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Investigation
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March 19, 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
Countervailing Duty Investigation of Utility Scale Wind Towers
from Malaysia

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of utility scale wind towers (wind towers) from Malaysia, as provided in section 703(b)(1) of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

A. Initiation and Case History

On September 30, 2020, the Wind Tower Trade Coalition (the petitioner) filed a petition with Commerce seeking the imposition of countervailing duties (CVD) on imports of wind towers from Malaysia.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

On October 16, 2020, Commerce held consultations with representatives of the Government of Malaysia (GOM).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 (the Petition).

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 Memorandum, “Consultations with the Government of Malaysia on the Countervailing Duty Petition Regarding Utility Scale Wind Towers from Malaysia,” dated October 20, 2020.



On November 9, 2020, Commerce initiated an investigation of wind towers from Malaysia.⁴ As stated in the *Initiation Notice*, the petitioner named only one company in the Petition as a producer/exporter of wind towers in Malaysia, CS Wind Malaysia Sdn Bhd (CS Wind).⁵ The U.S. Customs and Border Protection import data placed on the record of the proceeding corroborated the identification of CS Wind as the sole producer/exporter in the foreign market.⁶ Therefore, we selected CS Wind as the mandatory respondent in this investigation.

On November 13, 2020, we issued the initial CVD questionnaire to the GOM, and instructed the GOM to forward the questionnaire to CS Wind and to Ji Kang Dimensi Sdn Bhd, an alleged input supplier.⁷ Between November 30, 2020, and February 11, 2021, we received timely responses to our initial and supplemental CVD questionnaires from the GOM⁸ and CS Wind.⁹

In January and February 2021, Vestas Towers America, Inc. and its affiliates (collectively, Vestas) requested that Commerce revisit its determination of industry support in this proceeding.¹⁰ However, 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.”¹¹ Accordingly, we are not reconsidering our determination in this regard.

⁴ See *Utility Scale Wind Towers from India and Malaysia: Initiation of Countervailing Duty Investigations*, 85 FR 73019 (November 16, 2020) (*Initiation Notice*); see also CVD Initiation Checklist, “Utility Scale Wind Towers from Malaysia,” dated November 9, 2020.

⁵ See Volume I of the Petition at Exhibit I-17.

⁶ See Memorandum, “Release of U.S. Customs and Border Protection Data,” dated November 2, 2020.

⁷ See Commerce’s Letter, “Investigation of Utility Scale Wind Towers from Malaysia: Countervailing Duty Questionnaire,” dated November 13, 2020 (Initial Questionnaire).

⁸ See GOM’s Letters, “Utility Scale Wind Towers from Malaysia: Countervailing Duty Questionnaire Response,” dated December 24, 2020 (GOM December 24, 2020 IQR); “Utility Scale Wind Towers from Malaysia – Resubmission of GOM Supplementary Questionnaire Response,” dated February 3, 2021 (GOM February 3, 2021 SQR), and “Utility Scale Wind Towers from Malaysia – Submission of GOM Supplemental Questionnaire Response after Third Extension Granted for Specific Programs,” dated February 4, 2021 (GOM February 4, 2021 SQR).

⁹ See CS Wind’s Letters, “Utility Scale Wind Towers from Malaysia: Section III “Affiliated Companies” Response,” dated November 27, 2020 (CS Wind November 27, 2020 AQR); “Utility Scale Wind Towers from Malaysia: Section III Questionnaire Response,” dated December 30, 2020 (CS Wind December 30, 2020 IQR); “Countervailing Duty Investigation of Utility Scale Wind Towers from Malaysia: Supplemental Questionnaire,” dated January 26, 2021; and “Utility Scale Wind Towers from Malaysia: Supplemental Questionnaire Response,” dated February 11, 2021).

¹⁰ See Vestas’ Letters, “Utility Scale Wind Towers from Malaysia: Request for Reexamination of Industry Support,” dated January 26, 2021; and “Utility Scale Wind Towers from Malaysia: Placing Documents on the Record; Response to Petitioner’s January 27 Letter Regarding Industry Support,” dated February 6, 2021; see also Petitioner’s Letter, “Utility Scale Wind Towers from Malaysia: Response to Vestas’ Request to Reexamine the Domestic Industry Support,” dated January 27, 2021.

¹¹ See *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.

On February 8, 2021, the petitioner timely submitted new subsidy allegations (NSAs) for two programs.¹² On February 17, 2021, the petitioners submitted benchmark information.¹³ On February 18, 2021, and March 1, 2021, CS Wind filed responses to these submissions¹⁴ and benchmark information, respectively.

In March 2021, the petitioner submitted pre-preliminary comments,¹⁵ and CS Wind submitted a response to these comments.¹⁶

B. Postponement of Preliminary Determination

On December 28, 2020, based on a request from the petitioner,¹⁷ Commerce postponed the deadline for issuance of the preliminary determination until March 19, 2021, in accordance with section 703(c)(1)(A) of the Act and 19 CFR 351.205(b)(2).¹⁸

C. Period of Investigation

The period of investigation (POI) is January 1, 2019, through December 31, 2019.

D. New Subsidy Allegations

As noted above, on February 8, 2021, the petitioner timely submitted two NSAs. We addressed the petitioner's NSAs in a memorandum issued on March 18, 2021.¹⁹

III. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,²⁰ we set aside a period of time in the *Initiation Notice* for parties to raise issues regarding product coverage (*i.e.*, scope).²¹ We did not receive comments concerning the scope of the concurrent antidumping duty and CVD investigations of wind towers as it appeared in the *Initiation Notice*.

¹² See Petitioner's Letter, "Utility Scale Wind Towers from Malaysia: New Subsidy Allegations," dated February 8, 2021.

¹³ See Petitioner's Letter, "Utility Scale Wind Towers from Malaysia: Submission of Benchmark Information," dated February 17, 2021 (Petitioner February 17, 2021 Benchmark Submission).

