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Australian Government
**Department of Industry, Science,
Energy and Resources**

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

TERMINATION REPORT
NO. 553-A

ALLEGED DUMPING OF PAINTED STEEL STRAPPING
EXPORTED TO AUSTRALIA FROM
THE SOCIALIST REPUBLIC OF VIETNAM
BY
SAM HWAN VINA CO LTD

13 August 2021

TER 553-A – Painted Steel Strapping – China and Vietnam – Sam Hwan

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ABBREVIATIONS

ABF	Australian Border Force
the Act	<i>Customs Act 1901 (Cth)</i>
ADA	Anti-Dumping Agreement
ADN	Anti-Dumping Notice
the applicant	Signode Packaging Group Australia Pty Ltd
CBSA	Canada Border Services Agency
China	the People's Republic of China
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CON	consideration report
CRC	cold rolled coil
CTM	cost to make
CTMS	cost to make and sell
EPR	electronic public record
GOC	Government of China
the goods	the goods the subject of the application (also referred to as the goods under consideration)
GOV	Government of Vietnam
the Guidelines	<i>Guidelines on the Application of Forms of Dumping Duty November 2013</i>
HRC	hot rolled coil
Jiashilun	Qinhuangdao Jiashilun Packaging Materials Co Ltd
the Manual	<i>Dumping and Subsidy Manual</i>
MCC	model control code
the Minister	the Minister for Industry, Science and Technology
NIP	non-injurious price
OCOT	ordinary course of trade
PAD	Preliminary Affirmative Determination
PAD Direction	<i>Customs (Preliminary Affirmative Determinations) Direction 2015</i>
the Regulation	<i>Customs (International Obligations) Regulation 2015 (Cth)</i>
REQ	response to exporter questionnaire
RGQ	response to government questionnaire
Sam Hwan	Sam Hwan Vina Co Ltd
SEF	statement of essential facts
SG&A	selling, general and administrative
Signode Australia	Signode Packaging Group Australia Pty Ltd
SOE	state-owned enterprise
TER 553-A	<i>Termination Report No. 553-A (this report)</i>

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Vietnam	the Socialist Republic of Vietnam
WTO	World Trade Organization

1 SUMMARY AND CONCLUSIONS

1.1 Introduction

The Anti-Dumping Commission (the Commission) has prepared this *Termination Report No. 553-A* (TER 553-A) in response to an application by Signode Packaging Group Australia Pty Ltd (Signode Australia). Signode Australia's application seeks the publication of a:

- dumping duty notice in respect of painted steel strapping (the goods) exported to Australia from the People's Republic of China (China) and the Socialist Republic of Vietnam (Vietnam), and
- countervailing duty notice in respect of the goods from China.

Signode Australia, the sole member of the Australian industry manufacturing like goods, claims that it suffered material injury because of dumped and subsidised imports of the goods.

TER 553-A follows the publication of the Commission's *Statement of Essential Facts No. 553* (SEF 553) for this investigation¹ on 23 April 2021.

TER 553-A sets out the reasons the Commissioner of the Anti-Dumping Commission (the Commissioner) is terminating part of the dumping investigation in relation to Sam Hwan Vina Co Ltd (Sam Hwan).

1.2 Scope of this report

This report concerns the termination of part of the dumping investigation in relation to Sam Hwan.

The Commission will address findings and recommendations in respect to Qinhuangdao Jiashilun Packaging Materials Co Ltd (Jiashilun) and all other exporters from China and Vietnam, in separate reports.

1.3 Authority to make decision

Division 2 of Part XVB of the *Customs Act 1901*² (the Act) describes, among other things, the procedures to be followed and the matters to be considered by the Commissioner when conducting investigations in relation to the goods covered by an application under section 269TB(1).

The Commission has prepared this report to support the Commissioner in the consideration of the application, pursuant to the Commission's function specified in section 269SMD.

¹ Electronic Public Record (EPR) 553, Item 18.

² All legislative references in this report are to the *Customs Act 1901*, unless otherwise stated.

1.3.1 Application

On 31 March 2020, Signode lodged an application alleging that the Australian industry has suffered material injury caused by the goods exported to Australia from China and Vietnam at dumped prices and China at subsidised prices.

The Commissioner considered the application and decided not to reject it. The Commissioner initiated this investigation, Investigation No. 553, on 27 May 2020. On the same date, the Commissioner published *Consideration Report No. 553* (CON 553) and a public notice (Anti-Dumping Notice (ADN) No. 2020/050) providing further details regarding the initiation of the investigation.³

1.3.2 The goods and like goods (Chapter 3)

Chapter 3 further describes the subject goods.

1.3.3 The Australian market (Chapter 4)

Local production and imports from several countries, including China and Vietnam, supply the Australian market for the goods and like goods.

1.3.4 Dumping assessment (Chapter 5)

In relation to the dumping investigation, the Commissioner has found that Sam Hwan exported goods during the investigation period at negligible levels, at a dumping margin of 1.7%.

Accordingly, the Commissioner must terminate the investigation in relation to Sam Hwan as far as it relates to dumping, pursuant to section 269TDA(1)(b)(ii).

1.4 Conclusion

The Commissioner is terminating part of the dumping investigation with respect to Sam Hwan under section 269TDA(1)(b)(ii).

³ EPR 553, Items 2 and 3.

2 BACKGROUND

2.1 Initiation

On 31 March 2020, Signode Australia lodged an application under section 269TB(1) seeking the publication of a dumping duty notice in respect of the goods exported to Australia from China and Vietnam and a countervailing duty notice in respect of the goods from China.

Having considered the application, the Commissioner decided not to reject the application and initiated Investigation 553 on 27 May 2020. The Commission published the notification of the initiation on 27 May 2020. CON 553 and ADN No. 2020/050 provide further details relating to the initiation of the investigation.⁴

The Commissioner examined:

- an investigation period of 1 April 2019 to 31 March 2020 for the purpose of assessing dumping and subsidisation, and
- an injury analysis period from 1 April 2016 in determining whether exports of dumped and subsidised goods caused material injury to the Australian industry.

2.2 Conduct of the investigation

2.2.1 Statement of essential facts

The initiation notice advised that the Commission would publish the SEF by 14 September 2020. However, the Delegate of the Commissioner extended the due date.⁵ The Commission placed SEF 553 on the public record on 23 April 2021.⁶ Following its publication on the public record, interested parties had until 13 May 2021 to respond to SEF 553.⁷ The Commissioner considered submissions received in response to SEF 553 when making this report.

2.2.2 Australian Industry

The Commissioner considers that locally produced painted steel strapping are 'like' to the goods the subject of the application and is satisfied that there is an Australian industry producing those like goods, which comprises solely of Signode Australia.

The Commission verified the information provided by Signode Australia in its application. The verification report is available on the public record.⁸

⁴ EPR 553, Items 2 and 3.

⁵ EPR 553, Items 7,13 and 17.

⁶ EPR 553, Item 18.

⁷ Unless the Delegate of the Commissioner granted an extension.

⁸ EPR 553, Item 16

2.2.3 Importers

The Commission identified several importers in the Australian Border Force (ABF) import database that imported the goods from China and Vietnam during the investigation period. The Commission forwarded importer questionnaires to 22 importers and placed a copy of the importer questionnaire on the Commission's website for completion by other importers whom the Commission did not contact directly.

Three importers provided responses, 2 of which the Commission selected for verification. However, the Commission completed neither verification after each importer decided not to participate fully in a verification process.

2.2.4 Exporters

At the outset of the investigation, the Commission forwarded questionnaires to 13 exporters of the goods from China and Vietnam.

Both Jiashilun (China) and Sam Hwan (Vietnam) requested and received extensions to provide a response to the exporter questionnaire (REQ).

Non-confidential versions of the REQs are available on the Commission's website.⁹ The Commission conducted desktop verifications of the data provided by Jiashilun and Sam Hwan. These exporter verification reports are also on the Commission website.¹⁰

2.2.5 Foreign Governments

The Commission forwarded questionnaires to the Government of China (GOC) and the Government of Vietnam (GOV) at the beginning of the investigation. Both governments provided a response. The Commission has considered the response provided by the GOV in reaching the conclusions contained within this report.¹¹

2.3 Submissions received from interested parties

The Commission received one submission from interested parties prior to the publication of SEF 553, which is available on the public record. The Commissioner considered this submission in reaching the conclusions contained within SEF 553.

The Commission received 4 submissions following the publication of SEF 553. The Commissioner has considered all 4 submissions in reaching the conclusions contained within this report.

⁹ EPR 553, Items 8 and 9.

¹⁰ EPR 553, Items 14 and 15.

¹¹ EPR 553, Item 11.

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EPR Item No.	Interested Party	Date Received
20	Signode Australia	13 May 2021
21	Sam Hwan	16 May 2021
22	Government of China	21 May 2021
23	Sam Hwan	27 May 2021

Table 1 – Submissions considered after the SEF

2.3.1 Submission by Signode Australia

In its submission dated 13 May 2021¹², Signode Australia provided comments relating to the following issues in SEF 553:

- (a) it is unclear what delivery costs have been accounted for in the benchmark calculation for Chinese exporters
- (b) the coil prices for Chinese and Vietnamese exporters do not include pre-slitting costs and therefore the benchmark comparison understates the true cost of the coil by not taking into account additional pre-slitting costs
- (c) the Commission should determine a particular market situation for the goods existed in Vietnam during the investigation period, and that normal value should have been constructed in accordance with subsection 269TAC(2)(c) for Sam Hwan and uncooperative exporters as the Commission has not taken fully into account the influence and impact of the recently expired GOV programs which along with Chinese imported prices for steel would continue to influence the domestic steel prices in Vietnam
- (d) whether all relevant costs and allocation of costs incurred by Sam Hwan in the production of the goods are complete and accurate and that the downward adjustment for commission in Sam Hwan's domestic market is valid
- (e) the termination of the dumping investigation against Sam Hwan should not go ahead as the company has continued dumping the goods into Australia after the investigation period, based on observations that price movements of Vietnamese produced imported products post the investigation period have not been in line with price increases over the same period for raw materials
- (f) the Commission's material injury analysis should have included Vietnam, as the Commission erred in not determining a particular market situation and that if the Sam Hwan dumping margin was correctly calculated, the dumping margin would have been above 2%.

The Commission considers Issues (b), (c), (d), (e) and (f) above relevant to the findings in respect of Sam Hwan and have been addressed where relevant throughout TER 553-A.

The Commission will address the remaining issues in separate reports.

¹² EPR 553, Item 20.

2.3.2 Second Submission by Sam Hwan

The second submission by Sam Hwan dated 27 May 2021 was 14 days after the 20-day period parties have to respond to SEF 553. The Commission has considered the submission in preparing this report but has not addressed the issues raised in the submission directly in this report, noting that the Commissioner is terminating the investigation in respect of Sam Hwan.

3 THE GOODS AND LIKE GOODS

3.1 Preliminary finding

The Commissioner is satisfied that the locally manufactured painted steel strapping are like goods to the goods the subject of the application.

3.2 Legislative framework

Section 269TC(1) requires that the Commissioner must reject an application for a dumping duty notice if, inter alia, the Commissioner is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods.

In making this assessment, the Commissioner must firstly determine that the goods produced by the Australian industry are “like” to the imported goods. Section 269T(1) defines like goods as:

goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

An Australian industry can apply for relief from injury caused by dumped or subsidised imports even if the goods it produces are not identical to those imported. The industry must however, produce goods that are “like” to the imported goods.

Where the locally produced goods and the imported goods are not alike in all respects, the Commissioner assesses whether they have characteristics closely resembling each other against the following considerations:

- physical likeness
- commercial likeness
- functional likeness
- production likeness.

3.3 The goods

3.3.1 The goods description

The goods the subject of the application (the goods) are:

Painted steel strapping, of carbon steel, whether or not in coils, whether or not waxed, with a nominal width of 12 mm to 32 mm, a nominal thickness of 0.5 mm to 1.5mm.

Stainless steel strapping and galvanised steel strapping are excluded from the goods.

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The goods are used for load containment or lifting in a range of industries. There are a number of grades of hot rolled coil (HRC) steel¹³ used in the manufacture painted steel strapping. The grade of HRC depends on the product to be contained, the method of containment and its final destination.

3.3.2 Tariff classification of the goods

The goods are generally, but not exclusively, classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995*:¹⁴

Tariff Subheading	Statistical Code	Description
7212		FLAT-ROLLED PRODUCTS OF IRON OR NON-ALLOY STEEL, OF A WIDTH OF LESS THAN 600 mm, CLAD, PLATED OR COATED:
7212.40.00		Painted, varnished or coated with plastics:
	62	Of a width not exceeding 32 mm

Table 2 – General tariff classification for the goods

3.4 Model control codes

The Commission has used a model control code (MCC) structure in order to identify key characteristics for, among other things, model matching when comparing export prices and normal values (the basis for using a MCC structure and the Commission's practice is explained in the *Dumping and Subsidy Manual* (Manual)). The Commission requested all interested parties participating in this investigation to provide sales and cost data in accordance with the MCC structure detailed in the table below.

	Category	Sub-Category	Identifier	Sales Data	Cost Data
1	Hot rolled coil carbon content	≤0.22 %	C1	Mandatory	Mandatory
		>0.22 % to ≤0.37 %	C2		
		>0.37 % to ≤0.0.54 %	C3		
		≥0.54 %	C4		
2	Width	≤12.7 mm	W1	Mandatory	Optional
		>12.7 mm to ≤16.0 mm	W2		
		>16.0 mm to ≤19.1 mm	W3		
		>19.1 mm to ≤32.0 mm	W4		
3	Thickness	≤0.7 mm	T1	Mandatory	Optional
		>0.7 mm to ≤1.0 mm	T2		
		>1.0 mm	T3		
4	Break force	≤10 KN	B1	Mandatory	Optional
		≥10 to <15 KN	B2		
		≥15 KN to <25 KN	B3		

¹³ HRC may not be used exclusively to manufacturer the goods.

¹⁴ These tariff classifications and statistical codes may include goods that are both subject and not subject to the anti-dumping measures. The listing of these tariff classifications and statistical codes is for convenience and reference only and does not form part of the goods description. Please refer to the goods description for authoritative detail regarding goods subject to the anti-dumping measures.

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		≥25 KN	B4		
5	Metres per kilogram	≤5 m/kg	S	Mandatory	Optional
		≥5 m/kg to <10 m/kg	M		
		≥10 m/kg	L		
6	Coil winding	Ribbon wound	R	Optional	Optional
		Mill/rope wound	M		
		Other (including not in coils)	O		

Table 3 – MCC Structure

The Commission addressed proposed changes to the MCC structure in respect of each interested party in verification reports that it made available on the EPR.

3.5 Like goods

An application can only be made if there exists an Australian industry producing ‘like goods’ to the goods the subject of the application. The phrase ‘like goods’ is defined in section 269T(1). Sections 269T(2), 269T(3), 269T(4), 269T(4A), 269T(4B) and 269T(4C) are relevant to determining whether the like goods are produced in Australia and whether there is an Australian industry.¹⁵

The following analysis outlines the Commission’s assessment of whether the locally produced goods are identical to, or closely resemble, the goods the subject of the application and are therefore like goods.

3.5.1 Physical likeness

The Commission has found that both the imported goods and the goods produced by the Australian industry are physically alike. Both trade in a similar range of widths, thicknesses and break force, as specified in the goods description.

3.5.2 Commercial likeness

The Commission has found that the imported and locally produced goods are commercially similar. Imported goods and goods produced by the Australian industry are interchangeable and compete in the same market sectors, e.g. steel, timber and mining industries, with direct head-to-head competition between them.

3.5.3 Functional likeness

The Commission has found that the imported and locally produced goods are functionally alike as they compete for sales to the same customers for similar (or the same) end-uses, i.e. packaging in the steel, timber and mining industries.

¹⁵ See chapter 4 for further discussion on the Australian industry.

3.5.4 Production likeness

The Commission has found that the production processes and raw material inputs for the imported and locally produced goods are alike in all significant practical aspects. HRC or cold rolled coil (CRC) is the major raw material input.

3.5.5 Like goods assessment

Based on the findings above, the Commission considers that goods produced by the Australian industry have characteristics identical or closely resembling the goods exported to Australia. The Commission considers that:

- the goods and the domestically produced goods are physically alike, as they have the same or similar physical characteristics
- the goods and the domestically produced goods are commercially alike, as they are sold to common users and directly compete in the same market
- the goods and the domestically produced goods are functionally alike, as they have a similar range of end uses
- the goods and the domestically produced goods undergo similar manufacturing processes.

In light of the above, the Commissioner is satisfied that the Australian industry produces 'like goods' to the goods the subject of the application, as defined in section 269T.

4 AUSTRALIAN MARKET

4.1 Findings

The Commissioner has found that Australian industry and imports from a number of countries supply the Australian market for painted steel strapping. Imports from China and Vietnam, as a percentage of the total Australian import volume of the goods, were above negligible levels.

4.2 Background

Signode Australia, as the sole member of the Australian industry, as well as manufacturers from other countries who export to Australian customers directly or through intermediaries and distributors, supply the Australian market for the goods and like goods.

Importers in Australia purchase the goods from numerous countries. However, in recent years the highest volumes have originated from China and Vietnam.

The Commission has based its analysis of the Australian market detailed in this chapter on verified information submitted by Signode Australia, import data from the ABF import database and verified exporter information.

4.3 Market structure

The Australian market for painted steel strapping consists of Signode Australia as the sole local manufacturer, exporters and importers, distributors, re-sellers and end-users.

Suppliers sell painted steel strapping to a range of market sectors including food production, steel manufacturing, mining, paper, timber, wool and recycling.

4.3.1 Markets and distribution

Like goods manufactured by the Australian industry are produced for various markets within Australia, but not for any particular application or market segment. Like goods are usually available in stock to fulfil orders, with some products produced on request. Signode Australia distributes its goods from its warehouses located around Australia, either directly to its end-user customers or to third party distributors. There is no formal distribution arrangement between Signode Australia and the third party distributors, who may also import the goods.

Similar to the Australian industry, overseas producers who supply the Australian market have a similar product offering and service the Australian market in a manner comparable to the Australian industry. Overseas producers compete directly with the Australian industry and receive purchase orders from Australian customers directly. Importers in Australia may ship goods directly to an end-user customer's location or warehouse the goods at its own facility before dispatch.

4.3.2 Supply

Painted steel strapping is a commodity product. Provided the goods meet the relevant grade requirements for the desired end-use, there are limited ways in which suppliers can

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differentiate their offering beyond price and service. In most circumstances, customers can easily change suppliers.

Signode Australia supplies like goods to end-users, either directly or through third party distributors, who use the goods, with no or only minimal alteration, for load containment.

In addition to domestic producers of like goods, producers from other countries supply Australian customers directly or via Australian distributors. Overseas producers supply the same market segments as the Australian industry and in some cases the same customers.

Importers in Australia purchase the goods from numerous countries. However, in recent years the highest volumes have originated from China and Vietnam.

4.3.3 Demand

The output of end-users drives demand for painted steel strapping, primarily from the following industries within Australia:

- steel manufacturing
- timber
- mining
- food production
- paper
- wool
- recycling.

The Commission considers that movements in the above industries will accordingly affect demand for the goods and like goods.

4.4 Pricing

Signode Australia explained during verification it is a 'price taker' in the market and bases its prices on an import price parity pricing strategy, also taking into account its cost to make (CTM) the goods which are largely driven by raw material costs. However, there is little price transparency in the Australian market for painted steel strapping. As a result, its awareness of price in the market is generally via interactions with its customers or other publicly accessible market intelligence.

The price sensitivity of steel strapping is dependent on its application, with strapping used in simple applications being particularly price sensitive.

The Commission's examination of questionnaire responses from entities which cooperated with the investigation found that pricing for the goods exported to Australia from China and Vietnam is based on a 'cost-plus' pricing strategy. Exporters seek to set a price based on the CTM of the goods, largely driven by raw material costs, and maximise their margin over their costs, based on a consideration of prices offered by competing suppliers. Price negotiation occurs regularly with customers, often on a transaction-by-transaction basis.

4.5 Market size

4.5.1 Initial application data

In its application, Signode Australia relied upon its own sales data in relation to the goods and import data for HTISC¹⁶ 7212400062, 'Flat-rolled products of iron or non-alloy steel, painted, with a width not exceeding 32 mm' sourced from the Australian Bureau of Statistics (ABS).

The HTISC used by Signode Australia in its application is the same as tariff subheading 7212.40.00, statistical code 62 in Schedule 3 to the *Customs Tariff Act 1995*. Chapter 3.3.2 discusses this further.

4.5.2 Commission's assessment

The Commission is satisfied that the tariff classification identified by Signode Australia is suitable for estimating the size of the Australian market.

In its examination of the volume of imports of the goods into Australia, the Commission has used data extracted from the ABF import database in respect of consignments declared under the identified tariff classification. Data from the ABF import database is preferred over data from the ABS as it provides detail to a greater granular level.

To exclude outlying data, which may distort any findings, the Commission has then filtered the data to exclude transactions where the Free on Board (FOB) price per tonne was outside a range of AUD\$500 to AUD\$5,000. The Commission considers this a reasonable price range to use as a filter for the goods, based on the export price and normal values observed by the Commission during the investigation. The Commission has also excluded transactions that it determined were not in relation to the goods, based on the description recorded in the ABF import database.

The Commission has then estimated the size of the Australian market for the goods from 1 April 2016 to 31 March 2020 using the import data as discussed above, along with verified sales data from Signode Australia.

¹⁶ Harmonised Tariff Item Statistic Code.

5 DUMPING INVESTIGATION

5.1 Finding

The Commission found that Sam Hwang exported the goods to Australia at a margin of 1.7% during the investigation period. Based on this, the Commissioner is satisfied that Sam Hwang exported the goods to Australia at negligible levels.

5.2 Legislative and policy framework

Dumping occurs when an exporter exports a product from one country to another country at a price less than its normal value. The export price and normal value of goods are determined under sections 269TAB and 269TAC respectively.

In the report to the Minister under section 269TEA(1), the Commissioner must recommend whether the Minister ought to be satisfied as to the grounds for publishing a dumping duty notice under section 269TG.

Under section 269TG, one of the matters the Minister must be satisfied of, in order to publish a dumping duty notice, is that there are dumped goods.

Section 269TDA(1) requires that the Commissioner must terminate the investigation, in so far as it relates to an exporter, if satisfied that there has been no dumping by the exporter, or there has been dumping during the investigation period, but the dumping margin is less than 2%.

5.2.1 Export price

Export price is determined in accordance with section 269TAB, taking into account whether the purchase or sale of goods are 'arms length' transactions under section 269TAA. Section 269TAB(1)(a) generally provides that the export price of any goods exported to Australia is the price paid (or payable) for the goods by the importer where the goods have been exported to Australia otherwise than by the importer, and have been purchased by the importer from the exporter in 'arms length' transactions.

5.2.2 Normal value

Section 269TAC(1) provides that the normal value of any goods exported to Australia is the price paid (or payable) for like goods sold in the ordinary course of trade (OCOT) for home consumption in the country of export in sales that are 'arms length' transactions by the exporter, or if like goods are not so sold by the exporter, by other sellers of like goods.

5.2.2.1 Low volume of domestic sales

Section 269TAC(2)(a)(i) provides that the normal value of goods exported to Australia cannot be ascertained under section 269TAC(1) where there is an absence, or low volume, of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a price under section 269TAC(1). Relevant sales are sales of like goods sold for home consumption that are 'arms length' transactions and sold in the OCOT.

Domestic sales of like goods are taken to be in a low volume where the total volume of like goods is less than 5% of the total volume of the goods under consideration that are exported to Australia (unless the Minister is satisfied that the volume is still large enough to permit a proper comparison). As per the Manual, where the total volume of relevant sales is 5% or greater than the total volume of the goods under consideration, and where comparable models exist, the Commission also considers the volume of relevant domestic sales of like goods for each model (or MCC).

5.2.2.2 Particular market situation

Section 269TAC(2)(a)(ii) provides that the normal value of goods exported to Australia cannot be ascertained under section 269TAC(1) where the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under section 269TAC(1).

Signode Australia alleged in its application that a particular market situation exists in relation to the domestic market for like goods for both China and Vietnam. Chapter 5.3 discusses particular market situation further.

5.2.3 Dumping margin

For all dumping margins calculated for the purposes of the investigation, the Commission compared the weighted average export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of the investigation period.

5.3 Particular market situation

Section 269TAC(2)(a)(ii) implements, in part, Article 2.2 of the World Trade Organization (WTO) Antidumping Agreement (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 [footnote omitted], 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.

Where a particular market situation is found, pursuant to section 269TAC(2)(a)(ii), the Commission must further consider whether, because of the situation in the subject market, sales in that market are not suitable for determining a price under section 269TAC(1).

If a market situation exists in a country, such that domestic sales are not suitable for comparison with export sales, normal values may instead be constructed under section 269TAC(2)(c) or determined by reference to prices from a third country under section 269TAC(2)(d).

The Act does not prescribe what is required to reach a finding of a market situation. A market situation will arise when there is some factor or factors affecting the relevant market in the country of export generally. When considering whether sales are not suitable for use in determining a normal value under section 269TAC(1), because of the

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situation in the market of the country of export, the Commission may have regard to factors such as:

- whether the prices are artificially low, or
- whether there are other conditions in the market that render sales in that market not suitable for use in determining prices under section 269TAC(1).

Government influence on prices or input costs could be one cause of artificially low prices. Such government influence could come from any level of government.

In assessing whether a market situation exists due to government influence, the Commission has assessed whether government involvement in the domestic market has materially distorted market conditions. If government involvement has materially distorted market conditions, then domestic prices may be artificially low or not substantially the same as they would be in a market free of material distortion.

Prices for the like goods may also be artificially low or not substantially the same as they would otherwise be due to government influence on the costs of inputs.

The Manual provides further guidance on the circumstances in which the Commission will find that a market situation exists.¹⁷

5.3.1 Significance of HRC costs in the production of the goods

The Commission has found that HRC and CRC are the major raw material inputs used in the production of painted steel strapping.

HRC undergoes further processing to make CRC through rolling at low temperatures (generally room temperature). The process affects the performance and application properties of the coil, but not its specifications or grade. There is no additional material input other than HRC in the production of CRC, with CRC retaining the same metallurgical composition as its HRC input. The Commission considers that CRC costs, while generally higher than HRC due to the additional processing, closely relate to the costs of HRC, with any influence on the HRC market also affecting their costs so a similar extent.

The Commission has verified the HRC and CRC costs associated with the production of the goods and like goods during the investigation period for all producers. The Commission found that coil costs (whether hot or cold rolled) represented a significant and broadly consistent proportion of the CTM of the goods and like goods.

Country of production	Percentage of total CTM made up by HRC/CRC	Percentage of raw material costs made up by HRC/CRC
Australia	70%	100%
China	90%	99%
Vietnam	83%	95%

¹⁷ The Manual, p. 36.

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Table 4 – Raw material coil as a proportion of CTM of the goods¹⁸

The proportion of CTM represented by raw material costs for Australian producers is lower than that for Chinese and Vietnamese producers primarily due to higher manufacturing overheads.

Cooperating exporters from both China and Vietnam advised the Commission that raw material prices are influential in setting selling prices for the goods and like goods, with lower raw material prices resulting in lower painted steel strapping prices.

Given the high cost proportion of HRC in the production of the goods and like goods and its influence on pricing decisions, the Commission considers that HRC price has a significant impact on both the production cost and selling price of the goods and like goods.

5.3.2 Vietnam – Sam Hwan

Signode Australia claimed in its application that GOV influence on the steel industry in Vietnam, through a broad range of government policies, has distorted domestic selling prices of painted steel strapping such that prices are not determined in a competitive manner and are substantially different to what they would otherwise be in a competitive market. In Signode Australia's view, this has resulted in a particular market situation in the Vietnamese painted steel strapping market that renders sales in that market unsuitable for determining normal values under section 269TAC(1).

Signode Australia has claimed the GOV has intervened in the domestic steel industry through:

- Steel Master Plans
- imposition of technical barriers and environmental standards
- State ownership of large integrated Vietnamese steel manufacturers
- domestic price stabilisation initiatives
- steel industry subsidisation.

In its 15 May 2020 submission,¹⁹ the GOV claimed Signode Australia provided insufficient evidence in its application to support the assertion that there is a particular market situation in the Vietnamese market for painted steel strapping. The GOV further submitted that:

- the alternative methodology available to WTO members in anti-dumping investigations when determining price comparability, as set out in Vietnam's Protocol of Accession to the WTO,²⁰ expired on 31 December 2018 and is therefore not available in this investigation
- in 2008 the Australian Government recognised Vietnam as a market economy

¹⁸ Confidential Attachment 1 – CTM breakdown.

¹⁹ EPR 553, Item 4.

²⁰ WTO, Report of the Working Party on the Accession of Vietnam, WT/AA/VNM/48, 27 October 2006, at paragraph 255 and 527; Vietnam's Protocol of Accession to the WTO, WT/L/662, 15 November 2006, at paragraph 2.

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- there have been changes to its Steel Master Plans such that they have been invalid since the beginning of 2019
- the findings of the Canada Border Services Agency (CBSA) in its investigations into subsidies of certain oil country tubular goods and cold rolled steel exported from Vietnam to Canada referred to in the application were made in the absence of a response from Vietnamese exporters and should not be regarded in the current investigation
- in an anti-dumping investigation into carbon-welded pipe in 2018, the CBSA found that the evidence did not support a conclusion that GOV involvement determines the domestic carbon steel welded pipe price in Vietnam.

The Commission also sent the GOV a questionnaire requesting further information in relation to the painted steel strapping market in Vietnam. The GOV provided a response to the questionnaire to the Commission on 3 August 2020.²¹

In assessing whether a market situation exists in relation to the Vietnamese painted steel strapping market in the investigation period, the Commission has relied on all the evidence available to it, including questionnaires and submissions made in this investigation and desktop research. This includes:

- previous investigations by the Commission which did not find there to be a particular market situation present in respect of the relevant goods²²
- the expiry of the Steel Master Plans in late 2018 with no evidence of any ongoing influence
- the expiry of legislation implementing price stabilisation measures in 2014
- the right of enterprises to determine their own prices at which goods and services which they manufacture are sold
- the lack of evidence of a significant role for Vietnamese State-owned Enterprises (SOEs) in the steel, HRC or painted steel strapping market
- the minimal levels of subsidisation found in respect of upstream raw materials or the goods themselves
- the level of import penetration in the domestic steel Vietnamese market
- evidence that raw materials for Vietnamese exporters are in line with benchmark costs in comparable countries.

A complete examination of the evidence for this finding is set out in **Non-confidential APPENDIX A**.

5.3.3 Submissions to SEF 553

5.3.3.1 *Submission by Signode Australia*

In its submission of 13 May 2021²³, Signode Australia submitted that the Commission should have found that a particular market situation existed in the market for painted steel strapping in Vietnam during the investigation period. Accordingly, Signode Australia

²¹ EPR 553, Item 11.

²² See Non-confidential Appendix A2.2.

²³ EPR 553, Item 20.

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considers that the Commission should have constructed the normal value under subsection 269TAC(2)(c) for Sam Hwan and uncooperative exporters because:

- the Commission has not taken fully into account the influence and impact of the recently expired GOV programs, including the Steel Master Plan, which along with Chinese imported prices for steel would continue to influence the domestic steel prices in Vietnam
- the benchmark CRC price for Korea and Taiwan that the Commission used to conclude that raw material prices in Vietnam are consistent with market prices, excludes slitting costs, whereas CRC purchased by Sam Hwan is pre-slit coil.

The Commission has reviewed Signode Australia's claims and has concluded the following:

- the Commission does not have evidence regarding the long-term effects of the Steel Master Plans on the Vietnamese steel industry. While the plans contained forecasts for increased production to 2025, whether these production goals are met and whether there is then a causal link between the Steel Master Plans and any increased production is, with respect to the information before the Commission, merely speculation.
- the Manual provides that:²⁴

The concept of a competitive market price is not taken to prevent an exporter buying inputs from 'arms length' suppliers at the prevailing price even if that input had been sold at below cost or dumped. This is because a company should not be penalised for making commercial decisions to buy inputs at the best price, and a dumping authority would not be able to verify input costs from uncooperative and unrelated companies.

For example, if an exporter buys "on-the-spot" from an external unrelated supplier in another country that will mean that it is a normal competitive market price.

Accordingly, the Commission does not generally consider that the purchase of lower priced imported steel coil from China would result in an uncompetitive market for steel coil in the importing country, in this case Vietnam.

The Commission also notes its findings in respect of steel coil prices paid by Sam Hwan during the investigation period in **Non-confidential Appendix A4**, particularly Figure 1, which shows that costs for raw materials for Sam Hwan are in line with benchmark costs in comparable countries such as South Korea and Taiwan.

- the Commission is satisfied that the Korea and Taiwan benchmark cost for CRC used in determining the competitive cost of Sam Hwan's CRC cost are comparable. The Commission confirmed during verification that Sam Hwan used unslit, i.e. full-width coil, with the slitting of coil part of the steel strapping production

²⁴ The Manual, p45.

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process which is incorporated in the production cost. The Commission confirms that delivery costs have been included in Sam Hwan's coil purchase price, as well as the MEPS CRC price for Korea and Taiwan.

5.3.4 Conclusion

In light of all the information before the Commission, including submissions received in respect of SEF 553, the Commission's view is that a particular market situation did not exist in respect of the domestic market for painted steel strapping in Vietnam for the investigation period.

5.4 Sam Hwan

5.4.1 Verification

The Commission conducted a verification of Sam Hwan's REQ.

The Commission is satisfied that Sam Hwan is the producer of the goods and like goods. The Commission is further satisfied that the information provided by Sam Hwan is accurate and reliable for ascertaining the variable factors applicable to its exports of the goods.

A report covering the Commission's verification findings is available on the EPR.²⁵

5.4.2 Export price

The Commission considers Sam Hwan to be the exporter of the goods as Sam Hwan:

- is the manufacturer of the goods
- is named on the commercial invoice as the supplier
- is named as consignor on the bill of lading
- arranges and pays for the inland transport to the port of export
- arranges and pays for the port handling charges at the port of export, and
- arranges and pays for the ocean freight and marine insurance.

The Commission is satisfied that for all Australian export sales during the period that Sam Hwan was the exporter of the goods.

Sam Hwan did not have export sales of the goods to any related customers in Australia during the investigation period.

In respect of Sam Hwan's Australian sales of the goods to its unrelated customers during the period, the Commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than its price, or

²⁵ EPR 553, Item 14.

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- the price appeared 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
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

The Commission therefore considers that all export sales made by Sam Hwan to its Australian customers during the investigation period were 'arms length' transactions.

In respect of Australian sales of the goods by Sam Hwan, the Commission has determined an export price under section 269TAB(1)(a), being the price paid by the importer to the exporter, less transport and other costs arising after exportation.

5.4.3 Normal value

In respect of Sam Hwan's domestic sales of like goods to its related customer during the period, the Commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than its price, or
- the buyer, or an associate of the buyer, was not directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.²⁶

However, the Commission found evidence that a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller appeared to influence the price because:

- Sam Hwan is partly owned by its related customer, and
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.²⁷

The Commission therefore considers that domestic sales made by Sam Hwan to its related customers during the investigation period were not 'arms length' transactions, pursuant to section 269TAA(1)(b) and the Commission removed these sales from the domestic sales listing.

In respect of Sam Hwan's domestic sales of like goods to its unrelated customers during the period, the Commission found no evidence that:

- there was any consideration payable for, or in respect of, the goods other than its price, or
- the price appeared 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

²⁶ Section 269TAA(1)(b) refers.

²⁷ Ibid.

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- the buyer, or an associate of the buyer, was not directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.²⁸

The Commission therefore considers that all domestic sales made by Sam Hwan to its unrelated customers during the period were 'arms length' transactions.

Section 269TAC(2) provides alternative methods for calculating the normal value of goods exported to Australia where there is an absence, or low volume, of relevant sales of like goods in the market of the country of export. Section 269TAC(14) provides that an exporter's domestic sales of like goods are a low volume where the total volume of sales of like goods for home consumption in the country of export by the exporter is less than 5% of the total volume of the goods under consideration that are exported to Australia by the exporter. This is unless the Minister is satisfied that the volume is still large enough to permit a proper comparison for the purposes of assessing a dumping margin.

Using information obtained during the verification of Sam Hwan, the Commission has assessed the total volume of relevant sales of like goods as a percentage of the goods exported to Australia and found that the volume of domestic sales was 5% or greater and therefore was not a low volume.

When calculating a normal value under section 269TAC(1), in order to ensure a proper comparison between the goods exported to Australia and the goods sold on the domestic market, the Commission considers the volume of sales of each exported MCC on the domestic market. Where the volume of domestic sales of an exported model is less than 5% of the volume exported, the Commission will consider whether it can make a proper comparison at the MCC level. In these situations, the Commission may consider whether it should use a surrogate domestic model to calculate the normal value for the exported model. The table below provides further detail.

Export MCC	Comment	Surrogate MCC
C1-W3-T1-B2-L	Volume of domestic sales model is less than 5% of the exported volume	C1-W3-T1-B2-M has been used as a surrogate due to the similarity between models

Table 5 – Surrogate export model

5.4.4 Adjustments

The Commission is satisfied that there is sufficient information to justify the following adjustments in accordance with section 269TAC(8). The Commission considers it necessary to make these adjustments to ensure a fair comparison of normal values and export prices.

²⁸ Ibid.

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Adjustment Type	Deduction/addition
Domestic credit terms	Deduct an amount for domestic credit
Domestic inland transport	Deduct an amount for domestic inland transport
Domestic commission	Deduct an amount for domestic commission
Export inland transport	Add an amount for export inland transport
Export port and handling charges	Add an amount for port charges
Export commission	Add an amount for export commission
Export bank charges	Add an amount for export bank charges
Export credit terms	Add an amount for export credit terms

Table 6 – Summary of adjustments (Sam Hwan)

5.4.5 Submissions to the SEF

5.4.5.1 Submission by Signode Australia

In its submission²⁹, Signode Australia requested the Commission revisit the following factors in determining normal value for Sam Hwan:

- ensure that all relevant costs and allocation of costs incurred by Sam Hwan in the production of the goods are complete and accurate, and
- ensure that downward adjustment for commission in Sam Hwan's domestic market is valid.

The Commission verified the relevance, completeness and accuracy of Sam Hwan's sales and cost data, and identified a number of exceptions relating to cost allocation, which it resolved with Sam Hwan. Sam Hwan's verification report provides detail³⁰. In concluding the verification of Sam Hwan's REQ, the Commission is satisfied that the information provided by Sam Hwan is accurate and reliable for ascertaining its variable factors.

During verification of Sam Hwan's REQ, the Commission observed that Sam Hwan allocated commission payments on a weighted average basis across all sales, and allocated to the goods based on revenue. Sam Hwan paid all the commissions listed in the account detailing the payments to unrelated parties. The Commission is satisfied that Sam Hwan reasonably allocated the amounts for commission and found no evidence to suggest that Sam Hwan paid commission to any related party in the domestic market. As a result, The Commission considers that no change to the downward adjustment for commission is necessary.

The Commission is satisfied that all adjustments made are necessary to ensure a fair comparison between export price and normal value.

²⁹ EPR 553, Item 20.

³⁰ EPR 553, Item 14.

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Signode Australia also requested that the Commission examine the method for calculating Sam Hwan's dumping margin, as well as narrowing the weighted-average periods to better align raw material cost inputs with selling prices for the goods.

In general, where there are many sales, such as the circumstances in this case, the Commission uses the weighted average-to-weighted average method over the investigation period to determine a dumping margin. The weighted average-to-weighted average method is provided for in subsection 269TACB(2)(a). The provision at subsection 269TACB(2)(aa) extends subsection 269TACB(2)(a) to allow shorter period comparisons which may be required for fair comparison, which is aggregated to determine the level of dumping for the whole of the investigation period. Applying the weighted average-to-weighted average method allows for all relevant domestic sales over the period in which sales are being investigated to be taken into account. Signode Australia has not provided reasons why this method is not appropriate or why another method would be more preferable.

The Commission typically calculates the weighted average unit normal value on a quarterly basis. The Commission has not identified sufficient changes in cost and/or prices over shorter periods within the present circumstance of this investigation to narrow the period.

In terms of costs, Sam Hwan has provided its data on a quarterly basis. The Commission may calculate monthly CTMS where an exporter has monthly costing records and there are significant variations in raw material costs from month to month or there is a highly inflationary or deflationary market. None of these factors are present for Sam Hwan and the Commission considers it appropriate to use quarterly costs.

In terms of the normal value, which the Commission calculated using domestic sales prices, it is not clear to the Commission why using a shorter period when comparing to export prices would allow for better alignment of raw material costs with selling prices of the goods as contended in Signode Australia's submission. In any case, the Commission has not identified sufficient changes in costs or prices over shorter periods within the investigation period that would warrant the use of shorter periods for determining the weighted average normal value or dumping margin.³¹

Signode Australia's submission further contended that the termination of the dumping investigation against Sam Hwan should not go ahead as the company has continued dumping the goods into Australia after the investigation period. Signode Australia stated that the Commission should have continued to monitor prices from Vietnam by Sam Hwan between 1 April 2020 and 31 March 2021. Signode Australia contends that price movements in that time for Vietnamese produced imported products are not in line with price increases of the raw material input HRC over the same period.

The Commission notes that section 269TDA(1) requires the Commissioner to terminate a dumping investigation, so far as it relates to an exporter, if that exporter is found either not

³¹ See Confidential Attachment 4 – Sam Hwan Normal Value and Confidential Attachment 7 – Sam Hwan raw material purchases.

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to have dumped or to have dumped at a dumping margin, worked out under section 269TACB, that is less than 2% (a negligible dumping margin).

Section 269TACB further provides that, when determining a dumping margin in an investigation, the Minister must determine whether dumping has occurred with reference to export prices in respect of goods exported to Australia, and corresponding normal values, during the investigation period.

Accordingly, any claims as to dumping after the investigation period are not relevant to whether an investigation should be terminated where a negligible dumping margin has been found in respect of goods exported during the investigation period, such as in the present case with Sam Hwan.

Finally, based on Signode Australia's assertion that the Commission should have found a particular market situation in Vietnam, it was submitted that the Commission's material injury section should have included analysis on injury from Vietnamese imports, as the dumping margin found should have been greater than 2%.

As discussed in Chapter 5.3.2, the Commission has determined that a market situation did not exist in Vietnam in respect of the goods the subject of this investigation.

5.4.5.2 Submission by Sam Hwan

In its submission of 16 May 2021³², Sam Hwan expressed its support for the Commission's findings outlined in SEF 553 and submitted it was an accurate summary of the verification team's findings in relation to Sam Hwan. Sam Hwan also noted that its verification report had been available on the EPR for nearly 2 months prior to the publication of the SEF and the Commission received no submissions to overturn the finding as it relates to Sam Hwan.

5.4.6 Dumping margin

The Commission has calculated a dumping margin in respect of the goods exported to Australia by Sam Hwan for the investigation period. The dumping margin is **1.7%**.

The Commission's calculations are included at **Confidential Attachments 2 to 5**.

³² EPR 553, Item 21.

6 NON-INJURIOUS PRICE

Section 269TACA defines the non-injurious price (NIP) as “the minimum price necessary to prevent the injury, or a recurrence of the injury” caused by the dumped or subsidised goods, the subject of a dumping duty notice or a countervailing duty notice.

As the Commissioner is terminating the dumping investigation as it relates to Sam Hwan, the Commission did not calculate a NIP in respect to the goods exported by Sam Hwan.

7 PARTIAL TERMINATION OF THE INVESTIGATION

7.1 Legislative reference

Section 269TDA sets out the circumstances in which the Commissioner must terminate an investigation in its entirety, or solely in respect of a specific exporter. Section 269TDA provides for rules of termination based on volumes and scale of dumping and subsidisation by countries and exporters.

7.2 Partial termination of dumping investigation

Section 269TDA(1)(b) provides that the Commissioner must terminate a dumping investigation, in so far as it relates to an exporter of the goods, if satisfied that:

- there has been no dumping by the exporter of any of those goods, or
- there has been dumping by the exporter of any of those goods, but the dumping margin for the exporter worked out under section 269TACB is less than 2%.

The Commission has determined that the dumping margin for Sam Hwan for this investigation is **1.7%**.

Based on the findings in this report, the Commissioner is satisfied that the level of dumping by Sam Hwan in the investigation period was negligible.

Therefore, in accordance with section 269TDA(1)(b)(ii), the Commissioner is terminating the dumping investigation in as far as it relates to Sam Hwan.

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ATTACHMENTS

Non-confidential Appendix A	Assessment of particular market situation – Vietnam
Non-confidential Attachment 1	GOV steel industry plan 2015-2025
Non-confidential Attachment 2	GOV Decision No. 4977/QD-BCT 2018
Confidential Attachment 1	CTM breakdown
Confidential Attachment 2	Sam Hwan Export Sales
Confidential Attachment 3	Sam Hwan CTMS
Confidential Attachment 4	Sam Hwan Normal Value
Confidential Attachment 5	Sam Hwan Dumping Margin
Confidential Attachment 6	Sam Hwan CTM benchmarking
Confidential Attachment 7	Sam Hwan raw material purchases

APPENDIX A ASSESSMENT OF PARTICULAR MARKET SITUATION – VIETNAM

This appendix sets out the Commission's assessment of whether a particular market situation existed in the Vietnamese market for painted steel strapping during the investigation period.

A1 Introduction

Signode Australia has claimed the GOV has intervened in the domestic Vietnamese steel industry through the following:

- Steel Master Plans
- imposition of technical barriers and environmental standards
- State ownership of large integrated Vietnamese steel manufacturers
- domestic price stabilisation initiatives
- steel industry subsidisation.

The Commission investigated each of these areas to determine the level of GOV involvement and whether such involvement materially distorted competitive conditions in the domestic market.

After reviewing the evidence available to the Commission, including questionnaires and submissions made in this investigation, as well as desktop research, the Commission has concluded that a particular market situation did not exist in respect of the domestic market for painted steel strapping market in Vietnam for the investigation period.

The remainder of this appendix discusses the Commission's consideration of the evidence.

A2 Previous investigations

A2.1 Foreign investigations

In its application, Signode Australia referred to previous findings by the International Trade Administration within the United States Department of Commerce (ITA) and the CBSA.

This included the ITA *Decision Memorandum for the Preliminary Determination in the Antidumping Duty investigation of Circular Welded Carbon-Quality Steel Pipe from Socialist Republic of Vietnam*, dated 31 May 2016.³³ In this determination, the ITA stated it considers Vietnam to be a non-market economy (NME). The determination states that:

In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the

³³ <https://enforcement.trade.gov/frn/summary/vietnam/2016-13484-1.pdf>

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*administering authority. Therefore, we continue to treat Vietnam as an NME country for purposes of this preliminary determination.*³⁴

The Commission notes that the determination by the ITA that Vietnam is a NME commenced on 8 November 2002³⁵ and continues in force as of its most recent determination regarding Vietnam.³⁶

The other investigation referred to in the application was the CBSA investigation into cold-rolled steel from China, Korea and Vietnam. In its Statement of Reasons, dated 15 November 2018³⁷, the CBSA examined whether the GOV substantially determines domestic prices in Vietnam and whether there was sufficient reason to believe that the domestic prices were not substantially the same as they would have been in a competitive market. This included an examination of the Steel Master Plan 2007-2015, the Steel Master Plan 2015-2025 and state ownership of suppliers and producers in the cold-rolled steel sector. The Commission considered the findings of the CBSA in its analysis of the Steel Master Plans and SOEs below.

A2.2 Commission investigations

The Commission has considered previous claims for a particular market situation in Vietnam in the following investigations:

- Investigation 370 into galvanised Steel exported from India, Malaysia and Vietnam (INV 370)
- Investigation 416 into steel rod in coils exported from Indonesia, Korea and Vietnam (INV 416).

In both investigations, the Commission did not find there to be a particular market situation present in respect of the relevant goods.

INV 370 concerned primarily a claim that the large proportion of imported HRC into Vietnam from China, where a particular market situation had been found, resulted in Chinese HRC prices influencing imported HRC prices from other countries, which consequently could have distorted selling prices of galvanised steel in Vietnam. The Commission found no evidence suggesting such an influence, nor did the Commission find any evidence indicating that the costs of HRC used in the production of galvanised steel in Vietnam were not competitive market costs.

In INV 416, the application alleged that the GOV used policies of differentiating import and export taxes for the upstream raw materials of coking coal, coke, iron ore and scrap

³⁴ Ibid, Section VI.A, "Discussion of Methodology", page 5

³⁵ *Memorandum for Faryar Shirzad, Assistant Secretary, Import Administration from Shauna Lee-Alaia, George Smolik, Athanasios Mihalakas and Lawrence Norton, Office of Policy through Albert Hsu, Senior Economist, Office of Policy, Import Administration, Jeffrey May, Director, Office of Policy, Import Administration, Antidumping Duty Investigation of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Determination of Market Economy Status ("Market Status Memo")*, dated 8 November 2002

³⁶ *Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Seamless Refined Copper Pipe and Tube from the Socialist Republic of Vietnam*, ITA, dated 26 January 2021

³⁷ CBSA, CRS 2018 IN, *Statement of Reasons, Cold-rolled steel from China, South Korea and Vietnam*, dated 15 November 2018, <https://cbsa-asfc.gc.ca/sima-lmsi/i-e/crs2018/crs2018-fd-eng.pdf>

steel to create an artificial oversupply in the domestic market. The application also alleged that GOV influence on the costs of coking coal, coke, iron ore, scrap steel and electricity affected domestic prices for steel rod in coil. In the investigation, the Commission did not observe a decrease in upstream raw material export volumes, indicating that any differentiating tax policies did not result in an increase of domestic supply and a consequential price decrease. The Commission did find that GOV intervention suppressed electricity prices. However, the Commission did not agree with the assertion that domestic prices of steel rod in coil were less than they would have been otherwise because of such suppression. The Commission concluded that there was no market situation in respect of steel rod in coil.

A3 The GOV role in the Vietnamese steel market

A3.1 Steel Master Plans

As detailed by the applicant, in recent decades the GOV has detailed its plans for their domestic steel industry in a two stage Master Plan, as below:

- The Steel Master Plan 2007-2015 (Decree No. 145/2007/QD-TTg)³⁸
- The Steel Master Plan 2015-2025 (Decision No. 694/QD-BCT).³⁹

The original Steel Industry Plan (2007-2015) contained production targets of 23 million tonnes of finished steel production by 2020 and 28 million tonnes by 2025,⁴⁰ achieved by large investment projects in a number of steel manufacturing facilities. The GOV sought to develop a domestic steel industry through a range of policy objectives including:

- (i) Protection of the domestic industry through technical barriers and environmental standards,⁴¹ and
- (ii) Tasking various Ministries in the GOV with enacting various policies, including protecting the domestic steel manufacture against competition of foreign steel products and imposing import tax and export tax policies to step up investment in the development and restructuring of the steel industry in Vietnam.⁴²

The Steel Master Plan 2015-2025 superseded the Steel Master Plan 2007-2015. The later plan details a diversification in domestic steel production into the production of hot-rolled, cold-rolled and galvanised steel.

- Article 1(5)(a) demonstrates a shift to greater diversification: *Having incentive policies for combined steel plant projects. Prioritising the investment in projects of manufacturing pig iron, steel billets, hot rolled steel sheet, alloy steel, steel of high quality, large shaped steel and stainless steel...*
- Article 2(3) seeks to influence and control steel prices:

³⁸ Available on the GOV legislative gazette at <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=3341&Keyword=145/2007/QD-TTg>

³⁹ Non-confidential Attachment 1 – GOV steel industry plan 2015-2025

⁴⁰ Steel Master Pan 2007-2015, Article 1(3)(a)

⁴¹ Ibid, Article 1(3)(c)

⁴² Ibid, Article 2

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People’s Committee of centrally-affiliated cities and provinces shall: Direct the market management force in the area to coordinate with the authorities to strengthen the inspection and control of prices of steel products; prevent speculation, fake and ensure price stability steel in the area.

In response to these claims by the applicant, the GOV submitted that national plans, such as the Steel Master Plans, are not legal instruments of government to support a certain industry. The plans are merely tools to provide forecast and guidance for the future development of the relevant industry.⁴³

The GOV further asserted that the Steel Master Plans were made redundant from the beginning of 2019, because of further laws passed by the GOV. The first, Law on Planning No. 21/2017/QH14, decreed that manufacturing industries, including steel, are no longer the subject of master plans developed by the GOV. Following that law, the Ministry of Industry and Trade promulgated Decision No. 4977/QD-BCT to repeal specific products planning under the provisions on Law on Planning No. 21/2017/QH14, including Decision No. 694/QD-BC (otherwise known as the Steel Master Plan 2015-2025).⁴⁴

The Commission has verified the claims of the GOV:

- Article 59(1)(d) of the Law on Planning No. 21/2017/QH14 provides that:

The planning for investment in and development of specific goods, services and products, determination of the volume of goods, services and produced and sold products that is decided or approved is null and void no later than December 31, 2018.

- Article 1 of Decision No. 4977/QD-BCT provides that the *Steel production and distribution system development planning up to 2020, with a vision to 2025* was annulled on 27 December 2018.

Accordingly, the Commission is satisfied that the legal basis for the Steel Master Plans referenced by the applicant are no longer in force.⁴⁵

The Commission has not been provided with any evidence demonstrating that there has been a continuing impact on the domestic Vietnamese steel industry because of the now rescinded Steel Master Plans, nor has the Commission been able to find any evidence of such an impact through its desktop research.

A3.2 Other GOV policies affecting the steel industry

Signode Australia submits that the GOV has identified the domestic steel industry as a “priority industry” specifically to “invest in the development of steel manufacturing for mechanical engineering such as steel sheets, shaped steel, and alloy steel.”

⁴³ GOV RGQ, p230

⁴⁴ Ibid, p240

⁴⁵ Non-confidential Attachment 2 - GOV Decision 4977 _ QD-BCT 2018 abolishes planning for specific products and services

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The applicant referred to GOV Circular 122 on price management and registration entered into force in 2010. This regulation enables the GOV via the Ministry of Finance to apply price controls when prices increase or decrease without “legitimate” reasons. The goods subject to pricing registration includes steel products, along with some raw material inputs including coal. The intent is to place price ceilings on products such that they are inconsistent with global changes in prices (including steel).

The Commission examined Circular 122 and confirmed it relates to the implementation of price stabilisation, powers and responsibilities of agencies, organisations and individuals in the elaboration, submission and appraisal of price plans and price decisions, price consultation dossiers and procedures, control for price factors, forms and procedures for price registration and declaration of prices of goods and services.⁴⁶ The GOV can implement such measures where:⁴⁷

- the price increase is higher than the increase in the price of the inputs, or higher than the cost price of imported goods
- the price increases or decreases are not grounded, while the price constituents have no change, in the event of natural disasters, fires, epidemics, enemy sabotage, economic-financial crisis, or loss, temporary supply-demand balance or due to unfounded rumours of price increases or decreases, and
- unreasonable increase or decrease in prices due to abuse of monopoly position or market dominance.

Circular 122 also specifies that the measures relate only to certain goods and services, listed in Decree 75/2008.⁴⁸ Decree 75/2008 lists “Construction steel” as a good subject to price stabilisation.

However, both Decree 75/2008 and Circular 122 expired on 1 January 2014.

The GOV submitted that it does not have any policies or regulations that could be interpreted as impacting or exercising control over domestic market conditions in Vietnam for steel strapping or on the raw materials supplied in the manufacture of steel strapping. The GOV states that:

According to Article 11 of the Law on Prices, enterprises have the right to self-determine the prices of goods or services which they manufacture except for the goods subject to price determination by the GOV. Article 19 of this Law identifies goods subject to price determination by the GOV which include (i) goods or services under the monopoly supply by the state and (ii) important resources, and (iii) National reserve goods; products, services for public interest and service of public career using state budget. Steel strapping and all the upstream raw materials used to manufacture these products do not fall within three types of goods...⁴⁹

⁴⁶ Article 1 of Circular No. 122/2010/TT-BTC, available at <http://vbpl.vn/TW/Pages/vbpq-toanvan.aspx?ItemID=25631>

⁴⁷ Ibid, Article 2(2)

⁴⁸ Available at <http://vbpl.vn/TW/Pages/vbpq-toanvan.aspx?ItemID=12714>

⁴⁹ GOV RGQ, p236

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Article 19(3) provides a list of goods and services in which the GOV may define prices. This includes relevantly, “assigned under business and production plans by the State”. The Commission presumes that this would have affected steel prices when a Steel Master Plan was in force. However, as discussed previously, the GOV rescinded the Steel Master Plans. Accordingly, the Commission does not consider that the exception to “self-determination” of prices in Article 19 of the Law on Prices applies in respect of steel products.

Signode Australia submits that the GOV maintains control over projects and investment in key industries, including steel, such that the GOV may halt or advance projects at its discretion. This level of influence does not enable the market to determine investment.

The GOV in its RGQ provides that investment projects related to the goods or any of the upstream raw materials used to manufacture the goods are subject to the same investment regulations as other sectors, in accordance with:⁵⁰

- Law on Investment 67/2014/QH13⁵¹
- Decree 118/2015/ND-CP, which details the implementation of a number of articles of the Law on Investment.⁵²

The Commission has reviewed Law on Investment 67/2014/QH13 and Decree 118/2015/ND-CP and is satisfied that investors may make their own investment decisions, in accordance with the relevant laws of Vietnam. The relevant laws restrict investment in certain areas, but do not appear to impose a level of power and control within the GOV over the steel industry such as to prevent market decisions on investment within the industry.

A3.3 Role and operation of SOEs

Signode Australia submitted in its application that the GOV could enact its policy initiatives via its ownership in large steel industry companies. The large integrated steel producer Vietnam Steel (VN Steel) manufactures a range of steel products, including both inputs for and finished products and operates in accordance with a charter from the GOV. The GOV has an active role in VN Steel’s management and daily operations.

In a paper by Nozomu Kawabata published in 2017, it was suggested it is debatable whether VN Steel has a significant role in the market relating to prices and production of other firms. VN Steel does not receive GOV subsidies, and any GOV intervention may only be due to it falling into management crisis, itself a result of delays in corporate governance reforms.⁵³

VN Steel has an annual finished steel production capacity of 2.5 million tonnes, with an additional capacity to produce 1.5 million tonnes of billet. This compares to Hoa Phat

⁵⁰ GOV RGQ, p237

⁵¹ EPR 553, Item 11, Exhibit 46

⁵² EPR 553, Item 11, Exhibit 2

⁵³ KAWABATA Nozomu, 2017. "Decline and Restructuring of a State-owned Enterprise Group in the Vietnamese Iron and Steel Industry (Japanese)," Discussion Papers (Japanese) 17066, Research Institute of Economy, Trade and Industry (RIETI), available at <https://ideas.repec.org/p/eti/rdpsjp/17066.html>

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Group, a private company, which has an annual steel production capacity of finished steel products of 2.77 million tonnes.⁵⁴ Hoa Phat now considers itself the market leader, above VN Steel, in construction steel companies.

The GOV advised that the private sector wholly owns the painted steel strapping industry in Vietnam. The GOV does not have direct ownership or relation in any painted steel strapping product.

In light of the above, the Commission does not consider the GOV enacts large-scale policy initiatives through SOEs.

A3.4 The role of the GOV in private firms

The applicant did not provide positive evidence of a GOV role within private firms.

In its verification of Vietnamese exporters, the Commission found that the GOV made no business decisions nor was there any GOV representation within senior management.

A3.5 Direct and indirect financial support

As discussed in chapter A2.1, Signode Australia identified a previous finding by the CBSA of steel industry subsidisation in respect of cold-rolled steel exported from China, Korea and Vietnam.

The CBSA investigation found that the following subsidies were in place:⁵⁵

- Program 1 – Exemptions of import duty
- Program 2 – Refunds of import duty
- Program 3 – Exemptions/Reductions of Land Rent, Tax and Levy
- Program 4 – Incentives on non-agricultural land use tax
- Program 5 – Export and import support in forms of preferential loan, guarantee and factoring
- Program 6 – Enterprise income tax preferences, exemptions and reductions
- Program 7 – Accelerated Depreciation of Fixed Assets
- Program 8 – Establishments Dealing with Exported Goods
- Program 9 – Investment support
- Program 10 – Export Promotion Program
- Program 11 – Grants to Firms that Employ More than 50 Employees
- Program 12 – Assistance to Enterprises Facing Difficulties for Objective Reasons

The CBSA found each program specific and therefore countervailable.

In its investigation, the CBSA received no response from the GOV to its request for information of the subsidies and so determined a subsidy rate on the facts available to it. The CBSA calculated the subsidy margin based on the difference between the estimated full costs of the subject goods, which are the costs of producing the goods plus allocated

⁵⁴ Hoa Phat Annual Report 2019, p37, available at <https://file.hoaphat.com.vn/hoaphat-com-vn/2020/05/annual-report-2019.pdf>

⁵⁵ CBSA numbering has been maintained.

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SG&A, and the estimated export price of the goods as declared on import documentation. From this, the CBSA calculated a subsidy margin of 6.5% for Vietnamese exports of cold-rolled steel.

The Commission has undertaken a high-level examination of these subsidies and concluded that the following are no longer in force, as they were terminated in 2006 by GOV Decree 108/2006/ND-CP, as part of the process for Vietnam's accession to the WTO in 2007:

- Program 8 – Establishments Dealing with Exported Goods
- Program 10 – Export Promotion Program
- Program 11 – Grants to Firms that Employ More than 50 Employees
- Program 12 – Assistance to Enterprises Facing Difficulties for Objective Reasons

The Commission considers that the remaining programs are likely still in force. However, it has not undertaken a comprehensive review of these programs in relation to their application to painted steel strapping producers as Signode Australia made no application for countervailing of subsidies from Vietnam.

The Commission has examined subsidisation of precision pipe and tube exported from Vietnam in Investigation 550 into precision pipe and tube exported from China, Korea, Taiwan and Vietnam (INV 550). In that investigation, the application alleged that Vietnamese producers received the same or similar subsidy programs. The Statement of Essential Facts in INV 550 found negligible subsidisation in relation to precision pipe and tube exported from Vietnam.

In addition, the Commission considers the level of subsidisation found by the CBSA in and of itself is unlikely sufficient to create a distortion in the Vietnamese domestic market for the goods.

A4 Competition in Vietnamese steel markets

In 2020, Vietnam imported 13.3 million tonnes of steel, compared to 9.85 million tonnes of exports, valued at over USD\$8 billion and USD\$5 billion respectively.⁵⁶ The high level of import penetration indicates a high level of competition within the Vietnamese steel market.

The applicant provided no direct evidence of a lack of competition in Vietnamese steel markets. In addition, analysis of raw material costs shows that the costs paid by Vietnamese producers for CRC, the main input and driver of CTM for steel strapping, are in line with benchmark figures for other Asian countries which are considered competitive markets.

With CRC being the major raw material input in steel strapping, a comparison of CRC costs between Sam Hwan and benchmark steel prices from MEPS gives an indication

⁵⁶ Vietnamese Steel Association, *Vietnam steel market in January 2021*, available at <http://vsa.com.vn/tinh-hinh-thi-truong-thep-viet-nam-thang-1-2021/>

into the relative CTM of steel strapping, for entities in Vietnam compared to other Asian countries.

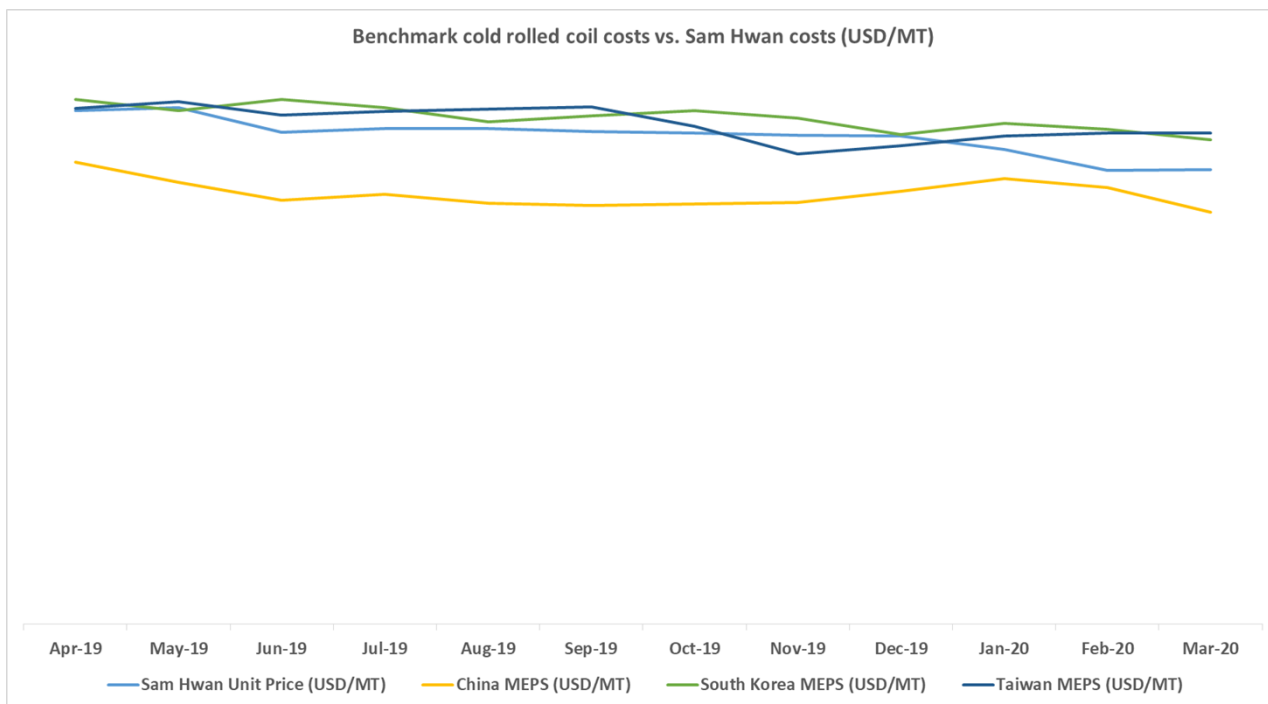


Figure 1 – Benchmark CRC costs vs. Sam Hwan costs⁵⁷

The figure above shows that costs for raw materials for Sam Hwan are in line with benchmark costs in comparable countries such as South Korea and Taiwan. Costs are considerably higher than the benchmark prices in China, where the applicant also alleged a market situation.

A5 GOV influence on the Vietnamese painted steel strapping market

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

In respect of the applicant’s assertion that the Steel Master Plans developed by the GOV are evidence of Government intervention, and following that, a market situation, the repeal of these Master Plans, as documented through official Government decrees (Decision No. 4977/QD-BCT and Law on Planning No. 21/2017/QH14), renders these plans invalid from 2019 onwards. The Commission considers there is no market situation that makes calculating the normal value for Vietnamese exports under section 269TAC(1) inappropriate because:

⁵⁷ Confidential Attachment 6 – Sam Hwan CTM benchmarking

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- there exists no official Government plans to control or otherwise influence the Vietnamese steel industry
- no demonstrated lasting effects from the time under the steel master plans, and
- no evidence of significantly different prices for raw materials in Vietnam compared to other Asian countries.