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Investigation
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May 18, 2021

MEMORANDUM TO: Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Less-Than-Fair-Value Investigation of Utility Scale Wind Towers
from Malaysia

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that utility scale wind towers (wind towers) from Malaysia are not being, or are not 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 Malaysia, 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*).

On November 12, 2020, Commerce issued the AD questionnaire to CS Wind Malaysia Sdn. Bhd. (CS Wind Malaysia), the only company identified in the Petition.⁴ 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 Malaysia.⁵

In the *Initiation Notice*, Commerce 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.⁶ We received comments on the physical characteristics of wind towers in response to Commerce's solicitation in the *Initiation Notice* from the petitioners⁷ and Anand Engineering Products Private Limited and Windar Renewable Energy Private Limited (Anand/Windar), interested parties in the companion AD case involving India.⁸

Between December 2020 and January 2021, CS Wind Malaysia and its parent company, CS Wind Corporation,⁹ (collectively, CS Wind) submitted timely responses to Commerce's AD questionnaire.¹⁰

On January 26, 2021, Vestas Towers America, Inc. (Vestas), an interested party in the companion AD cases involving India and Spain, requested that Commerce reexamine industry support for the instant investigation.¹¹ 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."¹² Accordingly, we are not reconsidering our determination in this regard.

⁴ See Volume I of the Petition, at Exhibit I-17.

⁵ See *Utility Scale Wind Towers from India, Malaysia, and Spain*, 85 FR 79217 (December 9, 2020).

⁶ See *Initiation Notice*, 85 FR at 73024.

⁷ See Petitioner's Letter, "Utility Scale Wind Towers from India, Malaysia, and Spain: Petitioner's Comments on Product Matching Characteristics," dated November 30, 2020.

⁸ 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 (Anand/Windar Rejection Letter); see also Memorandum, "Rejection of Untimely Arguments and New Factual Information," dated December 29, 2020; and Anand/Windar's Letter, "Resubmission of Rebuttal Comments to Product Matching Characteristics," dated December 23, 2020.

⁹ As noted below, Commerce preliminarily determines that CS Wind Malaysia and CS Wind Corporation are a single entity. See Memorandum, "Less-Than-Fair-Value Investigation of Utility Scale Wind Towers from Malaysia: Preliminary Affiliation and Single Entity Memorandum for CS Wind Corporation and CS Wind Malaysia Sdn Bhd," dated concurrently with this memorandum (Affiliation and Single Entity Memo).

¹⁰ See CS Wind's Letters, "CS Wind's Section A Questionnaire Response," dated December 10, 2020; see also "CS Wind's Sections C and D Questionnaire Response," dated January 15, 2021 (CS Wind's CDQR).

¹¹ See Vestas' Letter, "Utility Scale Wind Towers from Malaysia: Request for Reexamination of Industry Support," dated January 26, 2021. On February 6, 2021, Vestas reiterated this request. See also Vestas' Letter, "Utility Scale Wind Towers from Malaysia: Response to Petitioner's January 27, 2021 Letter Regarding Industry Support," dated February 6, 2021.

¹² 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.

On February 2, 2021, the petitioner alleged that Commerce should apply the multinational corporation (MNC) provision in this investigation.¹³ We preliminarily found that the allegation was sufficient to warrant further analysis and we also issued additional questionnaires to address the MNC Allegation.¹⁴ We intend to evaluate the responses and make a determination on the MNC Allegation in a post-preliminary determination.

Between February and April 2021, we issued supplemental questionnaires to CS Wind regarding its responses to the AD questionnaire, and CS Wind timely filed supplemental questionnaire responses.¹⁵

On February 26, 2021, the petitioner requested that the date for the issuance of the preliminary determination in this investigation be extended until 190 days after the date of initiation.¹⁶ Based on the request, and pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), on March 12, 2021, Commerce published in the *Federal Register* a postponement of the preliminary determination until no later than May 18, 2021.¹⁷

III. PERIOD OF INVESTIGATION

The period of investigation (POI) 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.¹⁸

IV. SCOPE OF THE INVESTIGATION

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

V. AFFILIATION AND SINGLE ENTITY TREATMENT

As noted in the “Background” section above, we selected CS Wind Malaysia as our mandatory respondent in this investigation, and CS Wind Malaysia submitted a consolidated response to the AD questionnaire on behalf of itself and its parent company, CS Wind Corporation. Therefore, we examined whether it is appropriate to treat CS Wind Malaysia and CS Wind Corporation as a single entity in this investigation.

¹³ See Petitioner’s Letter, “Utility Scale Wind Towers from Malaysia: Multinational Corporation Allegation,” dated February 2, 2021 (MNC Allegation).

¹⁴ See Commerce’s Letter, “Multinational Corporation Provision,” dated April 9, 2021.

¹⁵ See CS Wind’s Letters, “CS Wind’s Supplemental Section A Questionnaire Response,” dated February 16, 2021 (CS Wind’s AQR); “CS Wind’s Supplemental Section D Questionnaire Response,” dated March 5, 2021; “CS Wind’s Supplemental Section C Questionnaire Response,” dated March 30, 2021; and “CS Wind’s Second Supplemental Section D Questionnaire Response,” dated April 26, 2021.

¹⁶ See Petitioner’s Letter, “Request for Postponement of Preliminary Determination,” dated February 26, 2021.

¹⁷ See *Utility Scale Wind Towers from India and Malaysia: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 86 FR 14071 (March 12, 2021).

¹⁸ See 19 CFR 351.204(b)(1).

Commerce has, in other proceedings, treated certain exporters and producers as a single entity if record facts of the case supported such treatment.¹⁹ Pursuant to 19 CFR 351.401(f)(1), Commerce will treat producers as a single entity where: (1) those producers are affiliated; (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (3) there is a significant potential for manipulation of price or production.²⁰ In determining whether a significant potential for manipulation exists, 19 CFR 351.401(f)(2) states that Commerce may consider various factors, including: (1) the level of common ownership; (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (3) whether the operations of the affiliated firms are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.²¹

Treating companies as a single entity starts with a determination as to whether two or more companies are affiliated. Section 771(33)(E) of the Act defines affiliated persons to include “any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization.” Section 771(33)(F) of the Act defines affiliated persons to include “two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.” Section 771(33)(G) of the Act defines affiliated persons to include “any person who controls any other person and such other person.” Section 771(33) of the Act further provides that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

CS Wind Malaysia produced the merchandise under consideration in Malaysia under a tolling arrangement according to terms agreed upon with its parent company, CS Wind Corporation.²² However, CS Wind Corporation owned, and exported, the subject merchandise toll-produced by CS Wind Malaysia to U.S. customers during the POI.²³ Based on record evidence, we preliminarily find that CS Wind Corporation and CS Wind Malaysia are affiliated, pursuant to section 771(33) of the Act and 19 CFR 351.102(b)(3). Because CS Wind Malaysia is wholly owned by CS Wind Corporation, the record demonstrates that the ownership, management, and operational structure of these companies is such that CS Wind Corporation is in a position to assert control over decisions concerning CS Wind Malaysia’s production, pricing, and cost of in-

¹⁹ See *Certain Steel Nails from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances and Postponement of Final Determination*, 73 FR 3928, 3932 (January 23, 2008), unchanged in *Certain Steel Nails from the People’s Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 7254 (February 7, 2008), and *Certain Steel Nails from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008).

²⁰ See, e.g., *Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 12764, 12774-12775 (March 16, 1998).

²¹ See, e.g., *Nihon Cement Co., Ltd. v. United States*, Slip Op. 93-80 (CIT May 25, 1993); and *Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan*, 62 FR 51427, 51436 (October 1, 1997).

²² See CS Wind’s CDQR at D-1.

²³ *Id.* We note that the record supports a finding that CS Wind Malaysia processed material owned by CS Wind Corporation into the subject merchandise. Thus, CS Wind Malaysia and CS Wind Corporation may both be considered producers of that merchandise, although only CS Wind Malaysia has production facilities.

scope merchandise.²⁴ The CIT has held that once a finding of affiliation is made, affiliated exporters can be considered a single entity where their relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise.²⁵ While 19 CFR 351.401(f) explicitly applies to producers, Commerce has found it to be instructive in determining whether non-producers should be collapsed and has used the criteria outlined in the regulation in its analysis. Specifically, in a number of past cases Commerce has treated exporting companies as a single entity for purposes of its affiliation analysis.²⁶ Accordingly, because CS Wind Corporation and CS Wind Malaysia are affiliated pursuant to section 771(33)(E) and (G) of the Act and 19 CFR 351.102(b)(3) and, consistent with 19 CFR 351.401(f)(1) and (2), because the operations performed by CS Wind Corporation result in significant potential for the manipulation of price or production, we are preliminarily treating these companies as a single entity and calculating a single estimated weighted-average dumping margin for the preliminary determination.²⁷

Due to the business proprietary nature of information relating to this analysis, a more detailed discussion of this matter can be found in the Affiliation and Single Entity Memorandum, dated concurrently with this preliminary determination.²⁸

VI. DISCUSSION OF THE METHODOLOGY

A. Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether CS Wind's sales of subject merchandise from Malaysia to the United States were made at LTFV, Commerce compared the export price (EP) to the normal value (NV), as described in the "Export Price," and "Normal Value" sections of this memorandum.

(1) Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs or constructed export prices (CEPs), *i.e.*, the average-to-average method, unless the Secretary determines that another method is appropriate in a particular situation. In LTFV investigations, Commerce examines whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales, *i.e.*, the average-to-transaction method, as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

²⁴ See Affiliation and Single Entity Memorandum.

²⁵ See *Hontex Enterprises v. United States*, 342 F. Supp. 2d 1225, 1230-34 (CIT 2004).

²⁶ See, e.g., *Seamless Refined Copper Pipe and Tube from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 60725 (October 1, 2010); *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 59217 (September 27, 2010); and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004), and accompanying IDM at Comment 5.

²⁷ *Id.*

²⁸ *Id.*

In numerous investigations, Commerce has applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.²⁹ Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce’s additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent’s weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of export prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code, *i.e.*, zip code, and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POI based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between EP or CEP and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally-recognized statistical measure of the extent of the difference between the mean, *i.e.*, weighted-average price, of a test group and the mean, *i.e.*, weighted-average price, of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region, or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of

²⁹ See, *e.g.*, *Polyethylene Terephthalate Resin from Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 19696 (May 4, 2018), unchanged in *Polyethylene Terephthalate Resin from Taiwan: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances, in Part*, 83 FR 48287 (September 24, 2018); *Large Diameter Welded Pipe from Canada: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 43649 (August 27, 2018), unchanged in *Large Diameter Welded Pipe from Canada: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 6378 (February 27, 2019); and *Cast Iron Soil Pipe from the People’s Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 83 FR 44567 (August 31, 2018), unchanged in *Cast Iron Soil Pipe from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 6767 (February 28, 2019).

three fixed thresholds defined by the Cohen's *d* test: small, medium, or large (0.2, 0.5, and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large, *i.e.*, 0.8, threshold.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage, *i.e.*, the Cohen's *d* test and the ratio test, demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative comparison method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if: (1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold; or (2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.³⁰

³⁰ The Court of Appeals for the Federal Circuit (CAFC) has affirmed much of Commerce's differential pricing methodology. See, e.g., *Apex Frozen Foods v. United States*, 862 F. 3d 1322 (Fed. Cir. 2017). We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

(2) Results of the Differential Pricing Analysis

Based on the results of the differential pricing analysis, Commerce preliminarily finds that 39.68 percent of CS Wind's U.S. sales, by value, pass the Cohen's *d* test,³¹ which confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. However, Commerce finds that there is not a meaningful difference in the weighted-average dumping margin calculated using the average-to-average comparison method applied to all U.S. sales and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test.³² Thus, for this preliminary determination, Commerce is applying the average-to-average method to all U.S. sales to calculate the weighted-average dumping margin for CS Wind.

B. Date of Sale

Section 351.401(i) of Commerce's regulations states that, in identifying the date of sale of the subject merchandise or foreign like product, Commerce normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, Commerce may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.³³ CS Wind reported the date of sale as the commercial invoice date for all U.S. sales.³⁴ We preliminarily followed Commerce's long-standing practice of basing the date of sale for U.S. sales on the earlier of the invoice date or the shipment date.³⁵

C. Export Price

For all sales made by CS Wind, we used the EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was first sold by the producer/exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation, and the CEP methodology was not otherwise warranted.

We based CS Wind's EP sales on a packed price to the first unaffiliated purchaser in the United States. We made deductions from the starting price for movement expenses, *i.e.*, foreign inland freight, insurance, foreign brokerage and handling, marine insurance, international freight, U.S. brokerage and handling and U.S. duties, in accordance with section 772(c)(2)(A) of the Act.³⁶

³¹ See Memorandum, "Preliminary Results Analysis Memorandum for CS Wind," dated May 18, 2021 (CS Wind Preliminary Analysis Memorandum).

³² *Id.*

³³ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

³⁴ See CS Wind's AQR at A-14.

³⁵ See, e.g., *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007), and accompanying IDM at Comment 11; and *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying IDM at Comment 2.

³⁶ See CS Wind Preliminary Analysis Memorandum.

Where applicable, we reduced movement expenses by freight revenue, capped by the amount of the corresponding expenses, in accordance with our practice.³⁷

D. Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as the EP or CEP. The NV level of trade (LOT) is that of the starting-price sales in the comparison market or, when NV is based on constructed value (CV), that of the sales from which we derive selling, general, and administrative expenses (SG&A) and profit.³⁸ For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision).³⁹

In this investigation, we found that CS Wind Malaysia had no viable home or third country market. In accordance with 19 CFR 351.412(d), Commerce will make its LOT determination under paragraph (d)(1) of this section on the basis of sales of the foreign like product by the producer or exporter. Because it is not possible in this case to make an LOT determination on the basis of sales of the foreign like product in the home or third country market, Commerce may use sales of different or broader product lines, sales by other companies, or any other reasonable basis. Because we based the selling expenses and profit for CS Wind Malaysia on the selling expenses incurred and profits earned by another Malaysian producer of comparable merchandise who was not party to this investigation as explained below, there is insufficient information on the record in this investigation to allow Commerce to make an LOT adjustment to the CVs reported by CS Wind.

³⁷ See, e.g., *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review*, 74 FR 40167 (August 11, 2009), and accompanying IDM at Comment 3.

³⁸ See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Atlantic Salmon from Chile*, 63 FR 2664 (January 16, 1998).

³⁹ See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 23761 (November 19, 1997).

E. Calculation of NV Based on CV

In accordance with section 773(a)(4) of the Act, we used CV as the basis for NV because CS Wind did not have a viable comparison market.⁴⁰ In accordance with section 773(b)(2)(A)(ii) of the Act, Commerce requested CV information from interested parties. Based on our examination of the data, we determined that our quarterly cost methodology is not warranted, and, therefore, we are applying our standard methodology of using annual costs based on CS Wind's reported data.

We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, SG&A expenses, interest expenses, U.S. packing expenses, and profit in the calculation of CV. We relied on CS Wind's submitted data, with one exception.⁴¹ For CS Wind, we adjusted the transfer prices of certain inputs from an affiliated supplier to reflect arm's-length values, in accordance with section 773(f)(2) of the Act. As explained below, we based CS Wind's CV profit and selling expenses on the financial statements of Alpine Pipe Manufacturing (Alpine), a Malaysian producer of welded steel pipe, steel plates, and sheets.⁴²

Because CS Wind does not have a viable home or third country market, we are unable to calculate a CV profit ratio using the preferred method under section 773(e)(2)(A) of the Act, *i.e.*, based on the respondent's own home market or third country sales made in the ordinary course of trade.

When the preferred method is unavailable, we must instead rely on one of the three alternatives outlined in sections 773(e)(2)(B)(i) through (iii) of the Act. Those alternatives are: (i) the use of the actual amounts incurred and realized by the specific exporter or producer in connection with the production and sale of merchandise that is in the same general category of products as the subject merchandise; (ii) the use of the weighted average of the actual amounts incurred and realized by exporters or producers (other than the respondent) that are subject to the investigation or review; or (iii) any other reasonable method, except that the amount for profit may not exceed the amount realized by exporters or producers (other than the respondent) in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise (*i.e.*, the "profit cap"). The Act does not establish a hierarchy for selecting among these alternatives.

Because CS Wind manufactures only wind towers and did not sell any non-subject comparable merchandise in the home market during the POI, we are unable to calculate profit under section 773(e)(2)(B)(i) of the Act, *i.e.*, based on sales of the same general category of product. Further, as CS Wind is the only respondent in this investigation for which there will be a calculated margin, we are unable to calculate profit under section 773(e)(2)(B)(ii) of the Act, *i.e.*, based on

⁴⁰ As noted above, we found that the petitioner's MNC Allegation was sufficient to warrant further analysis and we also issued additional questionnaires to address the MNC Allegation. Because CS Wind's response to that request for information was submitted in close proximity to this preliminary determination, we intend to analyze those responses and address the MNC Allegation in a post-preliminary determination. *See* CS Wind's Letter, "CS Wind's MNC Questionnaire Responses," dated May 7, 2021.

⁴¹ *See* Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – CS Wind Malaysia," dated concurrently with this memorandum.

⁴² *See* CS Wind's CV Profit Comments at Exhibit CV-5.

the preferred method of averaging the profit ratios of the other exporters or producers being examined. Thus, we must calculate profit under section 773(e)(2)(B)(iii) of the Act, *i.e.*, any other reasonable method.

On January 29, 2021, we released a letter to all interested parties providing an opportunity to comment and submit new factual information on CV profit and selling expenses.⁴³ On February 12, 2021, CS Wind submitted comments and factual information.⁴⁴ On February 26, 2021, the petitioner, submitted rebuttal comments.⁴⁵ These parties placed fiscal year (FY) 2019 or FY 2020 audited financial statements for the following 14 entities on the record as potential sources for CV profit:

- Alpine, a Malaysian producer of welded steel pipe, steel plates and sheets;⁴⁶
- Borusan Mannesmann Boru Sanayi ve Ticaret (Borusan), a Turkish producer of steel pipe and hollow section;⁴⁷
- Century Iron and Steel Industrial Co., Ltd. (Century), a Taiwanese producer of steel frame, iron bone, and steel structures of building and bridges;⁴⁸
- Chung Hung Steel Corporation (Chung Hung), a Taiwanese steel pipe producer;⁴⁹
- Engtex Group Berhad (Engtex), a Malaysian company with diversified operations including manufacturing of various steel products;⁵⁰
- Melewar Industrial Group Berhad (Melewar), a Malaysian producer of pipe, tube, and hollowed sections;⁵¹
- Metalzone Industrial Sdn. Bhd (Metalzone), a Malaysian producer of seamless steel pipes and tubes, in addition to steel flanges and plates;⁵²
- Nippon Steel Corporation (Nippon), a Japanese steel pipe producer;⁵³
- Pantech Group Holdings, a Malaysian producer of ferrous industrial goods including steel pipes;⁵⁴
- Pipeway Industry Sdn. Bhd. (Pipeway), a Malaysian producer of electric resistance welded steel pipe products;⁵⁵
- PAO TMK, a Russian producer of steel pipe, including production of large diameter pipe, oil country tubular goods, and other industrial pipes;⁵⁶

⁴³ See Commerce's Letter, "Request for Constructed Value Profit and Selling Expense Comments and Information," dated January 29, 2021.

⁴⁴ See CS Wind's Letter, "Utility Scale Wind Towers from Malaysia: CV Profit and Selling Expense Comments and Information," dated February 12, 2021 (CS Wind's CV Profit Comments).

⁴⁵ See Petitioner's Letter, "Utility Scale Wind Towers from Malaysia: Petitioner's Rebuttal Comments on CS Wind's CV Profit Comments," dated February 26, 2021.

⁴⁶ See CS Wind's CV Profit Comments at Exhibit CV-5.

⁴⁷ *Id.* at Exhibit CV-10.

⁴⁸ See MNC Allegation at Exhibit-21.

⁴⁹ See CS Wind's CV Profit Comments at Exhibit CV-11.

⁵⁰ *Id.* at Exhibit CV-6.

⁵¹ *Id.* at Exhibit CV-7.

⁵² *Id.* at Exhibit CV-8.

⁵³ *Id.* at Exhibit CV-12.

⁵⁴ See Petition, vol. III at Exhibits III-27 and III-28.

⁵⁵ *Id.* at Exhibit CV-9.

⁵⁶ *Id.* at Exhibit CV-13.

- SeAH Steel Corporation, a Korean producer of steel pipes, including large diameter welded pipes and affiliated to SeAH Steel Holdings Corporation (SeAH Steel);⁵⁷
- SeAH Steel Holdings Corporation, a Korean holding company with affiliates involved in the production of comparable merchandise (SeAH Holdings);⁵⁸ and
- Severfield Plc (Severfield), a structural steel producer in the United Kingdom.⁵⁹

For this preliminary determination, we have considered the options advocated by interested parties and find that the 2019 financial statements of Alpine are the best source available for determining the CV profit and selling expenses for CS Wind. Alpine is a Malaysian company that produces and sells welded steel pipe, steel plates and sheets, and hollow sections, which we preliminarily find to be comparable products to subject merchandise.⁶⁰ Further, it appears a significant portion of Alpine's sales were to the Malaysian market. Therefore, Alpine's information meets our criteria in that it is contemporaneous with the POI, is from a Malaysian producer of comparable merchandise, and appears to predominantly reflect sales (and thus profits) in the Malaysian market.

Because we have a usable Malaysian surrogate available for the calculation of CV profit and selling expenses, we find it unnecessary to resort to the experience of producers outside of Malaysia. Consequently, we have excluded the financial statements of Borusan, Century, Chung Hung, Nippon, PAO TMK, SeAH Holdings, SeAH Steel, and Severfield from the calculation of CV profit and selling expenses. We have also rejected the Malaysian producers Melewar Group, Metalzone and Pantech's financial statements as a CV profit data source because the statements were not contemporaneous to the POI. Finally, we rejected the Malaysian producers Engtex and Pipeway's financial statements because either the overall company was not profitable for FY 2019 or the segment related to comparable merchandise was not profitable.

Based on the foregoing, for this preliminary determination, we have calculated CS Wind's CV profit and selling expenses in accordance with section 773(e)(2)(B)(iii) of the Act using Alpine's 2019 financial statements. Thus, for the preliminary determination we calculated a CV profit rate of 4.60 percent and CV selling expense rate of 1.11 percent.

Commerce is unable to calculate the amount realized by exporters and producers in connection with the sale, for consumption in the foreign country, of the merchandise in the same general category of products as the subject merchandise (*i.e.*, the "profit cap"), in accordance with section 773(e)(2)(B)(iii) of the Act, because the record does not contain any information for making such a calculation. However, the SAA makes clear that Commerce might have to apply alternative (iii) on the basis of facts available.⁶¹ We conclude that Alpine's profit information serves as a reasonable profit cap for this preliminary determination.

⁵⁷ *Id.* at Exhibit CV-4.

⁵⁸ *Id.* at Exhibit CV-3.

⁵⁹ *See* MNC Allegation at Exhibit-19.

⁶⁰ *Id.* at Exhibit CV-5.

⁶¹ Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 840.

F. Price to CV Comparisons

As noted above, in accordance with section 773(a)(4) of the Act, we based NV on CV because there was no viable home or third-country market. We made no adjustment for differences in selling expenses between markets because the record contained inadequate information to do so, given that Alpine's financial statements do not separately identify direct selling expenses.

VII. CURRENCY CONVERSION

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415(a), based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

VIII. RECOMMENDATION

We recommend that you approve the preliminary findings described above.



Agree



Disagree

5/18/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance