



A-469-823  
Investigation  
POI: 7/1/2019 – 6/30/2020  
**Public Document**  
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June 14, 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:** Issues and Decision Memorandum for the Final Affirmative  
Determination in the Less-Than-Fair-Value Investigation of Utility  
Scale Wind Towers from Spain

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## I. SUMMARY

The Department of Commerce (Commerce) finds 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 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is July 1, 2019, through June 30, 2020.

We analyzed the comments submitted by interested parties, and have made changes to the *Preliminary Determination*.<sup>1</sup> As a result of our analysis, we removed Proyectos Integrales Y Logísticos, S.A. (Proinlosa) from the list of companies for which we are assigning an antidumping margin based on facts available with an adverse inference (AFA). 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 for which we received comments from interested parties:

- Comment 1: Whether Commerce Should Have Selected Siemens Gamesa Renewable Energy (SGRE) as a Mandatory Respondent
- Comment 2: Whether Commerce Should List All Non-Responsive Companies in the *Federal Register* Notice

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<sup>1</sup> See *Utility Scale Wind Towers from Spain: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 86 FR 17354 (April 2, 2021) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).



## II. BACKGROUND

On April 2, 2021, Commerce published in the *Federal Register* its affirmative *Preliminary Determination* in this investigation. On April 14, 2021, we accepted a quality and value (Q&V) questionnaire response from Proinlosa.<sup>2</sup> Proinlosa submitted evidence that it had attempted to return its Q&V response in a timely manner, but an error in the contact information in the Q&V questionnaire prevented Proinlosa from successfully contacting Commerce.<sup>3</sup> No parties commented on Proinlosa's Q&V submission.

On May 3, 2021, we received a timely-filed case brief from SGRE on behalf of itself and Windar Renovables (Windar).<sup>4</sup> On May 10, 2021, we received a timely-filed rebuttal brief from Wind Tower Trade Coalition (the petitioner).<sup>5</sup> Also on May 10, 2021, Commerce received a submission from the Government of Spain; however, Commerce determined that this brief did not meet the regulatory criteria for a rebuttal brief, pursuant to 19 CFR 351.309(d)(2), and rejected it from the record.<sup>6</sup>

## III. SCOPE OF THE INVESTIGATION

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

## IV. CHANGES SINCE THE *PRELIMINARY DETERMINATION*

- We have removed Proinlosa from the list of non-responsive companies that received AFA.

## V. DISCUSSION OF THE ISSUES

### **Comment 1: Whether Commerce Should Have Selected SGRE as a Mandatory Respondent**

Commerce selected Vestas Eolica, S.A.U. (Vestas), an exporter/producer of wind towers in Spain, as the sole mandatory respondent in this investigation.<sup>7</sup> On January 28, 2021, Vestas informed Commerce that it was withdrawing from further participation in the investigation,<sup>8</sup> and

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<sup>2</sup> See Memorandum, "Late Quantity and Value Submission," dated April 14, 2021 (Proinlosa Q&V Memorandum).

<sup>3</sup> *Id.*

<sup>4</sup> See SGRE's Letter, "Antidumping Duty Investigation of Utility Scale Wind Towers from Spain: SGRE's Case Brief," dated May 3, 2021 (SGRE Case Brief).

<sup>5</sup> See Petitioner's Letter, "Utility Scale Wind Towers from Spain: Rebuttal Brief," dated May 10, 2021 (Petitioner Rebuttal Brief).

<sup>6</sup> See Commerce's Letter, "May 10, 2021 Brief of the Government of Spain -- Antidumping Duty Investigation of Utility Scale Wind Towers from Spain," dated June 4, 2021.

<sup>7</sup> See Memorandum, "Less-Than-Fair-Value Investigation of Utility Scale Wind Towers from Spain: Respondent Selection," dated December 23, 2020 (Respondent Selection Memorandum), at 1.

<sup>8</sup> See Vestas' Letter, "Utility Scale Wind Towers from Spain: Notice of Decision to Not Participate in the Investigation," dated January 28, 2021.

on February 17, 2021, SGRE requested that Commerce select it for individual examination instead.<sup>9</sup>

Commerce did not select SGRE as a replacement respondent.<sup>10</sup> In the *Preliminary Determination*, we assigned Vestas a preliminary dumping margin based on total AFA and SGRE the all-others rate.<sup>11</sup>

#### *SGRE's Comments*

- When Vestas withdrew from participation in this investigation, Commerce's normal practice dictates Commerce should have selected the second-largest exporter, *i.e.*, SGRE, as the mandatory respondent.<sup>12</sup>
- At the time of Vestas's withdrawal, over two months remained prior to the *Preliminary Determination* deadline, which had not been extended; additionally, at the time of SGRE's request for individual examination, over six weeks remained.<sup>13</sup> Commerce had the authority and obligation to extend the deadlines here because SGRE was cooperating and this investigation was extraordinarily complicated. Commerce also could have extended the deadline for the final determination, as there were no compelling reasons not to do so.<sup>14</sup>
- SGRE would have requested voluntary respondent status, but any submission of a voluntary response would have been futile, as Commerce had already determined that it was going to select a single respondent.<sup>15</sup>
- Commerce is charged under the Act with determining the dumping margin for each known exporter, and the Act provides that Commerce may limit its examination to a "reasonable number of exporters"; SGRE cannot, by itself, constitute a large number of exporters following the withdrawal of the initial respondent.<sup>16</sup>
- Selecting SGRE as a respondent would not put any further burden on Commerce since it has already indicated that it can examine one company in the Respondent Selection Memorandum.<sup>17</sup>

#### *Petitioner's Rebuttal*

- Commerce appropriately exercised its discretion not to select SGRE as a replacement mandatory respondent. Commerce may deny a company's request to be selected as a replacement respondent in an investigation where that company has already submitted initial questionnaire responses and other pertinent information; SGRE, in contrast,

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<sup>9</sup> 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.

<sup>10</sup> See Commerce's Letter, "Utility Scale Wind Towers from Spain: Request to Select Replacement Mandatory Respondent," dated March 5, 2021.

<sup>11</sup> See generally *Preliminary Determination*.

<sup>12</sup> See SGRE Case Brief at 2-3.

<sup>13</sup> *Id.* at 3.

<sup>14</sup> *Id.* at 5.

<sup>15</sup> *Id.* at 8.

<sup>16</sup> *Id.* at 6.

<sup>17</sup> *Id.* at 4 (citing Respondent Selection Memorandum at 1).

submitted no questionnaire responses, comments on respondent selection, or other relevant data or factual information prior to its late request to be reviewed in this investigation.<sup>18</sup>

- At the late stage when SGRE made its request, it would have been nearly impossible for Commerce to fully investigate a new respondent and calculate an accurate margin, and Commerce was under no obligation to extend the deadlines for the preliminary or final determinations to accommodate SGRE.<sup>19</sup> Rushing a newly-selected respondent to a preliminary determination in 35 days – assuming that was possible – is untenable and would have resulted in a highly-underdeveloped record.
- The Act states that Commerce “may” postpone a preliminary determination under certain conditions.<sup>20</sup> SGRE’s assertion that Commerce was required to extend the deadline is plainly incorrect. SGRE was not, as it claims, a “fully-participating” respondent, and only made that claim when it was clear that it would be subject to a higher antidumping duty rate than expected. SGRE did not submit comments in response to the initial respondent selection memorandum or with respect to product matching characteristics. Similarly, as noted above, it did not request voluntary respondent status, and also did not resubmit its Q&V response after Commerce provided clarifying instructions to recipients.<sup>21</sup>
- SGRE’s claims that submission of a voluntary response would have been futile is an attempt to shift blame for its own lack of participation. Had SGRE requested voluntary respondent status from the beginning, it would have had an argument to be selected as a replacement once the initial respondent dropped out; however, it did not.<sup>22</sup>

**Commerce’s Position:** We disagree with SGRE and find that Commerce was not required to select it as an additional mandatory respondent in this investigation.

Section 777A(c)(1) of the Act directs Commerce to determine an individual weighted-average dumping margin for each known exporter and producer of the subject merchandise. However, section 777A(c)(2)(B) of the Act and 19 CFR 351.204(c)(2) state that Commerce may limit its examination to exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined. As discussed in our Respondent Selection Memorandum, after a careful examination of our available resources, we determined that it was not practicable to examine all known producers or exporters of subject merchandise.<sup>23</sup> Therefore, in accordance with section 777A(c)(2)(B) of the Act, we selected Vestas as a mandatory respondent because it was the largest exporter and its selection allowed us to investigate the largest volume of exports that could be reasonably examined while also balancing our resource concerns. Indeed, at the time, we found that Vestas “accounted for a significant majority of imports of subject merchandise during the POI.”<sup>24</sup>

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<sup>18</sup> See Petitioner Rebuttal Brief at 2-3 (citing *DuPont Teijin Films China Ltd. v. United States*, 7 F. Supp. 3d 1338, 1357 (CIT 2014) (*DuPont Teijin Films*)).

<sup>19</sup> *Id.* at 4.

<sup>20</sup> *Id.* (citing section 733(c)(1)(B) of the Act).

<sup>21</sup> *Id.* at 6-8.

<sup>22</sup> *Id.* at 9-11.

<sup>23</sup> See Respondent Selection Memorandum at 3.

<sup>24</sup> *Id.* at 7.

On January 28, 2021, Vestas withdrew its participation in this investigation. SGRE did not, at any time during the proceeding, request voluntary treatment. Had SGRE requested voluntary treatment, Commerce would have reviewed its request pursuant to 19 CFR 351.204(d)(2) to determine whether to accept a voluntary respondent. Additionally, had SGRE provided a voluntary response, which would have been due on the same date as Vestas' response,<sup>25</sup> Commerce could have considered – with limited delay – whether it had the resources to examine SGRE. Although SGRE claims that its submission of a voluntary response would have been futile, Commerce has indeed selected voluntary respondents in the past.<sup>26</sup> Commerce and the U.S. Court of International Trade (CIT) have emphasized a company's obligation to pursue selection as a respondent; for instance, the CIT has found that “a respondent who wishes to challenge Commerce's mandatory respondent selection must exhaust its administrative remedies by seeking such status itself and pursuing voluntary respondent status.”<sup>27</sup>

Additionally, although Vestas notified Commerce that it would not be participating in this investigation on January 28, 2021, SGRE waited until February 17, 2021, before requesting that it be selected as a mandatory respondent. Therefore, SGRE waited nearly three weeks before signaling interest in participating in this investigation as a mandatory respondent (after also failing to express interest at the respondent selection stage). This too impeded our ability to potentially select and review SGRE as a mandatory respondent.

Furthermore, SGRE failed to properly seek voluntary respondent status. In *Taiwan Nails*, we explained:

{Respondent} had ample opportunity to request voluntary respondent status, but did not do so or follow the statutory directive under section 782(a) of the Act, to present itself as a voluntary respondent. ... Rather than following the statutory requirements for requesting voluntary status, {Respondent} filed a letter, well after the deadlines established under section 782(a) of the Act passed, stating it was ‘willing and able to submit a response to the ... antidumping duty questionnaire in this segment of the proceeding.’ As we already stated in the *Preliminary Results*, {Respondent}'s ‘letter of willingness’ to be a respondent was an unacceptable substitute for the requirements established under section 782(a) of the Act.<sup>28</sup>

In practical terms, had Commerce issued an initial questionnaire to SGRE on the day immediately following SGRE's request, it would have been approximately eight weeks after

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<sup>25</sup> See section 782 (a)(1)(A) of the Act.

<sup>26</sup> See, e.g., *Certain Cold-Rolled Steel Flat Products from Japan: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances*, 81 FR 11747 (March 7, 2016), and accompanying PDM at 10.

<sup>27</sup> See, e.g., *Shenzhen Xinboda Indus. Co. v. United States*, 180 F. Supp. 3d 1305, 1318 (CIT 2016); and *DuPont Teijin Films*, 7 F.Supp.3d at 1357 (“{A} party aggrieved by not being selected as a mandatory respondent must request to be reviewed as voluntary respondent ... before it can challenge the mandatory respondent selection process in court”); see also *Certain Steel Nails from Taiwan: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018-2019*, 5 FR 76014 (November 27, 2020) (*Taiwan Nails*), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

<sup>28</sup> See *Taiwan Nails* IDM at 20.

Commerce issued its questionnaire to Vestas in this matter.<sup>29</sup> Given Commerce's practice of setting the questionnaire's initial deadline 37 days after its issuance,<sup>30</sup> and presuming that Commerce provided no extensions, the questionnaire would have been due on March 29, 2021 – the same date as the unextended statutory deadline for the *Preliminary Determination*.

Additionally, although SGRE asserts that adequate time remained in this investigation, we disagree. Analysis of a company's response, the collection and analysis of U.S. and comparison market sales information, as well as cost of production data for each unique product produced by that company, and performing the margin calculations require an enormous expenditure of resources. Further, the analysis of an initial questionnaire response makes up only a limited portion of the work performed with respect to any given respondent. Rather, Commerce frequently finds deficiencies, inconsistencies, contradictory responses, and issues requiring further clarification. Accordingly, Commerce typically issues supplemental questionnaires, identifies and resolves issues with respect to a respondent's data, and addresses any issues raised in comments. Here, selecting SGRE after it failed to timely provide a voluntary response (and further delayed in expressing its desire to be individually examined in this investigation) would have required Commerce to conduct a full investigation of a new respondent without adequate time to complete the investigation within the statutory deadlines. Moreover, SGRE's suggestion that selecting SGRE would have been an equivalent use of resources to examining Vestas is clearly incorrect; this assertion entirely ignores the fact that nearly two months of time was lost due to SGRE's failure to file a response as a voluntary respondent on the date when voluntary responses were due.<sup>31</sup>

SGRE also asserts that "Commerce is no doubt partially responsible for the extraordinarily prolonged respondent selection process in this investigation."<sup>32</sup> This too is not borne out by the record. After placing CBP data on the record of this investigation, we received comments alerting us to the fact that these data were flawed because they contained entry data in mixed units of measure.<sup>33</sup> The mixed units of quantity reported in the CBP data,<sup>34</sup> if left unresolved,

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<sup>29</sup> Moreover, Commerce's issuance of questionnaires in this proceeding was already delayed as a result of our solicitation of Q&V information from prospective respondents, as well as our extension of deadlines for companies to respond to the request for information. We also extended the deadline to comment on respondent selection, at the request of a respondent in this matter.

<sup>30</sup> See, e.g., Commerce's Letter to Vestas, "Initial AD Questionnaire," dated December 23, 2020, at 4; see also 19 CFR 351.301(c)(1) ("Initial questionnaire responses are due 30 days from the date of receipt of such questionnaire. ... In general, the date of receipt will be considered to be seven days from the date on which the initial questionnaire was transmitted").

<sup>31</sup> This assertion also ignores the fact that SGRE sourced the wind towers subject to this investigation from Windar, an affiliated company which failed to respond to Commerce's Q&V questionnaire (and which Commerce found uncooperative as a result). See SGRE's Letter, "Less-Than-Fair-Value Investigation of Utility Scale Wind Towers from Spain: Response to Quantity and Value Questionnaire," dated December 7, 2020 (stating "The U.S. sales ... reflect SGRE's purchases from Windar Renovables, an affiliated supplier in Spain"). While it is unclear how this fact pattern would impact Commerce's analysis, it is certain that it would be a complicating factor, requiring additional time and resources to address.

<sup>32</sup> See SGRE Case Brief at 5.

<sup>33</sup> See Petitioner's Letter, "Utility Scale Wind Towers From Spain: Comments on CBP Data and Respondent Selection," dated November 23, 2020 (Petitioner CBP Comments).

<sup>34</sup> See Petitioner CBP Comments at 2 (noting that, as a result of the CBP data units reported, "it is unclear precisely which companies entered the largest quantities of wind towers"); see also Vestas's Letter, "Comments on CBP Data

would have prevented Commerce from accurately identifying the exporter(s) accounting for the largest volume of U.S. imports. As a result, Commerce was required to issue Q&V questionnaires in this investigation to identify the potential respondent(s) accounting for the largest share of imports to the United States. We also extended the deadline for submission of responses to provide adequate time for potential respondents to file responses,<sup>35</sup> and then subsequently provided an additional time to comment on respondent selection.<sup>36</sup> SGRE faults Commerce for the delay, despite the fact that much of the delay in the respondent selection process was beyond Commerce's control and such extensions were necessary to afford parties sufficient time to comment on this fundamental question. Additionally, SGRE did not file respondent selection comments when it had ample opportunity to do so.

In addition to SGRE not requesting voluntary treatment or providing a voluntary questionnaire response in a timely manner and waiting three weeks before requesting that it be selected as a mandatory respondent, the increasing constraint on Commerce's resources throughout this proceeding coupled with the administrative burden of the continually growing number of investigations, administrative reviews, concurrent segments throughout Commerce, and the high coverage of imports with the initially selected mandatory respondent meant that we lacked the resources to select and analyze an additional mandatory respondent under a tightly compressed schedule in this investigation.<sup>37</sup> Thus, we disagree with SGRE's assessment of the resources necessary to select SGRE at a late stage in this investigation, and its assertion that Commerce was required to conduct this investigation on a reduced timeline. Commerce's decision in this regard is consistent with past practice.<sup>38</sup>

Finally, SGRE asserts that Commerce's decision will lead to an unjust all-others rate and antidumping duty order. However, requiring Commerce to conduct an investigation on an unrealistic timeframe – due in large part to SGRE's failure to timely file a voluntary response – would undermine Commerce's ability to properly conduct this investigation within the statutory deadlines.

## **Comment 2: Whether Commerce Should List All Non-Responsive Companies in the Federal Register Notice**

### *SGRE's Comments*

- Pursuant to sections 773(d)(1)(ii) and 735(c)(5)(A) of the Act, Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. However, Commerce has listed various importers and exporters of wind towers and

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and Respondent Selection,” dated November 23, 2020 (asserting that “the Department should issue quantity and value questionnaires to known Spanish tower producers”).

<sup>35</sup> See Memorandum, “Less-Than-Fair-Value Investigation of Utility Scale Wind Towers from Spain: Quantity and Value Questionnaire – Clarification and Extension,” dated December 7, 2020.

<sup>36</sup> 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.

<sup>37</sup> See *Twist Ties from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 86 FR 10536 (February 22, 2021), and accompanying IDM at Comment 2.

<sup>38</sup> *Id.*

components from Spain with individually-assigned rates, despite not having individually examined them. Commerce's prior practice requires listing only the individually-examined entities with individual rates, in addition to a single all-others rate for those not individually examined.<sup>39</sup>

- SGRE affiliates Gamesa Energy Transmission and Windar are improperly identified with an individually-assigned rate, and Gamesa Energy Transmission did not appear in the Petition as a known exporter.<sup>40</sup>
- If Commerce does not select SGRE as a mandatory respondent, it should only list individual rates for those entities selected for individual examination. Alternately, Commerce should limit the list of companies identified in the final *Federal Register* notice to companies that were identified in the Petition and the mandatory respondent, Vestas.<sup>41</sup>

**Commerce's Position:** We disagree with SGRE. For the reasons explained in the *Preliminary Determination*, we continue to apply AFA to Vestas and the companies that failed to respond to Commerce's Q&V questionnaire, with the exception of Proinlosa.

SGRE asserts that "Commerce confusingly listed various importers and exporters of wind towers, in addition to the 'all-others' rate,"<sup>42</sup> and further contends that doing so "is contrary to Commerce's prior practice"<sup>43</sup> which requires listing only the individually-examined entities with individual rates in addition to a single all-others rate for all exporters and producers not individually examined. SGRE appears to have misunderstood Commerce's application of AFA to the non-responsive companies and is incorrect as to Commerce's practice in this regard.

As an initial matter, Commerce did not list various exporters that would, otherwise, have been covered by the all-others rate in the *Preliminary Determination*. Rather, Commerce listed the non-cooperating mandatory respondent and a set of companies that failed to cooperate to the best of their ability by not timely/properly responding to Commerce's Q&V questionnaire. These companies all failed to respond to a request for information from Commerce and, accordingly, received a dumping margin based on AFA in this investigation. Commerce properly applied AFA to these companies; these non-cooperating companies are not subject to the all-others rate. It is standard practice to assign margins based on AFA to companies that fail to respond to Q&V questionnaires, and Commerce has done so regularly, including in recent investigations.<sup>44</sup>

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<sup>39</sup> See SGRE Case Brief at 9.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 9-10.

<sup>42</sup> *Id.* at 9.

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

<sup>44</sup> See, e.g., *Forged Steel Fittings from India: Final Affirmative Determination of Sales at Less Than Fair Value*, 85 FR 66306 (October 19, 2020); *Forged Steel Fittings from the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value*, 85 FR 66302 (October 19, 2020); *Forged Steel Fluid End Blocks from Italy: Final Affirmative Determination of Sales at Less Than Fair Value*, 85 FR 79996 (December 11, 2020); *Forged Steel Fluid End Blocks from the Federal Republic of Germany: Final Determination of Sales at Less Than Fair Value*, 85 FR 80018 (December 11, 2020); and *Utility Scale Wind Towers From India: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 86 FR 27829 (May 24, 2021).



Although SGRE asserts that Gamesa Energy Transmission and Windar are affiliates, that does not affect our treatment of the companies. Commerce has not made any affiliation or collapsing determinations with respect to these companies. Accordingly, both were required to provide a response to our Q&V questionnaire and did not do so. Additionally, SGRE's assertion that Commerce should only include companies listed in the Petition among the AFA recipients is without merit. Commerce determined that the issuance of Q&V questionnaires was required in this investigation and sent such questionnaires to all producers and/or exporters of subject merchandise as shown in Customs data and to the companies listed in the Petition.<sup>45</sup> Once Commerce solicited such information – which is necessary for accurate respondent selection – the questionnaire recipients were required to respond to this request for information, regardless of whether they were listed in the Petition or not.

Finally, as noted above, we determined that Proinlosa attempted to contact Commerce in a timely manner regarding its Q&V response.<sup>46</sup> As a result, we accepted such information on the record of this proceeding, and no party provided comments on Proinlosa's submission. As a result, in this final determination, we have removed Proinlosa from the list of companies receiving a rate based on AFA. Because Proinlosa is not an individually-examined company, it is assigned the all-others rate established in this investigation.

## VI. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination in the investigation in the *Federal Register*.



Agree



Disagree

6/14/2021

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Signed by: CHRISTIAN MARSH

Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance

<sup>45</sup> See Memorandum, "Antidumping Duty Investigation of Utility Scale Wind Towers from Spain: Issuance of Quantity and Value Questionnaires," dated November 25, 2020.

<sup>46</sup> See generally Proinlosa Q&V Memorandum.