October 31, 2017

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations


I. SUMMARY

The Department of Commerce (the Department) is conducting the fourth administrative review of the antidumping duty (AD) order on utility scale wind towers (wind towers) from the Socialist Republic of Vietnam (Vietnam). This review covers respondent CS Wind Group. The period of review (POR) is February 1, 2016, through January 31, 2017. We preliminarily find that there is no evidence of any reviewable entries, shipments, or sales of subject merchandise by CS Wind Group during the POR and, as such, we are preliminarily issuing a determination of no shipments.

II. BACKGROUND

In February 2013, the Department published in the Federal Register the AD order on wind towers from Vietnam. In the AD order of this underlying less-than-fair-value (LTFV) investigation, the Department determined that CS Wind Vietnam Co., Ltd., and CS Wind Corporation are a single entity: CS Wind Group. On March 16, 2017, the United States Court of International Trade (CIT) issued its final judgment, sustaining the Department’s final results

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of redetermination concerning the LTFV investigation of wind towers from Vietnam. On March 29, 2017, pursuant to that Court decision, effective March 26, 2017, the Department excluded from the AD order wind towers that are produced and exported by the CS Wind Group. Pursuant to section 751(a) of the Tariff Act of 1930, as amended (the Act), and in accordance with 19 CFR 351.213(b)(1), the petitioner and CS Wind Group requested an administrative review on February 28, 2017. Accordingly, on April 10, 2017, the Department initiated a review for CS Wind Group, Vina Halla Heavy Industries Ltd. (Vina Halla), and UBI Tower Sole Member Company Ltd (UBI). On April 27, 2017, the Department placed the results of a U.S. Customs and Border Protection (CBP) database query for the 2016-2017 administrative review of wind towers from Vietnam on the record and invited interested parties to submit comments. According to the CBP database query, the only entries, shipments, or sales of subject merchandise during the POR were wind towers produced and exported by CS Wind Group during the POR. No parties provided comments concerning the CBP database query. On May 9, 2017, CS Wind Group submitted a separate rate certification and request for rescission. On May 23, 2017, the petitioner submitted a letter responding to CSWG’s request for a rescission of this administrative review.

On May 31, 2017, the Department published its Amended Initiation Notice. According to the Amended Initiation Notice, the Department stated it was initiating an administrative review only

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4 The petitioner is the Wind Tower Trade Coalition.
8 Id.
9 See Letter from CS Wind Group, “CS Wind: Separate Rate Certification and Request for Rescission: Fourth Administrative Review of the Antidumping Duty Order on Utility Scale Wind Towers from Vietnam,” dated May 9, 2017. In its letter, CSWG contended that it complied with the Department’s instructions by filing the separate rate certification and that CSWG believes the Department should immediately rescind POR 4 for the CSWG as a result of the Timken Notice. In the Timken Notice, the Department stated that “as a result of the exclusion the Department will not initiate any administrative reviews of the antidumping duty order with respect to merchandise produced and exported by CS Wind Group.”
10 See Letter from the petitioner, “Utility Scale Wind Towers from the Socialist Republic of Vietnam: Response to CS Wind’s Request to Rescind AR,” dated May 23, 2017. The petitioner argued that in the Timken Notice, the Department acknowledged that the revocation of the order with respect to CS Wind Group is not final and is subject to appeal. Given that the appeal is still pending and CS Wind could once again become subject to the AD order, the petitioner stated that it would be inappropriate for the Department to rescind this administrative review of CS Wind Group’s entries during the POR.
11 Utility Scale Wind Towers from the Socialist Republic of Vietnam: Notice of Amended Initiation of Antidumping Duty Administrative Review: 2016-2017, 82 FR 24943 (May 31, 2017) (Amended Initiation Notice). In the Amended Initiation Notice, the Department stated that it inadvertently initiated an administrative review on all entries of merchandise exported by CS Wind Group. Because wind towers that are produced and exported by CS
on entries where CS Wind Group was (1) the producer but not the exporter, or (2) the exporter but not the producer of subject merchandise and that the initiation with respect to Vina Halla and UBI remained unchanged.

On June 1, 2017, CS Wind Group responded to the Department’s *Amended Initiation Notice* and stated that CS Wind Group did not have entries, exports, or sales of subject merchandise during the POR where CS Wind Group was (1) the producer but not the exporter, or (2) the exporter but not the producer. Further, CS Wind Group explained that because there were no shipments of merchandise produced by other Vietnamese suppliers and the review was not initiated on any wind towers produced and exported by CS Wind Group, CS Wind Group would not be responding to the initial questionnaire. On June 5, 2017, the petitioner submitted a withdrawal of the administrative review and a response to CS Wind Group’s No Shipment Letter. In its June 5, 2017 letter, the petitioner withdrew its administrative review with respect to Vina Halla and UBI and reiterated that rescinding the review with respect to CS Wind Group would unfairly prejudice the petitioner because the CIT’s ruling is currently on appeal before the U.S. Court of Appeals for the Federal Circuit and should the petitioner prevail on that appeal, the AD order could be reinstated with respect to CS Wind Group. On July 24, 2017, the Department issued a letter specifying the deadline for CS Wind Group to submit its response to Section A of the initial questionnaire. On July 28, 2017, CS Wind Group submitted a request for a waiver to submit its Section A response to the initial questionnaire. According to CS Wind Group’s request for a waiver to submit its Section A response, CS Wind Group states that it submitted a No Shipment Letter on June 1, 2017 certifying that it did not have any entries, exports or sales of subject merchandise during the POR for which CS Wind Group was (1) the producer but not the exporter, or (2) the exporter but not the producer of subject merchandise. As such, CS Wind Group requested a waiver from the questionnaire reporting requirements in full and that the Department rescind the administrative review with respect to CS Wind Group under 19 CFR 351.213(d)(3).

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13 *Id.*
15 Letter from the Department, “Fourth Administrative Review of the Antidumping Duty Order on Utility Scale Wind Towers from the Socialist Republic of Vietnam: Deadline to Submit Response to Section A,” dated July 24, 2017. In its July 24, 2017 letter, the Department stated that the Department is only rescinding this instant review with respect to the exporter producer combination and that CSWG is still subject to review where CS Wind Group was (1) the producer but not the exporter, or (2) the exporter but not the producer of subject merchandise.
III. SCOPE OF THE ORDER

The merchandise covered by this order are certain wind towers, whether or not tapered, and sections thereof. Certain wind towers are designed to 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.

Merchandise covered by the order is currently classified in the Harmonized Tariff System of the United States (HTSUS) under subheadings 7308.20.0020 or 8502.31.0000. Prior to 2011, merchandise covered by the order was classified in the HTSUS under subheading 7308.20.0000. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

IV. RESCISSION, IN PART

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. The Department initiated the instant review on April 10, 2017. The petitioner withdrew its request of an administrative review of Vina Halla and UBI on June 5, 2017, which is within the 90-day period and is thus timely. Because the petitioner’s withdrawal of its request for review is timely and because no other party requested a review of Vina Halla and UBI, we are rescinding this review, in part, with respect to these two companies.

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17 Wind towers are classified under HTSUS 7308.20.0020 when imported as a tower or tower section(s) alone.
18 Wind towers may also be classified under HTSUS 8502.31.0000 when imported as part of a wind turbine (i.e., accompanying nacelles and/or rotor blades.)
The Department is proceeding with the review of any entries, exports or sales of subject merchandise during the POR for which CS Wind Group was (1) the producer but not the exporter, or (2) the exporter but not the producer of subject merchandise because the petitioner did not withdraw its request for review of these entries.

V. PRELIMINARY DETERMINATION OF NO SHIPMENTS

Based on information submitted by CS Wind Group after the Amended Initiation Notice and the fact that the CBP database query results demonstrate that there are no entries, exports or sales of subject merchandise during the POR for which CS Wind Group was (1) the producer but not the exporter, or (2) the exporter but not the producer of subject merchandise, the Department has preliminarily determined that, consistent with 19 CFR 351.213(d)(3), CS Wind Group has no reviewable entries, shipments, or sales of subject merchandise during the POR. 19

Consistent with an announced refinement to its assessment practice in non-market economy cases, the Department is not rescinding this administrative review with respect to CS Wind Group for which CS Wind Group was (1) the producer but not the exporter, or (2) the exporter but not the producer of subject merchandise under 19 CFR 351.213(d)(3). 20 The Department intends to complete the review with respect to CS Wind Group for which it has preliminarily found no shipments and issue appropriate instructions to CBP based on the final results of the review. 21

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21 Id.
VI. RECOMMENDATION

The Department recommends applying the above determination of no shipments for these preliminary results. In addition, we recommend completing this review and issuing appropriate instruction to CBP based on the final results of review.

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Agree Disagree

10/31/2017

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance