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MEMORANDUM TO: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

FROM: James Doyle
Office Director, Office V
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping
Duty Administrative Review: Certain Hot-Rolled Steel Flat
Products from Australia; 2016-2017

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on certain hot-rolled steel flat products (hot-rolled steel) from Australia. The review covers one producer/exporter of the subject merchandise, the collapsed entity BlueScope Steel Ltd., BlueScope Steel (AIS) Pty Ltd., and BlueScope Steel Distribution Pty Ltd. (collectively, BlueScope).¹ The period of review (POR) is March 22, 2016, through September 30, 2017. We preliminarily determine that BlueScope provided deficient responses and failed to provide information in the manner and form requested, thereby significantly impeding this administrative review. Further, BlueScope failed to cooperate to the best of its ability with Commerce's request for information. Accordingly, we are applying facts otherwise available with an adverse inference pursuant to sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act).

¹ In the investigation, Commerce found that BlueScope Steel Ltd., BlueScope Steel (AIS) Pty Ltd., and BlueScope Steel Distribution Pty Ltd. (BlueScope) are a single entity and, because there were no changes to the facts which supported that decision since that determination was made, we continue to find that these companies are part of a single entity for this administrative review. See *Certain Hot-Rolled Steel Flat Products from Australia: Final Determination of Sales at Less Than Fair Value*, 81 FR 53406, 53407 (August 12, 2016).



II. BACKGROUND

On October 1, 2016, Commerce published in the *Federal Register* a notice of opportunity to request an administrative review of the AD order on hot-rolled steel from Australia for the period of review March 22, 2016, through September 30, 2017.² On October 31, 2017, BlueScope Steel, Ltd., and its affiliates BlueScope Steel Americas, Inc. (BSA) and Steelscape LLC (Steelscape) timely requested an administrative review of the AD order on hot-rolled steel from Australia with respect to its exports of subject merchandise to the United States during the POR.³ Accordingly, on December 7, 2017, we published a notice of initiation of an administrative review of the AD order on hot-rolled steel from Australia.⁴

On December 7, 2017, we issued the AD questionnaire to BlueScope. In January and February 2018, BlueScope submitted its responses to our questionnaire. Between February 2018 and July 2018, we issued four supplemental questionnaires to BlueScope seeking clarification of information submitted and requesting that information be provided in a specified manner and form, to which it filed responses between February 2018 and July 2018. On June 4, 2018, Commerce extended the time period for issuing the preliminary results by 120 days.⁵

On August 27, 2018, United States Steel Corporation (the petitioner) filed comments requesting that Commerce issue a preliminary determination and apply total adverse facts available.⁶ On September 6, 2018, BlueScope filed rebuttal comments.⁷ On September 10, 2018, the petitioner submitted comments in response to BlueScope's rebuttal comments.⁸ We have considered all of these comments in making this determination.

III. SCOPE OF THE ORDER

The products covered by this *Order*⁹ are certain hot-rolled, flat-rolled steel products, with or without patterns in relief, and whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 82 FR 46217 (October 4, 2017).

³ See BlueScope's Letter, "BlueScope's Request for Administrative Review: Certain Hot Rolled Steel Flat Products from Australia," dated October 31, 2017.

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 57705 (December 7, 2017).

⁵ See Memorandum, "Certain Hot-Rolled Steel Flat Products from Australia: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated June 4, 2018.

⁶ See the Petitioner's Letter, "Hot-Rolled Steel Flat Products from Australia: Request to Issue a Preliminary Determination and Apply Total Adverse Facts Available," dated August 27, 2018.

⁷ See BlueScope's Letter, "BlueScope Steel Ltd.'s Rebuttal to and Refutation of US. Steel's Request for Application of Total AFA," dated September 6, 2018.

⁸ See the Petitioner's Letter, "Hot-Rolled Steel Flat Products from Australia: Petitioner's Response to BlueScope's September 6 Rebuttal Comments," dated September 10, 2018.

⁹ See *Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Australia, the Republic of Korea, and the Republic of Turkey and Antidumping Duty Orders*, 81 FR 67962 (October 3, 2016) (*Order*).

measurement (“width”) of 12.7 mm or greater, regardless of thickness, and regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been “worked after rolling” (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

- (1) where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above unless the resulting measurement makes the product covered by the existing antidumping¹⁰ or countervailing duty¹¹ orders on Certain Cut-To-Length Carbon-Quality Steel Plate Products From the Republic of Korea (A-580-836; C-580-837), and
- (2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this *Order* are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.30 percent of vanadium, or

¹⁰ *Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate Products from France, India, Indonesia, Italy, Japan and the Republic of Korea*, 65 FR 6585 (February 10, 2000).

¹¹ *Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate from India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate from France, India, Indonesia, Italy, and the Republic of Korea*, 65 FR 6587 (February 10, 2000).

- 0.30 percent of zirconium.

Unless specifically excluded, products are included in the scope regardless of levels of boron and titanium.

For example, specifically included in these scopes are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, the substrate for motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). If steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes hot-rolled steel that has been further processed in a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of this *Order* if performed in the country of manufacture of the hot-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this *Order* unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this *Order*:

- Universal mill plates (*i.e.*, hot-rolled, flat-rolled products not in coils that have been rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, of a thickness not less than 4.0 mm, and without patterns in relief);
- Products that have been cold-rolled (cold-reduced) after hot-rolling;¹²
- Ball bearing steels;¹³

¹² For purposes of this scope exclusion, rolling operations such as a skin pass, levelling, temper rolling or other minor rolling operations after the hot-rolling process for purposes of surface finish, flatness, shape control, or gauge control do not constitute cold-rolling sufficient to meet this exclusion.

¹³ Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

- Tool steels;¹⁴ and
- Silico-manganese steels;¹⁵

The products covered by this *Order* are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.10.1500, 7208.10.3000, 7208.10.6000, 7208.25.3000, 7208.25.6000, 7208.26.0030, 7208.26.0060, 7208.27.0030, 7208.27.0060, 7208.36.0030, 7208.36.0060, 7208.37.0030, 7208.37.0060, 7208.38.0015, 7208.38.0030, 7208.38.0090, 7208.39.0015, 7208.39.0030, 7208.39.0090, 7208.40.6030, 7208.40.6060, 7208.53.0000, 7208.54.0000, 7208.90.0000, 7210.70.3000, 7211.14.0030, 7211.14.0090, 7211.19.1500, 7211.19.2000, 7211.19.3000, 7211.19.4500, 7211.19.6000, 7211.19.7530, 7211.19.7560, 7211.19.7590, 7225.11.0000, 7225.19.0000, 7225.30.3050, 7225.30.7000, 7225.40.7000, 7225.99.0090, 7226.11.1000, 7226.11.9030, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.5000, 7226.91.7000, and 7226.91.8000.

The products covered by this *Order* may also enter under the following HTSUS numbers: 7210.90.9000, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7214.99.0060, 7214.99.0075, 7214.99.0090, 7215.90.5000, 7226.99.0180, and 7228.60.6000.

The HTSUS subheadings above are provided for convenience and U.S. Customs purposes only. The written description of the scope of this *Order* is dispositive.

IV. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

In accordance with sections 776(a) and (b) of the Act, we determine that the use of facts otherwise available with an adverse inference (AFA), is appropriate for these preliminary results. Therefore, for the reasons discussed below, we are preliminarily assigning a dumping margin of 99.20 percent to BlueScope.

A. Legal Authority

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: (A) withholds information that has been requested by Commerce; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding; or (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act, Commerce shall, subject to subsection 782(d) of

¹⁴ Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) more than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

¹⁵ Silico-manganese steel is defined as steels containing by weight: (i) not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party “promptly after receiving a request from {Commerce} for information, notifies {Commerce } that such party is unable to submit the information requested in the requested form and manner,” Commerce shall consider the ability of the interested party and may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if Commerce determines that a response to a request for information does not comply with the request, Commerce shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person an opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, Commerce may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that Commerce shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Section 776(b)(1)(A) of the Act provides that Commerce may use an adverse inference in selecting the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and pursuant to section 776(b)(1)(B) of the Act, Commerce is not required to determine, or make any adjustments to, a weighted average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. 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.”¹⁶ Further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.¹⁷ It is Commerce’s practice to consider, in employing adverse inferences,

¹⁶ See *Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. 103-316, Vol. 1, 103d Cong. at 870 (1994) (SAA).

