



A-122-864
Investigation
Public Document
E&C/OII: AKM

January 23, 2020

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

FROM: James Maeder
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
Certain Fabricated Structural Steel from Canada

I. Summary

The Department of Commerce (Commerce) finds that certain fabricated structural steel (fabricated structural steel) 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, 2018 through December 31, 2018.

We analyzed the comments submitted by interested parties and have made changes to the *Preliminary Determination*.¹ As a result of our analysis, and based on our findings at verification, we made changes to the margin calculations for Les Constructions Beauce-Atlas, Inc. (Beauce-Atlas) and Canatal Industries, Inc. (Canatal). 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:

General

- Comment 1: Whether There Was Sufficient Industry Support to Initiate this Investigation
- Comment 2: Calculation of U.S. Price
- Comment 3: Revisions to the Fabricated Structural Steel Ratio (FSS Ratio)
- Comment 4: Whether to Deduct Use Taxes from U.S. Price

¹ See *Certain Fabricated Structural Steel from Canada: Preliminary Negative Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 84 FR 47481 (September 10, 2019) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).



Beauce-Atlas

Comment 5: Beauce-Atlas' Reporting of the Substantial Completion Date for Certain Projects

Comment 6: Collapsing Beauce-Atlas' Affiliate, Les Dessins de Structures Steltec (Steltec)

Comment 7: Whether Commerce Double Counted a Billing Adjustment in the *Preliminary Determination*

Comment 8: Adjusting Revenue for One Home Market Project With a Delayed Payment

Comment 9: Calculating General and Administrative Expenses (G&A) and Interest Expenses (INTEX) Based on the Revised Cost of Manufacturing (COM)

Canatal

Comment 10: Treatment of All of Canatal's U.S. Sales as Constructed Export Price (CEP) Sales

Comment 11: Canatal's Further Manufacturing Costs for a CEP Sale

Comment 12: Whether One U.S. Project is In-Scope Merchandise

Comment 13: Revisions to Canatal's Data Based on Commerce's Verification Findings

Comment 14: Calculation of Constructed Value (CV) Selling Expenses and Profit

II. Background

On September 10, 2019, Commerce published the *Preliminary Determination* of sales at LTFV of fabricated structural steel from Canada. From September through October 2019, we conducted verification of the sales and cost of production (COP) data reported by Beauce-Atlas and Canatal, in accordance with section 782(i) of the Act.² In November 2019, we requested that Canatal submit a revised U.S. sales database, which we received in the same month.

We invited parties to comment on the *Preliminary Determination*.³ In November, we received case briefs from Beauce-Atlas, Canatal, the Governments of Canada (GOC) and Quebec (COQ), and the American Institute of Steel Construction (AISC) Full Member Subgroup (the

² See Memoranda, "Verification of the Sales Responses of Les Constructions Beauce-Atlas (Beauce-Atlas)," dated October 18, 2019 (Beauce-Atlas' SVR); "Verification of the Sales Responses of Canatal Industries, Inc. (Canatal)," dated October 22, 2019 (Canatal's SVR); "Verification of Canatal Steel USA Inc. (CSU)," dated November 4, 2019 (CSU's SVR); "Verification of the Cost Response of Industries Canatal, Inc. in the Antidumping Duty Investigation of Fabricated Structural Steel from Canada," dated November 5, 2019 (Canatal's CVR); and "Verification of the Cost Response of Les Constructions Beauce-Atlas, Inc. in the Antidumping Duty Investigation of Fabricated Structural Steel from Canada," dated November 5, 2019 (Beauce-Atlas' CVR).

³ See *Preliminary Determination*, 84 FR at 474812.

petitioner).⁴ We received rebuttal briefs from Beauce-Atlas, Canatal, and the petitioner.⁵ On December 17, 2019, we held a hearing.⁶

Based on our analysis of the comments received, as well as our verification findings, we revised our calculations of the weighted-average dumping margins for Beauce-Atlas and Canatal from the *Preliminary Determination*.

III. Scope of the Investigation

The product covered by this investigation is fabricated structural steel from Canada. For a complete description of the scope of this investigation, *see* Appendix I of the accompanying *Federal Register* notice.

IV. Scope Comments

During the course of this investigation, and the concurrent AD and CVD investigations of fabricated structural steel from Canada, China, and Mexico, Commerce received scope comments from interested parties. Commerce issued Preliminary Scope Decision Memoranda to address these comments and establish a period of time for parties to address scope issues in scope case and rebuttal briefs.⁷ We received comments from interested parties on the Preliminary Scope Decision Memoranda, which we addressed in the Final Scope Decision Memorandum.⁸ As a result, for this final determination, we made certain changes to the scope of these investigations from that published in the *Preliminary Determination*.

⁴ *See* Beauce-Atlas' Letter, "Fabricated Structural Steel from Canada, Case No. A-122-864: CBA's Case Brief," dated November 18, 2019 (Beauce-Atlas' Case Brief); *see also* Canatal's Letter, "Fabricated Structural Steel from Canada: Industries Canatal Inc.'s Case Brief," dated November 18, 2019 (Canatal's Case Brief); GOC and GOQ's Letter, "Government of Canada and Government of Québec's Joint Case Brief Fabricated Structural Steel from Canada (A-122-864)," dated November 18, 2019 (GOC's and GOQ's Case Brief); and Petitioner's Letter, "Certain Fabricated Structural Steel from Canada: Case Brief," dated November 18, 2019 (Petitioner's Case Brief).

⁵ *See* Beauce-Atlas's Letter "Fabricated Structural Steel from Canada, Case No. A-122-864: CBA's Rebuttal Brief," dated November 25, 2019 (Beauce-Atlas' Rebuttal Brief); Canatal's Letter "Fabricated Structural Steel from Canada: Industries Canatal, Inc.'s Rebuttal Brief," dated November 25, 2019 (Canatal's Rebuttal Brief); and Petitioner's Letter "Certain Fabricated Structural Steel from Canada: Rebuttal Brief," dated November 25, 2019 (Petitioner's Rebuttal Brief).

⁶ *See* Public Hearing Transcript regarding "Antidumping Duty Investigation of Certain Fabricated Structural Steel from Canada," dated December 17, 2019; *see also* Closed Hearing Transcript regarding "Antidumping Duty Investigation of Certain Fabricated Structural Steel from Canada," dated December 17, 2019.

⁷ *See* Memorandum, "Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Preliminary Scope Decision Memorandum," dated July 5, 2019; *see also* Memorandum, "Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Second Preliminary Scope Memorandum," dated September 3, 2019 (collectively, Preliminary Scope Decision Memoranda).

⁸ *See* Memorandum, "Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Final Scope Decision Memorandum," dated concurrently with this memorandum (Final Scope Decision Memorandum).

V. Changes Since the Preliminary Determination

We calculated export price (EP), CEP, CV, and COP for Beauce-Atlas and Canatal using the same methodology as stated in the *Preliminary Determination*,⁹ except as follows:¹⁰

Beauce-Atlas

- We revised Beauce-Atlas' U.S. sales database to incorporate changes from the sales verification.
- We revised Beauce-Atlas' margin calculation to remove the deduction of BILLADJU. *See* Comment 7, below.
- We revised the FSS ratio used in the *Preliminary Determination* to: (1) exclude revenue not associated with the subject merchandise; and (2) account for the cost of transporting fabricated structural steel to the project site. *See* Comment 3, below.¹¹

Canatal

- We relied on Canatal's revised U.S. sales and COP databases, incorporating changes from the sales verification.
- Because we found at verification that Canatal failed to report certain expenses for one CEP sale, we applied adverse facts available (AFA) to this sale. *See* Comment 11, below.
- We made additional revisions to Canatal's U.S. sales and COP data based on information obtained at verification. *See also* Comment 13, below.¹²
- We revised the FSS ratio used in the *Preliminary Determination* to: (1) exclude revenue not associated with the subject merchandise; and (2) account for the cost of transporting fabricated structural steel to the project site. *See* Comment 3, below.¹³
- We revised the G&A expense ratio calculation to incorporate corrections from the cost verification.¹⁴

⁹ *See Preliminary Determination*, PDM at 9-15; *see also* Memoranda, "Preliminary Determination Margin Calculation for Beauce-Atlas," dated September 3, 2019 (Beauce-Atlas' Prelim Calc Memo); "Preliminary Determination Margin Calculation for Canatal," dated September 3, 2019 (Canatal's Prelim Calc Memo); "Preliminary Determination Cost Calculation for Beauce-Atlas," dated September 3, 2019 (Beauce-Atlas Prelim Cost Calc Memo); and "Constructed Value Selling Expense and Profit Rates for Canatal," dated September 3, 2019 (Canatal's CV Profit Memo).

¹⁰ *See* Memoranda, "Final Determination Margin Calculation for Beauce-Atlas," dated January 23, 2020 (Beauce-Atlas' Final Sales Calc Memo); "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Beauce-Atlas," dated January 23, 2020 (Beauce-Atlas' Final COP Calc Memo); "Final Determination Margin Calculation for Canatal," dated January 23, 2020 (Canatal's Final Sales Calc Memo); and "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Industries Canatal Inc.," dated January 23, 2020 (Canatal's Final COP Calc Memo).

¹¹ *See* Beauce-Atlas' Final Sales Calc Memo.

¹² *See* Canatal's Final Sales Calc Memo at 2; and Canatal's Final COP Calc Memo at 1-2.

¹³ *See* Canatal's Final Sales Calc Memo at 2.

¹⁴ *See* Canatal's CVR at 3 and Canatal's Final COP Calc Memo at 2.

VI. Analysis of Comments

Comment 1: Whether There Was Sufficient Industry Support to Initiate this Investigation

GOC's and GOQ's Case Brief

- The petitioner lacked standing to file a petition because less than a majority of its members produce, manufacture, or wholesale fabricated structural steel in the United States. The petitioner amended its petition to clarify that the petitioner was the AISC Full Member Subgroup only two days before the deadline to comment.¹⁵ In providing this clarification, the petitioner admits that it did not have standing to file a petition as an interested party because the AISC Full Member Subgroup did not file the original petitions.
- Respondent interested parties were denied due process to comment on the adequacy of domestic industry support. Commerce allowed the petitioner to revise its identity just two days before its initiation deadline. Section 732(c)(1)(B) of the Act provides 20 days from the filing date of the petition for interested parties to debate industry support based on evidence presented in the petition.
- Commerce's affirmative industry support finding was not supported by substantial evidence. The conclusion that the petitioner had the authority to speak on behalf of the domestic industry is not based on any record evidence beyond the petitioner's claim.

Canatal's Case Brief

- Commerce erred in initiating this investigation because the petitioner failed to establish that it represents the fabricated structural steel industry in the United States and/or that the petition had sufficient industry support for initiation.
- On February 21, 2019, the petitioner amended its petition to be filed on behalf of the AISC Full Member Subgroup. The GOC and GOQ filed additional letters on February 22, 2019, challenging whether a proper petitioner had been identified and noting the lack of industry support identified by the petitioner. The petitioner did not disclose the identities of its members until a submission dated February 22, 2019, which was served by first class mail on the parties and which they did not receive until after Commerce initiated the investigation on February 25, 2019. Therefore, respondent interested parties were deprived of any review and comment on the member companies of the AISC Full Member Subgroup.
- Commerce unlawfully deviated from the plain language of the statute that defines an interested party under section 771(9)(A) of the Act. Commerce interpreted this plain

¹⁵ See GOC's and GOQ's Case Brief at 4-5 (citing Petitioner's Letter, "Certain Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Amendment to Petition to Clarify Petitioner," dated February 21, 2019 (Amendment to Petition)).

language to include a clause that a trade or business association can include a subgroup of such an association.

- The GOQ submitted a declaration from a full member of the AISC, stating that he has “never seen a list of the Full Member Subgroup and ha{s} never heard that term used before by AISC.”¹⁶

Petitioner’s Rebuttal Brief

- Commerce’s determination regarding standing and industry support cannot be reconsidered after the initiation of an investigation.¹⁷
- Commerce properly decided to initiate this investigation. The AISC Full Member Subgroup is a domestic interested party within the meaning of section 771(9)(E) of the Act and 19 CFR 351.102(b)(17). The AISC Full Member Subgroup consists of the full members of AISC as defined in its bylaws (*i.e.*, entities that fabricate structural steel or iron, manufacture the steel mill products used in the fabrication of structural steel or iron, and warehouse and distribute materials for the fabrication of structural steel or iron).¹⁸ A majority of the AISC Full Member Subgroup are manufacturers, producers or wholesalers of fabricated structural steel.
- There are other cases in which the petitioner has clarified the petitioning entities.¹⁹ In this investigation, the petitioner did not change the identity of the petitioner. Respondent interested parties have submitted no information to refute Commerce’s determination that the petitioner is an interested party under the statute.
- Commerce provided interested parties sufficient opportunity to consider the petitioner’s standing and domestic industry before initiating this investigation and did not violate interested parties’ due process rights. The AISC website provides a publicly available and searchable directory of AISC members, including all of its full members. As such, respondent parties were in no way limited in their ability to determine specific producers’ position on the Petitions. It is unclear how Commerce could have hindered respondent interested parties in their review of the domestic industry’s support of the Petitions, given that no respondent party contested the petitioner’s industry support calculations.

¹⁶ See Canatal’s Case Brief at 32 (citing GOC’s Letter, “Fabricated Structural Steel from Canada, (A-122-864 and C-122-865): Response to AISC Amendment to Petition,” dated February 22, 2019).

¹⁷ See Petitioner’s Rebuttal Brief at 41 (citing section 732(c)(4)(E) of the Act).

¹⁸ *Id.* at 42 (citing Amendment to Petition at 2).

¹⁹ *Id.* at 45 (citing *Notice of Initiation of Antidumping Duty Investigations: Certain Durum Wheat and Hard Red Spring Wheat from Canada*, 67 FR 65947 (October 29, 2002)).

- Commerce already considered and rejected respondent interested parties' arguments in its initiation memorandum.²⁰ Commerce noted that the petitioner demonstrated that it qualifies as an interested party under section 771(9)(E) of the Act.²¹

Commerce's Position:

Section 732(c)(4)(E) of the Act directs Commerce as follows regarding the consideration of comments regarding industry support:

Before the administering authority makes a determination with respect to initiating an investigation, any person who would qualify as an interested party under section 771(9) if an investigation were initiated, may submit comments or information on the issue of industry support. After the administering authority makes a determination with respect to initiating an investigation, the determination regarding industry support shall not be reconsidered.²²

Therefore, Commerce is statutorily precluded from reconsidering its industry support determination at this stage of the investigation. As a result, we continue to rely on our determination of industry support provided in the Initiation Checklist.²³ We reiterate that analysis, below.

The legislative history explains that a subgroup of a trade association may qualify as an interested party under section 771(9)(E) of the Act. Importantly, the legislative history explains that, while the majority limitation of section 771(9)(E) of the Act is "believed to fairly delimit those groups with sufficient interest to always be considered interested parties," it further clarifies that "{a}n association representative of...business generally, would not be considered an interested party under this limitation, *although a sub-group of such an association may qualify.*"²⁴ As noted above, the petitioner amended the Petitions²⁵ to clarify that the Petitions are filed on behalf of the AISC Full Member Subgroup. Amending a petition is permissible under Commerce's regulations,²⁶ and other petitioners have amended petitions to clarify the petitioning entities in past cases.²⁷ Moreover, all amendments and supplements are considered part of the "Petitions" as a whole,²⁸ and as such, we consider the Petitions, as amended, to be filed by the

²⁰ *Id.* at 49 (citing Antidumping Duty Investigation Initiation Checklist: Certain Fabricated Structural Steel from Canada, dated February 25, 2019 (Initiation Checklist) at Attachment II).

²¹ See Initiation Checklist at Attachment II, at 19.

²² See section 732(c)(4)(E) of the Act (emphasis added).

²³ See Initiation Checklist at Attachment II, at 13-14.

²⁴ See S. Rep. 96-249, Report of the Committee on Finance, Trade Agreements Act of 1979, at 90 (emphasis added).

²⁵ See Petitions for the Imposition of Antidumping and Countervailing Duties on Certain Fabricated Structural Steel from Canada, the People's Republic of China, and Mexico, dated February 4, 2019, as amended February 21, 2019 (the Petitions).

²⁶ See 19 CFR 351.202(e).

²⁷ See, e.g., *Notice of Initiation of Antidumping Duty Investigations: Certain Durum Wheat and Hard Red Spring Wheat from Canada*, 67 FR 65947 (October 29, 2002) and unpublished memorandum, "Antidumping and Countervailing Duty Petitions on Certain Durum Wheat and Hard Red Spring Wheat from Canada," dated October 23, 2002.

²⁸ See, generally, sections 702(b)(1) and 732(b)(1) of the Act, "{t}he petition may be amended at such time, and

AISC Full Member Subgroup. Accordingly, we find that the record information demonstrates that the petitioner is an interested party under the statute and, as such, has standing to file the Petitions. Furthermore, we note there is no basis to “reset the clock” for the 20-day initiation period from the amendment of the petition to clarify the identity of the petitioner.²⁹

Comment 2: Calculation of U.S. Price

Beauce-Atlas’ Case Brief

- In the *Preliminary Determination*, Commerce adjusted the total project price of the U.S. sale to exclude the non-subject merchandise (*i.e.*, on-site installation and additional materials) by applying a ratio based on relative costs to the U.S. price. Specifically, Commerce calculated the portion of the price for fabricated structural steel based on the ratio of the COP of the subject merchandise to the total cost of producing the completed project.³⁰
- Beauce-Atlas sells fabricated structural steel at an all-inclusive price that usually includes installation and movement expenses. The prices for the elements of the project are never negotiated separately. Thus, there is no legitimate method to break out installation revenue from the total project price.
- There is no evidence on the record to support Commerce’s application of the FSS ratio to capture imputed installation revenue. On the contrary, Beauce-Atlas’ submissions demonstrate that all costs of installation and additional materials are included in the starting price of its U.S. sales and these items are not negotiated separately.³¹
- Under the definition of EP methodology in section 772(a) of the Act, Commerce must rely on the price at which the merchandise is first sold to the unaffiliated customer. The price based on the FSS ratio is a hypothetical price that was not agreed to between the exporter and customer and, thus, its use is contrary to the statute.
- The statute does not allow Commerce to deduct profit earned on services provided in connection with the sale of the subject merchandise (*e.g.*, through a revenue cap) when the cost of such services is not negotiated separately from the price. The Courts have asserted that Commerce does not have the legal authority to deduct any amount other than the cost of the service in such situations.³² Commerce determined not to treat

upon such conditions, as {Commerce}...may permit;” *see also* Enforcement and Compliance Antidumping Manual, at Chapter 2, page 6, “Everything that is submitted during the initiation period by the petitioner is collectively considered ‘the petition.’”

²⁹ *See, e.g., Initiation of Countervailing Duty Investigations; Welded Carbon Steel Pipe and Tube Products from Mexico*, 49 FR 46182 (November 23, 1984).

³⁰ *See* Beauce-Atlas’ Case Brief at 3 (citing *Preliminary Determination*, PDM at 10).

³¹ *Id.* at 4, and 6-9 (citing, *inter alia*, Beauce-Atlas’ Letter, “Certain Fabricated Structural Steel from Canada, Case No. A-122-864: Request for Clarification Regarding the Department’s Section E Questionnaire,” dated April 24, 2019; Beauce-Atlas’ April 30, 2019 Section A Questionnaire Response (Beauce-Atlas’ April 30, 2019 AQR) at A-17 and A-33 and Exhibit A-7; Beauce-Atlas’ July 16, 2019 Section C Supplemental Questionnaire Response (Beauce-Atlas’ July 16, 2019 SCQR) at Exhibits C-34 – C-37; and Beauce-Atlas’ SVR at 9-12, 17 and 18).

³² *Id.* at 6-7 (citing *ABB Inc. v. United States*, 355 F. Supp. 3d 1206, 1220 (CIT 2019) (*ABB Inc.*); *Hyundai Heavy Industries, Co. Ltd. v. United States*, 332 F. Supp. 3d 1331, 1340 (CIT 2018) (*Hyundai Heavy Industries*); and *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 16461 (April 19, 2019) (*LPT from Korea III*), and accompanying IDM at Comment 6).

installation expenses as further manufacturing expenses.³³ Thus, consistent with the statute and Commerce’s past practice, Commerce should treat installation services as a movement expense and deduct these costs from the total project price in the same manner as freight services.³⁴

- Commerce’s FSS ratio methodology is inconsistent with U.S. Customs and Border Protection’s (CBP) calculation of Beauce-Atlas’ entered value for fabricated structural steel. CBP calculates the entered value of fabricated structural steel based on the total project price, less the cost of installation and other materials. Commerce should be consistent in its treatment of these costs for purposes of the dumping calculation.³⁵

Canatal’s Case Brief

- Canatal typically sells installed building projects based on a lump sum price for the fabricated structural steel that includes installation and additional materials. The price after applying the adjustment ratio is artificial as Canatal does not have a separate agreement with its customers for installation and other materials. Thus, applying Commerce’s adjustment to price is contrary to the statutory definition of EP.³⁶
- Under the statute, EP may only be increased or decreased for expenses that are included in the sales price. In this case, the installation services and additional materials are included in the total project price and not separately negotiated.³⁷
- While it is standard in the industry to provide a schedule of values (SOV) listing individual values for different components of a project, the SOV does not represent

³³ *Id.* at 10 (citing Commerce’s Letter, “Less-Than-Fair-Value Investigation of Certain Fabricated Structural Steel from Canada,” dated April 30, 2019).

³⁴ *Id.* at 5, and 9-10 (citing *Mechanical Transfer Presses from Japan: Final Determination at Less Than Fair Value*, 55 FR 335, 339 (January 4, 1990) (*MTP from Japan*); *Mechanical Transfer Presses from Japan: Final Results of Antidumping Administrative Review*, 61 FR 52910, 52911 (October 9, 1996); *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 17034 (March 31, 2015), and accompanying IDM at Comment 1 (*LPT from Korea I*); and *Large Power Transformers from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 60672 (September 2, 2016), and accompanying PDM at 8-9, unchanged in *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 13432 (March 13, 2017) (*LPT from Korea II*)).

³⁵ *Id.* at 11 (citing Beauce-Atlas’ CVR at Verification Exhibit (VE)-11; *ABB Inc.*, 355 F. Supp. 3d at 1220; and *Hyundai Heavy Industries*, 332 F. Supp. 3d at 1340).

³⁶ See Canatal’s Case Brief at 8-9 (citing section 772(a) of the Act; Canatal’s April 30, 2019 Section A Questionnaire Response (Canatal’s April 30, 2019 AQR) at A- 29 and Exhibit A-5b; Canatal’s May 24, 2019 Section C Questionnaire Response (Canatal’s May 24, 2019 CQR) at C-14; Canatal’s August 21, 2019 Third Section C Supplemental Questionnaire Response (Canatal’s August 21, 2019 TSCQR) at 1; Canatal’s SVR at VE-7 – VE-10; and CSU’s SVR at VE-7 - 9).

³⁷ *Id.* at 10-13 (citing sections 772(c)(1) and (2) of the Act; Canatal’s Letter, “Certain Fabricated Structural Steel from Canada: Request for Clarification and Relief, and Notification of Difficulties Pertaining to Question 1.a. the Third Supplemental Questionnaire for Sections A and C,” dated August 19, 2019 at 5 (Canatal’s Request for Clarification Letter) at 2-5; Canatal’s April 30, 2019 AQR at 2-3, and A-33, and Exhibit A-5b; and Canatal’s SVR at VE-7).

separately negotiated prices for these activities but, rather, is a means for billing based on the progress of the project.³⁸

- The Courts have held that Commerce cannot reduce EP “except by the amount of the expense in question” when “substantial evidence does not support a finding that the cost of the services was separately negotiable from the price of the subject merchandise.”³⁹ On the other hand, when service-related expenses are included in the price, but separately negotiated with the customer, Commerce may make an adjustment to cap service-related revenue by the corresponding expense. In this case, there is no separate negotiation for installation services or the provision of additional materials and, thus, there is no basis in law or on the record for applying the FSS ratio.⁴⁰

GOC’s and GOQ’s Case Brief

- Because the Canadian respondents negotiate a total project price inclusive of all installation services, the deduction of a revenue value for assembly services included in the total project price is contrary to the clear language of the statute. Specifically, Commerce’s imputation of a profit incurred on assembly services and deduction of it from the total project price is not permitted under section 772(c)(2) of the Act, as confirmed by the Court.⁴¹
- Commerce’s FSS ratio assumes that the ratio of the value of services (*i.e.*, cost plus profit) is the same as the ratio of the cost of the assembly to the total project cost. This assumption is not based on any evidence on the record.

Petitioner’s Rebuttal Brief

- The respondents misstate the standard for capping service revenue. Rather than whether services are included in the all-inclusive price, the standard is whether services may reasonably have been separately negotiable.⁴²
- Contrary to the respondents’ assertions regarding the negotiation of an all-inclusive price for fabricated structural steel and its on-site installation, the record indicates that the respondents’ customers are aware of the prices for the various services included in a project contract. Specifically, the SOV accompanies each invoice to the customer and provides a price for each item of work. The SOV is equivalent to the post-sale order

³⁸ *Id.* at 13-14 (citing *Thai Pineapple Public Co., Ltd. v. United States*, 187 F. 3d 1362, 1367 (Fed. Cir. 1999); and Canatal’s Request for Clarification Letter at 5; and Canatal’s August 21, 2019 TSCQR at 2-3 and 5).

³⁹ *Id.* at 15 (citing *ABB Inc.*, 355 F. Supp. 3d at 1215, 1220).

⁴⁰ *Id.* at 14-18 (citing *Hyundai Heavy Industries*, 332 F. Supp. 3d at 1340; *ABB Inc.*, 355 F. Supp. 3d at 1220; *MTP from Japan*, 55 FR at 339; *LPT from Korea III* IDM at Comment 6; Final Results of Redetermination Pursuant to Court Remand, Consol. Court No. 16-54, Slip Op. 18-156, dated April 26, 2019; and *Suramerica de Aleaciones Laminadas, C.A. v. United States*, 44 F. 3d 978, 985 (Fed. Cir. 1994)).

⁴¹ See GOC’s and GOQ’s Case Brief at 9-11 (citing *ABB Inc.*, 355 F. Supp. 3d at 1220).

⁴² See Petitioner’s Rebuttal Brief at 8 (citing *Hyundai Heavy Industries*, 332 F. Supp. 3d at 1340; *ABB Inc.*, 355 F. Supp. 3d at 1221; and *LPT from Korea III* IDM at Comment 6).

acknowledgement forms in *LPT from Korea III* that demonstrated customers were aware of the separate pricing for services associated with product purchases.⁴³

- The statute requires Commerce to begin with the price of the subject merchandise,⁴⁴ rather than an all-inclusive price that includes non-subject merchandise and services performed in the United States after importation. To start with the total project price, as the respondents argue, provides an overstated price inclusive of non-subject merchandise and services in a manner precluded by the plain language of the statute.
- While the statute provides for adjustments to the starting price, it is silent on how Commerce establishes the starting price. Thus, Commerce has significant discretion to develop and apply methodologies that effectuate the purpose of the statute.⁴⁵
- The respondents' sales include significant value-added services after importation in the United States. Ideally, the respondents should have provided responses to section E of Commerce's questionnaire regarding further manufacturing, which would have provided an appropriate basis to determine their starting prices for fabricated structural steel. Because neither respondent submitted such a response, Commerce relied on other information to determine an appropriate starting price under EP methodology.⁴⁶
- The respondents' reliance on *LPT from Korea* and *MTP from Japan* is misplaced, because those cases involved products that were first assembled in the country of manufacture, disassembled for transport, and then reassembled in the United States. In contrast, this case does not involve reassembly in the United States but, instead, involves extensive and complex services after importation that integrate the subject merchandise into a larger scope of work at the U.S. project site.⁴⁷
- *ABB Inc.* dealt with adjustments to gross price and whether those adjustments should be capped by the amount of service-related expenses, not with the starting price, as the respondents suggest. The respondents failed to report gross unit prices for the subject merchandise, instead reporting total project prices. Thus, the respondents are now attempting to invert the revenue-capping methodology, relying on the total project price with deductions for expenses, but including profit on installation services, rather than a gross unit price for the subject merchandise with additions for installation revenue capped by the installation expense.⁴⁸
- Commerce's application of the FSS ratio methodology results in a net U.S. price for the subject merchandise after deducting non-subject merchandise and installation services, and their associated revenue. This methodology is reasonable, because it accomplishes the goal of setting an appropriate EP starting price for the subject merchandise to measure dumping, and it avoids the inconsistencies in the respondents' arguments.
- Alternatively, if Commerce determines not to apply the FSS ratio methodology to EP sales in the final determination, it should treat all EP sales by both Beauce-Atlas and

⁴³ *Id.* at 8-10 (citing *LPT from Korea III* IDM at Comment 6).

⁴⁴ *Id.* at 11 (citing section 772(a) of the Act).

⁴⁵ *Id.* at 12 (citing *Fujitsu Gen. Ltd. v. United States*, 88 F.3d 1034, 1039 (Fed. Cir. 1996)).

⁴⁶ *Id.* at 12-14 (citing Beauce-Atlas' Letter, "Certain Fabricated Structural Steel from Canada, Case No. A-122-864: Request for Clarification Regarding The Department's Section E Questionnaire," dated April 24, 2019; Canatal's Letter, "Fabricated Structural Steel from Canada; Industries Canatal Inc.'s Request for Clarification on Sections C-E of the Department's Antidumping Questionnaire and Rebuttal to Petitioner's April 19, 2019 Comments on Date of Sale and Period of Investigation," dated April 24, 2019 (Canatal's April 24, 2019 SCEQR)).

⁴⁷ *Id.* at 15-16 (citing *MTP from Japan*, 55 FR at 339; and *LPT from Korea I* IDM at Comment 1).

⁴⁸ *Id.* at 16-20 (citing *ABB Inc.* 355 F. Supp. 3d 1217, 1220; and *LPT from Korea III* IDM at Comment 6).

Canatal as CEP sales and consider all installation services as further manufacturing. The assembly of the Canadian fabricated structural steel in the United States is more similar to *LNPP from Germany*, where Commerce treated installation as further manufacturing, than to *LPT from Korea* and *MTP from Japan* where reassembly of disassembled parts was at issue.⁴⁹

Beauce-Atlas' Rebuttal Brief

- Contrary to the petitioner's assertion that EP methodology assumes the seller undertakes no value-added activity in the United States, the statute recognizes that such costs may be incurred after importation.⁵⁰ In *LDWP from Turkey*, Commerce accounted for the respondent's costs incurred in the United States and included in the price, and also accounted for any revenue received for those costs.⁵¹ Thus, there is no basis for Commerce to depart from its normal EP methodology and apply the FSS ratio.

Commerce's Position:

This investigation presents unique circumstances for determining the appropriate starting price because the respondents normally sell the subject merchandise as part of a project that includes installation performed by unaffiliated subcontractors in the United States and additional materials consisting of non-subject merchandise. The installation services and additional materials constitute a substantial portion of the total project price.⁵² As a result, the gross price reported by the respondents is the price that includes significantly more than just the subject merchandise. Accordingly, Commerce must ensure that, in making comparisons to normal value, the net U.S. price is not artificially inflated due to the profit on goods and services which are not subject to the investigation.

The statute provides for a deduction from U.S. price for "the cost of any further manufacture or assembly (including additional material and labor)," and "the profit allocated to {these} expense."⁵³ However, these provisions only apply to CEP sales. As discussed in Comment 10, below, except for three of Canatal's reported U.S. sales, the respondents' U.S. sales do not meet the definition of CEP sales, because these sales were not "first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter."⁵⁴

⁴⁹ *Id.* at 21-24 (citing *LPT from Korea II* IDM at Comment 6; *MTP from Japan*; and *Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany*, 61 FR 38166, 38177 (July 23, 1996) (*LNPP from Germany*)).

⁵⁰ See Beauce-Atlas Rebuttal Brief at 13 (citing Petitioner's Case Brief at 21 and section 772(c)(2)(A) of the Act).

⁵¹ *Id.* (citing *Large Diameter Welded Pipe from the Republic of Turkey: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 83 FR 43646 (August 27, 2018), and accompany PDM at 9 (*LDWP from Turkey*); unchanged in *Large Diameter Welded Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 84 FR 6362 (February 27, 2019)).

⁵² See, e.g., Beauce-Atlas' May 24, 2019 CQR *passim*; and Canatal's May 24, 2019 CQR *passim*.

⁵³ See section 772(d)(2) and (3) of the Act.

⁵⁴ See section 772(b) of the Act; see also Comment 10, below, for further discussion regarding Canatal's U.S. sales.

The remainder of Canatal's U.S. sales, and all of Beauce-Atlas' U.S. sales, meet the definition of EP under section 772(a) of the Act, because they are "first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States."⁵⁵ Under EP methodology, there is no provision under the Act to deduct further manufacturing expenses or the profit allocated to these expenses, as provided under section 772(d)(3) of the Act for CEP sales. However, simply deducting the costs of installation and additional materials from the total project price to obtain the price of the subject merchandise results in a net price that still includes the respondents' profit on providing these items.

In the *Preliminary Determination*, we applied the FSS ratio methodology. Section 772(a) of the Act directs us to calculate EP beginning with "the price at which the **subject merchandise** is first sold (or agreed to be sold)" (emphasis added). As noted above, the respondents negotiate an all-inclusive project price that includes substantially more than the subject merchandise.⁵⁶ Thus, the gross price they reported to Commerce is that all-inclusive project price, not the price at which the subject merchandise (*i.e.*, fabricated structural steel) is first sold.

In *LPT from Korea* and *MTP from Japan*, where Commerce treated installation services as a movement expense and deducted the installation costs in the same manner as freight expenses, the subject merchandise was first assembled in the country of manufacture prior to shipment to the United States, and then reassembled in the United States.⁵⁷ The installation performed on the subject merchandise in this investigation does not involve reassembly in the United States but, rather, the first-time integration of the subject merchandise into a larger project at the U.S. job site where the assembly costs are a substantial portion of the total project price.⁵⁸ Under EP methodology, merely deducting the installation and additional materials costs from the total project price does not adequately account for the respondents' revenue for providing the services and non-subject merchandise included in the price.

The respondents contend that Commerce cannot apply the revenue cap methodology because installation services and additional materials are not separately negotiated, in accordance with *ABB Inc.* While the record contains SOVs listing installation services and non-subject merchandise as separate line items, the respondents acknowledge that this information may not fully account for the revenue associated with those items.⁵⁹ Further, Commerce normally applies a revenue cap when the gross unit price of the subject merchandise includes service-related expenses.⁶⁰ In this investigation, the respondents reported a total project price, which includes not only the subject merchandise, but also the installation and additional materials for the project. Thus, rather than starting with the gross unit price and making adjustments with a revenue cap, as Commerce did in *LDWP from Turkey* and *LPT from Korea*, we must first determine the gross

⁵⁵ See, e.g., Beauce-Atlas' April 30, 2019 AQR at A-17 – A-18; Beauce-Atlas' SVR at VE-5, VE-6, and VE-9 – VE-12; Canatal's AQR at A-19 – A-20 and A-23; and Canatal's SVR at VE-4 and VE-7 – VE-10.

⁵⁶ See, e.g., Beauce-Atlas' April 30, 2019 AQR at A-17; and Canatal's May 24, 2019 CQR at C-23 – 25.

⁵⁷ *Id.* at 15-16 (citing *MTP from Japan*, 55 FR at 339; and *LPT from Korea I* IDM at Comment 1).

⁵⁸ See, e.g., Beauce-Atlas' April 30, 2019 AQR at A-17 – A-18; and Canatal April 30, 2019 AQR at A-32 and A-34-A-35.

⁵⁹ See Beauce-Atlas' August 21, 2019 Second Supplemental Sections A and C Questionnaire Response at 1-3 and Exhibit A-31, and Canatal's August 21, 2019 TSCQR at 1-4 and Exhibits TSC-4 – TSC-6.

⁶⁰ See, e.g., *LDWP from Turkey* and *LPT from Korea*; see also *ABB Inc.*, 355 F. Supp. 3d 1217 at 1220.

unit price of the subject merchandise. In effect, the respondents suggest inverting the revenue-capping methodology by relying on the total project price with deductions for expenses, but including profit on installation services, rather than a gross unit price for the subject merchandise with additions for installation revenue capped by the installation expense. As a result, we find that, under the unique circumstances of this case, the revenue cap methodology is inadequate for calculating the gross unit price of the subject merchandise.

Therefore, in the absence of specific guidance regarding how to reduce the observed EP to a price reflecting only the subject merchandise where a revenue cap does not apply, the FSS ratio methodology for EP sales provides a reasonable means of determining the price of the subject merchandise alone, based on the record information. We calculated the FSS ratio based on the COM of the fabricated structural steel, the installation expenses, and additional material costs.⁶¹ While the GOC and GOQ argue that there is no evidence on the record to assume that the value of services is the same as the ratio of these costs to the total project cost, there is no evidence on the record to otherwise allocate the value of these services. In the absence of any other method to determine the price of the fabricated structural steel portion of the reported project price, the FSS ratio provides a reasonable estimate, based on reported and verified cost elements, of the profit attributable to installation services and non-subject merchandise included in the total project price for EP sales. Thus, for the final determination, we continued to apply the FSS ratio to the respondents' reported EP sales. In addition, as discussed in Comment 3, below, we made certain revisions to our FSS ratio calculation for the final determination.

Finally, we disagree with Beauce-Atlas that calculating a price based on the FSS ratio is inconsistent with the calculation of entered value. The application of the FSS ratio results in a cash deposit rate calculated based on the net price of the fabricated structural steel exported from Canada (*i.e.*, the total project price less movement expenses and the value of installation services and other materials). As a result, we calculated an ex-factory price for the subject merchandise consistent with Commerce's normal methodology. While Commerce does not attempt to match its calculation of net price to entered value, we note that Beauce-Atlas reported entered value to CBP based on the total project price, less the cost of installation and other materials (*i.e.*, the net value of fabricated structural steel).⁶² Thus, we find no inconsistency between our calculation of the ex-factory price and Beauce-Atlas' entered value.

⁶¹ See Beauce-Atlas' Prelim Calc Memo at 2; and Canatal's Prelim Calc Memo at 2.

⁶² See Beauce-Atlas' Case Brief at 11 (citing Beauce-Atlas' CVR at VE-11).

Comment 3: Revisions to the FSS Ratio

Beauce-Atlas' Case Brief

- If Commerce continues to use the FSS ratio methodology, Commerce must adjust its calculation of the FSS ratio to avoid deducting movement expenses twice.
- Commerce must revise the FSS ratio to include movement expenses, section 232 duties, pre-payment bond and tax bond expenses, and pre-bid expenses, all of which are part of the starting price, as part of the cost of fabricated structural steel in the FSS ratio.

Canatal's Case Brief

- If Commerce continues to apply the FSS ratio methodology, it should first deduct movement expenses from the total project price before applying the FSS ratio to the price, in order to avoid double counting these expenses.

Petitioner's Case Brief

- In the *Preliminary Determination*, Commerce applied the FSS ratio to Canatal's total project price based on per-unit costs (*i.e.*, per pound). Because these per-unit costs are calculated based on the weight of the fabricated structural steel inputs, the per-unit amounts understate the per-unit cost of additional materials.
- To more accurately calculate the FSS ratio, Commerce should use the total costs for each element.⁶³

Canatal's Rebuttal Brief

- If Commerce maintains its use of the FSS ratio, it should reject the petitioner's illogical argument to apply it on a total cost basis.
- Canatal reported project price and expenses on a per-unit basis. If the purpose of the FSS ratio is to reduce the gross unit price for non-fabricated structural steel elements of the project price, then applying the FSS ratio to the per-unit amounts as Commerce did in the *Preliminary Determination* is the appropriate methodology.

Petitioner's Rebuttal Brief

- Neither Beauce-Atlas nor Canatal offer any persuasive basis to modify the FSS ratio methodology for movement expenses.
- Transportation of fabricated structural steel involves specialized freight companies and equipment to move the subject merchandise on both sides of the border. As this activity has a high value-added component, it is appropriate to allocate the reported gross price using the FSS ratio before movement expenses have been deducted.

⁶³ See Petitioner's Case Brief at 31-32 (citing Canatal's Prelim Calc Memo at 2 and Canatal's CQR at Exhibit C-49).

Commerce's Position:

For the final determination, we revised the calculation of the FSS ratio to account for movement expenses associated with fabricated structural steel. Specifically, we revised the FSS ratio to add these movement expenses to both the numerator and the denominator of the calculation.⁶⁴ In this manner, we allocated the revenue associated with these expenses to the price for fabricated structural steel; those expenses are then deducted from the price as part of the net price calculation. This revision eliminates the double counting of movement expenses identified by Beauce-Atlas and Canatal in the *Preliminary Determination* (i.e., by applying the FSS ratio to allocate a price for fabricated structural steel that does not include movement expenses but then separately deducting such expenses).

Moreover, we disagree with the petitioner that Canatal's FSS ratio should be recalculated according to Canatal's total costs per element. The per-unit calculation in the *Preliminary Determination* properly allocates the cost of additional materials to all of the fabricated structural steel used in a project. The petitioner's proposal would allocate the additional materials only to the Canadian-sourced fabricated structural steel (i.e., subject merchandise), rather than all fabricated structural steel in a project. The petitioner provided no support for its claim that the additional materials supplied for a project are associated only with the Canadian-sourced fabricated structural steel. Therefore, we continued to calculate the FSS ratio for Canatal on a per-unit basis in the final determination.

Comment 4: Whether to Deduct Use Taxes from U.S. Price

Petitioner's Case Brief

- Use taxes should be deducted from EP sales prices. Failure to make such an adjustment improperly inflates U.S. price.
- Commerce concluded that use taxes could not be deducted from EP because taxes incurred in the country of sale are not among the explicitly enumerated adjustments in section 771(6)(C) of the Act. This ruling conflicts with the long-standing practice of deducting all non-fixed expenses for goods or services included in the gross export price.⁶⁵ In order to ensure a fair comparison, Commerce must account for differences between foreign market and U.S. merchandise.
- If Commerce cannot adjust U.S. price to account for use tax for EP sales, it should include this tax in the denominator of the FSS ratio.

⁶⁴ See Beauce-Atlas' Final Sales Calc Memo at 2; and Canatal's Final Sales Calc Memo at 2.

⁶⁵ See Petitioner's Case Brief at 27 (citing *Stainless Steel Butt-Weld Pipe Fittings from Italy: Final Results of Antidumping Duty Administrative Review*, 81 FR 43587 (July 5, 2016), and accompanying PDM at 6; *Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results of Antidumping Duty Administrative Review*, 83 FR 45211 (September 6, 2018), and accompanying PDM at 8; *Certain Steel Nails from Malaysia: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 83 FR 39422 (August 9, 2018), and accompanying PDM at 11).

- All of Canatal's U.S. sales should be treated as CEP sales in the final determination. Use taxes should be deducted from CEP sales prices, because any tax that arises because of installation is a direct selling expense under 772(d)(1)(B) of the Act.

Beauce-Atlas' Rebuttal Brief

- Sales use tax does not fit into the definition of bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States. Commerce has never deducted a sales use tax from export price in any prior case.
- Section 772(c)(2)(B) of the Act provides Commerce with the authority to deduct certain taxes from EP, and sales use tax is not listed among them. Because there is a distinct provision in the statute dealing with the deduction of taxes from EP means that Congress would have explicitly provided for the deduction of sales use taxes if it intended to allow Commerce to adjust for them.

Canatal's Rebuttal Brief

- In the *Preliminary Determination*, Commerce explained that it did not include use tax as an adjustment to U.S. price, because there is no provision under sections 772(c)(2) or (d) of the Act for such an adjustment.
- Use taxes are not covered by the statutory provision for reductions to EP and CEP sales for "additional costs, charges or expenses...which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States."
- Commerce should reject the petitioner's argument that the use taxes should be included in the denominator of the FSS ratio calculation. Allocating profit to use taxes would not be appropriate as there is no evidence of a profit to Canatal on a tax, which is only an expense. Including use taxes in the FSS ratio calculation would artificially decrease the gross unit price.
- Use taxes should not be deducted from CEP sales because they are not incurred to sell or distribute the merchandise. The taxes relate only to certain projects in states that require them, and the taxes do not apply to the entire value of the project. The sale of the project does not trigger a use tax liability on that sale – certain "use tax purchases" in certain states resulted in Canatal paying use taxes to state tax authorities.

Commerce's Position:

We disagree with the petitioner that use taxes should be deducted from U.S. price. Section 772(c)(2) of the Act enumerates the deductions permitted under EP:

the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties, which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States, and
(B) the amount, if included in such price, of any export tax, duty, or other charge imposed by the exporting country on the exportation of the subject merchandise to

the United States, other than an export tax, duty, or other charge described in section 771(6)(C).

While section 772(d)(1) of the Act lists the deductions permitted under CEP:

(1) the amount of any of the following expenses generally incurred by or for the account of the producer or exporter, or the affiliated seller in the United States, in selling the subject merchandise (or subject merchandise to which value has been added)—

(A) commissions for selling the subject merchandise in the United States;

(B) expenses that result from, and bear a direct relationship to, the sale, such as credit expenses, guarantees and warranties;

(C) any selling expenses that the seller pays on behalf of the purchaser; and

(D) any selling expenses not deducted under subparagraph (A), (B), or (C);

Thus, while the petitioner contends that use taxes should be deducted from either EP or CEP sales price, we find no basis to do so in the language of sections 772(c)(2) or 772(d)(1) of the Act, which enumerates the specific types of expenses to be deducted. The only mention of taxes in these sections of the Act relates to export taxes imposed by the exporting country. Moreover, there is no evidence to support that these taxes are “incident to bringing merchandise...to the place of delivery in the United States” such that they would be covered by section 772(c)(2) of the Act. Canatal stated that these taxes related to the “use or consumption of tangible personal property in {a} given state.”⁶⁶ In any event, to the extent that these taxes relate to installation of fabricated structural steel, as the petitioner claims, our use of the FSS ratio to determine the portion of the project price related to fabricated structural steel (exclusive of installation and additional materials), renders this deduction unnecessary.

Finally, we disagree with the petitioner that use taxes should be included in the denominator of the FSS ratio. As noted in Comment 2, above, we are calculating the FSS ratio in order to ensure we have removed the profit on goods and services which are not subject to the investigation. Indeed, our application of the FSS ratio renders the inclusion of use taxes in the denominator unnecessary because these taxes are not directly related to the price of the subject merchandise. Therefore, we did not revise the denominator of the FSS ratio to include use taxes in our calculations for the final determination.

Comment 5: Beauce-Atlas’ Reporting of the Substantial Completion Date for Certain Projects

A. Home Market Project 1237

Petitioner’s Case Brief

- On July 16, 2019, Beauce-Atlas provided a list of all job orders open at any time during the period of October 1, 2017, through March 31, 2019, and it indicated the date of substantial completion for each of these projects. In a supplemental questionnaire,

⁶⁶ See Canatal’s May 24, 2019 CQR at C-63.

Commerce asked Beauce-Atlas to revise its home market sales reporting to determine the home market sales which were substantially completed during the POI in the same manner as its U.S. sales.⁶⁷

- In its revised list of projects, Beauce-Atlas changed its reporting of project 1237 as two projects to artificially reduce the final dumping margin.
- Because there is no reliable evidence on the record to support Beauce-Atlas' claim that it "closed out" project 1237-I in August 2017 and opened new project 1237-II, Commerce should reject this *post hoc* revision and treat project 1237 as a single project.

Beauce-Atlas' Rebuttal Brief

- At verification, Beauce-Atlas provided Commerce with documentation demonstrating the reported date of substantial completion for projects 1237-I and 1237-II. Commerce examined a management report and correspondence with the customer agreeing to close out project 1237-I and pay the retainage. Commerce also examined documentation demonstrating that the retainage had been paid out and stage one of the project was over.⁶⁸
- Beauce-Atlas also provided Commerce a management report prepared to update its board of directors regarding this set of projects and the reason why it was split.
- Commerce's verification report disproves the petitioner's contention that there are no source documents showing that 1237-I and 1237-II are separate projects. After reviewing the documentation presented at verification, Commerce noted in its sales verification report that Beauce-Atlas reported data for all home market sales substantially completed during the POI and that there were no discrepancies with the reported data.⁶⁹
- The overwhelming evidence that the projects were split is not undermined by the fact that certain documents do not differentiate by Roman numeral. This was a very unique set of projects that involved the Canadian parliament, which evolved far beyond the original parameters. Beauce-Atlas insisted on receiving its retainage from the original project.⁷⁰
- Commerce's verification report explains that Beauce-Atlas allocated the revenue between projects 1237-I and 1237-II by the date when Beauce-Atlas closed out the initial project.⁷¹ The sales and cost information was provided in Beauce-Atlas' September 13 supplemental questionnaire response, and the sales and cost teams found no issues with this information.⁷²

⁶⁷ See Petitioner's Case Brief at 13 (citing Beauce-Atlas' September 13, 2019 Supplemental Home Market Questionnaire Response (Beauce-Atlas' September 13, 2019 HMSQR) at 2).

⁶⁸ *Id.* at 7 (citing Beauce-Atlas' SVR at VE-23).

⁶⁹ *Id.* at 9 (citing Beauce-Atlas' SVR at 7).

⁷⁰ *Id.* at 15.

⁷¹ *Id.* at 10 (citing Beauce-Atlas' SVR at 10).

⁷² *Id.* (citing Beauce-Atlas' SVR at 25 and Beauce-Atlas' CVR at 10-11).

Commerce's Position:

Based on the information on record, we treated project 1237 as a single project in our CV selling expense and profit calculations for the final determination.

Beauce-Atlas defined the date of completion for all projects that included installation services as “the date of the final invoice to {Beauce-Atlas} from the installation/erection company.”⁷³ In response to Commerce's instructions, in its September 13, 2019, supplemental questionnaire response, Beauce-Atlas revised the universe of its home market projects used for CV profit and selling expenses to report them in the same manner as its U.S sales.⁷⁴ According to Beauce-Atlas, the substantial completion date for project 1237-I was prior to the POI,⁷⁵ and the substantial completion date for project 1237-II was during the POI.⁷⁶

At verification, we found that, for all sales examined that included installation services (except for the first part of project 1237), Beauce-Atlas consistently reported as the date of substantial completion on the date of the final invoice from the installer.⁷⁷ For project 1237, we determined that the installer issued the final invoice to Beauce-Atlas during the POI.⁷⁸ However, when dividing project 1237 into two parts, Beauce-Atlas departed from its methodology to determine the substantial completion date for the first part of project 1237. In this single instance, Beauce-Atlas relied on the date that it issued the invoice for the retainage balance due as the substantial completion date.⁷⁹ Beauce-Atlas did not base its reported substantial completion date on the issuance of the final retainage invoice for any other U.S. or home market project.

While Beauce-Atlas contends that the specific circumstances of project 1237 warrant the separation of the project into two parts,⁸⁰ record evidence does not support finding that Beauce-Atlas substantially completed this project as of the date it issued this interim retainage invoice. Beauce-Atlas provided no information to demonstrate that a discrete portion of the contracted work was completed as of that date. Rather, the record shows that Beauce-Atlas continued work on the project, based on the initial contract and change orders dated after it issued the retainage invoice.⁸¹ Thus, consistent with the methodology Beauce-Atlas used to report all other projects with installation, we find that the full project was substantially completed when the installer issued its final invoice to Beauce-Atlas.⁸² As a result, we agree that project 1237 should be treated as a single project in our calculation of CV expenses and profit, including the revenues and costs for the full project, for the final determination.⁸³

⁷³ See Beauce-Atlas' May 24, 2019 CQR at C-20; *see also* Beauce-Atlas' April 9, 2019 Supplemental Questionnaire Response at 3 (Beauce-Atlas' April 9, 2019 SQR).

⁷⁴ See Beauce-Atlas' September 13, 2019 HMSQR at 1-2.

⁷⁵ *Id.* at Exhibit C-53.

⁷⁶ *Id.* at Exhibits C-53 and D-62.

⁷⁷ See Beauce-Atlas' SVR at 6.

⁷⁸ *Id.* at 7 and 15, and VE-6 and VE-23.

⁷⁹ *Id.* at 15 and VE-23.

⁸⁰ *Id.*; *see also* Beauce-Atlas' Rebuttal Brief at 7-10.

⁸¹ See Beauce-Atlas' SVR at VE-23.

⁸² *Id.*; *see also* Beauce-Atlas' SVR at VE-6.

⁸³ See Beauce-Atlas' Final COP Calc Memo at Attachment 1.

B. U.S. Project 1361

Petitioner's Case Brief

- The Beauce-Atlas verification report makes clear that the evidence supporting Beauce-Atlas' revised reporting of project 1361 as outside of the POI should not dictate whether the sale is deemed to be "substantially completed" during the POI.
- In fact, the revised final invoice did not change the reported costs or price of this project.⁸⁴ Furthermore, Beauce-Atlas' statements make clear that this final invoice was unrelated to installation activities.⁸⁵
- Allowing a sale to be removed from the U.S. sales database based on events that occurred not only after the POI, but also during the course of the investigation, opens the door to manipulation by the respondents in the future. Therefore, Commerce should find that project 1361 was substantially completed during the POI and continue to include it in Beauce-Atlas' U.S. sales database.

Beauce-Atlas' Case Brief

- In response to Commerce's supplemental questionnaire, Beauce-Atlas noted that project 1361 had a subsequent installation invoice issued in 2019, so it was not substantially completed during the POI.⁸⁶
- While Commerce notes that this was the only project substantially completed during the POI affected by bankruptcy litigation, it is not the only project with a credit final installation invoice.⁸⁷ Beauce-Atlas used a consistent methodology to determine when its projects were substantially completed and applied this rule to all reported projects. Using this methodology, project 1361 is outside of the POI and Commerce should remove it from its calculations for the final determination.⁸⁸

Petitioner's Rebuttal Brief

- Commerce should continue to find that project 1361 was substantially completed during the POI.⁸⁹
- Pursuant to Beauce-Atlas' definition of substantial completion, Beauce-Atlas identified project 1361 as completed during the POI in numerous questionnaire responses.⁹⁰

⁸⁴ *Id.* at 14 (citing Beauce-Atlas' SVR at 6 and VE-1, p. 2; and Beauce-Atlas' SVR at 6).

⁸⁵ *Id.* at 14-15 (citing Beauce-Atlas' SVR at 6).

⁸⁶ *See* Beauce-Atlas' Case Brief at 13 (citing Beauce-Atlas' September 13, 2019 HMSQR).

⁸⁷ *Id.* at 13 (citing Beauce-Atlas' SVR at VE-6).

⁸⁸ *Id.* at 14.

⁸⁹ *See* Petitioner's Rebuttal Brief at 29.

⁹⁰ *Id.* at 30-31 (citing Beauce-Atlas' April 30, 2019 AQR at A-16; Beauce-Atlas' May 24, 2019 CQR at CQR at C-20, Exhibit C-2; Beauce-Atlas May 31, 2019 Section D Questionnaire Response at Exhibit D-12; and Beauce-Atlas' July 16, 2019 SCQR at Exhibit C-31).

- The documentation provided by Beauce-Atlas at verification does not demonstrate that project 1361 was substantially completed outside of the POI, contrary to Beauce-Atlas' contention, because the documentation examined at verification was not an installation invoice.⁹¹
- At verification, company officials explained that project 1361 was the only project substantially completed during the POI affected by bankruptcy litigation.⁹²
- Beauce-Atlas' argument that it treated the date of final installation invoice as the date of substantial completion regardless of whether the invoice was a credit or debit invoice is contradicted by its prior submissions. In response to Commerce, Beauce-Atlas previously said that the substantial completion date is the date the installation was completed (*i.e.*, the date of the final invoice from the subcontractor in charge of the installation).⁹³ Because a bankruptcy litigation credit is not related to installation of subject merchandise, it should not impact the date of substantial completion.⁹⁴
- Beauce-Atlas' argument that it commonly used a final installation credit invoice to define the substantial completion date is unavailing. Unlike the four other projects that Beauce-Atlas stated had final installation credit invoices, Beauce-Atlas reported that project 1361 was substantially completed during the POI at the outset of the investigation.

Beauce-Atlas' Rebuttal Brief

- Contrary to the petitioner's contention, Beauce-Atlas provided documentation to support its revised reporting of this project as part of its September 13, 2019 questionnaire response.⁹⁵
- Beauce-Atlas also provided this exact same information at verification along with documentation from its accounting system.⁹⁶
- There is no merit to the petitioner's argument that, because the final installation invoice was for a credit, it is not the final installation invoice. At times, Beauce-Atlas reported credit invoices as the final installation invoice.⁹⁷ However, there is nothing unusual about a project having a credit invoice as the final installation invoice.

Commerce's Position:

We continue to find that project 1361 was substantially completed during the POI and, as a result, we have included it in our calculations for the final determination.

Throughout the course of this investigation, Beauce-Atlas defined the date of substantial completion for all projects that included installation services as "the date of the final invoice to

⁹¹ *Id.* at 32 (citing Beauce-Atlas' SVR at VE-11).

⁹² *Id.* at 33 (citing Beauce-Atlas' SVR at 6).

⁹³ *Id.* (citing Beauce-Atlas' April 19, 2019 SQR).

⁹⁴ *Id.* at 34.

⁹⁵ See Beauce-Atlas' Rebuttal Brief at 4 (citing Sept. 13 SQR at 2-3 and Exhibit C-53).

⁹⁶ *Id.* at 5 (citing Beauce-Atlas' SVR at VE-1).

⁹⁷ *Id.* at 6 (citing Beauce-Atlas' SVR at 6-7, VE-6, and VE-26).

{Beauce-Atlas} from the installation/erection company.”⁹⁸ In its September 13, 2019, supplemental questionnaire response, Beauce-Atlas revised the date of substantial completion for U.S. project 1361 to be outside of the POI.⁹⁹ At verification when discussing this issue, company officials stated that:

...the customer for project 1361 went bankrupt and still owed Beauce-Atlas a final payment on this project. Company officials stated that, as a result of the bankruptcy litigation: 1) Beauce-Atlas wrote off the outstanding payment amount; and 2) the installer agreed to credit Beauce-Atlas for a portion of the customer’s unpaid balance. Company officials stated that this was the only project substantially completed during the POI affected by bankruptcy litigation.¹⁰⁰

We disagree with Beauce-Atlas’ argument that Commerce should accept its revised reporting of the date of substantial completion for project 1361 because, consistent with its methodology for reporting its universe of sales, it did not distinguish whether the final installation invoice was issued as a credit or a debit.¹⁰¹ While we acknowledge that this is the methodology Beauce-Atlas used to report substantial completion, we note that a credit invoice does not pertain to final installation activities but, rather, is a reimbursement of previously-paid funds. Therefore, we continue to find that project 1361 was substantially completed during the POI and included it in our calculations for the final determination.

C. U.S. Project 1304

Petitioner’s Case Brief

- Documents examined at verification do not support Beauce-Atlas’ reporting of project 1304.
- Upon noticing information missing from a verification exhibit, the petitioner asked Commerce to collect this information. However, Commerce declined to do so, stating that no pages were omitted.¹⁰²
- The U.S. Court of International Trade (CIT) has stated that Commerce “may not explain the absence of evidence by invoking procedural difficulties that were at least in part a creature of its own making.” Here, Commerce has created a “procedural difficulty” of its own making that it could remedy by issuing a post-verification supplemental questionnaire, as it has done in other cases.¹⁰³

⁹⁸ See Beauce-Atlas’ CQR at C-20; and Beauce-Atlas’ April 19, 2019 SQR at 3.

⁹⁹ See Beauce-Atlas’ SVR at 6.

¹⁰⁰ *Id.*

¹⁰¹ See Beauce-Atlas’ SVR at 6-7. See also Beauce-Atlas’ Rebuttal Brief at 3.

¹⁰² *Id.* at 16-17 (citing Commerce’s Letter, “Less-Than-Fair-Value Investigation of Fabricated Structural Steel from Canada,” dated November 15, 2019 (Commerce’s Rejection Letter)).

¹⁰³ *Id.* at 17 (citing *Dynamic Random Access Memory Semiconductors from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 7395 (February 17, 2009) (*DRAMS from Korea*), and accompanying IDM at Comment 2; *Diamond Sawblades and Parts Thereof from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 26912 (June 12, 2017) (*Diamond Sawblades from China*), and accompanying IDM at Comment 3; *Certain Cut-to-Length Carbon-Quality Steel Plate*

- Commerce should collect this information from Beauce-Atlas and allow supplemental briefing on whether the information has any implications for the final determination.¹⁰⁴ If Commerce does not collect this information from Beauce-Atlas, it must distinguish this situation from other proceedings where it has collected additional information after verification.
- Commerce should also apply facts available to project 1304 and find that it was completed during the POI. Furthermore, because Commerce does not have the information necessary to calculate a margin for this sale, it should assign it Beauce-Atlas' highest calculated dumping margin.¹⁰⁵

Beauce-Atlas' Rebuttal Brief

- No evidence supports the petitioner's claim that project 1304 was substantially completed during the POI.
- Beauce-Atlas received the final installation invoice for this project prior to the POI. At verification, Beauce-Atlas provided Commerce with the final installation invoice and the ABC report¹⁰⁶ for the installation account for this project. The ABC report shows that Beauce Atlas reported the final invoice date as date of substantial completion and Commerce noted no issues with this date in its report.¹⁰⁷

Commerce's Position:

We continue to find that project 1304 was completed outside of the POI. Thus, we did not include it in the universe of Beauce-Atlas' U.S. sales for the final determination.

At verification, we examined documentation to support Beauce-Atlas' reported date of substantial completion for this project and tied the final installation invoice to Beauce-Atlas' general ledger.¹⁰⁸ In our verification report, we noted that Beauce-Atlas properly "excluded data for those home market sales substantially completed outside the POI," which included project 1304.¹⁰⁹

Moreover, we disagree with the petitioner that there is information missing from our verification exhibit for this project. As we noted in our November 15, 2019 letter to the petitioner regarding

Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016, 82 FR 42075 (September 6, 2017) (*CTL Plate from Korea*), and accompanying IDM at Comment 2; and *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010) (*OCTG from China*), and accompanying IDM at Comment 30). The petitioner notes that Commerce issued a supplemental questionnaire to the Government of Mexico after issuing its verification report in the concurrent CVD investigation of fabricated structural steel from Mexico. *Id.*

¹⁰⁴ *Id.* at 18.

¹⁰⁵ *Id.*

¹⁰⁶ The ABC report is a detailed internal accounting report.

¹⁰⁷ See Beauce-Atlas' Rebuttal Brief at 4 (citing Beauce-Atlas' SVR at 6-7 and VE-6).

¹⁰⁸ See Beauce-Atlas' SVR at VE-6.

¹⁰⁹ *Id.* at 7.

this issue, “the exhibit on ACCESS is complete and Beauce-Atlas omitted no pages in its filing.”¹¹⁰

Finally, we disagree that the cases cited by the petitioner support the claim that it is Commerce’s practice to collect additional information, which could have been obtained at verification, after verification. In none of these cases did Commerce request additional information about information presented at verification.¹¹¹ Furthermore, it would be inappropriate to solicit information related to information examined at verification once that process has ended, because Commerce is unable to confirm whether information that is subsequently submitted is the same as that examined at verification. We note that the post-verification questionnaire issued in the concurrent Mexico countervailing duty investigation did not pertain to information examined at verification. Consequently, because we found no issues with Beauce-Atlas’ reporting of project 1304 at verification and there is no evidence to indicate that this project was substantially completed during the POI, we did not consider it in our calculations for the final determination.

Comment 6: Collapsing Beauce-Atlas’ Affiliate, Steltec

Beauce-Atlas’ Case Brief

- At the *Preliminary Determination*, Commerce collapsed Beauce-Atlas with Fabrication Beauce-Atlas and Structure Beauce-Atlas.¹¹² However, Commerce did not include Steltec as part of the collapsed entity.
- The same facts that led Commerce to find affiliation between Beauce-Atlas, Fabrication Beauce-Atlas, and Structure Beauce-Atlas prior to the *Preliminary Determination* support finding that Steltec is affiliated with these entities.¹¹³ Therefore, Commerce should find that Steltec is affiliated with the collapsed entity.
- While Steltec does not fabricate the subject merchandise, Beauce-Atlas demonstrated at verification that Steltec is fully involved in the production process, providing drafting services throughout the entire lifecycle of the project. In addition, its operations are significantly intertwined with Beauce-Atlas, Fabrication Beauce-Atlas, and Structure Beauce-Atlas.¹¹⁴
- Commerce collapsed Beauce-Atlas because “it is the entity primarily responsible for the sale of the subject merchandise to the United States and was the exporter of record” and because “of a relationship which presents a significant potential for manipulation.”¹¹⁵

¹¹⁰ See Commerce’s Rejection Letter.

¹¹¹ See *DRAMS from Korea* IDM at Comment 2; *Diamond Sawblades from China* IDM at Comment 3; *CTL Plate from Korea* IDM at Comment 2; *OCTG from China* IDM at Comment 30.

¹¹² See Beauce-Atlas’ Case Brief at 14 (citing PDM at 5 and Memorandum, “Antidumping Duty Investigation of Fabricated Structural Steel from Canada: Les Constructions Beauce-Atlas Preliminary Affiliation and Collapsing Memorandum,” dated August 9, 2019).

¹¹³ *Id.* at 14-15 (citing Beauce-Atlas’ April 30, 2019 AQR at A-7 and Exhibit A-10).

¹¹⁴ *Id.* at 17 (citing Beauce-Atlas’ CVR at VE-5).

¹¹⁵ See Beauce-Atlas’ Case Brief at 16 (citing Memorandum, “Antidumping Duty Investigation of Fabricated Structural Steel from Canada: Les Constructions Beauce-Atlas Preliminary Affiliation and Collapsing Memorandum,” dated August 9, 2019 (CBA Collapsing Memo) at 1).

While Steltec is not the exporter of record for Beauce-Atlas' sales of subject merchandise, there is nothing preventing Steltec from assuming this role.

Petitioner's Rebuttal Brief

- Commerce's regulations provide that it will only collapse an affiliated producer where it has production facilities for similar or identical products that would not require substantial retooling.¹¹⁶
- Commerce does have a practice of collapsing non-producing sales affiliates with producing affiliates where the role of producer and seller could switch from one entity to another; however, the same reasoning does not apply to collapsing a non-producing affiliate Steltec with Beauce-Atlas.¹¹⁷
- Unlike Structure Beauce-Atlas and Fabrication Beauce-Atlas, Steltec does not produce fabricated structural steel under Beauce-Atlas' control.¹¹⁸ Therefore, the relationship between Beauce-Atlas and Steltec does not give rise to the possibility that they could switch the roles of producer and seller.

Commerce's Position:

We disagree that we should collapse Steltec with Beauce-Atlas, Fabrication Beauce-Atlas, and Structure Beauce-Atlas for the final determination. Section 351.401(f) of Commerce's regulations provide that we will collapse two affiliated producers when those producers have "production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities... and that there is a significant potential for the manipulation of price or production." Steltec is not a producer of fabricated structural steel; thus, because it does not have production facilities for similar or identical products, we find no basis to collapse it with Beauce-Atlas, Fabrication Beauce-Atlas, and Structure Beauce-Atlas pursuant to 19 CFR 351.401(f).

We also disagree with Beauce-Atlas's claim that, because Steltec provides drafting services throughout the life of a project, this is sufficient to meet the requirements of 19 CFR 351.401(f). The information on the record demonstrates that Steltec provides drafting services, a major input to the fabrication of structural steel, but *does not produce* the subject merchandise.¹¹⁹ There is no provision under 19 CFR 351.401(f) to collapse providers of major inputs, and Beauce-Atlas does not cite any cases as support for its position where we have done this. Thus, we find no basis to collapse Steltec because it provides drafting services to Beauce-Atlas.

Finally, although Beauce-Atlas argues that Steltec could become the exporter of its subject merchandise, our collapsing regulations contemplate collapsing affiliates who currently have

¹¹⁶ See Petitioner's Case Brief at 36-37 (citing 19 CFR 351.401(f)).

¹¹⁷ *Id.* at 37 (citing *Certain Frozen Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004), and accompanying IDM at Comment 5).

¹¹⁸ *Id.* at 37 (citing CBA Collapsing Memo at 6 and Beauce-Atlas' CVR at 4).

¹¹⁹ Although this information is BPI on pages A-7 and A-25 Beauce-Atlas' April 30, 2019 AQR, Beauce-Atlas' disclosed that Steltec provides drafting services in footnote 43 of the public version of its case brief.

production facilities. In situations where Commerce has collapsed affiliated exporters, it has done so where the company is exporting the subject merchandise, not merely where it could possibly become the exporter.¹²⁰

Comment 7: Whether Commerce Double Counted a Billing Adjustment in the *Preliminary Determination*

Beauce-Atlas' Case Brief

- In the *Preliminary Determination* Commerce inadvertently double counted the billing adjustment reported by Beauce-Atlas by deducting it from the starting project price.¹²¹
- Because Beauce-Atlas' reported starting project price already accounted for billing adjustments, there was no need for Commerce to deduct the billing adjustment in its margin calculations.¹²²

No other party commented on this topic.

Commerce's Position:

We agree with Beauce-Atlas that it reported the starting project price net of billing adjustments. Therefore, we did not separately deduct billing adjustments in our margin calculations for Beauce-Atlas for the final determination.¹²³

Comment 8: Adjusting Revenue for One Home Market Project With a Delayed Payment

Beauce-Atlas' Case Brief

- At the sales verification, Commerce observed that Beauce-Atlas had not received the final payment for project 1311, a home market sale used for calculating CV selling expenses and profit in the *Preliminary Determination*.¹²⁴
- Beauce-Atlas demonstrated that it expects to receive final payment for this project by providing correspondence between its project manager and the customer. Moreover, at the cost verification, Commerce reviewed the costs associated with this project, as well as the estimated payment.¹²⁵

¹²⁰ See *Certain Steel Nails from Malaysia: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination and Extension of Provisional Measures*, 79 FR 78055 (December 29, 2014), and accompanying PDM at 12-14, unchanged in *Certain Steel Nails from Malaysia; Final Determination of Sales at Less-Than-Fair-Value*, 80 FR 28969 (May 20, 2015); see also *United States Steel Corp. v. United States*, 179 F. Supp. 3d 1114, 1135 (CIT 2016).

¹²¹ See Beauce-Atlas' Case Brief at 19 (citing Beauce-Atlas' Prelim Calc Memo).

¹²² *Id.* (citing Beauce-Atlas' July 16, 2019 SCQR at C-25).

¹²³ See Beauce-Atlas' Final Sales Calc Memo at 2.

¹²⁴ See Beauce-Atlas' Case Brief at 18 (citing Beauce-Atlas' SVR at 15).

¹²⁵ *Id.* (citing Beauce-Atlas' SVR at VE-26; and Beauce-Atlas' CVR at VE-9 and VE-26).

- Beauce-Atlas also demonstrated that, if it does not receive payment from a customer for a change order, then it has no obligation to pay the service provider on that specific change order.¹²⁶
- Because record evidence demonstrates that Beauce-Atlas expects to receive payment, Commerce should not adjust the reported sales revenue for this project for purposes of calculating CV profit.

Petitioner's Rebuttal Brief

- At verification, Commerce identified an outstanding payment for project 1311. It is uncertain whether Beauce-Atlas will eventually receive this payment or that all of the corresponding costs for this project will be booked.¹²⁷
- Unless project 1311 is fully paid, Commerce cannot determine whether this project is a profitable home market sale. Therefore, Commerce should exclude project 1311 from the calculation of CV selling expenses and profit.

Commerce's Position:

We continue to include home market project 1311 as part of the calculation of CV profit and selling expenses for purposes of the final determination. While Beauce-Atlas has not yet received the final payment from the customer for this project,¹²⁸ at verification we found no indication that the outstanding amount would not be paid. Rather, we examined correspondence between Beauce-Atlas and its customer indicating that the customer will eventually pay the outstanding amount.¹²⁹ This approach is consistent with our normal practice to include sales that have not been fully paid in our margin calculations.¹³⁰

Comment 9: Calculating G&A and INTEX Based on the Revised COM

Petitioner's Case Brief:

- In the *Preliminary Determination*, Commerce modified Beauce-Atlas' reported COM to account for certain adjustments relating to affiliated transactions. While Commerce did not apply Beauce-Atlas' G&A and INTEX rates to the adjusted COM, it should do so for the final determination.¹³¹

¹²⁶ *Id.* at 18-19 (citing Beauce-Atlas' CVR at VE-9).

¹²⁷ See Petitioner's Case Brief at 28 (citing Beauce-Atlas' SVR at 15).

¹²⁸ See Beauce-Atlas' SVR at 15.

¹²⁹ *Id.* at VE-26.

¹³⁰ See, e.g., *Certain Uncoated Groundwood Paper from Canada: Final Determination of Sales at Less Than Fair Value*, 83 FR 39412 (August 9, 2018), and accompanying IDM at 5.

¹³¹ See Petitioner's Case Brief at 33.

Beauce-Atlas' Rebuttal Brief:

- Commerce should not recalculate Beauce-Atlas' G&A and INTEX and apply them to the revised COM, because doing so is inconsistent with Commerce's practice.¹³²
- In the *Preliminary Determination*, Commerce calculated Beauce-Atlas' G&A and INTEX based on Gestion Beauce-Atlas' Inc.'s (Gestion Beauce-Atlas') consolidated financial statements. The only revision to COM was to add the inter-company profit deducted for Steltec.¹³³
- Gestion Beauce-Atlas' consolidated financial statements include Steltec's intercompany profit that Commerce added to COM for the *Preliminary Determination*. Commerce's practice is to calculate G&A and INTEX ratios that are consistent with the manner in which the expenses are applied to COM that contains a denominator that is consistent with which the expenses are allocated because it is mathematically correct. It is mathematically incorrect because the denominator of both ratios was calculated using a COGS that did not include Steltec's profit, because it was eliminated for financial reporting through inter-company transactions. Thus, to apply the ratios to an adjusted COM that includes these inter-company transactions creates an imbalanced application of G&A and INTEX costs. Therefore, it would be mathematically incorrect to apply these ratios to a recalculated COM that includes the intercompany profit.¹³⁴
- Nevertheless, if Commerce decides to apply the G&A and INTEX ratios to the revised COM, then Commerce would also need to adjust the denominator of the G&A and INTEX ratios to add back Steltec's profit.¹³⁵

Commerce's Position:

We have not applied Beauce-Atlas' G&A and INTEX ratios to the revised COM calculated for *Preliminary Determination* in our calculations for the final determination. For the *Preliminary Determination*, we adjusted Beauce-Atlas' COM to add profit from transactions Beauce-Atlas conducted with its affiliate, Steltec.¹³⁶ For financial reporting purposes, profit on these inter-company transactions was eliminated, as seen on Gestion Beauce-Atlas' consolidated financial statements (Beauce-Atlas' parent company).¹³⁷ We note that we used Gestion Beauce-Atlas' consolidated cost of goods sold (COGS) denominator to calculate Beauce-Atlas' G&A and INTEX ratios, which does not include profit relating to inter-company transactions between Beauce-Atlas and Steltec.

In calculating the G&A and INTEX ratios, a respondent divides its fiscal year administrative expenses (G&A) and financial expenses (INTEX), respectively, by the fiscal year cost of goods

¹³² See Beauce-Atlas' Rebuttal Brief at 14.

¹³³ *Id.* at 15.

¹³⁴ *Id.* (citing *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*; 2016-2017, 84 FR 32720 (July 9, 2019), and accompanying IDM at Comment 13; and *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 77 FR 63291 (October 16, 2012), and accompanying IDM at Comment 2).

¹³⁵ *Id.* at 16.

¹³⁶ See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination - Les Constructions Beauce-Atlas Inc.," dated September 3, 2019 (Preliminary Cost Calc Memo).