¹⁴ See CS Wind's Letters, "Utility Scale Wind Towers from Malaysia: Rebuttal Comments Relating to the Petitioner's New Subsidy Allegations," dated February 18, 2021; and "Utility Scale Wind Towers from Malaysia – Submission of Factual Information to Rebut, Clarify or Correct the Petitioner's February 17th Benchmark Submission," dated March 1, 2021.

¹⁵ See Petitioner's Letter, "Utility Scale Wind Towers from Malaysia: Pre-Preliminary Determination Comments," dated March 2, 2021 (Petitioner Pre-Prelim Comments).

¹⁶ See CS Wind's Letter, "Utility Scale Wind Towers from Malaysia: Response to the Petitioner's Pre-Preliminary Determination Comments," dated March 10, 2021.

¹⁷ See Petitioner's Letter, "Utility Scale Wind Towers from Malaysia: Request for Extension of Preliminary Determination Deadline," dated December 4, 2020.

¹⁸ See *Utility Scale Wind Towers from India and Malaysia: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 85 FR 84302 (December 28, 2020).

¹⁹ See Memorandum, "Countervailing Duty Investigation of Utility Scale Wind Towers from Malaysia: New Subsidy Allegations," dated March 18, 2021.

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

²¹ See *Initiation Notice*, 85 FR at 73020.

IV. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation consists of certain wind towers, whether or not tapered, and sections thereof. The complete description of the scope of this investigation is contained in Appendix I of the preliminary determination *Federal Register* notice.

V. INJURY TEST

Because Malaysia is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Malaysia materially injure, or threaten material injury to, a U.S. industry. On December 9, 2020, the ITC preliminarily determined that there is a reasonable indication that an industry in the U.S. is materially injured by reason of imports of wind towers from Malaysia.²²

VI. SUBSIDIES VALUATION

A. Allocation Period

Commerce normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.²³ In Commerce’s initial questionnaire, we notified the respondents to this proceeding that the AUL period would be 12 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service Publication 946 (2017).²⁴ No party in this proceeding submitted comments challenging the proposed AUL period. We preliminarily determine that a 12-year period is appropriate to allocate benefits from non-recurring subsidies.

Furthermore, for non-recurring subsidies, we applied the “0.5 percent test,” as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of the subsidy approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the same year. If the amount of the subsidy is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than across the AUL period.

B. Attribution of Subsidies

In accordance with 19 CFR 351.525(b)(6)(i), Commerce normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is

²² See *Utility Scale Wind Towers from India, Malaysia, and Spain*, 85 FR 79217 (December 9, 2020).

²³ See 19 CFR 351.524(b).

²⁴ See U.S. Internal Revenue Service Publication 946 (2017), “How to Depreciate Property” at Table B-2: Table of Class Lives and Recovery Periods.

primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

Commerce's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade (CIT) upheld Commerce's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.²⁵

CS Wind is a 100 percent foreign-invested enterprise, wholly owned by its parent company, CS Wind Corporation (CS Wind Korea).²⁶ Although CS Wind has several overseas affiliates that manufacture utility scale wind towers,²⁷ CS Wind's sole affiliate located in Malaysia, Famous Fleet Sdn Bhd, is not involved in the sale, production, or distribution of wind towers.²⁸ Thus, CS Wind did not have any cross-owned companies during the AUL period/POI.

Regarding its sales process, CS Wind's export sales of subject merchandise to the United States were all made and negotiated by CS Wind's parent company located in South Korea, CS Wind Korea.²⁹ Thus, CS Wind's own sales revenue is not based on invoice prices or on the value of wind towers that it sold to unaffiliated U.S. customers but, rather, on the service revenue that it received from CS Wind Korea.³⁰

C. Denominators

When selecting an appropriate denominator for use in calculating an *ad valorem* subsidy rate, Commerce considers the basis for the respondent's receipt of benefits under each program at issue.³¹ For purposes of this preliminary determination, we have used, where appropriate, the reported POI sales value of CS Wind Korea's sales of merchandise produced by CS Wind in Malaysia, which includes sales of subject merchandise, as the denominator of the subsidy calculations. In this instance, given the unique relationship between the parent and respondent, the sales denominator reflects the value of subject merchandise that is entering the United States.³² For further discussion of the denominators used, including related proprietary information, *see* CS Wind Preliminary Calculation Memorandum.³³

²⁵ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

²⁶ See CS Wind November 27, 2020 AQR at 5.

²⁷ *Id.*

²⁸ *Id.* at 3.

²⁹ *Id.* at 2.

³⁰ *Id.* at 5.

³¹ See 19 CFR 351.525(b)(1)-(5).

³² See *Utility Scale Wind Towers from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination and Negative Determination of Critical Circumstances*, 85 FR 40229 (July 6, 2020), and accompanying IDM at 4.

³³ See Memorandum, "Countervailing Duty Investigation of Utility Scale Wind Towers from Malaysia: CS Wind Preliminary Determination Calculations," dated concurrently with this memorandum (CS Wind Preliminary Calculation Memorandum).

D. Land and Electricity Benchmarks and Interest Rates

Commerce identifies appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services, in accordance with 19 CFR 351.511(a)(2). This section of Commerce's regulations specifies potential benchmarks in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively-run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); and (3) an assessment of whether the government price is consistent with market principles (tier three).

With respect to the provision of land for less than adequate remuneration (LTAR) program, pursuant to 19 CFR 351.511(a)(2)(1), we first determined whether there are market prices from actual sales transactions involving Malaysian buyers and sellers that can be used to determine whether the government authority sold land to the respondent for LTAR. The GOM placed 2019 land pricing data for land in Pahang on the record.³⁴ However, because we cannot determine whether the prices represent private transactions, we find these prices unusable. Therefore, Commerce is using a tier-one benchmark analysis and is relying on information found in the "Real Estate Market Outlook 2020 Malaysia" publication from C.B. Richard Ellis provided by the petitioner.³⁵ This source provides purchase prices and lease rates for industrial land in Malaysia during the POI. The submitted information contains data on private land transactions in Malaysia during 2019. We relied on a sales price of raw industrial land, of a comparable size, between two private parties in Melaka as our benchmark.

For this preliminary determination, we are using the average ringgit-per-square-meter price paid for these land parcels adjusted for inflation or deflation using Malaysia's Consumer Price Index, as published by the IMF. Our treatment of this program is discussed further below, in the section titled "East Coast Economic Region (ECER)/Industrial Zone – Land for LTAR Program."

With respect to the provision of electricity for LTAR program, as discussed in the section titled "Application of Facts Available: Electricity for LTAR – Benchmark," based on the record and the information currently available, we are relying on electricity rates from Singapore as a tier-three benchmark. These data consist of 2019 electricity tariffs for Singapore obtained from the Department of Statistics Singapore, an agency of the Government of Singapore.³⁶ We find that these data constitute an appropriate benchmark because: (1) the record demonstrates that the Malaysia and Singapore electricity grids are interconnected; (2) the data represent rates for a comparable class/type of electricity consumer; and (3) the record indicates that the Singapore rates are market-based.³⁷ Accordingly, we relied on the base uncontracted capacity, kilowatt hour, and reactive power usage charges for high tension, large supplies in 2019 as a tier-three benchmark.³⁸

³⁴ See GOM February 3, 2021 SQR at Exhibit XII.

³⁵ See Petitioner February 17, 2021 Benchmark Submission at Exhibit 2.

³⁶ *Id.* at Exhibit 4.

³⁷ See GOM February 4, 2021 SQR at Exhibit B4a, page 1124-1127 (noting that "Singapore was one of the earliest countries in the world to liberalise the power supply market").

³⁸ See CS Wind Preliminary Calculation Memorandum.

For allocating the benefit from non-recurring subsidies, we have used the yearly average long-term lending rate in Malaysia from the International Monetary Fund's (IMF)'s International Financial Statistics for the year in which the GOM provided the subsidy, consistent with 19 CFR 351.524(d)(3)(i). The discount rates used in our preliminary calculations are provided in the CS Wind Preliminary Calculation Memorandum.³⁹

VII. USE OF FACTS OTHERWISE AVAILABLE

A. Legal Standard

Sections 776(a) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply "facts otherwise available" if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within 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.

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

B. Application of Facts Available: Electricity for LTAR – Benchmark

As part of Commerce's analysis regarding the appropriate benchmark to use in determining whether the GOM provided electricity for LTAR, we requested a variety of data regarding the operations of Tenaga Nasional Berhad (TNB). TNB is the GOM's electricity provider in Peninsular Malaysia and is CS Wind's electricity supplier.⁴⁰ In particular, we requested that the GOM provide data to permit an analysis of whether TNB recovers its costs in the context of electricity distribution; we asked:

For the tariffs that were in place during the 2019 POI, provide TNB's operating costs and expenses, including return on capital that is incurred with respect to each of TNB's tariff classes. In addition, provide this information with respect to each of the subcategories of TNB's tariffs.⁴¹

³⁹ *Id.*

⁴⁰ See generally GOM February 4, 2021 SQR.

⁴¹ See Initial Questionnaire at II-6.

We also requested that the GOM:

Provide TNB's earned revenue during the 2019 POI with respect to each of its tariff classes. In addition, provide the information with respect to each of the subcategories of TNB's tariff classes.⁴²

In its initial questionnaire response, the GOM summarily stated that CS Wind did not receive a preferential electricity rate, and it declined to respond to the vast majority of Commerce's questions regarding the provision of electricity, including the two questions above.⁴³

We renewed our request for information regarding the operation of the Malaysian electricity system, and TNB in particular, in a supplemental questionnaire.⁴⁴ The GOM provided a partial response to these questions, including a variety of electricity laws as well as corporate governance/financial documents for TNB. However, with respect to our question regarding TNB's operating costs and its return on capital for the tariff classes, the GOM stated that "TNB is unable to provide the information in view of TNB's Confidentiality Policy."⁴⁵ With respect to our question regarding TNB's earned revenue for the electricity tariff classes, the GOM stated that "the information on sub-categories is confidential and TNB is unable to provide the information in view of TNB's Confidentiality Policy."⁴⁶ This information, however, is essential to Commerce's analysis of whether TNB's pricing reflects market principles.

Therefore, the record is incomplete as there is no data to demonstrate that the rates determined pursuant to the GOM's Incentive Based Regulation (IBR) pricing methodology results in TNB's recovering costs and making a fair rate of return as envisioned in 19 CFR 351.511(a)(2)(iii), specifically in regards to its industrial tariffs. We note that the GOM's partial response indicates that TNB appears to be, overall, a profitable enterprise. However, information on the record also states government funding was partially provided under the IBR.⁴⁷ As a result, in the absence of specific and verifiable cost information as it pertains to setting the tariff rates, we cannot use a market principles analysis to determine whether the applicable electricity prices charged to CS Wind were based on market principles pursuant to 19 CFR 351.111(a)(2)(iii). Accordingly, we find that, pursuant to section 776(a)(1) and sections 776(a)(2)(A), (C), and (D) of the Act that information is missing from the record, and application of facts available is necessary. As facts available, we are relying on Singaporean electricity prices as the best alternative electricity pricing data on the record.

⁴² *Id.*

⁴³ See GOM December 29, 2020 IQR at 15.

⁴⁴ See Commerce's Letter, dated January 15, 2021 (GOM Supplemental Questionnaire).

⁴⁵ See GOM February 4, 2021 SQR at 24.

⁴⁶ *Id.*

⁴⁷ *Id.* at Exhibit B4a, page 1160 ("...commercial and industrial consumers, RM900 million of the {Electricity Industry Fund (KWIE)} was used to cover part of the actual {Imbalance Cost Pass-Through (ICPT)} surcharge rate").

VIII. ANALYSIS OF PROGRAMS

Based upon our analysis and the responses to our questionnaires, we preliminarily determine the following:

A. Programs Preliminarily Determined to be Countervailable

1. *ECER/Industrial Zone – Land for LTAR Program*

The East Coast Economic Region (ECER) was established in 2007.⁴⁸ In 2008, the governing body, the East Coast Economic Region Development Council (ECERDC) was formally established as a Federal Statutory Body.⁴⁹ The zone/program focuses on economic development on the east coast of Peninsular Malaysia, which covers the states of Kelantan, Terengganu, and Pahang, and the district of Mersing in northeast Johor. The goal of the ECER is to develop the east coastal area by implementing the “projects and programs outlined in the ECER Master Plan.”⁵⁰ Additionally, the ECER Master Plan states that the ECERDC collaborates with state governments for the implementation and development of industrial parks through an arrangement in which “{t}he States provide the land at raw land price” and the “ECERDC through Federal funding implements infrastructure works.”⁵¹ The GOM reported that this program is administered by the ECERDC in conjunction with the applicable state-level land authority, *i.e.*, the Pahang State Development Corporation (PSDC).⁵²

CS Wind’s predecessor, Eco Tower Sdn Bhd, purchased land from the PSDC in 2009.⁵³ The land is located within the ECER. It is located in the Gebeng Industrial Zone which is, in turn, located in the state of Pahang.⁵⁴ CS Wind acquired Eco Tower Sdn Bhd, and the subject land, in 2017.⁵⁵

We find that the program provides a financial contribution because it involves the sale/transfer of land through a government authority, the PSDC.⁵⁶ Accordingly, we determine that the land purchase conferred a financial contribution in the form of a provision of a good under section 771(5)(D)(ii) of the Act.

We further find that the program is regionally specific, because it targets a region within the governing jurisdiction.⁵⁷ The ECER was established pursuant to a national level law and is

⁴⁸ See GOM December 24, 2020 IQR at 6.

⁴⁹ *Id.*

⁵⁰ See GOM February 3, 2021 SQR at 8.

⁵¹ See Petition at Exhibit VI-4.

⁵² See GOM February 3, 2021 SQR at 8.

⁵³ *Id.* at 10.

⁵⁴ See CS Wind December 30, 2020 IQR at 17-18.

⁵⁵ *Id.*

⁵⁶ See GOM December 24, 2020 IQR at 6. Additionally, the program is administered by regional and state-level government entities.

⁵⁷ *Id.* at 5-6.

governed by a “Federal Statutory Body,” while it covers a particular region, *i.e.*, designated areas along the east coast of Malaysia.⁵⁸

With respect to benefit, the adequacy of remuneration for government-provided goods or services is determined pursuant to 19 CFR 351.511(a)(2). Under 19 CFR 351.511(a)(2), Commerce measures the remuneration received by a government for goods or services against comparable benchmark prices to determine whether the government provided goods or services for LTAR. These potential benchmarks are listed in hierarchical order, by preference, as noted in the “Land and Electricity Benchmarks” section. Where possible, it is Commerce’s preference to use a transaction-specific (tier one) benchmark derived from transactions in the country under investigation. Therefore, we relied on actual transaction prices between private entities in Malaysia.⁵⁹

To calculate the benefit for this program, we compared the benchmark with the price at which CS Wind purchased land from the PSDC. We conducted the “0.5 percent test,” as instructed by 19 CFR 351.524(b)(2), for the relevant year of purchase from the PSDC by dividing the total unallocated benefit for the tract of land for the corresponding year by the appropriate sales denominator. We found that the benefits were greater than 0.5 percent of the relevant sales for the particular year; therefore, we allocated the benefit over the AUL period to determine the amount attributable to the POI.⁶⁰

On this basis, we preliminarily determine the countervailable subsidy provided to CS Wind under this program to be 0.99 percent *ad valorem*.⁶¹

2. Exemption of Import Duties and Sales Taxes for Imported Raw Materials, Spare Parts/Accessories, and Machinery

Pursuant to the Customs Act of 1967, the GOM provides an exemption of duties and taxes on specified imports.⁶² To be eligible, a participating firm must establish a Licensed Manufacturing Warehouse (LMW), in which the company can store dutiable goods and process raw materials. The application process requires submission of documentation to the State Director of Customs in the jurisdiction in which the proposed warehouse is to be located, through the nearest Customs Office. LMWs can be set up in Principal Customs Areas throughout Malaysia, *i.e.* any part of Malaysia except designated “free zones”, and Labuan and Langkawi.⁶³ Under the program, imports of machinery and equipment required for direct manufacturing of approved final

⁵⁸ The GOM stated that both ECERDC and PSDC administer the program but did not provide any laws or regulations relating to the provision of land beyond a national level law that pre-dated the creation of the ECER. Additionally, the GOM provided no response to Commerce’s questions relating to our *de facto* specificity analysis. See GOM February 3, 2021 SQR at 21. We find this deficiency to be moot in light of our finding of specificity pursuant to section 771(5A)(D)(iv) of the Act.

⁵⁹ See Petitioner’s February 17, 2021 Benchmark Submission at Exhibit 2.

⁶⁰ The GOM placed 2019 land pricing data for land in Pahang on the record. However, because we cannot determine whether the prices represent private transactions, we find these prices unusable. See GOM February 3, 2021 SQR at Exhibit XII.

⁶¹ See CS Wind Preliminary Calculation Memorandum

⁶² See GOM February 3, 2021 SQR at 45-46.

⁶³ *Id.* at 45.

products are eligible for exemption from customs duty and sales tax.⁶⁴ Additionally, raw material imports are eligible for duty/tax exemptions.⁶⁵ The program is administered by the Royal Malaysian Customs Department (RMCD).⁶⁶

With respect to the importation of machinery and parts, we preliminarily find that the program constitutes an indirect tax or import duty program to be analyzed under 19 CFR 351.510. We find that this program provides a financial contribution in the form of revenue forgone within the meaning of section 771(5)(D)(ii) of the Act. Further, we preliminarily find that this program is specific under section 771(5A)(D)(i) of the Act, because it is limited to a subset of enterprises that are engaged in the production of approved final products.⁶⁷ However, we find that CS Wind did not benefit from this aspect of the program, because the normal tariff rate for applicable machinery/spare part imports was zero.

With respect to the importation of raw materials, we preliminarily find that the program constitutes a remission or drawback of import charges program to be analyzed under 19 CFR 351.519. We preliminarily find that this program provides a financial contribution in the form of revenue forgone within the meaning of section 771(5)(D)(ii) of the Act. As discussed further below, we also preliminarily find that this aspect of the program is specific within the meaning of sections 771(5A)(A) and (B) of the Act because receipt of the duty exemption is, in principle, contingent upon exportation.⁶⁸

With regard to the export requirement for goods produced from imported raw materials, and our treatment of the program under 19 CFR 351.519, we note that the GOM stated in its questionnaire response that “{t}he company is eligible to receive the exemption from customs duties and sales tax ... regardless of whether the finished products are meant for export or local market from the initial stage of manufacture until the manufacture of finished products.”⁶⁹ This statement suggests that the program was not designed to be contingent on exportation, *i.e.*, is a program to be analyzed under 19 CFR 351.510.

Following the GOM’s questionnaire response, CS Wind asserted that the GOM’s characterization of the program was inaccurate, and it provided comments and additional factual information to correct or clarify the GOM’s response.⁷⁰ Specifically, CS Wind asserted that the program was, in fact, designed to require the exportation of the finished good processed from the imported raw materials, *i.e.*, is a program to be analyzed under 19 CFR 351.519. However, the petitioner objected to CS Wind’s effort to clarify or correct the GOM’s characterization of the

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at 46.

⁶⁷ See GOM December 24, 2020 IQR at 16 (stating that “only machinery and equipment required for direct manufacturing process of approved final products are eligible for exemption from customs duty and sales tax”).

⁶⁸ *Id.* As this program is limited to companies producing approved products, it is also specific under section 771(5A)(D)(i) of the Act.

⁶⁹ *Id.* at 15-16.

⁷⁰ See CS Wind’s Letter, “Utility Scale Wind Towers from Malaysia – Submission of Factual Information to Clarify or Correct the Government of Malaysia’s February 4th Supplemental Questionnaire Response,” dated February 16, 2021.

program.⁷¹ We agree with the petitioner that CS Wind’s response cannot substitute for an accurate and complete response from the GOM, as the GOM is responsible for administering the program. Nonetheless, we find that information on the record – including other information provided by the GOM, discussed below – demonstrates that the program, as it relates to raw material imports, is designed to be an export program and, thus, is properly analyzed under 19 CFR 351.519.

Provision 65A of the Customs Law of 1967 provides the rules governing the “Manufacture and other operations in relation to goods in licensed warehouse.”⁷² The law states that, with respect to goods which have undergone any manufacturing process in the LMW, “if such goods are released from the licensed manufacturing warehouse for home consumption {i.e., consumption within Malaysia} the customs duty thereon shall be calculated on the basis as if such goods had been imported.”⁷³ Similarly, the GOM stated that “sales to the local market are subject to import duty payment.”⁷⁴ Stated differently: the duty exemption for raw material imports is intended to apply to goods that are exported. For this reason, we preliminarily find that this program is properly analyzed as an export program under 19 CFR 351.519. However, for the reasons stated below, we find that the GOM does not maintain adequate input tracking procedures to ensure that processed raw materials are traced through the production process as contemplated by 19 CFR 351.519(a)(4)(i)-(ii).

Duty exemptions on inputs used in the production of exported products are generally not countervailable, as long as the exemption extends only to inputs consumed in the production of the exported product, making normal allowances for waste.⁷⁵ However, the government in question must have in place and apply a system to confirm which inputs are consumed in the production of the exported products and in what amounts.⁷⁶ This system must be reasonable, effective for the purposes intended, and based on generally accepted commercial practices in the country of export.⁷⁷ If such a system does not exist, or if it is not applied effectively, and the government in question does not carry out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, the entire amount of any exemption, deferral, or remission of drawback is countervailable.⁷⁸ We find that the GOM’s duty exemption program does not meet these criteria and, accordingly, we find the full value of the duty exemption realized by CS Wind to be countervailable.

In its initial questionnaire, Commerce asked the GOM to provide a description of any input tracking system relating to its import duty exemption for raw materials.⁷⁹ Following the GOM’s cursory response regarding the existence of an input tracking system for this program, we issued a supplemental questionnaire. We stated that the GOM’s initial response did not constitute a

⁷¹ See Petitioner Pre-Prelim Comments at 6.

⁷² See GOM February 3, 2021 SQR at Exhibit CE.

⁷³ *Id.*

⁷⁴ *Id.* at 49.

⁷⁵ See 19 CFR 351.519(a)(1)(ii).

⁷⁶ See *Certain Frozen Warmwater Shrimp from India: Final Affirmative Countervailing Duty Determination*, 78 FR 50385 (August 19, 2013), and accompanying IDM at “Duty Drawback.”

⁷⁷ *Id.*

⁷⁸ See 19 CFR 351.519(a)(4)(i)-(ii).

⁷⁹ See Initial Questionnaire at II-7.

complete response and requested “a description of how the GOM confirms the quantity of a given input that is necessary for the production of the final exported good on a product-specific or industry-specific basis.”⁸⁰ We also asked the GOM to “demonstrate how it confirms that raw material inputs imported under the program are ultimately used in merchandise destined for the domestic or export markets and provide supporting documentation.”⁸¹ Finally, we asked for a “step-by-step description of any on-site verification process, as supported by official verification documents relating to the respondent.”⁸²

The GOM again provided a conclusory response. Its explanation consisted of the following statements: (1) “Monitoring will be done manually;” (2) “No specific system in place. Hardcopies are kept in files;” (3) “Physical inspection at the premise will be done to confirm the activity and utilization of the exempted materials;” (4) “The company needs to declare the actual importation / usage of exempted raw materials including wastage and scraps using M1 Form;” (5) “RMCD to compare the company’s declaration in the M1 form as in para d with the import document and the physical goods produced and those to be exempted;” and (6) “To confirm the usage of raw materials and finished goods according to input and output ratios.”⁸³ We preliminarily determine that the GOM’s response is insufficient to demonstrate the existence of an adequate input tracking system.

As an initial matter, in its response to our question, the GOM stated that it had “No specific system in place.”⁸⁴ Looking beyond this threshold statement, the GOM’s remaining assertions do not demonstrate that the GOM applies an adequate input tracking system. These assertions simply reference a reporting requirement for participating companies, make a one sentence statement that the RMCD compares certain information, and then make a passing reference to input and output ratios. This response does not explain *how* the GOM confirms the quantity of a given input that is necessary for the production of the final exported good on a product-specific or industry-specific basis; nor does it provide documentation (*e.g.*, regulations, RMCD documents, audit results) to confirm that any such steps were taken with respect to CS Wind or the wind tower industry more generally.

Additionally, as noted above, the applicable law (*i.e.*, the Customs Law of 1967) states that, with respect to goods which have undergone any manufacturing process in the LMW, “if such goods are released from the licensed manufacturing warehouse for home consumption the customs duty thereon shall be calculated on the basis as if such good had been imported.”⁸⁵ However, immediately thereafter, the law states that the customs authority “may in any particular case exempt any person from the payment of the whole or part of such duty which may be payable by such person on any such goods and in granting such exemption the Minister may impose such conditions as he may deem fit.”⁸⁶ Therefore, the law provides for a discretionary exemption from the duty payment requirement. Under similar circumstances, *i.e.*, where a duty exemption

⁸⁰ See GOM Supplemental Questionnaire.

⁸¹ *Id.*

⁸² *Id.*

⁸³ See GOM February 3, 2021 SQR at 66.

⁸⁴ *Id.*

⁸⁵ *Id.* at Exhibit CE.

⁸⁶ *Id.*

program has carve-outs or exemptions from the exportation requirement, we have found the program to be countervailable.⁸⁷

Although CS Wind attempted to cure the GOM's deficient response by providing details about the GOM's program and CS Wind's operations, we specifically requested "a description of how *the GOM* confirms the quantity of a given input that is necessary for the production of the final exported good on a product-specific or industry-specific basis."⁸⁸ Our inquiry does not focus on CS Wind's self-reporting. The CIT has specifically explained that, for an analysis under 19 CFR 351.519, "business records" of a beneficiary company are insufficient for Commerce's analysis because "the underlying concern is whether the government maintains and applies a consistent procedure in order to confirm the inputs consumed in the production."⁸⁹ The GOM's response tells us nothing about the steps the government takes to confirm participating companies' reporting, and/or the application or derivation of input-output ratios, despite our request for a "step-by-step" explanation and supporting documentation. Commerce has consistently held that, to merely point to an input tracking system is not enough to demonstrate that such a system exists in practice; that system must also be implemented and supported with documentation.⁹⁰ Therefore, consistent with Commerce practice, we preliminarily find that the GOM has not demonstrated that it "has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts," pursuant to 19 CFR 351.519(a)(4)(i).

Next, we consider whether, in the absence of an adequate tracking system, the GOM conducted an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product. As noted above, we requested a "step-by-step description of any on-site verification process, as supported by official verification documents relating to the respondent."⁹¹ In response, the GOM simply stated: "Physical inspection will be done at the premises to confirm the activity and utilization of the exempted materials."⁹² The GOM provided no indication that CS Wind's facilities have been audited/verified, either during the POI

⁸⁷ See, e.g., *Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 73 FR 7708 (February 11, 2008), and accompanying IDM at Comment 3 (stating that Commerce's decision was based on "the GOI's lack of a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts that is reasonable and effective for the purposes intended" and noting a "lack of evidence regarding the implementation of penalties for companies not meeting the export requirements" and an exemption that permitted "benefits for a broad category of 'deemed' exports").

⁸⁸ See GOM Supplemental Questionnaire (emphasis added).

⁸⁹ See *Guizhou Tyre Co. v. United States*, 348 F. Supp. 3d 1261, 1279 (*Guizhou Tyre*) (upholding Commerce's determination that an input tracking system was inadequate under 19 CFR 351.519(a)(4)(i) where the administering government "utterly neglect[ed] to provide specific details on how the {government} determined the quantity of rubber, nylon cord, and carbon black consumed in the production process"); see also *MTZ Polyfilms, Ltd. v. United States*, 659 F. Supp. 2d 1303, 1315 (CIT 2009) (noting that Commerce is required by the regulation to "make an independent assessment" with respect to "the adequacy of that government's procedure" as it pertains to input tracing). The CIT has noted that "Commerce is entitled to focus on the {administering government's} responses in light of the fact that its regulations specifically require that {Commerce} determine that the 'government in question has in place and applies' an adequate tracking system") (emphasis in original). *Guizhou Tyre*, 348 F. Supp. 3d at 1278-79.

⁹⁰ See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review; 2016*, 84 FR 10789 (March 22, 2019), and accompanying IDM at Comment 4.

⁹¹ See GOM Supplemental Questionnaire.

⁹² See GOM February 3, 2021 SQR at 66.

or otherwise; nor did it provide any supporting documentation relating to its administration of the program as it relates to CS Wind in response to this question. Accordingly, the record does not support a finding that the RMCD or any other relevant authority carried out an examination of CS Wind's actual inputs involved to confirm which inputs were consumed in the production of the exported product, pursuant to 19 CFR 351.519(a)(4)(ii).

For the reasons stated above, we find that the GOM does not have in place, and does not apply, a system that is reasonable and effective for the purposes intended in accordance with 19 CFR 351.519(a)(4), to confirm which inputs, and in what amounts, are consumed in the production of the exported product, making normal allowance for waste. Moreover, we find that the GOM did not carry out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, and in what amounts. Thus, the entire amount of the import duty exemption provided to CS Wind constitutes a benefit under section 771(5)(E) of the Act.

To calculate the benefit, we used the total amount of import duties CS Wind would have paid on raw material imports during the POI in the absence of this program. We then divided CS Wind's benefit by the appropriate sales value, *i.e.*, the POI sales value of CS Wind Korea's sales of merchandise produced by CS Wind in Malaysia, as discussed in the "Denominators" section above, to derive the subsidy rate for CS Wind. On this basis, we preliminarily determine a countervailable subsidy rate of 4.78 percent *ad valorem* for CS Wind under this program.

3. ECER/Industrial Zone - Provision of Electricity for LTAR

The petitioner alleges the GOM subsidizes electricity for producers of subject merchandise through an Imbalance Cost Pass-Through (ICPT) mechanism.⁹³ The mandatory respondent, CS Wind, is located in Peninsular Malaysia and electricity provider TNB supplied its electricity during the POI.⁹⁴

Within Malaysia, the electricity regulation system comprises three areas: Peninsular Malaysia, the State of Sabah and the State of Sarawak. According to the Power Supply Act of 1990, at sections 26 and 50C, the Electricity Commission may determine and approve tariffs, as well as issue guidelines or direction to parties involved in the electricity sector.⁹⁵ The Electricity Commission regulates the energy sector in Peninsula Malaysia and Sabah, but the Power Supply Act of 1990 was suspended in the Sarawak effective September 1, 1990.⁹⁶

On January 1, 2014, the Electricity Commission established, through its regulatory mandate, the IBR.⁹⁷ The IBR is the basis upon which electricity tariff rates are established and consists of two components: the Base Tariff Review and ICPT.⁹⁸ The Base Tariff is reviewed every three years

⁹³ See Petitioner Pre-Prelim Comments at 21.

⁹⁴ See CS Wind December 30, 2020 IQR at III-22.

⁹⁵ See GOM February 4, 2021 SQR at Exhibit B1Ei.

⁹⁶ *Id.* at Exhibit B4a at page 1090 and Exhibit B1Ei at page 139 ("NOTE – The operation of the whole of the electricity Supply Act 1990 {Act 447} is suspended in the State of Sarawak with effect from 1 September 1990 – see P.U. (a)272/1990").

⁹⁷ See GOM December 24, 2020 IQR at Exhibit B1, page 1.

⁹⁸ *Id.*

and includes capital/operation expenses, the purchase cost of generation, and a return on assets.⁹⁹ The ICPT is reviewed every six months and includes fuel and other generation-related costs.¹⁰⁰ If there is a change in such costs, in either direction, the electricity distributor will account for the difference through a surcharge or rebate.¹⁰¹ The IBR was implemented in Peninsular Malaysia and is anticipated to be implemented in the state of Sabah in the next few years.¹⁰²

TNB is Malaysia's largest utility company; it has forty-seven generation facilities, transmits electricity, and is the distributor of electricity to end users in Peninsular Malaysia.¹⁰³ It is a publicly-listed company that was incorporated on September 1, 1990. As noted above, the Energy Commission regulates TNB through the implementation of the IBR that sets the tariff rates charged by the company to the end user. Although the company is publicly listed, the majority of the shares are owned by the GOM (68.6 percent is owned by government agencies).¹⁰⁴ Of these shareholders, the overall majority shareholder is Khazanah Nasional Berhad (KNB) and it "is a wholly-owned entity of {Minister of Finance Incorporated (MoF Incorporated)} which is in turn owned by the Ministry of Finance."¹⁰⁵ Moreover, MoF Incorporated holds the Special Rights Redeemable Preference Share (Special Share) that allows the following rights:

- (i) The Special Share would enable the Government of Malaysia through {MoF Incorporated} to ensure that certain major decisions affecting the operations of the Company are consistent with the Government's policies. The Special Shareholder, which may only be the Government or any representative or person acting on its behalf, is entitled to receive notices of meetings but not to vote at such meetings of the Company. However, the Special Shareholder is entitled to attend and speak at such meetings.

The Special Shareholder has the right to appoint any person, but not more than six at any time, to be a member of the Board of Directors of the Company.

- (ii) Certain matters, in particular the alteration of the Articles of Association of the Company relating to the rights of the Special Shareholder, creation and issue of additional shares which carry different voting rights, the dissolution of the Company, substantial disposal of assets, amalgamations, merger and takeover, require the prior consent of the Special Shareholder.¹⁰⁶

⁹⁹ *Id.* at 1-2.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² See GOM December 24, 2020 IQR at Exhibit B1, page 1 and GOM February 4, 2021 SQR at Exhibit B4a at page 1261 ("In 2019, IBR entered the second year of the Second Regulatory Period (RP23), from 2018 to 2020. For Sabah, IBR is to be introduced in the next few years. In the meantime, the Commission has put in place several IBR features in the state") and page 1274 ("In 2019, the proposal for the implementation of the IBR mechanism in Sabah was updated whereby it took into account the latest electricity demand forecasts as outlined in the Sabah Generation Development Plan. The plan is subject to approval by the Sabah State Government").

¹⁰³ See GOM February 4, 2021 SQR at Exhibit B5cii at pages 524, 530-531.

¹⁰⁴ *Id.* at Exhibit B5ci, page 595.

¹⁰⁵ *Id.* at Exhibit B5ci, page 465 (KNB holds 27.3 percent shares in TNB).

¹⁰⁶ *Id.* at Exhibit B5ci, page 461.

Accordingly, we preliminarily determine that TNB's electricity tariffs are regulated and approved by the GOM through the Energy Commission. In addition, we preliminarily find that the GOM exercises significant control over TNB through its special share, and that the company pursues government policy objectives through the entity's business operations. As a result, we find TNB to be an "authority" within the meaning of section 771(5)(B) of the Act. Therefore, we preliminarily determine that a financial contribution in the form of a good or service under section 771(5)(D)(iii) of the Act is being provided to producers of the subject merchandise.

With regard to specificity, as noted above, the GOM implemented the Power Supply Act of 1990 and designated the Energy Commission as the regulatory agency for electricity tariffs. The Energy Commission has enacted the IBR and its pricing methodology exclusively to the area of Peninsular Malaysia. Therefore, we preliminarily determine that the provision of electricity is specific, pursuant to section 771(5A)(D)(iv) of the Act, as it is limited to enterprises and industries located in Peninsular Malaysia.

With regard to whether a benefit was provided, under 19 CFR 351.511(a)(2), Commerce determines whether electricity is provided for LTAR by comparing, in order of preference: (i) the government price to a market determined price for actual transactions within the country, such as electricity tariffs from private parties (referred to as a tier-one benchmark); (ii) the government price to a world market price where it would be reasonable to conclude that such a world market price is available to electricity consumers in the country in question (referred to as a tier-two benchmark); or (iii) if no world market price is available, an assessment of whether the government price is consistent with market principles (referred to as a tier-three benchmark).

The record establishes that the only effective tariff rates in Peninsular Malaysia involve TNB, and the IBR pricing methodology.¹⁰⁷ Moreover, parties have not submitted other electricity tariff rates from within Malaysia, and we do not have any usable Malaysian electricity prices on the record (*i.e.*, prices that are not from a state-owned electricity provider) which could be used for consideration as a tier-one benchmark. Therefore, we determine that a tier-one benchmark (a market-determined price within the country) is not available on the instant record.

In the absence of a tier-one benchmark, we have considered whether world market prices, the next alternative in the benchmark hierarchy, are available on the record. However, under 19 CFR 351.511(a)(2)(ii), Commerce will only use world market prices if the good or service is actually available to the purchaser in the country under investigation. With respect to electricity, Commerce has stated that electricity prices from countries in the world market are normally not available to purchasers in the country under investigation.¹⁰⁸ Therefore, although record

¹⁰⁷ *Id.* at Exhibit B1A and Exhibit B28.

¹⁰⁸ See *Countervailing Duties; Final Rule*, 63 FR 65348, 65377 (November 25, 1998) (*CVD Preamble*) (emphasis added):

Paragraph (a)(2)(ii) provides that, if there are no useable market-determined prices stemming from *actual* transactions, we will turn to world market prices that *would be available* to the purchaser. We will consider whether the market conditions in the country are such that it is reasonable to conclude that the purchaser could obtain the good or service on the world market. For example, a European price for electricity normally would not be an acceptable comparison price for electricity provided by a Latin American government, because electricity from Europe in all likelihood would not be available to consumers in Latin America.

information indicates that Malaysia has electricity connections to Singapore and Thailand, and although record information includes Singaporean tariff rates, we preliminarily determine that the applicable tariffs in these countries would not be *available* to end users in Malaysia.¹⁰⁹

The final alternative in the benchmark hierarchy, set forth under 19 CFR 351.511(a)(2)(iii), is to determine whether the government price is consistent with market principles.¹¹⁰ Under a tier-three benchmark analysis, Commerce will assess whether the prices charged by TNB are set in accordance with market principles through an analysis of such factors as TNB's price-setting philosophy and costs (including rates of return sufficient to ensure future operations). We have not put these factors in any hierarchy, and we may rely on one or more of these factors in any particular case.¹¹¹

As noted in the "Application of Facts Available: Electricity for LTAR - Benchmark" section above, the GOM did not provide the underlying data relating to the IBR and ICPT to establish how costs are allocated in the price-setting mechanism and, moreover, to demonstrate that the established industrial tariffs recovered costs and also include a fair rate of return. Without this data, Commerce is unable to do a complete analysis under tier three that would allow us to make a market principles determination. Therefore, as noted in the "Land and Electricity Benchmarks" section above, we have preliminarily determined to use tariff rates from Singapore to measure the benefit under a tier-three benchmark analysis.

To calculate the benefit from this program, pursuant to 19 CFR 351.511(a)(2)(iii), we combined CS Wind's reported base and ICPT rates for each month and the applicable charges (*e.g.*, Capacity, Max Demand, *etc.*), and compared the sum of the reported rates to the applicable Singapore rate converted to Malaysian ringgit.¹¹² These monthly amounts were then summed and divided by the POI sales value of CS Wind Korea's sales of merchandise produced by CS Wind in Malaysia. On this basis, we preliminarily determine that CS Wind received a countervailable subsidy at a rate of 0.55 percent *ad valorem* under this program.¹¹³

¹⁰⁹ See GOM February 4, 2021 SQR at Exhibit B14b, page 708 and Exhibit B5cii, page 569; *see also* Petitioner February 17, 2021 Benchmark Submission at Exhibit 4.

¹¹⁰ See *CVD Preamble*, 63 FR at 65378:

Paragraph (a)(2)(iii) provides that, in situations where the government is clearly the only source available to consumers in the country, we normally will assess whether the government price was established in accordance with market principles. Where the government is the sole provider of a good or service, and there are no world market prices available or accessible to the purchaser, we will assess whether the government price was set in accordance with market principles through an analysis of such factors as the government's price-setting philosophy, costs (including rates of return sufficient to ensure future operations), or possible price discrimination. We are not putting these factors in any hierarchy, and we may rely on one or more of these factors in any particular case. In our experience, these types of analyses may be necessary for such goods or services as electricity, land leases, or water, and the circumstances of each case vary widely. *See, e.g., Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada*, 57 FR 30946, 30954 (July 13, 1992) and *Final Affirmative Countervailing Duty Determination: Venezuelan Wire Rod*, 62 FR 55014, 55021-22 (October 22, 1997).

¹¹¹ *Id.*, 63 FR at 65378. The Court of Appeals for the Federal Circuit, in *Nucor Corp.*, made clear that a finding of preferential pricing alone is not sufficient to conclude that the government price is inconsistent with market principles. *See Nucor Corp. v United States* 927 F.3d 1243, 1254 (Fed. Cir. 2019) (*Nucor Corp.*).

¹¹² *Id.*

¹¹³ *Id.*

B. Programs Preliminarily Determined Not to Be Used During the POI

We preliminarily determine that CS Wind did not receive benefits during the POI under the programs listed below:

1. Pioneer Status Direct Tax Incentives
2. Preferential Financing from the Malaysia Development Bank
3. High Impact Fund Grant
4. Upstream Subsidization of Malaysian Cut-to-Length Plate Producers by the GOM

IX. RECOMMENDATION

We recommend that you approve the preliminary findings described above.



Agree



Disagree

3/19/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance