

**BEFORE THE UNITED STATES INTERNATIONAL TRADE COMMISSION**

**UTILITY SCALE WIND TOWERS FROM CHINA AND VIETNAM**

**FINAL PHASE**

**DECEMBER 13, 2012**

**ELLIOT J. FELDMAN**

**BAKER & HOSTETLER LLP**

**COUNSEL TO SIEMENS ENERGY AND SIEMENS WIND POWER**

Good morning. I am Elliot Feldman, Senior Partner at BakerHostetler and counsel to Siemens Energy and Siemens Wind Power. I am accompanied by my partner, Mike Snarr.

The Staff has done an excellent job establishing certain facts in this case. The key facts are that

- Domestic towers dominate sales in the heartland of the United States close to where they are manufactured. Subject towers penetrate this territory only when domestic producers fail to deliver or to accept orders.
- Transportation costs, with associated risks and logistical challenges, dominate tower purchasing decisions, not price.
- Petitioners sold more towers in each year, year over year, of the POI.
- Tower prices have held steady or risen throughout the POI, despite falling prices for energy.
- A sealed process for price quotations means petitioners speculate they are competing with foreign prices without any knowledge of such prices.

- Purchasers consistently have paid more for foreign towers than for domestic towers.
- Expiration of the Production Tax Credit has driven the tower market.
- Custom ordering means no inventories and long production lead times.

The Pre-Hearing Staff Report reconfirms (from the preliminary phase) that petitioners have provided no evidence of lost sales. Nor have petitioners provided a single specific example of underselling.

Petitioners' argument now is that unfairly traded Chinese and Vietnamese towers have surged into the U.S. market, suppressing prices and rendering the domestic manufacturers uncompetitive. They claim that f.o.b. price is the single most important issue in the negotiation of a contract for towers; that tower manufacturers are forced to bid for contracts against the unfairly traded prices from China and Vietnam; that they consistently lose in this bidding because they cannot compete with the unfairly traded prices.

Purchasers and respondents' briefs are exactly to the contrary: that f.o.b. price is not important at all, and that price itself is secondary, at best, in the selection of contractors for towers; that OEMs do not collect competitive prices and in any event never show prices of any tower producers to any other tower producers; that Asian towers are never selected solely on the basis of price.

By constructing an argument diametrically opposed to the facts presented in the Purchasers' Questionnaire Responses and as indicated in the Pre-Hearing Staff Report, petitioners perhaps hope the Commission will split the difference, reckoning that

there must be fair points on each side. There is no difference here to split. There is no reconciling petitioners' argument with the facts of the case.

OEMs report Chinese and Vietnamese towers to be more reliably delivered (there are no reported lawsuits against Chinese and Vietnamese producers; there are many legal disputes with domestic producers, and they themselves admit many problems in 2010, 2011, and 2012 in producing quality towers reliably on time). According to petitioners, the Chinese and Vietnamese towers are always much cheaper, and now they claim that OEMs do not bear ocean freight costs, so not only would delivered cost not be important, but OEMs necessarily buy cheaper, whether f.o.b. or delivered, from Asia. Why, if China and Vietnam have unlimited capacity to produce towers that are better, more reliably delivered, and always cheaper, would the OEMs ever buy anything but Chinese and Vietnamese towers?

Yet, domestic manufacturers sold more towers in 2011 than in 2010, and more in 2012 than in 2011. The record is full of petitioners' confessions of turning down orders because they did not have the capacity to deliver, so their loss of market share was due to their inability to produce more, not due to foreign imports. The record is also full of evidence of petitioners' failures to fill orders, forcing OEMs to cover, often with domestic towers, sometimes with Chinese and Vietnamese towers. The record shows that in almost all instances the delivered cost of the subject towers was higher than the delivered cost of the domestic towers. And our maps, one of which we can display here (the other contains BPI of another company), show the absolute dominance of domestic tower sales in the American heartland. Petitioners themselves, in their many sworn

declarations, have acknowledged OEM preference for towers manufactured near wind farms, as proven by the map.

Chinese and Vietnamese towers oversell domestic towers, bought to cover when domestic towers have not been available. Petitioners claim they rejected orders because they could not meet Chinese and Vietnamese prices, but the evidence of record – petitioners' own communications – show that they had no knowledge of competitive prices and they did not have capacity or, sometimes, the equipment or ability to make the towers needed.

Petitioners complain about sealed bids, yet claim to have known somehow what was in the envelopes. There not being a Carnac among them, they either bid against themselves or conjured an excuse for rejecting orders, failing to fill them, and not making money. Price competition from foreign imports simply had nothing to do with their apparent travails.