



A-602-809  
Administrative Review  
POR: 10/1/17 - 9/30/18  
**Public Document**  
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December 10, 2019

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

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

**SUBJECT:** Decision Memorandum for the Preliminary Results of the  
Antidumping Duty Administrative Review: Certain Hot-Rolled  
Steel Flat Products from Australia; 2017-2018

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## 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 for the period of review (POR) October 1, 2017 through September 30, 2018. The review covers one producer/exporter of subject merchandise: BlueScope Steel (AIS) Pty Ltd (AIS), BlueScope Steel Limited (BSL), and BlueScope Steel Distribution (BSD) (collectively, BlueScope).<sup>1</sup> During the investigation, Commerce found BlueScope to be a single entity and, because there were no changes to the facts that supported that determination, we continue to find that these companies are part of a single entity.<sup>2</sup> We preliminarily determine that BlueScope made sales of the subject merchandise at prices below normal value (NV) during the POR.

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<sup>1</sup> We note that we initiated this review on BlueScope Steel Ltd., BlueScope Steel Americas, Inc. (BSA), and Steelscape LLC (Steelscape). However, this was an error, and the calculated margin is only applicable to the BlueScope collapsed entity, as an exporter, because BSA is an importer of subject merchandise and Steelscape is a further manufacturer of subject merchandise in the United States. Accordingly, consistent with the underlying investigation and the first administrative review, we conducted our review and reviewed the responses from the BlueScope collapsed entity, which included responses from BSA and Steelscape as required by our requests for information.

<sup>2</sup> See *Certain Hot-Rolled Steel Flat Products from Australia: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 15241 (March 22, 2016), and accompanying Preliminary Decision Memorandum at 8; unchanged in *Certain Hot-Rolled Steel Flat Products from Australia: Final Determination of Sales at Less Than Fair Value*, 81 FR 53406, 53407 (August 12, 2016), and accompanying Issues and Decision Memorandum (*Investigation Final Determination*).



## II. BACKGROUND

On October 3, 2016, Commerce published in the *Federal Register* the AD order on hot-rolled steel from Australia.<sup>3</sup> On October 1, 2018, Commerce published a notice of opportunity to request an administrative review of the *Order*.<sup>4</sup> On October 30, 2018, BlueScope requested an administrative review of its exports of subject merchandise to the United States pursuant to this proceeding.<sup>5</sup> On October 31, 2018, AK Steel Corporation; ArcelorMittal USA LLC; Nucor Corporation; SSAB Enterprises, LLC; Steel Dynamics, Inc. (domestic interested parties); and United States Steel Corporation (the petitioner) requested an administrative review for this proceeding with respect to BlueScope.<sup>6</sup> On December 11, 2018, based on timely requests for the administrative review of BlueScope, we initiated an administrative review of BlueScope's sales of hot-rolled steel from Australia.<sup>7</sup> Accordingly, on December 11, 2018, Commerce issued its initial AD questionnaire to BlueScope.<sup>8</sup>

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 29, 2019, resulting in a revised preliminary deadline of August 12, 2019.<sup>9</sup>

BlueScope timely responded to the initial questionnaire.<sup>10</sup> Between February 26, 2019, and April 8, 2019, the petitioner submitted comments regarding BlueScope's sections A-D questionnaire responses.<sup>11</sup> In addition, between April 8, 2019 and October 29, 2019, BlueScope

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<sup>3</sup> 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*).

<sup>4</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 83 FR 49358 (October 1, 2018).

<sup>5</sup> See BlueScope's Letter, "BlueScope's Request for Administrative Review: Certain Hot Rolled Steel Flat Products from Australia," dated October 30, 2018.

<sup>6</sup> See Domestic Interested Parties and Petitioner's Letter, "Hot-Rolled Steel Flat Products from Australia: Request for Administrative Review of Antidumping Duty Order," dated October 31, 2018.

<sup>7</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 63615 (December 11, 2018) (*Initiation Notice*).

<sup>8</sup> See Commerce's Letter, "Certain Hot-Rolled Steel Flat Products from Australia: Questionnaire," dated December 11, 2018.

<sup>9</sup> See Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

<sup>10</sup> See BlueScope's Letter, "Blue Scope Steel's Section A Questionnaire Response," dated February 11, 2019 (BlueScope February 11, 2019 AQR); see also BlueScope's Letters, "BlueScope Steel Distribution's Response to Section B of the Department's Antidumping Questionnaire," dated February 26, 2019 (BSD February 26, 2019 BQR); "BlueScope Steel Ltd.'s Response to Section B of the Department's Antidumping Questionnaire," dated February 26, 2019 (BSL February 26, 2019 BQR); "BlueScope Steel Ltd.'s Response to Section C of the Department's Antidumping Questionnaire," dated March 1, 2019 (BlueScope March 1, 2019 CQR); "BlueScope Steel Ltd.'s Response to Section D of the Department's Antidumping Questionnaire," dated February 26, 2019; and "BlueScope Steel Ltd.'s Response to Section E of the Department's Antidumping Questionnaire," dated March 1, 2019.

<sup>11</sup> See Petitioner's Letter, "U.S. Steel's Comments Concerning BlueScope's Section A Questionnaire Response;

timely responded to supplemental questionnaires issued by Commerce.<sup>12</sup> The petitioner submitted comments regarding BlueScope's supplemental questionnaire responses and pre-preliminary results comments between April 18, 2019 and November 19, 2019.<sup>13</sup> BlueScope provided rebuttal comments to the petitioner's comments regarding their questionnaire responses and pre-preliminary results comments between April 15, 2019 and November 25, 2019.<sup>14</sup>

On July 1, 2019, Commerce fully extended the deadline for these preliminary results until December 10, 2019.<sup>15</sup>

### III. SCOPE OF THE ORDER

The products covered by this *Order* 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 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

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Submission of Rebuttal Factual Information," dated February 26, 2019; *see also* Petitioner's Letter, "U.S. Steel's Deficiency Comments Concerning BlueScope's Sections B-E Responses," dated April 5, 2019 (Petitioner's B-D Deficiency Comments).

<sup>12</sup> *See* BlueScope's Letter, "BlueScope Steel's Response to the Department's 1<sup>st</sup> Supplemental Section A Questionnaire" dated April 8, 2019; *see also* BlueScope's Letters, "BlueScope Steel's Response to the Department's Supplemental Section B Questionnaire," dated July 30, 2019 (BlueScope July 30, 2019 SQR); "BlueScope Steel's Response to the Department's Supplemental Section C Questionnaire," dated October 9, 2019; and "BlueScope Steel Ltd.'s Response to Supplemental Sections D and E of the Department's Antidumping Questionnaire," dated November 11, 2019.

<sup>13</sup> *See* Petitioner's Letter, "U.S. Steel's Submission of Rebuttal Factual Information," dated April 18, 2019 (Petitioner's Rebuttal Factual Information); *see also* Petitioner's Letters, "Comments on BlueScope's Supplemental Section B Questionnaire Response," dated September 26, 2019; and "U.S. Steel's Pre-Preliminary Comments Concerning BlueScope," dated November 19, 2019 (Petitioner's Pre-Prelim Comments).

<sup>14</sup> *See* BlueScope's Letter, "BlueScope Steel's Rebuttal to USX's Claim of Affiliation Between BlueScope and BHP," dated April 15, 2019; *see also* BlueScope's Letters, "BlueScope Steel's Rebuttal to USX's Claim of Affiliation Between BlueScope and BHP," dated April 24, 2019; and "BlueScope Steel Ltd.'s Rebuttal to and Refutation of US. Steel's Pre-Preliminary Comments," dated November 25, 2019.

<sup>15</sup> *See* Memorandum, "Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated July 1, 2019.

existing antidumping<sup>16</sup> or countervailing duty<sup>17</sup> 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
- 0.30 percent of zirconium.

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

For example, specifically included in this scope 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.

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<sup>16</sup> See *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).

<sup>17</sup> See *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).

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 the *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;<sup>18</sup>
- Ball bearing steels;<sup>19</sup>
- Tool steels;<sup>20</sup> and
- Silico-manganese steels;<sup>21</sup>

The products subject to 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 subject to the

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<sup>18</sup> 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.

<sup>19</sup> 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.

<sup>20</sup> 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.

<sup>21</sup> 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.

*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 the *Order* is dispositive.

#### **IV. AFFILIATION**

Section 771(33) of the Act defines the term affiliated persons (affiliates) to include: (A) members of a family; (B) an officer or director of an organization and that organization; (C) partners; (D) employers and employees; (E) any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and that organization; (F) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (G) any person who controls any other person and that other person. For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

The petitioner suggests that BlueScope is affiliated with a certain supplier of subject merchandise inputs by virtue of shared ownership and a close supplier relationship.<sup>22</sup> Pursuant to section 771(33) of the Act, we reviewed the record evidence regarding BlueScope's relationships with this input supplier. We analyzed the information provided in BlueScope's questionnaire responses, and the additional information the petitioner placed on the record of this review, and preliminarily find that there is no evidence of sufficient shared ownership or a close supplier relationship between BlueScope and its supplier.<sup>23</sup> Therefore, we preliminarily find that there is insufficient evidence to demonstrate control or reliance between the two companies for purposes of finding affiliation under section 771(33) of the Act.

#### **V. DISCUSSION OF THE METHODOLOGY**

##### *Comparisons to NV*

Pursuant to section 773(a) of the Tariff Act of 1930 (the Act) and 19 CFR 351.414(c)(1) and (d), in order to determine whether BlueScope's sales of subject merchandise from Australia to the United States were made at less than normal value, Commerce compared the export price (EP) or constructed export price (CEP), as appropriate, to the NV as described in the "Export Price/Constructed Export Price" and "Normal Value" sections of this memorandum.

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<sup>22</sup> See Petitioner's Rebuttal Factual Information; see also Petitioner's B-D Deficiency Comments at 22.

<sup>23</sup> See Memorandum, "Antidumping Duty Administrative Review of Certain Hot-Rolled Steel Flat Product from Australia: Preliminary Results Analysis Memorandum for BlueScope Steel (AIS) Pty Ltd, BlueScope Steel Limited, and BlueScope Steel Distribution," dated concurrently with this memorandum (Preliminary Analysis Memorandum).

## A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates dumping margins by comparing weighted-average normal values to weighted-average EPs (or CEPs) (the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In AD investigations, Commerce examines whether to compare weighted-average normal values with the EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews, the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is analogous to the issue in AD investigations.<sup>24</sup>

In numerous AD investigations, Commerce applied a “differential pricing” analysis for determining whether application of average-to-transaction comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.<sup>25</sup> Commerce finds that the differential pricing analysis used in those recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating weighted-average dumping margins.

The differential pricing analysis used in these preliminary results requires a finding of a pattern of EPs, (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code

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<sup>24</sup> See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews*; 2010–2011, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum (IDM) at Comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014).

<sup>25</sup> See, e.g., *Polyethylene Terephthalate Resin from Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 19696 (May 4, 2018), unchanged in *Polyethylene Terephthalate Resin from Taiwan: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances, in Part*, 83 FR 48287 (September 24, 2018); see also *Large Diameter Welded Pipe from Canada: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 43649 (August 27, 2018), unchanged in *Large Diameter Welded Pipe from Canada: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 6378 (February 27, 2019); and *Cast Iron Soil Pipe from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 83 FR 44567 (August 31, 2018), unchanged in *Cast Iron Soil Pipe from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 6767 (February 28, 2019).

(*i.e.*, zip codes or city and state names) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that Commerce uses in making comparisons between EP (or CEP) and normal value for the individual dumping margins.

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

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

If both tests in the first stage (*i.e.*, the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative comparison method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting



from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if: (1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or (2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

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

## B. Results of the Differential Pricing Analysis

For BlueScope, based on the results of the differential pricing analysis, Commerce preliminarily finds that 58.30 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>26</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that the average-to-average method cannot account for such differences because there is at least a 25 percent relative change between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for these preliminary results, Commerce is applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test to calculate the weighted-average dumping margin for BlueScope.

## C. Product Comparisons

In accordance with section 771(16) of the Act, Commerce considered all products produced and sold by the respondents in Australia as described in the "Scope of the Order" section of this memorandum, above, that were in the ordinary course of trade. Commerce compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, Commerce compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

In making product comparisons, Commerce matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: whether the product is painted, minimum specified carbon content, quality, minimum specified yield strength, nominal thickness, nominal width, form, pickled, and patterns in relief. For BlueScope's sales of hot-rolled steel in the United States, the reported control number (CONNUM) identifies the characteristics of hot-rolled steel as it entered the United States.

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<sup>26</sup> See Preliminary Analysis Memorandum.

BlueScope reported some of its home market sales with incomplete product characteristics. BlueScope explained that BSD, BlueScope's distributor, "simply has no business reason to keep track of the underlying chemistry of the product{s}," and therefore, it was unable to supply all of the CONNUM characteristics for some of BSD's home market sales.<sup>27</sup> For the preliminary results, Commerce is applying partial adverse facts available (AFA) and assigning a replacement CONNUM and net price to all sales with incomplete CONNUMs. For a detailed discussion of Commerce's AFA determination, *see* Adverse Facts Available section *infra vide*. For a detailed discussion of Commerce's calculation of BSD's sales with missing CONNUM characteristics, *see* Preliminary Analysis Memorandum.

### *Date of Sale*

Section 351.401(i) of Commerce's regulations states that, "{i}n identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business." The regulation provides further that Commerce may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.<sup>28</sup> Commerce has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.<sup>29</sup>

For its home market sales, BlueScope reported the earlier of shipment date (*i.e.*, the date the merchandise leaves the factory or warehouse), or invoice date in the field SALEDATH.<sup>30</sup> For its U.S. sales to unaffiliated customers, BlueScope reported the earlier of shipment date (*i.e.*, the date the merchandise leaves the factory or warehouse), or invoice date in the field SALEDATU.<sup>31</sup> Accordingly, for the preliminary results we are using the earlier of invoice date or shipment date for both home market and U.S. sales as reported in fields SALEDATH and SALEDATU.

### *Export Price/Constructed Export Price*

BlueScope reported that its sales to the United States were all made on a CEP basis.<sup>32</sup> In accordance with section 772(b) of the Act, CEP is "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

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<sup>27</sup> *See* BSD February 26, 2019 BQR at 10.

<sup>28</sup> *See* 19 CFR 351.401(i); *see also* *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)) (*Allied Tube*).

<sup>29</sup> *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying IDM at Comment 10; *see also* *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying IDM at Comment 2.

<sup>30</sup> *See* BlueScope February 26, 2019 BQR at 21; *see also* BSD February 26, 2019 BQR at 20.

<sup>31</sup> *See* BlueScope March 1, 2019 CQR.

<sup>32</sup> *Id.* at 18.

producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d).”

We calculated CEP based on the packed, delivered prices to unaffiliated purchasers in the United States. Where applicable, we adjusted these prices for movement expenses (*e.g.*, foreign inland freight, foreign brokerage and handling, U.S. brokerage and handling, international freight, marine insurance, U.S. inland freight, and U.S. duty), in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which include direct selling expenses (imputed credit expenses and U.S. inventory carrying costs) and indirect selling expenses. We also made an adjustment for profit allocated to these selling expenses, in accordance with section 772(d)(3) of the Act. Additionally, we made an adjustment to CEP for the cost of any further manufacturing of subject merchandise that entered the United States and then was further manufactured, in accordance with section 772(d)(2) of the Act.

#### *Further Manufactured Sales*

The petitioner requests that Commerce disregard BlueScope’s further manufactured sales in accordance with section 772(e) of the Act and 19 CFR 351.402(c)(2) (the “Special Rule”).<sup>33</sup> The petitioner states that irrespective of the fact that the value added to BlueScope’s subject merchandise via further manufacturing is above the threshold established by the Special Rule, the use of BlueScope’s further manufactured sales would be too burdensome for Commerce to adjust.<sup>34</sup> Section 772(e) of the Act discusses the Special Rule for merchandise with value added after importation, “{w}here the subject merchandise is imported by a person affiliated with the exporter or producer, and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, the administering authority shall determine the constructed export price for such merchandise by using... (1) the price of identical subject merchandise sold by the exporter or producer to an unaffiliated person; (2) the price of other subject merchandise sold by the exporter or producer.” 19 CFR 351.402(c)(2) states that Commerce “normally will determine that the value added in the United States is likely to exceed substantially the value of subject merchandise if the Secretary estimates the value added to be at least 65 percent of the price charged to the first unaffiliated purchaser of the merchandise in the United States.”

In the *Final Rule*, Commerce established the 65 percent threshold for administering the Special Rule and clarified that despite establishing this threshold Commerce “retains the discretion to refrain from applying the special rule in situations where there are an insufficient number of sales to unaffiliated customers to use as an alternative... because the purpose of 772(e) is to reduce the administrative burden on {Commerce}, {Commerce} retains the authority to refrain from applying the special rule in those situations where the value added, while large, is simple to calculate.”<sup>35</sup>

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<sup>33</sup> See Petitioner’s Pre-Prelim Comments at 2-13.

<sup>34</sup> *Id.* 5-13. For a complete discussion of the petitioner’s comments regarding BlueScope’s further manufactured sales, see Preliminary Analysis Memorandum.

<sup>35</sup> See *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27343 (May 19, 1997) (*Final Rule*).

The Court of Appeals for the Federal Circuit (Federal Circuit), in *RHP Bearings Ltd. v. United States*, recognized Commerce’s discretion, stating that “Congress has directly expressed the intent to allow Commerce to determine, when the triggering circumstances of section {772(e) of the Act} are present, whether application of the special rule is appropriate.”<sup>36</sup> The Federal Circuit further stated, citing the Statement of Administrative Action (SAA), that “Congress did not intend for the special rule to dictate to Commerce a particular method for calculating constructed export price.”<sup>37</sup>

BlueScope’s hot-rolled steel is further manufactured by a BlueScope affiliate, Steelscape, into coated steel before being sold to unaffiliated customers.<sup>38</sup> In comparing the transfer price between BlueScope and its affiliate and the price Steelscape charged its customers, we preliminarily find that, although the petitioner’s calculation shows the value added to the subject merchandise through further manufacturing exceeded the 65 percent threshold established by 19 CFR 351.402(c)(2), our calculation is below the 65 percent threshold. However, we will continue to examine this issue after the preliminary results of this review. Therefore, give our calculation is less than 65 percent, for these preliminary results, we included BlueScope’s further manufactured sales in the margin calculation, as appropriate. *See* the Preliminary Analysis Memorandum for a detailed discussion regarding Commerce’s decision to include BlueScope’s further manufactured sales.

### *Reimbursement of Antidumping Duties*

The petitioner alleges that during the POR, BlueScope reimbursed its affiliated U.S. importer for the antidumping duties it incurred.<sup>39</sup> Based on our preliminary analysis, we find that the record does not demonstrate that BlueScope reimbursed its U.S. affiliate.<sup>40</sup> Accordingly, for the preliminary results, we are not adjusting BlueScope’s U.S. gross unit price by antidumping duties.

### *Normal Value*

#### A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), Commerce normally compares the respondent’s volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If Commerce determines that no viable home market exists, Commerce may, if appropriate, use a respondent’s sales of the foreign like product to a third

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<sup>36</sup> *See RHP Bearings Ltd. v. United States*, 288 F.3d 1334, 1345 (Fed. Cir. 2002) (*RHP Bearings Ltd. v. United States*).

<sup>37</sup> *Id.* (citing Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 11994 at 825-26 (SAA)).

<sup>38</sup> *See, e.g.*, BlueScope March 1, 2019 CQR at 6.

<sup>39</sup> *See* Petitioner’s Pre-Prelim Comments at 14-16.

<sup>40</sup> *See* Preliminary Analysis Memorandum.

country market as the basis for comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

In this review, Commerce determined that the aggregate volume of home market sales of the foreign like product for each respondent was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise. Therefore, Commerce used home market sales as the basis for NV for BlueScope, in accordance with section 773(a)(1)(B) of the Act.<sup>41</sup>

## B. Affiliated Party Transactions and Arm's-Length Test

Commerce may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales were made at arm's-length prices.<sup>42</sup>

Commerce excludes home market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because Commerce considered them to be outside the ordinary course of trade. Consistent with 19 CFR 351.403(c) and (d) Commerce “ may calculate normal value based on sales to affiliates if satisfied that the transactions were made at arm's length.”<sup>43</sup>

To test whether BlueScope's home market sales to affiliated customers were made at arm's-length prices, Commerce compared these prices to the prices of sales of comparable merchandise to unaffiliated customers, net of all discounts and rebates, movement charges, direct selling expenses, and packing. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, when the prices charged to an affiliated customer were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated customer, Commerce determined that the sales to that affiliated customer were at arm's-length prices.<sup>44</sup> In this review, Commerce excluded sales to affiliated customers in the home market that were not made at arm's-length prices from our analysis because we considered these sales to be outside the ordinary course of trade.<sup>45</sup>

## C. Partial Application of Adverse Facts Available

### 1. 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 section 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

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<sup>41</sup> See BlueScope February 11, 2019 AQR at 3 and Exhibit A-1.

<sup>42</sup> See 19 CFR 351.403(c).

<sup>43</sup> See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1367 (CIT 2003), *aff'd*, 306 F. Supp. 2d 1291 (CIT 2004) .

<sup>44</sup> See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69187 (November 15, 2002).

<sup>45</sup> See 19 CFR 351.102(b)(35).

Section 782(c)(1) of the Act states that Commerce shall consider the ability of an interested party to provide information upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information. 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 it finds that a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, 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.<sup>46</sup> Section 776(b)(2) of the Act 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.”<sup>47</sup> Further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.<sup>48</sup>

## 2. Application of Facts Available

As noted above, BlueScope reported some of its home market sales with incomplete product characteristics. At first, BlueScope explained that BSD “simply has no business reason to keep track of the underlying chemistry of the product{s},” and therefore, it was unable to supply all of the CONNUM characteristics for some of BSD’s home market sales.<sup>49</sup> Later, BlueScope further explained how BSD’s distribution business model does not lend itself to tracking the original coils it sold, and that despite this, BSD “has undertaken an extraordinary amount of effort to research and analyze all of its underlying data and has reported the actual types and grade of products that it sells, except in the limited instances when the product is simply sold without regard to quality or type{.}”<sup>50</sup>

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<sup>46</sup> See section 776(b)(1)(B) of the Act.

<sup>47</sup> See SAA at 870.

<sup>48</sup> See, e.g., *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*); see also *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) (*Nippon Steel*); and *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997).

<sup>49</sup> See BSD February 26, 2019 BQR at 10.

<sup>50</sup> See BlueScope July 30, 2019 SQR at 9.

BlueScope also addressed why it did not have any issues in reporting BSD's product characteristics in the underlying investigation. BlueScope stated, in this review, that as a result of its "massive operation to attempt to link its data...{t}he sales that do not have certain CONNUM characteristics are often sold in a general product line that was not discoverable during the original investigation..."<sup>51</sup>

Without complete CONNUM characteristics for certain sales, Commerce cannot determine whether these sales would match to U.S. sales. Thus, we find that necessary information is missing from the record, in accordance with section 776(a)(1) of the Act. Moreover, we find that BlueScope failed to provide all of the necessary information requested in the form and manner requested by Commerce, for Commerce to calculate a dumping margin for it in this administrative review, in accordance with section 776(a)(2)(B) of the Act. We also preliminarily find that BlueScope's failure to provide CONNUM characteristics amounts to its significant impediment of this proceeding within the meaning of section 776(a)(2)(C) of the Act. Accordingly, pursuant to sections 776(a)(1) and (a)(2)(B) and (C) of the Act, we relied upon partial facts otherwise available in determining the preliminary dumping margin for BlueScope.

### 3. Use of Adverse Inference

As discussed above, section 776(b)(1)(A) of the Act provides that, if Commerce finds that an interested party has 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 applying adverse inferences, section 776(b)(1)(B) of the Act explains that 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. 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."<sup>52</sup>

The Federal Circuit's decision in *Nippon Steel* provides guidance on the standard Commerce must apply in determining whether a respondent provided information to "the best of its ability":

Compliance with the "best of its ability" standard is determined by assessing whether respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation. While the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping. It assumes that importers are familiar with the rules and regulations that apply to the import activities undertaken and requires that importers, to avoid a risk of an adverse inference determination in responding to Commerce's inquiries: (a) take reasonable steps to keep and maintain full and complete records documenting the

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<sup>51</sup> *Id.* at 10.

<sup>52</sup> See SAA at 870; see also *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

information that a reasonable importer should anticipate being called upon to produce; (b) have familiarity with all of the records it maintains in its possession, custody, or control; and (c) conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of the importers' ability to do so.<sup>53</sup>

In the instant case, BlueScope failed to maintain adequate records of certain characteristics of certain home market sales. Of note, however, is that BlueScope participated in both the underlying investigation and the first administrative review, and therefore is familiar with the expectations Commerce has for the information it requires, as well as the expectation that BlueScope is familiar with its own records.<sup>54</sup> Yet, BlueScope states that it discovered a new line of products that it did not realize was subject merchandise in the investigation or the first administrative review, and that it is impossible to report all of the CONNUM characteristics for this line of products. We find that BlueScope has not acted to the best of its ability to provide the information requested by Commerce. Specifically, by not taking the reasonable steps to keep and maintain full and complete records prior to this review and by not having familiarity with all of its own records, *i.e.*, knowing all of the CONNUM characteristics of the merchandise it sells, BlueScope demonstrated that it has not acted to the best of its ability in providing the information requested by Commerce.<sup>55</sup> Accordingly, pursuant to section 776(b)(1)(A) of the Act, we preliminary find that the application of adverse inferences is appropriate in selecting from among the facts available to determine the incomplete CONNUMs reported in BlueScope's home market sales database.

#### 4. Selection of Adverse Facts Available

In making an adverse inference from among the facts otherwise available, Commerce selects information 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.<sup>56</sup> Section 776(b)(2)(D) of the Act states that Commerce may rely on information derived from "any other information on the record" in selecting among the facts otherwise available. Accordingly, for the preliminary results of this review, we are replacing the CONNUMs from BlueScope's home market database that are incomplete with the CONNUM that generates the highest dumping margin in the margin calculation. Then, we are replacing the reported price of these sales with the highest net price of all home market sales that also have that replacement CONNUM.<sup>57</sup> Because this information was obtained in the course of this review, the statutory corroboration requirement at section 776(c)(1) of the Act does not apply.

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<sup>53</sup> See *Nippon Steel*, 337 F.3d at 1382.

<sup>54</sup> See *Investigation Final Determination*, 81 FR at 53406; *Certain Hot-Rolled Steel Flat Products from Australia: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 18241 (April 30, 2019), and accompanying IDM.

<sup>55</sup> See *Nippon Steel*, 337 F.3d at 1382.

<sup>56</sup> See SAA at 870.

<sup>57</sup> See Preliminary Analysis Memorandum for further discussion on the calculations of BlueScope's missing CONNUM information.



#### D. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).<sup>58</sup> Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.<sup>59</sup> In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, Commerce examined the distribution system in each market (*i.e.*, the chain of distribution), including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),<sup>60</sup> Commerce considered the starting prices before any adjustments. For CEP sales, Commerce considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.<sup>61</sup>

When Commerce is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, Commerce may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.<sup>62</sup>

BlueScope does not claim different levels of trade between the home market and the U.S. market.<sup>63</sup> Consequently, there is no basis for considering a CEP offset with respect to BlueScope. Accordingly, we have not granted a CEP offset, pursuant to section 773(a)(7)(B) of the Act.

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<sup>58</sup> See 19 CFR 351.412(c)(2).

<sup>59</sup> *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010) and accompanying IDM at Comment 7 (*OJ from Brazil*).

<sup>60</sup> Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

<sup>61</sup> See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

<sup>62</sup> See, *e.g.*, *OJ from Brazil*, at Comment 7.

<sup>63</sup> See BlueScope February 25, 2019 BQR at 33.

## E. Cost of Production Analysis

Section 773(b)(2)(A)(ii) of the Act requires Commerce to request cost of production (COP) information from respondent companies in all antidumping proceedings.

### 1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses and interest expenses.<sup>64</sup> We relied on the COP data submitted by BlueScope, as reported in its most recently submitted cost databases for the COP calculation. We examined BlueScope's cost data and determined that our quarterly cost methodology is not warranted. Therefore, we have applied our standard methodology of using annual costs based on the reported data.

### 2. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COPs to the home market sales prices of the foreign like product to determine whether the sales prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of any applicable billing adjustments, discounts and rebates, where applicable, movement charges, actual direct and indirect selling expenses, and packing expenses.

### 3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: (1) within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: (1) they were made within an "extended period of time" in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and, (2) based on our comparison of prices to the weighted-average COPs for the POI, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain specific products, more than 20 percent of BlueScope's home market sales during the POR were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded

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<sup>64</sup> See "Test of Comparison Market Sales Prices" section, *infra*, for treatment of home market selling expenses.

these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.<sup>65</sup>

#### F. Calculation of NV Based on Comparison Market Prices

For those comparison products for which there were an appropriate number of sales at prices above the COP for BlueScope, we based NV on comparison market prices. We calculated NV based on packed prices to customers in Australia.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, Commerce also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing of the foreign like product and the subject merchandise.<sup>66</sup>

Commerce calculated NV based on delivered or ex-works prices to unaffiliated customers.<sup>67</sup> We made deductions, where appropriate, from the starting price for movement expenses, including inland freight and warehousing, under section 773(a)(6)(B)(ii) of the Act. We adjusted for differences in packing, in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and in circumstances of sale (imputed credit expenses and other direct selling expenses), in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410.

#### G. Calculation of NV Based on Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison market sales, NV may be based on CV. Accordingly, for those hot-rolled steel products for which we could not determine the NV based on comparison market sales because, as noted in the “Results of the COP Test” section above, all sales of the comparable products failed the COP test, we based NV on CV.

Sections 773(e)(1) and (2)(A) of the Act provide that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts for selling, general, and administrative (SG&A) expenses, profit, and U.S. packing costs. For BlueScope, we calculated the cost of materials and fabrication based on the methodology described in the “Cost of Production Analysis” section, above. We based SG&A and profit for BlueScope on the actual amounts incurred and realized by it in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act.

For comparisons to BlueScope’s CEP sales, we deducted from CV direct selling expenses incurred on its comparison market sales, in accordance with section 773(a)(8) of the Act.<sup>68</sup>

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<sup>65</sup> See Preliminary Analysis Memorandum.

<sup>66</sup> See 19 CFR 351.411(b).

<sup>67</sup> See Preliminary Analysis Memorandum.

<sup>68</sup> *Id.*

## VI. CURRENCY CONVERSION

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. The exchange rates are available on the Enforcement and Compliance website at <http://enforcement.trade.gov/exchange>.

## VII. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.



\_\_\_\_\_  
Agree



\_\_\_\_\_  
Disagree

12/10/2019

X



Signed by: JEFFREY KESSLER

\_\_\_\_\_  
Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance