



A-122-864
Investigation
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September 3, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Less-Than-Fair-Value Investigation of Certain Fabricated
Structural Steel from Canada

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that certain fabricated structural steel (fabricated structural steel) from Canada is not being, or is not likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

II. BACKGROUND

On February 4, 2019, Commerce received antidumping duty (AD) and countervailing duty (CVD) petitions covering imports of fabricated structural steel from Canada, filed on behalf of the American Institute of Steel Construction Full Member Subgroup (the petitioner).¹ On February 25, 2019, we released U.S. Customs and Border Protection (CBP) data to all interested parties under an administrative protective order and requested comments regarding the data and respondent selection.²

On February 25, 2019, we initiated this investigation.³ In the *Initiation Notice*, Commerce stated that, where appropriate, it intended to select respondents based on CBP data for U.S. imports of

¹ See Petitioner’s Letter, “Petitions for the Imposition of Antidumping and Countervailing Duties on Certain Fabricated Structural Steel from Canada, Mexico, and the People’s Republic of China,” dated February 4, 2019 (Petition).

² See Memoranda, “Less-Than-Fair-Value Investigation of Certain Fabricated Structural Steel from Canada: Release of U.S. Customs and Border Protection Data,” dated February 25, 2019.

³ See *Certain Fabricated Structural Steel from Canada, Mexico, and the People’s Republic of China: Initiation of Less-Than-Fair-Value Investigations*, 84 FR 7330 (March 4, 2019) (*Initiation Notice*).



fabricated structural steel under the appropriate Harmonized Tariff Schedule of the United States subheadings.⁴ Also in the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of fabricated structural steel to be reported in response to Commerce’s AD questionnaire.⁵ Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice*. For further discussion of these comments, *see* the “Scope of the Investigation” section below.

On March 27, 2019, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of fabricated structural steel from Canada.⁶

On June 19, 2019, the petitioner requested that the date for the issuance of the preliminary determination in this investigation be extended until 190 days after the date of initiation, from an initial deadline of July 15, 2019, to September 3, 2019.⁷ Based on the request, and pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), on July 1, 2019, Commerce published in the *Federal Register* a postponement of the preliminary determination by 50 days, until no later than September 3, 2019.⁸

In July 2019, Les Constructions Beauce-Atlas, Inc. (Beauce-Atlas) and Canatal Industries, Inc. (Canatal) requested that Commerce postpone the final determination, and that provisional measures be extended.⁹ Also in July 2019, the petitioner requested that Commerce postpone the final determination.¹⁰

On August 5, 2019, the petitioner submitted factual information relating to the calculation of constructed value (CV).¹¹

Between August 13 and 16, 2019, parties submitted pre-preliminary comments and rebuttals.¹²

⁴ *See Initiation Notice*, 84 FR at 7335.

⁵ *Id.*, 84 FR at 7340.

⁶ *See Fabricated Structural Steel from Canada, China, and Mexico*, 84 FR 11554 (March 27, 2019).

⁷ *See* Petitioner’s Letter, “Certain Fabricated Structural Steel from Canada, Mexico, and the People’s Republic of China: Request to Postpone Preliminary Antidumping Duty Determination and to Align Final Countervailing Duty Determination with Final Antidumping Duty Determination,” dated June 19, 2019.

⁸ *See Certain Fabricated Structural Steel from Canada, Mexico, and the People’s Republic of China: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 84 FR 31301 (July 1, 2019).

⁹ *See* Beauce-Atlas’ Letter, “Fabricated Structural Steel from Canada. Case No. 4-1.22-864: Request to Postpone Final Determination,” dated July 18, 2019; *see also* Canatal’s Letter, “Certain Fabricated Structural Steel from Canada: Request to Postpone Final Determination,” dated July 22, 2019.

¹⁰ *See* Petitioner’s Letter, “Certain Fabricated Structural Steel from Canada, Mexico, and the People’s Republic of China: Request to Extend Final Determination,” dated July 23, 2019.

¹¹ *See* Petitioner’s Letter, “Certain Fabricated Structural Steel from Canada: Petitioner’s Submission of Other Factual Information,” dated August 5, 2019 (Petitioner’s NFI).

¹² *See* Petitioner’s Letter, “Certain Fabricated Structural Steel from Canada: Petitioner’s Comments in Advance of the Preliminary Determination,” dated August 13, 2019; *see also* Beauce-Atlas’ Letter, “Fabricated Structural Steel from Canada, Case No. A-122-864: CBA’s Reply to Petitioner’s Pre-Preliminary Determination Comments,” dated August 19, 2019; and Canatal’s Letter, “Certain Fabricated Structural Steel from Canada: Industries Canatal’s Reply to Petitioner’s Pre-Preliminary Comments and Endorsement of CBA’s Reply,” dated August 22, 2019.

We are conducting this investigation in accordance with section 733(b) of the Act.

A. Respondent Selection

On March 7, 2019, the petitioner and three Canadian exporters/producers of fabricated structural steel (*i.e.*, Canam, Canatal, and Walters,) provided comments on the issue of respondent selection.¹³ In their comments, the Canadian companies identified deficiencies in the CBP data placed on the record; they then argued that these data were fundamentally flawed, such that they could not be used as the basis of respondent selection.¹⁴ Therefore, they requested that Commerce solicit quantity and value (Q&V) data from the producers of subject merchandise named in the Petition and use these data as the basis for respondent selection in this investigation. After examining the CBP data, we agreed that the data contained certain issues which made the CBP data unreliable for respondent selection purposes and, on March 12, 2019, consistent with the respondent selection methodology in the companion AD and CVD investigations for the People's Republic of China and Mexico, we issued questionnaires requesting information on the Q&V of the top ten known exporters' shipments of fabricated structural steel to the United States during the period of investigation (POI).¹⁵ We also placed the Q&V questionnaire on Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) and provided all other interested parties the opportunity to respond to it. From March 18 through 26, 2019, we received responses to the Q&V questionnaires.

On March 29, 2019, Commerce limited the number of respondents selected for individual examination to the two largest producers/exporters of the subject merchandise by volume, Beauce-Atlas and Canatal.¹⁶

B. Questionnaires and Responses

On April 1, 2019, we issued initial questionnaires to Beauce-Atlas and Canatal to solicit information regarding all U.S. projects that each company substantially completed during the POI. We received timely responses to these questionnaires in the same month from Beauce-Atlas and Canatal.¹⁷

¹³ See Petitioner's Letter, "Certain Fabricated Structural Steel from Canada: Petitioner's Comments on CBP Data and Respondent Selection," dated March 7, 2019 at 2; and Canam Buildings and Structures, Inc.'s (Canam), Canatal's and Walters Inc.'s (Walters) Letter, "Fabricated Structural Steel from Canada, (A-122-864): Comments on CBP Data for U.S. Imports," dated March 7, 2019, at 1-2.

¹⁴ *Id.*

¹⁵ See Memorandum, "Antidumping and Countervailing Duty Investigations of Certain Fabricated Structural Steel from Canada: Issuance of Quantity and Value Questionnaires," dated March 12, 2019.

¹⁶ See Memorandum, "Antidumping Duty Investigation of Certain Fabricated Structural Steel from Canada: Respondent Selection," dated March 29, 2019.

¹⁷ See Beauce-Atlas' April 9, 2019 Mini Section A Questionnaire Response; and Canatal's April 9, 2019 Mini Section A Questionnaire Response.

In April 2019, we issued the AD questionnaire to Beauce-Atlas and Canatal. We received timely responses to section A of this questionnaire (*i.e.*, the section relating to general information) from both companies in the same month.¹⁸ In May 2019, we also received timely responses to sections C and D of the questionnaire (*i.e.*, the sections relating to U.S. sales and cost of production (COP)/CV, respectively) from Beauce-Atlas and Canatal.¹⁹

From May through August 2019, we issued supplemental questionnaires to Beauce-Atlas and Canatal, and we received timely responses to these supplemental questionnaires during the same time period.²⁰

III. PERIOD OF INVESTIGATION

The POI is January 1, 2018 through December 31, 2018. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition.²¹

IV. POSTPONEMENT OF THE FINAL DETERMINATION

On July 23, 2019, the petitioner requested that Commerce postpone the final determination.²² Therefore, in accordance with section 735(a)(2)(B) of the Act and 19 CFR 351.210(b)(2), because the preliminary determination is negative, and the petitioner has requested the postponement of the final determination, Commerce is postponing the final determination. Consequently, Commerce will make its final determination by no later than 135 days after the date of publication of this preliminary determination.

¹⁸ See Beauce-Atlas' April 30, 2019 Section A Questionnaire Response; and Canatal's April 30, 2019 Section A Questionnaire Response (Canatal's April 30, 2019 AQR).

¹⁹ See Beauce-Atlas' May 24, 2019 Section C Questionnaire Response; Beauce-Atlas' May 31, 2019 Section D Questionnaire Response; Canatal's May 24, 2019 Section C Questionnaire Response (Canatal's May 24, 2019 CQR); and Canatal's May 31, 2019 Section D Questionnaire Response.

²⁰ See Beauce-Atlas' May 31, 2019 Section A Supplemental Questionnaire Response; *see also* Beauce-Atlas' July 16, 2019 Section C Supplemental Questionnaire Response (Beauce-Atlas' July 16, 2019 SCQR); Beauce-Atlas' July 16, 2019 Section D Supplemental Questionnaire Response; Beauce-Atlas' May 31 2019 Section A Supplemental Questionnaire Response (Beauce-Atlas May 31, 2019 SAQR); Canatal's May 31, 2019 Section A Supplemental Questionnaire Response (Canatal's May 31, 2019 SAQR); Canatal's July 12, 2019 Section C Supplemental Questionnaire Response; Beauce-Atlas' July 24, 2019 Supplemental Section D Questionnaire Response; Canatal's July 26, 2019 Section D Supplemental Questionnaire Response; Beauce-Atlas' August 5, 2019 CV Selling Questionnaire Response; Beauce-Atlas' August 14, 2019 Second Section C Supplemental Questionnaire Response; Canatal's August 14, 2019 Second Section C Supplemental Questionnaire Response; Beauce-Atlas' August 15, 2019 Selling Functions Chart (Beauce-Atlas' August 15, 2019 SFC); Beauce-Atlas' August 21, 2019 Third Section C Supplemental Questionnaire Response; and Canatal's August 21, 2019 Third Section C Supplemental Questionnaire Response.

²¹ See 19 CFR 351.204(b)(1).

²² See Petitioner's Letter, "Certain Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Request to Extend Final Determination," dated July 23, 2019.

V. SCOPE COMMENTS

In accordance with the preamble to Commerce's regulations,²³ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, scope.²⁴ Certain interested parties commented on the scope of this investigation as it appeared in the *Initiation Notice*. On July 5, 2019, Commerce addressed certain scope comments raised by interested parties, and where appropriate, preliminarily made revisions to the scope of this investigation, and the scopes of the companion CVD investigation for Canada and the companion AD and CVD investigations for Mexico and the People's Republic of China.²⁵ We have addressed the remainder of the scope comments in this preliminary determination.²⁶ After analyzing those comments, we made additional modifications to the scope. For discussion of the changes to the scope from that identified in the *Initiation Notice*, *see* the preliminary scope decision memoranda.²⁷

VI. SCOPE OF THE INVESTIGATION

For a full description of the scope of this investigation, as modified in the preliminary scope decision memoranda, *see* the accompanying *Federal Register* notice at Appendix I.

VII. AFFILIATION AND COLLAPSING

On August 9, 2018, we preliminarily determined to collapse Beauce-Atlas, Fabrication Beauce-Atlas, and Structure Beauce-Atlas because they are affiliated pursuant to sections 771(33)(F) of the Act, and that they produced the subject merchandise during the POI. Further, we preliminarily found that there is a significant potential for manipulation of prices and production. Therefore, we are treating them as a single entity (collectively, Beauce-Atlas) for the purposes of our analysis in this preliminary determination, in accordance with 19 CFR 351.401(f).²⁸

VIII. DISCUSSION OF THE METHODOLOGY

Comparisons to Fair Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether Beauce-Atlas' and Canatal's sales of subject merchandise from Canada to the United States were made at LTFV, Commerce compared the export price (EP) or constructed export

²³ *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997).

²⁴ *See Initiation Notice*, 84 FR at 7331.

²⁵ *See* Memorandum, "Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Preliminary Scope Decision Memorandum," dated July 5, 2019 (First Preliminary Scope Decision Memorandum).

²⁶ *See* Memorandum, "Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Second Preliminary Scope Decision Memorandum," dated concurrently with this memorandum (Second Preliminary Scope Decision Memorandum).

²⁷ *See* First Preliminary Scope Decision Memorandum; and Second Preliminary Scope Decision Memorandum.

²⁸ For a detailed discussion of our analysis, *see* Memorandum, "Antidumping Duty Investigation of Fabricated Structural Steel from Canada: Les Constructions Beauce-Atlas Preliminary Affiliation and Collapsing Memorandum," dated August 9, 2019.

price (CEP), as appropriate, to the normal value (NV), as described in the “Export Price/Constructed Export Price,” and “Normal Value” sections of this memorandum.

A) Determination of Comparison Method

Pursuant to section 777A(d)(1) of the Act and 19 CFR 351.414(c), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs or CEPs, *i.e.*, the average-to-average method, or transaction-specific NVs to transaction-specific EPs or CEPs, *i.e.*, the transaction-to-transaction method, unless the Secretary determines that another method is appropriate in a particular situation. In an LTFV investigation, Commerce examines whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales, *i.e.*, the average-to-transaction method, as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In numerous LTFV investigations and AD reviews, Commerce has applied a “differential pricing” analysis for determining whether application of an alternative comparison method is appropriate in a particular situation pursuant to 19 CFR 351.414(c) and section 777A(d)(1)(B) of the Act.²⁹ Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce’s additional experience with addressing the potential masking of dumping that can occur when Commerce uses a standard comparison method in calculating a respondent’s weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of export prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code, *i.e.*, zip code, and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POI based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between EP or CEP and NV for the individual dumping margins.

²⁹ See, e.g., *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean, *i.e.*, weighted-average price, of a test group and the mean, *i.e.*, weighted-average price, of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region, or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium, or large (0.2, 0.5, and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large, *i.e.*, 0.8, threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage, *i.e.*, the Cohen’s *d* test and the ratio test, demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative comparison method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if: (1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold; or (2) the resulting

weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.

B) Results of the Differential Pricing Analysis

For both Beauce-Atlas and Canatal, based on the results of the differential pricing analysis, we preliminarily find for each respondent that zero percent of the value of the respondents' U.S. sales pass the Cohen's *d* test,³⁰ and does not confirm the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Thus, the results of the Cohen's *d* and ratio tests do not support consideration of an alternative comparison method. Accordingly, we preliminarily determine to use a standard comparison method for all U.S. sales to calculate the weighted-average dumping margin for both Beauce-Atlas and Canatal.

IX. DATE OF SALE

Section 351.401(i) of Commerce's regulations states that, in identifying the date of sale of the subject merchandise or foreign like product, Commerce normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, Commerce may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.³¹ In this investigation, because fabricated structural steel is sold on a project basis, Commerce has determined that using the contract date as the date of sale most accurately reflects the date on which the material terms of sale were established.

Therefore, for Canatal, we are preliminarily using the date the contract was signed as the date of sale for all U.S. sales.³² For Beauce-Atlas, we are preliminarily using the date the contract was signed as the date of sale, unless the date of initial principal agreement precedes the contract date.³³

X. UNIVERSE OF SALES EXAMINED

In Commerce's standard AD questionnaire for investigations, respondents are instructed to report all sales made during the POI. The date of sale, defined as noted above, is generally used to determine whether a sale was made within the POI. However, fabricated structural steel is unique in that it is typically custom manufactured for a specific project which may take a

³⁰ See Memorandum, "Preliminary Determination Margin Calculation for Beauce-Atlas," dated September 3, 2019 (Beauce-Atlas Preliminary Calculation Memo); and Memorandum, "Preliminary Determination Margin Calculation for Canatal," dated September 3, 2019 (Canatal Preliminary Calculation Memo).

³¹ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

³² See Canatal's May 24, 2019 CQR at C-12.

³³ See Beauce-Atlas' July 16, 2019 SCQR at 13.

significant amount of time to complete. The period of time between the initial contract and final delivery and payment for the fabricated structural steel may take longer than one year. Hence, the final price and all movement charges and adjustments for sales of fabricated structural steel may not be known until it has been produced and the project completed.³⁴ Given these facts, we determined that the universe of U.S. sales examined should include only sales of products that were substantially completed during the investigated time period, and we gathered information necessary to determine the length of this period.

Specifically, in April 2019, we issued initial questionnaires to Beauce-Atlas and Canatal to collect information regarding all U.S. projects substantially completed during the POI, as well as in the following calendar quarter.³⁵ We received timely responses to these questionnaires in the same month from each respondent.³⁶ After examining this information, we instructed Beauce-Atlas and Canatal to report all projects each respondent substantially completed during the period January 2018 through December 2018.³⁷

XI. PRODUCT COMPARISONS

Although the home market was viable for Beauce-Atlas, in accordance with section 773 of the Act, we based NV on CV for both respondents because consistent with Commerce's practice in cases involving unique, custom-built merchandise, we determined that the unique, custom-built nature of each fabricated structural steel project does not permit proper price-to-price comparisons.³⁸

XII. EXPORT PRICE/CONSTRUCTED EXPORT PRICE

For all sales made by Beauce-Atlas and certain U.S. sales made by Canatal, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and CEP

³⁴ See, e.g., Petition at Volume I at 8, and Volume II at 12-13; Canam's, Canatal's, and Walters' Letter, "Fabricated Structural Steel from Canada (A-122-864), Mexico (A-201-850), and the People's Republic of China (A-570-102): Comments on Product Characteristics," dated March 18, 2019, at 2-3; and Petitioner's Letter, "Certain Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Petitioner's Comments on Questionnaire Modifications," dated March 22, 2019, at 2-5.

³⁵ See Commerce's Letter to Beauce-Atlas, "Less-Than-Fair-Value Investigation of Certain Fabricated Structural Steel from Canada," dated April 1, 2019; see also Commerce's Letter to Canatal, "Less-Than-Fair-Value Investigation of Certain Fabricated Structural Steel from Canada," dated April 1, 2019.

³⁶ See Beauce-Atlas' Letter, "Certain Fabricated Structural Steel from Canada, Case No. A-122-864: Supplemental Questionnaire Response," dated April 9, 2019; see also Canatal's Letter, "Fabricated Structural Steel from Canada; Response of Les Industries Canatal Inc. to the Department's Date of Sale Questionnaire," dated April 9, 2019.

³⁷ See Commerce's Letter to Beauce-Atlas, "Less-Than-Fair-Value Investigation of Certain Fabricated Structural Steel from Canada," dated April 10, 2019, at Section C Questionnaire, 1; see also Commerce's Letter to Canatal, "Less-Than-Fair-Value Investigation of Certain Fabricated Structural Steel from Canada," dated April 10, 2019, at Section C Questionnaire, 1.

³⁸ See Initiation Checklist, at Attachment II; see also *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Preliminary Results of Antidumping Duty Administrative Reviews*, 64 FR 55243 (October 12, 1999), unchanged in *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Reviews*, 65 FR 7492 (February 15, 2000).

methodology was not otherwise warranted based on the facts on the record. For Canatal's remaining U.S. sales, we used CEP methodology, in accordance with section 772(b) of the Act, because the subject merchandise was sold in the United States by a U.S. seller affiliated with the respondent and EP methodology was not otherwise warranted.

Beauce-Atlas

With respect to Beauce-Atlas' EP sales, we calculated EP based on packed prices to unaffiliated purchasers in the United States. Because Beauce-Atlas sells fabricated structural steel as part of a completed project, which includes more than just the subject merchandise, we adjusted the reported total project price to exclude the non-subject merchandise (*i.e.*, on-site installation and additional materials). We determined the portion of the price for fabricated structural steel based on the ratio of the cost of production of the subject merchandise to the total cost of producing the completed project. We also applied this ratio to billing adjustments and discounts, which we then deducted from the starting price. We also made deductions from the starting price, where appropriate, for movement expenses (*i.e.*, inland freight expenses and brokerage and handling expenses), in accordance with section 772(c)(2)(A) of the Act. In addition, guided by section 772(c)(2)(A) of the Act, we determined that it is appropriate to deduct Section 232 duties from U.S. price when such duties are included in the U.S. price.³⁹

Canatal

With respect to Canatal's EP sales, we calculated EP based on packed prices to unaffiliated purchasers in the United States. Because Canatal sells fabricated structural steel as part of a completed project, which includes more than just the subject merchandise, we adjusted the reported total project price to exclude the non-subject merchandise (*i.e.*, on-site installation and additional materials). We determined the portion of the price for fabricated structural steel based on the ratio of the cost of production of the subject merchandise to the total cost of producing the completed project. We also made deductions from the starting price, where appropriate, for movement expenses (*i.e.*, inland freight expenses, U.S. brokerage expenses, merchandise processing fees, and marshalling yard expenses), in accordance with section 772(c)(2)(A) of the Act.

We calculated CEP based on packed prices to unaffiliated purchasers in the United States. We also made deductions from the starting price, where appropriate, for movement expenses (*i.e.*, inland freight expenses, U.S. brokerage expenses, merchandise processing fees, and marshalling yard expenses), in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, we calculated CEP by deducting selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, installation expenses, additional materials, installation supervision

³⁹ See *Amendment to the Agreement Suspending the Antidumping Duty Investigation on Certain Oil Country Tubular Goods from Ukraine*, 83 FR 31369 (July 5, 2018); see also Memorandum, "Issues and Decision Memorandum for the Final Normal Value Calculations to be Effective from July 1, 2019, through December 31, 2019, under the Agreement Suspending the Antidumping Duty Investigation on Certain Oil Country Tubular Goods from Ukraine," dated June 20, 2019, at Issue 1.

expenses, and imputed credit expenses), and indirect selling expenses (*i.e.*, pre-sale project bidding expenses and other indirect selling expenses).

We also made an adjustment for profit allocated to CEP selling expenses, in accordance with section 772(d)(3) of the Act. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Canatal and its U.S. affiliate, Canatal Steel USA (CSU), on their sales in the United States and the profit associated with those sales.⁴⁰

XIII. NORMAL VALUE/CONSTRUCTED VALUE

A) Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁴¹ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁴² In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market, *i.e.*, the chain of distribution, including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales, *i.e.*, NV based on either home market or third country prices,⁴³ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.⁴⁴

When Commerce is unable to match sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, Commerce may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales to sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability, *i.e.*, no LOT adjustment is possible, Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.⁴⁵

⁴⁰ *Id.*

⁴¹ See 19 CFR 351.412(c)(2).

⁴² *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010) (*OJ from Brazil 2010*), and accompanying IDM at Comment 7.

⁴³ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative expenses (SG&A), and profit for CV, where possible. See 19 CFR 351.412(c)(1).

⁴⁴ See *Micron Tech., Inc. v. United States*, 243 F. 3d 1301, 1314-16 (Fed. Cir. 2001).

⁴⁵ See, *e.g.*, *OJ from Brazil 2010* IDM at Comment 7.

In this investigation, as discussed above, we based NV on CV for both respondents. When NV is based on CV, the NV LOT is that of the sales from which we derive SG&A expenses and profit.⁴⁶ In accordance with 19 CFR 351.412(d), Commerce will make its LOT determination under paragraph (d)(1) of this section on the basis of sales of the foreign like product by the producer or exporter. As discussed below in the “Calculation of NV Based on CV,” section, because we based NV on CV calculated using Beauce-Atlas’ CV selling expenses and profit for both respondents, we compared Beauce-Atlas’ home market LOT to Beauce-Atlas’ and Canatal’s U.S. sales LOTs.

Beauce-Atlas

In the home market, Beauce-Atlas reported that it made sales through one channel of distribution: long-term contract sales to general contractors.⁴⁷ According to Beauce-Atlas, it performed the following selling activities for all sales through this channel: sales forecasting; market research; engineering services; technical assistance; post-sale warehousing; freight and delivery; and order input/processing.⁴⁸

Selling activities can be generally grouped into four selling function categories for analysis: (1) sales and marketing; (2) freight and delivery services; (3) inventory maintenance and warehousing; and (4) warranty and technical support. Based on these selling function categories, we find that Beauce-Atlas performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical support for all of its home market sales. Because Beauce-Atlas performed the same selling activities for all of its home market sales, we determine that all of its home market sales are at the same LOT.

With respect to the United States, Beauce-Atlas reported that it made sales through one channel of distribution: long-term contract sales to general contractors.⁴⁹ According to Beauce-Atlas, it performed the following selling activities for all sales through this channel: sales forecasting; market research; engineering services; technical assistance; post-sale warehousing; freight and delivery; and order input/processing.⁵⁰ Accordingly, based on the selling function categories noted above, we find that Beauce-Atlas performed sales and marketing, freight and delivery services, inventory maintenance, and warranty and technical support for all of its reported U.S. sales. Because Beauce-Atlas performed the same selling functions for all of its U.S. sales, we determine that all U.S. sales are at the same LOT.

Finally, we compared the U.S. LOT to the home market LOT, and found that the selling functions Beauce-Atlas performed for its U.S. and home market customers do not differ. Therefore, we preliminarily determine that Beauce-Atlas’ sales to the United States and home

⁴⁶ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 47081 (August 4, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004).

⁴⁷ See Beauce-Atlas’ May 31, 2019 SAQR at Exhibit A-23.

⁴⁸ See Beauce-Atlas’ August 15, 2019 SFC at Attachment 1.

⁴⁹ *Id.*

⁵⁰ *Id.* at 15-19 and Exhibit A-6.

market during the POI were made at the same LOT and, as a result, no LOT adjustment is warranted.

Canatal

With respect to the United States, Canatal reported that it made sales through two channels of distribution: (1) direct sales to unaffiliated customers (channel 1); and (2) sales to its U.S. affiliate, CSU (channel 2).⁵¹ Canatal reported that it performed the following selling activities for sales through both of its U.S. sales channels: sales promotion, advertising; market research; pre-sale engineering and bidding; personnel training; order input/processing; sales/marketing support; engineering services, design services, project management, installation supervision; warranty service; and freight and delivery arrangements. Canatal also stated that it performed these services at a lower level of intensity for channel 2 sales than for channel 1 sales.⁵²

Accordingly, based on the selling function categories noted above, we find that Canatal performed sales and marketing, freight and delivery services, and warranty and technical support for all U.S. sales. According to 19 CFR 351.412(c)(2), Commerce will determine that sales are made at different LOTs if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. Although Canatal reported that it performed these functions at a higher level of intensity for channel 1 sales than for channel 2 sales, we do not find that these differences alone are significant enough to establish sales through each channel as separate LOTs.⁵³ Therefore, because the selling functions Canatal performed for its two U.S. sales channels do not differ, such that we would consider these channels to be separate marketing stages, we determine that all U.S. sales are at the same LOT.

Finally, we compared Canatal's U.S. LOT to Beauce-Atlas' home market LOT, and found that the selling functions Canatal performed for its U.S. customers do not differ significantly from those Beauce-Atlas performed for its home market customers. Therefore, we preliminarily determine that Canatal's sales to the United States and Beauce-Atlas' sales to the home market during the POI were made at the same LOT and, as a result, no LOT adjustment is warranted.

B) Calculation of NV based on CV

As explained above,⁵⁴ because of the unique nature of the merchandise under consideration, we used CV as the basis for calculating NV. In accordance with section 773(e) of the Act, we calculated CV based on the sum of the costs of materials and fabrication employed in producing the subject merchandise, plus amounts for general and administrative expenses, interest, profit, selling expenses, and U.S. packing costs.

⁵¹ See Canatal's April 30, 2019 AQR at A-19 – A-20.

⁵² See Canatal's May 31, 2019 SAQR at 3 and Exhibit SA-3.

⁵³ See, e.g., *Stainless Steel Bar from France: Final Results of Antidumping Duty Administrative Review*, 70 FR 46482 (August 10, 2005), and accompanying IDM at Comment 4.

⁵⁴ See *supra* section VIII.

Beauce-Atlas

We relied on the COP and CV data submitted by Beauce-Atlas except as follows:⁵⁵

- Beauce-Atlas reported its costs for services provided by Les Dessins de Structures Steltec Inc. (Steltec), an affiliate, as if the affiliate has been collapsed (*i.e.*, by eliminating the profit component of the services between itself and the affiliate). Because we have not collapsed Steltec, we revised the reported costs to include the profit which had been eliminated (*i.e.*, to reflect the transfer price between the affiliates).⁵⁶
- We recalculated the CV selling expense and profit ratios reported on home market sales to reflect the ratio to the COP of above-cost sales.⁵⁷

Canatal

We relied on the COP data submitted by Canatal except as follows:⁵⁸

- We revised Canatal's financial expense rate according to our practice.