¹³⁷ See Beauce-Atlas' April 30, 2019 AQR at Exhibit A-10.

sold amounts. The calculated G&A and INTEx rates are then applied (*i.e.*, multiplied) by the reported COM to arrive at the per-unit G&A and INTEx amounts. In calculating the ratios, the elements in the respondent's denominator (*i.e.*, materials, labor, production overheads, etc.) must be consistent with the COM to which the rates are applied. Therefore, it would be inaccurate to apply Beauce-Atlas' G&A and INTEx ratios, which are calculated based on a cost of goods sold denominator that excludes the profits from certain affiliated party transactions, to the adjusted COM that includes such profit. To ensure that the denominator of the G&A and INTEx rate calculations is consistent with the base to which they are applied, for the final determination we did not apply Beauce-Atlas' G&A and INTEx rates to the COM adjustment (*i.e.*, inter-company profit on transactions with Steltec) made for the *Preliminary Determination*.

Comment 10: Treatment of All of Canatal's U.S. Sales as CEP Sales

Petitioner's Case Brief

- Because of the extent of the comingling of operations between Canatal's U.S. and Canadian operations, including the activities CSU performed in support of all of U.S. sales, Commerce should treat all of Canatal's U.S. sales as CEP sales.
- The overarching goal of the AD law is to ensure a fair comparison between U.S. and home market prices. Further, it is Commerce's duty to determine margins as accurately as possible and to use the best information to do so.¹³⁸
- The underlying assumption of EP sales is that the seller has no U.S. activity that adds value to the merchandise that is reflected in the price to the customer. The statute provides for additional adjustments applicable to CEP sales in order to remove all costs incurred in the United States by an affiliated party from the starting price.¹³⁹
- Commerce determined to treat most of Canatal's sales as EP sales solely because it determined that the sales were made prior to importation. However, the statute provides that a CEP sale can also occur before importation. Commerce must take into account the high level of comingling of operations, intercompany transactions, and profit sharing between the U.S. and Canadian entities in considering whether to treat Canatal's sales as CEP sales.¹⁴⁰
- In order to estimate the starting price based on EP, Commerce had to resort to a novel methodology in the *Preliminary Determination* to allocate the total contract price based on the relative costs incurred in the United States and Canada.¹⁴¹ Commerce's application of this methodology was an implicit acknowledgement of the need to make appropriate adjustments to price for economic activities occurring in the United States. This methodology can lead to distortions because many of the costs are based on transfer

¹³⁸ See Petitioner's Case Brief at 19-20 (citing section 772(a) of the Act; *Lasko Metal Products, Inc. v. United States* 43 F.3d 1442 (Fed. Cir. 1994); and *PSC VSMPO-AVISMA Corp. v. United States*, 33 CIT 1593, 1601 (CIT 2009)).

¹³⁹ *Id.* at 20-22 (citing section 772(d) of the Act).

¹⁴⁰ *Id.* at 22-24 (citing Canatal's May 31, 2019 Supplemental Section A Questionnaire Response at 14 and Exhibit SA-2 (Canatal's May 31, 2019 SAQR); and Canatal's April 30, 2019 AQR at A-8, A-9, A-30, Exhibit A-7e, and Exhibit A-7f).

¹⁴¹ *Id.* at 25 (citing PDM at 10).

prices. Instead, Commerce should use Canatal's actual costs and make adjustments to price using the CEP methodology.

Canatal's Rebuttal Brief

- Commerce's treatment of most of Canatal's U.S. sales as EP sales was supported by substantial evidence and should not be changed in the final determination.¹⁴²
- The petitioner incorrectly points to CSU's activities for Canatal's U.S. sales as support for its contention that Canatal's sales should be considered CEP sales. In fact, it is Canatal that provides services and activities in support of CSU's sales in the United States.¹⁴³
- Contrary to the petitioner's claim, profit sharing between Canatal and CSU does not occur on every U.S. sale, but only on those transactions when Canatal or CSU provides some fabricated structural steel for the other company's project.¹⁴⁴
- While CSU may perform certain supervisory activities at the job site for Canatal's sales, these activities are only performed after the importation of the fabricated structural steel. CSU does not perform selling activities related to Canatal's sales.
- If Commerce reclassifies Canatal's EP sales as CEP sales, it should not apply CEP profit for installation, supervisory services, or additional materials. The statute limits additional adjustments for CEP sales to certain commissions, expenses directly related to the sale, and selling expenses. Installation, supervisory services, and additional materials expenses do not meet the definition of direct selling expenses.¹⁴⁵

Commerce's Position:

We continue to find that, with the exception of Canatal's sales reported as CEP transactions, Canatal's U.S. sales are properly classified as EP transactions.¹⁴⁶ The Act defines CEP as follows:

The term "constructed export price" means the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter...¹⁴⁷

We verified that Canatal's reported EP transactions involved projects that were sold outside the United States (*i.e.*, by Canatal's staff in Canada).¹⁴⁸ Moreover, none of these projects was sold

¹⁴² See Canatal's Rebuttal Brief at 3-4 (citing section 772(a) of the Act, and Canatal's SVR).

¹⁴³ *Id.* at 4-5 (citing Petitioner's Case Brief at 23; Canatal's April 30, 2019 AQR at A-8 – A-9; Canatal's September 10, 2019 Second Section D Supplemental Questionnaire at SSD-4 (Canatal's September 10, 2019 SSDQR); and Canatal's SVR at VE-7 – VE-9 and VE-60).

¹⁴⁴ *Id.* at 5-6 (citing Petitioner's Case Brief at 19; and Canatal's April 30, 2019 AQR at A-30).

¹⁴⁵ *Id.* at 7-8 (citing Petitioner's Case Brief at 20-22; and sections 772(c)(2) and 772(d) of the Act).

¹⁴⁶ See PDM at 9-10; *see also* Comment 2, above.

¹⁴⁷ See section 772(b) of the Act.

¹⁴⁸ See Canatal's April 30, 2019 AQR at A-19 – A-20 and A-23; Canatal's May 31, 2019 SAQR at 5; Canatal's May

by or for the account of CSU. Given that these transactions were neither “sold in the United States” nor sold “by a seller affiliated with the producer or exporter,” there is no statutory basis under section 772(b) of the Act to reclassify these sales as CEP sales.

We also disagree that CSU performed selling activities for Canatal’s U.S. sales or that there was a comingling of Canatal’s and CSU’s operations for these sales. Contrary to the petitioner’s claims, the only activity related to Canatal’s sales, which CSU supported, relate to project supervision.¹⁴⁹ While the two companies do engage in profit sharing, this only occurs when CSU supplies fabricated structural steel for a Canatal project, or when Canatal supplies fabricated structural steel for a CSU project.¹⁵⁰ To the extent that Canatal and CSU share some operations, it is with respect to Canatal’s activities for CSU’s sales of U.S.-manufactured fabricated structural steel. Specifically, Canatal provides for CSU: (1) programming, detailing, and engineering services in support of CSU’s manufacturing operations;¹⁵¹ and (2) accounting, human resources management, and procurement services in support of CSU’s administrative operations.¹⁵² Moreover, we found no evidence at verification that CSU is involved in Canatal’s U.S. sales process.¹⁵³ As a result, we continued to treat the majority of Canatal’s reported U.S. sales as EP transactions in our calculations for the final determination.

Comment 11: Canatal’s Further Manufacturing Costs for a CEP Sale

Canatal’s Case Brief

- At Canatal’s CEP verification, Commerce found that Canatal had not reported further manufacturing costs and U.S. inland freight expenses for a portion of the Canadian fabricated structural steel included in one CEP sale, project 1579.¹⁵⁴ The quantity of Canadian fabricated structural steel in the project represents less than two percent of the total quantity of the CEP sale.¹⁵⁵
- The record contains the information necessary to calculate further manufacturing and inland freight expenses for this project, if Commerce determines to make such adjustments.¹⁵⁶ While Canatal made a reporting error, it emphasizes the *de minimis*

24, 2019 CQR at 8; Canatal’s July 12, 2019 Supplemental Section C Questionnaire Response at 18-20; and Canatal’s SVR at 6, and VE-3, VE-4, and VE-7 – VE-10.

¹⁴⁹ See Canatal’s April 30, 2019 AQR at A-8 – A-9; and Canatal’s July 12, 2019 SQR at 19.

¹⁵⁰ See Canatal’s April 30, 2019 AQR at A-30.

¹⁵¹ *Id.* at A-8.

¹⁵² *Id.*

¹⁵³ See Canatal’s SVR at 6, and VE-7 – VE-9 and VE-60; and CSU’s SVR at 4.

¹⁵⁴ See CSU’s SVR at 9.

¹⁵⁵ See Canatal’s Case Brief at 20 for business proprietary information concerning this sale which cannot be discussed here.

¹⁵⁶ *Id.* at 20-21, 23-25 and Exhibits CB-1 and CB-2 (citing CSU’s SVR at VE-1 and VE-9; Canatal’s May 24, 2019 CQR at Exhibit C-7; CSU’s SVR at VE-16; Canatal’s September 10, 2019 SSDQR at Exhibits SSD-2 and SSD-3, and Canatal’s CVR at VE-2).

nature of this error and its full cooperation in this investigation, noting that cooperation “does not require perfection and recognizes that mistakes sometimes occur.”¹⁵⁷

- A portion of the Canadian fabricated structural steel for this CEP sale was produced by an unaffiliated company in Canada. This quantity should not be included in Commerce’s calculations, because Canatal did not produce it. Although Commerce may limit its examination to certain exporters or producers, Commerce is not authorized to impute the COP for one company’s merchandise to another. Accordingly, if Commerce includes the Canadian fabricated structural steel not produced by Canatal in the margin calculation, it must do so in a way that is not distortive.¹⁵⁸

Petitioner’s Rebuttal Brief

- Canatal does not dispute that the information first provided at verification should have been provided earlier in the investigation in response to Commerce’s questionnaires. While the standard for a party’s cooperation may not require perfection, it also “does not condone inattentiveness, carelessness, or inadequate record keeping.”¹⁵⁹
- In determining whether or not to apply AFA for Canatal’s failure to report the information prior to verification for this CEP sale, Commerce should not take into account the volume of Canatal’s submitted information but, rather, whether the omission was the result of carelessness or inattentiveness.¹⁶⁰

Commerce’s Position:

At our verification of Canatal’s CEP sales, we determined that Canatal failed to disclose that it first shipped a portion of the subject merchandise included for project 1579 to Canatal’s U.S. affiliate, CSU, which CSU further processed and subsequently shipped to the project job site.¹⁶¹ Prior to verification, in its questionnaire responses, Canatal stated that none of its U.S. sales underwent further manufacturing in the United States prior to delivery at the project job site.¹⁶² Accordingly, Canatal failed to report the further manufacturing expenses and U.S. inland freight expenses that it incurred associated with this sale.

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that if necessary information is not available on the record or if an interested party or any other person: (1) withholds information that has been requested by Commerce; (2) fails to provide information within the established deadlines or in the form or manner requested, subject to section 782(c)(1) and section 782(e) of

¹⁵⁷ *Id.* at 25-27 (citing *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*)).

¹⁵⁸ *Id.* at 22-23 (citing section 777A(c)(2) of the Act; 19 CFR 351.204(c)(2); and *Shenyang Yuanda Aluminum Indus. Eng’g Co. v. United States*, 146 F. Supp. 3d 1331, 1347 (CIT 2016)).

¹⁵⁹ See Petitioner’s Rebuttal Brief at 39 (citing *Nippon Steel*, 337 F. 3d at 1382).

¹⁶⁰ *Id.* at 39-40 (citing section 776 of the Act).

¹⁶¹ See CSU’s SVR at 9.

¹⁶² See Canatal’s April 24, 2019 SCEQR, at 3 (“However, once FSS is fabricated, no further manufacturing is performed, merely installation or erection of the completed pieces.”) and 4 (“For{CEP} sales, Industries Canatal fabricates structural steel in Canada and delivers it to the job site in the United States, but the sale is to its U.S. affiliate, Canatal Steel USA. The FSS is not further manufactured in the United States.” (emphasis in original)); and Canatal’s AQR at A-3.

the Act; (3) significantly impedes a proceeding; or (4) provides information but the information cannot be verified, then Commerce shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Moreover, section 776(b) of the Act provides that, if Commerce finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting the facts otherwise available. In addition, the SAA explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”¹⁶³

In *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit (CAFC) noted that, while the statute does not provide an express definition of the “failure to act to the best of its ability” standard, the ordinary meaning of “best” is “one’s maximum effort.”¹⁶⁴ Thus, according to the CAFC, the statutory mandate that a respondent act to the “best of its ability” requires the respondent to do the maximum it is able to do. The CAFC indicated that inadequate responses to an agency’s inquiries would suffice to find that a respondent did not act to the best of its ability. While the CAFC noted that the “best of its ability” standard does not require perfection, it does not condone inattentiveness, carelessness, or inadequate record keeping.¹⁶⁵ The “best of its ability” standard recognizes that mistakes sometimes occur; however, it requires a respondent to, among other things, ‘have familiarity with all of the records it maintains,’ and ‘conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of’ its ability to do so.”¹⁶⁶

We find that the application of facts available is appropriate under section 776(a)(1) of the Act which provides that, if the necessary information is not on the record, Commerce shall use the facts otherwise available in reaching its determination. As noted above, at verification, we found that Canatal failed to report the further manufacturing expenses and U.S. inland freight expenses incurred on one of Canatal’s CEP sales. Thus, we do not have the actual data on the record to accurately calculate a dumping margin for this sale. Therefore, we must base the dumping margin for this sale on facts available. Section 782(d) of the Act does not change this decision because, although Commerce issued supplemental questionnaires to Canatal, Commerce was not aware of these reporting omissions until verification; thus, it was unable to provide Canatal with an opportunity to remedy the omitted information through a supplemental questionnaire.

In addition, we find that Canatal’s failure to report complete information for this sale (*i.e.*, all associated expenses, using the records over which it maintained control), indicates that Canatal did not act to the best of its ability to comply with our requests for information. While the CAFC noted that the “best of its ability” standard does not require perfection, it does not condone

¹⁶³ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 870; see also *Notice of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); and *Notice of Final Determination of Sales of Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

¹⁶⁴ See *Nippon Steel*, 337 F.3d at 1382-83.

¹⁶⁵ *Id.* at 1382.

¹⁶⁶ *Id.*

inattentiveness, carelessness, or inadequate record keeping.¹⁶⁷ We find that Canatal’s failure to report the further manufacturing expenses and U.S. inland freight expenses it incurred on this sale in its U.S. sales database is not indicative of doing the maximum one is able to do. By failing to provide this information in a timely manner, Canatal significantly impeded this investigation. Hence, we find that the application of AFA is appropriate, under section 776(b) of the Act, to account for Canatal’s unreported expense data for this U.S. sale.

As partial AFA, we have assigned the highest non-aberrational, transaction-specific dumping margin calculated for Canatal to this sale.¹⁶⁸ In light of the fact that we are relying on Canatal’s own information obtained during the course of this investigation, there is no requirement that Commerce corroborate this information pursuant to section 776(c) of the Act.

Comment 12: Whether One U.S. Project is In-Scope Merchandise

Canatal’s Case Brief

- Project 1572 consists of non-subject merchandise and, thus, this project should be removed from the sales and cost files.
- The materials related to this project—stairs, and theater catwalk and theatrical lighting products—are outside the scope of the investigation because they are not structural steel products. Therefore, the issue of removing this project from Commerce’s calculations is not a scope issue.
- The Canadian portion of this project is not fabricated structural steel because, as explained in Canatal’s supplemental questionnaire responses, it is not “structural,” but more like scaffolding, and is not used as part of a building structure.¹⁶⁹ The pipe material used in this project conforms to ASTM specification A53 Grade B, which is not the same as the round hollow structural section shapes mentioned in the scope; as a result, it is not in-scope merchandise.¹⁷⁰

Petitioner’s Rebuttal Brief

- Commerce should not remove project 1572 from Canatal’s sales and cost files unless it renders a scope determination that the material at issue is non-subject merchandise. Whether a particular product falls within the scope of an investigation is, by definition, a scope issue.
- Commerce should make its determination regarding project 1572 as part of its final determination regarding the scope of the fabricated structural steel investigations, and not exclude the project unless it determines that the merchandise is outside the scope.

¹⁶⁷ *Id.*

¹⁶⁸ See Canatal’s Final Calc Memo at 3.

¹⁶⁹ See Canatal’s Case Brief at 7 (citing Canatal’s Letter, “Fabricated Structural Steel from Canada: Industries Canatal Inc.’s Response to the Second Supplemental Questionnaire for Section A and Section C,” dated August 14, 2019 at Exhibit SC-MC-2).

¹⁷⁰ *Id.* (citing Canatal’s Letter, “Fabricated Structural Steel from Canada (A-122-864, A-201-850, A-570-102, C-122-865, C-201-851, and C-570-103): Letter in Lieu of Scope Brief,” dated October 1, 2019).

Commerce's Position:

We disagree with Canatal that the merchandise at issue in project 1572 (*i.e.*, ASTM specification A53 Grade B) is excluded from the scope. Commerce addressed this issue in the Preliminary Scope Memorandum, stating:

...{G}iven record information indicating that pipe meeting API 5L GR.B, ASTM A106 GR.B, or ASTM A53 GR.B can be suitable for structural applications, it would not be appropriate to exclude from the scope of these investigations pipe meeting these specifications, if the pipe has been fabricated for erection or assembly into structures. Hence, we preliminarily find that pipe meeting API 5L GR.B, ASTM A106 GR.B, or ASTM A53 GR.B that also meets the description of the scope of these investigations and that is not covered by an existing AD or CVD order, as applicable, is not outside the scope of these investigations.¹⁷¹

Commerce has not changed its determination regarding pipe meeting ASTM specification A53 Grade B in its Final Scope Memorandum.¹⁷² Thus, we find no basis to consider the merchandise in project 1572 outside the scope of this investigation. As a result, we continued to include project 1572 in our margin calculations for Canatal for the final determination.

Comment 13: Revisions to Canatal's Data Based on Commerce's Verification Findings

Canatal's Case Brief

- In response to Commerce's request, Canatal submitted database revisions based on verification findings.¹⁷³ While Canatal agrees with most of these revisions, it proposes additional revisions.
- For project 1565, the revision to installation expenses reflected an amount that had been reported as part of direct overhead expenses. If Commerce continues to revise installation expenses, it must also make corresponding adjustments to direct overhead and packing expenses, where Canatal initially accounted for these expenses to avoid double counting.¹⁷⁴
- For project 1572, Commerce should revise the subcontractor fabrication services expense (SUBSERFAB) affected by the revision to the Canadian-sourced additional materials expense, to avoid double-counting by accounting for the same expense twice. In addition, where Commerce instructed Canatal to revise either the total expense amount or

¹⁷¹ See Memorandum, "Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Second Preliminary Scope Decision Memorandum," dated September 3, 2019, (Preliminary Scope Memorandum) at 49.

¹⁷² See Memorandum "Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Final Scope Decision Memorandum," dated concurrently with this memorandum (Final Scope Memorandum).

¹⁷³ See Canatal's Letter, "Fabricated Structural Steel from Canada: Industries Canatal Inc.'s Submission of Revised U.S. Sales Database," dated November 7, 2019.

¹⁷⁴ See Canatal's Case Brief at 28-29 and Exhibit CB-3 (citing Canatal's SVR at 12 and VE-38).

the per-unit amount, but not both, Commerce should make additional adjustments to both fields.¹⁷⁵

- For project 1579, Commerce requested that Canatal adjust the quantity of Canadian fabricated structural steel in the project. Commerce should also recalculate the per-unit expense amounts based on that quantity.¹⁷⁶

No other party commented on this topic.

Commerce's Position:

We agree with Canatal and made the additional adjustments set forth in its case brief for projects 1565 and 1572.¹⁷⁷ However, as discussed in Comment 11, above, we applied AFA to project 1579 in our calculations for the final determination. Therefore, we did not make the additional adjustments Canatal noted for project 1579.

Comment 14: Calculation of CV Selling Expenses and Profit

Canatal's Case Brief

- If Commerce revises the combined CV selling expenses and profit ratio that it calculated in the *Preliminary Determination* to increase it so that it becomes “aberrational,” then Commerce should instead rely on the data from the fiscal year 2018 and 2019 audited financial statements of ADF Group, Inc. (ADF Group), a Canadian fabricated structural steel producer, to calculate CV selling expenses and profit for Canatal as “any other reasonable method” under section 773(e)(2)(B)(iii) of the Act.¹⁷⁸
- Commerce should not rely on the information provided by the petitioner for Empire Industries Ltd. (Empire) for CV selling expenses and profit because only 6.2 percent of the company's sales were of fabricated structural steel.¹⁷⁹

Petitioner's Rebuttal Brief

- Canatal's argument is based on conjecture, and Canatal does not specify what might be considered an aberrational profit for this industry.
- Canatal acknowledges that Commerce has the authority to use Beauce-Atlas' profit and selling expense ratios to calculate Canatal's CV and that this information was reasonable to use in the *Preliminary Determination*.¹⁸⁰

¹⁷⁵ *Id.* at 29-30 (citing CSU's SVR at 8 and VE-7).

¹⁷⁶ *Id.* at 30 and Exhibit CB-4 (identifying the specific items for adjustment).

¹⁷⁷ For further discussion of these adjustments, *see* Canatal's Final COP Calc Memo and Canatal's Final Calc Memo.

¹⁷⁸ *See* Canatal's Case Brief at 27 (citing 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 (Canatal CV Profit Submission), at Exhibit 1).

¹⁷⁹ *Id.* at 28 (citing PDM at 14-15; and Petitioner's Letter, “Certain Fabricated Structural Steel from Canada: Petitioner's Submission of Other Factual Information,” (Petitioner's NFI) dated August 5, 2019).

¹⁸⁰ *See* Petitioner's Rebuttal Brief at 24 (citing Canatal Case Brief at 27).

- The statutory preference is that surrogate CV selling expenses and profit reflect the production and sale of the foreign like product in the foreign country. In addition, Commerce's practice is to exclude from the CV profit calculation information reflecting below-cost sales or sales made at a loss.¹⁸¹
- Beauce-Atlas' CV profit rate, whether or not it changes in the final determination, is not aberrational, and it satisfies all of Commerce's preferences for profitable sales of the foreign like product in the home market.
- Commerce has already noted the deficiencies with the ADF Group's data, because they reflect sales sold at a loss and over 90 percent of its sales were outside Canada. The ADF Group also had manufacturing operations in the United States.¹⁸²
- Relying on a CV profit based on above-cost sales is particularly important in this case, because Commerce is not able to apply its differential pricing analysis and, thus, the margin calculation incorporates the offsetting of low profit, low priced U.S. sales by high profit U.S. sales.¹⁸³

Commerce's Position:

For the final determination, as in 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.¹⁸⁴ Beauce-Atlas' combined CV profit and selling expenses reflect the experience of a Canadian fabricated structural steel producer, on the merchandise under consideration, in the ordinary course of trade.

In the *Preliminary Determination*, we considered and rejected the options for CV profit submitted on the record by the parties, including the fiscal year 2018 audited consolidated financial statements of Empire, a diversified conglomerate in Canada.¹⁸⁵ The submitted information for Empire shows that only 6.2 percent of its sales are related to fabricated structural steel products, and the company shows a loss from continuing operations.¹⁸⁶ Canatal submitted the audited financial statements of the ADF Group for the fiscal years ending January 31, 2018, and January 31, 2019.¹⁸⁷ The ADF Group financial statements show that the company incurred a loss for the period covering 11 months of the POI. The data also indicate that the ADF Group's sales in the home market only accounted for 8.8 percent of revenues in 2018 and 2.6 percent of revenues in 2019.¹⁸⁸ Over 90 percent of each company's sales were not of Canadian sales of fabricated structural steel, and neither company was profitable during the POI. Accordingly, these sources cannot be relied upon as sources for CV profit and selling information because

¹⁸¹ *Id.* at 25 (citing *Biodiesel from Indonesia: Final Determination of Sales at Less Than Fair Value*, 83 FR at 8835 (March 1, 2018), and accompanying IDM at Comment 5; and *Hustee Co. v. United States Steel Corp.*, 180 F. Supp. 3d 1330, 1345-46 (CIT 2016)).

¹⁸² *Id.* at 26 (citing PDM at 15).

¹⁸³ *Id.* at 26-27 and Exhibit 2.

¹⁸⁴ See Canatal's CV Profit Memo at Attachment 1.

¹⁸⁵ See PDM at 14-15.

¹⁸⁶ See Petitioner's NFI at Exhibit 3.

¹⁸⁷ See Canatal CV Profit Submission at Exhibit 2.

¹⁸⁸ *Id.*; see also PDM at 15.

they do not predominantly reflect the experience of a Canadian producer of fabricated structural steel products on home market sales.

Canatal does not define what it considers an aberrational profit. Further, the statute under section 773(e)(2)(B)(ii) of the Act does not include a provision for limiting the profit of other producers; thus, Canatal's argument is not grounded within this provision of the statute. Accordingly, for the final determination, we continued to rely on the home market sales information submitted by Beauce-Atlas to calculate CV profit and selling expenses for Canatal.¹⁸⁹

VII. Recommendation

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

☒

Agree

☐

Disagree

1/23/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

¹⁸⁹ See Memorandum, "Final Determination Constructed Value Selling Expenses and Profit Ratio for Canatal Industries, Inc. (Canatal)" dated concurrently with this memorandum.