



A-602-809  
Investigation  
Public Document  
E&C/V: FMV

DATE: March 14, 2016

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

FROM: Christian Marsh  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the  
Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat  
Products from Australia

---

## I. SUMMARY

The Department of Commerce (“Department”) preliminarily determines that certain hot-rolled steel flat products (“hot-rolled steel”) from Australia are being, or are likely to be, sold in the United States at less-than-fair-value (“LTFV”), as provided in section 733 of the Tariff Act of 1930, as amended (“the Act”). The estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying Federal Register notice.

## II. BACKGROUND

On August 11, 2015, the Department received an antidumping duty (“AD”) petition covering imports of hot-rolled steel from Australia,<sup>1</sup> which were filed in proper form on behalf of AK Steel Corporation, ArcelorMittal USA LLC, Nucor Corporation, SSAB Enterprises, LLC, Steel Dynamics, Inc., and United States Steel Corporation (collectively “Petitioners”). The Department initiated this investigation on August 31, 2015.<sup>2</sup>

In the Initiation Notice, the Department stated that the Petitioners identified only one company as a producer/exporter of hot-rolled steel in Australia and that we currently know of no additional

---

<sup>1</sup> See Letter to the Secretary of Commerce from Petitioners “Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, Turkey, and the United Kingdom Petitions for the Imposition of Antidumping and Countervailing Duties” (August 11, 2015) (“Petition”).

<sup>2</sup> See Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations, 80 FR 54261 (September 9, 2015) (“Initiation Notice”).



producers/exporters of merchandise under consideration from Australia.<sup>3</sup> Accordingly, on September 21, 2015, the Department issued the AD questionnaire to the only known producer/exporter in Australia, BlueScope Steel Ltd. (“BlueScope”).<sup>4</sup>

Also in the Initiation Notice, the Department notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of hot-rolled steel to be reported in response to the Department’s AD questionnaire.<sup>5</sup> From September through October 2015, the following interested parties submitted comments on the scope of the investigation: POSCO; Tata Steel IJmuiden BV; BlueScope Steel Ltd.; Nippon Steel & Sumitomo Metal Corporation; and JFE Steel Corporation.<sup>6</sup> On October 5, October 21, and November 5, 2016, Petitioners submitted rebuttal scope comments in response to the scope comments of each of the interested parties that submitted scope comments.<sup>7</sup>

On September 16, 2015, in addition to the petitioners, BlueScope, Companhia Siderúrgica Nacional, Ereğli Demir ve Çelik Fabrikaları T.A.Ş., Hyundai Steel Company (“Hyundai Steel”), Nippon Steel & Sumitomo Metal Corporation, POSCO, Tata Steel IJmuiden BV, Tata Steel UK Ltd., and Usinas Siderurgicas de Minas Gerais - Usiminas S.A. submitted comments to the Department regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes.<sup>8</sup> On September 21, 2016, BlueScope filed rebuttal comments. On September 22, 2015, the petitioners, Colakoglu Metalurji A.S., Colakoglu Dis Ticaret A.S., and Hyundai Steel filed rebuttal comments.<sup>9</sup>

On September 30, 2015, the U.S. International Trade Commission preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of hot-rolled steel.<sup>10</sup>

In November 2015, the Department extended the date for the issuance of the preliminary determination in this investigation until 190 days after the date of initiation and published a postponement of the preliminary determination until no later than March 8, 2015.<sup>11</sup> As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due

---

<sup>3</sup> Id., 80 FR at 54265.

<sup>4</sup> See Letter to BlueScope from Catherine Bertrand, Program Manager, Office V, regarding AD Questionnaire (September 21, 2015).

<sup>5</sup> See Initiation Notice, 80 FR at 54262.

<sup>6</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Scope Comments Decision Memorandum for the Preliminary Determinations,” dated concurrently with this preliminary determination (“Scope Memorandum”).

<sup>7</sup> Id.

<sup>8</sup> These companies are interested parties in the hot-rolled steel investigations, i.e., Australia, Brazil, Japan, the Netherlands, Turkey, the Republic of Korea and the United Kingdom.

<sup>9</sup> Id.

<sup>10</sup> See Certain Hot-Rolled Steel Flat Products From Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom: Determinations, 80 FR 58787 (September 30, 2015).

<sup>11</sup> See Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Postponement of Preliminary Determinations of Antidumping Duty Investigations, 80 FR 73702 (November 25, 2015).

to the recent closure of the Federal Government.<sup>12</sup> All deadlines in this investigation have been extended by four business days.<sup>13</sup> The revised deadline for the preliminary determination of this investigation is now March 14, 2016.

In October 2015, BlueScope submitted a timely response to section A of the Department's AD questionnaire (*i.e.*, the section relating to general information), and in November 2015, BlueScope responded to sections B, C, D, and E (*i.e.*, the sections relating to home market sales, U.S. sales, home market cost of production, and further processing in the United States, respectively). From October 2015 through February 2016, we issued supplemental questionnaires to BlueScope, and we received responses to these supplemental questionnaires from November 2015 through February 2016.

On February 29, 2016, and March 1, 2016, BlueScope and Petitioners, respectively, submitted pre-preliminary comments.<sup>14</sup>

We are issuing this preliminary determination in this investigation in accordance with section 733(b) of the Act.

### **III. PERIOD OF INVESTIGATION**

The POI is July 1, 2014, through June 30, 2015. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was August 2015.<sup>15</sup>

### **IV. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES**

On February 24, 2016, pursuant to 19 CFR 351.210(b) and (e), BlueScope requested that, contingent upon an affirmative preliminary determination of sales at LTFV for BlueScope, the Department postpone the final determination and that provisional measures be extended to a period not to exceed six months.<sup>16</sup> In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because 1) our preliminary determination is affirmative, 2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise, and 3) no compelling reasons for denial exist, we are granting the respondent's request and are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the Federal Register, and we are extending provisional

---

<sup>12</sup> See Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement and Compliance, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas," dated January 27, 2016.

<sup>13</sup> *Id.*

<sup>14</sup> See Letter from BlueScope regarding, "Certain Hot-Rolled Steel Flat Products from Australia," dated February 29, 2016; see also Letter from Petitioners regarding, "Certain Hot-Rolled Steel Flat Products from Australia," dated March 1, 2016.

<sup>15</sup> See 19 CFR 351.204(b)(1).

<sup>16</sup> See Petitioners' letter to the Secretary of Commerce from BlueScope regarding, "Hot-Rolled Flat Products from Australia: Request for Postponement of the Final Determination" (February 26, 2016); see also BlueScope's letter regarding "Hot-Rolled Flat Products from Australia: Pre-Preliminary Comments of BlueScope Steel Ltd. and BlueScope Steel Americas LLC" (February 26, 2016).

measures from four months to a period not to exceed six months. Suspension of liquidation will be extended accordingly.

## **V. PRELIMINARY NEGATIVE DETERMINATION OF CRITICAL CIRCUMSTANCES**

On December 9, 2015, the Department published its preliminary critical circumstances determination in which we found that Australia's shipment data did not demonstrate massive surges in imports for any producers/exporters. Thus, we reached a preliminary negative critical circumstances determination with respect to Australia.<sup>17</sup>

## **VI. SCOPE OF THE INVESTIGATION**

The products covered by this investigation are hot-rolled steel from Australia. For a full description of the scope of this investigation, see this investigation's accompanying preliminary determination notice at Appendix I.

## **VII. SCOPE COMMENTS**

In accordance with the preamble to the Department's regulations,<sup>18</sup> the Initiation Notice set aside a period of time for parties to raise issues regarding product coverage (i.e., "scope").<sup>19</sup> Certain interested parties commented on the scope of the investigation as it appeared in the Initiation Notice, as well as additional language proposed by the Department. For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, see the Preliminary Scope Decision Memorandum.<sup>20</sup> The Department is preliminarily not modifying the scope language as it appeared in the Initiation Notice.

## **VIII. AFFILIATION AND COLLAPSING**

### **A. Affiliation**

BlueScope reported that all sales made to the United States during the POI were sold by BlueScope and BlueScope Steel (AIS) Pty Ltd. ("AIS").<sup>21</sup> BlueScope also reported that AIS is an integrated producer of hot-rolled steel and that AIS made sales of hot-rolled steel both to unaffiliated and affiliated customers (BlueScope and BlueScope Steel Distribution Pty Ltd. ("BSD")) in Australia and the United States.<sup>22</sup> BlueScope only purchases hot-rolled steel from AIS, and sometimes pickles and oils the product before reselling it to unaffiliated and affiliated

---

<sup>17</sup> See Antidumping Duty Investigations of Certain Hot-Rolled Steel Flat Products From Australia, Brazil, Japan, and the Netherlands and Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products From Brazil: Preliminary Determinations of Critical Circumstances, 80 FR 76444, 76446 (December 9, 2015).

<sup>18</sup> See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27323 (May 19, 1997).

<sup>19</sup> See Initiation Notice, 80 FR at 54261.

<sup>20</sup> See Scope Memorandum.

<sup>21</sup> See BlueScope's Section A questionnaire response, dated October 23, 2015 ("BlueScope's Section A Response").

<sup>22</sup> BlueScope Steel's Second Supplemental Section D Questionnaire Response, dated February 8, 2016 ("BlueScope's Supplemental Section D Response").

customers (BSD) in Australia and the United States.<sup>23</sup> BSD only purchases hot-rolled from AIS and BlueScope, and warehouses and sometimes cuts the product before reselling it as hot-rolled steel to unaffiliated customers in Australia.<sup>24</sup>

Section 771(33) of the Tariff Act of 1930, as amended (“the Act”), provides that:

The following persons shall be considered to be ‘affiliated’ or ‘affiliated persons’:

- (A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.
- (B) Any officer or director of an organization and such organization.
- (C) Partners.
- (D) Employer and employee.
- (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.
- (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.
- (G) Any person who controls any other person and such other person.

Section 351.102(b)(3) of the Department’s regulations defines affiliated persons and affiliated parties as having the same meaning as in section 771(33) of the Act, and states the following:

In determining whether control over another person exists, within the meaning of section 771(33) of the Act, the Secretary will consider the following factors, among others: corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The Secretary will not find that control exists on the basis of these factors unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product. The Secretary will consider the temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control.<sup>25</sup>

We have preliminarily determined that BlueScope, AIS, and BSD, entities engaged in the production and sale of hot-rolled steel coil in Australia are affiliated, pursuant to section 771(33)(F) of the Act.

The record shows that BlueScope’s affiliates (*i.e.*, AIS and BSD) are wholly-owned by BlueScope.<sup>26</sup> BlueScope submitted an organization chart, supported by information in its financial statements, which demonstrates that it owns 100 percent of AIS and BSD.<sup>27</sup>

---

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> See 19 CFR 351.102(b)(3).

<sup>26</sup> See BlueScope’s Section A Response.

<sup>27</sup> Id., at Exhibit 2.

Regarding board members, the record of this proceeding shows that AIS and BSD are subsidiaries of BlueScope (also referred to as “Group” in BlueScope’s audited financial statements).<sup>28</sup> The Group has one Board, which controls the companies within it.<sup>29</sup> The record also shows that the Group has final control over its subsidiaries, which include BlueScope, AIS and BSD, and has the power to direct the activities of each entity.<sup>30</sup>

Section 771(33)(F) of the Act considers entities to be affiliated if they directly or indirectly control, are controlled by, or are under common control with, any person. For purposes of statutory construction, the term “person” can be construed in the singular or plural and can include a corporate entity or group.<sup>31</sup> Moreover, the statute does not require evidence of actual control; it is the ability to control that is dispositive.<sup>32</sup> A company may be in a position to exercise restraint or direction, for example, through “corporate . . . groupings”<sup>33</sup> Additionally, the Department may consider control to arise from the potential to manipulate price and production.<sup>34</sup>

As described above, BlueScope has final control over its subsidiaries, which include AIS and BSD, and has the power to direct the activities of each entity.<sup>35</sup> Accordingly, the record of this investigation demonstrates that the ownership, management, and operational structure of these companies is such that BlueScope is in a position to impact decisions concerning the production, pricing and cost of merchandise under consideration and the foreign like product and that BlueScope controls AIS and BSD. Therefore, we preliminarily find BlueScope is affiliated with AIS, and BSD, pursuant to section 771(33)(F) of the Act, based on ownership and control. Furthermore, we also find BlueScope, AIS, and BSD to be affiliated pursuant to section 771(33)(F) of the Act because they have one Board, which controls the companies.

## B. Collapsing

Section 351.401(f) of the Department’s regulations outlines the criteria for treating affiliated producers as a single entity for purposes of antidumping proceedings:

- (1) In general. In an antidumping proceeding under this part, the Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production.

---

<sup>28</sup> Id., at Exhibit 13.

<sup>29</sup> Id.

<sup>30</sup> Id.

<sup>31</sup> See Dongkuk Steel Mill Co., v. United States, Court No. 04-000190, Slip Op. 05-75 (CIT June 22, 2005).

<sup>32</sup> See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27297-98 (May 19, 1997).

<sup>33</sup> See SAA at 838; 19 CFR 351.102(b).

<sup>34</sup> See Certain Welded Carbon Standard Steel Pipe and Tubes from India; Final Results of New Shippers Antidumping Duty Administrative Review, 52 FR 47632, 47638 (September 10, 1997).

<sup>35</sup> See BlueScope’s Section A Response, at Exhibit 13.

(2) Significant potential for manipulation. In identifying a significant potential for the manipulation of price or production, the factors the Secretary may consider include:

- (i) The level of common ownership;
- (ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and
- (iii) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.<sup>36</sup>

The Department has long recognized that it is appropriate to treat certain groups of companies as a single entity and to determine a single weighted-average margin for that entity to determine margins accurately and to prevent manipulation that would undermine the effectiveness of the antidumping law.<sup>37</sup> While section 19 CFR 351.401(f) explicitly applies to producers, the Department has found it to be instructive in determining whether non-producers should be collapsed and has used the criteria outlined in the regulation in its analysis. In a number of past cases, the Department has treated exporting companies as a single entity,<sup>38</sup> as well as producers and exporters as a single entity.<sup>39</sup>

Furthermore, the CIT has upheld the Department's practice of collapsing two entities that were sufficiently related to prevent the possibility of price manipulation, even when those entities were not both producers.<sup>40</sup> For example, in Hontex II,<sup>41</sup> the CIT held that, once a finding of affiliation is made, affiliated exporters can be considered a single entity where their relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise.<sup>42</sup>

Based on the facts discussed above, the Department preliminarily determines that the criteria of section 19 CFR 351.401(f) are met with respect to treating BlueScope, AIS, and BSD as a single entity. While the record demonstrates that AIS is the only affiliate that is an integrated producer of hot-rolled steel in Australia, AIS is able to perform the further processing performed by both BlueScope and BSD that changes the designated product characteristics that make up the control number ("CONNUM"), which results in a new CONNUM.<sup>43</sup> We therefore find, consistent with section 19 CFR 351.401(f)(1), that there is potential for the restructure of certain manufacturing priorities because the operations performed by BlueScope and BSD are also performed by AIS.

---

<sup>36</sup> See 19 CFR 351.401(f).

<sup>37</sup> See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Brazil, 69 FR 76910 (December 23, 2004) and accompanying Issues and Decision Memorandum at Comment 5.

<sup>38</sup> Id.

<sup>39</sup> See Certain Welded Carbon Steel Standard Pipes and Tubes from India: Preliminary Results of Antidumping Duty Administrative Review, 75 FR 33578, 33580-33581 (June 14, 2010), unchanged in Certain Welded Carbon Steel Standard Pipes and Tubes From India: Final Results of Antidumping Duty Administrative Review, 75 FR 69626 (November 15, 2010).

<sup>40</sup> See Queen's Flowers de Colon v. United States, 981 F. Supp. 617, 628 (CIT 1997).

<sup>41</sup> See Hontex Enterprises v. United States, 342 F. Supp. 2d 1225, 1230-34 (CIT 2004) ("Hontex II").

<sup>42</sup> Id.

<sup>43</sup> See BlueScope's Supplemental Section D Response, at 2-3.

Further, the Department finds that in accordance with criteria of section 19 CFR 351.401(f)(2), significant potential for manipulation of price or production, are met for the following reasons. As described above, BlueScope owns 100 percent of each of the above-referenced entities.<sup>44</sup> Also, BlueScope, AIS and BSD have one Board, which controls the companies and has the power to direct the activities of each entity. In addition, as described above, there are significant transactions between BlueScope, AIS and BSD. Each of the above factors, including ownership, interlocking directorates, and intertwined operations constitute a significant potential for the manipulation of price or production within the meaning of 19 CFR 351.401(f)(2).

Therefore, based on the forgoing discussion, the Department preliminarily finds that BlueScope, AIS and BSD are affiliated pursuant to section 771(33)(F) of the Act. Further, we preliminarily find that BlueScope, AIS, and BSD should be treated as a single entity pursuant to 19 CFR 351.401(f).

## **IX. DISCUSSION OF THE METHODOLOGY**

### Comparisons to Fair 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 the subject merchandise from Australia to the United States were made at less than fair value, the Department compared the export price ("EP") and constructed export price ("CEP") to the normal value as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this memorandum.

#### A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average normal values to weighted-average export prices (or constructed export prices) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department examines whether to compare weighted-average normal values with the export prices (or constructed export prices) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In recent investigations, the Department applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.<sup>45</sup> The Department finds that the differential pricing analysis used in recent investigations may be instructive for

---

<sup>44</sup> See BlueScope's Section A Response, at Exhibit 13.

<sup>45</sup> See, e.g., Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair, 78 FR 33351 (June 4, 2013); Steel Concrete Reinforcing Bar From Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, 79 FR 54967 (September 15, 2014); or Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value, 80 FR 61362 (October 13, 2015).

purposes of examining whether to apply an alternative comparison method in this investigation. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions, and time periods 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 average-to-average 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.*, state) 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 period of investigation 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 the Department uses in making comparisons between export price (or constructed export price) and normal value for the individual dumping margins.

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

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average

method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative comparison method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the de minimis threshold, or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the de minimis threshold.

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

For BlueScope, based on the results of the differential pricing analysis, the Department preliminarily finds that 64.01 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>46</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test.<sup>47</sup> Thus, for this preliminary determination, the Department is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for BlueScope.<sup>48</sup>

---

<sup>46</sup> See the Memorandum to the File from Frances Veith, "Analysis for the Preliminary Determination of the Less-Than-Fair-Value Investigation of Certain Hot-Rolled Steel Flat Products from Australia" dated concurrent with this memorandum ("BlueScope Preliminary Analysis Memorandum").

<sup>47</sup> Id.

<sup>48</sup> Id.

## **X. DATE OF SALE**

Section 351.401(i) of the Department’s regulations states that, in identifying the date of sale of the merchandise under consideration 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. Additionally, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.<sup>49</sup> In this case, except for certain U.S. sales made by Steelscape LLC<sup>50</sup> where BlueScope reported the earlier of the invoice date or shipment date as the date of sale, BlueScope reported that the invoice date for all home market and U.S. sales best represents the date of sale because, at that point, the material terms of the sale cannot be altered.<sup>51</sup> We preliminarily accept BlueScope’s basis for the reported dates of sale and used them for purposes of this preliminary determination.

## **XI. PRODUCT COMPARISONS**

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondent in Australia during the POI that fit the description in the “Scope of Investigation” section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We 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, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

In making product comparisons, we 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.

## **XII. EXPORT PRICE AND CONSTRUCTED EXPORT PRICE**

BlueScope reported that its sales to the United States were made on an EP and/or a CEP basis.<sup>52</sup> In accordance with section 772(a) of the Act, EP is “the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States,” as adjusted under section 772(c) of the Act. In accordance with section 772(c)(2)(A) of the Act, where appropriate, for BlueScope EP sales, we deducted from the starting price to unaffiliated purchasers foreign inland

---

<sup>49</sup> See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

<sup>50</sup> Steelscape LLC is an affiliated company of BlueScope located in the United States. Steelscape further processes and sells some of the hot-rolled steel BlueScope exported to the United States during the POI.

<sup>51</sup> See BlueScope’s Section B questionnaire response dated November 12, 2015, at 16; see also its Section C questionnaire response, dated November 12, 2015 at 19.

<sup>52</sup> See BlueScope’s Section C response dated November 12, 2015, at 14.

freight, foreign brokerage and handling, customs duties, domestic brokerage and handling and other movement expenses incurred in Australia and the United States.

In accordance with section 772(b) of the Act, CEP is the price at which the merchandise under consideration 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. For certain sales made by BlueScope in the United States, 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, including foreign inland freight, international freight, marine insurance, U.S. brokerage and handling, U.S. customs duties, and further manufacturing in the United States 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 includes direct selling expenses and indirect selling expenses. Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP.<sup>53</sup>

### **XIII. NORMAL VALUE**

#### *A. Comparison Market Viability*

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (i.e., the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we normally compare 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 investigation, we 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 the subject merchandise. Therefore, we used home market sales as the basis for NV for BlueScope, in accordance with section 773(a)(1)(B) of the Act.

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

Pursuant to the Act and the Department's regulations, the Department examines whether inputs purchased from or sales made to an affiliate were made at arm's-length before relying on reported costs and sales prices in its margin calculation. BlueScope reported that its producer AIS made sales of merchandise under consideration to several affiliated parties (BlueScope,

---

<sup>53</sup> For further discussion, see BlueScope's Preliminary Calculation Memo dated concurrently with this memorandum.

BSD, and ORRCON) in the home market during the POI.<sup>54</sup> As discussed above, we have found BlueScope and its affiliates AIS and BSD to be a single entity and as such have eliminated all intercompany sales between these companies.<sup>55</sup> Pursuant to 19 CFR 351.403(c) and in accordance with the Department's practice, where the price to the remaining affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length.<sup>56</sup> Sales to affiliated customers in the home market that were not made at arm's-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade.<sup>57</sup>

### C. Level of Trade

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

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

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales to 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 the CEP and there is no basis

---

<sup>54</sup> See BlueScope's Section A response dated October 23, 2015, at 6; see also BlueScope's section B response dated November 12, 2015, at 2.

<sup>55</sup> See, above, at "Affiliation and Collapsing" section.

<sup>56</sup> See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade, 67 FR 69186, 69187 (November 15, 2002) (establishing that the overall ratio calculated for an affiliate must be between 98 percent and 102 percent in order for sales to be considered in the ordinary course of trade and used in the normal value calculation).

<sup>57</sup> See 19 CFR 351.102(b).

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

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

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

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

for determining whether the difference in LOTs between NV and CEP affects price comparability (i.e., no LOT adjustment is possible), the Department will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.<sup>62</sup>

BlueScope has not claimed different levels of trade in the home market or in the U.S. market.<sup>63</sup> Therefore, we considered the comparison market sales to be at the same LOT as the U.S. market.

#### D. *Cost of Production Analysis*

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (“TPEA”), which made numerous amendments to the AD and countervailing duty (“CVD”) law, including amendments to section 773(b)(2) of the Act, regarding the Department’s requests for information on sales at less than the cost of production (“COP”).<sup>64</sup> The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the ITC.<sup>65</sup> Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015. It requires the Department to request constructed value (“CV”) and COP information from respondent companies in all AD proceedings.<sup>66</sup> Accordingly, the Department requested this information from BlueScope.<sup>67</sup> We examined BlueScope’s cost data and determined that our quarterly cost methodology is not warranted and, therefore, we applied our standard methodology of using annual costs based on the reported data.

##### 1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses (“G&A”) and interest expenses.<sup>68</sup> We relied on the COP data submitted by BlueScope.

##### 2. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COP to the home market sales prices of the foreign like product, in order to determine whether the sales prices were below the weighted-average COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses and used sales prices that

---

<sup>62</sup> See, e.g., Orange Juice from Brazil, at Comment 7.

<sup>63</sup> See BlueScope Section C submission dated November 12, 2015, at 31; see also BlueScope’s Section B submission dated November 12, 2015, at 26.

<sup>64</sup> See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA).

<sup>65</sup> See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793 (August 6, 2015) (“Applicability Notice”).

<sup>66</sup> Id., 80 FR at 46794-95.

<sup>67</sup> The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>; see also the Petition.

<sup>68</sup> See “Test of Comparison Market Sales Prices” section, below, for treatment of home market selling expenses.

were exclusive of any applicable billing adjustments, discounts and rebates, where applicable, movement charges, actual direct and indirect selling expenses, and packing expenses.

### 3. Results of the COP Test

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

We found that, for certain products, more than 20 percent of BlueScope's home market sales during the POI were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

#### *E. Calculation of NV Based on Comparison-Market Prices*

For those comparison products for which there were an appropriate number of sales at prices above the COP, we based NV on comparison market prices. We calculated NV based on packed, delivered or ex-works prices to unaffiliated customers in Australia. We made deductions, where appropriate, from the starting price for billing adjustments and discounts in accordance with 19 CFR 351.401(c). We also made a deduction from the starting price for movement expenses, including inland freight under section 773(a)(6)(B)(ii) of the Act. We made adjustments for differences in packing, in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and for circumstances of sale (imputed credit expenses and other direct selling expenses), in accordance with section 773(a)(6)(c)(iii) of the Act and 19 CFR 351.410. When comparing U.S. sales with home market sales of merchandise similar to that sold in the U.S. market, we made adjustments for differences in costs attributable to differences in the physical characteristics of 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 product and subject merchandise.<sup>69</sup>

---

<sup>69</sup> See 19 CFR 351.411(b).

**XIV. CURRENCY CONVERSION**

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

**XV. CONCLUSION**

We recommend applying the above methodology for this preliminary determination.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

\_\_\_\_\_  
Date