

21 June 2021

Mr Corey Hawke
Case Manager, Investigations 3
Anti-Dumping Commission
Level 6
215 Spring Street
Melbourne Victoria 3000

Public File

Dear Mr Hawke,

Anti-Dumping/Subsidisation Investigation No. 550 – Precision Pipe & Tube Steel exported from China, Korea, Taiwan, and Vietnam

I. Introduction

Orrcon Manufacturing Pty Ltd (“Orrcon”) is the manufacturer of the subject goods Precision pipe & tube steel in Australia. Orrcon was the applicant company that requested the Anti-Dumping and Subsidisation investigation applicable to Precision pipe and tube exported from the People’s Republic of China (“China”), the Republic of Korea (“Korea”), Taiwan, and the Socialist Republic of Vietnam (“Vietnam”) – refer ADN No. 2020/030.

Orrcon makes the following comments and representations in relation to the recently published Statement of Essential Facts (“SEF 550”).

II. Executive Summary

In SEF 550, the Anti-Dumping Commission (“the Commission”) has determined that the goods exported by Chinese and Korean exporters were at dumped and (in the case of China) subsidised prices. The Commission has also found that dumped and subsidised exports from China, and dumped exports from Korea, have caused material injury to the Australian industry for like goods.

The Commission did not find that the goods exported by Taiwanese or Vietnamese exporters were dumped. In respect of Vietnam, exports of the goods by cooperative and residual exporters were not subsidised, and for non-cooperative entities, exports of the goods were subsidised, albeit at negligible levels.

Subject to responses to SEF 550, the Commissioner proposes to:

- recommend that the Minister¹ publish a dumping duty notice in respect of all exports of the goods from Chinese and Korean exporters;
- recommend that the Minister publish a countervailing duty notice in respect of all exports of the goods from Chinese exporters; and
- terminate the investigation for all Taiwanese and Vietnamese exporters.

Orrcon supports the proposed recommendation to publish a dumping and countervailing duty notice in respect of exports of the goods to Australia from China, and a dumping duty notice in respect of exports from Korea. Orrcon, however, does not consider that the investigation into exports from Vietnam and Taiwan should be terminated on the basis that:

¹ Minister for Industry, Science and Technology.

- the Particular Market Situation in Vietnam (“PMS”) can be readily evidenced, hence supporting a material injury finding caused by dumping above de minimis levels; and
- the Commission’s methodology in the determination of the uncooperative dumping margin for Taiwanese exporters is not correct or preferable.

III. Like Goods – Air Heater Tubes

Orrcon’s application for measures defined the goods to include air heater tubes manufactured to Australian Standard AS2556, up to and including 101.6 millimetre (“mm”) outside diameter.² The Commission’s preliminary conclusion is that Orrcon does not offer like or directly competitive goods to air heater tubes for sale in Australia, on the basis that:

- an interested party submission cited examples of potential customers enquiring with Orrcon for the supply of air heater tubes, without success;
- the absence of any products matching the description for air heater tubes in Orrcon’s Australian sales listing; and
- the absence of any products matching the description of air heater tubes in Orrcon’s Precision product catalogue.³

The Commission has referenced the provision of additional information by Orrcon in respect of air heater tubes prior to the publication of the SEF, and its intent to consider this as part of the preparation of the report to the Minister.⁴

In further support of the existence of air heater tubes in Orrcon’s product range, Orrcon refers the Commission to Non-Confidential Attachment 1⁵ and Confidential Attachment 2.⁶ These evidence that air heater tube products are referenced in Orrcon’s product catalogue (and, in the case of Confidential Attachment 2, as included in internal Orrcon training documents).

In relation to the above-noted interested party submission, Orrcon specifically investigated the claims made, and addressed these in its part 1 Industry Verification Questionnaire response:⁷

“ [REDACTED]

[REDACTED]

[REDACTED]

”

Orrcon has evidenced that it does offer like or directly competitive goods for sale in Australia, and asserts that the interested party submission is not a relevant consideration in the Commission’s determination of this. Orrcon welcomes an affirmative finding by the Commission that air heater tubes fall within the scope of the inquiry.

² SEF 550, p. 19-20.

³ SEF 550, section 3.4.2 (p. 23).

⁴ Ibid, footnote 25.

⁵ Non-Confidential Attachment 1: *Precision Product Catalogue*. Refer p. 9-10 as highlighted. Air heater tube products are identified, as highlighted, in the references to the flare, flattening, and bulging test, and the availability of certificates of compliance.

⁶ Confidential Attachment 2: [REDACTED]

⁷ Confidential Attachment 3: *Orrcon Industry Verification Questionnaire – Part 1 050220* (p. 11-12).

IV. Particular Market Situation – China

The Commission concluded in SEF 550⁸ that a particular market situation existed for Precision pipe & tube steel in China due to the significant influence of the Government of China (“GOC”) over the Chinese steel market. Orrcon concurs with this finding.

V. Benchmark Cost – China

In ascertaining Chinese exporter normal values, SEF 550 states that:⁹

“The Commission has considered all relevant information, including raw material purchases by the cooperative Chinese exporter, and considers it appropriate to use the exporter’s records, which are in accordance with GAAP, but only after an adjustment is made to the records relating to the raw material costs. Such an adjustment ensures that the exporter’s records reflect “competitive market costs”, that is, the cost of production in China absent the market situation. Consistent with this approach, the Commission has replaced the raw material coil costs for Chinese exporters on the basis they were not normal competitive market costs.”

The Commission considers that the difference in price between verified purchases by the only cooperative exporter *Dalian Steelforce Hi Tech. Co., Ltd* (“Dalian Steelforce”) and a competitive benchmark based on MEPS Korean and Taiwan steel coil prices is representative of the level of distortion of Chinese steel coil prices (from earlier inquiries, the Commission considers that normal competitive market conditions prevail in the Korean and Taiwanese domestic markets for steel coil).¹⁰

The Commission’s raw material cost adjustment has been made by:¹¹

“...comparing the benchmark cost to the exporter’s actual costs for different coil types, in this case CRC and pre-galvanised coil, and applying the resultant variation as an adjustment to the exporters records.”

Orrcon agrees with the Commission’s benchmark methodology but submits that an additional step must be taken to exclude the impact of the GOC’s influence on the Korean and Taiwanese MEPS steel coil prices.

In Hollow Structural Sections (“HSS”) review inquiry 529 (“Review 529”)¹² the Commission disregarded HRC input costs for Chinese exporters on the basis that they were not normal competitive market costs,¹³ and substituted this for a competitive HRC cost adjustment based on verified HRC purchases during the review period from cooperating HSS exporters in Korea, Taiwan, and Thailand. According to the Commission, this ensured that the Chinese exporter’s adjusted records reflected the HRC feed cost that would have otherwise been incurred in China absent the distortion resulting from the influence of the GOC.

The Commission’s methodology in Review 529:¹⁴

“...excluded Chinese originating HRC, and HRC from other unknown sources, from its calculation of competitive HRC costs so as to minimise the risk that these costs have also been impacted by GOC influence.”

The Commission made similar exclusions in the recent concurrent review inquiries for zinc coated (galvanised) steel and aluminium zinc coated steel (“Review 521/522”).¹⁵ Review 521/522 addressed the same Chinese competitive

⁸ SEF 550, section 6.3.5 (p. 45).

⁹ SEF 550, p. 59.

¹⁰ Ibid.

¹¹ SEF, p. 60.

¹² Review 529 – *Dumping & Subsidisation of Hollow Structural Sections from China, Korea, Malaysia, Taiwan, and Thailand.*

¹³ Report 529, p. 40.

¹⁴ Ibid, p. 42.

¹⁵ Review 521 – *Dumping and Subsidisation of Zinc coated (galvanised) steel from China, India, Korea, Malaysia, Taiwan and Vietnam,* and Review 522 – *Dumping and Subsidisation of Aluminium zinc coated steel from China.*

HRC cost issue under a PMS. In the Statement of Essential Facts to Review 521/522, the Commission's preliminary benchmark:¹⁶

"...excluded Chinese originating HRC, and HRC from other unknown sources, from its calculation of competitive HRC costs, so as to minimise the risk that these costs have also been impacted by GOC influence."

In the Review 521/522 Final Determination, the Commission made the distinct additional exclusion in the benchmark adjustment for all other imported HRC:

*"The Commission has excluded Chinese originating HRC, imported HRC and HRC from other unknown sources, from its calculation of competitive HRC costs, so as to minimise the risk that these costs have also been impacted by GOC influence."*¹⁷ (emphasis added).

Between the SEF and Final Determination for Review 521/522, the Commission undertook the additional step of fully ensuring that the impact of the GOC's influence was not reflected in the cost adjustment, by excluding all other imported HRC.

Applied here, under almost identical circumstances and over almost identical periods of inquiry to the current investigation,¹⁸ Orrcon requests that the Commission's benchmark cost methodology be expanded to minimise the risk of the GOC's influence on Korean and Taiwanese MEPS CRC and pre-galvanised prices.

In the absence of insufficient data provided by Korean and Taiwanese exporters to construct a benchmark price (with no data provided by Korean exporters, and with exports of the goods by the sole cooperating Taiwanese exporter representing a small volume of total exports of the goods from Taiwan during the investigation period),¹⁹ Orrcon submits that minimising the impact of the GOC's influence on the MEPS benchmark could be achieved by reference to the adjustments made in the above-noted inquiries.

VI. Dalian Steelforce – Related Party Import Relationship

In the SEF 550 export price determination, the Commission considers that all export sales made by Dalian Steelforce during the period were on arms-length terms.²⁰ The export price has hence been determined under section 269TAB(1)(c)²¹ using the price between Dalian Steelforce and Steelforce Trading Pty Ltd ("Steelforce Trading"). Orrcon respectfully submits that the Commission has erred in this assessment.

The Commission's assessment has been informed by its verification of Dalian Steelforce, Steelforce Australia Pty Ltd ("Steelforce Australia"), and Steelforce Trading. Orrcon has compared the relevant verification (and resultant SEF 550) outcomes for Steelforce Australia in the current inquiry with that of the outcomes in Review 529, as relating to the determination of the export price:

1.1 Corporate structure and ownership	
<i>Review 529 – Verification Report²²</i>	<i>Investigation 550 – Verification Report²³</i>
The Commission detailed the manner in which Steelforce Australia operated in the Australian market, and its commercial relationships and arrangements with Dalian Steelforce and Steelforce Trading.	The Commission disclosed the same corporate structure and ownership details as in Review 529.

¹⁶ SEF 521/522, p. 37.

¹⁷ Review 521/522 Final Determination, p. 37.

¹⁸ The inquiry period for Review 521/522 was fiscal year 2019; compared to the Review 529 period ending September 2019; compared to the current investigation period ending December 2019.

¹⁹ SEF 550, p. 59.

²⁰ SEF 550, p. 66.

²¹ References in this submission to legislative provisions are those of the *Customs Act 1901*, unless otherwise stated.

²² Review 529, Folio No. 055, p. 3

²³ Folio No. 048, p. 4.

1.2 Related Parties	
<i>Review 529 – Verification Report²⁴</i>	<i>Investigation 550 – Verification Report²⁵</i>
<i>“The verification team examined the relationships between related parties involved in the importation and sale of the goods. The verification team noted that there are related suppliers and customers.”</i>	<i>“The verification team examined the relationships between related parties involved in the importation and sale of the goods. The verification team noted that there are related suppliers and customers.”</i>
<u>1.2.1 – Related Suppliers</u> <i>“The imported goods are manufactured by a related entity, Dalian Steelforce.”</i>	<u>1.2.1 – Related Suppliers</u> <i>“The goods are manufactured by Dalian Steelforce.”</i>
<u>1.2.2 – Related Customers</u> <i>“Steelforce Australia sells mostly to unrelated customers. Steelforce Australia made some sales to related entities...”</i>	<u>1.2.2 – Related Customers</u> <i>“Steelforce Australia sells mostly to unrelated customers. Steelforce Australia made some sales to related entities.”</i>
6.1 The Importer	
<i>Review 529 – Verification Report²⁶</i>	<i>Investigation 550 – Verification Report²⁷</i>
The Commission detailed Steelforce Australia’s HSS importation specifics, including import documentation disclosures, how the goods are physically managed on arrival into Australia, pricing relationships between Steelforce Australia, Steelforce Trading and Dalian Steelforce, etc.	The Commission described the same importation specifics for Precision pipe & tube.
6.3 Related Party Customers	
<i>Review 529 – Verification Report²⁸</i>	<i>Investigation 550 – Verification Report²⁹</i>
<i>“Steelforce Australia sold goods during the continuation and review period to companies within the Infrabuild Group. The Infrabuild Group is owned by the GFC Alliance, which also owns the Steelforce group companies. The verification team did not identify any other related party customers.</i> <i>The verification team did not identify price differences between Steelforce Australia’s sales to related customers versus unrelated customers.”</i>	<i>“Steelforce Australia sold goods during the investigation period to related parties.</i> <i>The verification team did not identify significant price differences between Steelforce Australia’s sales to related customers versus unrelated customers.”</i>
6.4 Profitability of Imports	
<i>Review 529 – Verification Report³⁰</i>	<i>Investigation 550 – Verification Report³¹</i>
The Commission assessed the profitability of sample shipments, comparing HSS revenue to the CTIS allocation for each shipment.	The Commission assessed the profitability for 12 selected shipments by estimating the revenue received to the CTIS for each shipment. On the basis that each shipment could not be traced to actual sales transactions, the Commission used monthly average weighted sales revenue to estimate profitability.

²⁴ Review 529, Folio No. 055, p. 3

²⁵ Folio No. 048, p. 5.

²⁶ Review 529, Folio No. 055, p. 11-12.

²⁷ Folio No. 048, p. 13-14.

²⁸ Review 529, Folio No. 055, p. 12.

²⁹ Folio No. 048, p. 14.

³⁰ Review 529, Folio No. 055, p. 12.

³¹ Folio No. 048, p. 14.

6.5 Arm's Length	
<i>Review 529 – Verification Report³²</i>	<i>Investigation 550 – Verification Report³³</i>
<i>“As mentioned above in section 1.1, the verification team has not found evidence of real price bargaining between Dalian Steelforce and Steelforce Australia, either directly or indirectly via Steelforce Trading.”</i>	<i>“The verification team are satisfied that Steelforce Australia’s prices into the Australian market during the investigation period are the result of real bargaining power. In addition...those sales are profitable.”</i>

Section 6.5.2 of Steelforce Australia’s verification report then states that prices between the related parties are not the result of real bargaining. Notwithstanding this, the Commission concludes that there are no compelling reasons not to treat prices as not being arms-length. This is on the basis that:

1. Steelforce Australia’s sales of goods into the Australian market are profitable;
2. prices between the related parties rely on market intelligence; and
3. import costs of Steelforce Trading and Steelforce Australia are factored in, and mark-ups applied, when setting prices between the related parties.³⁴

For 2 and 3 above, these factors were also present in Review 529 where the Commission concluded prices were not at arms-length. In the case of market intelligence, the Commission concluded in Review 529 that:³⁵

“Steelforce Trading also provides Australian market price information to Dalian Steelforce so that Dalian Steelforce can set its prices for Australian destined goods.”

In the current inquiry, the Commission has concluded almost identically that:³⁶

“Steelforce Trading also provides Australian market price information to Dalian Steelforce so that Dalian Steelforce can assess the competitiveness of its prices for Australian-destined goods.”

In relation to import costs and mark-ups, the only difference between the comparable inquiries was the fact that the Dalian Steelforce invoice to Steelforce Trading was set with reference to a Steelforce Trading ‘transfer’ price plus a transfer premium (in Review 529). In the current inquiry, the ‘transfer’ component of the Steelforce Trading price is omitted, and reference made to import costs and the premium.³⁷

This then leaves profitable sales as the sole determining factor in the Commission’s change of view. All other factors that define the commercial relationships between the parties, as comprehensively detailed above, have remained the same.

Section 269TAA outlines the circumstances in which the price paid or payable shall not be treated as arms length.³⁸ These circumstances are where:

- there is any consideration payable for the goods other than price;
- the price appears to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or
- in the opinion of the Minister, the buyer, or an associate of the buyer, will directly or indirectly, be reimbursed, compensated, or otherwise receive a benefit for, or in respect of, whole or part of the price.

Section 269TAA sets out the conditions where, if any one of them exists, a transaction will not be at arms length. In practice, the Commission considers:

- whether there has been any consideration payable other than price;

³² Review 529, Folio No. 055, p. 13.

³³ Folio No. 048, p. 15.

³⁴ Folio No. 048, p. 16.

³⁵ Review 529, Folio No. 055, p. 3.

³⁶ Folio No. 048, p. 4.

³⁷ Refer Review 529, Folio. No. 055, p. 11, and current inquiry Folio No. 048, p. 13.

³⁸ Dumping and Subsidy Manual, p. 25.

- whether the price appears to be influenced by a commercial or other relationship;
- any reimbursement, compensation or other benefit in respect of the price;
- factors that determine whether a transaction is the result of real bargaining power;
- the impact of rebate reimbursements; and
- sales at a loss by the importer.

The Commission has concluded that prices between the parties are not the result of real bargaining.³⁹ When compared to Review 529 and other earlier HSS inquiries, sales profitability is the only defining factor (among many requiring consideration) in the Commission's determination that prices are no longer non-arms length. Orrcon therefore respectfully requests that the Commission revisit this preliminary assessment, and apply a deductive export calculation methodology. This is both consistent with past practice, but more importantly is the most appropriate export price methodology given the related party nature of the commercial relationships.

VII. China – Uncooperative Exporters

The Commission considers that the verified export price of the cooperating Chinese exporter is representative of uncooperative Chinese exporters of the goods during the investigation period. The Commission has also used the normal value of the sole cooperating exporter to determine the normal value for uncooperative entities.

Orrcon submits that the above recommended changes to the determination of the normal value and export price for Dalian Steelforce will consequently impact the variable factors for uncooperative exporters.

VIII. Uncooperative Exporters – Taiwan

Export Price

The Commission has determined the export price for uncooperative Taiwanese exporters pursuant to section 269TAB(3), having regard to all relevant information. In doing so, the Commission has relied on verified data from the only cooperative exporter, Ta Fong Steel Co., Ltd ("Ta Fong").

Irrespective that Ta Fong's export volumes to Australia represent only a small proportion of total exports of the goods from Taiwan during the investigation period,⁴⁰ the Commission's preference to rely on Ta Fong's data is premised on the fact that:

- 81% of export volumes from other Taiwanese exporters are within one standard deviation of Ta Fong's export price; and that
- using verified data would be an accurate representation of the export price for uncooperative Taiwanese exporters.

Orrcon respectfully disagrees with the Commission's approach.

Firstly, reasoning that an accurate export price representation can be derived from only a small proportion of total exports is erroneous. There are distinct Taiwanese Australian export product differences (defined by the Model Control Codes) evidenced between the Austube Mills Pty Ltd importer verification report⁴¹ and those above for Ta Fong. The product specifics of the larger proportion of Taiwanese exports is therefore not represented in the export price.

Secondly, the Commission's application of statistical standard deviation to the export price is inconsistent with SEF 550's other Taiwanese-related quantitative assessments on price and price comparisons:

³⁹ Folio No. 048, p. 16.

⁴⁰ SEF, p. 76.

⁴¹ Folio No. 50.

“MCC Matching

*In this instance, the Commission chose MCC P-H-2-N-1-C-1-N-A-2-P as the surrogate model for P-H-2-N-1-C-1-N-B-2-P. The variance between these models was the product thickness. Analysis of the domestic selling prices of the exported model and the surrogate model revealed pricing was within **0.2%**, which was considered negligible.⁴²*

...

*The Commission has then compared the verified export price for Ta Fong against its FOB export price, as reported in the ABF import database, and has observed a **4%** difference between the two values.”⁴³ (emphasis added).*

The Commission has not further elaborated on how the standard deviation conclusion translates to an SEF disclosure-consistent percentage export price comparison, nor where the other remaining 19% falls on the standard deviation scale (and again, what the percentage comparison is).

Further, Annex II of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (ADA) states that if a party does not cooperate with an investigating authority, it could lead to a less favourable result for that party. Applied here, Orrcon is not of the view that a preliminary 0.4% dumping margin difference is a less favourable outcome for those Taiwanese exporters who made the purposeful decision to not cooperate in the current inquiry.

For these reasons, Orrcon requests that the Commission determine the export price utilising the same SEF 550 methodology as that for uncooperative Korean exporters.

Normal Value

In determining the normal value for uncooperative exporters, the Commission has used the normal value for the sole cooperating exporter Ta Fong, less favourable adjustments.⁴⁴ Again, Orrcon would respectfully request that the Commission instead utilise the SEF 550 methodology adopted for Korea in ascertaining the normal value.

In response to the reasonings of the Commission (in addition to the arguments put forward above regarding the export price), the Korean SEF 550 methodology adequately accommodates for a lack of information relating to uncooperative exporters, as relevant to the calculation of the normal value. It would also be more indicative of a price at which an uncooperative Taiwanese exporter may sell the goods for in the domestic Taiwanese market; utilising the comprehensive constructed normal value methodology detailed by the Commission at section 6.5.2 of SEF 550 would provide a more accurate and reliable basis for the normal value, as opposed to only referencing Ta Fong's.

IX. Normal Value Adjustments – Vietnam

At Table 15 of SEF 550, the Commission makes the following normal value adjustments for Chinh Dai Industrial Co., Ltd (“CDI”):

Adjustment Type	Deduction/addition
Domestic credit terms	Deduct an amount for domestic credit
Domestic other costs	Deduct an amount for domestic other costs
Export inland transport	Add an amount for export inland transport
Export port charges	Add an amount for port charges
Export other costs	Add an amount for 'other costs'

Table 15: Summary of adjustments - CDI

⁴² SEF 550, p. 74.

⁴³ SEF 550, p. 76.

⁴⁴ SEF, p. 77.

Orrcon requests that the Commission clarify the nature of the 'other costs' adjustments. This type of adjustment was not made for the other cooperative exporter, Vina One Steel Manufacturing Corporation.

X. Particular Market Situation – Vietnam

On the issue of price distortion as a measure of whether a PMS exists for Precision pipe & tube in Vietnam, SEF 550 concludes that:

“From the evidence available to it, the Commission does not consider that the GOV exerts influence on the steel market in Vietnam such that domestic selling prices for precision pipe and tube steel in Vietnam are unsuitable for use for determining a normal value under section 269TAC(1).”⁴⁵

The Commission has based its findings on the fact that there is:⁴⁶

- no official government plans to control or otherwise influence the Vietnamese steel industry;
- no positive evidence of a continuing impact as a result of the Steel Master Plans;
- no impact of distorted electricity prices on the CTM of the goods;
- negligible subsidisation of the goods; and
- no evidence of significantly different prices for raw materials in Vietnam compared to other Asian countries.

Orrcon does not consider that the Commission has taken full account of the influence and impact of the recently expired Government of Vietnam (“GOV”) programs (including the Steel Master Plan and price stabilisation initiatives) that will continue to influence and impact domestic steel prices in Vietnam long after identified expiry dates.

The GOV has claimed that the *Steel Master Plan 2015-2025 (Decision No. 694/QD-BCT)* was made redundant from the beginning of 2019.⁴⁷ Orrcon submits that the plan impacted the domestic Vietnamese Precision pipe and tube industry during the investigation period (ending the 12 months to December 2019), and is an important consideration in reaching the PMS conclusion.

The Commission’s SEF 550 assessment of competition in the Vietnamese steel market determined that:

“...for the majority of the period, Vietnamese exporters paid a similar amount or slightly less for domestically sourced HRC as they did for HRC from other countries, excluding China. Vietnamese HRC costs were lower for 6 months of the investigation period. For 3 of those months, prices were less than 3% lower than other country prices, and for the other 3 months, prices were between 7% and 10% lower. However, over the course of the investigation period, Vietnamese prices were 0.2% lower overall.”⁴⁸

Prior to 2017/18, the key feature of Vietnam’s steel sector was the absence of integrated steel production and HRC manufacturing capabilities. The above-noted trends highlighted by the Commission is reflective of the Vietnamese integrated steel industry in relative infancy; local producers such as Formosa Ha Tinh Steel and the Hoa Phat Group have sought to establish a foothold in the HRC market vis-à-vis imports by maintaining price offers consistent with the dominant import feed supply chain. Once at scale, and as a direct consequence of the PMS, Orrcon would expect the price of domestically produced HRC to trade at levels consistently lower than import equivalents.

In its April 2020 public file submission,⁴⁹ Orrcon noted that the GOV’s programs will significantly affect the Vietnamese steel industry, including subject goods producers, for years to come. The propensity of the GOV to continue to direct and control the Vietnamese steel industry can be clearly evidenced. As recently as May 2021, the GOV requested domestic steel makers implement several steps to control rising steel prices:⁵⁰

⁴⁵ SEF 550, p. 163.

⁴⁶ SEF 550, p. 163-164.

⁴⁷ SEF 550, p. 156.

⁴⁸ SEF 550, p. 163.

⁴⁹ EPR Folio No. 006.

⁵⁰ Non-Confidential Attachment 4: *Vietnam Seeks to Stabilise Steel Prices*. VN Express International, May 11, 2021.

“Deputy Prime Minister Le Minh Khai has asked the Ministry of Industry and Trade to push for increased domestic steel production towards stabilizing prices. Steel production in Q1 reached 7.6 million tonnes, and year-on-year increase of 34 percent, according to the Vietnam Steel Association (VSA).

He also said the export of steel should be lowered to ensure that local demand is met. Steel exports in Q1 rose 59.5 percent year-on-year to 1.6 million tonnes, according to the VSA.”⁵¹

The directive of the GOV to increase domestic steel production and to limit the export of steel products that are in high demand in Vietnam to keep prices steady clearly indicates ongoing governmental intervention in the Vietnamese iron and steel industry.

In further advancing this, the Ministry of Industry and Trade (“MoIT”) has recommended that the GOV issues policies limiting exports, encouraging steelmakers to expand production, and attract new enterprises to the steel industry.⁵²

*“On May 11 the MoIT issued document **No.2612/BCT-CN** to the VSA and large steel manufacturers, proposing a range of solutions that include restricting the export of domestic steel products and other in-demand products.”⁵³ (emphasis added).*

The detailed content of document No. 2612/BCT-CN requires that the VSA review and consider issues relating to input materials, reduce production costs, take measures to increase capacity to meet maximum demand, and restrict the export of in-demand steel products.⁵⁴

Other steps recently taken/proposed by the GOV include:

- promulgating export control policies for domestic steels that are in demand (formalising the above);⁵⁵
- regularly monitoring and closely following developments in the Vietnamese construction sector, and “...adjust the announcement of construction material prices and construction prices indexes to suit the market price level...”;⁵⁶ and
- proposing solutions to overcome and remove difficulties in managing construction investment costs, and implementing construction contracts in the form of fixed price arrangements.⁵⁷

Orrcon understands that the above was driven by an overarching MoIT agenda:

“In order to gradually adjust steel supply, stabilise steel prices, [and] avoid speculation and price pressure to profit from steel products, in early February 2021, the Ministry of Industry and Trade coordinated with other ministries, 724/BCT-CN dated February 5, 2021 to report to the government and propose to direct relevant agencies a number of solutions to stabilize domestic steel supply-demand and price in the year 2021.”^{58 59}

Overall, the MoIT aims to:

“...strengthen market management to prevent and promptly handle the phenomena of speculation to increase steel prices, manipulate steel prices in the market, and trade frauds, causing loss of State budget revenue and affecting the economy [and] consumers; Promulgating export control policies for domestic

⁵¹ Ibid.

⁵² Non-Confidential Attachment 5: *No cartel pushing up steel prices: ministry*. VN Express International, May 6, 2021.

⁵³ Non-Confidential Attachment 6: *Steel price ripple effect felt across domestic businesses*. Vietnam Investment Review, May 19, 2021.

⁵⁴ Non-Confidential Attachment 8: *The Price Spiked; the Ministry of Industry and Trade Propose to Limit Steel Exports*. NDH Vietnam. May 2021.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Non-Confidential Attachment 9: *The Ministry of Industry and Trade explains that the price of steel products continuously increases “gallopingly”*. VietnamPlus. May 2012.

⁵⁹ [REDACTED]

steels in demand. At the same time, removing difficulties for steel production investment projects to be put into operation soon.”⁶⁰ [sic].

The GOV clearly has a long-term development agenda for the Vietnamese steel industry. Specifically when and by what legislative instruments this agenda is pursued is a far less relevant consideration for the Commission than the actual existence of ongoing governmental intervention in the Vietnamese iron and steel industry, mandated in law or by other means directed. The fact that the current investigation period has fallen at a time of minimal official governmental directive (according to the GOV, at least) is a moot point and does not detract from the GOV's overall and long-term intent.

The reality is that the GOV does interfere and influence the daily operation and price-setting of steel in the Vietnamese market. On this basis, the Commission should determine that a PMS existed for the goods in Vietnam during the investigation period, and that a benchmark HRC/CRC price be included in constructed normal values for cooperative and uncooperative exporters in accordance with subsection 269TAC(2)(c) and the *Customs (International Obligations) Regulation 2015*.

The impact of the proper determination of a PMS finding in respect of determined normal values for the Vietnam exporters is that the consequent normal values would have resulted in dumping margins above negligible levels, and anti-dumping measures recommended by the Commissioner.

XI. Proposed Measures

Orrcon notes that the Commission is proposing to recommend that the form of anti-dumping measures to be applied to Precision pipe & tube exported from China and Vietnam is *ad valorem*.

SEF 550 considers the merits of applying either the *ad valorem* or the combination duty method in the present case,⁶¹ but does not, in Orrcon's opinion, consider the relative importance of the factors discussed. The Commission's preference for *ad valorem* measures does not adequately address the injury that the measures are intended to prevent. As export prices fall, the *ad valorem* measure (as a percentage of the export price) diminishes and as such does not address the full margin of injury experienced by the industry. The full impact of the *ad valorem* measure can also be evaded by the exporter purposefully reducing export prices to reduce the level of interim duty payable.

In order to reduce the circumvention of measures, a key recommendation from the May 2015 House of Representatives Inquiry into Australia's Anti-Circumvention Framework in relation to Anti-Dumping Measures was that the Minister should use a combination of duties in preference to a single duty, and that this should be the default position in each case.⁶²

In support of the combination method, trade-exposed Australian producers submitted during the inquiry that:

“... measures based upon the ad valorem method may be readily circumvented by exporters and importers. This is particularly the case where measures are relatively small – for example five per cent or less. All that is required is for the exporter to reduce the export price by the amount of the interim duty margin for the duty to become ineffective. Ad valorem measures do not allow for a penalty to be applied where the exporter reduces export prices further – whereas measures based upon the combination method (where a fixed and variable component addresses subsequent reductions in export prices) remain effective and limit further injury to the Australian industry.”⁶³

In the current circumstances, *ad valorem* measures are not suited to the aim of removing the injurious effects of dumping as exporters have the ability to reduce export prices to reduce the interim duty amount payable, thereby continuing to cause injury to the Australian industry.

⁶⁰ Ibid. footnote 58.

⁶¹ SEF 550, p. 132.

⁶² Non-Confidential Attachment 7: *Circumvention: closing the loopholes. Inquiry into Australia's anti-circumvention framework in relation to anti-dumping measures.* House of Representatives. Standing Committee on Agriculture and Industry. May 2015. P. 50.

⁶³ Ibid, p. 38-39.

As a trade-exposed Australian producer, Orrcon respectfully requests the Commission to reconsider the appropriate form of measure to recommend to the Minister, and substitute *ad valorem*-based measures for measures based upon the combination method. This will detract from any reductions in export prices to injurious levels.

If you have any questions concerning this submission, please do not hesitate to contact me on [REDACTED].

Kind regards,

[REDACTED]

Manager – Trade Measures