¹⁷ See, e.g., *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*); *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997) (*Preamble*).

the extent to which a party may benefit from its own lack of cooperation.¹⁸

Section 776(c)(1) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.¹⁹

B. Application of Facts Available to BlueScope

Commerce's standard questionnaire instructs respondents to state the total quantity and value of the merchandise under review sold in the United States and to state the quantity and value of the merchandise entered into the United States. In response, BlueScope explained that BlueScope's U.S. sales of subject merchandise were to an affiliated company, BSA, which in turn resold the product in a back-to-back transaction to another affiliated company, Steelscape, and that Steelscape then further processed the subject merchandise prior to the first sale to an unrelated customer.²⁰ BlueScope stated that it had provided a consolidated quantity and value chart (Q&V chart) showing the quantity and value of sales by Steelscape of further processed merchandise during the POR, as well as the quantity and value of the subject merchandise entered into the United States during the POR, as requested by the questionnaire.²¹ However, Commerce was unable to discern what the quantity and value figures reported in BlueScope's consolidated Q&V chart represented, because the chart only showed quantity and value figures in the "Total Quantity" and "Total Value in U.S. Dollars" column. Because the quantity and value information was not provided in the form and manner as requested by Commerce, was not consistent with BlueScope's narrative response, and did not tie to the quantity and value figures reported in the charts BlueScope submitted for the individual affiliates, the information reported was not usable in our analysis.²² Reliable and accurate quantity and value information serves as a basis upon which we test the accuracy of the quantity and value of sales reported in the U.S. sales database and the accuracy of the respondents' U.S. sales reconciliation, and is necessary to Commerce's ability to calculate a respondent's dumping margin.

In a supplemental questionnaire, we explained that the information submitted in BlueScope's narrative response was inconsistent with the information submitted in BlueScope's consolidated Q&V chart and that, further, it was unclear what the quantity and value reported in the

¹⁸ See, e.g., *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Issues and Decision Memorandum at 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

¹⁹ See SAA at 870.

²⁰ See BlueScope's January 8, 2018 Section A Questionnaire Response (BlueScope's SAQR) at 3.

²¹ *Id.*

²² *Id.* at Exhibit A-1; see also Memorandum, "Proprietary Information for Preliminary Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Steel Flat Products from Australia; 2016-2017," dated concurrently with this Memorandum, (BPI Memorandum) at Note 1.

consolidated Q&V chart represented. We requested that BlueScope clarify these inconsistencies and separately report, consistent with its narrative response to the original questionnaire, the total quantity and value of sales during the POR by Steelscope of further processed merchandise made using the subject merchandise that entered during the POR; and the total quantity and value of the subject merchandise that entered into the United States during the POR.²³ In response to the supplemental questionnaire, BlueScope reported that it had updated its consolidated quantity and value chart to include separately the CEP quantity and value sold by Steelscope.²⁴ However, the updated chart submitted did not include a separate CEP quantity and value for Steelscope, as requested.²⁵ Further, the information reported in BlueScope's consolidated quantity and value chart continued to be inconsistent with the individual quantity and value charts that BlueScope reported for its affiliates.²⁶

In a second supplemental questionnaire, we again requested that BlueScope separately report the total quantity and value of sales during the POR by Steelscope of further processed merchandise made using the subject merchandise that entered during the POR; and the total quantity and value of the subject merchandise that entered into the United States during the POR.²⁷ We also requested that BlueScope explain the inconsistencies between the consolidated quantity and value chart and the individual quantity and value charts that BlueScope reported for its affiliates.²⁸ In response, BlueScope stated that it had updated the chart to include a separate quantity and value for sales by AIS, yet BlueScope re-submitted the identical quantity and value chart that we had previously found to be deficient in its first supplemental response.²⁹ In this case, it was necessary for Commerce to have a clear understanding as to which affiliate entities were making entries into the United States and which affiliate entities were making sales in the United States because BlueScope has multiple affiliates. Further, in this review, BlueScope claims that its sales are made through a single channel of distribution, whereas in the original investigation, BlueScope claimed that its sales were made through multiple channels of distribution.³⁰ Accordingly, a clear understanding of which affiliates were involved in the sales in the United States and the ability to tie the information reported in BlueScope's quantity and value charts to its narrative description is crucial to understanding BlueScope's claimed changes to its channels of distribution.

Further, the amount reported in BlueScope's consolidated Q&V chart and sales reconciliation does not reconcile to the quantity and value of sales reported in BlueScope's U.S. sales

²³ See Commerce's Letter, "Antidumping Duty Administrative Review of Certain Hot Rolled Steel Flat Products from Australia: Supplemental A Questionnaire," dated February 2, 2018, at 3.

²⁴ See BlueScope's February 22, 2018 Supplemental Section A Questionnaire Response (BlueScope's SSAQR) at 1.

²⁵ *Id.* at Exhibit SA1-1.

²⁶ See BPI Memorandum at Note 2.

²⁷ See Commerce's Letter, "Antidumping Duty Administrative Review of Certain Hot Rolled Steel Flat Products from Australia: Supplemental Section A-C Questionnaire," dated July 2, 2018, at 3-4.

²⁸ *Id.* at 4.

²⁹ See BlueScope's July 16, 2018 Second Supplemental Section A Questionnaire Response (BlueScope's Second SSAQR) at 2. Compare BlueScope's SSAQR at Exhibit SA1-1 and BlueScope's Second SSAQR at Exhibit SA3-1.

³⁰ See BlueScope's SSAQR at 5; see also *Certain Hot-Rolled Steel Flat Products from Australia: Final Determination of Sales at Less Than Fair Value*, 81 FR 53406, 53408 (August 12, 2016) ("Comment 4: U.S.--Credit Expense for U.S. Sales in Channels 1 and 2").

database.³¹ In certain cases, we may tolerate a difference between the amount reported in the sales reconciliation and the amount reported in the sales database where a company provides a sufficient explanation for the difference. Here, however, BlueScope refused to comply with our reporting instructions, and failed to provide a sufficient explanation for the difference.³² This refusal and failure not only raises serious concerns as to the reliability of BlueScope's U.S. sales reporting, but also significantly impeded the review. Accordingly, the total quantity and value of the merchandise under review that BlueScope sold in the United States during the POR remains unclear and cannot be reconciled to the quantity and value reported in the U.S. sales database. As noted above, a usable U.S. market sales reconciliation is necessary for our margin calculation.³³

In addition, between January 23, 2018, and July 25, 2018, BlueScope submitted four U.S. sales databases and four consolidated home market sales databases in response to our supplemental questionnaires.³⁴ However, instead of clarifying the original information provided, subsequent U.S. sales databases were modified without clarification and do not reconcile to the quantity and value reported in BlueScope's narrative responses to section A of the questionnaire, or to its supporting U.S. sales reconciliation documentation.³⁵ BlueScope also made significant unsolicited and unexplained changes between its third consolidated home market sales database, submitted May 7, 2018, and its fourth consolidated home market sales database, submitted July 20, 2018.³⁶ The unsolicited and unexplained changes that BlueScope made to the fourth consolidated home market sales database impact the majority of its home market sales. The changes made to this database are so significant, that we are unable to link this database to the three previously submitted consolidated home market sales databases and, thus, we consider it to be a new home market sales database. This unexplained and unsolicited new dataset has significantly impeded the proceeding. Rather than providing clarification about the previously submitted home market sales databases, the revisions to the fourth consolidated home market sales database have made the record even more unclear and calls into question the reliability of all the databases provided by BlueScope. BlueScope's multiple submissions of inconsistent and unreconcilable databases impeded Commerce's ability to analyze the home market sales data. Further, as a result of the unsolicited and unexplained changes made to the home market sales database, Commerce does not have a usable home market sales reconciliation, which is core to our margin calculation.³⁷

Based on the totality of the record, we, therefore, find that the record lacks usable and necessary information under section 776(a)(1), (2)(A)-(C) of the Act. Specifically, the record lacks a usable total consolidated U.S. sales quantity for the POR, a usable U.S. sales reconciliation, and a usable home market sales reconciliation, because BlueScope provided inconsistent narrative

³¹ See BPI Memorandum at Note 3.

³² See BPI Memorandum at Note 4.

³³ See e.g., *Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 14092 (March 16, 2016), and accompanying Issues and Decision Memorandum (*Nails from China*) at Comment 4.2.

³⁴ See BPI Memorandum at Note 5.

³⁵ See BPI Memorandum at Note 6.

³⁶ See BPI Memorandum at Note 7.

³⁷ See BPI Memorandum at Note 8.

responses, and filed multiple, inconsistent versions of databases without any explanation for the inconsistencies, thereby calling into question the reliability of all of the submissions. Further, the record also lacks usable home market sales data as the reliability of BlueScope's home market sales data has been called into question by the unsolicited and unexplained changes reflected in the fourth consolidated home market sales database, and unexplained inconsistencies between BlueScope's narrative responses and the data and supporting documentation submitted on the record. Therefore, we conclude that BlueScope withheld information that had been requested by Commerce by failing to provide it in the form and manner requested which significantly impeded the proceeding under sections 776(a)(2)(A)-(C) of the Act, respectively. This results in missing information with regards to BlueScope's home market and U.S. market sales quantities and values, which is information that is necessary to Commerce's ability to calculate BlueScope's dumping margin under section 776(a)(1). Consequently, we will rely on the facts available to determine BlueScope's dumping margin for this preliminary determination

C. Use of Adverse Inference

In *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit clarified that the "best of its ability" standard of section 776(b) of the Act means to put forth maximum effort to provide full and complete answers to all inquiries.³⁸ We preliminarily find that BlueScope has failed to cooperate by not acting to the best of its ability to comply with a request for information regarding its reporting of the quantity and value of its sales of subject merchandise during the POR, which prevented Commerce from reconciling BlueScope's sales quantity and value in the United States. In addition, we preliminarily find that BlueScope has failed to cooperate by not acting to the best of its ability to provide complete and accurate information regarding its home market sales, which causes us to question the reliability of the information provided by BlueScope and prevents us from reconciling BlueScope's home market sales. BlueScope's failure to provide usable U.S. and home market sales reconciliations, and its failure to provide accurate home market sales information, demonstrate that it has failed to cooperate to the best of its ability. Therefore, and pursuant to section 776(b) of the Act, we preliminarily determine that the application of adverse inferences is appropriate in selecting from among the facts available to determine BlueScope's dumping margin.

D. Selection and Corroboration of AFA Rate

Section 776(b)(2) of the Act states that Commerce, when employing an adverse inference, may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.³⁹ In selecting a rate based on AFA, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.⁴⁰ Specifically, Commerce's practice in reviews, in selecting a rate as total AFA, is to use the highest rate on the record of the proceeding which, to the extent

³⁸ See *Nippon Steel*, 337 F.3d at 1382.

³⁹ See 19 CFR 351.308(c).

⁴⁰ See SAA, at 870.

practicable, can be corroborated (assuming the rate is based on secondary information).⁴¹ Further, under section 776(d)(1) and (2) of the Act, Commerce may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins. Additionally, under section 776(d)(3) of the Act, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.

Because the only individually calculated dumping margin in the history of the proceeding is BlueScope’s current rate from the investigation, we find that this rate is not sufficient to induce cooperation from BlueScope. Therefore, we turn to the margin alleged in the petition, which is 99.20 percent.⁴² However, because this AFA rate is derived from the petition and, consequently, is based upon secondary information, Commerce must corroborate the rate to the extent practicable, pursuant to section 776(c) of the Act.

The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information to be used has probative value.⁴³ To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used.⁴⁴

During our pre-initiation analysis, we examined: (1) the information used as the basis for EP and NV in the petition; (2) the calculations used to derive the alleged margin; and (3) information from various independent sources provided in the petition.⁴⁵ We determine that the petition margin of 99.20 percent is reliable, where, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition as reflected in the Initiation Checklist.⁴⁶ In addition, because we obtained no other information that would cause us to question the validity of the information supporting the calculations provided in the petition,

⁴¹ See *Glycine from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 15930, 15934 (April 8, 2009), unchanged in *Glycine from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 41121 (August 14, 2009); see also *Fujian Lianfu Forestry Co., Ltd. v. United States*, 638 F. Supp. 2d 1325, 1336 (CIT 2009) (“Commerce may, of course, begin its total AFA selection process by defaulting to the highest rate in any segment of the proceeding, but that selection must then be corroborated, to the extent practicable.”)

⁴² See *Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 54261, 54265 (September 9, 2015) (*Initiation Notice*).

⁴³ *Id.*; see also 19 CFR 351.308(d).

⁴⁴ See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

⁴⁵ See *Initiation Notice*, 80 FR at 54261 n.12, 54265 n.45; see also Memorandum, “Certain Hot-Rolled Steel Flat Products from Australia Administrative Review— Placing of Initiation Checklist on the Record,” dated concurrently with this memorandum (Memo Placing Information on Record).

⁴⁶ *Id.*

we consider the margin of 99.20 percent to be reliable and relevant for purposes of assigning an AFA rate to BlueScope in this administrative review.

In sum, Commerce corroborated the AFA rate of 99.20 percent to the extent practicable within the meaning of section 776(c) of the Act. Because it is sufficient to induce cooperation and because it is corroborated, we select the margin alleged in the petition as the AFA rate applicable to BlueScope in this administrative review. Thus, we preliminarily assign 99.20 percent as the AFA rate to the subject merchandise from BlueScope.

V. CONCLUSION

We recommend applying the above methodology for these preliminary results of review.

☒

Agree

☐

Disagree

11/1/2018

X

James Maeder

Signed by: JAMES MAEDER

James Maeder

Associate Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations

performing the duties of Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations