



TRADE REMEDIES AUTHORITY OF VIET NAM

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Ha Noi, May 15th, 2020

To:

Anti-Dumping Commission

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CANBERRA ACT 2600

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Subject: The application for antidumping investigation in respect of exports of steel strapping exported to Australia from the Socialist Republic of Viet Nam (Case 553)

Dear Sir/Madam,

The Trade Remedies Authority of Viet Nam (TRAV) under the Ministry of Industry and Trade of Viet Nam would like to extend its compliments to the Australia Anti-dumping Commission (ADC). By this letter, the TRAV would like to raise its concerns regarding the application for anti-dumping investigation in respect of exports of **steel strapping** exported to Australia from the Socialist Republic of Viet Nam.

At the outset, for the purpose of initiating an investigation, ADC shall comply with Article 5.3 of the WTO Anti-Dumping Agreements (ADA): “the authorities shall examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation”. Moreover, Article 5.2 of this Agreement provides that:

*“An application under paragraph 1 shall include evidence of (a) dumping, (b) injury within the meaning of Article VI of GATT 1994 as interpreted by this Agreement and (c) a causal link between the dumped imports and the alleged injury. **Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this paragraph.**”*

[emphasis added]

Taking the application under a thorough consideration, the TRAV deems that the application contained a number of simple assertions and unsubstantiated evidences that

could not meet the requirements to initiate an investigation as prescribed by the ADA. The detailed concerns are provided as follows:

I. Applicant

Article 4.1 of the ADA stated that:

“For the purposes of this Agreement, the term “domestic industry” shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that:

(i) when producers **are related to the exporters or importers or are themselves importers of the allegedly dumped product**, the term “domestic industry” may be interpreted as referring to the rest of the producers;

.....”

[emphasis added]

In the application, it is stated that Signode is the **only** Australian manufacturer of painted steel strapping that is used for load containment and packaging purposes.¹ If Signode is **related to the exporters or importers or are themselves importers of the allegedly dumped product, there may be none of Australian manufacturer who is qualified to represent the domestic industry** as defined in Article 4.1 of the ADA. The data only provided by the Applicant would become unreliable due to the monopoly in the domestic market. Therefore, the TRAV kindly requests the Commission to carefully verify information provide by Signode before taking any further step of the proceeding.

II. Particular market situation (PMS) allegation

At the outset, TRAV would like to recall Article 2.2 of the ADA:

“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 situation** or the low volume of the sales in the domestic market of the exporting country, **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

¹ 553-Signode Public File Application, page 11

country of origin plus a reasonable amount for administrative, selling and general costs and for profits”.

[emphasis added]

As the text of Article 2.2, there are two mandatory elements of the PMS including the assessment of the existence of PMS and, more important, the effect of PMS that make the comparison between normal value and export price improper². In the application, Signode has only provided some, in our view, incorrect evidences for the allegation of PMS’s existence. They did not explain how the PMS may impact to the normal price in Viet Nam.

As application, Signode alleged that domestic prices of steel strapping in Viet Nam are not suitable for the determination of normal values in comparison with export prices in calculation of dumping margins. They explained that an intervention of the Government of Viet Nam (“GOV”) in the raw material (hot-rolled coil) of steel strapping supply has distorted the price of goods³.

In the context, due to the incorrect evidences and insufficient information supplied by the applicant, the TRAV would like to draw your attention for its concerns as follows:

First, Signode referred *Viet Nam’ Protocol of Accession to the WTO at paragraph 225* in order to consider that domestic sales in Viet Nam is not suitable for determining normal values in dumping margins calculation. As mentioned in the consultation letter of TRAV for Case 550, the TRAV would like to state again that this statement related to paragraph 225 **has been expired in 31 December 2018**. Therefore, WTO members could not use it in any further anti-dumping proceeding.

Second, as a result of AANZFTA conclusion, Australia has recognized Viet Nam as a market economy in 2008 by an official letter at ministerial level. Thus, it is unreasonable as Signode mentioned to the previous cases of the U.S and Canada which have regarded Viet Nam as a “non-market” economy in order to indicate the existence of PMS in Viet Nam. Furthermore, the TRAV would like to clarify the case of cold-rolled steel investigation of Canada in 2018. In this case, the conclusions in final determination of CBSA (investigation authority of Canada) were based on the available facts because of the absence of Viet Nam exporters. As a consequence, it is not appropriate to refer this case for justifying the existence of PMS.

Third, in order to strengthen the statement about the PMS in Viet Nam, the TRAV would like mentioned the final determination of CBSA in 2018 of anti-dumping investigation regarding the carbon steel welded pipe (HS code 730630) as below:

² EEC-Brazil yarn, Panel report, Note 206

³ 553- Signode Public File Application, page 36-37

- (i) the evidence *does not support a conclusion that* the GOV substantially determines domestic price in the carbon steel welded pipe sector in Viet Nam.⁴
- (ii) the CBSA *did not* form the opinion that the *GOV's involvement has substantially determined prices* in the carbon steel welded pipe sector in Viet Nam⁵.

[emphasis added]

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

Forth, the TRAV stated that information about *The Steel Master Plans* provided in page 37 and 38 are not correct. The Steel Master Plan 2007-2015 complied with Decision No. 145/2007/QD-TTg which was terminated and replaced by Decision No. 694/QD-BCT dated January 31st, 2013. However, according to Law on Planning No. 21/2017/QH14 dated November 24th, 2017, manufacturing industries, including the steel industry, have no longer considered as the subject of master plans developed by the GOV. Consequently, Ministry of Industry and Trade promulgated Decision No. 4977/QD-BCT dated December 27th, 2018 to repeal specific products planning under the provisions on Law on Planning No. 21/2017/QH14, including Decision No. 694/QD-BCT. Therefore, *The Steel Master Plans* mentioned in the application is invalid from the beginning of the year of 2019.

Based on these clarifications above, the TRAV has noted that PMS allegations in the application were merely based on **simple assertion** because of insufficient evidences provided. It does meet the requirement of initiating investigation according to Article 5.2. Therefore, the TRAV kindly requests the Commission consider thoroughly to revoke the PMS investigation.

III. Injury

It is noted that, due to the protection of commercially sensitive financial data in public file application, the TRAV could not find out signification information. Based on the data provided, the TRAV would like to raise concerns as follows:

First, Articles 3.1 and 3.2 of the ADA stated that:

“3.1. A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market

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

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

for like products, and (b) the consequent impact of these imports on domestic producers of such products.

3.2. With regard to the volume of the dumped imports, the investigating authorities shall consider whether there has been a *significant increase* in dumped imports, either in absolute terms or relative to production or consumption in the importing Member. With regard to the effect of the dumped imports on prices, the investigating authorities shall consider whether there has *been a significant price undercutting by the dumped imports* as compared with the price of a like product of the importing Member, or whether the effect of such imports is otherwise to *depress prices to a significant degree* or prevent *price increases*, which otherwise would have occurred, to *a significant degree*. No one or several of these factors can necessarily give decisive guidance.”

[emphasis added]

According to the indexed table of sale quantities in page 14, Signode demonstrated a decrease in both of its sales and the imports of PUI during the period of 2017-2019. However, the TRAV has found that the sales of domestic goods increased in 2017 then slightly declined in 2018 and 2019 by around 3% comparing to benchmark of 2016. Meanwhile, the sales of allegedly dumped imports experienced a significant decrease of about 10-25% from 2017 to 2019. It means the decrease level in domestic goods was less than this figure in dumped imports during the examined period.

Moreover, Signode maintained relatively stable domestic sales volumes of steel strapping over the period of 2016-2019 as its statement in page 15 of the application. Therefore, TRAV has not found any ground justifying “**a significant increase in dumped imports**” in relative to the production or consumption in the importing Member as prescribed by Article 3.2 of the ADA mentioned above.

Second, it can be seen in both tables of Applicant’s sale quantities and values in page 14 and 15 that the sales of like goods of the Applicant in export market reduced more than the sales in Australia market, especially in 2019. In addition, according to the statistics of International Trade Center ⁶, the exported quantity of products under HS code 7212.40.00 of Australia experienced a significant decline from 2016 to 2019, especially in 2018 and 2019. The quantity of like goods exports in 2018 was 1630 tons then fell to 377 tons in 2019, reducing by about 71.5% and 93.4% compared to 2016 (5720 tons) respectively.

⁶ Available from: <https://www.trademap.org/> [Accessed 14 May 2020].

Therefore, the TRAV submits that the depression in exports of steel strapping of the Applicant would be a reason causing injury to sales of the Applicant, not due to imports of steel strapping which has been alleged dumping in Australia market.

Third, the TRAV could not examine data of the Applicant about revenue, return on investment, capacity utilization and wages in page 21 due to sensitive financial data protection. However, it is hard to define whether the allegations of the Applicant are fully true if these data are not available. Thus, the TRAV kindly requests the Commission carefully consider the information relevant to the Applicant.

Fourth, as mentioned in page 13 of the application, Signode did not consider any other factors affecting the demand in steel strapping market. It may result to a misleading assessment of the influence of dumped imports on domestic goods without other economic variables such as **cash flow, inventories, wages, growth, ability to raise capital or investments...** Therefore, the allegation of domestic product injury does not meet the requirement in Articles 3.4 and 3.5 of ADA cited below:

“3.4. The examination of the impact of the dumped imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

3.5. It *must* be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs 2 and 4, *causing injury within the meaning of this Agreement...*”

[emphasis added]

IV. Public interests

The applying anti-dumping measures with the imports of steel strapping from alleged countries would lead to the monopoly in domestic market due to Signode will be the only provider in Australia. This would also significantly influence on the downstream industries in Australia which use the steel strapping for containment and packaging.

In conclusions, for the above-mentioned arguments, the TRAV respectfully requests that the Commission review the accuracy and adequacy of the evidences provided in the application to determine whether the evidences are sufficient to justify the initiation of an investigation.

The Trade Remedies Authority of Viet Nam will be most grateful for kind and highest consideration from the Commission.

Yours sincerely,



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

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