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Investigation
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March 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
Sodium Sulfate Anhydrous from Canada and Final Negative
Determination of Critical Circumstances

I. SUMMARY

The Department of Commerce (Commerce) finds that sodium sulfate anhydrous (sodium sulfate) 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). Additionally, Commerce determines that critical circumstances do not exist with regard to imports of sodium sulfate anhydrous from Canada. The period of investigation (POI) is January 1, 2018 through December 31, 2018.

After analyzing the comments submitted by interested parties, we have made changes to the *Preliminary Determination*.¹ We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

Issues

Comment 1: Impairment Losses
Comment 2: Packing Expenses
Comment 3: Freight Variance Correction

¹ See *Sodium Sulfate Anhydrous from Canada: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures*, 84 FR 60375 (November 8, 2019) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

Comment 4: Programming Errors

- A. Calculation for Capping U.S. Freight Revenue
- B. Per-Unit Adjustments to Gross Unit Price
- C. Repacking Variance
- D. Incorporation of the Correct Cost Database

II. BACKGROUND

On November 8, 2019, Commerce published in the *Federal Register* its preliminary affirmative determination in the LTFV investigation of sodium sulfate from Canada, in which we calculated an estimated weighted-average dumping margin for the sole mandatory respondent, Saskatchewan Mining and Minerals Inc. (SMM), of 9.85 percent.² We also postponed the *Final Determination* to March 23, 2020 and invited parties to comment on the *Preliminary Determination*.³ In October and December, we conducted verification of the cost and sales information submitted by SMM.⁴ On January 17, 2020, Cooper Natural Resources, Inc., Elementis Global LLC, and Searles Valley Minerals (the petitioners) and SMM submitted case briefs.⁵ On January 22, 2020, the petitioners, the Government of Canada (GOC) and SMM submitted rebuttal briefs.⁶ On February 28, 2020, we held a public hearing on the issues raised in case and rebuttal briefs.⁷

III. SCOPE OF THE INVESTIGATION

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

² *See Preliminary Determination*, 84 FR at 60375-76.

³ *Id.* 84 FR at 60376.

⁴ *See* Memorandum, “Verification of the Cost Response of Saskatchewan Mining and Minerals Inc. in the Antidumping Duty Investigation of Sodium Sulfate Anhydrous from Canada,” dated December 10, 2019 (Cost Verification Report); *see also* Memorandum, “Verification of the Sales Response of Saskatchewan Mining and Minerals Inc. in the Antidumping Investigation of Sodium Sulfate from Canada,” dated January 9, 2020 (Sales Verification Report).

⁵ *See* Petitioners’ Letter, “Sodium Sulfate Anhydrous from Canada: Petitioners’ Case Brief,” dated January 17, 2020 (Petitioners’ Case Brief); *see also* SMM’s Letter, “Antidumping Duty Investigation of Sodium Sulfate Anhydrous from Canada: Case Brief for SMMI,” dated January 17, 2020 (SMM’s Case Brief).

⁶ *See* Petitioners’ Letter, “Sodium Sulfate Anhydrous from Canada: Petitioners’ Rebuttal Brief,” dated January 22, 2020 (Petitioners’ Rebuttal Brief); *see also* Government of Canada’s Letter, “Rebuttal Brief of the Government of Canada: Antidumping Duty Investigation of Sodium Sulfate Anhydrous from Canada,” dated January 22, 2020 (GOC’s Rebuttal Brief); and SMM’s Letter, “Saskatchewan Mining and Minerals, Inc. Rebuttal Brief,” dated January 22, 2020 (SMM’s Rebuttal Brief).

⁷ *See* Hearing Transcript from Neal R. Gross and Co., Inc., dated March 6, 2020.

IV. CHANGES FROM THE PRELIMINARY DETERMINATION

We made the following changes from the *Preliminary Determination*:

1. Incorporated minor corrections pursuant to verification using revised home-market and U.S. sales databases;⁸
2. Modified the build-up of home-market and U.S. movement expenses to ensure all relevant freight expenses are accounted for and that SMM's freight revenue reported in both markets is capped appropriately by the expenses associated with that same type of activity;⁹
3. Incorporated the revised cost figures into the final margin calculation program.¹⁰

IV. NEGATIVE FINDING OF CRITICAL CIRCUMSTANCES

On August 23, 2019, the petitioners filed allegations that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of subject merchandise from Canada.¹¹ On November 8, 2019, Commerce issued its preliminary critical circumstances determinations for Canada.¹² Pursuant to this determination, Commerce preliminarily determined that critical circumstances did not exist for imports of subject merchandise from SMM and "all others."¹³ Because record information has not changed with respect to our determination of negative critical circumstances for the *Preliminary Determination*, we continue to find that critical circumstances do not exist for imports of sodium sulfate from Canada for this final determination.

V. DISCUSSION OF THE ISSUES

Comment 1: Impairment Losses

Petitioners' Comments:

- Commerce should include SMM's impairment loss on loans to an affiliated company in SMM's general and administrative (G&A) expense ratio.¹⁴
- At the cost verification of SMM, Commerce determined that SMM, through various holding companies, loaned money to an affiliated party.¹⁵
- In 2018, SMM management determined that the loans were impaired, and recorded an impairment loss on SMM's consolidated income statement for the year ending December 31,

⁸ See SMM Final Margin Calculation Memorandum.

⁹ *Id.*

¹⁰ *Id.*

¹¹ See Petitioners' Letter, "Sodium Sulfate Anhydrous from Canada: Critical Circumstances Allegation," dated August 23, 2019 (Critical Circumstances Allegation).

¹² See *Preliminary Determination*.

¹³ *Id.*

¹⁴ See Petitioners' Case Brief at 2-3.

¹⁵ *Id.* at 2.

2018. However, this impairment loss was not included by SMM as part of its reported costs.¹⁶

- Commerce's established practice with respect to impairment losses is to treat them as general expenses, and to include the total amount recorded in the respondent's financial statements in the G&A expense ratio calculation.¹⁷

SMM's Comments:

- Commerce should continue to rely on SMM's reported G&A expense ratio.¹⁸
- In accordance with Commerce's practice, SMM's reported G&A expense ratio properly excludes SMM's non-operating losses related to investments.¹⁹
- It is Commerce's well-established practice to exclude non-operating income and expenses from the calculation of cost of production (COP) and constructed value (CV).²⁰
- Commerce has continually held that including the cost of investment activities in its G&A expense calculation does not accurately capture the cost of production of the foreign like product and subject merchandise.²¹
- As Commerce explained in the *ESBR from Korea Final Determination*, Commerce does "not parse out investment activities, but simply excludes investment gains and losses because investment activities are not related to the general production operations of the company but are rather a separate profit-making activity."²²
- Commerce's cost verification report notes that SMM loaned money to a company, for the purpose of investing in another company.²³
- In 2018, SMM's management determined that the loans for the facility were impaired due to big losses in 2017 which led to no production in 2018.²⁴
- Commerce has a long-held policy of considering money as fungible, *i.e.*, consisting of both debt and equity.²⁵ Thus, the instrument SMM used to structure its investment activities is immaterial to Commerce's analysis of whether the loss is related to an investment activity.²⁶

¹⁶ *Id.* at 2-3 (citing the Cost Verification Report at p. 2; CVE 2 (SMM's Consolidated Financial Statements) at n. 18).

¹⁷ *Id.* at 3.

¹⁸ SMM's Case Brief at 1

¹⁹ *Id.*

²⁰ *Id.* (citing *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Sixteenth Administrative Review*, 76 FR 15291 (March 21, 2011), and accompanying Issues and Decision Memorandum (IDM) at Comment 14 (*CORE from Korea Final Results*); *Polyethylene Terephthalate Resin from Brazil: Final Determination of Sales at Less than Fair Value*, 83 FR 48285 (September 24, 2018) and accompanying IDM at Comment 4).

²¹ *Id.*

²² *Id.* (citing *Emulsion Styrene-Butadiene Rubber from the Republic of Korea: Final Affirmative Determination of Sales at less than Fair Value, and Final Affirmative Determination of Critical Circumstances, in Part*, 82 FR 33045 (July 19, 2017), and accompanying IDM at Comment 3).

²³ *Id.* at 2 (citing Cost Verification Report at 2).

²⁴ *Id.*

²⁵ *Id.* (citing *Notice of Final Results of Antidumping Duty Administrative Review and Final Determination Not to Revoke Order in Part: Canned Pineapple Fruit/ram Thailand*, 66 FR 77851 (December 13, 2000), and accompanying IDM at Comment 19; *Kiswok Indus. Pvt. Ltd. v. United States*, 28 CIT 774, 787 (2004)).

²⁶ *Id.*

- Here, SMM's reported impairment loss is clearly related to investment and nonoperating income and is therefore properly excluded.²⁷
- The notes to SMM's financial statements clearly show that the money loaned was for investment purposes. If it is an investment, Commerce should exclude any impairment from SMM's G&A expense calculation.²⁸
- The statute directs Commerce to rely on a company's normal books and records if such records are kept in accordance with home country GAAP if such practices are not distortive.²⁹
- SMM's financial statements, kept in accordance with Canadian GAAP, demonstrate that the loss at issue is from an investment activity and does not form an integral part of the company's cash flow management for its general operation.³⁰
- Thus, Commerce should continue to rely on SMM's normal books and records and exclude the impairment loss related to SMM's investment from its G&A expense ratio calculation.³¹
- In addition to finding that investment related to gains and losses are non-operating income and expense items, Commerce makes a distinction between gains and losses on the routine disposition of assets and gains or losses associated with the permanent shut down of an entire production facility.³²
- Commerce's position is that the permanent shut down of an entire production facility generates non-recurring income or losses that are not part of a company's normal business operations and are unrelated to the general operation of the company.³³
- It is evident that the investment related losses SMM incurred are indeed non-operating expenses. As such, Commerce should continue to rely on SMM's reported G&A expense ratio calculation for purposes of its final determination.³⁴

Petitioners' Rebuttal Comments:

- Contrary to SMM's assertions, the impairment loss was not related to investment-related activities, but rather, stemmed from an advance to related parties, for the construction of another company.³⁵
- The characterization of expenses in the books and records of the respondent is an important (if not controlling) part of Commerce's evaluation of whether to include them in the G&A

²⁷ *Id.*

²⁸ *Id.* at 2-3.

²⁹ *Id.* at 3 (citing 19 U.S.C. 1677a(f)(I)(A)).

³⁰ *Id.* (citing SMM's Section A Questionnaire Response at Exhibit A-14).

³¹ *Id.*

³² *Id.* at 4 (citing *Large Diameter Welded Pipe from Canada: Final Affirmative Determination of Sales at Less than Fair Value*, 84 FR 6378 (February 27, 2019) (*Welded Pipe from Canada Final Determination*), and accompanying IDM at Comment 8; *Certain Hot-Rolled Steel Flat Products from the United Kingdom: Final Determination of Sales at Less than Fair Value*, 81 FR 53436 (August 12, 2016) (*Hot-Rolled Steel from the UK Final Determination*), and accompanying IDM at Comment 5; *Notice of Final Results of Antidumping Duty Administrative Review, and Final Determination to Revoke the Order in Part: Individually Quick Frozen Red Raspberries from Chile*, 72 FR 6524 (February 12, 2007), and accompanying IDM at Comment 6).

³³ *Id.*

³⁴ *Id.* at 5

³⁵ Petitioners' Rebuttal Brief at 13-4.

expense ratio calculation. Commerce should treat SMM's loss as the company itself did in its books and records – as an impairment loss.³⁶

- SMM's impairment loss did not stem from the trading of securities, equity investments, or real estate projects.³⁷
- An advance to related parties is different from the kinds of activities routinely determined to be investment related by Commerce.³⁸

SMM's Rebuttal Comments:

- In all cases cited by the petitioners, the term impairment is used specifically regarding production assets rather than assets related to investment activity.³⁹
- Commerce treats gains and losses from investment activity as separate from the general operations of the company because a write down of an investment is not related to a company's operations and should not be treated as a general expense.⁴⁰
- Despite the petitioners' insistence that the record is unclear, SMM's financial statements explicitly describe its impairment loss as related to an investment.⁴¹
- The impairment loss that SMM recorded on its consolidation Financial Statements was to recognize that the loan to the affiliated company was impaired, and its collectability was in question. Here, SMM's reported impairment loss is clearly related to investment and nonoperating income and is therefore properly excluded.⁴²
- In *Diocetyl Terephthalate from the Republic of Korea*,⁴³ Commerce clearly stated that it does not include impairment losses on investments in subsidiaries and in joint ventures.
- Moreover, the impairment loss has nothing to do whatsoever with "the cost of producing the foreign like product and the subject merchandise."⁴⁴
- Neither the related company to whom SMM loaned the money for capital contribution purposes, nor the company located in a third country, are involved with the production, sale or distribution of any product produced by SMM. As such, in the final determination, Commerce should continue to exclude the impairment loss related to that investment activity from SMM's G&A expenses.⁴⁵

Government of Canada's Rebuttal Comments:

- Commerce should exclude non-operating expenses related to investment activities from the calculation of SMM's G&A expense ratio calculation.⁴⁶

³⁶ *Id.* at 1, 4.

³⁷ *Id.* at 5.

³⁸ *Id.*

³⁹ See SMM's Rebuttal Brief, at 1-5.

⁴⁰ *Id.*

⁴¹ *Id.* at 2 (citing SMM's Section A Questionnaire Response at Exhibit A-14).

⁴² *Id.*, at 1-5.

⁴³ *Id.* at 3 (citing *Diocetyl Terephthalate from the Republic of Korea: Final Determination of Sales at Less than Fair Value and Final Negative Determination of Critical Circumstances*, 82 FR 28824 (June 26, 2017) (*Diocetyl Terephthalate from the Republic of Korea*), and accompanying IDM at Comment 10).

⁴⁴ *Id.* at 1-5.

⁴⁵ *Id.*

⁴⁶ See GOC's Rebuttal Brief at 1-7.

- Both U.S. law and U.S. international obligations require excluding from G&A such expenses unrelated to the production of the product under investigation.⁴⁷
- The decision to exclude SMM's investment losses from the G&A expense ratio in the preliminary determination is consistent with both the U.S. statutory requirements and Commerce's long-standing practice of excluding from the G&A calculation the gains and losses associated with a company's investment activities.⁴⁸
- Commerce has developed a long-standing practice of including an item in the numerator of the G&A expense ratio only when the income or expense relates to the general production operations of the company.⁴⁹
- This same logic has been extended to situations involving the complete shutdown of production operations. Commerce routinely makes a distinction between gains and losses on the routine disposition of assets and gains as part of continuing production operations, versus those losses associated with the permanent shutdown of an entire production facility.⁵⁰
- Commerce's position has been that the permanent shutdown of an entire production facility generates non-recurring income or losses that are not part of normal business operations and are thus unrelated to the general production operation of the company.⁵¹
- As Commerce has explained: Commerce's "practice is to exclude the closure costs if the respondent can provide evidence that the facility no longer exists or is permanently closed."⁵² The basic principle is the same – G&A expenses should reflect the actual expenses of ongoing production activities related to the merchandise under consideration. They should not reflect unrelated investment activities and should not reflect the lingering extraordinary expenses of shutting down facilities.⁵³
- Based on the submissions by the parties, the record evidence in this case is clear that the expenses at issue are related to investments, not production; and they relate to operations that

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 3 (citing *Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Romania: Final Results of Antidumping Duty Administrative Review and Final Determination Not To Revoke Order in Part*, 70 FR 7237 (February 11, 2005), and accompanying IDM at Comment 2, p. 10 ("Where the income (or expense) relates to the general production operations of the company, {Commerce} includes this item in the calculation of the G&A expense"); *Notice of Final Results of Antidumping Duty Administrative Review: Polyester Staple Fiber from Korea*, 67 FR 63616 (October 15, 2002), and accompanying IDM at Comment 15).

⁵⁰ *Id.* at 4 (citing *Large Diameter Welded Pipe from Canada: Final Affirmative Determination of Sales at Less than Fair Value*, 84 FR 6378 (February 27, 2019), and accompanying IDM at Comment 8, p. 31 ("If the task before Commerce is to determine a particular producer's cost to manufacture a given product (including the costs associated with financing and supporting the producer's general operations), it is not reasonable to include gains or losses on the shutdown of an entire production facility as a product cost"); *Hot-Rolled Steel from the UK Final Determination Certain Hot-Rolled Steel Flat Products from the UK Final Determination* (reducing total restructuring and impairment costs by the impairment costs related to separate legal entities); *Notice of Final Results of Antidumping Duty Administrative Review, and Final Determination to Revoke the Order in Part: Individually Quick Frozen Red Raspberries from Chile*, 72 FR 6524 (February 12, 2007), and accompanying IDM at Comment 6, p. 15 ("Under our current practice, we exclude investment related gains, losses or expenses from the calculation of COP and CV. . . the reasoning. . . is that, in calculating COP and CV, we seek to capture the cost of production of the foreign like product and subject merchandise, and to exclude the cost of investment activities"))).

⁵¹ *Id.* at 1-7.

⁵² *Id.* (citing *Certain Hot-Rolled Steel Flat Products from the UK Final Determination* and accompanying Issues and Decision Memorandum Comment 5).

⁵³ *Id.* at 1-7.

have long since been shut down. They also relate to operations in a third country, not production facilities in Canada.⁵⁴

- These expenses have nothing to do with production of the subject merchandise in Canada during the period of investigation. In accordance with its long-standing practice, and the facts now confirmed at verification, these non-operating expenses relating to SMM's investment activities outside of Canada should continue to be excluded from reported G&A.⁵⁵

Commerce's Position:

We disagree with the petitioners that SMM's impairment loss on its loan to an affiliate should be included in the calculation of SMM's cost of production. The loan was recorded on SMM's financial statements as an "advance to related parties."⁵⁶ The money was lent to an affiliate that is not consolidated with SMM. In 2018, SMM's management determined that the loan was impaired and, thus, SMM recorded an impairment loss during 2018. Record evidence shows that the loan between SMM and its affiliate were recorded and treated as a long-term loan on the Canadian GAAP audited consolidated financial statements (*i.e.*, prior to the loans being written-off). Specifically, SMM's balance sheet shows that the loan was originally recorded as an "advance to related parties" in 2007.⁵⁷

We note that while the loss is described as an "impairment" and the parties focused their comments on G&A expense treatment, apparently because certain types of impairments are recorded to G&A expenses, we find that the item was clearly financial in nature and should be treated as a financial item. Furthermore, we disagree that the borrower's ultimate use of the borrowed funds is relevant to how the lender treats, or records the loan, or in any way changes the nature of the loan itself. In accordance with section 773(f)(1)(A) of the Act, Commerce will normally calculate costs based on the records of the producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles (GAAP) of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise.⁵⁸ As such, we find that the "advance to related parties" was a long-term loan made by SMM that was subsequently impaired once its repayment became unlikely.

Commerce's practice is to calculate the respondent's net interest expense based on the financing expenses incurred on behalf of the highest consolidated group of companies to which the respondent belongs.⁵⁹ In calculating COP and CV, it is Commerce's normal practice to allow a respondent to offset financial expenses with interest income derived from short-term loans, but to exclude interest income earned from long-term sources as these long-term loans are not

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ See Cost Verification Report at Exhibit 2.

⁵⁷ See Cost Verification Report at 2.

⁵⁸ See *Notice of Final Determination of Sales at Less Than Fair Value: Light-Weight Rectangular Pipe and Tube from Mexico*, 73 FR 35649 (June 24, 2008) and accompanying IDM at Comment 10; see also *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Determination of Sales at Less Than Fair Value*, 75 FR 59223 (September 27, 2010) and accompanying IDM at Comment 2.

⁵⁹ See *Notice of Final Determination of Sales at Less than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Mexico*, 67 FR 55800 (August 30, 2002) and accompanying IDM at Comment 8.

associated with the working capital requirements necessary for production activities,⁶⁰ but are rather deemed to be related to investing activities.⁶¹ When the record evidence does not demonstrate that the interest income received is related to a company's working capital, Commerce excludes the interest income earned from that item from the financial expense calculation.⁶² Likewise, we consider it inappropriate to include the impairment loss on the same long-term loans that in this case are not part of the company's working capital, and are deemed to be associated with investing activities. Therefore, we have continued to exclude impairment loss from both the financial expense and G&A expense ratio calculations for the final determination.

Comment 2: Packing Expenses

Petitioners' Comments:

- Commerce found at verification that SMM misreported certain packing expenses (*i.e.*, average tons per truck) for a significant number of sales by volume. The widespread nature of these errors requires the application of partial facts available for the final determination, as the remaining, unverified U.S. and home-market packing expenses are unreliable.⁶³
- As facts available, for the final determination, Commerce should use the verified packing expenses as surrogate expenses for the respective sales in each market.⁶⁴

SMM's Rebuttal Comments:

- The petitioners incorrectly mischaracterize as unverified the inadvertent, clerical error pertaining to the average truck tonnage as part of SMM's packing expenses.⁶⁵
- At verification, Commerce officials discovered these errors using its standard verification procedures by conducting spot-checks. SMM corrected these errors and presented revised values to Commerce officials, which they accepted at verification.⁶⁶
- The petitioners' assertion that SMM's packing costs were unverified is contradicted by statements in the verification report in which Commerce explains how the clerical error in the average truck tonnage was reported. At issue was the calculation of the average tons per truck in the packing-expense calculation and not the underlying packing costs, which Commerce officials tied to SMM's general ledger.⁶⁷
- Commerce's ability to calculate the accurate average tons per truck necessary to correct SMM's clerical error already existed on the record prior to verification. Therefore, there

⁶⁰ See *Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 65 FR 68976 (November 15, 2000) (*DRAMs from Korea*), and accompanying IDM at Comment 7.

⁶¹ See *Timken v. United States*, 852 F. Supp. 1040, 1048 (CIT 1994).

⁶² See *Chlorinated Isocyanurates from Spain: Notice of Final Determination of Sales at Less Than Fair Value*, 70 FR 24506 (May 10, 2005) (*Isos from Spain*), and accompanying IDM at Comment 10.

⁶³ See Petitioners' Case Brief, at 5-7.

⁶⁴ *Id.*

⁶⁵ See SMM's Rebuttal Brief, at 5.

⁶⁶ *Id.*, at 5.

⁶⁷ *Id.*

is no reason to resort to facts available, as the necessary information is not missing from the record.⁶⁸

- Reliance on facts available to fill a perceived gap associated with packing expenses in both the home-market and U.S. sales databases would be unfairly punitive and result in the application of adverse facts available. The sales on which the packing expenses were in error represent an insignificant tonnage shipped by truck, as the majority of SMM's sales were shipped by rail freight. Thus, petitioners misstate the magnitude of the "clerical" error.⁶⁹

Commerce's Position:

We disagree with the petitioners that application of partial facts available is warranted for SMM's packing expenses at issue. Pursuant to section 776(a)(1) and (2) of the Act, Commerce shall, subject to section 782(d) of the Act, apply facts available when it determines that necessary information is not on the record or an interested party: (A) withholds information requested by Commerce; (B) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act.

In this instance, SMM's error with respect to the reported average tonnage packing expenses was discovered by Commerce officials during SMM's sales verification, where Commerce found that SMM had incorrectly copied duplicate information into multiple cells in an Excel worksheet.⁷⁰ We find that the type of error that was discovered is similar in nature to the types of minor corrections that Commerce normally accepts at the outset of verification.⁷¹ That is, based on our examination of this reporting error during verification, we determined that the error pertained to information already on the record of the investigation, and that it stemmed from a mere copying error in an Excel worksheet that was inadvertent, in nature.⁷² Furthermore, Commerce officials used standard verification procedures, as provided in the verification outline,⁷³ to examine the underlying documentation and determine the accuracy of the corrected data. We also determine that the calculation methodology used to correct the error was reasonable and directly related to information on the investigation record.⁷⁴ Because we have the necessary information on the record of this investigation to calculate SMM's dumping margin using information that has been verified, and because the correction to the data is not so extensive that it would otherwise necessitate using a "plug" for missing data, for instance, we disagree with the petitioners that the

⁶⁸ *Id.* at 6.

⁶⁹ *Id.* at 7-9.

⁷⁰ See Sales Verification Report at 14.

⁷¹ See SMM's Letter, "Sodium Sulfate Anhydrous from Canada: Sales Verification Agenda for Saskatchewan Mining and Minerals Inc.," dated November 26, 2019 (Sales Verification Agenda) ("Commerce will consider a minor correction at the outset of verification provided (a) the need for the information was not previously evident, *i.e.*, was discovered during the preparation for verification, (b) such corrections pertain to information already on the record, and (c) the correction(s) corroborates, supports or clarifies information already on the record.") (Verification Agenda Letter).

⁷² See Sales Verification Report at 14.

⁷³ See Verification Agenda Letter.

⁷⁴ See, *e.g.*, SMM IQR - Section B, at 45 and Exhibit B-16 and Section C, at 47 and Exhibit C-22; SMM supplemental questionnaire response (SQR), at 27-31.

use of facts available is appropriate in this instance. Instead, for the final determination, we have updated SMM's reported packing expenses using the corrected packing-expense information that we verified.⁷⁵

Comment 3: Freight Variance Correction

Petitioners' Case Brief:

- Commerce should reject SMM's revised freight variance calculation for certain rail shipments in SMM's home and U.S. markets that SMM presented as a minor correction at the outset of verification.⁷⁶
- SMM's revised freight-variance calculation constitutes a significant methodological change to its reported freight variances. The modification to SMM's freight variance value resulted in a change from a single value for rail shipments to three different freight variance values for rail, rail and truck, and truck shipments, which impacted a large portion of reported U.S. sales. Commerce's practice delineates between corrections considered clerical errors and those that are substantive.⁷⁷

SMM's Rebuttal Brief:

- The freight-variance error presented at the outset of verification was minor, inadvertent, and was consistent with SMM's verified accounting methodology for recording freight expenses in which it failed to capture all year-end adjusting entries.⁷⁸ Furthermore, Commerce accepted SMM's correction to packing expenses as part of the modification to the freight-variance calculation.⁷⁹
- While the petitioners point out the far-reaching impact of the correction on reported sales, this argument rests on the interpretation of the word "minor," which Commerce has previously rejected. In previous cases, including *Fine Denier Staple Fiber from Korea*,⁸⁰ Commerce has previously determined, and the Court of International Trade (CIT) has affirmed, that the impact of a minor correction on a voluminous number of sales transactions does not invalidate the error as minor, in nature.⁸¹ The CIT has previously upheld Commerce's discretion to accept or reject minor corrections presented at verification.⁸²

⁷⁵ See SMM Final Calculation Memorandum.

⁷⁶ See Petitioner's Case Brief at 7.

⁷⁷ *Id.* at 7-9 (citing to *Fine Denier Staple Fiber from the Republic of Korea: Final Affirmative Determination of Sales at Less than Fair Value*, 83 FR 24743 (May 30, 2018) (*Fine Denier Staple Fiber from Korea*), and accompanying IDM at Comment I(a) ("None of the minor corrections accepted at verification were all-encompassing changes such as modifications to the date of sale methodology or reporting new sales or adjustments. Rather, the changes involved correcting minor clerical errors, correcting minor errors in existing calculations, or correcting minor omissions.")).

⁷⁸ SMM's Rebuttal Brief, at 10-11.

⁷⁹ *Id.* at 12.

⁸⁰ See *Fine Denier Staple Fiber from Korea* and accompanying IDM at Comment I(a) (citing *Tatung Co., v. United States*, 18 CIT 1137 1141 (1194)).

⁸¹ See SMM's Rebuttal Brief, at 10-11.

⁸² *Id.* at 11 (citing *Maui Pineapple Co. v. United States*, 264 F. Supp. 2d 1244 (CIT 2003)).

- As upheld by the CIT in *American Brake v. United States*,⁸³ and consistent with the standard language in the verification agenda, Commerce should accept minor corrections, as presented by the company and accepted by Commerce, rather than rely on facts available.⁸⁴

Commerce's Position:

We disagree with the petitioners, and we continue to accept SMM's minor corrections that we accepted at verification. We found during SMM's sales verification that the errors concerning SMM's inland freight variances, which SMM presented as a minor correction, are minor, in nature.⁸⁵ SMM indicated at verification that the error concerning its freight variance was the result of year-end adjusting entries in its accounting system that were inadvertently overlooked when preparing SMM's questionnaire responses.⁸⁶ At verification, we examined the freight variances presented at the outset of verification in conjunction with the qualitative descriptions provided in SMM's narrative responses and quantitative variances reported in SMM's databases.⁸⁷ SMM stated in its questionnaire response that, "SMM has reported an estimated amount here for rail freight because it records inland rail and at a later time, reconciles these estimates with an adjustment entry in its accounting system for freight."⁸⁸ We examined the adjusting entries, confirming the reasonableness of the methodology employed by SMM, and tied the calculations to SMM's accounting system and to its database(s) on the record of this investigation.⁸⁹

Despite the petitioners' argument, we find that the fact that the error impacted a large number of sales transactions does not in and of itself determine whether the error at issue should be considered a minor correction. As stated in Commerce's sales verification agenda, "Commerce will consider a minor correction at the outset of verification provided (a) the need for the information was not previously evident, *i.e.*, was discovered during the preparation for verification, (b) such corrections pertain to information already on the record, and (c) the correction(s) corroborates, supports or clarifies information already on the record."⁹⁰ While the petitioners cite to *Fine Denier Staple Fiber from Korea* to support their assertion that SMM's correction to freight variances constituted significant methodological changes, and not minor corrections, we believe the petitioners' reliance upon *Fine Denier Staple Fiber from Korea* is misplaced. In that case, Commerce stated that in certain instances, some of the corrections involved a large number of transactions stemming from a minor correction to a calculation that could have a widespread impact on most, if not all, reported sales transactions,⁹¹ as supported by

⁸³ See *Coalition for Preservation of American Brake Drum & Rotor v. United States*, 44 F. Supp. 2d 229, 235-36 (CIT 1999) (*American Brake v. United States*).

⁸⁴ See SMM's Rebuttal Brief at 11 (citing *Coalition for Preservation of American Brake Drum & Rotor v. United States*, 44 F. Supp. 2d 229, 235 -236 (CIT 1999)).

⁸⁵ See SMM's Letter, "Sodium Sulfate Anhydrous from Canada: Sales Verification Agenda for Saskatchewan Mining and Minerals Inc., dated November 26, 2019, at 2; *see also* Sales Verification Report, at 3.

⁸⁶ See Sales Verification Report at 3.

⁸⁷ *Id.*

⁸⁸ See SMM IQR at 30.

⁸⁹ See SMM Sales Verification Report at 3.

⁹⁰ See Sales Verification Agenda.

⁹¹ See *Fine Denier Staple Fiber from Korea*, and accompanying IDM at Comment I (a) ("While some of the corrections may have affected a large number of transactions, a minor correction to a calculation, such as correction

the CIT in *Tatung Co. v. United States*.⁹² In *Tatung Co. v. United States*, the CIT stated that “the issue is not the value of the errors as a percentage of total U.S. sales, or the number of instances of errors. Rather the issue is the nature of the errors and their effect on the validity of the submission.”⁹³ We determine that in this case, the errors were minor and do not affect the validity of SMM’s submissions.

Thus, we continue to find that the error and correction thereof is minor, in nature, and we have used SMM’s corrected freight variances for the final determination.⁹⁴

Comment 4: Programming Errors

A. Calculation for Capping U.S. Freight Revenue

SMM’s Comments:

- Commerce incorrectly calculated total U.S. freight for capping freight revenue for the *Preliminary Determination*.⁹⁵
- Specifically, Commerce erred in its build-up of U.S. movement expenses (USMOVE) to be deducted from the U.S. gross unit price by not including three reported freight costs: U.S. Inland Freight from Chaplin to the Unaffiliated Customer -USD (DINLFWC1U); U.S. Inland Freight from Chaplin Plant to the Unaffiliated Customer – CDN (DINLFWC2U); and Rail Freight Variance Adjustment – CVD (INLFVARU).⁹⁶
- Commerce should correct this error for the final determination using the calculation proposed in SMM’s case brief, which includes these variables in the buildup of USMOVE.⁹⁷

Petitioners’ Rebuttal Comments:

- Although Commerce erred in calculating total U.S. movement expenses (USMOVE), Commerce should employ a calculation methodology different from the one proposed by SMM.⁹⁸
- The revised calculation should limit the build-up of USMOVE to only certain freight expenses and should exclude a freight-variance adjustment (INLFVARU), as well as non-freight-related movement expenses, such as repacking expenses.⁹⁹

of an indirect selling expense ratio...will impact all sales for which such an adjustment was report. However, just because a large number of transactions are affected by a correction does not necessarily render a correction not ‘minor’ or warrant AFA.”).

⁹² See *Tatung Co. v. United States*, 18 CIT 1137, 1141 (1994) (*Tatung Co. v. United States*).

⁹³ *Id.*

⁹⁴ See SMM Final Calculation Memorandum.

⁹⁵ See SMM’s Case Brief at 5.

⁹⁶ *Id.*

⁹⁷ *Id.* at 5-6.

⁹⁸ See Petitioners’ Rebuttal Brief at 8-11.

⁹⁹ *Id.* at 8-9.

- SMM's claim that freight variance be deducted from the build-of USMOVE is illogical because the variance is calculated on an aggregate and allocated basis and is incurred after invoicing the final customer. In this regard, it is not possible to determine whether any single transaction incurs additional expenses associated with freight variance, let alone having reported in the sales listing these charges to the customer.¹⁰⁰
- Commerce should ensure that the freight-cap adjustment is calculated consistently for both the U.S. and home markets in the respective programs.¹⁰¹

Commerce's Position:

We agree with SMM that we erred in the calculation of U.S. movement expenses. In accordance with section 772(c)(2)(A) of the Act, we reduce the starting price to account for movement expenses, including freight expenses for transfers between the plant and warehouse, freight to the U.S. customer, brokerage expenses, insurance expenses, warehousing expenses, and a freight variance adjustment, where applicable. For purposes of the final determination, we modified the calculation of the build-up of U.S. movement expenses (USMOVE) to include all relevant freight expenses used to transport the merchandise to the United States, including those omitted from this calculation for the *Preliminary Determination*. In particular, we added to the build-up of USMOVE the previously omitted freight expenses (*i.e.*, (DINLFWC1U, DINLFWC2U, and INLFVARU).

We also agree with the petitioners that we should ensure that all reported movement expenses are included in the calculation of total movement expenses in both markets (HMMOVE and USMOVE). Accordingly, we have made the requisite adjustment in the calculation of SMM's antidumping margin for the final determination.

In addition, we also agree with the petitioners that the freight-cap adjustment should be employed consistently in both the U.S. and home markets, *i.e.*, capping the reported revenue by the movement expenses associated with that revenue. Commerce's normal practice is to treat freight revenue as an offset to freight costs.¹⁰² Because SMM reported inland freight revenue in both the U.S. and home markets, we capped inland freight revenue by the sum of the respective expense variables associated with the revenue reported in each market. In doing so, we ensure that the treatment of said revenue is associated with the same type of activity as that incurred by the respondent, which is reflected in our margin calculation.¹⁰³

Furthermore, the petitioners claim that Commerce cannot cap inland freight expenses by the reported revenue because such revenue was reported on an aggregate basis; however, we disagree. As an initial matter, 19 CFR 351.401(g)(1) stipulates our preference for the reporting

¹⁰⁰ *Id.* at 10.

¹⁰¹ *Id.* at 10-11.

¹⁰² See, *e.g.*, *Certain New Pneumatic Off-the-Road Tires from India: Negative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 55431 (August 19, 2016) and accompanying PDM, at 13 (upheld in *Certain New Pneumatic Off-the-Road Tires From India: Final Negative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances*, 82 FR 4848 (January 17, 2017) (*OTR Tires Final Determination*) and accompanying IDM, at Comment 15 at 49.

¹⁰³ See *OTR Tires Final Determination*.

of actual expenses incurred. However, where this is not possible, we accept allocated movement expenses, provided the allocation causes no inaccuracies or distortions. In the case of SMM's freight variance calculation, we examined the underlying documentation that comprises SMM's reported freight variance adjustments and found no discrepancies or inaccuracies that would call into question the reporting of SMM's calculation methodology.¹⁰⁴ Furthermore, at verification, we examined the additional year-end adjustments that SMM inadvertently omitted but found during preparation for verification and determined them to be minor, in nature, despite the impact of the adjusting entries on reported sales.¹⁰⁵ In addition to tying the overall amounts for the various type of freight expenses to the respective ledgers in SMM's accounting records, we tied the per-unit amounts to the amounts reported in SMM's sales databases.¹⁰⁶ Thus, as supported by Commerce's regulations, our verification findings, and our ability to exercise discretion to ensure reasonableness,¹⁰⁷ we have accepted the verified, revised freight-variance adjustments as a minor correction and have used the revised figures in the margin calculation program for the final determination.

B. Adjustments to Gross Unit Price

SMM's Comments:

- Commerce erred in its treatment of SMM's reported U.S. billing adjustments and should correct this error for the final determination.¹⁰⁸

No other interested parties commented on this issue.

Commerce's Position:

We agree with SMM and have accounted for SMM's reported U.S. billing adjustments in the final determination.¹⁰⁹

C. Repacking Variance

SMM's Comments:

- Commerce erred in its treatment of SMM's reported repacking expense variance variable by not including it in the build-up of home-market packing expenses and should correct this error for the final determination.¹¹⁰

No other interested parties commented on this issue.

¹⁰⁴ See Sales Verification Report. at 10.

¹⁰⁵ *Id.* at 2.

¹⁰⁶ *Id.* at 2 and Exhibit VE-18.

¹⁰⁷ See 19 CFR 351.401(g)(1); Sales Verification Report at Exhibit VE-1.

¹⁰⁸ See SMM Case Brief at 6.

¹⁰⁹ See SMM Final Calculation Memorandum.

¹¹⁰ See SMM Case Brief at 6.

Commerce's Position:

We agree with SMM and have adjusted for SMM's reported home-market repacking variances in the build-up of packing expenses for the final determination.¹¹¹

D. Incorporation of the Correct Cost Database

SMM's Case Brief

- Commerce used the incorrect cost database in its calculations for the preliminary determination, which should be corrected for the final determination.¹¹²

No other interested parties commented on this issue.

Commerce's Position:

We agree with SMM that we should use revised cost figures, as provided in Exhibit SD-6 of SMM's August 7, 2019 Supplemental Response. While SMM refers to a revised cost database in its case brief, SMM did not submit a separate supplemental Section D database onto the record of this investigation; rather, it submitted the data as an exhibit in its supplemental cost response.¹¹³ We have, therefore, used the information contained in that exhibit as revised cost figures in our SAS programs for purposes of calculating SMM's margin for the final determination.¹¹⁴

VI. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of 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

3/23/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

¹¹¹ See SMM Final Calculation Memorandum.

¹¹² See SMM Case Brief at 7.

¹¹³ See SMM Section D Response, "Antidumping Duty Investigation of Sodium Sulfate Anhydrous from Canada: Section D Supplemental Questionnaire Response of Saskatchewan Mining and Minerals Inc.," dated August 7, 2019 at Exhibit SD-6.

¹¹⁴ See SMM Final Calculation Memorandum.