



A-602-809
Administrative Review
POR: 10/01/2018 – 9/30/2019
Public Document
E&C/OI: AH

February 16, 2021

MEMORANDUM TO: Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Hot Rolled Steel Flat Products from Australia: Decision
Memorandum for Preliminary Results of Antidumping Duty
Administrative Review; 2018-2019

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, 2018, through September 30, 2019. The review covers one producer/exporter of subject merchandise: BlueScope Steel (AIS) Pty Ltd (AIS), BlueScope Steel Ltd. (BSL), and BlueScope Steel Distribution (BSD) (collectively, BlueScope). During the investigation, Commerce found BlueScope to be a single entity and, because there were no changes to the facts that supported that determination in this review, we continue to find that these companies are part of a single entity.¹ We preliminarily determine that BlueScope made sales of the subject merchandise at prices below normal value (NV) during the POR. Interested parties are invited to comment on these preliminary results of review.

II. BACKGROUND

On October 3, 2016, Commerce published in the *Federal Register* the AD order on hot-rolled steel from Australia.² On October 1, 2019, Commerce published a notice of opportunity to

¹ 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 (IDM).

² 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*).



request an administrative review of the *Order*.³ On October 31, 2019, BlueScope requested an administrative review of its exports of subject merchandise to the United States.⁴ On October 31, 2019, United States Steel Corporation (the petitioner); and Steel Dynamics, Inc., SSAB Enterprises, LLC, and ArcelorMittal USA LLC (domestic interested parties) requested an administrative review with respect to AJU Steel USA Inc. and BlueScope.⁵ On January 17, 2020, based on timely requests for the administrative review of AJU Steel USA Inc. and BlueScope, Commerce initiated this administrative review.⁶

On January 10, 2020, we released under administrative protective order (APO) entry data we obtained from U.S. Customs and Border Protection (CBP) to all interested parties having an APO and invited comments regarding the data and our selection of respondents for this review.⁷ BlueScope is the only entity subject to review that had entries of subject merchandise during the POR; therefore Commerce selected BlueScope for individual examination as the sole mandatory respondent in this administrative review.⁸ On February 4, 2020, Commerce issued its initial AD questionnaire to BlueScope.⁹ BlueScope submitted timely questionnaire responses.¹⁰ Commerce issued supplemental questionnaires to BlueScope and received timely responses.¹¹ The petitioner submitted comments regarding BlueScope's questionnaire responses on May 20, 2020,

³ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 84 FR 52068 (October 1, 2019).

⁴ See BlueScope's Letter, "BlueScope's Request for Administrative Review," dated October 31, 2019.

⁵ 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, 2019.

⁶ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 3014 (January 17, 2020) (*Initiation Notice*). Commerce inadvertently initiated a review of AJU Steel USA Inc., a U.S. company which should not have been under review. Commerce intends to address this inadvertent error by rescinding the review as to AJU Steel USA Inc., as discussed in the FR notice dated concurrently with this memorandum.

⁷ See Memorandum to The File, "Release of Customs and Border Protection (CBP) Data Query," dated January 10, 2020.

⁸ See Memorandum to The File, "Administrative Review of the Antidumping Duty Order of Certain Hot-Rolled Steel Flat Products from Australia: Respondent Selection," dated February 4, 2020.

⁹ See Commerce's Letter, "Administrative Review of the Antidumping Duty Order of Certain Hot-Rolled Steel Flat Products from Australia: Initial Questionnaire," dated February 4, 2020.

¹⁰ See BlueScope's Letters, "BlueScope Steel's Section A Questionnaire Response," dated March 3, 2020; "BlueScope Steel's Response to Section B of the Department's Questionnaire," dated March 23, 2020 (BlueScope BQR); "BlueScope Steel Distribution's Response to Section B of the Department's Questionnaire," dated March 23, 2020 (BSD BQR); "Blue Scope Steel Ltd.'s Response to Section C of the Department's Antidumping Questionnaire," dated March 30, 2020 (BlueScope CQR); "BlueScope Steel Ltd.'s Response to Section D of the Department's Antidumping Questionnaire," dated April 2, 2020; and "BlueScope Steel Ltd.'s Response to Section E of the Department's Antidumping Questionnaire," dated April 6, 2020.

¹¹ See BlueScope's Letters, "BlueScope Steel's Response to the Department's Supplemental Section A Questionnaire," dated July 10, 2020; "BlueScope Steel's Response to Section A of the Department's Second Supplemental Questionnaire," dated December 17, 2020; "BlueScope Steel's Response to Sections B and C of the Department's Supplemental Questionnaire," dated December 28, 2020; "BlueScope Steel's Response to Section D of the Department's Supplementary Questionnaire," dated January 14, 2021; "BlueScope Steel's Response to Section E of the Department's Supplementary Questionnaire," dated January 19, 2021; and "BlueScope Steel's Response to the Department's Second Supplementary A-E Questionnaire," dated February 9, 2021.

and September 9, 2020, and pre-preliminary results comments on January 25, 2021.¹² BlueScope submitted pre-preliminary rebuttal comments on February 1, 2021.¹³

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for the preliminary results of this administrative review until August 21, 2020.¹⁴ On July 21, 2020, Commerce tolled all deadlines again in administrative reviews by an additional 60 days, thereby extending the deadline for the preliminary results of this administrative review until October 20, 2020.¹⁵ On September 21, 2020, Commerce fully extended the deadline for these preliminary results until February 17, 2021.¹⁶

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 existing antidumping¹⁷ or countervailing duty¹⁸ orders on Certain Cut-To-Length Carbon-Quality Steel Plate Products from the Republic of Korea (A-580-836; C-580-837), and

¹² See Petitioner’s Letters, “Comments on BlueScope’s Section C Questionnaire Response,” dated May 20, 2020; “Comments on BlueScope’s Supplemental Section A Questionnaire Response,” dated September 9, 2020; and “U.S. Steel’s Pre-Preliminary Comments Concerning BlueScope,” dated January 25, 2021 (Pre-Preliminary Comments).

¹³ See BlueScope’s Letter, “BlueScope’s Rebuttal of Pre-preliminary Comments of US Steel Corporation,” dated February 1, 2021.

¹⁴ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19,” dated April 24, 2020.

¹⁵ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,” dated July 21, 2020.

¹⁶ See Memorandum, “Certain Hot-Rolled Steel Flat Products from Australia: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2018-2019,” dated September 21, 2020.

¹⁷ 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).

¹⁸ 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).

(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.

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;¹⁹
- Ball bearing steels;²⁰
- Tool steels;²¹ and
- Silico-manganese steels;²²

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 *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. DISCUSSION OF THE METHODOLOGY

We are conducting this administrative review in accordance with section 751(a) of the Act and

¹⁹ 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.

²⁰ 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.

²¹ 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.

²² 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.

19 CFR 351.213.

A. Comparisons to Normal Value

Pursuant to section 773(a) of 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-fair-value, Commerce compared the constructed export prices (CEP) to NV as described in the "Constructed Export Price" and "Normal Value" sections of this memorandum.

1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average export prices (EPs) or CEPs (*i.e.*, the average-to-average (A-A) method) unless Commerce determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, Commerce examines whether to compare weighted-average NVs with the EPs or CEPs of individual sales (*i.e.*, the average-to-transaction (A-T) 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, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.²³

In recent proceedings, Commerce applied a "differential pricing" analysis for determining whether application of the A-T method is appropriate in a particular situation, pursuant to section 777A(d)(1)(B) of the Act and 19 CFR 351.414(c)(1).²⁴ Commerce finds that the differential pricing analysis used in recent investigations and reviews 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 A-A method in calculating weighted-average dumping margin for each respondent.

²³ 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 IDM at Comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014).

²⁴ *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); *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).

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

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 accounts 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 A-T method to all sales as an alternative to the A-A 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 A-T method to those sales identified as passing the Cohen’s *d* test as an alternative to the A-A method, and application of the A-A 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 A-A 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 A-A 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 A-A method only. If the difference between the two calculations is meaningful, then this demonstrates that the A-A 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 A-A 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 A-A 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.²⁵

2. Results of the Differential Pricing Analysis

For BlueScope, based on the results of the differential pricing analysis, Commerce preliminarily finds that 100 percent of the value of U.S. sales pass the Cohen’s *d* test,²⁶ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that the A-to-A method cannot account for such differences because there is a greater than 25 percent relative change between the weighted-average dumping margin calculated using the A-to-A method and the weighted-average dumping calculated using an alternative comparison method based on applying the A-to-T method to all U.S. sales. Thus, for these preliminary results, Commerce is applying the A-to-T method to all U.S. sales to calculate the weighted-average dumping margin for BlueScope.

B. Product Comparisons

In accordance with section 771(16) of the Act, Commerce considered all products meeting the physical description of merchandise covered by 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,

²⁵ The Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods v. United States*, 862 F.3d 1322 (Fed. Cir. 2017) affirmed much of Commerce’s differential pricing methodology. We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

²⁶ See Memorandum, “Administrative Review of the Antidumping Duty of Certain Hot-Rolled Steel Flat Products 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).

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 respondent 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.

C. 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 further provides 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.²⁷ 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.²⁸

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.²⁹ 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.³⁰ Accordingly, for these 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.

D. Constructed Export Price

BlueScope reported that its sales to the United States were all made on a CEP basis.³¹ 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 producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d)."

²⁷ 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)).

²⁸ 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.

²⁹ See BlueScope BQR at 24; see also BSD BQR at 21.

³⁰ See BlueScope CQR at 19.

³¹ *Id.* at 15.

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.

E. Reimbursement of Antidumping Duties

The petitioner alleges that during the POR, BlueScope reimbursed its affiliated U.S. importer for the antidumping duties it incurred.³² Based on our preliminary analysis, we find that the record does not demonstrate that BlueScope reimbursed its U.S. affiliate.³³ Accordingly, for these preliminary results, we are not adjusting BlueScope's U.S. gross unit price for any alleged reimbursements.

F. Normal Value

1. Selection of Comparison Market

To determine whether there was 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 we determine that no viable home market exists, we may, if appropriate, use a respondent's sales of the foreign like product to a third 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 administrative review, Commerce preliminarily determined that the aggregate volume of home market sales of the foreign like product for BlueScope was greater than five percent of the aggregate volume of its U.S. sales of subject merchandise. Therefore, we used home market sales as the basis for NV in accordance with section 773(a)(1)(B) of the Act.

2. Affiliated Party Transactions and Arm's-Length Test

³² See Petitioner's Pre-Preliminary Comments at 2-14.

³³ For further discussion involving the use of business proprietary information, *see* Preliminary Analysis Memorandum.

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.³⁴ Commerce excludes home market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because Commerce considers them to be outside the ordinary course of trade. Therefore, consistent with 19 CFR 351.403(c) and (d) and our practice, Commerce “*may* calculate normal value based on sales to affiliates if {...} satisfied that the transactions were made at arm's length.”³⁵

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.³⁶ In this review, Commerce preliminarily 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.³⁷

3. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, we will calculate NV based on sales of foreign like products at the same level of trade (LOT) as the EP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).³⁸ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.³⁹ To determine whether the comparison-market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale. To determine whether home market sales are at a different LOT than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.

³⁴ See 19 CFR 351.403(c).

³⁵ See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1365 (CIT 2003), *aff'd*, 306 F. Supp. 2d 1291 (CIT 2004).

³⁶ See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69187 (November 15, 2002).

³⁷ See 19 CFR 351.102(b)(35).

³⁸ See 19 CFR 351.412(c)(2).

³⁹ *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010) (*OJ from Brazil*), and accompanying IDM at Comment 7.

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),⁴⁰ 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.⁴¹

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.⁴²

BlueScope does not claim different levels of trade between the home market and the U.S. market.⁴³ Consequently, there is no basis for considering a CEP offset with respect to BlueScope. Accordingly, for these preliminary results, we have not granted a CEP offset, pursuant to section 773(a)(7)(B) of the Act.

4. Cost of Production

In accordance with section 773(b)(2)(A) of the Act, Commerce requested cost information from BlueScope and it submitted timely responses. We examined the respondent's cost data and determined that the quarterly cost methodology is not warranted and, therefore, we applied our standard methodology of using annual costs based on the reported data.

a. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative and financial expenses, in accordance with section 773(b)(3) of the Act. We relied on the COP data submitted by the BlueScope in its questionnaire responses for the COP calculation.

b. Test of Comparison Market Sales Prices

As required under sections 773(b)(1) and (2) of the Act, we compared the weighted average of the COP for the POR to the per-unit price of the comparison market sales of the foreign like product to determine whether these sales had been made at prices below the COP within an

⁴⁰ 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).

⁴¹ *See Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

⁴² *See, e.g., OJ from Brazil* IDM at Comment 7.

⁴³ *See* BlueScope BQR at 35.

extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below cost test by subtracting from the gross unit price any applicable movement charges, discounts, billing adjustments, direct and indirect selling expenses, and packing expenses.

c. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where 20 percent or more of a respondent's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because (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 of the COPs, 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.

For BlueScope, our cost test demonstrates that, for home market sales of certain products, more than 20 percent were sold at prices below the COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we excluded these below-cost sales from our analysis and used the remaining above-cost sales to determine NV.

5. Calculation of Normal Value Based on Comparison Market Prices

For those comparison products for which there were sales at prices above the COP for the respondents, we based NV on home 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, we also made adjustments for differences in costs attributable to 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 for the foreign like products and the subject merchandise.⁴⁴

Where applicable, we calculated NV based on delivered or ex-works prices to unaffiliated customers.⁴⁵ In addition, we made deductions, where appropriate, from the starting price for billing adjustments in accordance with 19 CFR 351.401(c), and adjusted the starting price for foreign inland freight, inland insurance, and warehousing pursuant to section 773(a)(6)(B)(ii) of the Act. We made adjustments for differences in packing, in accordance with section 773(a)(6)(A) and also made adjustments for differences in circumstances of sale (for imputed credit expenses and other selling expenses) in accordance with section 773(a)(6)(c)(iii) of the Act and 19 CFR 351.410.

⁴⁴ See 19 CFR 351.411(b).

⁴⁵ See Preliminary Analysis Memorandum.

V. CURRENCY CONVERSION

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

VI. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.



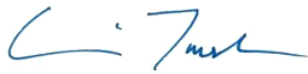
Agree



Disagree

2/16/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance