

Case No: ADC 550
Period of Investigation: 1 January
2019 - 31 December 2019

7 August 2020

The Director - Investigations 3
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601
EMAIL: investigations3@adcommission.gov.au

Dear Mr. Director,

On behalf of the Government of Viet Nam (hereinafter referred to as “GOV”), we hereby submit comments on the applicant’s claims on the existence of countervailable subsidies and particular market situations in Viet Nam within the on-going anti-dumping investigation against precision pipe and tube steel imported from Viet Nam. In summary of this submission as analyzed below, the GOV requests the Australia Anti-dumping Commission (hereinafter referred to as “the Commission”):

- ❖ To reject the applicant’s allegations of the existence of countervailable subsidies provided by the Government of Viet Nam to the concerned exporters of precision pipe and tube steel.
- ❖ To reject the applicant’s claims of the existence of a particular market situation in Viet Nam and thus, to apply the precision pipe and tube steel price in Viet Nam’s market in determining the normal value for those products originating from Viet Nam. In this case, any claim on a particular market situation in Viet Nam under Section 269 (2) (a) (ii) TAC, Custom Act 1901 is not warranted because of insufficient evidence of the case record showing that:
 - (i) The precision pipe and tube steel prices in Viet Nam are artificially low due to the absence of the GOV’s influence in both prices and cost of precision pipe and tube steel in Viet Nam and

- (ii) Other conditions exist in Viet Nam market that render the precision pipe and tube steel sales in Viet Nam not suitable for use in determining the normal value within the instant investigation.
- ❖ In case of an affirmative decision on the particular market situation in Viet Nam, to implement Australia's obligation under Article 2 of the WTO Antidumping Agreement by using Vietnamese producers' production cost data to construct the normal value, instead of using Indonesian or any foreign data as suggested by the applicant.

In addition, the GOV also notes that it has fully cooperated at its best capacity and provided the Commission with requested response and information to the Commission's questionnaire in a timely manner. They are official and factual evidence to demonstrate that the GOV's law and policy do not intend to have or result in any countervailable subsidy or distorting effects with regard to the precision pipe and tube steel industry and market in Viet Nam. As an interested party to this proceeding, the GOV requests that this position as supported by factual evidence should be carefully taken into account by the Commission in accordance with its obligation under Article 6 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as "the WTO Antidumping Agreement") to which Viet Nam and Australia are both members. The GOV reserves its rights to provide additional comments on the applicant's allegation as well as any findings of the Commission at the later stage of this investigation.

A. The applicant's claim on the existence of countervailable subsidies received by the exporters of the subject merchandise from the Government of Viet Nam is not supported by the facts of this case.

1. In explanation of countervailable subsidy, **Section 269TAAC** as to countervailable subsidy defines that a program is considered a countervailable subsidy if it is:
 - a financial contribution or any form of income or price support as referred to in Article XVI of the General Agreement on Tariffs and Trade 1994 that is received from such a government or body;
 - a benefit is thereby conferred; and
 - it is specific
2. In this case, the GOV provided a detailed response to explain each of the 44 alleged investigations, which serves as a solid basis for the Commission to arrive a negative conclusion of any countervailable subsidy received by the exporters of precision pipe and tube steel during the POI.

3. First, five of the investigated programs ceased during the POI and were never available to the producers or exporters of precision pipe and tube steel. Thus, there was no benefit conferred to these producers and exporters within the meaning of Section 269TAAC. The GOV provides a detailed description of these programs in its response to the Commission. For the purpose of this submission, the GOV would like to draw the Commission's attention to the important features of these programs as below:

Program	Date of Termination	Eligible for producers or exporters of precision pipe and tube steel	Used by Exporters of precision pipe and tube steel to Australia during the POI (Yes/No)
Program 2	4 January 2007 ¹	No. Only available for industrial products including shipbuilding, combustion engines, colour television sets, and computers under Decision 37/2000/QD-TTg dated 4 March 2000 and Decision 19/2001/QD-TTg.	No
Program 12	4 January 2007 ²	No. Precision pipe and tube steel did not fall into the List of sectors of producing and manufacturing mechanical products of Decision 67/2000/ND-CP.	No
Program 13	25 October 2006 ³	No. Precision pipe and tube steel did not fall into the List of shipbuilding	No

¹ This program was terminated under Decision 43/2006/QD-BTC abolishing the localization rate-based tax policy for mechanical electrical and electronic products and spare parts in accordance with Vietnam's commitments to access the WTO.

² This program was terminated under Decision 43/2006/QD-BCN abolishing the localization rate-based tax policy for mechanical electrical and electronic products and spare parts in accordance with Vietnam's Viet Nam's commitments to access the WTO.

³ This program was no longer available when Decree 51/1999/ND-CP was annulled on 25 October 2006.

		projects under Decision 117/2000/QD-TTg	
Program 14	20 October 2012 ⁴	No. This program was limited to traders conducting commercial activities in mountain areas, islands, and ethnic minority regions under Decree 20/1998/ND-CP and Decree 02/2002/ND-CP. Thus, this program was not available to any producers or manufacturers of any sectors including precision pipe and tube steel.	No
Program 16	2004 – 2014 ⁵	No. Precision pipe and tube steel did not fall into the List of scientific and technology activities under Decree 119/1999/ND-CP	

4. Second, 22 of the investigated programs ceased their effects before the POI and no exporters of precision pipe and tube steel to Australia received any benefit under these programs during the POI. Thus, there was no financial contribution by the GOV which conferred any benefit to these exporters during the POI, which disqualifies the 22 programs to be countervailing subsidies as alleged by the applicant.

Program	Date of Termination	Replaced by any other program with similar eligible criteria	Used by Exporter of precision pipe and tube to Australia during the POI (Yes/No)

⁴ This program was terminated under Decision 517/QD-UBDT abolishing land rent exemption and reduction and Circular 25/2012/TT-NHNN replacing the regulations on reduction in interest rate.

⁵ This program was terminated in various years between 2004 and 2014. Specifically, corporate income tax preferences was terminated under Law on Corporate Income Tax 2003; land rent or land use fee preferences was annulled by Decree 142/2005/ND-CP; import duty exemption was annulled by Decree 149/2005/ND-CP; investment credits under this program was replaced by investment credit provision under Decree 32/2017/ND-CP in Program 9; financial support for project of scientific and technology research and application was terminated under Decree 08/2014/ND-CP.

		during the POI (Yes/No)	
Program 1	1 October 2006 ⁶	No	No
Program 3	25 October 2006 ⁷	No	No
Program 4	25 October 2006 ⁸	No	No
Program 15	1 July 2007 ⁹	No	No
Program 5 and 6	25 October 2006 ¹⁰	No	No
Program 7	16 January 2007 ¹¹	No	No
Program 8	16 January 2007 ¹²	No	No
Program 10	29 June 2007 ¹³	No	No
Program 20	25 October 2006 ¹⁴	No	No
Program 25	2010 - 2012 ¹⁵	No	No

⁶ This program was terminated under Decision 43/2006/QD-BTC abolishing the localization rate-based tax policy for mechanical electrical and electronic products and spare parts in accordance with Viet Nam's commitments to access the WTO.

⁷ Corporate income tax preferences under this program were terminated under Decree 24/2007/ND-CP; import duty exemption for imported equipment and machinery to create fixed assets was terminated on 31 December 2005 since the effect of Decree 149/2005/ND-CP on 1 January 2006; land rent and use exemption and reduction were terminated on 25 October 2006 when Decree 51/1999/ND-CP was replaced by Decree 108/2006/ND-CP.

⁸ This program was terminated under Decree 108/2006/ND-CP abolishing the corporate income tax preferences and land rent and use exemption and reduction; Decree 149/2005/ND-CP abolishing import duty exemption for imported equipment and machinery to create fixed assets.

⁹ This program was terminated when Law on Tax Administration No. 78/2006/QH11 came into effect and annulled all the assistance relating to tax under Decision 72/2001/QD-TTg and Circular 32/2002/TT-BTC. Circular 32/2002/TT-BTC was annulled by Decision 53/2008/QD-BTC.

¹⁰ This program was terminated under Decree 24/2007/ND-CP which eliminates all benefits relating to export performance or ratio, included corporate income tax preferences, and Decree 149/2005/ND-CP abolishing import duty exemption for imported equipment and machinery to create fixed assets.

¹¹ As part of Viet Nam's commitments to access the WTO, this program was terminated on 16 January 2007 as provided under Decree 151/2006/ND-CP

¹² See footnote of Program 7

¹³ This program was in fact terminated on 29 June 2007 as the Council Board of Bonus Approval was dissolved under Decision 1042/2007/QD-BTM in accordance with Viet Nam's commitments on eliminating export subsidies when Viet Nam acceded to the WTO

¹⁴ This program was terminated under Decree 108/2006/ND-CP

¹⁵ This program was limited to the application duration in a certain time under Decision 131/QD-TTg, Decision 443/QD-TTg and Decision 2072/QD-TTg, which all were no longer available during the POI.

Program 24 and 26	15 May 2017 ¹⁶	No	No
Program 23	15 May 2017 ¹⁷	No	No
Programs 28, 31, 41, 30 item 4	25 October 2006 ¹⁸	No	No
Program 38	7 January 2004 ¹⁹	No	No

5. Third, seven of the investigated programs were effect during the POI but they were not used by the exporters of steel tubes or pipes to Australia as follows:

Program	Used by Exporter of steel tube and pipe to Australia during the POI (Yes/No)
Program 9	No, because producing precision pipe and tube steel does not fall within the List of project eligible for state investment credits under Decree 32/2017/ND-CP and no exporters of the steel tubes or steels had any outstanding investment loans in the Vietnam Development Bank during the POI
Program 19	No, as the exporters of precision pipe and tube steel paid non-agricultural land use tax during the POI.
Program 21	No, as the exporters of precision pipe and tube steel do not operate in the business of infrastructure development.
Program 29	No
Program 33	No
Program 34	No
Program 36	No

6. Forth, five programs do not constitute financial contribution by the GOV or do not satisfy the specificity requirement as demonstrated below:

¹⁶ These programs were terminated under Decree 32/2017/ND-CP

¹⁷ See footnote of Program 24

¹⁸ These programs were terminated when Decree 164/2003/ND-CP was annulled by Decree 108/2006/ND-CP

¹⁹ The program was terminated by Decree 164/2003/ND-CP detailing the implementation of the Law on Corporate Income Tax 2003.

Program	Financial Contribution by the GOV (Yes/No)
Program 22	No, because state assets are subject to public auction and thus there is no case of acquisition of state assets at less than fair market value as alleged by the applicants.
Program 23	No, because Vietinbank and Vietcombank are all commercial joint-stock banks in Viet Nam and are subject to the Law on Credit Institution 2010 and the Law on Amendments to Some Articles of the Law on Credit Institutions 2017 (“the amended Law”) (Exhibit 29) as with joint venture banks or foreign banks. These banks have their own autonomy in their business and decisions relating to lending and interest rates. The GOV notes that any state lending policy is conducted only by the Vietnam Development Bank.
Program 27	No, because accelerated fixed assets are not limited to any certain enterprise or any sector or located in any region
Program 42 and 44	No, because the GOV has developed and implemented a proper and strict custom monitoring system to identify which materials or inputs and how much of them are consumed in the production of exported goods, and thus avoids excessive import duty exemption.

7. For remaining programs, many of these programs provide the same benefits and should be considered as one group of programs. For example, the group of programs 18-35-37-39-40 relate to income tax benefits, the group of programs 32, 42, 44 relate to import duty. The GOV already provided a detailed explanation on these programs and request the Commission to use our response as well as the responses of the cooperative exporters to arrive an accurate calculation of subsidy margin which we believe is de-minimis, which has been confirmed by the Commission in prior cases against Viet Nam
8. In conclusion, we are of the view that the applicant’s claim on the existence of countervailable subsidies received by the Vietnamese exporters of precision pipe and tube steel is not warranted as those alleged subsidies in fact do not exist or confer a minor benefit which would amount to a de-minimis subsidy margin.

B. Any claim on the existence of a particular market situation in Viet Nam with regards to precision pipe and tube steel as provided under Section 269TAC(1) of Customs Act 1901 of Australia (hereinafter referred to as “Customs Act”) is not warranted.

9. Regarding the Applicant’s allegations of the particular market situation in Viet Nam, the GOV submits that there is no particular market situation in Viet Nam related to the

precision pipe and tube steel products because the criteria of establishing the existence of such market under **Section 269TAC(2)(a)(ii) of Customs Act 1901** of Australia and **the Commission’s Dumping and Subsidy Manual** are not satisfied.

10. Pursuant to **Section 269TAC(1) of the Customs Act 1901**, a general principle to establish the normal value of any goods exported to Australia is using “*the price paid or payable for like goods sold for home consumption in the exporting country*”. However, Section 269TAC(2)(a)(ii) provides an instance where the normal value of goods exported to Australia cannot be ascertained by using the price paid or payable in the exporting country because of the situation in the market of the country of export which renders the sales in that market are not suitable for use in determining a price under subsection 1. This situation as described in Section 269(2)(a)(ii)TAC as such is often referred to as “a particular market situation”.
 11. The legislation does not define what constitutes a particular market situation that would render domestic sales as unsuitable. However, the Commission in its Dumping and Subsidy Manual indicated that a particular market situation exists in an exporting country when:

“(i) the prices are artificially low; or

(ii) there are other conditions in the market which render sales in that market not suitable for use in determining prices under Subsection 269TAC(1)”²⁰
 12. The GOV believes that none of these factors do exist in this case because the allegations of Applicant in its Application, as well as submissions, thereafter did not demonstrate any evidence to jump to the conclusion that the GOV intervened to distort the price of precision pipe and tube steel products in the market of Viet Nam. To prove that, in this submission, the GOV would like to discuss and analyze all the factual evidence in light of Australia’s legislation and other relevant international provisions regarding the two following issues:
 - (i) There is the non-existence of a particular market situation with regards to the industry and market of precision pipe and tube steel products in Viet Nam;
 - (ii) It is necessary and suitable to use the data provided by Vietnamese producers and exporters of the precision pipe and tube steel in order to ensure a suitable determination of normal value under Article 2 of Anti-dumping Agreement (Hereinafter referred to as “ADA”).
- I. Insufficient evidence to conclude that there is any influence by the GOV that distorts the price of precision pipe and tube steel and main material inputs on the market in Viet Nam**

²⁰ Dumping and Subsidy Manual, April 2017 by the Anti-dumping Commission of Australia, page 36

1. Insufficient evidence showing that the price of precision pipe and tube steel in Viet Nam is artificially low

13. In the Commission's Dumping and Subsidy Manual, in order to "artificially low pricing" of the subject merchandise, there must be sufficient evidence of the records showing significant influence by the government of an exporting country that distorts the price or cost of the subject merchandise.

*"...in investigating whether a market situation exists due to government influence, the Commission will seek to determine whether the impact of the government's involvement in the domestic market has materially distorted competitive conditions. A finding that competitive conditions have been materially distorted may give rise to a finding that domestic prices are artificially low or not substantially the same as they would be if they were determined in a competitive market. One example of government influence distorting competitive conditions and leading to artificially low prices may be the presence of government-owned enterprises in the domestic market. The presence of government-owned enterprises, of itself, may not lead to the conclusion that sales are unsuitable. Rather, market conditions will no longer be said to prevail when the number of government-owned enterprises, together with any unprofitable sales by those same enterprises, has caused a significant distortion to the prices received by private enterprises"*²¹

14. In the instant investigation, the GOV does not have any influence in a manner that materially distorts competitive conditions of the precision pipe and tube steel products on the Viet Nam's market.

15. **First**, in terms of law and policy, Article 11 of Law on Price 2012 provides that business entities have the right to self-determine selling prices of goods and services produced or traded by themselves, an exception to those subject to the list of goods and services determined by the State. This list is specified under Article 19.1 of Law on Price as follows:
*"a) Goods or services under monopoly field in which the State manufacture, business;
b) Important resources;
c) National reserve goods; products, services for public interest and service of public career using state budget."*

It is clearly seen that precision pipe and tube steel is absent from the list. Additionally, the subject merchandise is not also subject to the list of price stabilization under Article 15.2 of Law on Price 2012, which regulates:

"2. The List of goods or services implementing price stabilization includes:

²¹ Dumping and Subsidy Manual, April 2017 by the Anti-Dumping Commission of Australia, page 36

- a) *Finished petrol, oil;*
- b) *Electricity;*
- c) *Liquefied petroleum gas;*
- d) *Nitrogenous fertilizer, NPK fertilizer;*
- dd) *Pesticide as prescribed by law;*
- e) *Prevention vaccine for cattle, poultry;*
- g) *Edible salt;*
- h) *Milk for children under 06 years old;*
- i) *Edible sugar, including white sugar and refined sugar;*
- k) *Paddy, ordinary rice;*
- l) *Drugs for human disease prevention and treatment in the List of essential medicines using at establishments of medical examination and treatment as prescribed by law.”*

As such, under Viet Nam’s laws, the GOV has no authority to intervene in the selling price of the subject merchandise. It is contrary to the Applicant’s claim that the GOV controls the prices of steel products by referencing to no longer effective Circular 122, which is superseded by Law on Price 2012.²² As the Applicant fails to present any evidence that the GOV implemented a law or policy in order to control steel market during the POI, he merely cited a conclusion made by the U.S. Government dated 24 August 2018 without conducting a serious comparison of regulations in Circular 122 and Law on Price 2012.²³ Specifically, the U.S Government’s conclusion indicates “*Circular 122 on price management and its registration entered into force in 2010. Circular 122 states that MoF may apply price controls when prices increase or decrease without a “legitimate excuse” and subjects an extensive list of goods to pricing registration, including steel, liquefied petroleum gas, chemical fertilizers, plant protection products, animal drugs and vaccines, salt, milk and nutritional powders for children under six years old, sugar, rice, animal feed, coal, paper, and textbooks. In 2012, the National Assembly promulgated the Price Law, which became effective on Jan 1, 2013. While this law supersedes Circular 122, the Vietnamese government policy with regard to price stabilization of certain items did not change”.*

It is clear that the statement only indicates governmental price stabilization on some of the items in Law on Price 2012 did not change as opposed to Circular 122. It is true that as compared with Circular 112, Law on Price 2012 remains price stabilization regulation on

²² The Application, V. Govt. of Vietnam Viet Nam Price Stabilization

²³ Please refer to Exhibit 1 for *Vietnam – Trade Barriers*, published 24 August 2018, [Online] available at <https://www.export.gov/apex/article2?id=Vietnam-Trade-Barriers>

some products, including petrol, liquefied petroleum gas, chemical fertilizers, plants protection products, animal drugs and vaccines, salt, milk, sugar, and rice under Article 15.2; however, it excludes **steel**, cement, passenger transportation fee, and drugs for human from the list of price stabilization.²⁴

16. **Second**, the GOV also submits that it does not have any significant ownership in the subject merchandise industry as claimed by the Applicant. In the Application, the Applicant alleges that Vina One – a large Vietnamese precision and structural steel tube producer is a state-owned enterprise. The evidence is that Vina One was established in 2007 by the Department of Planning and Investment of Long An Province. We note that Vina One is 100% owned by the private sector. In fact, it registered with the Department of Planning and Investment, then the Department issued a company registration certificate to Vina One, but not establishing it as claimed by the Applicant. The company's registration business certificate provided in Exhibit 2 clearly indicates that all shareholders of Vina One are individuals, not the GOV. As such, the Applicant's claim that Vina One is a state-owned company is unfounded. In contrast, we are of the view that the Applicant is trying to mislead the Commission by providing such wrong information because as a lawyer, he/she should understand that in order to establish a company, an entity must conduct a procedure of registering with a governmental authority, in case of Viet Nam is the Department of Planning and Investment, while Australia is Australian Securities and Investment Commission (ASIC). The register procedure cannot be understood that the registration authority establishes the company.
17. Additionally, the Applicant claims that the GOV controls the prices of the subject goods via VN Steel's subsidiary, i.e. Vina Pipe Company Limited – a producer of the subject merchandise. We believe that this allegation is unfounded as it is not supported by any evidence. Although we agree that VN Steel is a state-owned company, we note that the market share and assets of Vina Pipe in the subject merchandise market is very small, i.e. [REDACTED]²⁵ as opposed to 5 leading companies in this industry, including Hoa Phat Group Joint Stock Company (Hoa Phat), Hoa Sen Group Joint Stock Company (Hoa Sen), Minh Ngoc Company Limited (Minh Ngoc), TVP Steel Joint Stock Company (TVP Steel), and SeAh Steel Vina Corporation, which are all private companies and account for 79.2% of the market share according to a report in 2019.²⁶ In terms of asset, the only asset of Hoa Phat is more than 4 times of VN Steel according to audited consolidated financial statement

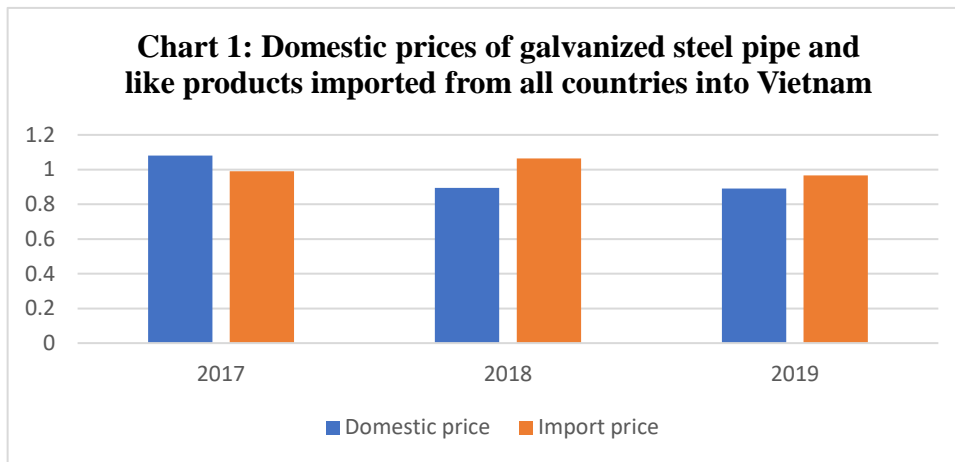
²⁴ Please refer to Exhibit 3 for Law on Price 2012 and Circular No. 122

²⁵ Please see Exhibit 4 for the subject merchandise's market share in Vietnam

²⁶ Please see Exhibit 4 for the subject merchandise's market share in Vietnam

2019.²⁷ Therefore, with the small market share and asset as opposed to other private companies in the steel pipe and tube industry, we could not understand how VN Steel can distort (if any) the selling prices of the subject goods as the Applicant’s claim. The GOV also notes that Vina Pipe is not an exporter of the subject merchandise to Australia during the POI.

18. The chart below indicates that the domestic selling prices of galvanized steel pipe are level with like products imported into Viet Nam during the period 2017 to 2019.²⁸



19. In the Australian market, the export prices of the subject goods from Viet Nam are also the same level or even higher than other exporting countries as indicated in the table below:²⁹

Countries	2017			2018			2019		
	Sum of Net weight (kg)	Sum of Trade Value (US\$)	Average of Unit Price (US\$/Kg)	Sum of Net weight (kg)	Sum of Trade Value (US\$)	Average of Unit Price (US\$/Kg)	Sum of Net weight (kg)	Sum of Trade Value (US\$)	Average of Unit Price (US\$/Kg)
India	26,326,402	22,091,042	0.8	27,211,099	24,629,961	2.4	32,151,495	25,243,486	0.8
Rep. of Korea	18,108,474	14,499,094	1.4	20,885,589	17,315,226	1.2	26,803,366	22,178,719	0.9
Japan	22,800,556	17,099,693	1.2	24,102,296	19,687,939	2.2	18,198,029	16,455,709	2.0
Thailand	16,554,870	10,952,746	0.7	19,999,241	16,518,846	1.2	18,918,709	16,411,396	1.0

²⁷ Please see [Exhibit 5](#) for audited consolidated financial statements of VN Steel and Hoa Phat in 2019

²⁸ Please see [Exhibit 6](#) for domestic and import selling prices of the subject merchandise

²⁹ Please see [Exhibit 7](#) for 05 largest exporting countries of the subject merchandises to Australia. Source of data is from UN Comtrade

Viet Nam	14,463,933	14,402,111	1.3	11,143,315	12,988,353	1.5	14,753,941	15,138,604	1.4
----------	------------	------------	-----	------------	------------	-----	------------	------------	-----

Therefore, the allegation regarding the GOV controlling or distorting the domestic selling price of the subject merchandise is unfounded.

2. Selling Prices of Inputs

20. In the Dumping and Subsidy Manual, the Commission also attributes the existence of “artificially low” price to the export country’s government influence and distortion of the cost of inputs to produce the subject merchandise:

“Prices may also be artificially low or lower than they would otherwise be in a competitive market due to government influence and distortion of the costs of inputs. The mere existence of any government influence on the costs of inputs would not be enough to make sales unsuitable. The Commission looks at the effect of this influence on market conditions and the extent to which domestic prices can no longer be said to prevail in a normal competitive market. It should be noted that government influence on costs can only disqualify the sales if those costs can be shown to be affecting the domestic prices. Thus, a range of conditions concerning the sales themselves may have the effect of rendering those sales prices as being unsuitable for use in determining prices under subsection 269TAC(1)”³⁰

In the instance case, the main raw material used in the production of the subject merchandise is hot-rolled coil (HRC), cold-rolled coil (CRC), or galvanized steel. The analysis below demonstrates the prices of these materials are sold in Viet Nam in a competitive market.

2.1. Hot-Rolled Steel Coil

21. First of all, we kindly note that there is only one producer in Viet Nam which is capable to produce HRC that is Formosa Ha Tinh Steel Corporation. This company is 100% owned by a Taiwanese company, i.e. Formosa Plastics Corporation. As such, the GOV cannot intervene in any activities of this company, including selling prices.

The remaining of HRC is mainly imported from India, Japan, Korea, Russia, China, Brazil, and Australia.³¹ As you can see from the table below, imports of HRC into Viet Nam increased gradually during the period 2017-2019. Around 6.7 million tons of HRC was imported in 2019, around 1.5 times of the Formosa’s production quantity of HRC in 2019.

Table 2: HRC imports into Viet Nam during 2017-2019

³⁰ The Dumping and Subsidy Manual, April 2017 by the Anti-Dumping Commission of Australia, page 37

³¹ Please see [Exhibit 8](#) for HRC’s imports into Vietnam Viet Nam from several countries. Source data is from UN Comtrade

Country	2019		2018		2017	
	Trade Value ('000 US\$)	Net weight ('000 Ton)	Trade Value ('000 US\$)	Net weight ('000 Ton)	Trade Value ('000 US\$)	Net weight ('000 Ton)
India	1,046,995	1,864	323,220	507	733,729	1,439
Japan	792,557	1,331	912,028	1,344	788,503	1,596
Rep. of Korea	681,576	1,119	620,690	913	555,510	1,051
Russian Federation	181,055	322	315,402	494	99,578	204
China	194,751	284	476,696	699	228,921	454
Brazil	145,963	258	83,159	129	153,844	307
Australia	42,034	73	13,606	20	7,025	15
Others	849,323	1,469	758,054	1,151	617,290	1,261
Total	3,934,254	6,721	3,502,855	5,257	3,184,400	6,327

We further provide a comparison of HRC prices in Viet Nam as opposed to other markets in the world below. It is clearly indicated that the selling prices of HRC products in Viet Nam were at the same level as the World, Asia, and China markets.

Countries	Note	Price (USD/ton)	Price (VND/ton)
HRC			
China	HRC 2.75 domestic (Factory)	586.9	13,643,440
	HRC 3mm Export - Shanghai	520.0	12,088,440
Viet Nam	HRC- Warehouse in Ha Noi	581.8	13,526,183
Malaysia	HRC- Warehouse in Kuala Lumpur	589.2	13,697,965
Thailand	HRC- Warehouse in Bangkok	631.7	14,685,911
India	HRC- Warehouse in Mumbai	577.3	13,421,467

Therefore, it is unquestionable that the HRC prices in Viet Nam are reflected competitive market prices

2.2. Cold-Rolled Steel Coil

22. Like other steel products, GOV does not distort selling prices of this product. First, GOV does not implement any law or policy to artificially low domestic prices of CRC. CRC is not placed in the list of products which are subject to price stabilization according to Article

³² Please see Exhibit 9 for HRC's prices in several countries, page 14. Also available at <https://www.vietinbank.vn/investmentbanking/resources/reports/072019-CTS-BCnganhthep.pdf>

15 of Law on Price 2012. During the POI, the applicable MFN import duty to this product is 7%, while it is not subject to export duty.³³ This policy indirectly limits CRC from imports and encourage to export CRC. Under the theory of supply and demand which has been widely used by the Commission in particular market situation cases against Viet Nam and China, domestic selling prices of CRC are not considered to be distorted. Moreover, on 03 September 2019, Viet Nam Trade Remedies Authority initiated an anti-dumping case against CRC originated from China, the largest supplier of CRC to Viet Nam in 2019. Although a final determination has not been issued yet, this decision more or less lows down the import volume of CRC from China, and thus make domestic prices of CRC to increase. The table below indicates that the quantity and value of CRC from China in 2019 significantly decreased by around 50% and 5 times as opposed to 2018 and 2017, respectively.

	2017			2018			2019		
	Net weight (kg)	Trade value (USD)	Unit price (USD/kg)	Net weight (kg)	Trade value (USD)	Unit price (USD/kg)	Net weight (kg)	Trade value (USD)	Unit price (USD/kg)
China	342,539,569	170,818,285	0.498	195,528,115	147,741,861	0.755	88,346,095	59,876,853	0.677
Japan	139,018,400	90,803,170	0.653	140,463,537	106,833,922	0.76	129,021,302	87,831,981	0.68
Korea	34,896,500	18,988,817	0.544	17,942,022	13,672,759	0.762	14,292,922	9,693,897	0.678
India	26,157,300	17,592,556	0.672	7,134,318	5,425,864	0.76	3,361,877	2,290,154	0.681
Other Asia, nes	25,725,500	18,654,105	0.725	27,175,786	20,628,815	0.759	21,449,726	14,664,564	0.683
Others	12,701,218	5,886,883	0.463	14,805,595	11,229,771	0.758	35,588,411	52,975,590	0.679

³³ Please see [Exhibit 10](#) for Vietnam's Viet Nam's Import and Export Schedule Under Article 1.1 of Decree 125/2017/ND-CP, Appendix 1 attached to the Decree is the export duty schedule applicable to all goods subject to export duty. As such, if a good is absent from the Appendix 1, it means that it is not subject to export duty. The Appendix 1 attached to this Decree is provided at [Exhibit 10](#).

³⁴ Please see [Exhibit 11](#) for CRC imports into Vietnam Viet Nam from all countries. Source data is from UN Comtrade

23. Second, GOV does not own significant ownership in this industry. The key producers of the product are Posco Vietnam Co., Ltd, China Steel Sumikin Vietnam (CSVC), Hoa Sen and Ton Dong A Corporation, accounting for 78% of the domestic production quantity.³⁵
24. Finally, we note that all main Vietnamese exporters of the subject merchandise to Australia, including Hoa Phat Group Joint Stock Company, Vina One Steel, Chinh Dai Industrial Limited Company and Tay Nam Steel Products and Trading Co., Ltd are capable to produce cold-rolled steel coil (CRC) from HRC steel. They do not need to purchase CRC from outside to produce the subject merchandise. As such, even if in case of selling prices of CRC in the domestic market are distorted (if any), it cannot be considered to be a factor affecting the production cost of the subject merchandise.

2.3. Galvanized Steel

25. Similar to HRC and CRC, GOV does not control the selling price of galvanized steel. First, galvanized steel is not subject to price stabilization under Article 15 of Law on Price.
26. Second, GOV does not implement any policy to artificially low the selling price of galvanized steel. On the contrary, the current export-import duty policy applicable to galvanized steel makes the domestic price to increase. Galvanized steel is not subject to export duty while the import duty is from 5-10%.³⁶ The galvanized steel imported from China and Korea is also subject to anti-dumping measures with additional import duties from 2.53-34.27%. By implementing the policy of limitation of import and encouraging export, the supply of galvanized steel in the domestic market has been decreased and thus, indirectly increasing the domestic price of this product under the theory of supply and demand which has been historically used by the Commission in particular market situation cases against Viet Nam and China.
27. Third, the private sector prevails a significant share in the galvanized industry. Top five domestic producers of galvanized steel, accounting for 75.7% of the market share in 2019 include Hoa Sen, Nam Kim Joint Stock Company (Nam Kim), Ton Dong A, CSVC, and Maruichi Sun Steel Joint Stock Company (Sun Steel). These companies are owned 100% by the private sector.³⁷

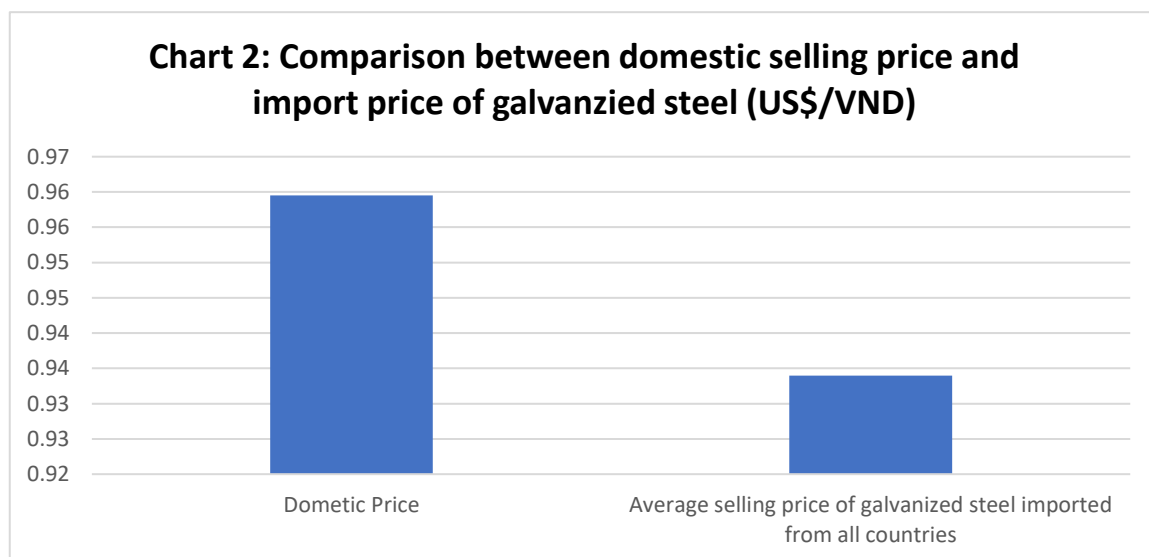
³⁵ Please see [Exhibit 12](#) for CRC's proportion of production quantity in VietnamViet Nam

³⁶ Please see [Exhibit 10](#) for Vietnam'sViet Nam's Import and Export Schedule

Under Article 1.1 of Decree 125/2017/ND-CP, Appendix 1 attached to the Decree is the export duty schedule applicable to all goods subject to export duty. As such, if a good is absent from the Appendix 1, it means that it is not subject to export duty. Appendix 1 attached to this Decree is provided at [Exhibit 10](#).

³⁷ Please see [Exhibit 13](#) for galvanized steel's market share in VietnamViet Nam

In fact, the chart below indicates that the domestic selling price of galvanized steel is higher than the average selling price of galvanized steel imported from all countries into Viet Nam.³⁸



2.4. Iron Ore

28. In the Application, the Applicant alleges “*by controlling the feed inputs for the subject goods, the GOV is also controlling the subject goods market*”. We are of the view that this allegation is frivolous as GOV does not implement any law or policy to control the price of iron ore. Even if such circumstance has existed, it does not produce any effects on the subject goods markets as claimed by the Applicant. We believe that any claim or allegation placed before the Commission should be careful, serious and supported by evidence, rather than giving simple statements like the Applicant.

29. **First**, as to law and policy, iron ore is not subject to price stabilization under Article 15.2 of Law on Price 2012, which indicates:

“2. The List of goods or services implementing price stabilization includes:

- a) Finished petrol, oil;*
- b) Electricity;*
- c) Liquefied petroleum gas;*
- d) Nitrogenous fertilizer, NPK fertilizer;*

³⁸ Please see [Exhibit 14](#) for domestic and import prices of galvanized steel

- dd) Pesticide as prescribed by law;
- e) Prevention vaccine for cattle, poultry;
- g) Edible salt;
- h) Milk for children under 06 years old;
- i) Edible sugar, including white sugar and refined sugar;
- k) Paddy, ordinary rice;”

It is obviously contrary to the statement of the Applicant that iron ore is subject to price stabilization regulation. The Applicant wrongly references to Circular 122 that was superseded in 2013 by the Law on Price 2012, and the statements of the Ministry of Finance in 2010 that is outside the period of investigation and before the Law on Price 2012 taking effects.³⁹ Because the Applicant cannot present any evidence before the Commission that the GOV implemented a policy as to price stabilization of iron ore during the POI, he wrongly referred to a conclusion made by the U.S. Government dated 24 August 2018, which says “Circular 122 on price management and its registration entered into force in 2010. Circular 122 states that MoF may apply price controls when prices increase or decrease without a “legitimate excuse” and subjects an extensive list of goods to pricing registration, including steel, liquefied petroleum gas, chemical fertilizers, plant protection products, animal drugs and vaccines, salt, milk and nutritional powders for children under six years old, sugar, rice, animal feed, coal, paper, and textbooks. In 2012, the National Assembly promulgated the Price Law, which became effective on Jan 1, 2013. While this law supersedes Circular 122, the Vietnamese government policy with regard to price stabilization of certain items did not change.”

It is unquestionable that there is no word in the statement above indicating that the GOV stabilizes the selling price of iron ore.

The GOV also submits that no export restriction measures in the form of quotas or tariff against iron ore were introduced in 2019 to reserve the market for these products for the domestic downstream users. In fact, the table below indicates that the export quantity of iron ore from Viet Nam increased dramatically during the period 2016-2019, although there is no change in export duty, i.e. 20%.⁴⁰

Table 5: Statistic on Viet Nam's Exports of Iron Ore during 2016-2019⁴¹		
Year	Trade Value (US\$)	Net weight (kg)
2016	18,547,098.00	487,019,496.00
2017	71,946,787.00	1,367,291,129.00

³⁹ The Application, V. Govt. of Vietnam Viet Nam Price Stabilization, page 52

⁴⁰ Please see [Exhibit 10](#) for Vietnam’s Viet Nam’s Import and Export Schedule

⁴¹ Please see [Exhibit 15](#) for Vietnam’s Viet Nam’s exports of iron ore. Source data is from UN Comtrade

2018	35,864,288.00	531,878,640.00
2019	50,086,536.00	835,471,819.00

The table also indicates that there is no correlation between the GOV's export tariff in this regard and the so-called "export restriction" policy as claimed by the Applicant.

30. Meanwhile, the import tariff of iron ore of 0% in 2019 was actually the ceiling rate under Viet Nam's WTO commitment since 2017. It is not the GOV's policy to remain the difference of 40% between export and import duty in order to favor the downstream producers.⁴²
31. **Second**, we are of the view that the selling price of iron ore does not produce any effect on the price of the subject merchandise in this case, regardless of whether the distortion circumstance on iron ore has existed or not. As we mentioned above, raw materials used in the production of the subject goods include HRC, CRC and galvanized steel. Among them, iron ore is an upstream raw material to produce HRC which is a raw material to produce CRC, galvanized steel and the subject merchandise. However, as we noted above, Viet Nam has only one producer of HRC, i.e. Formosa, meanwhile, this company mainly imports iron ore and coking coal from Australia, Canada, Malaysia, etc., to produce steel slab which is used in the production of HRC.⁴³ The remaining of HRC is from importation. Therefore, it is obvious that the domestic selling price of iron ore whether is distorted or not has no effect on HRC, and thus having no effect on the subject merchandise.

3. Electricity

32. The GOV re-affirms that electricity prices in Viet Nam are not artificially suppressed as indicated in the Termination Report No. 416 by the Commission and the Applicant's allegation in this case. Additionally, even in case the Commission concludes that electricity prices in Viet Nam are suppressed as you did in the case No. 416, the GOV note that such distortion has a slight impact on the production costs of Vietnamese precision pipe and tube steel manufacturers. As such, it cannot disqualify domestic sales of the subject merchandises.
33. First, as to the common view that the GOV control electricity prices through its regulations on electricity, we note that this is a common practice adopted by many countries, even in countries having the highest economic freedom, such as Australia and the United States. Particularly, in the Q&V section on the website of the United State Office of Energy, the Department affirms that State Governments regulate retail electric service:

"Q: How is electricity regulated?"

⁴² Please see [Exhibit 10](#) for Vietnam's Viet Nam's Import and Export Schedule

⁴³ Please see [Exhibit 16](#) for Agriculture Vietnam News (August 2019) *Factory Tour in Formosa* [Online] available at <https://nongnghiep.vn/vao-formosa-ha-tinh-xem-san-xuat-thep-d248894.html>

A: The Federal government, through the Federal Energy Regulatory Commission, regulates interstate power sales and service. State governments, through their public utility commissions or equivalent, regulate retail electric service as well as facility planning and siting.”⁴⁴

For Australia, Exhibit 18 provides Queensland’s regulation which indicates that caps on electricity are also applied.

Additionally, in the Termination Report No. 416, the Commission affirms that most of countries have a significant influence on electricity in the form of control on electricity tariffs or provision of subsidy on upstream materials:

“The Commission’s research indicated the following problems with finding an external benchmark for Viet Nam’s electricity tariff:

- *in most of the countries in the region, there is significant government influence, either in the form of control on electricity tariffs or the provision of subsidized coal, fuel, and natural gas for power generation purposes”*

34. As such, the GOV is of the view that likewise other countries, it adopts regulations on electricity because this is a vital energy to Viet Nam, affecting every aspect of the nation, both economic and national security, rather than suppressing selling prices to support a specific industry.

35. This is reflected in **Article 19.1a of Law on Electricity**,⁴⁵ which stipulates that electricity prices shall be followed market mechanisms with the State’s regulation to comply with the development of the electricity market. The GOV further opines that a requisite condition in analysis as to whether prices of goods or services are followed market mechanism or not is to analyze whether goods or services are supplied less than remuneration or not. In the case of EVN, the GOV affirms that this circumstance has not existed as EVN has made a large profit during the period 2016-2019 as indicated in the table below:

Table 6: EVN's Income during the Period 2016-2019 (million VND)⁴⁶				
Year	2019	2018	2017	2016
Total revenue	325,890,067.64	275,040,855.76	236,084,124.94	219,124,040.73
Profit before tax	2,107,406.86	1,411,155.90	918,896.77	695,399.20
Increase/Decrease (%)	203.050%	102.927%	32.139%	-

⁴⁴ Please see [Exhibit 17](#) for the Q&V section on the website of the United State Office of Energy

⁴⁵ Please see [Exhibit 19](#) for Law on Electricity

⁴⁶ Please see [Exhibit 20](#) for EVN’s Income Statement

36. Additionally, the chart below shows that the prices of electricity in 2019 in Viet Nam are comparable with countries in the region.

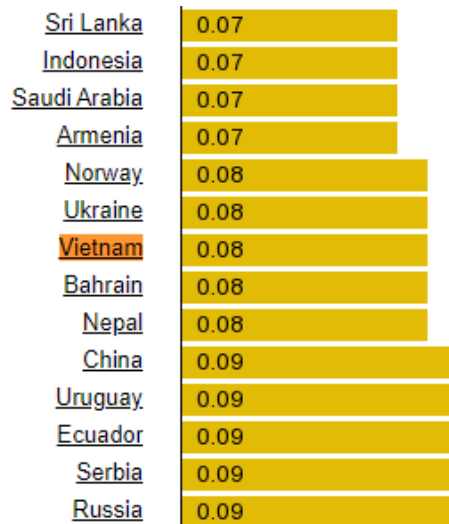


Chart 3: Electricity prices for business, December 2019 (kWh, USD) - Global Petrol Prices⁴⁷

37. Second, the GOV has reviewed the Commission’s conclusion on electricity in the Termination Report 416. The GOV found that the Commission based on the two reports that are “*Vietnam, Energy Sector Assessment, Strategy and Road Map by the Asian Development Bank*” and “*A Financial Recovery Plan for Vietnam Electricity*” to conclude that Vietnam Electricity Group (EVN) sell electricity below cost, particularly:

“The Commission notes that there has been a consensus in the available resources in relation to the GoV’s control over electricity pricing in Vietnam and the current retail electricity tariffs being below the cost of supply. Two of the most prominent reports published on the electricity market outlook in Vietnam and which support this view are Vietnam, Energy Sector Assessment, Strategy and Road Map by the Asian Development Bank (Non-Confidential Appendix 1) and A Financial Recovery Plan for Vietnam Electricity by the World Bank Group (Non-Confidential Appendix 2).”

We note that both reports were published in December of 2015 and February of 2016, respectively. However, since that time there have been changes in the electricity industry.

⁴⁷ Please see [Exhibit 21](#) for electricity prices for business, December of 2019. Also available at https://www.globalpetrolprices.com/Australia/electricity_prices/

Specifically, during the period 2013-2016 before the reports were published, EVN suffered a significant decrease by around 91% in profits as indicated in the table below:

Year	2016	2015	2014	2013
Total revenue	219,124,040.73	191,373,664.25	162,642,266.20	137,336,800.47
Profit before tax	695,399.20	616,544.66	529,865.48	8,242,514.86
Increase/Decrease (%)	-91.563%	-92.520%	-93.572%	

It may be contributed by the GOV's rejection of increasing electricity in 2014. As such, we opine that this is one of the reasons why the two reports said that EVN sells electricity below the cost of supply. However, after the reports were published, the profits rocketed up 200% as indicated in the table below:

Year	2019	2018	2017	2016
Total revenue	325,890,067.64	275,040,855.76	236,084,124.94	219,124,040.73
Profit before tax	2,107,406.86	1,411,155.90	918,896.77	695,399.20
Increase/Decrease (%)	203.050%	102.927%	32.139%	-

It thanks to increases in the electricity prices during the period 2016-2019, particularly:

- On May of 2016, electricity prices increased by 2-5%
- On December of 2017, electricity prices increased by 6.08%
- On March of 2019, electricity prices increased by 8.36%

We cannot see any possibility of how EVN still makes a large profit if the electricity prices are suppressed as alleged by the Applicant. Therefore, the GOV opines that it did not suppress the electricity's prices during the POI

38. Third, even in case the Commission concludes that the selling prices of electricity in Viet Nam are artificially suppressed, it cannot disqualify the domestic sales of the subject merchandises under **the Commission's Dumping and Subsidy Manual**, which correctly points out:

"...The mere existence of any government influence on the costs of inputs would not be enough to make sales unsuitable. The Commission looks at the effect of this influence on market conditions and the extent to which domestic prices can no longer be said to prevail in a normal competitive market. It should be noted that government influence on costs can only disqualify the sales if those costs can be shown to be affecting the domestic prices."

39. In the Sink-China case, in order to come to the conclusion that the cost of 304 SS CRC steel – an input to produce the sink did not impact the domestic price of the latter in a

⁴⁸ Please see [Exhibit 20](#) for EVN's Income Statement

⁴⁹ Please see [Exhibit 20](#) for EVN's Income Statement

manner that rendered domestic sales of sink unsuitable for determining normal values, the Commission analyze two factors: (i) how percentage is the raw material under consideration accounted for in the total production cost; and (ii) how much is different between reasonable competitive market cost and the distorted price of the raw material under consideration.

The Commission found that SS CRS input did not impact the domestic sale price of the Deep Drawn Stainless Steel Sinks given the fact that the difference between reasonable competitive market cost and the Chinese's 304 SS CRS steel is 10%, while the cost of 304 SS CRC accounted for 45-55%.

40. For the first factor, in case of precision pipe and tube steel, electricity accounts for a modest percentage, around 1% of the total production cost indicated in the table below:

Cost Component	Factor	Units	Cost \$/unit	Fixed	Variable	Total Cost	Percentage
Hot rolled coil	1.045	t	485	0	506.83	506.83	88%
Delivery costs	1.045	t	5	0	5.23	5.23	1%
Manpower	1.4	MHP T	25	8.75	26.25	35	6%
Electricity	120	KwH	0.07	0	8.4	8.4	1%
Welding consumables	1	unit	2.5	0	2.5	2.5	0%
Other consumables	1	t	7.5	0	7.5	7.5	1%
Yield loss	4.50%		58.63	0	2.64	2.64	0%
Scrap credit	4.50%	t	250	0	-11.25	-11.25	-2%
Depreciation & others	1	t	10	10		10	2%
Packing	1	t	2.5	0	2.5	2.5	0%
SG&A costs	1	t	5	5	0	5	1%
Total cost				23.75	550.6	574.35	100%

For the second factor, if the Commission still uses the sustainable tariff rate calculated by the World Bank Group in the “*A Financial Recovery Plan for Vietnam Electricity*” report, the difference is 10% or 7%.⁵¹

	2015	2016	2017	2018	2019	2020
Case 1: Tariff Increase To Ensure Financial Sustainability in 2018						
Tariff Increase (%)	7.5	15	15	10	10	7
D.E (%)	59.4	62.3	62.1	61.3	59.5	59.1
DSCR	1.3	1.47	1.5	1.5	1	1.51
SFR (%)	-1.1	10.8	17.4	26.5	27.4	45.4
Case 2: Tariff Increase Capped By Inflation (7%) Year						
D.E (%)	60.5	66.8	72.8	79.7	87.4	95.4

⁵⁰ Please see [Exhibit 22](#) for cost components in production of steel pipe. Also available at [Steelonthenet.com](#).

⁵¹ *A Financial Recovery Plan for Vietnam Electricity* report by World Bank Group, page 44

DSCR	1.19	1.14	0.86	0.68	0.46	0.36
SFR (%)	-6.7	-14.2	-48.8	-48.8	-115.8	-331.3
Case 1: Tariff Increase To Ensure Financial Sustainability in 2019, Assuming Flat Fuel Prices						
Tariff Increase (%)	7.5	10	10	9.7	7	5
D.E (%)	59.4	62.5	63.1	62	59.1	55.9
DSCR	1.3	1.45	1.4	1.44	1.46	1.65
SFR (%)	-1.1	9.8	8.3	21.6	25.2	82.4

In both cases, we opine that the electricity prices cannot impact on the selling prices of the subject merchandise, as such it cannot disqualify the domestic sales of the subject merchandise under **the Commission's Dumping and Subsidy Manual**.

41. For the reasons above, we are of the view that there is no reasonable ground to conclude that electricity policy of the GOV effect on distorting the price of the investigated products as well as its inputs. As such, the GOV strongly requests the ADC to reject the applicant's position in its submission regarding the existence of a particular market situation in Viet Nam's precision pipe and tube due to the GOV's influence on the electricity.

4. Miscellaneous claims by the Applicant

4.1. The Steel Master Plan and Industrial Development Strategy

42. In the submission, the Applicant refers to Viet Nam's overall Steel Master Plan under Decision No. 145/2007/ QD-TTg dated 4 September 2007 and Decision No. 694/QD-BCT dated 31 January 2013. However, the GOV would like to emphasize that these decisions have expired for a long time before the course of the investigation. Specifically, Decision No. 145/2007/QD-TTg was abolished on 31 January 2013 and Decision No. 694/QD-BCT was abolished on 27 December 2018 under Decision No. 4977/QD-TTg dated 27 December 2018. Besides that, the Applicant also did not show any evidence shown that there is any direct connection between these documents and the influence on the prices of precision pipe and tube steel before and during the period of investigation. Therefore, there is no basis to support the claims that the GOV has intervened in the price of precision pipe and tube steel through these documents as allegations of the Applicant.
43. In addition, as mentioned in the Response of Questionnaire, the GOV notes that all national plans including the Steel Master Plan are not recognized as legal instruments of government to support a certain industry. The plans are merely tools to provide forecast and guidance for the future development of that industry. Such forecast and orientation serve as a reference source for steel producers and investors in sharpening their production and business plans and as an advisory source for other state agencies in building specific policies and actions which are reflected in a variety set of laws and such as Law on investment, Law on corporate income tax, Law on import and export duty and so on.

Therefore, these documents cannot be considered as regulations to demonstrate that the GOV has intervened in prices or influences on the steel industry during the POI.

44. In terms of Industry Development Strategies, like the Steel Master Plans, the strategies are no longer available under the Law on Planning. Basically, these strategies also served as a forecast and orientation source for reference information of enterprises and state bodies, not mandatory for them to follow, especially private enterprise sectors which are accounting for the largest market share in the steel industry structure.

4.2. Domestic Price Stabilization Initiatives and Investment:

45. We would like to remind that the GOV does not implement any intervention or effect on precision pipe and tube steel price be through Domestic Price Stabilization Policy because as mentioned in subsection 1 above, (i) pursuant to Article 15 of the Law on Price 2013, steel products are outside the scope of the list of products subject to price stabilization and most of the precision pipe and tube steel producers and exporters are private sectors, as such, the GOV cannot have any influence on the price set out by the enterprises; (ii) regarding the allegation of the Applicant that Circular No.122/2010/TT-BTC, please note that this legal document already expired on 14 June 2014 - long before the period of investigation. Thus, the allegations in the Application are based on the outdated information as such, the claims are unfounded and not suitable to consider in the context of the current investigation.
46. Besides that, the Applicant's evidence of stabilizing steel prices in 2008 is not suitable to consider as a proof of the Government's impact on steel prices because as we mentioned above as of January 1, 2013, steel products are no longer subject to price stabilization products in accordance with the Law on Prices 2012 and the price stabilization policy in 2008 as reported by the Applicant was pursuant to an outdated legal document (Ordinance on Prices 2002). This document was already abolished long before the course of the investigation and the period to investigate the injury so it cannot cause any effect on the price of the subject merchandises under the current case.
47. Regarding Applicant's allegation related to investment, the Applicant itself did not point out any factual evidence that the GOV's approvals on investments for enterprises have affected to the price of precision pipe and tube, and it also did not demonstrate any relationship between the fluctuation of the precision pipe and tube steel price and the GOV's approvals of investment. Therefore, such claims of the Applicant are baseless.

4.3. Allegation of Vietnamese Steel Industry Subsidization:

48. First, as we mentioned in the GOV response dated June 7, 2020 and Section A of this Submission, there is no ground to impose countervailing duties on the imports of the subject merchandises from Viet Nam in this case.
49. Second, even in case of the Commission finds that countervailable subsidies have existed, it is not a legal basis to conclude that the particular market situation has existed in Vietnamese industry of precision steel tube and pipe because **the Commission's Dumping and Subsidy Manual** finds that a conclusion of a particular market situation existed is satisfied if
- “(i) the prices are artificially low; or*
*(ii) there are other conditions in the market which render sales in that market not suitable for use in determining prices under Subsection 269TAC(1)”*⁵²
50. There is nowhere in **Australian legislation** and **the Commission's Dumping and Subsidy Manual** indicating that an affirmative determination on countervailable subsidies leads to an affirmative determination on a particular market situation.
51. Third, the GOV opines that the Applicant's reference to CVD cases in third countries are irrelevant in this case because there's nowhere in **Australian legislation** and **the Commission's Dumping and Subsidy Manual** stipulates that an affirmative determination of a third country is a legal basis to come to an affirmative determination in a CVD or PMS case initiated by the Commission.
52. Moreover, we note that in the cases referred by the Applicant, producers and/or exporters did not participate and thus, affirmative determinations in that cases were released based on adverse facts available. Therefore, we are of the view that those cases cannot be used as evidence in the instant case.

4.4. There are no other conditions in the market rendering sales in Viet Nam not suitable for use in determining the normal value pursuant to Section 269TAC(1) of this Act

53. In the Commission's Dumping and Subsidy Manual, other conditions in the market may include:
- “- differing patterns of demand in the exporter's domestic market and the sales to Australia (including domestic sales significantly different in character or design features to the types exported);*
- where only a single sale to one customer constitutes 5 percent of the sales to Australia;
- significant barter trade; or
*- non-commercial processing arrangements.”*⁵³

⁵² Dumping and Subsidy Manual, April 2017 by the Anti-dumping Commission of Australia, page 36

⁵³ Dumping and Subsidy Manual, page 36

54. For the investigation, we believe that none of the conditions as mentioned above exists in this case because of the following reasons:

- (i) In 2019, steel consumption in Viet Nam's market grew at the same level with the construction industry, which is about 9%.⁵⁴ According to a report of the Vietnam Steel Association, the domestic market will consume about 9% per year in the period of 2019 to 2023 due to the demand for infrastructure construction in Viet Nam is increasing more and more. Please refer to the following charts for more details. Therefore, sales in the domestic market account for a major proportion and can be compared with the export price when calculating the dumping margin of products.

Chart 4: GDP and the consumption of construction steel on domestic market⁵⁵

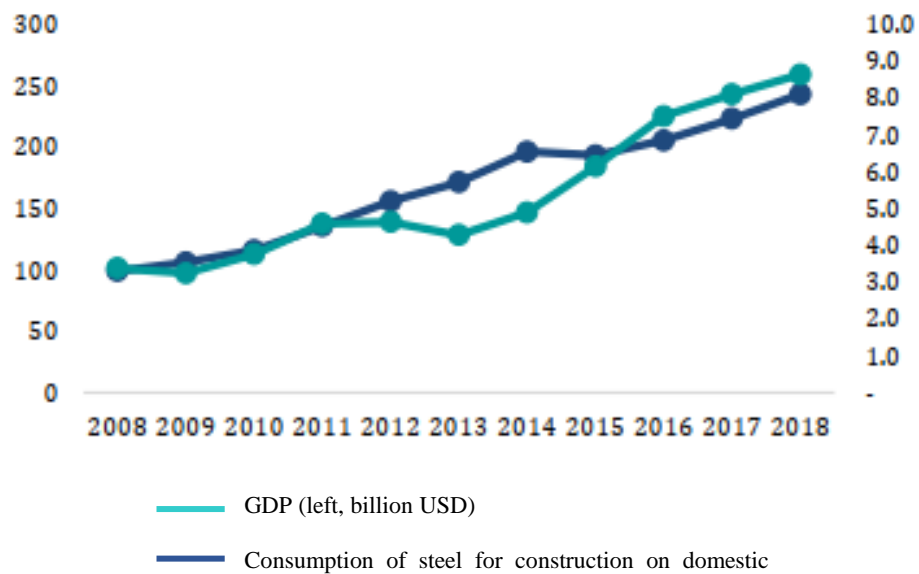
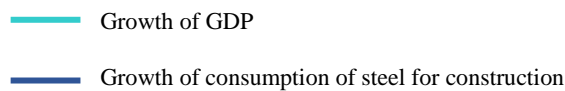


Chart 5: GDP and the growth of the steel for construction⁵⁶



⁵⁴ Please see [Exhibit 23](#) for Report on steel industry in July 2019, published by VietinBank, page 17

⁵⁵ Id.

⁵⁶ Id.

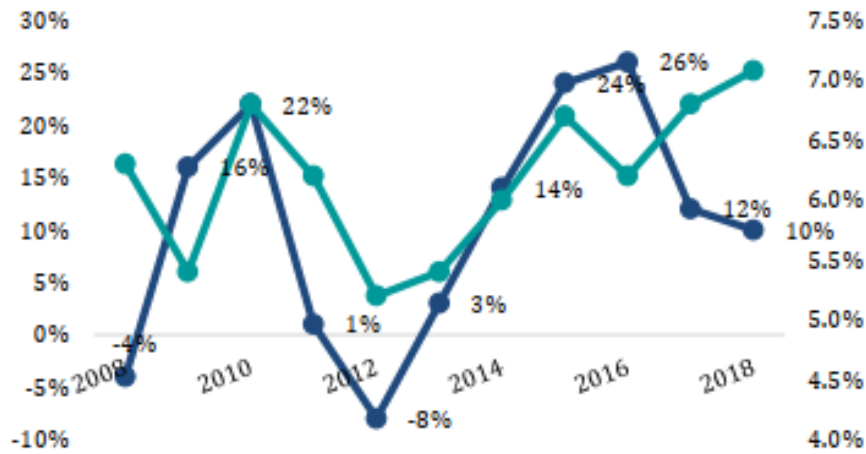
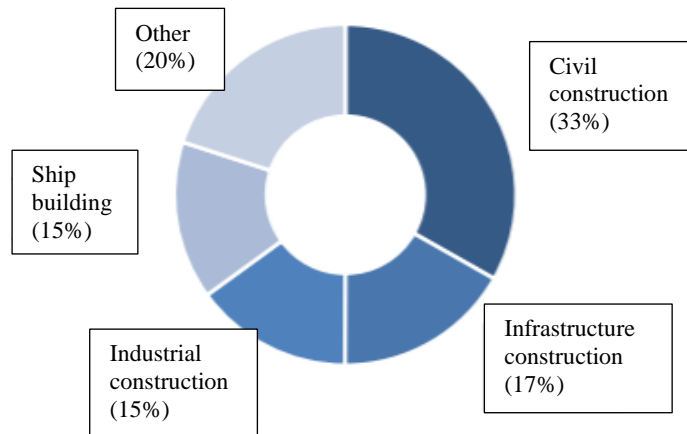


Chart 6: Construction of using steel in Vietnam



Source: Estimated by POSRI, GSO, CTS

(ii) In addition, the whole sector of precision pipe and tube and steel industry is majority-owned by the private sectors which are free to decide what and how many to produce and who to sell for. Therefore, this market in Viet Nam is absolutely a commercial market where manufacturers are free to set up different channels of sale including distribution and agents. For more details, please refer to the responses of the related enterprises. Their sale prices in the domestic markets show no relevance with any noncommercial arrangement or significant barter trade or any other conditions that are sufficient to remove the “commercial nature” out of the Viet Nam market.

55. In conclusion, from the above analysis, we are of the view that there is no particular market situation existed in the Vietnamese industry of precision pipe and tube steel because the GOV does not implement any policy to distort domestic selling prices of the subject merchandises or inputs. As such, we highly recommend the Commission to use the domestic sales for normal value determination.

⁵⁷ Id.

II. In the event of an affirmative decision of a particular market situation in Viet Nam, the ADC is obliged to use Vietnamese producers' data of production cost to construct the normal value.

56. Even if the Commission affirmatively determines that a particular market situation in Viet Nam exists in a manner that renders domestic sales of precision pipe and tube in Viet Nam unsuitable for normal value calculation, it is obliged under Article 2.2 of the WTO Antidumping Agreement to construct the normal value based on Vietnamese producers' data on the cost of production or export sale to third countries.

57. Article 2.2 provides as below:

“ When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market a situation or the low volume of the sales in the domestic market of the exporting country(2), such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country, provided that this price is representative, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.

58. As such, the existence of a particular market situation authorizes the Commission only to disregard domestic sales of precision pipe and tube steel in Viet Nam for normal value

calculation. Either the cost of production incurred by Vietnamese producers or representative sale prices of precision pipe and tube steel to third countries must be applied to determine normal value. Nothing in this Article further authorizes the Commission to rely on a foreign benchmark of production cost to calculate the normal value as requested by the applicant in this case. This interpretation is fully supported and clarified by Article 2.2.1.1 as follows:

“For purpose of paragraph 2, costs “shall” normally be calculated on the basis of records kept the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration.

59. As long as the Vietnamese producer's cost records comply with requirements under Article 2.2.1.1, the Commission is obliged to calculate the cost of production based on the former's records and data as a general principle. This Article does not require an investigated producer's cost to be on a competitive basis in order for such cost records

to be used to construct normal value. Thus, the Commission is not authorized to use a foreign cost benchmark to replace Vietnamese producers' cost records merely because the latter is not competitively based due to the existence of a particular market situation in Viet Nam.

60. The GOV's position in this regard is supported by the WTO jurisprudence with regards to the interpretation of Article 2.2 of the WTO Anti-dumping Agreement.
61. In *EC-Tube or Pipe Fitting*, the Appellate Body clearly indicated that Article 2.2.1.1 identified the records kept by the exporter or producer under investigation "*to be the preferred source for cost of production data.*"⁵⁸ Therefore, the Commission as the investigation authority, in this case, is directed to base its calculation of costs on such records when two conditions under this Article are met.
62. Moreover, in *EU-Biodiesel* – a dispute that addresses a similar situation where Argentina challenged the EU's departure from the Argentinian respondents' recorded costs of raw materials because of Argentina's imposition of an export tax on soya-a biodiesel input, the Appellate Body found that the EU's departure acted inconsistently with Article 2.2.1.1 and Article 2.2 of the WTO Anti-dumping Agreement. Therefore, the GOV opines that the applicant's request for substituting Indonesia's steel billet cost data for that of Vietnamese producers' in this case would obviously amount to a violation engaged by the EU in the Biodiesel case and thus, such request should be dismissed by the Commission.
63. First, Article 2.2.1.1 of the WTO Antidumping Agreement requires the cost records to "reasonably reflect" the cost actually incurred by the producers instead of insisting on the reasonableness of the cost itself. In other words, this Article "*requires a comparison between the costs in the producer's or exporter's records and the costs incurred by such producer or exporter. The object of the comparison is to establish whether the records reasonably reflect the costs actually incurred, and not whether they reasonably reflect some hypothetical costs that might have been incurred under a different set of conditions or circumstances and which the investigating authority considers more 'reasonable' than the costs actually incurred.*"⁵⁹ Therefore, in *EU Biodiesel* case, the mere affirmation by EU that the Argentina's domestic prices of the soya bean – main raw material used by biodiesel producers – were found to be artificially lower than international prices due to the distortion by Argentina

⁵⁸ EC- Tube or Pipe Fittings, AB report, para 99

⁵⁹ EU-Biodiesel, (DS473), AB report, para 6.41

government's export tax system "cannot serve as a sufficient basis under Article 2.2.1.1 for concluding that the producers' records do not reasonably reflect the costs associated with the production and sale of biodiesel."⁶⁰ Applying the same interpretation in this precision pipe and tube steel case, the applicant's request for replacing Vietnamese producers' billet cost data with those of Indonesian by merely relying on its alleged existence of "artificially low" prices of inputs to produce precision pipe and tube in Viet Nam would present a violation of Article 2.2.1.1 in an exact manner with the EU in the cited case. The GOV strongly believes that the Commission would carefully take into account this issue in order to avoid this mistake.

64. Second, according to the Appellate Body, while Article 2.2 does not prohibit the authority from relying on information other than that contained in the records kept by the exporter or producer, including in-country and out-of-country evidence, this does not mean that an investigating authority may simply substitute the costs from outside the country of origin for the "cost of production in the country of origin" as suggested by the applicant.⁶¹ According to the Appellate Body, Article 2.2 of the Anti-Dumping Agreement and Article VI:1(b)(ii) of the GATT 1994 "make clear that the determination is of the "cost of production [...] in the country of origin". Thus, whatever the information that it uses, an investigating authority has to ensure that such information is used to arrive at the "cost of production in the country of origin. Compliance with this obligation may require the investigating authority to adapt the information that it collects"⁶². Thus, by replacing the actual cost of raw materials in the Argentine producers' records with the surrogate price of soybeans, the EU was found not to adapt the information is used to arrive at the cost of production in Argentina and thus, the arising cost was found not to represent the cost of production in Argentina for the purpose of constructing normal value as required by Article 2.2

65. In the precision pipe and tube case, the applicant is repeating exactly the EU's mistake when requesting the Commission to just substitute the Vietnamese producer's billet cost of production data without any adapting attempt to ensure the surrogate value may result in an arrival at the cost of production in Viet Nam as required by Article 2.2. Therefore, the GOV requests the Commission to reject the applicant's request for surrogate value.

III. Conclusion on the particular market situation

⁶⁰ Id., para 6.55

⁶¹ EU-Biodiesel, (DS473), AB report, para 6.73

⁶² Id.

66. In fact, as of February 27, 2009, Australia and Viet Nam have signed a Letter confirming the Australian Government's official recognition of market economy status for Viet Nam. Accordingly, Australia has officially recognized Viet Nam as a market economy. As a result, the Commission's acceptance and initiation of investigations on a particular market situation are no longer relevant in the context of cooperation between the two governments and contrary to agreements and commitments of this international connection. Therefore, the Government of Viet Nam once again urges the Commission to reject its investigation of a particular market situation in Viet Nam and recognize that the selling price of the investigated goods in Viet Nam is appropriate to calculate the normal value when calculating the dumping margin of this product.

Yours Sincerely,

Nguyen Thi Phuong Thao

IDVN Lawyers

Legal Counsel for the Government of Viet Nam

EXHIBITS AND BACKUP DOCUMENTS

(Please refer to attached files for more details)