



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

DATE: August 4, 2016

MEMORANDUM TO: Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

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

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

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## I. SUMMARY

We analyzed the comments of the interested parties in the antidumping duty investigation of certain hot-rolled steel flat products (“hot-rolled steel”) from Australia. As a result of our analysis, and based on our findings at verification, we made changes to our margin calculation for BlueScope Steel Ltd. (“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 the issues in this less than fair value (“LTFV”) investigation for which we received comments from interested parties:

- Comment 1: U.S. Sales of Nonprime (secondary) Merchandise
- Comment 2: U.S. - Freight Cap
- Comment 3: U.S. - Cost of Production Interest Expense Ratio
- Comment 4: U.S. - Credit Expense for U.S. Sales in Channels 1 and 2
- Comment 5: Home Market - Sales Adjustments
- Comment 6: Home Market - Interest Expense Ratio
- Comment 7: Home Market - Adverse Facts Available to Sales Data for BSD
- Comment 8: Home Market - Early Payment Discounts

## II. BACKGROUND

On March 22, 2016, the Department of Commerce (“the Department”) published the Preliminary Determination of sales at LTFV of hot-rolled steel from Australia.<sup>1</sup> The period of investigation (“POI”) is July 1, 2014, through June 30, 2015. The Department conducted sales and cost verifications at the offices of BlueScope in April and May 2016, in accordance with section 782(i) of the Tariff Act of 1930, as amended (“Act”).

We invited parties to comment on the Preliminary Determination. On June 21, 2016, and June 23, 2016, Petitioners,<sup>2</sup> and BlueScope each submitted a sales case brief and a cost case brief, respectively. On June 27, 2016, and June 28, 2016, Petitioners and BlueScope each filed a rebuttal sales brief and a rebuttal cost brief, respectively.

## III. SCOPE OF THE INVESTIGATION

The products covered by this investigation 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 antidumping<sup>3</sup> or countervailing duty<sup>4</sup> orders on Certain Cut-To-Length Carbon-Quality Steel Plate Products From the Republic of Korea (A-580-836; C-580-837), and

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<sup>1</sup> See Certain Hot-Rolled Steel Flat Products from Australia: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 81 FR 15241 (March 22, 2016) (“Preliminary Determination”) and accompanying Preliminary Decision Memorandum.

<sup>2</sup> United States Steel Corporation submitted comments on behalf of petitioners, i.e., AK Steel Corporation, ArcelorMittal USA LLC, Nucor Corporation, SSAB Enterprises, LLC, Steel Dynamics, Inc., and United States Steel Corporation (collectively “Petitioners”).

<sup>3</sup> Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate Products From France, India, Indonesia, Italy, Japan and the Republic of Korea, 65 FR 6585 (February 10, 2000).

<sup>4</sup> 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 investigation 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 investigation 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 investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Universal mill plates (*i.e.*, hot-rolled, flat-rolled products not in coils that have been rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, of a thickness not less than 4.0 mm, and without patterns in relief);
- Products that have been cold-rolled (cold-reduced) after hot-rolling;<sup>5</sup>
- Ball bearing steels;<sup>6</sup>
- Tool steels;<sup>7</sup> and
- Silico-manganese steels;<sup>8</sup>

The products subject to this investigation 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 investigation 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.

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<sup>5</sup> For purposes of this scope exclusion, rolling operations such as a skin pass, levelling, temper rolling or other minor rolling operations after the hot-rolling process for purposes of surface finish, flatness, shape control, or gauge control do not constitute cold-rolling sufficient to meet this exclusion.

<sup>6</sup> Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

<sup>7</sup> Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) more than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

<sup>8</sup> Silico-manganese steel is defined as steels containing by weight: (i) not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

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

#### **IV. SCOPE COMMENTS**

In the Preliminary Determination, we did not modify the scope language as it appeared in the Initiation Notice.<sup>9</sup> No interested parties submitted scope comments in case or rebuttal briefs. Accordingly, the scope of this investigation remains unchanged for this final determination.

#### **V. CHANGES SINCE THE PRELIMINARY DETERMINATION**

Based on our review and analysis of the comments received from parties, minor corrections presented at verifications, and various errors identified during verifications, we made certain changes to our margin calculations for BlueScope.<sup>10</sup> Specifically:

1. The Department relied on the revised home market sales, U.S. sales, and further manufactured and cost of production (“COP”) databases.
2. We revised U.S. Cost of Production Interest Expense Ratio.
3. We revised U.S. Further Manufacturing COP.<sup>11</sup>
4. We revised Home Market Sales Adjustments.
5. We revised Home Market Interest Expense Ratio used in COP.
6. We revised Home Market Warranty Expense.<sup>12</sup>

#### **VI. DISCUSSION OF THE METHODOLOGY**

##### Comparisons to Fair Value

As explained in the Preliminary Determination, 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.

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<sup>9</sup> See Preliminary Determination Preliminary Decision Memorandum at “Scope Comments.”

<sup>10</sup> See the Department’s memorandum titled “Analysis for the Final Determination of the Less-Than-Fair-Value Investigation of Certain Hot-Rolled Steel Flat Products from Australia,” dated concurrently with this memorandum. (“BlueScope’s Final Analysis Memorandum”).

<sup>11</sup> See Memorandum to the File, from Frances Veith, Senior International Trade Analyst, Office V, through James Doyle, Director, Office V, and Catherine Bertrand, Program Manager Office V, re: “Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat Products from Australia; U.S. Verification Report,” dated June 13, 2016, at 21 and Exhibit 24; see also BlueScope’s Final Analysis Memorandum.

<sup>12</sup> See Memorandum to the File, from Frances Veith, Senior International Trade Analyst, Office V, through James Doyle, Director, Office V, and Catherine Bertrand, Program Manager Office V, re: “Verification of the Sales Response of BlueScope Steel Ltd. in the Antidumping Investigation of Certain Hot-Rolled Steel Flat Products from Australia,” dated June 2, 2016, at 17 and Exhibit 12.

## A. Determination of Comparison Method

In accordance with 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.

The purpose of a differential pricing analysis is to determine whether the average-to-average method is the appropriate comparison methodology, pursuant to section 777A(d)(1)(A)-(B) of the Act and 19 CFR 351.414(c)(1), and this analysis was described in the Department's Preliminary Decision Memorandum.<sup>13</sup> For BlueScope, the Department continues to apply a differential pricing analysis to determine whether the average-to-average method is appropriate for this final determination.<sup>14</sup>

## B. Results of the Differential Pricing Analysis

For BlueScope, based on the results of the differential pricing analysis, the Department finds that 68.17 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>15</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department 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. Thus, for this final 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>16</sup>

## VII. DISCUSSION OF ISSUES

### Comment 1: U.S. Sales of Nonprime (secondary) Merchandise

#### Petitioners' Comments:

- We should find all of Steelscape's<sup>17</sup> sales to be prime because BlueScope failed to identify which of its non-prime sales were actually prime sales that were later found to have a defect.

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<sup>13</sup> See Preliminary Decision Memorandum at 8-10; see also BlueScope's Final Analysis Memorandum at 2-3.

<sup>14</sup> See Preliminary Decision Memorandum at 8-10.

<sup>15</sup> See BlueScope's Final Analysis Memorandum.

<sup>16</sup> *Id.*

<sup>17</sup> Steelscape LLC ("Steelscape") 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.

- We should continue to apply our further manufacturing methodology because the statute requires the Department to reduce the U.S. price of the subject merchandise by the cost of further manufacturing performed by affiliates in the United States.

**BlueScope’s Comments:**

- The Department should exclude sales of secondary products entirely, as they are sales of non-quality and non-subject product resulting from Steelscape’s further processing. BlueScope cites to Welded Line Pipe from Korea<sup>18</sup> to support its argument.
- BlueScope’s U.S sales of secondary product should not have an adjustment for further manufacturing expenses because it does not reflect a true “apples-to-apples” comparison between normal value and export price.
- BlueScope’s U.S sales of secondary product are not sales of prime product.

**Department’s Position:** BlueScope reported that its U.S. affiliate, Steelscape, had U.S. sales of non-prime products. Some of the non-prime sales (NP 1) were sales of non-prime hot-rolled steel that was not used in any further production prior to sale. For these sales, as there was no further manufacturing in the United States, we will not deduct any U.S. further manufacturing expenses from the price to establish CEP. However, as these sales nevertheless fall within the scope of the investigation, we will continue to include BlueScope’s U.S. sales of non-prime hot-rolled product in the margin calculation.

BlueScope reported a second set of U.S. sales of non-prime product by Steelscape which it determined to be non-quality merchandise during its U.S. further manufacturing production process, but were still used in the downstream production of cold-rolled steel (NP 2). Put another way, the record shows that these NP 2 sales are attributable to Steelscape’s cold-rolled steel production process although the product did not meet quality specifications or were reported as sales of non-prime hot-rolled steel.<sup>19</sup> We are treating the NP 2 sales differently from the NP 1 sales, will include those sales in the margin calculation, and, where applicable, deduct the cost of any further manufacturing expenses from the price to establish CEP. Such treatment is appropriate, as the record reflects that Steelscape purchased hot-rolled steel from its Australian affiliate, BlueScope Steel (AIS) Pty Ltd. (“AIS”), for the express purpose of further processing these products into cold-rolled steel.

BlueScope claims that because the NP 2 sales of non-prime product are of cold-rolled steel, they are not subject to the scope of the investigation. BlueScope misstates the issue; the statute does not require that imported subject merchandise that it further processes in the United States retain its identity as a finished product.<sup>20</sup> In addition, the Department’s exclusion of sales made in the ordinary course of trade<sup>21</sup> that have been further processed into merchandise outside the scope of

<sup>18</sup> See BlueScope’s Sales Case Brief at 4 (citing Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value, 80 Fed. Reg. 61366 (October 13, 2015), and accompanying Issues and Decision Memorandum at Comment 7 (“Welded Line Pipe from Korea”).

<sup>19</sup> See BlueScope’s Section A Questionnaire response, dated October 23, 2015, at Exhibit 17.

<sup>20</sup> Section 772(d) of the Act states that the price used to establish constructed export price shall also be reduced by the cost of any further manufacture or assembly (including additional material and labor), except in circumstances described in subsection (e) Special Rule for Merchandise With Value Added After Importation.

<sup>21</sup> See section 771(15) of the Act.

the investigation or review is applicable only to home market sales and not to U.S. market sales.<sup>22</sup>

Furthermore, the CIT has held that U.S. sales within the ordinary course of trade are to be included in the U.S. price calculations.<sup>23</sup> Therefore, we determine to continue to include BlueScope sales of NP 2 product sold in the U.S. market in BlueScope's margin analysis.

We disagree with Petitioners' argument that we should treat all of BlueScope's non-prime sales as prime sales. The record shows that BlueScope maintains a cost structure and an inventory record for its secondary products, including product code descriptions that identify each process performed before it was deemed a second.<sup>24</sup> The record also shows that Steelscape books its sales of seconds as secondary merchandise (i.e., not as scrap, loss, or waste) and thus such sales are appropriate for AD analysis. Because BlueScope maintains its books and records to identify and track secondary merchandise, we find that treating BlueScope's non-prime U.S. sales as prime is inappropriate.

We further determine that BlueScope's reliance on Welded Line Pipe from Korea is misguided<sup>25</sup>. The issue in that case was whether the Department should include home market sales of non-prime merchandise in the home market.<sup>26</sup> In that case, we determined that the home market sales of non-prime products did not meet the plain language of the scope, and excluded the sales from the sales database.<sup>27</sup>

We disagree with BlueScope's argument that we should not adjust its sales of non-prime merchandise by deducting further manufacturing expenses from the value of the finished product. Section 772(d) of the Act requires that the Department deduct from CEP "the cost of any further manufacture or assembly (including additional material and labor)" incurred by an affiliated seller in the United States in selling "subject merchandise to which value has been added." Furthermore, the Act does not require that the subject merchandise retain its identity as a finished product.<sup>28</sup> BlueScope maintains that the coated steel that Steelscape sells in the United States is not "subject merchandise to which value has been added." We agree with BlueScope's argument that, but for non-prime sales of hot-rolled steel, Steelscape does not sell subject merchandise in the United States and that for some products (i.e., non-prime sales of hot-rolled steel) Steelscape did not add value. However, the record shows that Steelscape imported hot-rolled steel for the purpose of inputting that NP 2 hot-rolled steel into the production of cold-rolled steel. By deducting further manufacturing costs and expenses, the further manufacturing adjustment results in a U.S. price we can compare to the normal value ("NV") for hot-rolled steel. For these reasons, we find that the statutory directive that we calculate CEP by deducting

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<sup>22</sup> See e.g., Welded Line Pipe from Korea at Comment 7.

<sup>23</sup> See Bowe Passat Reinigungsgungs-und Washchereitechnik GmbH v. United States, 926 F. Supp. 1138, 1147-48 (CIT 1996) and Floral Trade Council v. United States, 775 F. Supp. 1492, 1503 n. 18 (CIT 1991).

<sup>24</sup> See BlueScope's Section A Questionnaire response at Exhibit 17.

<sup>25</sup> See BlueScope's Sales Case Brief at 4 (citing Welded Line Pipe from Korea).

<sup>26</sup> See Welded Line Pipe from Korea at Comment 7.

<sup>27</sup> Id.

<sup>28</sup> Section 772(d) of the Act states that the price used to establish constructed export price shall also be reduced by the cost of any further manufacture or assembly (including additional material and labor), except in circumstances described in subsection (e) Special Rule for Merchandise With Value Added After Importation.

from the price of the non-subject merchandise the increased value associated with a process of further manufacturing in the United States applies in this instance.

## **Comment 2: U.S. Freight Cap**

### **Petitioners Comments:**

- We should continue to follow our long-standing practice and limit freight and fuel revenue to the cost of freight and fuel for U.S. sales.<sup>29</sup>
- Petitioners disagree with BlueScope's contention that its customers view the total invoice price, inclusive of freight and fuel surcharges, as reflecting the full price of the merchandise. Steelscape's invoices on the record clearly demonstrate that its customers do not consider the value of the merchandise to include freight and fuel surcharge (e.g., discounts are given on the value of the merchandise, exclusive of freight and fuel surcharge).

### **BlueScope's Comments:**

- We should not cap the revenue Steelscape receives on its sales of subject merchandise by the cost of freight and fuel surcharges included in Steelscape's invoice price.
- BlueScope contends that the record shows that both Steelscape and its customers consider the total invoice price, including freight and fuel surcharges, to be part of the invoice price of the merchandise, as they receive credits and discounts on the full invoice price including surcharges, which it states are not separate charges for "services."
- If the Department continues to cap Steelscape's revenue at the cost of freight and fuel, it should at least limit any credits (claims reported under warranty (WARRUU1)) paid by Steelscape to the amount of the sale net of freight and fuel surcharges, in order to avoid double-counting the credits. Steelscape credits its customers for the full value of a sale, which includes revenue from freight and fuel surcharges.

**Department Position:** As explained in the Department's BlueScope Preliminary Analysis Memorandum,<sup>30</sup> consistent with normal practice we capped sales-related revenues to offset directly associated sales expenses in the Preliminary Determination.<sup>31</sup>

It is the Department's practice to not treat freight-related revenue as an addition to U.S. price under section 772(c)(1) of the Act or as a price adjustment under 19 CFR 351.102(b)(38).<sup>32</sup> The

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<sup>29</sup> See, e.g., Certain Steel Nails from the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2011-2013, 79 FR 78396 (December 30, 2014) and accompanying Issues and Decision Memorandum at Comment 6 ("It is our normal practice to cap freight revenue to the amount of reported freight"; see also Large Power Transformers From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013-2014, 81 FR 14087 (March 16, 2016), and accompanying Issues and Decision Memorandum at Comment 3. expenses.").

<sup>30</sup> See the Department's Memorandum to the File titled "Analysis for the Preliminary Determination of the Less-Than-Fair-Value Investigation of Certain Hot-Rolled Steel Flat Products from Australia," dated March 14, 2016, ("Preliminary Analysis Memorandum") at 5.

<sup>31</sup> Id.

term “price adjustment” is defined at 19 CFR 351.102(b)(38) 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.” The Department has stated that, although we will offset freight expenses with freight revenue, where freight revenue earned by a respondent exceeds the freight charge incurred for the same type of activity, the Department will cap freight revenue at the corresponding amount of freight charges incurred because it is inappropriate to increase gross unit selling price for subject merchandise as a result of profit earned on the sale of services (*i.e.*, freight).<sup>33</sup> The record casts doubt on BlueScope’s claim that its revenue from fuel surcharges are not separate charges for “services,” as the record shows that BlueScope classifies both revenues (*i.e.*, freight and fuel surcharge) as freight revenue under the same accounting code in its financial system.<sup>34</sup> Therefore, we will continue to treat revenue from freight and fuel surcharges as freight revenue.

BlueScope’s claim that freight and fuel surcharge revenue is inherently part of the price at which the subject merchandise is sold is at odds with the record of this case. The record shows that BlueScope charges separately for product and freight and classifies both under its own accounting code.<sup>35</sup> In addition, BlueScope reported that its freight and fuel surcharges “are intended to be a pass-through of charges (*e.g.*, Steelscape charges the customer based on what it pays for freight).”<sup>36</sup>

We also disagree with BlueScope’s argument that Steelscape’s customers consider the total invoice price, including freight and fuel surcharges, to be part of the invoice price of the merchandise, or that they receive credits and discounts on the full invoice price including surcharges. The record shows that Steelscape only provides a discount (early payment) for the value of the merchandise not the total invoice amount, which includes freight and fuel surcharge.<sup>37</sup> In addition, except for complete returns, Steelscape’s warranty claims on the record do not indicate that the freight and fuel surcharge revenue are included in the claim amount.<sup>38</sup> In fact, the record shows, and we verified, that the total claim amount when divided by the weight of the product on the claim results in a per-unit amount that is less than the original invoice’s per-unit price for the listed product. BlueScope’s request that the Department deviate from its regular practice of capping sales-related revenues to include credits in order to avoid double counting the credits contradicts the Department’s own policies and the statute. Moreover, the record demonstrates that Steelscape’s warranty claims do not include freight and fuel surcharge in the warranty calculation.<sup>39</sup> Therefore, we find Steelscape’s product claims are not sales expenses directly associated with Steelscape’s freight revenue.

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<sup>32</sup> See *e.g.*, Circular Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review, 77 FR 61738 (October 11, 2012), and accompanying Issues and Decision Memorandum at Comment 3 (“Welded Pipe & Tubes from Thailand”).

<sup>33</sup> See Multilayered Wood Flooring From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 64318 (October 18, 2011), and accompanying Issues and Decision Memorandum at Comment 39 (“Wood Flooring”).

<sup>34</sup> See *e.g.*, BlueScope U.S. verification exhibit 20.

<sup>35</sup> *Id.*

<sup>36</sup> See BlueScope’s Section C Questionnaire Response, dated November 12, 2015, at 27.

<sup>37</sup> See *e.g.*, BlueScope U.S. verification exhibit 20.

<sup>38</sup> See *e.g.*, BlueScope Steel’s Supplemental Section C Questionnaire Response, dated January 19, 2016, at Exhibit SC-10.

<sup>39</sup> *Id.*

For these reasons, as provided in the statute and in line with past practice, we are continuing to cap Steelscape's revenue from freight and fuel surcharge to offset directly associated expenses (i.e., inland freight - plant/warehouse to customer) for this final determination.

### **Comment 3: U.S. Cost of Production Interest Expense Ratio**

#### **Petitioners' Comments:**

- The Department should use the interest expense ratio derived from the consolidated financial statements of Steelscape's ultimate parent, BlueScope when calculating Steelscape's further manufacturing costs.
- The Department's long-established practice is to rely on the financial statements at the highest level of consolidation, and in this case, it is BlueScope. Petitioners cite to Silicon Metal from Brazil<sup>40</sup>, aff'd in America Silicon Technologies v. United States, (Fed. Cir. 2003)<sup>41</sup> and New Minivans from Japan<sup>42</sup> for this claim.
- In the parallel investigation of Hot-Rolled Steel from Japan,<sup>43</sup> the Department used the interest expense ratio derived from BlueScope's consolidated financial statements in calculating Steelscape's further manufacturing costs. It should do the same here.

#### **BlueScope's Comments:**

- Because the Department is seeking to determine only the cost of further processing in the United States, not the full cost of producing subject merchandise, it should calculate financial costs of further manufacturing at the highest level of consolidation in the United States: the consolidated returns of NS BlueScope Holdings USA, LLC ("NS BlueScope Holdings").
- If the Department uses BlueScope's consolidated financial costs, it should recognize that BlueScope's consolidated financial cost is zero. In addition, if the Department uses global consolidated interest costs, it should recognize that those costs are net positive.

**Department Position:** We will use the consolidated financial statements of the parent, BlueScope, to calculate Steelscape's further manufacturing COP interest expense, consistent with our practice.<sup>44</sup> Like general and administrative expenses, there is no definition in the Act of what financial expenses are or how the financial expense ratio should be calculated. Therefore, the Department has developed a practice, which has been used consistently and upheld by the

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<sup>40</sup> See Petitioners' Cost Case Brief at 10 (citing to Silicon Metal From Brazil: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part, 62 FR 1970 (January 14, 1997) ("Silicon Metal from Brazil").

<sup>41</sup> See Petitioners' Cost Case Brief at 10 (citing to America Silicon Technologies v. United States, 334 F.3d 1033 (Fed. Cir. 2003)).

<sup>42</sup> See Petitioners' Cost Case Brief at 10 (citing to Final Determination of Sales at Less Than Fair Value: New Minivans From Japan, 57 FR 21937 (May 26, 1992) ("New Minivans From Japan").

<sup>43</sup> See Petitioners' Cost Rebuttal Brief at 7 (citing to Certain Hot-Rolled Steel Flat Products from Japan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 81 FR 15222 (March 22, 2016) ("Hot-Rolled Steel from Japan") at 30).

<sup>44</sup> See BlueScope's Final Analysis Memorandum.

courts, for calculating and allocating financial expenses.<sup>45</sup> Specifically, we calculate financial expense ratios at the highest level of consolidation, *i.e.*, the ultimate parent.<sup>46</sup> BlueScope is the ultimate parent of Steelscape.<sup>47</sup> Record evidence substantiates that Steelscape’s financial results are consolidated into those of NS BlueScope USA,<sup>48</sup> a wholly owned subsidiary of BlueScope, which are then consolidated into BlueScope’s audited financial statements in Australia.<sup>49</sup> Further, Steelscape is a joint venture between BlueScope and Nippon Steel Sumitomo & Metal Corporation (“NSSMC”), a mandatory respondent in Hot-Rolled Steel from Japan. In Hot-Rolled Steel from Japan, the Department used the interest expense ratio derived from BlueScope’s consolidated financial statements, which are the highest level of consolidation for Steelscape, in calculating Steelscape’s further manufacturing costs.<sup>50</sup>

Additionally, the CIT has upheld the Department’s practice to consider majority equity ownership to be *prima facie* evidence of a parent’s control over its subsidiary, and it has explained that, because of this practice, the subsidiary has the burden of submitting evidence to rebut this presumption of control.<sup>51</sup> The CIT has also rejected the argument that while the parent controls a majority of the subsidiary’s shares, the parent exercises no effective production, marketing or managerial control over the subsidiary’s operations.<sup>52</sup> Record evidence substantiates that not only does BlueScope have controlling ownership of Steelscape, but also exerts control over Steelscape and its operations.<sup>53</sup>

Therefore, because we have found that Steelscape’s highest level of consolidation is BlueScope’s audited financial statements, and it is our practice to use the highest level of consolidation when calculating financial expense ratios, we have revised Steelscape’s financial ratio to use the consolidated financial statements of the parent, BlueScope, to calculate interest expenses in this final determination.<sup>54</sup> However, as discussed in Comment 7 below, we have found BlueScope’s financial expense is net positive or zero, and in such circumstances, we treat this as having no cost for financing and do not include financial expense in COP.<sup>55</sup> Accordingly, we are not including financial expenses in Steelscape’s further manufacturing COP.

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<sup>45</sup> See Gulf States Tube Division of Qualex Corp. v. United States, 981 F. Supp. 630, 649-650 (CIT 1997) (“Gulf States”); see also American Silicon Technologies v. United States, 334 F.3d 1033, 1035 (Fed. Cir. 2003) (citing favorably to Gulf States and “standard Commerce policy” on this issue).

<sup>46</sup> See, e.g., Prestressed Concrete Steel Rail Tie Wire From Mexico: Final Determination of Sales at Less Than Fair Value, 79 FR 25571 (May 5, 2014), and accompanying Issues and Decision Memorandum at Comment 5.

<sup>47</sup> See Blue Scope Steel’s Section A Questionnaire Response, dated October 23, 2015, at Exhibit 13.c, audited financial statements of NS BlueScope Holdings USA LLC.

<sup>48</sup> Steelscape is owned entirely by NS BlueScope Holdings, a joint venture between BlueScope and Nippon Steel Sumitomo & Metal Corporation (“NSSMC”). BlueScope is the controlling party in the venture.

<sup>49</sup> *Id.*

<sup>50</sup> See Hot-Rolled Steel from Japan at 30.

<sup>51</sup> See, e.g., Gulf States, 981 F. Supp. at 649.

<sup>52</sup> See *id.*

<sup>53</sup> See Blue Scope Steel’s Section A Questionnaire Response, dated October 23, 2015, at Exhibit 13.c.

<sup>54</sup> See BlueScope’s Final Analysis Memorandum.

<sup>55</sup> See Certain Hot-Rolled Steel Flat Products from Japan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 81 FR 15222 (March 22, 2016) and accompanying Preliminary Decision Memorandum at 30.

#### **Issue 4: U.S. – Credit Expense for U.S. Sales in Channels 1 and 2**

##### **Petitioners’ Comments:**

- Petitioners argue that the short-term interest rate that BlueScope used in its credit expense calculation for channels 1 and 2 in the U.S is incorrect. Specifically, BlueScope’s financing agreement identifies an interest rate for U.S.-dollar denominated borrowings that is augmented by the rate reported by BlueScope.

##### **BlueScope’s Comments:**

- Petitioners’ claim is without merit because BlueScope’s short-term financing agreement clearly states that the reported rate is the total interest cost for financing under the agreement for all payments made on or before the repurchase date and the additional rate is applicable on payments made after that date.

**Department’s Position:** With respect to Petitioners’ argument that the short-term interest rate BlueScope used in its credit expense calculation for channels 1 and 2 in the U.S is incorrect, we disagree. Petitioners point to section 19.2, “Interest and Overdue Amount,” of BlueScope’s short-term financial agreement alleging that the additional interest rate noted in this section is applicable to BlueScope’s borrowings.<sup>56</sup> In our examination of this agreement, we found that section 13, “Events of Default,” indicate that section 19.2 is applicable when the party fails to pay an amount payable when due.<sup>57</sup> In our examination of supporting documentation, *i.e.*, supplier invoices, we did not observe an additional charge for this interest on the supplier’s invoice, in fact, the invoices only included the fees as reported by BlueScope.<sup>58</sup> Accordingly, we find that BlueScope did not fail to fully report the interest applicable to this agreement and we have made no adjustment to BlueScope’s credit expense calculation for sales made under channels 1 and 2 in the U.S. for the final determination.

#### **Comment 5: Home Market - Sales Adjustments**

##### **Petitioners’ Comments:**

- For the final determination, the Department should deny BlueScope’s requested home market price adjustments for direct selling expenses (DIRSELH3), freight expenses (INLFTWH2, INLFTWH3), and warehousing expenses (WAREHSH) because these costs are all incurred by BlueScope affiliates at BlueScope facilities prior to the sale or shipment of hot-rolled steel to unaffiliated customers. Furthermore, these costs do not fall within the statutory or regulatory definition of a sales adjustment that can be used to reduce home market price. To the contrary, they are all costs of production.
- The Department’s decision to collapse these three affiliates, clearly making it inappropriate to treat internal costs of the constituent parts of a collapsed entity as sales expenses to be deducted from home market price.

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<sup>56</sup> See BlueScope’s home market Verification Exhibit 16.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

- Citing to 19 CFR 351.401(c), Petitioners argue that BlueScope’s home market price adjustments are not reasonably attributable to the foreign like product because BlueScope itself said it cannot allocate these costs between products that underwent further processing after transport and products that did not incur such costs.
- These costs should be excluded from the dumping margin analysis because they have been calculated on a sales quantity basis and allocated using varying methodologies that are not control number (“CONNUM”)-specific or relative to production quantities. As a result, they cannot be incorporated into BlueScope’s cost of production database on a proper basis.

**BlueScope’s Comments:**

- We should treat further processing expenses incurred by BlueScope companies in Australia as direct selling expenses and not as costs of production in CONNUM costs. Because these processes occur after the product leaves the mill (AIS) and therefore, qualify as direct selling expenses within the definition set forth in the statute, *i.e.*, “costs, charges and expenses incident to bringing the foreign like product from the *original place of shipment* to the place of delivery to the purchaser.”
- BlueScope argues that its CONNUM costs, which are based on weighted averages, are less accurate than calculating the costs as direct selling expenses because its records do not permit it to identify all the CONNUM classification changes that its products undergo in further processing operations.
- The Department’s collapsing of intercompany sales *only* affects the determination of which sales the Department includes in its universe of home market sales. It does not transform those sales into transfers, or into non-sales. The fact that the Department has decided to “collapse” the BlueScope entities for purposes of sales reporting does not transform these expenses into something other than what they were, direct selling expenses incurred after the original place of shipment and point of sale.
- BlueScope also argues that we should follow Cold-Rolled from Russia,<sup>59</sup> where we treated home market further processing costs as direct selling expenses. BlueScope also cites to Hot-Rolled from Brazil<sup>60</sup> arguing that we treated further processing by the manufacturer’s affiliated downstream resellers as selling costs and not as COP.
- None of BlueScope’s production costs has been calculated based on production quantities but rather are based on sales quantities because its records do not permit it to determine production quantities at the level of detail required by the Department’s CONNUM categories. The Department commonly accepts costs based on sales quantities where the costs of goods sold and the costs of goods produced are close.
- Should the Department determine to treat these costs as costs of production, rather than as direct selling expenses, BlueScope’s reported costs are sufficiently reasonable to permit it to do so. The fact that the methodology BlueScope relied upon to provide further processing costs as part of CONNUM costs is inferior to the methodology it was

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<sup>59</sup> See BlueScope’s Rebuttal Cost Brief at 1 (citing to Certain Cold-Rolled Steel Flat Products from the Russian Federation, 81 FR 12072 (March 8, 2016)).

<sup>60</sup> See Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products From Brazil; Final Results of Antidumping Duty Administrative Review, 75 FR 64254 (October 19, 2010) (“Hot-Rolled from Brazil”) and accompanying Issues and Decision Memorandum.

able to use in treating these costs as direct selling expenses does not mean that BlueScope's processing costs themselves are unusable.

**Department's Position:** With respect to our treatment of BSL's and BSD's further processing costs as production costs, several provisions of the Act are instructive to our decision in the final determination of this investigation. Section 773(e)(1) of the Act mandates that constructed value ("CV") shall be based on "the cost of materials and fabrication or other processing of any kind employed in producing the merchandise." Section 773(b)(3)(A) of the Act states that the COP should include "the cost of materials and of fabrication or other processing of any kind." Further, section 773(f)(1) of the Act dictates that, in general, "costs shall normally be calculated based on the records of the exporter or the producer of the merchandise, if such records... reasonably reflect the costs associated with the production and sale of the merchandise." Additionally, section 771(28) of the Act instructs that "[f]or purposes of section 773, the term 'exporter or producer' includes both the exporter of the subject merchandise and the producer of the subject merchandise to the extent necessary to accurately calculate the total amount incurred and realized for costs, expenses, and profits in connection with production and sale of that merchandise."<sup>61</sup> Therefore, for the reasons stated above, we determine that AIS's, BSL's, and BSD's processing costs constitute total production costs for BlueScope, and, we will use BlueScope's weighted-average COP database, which includes all costs of production for AIS, BSL, and BSD, in BlueScope's margin program. In addition, because we determine to treat BSD's processing costs as production costs, we will not include BSD's processing costs as a sales adjustment in BlueScope's final margin analysis.

In the Preliminary Determination, we determined that BSL, 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 and are a single entity pursuant to 19 CFR 351.401(f). In addition, we calculated a dumping margin for the single entity, BlueScope,<sup>62</sup> and it was our intent to treat all further processing performed by BSL and BSD as costs of production.<sup>63</sup> Contrary to BlueScope's allegation that our decision to collapse AIS, BSL, and BSD, into a single entity *only* affects the determination of which sales the Department includes in its universe of home market sales, in the Preliminary Determination, the Department also determined not to include home market further processing costs in BlueScope's margin program.<sup>64</sup> However, because we did not have BSD's cost at that time, we treated BSL's cost as a COP in BlueScope's preliminary margin analysis.<sup>65</sup> BlueScope reported BSD's processing cost as a direct selling expense in BSD's sales database and we treated it as such.<sup>66</sup> The Department's treatment of BSD's

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<sup>61</sup> See also SAA at 835 (the purpose of section 771(28) "is to clarify that where different firms perform the production and selling functions, Commerce may include the costs, expenses, and profits of each firm in calculating cost of production and constructed value").

<sup>62</sup> See Preliminary Determination, at 81 FR 15242.

<sup>63</sup> See BlueScope's Preliminary Analysis Memorandum at 4.

<sup>64</sup> See the Department's Memorandum titled, "Analysis for the Preliminary Determination of the Less-Than-Fair-Value Investigation of Certain Hot-Rolled Steel Flat Products from Australia," dated March 14, 2016, ("BlueScope's Preliminary Analysis Memorandum") at 4.

<sup>65</sup> Id.

<sup>66</sup> Id.; see also BlueScope's submission titled "BlueScope Steels' Second Section B Supplemental Questionnaire Response Hot-Rolled Flat Products from Australia," dated February 26, 2016.

processing costs as a direct selling expense in the Preliminary Determination should not be construed as an acceptance of this expense as a sales adjustment.

After the Preliminary Determination, but before our verification of BSD, we issued a supplemental questionnaire to BlueScope and instructed BlueScope to remove BSD's production costs from BSD's home market sales database and to incorporate these costs in BlueScope's COP database.<sup>67</sup> While BlueScope did not remove BSD's processing costs from BSD's sales database, or from BSL's sales database, it did include both BSL's and BSD's processing costs in its revised weighted-average COP database (i.e., bscost04), which it submitted with its supplemental response.<sup>68</sup> Consequently, BlueScope reported BSL's and BSD's processing costs in both of these companies' sales and COP databases, as well as BlueScope's weighted average COP database, which BlueScope revised in accordance with the Department's post-verification request for revised databases.<sup>69</sup> Thus, for BlueScope's final margin analysis, we will use BlueScope's post-verification revised weighted-average COP database for purposes of our calculations.<sup>70</sup>

We disagree with BlueScope that the Department should treat all further processing expenses incurred by BlueScope companies in Australia as direct selling expenses and not as costs of production. BlueScope premises its argument on the assumption that its steel mill (AIS) is the "original place of shipment." However, the record shows that the original place of shipment for sales made by BSL and BSD to unaffiliated customers in the home market were from a BSL or a BSD facility, not from the mill, i.e., AIS.<sup>71</sup> The record also shows that the sales made by AIS to unaffiliated customers in the home market were from AIS's location, the mill. Moreover, we verified that each of these companies records its sales to affiliated and unaffiliated customer on its own books and records.<sup>72</sup> Therefore, because the record shows, and we verified, that all sales made by BSL and BSD to its unaffiliated customers were from their own facility, we find that AIS's steel mill is not the original place of shipment for sales made by BSL or BSD.

In support of the above position, BlueScope cites to the Cold-Rolled from Russia preliminary determination arguing that because the Department treated home market further processing costs (slitting and cutting) as direct selling expenses that we should do so here.<sup>73</sup> The facts in that case are distinct from those here because, in that case there is no evidence of a CONNUM change because of the affiliates further processing. While, in this investigation, the record shows, and we verified, that BSL's and BSD's further processing resulted in CONNUM changes to many of their products. BlueScope also cites to Hot-Rolled from Brazil, again arguing that because we treated post-sale processing costs as direct selling, we should do so here.<sup>74</sup> However, while the accompanying issues and decision memorandum to that case's notice of final results includes a

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<sup>67</sup> See BlueScope's supplemental section B questionnaire response dated April 1, 2016.

<sup>68</sup> Id.

<sup>69</sup> See the Department's memorandum to the file dated April 29, 2016.

<sup>70</sup> See BlueScope's submission of revised databases dated May 11, 2016.

<sup>71</sup> See documentation related to unaffiliated customer sales for AIS and BSL at BlueScope's home market Verification Exhibits submissions dated April 22, 2016, at AIS/BSL Exhibits 17-23 and documentation for BSD's sales at BSD Exhibits 4-5.

<sup>72</sup> Id.

<sup>73</sup> See BlueScope's Rebuttal Cost Brief at 1 (citing to Cold-Rolled from Russia).

<sup>74</sup> Id.

reference to an affiliated company, we found no discussion on further processing of an affiliate or post sale processing treated as direct selling expense.<sup>75</sup> Therefore, because the facts of Hot-Rolled from Brazil do not apply to the facts of this investigation, the reason BlueScope argues to justify treating BlueScope's further processing expenses as direct selling expenses equally does not apply. Accordingly, we have not treated further processing performed by BSL and BSD as direct selling expenses, and, instead, will continue to treat them as COP.

With respect to the freight expense BlueScope reported in fields INLFTWH2 and INLFTWH3, we find it inappropriate to treat these expenses as direct selling expenses because they are for movement costs associated with intercompany movement of hot-rolled steel among affiliated parties. The record shows that the freight expenses were incurred prior to sale and before shipment from BlueScope's original place of shipment to unaffiliated customers.<sup>76</sup> Because we determined that AIS, BSL, and BSD are a single entity, the Department excluded all intercompany sales from BlueScope's margin analysis.<sup>77</sup> Therefore, any expenses attributable to these sales should not be included in their respective sales database. Pursuant to section 773(a)(6)(B)(ii) of the Act, these expenses are not attributable to bringing the foreign like product from the original place of shipment to the place of delivery to AIS's, BSL's, and BSD's unaffiliated customers. Therefore, we find that the freight expense BlueScope reported in fields INLFTWH2 and INLFTWH3 are not direct selling expenses. Accordingly, we will not include these adjustments in BlueScope's margin analysis.

With respect to warehousing costs, BlueScope reported in BSD's sales database, we also find it inappropriate to treat these expenses as adjustments to BSD's sales because they were not incurred by BSD on its sales to unaffiliated customers. First, the costs reported in BSD's sales database are for warehousing expenses incurred by AIS and BSL on their intercompany sales to BSD, not by BSD on its sales to unaffiliated customers.<sup>78</sup> Because we determined that AIS, BSL, and BSD are a single entity, the Department excluded all intercompany sales from BlueScope's margin analysis.<sup>79</sup> Therefore, any expenses attributable to these sales should not be included in BSD's sales database. Further, AIS and BSL record these costs as warehouse expenses in their respective financial records, not BSD's financial record. In addition, BlueScope reported that BSD sales are direct-to-customer (without an "in-transit" location), and therefore have no separate intervening warehouses.<sup>80</sup> Pursuant to section 773(a)(6)(B)(ii) of the Act, the warehouse expense is not incurred by BSD and is not directly attributable to any sales made by BSD. Therefore, we find the warehouse expenses incurred by AIS and BSL on intercompany sales to BSD should not be treated as an adjustment to BSD's sales price. Accordingly, we will not include warehouse expense as an adjustment on any of BSD's sales in BlueScope's margin analysis.

Finally, regarding warehousing costs BlueScope reported in AIS's and BSL's sales databases, we find that these warehouse expenses occurred after the foreign like product left the original place

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<sup>75</sup> Hot-Rolled from Brazil and accompanying Issues and Decision Memorandum at 2.

<sup>76</sup> See BlueScope's supplemental section B questionnaire response dated January 8, 2016, at 25.

<sup>77</sup> See Preliminary Determination and accompanying Preliminary Decision Memorandum at 13.

<sup>78</sup> See BlueScope's supplemental section B questionnaire response, dated February 26, 2016, at 24-25.

<sup>79</sup> See Preliminary Determination and accompanying Preliminary Decision Memorandum at 13.

<sup>80</sup> See BlueScope's supplemental section B questionnaire response, dated February 26, 2016, at 24.

of shipment. Pursuant to 19 CFR 351.401(e)(2), we will consider warehousing expenses that are incurred after the subject merchandise or foreign like product leaves the original place of shipment as movement expenses. At verification, we examined the allocation methodology BlueScope used to report warehouse expense on sales to unaffiliated customers made by AIS and BSL, and we found no discrepancies or any other signs of systematic inaccuracies with respect to these costs.<sup>81</sup> Therefore, we will not exclude AIS's or BSL's warehouse costs from BlueScope's margin analysis.

## **Comment 6: Home Market - Interest Expense Ratio**

### **BlueScope's Comments:**

- The Department should calculate BlueScope's financial costs at zero for purposes of determining the cost of production of subject merchandise. The Department's established practice is to include exchange gains and losses as part of financial costs. BlueScope's net exchange gains and losses are positive, and the exchange gains are larger than its borrowing costs resulting in a net positive financial expense, which the Department treats as zero financial expense.
- The verified<sup>82</sup> information on the record demonstrates that BlueScope's consolidated financial statements show net *gains* of \$101.3 million on exchange gains and losses for fiscal year 2015. Its total financial costs, on the other hand, were \$76.8 million during the same period.<sup>83</sup>
- It is a long-standing Department policy to include net financial gains and losses as part of the calculation of financial costs, as the very phrasing of item VI.C of the Department's verification outline makes clear. The Department should follow this long-standing practice and recognize that BSL's financial costs are net positive including the foreign exchange gains. It should therefore apply a financial cost of zero to BlueScope's cost of production for hot-rolled steel.

### **Petitioners' Comments:**

- BlueScope's argument that it disclosed at verification "that it had not included net exchange gains and losses in the financial rate calculation" and, therefore, its interest expense ratio should be adjusted must be rejected.<sup>84</sup> BlueScope has not met its regulatory burden to provide evidence showing that these purported gains represent short-term income from working capital.

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<sup>81</sup> See the Department's Memorandum titled "Verification of the Sales Response of BlueScope Steel Ltd. in the Antidumping Investigation of Certain Hot-Rolled Steel Flat Products from Australia," dated June 2, 2016, at 15-16 and Exhibit 9.

<sup>82</sup> See the Department's Memorandum titled "Verification of the Cost Response of BlueScope Steel Ltd. in the Antidumping Investigation of Certain Hot Rolled Steel Flat Products from Australia," dated June 17, 2016, at Exhibit CVE-15.

<sup>83</sup> See Exhibit D-6 of BlueScope's section D response, submitted to the Department on November 17, 2015.

<sup>84</sup> See Petitioners' Rebuttal Brief at 8-9 (citing to BlueScope's Cost Case Brief at 6).

**Department's Position:** It is the Department's long standing practice to include net foreign exchange gain or loss in a respondent's financial expense ratio calculation.<sup>85</sup> We also find Petitioners' argument that BlueScope has not met its regulatory burden to provide evidence showing that its purported gains represent short-term income from working capital inapposite to the facts herein. BlueScope has not argued that its gains are short-term income from working capital, but rather are net foreign exchange gains and losses.

It is the Department's practice, when calculating net financial expenses for COP, to sum the respondent's interest expenses relating to both long- and short-term loans made by the company and net foreign exchange gains and losses, which are then reduced by the amount of interest income the respondent earned on short-term investments of its working capital.<sup>86</sup> Additionally, if the respondent company is a member of a consolidated group of companies, net financial expenses are calculated based on the consolidated, audited fiscal year financial statements of the highest consolidation level available i.e., the ultimate parent.<sup>87</sup> In this case, BlueScope is the ultimate parent.<sup>88</sup>

BlueScope claims that the Department should include net foreign exchange gain or loss in its financial expense ratio calculation, and it has provided record evidence that it is entitled to the adjustment. The record shows that the entire amount of BlueScope's net foreign-exchange gain for fiscal year 2015 is reflected as current year income in the company's audited consolidated financial statements prepared in accordance with Australian GAAP.<sup>89</sup> The record also shows that BlueScope's interest expenses and net foreign exchange gains and losses are net-positive. The Statement of Administrative Action ("SAA") clearly places the burden on the respondent to demonstrate the appropriateness of any adjustment that benefits the respondent.<sup>90</sup> BlueScope met this burden when it pointed to the record which supported its claim. Given that it is our practice to include net foreign exchange gain or loss in respondent's financial expense ratio calculation, and the record supports BlueScope's claim, we find BlueScope has demonstrated the appropriateness of the inclusion of its net foreign exchange gain or loss in its financial expense ratio calculation.

Therefore, because evidence on the record supports BlueScope's claim that its financial expense is net positive or zero, and in such circumstances we treat this as having no cost for financing

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<sup>85</sup> See e.g., Silicomanganese from Brazil: Final Results of Antidumping Duty Administrative Review, 69 FR 13813 (March 24, 2004) and accompanying Issues and Decision Memorandum at Comment 14.

<sup>86</sup> Id.

<sup>87</sup> See, e.g., Prestressed Concrete Steel Rail Tie Wire from Mexico: Final Determination of Sales at Less Than Fair Value, 79 FR 25571 (May 5, 2014), and accompanying Issues and Decision Memorandum at Comment 5.

<sup>88</sup> See Blue Scope Steel's Section A Questionnaire Response, dated October 23, 2015, at Exhibit 13.c, audited financial statements of NS BlueScope Holdings USA LLC.

<sup>89</sup> See Blue Scope Steel's Section A Questionnaire Response, dated October 23, 2015, at Exhibit 13.a, BlueScope Steel Limited - Annual Financial Report- 30 June 2015 (consolidated financial statements) at page 1.

<sup>90</sup> See SAA, URAA, H.R. Doc. No. 103-316, vol. 1, at 829 (1994); see also 19 CFR 351.401(b)(1) ("The interested party that is in possession of relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment."); see also Fujitsu Gen. v. United States, 88 F.3d 1034, 1046 (Fed. Cir. 1996) (explaining that a party seeking an adjustment bears the burden of proving the entitlement to the adjustment).

and do not include financial expense in COP,<sup>91</sup> for the final determination, we have not included financial expenses in BlueScope's COP.

### **Comment 7: Home Market - Adverse Facts Available to Sales Data for BSD**

#### **Petitioners' Comments:**

- The Department should apply AFA to BSD's sales data because BlueScope repeatedly ignored the Department's instructions regarding reporting home market sales by its affiliate BSD. The information regarding such sales has been inaccurate, unreliable, and unverifiable, leaving significant gaps in the record and the Department's investigation has been significantly impeded. These problems are a direct result of BlueScope's failure to act to the best of its ability in reporting its home market sales data for BSD.
- Despite the Department's instructions in the original questionnaire, which instructs BlueScope to report its affiliates' home market sales of hot-rolled steel if BlueScope's sales to those affiliates exceeded five percent of the total volume of sales and did not pass the arm's-length test, BlueScope did not do so.
- When the Department requested BSD's sales information, despite having been given adequate time, BSD's sales information provided by BlueScope was inadequate and incomplete. Most egregiously, BlueScope did not properly report the control number ("CONNUM") physical characteristics of BSD's sales.
- Because the data reported for BSD's sales is unreliable and cannot be used, the Department is required by statute to use facts available. Because BlueScope did not act to the best of its ability and delayed reporting of BSD's sales, the application of AFA is warranted. As AFA, the Department should apply the highest individual margin calculated for any sale to all sales comparisons involving CONNUMs processed or sold by BSD.

#### **BlueScope's Comments:**

- The facts concerning BSD's sales demonstrates that the errors discovered in BSD's sales reporting were completely unintentional and understandable under the circumstances, and that BlueScope and BSD acted to the best of their ability in providing this information. Accordingly, AFA is not warranted.
- In BlueScope's original home market questionnaire response, BlueScope advised the Department that BSD's sales were under the five percent threshold and that it was not reporting BSD's resales. The conditional language of the Department's questionnaire of whether BlueScope was required to report BSD's sales, contradicts Petitioners' assertion that BlueScope should have known that it would be required to report these sales.
- The Department's decision to require the reporting of BSD's resales was triggered by its decision to "collapse" all BSL affiliates into a single company, thereby eliminating sales between affiliates from the universe of home-market sales. The lateness and unexpected nature of this decision, however, shows that it was perfectly reasonable for BlueScope to

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<sup>91</sup> See Certain Hot-Rolled Steel Flat Products from Japan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 81 FR 15222 (March 22, 2016) and accompanying Preliminary Decision Memorandum at 30.

assume that it would not be required to report resales by BSD up until the time it received the Department's second supplemental section B questionnaire.

- BlueScope acted in the best of its ability to obtain the required information. BSD is not located in the same facility as BlueScope and BSD has its own data systems which are not integrated with BlueScope's. Further, BSD is not a primary steelmaker and does not normally track physical characteristics like grade, quality, yield strength and carbon content.
- BlueScope discovered the classification errors preparing for verification and promptly reported them as part of BSD's minor corrections. The errors discovered in BSD's sales in the identification of product characteristics for the classification of its products under the Department's CONNUM criteria.
- The errors affected only a few of the CONNUMs that matched to U.S. sales so that it is highly unlikely that any of the inadvertent misclassifications would result in any change to BlueScope's margin at all, positive or negative.

**Department's Position:** We disagree with Petitioners that we should apply AFA to BSD's sales. In the Preliminary Determination, we determined that the BlueScope companies AIS, BSL, and BSD constituted a single entity and eliminated all downstream/intercompany sales among these affiliated companies in our calculation of normal value.<sup>92</sup>

Section 776(a)(1) and (2) of the Act provides that, if necessary information is missing from the record, or if an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the AD statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

We disagree with Petitioners' arguments that the Department should apply AFA to BSD's sales data because BlueScope ignored the Department's instructions, that its sales information is unverifiable or that this investigation has been significantly impeded. BlueScope has complied in a timely manner with all requests for information pertaining to BSD's sales. In its original section B questionnaire response, BlueScope reported that its sales to BSD constituted well below five percent of BlueScope's sales in the home market and it, therefore, reported its sales to BSD rather than resales by BSD.<sup>93</sup> Later in the proceeding, in the Department's *second* supplemental section B questionnaire, the Department required for the first time that BlueScope report BSD's sales, to which BlueScope provided a complete and timely response, two weeks before the deadline for the Preliminary Determination.<sup>94</sup>

While Petitioners contend that BSD's sales information provided by BlueScope was inadequate and incomplete, specifically that BlueScope did not properly report the CONNUMs of BSD's sales, we note that BSD's sales information provided in its responses was complete and useable

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<sup>92</sup> See Preliminary Decision Memo at 7-8 and 12-13.

<sup>93</sup> See BlueScope's Section B Response, dated November 12, 2015, at 9.

<sup>94</sup> See Letter to BlueScope from the Department, dated February 12, 2016, at Attachment I and BlueScope's Section B Supplemental Questionnaire Response, dated February 26, 2016.

for the Preliminary Determination.<sup>95</sup> With respect to the errors later identified in BSD's CONNUMs, BlueScope uncovered these errors prior to verification of BSD's home market sales and promptly brought this issue to the attention of the verification team as a minor correction.<sup>96</sup> BlueScope adequately explained the circumstances of the error and demonstrated the error impact, which we verified.<sup>97</sup> Further, as instructed by the Department, BlueScope provided a revised sales database, which included a correction of this error.

Therefore, we find BlueScope has provided BSD's sales information when requested and in a timely manner, and has not otherwise impeded this investigation. Further, BSD's sales information was verifiable and is not otherwise unusable for this final determination. Accordingly, we find that AFA is not warranted with respect to BSD's sales data and will use BSD's sales data in BlueScope's final margin.

### **Comment 8: Home Market Early Payment Discounts**

#### **Petitioners' Comments:**

- Following its practice, the Department should deny BlueScope's reported early payment discounts because BlueScope granted these discounts without written agreements, objective criteria, or customer expectations.
- The Department has long had a policy of permitting post-sale adjustments such as early payment discounts only if they are bona fide and made in the ordinary course of business. Where there are no agreements for such a discount, where the terms for such a discount are not followed, or where the discount is inconsistent with commercial reality, the Department has denied the adjustment.<sup>98</sup> The Department codified this long-standing policy in its regulations earlier this year.<sup>99</sup>
- The Department noted numerous discrepancies in the reported early payment discounts. BlueScope has conceded that the early payment terms on the invoices were not linked to actual early payment discounts and that it is unable to determine the amount of early payment discount applicable to each invoice. BlueScope also fully acknowledged that whether the average amount paid exceeds or is less than the agreed percentage on a given invoice is absolutely irrelevant to BlueScope. However, whether or not post-sale adjustments are consistent with written agreements is directly relevant to the Department's analysis — post-sale adjustments that are not made pursuant to pre-sale agreements must be denied.

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<sup>95</sup> See Preliminary Decision Memo at 12-13.

<sup>96</sup> See Memorandum to the File, from Frances Veith, Senior International Trade Analyst, Office V, through James Doyle, Director, Office V, and Catherine Bertrand, Program Manager Office V, re: "Verification of the Sales Response of BlueScope Steel Ltd. in the Antidumping Investigation of Certain Hot-Rolled Steel Flat Products from Australia," dated June 15, 2016, ("BSD Verification Report") at 1.

<sup>97</sup> Id. at 7 and BSD SVE 1.

<sup>98</sup> See Petitioners' Sales Case Brief at 9 (citing to Canned Pineapple Fruit from Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 70948 (December 7, 2006) and accompanying Issues and Decisions Memorandum at Comment 1).

<sup>99</sup> See Petitioners' Sales Case Brief at 10 (citing to Modification of Regulations Regarding Price Adjustments in Antidumping Duty Proceedings, 81 FR 15641, 15644 (March 24, 2016) ("Final Rule")).

- The Department should not accept BlueScope’s early payment discounts because it is unable to base the purported early payment discounts on whether or not a customer actually made early payment.
- The only terms for the discounts, the ones on the invoices, are not actually used to determine whether a discount should be granted. Neither BlueScope nor its customers can know whether an early payment discount will be granted because BlueScope does not track actual payment dates for its sales, which raises the question of how the company can determine whether an early payment has been made by a customer.

**BlueScope’s Comments:**

- Petitioners’ arguments regarding BlueScope’s early payment discounts are without merit and should be dismissed. Petitioners allege that “BlueScope granted these discounts without regard to any written agreements, objective criteria, or customer expectations.”<sup>100</sup> Petitioners’ allegation is wrong and sharply contradicted by record evidence.
- As verified by the Department, BlueScope does know whether a customer in fact took an early payment discount; BlueScope accrues for these discounts and then “if at the time of payment the terms of the discount are not met the system readjusts” for the difference between accrued discount and actual paid.<sup>101</sup>
- Petitioners’ allegations that the early payment discounts are not “predictably” rewarded are belied by the fact that the terms of these discounts are listed on a pricing agreement and/or the sales invoice, and BlueScope grants these discounts if the terms of the discount are met. Therefore, the Department should continue to utilize BlueScope’s actual, verified, early payment discounts in its margin calculation for the final determination.

**Department’s Position:** We will continue to rely on BlueScope’s reported early payment discounts and have deducted them from the reported gross unit price, where applicable, pursuant to 19 CFR 351.401(c) which states:

In calculating export price, constructed export price, and normal value (where normal value is based on price), the Secretary normally will use a price that is net of price adjustments, as defined in §351.102(b), that are reasonably attributable to the subject merchandise or the foreign like product (whichever is applicable). The Secretary will not accept a price adjustment that is made after the time of sale unless the interested party demonstrates, to the satisfaction of the Secretary, its entitlement to such an adjustment.

Petitioners argue that we should not grant BlueScope’s early payment discounts because BlueScope granted these discounts without written agreements, objective criteria, or customer expectations. Petitioners confuse early payment discounts with post-sale adjustments. As Petitioners correctly note, the Department does not accept post-sale adjustments unless parties

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<sup>100</sup> See BlueScope’s Rebuttal Brief at 9 (citing to Petitioners’ Case Brief, dated June 21, 2016).

<sup>101</sup> See BlueScope’s Rebuttal Brief at 14 (citing to the Department’s Memorandum to the File titled “Verification of the Sales Response of BlueScope Steel Ltd. in the Antidumping Investigation of Certain Hot-Rolled Steel Flat Products from Australia,” dated June 2, 2016, (“AIS/BSL Sales Verification Report”).

adequately demonstrate that they are entitled to such an adjustment.<sup>102</sup> Early payment discounts are provided when payment is received by the date set in the agreed terms of payment.<sup>103</sup> To those customers to which BlueScope provides an early payment discount, BlueScope clearly identifies the terms of the discount on the invoice to the customer.<sup>104</sup> Because the terms of the early payment discount are established at the time the material terms of sale are established, we do not consider this a post-sale adjustment, but an adjustment which should be deducted from the gross unit price pursuant to 19 CFR 351.401(c).

We disagree with Petitioners' argument that BlueScope's early payment discounts should be denied because it is unable to base the early payment discounts on whether or not a customer actually made an early payment or whether it paid according to the established date. As we noted at verification, BlueScope provided evidence demonstrating that when it records a sale in its financial system a provision for an early payment discount is recorded in its accounts receivable as an offset to the sale, and at the time of customer payment, the provision is reversed and, if applicable, the actual discount is applied.<sup>105</sup> Further, at verification, we identified in BlueScope's financials systems that it tracks the actual payment date and the amount paid in its books and records.<sup>106</sup> Therefore, in accordance with Department's regulation and practice, we will continue to accept BlueScope's early payment discounts as reported and deduct them from BlueScope's reported gross unit prices where applicable.

## VIII. NEGATIVE FINDING OF CRITICAL CIRCUMSTANCES

The Department preliminarily found,<sup>107</sup> and continues to find, that critical circumstances do not exist for imports of hot-rolled steel from Australia. For the final determination, we continue to find that there is no history of injurious dumping of hot-rolled steel from Australia pursuant to section 735(a)(3)(A)(i) of the Act. While the final estimated weighted-average dumping margin of 29.37 percent that we calculated for BlueScope, and for all other producers or exporters, exceeds the threshold sufficient to impute knowledge of dumping (*i.e.*, 25 percent for export price sales and 15 percent for constructed export price sales), shipment data from Australia do not demonstrate massive surges in imports for any producers/exporters. Therefore, for the final determination, we determine that there is no sufficient basis to find, pursuant to section 735(a)(3)(A)(ii) of the Act, that importers should have known that the exporters were selling the merchandise under consideration at LTFV.

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<sup>102</sup> See 19 CFR 351.401(c); see also, Final Rule at 15644.

<sup>103</sup> See Certain Lined Paper Products From India: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 26205 (May 7, 2014) and accompanying Issues and Decisions Memorandum at Comment 3.

<sup>104</sup> See Memorandum to the File, from Frances Veith, Senior International Trade Analyst, Office V, through James Doyle, Director, Office V, and Catherine Bertrand, Program Manager Office V, re: "Verification of the Sales Response of BlueScope Steel Ltd. in the Antidumping Investigation of Certain Hot-Rolled Steel Flat Products from Australia," dated June 2, 2016, ("HM Verification Report") at Exhibit SVE-13 and SVE-19.

<sup>105</sup> See HM Verification Report at 14.

<sup>106</sup> Id.

<sup>107</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 (December 9, 2015).

**IX. RECOMMENDATION**

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination in the investigation and the final weighted-average dumping margins in the Federal Register.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

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Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

\_\_\_\_\_  
Date