility Scale Wind Towers from Canada — Request for Postponement of Final Determination and Provisional Measures Period," dated January 27, 2020 (the Marmen Group's Postponement Request).

<sup>19</sup> See 19 CFR 351.204(b)(1).

<sup>20</sup> See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

<sup>21</sup> See *Initiation Notice*.

*Register notice at Appendix I.*

## **V. COLLAPSING AND AFFILIATION**

### *Legal Framework*

Section 771(33) of the Act provides that the following persons shall be considered to be “affiliated” or “affiliated persons”:

- (A) Members of a family, including brothers and sisters (whether by the whole or half-blood), spouse, ancestors, and lineal descendants;
- (B) Any officer or director of an organization and such organization;
- (C) Partners;
- (D) Employer and employee;
- (E) Any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization;
- (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; or,
- (G) Any person who controls any other person and such other person.

“Person” is defined to include “any interested party as well as any other individual, enterprise, or entity, as appropriate.”<sup>22</sup> The Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreement Act states the following:

The traditional focus on control through stock ownership fails to address adequately modern business arrangements, which often find one firm ‘operationally in a position to exercise restraint or direction’ over another in the absence of an equity relationship. A company may be in a position to exercise restraint or direction, for example, through corporate or family groupings, franchise or joint venture agreements, debt financing, or close supplier relationships in which the supplier or buyer becomes reliant upon the other.<sup>23</sup>

Section 351.102(b)(3) of Commerce’s regulations defines affiliated persons and affiliated parties as having the same meaning as in section 771(33) of the Act. In determining whether control over another person exists, within the meaning of section 771(33) of the Act, Commerce considers the following factors, among others: corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The regulation directs Commerce not to find that control exists on the basis of these factors unless the relationship has “the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.” The regulation also directs Commerce to consider the temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control.

---

<sup>22</sup> See 19 CFR 351.102(b).

<sup>23</sup> See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) at 838.

Section 351.401(f) of Commerce's regulations, which outlines the criteria for treating affiliated producers as a single entity for purposes of AD proceedings, states the following:

- (1) In general. In an antidumping proceeding under this part, the Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production.
- (2) Significant potential for manipulation, in identifying a significant potential for the manipulation of price or production, the factors the Secretary may consider include:

- (i) The level of common ownership;
- (ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and
- (iii) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.<sup>24</sup>

### *Analysis*

The Marmen Group reported that Marmen Inc., Marmen Énergie, and Marmen Energy are all part of the Marmen Group.<sup>25</sup> The Marmen Group companies are family-owned by the Pellerin family, and also include the holding companies Gestion Marmen Inc. and Marmen Canada Inc.<sup>26</sup> Gestion Marmen Inc. directly owns both Marmen Inc. and Marmen Énergie, while Marmen Canada Inc. directly owns Marmen Energy.<sup>27</sup> Gestion Marmen Inc. is the shareholder with voting interests in Marmen Inc. and Marmen Énergie, while Marmen Canada Inc. is the shareholder with voting interests in Marmen Energy.<sup>28</sup> Both Gestion Marmen Inc. and Marmen Canada Inc. are controlled by Patrick Pellerin, Annie Pellerin and Linda Pellerin.<sup>29</sup> Based on the evidence on the record that Marmen Inc., Marmen Énergie, and Marmen Energy are owned by a family group, Commerce preliminarily finds these companies affiliated, pursuant to section 771(33)(A) of the Act. Further, the record shows that Patrick Pellerin, Annie Pellerin and Linda Pellerin ultimately control Marmen Inc., Marmen Énergie, Marmen Energy, Gestion Marmen Inc., and Marmen Canada Inc., and therefore, Commerce also preliminarily finds that these companies are affiliated, pursuant to section 771(33)(F) of the Act.

Further, based on the evidence presented in the Marmen Group's questionnaire responses, we preliminarily find that Marmen Inc. and Marmen Énergie should be treated as a single entity for

---

<sup>24</sup> See 19 CFR 351.401(f).

<sup>25</sup> See the Marmen Group's AQR at 6.

<sup>26</sup> *Id.* at 6. In addition, the Marmen Group stated that "all Marmen Group companies are ultimately owned by members of the Pellerin family." *Id.* at 11.

<sup>27</sup> *Id.* at 7-8.

<sup>28</sup> *Id.* at Exhibit 4.

<sup>29</sup> *Id.*; see also the Marmen Group's SABCQR at 23.

the purposes of this investigation, pursuant to 19 CFR 351.401(f). We find that, because Marmen Inc. and Marmen Énergie are producers of wind towers, these companies have production facilities for similar or identical products that would not require substantial retooling in order to restructure manufacturing priorities, the requirements for treating affiliated parties as a single entity are met within the meaning of 19 CFR 351.401(f)(1).<sup>30</sup> Further, given the level of ownership and intertwining of operations, there exists a significant potential for manipulation of price or production, within the meaning of 19 CFR 351.401(f)(2). Specifically:

- Marmen Inc. is responsible for overall management of Marmen Inc. and Marmen Énergie, which includes finance, accounting, and steel procurement.<sup>31</sup>
- Marmen Inc., and Marmen Énergie share directors. Patrick Pellerin, Annie Pellerin, Linda Pellerin, and Ferdinand Pellerin are directors in these companies.<sup>32</sup>
- Marmen Inc. and Marmen Énergie produce and sell wind towers, and present themselves (along with Marmen Energy) as the Marmen Group to customers.<sup>33</sup>
- In addition to overlapping directors, the Marmen Group stated that these companies coordinate production, sales, and pricing decisions.<sup>34</sup>
- Marmen Inc. and Marmen Énergie routinely engage in intercompany transactions with respect to wind towers.<sup>35</sup>

As such, we have preliminarily collapsed Marmen Inc. and Marmen Énergie as the Marmen Group.

## **VI. PRELIMINARY NEGATIVE DETERMINATION OF CRITICAL CIRCUMSTANCES**

Section 733(e)(1) of the Act provides that Commerce, upon receipt of a timely allegation of critical circumstances, will determine whether there is a reasonable basis to believe or suspect that: (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 (A)(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. In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted 20 days or more before the scheduled date of the preliminary determination, Commerce must issue a preliminary critical circumstances determination no later than the date of the preliminary determination.

The petitioner submitted information alleging that, pursuant to section 733(e)(1) of the Act, and

---

<sup>30</sup> See the Marmen Group’s AQR at 6-7; the Marmen Group’s SABCQR at 23 – 24.

<sup>31</sup> See the Marmen Group’s AQR at 6. “Marmen Inc., Marmen Énergie, and Marmen Energy produce and sell wind towers, and coordinate production, sales, and pricing decisions across their facilities...” See the Marmen Group’s SABCQR at 24.

<sup>32</sup> See the Marmen Group’s AQR at Exhibit 4; the Marmen Group’s SABCQR at 22 - 23.

<sup>33</sup> See the Marmen Group’s AQR at 9; the Marmen Group’s SABCQR at 24.

<sup>34</sup> See the Marmen Group’s AQR at 9.

<sup>35</sup> See the Marmen Group’s SABCQR at 24.

19 CFR 351.206, critical circumstances exist with respect to imports of wind towers from Canada.<sup>36</sup> We preliminarily find that critical circumstances do not exist for Marmen Group or for all-other companies.

### *History of Dumping and Material Injury*

To determine whether there is a history of dumping pursuant to section 733(e)(1)(A)(i) of the Act, Commerce generally considers current or previous AD orders on the subject merchandise from the country in question in the United States and current orders imposed by other countries with regard to imports of the same merchandise.<sup>37</sup> In this case, the current investigation of the subject merchandise marks the first instance that Commerce has examined whether sales of the subject merchandise were made at LTFV in the United States from Canada. Although Commerce previously has not imposed an AD order on the subject merchandise from Canada, the ITC found during the sunset reviews of wind towers from the People's Republic of China and the Socialist Republic of Vietnam that U.S. producers reported increased availability of wind towers from Canada, as well as Indonesia, Korea, Mexico, and Spain.<sup>38</sup> Moreover, in post-hearing briefs at the ITC, the petitioner stated that imports of wind towers from countries such as Canada were having negative effects on U.S. producers, that these imports are gaining market share at the direct expense of U.S. producers, and are taking sales "from U.S. producers and negatively affecting the U.S. industry's performance."<sup>39</sup> In addition, there is a pattern of dumping of similar merchandise by companies that are subject to these investigations. For example, Korean producers were, until very recently, subject to an antidumping duty order covering certain wind towers exported to Australia.<sup>40</sup> Additionally, certain Vietnamese producers are still subject to AD duties on wind towers exported to the United States.<sup>41</sup> Moreover, respondents in these investigations have related producers in other countries, such as CS Wind, which is a company that has its main headquarters in Korea and has a Vietnamese affiliate (currently subject to investigation), a very recently closed Canadian affiliate, and a Chinese affiliate (already subject to antidumping and countervailing duties).<sup>42</sup> This company has

---

<sup>36</sup> See CC Allegation.

<sup>37</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 FR 31970, 31972 (June 5, 2008); and *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China*, 74 FR 2049, 2052 (January 14, 2009).

<sup>38</sup> See CC Allegation at 6 and Exhibit 2, citing *Utility Scale Wind Towers from China and Vietnam*, Inv. Nos. 701-TA-486, 731-TA-1195-1196, USITC Pub. 4888 (April 2019) (Rev.) at II-6 (*Wind Towers ITC Sunset Determination*).

<sup>39</sup> *Id.* at 7 and Exhibit 3, citing Post-hearing Brief of the Wind Tower Trade Coalition, *Utility Scale Wind Towers from China and Vietnam*, Inv. Nos. 701-TA-486 and 731-TA-1195-1196 (Rev.) (March 7, 2019) at Exhibit 1 (Question 2) (Public Version).

<sup>40</sup> *Id.* at 8 and Exhibit 2, citing *Wind Towers ITC Sunset Determination* at IV-8 n.23 (citing <https://www.industry.gov.au/regulations-andstandards/anti-dumping-and-countervailing-system/anti-dumping-commission-current-cases/487>).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 8 and Exhibit 1, citing *Wind Towers ITC Sunset Determination* at VII-3, VII-IS; *Utility Scale Wind Towers from the People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order*, 83 FR 22960, 22961 (May 17, 2018); *Utility Scale Wind Towers from the People's Republic of China: Antidumping Duty Order*, 78 FR 11146, 11148 (February 15, 2013); Petition Vol. I at 12.

been active in many aspects of Title VII trade litigation, and was certainly aware of the likelihood of filing of AD and CVD petitions.<sup>43</sup> Therefore, we preliminarily find a history of injurious dumping of the subject merchandise, pursuant to section 733(e)(1)(A)(i) of the Act.

*Knowledge that Exporters Were Dumping and that There Was Likely to Be Material Injury by Reason of Such Sales*

Because we have found a history of dumping and material injury by reason of dumped wind towers under section 733(e)(1)(A)(i) of the Act, as explained above, it is not necessary to determine whether importers knew, or should have known, that exporters were selling the subject merchandise at less than fair value, pursuant section 733(e)(1)(A)(ii) of the Act.

*Massive Imports of the Subject Merchandise over a Relatively Short Period*

Pursuant to section 733(e)(1)(B) of the Act, as well as 19 CFR 351.206(h), Commerce will not consider imports to be massive unless imports during a relatively short period (comparison period) have increased by at least 15 percent over imports in an immediately preceding period of comparable duration (base period). Commerce normally considers the comparison period to begin on the date that the proceeding began (*i.e.*, the date the petition was filed) and to end at least three months later.<sup>44</sup> Furthermore, Commerce may consider the comparison period to begin at an earlier time if it finds that importers, exporters, or foreign producers had a reason to believe that proceedings were likely before the petition was filed.<sup>45</sup> In addition, Commerce expands the periods as more data are available.

In this investigation, the petitioner has made no allegation that importers, exporters, or foreign producers had a reason to believe that proceedings were likely before the proceeding began, nor is there any record evidence to support such a finding. Therefore, we have relied on the largest possible periods by comparing the period February 2019, through June 2019 (*i.e.*, the base period), with the period July 2019, through November 2019 (*i.e.*, the comparison period) to determine whether imports of subject merchandise were massive. After examining the data provided by the Marmen Group,<sup>46</sup> we preliminarily find that the volume of U.S. imports did not increase by 15 percent from the base to the comparison period.<sup>47</sup> As such, we have preliminarily made a negative critical circumstances determination with respect to the Marmen Group.

For the non-individually investigated companies, we analyzed Global Trade Atlas (GTA) import statistics specific to the subject merchandise, less the mandatory respondent's (*i.e.* the Marmen Group's) reported shipment data, to determine if imports in the comparison period for the subject merchandise were massive. However, this analysis was not possible in this case because the

---

<sup>43</sup> *Id.* at 8.

<sup>44</sup> *See* 19 CFR 351.206(i).

<sup>45</sup> *Id.*

<sup>46</sup> *See, e.g.*, the Marmen Group's Letter, "Utility Scale Wind Towers from Canada: Response to Quantity and Value Questionnaire," dated December 23, 2019.

<sup>47</sup> *See* Memorandum, "Utility Scale Wind Towers from Canada: Critical Circumstances Analysis," dated February 4, 2020.



quantity of shipments reported by the Marmen Group were greater than the quantity of imports recorded in the GTA statistics for HTS number 7308.20.0020. Therefore, the GTA data do not provide a reliable measure of whether imports of covered merchandise were massive in the comparison period and we find the normal method of subtracting the mandatory respondents' data from the GTA data to be an unreliable indicator of the experience of the non-individually examined companies for the purposes of the "massive" determination.<sup>48</sup> Thus, we are basing the finding of massive imports for non-individually examined companies on the shipment data provided by the Marmen Group, the only mandatory respondent. As explained above, we find that the Marmen Group's imports were not massive. Consequently, we also find this to be a reasonable finding to apply to all non-individually examined companies. For the foregoing reasons, we find negative critical circumstances for non-individually examined companies.

## **VII. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES**

In January 2020, pursuant to 19 CFR 351.210(b)(2)(ii) and 19 CFR 351.210(e)(2), the Marmen Group and the petitioner requested that Commerce postpone its final determination, and requested that Commerce extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four month period to a period not to exceed six months.<sup>49</sup> In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because: (1) our preliminary determination is affirmative, (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise,<sup>50</sup> and (3) no compelling reasons for denial exist, we are granting the petitioner's and the Marmen Group's requests, and are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the *Federal Register*. Because the petitioner and the Marmen Group submitted a request to extend the provisional measures, we are extending the provisional measures from four months to a period not to exceed six months. Suspension of liquidation will be extended accordingly.

## **VIII. DISCUSSION OF THE METHODOLOGY**

### Comparisons to Fair Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether the Marmen Group's sales of subject merchandise from Canada to the United States were made at LTFV, Commerce compared the export price (EP) and constructed export price

---

<sup>48</sup> This is consistent with past cases where we had similar facts. *See, e.g., Certain Carbon and Alloy Steel Cut-to-Length Plate from Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 82 FR 16345 (April 4, 2017) and accompanying IDM at section IV; *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 2; and *Stainless Steel Flanges from India: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Critical Circumstance Determination*, 83 FR 40745 (August 16, 2018) and accompanying IDM at Section IV.

<sup>49</sup> *See* the Petitioner's Postponement Request; the Marmen Group's Postponement Request.

<sup>50</sup> *See* Respondent Selection Memorandum.

(CEP) to the normal value (NV), as described in the “Export Price and Constructed Export Price,” and “Normal Value” sections of this memorandum.

#### A) Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs or CEPs, *i.e.*, the average-to-average method, unless the Secretary determines that another method is appropriate in a particular situation. In LTFV investigations, Commerce examines whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales, *i.e.*, the average-to-transaction method, as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In numerous investigations, Commerce has applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.<sup>51</sup> Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce’s additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent’s weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of export prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code, *i.e.*, state, and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POI based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between EP or CEP and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the

---

<sup>51</sup> See, e.g., *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

difference between the mean, *i.e.*, weighted-average price, of a test group and the mean, *i.e.*, weighted-average price, of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region, or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large, *i.e.*, 0.8, threshold.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage, *i.e.*, the Cohen's *d* test and the ratio test, demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative comparison method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.<sup>52</sup>

## B) Results of the Differential Pricing Analysis

For the Marmen Group, based on the results of the differential pricing analysis, Commerce preliminarily finds that 68.29 percent of the value of U.S. sales pass the Cohen's *d* test, and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods.<sup>53</sup> Further, Commerce preliminarily determines that the average-to-average method cannot account for such differences because there is a 25 percent relative change between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, Commerce is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for the Marmen Group.

## IX. DATE OF SALE

In identifying the date of sale of the subject merchandise, Commerce normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business.<sup>54</sup> Additionally, Commerce may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.<sup>55</sup> Furthermore, we have a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.<sup>56</sup>

The Marmen Group reported the commercial invoice date as the date of sale, as requested.<sup>57</sup> The Marmen Group explained that the invoice date is the appropriate date of sale because adjustments to quantity, price, delivery times or other terms of the sale may occur until the

---

<sup>52</sup> The Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods v. United States*, 16–1789 (Fed. Cir., July 12, 2017) recently affirmed much of Commerce's differential pricing methodology. We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

<sup>53</sup> See Memorandum, "Preliminary Determination Calculations for the Marmen Group," dated February 4, 2020 (Preliminary Analysis Memorandum).

<sup>54</sup> See, e.g., *Certain Uncoated Paper from Indonesia: Final Determination of Sales at Less Than Fair Value*, 81 FR 3101 (January 20, 2016).

<sup>55</sup> *Id.*; see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 – 92 (CIT 2001) ("As elaborated by {Commerce} practice, a date other than invoice date 'better reflects' the date when 'material terms of sale' are established if the party shows that the 'material terms of sale' undergo no meaningful change (and are not subject to meaningful change) between the proposed date and the invoice date.").

<sup>56</sup> See, e.g., *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 10670 (March 12, 2018) and accompanying Preliminary Decision Memorandum (PDM) at 6 – 7, unchanged in *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 32629 (July 13, 2018).

<sup>57</sup> See the Marmen Group's AQR at 20.

invoice is finalized.<sup>58</sup> Consistent with 19 CFR 351.401(i), we preliminarily find that the invoice date is the appropriate date of sale for the Marmen Group.

## **X. PRODUCT COMPARISONS**

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondent, the Marmen Group, in Canada during the POI that fit the description in the “Scope of Investigation” section of the accompanying *Federal Register* notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade or CV, as appropriate.

In making product comparisons, we matched foreign like products based on the physical characteristics reported by the Marmen Group in the following order of importance: type (tower or section), weight of tower/section, height of tower/section, total sections, type of paint or coating, metalizing, electrical conduit – bus bars, electrical conduit – power cable, elevators, number of platforms, and other internal components.<sup>59</sup>

## **XI. EXPORT PRICE AND CONSTRUCTED EXPORT PRICE**

For the Marmen Group’s U.S. sales, we used the EP or CEP methodology, as appropriate, in accordance with section 772(b) of the Act. We based the control number, gross unit prices, and quantities for these sales on information on the invoices provided by the Marmen Group.<sup>60</sup> We based the charges and adjustments on the POI average amounts reported for U.S. sales made in the same channel of trade.<sup>61</sup>

We calculated EP and CEP based on packed prices per unit to affiliated and unaffiliated purchasers in the United States. We did not make deductions from the starting price for movement expenses because the Marmen Group reported that all sales, both U.S. and home market, were made on an ex-works basis.<sup>62</sup> In accordance with section 772(d)(1) of the Act, we calculated CEP by deducting selling expenses associated with economic activities occurring in the United States, which include billing adjustments, credit expenses, various discounts and rebates, commissions, direct selling expenses, indirect selling expenses and inventory carrying costs.<sup>63</sup> Additionally, we made an addition to CEP for duty drawback pursuant to section 772(c)(1)(B) of the Act.

