



A-469-823
Investigation
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March 29, 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 Spain

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that utility scale wind towers (wind towers) from Spain 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 Spain, filed in proper form, on behalf of the Wind Tower Trade Coalition (the petitioner).¹ 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.”² Commerce initiated this investigation on November 9, 2020.³

¹ See Petitioner’s Letter, “Utility Scale Wind Towers from India, Malaysia and Spain: 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.

² 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).

³ 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.⁴ On November 23, 2020, we received comments from the petitioner and Vestas Towers America, Inc. and its affiliates, Vestas Eolica S.A.U. (Vestas Eolica), Vestas Manufacturing A/S, and Vestas-American Wind Technology, Inc. (collectively, Vestas),⁵ requesting that Commerce issue quantity and value (Q&V) questionnaires to select respondents in this investigation.⁶ In light of the comments received, on November 25, 2020, Commerce issued Q&V questionnaires to the three exporters/producers with complete contact information identified in the Petition, as well as to an additional 16 companies identified in the CBP data.⁷

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 Spain.⁸

From December 5 to 16, 2020, we received responses to the Q&V questionnaires from 13 companies. We did not receive responses from the following six companies: Acciona Windpower S.A. (Acciona Windpower); Gamesa Energy Transmission (Gamesa); Haizea Wind Group (Haizea); Kuzar Systems S.L. (Kuzar Systems); Proyectos Integrales y Logísticos S.A.A (Proyectos Integrales); and Windar Renovables. For further discussion, *see* the “Application of Facts Available, Use of Adverse Inferences, Corroboration, and Calculation of All-Others Rate” section, below.

On December 15, 2020, we solicited additional comments on respondent selection.⁹ We received comments from the petitioner and Vestas on December 18, 2020.¹⁰ On December 23, 2020, we limited the number of respondents selected for individual examination to the largest producer/exporter of the subject merchandise by value, Vestas Eolica,¹¹ and issued the AD questionnaire to this company.¹²

⁴ 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, “Antidumping Duty Petition on Utility Scale Wind Towers from Spain: Release of U.S. Customs and Border Protection Data,” dated November 2, 2020 (CBP Data).

⁵ We refer to “Vestas Eolica” when discussing the Spain-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 made submissions to the record on behalf of the group).

⁶ See Petitioner’s Letter, “Utility Scale Wind Towers from Spain: Comments on CBP Data and Respondent Selection,” dated November 23, 2020; and Vestas’ Letter, “Antidumping Duty Investigation of Utility Scale Wind Towers from Spain: Comments on CBP Data and Respondent Selection,” dated November 23, 2020.

⁷ See Volume I of the Petition, at Exhibit I-17; and CBP Data.

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

⁹ See Memorandum, “Less-Than-Fair-Value Investigation of Utility Scale Wind Towers from Spain: Quantity and Value Questionnaires – Rejected Submissions and Refiling; Additional Comments on Respondent Selection,” dated December 15, 2020.

¹⁰ See Petitioner’s Letter, “Utility Scale Wind Towers from Spain: Comments on Respondent Selection and Q&V Data,” dated December 18, 2020; and Vestas’ Letter, “Utility Scale Wind Towers from Spain: Additional Comments on Respondent Selection,” dated December 18, 2020.

¹¹ See Memorandum, “Less-Than-Fair-Value Investigation of Utility Scale Wind Towers from Spain: Respondent Selection” dated December 23, 2020.

¹² See Commerce’s Letter, Initial AD Questionnaire, dated December 23, 2020 (AD questionnaire).

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.¹³ The petitioner filed comments on the physical characteristics of wind towers in response to Commerce's solicitation in the *Initiation Notice*.¹⁴ Windar Renovables, one of the producers named in the Petition, also submitted comments; however, we determined that this submission included untimely-filed new factual information and, thus, we rejected it from the record.¹⁵

On January 11, 2021, Vestas filed a submission informing us of its difficulty in reporting its home market sales and cost data.¹⁶ On January 15, 2021, the petitioner responded to this submission.¹⁷ On January 25, 2021, we issued Vestas Eolica a supplemental questionnaire regarding its home market viability, which Vestas Eolica had flagged as an issue in its January 11, 2021, submission.¹⁸

Also on January 25, 2021, Vestas requested that Commerce reexamine industry support for the instant investigation.¹⁹ On January 26, 2021, the petitioner commented on this request.²⁰ 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.”²¹ Accordingly, we are not reconsidering our determination in this regard.

On January 28, 2021, Vestas notified Commerce of Vestas Eolica's intention not to participate in this investigation.²² On February 17, 2021, Siemens Gamesa Renewable Energy (SGRE) requested to be selected as a mandatory respondent.²³ On February 19, 2021, the petitioner

¹³ See *Initiation Notice*, 85 FR at 73024.

¹⁴ See Petitioner's Letter, “Utility Scale Wind Towers from India, Malaysia, and Spain: Petitioner's Comments on Product Matching Characteristics,” dated November 30, 2020.

¹⁵ See Commerce's Letter, “Utility Scale Wind Towers from India, Malaysia, and Spain: Rejection of Untimely Arguments and New Factual Information,” dated December 22, 2020; see also Memorandum, “Rejection of Untimely Arguments and New Factual Information,” dated December 29, 2020.

¹⁶ See Vestas' Letter, “Utility Scale Wind Towers from Spain: Vestas Eolica's Notification Concerning Home Market Sales and Potential Difficulties in Questionnaire Response,” dated January 11, 2021.

¹⁷ See Petitioner's Letter, “Utility Scale Wind Towers from Spain: Comments on Vestas' Home Market Sales Difficulties,” dated January 15, 2021.

¹⁸ See Commerce's Letter, “Supplemental Questionnaire on Home Market Viability,” dated January 25, 2021.

¹⁹ See Vestas' Letter, “Utility Scale Wind Towers from Spain: Request for Reexamination of Industry Support,” dated January 25, 2021. On February 5, 2021, Vestas reiterated this request. See Vestas' Letter, “Utility Scale Wind Towers from Spain: Response to Petitioner's January 26, 2021 Letter Regarding Industry Support,” dated February 5, 2021.

²⁰ See Petitioner's Letter, “Utility Scale Wind Towers from Spain: Response to Vestas' Request to Reexamine the Domestic Industry Support,” dated January 26, 2021.

²¹ 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.

²² See Vestas' Letter, “Utility Scale Wind Towers from Spain: Notice of Decision to Not Participate in the Investigation,” dated January 28, 2021 (Vestas Non-Participation Notice).

²³ See SGRE's Letter, “Less-Than-Fair-Value Investigation of Utility Scale Wind Towers from Spain: Request for Mandatory Respondent Selection,” dated February 17, 2021.

commented on SGRE's request, noting that SGRE made it 56 days after respondent selection and 40 days before the preliminary determination.²⁴ On March 5, 2021, Commerce declined to select SGRE as a mandatory respondent.²⁵

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.²⁶

IV. SCOPE OF THE INVESTIGATION

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

V. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,²⁷ in the *Initiation Notice* Commerce set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, the scope).²⁸ We received no comments on the scope of the investigation.

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

As noted above, Commerce selected Vestas Eolica as a mandatory respondent in this investigation, and we issued it Commerce's questionnaire.²⁹ However, Vestas Eolica withdrew from participation in the investigation. Accordingly, we determine that the use of facts available with an adverse inference (AFA) is appropriate for these preliminary results with respect to Vestas Eolica. For the reasons discussed below, we are preliminarily assigning a dumping margin of 73.00 percent to Vestas Eolica.

Additionally, due to their failures to respond to Commerce's Q&V questionnaire, we are also preliminarily determining that the use of facts available with an adverse inference is appropriate for the following companies: Acciona Windpower, Gamesa, Haizea, Kuzar Systems, Proyectos Integrales, and Windar Renovables. For the reasons discussed below, we are also preliminarily assigning a dumping margin of 73.00 percent to these six companies.

²⁴ See Petitioner's Letter, "Utility Scale Wind Towers from Spain: Response to SGRE's Request for Additional Mandatory Respondent Selection," dated February 19, 2021.

²⁵ See Commerce's Letter, "Utility Scale Wind Towers from Spain: Request to Select Replacement Mandatory Respondent," dated March 5, 2021.

²⁶ See 19 CFR 351.204(b)(1).

²⁷ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

²⁸ See *Initiation Notice*, 85 FR at 73024.

²⁹ See Vestas Non-Participation Notice.

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 Eolica failed to respond to Commerce’s initial AD questionnaire and its home market viability supplemental questionnaire, and it also submitted a letter stating that it did not intend to participate in this proceeding.³⁰ As a result, we preliminarily find that necessary information is not available on the record of this investigation and that Vestas Eolica withheld information Commerce requested, failed to provide information by the specified deadlines, and significantly impeded the proceeding. Moreover, because Vestas Eolica failed to provide the necessary information and ceased participation, section 782(e) of the Act is not applicable. Accordingly, pursuant to sections 776(a)(1) and 776(a)(2)(A), (B), and (C) of the Act, we are relying upon facts otherwise available to determine Vestas Eolica’s preliminary dumping margin.

We similarly find that, with respect to the companies named above -- Acciona Windpower, Gamesa, Haizea, Kuzar Systems, Proyectos Integrales, and Windar Renovables -- 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 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.³¹ 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.³² 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

³⁰ See Vestas Non-Participation Notice.

³¹ 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).

³² See section 776(b)(1)(B) of the Act.

had cooperated fully.”³³ 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 the facts available.³⁴ It is Commerce’s practice to consider, in employing AFA, the extent to which a party may benefit from its own lack of cooperation.³⁵

We preliminarily find that Vestas Eolica has not acted to the best of its ability to comply with Commerce’s requests for information because Vestas Eolica failed to respond to Commerce’s initial AD questionnaire. The failure of Vestas Eolica to participate in the investigation and to respond to Commerce’s questionnaires has precluded Commerce from performing the necessary analysis to calculate a weighted-average dumping margin based on Vestas Eolica’s own data, as is otherwise required by the Act. Accordingly, Commerce concludes that Vestas Eolica failed to cooperate to the best of its ability to comply with a request for information by Commerce. 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.³⁶

We also preliminarily find Acciona Windpower, Gamesa, Haizea, Kuzar Systems, Proyectos Integrales, and Windar Renovables did not act to the best of their abilities to comply with our requests for information because these companies did not 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.³⁷ 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

³³ 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*).

³⁴ 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 *Preamble*, 62 FR at 27340.

³⁵ 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*).

³⁶ 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 pages 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).

³⁷ See 19 CFR 351.308(c); and SAA at 868-870.

if it had fully cooperated.³⁸ 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.³⁹

In this investigation, we have evaluated circumstances leading to our finding of non-cooperation. As discussed earlier, Vestas Eolica failed to submit a response to Commerce's initial AD questionnaire and its home market viability supplemental questionnaire, and it also submitted a letter stating that it did not intend to participate in this proceeding.⁴⁰ As a result of Vestas Eolica's failure to cooperate with our requests, the only dumping margin on the record is the dumping margin relied upon for initiation, which is 73.00 percent.⁴¹ In addition, because Vestas Eolica did not respond to our requests for information, there are no rates calculated for any individually-examined respondent. Thus, consistent with our practice, we have preliminarily selected the only dumping margin relied upon for initiation as the AFA rate applicable to Vestas Eolica.⁴²

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 select the same 73.00 percent rate as the AFA rate for Acciona Windpower, Gamesa, Haizea, Kuzar Systems, Proyectos Integrales, and Windar Renovables.

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.⁴³ The SAA clarifies that "corroborate" means that Commerce will satisfy itself that the secondary information to be used has probative value;⁴⁴ 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

³⁸ 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*.

³⁹ 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.

⁴⁰ See Vestas Non-Participation Notice.

⁴¹ See *Initiation Notice*, 85 FR at 73026.

⁴² 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.

⁴³ See SAA at 870.

⁴⁴ *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 Eolica and to the companies that did not 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.⁴⁵

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.⁴⁶ 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.⁴⁷

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. Due to the nature of wind tower sales and the industry, actual prices and quotes were unavailable to determine calculations.⁴⁸ The petitioner used its experience with wind tower construction⁴⁹ along with UN COMTRADE data, *i.e.*, data from a reliable independent source,⁵⁰ for its EP and CV calculations.⁵¹ Because 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, 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 there are no

⁴⁵ See AD Investigation Initiation Checklist - Utility Scale Wind Towers from Spain (November 9, 2020) (Initiation Checklist).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ See Petition at IV-2 through IV-3

⁴⁹ *Id.* at IV-9 through IV-14.

⁵⁰ *Id.* at Exhibit IV-15.

⁵¹ See Petitioner’s Letter, “Response to First Supplemental Questions on Spain AD Volume VI of the Petition,” dated October 9, 2021, at Exhibit IV-Supp-6.

participating cooperative respondents in this investigation, we relied upon the dumping margin specified in the *Initiation Notice*, which was based upon information from the Petition and the supplements thereto, which is the only information regarding the wind tower industry on the record. Furthermore, here the record does not contain additional information obtained during the investigation as a result of noncooperation of the sole mandatory respondent. In similar circumstances, Commerce has found no need to review 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.⁵²

Accordingly, Commerce preliminarily determines that the dumping margin of 73.00 percent specified in the *Initiation Notice* has probative value.⁵³ Commerce has, thus, 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.⁵⁴

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 Eolica 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, as the all-others rate, a simple average of the petition rates.⁵⁵ 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

⁵² 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").

⁵³ See Initiation Checklist.

⁵⁴ 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.

⁵⁵ 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.

its practice, Commerce is using the dumping margin alleged in the Petition of 73.00 percent as the all-others rate applicable to entities not individually examined in this investigation.⁵⁶

VII. RECOMMENDATION

We recommend that you approve the preliminary findings described above.



Agree



Disagree

3/29/2021

X



Signed by: CHRISTIAN MARSH