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DEPARTMENT OF COMMERCE

International Trade Administration

[A-560-833]

Utility Scale Wind Towers from Indonesia: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances

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

SUMMARY: The Department of Commerce (Commerce) determines that imports of utility scale wind towers (wind towers) from Indonesia are being, or are likely to be, sold in the United States at less than fair value (LTFV) for the period of investigation July 1, 2018 through June 30, 2019.

DATES: Applicable [Insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Brittany Bauer or Benjamin Luberda, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3860 or (202) 482-2185, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 14, 2020, Commerce published in the *Federal Register* the *Preliminary Determination* of sales at LTFV of wind towers from Indonesia, in which we also postponed the final determination until June 29, 2020.¹ We invited interested parties to comment on the

¹ See *Utility Scale Wind Towers from Indonesia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures*, 84 FR 8558 (February 14, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

Preliminary Determination. A summary of the events that occurred since Commerce published the *Preliminary Determination*, as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.²

Scope of the Investigation

The product covered by this investigation is wind towers from Indonesia. For a full description of the scope of this investigation, *see* the “Scope of the Investigation” in Appendix I of this notice.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs submitted by parties in this investigation are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is attached to this notice as Appendix II. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), in February and March 2020, we conducted verification of the sales and cost information submitted by PT Kenertec Power System (Kenertec) for use in our final determination. We used standard

² *See* Memorandum, “Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Utility Scale Wind Towers from Indonesia,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

verification procedures, including an examination of relevant accounting and production records, and original source documents provided by Kenertec.³

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we made certain changes to the margin calculations for the respondent. For a discussion of these changes, *see* the “Margin Calculations” section of the Issues and Decision Memorandum.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated weighted-average dumping margin for all other producers and exporters not individually investigated shall be equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding rates that are zero, *de minimis*, or determined entirely under section 776 of the Act. Kenertec is the only respondent for which Commerce calculated an estimated weighted-average dumping margin that is not zero, *de minimis*, or based entirely on facts otherwise available. Therefore, for purposes of determining the all-others rate, and pursuant to section 735(c)(5)(A) of the Act, we are using the estimated weighted-average dumping margin calculated for Kenertec, as referenced in the “Final Determination” section below.

Final Negative Determination of Critical Circumstances

³ For discussion of our verification findings, *see* the following memoranda: Memorandum, “Verification of the Sales Response of PT Kenertec Power System in the Less-Than-Fair-Value Investigation of Utility Scale Wind Towers from Indonesia,” dated March 30, 2020; and Memorandum, “Verification of the Cost Response of PT. Kenertec Power System in the Less-than-Fair-Value Investigation of Utility Scale Wind Towers from Indonesia,” dated April 1, 2020. *See also* Memorandum, “Antidumping and Countervailing Duty Investigations of Utility Scale Wind Towers from Indonesia: Early Conclusion of Verifications,” dated March 27, 2020.

In accordance with section 733(e)(1) of the Act and 19 CFR 351.206, we preliminarily determined that critical circumstances did not exist with respect to imports of wind towers from Indonesia because neither of the factors under section 773(e)(1)(A) of the Act were met. Our final determination remains unchanged. Accordingly, pursuant to section 735(a)(3) of the Act, we find that critical circumstances do not exist with respect to imports of wind towers from Indonesia. For a full description of the methodology and results of Commerce’s critical circumstances analysis, *see* the Issues and Decision Memorandum.

Final Determination

The final estimated weighted-average dumping margins are as follows:

Exporter or Producer	Estimated Weighted-Average Dumping Margin (percent)	Cash Deposit Rate (Adjusted for Subsidy Offset) (percent)⁴
PT Kenertec Power System	8.53	8.50
All Others	8.53	8.50

Disclosure

We intend to disclose the calculations performed in this final determination within five days of the date of publication of this notice to parties in this proceeding, in accordance with 19 CFR 351.224(b).

⁴ In the companion countervailing duty (CVD) investigation, Commerce calculated a 0.03 percent export subsidy rate for Kenertec and for all other producers and exporters under the program “Exemption from Import Income Tax Withholding for Companies in Bonded Zones.” *See* unpublished *Federal Register* notice, “Utility Scale Wind Towers from Indonesia: Final Affirmative Countervailing Duty Determination,” dated concurrently with this notice, and accompanying Issues and Decision Memorandum. Because we determined the LTFV all-others rate based on Kenertec’s estimated weighted-average dumping margin, the export subsidy offset for all other producers and exporters is the lesser of the export subsidy rate for Kenertec, the only individually investigated company in the CVD investigation, and the export subsidy rate for all other producers and exporters in the CVD final determination (*i.e.*, 0.03 percent).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, for this final determination, we will direct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of wind towers, as described in Appendix I of this notice, which are entered, or withdrawn from warehouse, for consumption on or after February 14, 2020, the date of publication in the *Federal Register* of the affirmative *Preliminary Determination*.

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), we will instruct CBP to require a cash deposit for such entries of merchandise equal to the estimated weighted-average dumping margin as follows: (1) the cash deposit rate for the company listed in the table above will be equal to the company-specific estimated weighted-average dumping margin identified for that company in the table; (2) if the exporter is not a company identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

To determine the cash deposit rate, Commerce normally adjusts the estimated weighted-average dumping margin by the amount of export subsidies determined in a companion CVD proceeding when CVD provisional measures are in effect. Accordingly, where Commerce makes an affirmative determination for export subsidies, Commerce offsets the calculated estimated weighted-average dumping margin by the appropriate rate(s). In the CVD investigation, we have found export subsidies for all producers and exporters of subject merchandise. However, suspension of liquidation for provisional measures in the companion

CVD case has been discontinued; therefore, we are not instructing CBP to collect cash deposits based upon the estimated weighted-average dumping margin adjusted for export subsidies at this time.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation of wind towers from Indonesia no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, and all cash deposits will be refunded and suspension of liquidation will be lifted. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the "Continuation of Suspension of Liquidation" section.

Notification Regarding Administrative Protective Orders

This notice serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

Dated: June 29, 2020.

Jeffrey I. Kessler,
Assistant Secretary for Enforcement and Compliance.

APPENDIX I

Scope of the Investigation

The merchandise covered by this investigation consists of certain wind towers, whether or not tapered, and sections thereof. Certain wind towers support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.*, where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.*, flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with nonsubject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof, unless those components are shipped with the tower sections.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7308.20.0020 or 8502.31.0000. Wind towers of iron or steel are classified under HTSUS 7308.20.0020 when imported separately as a tower or tower section(s). Wind towers may be classified under HTSUS 8502.31.0000 when imported as combination goods with a wind turbine (*i.e.*, accompanying nacelles and/or rotor blades). While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

APPENDIX II

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Investigation
- IV. Margin Calculations
- V. Final Negative Determination of Critical Circumstances
- VI. Adjustment for Countervailed Export Subsidies
- VII. Discussion of the Issues
 - Comment 1: Kenertec's Constructed Export Price (CEP) Profit Rate
 - Comment 2: Revenue Capping
 - Comment 3: Kenertec's Cost of Goods Sold (COGS) Denominator
 - Comment 4: Whether to Grant Kenertec a CEP Offset
 - Comment 5: Kenertec's Raw Material and Conversion Costs
 - Comment 6: Date of Sale
 - Comment 7: Constructed Value (CV) Profit
 - Comment 8: Early Conclusion of Verification
 - Comment 9: Cost Adjustments in Commerce's SAS Programming
- VIII. Recommendation

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