---

<sup>58</sup> See the Marmen Group’s SABCQR at 13 – 14 (where the Marmen Group provided a sample purchase order which contained multiple revisions applied over the course of almost six months, which demonstrates that the material terms of sale are not final until issuance of the invoice).

<sup>59</sup> See Commerce’s Letter, “Product Characteristics for the Antidumping Duty Investigation of Utility Scale Wind Towers from Canada,” dated September 17, 2019.

<sup>60</sup> See Preliminary Analysis Memorandum.

<sup>61</sup> *Id.*

<sup>62</sup> See, e.g., the Marmen Group’s BCDQR at B–36 and C–24.

<sup>63</sup> *Id.* at C–41 – C–55.

Finally, we made an adjustment for profit allocated to CEP selling expenses, in accordance with section 772(d)(3) of the Act. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by the Marmen Group and its U.S. affiliate, Marmen Energy, on their sales of the subject merchandise in the United States and the profit associated with those sales.

## **XII. NORMAL VALUE**

### **A) Home Market Viability**

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, *i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales, we normally compare the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate, use a respondent's sales of the foreign like product to a third-country market as the basis for comparison market sales, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

In this investigation, we determined that the aggregate volume of home market sales of the foreign like product for the Marmen Group was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise.<sup>64</sup> Therefore, we used home market sales as the basis for NV for the Marmen Group, in accordance with section 773(a)(1)(B) of the Act.

### **B) Level of Trade**

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).<sup>65</sup> Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.<sup>66</sup> In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market, *i.e.*, the chain of distribution, including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales, *i.e.*, NV based on either home market or third country prices,<sup>67</sup> we consider the

---

<sup>64</sup> See the Marmen Group's AQR at Exhibit 1.

<sup>65</sup> See 19 CFR 351.412(c)(2).

<sup>66</sup> *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010) (*OJ from Brazil*) and accompanying IDM at Comment 7.

<sup>67</sup> Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.<sup>68</sup>

When Commerce is unable to match sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, Commerce may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales to sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability, *i.e.*, no LOT adjustment is possible, Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.<sup>69</sup>

In this investigation, we obtained information from the Marmen Group regarding the marketing stages involved in making reported home market and U.S. sales, including a description of the selling activities performed for each channel of distribution.<sup>70</sup> Our LOT findings are summarized below.

In the home market, the Marmen Group reported that it made sales through one channel of distribution.<sup>71</sup> According to the Marmen Group, it performed the following selling functions for sales to all home market customers: sales support, training services, technical support, logistical services and sales related administrative activities.<sup>72</sup> With respect to the U.S. market, the Marmen Group reported that it made sales in two channels of distribution, *i.e.*, shipments to its U.S. affiliate, Marmen Energy (channel 2), and sales to unaffiliated customers (channel 1).<sup>73</sup> The Marmen Group reported that it performed the following selling functions in the U.S. for channel 1 sales: sales support, training services, technical support, logistical services and sales related administrative activities.<sup>74</sup> The Marmen Group reported that it performed the following selling functions in the U.S. for channel 2 sales: sales support and sales related administrative activities.<sup>75</sup>

We note that the Marmen Group reported nearly identical levels of trade for the home market and U.S. channel 1, except for some differences in technical support. However, the initial questionnaire asked the Marmen Group to: “provide a quantitative analysis showing how the expenses assigned to POI/POR sales made at different claimed levels of trade impact price comparability;” and to “explain how the quantitative analysis ... support the claimed levels of intensity for the selling activities reported in the selling functions chart.”<sup>76</sup> In response, to both of these questions the Marmen Group stated that the available data do not permit it to

---

<sup>68</sup> See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314 – 16 (Fed. Cir. 2001).

<sup>69</sup> See, *e.g.*, *OJ from Brazil* IDM at Comment 7.

<sup>70</sup> See the Marmen Group’s AQR at 13 – 20 and Exhibits 5 & 6.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> See the initial AD questionnaire at 7 & 8.

demonstrate how the two different levels of trade impact price comparability.<sup>77</sup> As such, we find the variance in the reported levels of intensity with respect to technical support to be unsubstantiated and, therefore, find that the home market and U.S. channel 1 are at the same level of trade.

With respect to U.S. channel 2, although the Marmen Group reported a second channel of trade based on instructions in the initial questionnaire, we find there is no *de facto* channel 2 level of trade. As noted above, the Marmen Group consists of three companies, Marmen Inc., Marmen Énergie, and Marmen Energy, and present themselves as the Marmen Group to customers.<sup>78</sup> Marmen Inc. is responsible for overall management of Marmen Inc., Marmen Énergie, and Marmen Energy, which includes finance, accounting, and steel procurement,<sup>79</sup> as well as sales related activities.<sup>80</sup> According to the Marmen Group, “there is only one level of trade” as Marmen Energy is a part of the Marmen Group.<sup>81</sup>

Consequently, the record contains no basis to find that the selling functions performed by the Marmen Group for its home market customers differ significantly from those performed for U.S. sales channel 1, such that they would constitute a different marketing stage. Therefore, we preliminarily determine that sales to the home market during the POI were made at the same LOT as sales to the United States. Because the Marmen Group’s home market LOT is not at a more advanced stage of distribution than its U.S. LOT, we preliminarily determine that a CEP offset is not warranted.

### C) Cost of Production Analysis

In accordance with section 773(b)(2)(A)(ii) of the Act,<sup>82</sup> Commerce requested COP information from the Marmen Group. We examined the Marmen Group’s cost data and preliminarily determined that our quarterly cost methodology is not warranted. Therefore, we are applying our standard methodology of using annual costs based on the Marmen Group’s reported data.

#### 1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated weighted-average COP based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses and interest expenses.

We relied on the data submitted by Marmen except as follows:<sup>83</sup>

---

<sup>77</sup> See the Marmen Group’s AQR at 18 & 19.

<sup>78</sup> See, e.g., the Marmen Group’s AQR at 9.

<sup>79</sup> *Id.* at 6.

<sup>80</sup> *Id.* at 14 (“Marmen Inc. is the only one with a Sales Department staff.”).

<sup>81</sup> *Id.* at 19.

<sup>82</sup> The Trade Preferences Extension Act amended section 773(b)(2)(A) of the Act. See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114 – 27, 129 Stat. 362 (2015) available at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>). See also *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015).

<sup>83</sup> See Memorandum, “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Marmen Inc. and Marmen Energie Inc. (Marmen),” dated February 3, 2020.



- We weight-averaged the reported plate costs across all reported CONNUMs.
- We included all foreign exchange gains and losses in the financial expense ratio calculation.
- We applied the reported general and administrative and financial expense ratios to the total costs of manufacturing exclusive of imputed exempted duties.

## 2. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COPs to the home market sales prices of the foreign like product, in order to determine whether the sales prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of any applicable movement charges, actual direct and indirect selling expenses, and packing expenses.

## 3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: (1) within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: (1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and, (2) based on our comparison of prices to the weighted-average COPs for the POI, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of Marmen's home market sales during the POI were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

## D) Calculation of NV Based on Comparison-Market Prices

We calculated NV based on ex-factory prices to unaffiliated customers. As noted above, we did not make deductions from the starting price for movement expenses, with the exception of freight from plant to warehouse. We also made deductions from the starting price for home market credit expenses and direct selling expenses, pursuant to 773(a)(6)(C) of the Act. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act.

When comparing U.S. sales with home market sales of similar merchandise, we also made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.<sup>84</sup>

### **XIII. CURRENCY CONVERSION**

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415(a), based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

### **XIV. RECOMMENDATION**

We recommend applying the above methodology for this preliminary determination.

☒

\_\_\_\_\_  
Agree

☐

\_\_\_\_\_  
Disagree

2/4/2020

**X** 

Signed by: JEFFREY KESSLER  
Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

---

<sup>84</sup> See *Stainless Steel Bar from France: Final Results of Antidumping Duty Administrative Review*, 70 FR 46482 (August 10, 2005) and accompanying IDM at Comment 8.