

Judge Chides Commerce For Ignoring Wind Tower Duty Order

By Alyssa Aquino

Law360 (October 12, 2023, 5:06 PM EDT) -- The U.S. Court of International Trade rejected the U.S. Department of Commerce's new duties for a Spanish wind tower company, chiding the department for again refusing to individually review the company, despite a prior court order to do so.

CIT Judge Timothy Stanceu found a handful of errors with the 73% antidumping duty that Commerce levied against Siemens Gamesa Renewable Energy on remand, the same dumping margin that he had remanded in February. The record gives the court no confidence that Commerce intended to investigate Siemens Gamesa on remand, the judge said.

The record "reasonably indicates to the court that Commerce already had reached a tentative decision not to calculate an actual dumping margin for the collapsed entity, a decision Commerce never reversed during the remand proceeding, and to assign it the 73 percent rate instead," Judge Stanceu said on Wednesday.

Commerce had first issued a 73% antidumping duty in June 2021, after determining that Spanish utility-scale wind towers were being sold in the U.S. at less than fair value. Siemens Gamesa, Spain's second largest utility-scale wind tower producer, challenged the duties in CIT, taking aim at Commerce's refusal to individually examine any company after its intended mandatory respondent — Spain's largest wind tower producer — bowed out of the investigation.

Instead of making Siemens Gamesa the mandatory respondent, as Siemens Gamesa had requested, Commerce used adverse facts available to assess a 73% dumping margin, which was then assigned to every Spanish producer.

Judge Stanceu faulted those duties, saying Commerce needed to review more than one producer to assess the dumping margins and ordered the department to undertake an individual review of Siemens Gamesa on remand.

On remand, Commerce collapsed Siemens Gamesa and several affiliates, including one that refused to participate in the original investigation, Windar Renovables, into one entity subject to the same duty rate. As Windar Renovables had not contested the 73% rate in the initial review, Commerce found that rate was final and assigned it to the full entity.

But Judge Stanceu found both those decisions to be at odds with each other on Wednesday. Once Windar was collapsed into a new entity, its dumping margin must be replaced with a dumping margin

for the combined entity, the judge said.

The judge further noted that the 73% rate was an adverse inference, finding it inappropriate to penalize Siemens Gamesa with that margin when it had participated in the original investigation.

If the evidentiary record could not support an investigation into Siemens Gamesa, Commerce was to blame, Judge Stanceu added.

"It appears that Commerce is now informing the court that it considers the record inadequate to allow it to determine an estimated weighted average dumping margin for Siemens Gamesa. If such is the case, the problem is one of the Department's own making. In the remand proceeding, Commerce reopened the record, designed a questionnaire procedure for the purpose of obtaining the information it needed, and acknowledged that it had obtained the information it requested," he said.

Commerce did not respond to a request for comment on Thursday.

Daniel Cannistra, counsel for Siemens Gamesa, told Law360 on Thursday that his team was pleased with the court's decision.

"[We] look forward to Commerce finally correcting the unlawful duties on Spanish wind towers," he said in a statement.

Siemens Gamesa is represented by Daniel J. Cannistra, Pierce Lee and Simeon Yerokun and Crowell & Moring LLP.

The U.S. is represented by Sara E. Kramer of the U.S. Department of Justice's Commercial Litigation Branch and Shelby Anderson of Commerce.

The case is Siemens Gamesa Renewable Energy v. United States, case number 1:21-cv-00449, in the U.S. Court of International Trade.

--Editing by Vaqas Asghar.