A-122-863
Investigation
Public Document
E&C/OV: AC, SSP

February 19, 2019

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
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Large Diameter Welded Pipe from Canada

---

I. Summary

The Department of Commerce (Commerce) finds that large diameter welded pipe (welded pipe) from Canada is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is January 1, 2017, through December 31, 2017.

After analyzing the comments submitted by interested parties, and based on our findings at verification, we have made changes to the *Preliminary Determination*.[1] We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this LTFV investigation for which we received comments from interested parties:

Comment 1: Evraz and Enbridge Affiliation
Comment 2: Enbridge's U.S. Sales
Comment 3: Freight Revenue
Comment 4: Startup Adjustment

[1] *See Large Diameter Welded Pipe from Canada: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 83 FR 43649 (August 27, 2018) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (*Preliminary Determination Memorandum*).

Comment 5: Cost of Downgraded Pipe
Comment 6: Parent Holding Company G&A Expenses
Comment 7: Major Input
Comment 8: Impairment Loss

II. Background

On August 27, 2018, Commerce published the *Preliminary Determination* in this LTFV investigation.

Between September 2018, and December 2018, we conducted verification of the sales and cost of production (COP) data reported by the respondent in this investigation, Evraz Inc. NA (Evraz) as well as Enbridge Inc. (Enbridge), in accordance with section 782(i) of the Act.[2] Subsequently, in December 2018, we requested, and Evraz and Enbridge submitted, revised sales databases.

On December 14, 2018, American Cast Iron Pipe Co., Berg Steel Pipe Corp., Berg Spiral Pipe Corp., Dura-Bond Industries, Skyline Steel, and Stupp Corp. (collectively, the petitioners), Evraz, and Enbridge submitted case briefs.[3] On December 20, 2018, the petitioners, Evraz, and Enbridge submitted rebuttal briefs.[4]

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.[5] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final determination of this investigation is now February 19, 2019.

Based on our analysis of the comments received, as well as our verification findings, we have made changes from our *Preliminary Determination*.

---

[2] *See* Memorandum, "Verification of the Cost Response of Evraz Inc. NA in the Less Than- Fair-Value Investigation of Large Diameter Welded Pipe from Canada," dated November 19, 2018 (Evraz Cost Verification Report); Memorandum, "Verification of the Sales Response of Evraz in the Antidumping Investigation of Large Diameter Welded Pipe from Canada," dated December 3, 2018 (Evraz Sales Verification Report); Memorandum, "Verification of the Sales Response of Enbridge Inc. in the Antidumping Investigation of Large Diameter Welded Pipe from Canada," dated December 10, 2018 (Enbridge Sales Verification Report).

[3] *See* the petitioners' Case Brief, "Large Diameter Welded Pipe from Canada: Case Brief," dated December 14, 2018 (the petitioners' Case Brief); Evraz's Case Brief, "Large Diameter Welded Pipe from Canada: Evraz's Case Brief," dated December 14, 2018 (Evraz Case Brief); Enbridge Case Brief, "Large Diameter Welded Pipe from Canada: Case Brief," dated December 14, 2018 (Enbridge Case Brief).

[4] *See* the petitioners' Rebuttal, "Large Diameter Welded Pipe from Canada: Rebuttal Brief," dated December 19, 2018 (the petitioners' Rebuttal Brief); Evraz's Rebuttal Brief, "Large Diameter Welded Pipe from Canada: Evraz's Rebuttal Brief," dated December 19, 2018 (Evraz Rebuttal); and Enbridge's Rebuttal Brief, "Large Diameter Welded Pipe from Canada: Rebuttal Case Brief," dated December 19, 2018 (Enbridge Rebuttal).

[5] *See* Memorandum, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this proceeding have been extended by 40 days.

III. Scope of the Investigation

For the scope language, see the scope in Appendix I of the accompanying *Federal Register* notice.

IV. Margin Calculations

We calculated export price, normal value, and COP for Evraz using the same methodology as stated in the *Preliminary Determination*,[6] except as follows:[7]

1. We requested revised sales listings from Evraz and Enbridge based on corrections noted in the verification reports and used these revised sales data for the final margin calculations.[8]
2. We reversed our preliminary determination of affiliation between Evraz and Enbridge, and have included Evraz's U.S. sales to Enbridge in the margin calculation.[9]
3. We included amortization of the excluded startup costs in the startup adjustment.[10]
4. We revised the adjustment for the downgraded line pipe based on our verification findings.[11]
5. We revised the adjustment for the major input based on our verification findings.[12]
6. We revised general and administrative (G&A) expenses to include impairment loss and to exclude certain investment and financial expenses.[13]

V. Discussion of the Issues

Comment 1: Evraz and Enbridge Affiliation

Evraz's Comments

- Consistent with section 771(33) of the Act, Commerce most commonly finds that two entities are affiliated based on common ownership, overlapping management, and other formal control mechanisms (*e.g.*, common board members).[14] However, the traditional bases for affiliation are not at issue in this case because Evraz and Enbridge are not affiliated through family relations, do not share a common owner, have no ownership interests in each other,

[6] *See* Memorandum, "Preliminary Determination Margin Calculation for Evraz Inc. NA," dated August 20, 2018 (Preliminary Analysis Memorandum).
[7] *See* Memorandum, "Antidumping Duty Investigation of Large Diameter Welded Pipe from Canada: Final Determination Calculations for Evraz Inc. NA" dated concurrently with this memorandum (Evraz Final Sales Analysis Memorandum); Evraz Sales Verification Report; Evraz Cost Verification Report.
[8] *See* Letter from Commerce to Evraz, "Large Diameter Welded Pipe from Canada," dated December 10, 2018; and Letter from Commerce to Enbridge, "Large Diameter Welded Pipe from Canada," dated December 10, 2018.
[9] *See* Evraz Final Sales Analysis Memorandum.
[10] *See* Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination-Evraz Inc. NA and its Affiliates", dated concurrently with this memorandum.
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *See* Evraz Case Brief at 7.

are not joint venture partners, do not share directors or managers, are not part of a common industrial group, and do not have any other overlapping forms of control.[15]

- While Commerce's *Preliminary Determination* found that a "control" relationship exists between Evraz and Enbridge, neither of the companies' audited financial statements, or SEC filings, identify the other as an affiliated company.[16]
- While the Statement of Administrative Action (SAA) and Commerce's practice do permit affiliation findings based on close supplier/buyer reliance, such findings are rare in practice and not warranted in this situation.[17]
- Although the petitioners assert that the Mill Space Agreement (MSA) is so special that its existence warrants a finding of affiliation, Enbridge has reported that it has thousands of MSAs with many goods and services suppliers.[18]
- Commerce's focus on certain provisions of the MSA do not give Enbridge control over Evraz's pricing or production.[19]
- Rather, the Evraz-Enbridge MSA is a framework agreement that streamlines ongoing commercial activities, facilitates forecasting, and fosters communication, thus minimizing the risk of loss related to supply disruption.[20]
- Evraz used the MSA to formalize the purchasing process that Evraz goes through with all of its customers.[21]
- For example, the record contains capacity reservations similar to Evraz's MSA with Enbridge and other companies.[22] Additionally, the record shows that Evraz's predecessor, IPSCO, also had a mill space reservation commitment.[23]
- In 2017, the Canadian International Trade Tribunal (CITT) investigated merchandise similar to the subject merchandise and found that the Evraz and Enbridge supply relationship is not exclusive, and that MSAs are commonplace in that market. Such commonplace agreements should not be the basis for determining whether the two companies are affiliated through control.[24]
- Commerce verified that the Evraz MSA did not create binding obligations on either party until Enbridge issued a purchase order (PO), similar to other line pipe customers.[25]
- While certain MSA provisions may have theoretically given Enbridge priority over other customers, this provision had no practical application during the POI.[26]
- The inclusion of Enbridge's production preferences in the MSA does not mean that Enbridge has the ability to control Evraz's production decisions.[27]

---

[15] *Id.* at 8.
[16] *Id.* at 8-9.
[17] *Id.* at 10-14 (*citing* SAA, accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316 (1994) at 838).
[18] *Id.* at 15.
[19] *Id.* at 16.
[20] *Id.* at 17-18.
[21] *Id.* at 18.
[22] *Id.* at 20.
[23] *Id.* at 21.
[24] *Id.*
[25] *Id.* at 22-23.
[26] *Id.* at 23-24.
[27] *Id.* at 25-27.

- In the *Preliminary Determination*, Commerce relied on Evraz's statement in summary information and graphics prepared as a marketing flyer claiming that Enbridge "requires that Evraz meet more rigorous and frequent testing than the industry standards" to reach a determination affiliation. Commerce verified that all of Evraz's customers specify standards that go beyond basic industry standards.[28]
- Commerce additionally relied on this flyer's statement that "{Enbridge's} inspectors have unlimited access to Evraz facilities during the manufacturing process." At verification, Evraz demonstrated that such access is standard in the welded pipe industry and no different for any of Evraz's other customers.[29]
- In the *Preliminary Determination*, Commerce found that Enbridge's purchases of Evraz's output were significant and sufficient to find reliance. However, these purchase amounts are consistent with the fact that the welded pipe industry is characterized by large projects that may account for a significant portion of total sales in any given year, and ignores the temporal, multi-year aspect of the industry.[30]
- Precedent does not support the finding of affiliation on such low sales quantity. In no proceeding has Commerce found close supplier affiliation where sales from a supplier to an allegedly affiliated producer totaled less than 50 percent of the supplier's total sales. Additionally, when respondents made the vast majority of sales to one customer, this did not constitute sufficient evidence to determine affiliation, and Commerce has observed that a sales ratio of 100 percent is insufficient to evince reliance.[31]
- Missing from Commerce's affiliation determination is the contextual fact that the North American line pipe market is "lumpy," such that line pipe projects often cover hundreds or thousands of miles and that such "lumpiness" refers to the peaks and valleys in demand. These projects can at various points in time entail significant shares of a company's sales to specific customers who are in the process of building a major pipeline, which is manifest in the record of this investigation. While certain welded pipe manufacturers were completely accounted for by various projects in the past, Evraz's total line production capacity was not filled to such a degree during the POI.[32]
- Data on the record indicates that while any given customer of a supplier may dominate shipments for one or two years, this is temporary. Relying on such transitory data as a possible basis for a finding of control and affiliation is unwarranted as a factual matter.[33]
- Commerce has previously found that the temporary significance of a single customer to be insufficient for an affiliation finding.[34]
- Commerce's analysis of relative sales to Enbridge did not capture the full context of Evraz's position in the market because it did not consider Evraz's POI production capability. Evraz could have supplied virtually any other project while also supplying Enbridge. The small share of total capacity occupied during the POI does not demonstrate reliance and control.[35]

---

[28] *Id.* at 27-28.
[29] *Id.* at 28-29.
[30] *Id.* at 29-30.
[31] *Id.* at 30-32.
[32] *Id.* at 32-34.
[33] *Id.* at 35.
[34] *Id.* at 36.
[35] *Id.* at 37-39.

Enbridge's Comments

- The contractual relationship between Enbridge and Evraz during the POI was not unusual or unique. The commercial terms of this relationship were similar to those found in numerous agreements negotiated by the two companies.[36]
- The key attribute of the MSA is that it allows a purchaser to reserve production or service capacity with a supplier. While the MSA does create legal rights and obligations for each party, the MSA does not itself constitute a sales contract. Enbridge has no obligation until a purchase order is issued.[37]
- MSAs are critical in the pipeline industry because a shortfall in supply during production can result in massive additional costs. As a result, Enbridge negotiates master service agreements to ensure that they do not experience a shortfall in supply. The MSA represents a sophisticated value calculation by both parties, arrived through an arm's-length negotiation.[38]
- The MSA is a type of master service agreement that Enbridge has entered. The record contains several master service agreements between Enbridge and other suppliers containing a wide range of products and services used in pipeline construction.[39]
- While the terms of the Enbridge-Evraz MSA may be unusual in Commerce's experience, such practices are customary in this particular industry and arise out of market conditions. As such, they cannot be used for a finding of affiliation.[40]
- The courts have noted that a close supplier relationship indicates affiliation only if the relationship "is such an integrated nature that the two entities cannot be said to transact at arms' length" and "lead to unfair transactions with unfair prices."[41] This standard is not met in this case.
- To establish reliance, Commerce must find that: 1) the relationship is so significant that it could not be replaced; 2) the relationship is exclusive and unique; 3) the relationship is not replaceable even if there is a high degree of cooperation; and 4) a party does not show willingness to discontinue the agreement.[42]
- Commerce has repeatedly stated that it will not find reliance merely on the proportion of purchases or sales between the buyer and seller, even if the proportion is 100 percent.[43]
- The Court of International Trade (CIT) has upheld that even if a supplier sold all of its exports to a buyer, this does not support a finding of a close supplier relationship.[44]
- Should Commerce consider the percentage of sales to determine reliance, this analysis should apply to Evraz's sales overall.[45]

[36] *See* Enbridge Case Brief at 3.
[37] *Id.* at 4-5.
[38] *Id.* at 5-6.
[39] *Id.* at 6.
[40] *Id.* at 6-7.
[41] *Id.* at 7.
[42] *Id.* at 8.
[43] *Id.* 8-9.
[44] *Id.* at 9.
[45] *Id.* at 10.

- There is no evidence on the record showing that the relationship between Evraz and Enbridge is so significant that it could not be replaced, thereby leading to reliance.[46]

Petitioners' Comments

- Commerce's *Preliminary Determination* of affiliation between Evraz and Enbridge was proper and supported by evidence obtained at verification.[47]
- Commerce previously determined that a buyer is reliant on a supplier if the relationship is significant and could not be easily replaced, as affirmed by the CIT.[48]
- The record clearly demonstrates that the MSA is a binding agreement, which, pursuant to 19 CFR 351.102(b)(3), provides Enbridge with the potential to control Evraz.[49]
- At verification, Commerce confirmed that the MSA between Enbridge and Evraz was unique and that Evraz did not have a similar agreement with any of its customers.[50]
- While Enbridge provided other MSA-type agreements for construction services and other goods, these agreements secured construction services and the supply of lesser goods, which do not compare to welded pipe.[51]
- Further, the MSA-type agreement for welded pipe presented at verification did not indicate the same requirements as the MSA between Evraz and Enbridge; thus, confirming the unique relationship between Evraz and Enbridge.[52]
- Commerce's determination should not be based on whether Enbridge had the freedom to purchase from other suppliers or whether it actually made purchases from other suppliers, but whether Enbridge purchased significant quantities from alternative sources.[53]
- Despite Evraz's argument that the percentage-of-sales-made figures are too low to determine a finding of reliance, Commerce does not have an established bright-line percentage-of-sales made amount which would determine evidence of control.[54]
- Commerce should determine reliance on the sales and actual production of subject merchandise instead of considering multiple years, or worldwide sales or capacity-based analysis as recommended by Evraz and Enbridge.[55]
- The record confirms that Evraz's relationship with Enbridge was not temporary and that Enbridge sourcing from other suppliers was irregular prior to 2017. Further, Evraz's claims of temporal lumpiness are unfounded since Evraz provided the vast majority of Enbridge's welded pipe requirements.[56] Accordingly, the transactions between the two companies are significant and could not be replaced without substantial financial repercussions.[57]

---

[46] *Id.* at 11.
[47] *See* the petitioners' Rebuttal at 5.
[48] *Id.* at 7.
[49] *Id.* at 10.
[50] *Id.*
[51] *Id.* at 12.
[52] *Id.* at 11-12.
[53] *Id.* at 13.
[54] *Id.* at 13-14.
[55] *Id.* at 14-15.
[56] *Id.* at 15.
[57] *Id.* at 16.

- In the *Preliminary Determination*, Commerce properly determined that evidence on the record shows a financing arrangement which was indicative of the potential for control.[58]
- Commerce also properly relied on information from Enbridge's website as evidence of affiliation. At verification, Enbridge was not able to point to a similar type of advertisement for any of its other suppliers.[59]
- At verification, Commerce verified that the third-party inspector access provided to Enbridge is not the same as the access provided to Evraz's other customers.[60]
- Other *indicia* of control not referenced in Commerce's *Preliminary Determination* are contained on the record. These include production decisions, internal decision-making, and special financing agreements.[61]

Commerce's Position

Following further development of the record after the *Preliminary Determination*, verification findings, as well as consideration of the parties' factual submissions and case briefs, for this final determination, we find that Enbridge and Evraz are not affiliated within the meaning of section 771(33)(G) of the Act.

Section 771(33)(G) of the Act provides that "affiliated persons" are "{a}ny person who controls any other person and such other person."[62] It further declares "{f}or purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person."[63] Control between persons may exist in close supplier relationships in which either party becomes reliant upon the other.[64] With respect to close supplier relationships, Commerce has determined that the threshold issue is whether either the buyer or seller has, in fact, become reliant on the other.[65] Only if such reliance exists does Commerce then determine whether one of the parties is in a position to exercise restraint or direction over the other.[66]

Commerce's regulations at 19 CFR 351.102(b)(3) state that, in finding affiliation based on control, Commerce will consider among other factors: (i) corporate of family groupings; (ii) franchise or joint venture agreements; (iii) debt financing; and (iv) close supplier relationships. Control between persons may exist in close supplier relationships in which either party becomes

[58] *Id*. at 17-18.
[59] *Id*. at 18-19.
[60] *Id*. at 19.
[61] *Id*. at 19-20.
[62] *See* Section 771(33)(G) of the Act.
[63] *Id*.
[64] *See* SAA at 838; *see also Stainless Steel Wire Rod from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review,* 71 FR 59739, 59739-59740 (October 11, 2006), unchanged in *Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 72 FR 6528 (February 12, 2007).
[65] *Id.*; *TIJID, Inc. v. United States*, 366 F. Supp 2d 1286, 1295-1300 (CIT 2005) (*TIIJD*).
[66] *See Catfish Farmers of Am.* v. *United States,* 641 F. Supp. 2d 1362, 1373-74 (ClT 2009); *TIJID,* 366 F. Supp. 2d at 1295-1300; *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 18404 (April 15, 1997) (*Carbon Steel Flat Products from Korea*) and accompanying IDM at Comment 2.

reliant on one another.[67] To establish a close supplier relationship, the party must demonstrate that the "relationship is so significant that it could not be replaced."[68] Only if such reliance exists does Commerce than determine whether one of the parties is in a position to exercise restraint or direction over the other.[69] Commerce will not, however, find affiliation on the basis of this factor unless the relationship has the potential to affect decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.[70]

In the *Preliminary Determination*, we considered several factors when analyzing whether Enbridge was able to exert control or direction over Evraz. Among those factors were: (1) the terms and provisions of the MSA between Evraz and Enbridge; (2) the relative percentage of Evraz's sales to Enbridge with respect to its total sales; and (3) terms of any financing agreements with its suppliers.[71] We now conclude that there is no close supplier relationship between Evraz and Enbridge.

With respect to the impact of the MSA between Evraz and Enbridge, we find that the agreement does not support a finding of affiliation. Following the *Preliminary Determination*, Commerce confirmed at the verification that the MSA did not prohibit Evraz from selling to other customers or require Enbridge purchase pipe from Evraz.[72] When purchasing welded pipe from Evraz, a financial commitment was established only after a firm order or purchase order was made by Enbridge.[73] The MSA does not require, nor confine, Evraz to sell solely to Enbridge, as is evidenced on the record.[74] In *Washers from Korea*, Commerce reviewed contracts where nothing in the agreements prohibited the suppliers from selling to other buyers and found this supported a finding that there was no control.[75] Even where supply agreements existed between a supplier and the buyer, Commerce determined such supply agreements to be insufficient evidence of control.[76] Upon review of Evraz's MSA with Enbridge, there is no such language

---

[67] *See* SAA at 838.
[68] *Id.*
[69] *See*, *e.g.*, *Multilayered Wood Flooring from the People's Republic of China, Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011) (*Wood Flooring from China*) and accompanying IDM at Comment 21; *Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers from the Republic of Korea,* 77 FR 75988 (December 26, 2012) (*Washers from Korea*) and accompanying IDM at Comment 8.
[70] *See* 19 CFR 351.102(b)(3).
[71] *See* Preliminary Analysis Memorandum at 3.
[72] *See* Memorandum, "Verification of the Sales Response of Evraz in the Antidumping Investigation of Large Diameter Welded Pipe from Canada," dated December 10, 2018 (Evraz Verification Report) at 5.
[73] *Id.*
[74] *See* Evraz's Letter, "Large Diameter Welded Pipe from Canada: Evraz's Post Verification Submission of Revised Sales Databases," dated December 17, 2018.
[75] *See Washers from Korea* at Comment 8.
[76] *See*, *e.g.*, *Wood Flooring from China* at Comment 21; *Certain Pasta from Turkey: Notice of Final Results of the 14th Antidumping Duty Administrative Review*, 76 FR 68399 (*Pasta from Turkey*) and accompanying IDM at Comments 1.C. and 1.D.

stipulating such prohibitions, thus providing no clear indication of control by Enbridge over Evraz.

We agree with Evraz and Enbridge that the clauses in its MSA which obligate it to give Enbridge notice when certain commercial circumstances arise (*e.g.*, mill reservation) are not evidence of control by Enbridge over Evraz. Commerce has previously determined that common commercial arrangements do not indicate control of one party over another.[77] In its submission to Commerce, Enbridge stated that it maintains a large number of master service agreements with many goods and services suppliers and that such agreements enable Enbridge to negotiate high level agreements with its supplier at one time, and all other aspects regarding purchasing at other times.[78] Enbridge clarified that the MSA between Evraz and Enbridge is a type of master service agreement.[79] At verification, Commerce reviewed several MSAs between Enbridge and its suppliers. In doing so, we observed similar provisions to the MSA shared with Evraz.[80] Additionally, Commerce verified that Evraz's predecessor company, IPSCO, was also involved in a mill space reservation commitment with one of its customers.[81] Following further review and development of the record, we agree with Evraz and Enbridge that the arrangement between the two companies is simply an agreement which is a common commercial arrangement customary across the welded pipe industry. The arrangements on the record are made at arm's length and do not indicate reliance or control of one party over the other. As such, Commerce does not find that the MSA at issue, and its clauses, are so exceptional or outside the norm that they indicate any sort of control.

Commerce agrees with Evraz that it was not required to produce welded pipe to more rigorous standards when it produced for Enbridge. At the *Preliminary Determination*, Commerce stated that Enbridge's website indicated "that it requires that Evraz meet more rigorous and frequent testing than the industry standards for the merchandise at issue."[82] At verification, Commerce found that Evraz provided this service to all of its customers.[83] It is common for customers to require Evraz to meet higher standards than the industry standards. Specifically, each of Evraz's customer's projects involves a Technical Specification Review (TSR) that enumerates the customer's specifications which supplement the Base Specification (*i.e.*, industry standards) which they exceed.[84] Namely, while Evraz produced Enbridge's welded pipe that included requirements beyond the Base Specification, this was no different from the type of production standards provided to any of Evraz's other customers for which there is evidence on the record.[85] We find that this is not evidence that Enbridge was directly involved in the production of subject merchandise at Evraz. Unlike *OCTG from Korea*, where Commerce found affiliation between the respondent and buyer because the buyer was directly involved in the production and sales of

[77] *See Carbon Steel Flat Products from Korea* at Comment 39.
[78] *See* Enbridge Verification Report at 3-4.
[79] *See* Letter from Enbridge, "Large Diameter Welded Pipe (LDWP) from Canada: Enbridge's Supplemental Section A Questionnaire Response," dated October 5, 2018 (Enbridge SAQR) at 8.
[80] *See* Enbridge Verification Report at SVE-2.
[81] *See* Evraz Verification Report at 6 and SVE-1.
[82] *See* Preliminary Analysis Memorandum at 4.
[83] *See* Evraz Verification Report at 6.
[84] *Id.*
[85] *See* Evraz Verification Report at SVE-1.

merchandise purchased by the buyer,[86] these rigorous standards are actually characteristics of the production of subject merchandise. Accordingly, in these terms, Commerce does not find that Enbridge could exercise control over Evraz's production decisions in this respect.

Commerce agrees with Evraz that Enbridge was not granted exceptional access to Evraz's pipe mills. At the *Preliminary Determination*, Commerce found that Enbridge's website stated that it had unlimited access to Evraz's facilities during the manufacturing process; thus, evincing control.[87] At verification, Commerce found this type of access is not specific to Enbridge and that all of Evraz's customers are given the same type of access to its facilities. Although the petitioners assert that the access provided to other customers are not the same as provided to Enbridge, information on the record indicates that Evraz's guidelines for this type of inspection access are identical for all of its customers.[88] With respect to Enbridge, information on the record indicates that it was given the same access to other of its suppliers' facilities, which Commerce verified.[89] As such, the access afforded to Enbridge by Evraz is not so unique as to demonstrate control.

Another factor we considered in our analysis as to whether Evraz and Enbridge were reliant on each other was the relative percentage that sales to Enbridge represented of Evraz's total sales. While the petitioners assert that the record confirms that the relationship between Evraz and Enbridge percentage-of-sales-made calculations reflect a close supplier relationship, we disagree.[90] Consistent with Commerce's past decisions, we find that a respondent making the large part of sales to one customer does not, by itself, constitute sufficient evidence to determine affiliation by virtue of a close relationship.[91] Further, in *TIJID*, the CIT affirmed Commerce's finding that even in instances where companies sell 100 percent of its products to one customer, with no evidence that there is a requirement to do so, that alone is not enough to find that the two companies are affiliated.[92] This has been consistently applied across Commerce's past decisions.[93] The portion of which Enbridge accounted for Evraz's business is merely one fact that, standing alone, does not support a finding of a close supplier relationship.

Moreover, we agree with Evraz that even if Enbridge may have accounted for a large part of Evraz's sales temporarily, such does not evince control. As noted above, 19 CFR 351.102(b)(3) provides guidance as to the relevance of the nature of the relationship between parties with

---

[86] *See Certain Oil and Tubular Goods from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 41983 (July 18, 2014) (*OCTG from Korea*) and accompanying IDM at Comment 20.
[87] *See Preliminary Determination Memorandum* at 6-7.
[88] *See* Evraz Verification Report at Exhibit 1.
[89] *See* Enbridge Verification Report at 4.
[90] *See* the petitioners' Rebuttal at 12-13.
[91] *See Certain Steel Nails from Taiwan: Final Determination of Sales at Less Than Fair Value*, 80 FR 28959 (May 20, 2015) and accompanying IDM at Comment 3, citing *TIJID*, 366 F. Supp. 2d at 1286.
[92] *See TIJID*, 366 F. Supp. 2d at 1299.
[93] *See Certain Oil Country Tubular Goods from Taiwan: Final Determination of Sales at Less Than Fair Value*, 79 FR 41979 (July 18, 2014) (*OCTG from Taiwan*) and accompanying IDM at Comment 1; *Grain Oriented Steel from the Czech Republic: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 58324 (September 29, 2014) (*GOES from the Czech Republic*) and accompanying IDM at Comment 39.

respect to determining affiliation stating, "{t}he Secretary will consider the temporal aspect of a relationship in determining whether control exists" and "normally, temporal circumstances will not suffice as evidence of control." We agree with Evraz that in the welded pipe industry customers can temporarily account for a large part of a supplier's sales. As evidenced by the record, welded pipe suppliers that are supporting major pipeline projects may make a significant share of sales to the customer building the pipeline.[94] Accordingly, while Enbridge may have accounted for a considerable amount of Evraz's sales during the POI, record information shows that this share of sales was not permanent.[95] We additionally disagree with the petitioners that information on the record demonstrates that Enbridge sourced from other suppliers prior to 2017 "irregularly at best."[96] In its Rebuttal NFI Submission, Evraz provided information indicating that Enbridge purchased welded pipe from other suppliers.[97] Specifically, this information includes instances of purchases made by Enbridge (as submitted to Canada's National Energy Board) and as well as project lists from other companies.[98] As a result, we do not find that there is ample evidence on the record in this regard to find any type of long-term trend.

With respect to the petitioners' arguments that an interest-free loan between Enbridge and Evraz supports a finding of reliance, we disagree. At the *Preliminary Determination*, we determined Evraz and Enbridge maintained a financial agreement such that Enbridge controlled Evraz. Commerce examined the further developed the record of this investigation at verification and found that the agreement at issue was not an interest-free loan, but an option that Evraz provides to all of its customers.[99] Moreover, information on the record indicates that Enbridge made prepayments for inputs to one of its other suppliers of welded pipe.[100] Additionally, Commerce has previously determined that advanced prepayments used to fund the production of subject merchandise can, in theory, be characterized as a *de facto* loan, but when such payments are not sufficient to fund the production company as a whole, this does not evince control.[101]

In sum, Commerce does not find that reliance and control exist between Evraz and Enbridge. Accordingly, for this final determination, we are including Evraz's U.S. market sales to Enbridge in the final margin calculation. Moreover, we will not test whether Evraz's sales of foreign like product in the home market to Enbridge were made at arm's length prices.

Comment 2: Enbridge's U.S. Sales

Petitioners' Comments

[94] *See* Enbridge Verification Report at 4-5.
[95] *See* Evraz Verification Report at SVE-1 and Evraz Case Brief at Exhibit 1B.
[96] *See* Evraz Rebuttal at 15.
[97] *See* Letter from Evraz, "Large Diameter Welded Pipe from Canada: Evraz's Response to Petitioners' Rebuttal Factual Information Submission Concerning the Section C Supplemental Questionnaire Response," dated July 27, 2018 (Rebuttal NFI Submission) at 2-4.
[98] *Id.*
[99] *See* Evraz Verification Report at 7.
[100] *See* Enbridge Verification Report at 4.
[101] *See* at *GOES from the Czech Republic* at Comment 1.

- If Commerce continues to find Evraz and Enbridge affiliated for the final determination, Commerce should include Enbridge's U.S. resales of Evraz-produced welded pipe in Evraz's final margin calculations.[102]
- Commerce preliminarily determined that Evraz and its customer Enbridge were affiliated through a close supplier relationship and excluded Enbridge transactions from the preliminary margin calculations.[103] Subsequent to the *Preliminary Determination*, Commerce requested Enbridge respond to the AD questionnaire and provide any applicable sales databases. Evraz and Enbridge each responded by providing data and information related to Enbridge's U.S. resales of welded pipe produced by Evraz during the POI. Enbridge described the resales as liquidation sales resulting from the withdrawal from the Sandpiper Pipeline Project, and it claims these transactions were rare, unusual and not part of its normal commercial activities.[104] However, the record demonstrates that these transactions are in fact a reliable basis for margin calculations.

Evraz's Comments

- If Commerce continues to find Evraz and Enbridge affiliated for the final determination, Commerce should exercise its discretion to exclude unusual and/or unrepresentative U.S. sales transactions from the margin calculation.[105]
- With respect to welded pipe, Enbridge is a purchaser and end-user, and only rarely does Enbridge resell surplus welded pipe.[106] The circumstances under which these particular sales were made are also highly unusual. During the POI, Enbridge found itself forced to dispose of the Evraz-produced welded pipe as a result of the unexpected commercial and regulatory withdrawal of the Sandpiper Pipeline Project.[107]
- As a result, thesetransactions should be excluded because they are not *bona fide* sales and are not "typical of those the exporter or producer will make after completion of the review {or investigation}."[108]

Enbridge's Comments

- If Commerce continues to find Evraz and Enbridge affiliated for the final determination, Commerce should consider Enbridge's sales of the subject merchandise during the POI as constructed export price (CEP) sales, as they would constitute the first sales to an unaffiliated customer made after importation.[109]

---

[102] *See* the petitioners' Case Brief at 3, citing *Chang Tieh Indus. Co. v. United States*, 840 F. Supp. 141, 145 (CIT 1993); *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 70 FR 12443 (March 14, 2005) and accompanying IDM at Comment 6.
[103] *See* the petitioners' Case Brief at 3-4.
[104] *Id.* at 3.
[105] *See* Evraz Case Brief at 5-53, and 61.
[106] *Id.* at 53.
[107] *Id.* at 54.
[108] *Id.* at 59, citing to *Fresh Garlic from the People's Republic of China: Final Rescission of the Semiannual Antidumping Duty New Shipper Review of Qingdao Doo Won Foods Co., Ltd.,* 83 FR 50636 (October 9, 2018) (*Garlic from China*) and accompanying IDM at 3.
[109] *See* Enbridge Case Brief at 24-27.

- However, Commerce should not include these sales in the calculation of Evraz's dumping margin as the abnormal circumstances under which they were sold make them an inappropriate basis on which to calculate a dumping margin. [110]
- Unlike Evraz, Enbridge made these sales because of an extraordinarily unusual event, the cancellation of the Sandpiper project. Because of that unusual event, Enbridge found itself holding an inventory of pipe it could not use and had a "liquidation sale" of random quantities of pipe located in pipe yards across the country. These sales were not part of Enbridge's normal commercial activities, which are the construction, operation, and maintenance of pipes, nor are they a fair representation of Evraz's commercial activities in the U.S. market.[111]

Commerce's Position

As discussed in Comment 1 above, Commerce has determined that Evraz and Enbridge are not affiliated. Accordingly, this issue is moot. These sales by Enbridge of Evraz-produced welded pipe are not considered sales by an affiliate of a respondent, rather Evraz' sales of subject merchandise to Enbridge constitutes the first sales to an unaffiliated customer in the U.S. market. Therefore, Enbridge's downstream U.S. sales are not included in Evraz's final margin calculation.

Comment 3: Freight Revenues

Petitioners' Comments

- In its *Preliminary Determination*, Commerce capped Evraz's reported U.S. freight revenues based on the freight revenues reported in the freight revenue (FRTREVU) field.[112]
- However, where freight revenues are incurred but not reported separately under the FRTREVU field, the cap has no impact, and Evraz receives the full benefit of the freight revenues wherever they exceed the reported freight expenses.
- Commerce's verification report clearly indicates that certain of Evraz's reported U.S. gross unit prices (GRSUPRU) are freight revenue inclusive, such that while freight revenues were incurred, they are not reported in the separate FRTREVU field but apparently captured in the reported GRSUPRU field.[113]
- Evraz claims that it has not failed to separately report freight revenues in its U.S. sales database, that it has responded in full to all of Commerce's requests, and that Commerce confirmed its freight revenues reporting at verification.[114] Evraz's assertions lack merit.

[110] *Id.* at 24.
[111] *Id.* at 25.
[112] *See* the petitioners' Rebuttal at 25, citing to the Preliminary Analysis Memorandum at Section III, "Adjustments to the Margin Calculation Program."
[113] *Id*.
[114] *See* the petitioners' Rebuttal at 25, citing to the Evraz Sales Verification Report at 19 and 31.

- Where revenues are incurred but not reported separately under FRTREVU, the cap has no impact. Evraz received the full benefit of the freight revenues wherever they exceeded the reported freight expenses.[115]
- For the final determination, Commerce should remove the freight revenues included in the reported gross price, capture them under a separate variable, and cap the amounts as required. Commerce gathered the information necessary to do so at verification.[116]

Evraz's Comments

- In the *Preliminary Determination*, Commerce correctly applied the freight revenue cap to sales where freight revenue was separately invoiced and reported. Additionally, Commerce correctly did not apply the freight revenue cap where the invoice price, and therefore the price reported in the GRSUPRU field, did not identify freight revenue amounts.[117]
- Commerce's long-standing practice has been to rely on the starting price as reported on the invoice and paid by the customer.[118] Commerce will reject adjustments to the starting price that are not specifically stated on the invoice and actually charged to, and paid by, the customer.[119] There is good reason for this policy of adjusting only for amounts actually charged to the customer.
- The petitioners claim that Evraz failed to separately report freight revenue in its sales database, this claim has no merit. Evraz did not fail to separately report freight revenues.[120]
- Evraz reported freight revenue in the field FRTREVU in accordance with the instructions in the questionnaire, as reported on the invoice, as recorded in the sales ledger, and as requested by the customer.[121]
- For Evraz, freight revenue can appear on either the line pipe invoice or on a "follow-on" invoice that relates to an invoice or set of invoices. Whenever freight revenue appears on the line pipe invoice or a "follow-on" invoice, Evraz reported this amount in the field for freight revenue in its sales data.[122] Where the invoice did not separately charge the customer for freight and where the sales ledger did not separately record freight revenue, Evraz accurately reported no freight revenue.[123]
- Evraz has responded in full to all information requests concerning freight revenue, beginning with its initial questionnaire response where Evraz provided the complete listing of invoices that contained all-inclusive prices and the amounts Evraz internally assigned to freight revenue. During the sales verification, Commerce reviewed the manual, post invoice

[115] *See* the petitioners' Case Brief at 2, 6-7.
[116] *Id*.
[117] *See* Evraz Rebuttal at 12.
[118] *See* Evraz Rebuttal at 13, citing to *Biodiesel from Indonesia: Final Determination of Sales at Less Than Fair Value*, 83 FR 2235 (March 1, 2018) (*Biodiesel from Indonesia*) at Comment 7.
[119] *Id.*
[120] *See* Evraz Case Brief at 61-63.
[121] *Id.* at 61.
[122] *Id.* at 62, *see also* Evraz Verification Report.
[123] *Id*., *see also* Evraz Verification Report at 17, 19, and 31.

treatment of these amounts in Evraz's accounting system.[124] At no point did Commerce ask that these amounts be reported in the sales database.[125]

- The petitioners are now asking Commerce to restate the starting price (gross unit price) as stated on the invoice in order to identify some amount for freight revenue that was not separately identified or recognized on any invoice to the customer. The petitioners argue that Commerce should "remove" freight revenue from the all-inclusive invoice price reported in the GRSUPRU field in order to cap embedded freight revenues.[126] Such an approach was rejected by Commerce in *Biodiesel from Indonesia*.[127]
- Under the approach advocated by the petitioners, respondents would be in a position to reallocate their starting price for both home market and U.S. sales whenever freight is not separately reported on the invoice based on self-identified elements in the price to the customer. Such a practice could be easily manipulated by respondents in order to allocate more revenue to non-product elements of the price to the customer for home market sales, and to allocate less revenue to non-product elements of the price to the customer for U.S. sales, in order to influence the margin calculation.[128]
- Commerce verified that for these sales the invoices did not have a breakout for freight, nor did they have a separate invoice for freight such that the starting price on the invoice was an "all-inclusive" price. Thus, there is no freight amount actually charged to the customer, freight revenue was separated from the invoice price only for internal accounting purposes by Evraz.[129]
- Commerce should not arbitrarily break out these post-sale allocation amounts from the invoice price Evraz reported in the GRSPRU field for these sales.[130] However, if Commerce does decide that it must reallocate the reported invoice price for the freight revenue amounts, it must do so on an invoice-specific basis.[131]
- The petitioners would have Commerce reallocate starting price based on a "simple average" ratio taken from a random sample of the invoices.[132] Given the importance of starting price in calculating an accurate margin, Commerce should reject this approach.[133]
- In its initial questionnaire response, Evraz identified and reported all invoices where it internally reallocated freight revenue from the invoice price.[134] At verification, Commerce reviewed the specific reallocation amounts for all invoices.[135] If Commerce reallocates starting price to separately report freight revenue, it should revise the starting price based on actual reported and verified amounts.[136]

---

[124] *See* Evraz Case Brief at 62, *see also* Evraz Verification Report.
[125] *See* Evraz Case Brief at 62.
[126] *See* Evraz Rebuttal at 12, citing to the petitioners' Case Brief at 6-7.
[127] *See* Evraz Case Brief at 63, citing to *Biodiesel from Indonesia* at Comment 7.
[128] *See* Evraz Rebuttal at 13.
[129] *Id.* at 14, citing to the Evraz Sales Verification Report at 31.
[130] *See* Evraz Rebuttal at 14.
[131] *Id*.
[132] *See* Evraz Rebuttal at 15, citing to the petitioners' Case Brief at 6-7.
[133] *See* Evraz Rebuttal at 15.
[134] *Id.*, citing to Evraz Section B Response (May 15, 2018) at Exhibit B-3A.
[135] *See* Evraz Rebuttal at 15, citing to the Evraz Sales Verification Exhibits (Oct. 30, 2018) at Exhibit 19.
[136] *See* Evraz Rebuttal at 15.

Commerce's Position

As an initial matter, Evraz properly reported gross unit price (GRSUPRU) as the amount that appears on the invoice. This is consistent with the antidumping questionnaire instructions, and with Evraz's original questionnaire response.

The initial antidumping questionnaire includes the following instructions regarding price adjustments granted, including discounts and rebates, "The gross unit price less price adjustments should equal the net amount of revenue received from the sale. ***If the invoice to your customer includes separate charges*** for other services directly related to the sale, such as a charge for shipping, create a separate field for reporting each additional charge."[137] Further, the antidumping questionnaire provides specific instructions on how to report GRSUPRU, "Report the unit price as it appears on the invoice for sales shipped and invoiced in whole or in part."[138]

These instructions taken together demonstrate Commerce's established practice of using the price listed on the invoice as GRSUPRU, and the correct use of price adjustments. In this case, Evraz correctly reported freight revenue when it was charged separately and did not report any freight revenue separate from the GRSUPRU when it was not charged separately.

In Evraz's initial response in reference to freight revenues, it stated that, during the POI, subject merchandise:

> "was either sold delivered with freight arranged by Evraz or sold FOB mill. Where applicable, logistics teams arrange freight and delivery for customers. In such cases, Evraz will arrange product transportation and contracts with the transportation service provider. ***Evraz will typically separately charge freight on its invoices or issue a separate invoice for charging freight***. Evraz likewise separately charges customers for arranging loading/offloading in relation to transporting the pipe. Lastly, Evraz will pass the cost of miscellaneous items, including those related to shipping the goods such as end capping, strapping, and tarping. As such, Evraz has either reported the revenue associated with providing these freight-related services as it appears on the combined pipe and freight-related service invoice or has allocated the total revenue across the OA item number where the freight-related service was charged on a separate invoice." (emphasis added)[139]

Further, Evraz's supplemental C questionnaire response included further narrative of how it calculated freight revenue and why it did or did not report freight revenue for some U.S. transactions:

> "Similar to coating revenue, the gross unit price to customers is generally not inclusive of these services but ***in some instances the gross unit price is inclusive of the services***.

[137] *See* Commerce Letter, "Antidumping Duty Questionnaire," dated March 26, 2018, (Initial AD Questionnaire) at Page C-20.
[138] *See* Initial AD Questionnaire at Page C-22.
[139] See Evraz's Section B Response at 44 and Exhibit B-14.

> Where Evraz has separately reported FRTREVU in the U.S. sales database, this means that the gross unit price was exclusive of these services." (emphasis added)[140]

Therefore, for U.S. sales Evraz reported in the GRSUPRU field the amount that appeared on the invoice. It also reported in the FRTREVU field freight revenue amounts only where those amounts were actually charged separately to the customer. Evraz, thereby, did not report any freight revenue for sales that had an "all-inclusive" delivered price for these sales.[141] We confirmed the application of this methodology at verification and affirm that Evraz correctly reported freight revenue.[142]

Commerce correctly capped freight revenue at the *Preliminary Determination* and continues this methodology in the final determination. In the Preliminary Analysis Memorandum, we adjusted both the comparison market program and the margin calculation program itself, stating that, "We capped freight revenue at the Evraz's cost of movement expenses."[143] In the *Preliminary Determination*, we stated, "Additionally, Commerce has not treated Evraz's reported freight revenue as an addition to Evraz's price, pursuant to 19 CFR 351.401(c). Instead, Commerce followed its normal practice for when the freight revenue exceeds expenses by treating freight revenue as offsets to the corresponding expenses rather than as an addition to U.S. price." [144]

The term "price adjustment" is defined at 19 CFR 351.102(b)(38) as "any change in the price charged for subject merchandise or the foreign like product, such as discounts, rebates and post-sale price adjustments, that are reflected in the purchaser's net outlay." Commerce has stated that, although we will offset freight expenses with freight revenue, where freight revenue earned by a respondent exceeds the freight charge incurred for the same type of activity, Commerce will cap freight revenue at the corresponding amount of freight charges incurred because it is inappropriate to increase gross unit selling price for subject merchandise as a result of profit earned on the sale of services (*i.e.*, freight). [145] Commerce maintains this approach here in the final determination.

The petitioners cite to *Wooden Bedroom Furniture from China* to support its position that Commerce's practice is to treat freight revenue as an offset to the movement expenses deducted from U.S. price, and not as a component of the price of the subject merchandise,[146] while Evraz

---

[140] *See* Evraz's letter to Commerce, "Large Diameter Welded Pipe from Canada: Evraz's Supplemental Section C Response," dated July 16, 2018.
[141] *See* Evraz Rebuttal at 13.
[142] *See* Evraz Verification Report at 27-29, and SVE 19.
[143] *See* Preliminary Analysis Memorandum.
[144] See *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 77 FR 61738 (October 11, 2012) and accompanying IDM at Comment 3*; see also Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less-Than-Fair-Value,* 76 FR 64318 (October 18, 2011) (*Wood Flooring from China*) and accompanying IDM at Comment 39; *Stainless Steel Bar from India: Final Results of Antidumping Duty Administrative Review; 2011-2012* (78 FR 34337) (*Steel Bar from India*) and accompanying IDM at Comment 5.
[145] *See Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 77 FR 61738 (October 11, 2012) and accompanying IDM at Comment 3*; see also Wood Flooring from China* at Comment 39*; Steel Bar from India* at Comment 5.
[146] *See* the petitioners' Case Brief at 1, 6-7*, see also Wooden Bedroom Furniture from the People's Republic of*

cites to *Biodiesel from Indonesia* to support its position that Commerce should reject adjustments to the starting price that are not specifically stated on the invoice and use the price actually charged by Evraz to its customer as the starting price for purposes of margin calculations.[147] Both of these practices hold merit and are included in Commerce's analysis of freight revenue in this investigation. Consistent with *Wooden Bedroom Furniture from China*, we did not treat Evraz's reported freight revenue as an addition to Evraz's price.[148] Instead, Commerce followed its normal practice for when the freight revenue exceeds expenses by treating freight revenue as offsets to the corresponding expenses rather than as an addition to U.S. price.[149] Consistent with *Biodiesel from Indonesia*, we did not make adjustments to the GRSPRU that were not either stated on the invoice specifically or charged separately.[150]

The petitioners' argument that Commerce must consider the total revenue from the subject merchandise sold without freight revenue (*i.e.*, the price paid by the U.S. customer for the welded pipe and the price paid for freight) is unsupported by the statute.[151] While the petitioners are correct in its assertion that where freight revenues were incurred but not reported separately, the cap has no impact. In these instances, Evraz would receive the benefit of freight revenues that may exceed the reported freight expenses.[152] However, the information required to conduct a transaction-specific capping of all freight revenues that are included in the GRSPRU and not reported separately is not on the record of this investigation.

The petitioners' argument that Commerce should apply the average freight revenue of the selected transactions with freight revenue inclusive GRSPRU collected at verification to all transactions in the U.S. database where the Evraz's reported freight revenue is zero is without merit. The petitioners are arguing that Commerce ignore respondent's books and records and apply a facts available plug for freight revenues allegedly not reported. In general, a seller sets its price to recover its production costs, selling expenses, movement charges, packing and other costs in order to realize a profit. Accordingly, each of these items implicitly has a revenue imbedded in the seller's price, including, but not limited to, such items as freight, packing, credit or installation services. The petitioners' assertion that Commerce should dissect a seller's price to account for each of these items would be speculative, not supported by the company's books and records and thus the factual record, and would become inadmissible.

In accordance with section 776(a) of the Act, Evraz did not withhold or fail to provide information requested because Evraz correctly followed the antidumping questionnaire reporting instructions regarding freight revenue. Furthermore, Commerce was able to verify the information provided by Evraz on its freight revenue reporting and calculation methodology. As such, we have determined that the application of facts available to Evraz with respect to freight revenue is not warranted.

China: Final Results and Final Rescission in Part, 75 FR 50992 (August 18, 2010) (*Wooden Bedroom Furniture from China*).

[147] *See* Evraz Rebuttal at 12-15, *see also Biodiesel from Indonesia* at Comment 7.

[148] *See Wooden Bedroom Furniture from China* at Comment 26.

[149] *See Preliminary Determination Memorandum* at 13.

[150] *See* Preliminary Analysis Memorandum.

[151] *See* section 772(b) of the Act (explaining that CEP means "the *price* at which the *subject merchandise* is first sold (or agreed to be sold) before the date of importation . . .") (emphasis added).

[152] *See* the petitioners' Case Brief at 6-7.

The petitioners argue that we should remove freight revenues from GRUPRU where the GRUPRU is freight revenue inclusive by applying a plug from an average taken from verification, we disagree with this concept, as discussed above. We agree with Evraz that it correctly reported freight revenues and fully responded to Commerce's requests for information. We will continue our practice from the *Preliminary Determination* of capping reported freight revenues where they have been separately recorded in Evraz' books and records and wherever they exceed Evraz' reported freight expense.

Comment 4: Startup Adjustment

Petitioners' Comments

- No startup adjustment should be allowed for Evraz's steel mill or the pipe mill, because both mills fail to meet the two-prong test to qualify for startup adjustment, *i.e.*, that 1) a producer is using new production facilities or producing a new product, and 2) the production levels are limited by technical factors associated with the initial phase of commercial production.[153]
- The upgrades to the steel mill do not represent a construction of a new facility or the replacement or rebuilding of nearly all of the machinery. The steel mill project does not result in a new product but only in an improved product, *i.e.*, plate in coil in higher grades and thicker gauge. The new pipe mill represents only an expansion of the existing capacity of the old pipe mills, and the construction of the new pipe mill did not result in the production of a principally new product.[154]
- Regina Steel's production data does not support the claim that the steel mill experienced significant reduction in production due to technical difficulties.[155]
- The startup period for the steel mill, if any, ended prior to the POI, because record evidence shows that commercial production levels were achieved in 2016, which is before the POI.[156]
- The startup period, if any for the pipe mill, also ended prior to the POI. The new spiral pipe mill was commissioned in January 2017 and started being depreciated in January 2017, just at the start of the POI.[157]
- In the *Preliminary Determination* Commerce considered the monthly production levels at the new pipe mill alone, separately from the overall Regina Tubular facility's production levels. However, all the pipe mills, including the new one, were managed as a single unit, and as such their combined output should be considered. In that case it becomes clear that the pipe mill's production levels were consistent throughout the year.[158]
- At the *Preliminary Determination* Commerce allowed a partial startup adjustment for the pipe mill, but did not add an amortized portion of the costs excluded due to the startup

[153] *See* the petitioners' Case Brief at 10.
[154] *Id.* at 11-15.
[155] *Id.* at 15-19.
[156] *Id.* at 9-10.
[157] *Id.*
[158] *Id.* at 18.

adjustment. If a start-up adjustment is granted, such amortization should be added for the final determination, as described in Commerce's Antidumping Manual.[159]

- Evraz further argues for two alternative separate startup adjustments - for April through June 2017, and for August 2017. This rather novel approach is designed to mask the fact that in July 2017 (*i.e.*, in the midst of its originally claimed startup period) the company achieved some of its highest production levels during the POI.[160]

Evraz's Comments

- Commerce should allow a startup adjustment for the Regina steel mill and should recognize the beginning of the startup period as April 2017, which is the month when the second unplanned outage occurred at the steel mill to complete the assembly and installation of the major new assets. Compared to the first quarter 2017 pre-startup period average, April 2017 consumption of scrap was significantly lower.[161]
- The retooling of the steel mill covered the production machinery throughout the entire steelmaking and flat-rolling production line. The petitioners' arguments that no new facilities were constructed or that this was nothing more than mere upgrades is contradicted by the facts.[162]
- The end of the startup period for the steel mill extends past the end of the POI because key assets remained in startup and calibration past December 2017.[163]
- Should Commerce continue to deny the above-requested startup adjustment for the steel mill, Commerce should at a minimum in the alternative allow a startup adjustment at the end of each phase of retooling completion, *i.e.*, adjustment for the months of April, May, June and August 2017, because Evraz failed to meet commercial production levels at the end of each startup phase during those months.[164]

Commerce's Position

We agree with the petitioners, in part, that the startup adjustments reported by Evraz for its refurbished steel mill and a new spiral pipe mill should be rejected. The data provided by Evraz do not support that these facilities were in a startup phase during the entire POI; however, as described below, we find that the new pipe mill was in a startup phase during a portion of the POI.

Section 773(f)(1)(C)(ii) of the Act permits adjustments for startup operations if: (1) a producer is using new production facilities or producing a new product that requires substantial investment, and (2) production levels are limited by technical factors associated with the initial phase of commercial production. The SAA clarifies that the term "new production facilities" may also include startup operations involving "the substantially complete retooling of an existing plant" which involves "the replacement of nearly all production machinery or the equivalent

[159] *See* the petitioners' Case Brief at 19-20.
[160] *See* the petitioners' Rebuttal at 28.
[161] *See* Evraz Case Brief at 64-65.
[162] *See* Evraz Rebuttal at 16.
[163] *Id.* at 17-18.
[164] *See* Evraz Case Brief at 71-72.

rebuilding of existing machinery."[165] Thus, in order for an existing facility to be considered a new production facility within the meaning of section 773(f)(1)(C)(ii), the SAA provides that it must be retooled to the extent that it becomes a brand new facility in virtually all respects. Indeed, the "replacement of nearly all production machinery or the equivalent rebuilding of existing machinery" would result in nothing less than an essentially new facility. Hence, the SAA makes it clear that, in analyzing these situations, an adjustment for startup costs is warranted only in those circumstances wherein the renovations result in a nearly new facility.

In reporting to Commerce, Evraz argued that its steel mill was completely retooled, that its spiral pipe mill was a new facility, and that the steel mill was in startup phase during April-December 2017, while the pipe mill was in startup phase during the entire POI (*i.e.*, January – December 2017).[166] As a result, Evraz claimed that startup adjustments were appropriate. For the *Preliminary Determination*, Commerce rejected Evraz's reported startup adjustments, stating that while both the steel mill and the new pipe mill meet the first criteria for the startup adjustment, we disagreed that the steel mill experienced a significant reduction in production levels due to technical difficulties during the POI, and that the pipe mill was in startup for the entire POI. Accordingly, for the *Preliminary Determination*, we rejected the reported startup adjustment for the steel mill and granted a partial startup adjustment for the pipe mill for only the first quarter of the POI.

For the final determination, we continue to find that both the steel mill and the new pipe mill satisfy the statute's definition of a new production facility. With regard to the steel mill, the petitioners argue the retooling project does not represent a new facility, because its key objectives were mere improvements, and these improvements enable Evraz to produce not a completely new product, but simply an improved product, *i.e.*, plate in coil in higher grades and thicker gauges.[167] According to the SAA, "replacement … or the equivalent rebuilding of existing machinery" would warrant an adjustment for startup costs. Given the record evidence with regard to the retooling of the steel mill, the petitioners' argument that Evraz did not meet the requirements for a new facility is unpersuasive. The record shows, and we confirmed at verification, that the retooling of the steel mill involved both replacement of existing production machinery and complete rebuilding of other production machinery throughout the entire steelmaking and flat rolling production line.[168] Specifically, this undertaking resulted in major upgrades to the alloying system, new ladles, new vacuum degasser, substantially upgraded caster, substantially upgraded roughing and finishing mills, and a new laminar cooling system. The substantially complete retooling also allowed Evraz to produce new products such as 10" thick slabs of vacuum degassed steel and 1,050 pounds per inch of width plate in coil in higher grades and thicker gauges.[169] Thus, as a result of the retooling, the steel mill effectively became a new facility in virtually all respects within the meaning of section 773(f)(1)(C)(ii) of the Act.

---

[165] *See* SAA at 836.
[166] *See* Evraz's May 15 DQR, p.26-28 and p. 40-42.
[167] *See* the petitioners' Case Brief at 11-15.
[168] *See* Memorandum "Verification of the Cost Response of Evraz Inc. NA (Evraz) in the Less Than Fair-Value Investigation of Large Diameter Welded Pipe from Canada," dated November 19, 2018 (Evraz Cost Verification Report), at 18-19.
[169] *See* Evraz's May 15 DQR, p.27.

However, we disagree with Evraz that the steel mill startup operation meets the second criterion for the adjustment, *i.e.*, that the monthly production data submitted for the record supports its claim that the steel mill experienced a significant reduction in production levels during the POI due to technical difficulties associated with the retooling.[170] The SAA directs Commerce to measure the units processed to determine whether commercial production levels have been reached, indicating the end of the start-up period. As Commerce stated in *Semiconductors from Taiwan*, "our determination of the startup period was based, in large part, on a review of wafer starts at the new facility during the POI, which represents the best measure of the facility's ability to produce at commercial production levels."[171] Furthermore, the SAA instructs that "the attainment of peak production levels will not be the standard for identifying the end of the start-up period, because the start-up period may end well before a company achieves optimum capacity utilization."

Consistent with the SAA and Commerce's practice, we have continued to rely on production starts as the best measure of a facility's commercial production levels. In evaluating Evraz's startup adjustment for the steel mill, we focused on when the refurbished steel mill achieved commercial production levels. Evraz reported that the first full outage in the Regina steel mill retooling project occurred in October 2016, which is before the POI.[172] Evraz claims the startup period for the steel mill is from April to December 2017 based on the fact that during April 2017, the month when the second unplanned outage occurred at the steel mill, the consumption of scrap was only a fraction of the average scrap consumption during the first quarter of 2017.[173] We reviewed the monthly volume of scrap processed (*i.e.*, inputs) and noted that the quantity of scrap consumed in the production process was fairly consistent throughout the POI, with the only noticeable dip occurring in April 2017. In its argument Evraz compares the April 2017 scrap consumption quantity with the average for the first quarter of 2017, in effect using the first quarter 2017 as a commercial production level benchmark and acknowledging that commercial production levels were reached prior to the POI. Furthermore, in May 2017, the very next month after the claimed beginning of the startup period of April 2017, the scrap consumption quantity was comparable to that of the first quarter 2017 and continued at that level or higher throughout the POI.[174] We agree with the petitioners that the outage of April 2017, and the corresponding reduction in scrap consumption levels, was an unplanned outage that occurred after commercial production levels had already been achieved. While production starts in April 2017 was lower than in any of the other months during the year, it still was at a level that we consider to be at commercial production operation.

Thus, we find that Evraz's retooled steel mill had already reached commercial output levels prior to the beginning of the POI, and hence Evraz's startup adjustment claim for the steel mill fails the second statutory criterion for a startup adjustment. Therefore, for the final determination, we have denied the steel mill startup adjustment claimed by Evraz.

---

[170] *See* Evraz's May 15 DQR, p.38-39 and Exhibit D-14D and D-14E.
[171] *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8930 (February 23, 1998) (*Semiconductors from Taiwan*).
[172] *See* Evraz's May 15 DQR, p.40.
[173] *See* Evraz's June 21, 2018 SDQR p.34-35 and Exhibit SD-20.
[174] *Id.*

As for the new pipe mill, the petitioners argue that it should not be considered a new production facility because it is simply an expansion of existing capacity, *i.e.*, adding one mill to the existing old mills.[175] We disagree. The record is clear that the pipe mill is a new facility constructed from the ground up that required substantial additional investment, all of which falls under the requirements of the statute.[176] As such, we find that Evraz's pipe mill startup project meets the first statutory criterion for the startup adjustment.

The record shows that Evraz experienced technical difficulties that limited production levels during the POI, and at verification we reviewed various technical problems that Evraz experienced with the commencement of production operation at the pipe mill.[177] Thus, we find that Evraz's pipe mill meets the second criteria for a startup adjustment. However, while Evraz claims that the pipe mill is still operating in a startup phase and therefore calculated an adjustment rate for the entire POI, we find that the startup period for the pipe mill ended at the beginning of April 2017. Our analysis of the throughput data for the new pipe mill (*i.e.*, plate in coil introduced in the production process for the pipe) indicates that the mill reached commercial production levels at the beginning of April 2017. Specifically, there was a noticeable increase in throughput in April of 2017 and this increase in throughput continued throughout the POI. Therefore, for the final determination we continued our adjustment made at the *Preliminary Determination* by limiting the claimed startup adjustment for the pipe mill to only January-March of 2017.

Finally, we agree with the petitioners that an amortized portion of the costs excluded due to the startup adjustment should be included in the reported costs, and for the final determination we added such amortization to Evraz's cost.

Comment 5: Cost of Downgraded Line Pipe

Evraz's Comments

- Commerce's *Preliminary Determination* fails to comply with the Court of Appeals for the Federal Circuit's (CAFC) ruling on *IPSCO*[178] in which it held that weight-based, rather than value-based, allocations should be used to value downgraded pipe.[179]
- Commerce should determine that Evraz's approach used in the normal course of business with regard to downgraded line pipe is distortive and should rely on Evraz's reported weight-based cost allocations because they reasonably and accurately allocate homogenous costs to subject merchandise even though they depart from the normal books and records.[180]
- Evraz's line pipe production process yields products of different quality, one of which is graded as prime line pipe and the other as prime structural pipe. These pipes are

[175] *See* the petitioners' Case Brief at 11-15.
[176] *See* Evraz's May 15 DQR, p.27-36 and exhibit D-14C.
[177] *See* Evraz Cost Verification Report at 19.
[178] *See IPSCO, Inc. v. United States*, 965 F.2d 1056 (Fed. Cir. 1992) (*IPSCO*), appeal of *IPSCO, Inc. v. United States*, 714 F. Supp. 1211 (CIT 1989).
[179] *See* Evraz Case Brief at 75.
[180] *Id.* at 75-78.

manufactured from the same homogenous raw material and go through the same production process. This production process simply produces two different grades of pipe due to inspection.[181]

- Commerce should treat structural pipe and line pipe as co-products rather than treating structural products as a downgraded product (as done in the normal course of business) in order to determine accurate margin results.[182]
- In reallocating costs, it is Commerce's practice to take into consideration whether the products at issue could be used in the same applications as prime subject merchandise. This case is distinguishable, because the structural pipe in question is sold to ASTM A252 specifications and is used in the intended applications of prime subject merchandise. Therefore, assigning the full cost of structural pipe is reasonable and accurate.[183]

Petitioners' Comments

- Commerce should continue its adjustment made at the *Preliminary Determination* to value the downgraded structural pipe.[184]
- Evraz's reliance on *IPSCO* is misplaced, as Commerce has addressed the respondent's reliance on *IPSCO* in *OCTG from Korea*.[185] *IPSCO* did not deal with the issue of non-prime products. Instead, the issue was related to co-products vs. byproducts. It would be wrong to treat structural pipe and line as co-products rather than as a by-product resulting from downgraded line pipe.[186]
- Commerce has explained in *OCTG from Korea* that the methodology it employs for the valuation of non-prime products has nothing to do with value-based allocations. Commerce explained that its policy is based on a GAAP-compliant practice in cost and financial accounting. In this case, Commerce should follow Evraz's normal books to value the downgraded structural pipe.[187]

Commerce's Position

In its decision in *CTL Plate from France*,[188] which was affirmed by the CIT,[189] Commerce explained its practice with regard to the cost of non-prime merchandise:

> It is the Department's practice to analyze products sold as non-prime on a case-by-case basis to determine how such products are costed in the respondent's normal books and records, whether they remain in scope, and whether they can still be used in the same

[181] *See* Evraz Case Brief at 81.
[182] *Id.* at 78.
[183] *Id.* at 82.
[184] *See* the petitioners' Rebuttal at 33.
[185] *See, e.g., OCTG from Korea* at Comment 18; *Certain Oil Country Tubular Goods from the Republic of Turkey, Final Determination of Sales at Less Than Fair Value,* 79 FR 41973 (July 18, 2014) (*OCTG from Turkey*) and accompanying IDM at Comment 8.
[186] *See* the petitioners' Rebuttal at 30-33
[187] *Id.*
[188] *See Certain Carbon and Alloy Steel Cut-to-Length Plate from France, Notice of Final Determination of Sales at Less than Fair Value*, 82 FR 16363 (April 4, 2017) (*CTL Plate from France*) and accompanying IDM at Comment 11.
[189] *See Dillinger France S.A. v. United States*, Slip Op. 2018-150 (CIT October 31, 2018) (*Dillinger*).

> applications as prime merchandise. Sometimes the downgrading is minor, and the product remains within a product group. Other times the downgraded product differs significantly, no longer belongs to the same group, and cannot be used for the same applications as the prime product. If the product cannot be used for the same applications, the product's market value is usually significantly impaired to a point where its full cost cannot be recovered. In such cases, assigning full costs to that product could be unreasonable.

In accordance with this practice, we reviewed the information on the record regarding how such products are accounted for in the respondent's normal books and record, whether they remain in scope and whether they can still be used in the same applications as prime merchandise. Evraz argues that this case is distinguishable from other cases where Commerce performed such analysis, because here "the structural pipe in question is sold to ASTM A252 specifications and is used in the intended application of prime subject merchandise."[190]

However, despite the fact that both line pipe and structural pipe products are within the scope of this investigation, the question is whether in Evraz's case the downgrading of line pipe is minor so the product remains within the same product group, or the downgraded product and its application differs significantly so as to belong to a different product group. Evraz downgraded line pipe to structural pipe when the product fails inspection and no longer belongs to the same product group (*i.e.*, line pipe), and thus cannot be used in the intended line pipe application.[191] We find that such differences between prime line pipe and line pipe downgraded to structural pipe warrant cost reallocation to reflect the fact that the downgraded line pipe value is significantly impaired to the point where its full production cost cannot be recovered, which is supported by the record evidence.[192]

Further, section 773(f)(1)(A) of the Act directs that the reported costs should be calculated based on a respondent's normal books and records if such records are kept in accordance with home country GAAP and reasonably reflect the cost of producing such products. Evraz, in its normal books, does not assign full cost to such downgraded products. In doing so, Evraz follows its home country GAAP which stipulates that to avoid the overstatement of inventory on the balance sheet, the products held in inventory should not be valued at an amount greater than their net realizable value. As Commerce explained in *OCTG from Korea*, this principle is known as the "lower of cost or market" (LCM) rule, and it attempts to measure the loss in value for purposes of presentation of a company's inventory on the balance sheet. The LCM rule recognizes that it is not always appropriate to value an inventory item at its production costs if there is evidence that the market value of that item cannot recover those costs. We find Evraz's normal books and records approach for valuing the downgraded line pipe reasonable, as the market price of the downgraded structural pipe is considerably less than the full production costs that Evraz assigned to them for reporting purposes.

Evraz's reliance on *IPSCO* is misplaced. As explained in *Dillinger*, *IPSCO* was decided before Congress amended the law to include subsection (f) in section 773 of the Act referred to above,

[190] *See* Evraz Case Brief at 82.
[191] *See* Evraz's June 21, 2018 SDQR p.27.
[192] *See* Evraz's May 15 DQR, p.9.

which directs Commerce to calculate costs based on a respondent's normal books and records if such records are kept in accordance with home country GAAP and reasonably reflect the costs. The Court of Appeals for the Federal Circuit (CAFC), therefore, did not have subsection (f) on which to rely in deciding *IPSCO*. As discussed above, Evraz records the cost of downgraded pipe in its normal books following the lower of cost or market rules provided by GAAP. We consider such an approach reasonable as the market price of the downgraded structural pipe is significantly less than the full production costs that Evraz assigned to them for reporting purposes, and we find no basis for departing from Evraz's normal treatment of these products in its books and records.

Further, *IPSCO* is factually distinguishable from this case, as in *IPSCO* the CAFC rejected the reallocation of costs between prime OCTG products and "limited service" OCTG because both products had the same applications.[193] In the instant case, as discussed above, the prime line pipe and the line pipe downgraded to structural pipe belong to different product groups which have different applications. Consequently, for the final determination we revalued the reported costs of the downgraded line pipe (structural products) to reflect their value as recorded in the Evraz's normal books and records.

Comment 6: Parent Holding Company G&A Expenses

Petitioners' Comments:

- Evraz Group SA (EGSA) is a holding company which holds shares in multiple entities and performs financing activities that benefit Evraz group companies. Thus, EGSA exists solely for the benefit of its subsidiaries, and its unrecovered costs should be allocated down to its subsidiaries.[194]
- In the *Preliminary Determination* Commerce added a portion of EGSA's costs to the G&A expenses of EICA and Camrose Works. Because EGSA owns Camrose Works indirectly via Evraz North America Plc (ENA), Commerce first allocated EGSA's expenses to ENA, and then to Camrose Works. However, ENA also owns EICA; therefore, for the final determination a portion of ENA's G&A expense ratio should also be added to EICA, following the same methodology as applied in the case of Camrose Works. [195]

Evraz's Comments:

- EGSA is a standalone legal entity that provides no administrative services to EICA or Camrose Works. Commerce's well-established practice is to exclude such costs where the record evidence shows that the expenses were not incurred on behalf of the subsidiary-respondent.[196]

---

[193] *See IPSCO* at 1059-61.
[194] *See* the petitioners' Rebuttal at 34-35.
[195] *Id.*
[196] *See Certain Polyester Staple Fiber from Korea; Final Results of Antidumping Duty Administrative Review*, 68 FR 59366 (October 15, 2003) and accompanying IDM at 14-15.

- Should Commerce decide to continue with the adjustment, it should exclude from EGSA's expenses certain costs that are not G&A in nature, such as financial expenses and investment-related expenses. Further, instead of allocating the parent G&A expenses based on investment figures as was done for the *Preliminary Determination*, Commerce should use consolidated cost of goods sold (COGS) as the allocation basis.[197]

Commerce's Position

We agree with the petitioners that a portion of the parent's G&A expenses should be included in respondents' costs. While EGSA does not provide services to the respondents directly, the company exists solely for the benefit of its subsidiaries by holding shares and overseeing investments in companies it owns. As such, its administrative costs should be borne by the companies of the group.

Evraz cites to *Certain Polyester Staple Fiber from Korea* to support its contention that EGSA's costs should be excluded. However, in that case Commerce excluded only imputed costs calculated by the petitioners based on certain assumptions and estimates, while the actual expenses incurred were included. Referring to the imputed costs calculated by the petitioners in that case, Commerce noted that "no record evidence exists that shows that such expenses were ever actually incurred" by the parent companies. In contrast, EGSA's financial statements clearly show expenses incurred by the company for the benefit of its subsidiaries.

We agree with Evraz that certain financial and investment type expenses recorded on EGSA's financial statements should be excluded from the calculation, because financial expenses are captured in the financial expense ratio calculated at the highest consolidated level, and it is Commerce's practice to exclude investment type expenses from the cost of production.[198] At verification we confirmed the nature of the investment expenses Evraz argues should be excluded.[199]

We have continued to allocate EGSA's G&A costs to its holdings based on the relative value of such holdings. As EGSA is a holding company, we consider it reasonable to allocate its costs based on relative holdings in the companies it owns. We disagree with Evraz that it would be appropriate to allocate EGSA's G&A expenses using two different financial statements, each of which are stated in different currencies and in accordance with different Generally Accepted Accounting Principles.[200]

Finally, we agree with the petitioners that ENA's G&A expense ratio should also apply to EICA. EICA is a part of the ENA consolidated entity, and as such, the administrative costs incurred by ENA benefit all consolidated subsidiaries, including EICA. Therefore, for the final determination we included ENA's G&A expenses in the G&A expense ratio calculated for EICA.

---

[197] *See* Evraz Case Brief at 88-89.
[198] *See Certain Polyethylene Terephthalate Resin from Brazil; Final Determination of Sales at Less Than Fair Value*, 83 FR 48285 (September 24, 2018) and accompanying IDM at Comment 4.
[199] *See* Evraz Cost Verification Report, at 20-21.
[200] *See* Evraz's July 23, 2018 SSDQR Exhibit SSD-14A and SSD-14B.

Comment 7: Major Input

Petitioners' Comments:

- At the *Preliminary Determination* Commerce adjusted the value of scrap purchased by Evraz from affiliated suppliers to reflect the arm's-length prices under the "major input" rule of Section 773(f)(3) of the Act. The value of scrap used by Commerce in its major input analysis does not include freight-in cost. Thus, the major input adjustment should be recalculated by adding material freight to both transfer prices and unaffiliated prices. The petitioners provided such calculation based on certain estimates.[201]

Evraz's Comments:

- Commerce's practice is to use prices on ex-factory basis in the major input analysis, and it is consistent with how the purchases are recorded in Evraz's books. Moreover, the petitioners' proposed method of allocating freight cost to affiliated and unaffiliated purchases is inappropriate. Therefore, freight-in cost should not be added to the prices used in the major input analysis. [202]
- Commerce should correct its calculation of the adjustment made at *Preliminary Determination* by excluding interdivisional transfers of scrap from the analysis. Commerce's practice is to exclude interdivisional transfers from the major input analysis where divisions are not separate legal entities.[203]

Commerce's Position

In performing our major input analysis under section 773(f)(3) of the Act, Commerce where possible attempts to base its comparisons on prices that are on the same basis.[204] Furthermore, Commerce attempts to test the specific affiliated party transactions at issue, which in this case are scrap purchases made on an ex-factory basis (*i.e.*, freight exclusive). Evraz reported affiliated and unaffiliated scrap prices for the major input analysis consistently on an ex-factory basis, and separately reported total freight costs incurred on all purchases, consistent with its recording of material purchases in its normal books.[205] Since Evraz's analysis is on a consistent basis and it tests the specific affiliated party transaction at issue, we consider it reasonable to use the freight-exclusive raw material prices in our major input analysis. Lastly, we note that the petitioners' proposed allocation of the total freight charges to affiliated and unaffiliated prices

[201] *See* the petitioners' Case Brief at 23.
[202] *See* Evraz Rebuttal at 36-39.
[203] *See* Evraz Case Brief at 91.
[204] *See, e.g., Certain Carbon and Alloy Steel Cut-to-Length Plate from the Federal Republic of Germany*: *Final Determination of Sales at Less Than Fair Value*, 82 FR 16360 (April 4, 2017) and accompanying IDM at Comment 31 (*CTL Plate from Germany*) ("As a result, to ensure that the comparison between the affiliated an unaffiliated consumption values is on the same basis, we adjusted the unaffiliated consumption values to reflect freight-exclusive values."); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Chlorinated Isocyanurates from Spain,*70 FR 24506 (May 10, 2005) and accompanying IDM at Comment 8; *Certain Uncoated Paper from Portugal: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 81 FR 3105 (January 20, 2016) and accompanying IDM at Comment 2.
[205] *See* Evraz's June 21, 2018 SDQR Exhibit SD-11.

employs certain estimates and assumptions which result in prices that do not reasonably reflect the actual delivered material cost.[206]

We agree with Evraz that interdivisional transfers are transactions within the same legal entity and not affiliated party transactions.[207] Accordingly, they should be excluded from the major input analysis. Therefore, for the final determination, we excluded from the analysis any transfers of scrap between divisions within the same legal entity.

Comment 8: Impairment Loss

Petitioners' Comments:

- Evraz excluded from the reported costs the amount for "Impairment of assets" claiming that impairment of assets due to complete retooling is the equivalent of a plant closure, which according to Commerce's practice should be excluded. However, the written off assets do not represent a plant, but is a collection of "unused equipment."[208]
- Commerce's practice is to distinguish between routine sales of fixed assets and the sale or closure of an entire plant. While non-routine sales of fixed assets are excluded from the G&A expenses, routine disposition of fixed assets is included, and as such the impairment loss should also be included.[209]
- As these losses relate to the startup project, by excluding the impairment losses Evraz is trying to obtain double relief for the alleged startup costs by simply removing some of the startup costs booked in the normal course of business.[210]

Evraz's Comments:

- As a result of startup operations in its steel and pipe mills, Evraz wrote off the cost of old equipment. In addition, Evraz wrote off the cost of purchased equipment that was not used in the construction of the new pipe mill. Evraz excluded these impairment losses from reporting.[211]
- Such extensive disposal is related to the decommissioning of a plant as part of Evraz's startup of a new mill. Such treatment is consistent with Commerce's practice to include gains and losses on the disposition of assets only where the disposition is routine.[212]
- In the *Preliminary Determination* Commerce found that Evraz's complete retooling of the steel mill and construction of the pipe mill constituted startups. A startup is non-routine in nature, and the associated asset impairment losses are an example of non-recurring losses which are normally excluded from the general and administrative expenses, as they are unrelated to the general operations of the company.[213]

---

[206] *See* the petitioners' Case Brief at 24-25.
[207] *See* Evraz Case Brief at 91.
[208] *See* the petitioners' Rebuttal at 25-27.
[209] *Id.*
[210] *Id.*
[211] *See* Evraz Rebuttal at 40-41.
[212] *Id.* at 41-42.
[213] *Id.* at 42-43.

- By excluding impairment losses, Evraz is not obtaining double relief as the petitioners claim. Startup adjustment is based on the operating activities while the impairment is an unrelated capital asset investment activity.[214]

Commerce's Position

Commerce normally makes a distinction between gains and losses on the routine disposition of production equipment and gains or losses associated with the permanent shutdown of an entire production facility.[215] As Commerce explained in *Lumber from Canada*[216] it is Commerce's practice to include gains or losses incurred on the routine disposition of fixed assets in the G&A expense ratio calculation, because it is expected that a producer will periodically replace production equipment and, in doing so, will incur miscellaneous gains or losses. Replacing production equipment is a normal and necessary part of doing business. The costs associated with assets currently being used in production are recognized, and become part of the product cost, through depreciation expenses. The gains or losses on the routine disposal or sale of assets of this type relate to the general operations of the company as a whole because they result from activities that occurred to support on-going production operations. In short, it is a cost of doing business.

In contrast, a permanent shutdown of an entire production facility is a significant transaction, both in form and value, and the resulting gain or loss generates non-recurring income or losses that are not part of a company's normal business operations and are unrelated to the general operation of the company. The shutdown of an entire production facility does not support a company's general operations, rather it is a removal of certain production facilities themselves. It represents a strategic decision on the part of management to no longer employ the company's capital in a particular production activity. These are transactions that significantly change the operations of the company. If the task before Commerce is to determine a particular producer's cost to manufacture a given product (including the costs associated with financing and supporting the producer's general operations), it is not reasonable to include gains or losses on the shutdown of an entire production facility as a product cost.

Impairment losses may relate to a facility that is still in operation, or one that has been sold or permanently closed. As noted in *Hot-Rolled Steel from the UK*, for impairment losses to be excluded they must result from the sale or permanent shutdown of an entire production facility:

> We agree with TSUK that the Department's established practice with respect to impairment losses is to treat them as general expenses and to include the total amount recorded in the respondent's financial statements in the G&A expense ratio calculation... Further, we agree with TSUK that the Department's practice is to exclude the closure costs if the respondent can provide evidence that the facility no longer exists or is

[214] *See* Evraz Rebuttal at 44.
[215] *See, e.g., Certain Purified Carboxymethylcellulose from the Netherlands*; *Final Results of Antidumping Duty Administrative Review*, 73 FR 75393 (December 11, 2008) and accompanying IDM at Comment 1.
[216] *See Notice of Final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 70 FR 73437 (December 12, 2005) (*Lumber from Canada*) and accompanying IDM at Comment 8.

> permanently closed... However, in the instant case, we have neither closure costs, nor do we have facilities that no longer existed or were permanently closed.[217]

Evraz does not dispute that Commerce normally includes impairment losses in the reported cost. In fact, Evraz included a portion of its total impairment losses in the reported G&A expenses.[218] Yet, Evraz requests special treatment for a portion of the impairment losses it claims are associated with startup operations, claiming that such losses are an example of non-recurring losses that are unrepresentative of the routine operations of the company and as such should be excluded.[219]

We disagree. The record shows that the impaired assets at issue mostly consist of certain machinery and equipment that were a part of a large purchase of used machinery and equipment associated with two startup projects.[220] While much of the large purchase of machinery and equipment was used in the construction of the two new mills, some of the machinery and equipment was not.[221] Evraz wrote off the value of the remaining unused equipment and recorded the loss as an impairment loss.[222] We consider this treatment of the unused assets akin to a routine disposition of assets in the normal course of business. The disposition of these unused assets did not result from the permanent shutdown of a production facility, it was not a significant transaction, neither in form nor in value, and it did not significantly change the company's operations. Therefore, for the final determination we have included the impairment losses in Evraz's G&A expense calculation.

[217] *See Certain Hot-Rolled Steel Flat Products from the United Kingdom*: Final Determination of Sales at Less Than Fair Value, 81 FR 53436 (August 12, 2016) (*Hot-Rolled Steel from the UK*) and accompanying IDM at Comment 5.
[218] *See* Evraz Cost Verification Report, exhibit CVE 21.
[219] *See* Evraz's June 21, 2018 SDQR p.51.
[220] *Id.*
[221] *Id.*
[222] *Id.*

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, then we will publish the final determination in the investigation and the final, estimated weight-average dumping margins in the *Federal Register*.

☒	☐
Agree	Disagree

2/19/2019

X 

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