



A-602-809
Administrative Review
POR: 10/01/2018 – 9/30/2019
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August 17, 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 Final Results of Antidumping Duty
Administrative Review; 2018-2019

I. SUMMARY

The Department of Commerce analyzed the case and rebuttal briefs submitted by interested parties in the 2018-2019 administrative review of the antidumping duty (AD) order on certain hot-rolled steel flat products (hot-rolled steel) from Australia covering the period of review (POR) October 1, 2018, through September 30, 2019. As a result of our analysis, we made certain changes to the margin calculations since the preliminary results for the sole respondent in this review, BlueScope Steel (AIS) Pty Ltd (AIS), BlueScope Steel Limited (BSL), and BlueScope Steel Distribution (BSD) (collectively, BlueScope).

We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of issues in this administrative review for which we received comments from interested parties:

Comment 1: Reimbursement of Antidumping Duties
Comment 2: Calculation of Constructed Export Price Profit
Comment 3: Non-Prime Product Costs
Comment 4: Home-Market Price Adjustments
Comment 5: Calculation of Further Manufacturing Expenses
Comment 6: Calculation of Home-Market Movement Expenses

II. BACKGROUND

On February 16, 2021, Commerce published in the *Federal Register* the preliminary results of the 2018-2019 administrative review of the AD order on hot-rolled steel from



Australia.¹ We invited interested parties to comment on the *Preliminary Results*. We received case and rebuttal briefs from BlueScope and from the United States Steel Corporation, AK Steel Corporation, ArcelorMittal USA LLC, Nucor Corporation, Steel Dynamics, Inc, (collectively, the petitioners).²

On May 18, 2021, Commerce extended the deadline for issuing the final results of this review by 60 days, until August 20, 2021.³

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 antidumping⁴ or countervailing duty⁵ orders on Certain Cut-To-Length Carbon-Quality Steel Plate Products from the Republic of Korea (A-580-836; C-580-837), and

¹ See *Certain Hot-Rolled Steel Flat Products from Australia: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind Review, in Part; 2018–2019*, 86 FR 10923 (February 23, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

² See Petitioners’ Letter, “Hot-Rolled Steel Flat Products from Australia: Petitioners’ Case Brief,” dated March 25, 2021 (Petitioners’ Case Brief); see also BlueScope’s Letter, “Case Brief of BlueScope Steel Ltd: Certain Hot-Rolled Steel Products from Australia,” dated March 25, 2021 (BlueScope’s Case Brief); the Petitioners’ Letter, “Hot-Rolled Steel Flat Products from Australia: Petitioners’ Rebuttal Brief,” dated April 6, 2021 (Petitioners’ Rebuttal Brief); and BlueScope’s Letter, “Rebuttal Brief of BlueScope Steel Ltd: Certain Hot-Rolled Steel Products from Australia,” dated April 6, 2021 (BlueScope’s Rebuttal Brief).

³ See Memorandum, “Certain Hot-Rolled Steel Flat Products from Australia: Extension of Deadline for Final Results of Antidumping Duty Administrative Review; 2018-2019,” dated May 18, 2021.

⁴ 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).

⁵ 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;⁶
- Ball bearing steels;⁷
- Tool steels;⁸ and
- Silico-manganese steels;⁹

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.

⁶ 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.

⁷ 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.

⁸ 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.

⁹ 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.

IV. CHANGES TO THE PRELIMINARY RESULTS

Based on our analysis of information on the record and the comments received, we revised our calculations of the weighted-average dumping margin for BlueScope.¹⁰

V. DISCUSSION OF THE ISSUES

Comment 1: Reimbursement of Antidumping Duties

BSL is the parent company of both AIS and BlueScope Steel Americas (BSA).¹¹ During the POR, AIS was the producer and exporter of BlueScope's subject merchandise to the United States, while BSA was the U.S. importer.¹² BSA sold all of its imported subject merchandise from BlueScope to Steelscape, LLC (Steelscape), an affiliated U.S. further manufacturer.¹³ Finally, Steelscape sold that subject merchandise after further manufacturing it to unaffiliated U.S. customers.¹⁴ A supply agreement between BlueScope, BSA, and Steelscape sets out the terms of the supply of hot-rolled coil from BSA to Steelscape.¹⁵ In the *Preliminary Results*, Commerce found that the record did not demonstrate that BlueScope reimbursed BSA for AD duties.¹⁶

The Petitioners' Argument:

- BlueScope is reimbursing its affiliated U.S. importer, BSA for antidumping duties by deducting the duties from the transfer price invoiced by AIS to BSA.¹⁷
- BlueScope's calculation of its transfer price and the terms of BlueScope's purchase order support this allegation.¹⁸
- Commerce's *Preliminary Results* did not address the petitioners' argument that BlueScope's deduction of antidumping duties from its invoice price calculation constitutes reimbursement of its importer, instead determining that because there is no evidence of a direct payment from BlueScope to BSA to refund cash deposits, no reimbursement had occurred.¹⁹

¹⁰ See Memorandum, "Final Results Analysis Memorandum for BlueScope Steel (AIS) Pty Ltd, BlueScope Steel Limited, and BlueScope Steel Distribution," dated concurrently with this memorandum (Final Analysis Memorandum).

¹¹ See BlueScope's Letter, "Blue Scope Steel's Section A Questionnaire Response," dated March 3, 2019 (BlueScope AQR) at Exhibit A-2.

¹² *Id.* at 7-8.

¹³ *Id.* at 7.

¹⁴ *Id.*

¹⁵ See BlueScope AQR at 20; *see also* BlueScope's Letter, "Blue Scope Steel's Response to the Department's Supplemental Section A Questionnaire," dated July 10, 2020 (BlueScope SAQR) at Exhibit SA-5.

¹⁶ 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 February 16, 2021 (Preliminary Analysis Memorandum) at 3-4.

¹⁷ See Petitioners' Case Brief at 6.

¹⁸ *Id.* at 6 (citing BlueScope SAQR at Exhibit SA-6).

¹⁹ See Petitioners' Case Brief at 12 (citing Preliminary Analysis Memorandum).

- Reimbursement concerns how cash deposits are financed through the sale of goods at a discounted rate to indirectly reimburse the importer for cash deposits, rather than whether the cash deposits were paid.²⁰
- Commerce’s definition of reimbursement is narrowly tailored to the transaction between exporter/producer and U.S. importer, therefore, regardless of any subsequent transactions, the record confirms reimbursement.²¹
- In *AFBs*, Commerce confirmed that 19 CFR 351.402(f)(1)(B) was meant to adjust for both direct and indirect reimbursement.²²
- The original interpretation of Commerce’s reimbursement rule when promulgated is binding regardless of the absence of numerous cases reiterating Commerce’s interpretation.²³
- Failure to find reimbursement threatens to undermine Commerce’s own interpretation of its rules as well as the remedial purpose of the antidumping statute.²⁴
- An “exporter lower{ing} the amount invoiced to the importer” by antidumping duties defeats the remedial purpose of the law because the importer’s eventual payment of the antidumping duties does not result in an additional outlay of money to the importer.²⁵
- BlueScope admits to shifting the burden of AD payment from its U.S. importer to its Australian manufacturing entity, stating that “antidumping duties are for the responsibility of ASP,” thus conceding reimbursement.²⁶
- BlueScope’s transfer pricing formula, worksheets, and invoices between BSA and AIS support adjusting for reimbursement.²⁷ This information satisfies the standard Commerce articulated in *AFBs* for what constitutes indirect reimbursement.²⁸
- Commerce’s definition of reimbursement is not affected by the importer’s payment of duties upon importation, nor any later stage of the transaction such as the transaction between BSA and Steelscape.²⁹

²⁰ See Petitioners’ Case Brief at 12.

²¹ *Id.* at 6-7.

²² *Id.* at 8 (citing *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 54043 (October 17, 1997) (*AFBs*), and accompanying Issues and Decision Memorandum (IDM) at Section 13, Comment 1).

²³ See Petitioners’ Case Brief at 12 (citing *NMB Sing. Ltd v. United States*, 557 F.3d 1316, 1328 (Fed. Cir. 2009), “Although many of the cases Timken cites do not address the issue clearly, those that do indicate that Timken is correct that Commerce ordinarily compares preorder volumes to volumes during the life of an anti-dumping order, rather than just considers volumes during the life of an anti-dumping order in isolation.”).

²⁴ *Id.* at 15.

²⁵ *Id.* at 15 (citing *AFBs* IDM at Section 13, Comment 1).

²⁶ See Petitioners’ Case Brief at 15 (citing BlueScope’s Letter, “BlueScope’s Rebuttal of Pre-Preliminary Comments of US Steel Corporation” (February 1, 2021) (BlueScope Pre-Prelim Comments) at 5.

²⁷ *Id.* at 16.

²⁸ *Id.* at 16 (citing *AFBs* IDM at Section 13, Comment 1, “We agree that the reimbursement regulation is applicable in CEP situations, there must be evidence that the parent has reimbursed (*e.g.*, the exporter directly paid the duties for the importer or the exporter lowered the amount invoiced to the importer) its subsidiary for antidumping duties to be assessed.”)

²⁹ See Petitioners’ Case Brief at 16-17.

BlueScope's Rebuttal Argument:

- BlueScope does not dispute the legality of the deduction of antidumping duties when the importer is reimbursed for antidumping; however, the facts of this case clearly demonstrate that BSA has not been reimbursed by AIS for its payment of dumping duty deposits.
- The petitioners' argument is premised on a claim that BlueScope "lowered" the invoice price of the merchandise to account for dumping duty deposits paid by BSA, citing that the pricing formula used by BlueScope to determine the invoice price includes payment of dumping duties.³⁰
- Record evidence demonstrates that this pricing formula is a price based on percentages of quotations from two published price lists, which determine the delivered price of the hot-rolled steel in the U.S. or to an Asian port, including any duties on the merchandise.³¹
- The formula sets the price to BSA at the FOB Australian port price, plus ocean freight, plus duties (a DDP price). AIS pays the ocean freight, so those charges must be included in the price charged to BSA, however because BSA pays the estimated duty deposits on the merchandise, the estimated duties cannot be included in the price charged to BSA.³²
- The petitioners' argument would effectively require BSA to pay the estimated dumping duties once to CBP and a second time in the price paid to AIS; neither the statute nor Commerce's regulations require this double counting, requiring only that the importer is not reimbursed directly or indirectly.³³
- The record demonstrates that BSA paid the full delivered price and separately paid estimated duties; thus, Commerce was correct in finding that BSA was not reimbursed for its payment of duties and should continue to reject the petitioners' claim.³⁴

Commerce's Position: We continue to find that AIS did not reimburse BSA for AD deposits during the POR.

In its initial questionnaire response, BlueScope described the process for its U.S. sales made through BSA, and described the long-standing supply agreement between BlueScope, BSA, and Steelscape, which sets the transfer price of subject hot-rolled coil from BSA to Steelscape according to a formula.³⁵ BlueScope provided this supply agreement, described and demonstrated the pricing methodology using sales documents from the POR,³⁶ and provided documentation indicating that BSA paid antidumping duties.³⁷

We disagree with the petitioners that the facts on the record demonstrate indirect reimbursement of antidumping duties in the form of AIS deducting an amount for duties when setting the price to BSA. Record evidence in fact demonstrates that BSA paid antidumping duties on its imports of subject merchandise. The petitioners claim that Commerce's *Preliminary Results* did not address their argument that BlueScope's deduction of antidumping duties from its invoice price

³⁰ See BlueScope's Rebuttal Brief at 3.

³¹ *Id.* at 3-4.

³² *Id.* at 4.

³³ *Id.*

³⁴ *Id.* at 5.

³⁵ See BlueScope's AQR at 20.

³⁶ See BlueScope's SAQR at Exhibit SA-5 and SA-6.

³⁷ *Id.* at Exhibit SA-15.

calculation constitutes reimbursement, instead determining that because there is no evidence of a direct payment from BlueScope to BSA to refund cash deposits, no reimbursement had occurred. We note that the preliminary analysis memorandum accompanying Commerce's *Preliminary Results* addressed and described BlueScope's transfer price calculation, with Commerce concluding that there is documentation on the record that BSA paid the antidumping duties *and* that BlueScope's pricing and sales process does not support the claim that BlueScope reimbursed its affiliate for antidumping duties.³⁸ In the Final Analysis Memorandum, we again discuss BlueScope's transfer price methodology, and we continue to find that it provides no evidence that AIS reimbursed BSA for antidumping duties.³⁹

This finding is consistent with Commerce's past practice, upheld by *Torrington*.⁴⁰ In *Torrington*, the Court of International Trade (CIT) agreed with Commerce that "{e}vidence of below-cost transfer pricing between related parties is not in itself evidence of reimbursement of antidumping duties." As noted above, AIS's pricing methodology, in which AIS calculates BSA's transfer price by, among other things, deducting an amount for estimated antidumping duties from the price calculated for its ultimate affiliated purchaser, Steelscape, is not evidence of reimbursement on the part of AIS as defined by Commerce's regulation against reimbursement. Therefore, consistent with *Torrington*, for these final results, we continue to find that there is no basis to conclude that reimbursement of AD duties occurred in this segment of the proceeding.

We disagree with the petitioners' argument that the standard articulated by Commerce in *AFBs* for what constitutes reimbursement is fulfilled in the instant review, wherein the reimbursement regulation is applicable in constructed export price (CEP) situations where there is "evidence that the parent has reimbursed (*e.g.*, the exporter directly paid the duties for the importer or the exporter lowered the amount invoiced to the importer) its subsidiary for antidumping duties to be assessed."⁴¹ Indeed, these final results were released after Commerce re-codified its reimbursement provision under 19 CFR 351.402(f) in 1997.⁴² However, it is incorrect to interpret Commerce's determination in *AFBs* as a binding expression of Commerce's intent.⁴³ The language of 19 CFR 351.402(f) solely provides that Commerce will deduct an amount of antidumping duties which the exporter reimbursed to the importer from export price or CEP, and does not indicate whether or not it applies to "indirect" or "direct" reimbursement. Commerce's *Preamble* additionally does not address whether or not Commerce's regulation applies to indirect reimbursement.⁴⁴ The plain language of Commerce's regulation is genuinely ambiguous with respect to direct or indirect reimbursement. Further, the petitioners' citation to *AFBs* merely references a parenthetical in which Commerce provides an *example* of what it considers to be reimbursement. Commerce, in fact, found in *AFBs* that below-cost transfer pricing between

³⁸ See Preliminary Analysis Memorandum at 4.

³⁹ For further discussion involving the use of business proprietary information, see Final Analysis Memorandum.

⁴⁰ See *Torrington Co. v. United States*, 881 F. Supp. 622, 632 (CIT 1995) (*Torrington*).

⁴¹ See *AFBs* IDM at Section 13, Comment 1.

⁴² See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296 (May 19, 1997) (*Preamble*) at 27,354.

⁴³ See *United States Steel Corp.*, 348 F. Supp. 3d at 1260; *Shandong Huarong Mach. Co. v. United States*, 435 F. Supp. 2d 1261 n. 23 (CIT 2006) (finding that "two prior determinations are not enough to constitute an agency practice that is binding on Commerce").

⁴⁴ See *Preamble* at 27,355.

affiliates is not indicative of reimbursement. This finding was affirmed in *Torrington* with respect to an earlier administrative review in the same proceeding.⁴⁵

The petitioners are explicit that their allegation of reimbursement is not based on a below-cost transfer value but specifically that reimbursement was conferred by AIS reducing the price invoiced to BSA by an amount for antidumping duties. It is unclear how the distinction between below-cost transfer pricing and transfer pricing calculated in accordance with estimated antidumping duties is consequential to Commerce's reimbursement finding in the instant review, or how it further undermines the remedial effect of the antidumping law. Commerce agrees that reimbursement relieves the importer of its obligation to pay AD duties and frustrates the purpose of the antidumping laws. However, the record evidence does not show reimbursement and the pricing methodology does not undermine the effectiveness of trade remedies. The record is clear that BSA, a U.S. importer, paid AD deposits, and passed the price of those duties on to Steelscape. Thus, Steelscape's U.S. customers bore the impact of the antidumping duties. The lowered transfer price from AIS to BSA by the amount of dumping duties offers no relief to BSA, because the lowered transfer price will be reflected in AIS' dumping margin. This reasoning comports with the Court's determination in *Torrington*, affirming Commerce's determination that below-cost transfer pricing was not indicative of reimbursement.

The petitioners argue that because Commerce's definition of reimbursement refers to the transaction between exporter/producer and U.S. importer, regardless of any subsequent transactions, the record confirms reimbursement. First, as discussed above, the plain language of Commerce's regulation is ambiguous with respect to direct or indirect reimbursement between exporter/producer and U.S. importer, and provides no explicit direction with respect to potential indirect reimbursement between affiliated parties. Thus, the below-cost transfer price between AIS and BSA, considered with or without the context of the subsequent transaction to Steelscape, does not confirm reimbursement. However, we find it unreasonable to extrapolate from the limited guidance that Commerce ought to disregard information on the record outside of the transaction between exporter/producer and U.S. importer.

Second, Commerce's reimbursement analysis centers on the transaction between AIS and BSA. Commerce found in part that BSA was not reimbursed for any payment of duties based on BlueScope's pricing methodology in which AIS calculates BSA's transfer price by, among other things, deducting an amount for estimated antidumping duties from the price calculated for its ultimate affiliated purchaser, Steelscape. As a practical matter, the fact that AIS lowered its transfer price to BSA by the amount of estimated antidumping duties offers no relief to BSA because the lowered transfer price will be accurately reflected in AIS' dumping margin. Commerce additionally found that BSA paid cash deposits for antidumping duties upon entry, a fact uncontested by the petitioners. This fact is crucial to Commerce's determination because as established above, below-cost transfer pricing alone is not indicative of reimbursement.

⁴⁵ The Court in *Torrington* also upheld Commerce's finding in its 1992 review of AFBs that "{e}vidence of below-cost transfer pricing between related parties is not in itself evidence of reimbursement of antidumping duties." *Torrington* at 631; see also *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.*, 57 FR 28360.

Based on the foregoing, and our explanation in the *Preliminary Results*, we continue to find that AIS did not reimburse BSA for AD deposits during the POR.

Comment 2: Calculation of Constructed Export Price Profit

The Petitioners' Argument

- The Statement of Administrative Action (SAA) directs Commerce to calculate the profit to be deducted from the starting price in the U.S. market as a ratio of total U.S. selling expenses (excluding the subject merchandise) by total expenses (including the subject merchandise).⁴⁶
- The SAA is an “authoritative expression” when interpreting and applying the Uruguay Round Agreements Act, therefore Commerce is bound by its direction.⁴⁷
- In accordance with the SAA, in *DRAMs from Korea* Commerce included in the calculation of the value added “... expenses associated with the portion of the merchandise further manufactured in the United States, as well as a proportional amount of profit or loss attributable to the value added.”⁴⁸
- Consistent with its established practice, Commerce must determine a share between “value added” and the value of the subject merchandise to attribute profit.⁴⁹
- BlueScope’s further manufacturing response fails to allocate profit to imported subject hot-rolled steel and additional materials associated with Steelscape’s further manufacturing in the United States as required with the inclusion of a further manufacturing profit rate field.⁵⁰
- As a result of this omission, all profit (or loss) is apportioned to the subject merchandise resulting in a further manufacturing database that is influenced by the net profit for sales of further manufactured hot rolled steel sold as corrosion-resistant steel (CORE), inflating CEP.⁵¹
- Commerce should apportion the profit generated from sales of CORE to the hot rolled steel and the value added in the United States, respectively, using the entered value field because it is specific to subject merchandise.⁵²

BlueScope’s Rebuttal Argument

- The petitioners’ argument to recalculate CEP profit relies on a single precedent, *DRAMS from Korea*, decided in 1996 which does not reflect law and regulations after changes made by the Uruguay Round Implementation Act.⁵³
- BlueScope has provided all the necessary information for Commerce to calculate CEP profit based on its five-step methodology.⁵⁴

⁴⁶ See Petitioners’ Case Brief at 17 (citing Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Rep. No. 103-316, vol. 1 at 825–26 (1994), reprinted in 1994 U.S.C.C.A.N. 4040, 4165 (SAA)).

⁴⁷ See Petitioners’ Case Brief at 18 (citing Section 102 of the Uruguay Round Agreements Act; 19 U.S.C. § 3512(d); and *Tech., Inc. v. U.S.*, 243 F.3d 1301, 1309 (Fed. Cir. 2001)).

⁴⁸ See Petitioners’ Case Brief at 18 (citing *DRAMs from Korea, unchanged in Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 61 FR 20216, 20216 (May 6, 1996) (*DRAMs from Korea*)).

⁴⁹ See Petitioners’ Case Brief at 18-19.

⁵⁰ *Id.* at 19.

⁵¹ *Id.*

⁵² *Id.* at 20.

⁵³ See BlueScope’s Rebuttal Brief at 5-6.

⁵⁴ *Id.* at 6.

Commerce's Position: The petitioners misrepresent Commerce's actions in *DRAMs from Korea* as representative of Commerce's interpretation of the SAA. In *DRAMs*, for subject merchandise that was further manufactured after importation, Commerce "deducted all value added in the United States, pursuant to section 772(e)(3) of the Act ..." including as part of the value added "a proportional amount of profit or loss attributable to the value added."⁵⁵

Section 772(e)(3) of the Act as cited in that decision, which includes all citations to the statute and regulations as they existed on December 31, 1994 before the implementation of the URAA, is silent on the specific deduction of profit attributable to the value added, reading:

(e) Additional adjustments to exporter's sales price. For purposes of this section, the exporter's sales price shall also be adjusted by being reduced by the amount, if any, of—

(3) any increased value, including additional material and labor, resulting from a process of manufacture or assembly performed on the imported merchandise after the importation of the merchandise and before its sale to a person who is not the exporter of the merchandise.

The corollary to the former 772(e) is now 772(d), which is explained as follows by the SAA:

Section 772(d)(3) requires Commerce, in determining the constructed export price, to identify and **deduct from the starting price in the U.S. market an amount for profit allocable to selling, distribution and further manufacturing activities in the United States. The profit to be deducted from the starting price in the U.S. market is that proportion of the total profit equal to the proportion which the U.S. manufacturing and selling expenses constitute of the total manufacturing and selling expenses.**

Thus, the profit to be deducted from the starting price in the U.S. market will be calculated by multiplying the total profit by the percentage obtained by dividing total U.S. expenses by total expenses. The total U.S. expenses are all of the expenses deducted under Section 772(d)(1) and (2) in determining the constructed export price.⁵⁶

The calculation and deduction of CEP profit from U.S. net price follows the current statute. The profit "to be deducted from the starting price in the U.S. market" is calculated at line 9334 in the margin program log. The variable CEPOTHER, in the calculation of CEP Profit at line 9334, includes the cost of further manufacturing, as evidenced by line 9266 of the margin program log. The variable CEPRATIO is equal to TOTPROFT (total profit) over TOTEXP (total expenses).

Thus, in accordance with the SAA's description of the implementation of section 772(d)(3), an amount of profit allocable to U.S. selling expenses *including further manufacturing activities* is divided by total expenses and multiplied by profit; this calculated CEP profit is then deducted

⁵⁵ See *Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea; Preliminary Results of Antidumping Duty Administrative Review*, 60 FR 47149, 47150 (September 11, 1995) (*DRAMs from Korea*) unchanged in *Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 61 FR 20216, 20216 (May 6, 1996).

⁵⁶ See SAA at 154.

from the starting price in the U.S. market, as evidenced by lines 9336-9337 of the margin program log.

The petitioners assert that Commerce should use entered value to apportion profit between the value of the subject merchandise and the “value added” in the United States to comport with Commerce’s actions in *DRAMs from Korea*. To the extent that the statute governing CEP addresses value-added in the United States, it is to provide an alternative methodology to arrive at a comparable U.S. price.⁵⁷ As demonstrated above, the appropriate amount of profit attributable to further manufacturing activities has already been deducted from CEP.

We further note that contrary to the petitioners’ claims, Commerce’s section E questionnaire on the costs of further manufacturing does not require a further manufacturing profit rate field.⁵⁸ Regarding the petitioners’ allegation that without such an adjustment, the further manufacturing database reports a CEP that is unreasonably distorted by the “net profit” for its sales of further manufactured hot-rolled steel sold as non-subject merchandise, we disagree. The total profit in the CEP profit calculation is determined based on a broader product line than the subject merchandise insofar as Steelscope further manufactures both subject and non-subject hot rolled coil which is then sold as non-subject coated steel. With regard to the total expenses component of the CEP profit calculation, such expenses are also determined based on the same expanded product line; thus, no distortion in the profit allocable to subject merchandise is created.⁵⁹

Comment 3: Non-Prime Product Costs

The Petitioners’ Argument

- In Pre-preliminary comments, the petitioners offered a methodology to allocate BlueScope’s costs to non-prime merchandise which does not exceed the sales value of the non-prime merchandise.⁶⁰
- BlueScope responded that it correctly excluded the net realizable value or downgrade adjustment from Steelscope’s cost of further manufacturing.⁶¹ BlueScope treats this cost adjustment as a cost of sales variance that gets spread to all products rather than individually increasing the actual cost of manufacture of prime products.⁶²
- BlueScope does not report hot rolled coil costs, only reporting the conversion costs to convert hot rolled coil to steel.⁶³ For conversion costs, BlueScope argues that all products should have the same cost.⁶⁴ The petitioners believe this argument is flawed.⁶⁵

⁵⁷ See section 772(e).

⁵⁸ See Commerce’s Letter, Initial Questionnaire, dated February 4, 2020 (Initial Questionnaire) at Section E.

⁵⁹ See section 772(f)(2)(C) of the Act.

⁶⁰ See Petitioners’ Case Brief at 22 (citing U. S. Steel’s Letter, “U. S. Steel’s Pre-Preliminary Comments Concerning BlueScope,” dated January 25, 2021 (U.S. Steel Pre-Prelim Comments) at 23-24).

⁶¹ See Petitioners’ Case Brief at 22 (citing BlueScope Pre-Prelim Comments at 21; and BlueScope’s Letter, “BlueScope Steel’s Response to Section E of the Department’s Supplementary Questionnaire,” dated January 19, 2021 (BlueScope SEQR) at 3).

⁶² See Petitioners’ Case Brief at 22 (citing BlueScope’s Letter, “BlueScope Steel’s Response to the Department’s Second Supplementary A-E Questionnaire,” dated February 9, 2021 (BlueScope 2nd Supp. A-E QR) at 20).

⁶³ See Petitioners’ Case Brief at 22-23.

⁶⁴ *Id.* at 23.

⁶⁵ *Id.*

- Application of the below three factors, based on Commerce’s established practice,⁶⁶ to the facts of this administrative demonstrates that assigning full costs to the downgraded merchandise is unreasonable.⁶⁷
 - (1) Section 773(f)(1)(A) of the Act directs that the reported costs should be calculated based on a respondent’s normal books and records. Steelscape does not assign full costs to such downgraded products in its normal books. Commerce should find Steelscape’s normal books and records approach for valuing the coated products reasonable, as the market price of the downgraded end product is considerably less than the full production costs that Steelscape assigned to them for reporting purposes.⁶⁸
 - (2) Commerce examines if the downgraded product is in scope. Commerce requested that BlueScope explain whether secondary product sales are to customers for similar applications as those made with prime coil.⁶⁹ BlueScope failed to address the customer application. Further, prior information on the record indicates that Steelscape further processed BlueScope coils into non-prime product.⁷⁰
 - (3) Record evidence indicates that downgraded products differ from a prime product.⁷¹ The write-down in cost for non-prime product implies issues with the physical characteristics of the finished product.⁷² Thus, Commerce should find that such differences warrant cost reallocation because the product’s market value is impaired to a point where its full cost cannot be recovered, as in *LWLP from Canada*.⁷³
- BlueScope believes both downgraded and prime products produced in an identical manner should incur the same weighted-average conversion costs.⁷⁴ BlueScope’s argument that including the write-down in its further manufacturing cost would be inappropriate because it relates to both the substrate and the further processing activity is flawed because Steelscape’s financial results recognize that downgrading a product has a quantifiable impact.⁷⁵
- The petitioners propose that Commerce reallocate costs for downgraded products that exceed sales value to prime merchandise based on a downgrade adjustment rate that should be applied to the full cost of the finished product in the same manner as the G&A expense rate.⁷⁶
- This allocation is consistent with Steelscape’s normal books and records that utilizes a cost of sales variance to make such adjustment and includes reported costs which BlueScope excluded from the reported total cost of manufacturing (COM).⁷⁷

⁶⁶ *Id.* at 23-24 (citing *Large Diameter Welded Pipe from Canada: Final Determination of Sales at Less Than Fair Value*, 84 FR 6378 (February 27, 2019) (*LDWP from Canada*), and accompanying IDM at Comment 5).

⁶⁷ See Petitioners’ Case Brief at 24.

⁶⁸ *Id.* at 24-25.

⁶⁹ *Id.* at 25 (citing BlueScope 2nd Supp. A-E QR at 19).

⁷⁰ *Id.*

⁷¹ See Petitioners’ Case Brief at 26.

⁷² *Id.*

⁷³ *Id.* at 26 (citing *LDWP from Canada* IDM at Comment 5, where Commerce reasoned that if “the product cannot be used for the same applications, the product’s market value is usually significantly impaired to a point where its full cost cannot be recovered{...} assigning full costs to that product could be unreasonable.”).

⁷⁴ See Petitioners’ Case Brief at 27.

⁷⁵ *Id.* at 26-27 (citing BlueScope SEQR at Exhibit SE1-3 Part 1).

⁷⁶ See Petitioners’ Case Brief at 28.

⁷⁷ *Id.* at 29.

BlueScope's Rebuttal Argument

- The petitioners' argument to increase Steelscape's actual cost for converting hot rolled steel to coated steel relies on cherry-picked information from BlueScope's responses.⁷⁸
- The petitioners' allegation that "BlueScope {itself} argues all products should have the same cost" is a blatantly false statement for which the petitioners provide no citation.⁷⁹
- BlueScope has correctly utilized Steelscape's SAP data to adjust its standard cost to an actual basis using product specific variances for every single batch of coated steel produced by Steelscape and has tied these actual costs to Steelscape's audited financial statements.⁸⁰
- The petitioners do not suggest a reallocation of cost, rather an increase across all products of BlueScope's reported further processing cost in field FURCOM, which would result in an overreporting of Steelscape's cost.⁸¹
- The petitioners' allegations that BlueScope did not answer Commerce's specific questions regarding whether non-prime products were within the scope of this review are false.⁸²
 - In response to Commerce's question, "Explain whether these secondary end product sales are to customers for similar applications as those made with prime coil. Confirm whether they are within scope,"⁸³ BlueScope answered that "secondary coated product can be sold for similar applications as prime coated product. Steelscape sells these products to a customer category that also purchases prime ... The only difference is that secondary coated product is downgraded because of surface defects or other issues that result in their classification as secondary (non-prime) product quality."
 - In response to Commerce's request to provide an adjustment to revise standards to reflect actual cost, BlueScope specifically addressed the issue, stating that "the secondary coated steel product hierarchy's FURMANU costs ... were reported as the weighted average of the actual conversion costs of prime coated steel."⁸⁴
- Argumentation aside, none of BlueScope's hot rolled steel was used to manufacture secondary product sold in the United States. Thus, the petitioners' requested adjustment would effectively increase subject merchandise cost to account for an adjustment to non-subject merchandise.⁸⁵

Commerce's Position: In the instant review BlueScope did not sell subject hot rolled steel to unaffiliated parties in the United States; rather, BlueScope reported its affiliate Steelscape's sales of non-subject coated steel which was manufactured from subject Australian hot-rolled steel.⁸⁶ Thus, neither the non-prime nor their prime counterpart products sold by Steelscape are subject merchandise. Steelscape further manufactures hot-rolled steel from BlueScope as well as other foreign suppliers into non-subject coated steel. While Steelscape produced downgraded further

⁷⁸ See BlueScope's Rebuttal Brief at 7.

⁷⁹ *Id.* at 7 (citing Petitioners' Case Brief at 23).

⁸⁰ See BlueScope's Rebuttal Brief at 7 (citing *e.g.*, BlueScope's Letter, "BlueScope Steel Ltd.'s Response to Section E of the Department's Antidumping Questionnaire," dated April 6, 2020 (BlueScope EQR) at 17-26; BlueScope SEQR at 6-8 and Exhibit SE1-3; and BlueScope 2nd Supp. A-E QR at 11-16).

⁸¹ See BlueScope's Rebuttal Brief at 7-8 and Attachment 1.

⁸² *Id.* at 8-9.

⁸³ *Id.* at 9 (citing BlueScope 2nd Supp. A-E QR at 20).

⁸⁴ See BlueScope's Rebuttal Brief at 9 (citing BlueScope 2nd Supp. A-E QR at 22).

⁸⁵ See BlueScope's Rebuttal Brief at 10.

⁸⁶ See BlueScope 2nd Supp. A-E QR at 16.

⁸⁶ *Id.* at 19.

manufactured products during the POR, downgraded further manufactured products made from BlueScope-originated hot rolled steel were not sold in the United States during the POR.⁸⁷ Thus, no sales of the product in question were reported to Commerce in the sales databases.

BlueScope reported that coated steel produced by Steelscape is downgraded either after processing or during the course of processing at Steelscape,⁸⁸ and that downgraded coated steel products incur conversion costs at the same rates as prime coated product.⁸⁹ In its normal books and records, Steelscape books downgraded products at a standard reduced cost, with the cost of this downgrade recorded in a separate account.⁹⁰ For reporting purposes, BlueScope departed from the methodology in its normal books and records by excluding the downgraded cost which was booked into the separate account from its further processing costs, and using the full standard costs of the secondary products which are a “weighted average of the actual conversion costs of prime coated steel.”⁹¹ This is the same manner by which Steelscape reports the cost of prime quality coated steel, by using a material-specific variance to adjust the standard cost to actual cost.⁹² For the *Preliminary Results*, Commerce based its calculations on the further manufacturing costs as reported.

The petitioners’ reliance on *LWLP Canada* has been superseded by the CAFC’s more recent ruling in *Dillinger* that the statute requires the reporting of actual production costs for non-prime and prime merchandise.⁹³ In both *Dillinger* and this case, the non-prime products at issue consume the same inputs and undergo the same production processes as prime products and following production, or as in the case of Steelscape at times during production, defects are identified in some of the finished goods which make them non-prime products. As such, in accordance with *Dillinger*, these non-prime products are to be assigned the actual cost of producing such products.⁹⁴ In light of the CAFC’s ruling in *Dillinger*, Commerce is currently reassessing its practice regarding the treatment of non-prime production costs. Specifically, we are evaluating what factors to consider for purposes of determining the “actual costs” of such products going forward, in a manner that complies with the CAFC’s recent directive. We further note that to the extent that there were no U.S. sales of downgraded merchandise manufactured from subject hot-rolled steel in the United States during the POR, the cost of further manufacturing for secondary products do not figure into Commerce’s margin calculation. While we will continue to refine and develop our practice in this area, for purposes of these final results, we decline to make an adjustment to BlueScope’s reported costs, which includes a calculated cost of production (COP) for downgraded merchandise (*i.e.*, the “actual costs”), rather than a standard downgraded cost, in accordance with *Dillinger*.

⁸⁷ *Id.*

⁸⁸ *Id.* at 16.

⁸⁹ *Id.* at 22.

⁹⁰ See BlueScope EQR at 25.

⁹¹ See BlueScope 2nd Supp. A-E QR at 21.

⁹² *Id.* at 21-22.

⁹³ See *Dillinger France S.A. v. United States*, 981 F.3d 1318, 1321 (CAFC 2020) (*Dillinger*); see also *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: Final Results of Antidumping Duty Administrative Review; 2018-2019*, 86 FR 41448 (August 2, 2021), and accompanying IDM at Comment 3.

⁹⁴ *Id.*

Comment 4: Home-Market Price Adjustments

The Petitioners' Argument

- Commerce will not accept a price adjustment that is made after the time of sale unless the interested party demonstrates its entitlement to such an adjustment.⁹⁵
- Commerce does not consider whether the price adjustment at issue is part of a standard business practice in existence prior to the initiation of the proceeding, recognizing that doing so would have “the potential to manipulate the dumping margins.”⁹⁶
- U.S. Steel’s January 25, 2021, pre-preliminary comments raised several issues with BlueScope’s reported adjustments.⁹⁷ BlueScope attempts to shift the blame to U.S. Steel for not pointing out these issues earlier.⁹⁸ However, Commerce’s regulations are well established, and it is the respondent’s burden to establish the record.⁹⁹
- BlueScope has not established that the terms and conditions of its early payment discounts are established with the customer prior to or at the time of the sale.
 - BlueScope’s early payment discount amounts to little more than a standard business practice that BlueScope has failed to document with evidence of terms and conditions being agreed to by the customer prior to or at the time of sale.¹⁰⁰
 - BlueScope reports that early payment discounts are taken by the customer on payment of each invoice, and that to claim the discount the customer simply reduces their payment.¹⁰¹ The home-market sales database identifies the early payment discount at the standard amount rather than the actual discount granted.¹⁰²
 - BlueScope claims that it offers the early payment discount to every customer, and that it is given so regularly BlueScope refers to it as standard.¹⁰³ Boilerplate language can be found on invoices.¹⁰⁴
 - To the extent that BlueScope reported discounts beyond the standard amount, BlueScope has not met any of the five factors considered by Commerce to establish entitlement.¹⁰⁵
 - BlueScope offers no explanation or documentation of how the actual early payment discount granted is reached or agreed to before the sale.¹⁰⁶
 - BlueScope further states that “customers can occasionally take early payment discounts that they may not have been qualified to take, but because BlueScope values its customers BlueScope generally does not, after the fact, attempt to reclaim additional

⁹⁵ See Petitioners’ Case Brief at 30 (citing 19 C.F.R. § 351.401(c)).

⁹⁶ *Id.*

⁹⁷ See Petitioners’ Case Brief at 31 (citing U.S. Steel Pre-Prelim Comments, generally).

⁹⁸ See Petitioners’ Case Brief at 31 (citing BlueScope Pre-Prelim Comments at 7-8).

⁹⁹ See Petitioners’ Case Brief at 31 (citing *Ta Chen Stainless Steel Pipe, Inc. v. U.S.*, 298 F.3d 1330, 1336 (Fed. Cir. 2002); *Zenith Elecs. Corp. v. U.S.*, 988 F.2d 1573, 1583 (Fed. Cir. 1993); see also *China Steel Corp. v. U.S.*, 306 F. Supp. 2d 1291, 1306 (CIT 2004); and *Welded Stainless Pressure Pipe from Thailand: Final Determination of Sales at Less Than Fair Value*, 79 FR 31093 (May 30, 2014), and accompanying IDM at V).

¹⁰⁰ *Id.*

¹⁰¹ See Petitioners’ Case Brief at 32 (citing BlueScope’s Letter, “BlueScope Steel’s Response to Sections B and C of the Department’s Supplemental Questionnaire,” dated December 28, 2020) (BlueScope SBCQR) at 19.

¹⁰² *Id.*

¹⁰³ See Petitioners’ Case Brief at 32-33.

¹⁰⁴ *Id.* at 32-33 (citing BlueScope’s Letter, “BlueScope Steel’s Response to Section B of the Department’s Questionnaire,” dated March 23, 2020 (BlueScope BQR) at Exhibit B-13).

¹⁰⁵ See Petitioners’ Case Brief at 33.

¹⁰⁶ *Id.* at 34.

funds from its customers.”¹⁰⁷ Thus, whatever early payment discounts established by the invoice are meaningless.¹⁰⁸

- Commerce will deny a claimed price adjustment if a respondent is “unable to provide any written evidence demonstrating that the customers knew the specific terms and conditions,”¹⁰⁹ or if the actual customer specific discount amount is not fixed at the time of sale.¹¹⁰
- BlueScope did not establish that the terms and conditions of its rebates to certain customers are established with the home-market customer prior to or at the time of the sale.
 - BlueScope has not met its burden to demonstrate its eligibility for each of its claimed rebates.¹¹¹ BlueScope reports that it provides rebates based on customer type, but at most, BlueScope has demonstrated that the customer expects certain adjustments because they are accustomed to certain standard business practices of BlueScope.¹¹²
 - Documentation provided by BlueScope with respect to certain customers failed to support that they knew the terms and conditions of the rebate prior to the time of sale and was deficient, with mismatched dates.¹¹³
 - BlueScope provided a rebate program summary as evidence of communication of the rebate program to the customer, arguing that it demonstrates that the customer “is aware of the terms and conditions of the rebates and adjustments associated with the sale at the time of the date of sale.”¹¹⁴
 - However, the summary amounts to an itemization of the types of discounts, rebates, and adjustments, which cannot alone establish customer knowledge of the associated terms and conditions prior to or at the time of the sale.¹¹⁵

BlueScope’s Rebuttal Argument

- The petitioners’ failure to provide comments on how BlueScope presented its home-market sales data at the appropriate time circumvented Commerce’s ability to ask follow-up questions in supplemental questionnaires as appropriate.¹¹⁶
- BlueScope submitted its complete home-market sales database and complete section B response on March 23, 2020, nearly an entire year before the scheduled preliminary determination.¹¹⁷ The petitioners submitted comments on BlueScope’s section A and C

¹⁰⁷ *Id.* at 34 (BlueScope SBCQR at 20).

¹⁰⁸ See Petitioners’ Case Brief at 34.

¹⁰⁹ *Id.* at 35 (citing *Certain Tapered Roller Bearings from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 83 FR 29092 (June 22, 2018), and accompanying IDM at Comment 11.

¹¹⁰ See Petitioners’ Case Brief at 35 (citing *Certain Carbon and Alloy Steel Cut-To-Length Plate from Taiwan: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 82 FR 16372 (April 4, 2017), and accompanying IDM at Comment 8; and *Certain Corrosion-Resistant Steel Products from Taiwan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 35,313 (June 2, 2016), and accompanying IDM at Comment 2.

¹¹¹ See Petitioners’ Case Brief at 35.

¹¹² *Id.* at 35-36.

¹¹³ *Id.* at 36 (citing BlueScope 2nd Supp. A-E QR at Exhibit S2-3).

¹¹⁴ See Petitioners’ Case Brief at 37 (citing BlueScope 2nd Supp. A-E QR at 3,6).

¹¹⁵ See Petitioners’ Case Brief at 37-38.

¹¹⁶ See BlueScope’s Rebuttal Brief at 11 (citing section 782(d) of the Act; see also *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F. 3d 1330, 1338 (Fed. Cir. 2002)).

¹¹⁷ See BlueScope’s Rebuttal Brief at 11.

response and chose not to do so for BlueScope's section B response. BlueScope should not be penalized for this choice.¹¹⁸

- The petitioners' argument to disregard BlueScope's reported early payment discount and rebate data is premised on an inaccurate understanding of the data submitted and Commerce's examination of it.¹¹⁹
- The petitioners mischaracterize the record with respect to early payment discounts, arguing that the early payment discount is "standard." However, BlueScope reported the actual early payment discount per individual line item.¹²⁰
- BlueScope provided as an exhibit the actual invoice issued to a customer for three different transactions demonstrating the payment terms specified by each invoice, and further tied the actual paid amount from payment remittance documents and bank statements to the home-market sales database.¹²¹
- BlueScope has conclusively demonstrated that the terms and conditions of the early payment discount were agreed and known by the customer at the date of sale via the early payment discount terms specified on the invoice issued to customer.
- BlueScope did not discount by a standard amount in practice, nor did it report in section B a standard amount, recording a discount only when it was taken. Thus, there is no legal justification to disregard early payment discounts reported
- BlueScope notes that petitioners are unable to cite a case where Commerce disregarded early payment discounts when those discounts were tied to actual invoices and accounting documentation.¹²²
- The petitioners' argument to disregard BlueScope's rebates is likewise premised on a mischaracterization of the record and should be dismissed.¹²³

Commerce's Position: For these final results of review, Commerce continues to allow BlueScope's early payment adjustments, but we have disallowed certain rebates, the terms of which were not demonstrated to have been fixed at or before the date of sale in accordance with our practice and 19 CFR 351.401(c).

Commerce's regulations, at 19 CFR 351.401(c), direct it to "use a price that is net of any price adjustment, as defined in section 351.102(b), that is reasonably attributable to the subject merchandise or the foreign like product." A price adjustment is defined under 19 CFR 351.102(b), as "any change in the price charged for subject merchandise or the foreign like product, such as discounts, rebates, and post-sale price adjustments that are reflected in the purchaser's net outlay." Further, pursuant to 19 CFR 351.401(c), Commerce will deduct rebates from the starting price, where those rebates are known to the customer prior to the sale and are customer specific.

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 12.

¹²⁰ *Id.* at 12-13 (citing BlueScope BQR at 32).

¹²¹ See BlueScope's Rebuttal Brief at 13.

¹²² *Id.* at 14.

¹²³ *Id.*

BlueScope's practice at AIS and BSL with regard to early payment discounts is for the customer to take such a discount upon payment of each invoice.¹²⁴ At the time of remittance from the customer, an internal credit note is raised to reduce the amount owed, which offsets the expected revenue and reduces the balance owed by the customer on the receivables ledger.¹²⁵ At BSD, a provision for the early payment discount is created at the time of invoicing and the sales value is reduced by that amount.¹²⁶ At the time of remittance from the customer, the discount is taken by the customer and the payment is offset against the created provision.¹²⁷ In its home market sales database, BlueScope reports the "standard amount" offered to the customer as well as the "actual discount granted," which BlueScope acknowledges may vary because customers "can occasionally take early payment discounts that they may not have been qualified to take."¹²⁸ The petitioners argue that this renders meaningless the early payment discount terms established by the invoice. However, upon further analysis, the record shows that the actual variance between the amount offered to the customer and the amount granted above that offer is insignificant to the margin calculation. Documentation provided by BlueScope reconciles to the database and additionally demonstrates that the early payment terms are included on the invoices issued to customers at the time of sale, indicating that the terms were established or known by the customer at the time of the sale and are customer specific.¹²⁹ BlueScope further provided an example of a customer-specific letter setting forth the terms and conditions of sale for shipments, including early payment discounts available.¹³⁰ The frequency and commonality of these adjustments as well as the timing of the adjustments reflect on their legitimacy. Therefore, Commerce continues to adjust the starting price in accordance with BlueScope's reported early payment discounts.

With regard to rebates, BlueScope reports that every customer that received a rebate from BlueScope was aware of the terms of conditions prior to the time of the sale either through the broad distributor rebate program information or through individual documentation in the form of letters to the company.¹³¹ In support of rebates identified in BlueScope's broad distributor rebate program information, BlueScope provided a program summary page for the types of discounts, rebates, and adjustments offered to certain customers.¹³² BlueScope further provided sample trace documentation tying a customer invoice and internal system credit screenshots to the database as well as to the program summary page.¹³³ While the petitioners assert that this documentation provided by BlueScope is deficient and includes invoices with dates that do not correspond, we find that the documentation reconciles. However, while BlueScope was able to provide documentation of its rebates and the specific terms for customers included in the program summary page provided, we find that record evidence provided by BlueScope does not establish that these customers were aware of the terms and conditions for these rebates. As a result of the record indicating that certain customers did not know the terms and conditions of the

¹²⁴ See BlueScope BCQR at 19.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.* at 20.

¹²⁹ *Id.* at Exhibit B-13; see also BlueScope SBCQR at Exhibit SB1-10.

¹³⁰ See BlueScope 2nd Supp. A-E QR at Exhibit S2-2.

¹³¹ *Id.* at 3.

¹³² See BlueScope BCQR at Exhibit B-15; see also BlueScope 2nd Supp. A-E QR at Exhibit S2-1.

¹³³ See BlueScope 2nd Supp. A-E QR at Exhibit S2-3.

rebates, in these final results we are disallowing BlueScope's rebates to certain customers in accordance with our practice and 19 CFR 351.401(c).¹³⁴

In rebuttal comments, BlueScope argues that the petitioners impeded Commerce's ability to ask supplemental questions to meet its statutory obligation to afford respondents an opportunity to address any concern Commerce may have with the respondent's data. We disagree. BlueScope was specifically asked by Commerce in a supplemental questionnaire to "explain whether each customer who received rebates knew the terms and conditions of the rebate at or prior to the time of sale. Please provide evidence to support your response ..."¹³⁵ As addressed above and in the Final Analysis Memorandum, BlueScope did not provide sufficient evidence indicating that certain customers had knowledge of the rebates at or prior to the time of sale. The regulations at 19 CFR 351.401(b)(1) are clear that "{t}he interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment."

Comment 5: Calculation of Further Manufacturing Expenses

BlueScope's Argument

- Commerce's calculation of net U.S. price contains a ministerial error. Commerce should replace FURCOM, TOTFURGNA, and TOTFURINT with FURMANU in its programming for the calculation of net U.S. price.¹³⁶
- If the programming utilized by Commerce reflected their intended calculation, it is unlawful because it is contrary to the approach that Commerce instructed be followed for calculating further manufacturing general and administrative (G&A) and financial expenses.¹³⁷
 - Section E of the questionnaire specifically instructs that the G&A expense ratio should be multiplied by the per-unit further manufacturing cost for the subject merchandise plus the COP, taken from section D of the subject merchandise that was further processed.¹³⁸ The same language is included for finance expenses (FURINT).¹³⁹
 - Commerce instead calculated BlueScope's FURGNA and FURINT by utilizing FURCOM plus raw material costs (RAWMAT).¹⁴⁰ Steelscape's raw material costs include expenses that are unrelated to the production or movement of subject merchandise.¹⁴¹
- Commerce's calculation of total further manufacturing expenses unlawfully results in double counting of selling expense deductions from U.S. price.¹⁴²

¹³⁴ BlueScope has claimed business proprietary treatment for the details of the rebates to certain customers. For further discussion involving the use of business proprietary information, see Final Analysis Memorandum.

¹³⁵ See BlueScope 2nd Supp. A-E QR at 3.

¹³⁶ See BlueScope's Case Brief at 3-4.

¹³⁷ *Id.* at 4 (citing *La Molisana S.P.A. v. United States*, 2018 CIT LEXIS 79 at *4 (July 21, 2018), *aff'd per curiam*, 784 Fed. Appx. 780 (Fed. Cir. 2019) (*La Molisana*); and *Final Results of Redetermination Pursuant to Court Remand* at 5, Slip Op. 17-111, Consol. Court No. 16-00047 (November 11, 2017) (highlighting that the questionnaire instructions precluded the reporting approach taken by the challenging respondent).

¹³⁸ See BlueScope's Case Brief at 5 (citing BlueScope EQR at E-9 to E-10).

¹³⁹ *Id.*

¹⁴⁰ See BlueScope's Case Brief at 6.

¹⁴¹ *Id.*

¹⁴² See BlueScope's Case Brief at 4-5 (citing *e.g., Husteel Co. v. United States*, 98 F. Supp. 3d 1315, 1362 (CIT 2015), upholding "Commerce's decision to employ a methodology that avoids the risk of double counting.").

- Section D costs of production includes all costs associated with producing hot-rolled steel for shipment from factory, and thus does not include any movement expenses associated with shipping from factory to customer; these expenses are captured in section C as selling expenses.¹⁴³
- Steelscape's RAWMAT, used in Commerce's calculation of G&A and financial expenses which are then deducted from gross U.S. price, also includes these selling expenses, namely DBROKEU USD/ DBROKU AUD, INFNFRU USD/INTNFRU AUD, USBROKU, MARNINU, INLFTPU, and USDUTYU.¹⁴⁴ Specifically, BlueScope's section E states that hot rolled coil purchased and reported in field RAWMAT is valued at the weighted average of beginning inventory plus receipts minus consumption on a monthly basis, and this cost "includes inbound freight and unloading cost."¹⁴⁵
- The RAWMAT which Commerce used in its calculation includes at minimum all transportation costs from Australia to the United States including international freight, U.S. import expense, and incoming freight to Steelscape's yard which have already been reported appropriately in section C.¹⁴⁶
- Thus, to include those expenses as part of the underlying cost to which the G&A and financial expense ratios are applied results in unlawful double counting of costs.¹⁴⁷
- Commerce's calculation of further manufacturing G&A and financial expenses results in deducting expenses unrelated to production and sale of hot-rolled steel from Australia.¹⁴⁸
 - Pursuant to section 772(d)(1) of the Act, Commerce may adjust for "commission for selling the subject merchandise"¹⁴⁹ and authorizes adjustments for "expenses that result from and bear a direct relationship to" subject sales.¹⁵⁰
 - BlueScope states in its section E response that Steelscape purchased hot-rolled steel from multiple suppliers.¹⁵¹ Thus, calculation of further manufacturing G&A and financial expenses deducts from U.S. gross price expenses that are unrelated to the production and sale of hot-rolled steel from Australia.¹⁵²
 - For example, this approach results in the deduction of section 232 duties that would have been included in the price Steelscape paid to hot-rolled steel supplier Nippon Steel in Japan whereas section 232 duties are not applied to hot-rolled steel products from Australia.¹⁵³
 - Further, this approach is unlawful because it uses acquisition costs that include profit from affiliated suppliers, contrary to Commerce's own instructions that calculation of G&A and net interest expense should "eliminate the profit or loss element on purchases of subject merchandise."¹⁵⁴

¹⁴³ See BlueScope's Case Brief at 6.

¹⁴⁴ *Id.* at 7.

¹⁴⁵ *Id.* at 7-8 (citing BlueScope EQR at Exhibit E-5).

¹⁴⁶ See BlueScope's Case Brief at 8.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 8 (citing section 772(d)(1)(A) of the Act).

¹⁵⁰ See BlueScope's Case Brief at 9 (citing section 772(d)(1)(B) of the Act).

¹⁵¹ See BlueScope's Case Brief at 9 (citing BlueScope EQR at 10-11).

¹⁵² See BlueScope's Case Brief at 9.

¹⁵³ *Id.* at 10.

¹⁵⁴ *Id.* at 10 (citing BlueScope EQR at Field Number 7.0).

- The necessary data for a lawful calculation of further manufacturing G&A and financial expenses is on the record in BlueScope's section C response.¹⁵⁵ Commerce should revise its calculation of further manufacturing using this information.¹⁵⁶

The Petitioners' Rebuttal Argument

- Commerce's calculation of further manufacturing expense using BlueScope's reported FURCOM, FURGNA, and FURINT is correct and reasonable based on the record.¹⁵⁷
- BlueScope claimed it could not report G&A and interest for further processed products based on the COP of the underlying substrate because it did not have and could not obtain that information;¹⁵⁸ instead, BlueScope constructed a methodology to report a value in FURGNA and FURINT.¹⁵⁹
- Commerce instructed BlueScope to revise its reported G&A expenses in a supplemental questionnaire;¹⁶⁰ BlueScope claimed it "already provided the requested information in its section E database."¹⁶¹ Thus, Commerce reasonably relied upon BlueScope's reported fields FURCOM, FURGNA, and FURINT.¹⁶²
- BlueScope's argument that Commerce's use of RAWMAT results in double counting of selling expenses is without merit.¹⁶³
 - The premise of BlueScope's argument is methodological rather than ministerial as claimed.¹⁶⁴ This mischaracterization avoids confronting Commerce's established methodology, which requires expenses to be reported in a specific manner that avoids double counting; Commerce instructs respondents to report certain movement expenses specific to further manufacturing activity in section E distinct from section C.¹⁶⁵
 - Commerce has explained why certain freight expenses are cost of further manufacturing expenses rather than selling expenses, *i.e.*, when the cost of transporting raw material to a further processor is included in COM, not counted as a movement expense because it is not being sold to a customer, rather it is a raw material input used to create the finished product.¹⁶⁶
 - Thus, altering the preliminary results calculation as suggested by BlueScope represents a deviation from Commerce's practice.¹⁶⁷

¹⁵⁵ See BlueScope's Case Brief at 10.

¹⁵⁶ *Id.* at 10-11.

¹⁵⁷ See Petitioners' Rebuttal Brief at 3.

¹⁵⁸ *Id.* at 3-4 (citing BlueScope EQR at 47).

¹⁵⁹ See Petitioners' Rebuttal Brief at 3 (citing BlueScope EQR at 48).

¹⁶⁰ See Petitioners' Rebuttal Brief at 4 (citing BlueScope EQR at 15).

¹⁶¹ *Id.*

¹⁶² See Petitioners' Rebuttal Brief at 4.

¹⁶³ *Id.* at 4-5.

¹⁶⁴ *Id.* at 5 (citing 19 C.F.R. § 351.224(f)).

¹⁶⁵ See Petitioners' Rebuttal Brief at 5-6 (citing BlueScope EQR at Field 3.0 (FURMAT) "... in addition to the cost of all direct materials added in the United States, you should include in this field the costs incurred for all movement charges incurred to transport the subject merchandise from the port of entry to the company's U.S. further manufacturing facilities.").

¹⁶⁶ See Petitioners' Rebuttal Brief at 6 (citing *Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 71 FR 3822 (January 24, 2006), and accompanying IDM at Comment 1).

¹⁶⁷ See Petitioners' Rebuttal Brief at 6.

- BlueScope’s argument that the inclusion of further manufacturing G&A and financial expenses is unlawful because it includes more than hot rolled Australian costs is without merit.¹⁶⁸
 - The calculation is consistent with Commerce’s established practice of calculating the G&A and financial expense ratios on a basis consistent with the figures to which it is applied.¹⁶⁹ In this instance, Commerce’s ratio denominators are consistent with the basis of the value (RAWMAT) to which the ratios are applied.¹⁷⁰
 - Commerce correctly allocated G&A expenses to all company activities in accordance with its practice.¹⁷¹ Commerce has provided specific guidance for a situation where further manufactured products are produced from non-subject material in *CTL Plate from France*, finding that it is appropriate to allocate G&A expenses to all company activities because G&A activities relate to all of the company’s operations.¹⁷²
 - In *HRC from Brazil*, Commerce also found it “appropriate to allocate G&A expenses to all company activities where the company engages in both further manufacturing and reselling activities.”¹⁷³
 - Commerce’s approach is mathematically balanced and reasonable given that the Steelscape’s G&A activities support the general activities of the company, and that the denominator of the G&A expense ratio includes total manufactured hot rolled coil.¹⁷⁴
- Further, Commerce’s use of the RAWMAT field and corresponding G&A and financial expense ratios is consistent with the previous review.¹⁷⁵ BlueScope is arguing for the first time that Commerce should eliminate the profit or loss element on purchases of subject merchandise in accordance with its questionnaire instructions.¹⁷⁶
- Commerce will either apply further manufacturing G&A and financial expense ratios to the further processor’s weighted average consumption value (*i.e.*, “books and records” or “cost of sales”) or subject merchandise COP.¹⁷⁷ In this instance, there is continuity between the cost of sales figure in the denominator of the ratio and in Steelscape’s cost of sales value.¹⁷⁸
- Commerce’s established practice is to calculate the G&A and financial expense ratios on a basis that is consistent with the figures to which they are applied; thus, Commerce correctly declined to apply the ratios to subject merchandise COP.
- Commerce’s analysis of whether to use the further processor’s weighted average consumption value or subject merchandise COP is fact specific.

¹⁶⁸ *Id.* at 7 (citing BlueScope’s Case Brief at 8-10).

¹⁶⁹ See Petitioners’ Rebuttal Brief at 7-8 (citing *Certain Carbon and Alloy Steel Cut-to-Length Plate from France: Final Determination of Sales at Less Than Fair Value*, 82 FR 16363 (April 4, 2017) (*CTL Plate from France*), and accompanying IDM at Comments 16 and 17).

¹⁷⁰ See Petitioners’ Rebuttal Brief at 8 (citing BlueScope EQR at 46 and Exhibit E-2).

¹⁷¹ See Petitioners’ Rebuttal Brief at 8.

¹⁷² *Id.* at 8-9 (citing *CTL Plate from France* IDM at Comment 17).

¹⁷³ See Petitioners’ Rebuttal Brief at 9 (citing *Certain Hot-Rolled Steel Flat Products from Brazil: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, in *Part*, 81 FR 53424 (August 12, 2016) (*HRC from Brazil*), and accompanying IDM at Comment 5).

¹⁷⁴ See Petitioners’ Rebuttal Brief at 10 (citing BlueScope EQR at Exhibit E-2).

¹⁷⁵ See Petitioners’ Rebuttal Brief at 10 (citing Prelim Analysis Memo).

¹⁷⁶ See Petitioners’ Rebuttal Brief at 11 (citing BlueScope’s Case Brief at 10).

¹⁷⁷ See Petitioners’ Rebuttal Brief at 11 (citing *Silicon Metal from Brazil: Affirmative Final Determination of Sales at Less Than Fair Value*, 83 FR 9835 (March 8, 2018) (*Silicon Metal from Brazil*), and accompanying IDM at Comment 2).

¹⁷⁸ See Petitioners’ Rebuttal Brief at 11 (citing BlueScope EQR at 12 and Exhibit E-2).

- In *Silicon Metal from Brazil*, Commerce similarly declined to use subject merchandise specific COP where silicon metal from other sources were commingled with subject merchandise in the further manufacturing process, reasoning that “the statute does not appear to make an exception for additional material that would be considered subject merchandise but for its country of origin.”¹⁷⁹
- Commerce found that inclusion of additional non-subject material is consistent with the purpose of the further manufacturing adjustment to “adjust the U.S. price of the downstream product into the CEP which reflects the subject merchandise that entered the United States. As noted above, the reported U.S. price of the downstream product includes the CEP of the subject merchandise plus conversion costs and the costs of other materials (including, in this situation, non-Brazilian silicon metal).”¹⁸⁰
- Commerce further concluded that the G&A and financial expense ratios should be applied to the weighted average total cost of the further manufacturer to ensure that the denominators of the G&A rate and financial rate are applied to a unit cost calculated on the same basis as the ratios.¹⁸¹
- The instant review parallels *Silicon Metal from Brazil* in that Steelscape also uses subject and non-subject materials in its production process, and Commerce has the data to calculate the amount using either methodology.¹⁸²
- Commerce’s selected methodology is appropriate because an adjustment to convert Steelscape’s cost of sales figure to a COP figure would result in inaccurate cost allocations given the discrepancy between the costs that the two values represent.¹⁸³
- Commerce similarly applied this methodology in HRC from Japan which also involved Steelscape as the further manufacturer.¹⁸⁴
- Commerce’s application of the G&A and financial expense is consistent with the previous review, and nothing on the record of this review nor in precedent warrants a departure.¹⁸⁵

Commerce’s Position: We confirm that the programming for the margin calculations in the *Preliminary Results* reflects Commerce’s intended calculation. Commerce calculated the total further manufacturing G&A expenses (TOTFURGNA) and total further manufacturing financial expenses (TOTFURINT) by multiplying the G&A ratio and the interest expense ratio, respectively, by the cost of further manufacturing (FURCOM) plus the cost of hot rolled coil (RAWMAT).

BlueScope argues that this calculation is unlawful because it is contrary to Commerce’s instructions in its questionnaire for calculating further manufacturing G&A and financial

¹⁷⁹ See Petitioners’ Rebuttal Brief at 11-12 (citing *Silicon Metal from Brazil* IDM at Comment 2).

¹⁸⁰ See Petitioners’ Rebuttal Brief at 12-13 (citing *Silicon Metal from Brazil* IDM at Comment 2).

¹⁸¹ See Petitioners’ Rebuttal Brief at 13 (citing *Silicon Metal from Brazil* IDM at Comment 3).

¹⁸² See Petitioners’ Rebuttal Brief at 14. The petitioners note that unlike in *Silicon Metal from Brazil*, Steelscape does not blend HRC.

¹⁸³ See Petitioners’ Rebuttal Brief at 14 (citing BlueScope EQR at 12).

¹⁸⁴ See Petitioners’ Rebuttal Brief at 15 (citing *Certain Hot-Rolled Steel Flat Products from Japan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 53409 (August 12, 2016) (*HRS from Japan*), and accompanying IDM at Comment 12).

¹⁸⁵ See Petitioners’ Rebuttal Brief at 15.

expenses.¹⁸⁶ We note the standard practice discussed in our questionnaire does not take the place of the statute, nor can it address all scenarios, nor does it limit us from considering information on a case-by-case basis. However, as a general mathematic principle it is necessary, when calculating at rate to be used to allocate across other figures, to calculate that rate (*e.g.*, G&A and financial expense ratios) using a denominator that is consistent with the figures to which they are applied, otherwise over – or under-allocation will occur.¹⁸⁷ Commerce’s questionnaire specifically indicates an intention for the G&A expense ratio to be applied on the same basis as it was calculated.¹⁸⁸ In calculating the G&A expense ratio, Commerce has long recognized that a company’s G&A expenses are those expenses associated with a period of time which relate to the general operations of the company as a whole, rather than with respect to the production process.¹⁸⁹ Therefore, the denominator typically used for these allocations is the company’s cost of goods sold figure, which includes material costs, labor costs, variable overheads and fixed overhead costs. As such, the denominator includes not only the further processing costs but also the cost of the merchandise that was further processed. In the instant review, Steelscape further manufactures both subject Australian hot-rolled coil as well as coil from other countries and producers. By applying the ratio to both the unit further manufacturing cost and the unit hot-rolled coil cost, we are consistent with the denominator of the ratio, and we correctly applied the ratio to values on the same basis, and as we did for the *Preliminary Results*.

Commerce’s application of Steelscape’s G&A ratio to Steelscape’s further manufacturing costs plus hot-rolled coil costs is balanced and reasonable. This approach properly assigns the G&A expense proportionately to the further manufactured coil. BlueScope posits that the correct calculation would replace RAWMAT with the COP from AIS, the manufacturer of BlueScope’s hot rolled coil (TOTCOM). However, to apply the ratio as BlueScope suggests would be less accurate and require the denominator of the G&A ratio to be changed to reflect the COP for all the coil further manufactured by Steelscape, rather than Steelscape’s cost to purchase it. As BlueScope itself notes, this information is unavailable because neither Steelscape nor BlueScope have access to the COP of all the coil consumed at Steelscape, because Steelscape consumes coil imported from other countries alongside subject hot-rolled coil in its further manufacturing operations.¹⁹⁰

BlueScope’s contention that the use of RAWMAT unlawfully results in the double counting of certain selling expenses is unconvincing. The record evidence indicates that the following selling expenses alleged by BlueScope to be included in RAWMAT – U.S. and Australian brokerage, international freight, marine insurance, inland freight to port, and duties – are incurred by AIS or the importer of record, BSA. Additionally, contrary to BlueScope’s argument, we find the presence of inbound freight and unloading cost in the field RAWMAT to

¹⁸⁶ We disagree with BlueScope that *La Molisana* is instructive here. The Court’s decision in *La Molisana* contemplates Commerce’s duty to uphold the model match methodology, which is distinct from other reporting requested by Commerce. Further, it was determined that the information placed on the record by *La Molisana* was insufficient to warrant shape reclassification; the Court did not hold that the methodology in the questionnaire precluded such a change. See *La Molisana*, 2018 WL 3089242 (CIT 2018).

¹⁸⁷ See *CTL Plate Canada* (citing *e.g.*, *Certain Pasta from Italy: Notice of Final Results of the Thirteenth Administrative Review*, 75 FR 81212 (December 27, 2010), and accompanying IDM at Comment 4.

¹⁸⁸ See Initial Questionnaire at section E.

¹⁸⁹ See *U.S. Steel Group, et al. v. United States*, 998 F. Supp 1151, 1154 (CIT 1998) (citing *Rautaruukki Oy v. United States*, 19 CIT 438, 444 (1995)).

¹⁹⁰ See BlueScope EQR at 47.

be appropriate because these movement expenses relate to the transportation of raw material to a further processor and would be reflected in the cost of goods sold figure used in the denominator of the ratios. Costs associated with the purchase of raw materials (*i.e.*, freight and unloading costs as well as expenses such as 232 duties) are also appropriately included in the denominator of the G&A ratio, which also reflects the costs of subject and non-subject coils.

We reiterate that Commerce's approach is mathematically sound given that the denominator of the ratio includes the costs related to the further manufacturing of both subject and non-subject coil. Regarding the inclusion of coil from affiliated suppliers such as BlueScope, we acknowledge that acquisition costs may include some profit. That such profit, along with other selling expenses, is included in the denominator of the G&A ratio, thereby decreasing the ratio itself. When this ratio is applied to the coil raw material costs, which would also include profit, it results in a reasonable G&A expense.

While evaluating the consistency of the G&A ratio calculation and application, we noted an inconsistency with the financial expense ratio and its application. The financial expense ratio is based on the audited financial statements at the highest level of consolidation of Steelscape, which is with its Australian parent BlueScope.¹⁹¹ The effect of using the consolidated parent's financial statements is that any transactions between Steelscape and the Australian parent are eliminated from the cost of goods sold denominator. Therefore, the calculated rate is slightly higher than it would have been if the sales were included, which results in a higher rate that was applied to BlueScope's COM (*i.e.*, the coil costs). So, the interest that should be applied to the coil coming over has already been fully accounted for. Thus, to avoid double-counting financial costs (*i.e.*, already accounted for at the producer) and to ensure that the denominator of the ratio is on the same basis as the amount to which it is applied, the financial expense ratio should only be applied to Steelscape's costs of further manufacturing. Therefore, we revised our margin programming from the *Preliminary Results* to correctly apply the financial expense ratio only to Steelscape's further manufacturing costs.¹⁹²

Comment 6: Calculation of Home-Market Movement Expenses

BlueScope's Argument

- Commerce incorrectly calculated the deduction for home-market movement expenses by failing to include the variable INLFTWH2_OCEAN and failing to include INLFTCH2 in the calculation of the freight revenue cap.¹⁹³

Commerce's Position: We agree with BlueScope. These fields should be included in home-market movement expenses and were inadvertently left out in our *Preliminary Results*. For these final results of review, we included the freight to warehouse expense INLFTWH2_OCEAN as a deduction for movement expenses and included marine freight to customer expense INLFTCH2 in the calculation of the freight revenue cap.

¹⁹¹ *Id.* at 47 and Exhibit E-12.

¹⁹² See Final Analysis Memorandum at 3.

¹⁹³ See BlueScope's Case Brief at 11.

VI. RECOMMENDATION

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



Agree



Disagree

8/17/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance