



A-533-897  
Investigation  
POI: 7/1/2019 – 6/30/2020  
**Public Document**  
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May 18, 2021

**MEMORANDUM TO:** Christian Marsh  
Acting 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 India

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## I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that utility scale wind towers (wind towers) from India 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 dumping margins are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

## II. BACKGROUND

On September 30, 2020, Commerce received an antidumping duty (AD) petition concerning imports of wind towers from India, filed in proper form, on behalf of the Wind Tower Trade Coalition (the petitioner).<sup>1</sup> On October 7, 2020, Commerce extended the initiation deadline by 20 days to poll the domestic industry, in accordance with section 702(c)(4)(D) of the Act, because the Petition, as filed, had “not established that the domestic producers or workers accounting for more than 50 percent of total production support the Petitions.”<sup>2</sup> Commerce initiated this investigation on November 9, 2020.<sup>3</sup>

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<sup>1</sup> See Petitioner’s Letter, “Petitions for the Imposition of Antidumping and Countervailing Duties,” dated September 30, 2020 (Petition). The Wind Tower Trade Coalition is composed of Arcosa Wind Towers Inc. and Broadwind Towers, Inc.

<sup>2</sup> See *Notice of Extension of the Deadline for Determining the Adequacy of the Antidumping and Countervailing Duty Petitions: Utility Scale Wind Towers from India, Malaysia, and Spain*, 85 FR 65028 (October 7, 2020).

<sup>3</sup> See *Utility Scale Wind Towers from India, Malaysia, and Spain: Initiation of Less Than-Fair-Value Investigations*, 85 FR 73023 (November 16, 2020) (*Initiation Notice*).

In the *Initiation Notice*, Commerce stated that, in the event that we limited the respondents selected for individual examination, in accordance with section 777A(c)(2) of the Act, we intended to base our selection on U.S. Customs and Border Protection (CBP) data for U.S. imports.<sup>4</sup> On November 19, 2020, we received comments from the petitioner; Anand Engineering Products Private Limited (Anand Engg); Vestas Wind Technology India Private Limited (Vestas India), Vestas Manufacturing A/S, and their affiliates (collectively, Vestas);<sup>5</sup> and Windar Renewable Energy Private Limited (Windar India) regarding respondent selection, requesting that Commerce issue quantity and value (Q&V) questionnaires to select respondents in this investigation.<sup>6</sup> In light of the comments received, on November 24, 2020, Commerce issued Q&V questionnaires to the four exporters/producers with complete contact information identified in the Petition and seven additional companies identified in the CBP data.<sup>7</sup>

On December 4, 2020, the U.S. International Trade Commission (ITC) preliminarily determined that there was a reasonable indication that an industry in the United States is materially injured by reason of imports of wind towers from India.<sup>8</sup>

From December 1 to 9, 2020, we received timely Q&V questionnaire responses from the following six companies: Anand Engg; GRI Towers India Private Limited (GRI); Revayu Systems Private Limited (Revayu); Vestas India; Windar India; and Wish Energy Solutions Pvt. Ltd. (WiSH). Revayu and WiSH stated that they did not export wind towers to the United States during the POI.<sup>9</sup> We did not receive timely Q&V questionnaire responses from the following companies: Acciona Wind Power India Pvt. Ltd. (Acciona); Nordex India Pvt. Ltd. (Nordex);<sup>10</sup> Prommada Hindustan Private Ltd. (Prommada); Vinayaka Energy Tek (Vinayaka); and Zeeco India Pvt. Ltd. (Zeeco). For further discussion, *see* the “Application of Facts Available, Use of Adverse Inferences, Corroboration, and Calculation of All-Others Rate” section, below.

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<sup>4</sup> *See Initiation Notice*, 85 FR at 73026. On November 2, 2020, Commerce released the CBP entry data to all interested parties under an administrative protective order and requested comments regarding the data and respondent selection. *See* Memorandum, “Release of U.S. Customs and Border Protection Data,” dated November 2, 2020 (CBP Data).

<sup>5</sup> We refer to “Vestas India” when discussing the India-based subsidiary of Vestas Wind Systems A/S (*i.e.*, the individual company selected to be the mandatory respondent) and “Vestas” when referring to the collective entity (*i.e.*, the entity which filed submissions on behalf of the group).

<sup>6</sup> *See* Petitioner’s Letter, “Comments on CBP Data and Respondent Selection,” dated November 19, 2020; Anand Engg’s Letter, “Respondent Selection Comments on behalf of producer in India,” dated November 19, 2020; Vestas’s Letter, “Comments on Respondent Selection,” dated November 19, 2020; and Windar India’s Letter, “Respondent Selection Comments on behalf of producer in India,” dated November 19, 2020. Anand Engg and Windar India also requested that they be selected as the mandatory respondents because they each produced a significant quantity of the wind towers exported to the United States during the period of investigation (POI).

<sup>7</sup> *See* Petition at Volume I at Exhibit I-17; *see also* CBP Data.

<sup>8</sup> *See Utility Scale Wind Towers from India, Malaysia, and Spain*, 85 FR 79217 (December 9, 2020).

<sup>9</sup> *See* Revayu’s Letter, “Response to Quantity and Value Questionnaire regarding Utility Scale Wind Towers from India,” dated December 1, 2020; *see also* WiSH’s Letter, “Submission of Quantity & Value Shipment,” dated December 8, 2020.

<sup>10</sup> Nordex filed an untimely Q&V response, which, because it was untimely, we removed from the record. *See* Commerce’s Letter, dated January 6, 2021.

On December 22, 2020, we limited the number of respondents selected for individual examination to the largest producer/exporter of the subject merchandise by value, Vestas India,<sup>11</sup> and on the following day we issued the AD questionnaire to this company.<sup>12</sup>

In the *Initiation Notice*, Commerce also 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 AD questionnaire.<sup>13</sup> We did not receive comments concerning the scope of the investigation. The petitioner filed comments on the physical characteristics of wind towers in response to Commerce's solicitation in the *Initiation Notice*.<sup>14</sup> Anand Engg and Windar India also submitted rebuttal comments regarding the physical characteristics of wind towers.<sup>15</sup>

On January 13, 2021, Vestas India filed a submission informing us of its difficulty in reporting its home market sales and cost data.<sup>16</sup> On January 21, 2021, Vestas India requested that Commerce reexamine industry support for the instant investigation.<sup>17</sup> On January 25, 2021, the petitioner commented on Vestas India's request.<sup>18</sup> Section 702(c)(4) of the Act states that, “{a}fter the administering authority makes a determination with respect to initiating an investigation, the determination regarding industry support shall not be reconsidered.”<sup>19</sup> Accordingly, we did not reconsider our industry support determination.

From January through February 2021, Vestas India submitted timely responses to sections A, C, and D of the AD questionnaire.<sup>20</sup>

On February 26, 2021, 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>21</sup> Based on the request, and pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), on March 12, 2021, Commerce published in the *Federal Register* a postponement of the preliminary determination until no later than May 18, 2021.<sup>22</sup>

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<sup>11</sup> See Memorandum, “Respondent Selection,” dated December 22, 2020.

<sup>12</sup> See Commerce's Letter, Initial AD questionnaire, dated December 23, 2020 (AD questionnaire).

<sup>13</sup> See *Initiation Notice*, 85 FR at 73024.

<sup>14</sup> See Petitioner's Letter, “Petitioner's Comments on Product Matching Characteristics,” dated November 30, 2020.

<sup>15</sup> See Anand Engg and Windar India's Letter, “Resubmission of Rebuttal Comments to Product Matching Characteristics,” dated December 23, 2020.

<sup>16</sup> See Vestas India's Letter, “Comparison Market and Potential Reporting Difficulties,” dated January 13, 2021.

<sup>17</sup> See Vestas India's Letter, “Request for Reexamination of Industry Support,” dated January 22, 2021. On February 5, 2021, Vestas India reiterated this request. See Vestas India's Letter, “Response to Petitioner's January 25, 2021 Letter Regarding Industry Support,” dated February 5, 2021.

<sup>18</sup> See Petitioner's Letter, “Response to Vestas' Request to Reexamine the Domestic Industry Support,” dated January 25, 2021.

<sup>19</sup> See, e.g., *Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 85 FR 11953 (February 28, 2020), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

<sup>20</sup> See Vestas India's Letters, “Section A Questionnaire Response,” dated January 21, 2021; “Section C Questionnaire Response,” dated February 11, 2021; and “Section D Questionnaire Response,” dated February 12, 2021.

<sup>21</sup> See Petitioner's Letter, “Request for Postponement of Preliminary Determination,” dated February 26, 2021.

<sup>22</sup> See *Utility Scale Wind Towers from India and Malaysia: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 86 FR 14071 (March 12, 2021).

In February and March 2021, we issued supplemental questionnaires to Vestas India regarding sections A, C, and D. Vestas India timely filed supplemental questionnaire responses to sections A and C in these same months.<sup>23</sup>

On March 4, 2021, the petitioner submitted a multinational corporation (MNC) allegation and supporting factual information, requesting that Commerce determine normal value (NV) using the special rule for certain MNCs.<sup>24</sup> On March 9, 2021, Vestas India requested that Commerce reject the petitioner's MNC allegation as untimely filed.<sup>25</sup>

On March 10, 2021, we invited interested parties to submit information to use for constructed value (CV) profit and selling expenses.<sup>26</sup> From March through April 2021, we received CV profit and selling expenses information and rebuttal comments from the petitioner, Vestas India, and GRI India.<sup>27</sup>

On March 15, 2021, the petitioner submitted an allegation and supporting factual information that a particular market situation (PMS) existed in India during the POI.<sup>28</sup> Subsequently, we invited interested parties to submit information to rebut, clarify, or correct the information in this allegation.<sup>29</sup>

On April 7, 2021, Vestas India filed a portion of its section D supplemental questionnaire response (SDQR1); however, Vestas India failed to file the narrative portion of this response by the established deadline. Because the complete response was not filed in its entirety by the due date, as required by 19 CFR 351.303(b)(1), we rejected this response and removed it from record of the investigation.<sup>30</sup> On April 8, 2021, Vestas India filed a timely response to part two of its section D supplemental questionnaire (SDQR2).<sup>31</sup>

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<sup>23</sup> See Vestas India's Letters, "Supplemental Section A Questionnaire," dated February 26, 2021; and "Response to the Supplemental Questionnaire to Section C Questionnaire," dated March 24, 2021.

<sup>24</sup> See Petitioner's Letter, "Multinational Corporation Allegation," dated March 4, 2021.

<sup>25</sup> See Vestas India's Letter, "Request to Reject Untimely Multinational Corporation Allegation," dated March 9, 2021.

<sup>26</sup> See Memorandum, "Request for Constructed Value Profit and Selling Expense Comments and Information," dated March 10, 2021.

<sup>27</sup> See Petitioner's Letter, "Comments and New and Factual Information for CV Profit and Selling Expenses," dated March 24, 2021; *see also* Vestas India's Letter, "Constructed Value Profit and Selling Expense Comments and Information," dated March 24, 2021; Petitioner's Letter, "Petitioner's Rebuttal Comments on Vestas' CV Profit and Selling Expenses Comments," dated April 9, 2021; Vestas India's Letter, "Constructed Value Profit and Selling Expense Rebuttal Comments and Factual Information," dated April 9, 2021; and GRI India's Letter, "Constructed Value Profit and Selling Expense Rebuttal Comments and Factual Information – GRI India," dated April 9, 2021.

<sup>28</sup> See Petitioner's Letter, "Particular Market Situation Allegation and Factual Information," dated March 15, 2021.

<sup>29</sup> See Memorandum regarding acceptance of PMS allegation, dated March 16, 2021.

<sup>30</sup> See Commerce's Letter, Rejection of Untimely-Filed Section D Supplemental Narrative, dated April 14, 2021 (Commerce's Rejection Letter).

<sup>31</sup> Because Vestas India included the narrative portion of its SDQR1 as part of this filing, we rejected this document and permitted Vestas India to refile without the untimely-filed new factual information. *See* Vestas India's Letter, "Refiling of Response to the Section D Supplemental Questionnaire (Part Two)," dated April 15, 2021 (Vestas India's SDQR2).

On April 9, 2021, after analyzing the comments received from interested parties regarding the petitioner's MNC allegation, we accepted the MNC allegation for consideration.<sup>32</sup> Moreover, because we found that the MNC allegation provided a reasonable basis to believe or suspect that the NVs of the foreign like product produced by Vestas's affiliates in Brazil and Spain are higher than the NV of the foreign like product produced in India, we requested that Vestas provide complete sales and cost data for Vestas's affiliates' POI sales of wind towers in Brazil and Spain.<sup>33</sup> On April 16 2021, Vestas provided further information regarding its affiliates' sales of wind towers in Brazil and Spain and requested that Commerce reconsider its MNC Information Request.<sup>34</sup> On April 22, 2021, we suspended the deadline for Vestas to submit sales and cost data for its Brazilian and Spanish affiliates.

### **III. PERIOD OF INVESTIGATION**

The period of investigation is from July 1, 2019, through June 30, 2020. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the Petition.<sup>35</sup>

### **IV. SCOPE OF THE INVESTIGATION**

The products covered by this investigation are wind towers from India. For a full description of the scope of this investigation, *see* the accompanying *Federal Register* notice at Appendix I.

### **V. APPLICATION OF FACTS AVAILABLE, USE OF ADVERSE INFERENCES, CORROBORATION, AND CALCULATION OF ALL-OTHERS RATE**

As noted above, on December 22, 2020, Commerce selected Vestas India as the mandatory respondent in this investigation and on December 23, 2020, issued the AD questionnaire to it.<sup>36</sup> On March 19, 2021, Commerce issued a supplemental section D questionnaire to Vestas India. On April 7, 2021, Vestas India submitted portions of its SDQR1; however, Vestas India did not file the narrative portion of its SDQR1 until April 8, 2021, as part of its Errata Letter.<sup>37</sup> As a result, Vestas India's SDQR1 was untimely filed. Vestas India also untimely submitted the narrative portion of its SDQR1 again on April 9, 2021, as part of its response to part two of the section D supplemental questionnaire.<sup>38</sup> On April 14, 2021, Commerce rejected and removed from the record Vestas India's SDQR1 and also rejected its April 8, 2021 and April 9, 2021 submissions of the narrative portion of the SDQR1.<sup>39</sup> On April 19, 2021, Vestas India requested that Commerce reconsider its rejection of the SDQR1 or allow Vestas India to refile the

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<sup>32</sup> See Commerce's Letter, "Multinational Corporation Provision," dated April 9, 2021 (MNC Information Request).

<sup>33</sup> *Id.*

<sup>34</sup> See Vestas India's Letter, "Utility Scale Wind Towers from India: Vestas' Initial Response to the Department's April 9, 2021 MNC Information Request and Notification of No Sales of Foreign Like Product in Brazil and Spain," dated April 16, 2021.

<sup>35</sup> See 19 CFR 351.204(b)(1).

<sup>36</sup> See AD Questionnaire.

<sup>37</sup> See Commerce's Rejection Letter; *see also* Vestas India's Letter, "Refiling of Errata to Response to Section D Supplemental Questionnaire (Part One)," dated April 16, 2021 (Errata Letter).

<sup>38</sup> See Commerce's Rejection Letter; *see also* Vestas India's SDQR2.

<sup>39</sup> See Commerce's Rejection Letter.

questionnaire response, reiterating many of the same arguments made in its Errata Letter.<sup>40</sup> In its April 19, 2021 letter, Vestas India also described what it claimed were extraordinary circumstances which led to the omission of the narrative portion of the SDQR1 by the April 7, 2021 deadline.<sup>41</sup> On May 7, 2021, Commerce denied Vestas India's request, finding no basis to reconsider its rejection of Vestas India's SDQR1.<sup>42</sup> Accordingly, for the reasons detailed below, we find that it is appropriate to assign Vestas India a margin in this preliminary determination based on adverse facts available (AFA).

Additionally, for the reasons discussed below, we also preliminarily determine that it is appropriate to assign a margin based on AFA to the following companies, due to their failures to respond to Commerce's Q&V questionnaire: Acciona, Nordex, Prommada, Vinayaka, and Zeeco.

### 1. Application of Facts Available

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, Commerce shall apply "facts otherwise available" if: (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information by the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

In this investigation, Vestas India failed to provide a complete response to Commerce's supplemental section D questionnaire in a timely manner. In addition to supporting documentation, Commerce in the supplemental section D questionnaire requested that Vestas India provide critical narrative explanations, details, rationale, and clarifications in order for Commerce to understand fully the company's normal books and records, the documents on the record, and the cost reporting methodology.<sup>43</sup> For example, Vestas India's SDQR1 did not include a narrative response to questions 4 and 13, in which Commerce requested detailed information, explanations and/or clarifications regarding Vestas India's reported raw materials cost, the largest component by far of its reported cost of manufacturing (COM).<sup>44</sup> Vestas India's failure to provide the narrative response to these questions, in addition to 13 other questions, by the established deadline, significantly impeded the investigation because Commerce and other parties are unable to assess the filing as a whole and the reasonableness and reliability of the submitted data and, thus, are prevented from fully analyzing Vestas India's reported costs.<sup>45</sup> As a result, we preliminarily find that necessary information is not available on the record of this investigation and that Vestas India failed to provide information by the specified deadlines and significantly impeded the proceeding. Accordingly, pursuant to sections 776(a)(1) and

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<sup>40</sup> See Vestas India's Letter, "Request for Reconsideration of Rejection Vestas India's Supplemental Section D Questionnaire Response; Alternative Request for Leave to Refile," dated April 19, 2021.

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

<sup>42</sup> See Commerce's Letter, Vestas India's Request for Reconsideration of Rejection of the Section D Supplemental Questionnaire, dated May 7, 2021 (Reconsideration Response).

<sup>43</sup> See Commerce's Letter, Section D Supplemental Questionnaire, dated March 19, 2021 (SDQ).

<sup>44</sup> See SDQ at 5 and 7; see also Vestas India's SDQR2 at Exhibit VestasCOP03.

<sup>45</sup> See SDQ. Vestas India did not provide the narrative response for questions 4-14, 17-18, and 20-21.

776(a)(2)(B)-(C) of the Act, we are relying upon facts otherwise available to determine Vestas India's preliminary dumping margin.

We disagree with Vestas India that the circumstances described in its Reconsideration Letter, which it claims led to the omission of the narrative portion of the SDQR1 by the April 7, 2021 deadline, were extraordinary as defined in 19 CFR 351.302(c)(2). As we noted in the Reconsideration Response, Vestas India was able to request an extension of the deadline for certain of the questions in the section D supplemental questionnaire on the day of the deadline (*i.e.*, April 7, 2021), and the issues described in Vestas India's April 19, 2021 letter occurred in India, not the United States. However, it was Vestas India's counsel located in the United States which filed the SDQR1 through ACCESS on April 7, 2021, and counsel made no attempt to contact Commerce regarding any difficulties encountered in filing the narrative portion of the SDQR1 prior to the deadline. Therefore, while Vestas India described unfortunate and regrettable events in its April 19, 2021 letter, these events do not meet the definition of an extraordinary circumstance set forth in 19 CFR 351.302(c)(2).

We similarly find that, for the companies named above – Acciona, Nordex, Prommada, Vinayaka, and Zeeco – necessary information is missing from the record, and these companies have also withheld information requested by Commerce, failed to provide information by the specified deadlines, and significantly impeded the proceeding by failing to timely respond to our Q&V questionnaires. Accordingly, pursuant to sections 776(a)(1) and 776(a)(2)(A), (B), and (C) of the Act, we are also relying upon facts otherwise available to determine these companies' preliminary dumping margins.

## 2. Use of Adverse Inference

Section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.<sup>46</sup> In doing so, Commerce is not required to determine, or make any adjustments to, the dumping margin based on any assumptions about information the interested party would have provided if the interested party had complied with the request for information.<sup>47</sup> In addition, the SAA provides that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>48</sup> Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference in selecting from

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<sup>46</sup> See, e.g., *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002); and *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382-83 (Fed. Cir. 2003).

<sup>47</sup> See section 776(b)(1)(B) of the Act.

<sup>48</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc 103-316, vol. 1 (1994) (SAA) at 870; see also *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007) (*PSF from Korea*).

the facts available.<sup>49</sup> It is Commerce's practice to consider, in employing AFA, the extent to which a party may benefit from its own lack of cooperation.<sup>50</sup>

We preliminarily find that Vestas India has not acted to the best of its ability by failing to provide the critical narrative explanations, details, rationale, and clarifications requested in Commerce's supplemental section D questionnaire in a timely manner. Because we do not have the critical narrative explanations, details, rationale, and clarifications requested in the SDQR1, we are unable to rely on Vestas India's reported cost data to calculate a margin. The failure of Vestas India to provide the narrative response to its SDQR1 in a timely manner has precluded Commerce from gaining a better understanding of the numerous exhibits on the record, Vestas India's financial accounting system, and its reported costs. In addition, Vestas India's failure to provide this narrative prevented Commerce from obtaining the information needed to determine whether Vestas India's reporting methodology is appropriate. Accordingly, Commerce concludes that Vestas India failed to cooperate to the best of its ability to comply with Commerce's request for information. Based on the above, in accordance with section 776(b) of the Act, Commerce preliminarily determines to use an adverse inference when selecting from among the facts otherwise available in determining Vestas India's preliminary margin.<sup>51</sup>

We also preliminarily find Acciona, Nordex, Prommada, Vinayaka, and Zeeco did not act to the best of their abilities to comply with our requests for information because these companies did not timely respond to Commerce's Q&V questionnaire. Accordingly, pursuant to section 776(b) of the Act, Commerce also preliminarily determines to use an adverse inference when selecting from among the facts otherwise available when determining the dumping margin for these companies.

### 3. Preliminary Estimated Dumping Margin Based on AFA

Where Commerce applies AFA because a respondent fails to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b)(2) of the Act authorizes Commerce to rely on information derived from the petition, the final determination from the investigation, a previous administrative review, or any other information placed on the record.<sup>52</sup>

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<sup>49</sup> See, e.g., *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003); *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000) (*SS Hollow Products from Japan*); and *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27340 (May 19, 1997).

<sup>50</sup> See, e.g., *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013) (*STR from Thailand Prelim*), and accompanying Preliminary Decision Memorandum (PDM) at 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014) (*STR from Thailand Final*).

<sup>51</sup> See, e.g., *Non-Oriented Electrical Steel from Germany, Japan, and Sweden: Preliminary Determinations of Sales at Less Than Fair Value, and Preliminary Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 29423 (May 22, 2014), and accompanying PDM at 7-11, unchanged in *Non-Oriented Electrical Steel from Germany, Japan, the People's Republic of China, and Sweden: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 61609 (October 14, 2014); and *SS Hollow Products from Japan*, 65 FR 42985 (applying total AFA when the respondent failed to respond to the AD questionnaire).

<sup>52</sup> See 19 CFR 351.308(c); and SAA at 868-870.



In selecting a rate based on AFA, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.<sup>53</sup> Commerce's practice is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the petition, or (2) the highest calculated rate of any respondent in the investigation.<sup>54</sup>

In this investigation, we have evaluated circumstances leading to our finding of non-cooperation. As discussed above, Vestas India failed to provide the narrative portion of its SDQR1 by the specified deadline and, in so doing, significantly impeded the proceeding. As a result of Vestas India's failure to cooperate in this investigation, Commerce is unable to rely on the cost data Vestas India submitted and cannot calculate a margin using Vestas India's reported data. Therefore, the only dumping margin on the record is the dumping margin relied upon for initiation, which is 54.03 percent.<sup>55</sup> Consequently, consistent with our practice, we preliminarily selected the only dumping margin relied upon for initiation as the AFA rate applicable to Vestas India.<sup>56</sup>

Because there are no rates calculated for any individually-examined respondent, and the only dumping margin on the record is the dumping margin relied upon in the *Initiation Notice*, we also preliminarily selected the same 54.03 percent rate as the AFA rate for Acciona, Nordex, Prommada, Vinayaka, and Zeeco.

#### 4. Corroboration of Secondary Information

When using facts otherwise available, section 776(c) of the Act provides that, where Commerce relies on secondary information (such as in the petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.<sup>57</sup> The SAA clarifies that "corroborate" means that Commerce will satisfy itself that the secondary information to be used has probative value;<sup>58</sup> however, under section 776(c)(2) of the Act, Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding. To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used, although under section 776(d)(3) of the Act, Commerce is not required to estimate what the dumping margin would have been if the interested party

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<sup>53</sup> See SAA at 870; see also *PSF from Korea*, 72 FR at 69664; and *STR from Thailand Prelim PDM* at 4, unchanged in *STR from Thailand Final*.

<sup>54</sup> See *Welded Stainless Pressure Pipe from Thailand: Final Determination of Sales at Less Than Fair Value*, 79 FR 31093 (May 30, 2014), and accompanying IDM at Comment 3.

<sup>55</sup> See *Initiation Notice*, 85 FR at 73026.

<sup>56</sup> See *Certain Polyethylene Terephthalate Resin from India: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 13327 (March 14, 2016), and accompanying IDM at Comment 14.

<sup>57</sup> See SAA at 870.

<sup>58</sup> *Id.*; see also 19 CFR 351.308(d).

failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.

Therefore, because the AFA rate applied to Vestas India and to the companies that did not timely respond to our Q&V questionnaire is derived from information in the Petition (as well as the supplements thereto), and consequently, is based upon secondary information, Commerce must corroborate the rate to the extent practicable.<sup>59</sup>

We examined evidence supporting the calculation in the Petition to determine the probative value of the dumping margin alleged in the Petition for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis, we also examined the key elements of the export price (EP) and constructed value (CV) calculation, and the alleged dumping margin.<sup>60</sup> We also examined information from various independent sources provided either in the Petition or, on our request, in the supplements to the Petition that corroborates key elements of the EP and CV calculations used in the Petition to derive the dumping margin alleged in the Petition.<sup>61</sup>

Based on our examination of the information, as discussed in detail in the Initiation Checklist, we consider the petitioner’s EP and CV calculations to be reliable. We obtained no other information that calls into question the validity of the sources or the information supporting the EP and CV calculations provided in the Petition, and based on our examination of the aforementioned information, we preliminarily consider the EP and CV calculations from the Petition to be reliable. Because we confirmed the accuracy and validity of the information underlying the derivation of the dumping margin alleged in the Petition by examining source documents and affidavits, as well as publicly-available information, we preliminarily determine that the dumping margin specified in the *Initiation Notice*, which was based upon information from the Petition and the supplements thereto, is reliable for the purpose of this investigation.

In making a determination as to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal to determine whether there are circumstances that would render a rate not relevant. In accordance with section 776(d)(3) of the Act, when selecting an AFA margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party. Because we are unable to calculate a margin in this investigation using Vestas India’s reported data, we relied upon the dumping margin specified in the *Initiation Notice*, which was based upon information from the Petition and the supplements thereto and is the only information regarding the wind tower industry on the record. In similar circumstances, Commerce has found no need to review

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<sup>59</sup> See AD Investigation Initiation Checklist – Utility Scale Wind Towers from India (November 9, 2020) (Initiation Checklist).

<sup>60</sup> *Id.*

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

documentation outside of the Petition because our examination of independent source data at the pre-initiation stage fulfills our requirements for corroboration of secondary information.<sup>62</sup>

Accordingly, Commerce preliminarily determines that the dumping margin of 54.03 percent specified in the *Initiation Notice* has probative value.<sup>63</sup> Thus, Commerce has corroborated this AFA rate to the extent practicable within the meaning of section 776(c) of the Act by demonstrating that the rate: (1) was determined to be reliable in the pre-initiation stage of this investigation (and we have no information indicating otherwise); and (2) is relevant to the uncooperative mandatory respondent and the other unresponsive companies.<sup>64</sup>

## 5. All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any rates that are zero, *de minimis*, or determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis*, or determined entirely under section 776 of the Act, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters.

As we indicated above, Vestas India is the sole mandatory respondent in this investigation and its estimated dumping margin is determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, Commerce's practice under these circumstances has been to assign a simple average of the petition rates as the all-others rate.<sup>65</sup> However, because the Initiation Checklist contained only one estimated dumping margin, there are no additional dumping margins available to include in the all-others rate. Consequently, and consistent with our practice, we preliminarily assigned the dumping margin alleged in the Petition of 54.03 percent as the all-others rate applicable to entities not individually examined in this investigation.<sup>66</sup>

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<sup>62</sup> See *Grain-Oriented Electrical Steel from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 59226 (October 1, 2014), and accompanying IDM at 20 (stating "there was no need to review any additional documentation outside of what was submitted in the Petition considering such sources of information fulfill our requirements for corroboration of secondary information"); see also *KYD, Inc. v. United States*, 607 F.3d 760, 765 (Fed. Cir. 2010) (agreeing with Commerce that price quotes and third party affidavits used in the petition to calculate estimated margins were independent information not requiring additional corroboration and stating that "{t}he relevant inquiry focuses on the nature of the information, not on whether the source of the information was referenced in or included with the petition").

<sup>63</sup> See Initiation Checklist.

<sup>64</sup> See section 776(c) of the Act; 19 CFR 351.308(c) and (d); *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China*, 73 FR 35652, 35653 (June 24, 2008), and accompanying IDM at Comment 1; and Initiation Checklist at 7.

<sup>65</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 38986, 38987 (July 8, 2008), and accompanying IDM at Comment 2.

<sup>66</sup> See, e.g., *Mattresses from Malaysia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 85 FR 69574 (November 3, 2020),

## VI. MNC AND PMS ALLEGATIONS

As noted above, the petitioner filed both MNC and PMS allegations in this investigation. However, we preliminarily assigned Vestas India a margin based on AFA because of its failure to timely submit the narrative portion of its SDQR1 and our subsequent inability to rely on Vestas India's reported cost data. Because we are unable to rely on Vestas India's reported costs, we are unable to apply the MNC provision in this preliminary determination. This is because we are unable to calculate CV for Vestas India to use as a benchmark for Vestas' sales of wind towers in other markets. Similarly, because any adjustment resulting from Commerce finding a PMS in this investigation would be made to Vestas India's reported costs, and we cannot rely on these costs, we have not analyzed the PMS allegation for the preliminary determination.

## VII. RECOMMENDATION

We recommend that you approve the preliminary findings described above.

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\_\_\_\_\_  
Agree

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\_\_\_\_\_  
Disagree

5/18/2021

X



Signed by: CHRISTIAN MARSH

\_\_\_\_\_  
Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance

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unchanged in *Mattresses from Malaysia: Final Affirmative Determination of Sales at Less Than Fair Value*, 86 FR 15901 (March 25, 2021); *Refillable Stainless Steel Kegs from Mexico: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 25738 (June 4, 2019), unchanged in *Refillable Stainless Steel Kegs from Mexico: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 84 FR 42894 (August 19, 2019); and Initiation Checklist at 7.