
Hughes Hubbard & Reed

New Antidumping and Countervailing Duty Petitions on Utility Scale Wind Towers from Canada, Indonesia, The Republic of Korea, and The Socialist Republic of Vietnam

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July 10, 2019 – On July 9, 2019, the Wind Tower Trade Coalition (“Coalition”), which consists of Arcosa Wind Towers Inc. and Broadwind Towers, Inc., filed antidumping (“AD”) and countervailing (“CVD”) petitions with the U.S. Department of Commerce (“DOC”) and the U.S. International Trade Commission (“ITC”). The Coalition filed AD petitions against Canada, Indonesia, the Republic of Korea (“Korea”), and the Socialist Republic of Vietnam (“Vietnam”) and filed CVD petitions against Canada, Indonesia, and Vietnam.

Under U.S. law, a domestic industry can petition the government to initiate an AD investigation into the pricing of an imported product to determine whether it is sold in the United States at less than fair value (i.e., “dumped”). A domestic industry can also petition for the initiation of a CVD investigation into foreign governments’ subsidization of foreign producers. The U.S. government can impose duties if (i) the DOC determines that imported goods are “dumped” and/or subsidized and (ii) the ITC determines that the domestic industry is materially injured or threatened with such injury by reason of subject imports.

If the ITC and DOC make preliminary affirmative determinations, U.S. importers will be required to post cash deposits in the amount of the AD and/or CVD duties for all entries on or after the date DOC’s preliminary determination is published in the Federal Register. Because DOC regulations provide for collection of factual information and responses to questionnaires prior to the preliminary determination, active engagement by foreign producers and their governments at the early stages of the investigations is essential.

The preliminary AD/CVD rates can change in the final DOC determination, and full participation by foreign producers and their governments in the investigations can help reduce final rates.

Scope

The products covered by these investigations include:

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 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 HTSUS under subheading 7308.20.0020 or 8502.31.0000.

Foreign Producers and Exporters of Subject Merchandise

Attachment 1 contains a list of companies that the Petitioner identifies as foreign producers and/or exporters of the subject merchandise.

U.S. Importers of Subject Merchandise

The Petitioner identified the following companies as U.S. importers of the subject merchandise: GE Renewable Energy, Goldwind Americas, Kousa International, Nordex USA, Senvion USA Corp., Siemens Gamesa Renewable Energy, and Vestas Towers America (see Attachment 2 for additional information).

Alleged Margins of Dumping/Subsidization

Petitioner alleges the following dumping margins:

- Canada: 46.32% to 57.70%;
- Indonesia: 27.23% to 38.58%;
- Korea: 350.62% to 422.87%; and
- Vietnam: 79.97% to 109.86%.

DOC generally assigns duties at these alleged dumping rates to exporters that fail to cooperate with the investigation.

No specific subsidy margins are included in the petition.

Potential Trade Impact

According to official U.S. import statistics for HTSUS 7308.20.0020, approximately 110,524 tons of subject merchandise, valued at \$169.1 million, were imported into the United States from the four countries in 2018. In terms of value, the value of each country's imports were as follows:

- Canada: \$60.2 million;
- Indonesia: \$37.4 million;
- Korea: \$34.9 million; and
- Vietnam: \$14.1 million.

The Petition notes that these official import statistics could be overstated, as HTSUS 7308.20.0020 may account for additional imports that would not be classified as wind tower imports under the scope.

Estimated Schedule of Investigations

July 7, 2019 – Petition filed

August 23, 2019 – ITC preliminary injury determination

September 12, 2019 – DOC preliminary CVD determination, if not postponed

November 16, 2019 – DOC preliminary CVD determination, if fully postponed

November 26, 2019 – DOC preliminary AD determination, if not postponed

January 15, 2020 – DOC preliminary AD determination, if fully postponed

June 5, 2020 – DOC final AD and CVD determinations, if both preliminary and final determinations are fully postponed

July 27, 2020 – ITC final injury determination, if DOC's determinations are fully postponed

August 10, 2020 – AD/CVD orders published

If you have any questions about the petitions, please contact the experienced attorneys in HHR's international trade group.

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