UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-122-867
Investigation
Public Document
E&C/OII: MJH

June 29, 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: Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Utility Scale Wind Towers from Canada

---

I. SUMMARY

The Department of Commerce (Commerce) finds 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 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is July 1, 2018 through June 30, 2019.

After analyzing the comments submitted by interested parties, we have made certain changes to the *Preliminary Determination*.[1] We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this LTFV investigation for which we received comments from interested parties:

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 the 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)

[1] *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 (PDM).

II. BACKGROUND

On February 14, 2020, Commerce published the *Preliminary Determination* in this LTFV investigation. On April 10, 2020, Commerce informed interested parties that it would not conduct verification in this investigation.[2]

On April 24, 2020, we received case briefs from the petitioner (*i.e.*, the Wind Tower Trade Coalition) and Marmen Inc., Marmen Energie, Inc., and Marmen Energy Co. (collectively, the Marmen Group).[3] On May 6, 2020, we received rebuttal briefs from the petitioner and the Marmen Group.[4] On May 27 and 28, 2020, we held meetings with counsel for the petitioner and the Marmen Group, respectively, in lieu of a public hearing, on the issues raised in the case and rebuttal briefs.[5]

Based on our analysis of the comments received, we have made changes from our *Preliminary Determination*.

III. SCOPE OF THE INVESTIGATION

For the scope language, *see* the scope in Appendix I of the accompanying *Federal Register* notice.

IV. MARGIN CALCULATIONS

We calculated constructed export price (CEP) and export price (EP), normal value (NV), and cost of production (COP) for the Marmen Group using the methodology stated in the *Preliminary Determination*,[6] except as follows:[7]

1. In our calculation of COP, we revised our recalculation of plate costs. *See* Comment 1, *infra*.[8]

---

[2] *See* Memorandum, "Antidumping Duty Investigation of Utility Scale Wind Towers from Canada—Cancellation of Verification," dated April 10, 2020 (Verification Memorandum).
[3] *See* Petitioner's Letter, "Utility Scale Wind Towers from Canada: Case Brief," dated April 24, 2020 (Petitioner Case Brief); *see also* Marmen Group's Letter, "Utility Scale Wind Towers From Canada: Case Brief," dated April 24, 2020 (Marmen Group Case Brief).
[4] *See* Petitioner's Letter, "Utility Scale Wind Towers from Canada: Rebuttal Brief," dated May 6, 2020 (Petitioner Rebuttal Brief); *see also* Marmen Group's Letter, "Utility Scale Wind Towers From Canada: Rebuttal Brief," dated May 6, 2020 (Marmen Group Rebuttal Brief).
[5] *See* Memorandum, "*Ex Parte* Meeting: Petitioner Case and Rebuttal Brief Issues," dated May 29, 2020; *see also* Memorandum, "*Ex Parte* Meeting: Marmen Group Case and Rebuttal Brief Issues," dated May 29, 2020.
[6] *See* Memorandum, "Analysis for the Preliminary Determination of Utility Scale Wind Towers: Preliminary Margin Calculation for the Marmen Group," dated February 4, 2020; and Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Marmen Inc., and Marmen Energie Inc.," dated February 4, 2020.
[7] *See* Memorandum, "Less-Than-Fair-Value Antidumping Duty Investigation of Utility Scale Wind Towers from Canada: Final Determination Calculations for the Marmen Group," dated concurrently with this memorandum (Marmen Group Final Sales Calculation Memorandum); and Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Marmen Inc., and Marmen Energie," dated concurrently with this memorandum (Marmen Group Final Cost Calculation Memorandum).
[8] *Id.*

2. We revised the Marmen Group's costs of manufacturing (COM) and financial expense rates based on our response to comments 1 and 2.[9]

V. FINAL NEGATIVE DETERMINATION OF CRITICAL CIRCUMSTANCES

On December 13, 2019, the petitioner alleged that critical circumstances exist with regard to Canada under section 773(e)(1) of the Act.[10] In the *Preliminary Determination*, Commerce found that critical circumstances did not exist for the Marmen Group or for all other producers and exporters in this investigation.[11] Although we preliminarily found a history of injurious dumping of the subject merchandise, pursuant to section 733(e)(1)(A)(i) of the Act, we found that the criterion under section 733(e)(1)(B) of the Act – massive imports of the subject merchandise over a relatively short period – was not met, because the volume of U.S. imports did not increase by 15 percent from the base to the comparison period.[12] No party raised the issue of critical circumstances for this final determination.

We continue to find that there is no evidence on the record indicating massive imports of the subject merchandise over a relatively short period.[13] Therefore, we continue to find that critical circumstances do not exist with regard to the Marmen Group.

Likewise, for all other producers or exporters of wind towers from Canada, Commerce finds that the criteria under sections 733(e)(1)(A)(i) and (ii) of the Act have not been met. Accordingly, Commerce determines that critical circumstances do not exist for all other producers or exporters of wind towers from Canada.

VI. ADJUSTMENT FOR COUNTERVAILED EXPORT SUBSIDIES

In an LTFV investigation where there is a concurrent countervailing duty (CVD) investigation, it is Commerce's normal practice to calculate the cash deposit rate for each respondent by adjusting the respondent's estimated weighted-average dumping margin to account for export subsidies, if any, found for each respective respondent in the concurrent CVD investigation. Doing so is in accordance with section 772(c)(1)(C) of the Act, which states that U.S. price shall be increased by "the amount of any countervailing duty imposed on the subject merchandise… to offset an export subsidy."[14]

---

[9] *Id*.
[10] *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.
[11] *See Preliminary Determination* PDM at 6-9.
[12] *Id*.
[13] *See, e.g.*, *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea*, 77 FR 17416 (March 26, 2012).
[14] *See, e.g.*, *Carbazole Violet Pigment 23 from India: Final Results of Antidumping Duty Administrative Review*, 75 FR 38076, 38077 (July 1, 2010), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

Commerce determined in the final determination of the concurrent CVD investigation that the Marmen Group and all other companies did not benefit from export subsidies.[15] Accordingly, if a CVD order is issued, we find that no export subsidy adjustment to the estimated weighted-average dumping margin is warranted to establish the cash deposit rates for the Marmen Group or all other companies.

VII. DISCUSSION OF THE ISSUES

Comment 1: Steel Plate Costs Smoothing

Marmen Group's Arguments:

- Commerce should not continue to smooth plate costs and, instead, should rely on the Marmen Group's reported plate costs, in accordance with Section 773(f)(1)(A) of the Act.
- The Marmen Group's reported plate costs are not significantly different with respect to product control numbers (CONNUMs) for products sharing similar physical characteristics.
- Differences in per-unit plate costs among dissimilar CONNUMs are related to differences in physical characteristics. Wind tower sections of different weight and height tend to have different thicknesses, which effects steel plate costs, because steel mills charge higher plate prices per-ton for larger thicknesses.
- For certain home market sales, the necessary plate was thicker and also included a door panel, which increases the direct material costs for that CONNUM.
- In addition, also directly effecting the comparative per-unit plate cost calculations, the weight reported in the Marmen Group's cost database is the total weight of the section (or tower), including the plate, flanges and other internal components, but excluding the weight of components supplied by the customer free of charge.

Petitioner's Rebuttal:

- Commerce appropriately applied cost smoothing in the *Preliminary Determination*, and Commerce should continue to equalize the Marmen Group's plate costs across all production in its final determination.
- There were significant differences in plate costs between products sold in the U.S. and home markets. Commerce smooths costs for an input when there is an absence of meaningful physical differences between products.
- The Marmen Group admits in its case brief that the grades of steel used for its home market sales and its U.S. sales are roughly equivalent. Differences in reported plate costs were not due to physical characteristics.
- While Commerce should smooth the costs for all of the Marmen Group's plate, in the alternative, Commerce should at least smooth the costs over all home market and U.S.

[15] *See* unpublished *Federal Register* notice titled "Utility Scale Wind Towers from Canada: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances," dated concurrently with this memorandum, and accompanying IDM.

CONNUMs that were produced with standard thickness plate (*i.e.*, exclusive of the CONNUM that includes only base plate).

Commerce's Position: We agree with the petitioner that, to mitigate the significant steel plate cost differences between CONNUMs that are unrelated to the product physical characteristics, we should continue to weight average the reported steel plate costs for all reported CONNUMs, as we did in the *Preliminary Determination*, with one change to exclude from the plate smoothing calculation the CONNUM for the product for which the high thickness plate was used in production.

When Commerce must evaluate a respondent's reported costs, section 773(f)(1)(A) of the Act states that costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise. Accordingly, Commerce will customarily rely on a company's normal books and records if two conditions are met: (1) the books are kept in accordance with the home country's generally accepted accounting principles (GAAP); and (2) the books reasonably reflect the cost to produce and sell the merchandise. In cases where the costs reported according to a company's normal books are unreasonable (*e.g.*, if cost differences among products do not represent differences in physical characteristics), Commerce may revise such costs. Here, the record is clear that the reported costs are derived from the Marmen Group's normal books and records and that those books are in accordance with Canadian GAAP.[16] Hence, the question facing Commerce is whether the reported steel plate costs from the Marmen Group's normal books and records reasonably reflect the cost to produce subject merchandise based on the physical characteristics identified by Commerce.

In this investigation, Commerce identified the physical characteristics that are the most significant in differentiating the costs between products. These are the physical characteristics that define the unique products, *i.e.*, the CONNUMs, for sales comparison purposes and the level of detail within each physical characteristic (*e.g.*, thickness, width, height, *etc*.) that reflects the importance Commerce places on comparing the most similar products in price to price comparisons. Thus, under sections 773(f)(1)(A) and 773(a)(6)(c)(ii) and (iii) of the Act, a respondent's reported costs should reflect meaningful cost differences attributable to these different physical characteristics. This ensures that the product-specific costs we use for the sales-below-costs test, constructed value (CV), and difference-in-merchandise (DIFMER) adjustment accurately reflect the physical characteristics of the products used in Commerce's dumping calculations.

The record evidence indicates that the Marmen Group's steel suppliers do not charge different prices for plates of different grade, thickness, width, or length.[17] The only exception demonstrated on the record is for high thickness range plates (*e.g.*, greater than 50.8 mm in

[16] *See* Marmen Group's December 13, 2019 Response to the Supplemental Section D Questionnaire (Marmen Group SDQR) at 2-4.
[17] *See* Marmen Group's February 28, 2020 Resubmitted Second Supplemental Section D Response at 2 and Exhibit D-2.

thickness for one supplier) for which the supplier charges a surcharge.[18] In one CONNUM, these thickest plates were used to produce a particular base section. Using the physical characteristics as our guidepost, we compared the reported CONNUM-specific plate costs with all of the other CONNUMs and noted that there were significant differences in plate costs. We found a pattern where most of the CONNUMs with the higher plate costs were sold early in the POI, whereas CONNUMs with lower plate costs were sold later in the POI.[19] As record evidence shows that on a per-unit weight basis, there should be little difference in plate costs for the different dimensions and grades used to produce the merchandise under consideration, it appears that the reported differences in costs are based on factors other than differences in the physical characteristics of such products (*i.e.*, timing of production). When faced with such situations, it is Commerce's normal practice to adjust costs to address distortions when such cost differences are attributable to factors beyond differences in the physical characteristics of such products.[20] Therefore, for the final determination, we have continued to weight average the reported plate costs for all reported CONNUMs (with the exception of the one CONNUM that used the thickest range of plate) because the record demonstrates that the reported plate cost differences are due to factors unrelated to the differences in the physical characteristics of such products. The only change from the *Preliminary Determination* is that we are excluding from the plate smoothing calculation the CONNUM that used the high thickness plate, since the record shows that there is a supported difference in cost for the high thickness plate.

While the Marmen Group attributes the differences in plate costs to the weight of internals, which are included in some CONNUMs and not included in others, we disagree, as record evidence does not support this claim. The record shows that the weight of the internals is extremely small and does not, therefore, appear to have much of an impact on the analysis of the costs. *See* Marmen Group Final Cost Calculation Memorandum for proprietary discussion regarding the record evidence.

Comment 2: Use of Amended Financial Statements

Marmen Group's Arguments:

- The independent auditor, Deloitte, restated the financial statements to present Cost of Sales and Exchange Rate Gain/(Loss) correctly and in conformance with Canadian GAAP.
- In order for Commerce to reject the independent auditors' opinion and discredit the financial statements, Commerce would need to have compelling evidence to the contrary.
- Commerce should use the Marmen Group's submitted revised financial expense rates for Marmen Inc. and Marmen Énergie, which reflect amendments to the companies' revised 2018 audited financial statements.

[18] *Id*.
[19] *See* Marmen Group Final Cost Calculation Memorandum at 1.
[20] *See Final Results of Antidumping Duty Administrative Review and New Shipper Review: Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea 2014-2015*, 81 FR 62712 (September 12, 2016), and accompanying IDM at Comment 1; *see also Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 82 FR 49179 (October 24, 2017), and accompanying IDM at Comment 2.

- Commerce should use the restated financial statements to recalculate the total cost of production ratio (MUC ratio) for the Marmen Group's U.S. sales.

No other interested parties commented on this issue.

Commerce's Position: We agree with the Marmen Group and have relied on Marmen Inc. and Marmen Energie's restated audited financial statements for computing the financial expense rates for the final determination. Section 773(f)(1)(A) of the Act states that the COP and CV shall normally be calculated based on the records of the exporter or producer of the merchandise if such records are kept in accordance with the GAAP of the exporting country (or the producing country where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise.

Upon review of the additional information related to the restatement of the financial statements, such as the details of the restatements and the auditors' report, we find that the revised audited financial statements were in accordance with Canadian GAAP. Therefore, because we find that Marmen's reported costs are calculated based on its normal books and records prepared in accordance with Canadian GAAP and we find no record evidence that those costs are unreasonable, we have based the financial expense rates for Marmen Inc. and Marmen Énergie on the restated audited financial statements for the final determination. In addition, the auditor adjustments also impacted the Marmen Group's cost of goods sold (COGS), which resulted in the revised cost reconciliation. Accordingly, we have made adjustments to Marmen Inc. and Marmen Energie's reported COM based on the revised cost reconciliations.[21] Finally, we note that, consistent with the position taken in *Canadian Structural Steel*, we use the MUC ratio only in our EP calculations.[22] Accordingly, in this final determination, we have made no revisions to our CEP calculations based upon the restated audited financial statements of Marmen Inc. and Marmen Energie.

Comment 3: Rejection of New Information

Marmen Group's Arguments:

- In response to the second supplemental section D Questionnaire, the Marmen Group submitted a correction to one line of Marmen Inc.'s cost reconciliation which Commerce rejected as "untimely filed new factual information." Commerce should accept the correction, because doing so does not raise finality concerns, would not be burdensome, is supported by previously submitted record information, and is minor, inasmuch as it does not require any modification to the Marmen Group's reported cost or sales data. The Marmen Group's correction should not have been rejected as untimely filed new factual information, as it was distinguishable as corrective information, which is permitted under 19 CFR 351.301(c).

[21] *See* Marmen Group Final Cost Calculation Memorandum.
[22] *See Certain Fabricated Structural Steel from Canada: Final Determination of Sales at Less Than Fair Value*, 85 FR 5373 (January 30, 2020) (*Structural Steel from Canada*), and accompanying IDM at Comment 3.

- If left uncorrected, Marmen Inc.'s cost reconciliation will falsely show an unreconciled difference, and if Commerce were to increase the reported total COM (TOTCOM) by such difference, this would distort the margin calculation.

No other interested parties commented on this issue.

Commerce's Position: We maintain our rejection of portions of the Marmen Group's submission of its second supplemental section D response on February 7, 2020,[23] which contained unsolicited new factual information pertaining to the cost reconciliation.

The Marmen Group originally reported its COM based on its audited financial statements.[24] However, the Marmen Group's auditor subsequently restated the 2018 audited financial statements (*i.e.*, after the costs were reported to Commerce), which, in effect, shifted some of the expenses, mostly exchange gains and losses, from other categories to the COGS, thus increasing the COGS.[25] Consequently, in the second supplemental D questionnaire Commerce asked the Marmen Group to submit a revised cost reconciliation based on these restated audited financial statements, where the revised reconciliation would start with the revised (increased) audited COGS.[26] Commerce specified that the Marmen Group should show only the changes to the previously submitted cost reconciliation that relate to the auditor's restatements.[27] The instructions in our questionnaire specifically stated that "All responses to this combined section D supplemental questionnaire should be limited to the questions contained herein."[28]

The Marmen Group submitted its revised cost reconciliation which showed that, as a result of the auditor's restatement, Marmen Inc.'s reportable COM would increase. However, the potential increase to the COM was offset by the Marmen Group, which submitted an additional change (reconciling item) to its cost reconciliation which was not related to the auditor's restatement of the audited financial statements.[29] According to the Marmen Group, this new reconciling item represents exchange gains/losses that were incorrectly booked. While not clear from the Marmen Group's insufficient explanation, it appears that these exchange gains/losses were not included in either the original audited financial statements or the restated audited financial statements. In effect, the Marmen Group is stating that its restated audited financial statements need to be restated yet again, however, without the backing of its auditors. The Marmen Group did not explain how, if at all, this correction related to the restated financial statements, or whether it was brought to the auditors' attention, given the fact that the auditors' reclassifications were related to the same cost category as the correction newly discovered by the Marmen Group. Rather, in its response, the Marmen Group simply stated that it "identified certain additional changes unrelated to the financial statement amendments."[30] Commerce rejected this unsolicited information and requested a revised response, accordingly.

---

[23] *See* Marmen Group's February 7, 2020 Response to Second Supplemental Section D Questionnaire (Marmen Group SSDQR).
[24] *See* Marmen Group's October 11, 2019 Response to Section B, C and D Questionnaires.
[25] *See* Marmen Group SDQR at Exhibit D-17.
[26] *See* January 28, 2020 Commerce's Second Supplemental D Questionnaire to Marmen Group at question 2.
[27] *Id*.
[28] *Id*.
[29] *See* Marmen Group Case Brief at 24.
[30] *See* Marmen Group SSDQR at Exhibit D-9.

The Marmen Group's proposed correction was submitted late in the proceeding, was not adequately described, and is not supported by factual information on the record. The Marmen Group alerted us to this claimed error for the first time after the *Preliminary Determination*. The Marmen Group provided a short explanatory statement and a single line in the cost reconciliation.[31] Contrary to the Marmen Group's assertion, it is not as simple as claiming an error occurred in its accounting records and presenting it as a single adjustment line on a single page of a reconciliation document. The Marmen Group's statement that it discovered that the company did not convert certain purchases to Canadian dollars does not explain how such discovery relates to the auditor's reclassifications and how it is reflected in the audited financial statements, which is the starting point of the cost reconciliation.[32] The fact that the Marmen Group purchased wind tower sections from an affiliate in U.S. dollars does not by itself establish that an adjustment is warranted.[33] Further, simply citing to various parts of responses that show the Marmen Group made purchases in U.S. dollars, and that its cost system, which is different than its financial accounting system, recorded a 1:1 exchange rate to Canadian dollars, does not establish that audited financial statements, which were already restated for errors in reporting COGS and foreign exchange gains and losses, are again wrong related to foreign exchange gains/losses and COGS errors.[34] All of these questions remain unanswered because of the untimely nature of the claimed changes. Notification after the *Preliminary Determination* is made too late for us to probe, question, and obtain support for a claimed change that is significant in amount and substance, especially in an investigation. In summary, this change that the Marmen Group presented was not in response to our questions, is not supported by record evidence, was claimed late in the proceeding, and is not information that can be relied upon for the final determination.

Commerce will reject any untimely filed or unsolicited questionnaire response and provide, to the extent practicable, written notice stating the reasons for rejection.[35] Section 351.301(b) of Commerce's regulations requires parties submitting factual information to indicate what type of information is being submitted, so that Commerce may efficiently and quickly identify the factual information and analyze it in accordance with the purpose for which it is being submitted. Commerce rejected the Marmen Group's newly submitted reconciliation item as it was not solicited in our questionnaire and it was not supported, as discussed above.

As a result of the above, we have continued to disregard the Marmen Group's unsolicited cost reconciliation item that we had previously rejected from the record in accordance with 19 CFR 351.301 and 19 CFR 351.302(d). Accordingly, for the final determination, we have adjusted the Marmen Group's reported COM by the unreconciled difference, as submitted in the revised second supplemental D response, and as warranted by the auditor's revision to the financial statements.[36]

---

[31] *Id*.
[32] *See* Marmen Group Case Brief at 23.
[33] *Id.* at 22-23.
[34] *Id*. at 21-27.
[35] *See* 19 CFR 351.302(d).
[36] *See* Marmen Group Final Cost Calculation Memorandum.

Comment 4: Average-to-Transaction Comparison Method

Marmen Group's Arguments:

- Commerce unlawfully employed the average-to-transaction (A-T) comparison method and zeroing in its *Preliminary Determination*. The A-T method has been determined to be inconsistent with Articles 2.4, 2.4.2, and 9.3 of the WTO Antidumping Agreement (AD Agreement) and Article VI.2 of the General Agreement on Tariffs and Trade.[37]
- The Cohen's *d* test utilized in Commerce's differential pricing analysis falsely identified a pattern of "significant" price differences with respect to five U.S. CONNUMs for which the differences in net price (DP_NETPRI) were less than one percent.[38] This less-than-one percent difference in price cannot reasonably be considered significant, especially because the differences in net price arise "solely" because of movement in the duty drawback adjustment (DTYDRAWU) and the imputed cost of credit (CREDITU).[39] This less-than-one percent difference demonstrates consistency in its U.S. pricing, rather than the existence of significant price differences.[40]

Petitioner's Rebuttal:

- In this final determination, Commerce should continue to apply its standard differential pricing methodology.
- *WTO Softwood Lumber from Canada*, a more recent WTO decision than *WTO Large Residential Washers from Korea*, rejected the argument that zeroing under the A-T method is "inconsistent with the WTO Antidumping Agreement."[41]
- The A-T method has been sustained under U.S. law and is permissible under U.S. statute. WTO decisions are without effect under U.S. law "unless and until such a {decision} has been adopted pursuant to the specified statutory scheme."[42] Moreover, in *U.S. Steel*, *Union Steel*, and *JBF* the Court of Appeals for the Federal Circuit (CAFC) sustained zeroing, Commerce's use of zeroing, and the A-T method.[43]

Commerce's Position: We disagree with the Marmen Group. In the *Preliminary Determination,* we adhered to our standard differential pricing analysis.[44] Sections 777A(d)(1)(B)(i) and (ii) of the Act permit Commerce to compare weighted averaged NVs to

[37] *See* Marmen Group Case Brief at 29 (citing Appellate Body Report, United States—Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea WT/DS464/AB/R (September 7, 2016) (*WTO Large Residential Washers from Korea*).
[38] *Id.* at 31.
[39] *Id*.
[40] *Id.* at 3.
[41] *Id.* (citing *Methodology to Software Lumber from Canada*, WTO Doc WT/DS534/R (April 9, 2019) (*WTO Softwood Lumber from Canada*).
[42] *See* Petitioner Rebuttal Brief at 18 (citing *Corus Staal v. Department of Commerce* 395 F. 3d 1343, 1349 (Fed Cir. 2005) (*Corus*)).
[43] *See* Petitioner Rebuttal Brief at 18-19 (citing *U.S. Steel Cmp. v. United States,* 621 F. 3d 1351, 1363 (Fed. Cir. 2010) (*US Steel*); *Union Steel v. United States,* 713 F. 3d 1101, 1109 (Fed. Cir. 2013) (*Union Steel*); and *JBF RAK LLC v. United States,* 790 F. 3d 1358, 1365 (Fed. Cir. 2015) (*JBF*)).
[44] *See Preliminary Determination* PDM at 10-12.

individual U.S. transactions where: (1) "there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time,"[45] and (2) the "administering authority explains why such differences cannot be taken into account" using the average-to-average (A-A) method.[46] As we noted in the *Preliminary Determination*, pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B)(i) of the Act, Commerce's practice is to apply a "differential pricing" analysis which determines whether a pattern of price differences exist.[47] Also, we continue to find use of the A-T method to be warranted because, notwithstanding the experience associated with several U.S. CONNUMs, on an overall basis, 68.29 percent of the Marmen Group's U.S. sales passed the Cohen's *d* test,[48] and the A-A method cannot account for such differences because there is a greater than 25 percent change between the weighted-average dumping margin calculated using the A-A method and the weighted-average dumping margin calculated using the A-T method.[49]

Additionally, we find the Marmen Group's reliance on *WTO Large Residential Washers from Korea* to be misplaced.[50] As the petitioner has noted, the CAFC has held that WTO reports are without effect under U.S. law "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the Uruguay Round Agreements Act (URAA).[51] In this regard, we note that Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.[52] As is clear from the discretionary nature of the scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Commerce's discretion in applying the statute.[53]

Finally, we note that – to date – the United States has fully complied with all adverse panel and Appellate Body reports adopted by the Dispute Settlement Body with regards to Article 2.4.2 of the AD Agreement. With regard to the A-T method, specifically, and an alternative comparison method and the use of zeroing under the second sentence of Article 2.4.2 of the AD Agreement, Commerce has issued no new determination, and the United States has adopted no change to its practice pursuant to the statutory requirements of sections 123 or 129 of the URAA. Based upon the foregoing, we have continued to apply the A-T method to the Marmen Group's sales in this investigation.

[45] *See* Section 777A(d)(1)(B)(i) of the Act.
[46] *See* Section 777A(d)(1)(B)(ii) of the Act.
[47] *See Preliminary Determination* PDM at 10.
[48] *See* Marmen Group Final Sales Calculation Memorandum.
[49] *Id*.
[50] *See* Marmen Group Case Brief at 29 (citing *WTO Large Residential Washers from Korea*).
[51] *See* Petitioner Rebuttal Brief at 18 (citing *Corus*, 395 F. 3d at 1349).
[52] *See, e.g.*, 19 USC Section 3353, 3358 (sections 123 and 129 of the URAA).
[53] *See, e.g.*, 19 USC Section 3538(b)(4) (implementation of WTO Reports is discretionary.)

Comment 5: Non-Verification of the Marmen Group's Data

Marmen Group's Arguments:

- Section 782(i) of the Act stipulates that Commerce "**shall** verify all information relied upon in making…a final determination in an investigation."[54]
- While the COVID-19 global pandemic poses "extraordinary" circumstances, Commerce's decision to cancel verification was unlawful under section 782(i)(1) of the Act.[55]
- Consequently, Commerce should either toll the deadline for the final determination in this investigation until verification can be conducted or conduct verification through non-traditional means.[56]

Petitioner's Rebuttal:

- If Commerce continues to calculate margins for the Marmen Group, verification would not provide an opportunity for the Marmen Group to supply new factual information which would "cast doubt" on Commerce's *Preliminary Determination*.[57]
- In lieu of data from the canceled AD verification, Commerce could use data from Commerce's CVD verification.[58]

Commerce's Position: We disagree with the Marmen Group. In this investigation, we have balanced Commerce's obligation to verify information relied upon in an investigation under section 782(i) of the Act, with Commerce's responsibility to issue timely final determinations pursuant to section 735(a)(2) of the Act.

Section 782(i) stipulates that Commerce shall "verify all information relied upon in making…a final determination in an investigation."[59] However, Commerce's April 10, 2020 Verification Memorandum stated:

> …during the course of this investigation, a Global 4 travel advisory was imposed, preventing Commerce personnel from traveling to conduct verification. Due to this, as well as the impending statutory deadline for the completion of the final determination, we are unable to conduct verification in this case.[60]

For the same reasons discussed in the Verification Memorandum, we continue to find that Commerce is unable to conduct verification of the Marmen Group and still issue the final determination required by section 735(a)(2) of the Act by the deadline of June 29, 2020. We

[54] *See* Marmen Group Case Brief at 32 (citing Section 782(i)(1) of the Act (emphasis the Marmen Group's)).
[55] *Id.* at 4.
[56] *Id*.
[57] *See* Petitioner Rebuttal Brief at 2.
[58] *Id.* at 17.
[59] *See* Marmen Group Case Brief at 32 (citing Section 782(i)(1) of the Act).
[60] *See* Verification Memorandum.

also do not find that the Marmen Group's suggestions that Commerce either toll the deadline for the final determination until verification can be conducted or conduct verification through non-traditional means represent the best course in this investigation. Moreover, we find no evidence suggesting that the Marmen Group was harmed by Commerce's cancellation of verification. Verification is an opportunity for Commerce to confirm the veracity of a respondent's submitted information, and verification would not have provided the Marmen Group the opportunity to submit new factual information to the record of the investigation.[61]

Here, the Marmen Group has provided information requested by Commerce, but Commerce was unable to conduct its verification of the information. Sections 776(a)(1) and (2) of the Act provide that, if necessary information is missing from the record, or if an interested party: (A) withholds information that has been requested by Commerce, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the AD statute, or (D) provides such information but the information cannot be verified, Commerce shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Pursuant to section 776(a)(2)(D) of the Act, in situations where information has been provided but Commerce cannot verify the information, Commerce will use "facts otherwise available" in reaching the applicable determination. Accordingly, because we were unable to proceed to verification in this investigation for reasons beyond our control, we have relied on the information submitted on the record, which we relied on in making our *Preliminary Determination*, as facts available in making our final determination.

Comment 6: Date of Sale

Petitioner's Argument:

- In the *Preliminary Determination*, Commerce relied on invoice date to represent the date of sale. However, in reporting both home market and U.S. sales to Commerce, the Marmen Group withheld information to properly establish the actual date of its home market and U.S. sales. Information in the Marmen Group's Second SABCQR, establishes that the purchase order date in actuality represents the appropriate date of sale in the home market.[62] Information contained in the Marmen Group's Second SABCQR (which was filed subsequent to Commerce's *Preliminary Determination*), establishes that Commerce lacked necessary information to properly analyze the Marmen Group's home market sales activity. Additionally, the Marmen Group misreported its U.S. date of sale. Accordingly, because Commerce lacks the information necessary to accurately calculate margins for the Marmen Group, Commerce must reject the data provided in the Marmen

[61] *See* Petitioner Rebuttal Brief at 2.
[62] *See* Marmen Group's February 6, 2020 Second Supplemental Sections A, B, and C Questionnaire Response (Marmen Group Second SABCQR).

Group's home market and U.S. sales listing[63] and proceed with appraisements based on AFA.

- While Commerce typically uses the earlier of invoice or shipment date as the date of sale, Commerce has previously recognized that, in cases involving large, custom-made merchandise wherein parties engage in formal negotiations and contracting procedures, Commerce will typically use a date of sale other than the invoice date.[64] Moreover, in cases, such as this, that involve large custom-made merchandise, the "burden of proof," in this case, is on the Marmen Group to establish that the invoice date established the essential terms of sale rather than the earlier purchase order date.[65]
- An earlier agreement established "a firm contractual agreement" between the Marmen Group and its Canadian customer. Moreover, no major revisions to the selling price occurred subsequent to this earlier agreement between the Marmen Group and its Canadian customer.[66] Only "minor and isolated" changes to delivery terms occurred subsequent to this agreement,[67] and "a minor subsequent alteration" is insufficient to alter the basic framework of a sales agreement.[68]
- The Marmen Group also misreported its U.S. sale date, as terms of sale in the United States were set well prior to the sale date that Marmen reported.[69] The Marmen Group's letter of intent with its U.S. customer establishes the essential terms of sale.[70] Additionally, no revisions to the price specified from the Marmen Group to its U.S. customer were issued subsequent to the issuance of the U.S. purchase order.[71] As in its reporting of home market sales, the Marmen Group's reporting of its U.S. database constitutes a deficiency which cannot be remedied with information that is currently on the record.

Marmen Group's Rebuttal:

- The invoice date represents the proper date of sale in both the home and U.S. markets. Section 351.401(i) of Commerce's regulations establishes that Commerce will "normally" use the invoice date as the date of sale.[72] Moreover, Commerce's practice is to use the invoice date where "a respondent is able to demonstrate changes in the material

[63] *See* Marmen Group's Letter, "Utility Scale Wind Towers from Canada: Section A Response," dated September 13, 2019 (Marmen Group AQR); Marmen Group's Letter, "Utility Scale Wind Towers from Canada: Sections B, C, and D Response," dated October 11, 2019 (Marmen Group BCDQR); and Marmen Group's Letter, "Utility Scale Wind Towers from Canada: Supplemental Section D Response," dated December 6, 2019 (Marmen Group First SDQR).
[64] *See* Petitioner Case Brief at 14-15 (citing *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27349 (May 19, 1997); *Large Power Transformers from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 77 FR 40852 (July 11, 2012) (*Large Power Transformers from Korea*), and accompanying IDM at Comment 1).
[65] *Id.* at 16.
[66] *Id.* at 12.
[67] *Id*. at 34.
[68] *Id*. at 35 (citing *Certain Fabricated Structural Steel from Mexico: Final Determination of Sales at Less Than Fair Value* 85 FR 5390 (January 30, 2020), and accompanying IDM at Comment 1).
[69] *Id.* at 35-38.
[70] *Id.* at 35-36.
[71] *Id.* at 38.
[72] *See* Marmen Group Rebuttal Brief at 4 (citing 19 CFR 351.401(i)).

terms of sale between the initial agreement (*e.g.*, contract, purchase order) and the date on which the invoice is issued to the customer."[73]

- The petitioner has failed to establish that the purchase order establishes the date of sale for Marmen Group's home market transactions. Wind towers are "components used in the production of large-scale capital equipment" (*i.e.*, wind turbines),[74] and factors which govern large capital equipment cases are not at issue here.
- The Marmen Group provided examples of post-purchase order changes in both the home market and United States,[75] which were "material" changes.[76] Finally, with regards to its U.S. sales, the Marmen Group contends that its U.S. customer amended the original purchase order five times.[77] Based on the foregoing, the Marmen Group concludes that the invoice date properly represents the date of sale for both its home market and U.S transactions.

Commerce's Position: We disagree with the petitioner. In reporting invoice date as both the home market and U.S. sale date, the Marmen Group adhered to the instructions set forth in both our AD Questionnaire and our Model Match Questionnaire.[78] From our review of the Marmen's Group AQR, the Marmen Group's BCDQR, and the Marmen Group SABCQR, we find no evidence suggesting that Marmen withheld information concerning the date of sale in either Canada or the United States.[79] In each of the submissions referenced above, the Marmen Group fully responded to the questions which Commerce posed to the company. Moreover, we find no evidence to suggest that the Marmen Group withheld mention of the agreement in question in the sales reporting set forth in Marmen's Group AQR, the Marmen Group's BCDQR, or the Marmen Group SDQR. The Marmen Group described the agreement in question in the Marmen Group SABCQR.[80] Moreover, we note that Commerce first inquired about the agreement in question in our Second Supplemental Questionnaire.[81] We, thus, find the description of this agreement provided by the Marmen Group in its Second ABCQR to represent a timely response from the Marmen Group.[82]

We further find that the invoice date reasonably represents the date of sale for both the Marmen Group's home market and U.S. sales. In this regard, 19 CFR 351.401(i) establishes that Commerce normally bases its sales on the invoice date.[83] Moreover, Commerce's practice is to use invoice date where the respondent is able to demonstrate that changes occur between the

---

[73] *See* Marmen Group Rebuttal Brief at 4 (citing *Welded Line Pipe from Korea: Final Results of Antidumping Duty Administrative Review*, 83 FR 33919 (July 18, 2018) (*Welded Line Pipe*), and accompanying IDM at Comment 7).
[74] *See* Marmen Group Rebuttal Brief at 6.
[75] *Id.* at 25 (citing Marmen Group First SABCQR at FSQ-12, FSQ-14, and FSQ-6 (home market sales) and FSQ-7 (U.S. sales)).
[76] *Id.* at 16.
[77] *Id.* at 19.
[78] *See* Commerce's Initial Questionnaire issued to the Marmen Group, dated August 19, 2019 (Antidumping Questionnaire) at B-2 and C-2; *see also* Commerce's Model Match Letter to Marmen, dated September 17, 2019 (Model Match Questionnaire).
[79] *See* Marmen Group AQR; Marmen Group BCDQR; and Marmen Group First SABCQR.
[80] *See* Marmen Group Rebuttal Brief at 10; and Marmen Group SABCQR at Exhibits FSQ-1 and FSQ-2.
[81] *See* Commerce's Letter, "Antidumping Duty Investigation of Utility Scale Wind Towers from Canada: Supplemental Questionnaire," dated January 22, 2020 (Second Supplemental Questionnaire).
[82] *See* Marmen Group Second SABCQR.
[83] *See* 19 CFR 351.401.

purchase order and the invoice date.[84] Additionally, while the petitioner has attempted to cast the changes between the order agreement and the invoice date as "minor and isolated,"[85] we note that Commerce did not ask the Marmen Group to detail numerous changes between the purchase order and the respective home market or U.S. sale date.[86] In the First Supplemental, we asked the Marmen Group to provide:

> a) …{for the home market} one example in which the terms of sale changed between the purchase order and the invoice date. Provide complete sales documentation which documents the changes in the terms of sale;
> b) …{for the U.S. market} one example in which the terms of sale changed between the purchase order and the invoice date. Provide complete sales documentation which documents the changes in the terms of sale.[87]

The Marmen Group responded to Commerce's request in the Marmen Group's First SABCQR, in which it delineated one such change in both the home market and the U.S. market.[88] Finally, we note that in this investigation, we have based our selection of the home market and U.S. sale date according to the sales information that is on the record of this proceeding. While the petitioner has asserted that wind towers are large scale capital equipment,[89] we note that, unlike the "capital intensive" cases cited by the petitioner (*e.g.*, *Large Power Transformers from Korea*),[90] the Marmen Group reported that it provided no sales support services such as designing and engineering, installation, or post maintenance repair.[91]

Finally, we note that use of the invoice date to represent the home market date of sale is consistent with Commerce's determination in *Wind Towers from Vietnam*, in which Commerce noted that "{the respondent}…provided evidence that the terms of purchase orders can and do change up and until issuance of the commercial invoice" and relied on invoice date as the date of sale.[92] We find a similar situation exists here. As previously indicated, the Marmen Group has provided evidence that changes to the material terms of sale occurred between the purchase order and the invoice date in both the home and U.S. markets. Based on the foregoing, we have continued to use the invoice date reported by the Marmen Group to represent the respective date of sale in both the home market and the United States.

---

[84] *See, e.g., Welded Line Pipe* IDM at Comment 7.
[85] *See* Petitioner Case Brief at 34.
[86] *See* Commerce's Letter, "Antidumping Duty Investigation on Utility Scale Wind Towers from Canada: Supplemental Questionnaire for Marmen," dated November 20, 2019.
[87] *Id.* at 5.
[88] *See* Marmen Group First SABCQR at Exhibits FSQ-6, FSQ-12, and FSQ-13 (home market); FSQ-7, FSQ-13, FSQ-14 (United States).
[89] *See* Petitioner Case Brief at 21.
[90] *Id.* at 16.
[91] *See* Marmen Group Rebuttal Brief at 8.
[92] *See Utility Scale Wind Towers from the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 76 FR 75984 (December 26, 2012) (*Wind Towers from Vietnam*), and accompanying IDM at Comment 12.

Comment 7: The Marmen Group's Sales of Completed Wind Towers or Wind Tower Sections

Petitioner's Argument:

- The Marmen Group has mischaracterized the merchandise that it sold to its customer in Canada. The purchase agreement described in the Marmen Group's Second SABCQR establishes that the Marmen Group sold completed wind towers in Canada, rather than wind tower sections.[93]
- The negotiations between the Marmen Group and its Canadian customer involved sales of completed wind towers, rather than of wind tower sections. Sales of completed wind towers in Canada would not match U.S. sales, and the Marmen Group "misled" Commerce and reported sales of sections in Canada.[94]
- Commerce should disregard the sale of sections which the Marmen Group reported in the home market and proceed with appraisements based on AFA.[95]

Marmen Group's Rebuttal:

- The Marmen Group "sold wind towers to Vestas, a turbine OEM in the home market" and "issued one invoice per section in accordance with Vestas' instruction."[96]
- Commerce's long-standing practice is to require that sales be reported on an invoice-line-item basis."[97] The Marmen Group reported its home market sales listing pursuant to the instructions that the Marmen Group received in Commerce's AD Questionnaire.[98]

Commerce's Position: We disagree with the petitioner. We find that, in reporting its sales of wind tower sections in Canada, the Marmen Group adhered to the instructions set forth in both our AD Questionnaire and our Model Match Questionnaire.[99] Also, and as previously noted in our response to Comment 6, from our review of the Marmen Group's AQR, the Marmen Group's ABCQR, and the Marmen Group's SABCQR, we find no evidence suggesting that the Marmen Group withheld information concerning its sales and invoicing of wind tower sections in Canada.[100] In its AQR, the Marmen Group indicated that Marmen Inc., and Marmen Energie produced and "sold wind-towers to Vestas, a turbine OEM, in the home market" and issued one invoice per section, in accordance with Vestas's instruction."[101] Because the Marmen Group's home market customer instructed the Marmen Group to issue invoices by section, the sales listing that the Marmen Group provided in its home market was consistent with the information

[93] *See* Petitioner Case Brief at 41 (citing Marmen Group Second SABCQR at FSQ-11 and FSQ-12).
[94] *See* Petitioner Case Brief at 40.
[95] *Id.* at 1.
[96] *See* Marmen Group Rebuttal Brief at 21 (citing Marmen Group AQR at A-21-A-22).
[97] *See* Marmen Rebuttal Brief at 21 (citing *Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture from the People's Republic of China* 69 FR 67313 (November 17, 2004) (*Wooden Bedroom Furniture*), and accompanying IDM at Comment 52).
[98] *See* Marmen Rebuttal Brief at 22 (citing AD Questionnaire at B-2 and C-2).
[99] *See* AD Questionnaire; and Model Match Questionnaire.
[100] *See* Marmen Group AQR; Marmen Group BCDQR; and Marmen Group First SABCQR.
[101] *See* Marmen Group Rebuttal Brief at 21 (citing Marmen Group AQR at A-21 and A-22).

that the Marmen Group provided in its section A response, and which Commerce requested in its AD Questionnaire and Model Match Questionnaire.[102]

As the Marmen Group has also argued, Commerce's general practice is to require the reporting of sales on an invoice-line-item basis. For example in *Wooden Bedroom Furniture*, we indicated that "{Commerce}'s general practice and clear instructions in this investigation were that respondents were to base control numbers on products and sets as they were listed and sold on respondents actual invoices."[103] Here, as also set forth in *Wooden Bedroom Furniture*, the Marmen Group's reporting of the invoice issued with each section that the Marmen Group sold to its home market customer, constituted a unique sales record that corresponded to the merchandise that the Marmen Group actually invoiced to its customer.[104]

Finally, we disagree with the petitioner's assertion that information concerning the supply agreement discussed in the Marmen Group's Second SABCQR undermines the credibility of the information that the Marmen Group provided in the Marmen Group AQR, the Marmen Group BCQR, and the Marmen Group SABCQR.[105] In reporting home market sales by section, the Marmen Group provided information which: (1) was consistent with the description of sales process provided in both the Marmen Group AQR and the Marmen Group BCDQR,[106] and (2) comprised a unique sales record for each line item on the invoice.[107] Based on the foregoing, we have continued to use the information provided by the Marmen Group in its home market sales listing in this final determination.

Comment 8: Adverse Facts Available

Petitioner's Argument:

- The Marmen Group's misreporting of home market and U.S. sales, and its mischaracterization of its sales in Canada, compels Commerce to apply total AFA to the Marmen Group, pursuant to sections 776(a)(1)(2) and 782(c)(1)(e) of the Act.
- The Marmen Group AQR, the Marmen Group BCDQR, and the Marmen Group First SABCQR withheld critical information concerning the Marmen Group's sales in both the home market and the United States.[108]
- The Marmen Group only disclosed in its Second SABCQR information from a supply agreement which establishes that: (1) the purchase order date properly represents the home market date of sale, and (2) the Marmen Group actually contracted to sell completed wind towers rather than wind tower sections in Canada.[109]

[102] *See* Marmen AQR at A-21-A22; and Marmen Group BCDQR at B-16.
[103] *See Wooden Bedroom Furniture* IDM at Comment 52.
[104] *See* Marmen Group AQR at A22; and Marmen Group BCDQR at B-2.
[105] *See* Petitioner Case Brief at 41.
[106] *See* Marmen AQR at A-21-A22; and Marmen Group BCDQR at B-2 and B-16
[107] *See* Marmen Group BCDQR at B-2 and B-16.
[108] *See* Petitioner Case Brief at 4.
[109] *Id*. at 9-11.

Marmen Group's Rebuttal:

- The Marmen Group provided complete and accurate responses "to all requests from {Commerce} and has cooperated to the best of its ability."[110]
- In the Marmen Group AQR, Marmen Group BCDQR, Marmen Group First SABCQR, and Marmen Group Second SABCQR, the Marmen Group fully responded to the information requested by Commerce.[111]
- Commerce should continue to rely on the Marmen Group's submitted data in this final determination.

Commerce's Position: We disagree with the petitioner that AFA is warranted for the Marmen Group. Section 776(a)(1) and (2) of the Act provides that, if necessary information is missing from the record, or if an interested party: (A) withholds information that has been requested by Commerce, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the AD statute, or (D) provides such information but the information cannot be verified, Commerce shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Further, section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In so doing, and under the Trade Preferences Extension Act of 2015 (TPEA),[112] Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.[113]

Also, where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

Here, and as explained in our response to Comments 6 and 7, above, we find that the Marmen Group was responsive to the information requested by Commerce, and submitted its responses in

[110] *See* Marmen Rebuttal Brief at 30.
[111] *Id.* at 31-38.
[112] On June 29, 2015, the TPEA made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act. *See* TPEA, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015). The amendments to section 776 of the Act are applicable to all determinations made on or after August 6, 2015. *See 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). The text of the TPEA may be found at https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.
[113] *See also* 19 CFR 351.308(c).

a timely manner.[114] Accordingly, we find there is no missing information from the record that is a condition necessary for applying facts available, whether based upon the use of an adverse inference or not in selecting from among the facts available.

Additionally, we note that while the petitioner has argued for an alternative date of sale and for a different reporting methodology than that which the Marmen Group has employed, the sales data that the Marmen Group provided was consistent with that which Commerce requested in both the AD Questionnaire and the Model Match Questionnaire.[115] We further note that in this investigation, we have made no requests in which we asked the Marmen Group to either: 1) revise its home market sales so as to report sales by purchase order; or 2) to replace the Marmen Group's home market reporting of wind tower sections with a reporting methodology that is based on completed wind towers.

Accordingly, we find that the requirements of 776(b) for applying facts otherwise available, are not met, and we have continued to rely on the Canadian and U.S. sales data provided by the Marmen Group without resorting to facts available in this final determination.

VIII. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, then we will publish the final determination in the investigation and the final, estimated weighted-average dumping margins in the *Federal Register*.

☒	☐
Agree	Disagree

6/29/2020

X

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

[114] *See* Response to Comments 6 and 7; Marmen Group AQR; Marmen Group BCDQR; Marmen Group First SABCQR; and Marmen Group Second SABCQR.
[115] *See* AD Questionnaire; and Model Match Questionnaire.