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DEPARTMENT OF COMMERCE

International Trade Administration

C-351-846

Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from Brazil: Final Affirmative Determination, and Final Determination of Critical Circumstances, in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of certain hot-rolled steel flat products (hot-rolled steel, or HRS) from Brazil. For information on the estimated subsidy rates, *see* the “Final Determination” section of this notice. The period of investigation is January 1, 2014, through December 31, 2014.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Sergio Balbontin, Nicholas Czajkowski, or Lana Nigro, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-6478, (202) 482-1395, and (202) 482-1779, respectively.

## SUPPLEMENTARY INFORMATION:

### **Background**

The Department published the *Preliminary Determination* on January 15, 2016.<sup>1</sup> A summary of the events that occurred since the Department published the *Preliminary Determination*, as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.<sup>2</sup> The Issues and Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>, and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed Issues and Decision Memorandum and the electronic version are identical in content.

### **Scope Comments**

In accordance with the Preliminary Scope Determination,<sup>3</sup> the Department set aside a period of time for parties to address scope issues in case briefs or other written comments on scope issues.

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<sup>1</sup> See *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products From Brazil: Preliminary Affirmative Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 81 FR 2168 (January 15, 2016) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

<sup>2</sup> See Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, "Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from Brazil," dated concurrently with this determination (Issues and Decision Memorandum) and hereby adopted by this notice.

<sup>3</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Hot-Rolled Steel Products from Australia, Brazil, Japan, the Netherlands, the Republic of Korea, Turkey and the United Kingdom: Scope Comments Decision Memorandum for the Preliminary Determinations," dated March 14, 2016.

In the *Preliminary Determination*, we did not modify the scope language as it appeared in the *Initiation Notice*.<sup>4</sup> No interested party submitted scope comments in case or rebuttal briefs; therefore, the scope of this investigation remains unchanged for this final determination.

### **Scope of the Investigation**

The products covered by this investigation are certain hot-rolled steel flat products from Brazil. For a complete description of the scope of this investigation, *see* the “Scope of the Investigation,” attached to this notice at Appendix I.

### **Analysis of Subsidy Programs and Comments Received**

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues that parties raised, and to which we have responded in the Issues and Decision Memorandum, is attached to this notice at Appendix II.

### **Use of Adverse Facts Available**

In making this final determination, the Department relied, in part, on facts available and, because the Government of Brazil and the respondent companies did not act to the best of their abilities in responding to the Department’s requests for information, we drew an adverse inference where appropriate in selecting from among the facts otherwise available.<sup>5</sup> Specifically, we applied facts available, with adverse inferences, for the Reduction of Tax on Industrialized Products for Machines and Equipment, the BNDES FINAME Loan program, and the Ex-Tarifário program, in accordance with section 776(a) and (b) of the Act. For further information, *see* the section “Use of Adverse Facts Available” in the accompanying Issues and Decision Memorandum.

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<sup>4</sup> *See Preliminary Determination* PDM at “Scope Comments.”

<sup>5</sup> *See* sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act).

## **Changes Since the Preliminary Determination**

Based on our analysis of the comments received from parties, and the minor corrections presented and additional items discovered at verification, we made certain changes to the respondents' subsidy rate calculations. For a discussion of these changes, *see* the Issues and Decision Memorandum.

## **Final Affirmative Determination of Critical Circumstances, in Part**

On October 23, 2015, the petitioner filed a timely critical circumstances allegation pursuant to section 703(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of hot-rolled steel from Brazil.<sup>6</sup> We preliminarily determined that critical circumstances existed with respect to CSN and Usiminas, but not for all others companies.<sup>7</sup> Based on additional import data that became available since the *Preliminary Determination of Critical Circumstances*, we are departing from our preliminary finding. For this final determination, in accordance with section 705(a) of the Act, we find that critical circumstances exist with respect to CSN but that critical circumstances do not exist with respect to Usiminas and all other producers and exporters of hot-rolled steel from Brazil.<sup>8</sup> For a complete discussion, *see* the "Critical Circumstances" section of the Issues and Decision Memorandum.

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<sup>6</sup> *See* letter from the Petitioner, "Certain Hot-Rolled Steel Flat Products From Australia, Brazil, Japan and the Netherlands – Critical Circumstances Allegations," dated October 23, 2015.

<sup>7</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) (*Preliminary Determination of Critical Circumstances*).

<sup>8</sup> *See* Issues and Decision Memorandum; *see also* Memorandum "Calculations for Final Determination of Critical Circumstances in the Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from Brazil," dated concurrently with this notice.

## Final Determination

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated a rate for Usiminas and CSN, the exporters/producers of subject merchandise selected for individual examination in this investigation.

In accordance with sections 705(c)(1)(B)(i)(I) and 705(c)(5)(A) of the Act, for companies not individually investigated, we apply an “all others” rate, which is normally calculated by weighting the subsidy rates of the individual companies selected as mandatory respondents by those companies’ exports of the subject merchandise to the United States. Under section 705(c)(5)(A)(i) of the Act, the all-others rate excludes zero and *de minimis* rates calculated for the exporters and producers individually investigated as well as any rates based entirely on facts otherwise available, pursuant to section 776 of the Act. Neither of the respondents’ rates was zero or *de minimis* or based entirely on facts otherwise available. Notwithstanding the language of section 705(c)(5)(A)(i) of the Act, we did not calculate the “all-others” rate by weight averaging the rates of the two individually investigated respondents using their actual export sales data, because doing so risks disclosure of proprietary information. Instead, we calculated the all-others rate using the simple average of the respondents’ calculated rates.<sup>9</sup> The estimated countervailable subsidy rates are as follows:

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<sup>9</sup> See Memorandum to Dana S. Mermelstein, Program Manager, AD/CVD Operations, Office I, “Final Affirmative Countervailing Duty Determination: Hot-Rolled Steel Flat Products from Brazil; Calculation of the All Others Rate for the Final Determination in the Countervailing Duty Investigation of Hot-Rolled Steel Flat Products from Brazil,” dated concurrently with this notice.

<b>Company</b>	<b>Subsidy Rate</b>
Companhia Siderurgica Nacional (CSN)	11.30 percent
Usinas Siderurgicas de Minas Gerais S.A. (Usiminas)	11.09 percent
All Others	11.20 percent

### **Suspension of Liquidation**

As a result of our *Preliminary Determination* and pursuant to section 703(d) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of hot-rolled steel from Brazil, that were entered, or withdrawn from warehouse, for consumption on or after October 17, 2015, for CSN and Usiminas, for which we found critical circumstances exist, and on or after January 15, 2016, the date of the publication of the *Preliminary Determination* in the *Federal Register*, for all other exporters. In accordance with section 703(d) of the Act, we instructed CBP to discontinue the suspension of liquidation for countervailing duty (CVD) purposes for subject merchandise entered, or withdrawn from warehouse, on or after May 14, 2016, but to continue the suspension of liquidation of all entries from October 17, 2015, or January 15, 2016, as applicable, through May 14, 2016. As a result of our negative critical circumstances determination for Usiminas, we will instruct CBP to discontinue the suspension of liquidation, and to liquidate, without regard to countervailing duties, subject merchandise exported by Usiminas and entered, or withdrawn from warehouse, on or after October 17, 2015 and before January 15, 2016.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order and will reinstate the suspension of liquidation under section 706(a) of the Act and will require a cash deposit of estimated CVDs for such entries of

subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

### **ITC Notification**

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

### **Notification Regarding Administrative Protective Orders**

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act and 19 CFR 351.201(c).

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Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

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August 4, 2016  
Date

## Appendix I

### 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>1</sup> or countervailing duty<sup>2</sup> orders on Certain Cut-To-Length Carbon-Quality Steel Plate Products From the Republic of Korea (A-580-836; C-580-837), and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this 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

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<sup>1</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>2</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).

- 2.00 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>3</sup>
- Ball bearing steels;<sup>4</sup>

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<sup>3</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>4</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

- Tool steels;<sup>5</sup> and
- Silico-manganese steels;<sup>6</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.

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.

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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>5</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>6</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.

## Appendix II

### List of Topics Discussed in the Issues and Decision Memorandum

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- II. Background
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- III. Final Determination of Critical Circumstances, In Part
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  - Comment 10: Whether the Integrated Drawback Scheme is Countervailable
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  - Comment 15: Whether the Exemption of Payroll Tax is Countervailable
  - Comment 16: Whether Subsidies Provided to UMSA should be Attributed to Usiminas
  - Comment 17: Whether the Economic Subvention to National Innovation Program is not Countervailable

Comment 18: Whether FINEP's Economic Subvention Program has not Conferred a Measurable Benefit

Comment 19: Whether the Bahia State Industrial Development and Economic Integration Program (Desenvolve) is *De Jure* Specific

Comment 20: Whether the GOB's References to Websites Constitute a Full Response

X. Recommendation

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