

Anti-dumping Commission note:

The Government of Vietnam wrote to the Commission on 20 January 2020 in relation to an application for an investigation in respect of precision pipe and tube steel exported to Australia from Vietnam. This application was later withdrawn.

The Government of Vietnam has agreed that this submission can be considered in respect of Case No. 550.



MINISTRY OF INDUSTRY AND TRADE
TRADE REMEDIES AUTHORITY OF VIET NAM

Ha Noi, January 20, 2020

To:
Anti-Dumping Commission
GPO Box 2013
CANBERRA ACT 2600
Tel: 03 8539 2438
Email: investigations1@adcommission.gov.au

Subject: Application requesting the publication of dumping and countervailing duty notices in respect of exports of precision pipe and tube steel exported to Australia from the Socialist Republic of Viet Nam.

The Trade Remedies Authority of Viet Nam (TRAV) under the Ministry of Industry and Trade of Viet Nam presents its compliments to the Australia Anti-dumping Commission (ADC). By this letter, the TRAV would like to raise its concerns regarding the application requesting the publication of dumping and countervailing duty notices in respect of exports of *precision pipe and tube steel* exported to Australia from the Socialist Republic of Viet Nam.

At the outset, according to Article 11.3 of the Agreement on Subsidies and Countervailing measures (SCM), the authorities shall review the accuracy and adequacy of the evidence provided *in the application* to determine whether the evidence is sufficient to justify the initiation of an investigation. Furthermore, Article 11.2 of SCM provides that:

"An application under paragraph 1 shall include sufficient evidence of the existence of (a) a subsidy and, if possible, its amount, (b) injury within the meaning of Article VI of GATT 1994 as interpreted by this Agreement, and (c) a causal link between the subsidized imports and the alleged injury. ***Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this paragraph.***"

[emphasis added]

The TRAV is in the position that the application contained lots of simple assertions and unsubstantiated evidences that make the application insufficient to have any an opportunity of initiation. The TRAV provides detailed concerns as follows:

I. Applicant

In the application, it is stated that Orrcon is the **only** Australian manufacturer of precision pipe & tube steel products.¹ The TRAV kindly requests the Commission to carefully verify the statement before taking any further step of the proceeding. Moreover, it is stated that Orrcon does not have a relationship (commercial or otherwise) with an exporter to Australian, or an Australian importer, of the goods the subject of this application² and BlueScope Steel Limited is the 100 percent owner of Orrcon Manufacturing Pty Ltd.³ However, as far as TRAV know, BlueScope also has related producer in Viet Nam named NS BlueScope Viet Nam operating in steel. It is questionable that Orrcon import PUI or raw material from Viet Nam. If it is true, according to Article 4.1 of Antidumping Agreement (ADA), *(the term "domestic industry" may be interpreted as referring to the rest of the producers)* the case should be terminated because of no domestic producer.

II. Particular market situation (PMS) allegation

As application, Orrcon alleged that domestic prices of precision pipe & tube in Vietnam are not suitable for the determination of normal values on the basis that intervention by the Government of Viet Nam ("GOV") in the iron and steel industry raw material supply markets has distorted prices of the subject goods during the investigation period and provided little supporting statements.

In this context, the TRAV would like to draw your attention for the allegation because the applicant has supplied inadequate information and wrong evidence.

First, the applicant referred "Vietnam agreed in its Protocol of Accession to the WTO... conditions prevail", the TRAV would like to update that this statement is related to paragraph 225 of Viet Nam' Protocol of Accession to the WTO **which has been expired in 31 December 2018**. Thus, WTO member could not use these in antidumping proceeding. Furthermore, as a result of AANZFTA conclusion, Australia has recognized Viet Nam as a market economy in 2008.

Second, the applicant referred to the U.S and Canada cases to demonstrate the existence of PMS. However, the TRAV would like to clarify that in the case of Canada anti-dumping and countervailing investigation on Cold-Rolled Steel, the exporters of Viet Nam did not participate in the proceeding. Thus, the investigating authority of Canada's (CBSA) determinations were based on fact available. Thus, it is unreasonable to use the statement to proof the PMS exist.

Third, the TRAV would like to recall that, in 2018, the CBSA has defined in the antidumping investigation of Carbon steel welded pipe - CSWP (HS code 730630) that:

- (i) *the evidence does not support a conclusion that the GOV substantially determines domestic price in the carbon steel welded pipe sector in Viet Nam.*⁴
- (ii) *the CBSA did not form the opinion that the GOV's involvement has substantially determined prices in the carbon steel welded pipe sector in Viet Nam.*⁵

¹ Non-confidential Application page 12

² Non-confidential Application page 8

³ Non-confidential Application page 8

⁴ Paragraph 156 of Statement of reasons of antidumping investigation of CSWP

⁵ Paragraph 157 of Statement of reasons of antidumping investigation of CSWP

[emphasis added]

In addition, in the antidumping investigation of Galvanised Steel imported from some countries including Viet Nam in 2017, which BlueScope was the applicant, the ADC initiated the PMS investigation in the steel of Viet Nam. The GOV has fully cooperated with ADC and provided timely and adequate responses at the request of ADC. Based on sufficient data, ADC has determined that:

"...the Commission found no evidence that indicates that the costs of HRC used in the production of galvanised steel in Vietnam, were not competitive market costs.⁶"

"The Commissioner found no evidence that a particular market situation exists with regards to the galvanised steel market in Viet Nam.⁷"

[emphasis added]

The TRAV noted that, 2017 – 2019 is not a significant period to make any change of circumstances of the policy and most of them are remained.

Forth, regarding *Government Policies & Directives - The Steel Master Plan or Industrial Development Strategy* page 48 and 50 of the application, the TRAV would like to recall that, according to the Law on Planning 21/2017/QH14, which was promulgated on 2017-11-24, manufacturing industries, including the steel industry, have no longer been the subject of master plans developed by the GOV. Thus, *the Steel Master Plan and Industrial Development Strategy* in the application is invalid.

Based on these clarifications, the TRAV is in the position the PMS allegation is based on **simple assertion** and the applicant has not provided sufficient evidences to the Commission. Thus, the TRAV kindly requests that ADC will not initiate the PMS investigation.

III. Subsidies allegation

First of all, the TRAV would like to draw your attention that, the applicant provides a wrong name of our country in page 62 of application. The TRAV respectfully requests the applicant/Commission to correct the name of our country.

Second, the TRAV would like to emphasize that Article 11.2 of SCM require sufficient evidence, not simple assertion in the application. However, in the application, the applicant has not referred to any legislative documents of the GOV, lack of evidence of specificity as well as benefit conferred from these programs, which is mandatorily required to define a subsidy according to Article 1 of SCM. In fact, the allegation of subsidies of export from Viet Nam is merely based on:

- (i) The conclusion of other anti-subsidies investigation from some WTO members. The TRAV is in view that different investigations have different facts, industries, product under consideration, period of investigations, allegation of subsidy programs etc. The applicant could not refer these facts as evidence in the light of the present allegation.

⁶ Section 6.7 of the public record of antidumping investigation of galvanised Steel

⁷ Section 6.10 of the public record of antidumping investigation of galvanised Steel

- (ii) The notifications of Viet Nam to WTO. The TRAV is in the position that a number of notifications related to legal documents issued and repealed before Viet Nam's accession to the WTO (such as: *Investment Incentives Contingent upon Export Performance For Domestic Businesses [Updating Programme IV of 2003-2004]*; *Investment Incentives Contingent upon Export Performance for Foreign Invested Enterprises [Updating Programme VI of the Period 2003-2004]* etc). Basically, the Commission should not initiate an investigation on programs under such legal documents. After its accession to the WTO in 2007, Viet Nam has conducted a variety of reforms to comply with its WTO commitments, including amendments to its legislation. Under its WTO commitments in 2007, Viet Nam has committed to eliminate all prohibited subsidies, immediately eliminate the investment incentives contingent on export performance.

Third, the TRAV share the views that the initiation of antidumping or countervailing investigation is the right of WTO member. The initiation, however, should be based on the sufficient information and data. The applicant could not provide a little information and simply request ADC to conduct the investigation which may lead to inconsistency with WTO obligation and relevant regulations of ADA and SCM.

IV. Injury

It is noted that, as non-confidential version of application, the TRAV could not seek signification information. Based on the data provided, the TRAV would like to raise concerns as follows:

First, Article 15.1 and 15.2 of SCM stated that:

"A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both (a) the volume of the subsidized imports and the effect of the subsidized imports on prices in the domestic market for like products and (b) the consequent impact of these imports on the domestic producers of such products.

With regard to the volume of the subsidized imports, the investigating authorities shall consider whether there has been **a significant increase** in subsidized imports, either in absolute terms or relative to production or consumption in the importing Member".

[emphasis added]

As data provided in page 39 of the application, the import of PUI in the period of 2018/19 is slightly decreased in comparison with period of 2017/18. In term of relative increase assessment, the TRAV could not find any relevant information in the application.

Second, Article 15.4 of SCM provided:

The examination of the *impact of the subsidized imports on the domestic industry* shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential

decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; actual and potential **negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments ...**

[emphasis added]

The TRAV noted that, there no such assessment of **cash flow, inventories wages, growth, ability to raise capital or investments** in the application. Thus, we are in view that, allegation of domestic injury is not met the requirement as stipulated at Article 15 of SCM.

In conclusion, for the above-mentioned arguments, the TRAV respectfully requests that ADC review the accuracy and adequacy of the evidence provided in the application to determine whether the evidence is sufficient to justify the initiation of an investigation.

The Trade Remedies Authority of Viet Nam will be most grateful for your kind and careful consideration of our views in this matter.

Yours sincerely,



Chu Thang Trung
Deputy Director General
Trade Remedies Authority of Viet Nam

Cc: Embassy of Australia in Hanoi
Embassy of the Socialist Republic of Viet Nam in Canberra
Viet Nam Trade Office in Australia