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DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

(C-122-868, C-560-834, C-552-826)

Utility Scale Wind Towers from Canada, Indonesia, and the Socialist Republic of Vietnam;  
Countervailing Duty Investigations: Preliminary Determinations of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that in the countervailing duty investigations on utility scale wind towers (wind towers), critical circumstances exist with respect to imports of wind towers from Indonesia and do not exist with respect to imports of wind towers from Canada or the Socialist Republic of Vietnam (Vietnam).

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Tyler Weinhold at (202) 482-1121 (Canada), Alex Wood at (202) 482-1955 (Indonesia), or Julie Geiger at (202) 482-2057 (Vietnam);

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SUPPLEMENTARY INFORMATION:

### Background

In response to petitions filed on July 9, 2019, the Commerce initiated countervailing duty (CVD) investigations concerning wind towers from Canada, Indonesia, and Vietnam.<sup>1</sup> On

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<sup>1</sup> See *Utility Scale Wind Towers from Canada, Indonesia, and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations*, 84 FR 38216 (August 6, 2019).

December 13, 2019, Commerce announced its preliminary CVD determinations<sup>2</sup> and, on the same day, received timely allegations, pursuant to section 703(e)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.206, that critical circumstances exist with respect to imports of wind towers from Canada, Indonesia, and Vietnam.<sup>3</sup> In accordance with section 703(e)(1) of the Act and 19 CFR 351.206(c)(1), because the Wind Tower Trade Coalition (the petitioner) submitted its critical circumstances allegations more than 30 days before the scheduled date of the final determinations, Commerce will make preliminary findings as to whether there is a reasonable basis to believe or suspect that critical circumstances exist and will issue preliminary critical circumstances determinations.<sup>4</sup>

#### Critical Circumstances Analysis

Section 703(e)(1) of the Act provides that Commerce will determine that critical circumstances exist in CVD investigations if there is a reasonable basis to believe or suspect that: (A) the alleged countervailable subsidy is inconsistent with the Agreement on Subsidies and Countervailing Measures (SCM Agreement) of the World Trade Organization; and (B) there have been massive imports of the subject merchandise over a relatively short period.<sup>5</sup> Pursuant

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<sup>2</sup> See *Utility Scale Wind Towers from Canada: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 68126 (December 13, 2019) (*Canada CVD Preliminary Determination*); see also *Utility Scale Wind Towers from Indonesia: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 68109 (December 13, 2019) (*Indonesia CVD Preliminary Determination*); *Utility Scale Wind Towers from the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 68104 (December 13, 2019) (*Vietnam CVD Preliminary Determination*).

<sup>3</sup> See Petitioner's Letter, "Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Critical Circumstances Allegations," dated December 13, 2019 (Critical Circumstances Allegations).

<sup>4</sup> Pursuant to section 703(e) of the Act and 19 CFR 351.206, the petitioner requested that we make our determinations at the earliest practicable time, but not later than the preliminary determinations in the antidumping duty investigations. We acknowledge that we have not made our preliminary critical circumstances determinations within the timeframe specified in 19 CFR 351.206(c)(2)(ii), but we have made it by the date requested by the petitioner. See Critical Circumstances Allegations at 4.

<sup>5</sup> Commerce limits its critical circumstances findings to those subsidies contingent upon export performance or use of domestic over imported goods (*i.e.*, those prohibited under Article 3 of the SCM Agreement). See, *e.g.*, *Final*

to 19 CFR 351.206(h)(2), imports must increase by at least 15 percent during the “relatively short period” to be considered “massive,” and 19 CFR 351.206(i) defines a “relatively short period” as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later.<sup>6</sup> The regulations also provide, however, that if Commerce finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, Commerce may consider a period of not less than three months from that earlier time.<sup>7</sup>

#### Alleged Countervailable Subsidies Are Inconsistent with the SCM Agreement

To determine whether an alleged countervailable subsidy is inconsistent with the SCM Agreement, in accordance with section 703(e)(1)(A) of the Act, Commerce considered the evidence currently on the record of the Canada, Indonesia, and Vietnam CVD investigations. In each of the three preliminary determinations, we examined a single mandatory respondent and assigned the all-others rate based upon the rate assigned to the mandatory respondent. Specifically, as determined in our preliminary determinations, we found the following subsidy programs to be export contingent, which would render them inconsistent with the SCM Agreement: Indonesia’s exemption from import tax withholding for companies in bonded zones, and Vietnam’s income tax preferences, import duty exemptions on imports of spare parts and accessories in industrial zones, and import duty exemptions on imports of raw materials for

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*Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire from Germany*, 67 FR 55808, 55809-10 (August 30, 2002).

<sup>6</sup> See 19 CFR 351.102 and 19 CFR 351.206.

<sup>7</sup> See 19 CFR 351.206(i).

exporting goods.<sup>8</sup> With respect to Canada, we preliminarily did not find any subsidies that are inconsistent with the SCM Agreement.<sup>9</sup>

Therefore, Commerce preliminarily determines, for purposes of these critical circumstances determinations, that there are no subsidies in the Canada investigation that are inconsistent with the SCM Agreement, and that there are subsidies in the Indonesia and Vietnam investigations that are inconsistent with the SCM Agreement.

### Massive Imports

In determining whether there have been “massive imports” over a “relatively short period,” pursuant to section 703(e)(1)(B) of the Act, Commerce normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the “base period”) to a comparable period of at least three months following the filing of the petition (*i.e.*, the “comparison period”). In this case, Commerce compared the import volumes of subject merchandise, as provided by each of the mandatory respondents,<sup>10</sup> for five months immediately preceding and following the filing of the petition. Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.<sup>11</sup>

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<sup>8</sup> See *Indonesia CVD Preliminary Determination* and accompanying Preliminary Decision Memorandum (PDM) at 21-23; see also *Vietnam CVD Preliminary Determination* and accompanying PDM at 6-8.

<sup>9</sup> See *Canada CVD Preliminary Determination* and accompanying PDM.

<sup>10</sup> In December 2019, the mandatory respondents to each of the three investigations timely provided quantity and value shipment data, pursuant to requests by Commerce.

<sup>11</sup> See 19 CFR 351.206(h)(2). On December 31, 2019, the mandatory respondent from Indonesia, PT Kenertec Power System, filed comments objecting to the petitioner’s critical circumstances allegation. We considered these comments and find them to be unavailing, as they do not pertain to the criteria listed in the statute, or regulations, with respect to determining the existence of critical circumstances. This is consistent with our findings in other cases where parties have made similar arguments with respect to criteria not explicitly listed in the statute or regulations with respect to the determination of massive imports. See, *e.g.*, *Certain Quartz Surface Products from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances*, 84 FR 23767 (May 23, 2019), and accompanying Issues and Decision Memorandum at Comment 2.

Because the petitions were filed on July 9, 2019, in order to determine whether there was a massive surge in imports for each cooperating mandatory respondent, Commerce compared the total volume of shipments during the period July 2019 through November 2019 with the volume of shipments during the preceding five-month period of February 2019 through June 2019. With respect to Canada and Vietnam, we preliminarily determine that there were no massive surges in imports for the respective mandatory respondents. With respect to Indonesia, we preliminarily determine there was a massive surge in imports for Kenertec.<sup>12</sup>

For “all others,” in each of the three countries, we also attempted to analyze monthly shipment data for the same time periods, using import data from Global Trade Atlas (GTA),<sup>13</sup> adjusted to remove the mandatory respondents’ shipment data. However, this analysis was not possible in this case, because the quantity of shipments reported by the mandatory respondents was greater than the quantity of imports recorded in the GTA statistics for the U.S. Harmonized Tariff Schedule categories included in the Petition. Therefore, we find that necessary information is not available on the records for each of the three investigations, pursuant to section 776(a)(1) of the Act, as to whether imports were massive for “all other” producers. Thus, as facts available, we based our analysis for “all other” producers and exporters on the results of the massive determination for the mandatory respondents in the respective countries. Consequently, as facts available, we find that there were no massive imports for “all other” producers from Canada and Vietnam, but that there were massive imports for “all other” producers from Indonesia.

### Conclusion

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<sup>12</sup> See respective preliminary critical circumstances memoranda for each proceeding for a description of the methodology and results of Commerce’s critical circumstances analysis, dated concurrently with this notice.

<sup>13</sup> Commerce gathered GTA data under the following harmonized tariff schedule numbers: 7308.20.0020 and 8502.31.0000.

Based on the criteria and findings discussed above, we preliminarily determine that critical circumstances exist with respect to imports of wind towers by certain producers/exporters. Our findings are summarized as follows.

<b>Country</b>	<b>Case No.</b>	<b>Affirmative preliminary critical circumstances determinations</b>	<b>Negative preliminary critical circumstances determinations</b>
Canada	C-122-868	--	Marmen Inc., Marmen Énergie Inc., Gestion Marmen Inc.; all other producers/exporters
Indonesia	C-560-834	PT Kenertec Power System; all other producers/exporters	--
Vietnam	C-552-826	--	CS Wind Tower Co., Ltd.; all other producers/exporters

Final Critical Circumstances Determinations

We will issue critical circumstances determinations when we issue our final countervailing duty determinations.

Public Comment

Case briefs or other written comments may be submitted no later than seven days after the date on which the last verification report is issued in each respective investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.<sup>14</sup> Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.<sup>15</sup>

Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time on the due dates established above.<sup>16</sup>

<sup>14</sup> See 19 CFR 351.309(d)(1).

<sup>15</sup> See 19 CFR 351.309(c)(2) and (d)(2).

<sup>16</sup> See 19 CFR 351.303(b)(1).

### ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determinations.

### Suspension of Liquidation

In accordance with section 703(e)(2)(A) of the Act, for PT Kenertec Power System and all other exporters/producers in Indonesia, we will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of any unliquidated entries of subject merchandise from Indonesia entered, or withdrawn from warehouse for consumption, on or after September 14, 2019, which is 90 days prior to the date of publication of the *Indonesia CVD Preliminary Determination* in the *Federal Register*. For such entries, CBP shall require a cash deposit equal to the estimated preliminary countervailable subsidy rates established in the *Indonesia CVD Preliminary Determination*. This suspension of liquidation will remain in effect until further notice.

This determination is issued and published pursuant to section 777(i) of the Act and 19 CFR 351.206.

Dated: February 4, 2020

Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

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