For Beauce-Atlas, we are using the preferred method for calculating CV profit under section 773(e)(2)(A) of the Act (*i.e.*, based on the respondent's own home market or third country sales made in the ordinary course of trade). For Canatal, we are unable to calculate CV profit using the preferred method, because Canatal did not have a viable home or third country market.⁵⁹ When the preferred method is unavailable, we must instead rely on one of the three alternatives outlined in sections 773(e)(2)(B)(i) through (iii) of the Act. Those alternatives are: (i) the use of the actual amounts incurred and realized by the specific exporter or producer in connection with the production and sale in the foreign country of merchandise that is in the same general category of products as the subject merchandise; (ii) the use of the weighted average of the actual amounts incurred and realized by exporters or producers (other than the respondent) in connection with the production and sale of the foreign like product, in the ordinary course of trade country, for consumption in the foreign country; or (iii) based on any other reasonable method, except that the amount for profit may not exceed the amount realized by exporters or producers (other than the respondent) in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise (*i.e.*, the "profit cap").

The petitioner submitted information for the calculation of profit and selling expenses to be added to CV. Specifically, the petitioner provided the fiscal year 2018 audited consolidated

⁵⁵ See Memorandum, "Preliminary Determination Cost Calculation for Beauce-Atlas," dated concurrently with this memorandum (Beauce-Atlas Preliminary Cost Calculation Memo) at Attachment 2.

⁵⁶ See Beauce-Atlas Preliminary Cost Calculation Memo at Attachment 2.

⁵⁷ See Beauce-Atlas Preliminary Calculation Memo at Attachment 2; and Beauce-Atlas Preliminary Cost Calculation Memo at Attachment 2.

⁵⁸ See Canatal Preliminary Calculation Memo.

⁵⁹ See Canatal's Letter, "Notification of Industries Canatal Inc. Relating to the Department's Antidumping Questionnaire," dated April 16, 2019.

financial statements of Empire Industries Ltd. (Empire), a diversified conglomerate in Canada comprised of four sectors.⁶⁰ The submitted information for Empire shows that only 6.2 percent of sales related to fabricated structural steel products and the company shows a loss from continuing operations. The petitioner also provided Profitability Data on Canada's Manufacturing Sector, from Statistics Canada.⁶¹ Canatal submitted the fiscal year 2018 and 2019 audited financial statements of ADF Group, Inc. (ADF), a Canadian fabricated steel producer.⁶² The submitted information for ADF shows that the company incurred a profit for 2018 and a loss for 2019; further, the submitted information indicates that home market sales only accounted for 2.6 percent of revenues in 2019 and 8.8 percent in 2018.

For the preliminary determination, we calculated Canatal's CV profit and selling expenses under section 773(e)(2)(B)(ii) of the Act using Beauce-Atlas' combined CV profit and selling expenses for the POI. Beauce-Atlas' combined selling expense and profit reflects the profit of a Canadian fabricated structural steel producer, on comparison market sales of the merchandise under consideration, in the ordinary course of trade. The combined CV profit and selling expense ratio is also public information.⁶³ Thus, for this preliminary determination, we based Canatal's CV profit and selling expenses on the combined CV profit and selling expense rate determined for Beauce-Atlas.

Finally, we made adjustments to CV for differences in circumstances of sale, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410.⁶⁴ These adjustments include installation supervision expenses, performance bond expenses, bank charges, and imputed credit expenses, where applicable. As noted above, we calculated a ratio to determine the portion of the reported price for fabricated structural steel. We applied this ratio to imputed credit expenses.⁶⁵ For Canatal, we also made a commission offset, in accordance with 19 CFR 351.410(e), based on Beauce-Atlas' home market indirect selling expenses, where commissions were granted on Canatal's U.S. sales.⁶⁶

XIV. CURRENCY CONVERSION

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415(a), based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

⁶⁰ See Petitioner's NFI at Exhibit 3.

⁶¹ *Id.* at Exhibit 4

⁶² See Canatal's Letter, "Certain Fabricated Structural Steel from Canada: Constructed Value Profit and Indirect Selling Expenses Submission of Industries Canatal Inc.," dated August 5, 2019, at Exhibits 2 and 3.

⁶³ See Memorandum, "Constructed Value Selling Expense and Profit Rates for Canatal," dated concurrently with this memorandum (Canatal CV Profit Memorandum).

⁶⁴ See Beauce-Atlas Preliminary Calculation Memorandum; and Canatal Preliminary Calculation Memorandum.

⁶⁵ *Id.*

⁶⁶ See Canatal CV Profit Memorandum.

XV. RECOMMENDATION

We recommend applying the above methodology for this preliminary determination.



Agree



Disagree

9/3/2019

X  _____

Signed by: JEFFREY KESSLER
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance