



Australian Government
Department of Industry, Science,
Energy and Resources

Anti-Dumping
Commission

CUSTOMS ACT 1901 - PART XVB

STATEMENT OF ESSENTIAL FACTS

NO. 558

**ALLEGED DUMPING OF ALUMINIUM ZINC COATED STEEL OF
A WIDTH EQUAL TO OR GREATER THAN 600 MILLIMETRES
EXPORTED FROM THE REPUBLIC OF KOREA, TAIWAN AND
THE SOCIALIST REPUBLIC OF VIETNAM**

AND

**ALLEGED SUBSIDISATION OF ALUMINIUM ZINC COATED
STEEL OF A WIDTH EQUAL TO OR GREATER THAN 600
MILLIMETRES
EXPORTED FROM THE SOCIALIST REPUBLIC OF VIETNAM**

22 September 2021

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ABBREVIATIONS

\$	Australian dollars
ABF	Australian Border Force
ADN	Anti-Dumping Notice
AFP	Anti-Finger Print
aluminium zinc coated steel (≥ 600 mm)	aluminium zinc coated steel of a width equal to or greater than 600 mm
AM	aluminium magnesium (coating type)
AS	Australian Standard
ASA	Australian Steel Association
AUD	Australian dollar
AZ	aluminium zinc (coating type)
BlueScope	BlueScope Steel Limited
BMT	Base metal thickness
CA Steel	CA Steel Products Pty Ltd
CBSA	Canada Border Services
China	People's Republic of China
CON 558	Consideration Report No. 558
CRC	cold rolled coil
CTM	Cost to make
CTMS	Cost to make & sell
DITH	DITH Australia Pty Ltd
Dongbu	KG Dongbu Steel Co., Ltd
Dongkuk	Dongkuk Steel Mill Co., Ltd
FOB	Free On Board
FIS	Free Into Store
FY	Financial year
GI	galvanised steel
GL	aluminium zinc alloy coated steel
GOV	Government of Vietnam
GS Global	GS Global Australia
Hoa Phat	Hoa Phat Steel Sheet Co. Ltd
HRC	hot rolled coil
HSG	Hoa Sen Group Joint Stock Company
IDD	interim dumping duty
Korea	Republic of Korea
Material Injury Direction	<i>Ministerial Direction on Material Injury 2012</i>
MCC	Model control codes

MT	Metric tonnes
MISO	Marubeni Itochu Steel Oceania Pty Ltd
mm	Millimetres
Nam Kim	Nam Kim Steel Joint Stock Company
NIP	Non-injurious price
OCOT	ordinary course of trade
PAD	Preliminary Affirmative Determination
REQ	response to exporter questionnaire
SCM agreement	<i>Article XVI:1 of the GATT 1994 and Article 25 of the WTO Agreement on Subsidies and Countervailing Measures.</i>
SEF	Statement of Essential Facts
Subject countries	Korea, Taiwan and Vietnam
SYSCO	SYSCO Steel Co., Ltd.
The Act	<i>Customs Act 1901</i>
The applicant	BlueScope
the commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
the Manual	<i>Anti-Dumping Commission Dumping and Subsidy Manual (November 2018)</i>
the Minister	the Minister for Industry, Science and Technology
USD	United States dollar
USP	Unsuppressed selling price
Vietnam	Socialist Republic of Vietnam
VN Steel	Vietnam Steel
VSA	Vietnam Steel Association
WTO	World Trade Organization
YE	Year ending
Yieh Phui	Yieh Phui Enterprise Co., Ltd.
ZA	zinc aluminium (coating type)

1 SUMMARY AND RECOMMENDATIONS

1.1 Preliminary finding

This statement of essential facts (SEF) No. 558 has been prepared in response to an application from BlueScope Steel Limited (BlueScope) seeking the publication of:

- a dumping duty notice in respect of aluminium zinc coated steel of a width equal to or greater than 600 millimetres (the goods, or the subject goods) exported to Australia from the Republic of Korea (Korea), Taiwan, and the Socialist Republic of Vietnam (Vietnam) (collectively, the subject countries) and
- a countervailing duty notice in respect of the goods from Vietnam.

BlueScope, the sole member of the Australian industry manufacturing like goods, claims that it suffered material injury due to dumped and subsidised imports of the goods.

The Commissioner of the Anti-Dumping Commission (the Commissioner) has found that with respect to exports from Korea in the investigation period, all exporters' goods were at dumped prices.

The Commissioner has found that with respect to exports from Taiwan in the investigation period, goods exported from:

- cooperating exporters Sheng Yu Steel Co Ltd (SYSCO) and Yieh Phui Enterprise Co Ltd (Yieh Phui) were not at dumped prices
- uncooperative exporters were dumped at volumes that are negligible.

The Commissioner has found that with respect to exports from Vietnam in the investigation period, goods exported from:

- cooperating exporters Hoa Phat Steel Sheet Co., Ltd (Hoa Phat) and Hoa Sen Group Joint Stock Company (HSG), and uncooperative exporters, were at dumped prices
- cooperating exporter Nam Kim Steel Joint Stock Company (Nam Kim) were not at dumped prices
- all exporters were not subsidised or subsidised at negligible levels.

The commission has found that the dumped exports from Korea and Vietnam caused material injury to the Australian industry.

Based on these preliminary findings and, subject to any further submissions received in response to this SEF, the Commissioner proposes to:

- recommend that the Minister for Industry, Science and Technology (the Minister) publish a dumping duty notice in respect of all exports of the goods from Korean exporters
- recommend that the Minister publish a dumping duty notice in respect of all exports of the goods from Vietnamese exporters, except for Nam Kim's exports
- terminate this investigation, in so far as it relates to Nam Kim

- terminate the subsidy investigation in respect of all exporters of the goods from Vietnam and
- terminate the dumping investigation in respect of all exporters of the goods from Taiwan.

1.2 Authority to make decision

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

1.2.1 Application

On 4 June 2020, BlueScope lodged an application alleging that the goods exported to Australia from Korea and Taiwan at dumped prices, as well as the goods from Vietnam at dumped and subsidised prices, caused material injury to the Australian industry.

Having considered the application, the Commissioner decided not to reject the application and initiated Investigation No. 558 on 30 June 2020.

Consideration Report No. 558 (CON 558) and Anti-Dumping Notice (ADN) No. 2020/067 provide further details relating to the initiation of the investigation.²

1.3 Findings and conclusions

The Commissioner's preliminary findings and conclusions in this SEF follow an assessment of the available information at this stage of the investigation. A summary of these preliminary findings is below and outlined in this SEF.

1.3.1 The goods and like goods and the Australian industry (chapters 3 and 4)

The Commissioner considers that locally produced aluminium zinc coated steel of a width equal to or greater than 600 millimetres (mm) are 'like' to the goods the subject of the application and is satisfied that there is an Australian industry producing like goods.

1.3.2 The Australian market (chapter 5)

The sources of supply for the Australian market for the goods and like goods are local production in Australia and imports from several countries, including the subject countries.

¹ All legislative references in this report are to the *Customs Act 1901*, unless otherwise stated.

² Electronic Public Record (EPR) No. 558, document 002 and 003.

1.3.3 Dumping margins (chapter 6)

The commission's assessment of dumping margins is set out in the table below.

Country	Exporter	Dumping margin (%)
Korea	KG Dongbu Steel Co., Ltd (KG Dongbu)	2.5
	Dongkuk Steel Mill Co., Ltd (Dongkuk)	6.9
	Uncooperative exporters	13.7
Taiwan	SYSCO	-5.6
	Yieh Phui	-4.4
	Uncooperative exporters	3.5
Vietnam	Hoa Phat	12.5
	HSG	5.2
	Nam Kim	-9.7
	Uncooperative exporters	20.6

Table 1 – Dumping Margins

1.3.4 Subsidy margins (chapter 7)

The commission's assessment of subsidy margins is set out in the table below.

Exporter	Subsidy Margin (%)
Nam Kim	N/A
Hoa Phat	N/A
HSG	N/A
Uncooperative Vietnamese exporters	0.4

Table 2 – Subsidy Margins (only relevant to Vietnamese exporters)

1.3.5 Economic condition of the Australian industry (chapter 8)

The Commissioner is preliminarily satisfied that the Australian industry has suffered material injury in the investigation period in the form of:

- price depression
- reduced profit
- reduced profitability.

1.3.6 Has dumping caused material injury (chapter 9)

The Commissioner is preliminarily satisfied that the Australian industry has suffered material injury due to the exported goods at dumped prices from Korean and Vietnamese exporters (except Nam Kim).

1.3.7 Whether dumping may continue (chapter 10)

The Commissioner considers that exports of the goods to Australia from Korean and Vietnamese exporters (except Nam Kim) may continue in the future at dumped prices.

1.3.8 Non-injurious price (chapter 11)

The commission has calculated that the non-injurious price (NIP) is less than the normal values ascertained for certain exporters from Vietnam. The Commissioner recommends that the Minister have regard to the desirability of the lesser duty rule for certain exporters from Vietnam.

1.3.9 Proposed measures (chapter 12)

The Commissioner proposes to recommend to the Minister that anti-dumping measures, using the combination duty method, apply to exports of the goods from Korea and Vietnam (except for Nam Kim).

1.3.10 Preliminary Affirmative Determination (chapter 13)

As part of this SEF, the Commissioner, after having regard to the application, the submissions received and other relevant information, has determined that it is appropriate to make a PAD. Pursuant to section 269TD(1)(a), the Commissioner is satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice in respect of the goods exported to Australia from all Korean and Vietnamese exporters, except for Nam Kim.

As a result, the Commissioner has made a PAD, pursuant to section 269TD. Securities will be taken in relation to interim dumping duty (IDD) that may become payable for imports of the goods that are entered for home consumption from 23 September 2021.

1.3.11 Termination and effect for certain exporters (chapter 14)

Section 269TDA provides for when the Commissioner must terminate an investigation.

Subject to any submissions received in response to this SEF, the Commissioner proposes to terminate:

- the dumping investigation in relation to all exporters from Taiwan, on the basis that
 - there has been no dumping of the goods from SYSCO and Yieh Phui, in accordance with section 269TDA(1)(b)(i) and
 - there are negligible volumes of dumped goods from uncooperative exporters, in accordance with 269TDA(3)
- the dumping investigation in relation to Nam Kim, on the basis that Nam Kim's exports of the goods during the investigation period were not at dumped prices, in accordance with section 269TDA(1)(b)(i) and
- the countervailing investigation in relation to all exporters from Vietnam, on the basis that:
 - in respect of Nam Kim, Hoa Phat, and HSG, no countervailable subsidy has been received in respect of the goods, pursuant to section 269TDA(2)(b)(i) and

- in respect of uncooperative entities, a countervailable subsidy has been received in respect of some or all of those goods but it never, at any time during the investigation period, exceeded the negligible level, pursuant to section 269TDA(2)(b)(ii).

2 BACKGROUND

2.1 Initiation

On 4 June 2020, BlueScope lodged an application with the Commissioner under section 269TB(1) seeking the publication of a dumping duty notice in respect of the goods exported to Australia from Korea, Taiwan and Vietnam, and a countervailing notice in respect of the goods exported from Vietnam.

Having considered the application, the Commissioner decided not to reject the application. The Commissioner initiated investigation 558 on 30 June 2020. CON 558 and ADN No. 2020/067 provide further details relating to the initiation of the investigation.³

In respect of this investigation:

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

2.2 Previous cases

The commission has carried out several cases into aluminium zinc coated steel. A summary of these cases is set out in the table below. The summary focusses on cases relating to all exporters from countries relevant to this investigation and therefore excludes exemption inquiries and accelerated review. The summary includes reviews of measures for exporters relevant to this investigation.

Case	Minister's decisions ADN	ADN date	Country of export	Findings
190 and 193 (Investigation)	2013/066 ⁴	5 August 2013	China, Korea, Taiwan	<ul style="list-style-type: none">• IDD imposed on China and Korea• Interim countervailing duty (ICD) imposed on China• Measures not imposed on Taiwan
456 (Review) and 450 (Continuation)	2018/095 (Review) ⁵ , 2018/097 (Continuation) ⁶	12 July 2018	China, Korea	<ul style="list-style-type: none">• IDD varied for China• Measures ceased for Korea

Table 3 - Summary of past cases relevant to the subject countries

³ EPR 558, document 002 and 003.

⁴ EPR 190, document 143.

⁵ EPR 456, document 019.

⁶ EPR 450, document 013.

Further information regarding the measures on aluminium zinc coated steel is also available on the commission's website.⁷

2.3 Conduct of the investigation

2.3.1 Australian industry

The Commissioner is satisfied that the applicant for the investigation, BlueScope, represents the Australian industry producing like goods to the goods the subject of the investigation.

2.3.2 Importers

The commission identified several importers in the Australian Border Force (ABF) import database that imported the goods from Korea, Taiwan and Vietnam during the investigation period. The commission forwarded importer questionnaires to 12 importers. The commission also made the importer questionnaire available on the public record for other importers (not contacted directly) to complete.

The commission undertook verification of the following importers:

- Macsteel International Australia (Macsteel), importing from Korea, Taiwan and Vietnam
- DITH Australia Pty Ltd (DITH), importing from Korea
- Marubeni Itochu Steel Oceania Pty Ltd (MISO), importing from subject countries
- CA Steel Products Pty Ltd (CA Steel), importing from Taiwan
- GS Global Australia (GS Global), importing from Korea.

Verification reports relating to each importer are available on the public record.

Ferrostaal Metals GmbH provided a response to the importer questionnaire. The commission did not conduct a verification of this data, as the import volumes were very low.

2.3.3 Exporters

The commission forwarded questionnaires to 11 suppliers identified in the ABF import database at the beginning of the investigation. Yieh Phui completed a questionnaire response (REQ) prior to the due date of 6 August 2020. Eight other entities sought (and were approved) extensions to provide a REQ. In total, 9 exporters completed the REQ, as noted in Table 4.

Name	Questionnaire submission date
Korea	
Dongkuk	9 June 2020
KG Dongbu	10 September 2020

⁷ Available on the commission [website](#).

Name	Questionnaire submission date
POSCO	31 August 2020
Taiwan	
Prosperity Tieh Enterprise Co., Ltd (Prosperity)	13 August 2020
SYSCO	26 August 2020
Yieh Phui	6 August 2020
Vietnam	
Hoa Phat	5 September 2020
HSG	4 September 2020
Nam Kim	31 August 2020

Table 4 – Entities who provided a REQ

The commission did not verify the information from POSCO and Prosperity as they did not export the goods during the investigation period. Specifically:

- as detailed in section 3.3.3.3, POSCO's exports of aluminium zinc coated steel do not meet the goods description and
- Prosperity's exports of aluminium zinc coated steel are chromated and therefore do not meet the goods description.

2.3.4 Foreign Governments

The commission forwarded questionnaires to the Government of Vietnam (GOV) at the beginning of the investigation. The commission has considered the response received from the GOV in reaching the preliminary findings contained within the SEF.

2.4 Submissions received from interested parties

The commission received the following submissions from interested parties prior to the publication of this SEF. The commission has considered the points raised in these submissions in preparing this SEF.

Public record document no.	Interested Party	Date published
004	Government of Vietnam	08/07/2020
005	BlueScope	10/07/2020
006	BlueScope	27/07/2020
010	Yieh Phui	19/08/2020
020	POSCO	29/09/2020
021	BlueScope	13/10/2020
022	BlueScope	13/10/2020
024	POSCO	30/10/2020
025	Yieh Phui	11/11/2020
026	Australian Steel Association (ASA)	12/11/2020
027	BlueScope	27/11/2020
031	BlueScope	03/03/2021

Public record document no.	Interested Party	Date published
032	POSCO	09/03/2021
033	BlueScope	17/03/2021
034	POSCO	25/03/2021
036	BlueScope	01/04/2021
037	BlueScope	28/05/2021
041	BlueScope	07/07/2021
042	BlueScope	13/07/2021
051	KG Dongbu	30/08/2021
055	Dongkuk	07/07/2021
056	Dongkuk	07/07/2021

Table 5 – Submissions considered in this SEF

2.5 Statement of essential facts

The Commissioner must, within 110 days after the initiation of an investigation, or such longer period as the Minister allows under section 269ZHI(3), place on the public record a SEF on which the Commissioner proposes to base a recommendation to the Minister in relation to the application.⁸

In formulating the SEF, the Commissioner must have regard to the application and any submissions concerning publication of the initiation notice submitted within 37 days after the initiation of the investigation.⁹ The Commissioner may also have regard to any other matters considered relevant.¹⁰

The SEF was originally due 19 October 2020. The commission obtained multiple extensions of time for this due date.¹¹ In the most recent extension, as advised in ADN No. 2021/114, the Commissioner approved an extension of time to 22 September 2021 for the publication of the SEF.

2.6 Preliminary affirmative determination

In accordance with section 269TD(1), the Commissioner may make a preliminary affirmative determination (PAD), if satisfied that:

- there appears to be sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice or
- it appears that there will be sufficient grounds for the publication of such notices subsequent to the importation of the goods into Australia.

A PAD may be made no earlier than day 60 of the investigation (in relation to this investigation, a date no earlier than 31 August 2020). The Commonwealth may require

⁸ This power has been delegated to the Commissioner. See ADN No. 2017/010. Also refer to section 269TDAA(1).

⁹ Section 269TDAA(2)(a).

¹⁰ Section 269TDAA(2)(b).

¹¹ EPR 558, document 023, 029 and 054.

and take securities at the time a PAD is made or at any time during the investigation after a PAD has been made, if the Commissioner is satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues.

In accordance with the PAD Direction, 60 days after the initiation of such an investigation, the Commissioner must make a PAD or provide a Status Report outlining the reasons why a PAD has not been made.

On 31 August 2020, the Commissioner published a Day 60 Status Report in ADN No. 2020/087.¹² In that report, the Commissioner set out that he did not make a PAD because he was not satisfied that, at that stage of the investigation, there appeared to be sufficient grounds for the publication of a dumping duty or countervailing duty notice.

The PAD Direction also requires the Commissioner to reconsider making a PAD after the publication of a status report, at least once prior to the publication of the SEF. In preparing this SEF, the Commissioner has reconsidered whether to make a PAD in view of the additional evidence available.

For the reasons set out in this SEF, the Commissioner is now satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice in relation to the goods exported to Australia from Korea and Vietnam (except Nam Kim).

The Commissioner considers that the Commonwealth should take securities under section 42 of the Act in respect of interim dumping duty that may become payable in relation to the goods exported to Australia from Korea and Vietnam (except Nam Kim).

The Commissioner is satisfied that securities are necessary to prevent material injury to the Australian industry occurring while the investigation continues. A detailed discussion of this is set out at section 13.3 of this report.

Securities will apply to imports of the goods from Korea and Vietnam (except Nam Kim) entered for home consumption on or after **23 September 2021**.

2.7 Responding to this SEF

This SEF sets out the essential facts on which the Commissioner proposes to base his final recommendations to the Minister.

This SEF represents an important stage in the investigation. It informs interested parties of the facts established and allows them to make submissions in response to the SEF.

It is important to note that the SEF may not represent the final views of the Commissioner.

Interested parties have 20 days to respond to the SEF. The Commissioner will consider these responses in making his final report to the Minister. The report will recommend

¹² EPR 558, document 011.

whether or not a dumping duty notice and/or a countervailing duty notice should be published, and the extent of any interim duties that are, or should be, payable.

Responses to this SEF are due no later than **12 October 2021**. The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Minister.

Submissions can be emailed to investigations4@adcommission.gov.au.

Alternatively, interested parties may post submissions to:

Director Investigations 4
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the public record.

A guide for making submissions is available at the commission's website via www.adcommission.gov.au.

The public record contains non-confidential submissions from interested parties, the non-confidential versions of the commission's visit reports and other publicly available documents.

Documents on the public record are to be read in conjunction with this SEF.

2.8 Report to the Minister

The Commissioner was initially due to provide his report in relation to this investigation to the Minister on or before 19 October 2020. However, as noted above, the commission obtained multiple extensions of time.¹³ Unless terminated earlier, the Commissioner is due to provide his report and recommendations to the Minister on or before 15 November 2021.¹⁴

¹³ Ibid.

¹⁴ Under section 269TEA.

3 THE GOODS AND LIKE GOODS

3.1 Preliminary finding

The commission is satisfied that locally manufactured aluminium zinc coated steel is 'like goods' to the goods the subject of the application.

3.2 Legislative framework

Section 269TC(1) of the Act requires that the Commissioner must reject an application for a dumping duty notice or countervailing duty notice if 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 the Australian industry produces 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:

- i. physical likeness
- ii. commercial likeness
- iii. functional likeness and
- iv. production likeness.

3.3 The goods

3.3.1 The goods description in the application

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

Flat rolled iron and steel products (whether or not containing alloys), of a width equal to or greater than 600 millimetres ('mm'), plated or coated with aluminium-zinc alloys, not painted, and whether or not including resin coating.

Trade or further generic names often used to describe the subject goods include:

- ZINCALUME® steel
- GALVALUME® steel
- Aluzinc, Supalume, Superlume, ZAM, GALFAN
- Zinc aluminium coated steel

- Aluminium zinc coated steel
- Aluminium zinc magnesium coated steel
- Alu-Zinc Steel sheet in Coils
- Al/Zn and
- Hot Dipped 55% Aluminium-Zinc Alloy coated steel sheet in coil.

The imported goods the subject of this application covers aluminum zinc coated steel whether or not including any combination of surface treatment. For example, whether passivated (often referred to as chromated), resin coated or not resin coated (often referred to as Anti-Finger Print ('AFP') or not AFP), oiled or not oiled, skin-passed or not skin-passed.

Excluded from the goods description of this application is un-passivated (often referred to as unchromated) aluminium zinc coated steel.

The amount of aluminium zinc coating on the steel is described as its coating mass and is nominated in grams per meter squared (g/m^2), with the prefix being AZ (Aluminium Zinc). Common coating masses used are: AZ200, AZ150, AZ100, and AZ70.

There are several relevant International Standards for aluminium zinc coated steel, covering the full range of products via specific grade designations, and including the recommended or guaranteed properties of each of those product grades.

These relevant standards are noted below in the table 'Relevant International Standards for Aluminium Zinc Coated Steel'.

International Standards	Product Grades
<i>General and Commercial Grades</i>	
AS/NZS 1397	G1, G2
ASTM A792	CS, type A, B and C
EN 10346	DX51D, DX52D
JIS 3321	SGLCC
<i>Forming, Pressing & Drawing Grades</i>	
AS/NZS 1397	G3
ASTM A792	FS, DS
EN 10346	DX53D, DX53D
JIS 3321	SGLCD, SGLCDD
<i>Structural Grades</i>	
AS/NZS 1397	G250, G300, G350, G450, G550
ASTM A792	33 (230), 37(255), 40 (275), 50 (340), 55 (380), 80 (550)
EN 10346	S220GD, S250GD, S280GD, S320GD, S350GD, S550GD
JIS 3321	SGLC400, SGLC440, SGLC490, SGLC570

Table 6 - Relevant International Standards for aluminium zinc coated steel

3.3.2 Tariff classification

The goods are generally, but not exclusively, classified to the following tariff classifications in Schedule 3 of the *Customs Tariff Act 1995*.

Tariff classification (Schedule 3 of the Customs Tariff Act 1995)		
Tariff Subheading	Statistical Code	Description
7210.61.00		FLAT-ROLLED PRODUCTS OF IRON OR NON-ALLOY STEEL, OF A WIDTH OF 600 mm OR MORE, CLAD, PLATED OR COATED: PLATED OR COATED WITH ALUMINIUM-ZINC ALLOYS
	60	<i>Of a thickness of less than 0.5 mm</i>
	61	<i>Of a thickness of 0.5 mm or more but less than 1.5 mm</i>
	62	<i>Of a thickness of 1.5 mm or more</i>
7225.99.00		FLAT-ROLLED PRODUCTS OF OTHER ALLOY STEEL, OF A WIDTH OF 600 mm OR MORE
	39	Other

Table 7 - The goods and general tariff classification for the goods

3.3.3 Submissions received on the goods – coating types

The commission received several submissions on coating types relevant to the goods description.

3.3.3.1 Submissions received on the goods – PhuizerFan

In its submission of 6 August 2020, Yieh Phui stated that it sells a product that is hot-dip 5% aluminium-zinc coated steel sheets in coils (sold under Yieh Phui's trade name PhuizerFan®; also known as GALFAN in the steel industry). It stated that these goods:

- have a hot-dip coating of zinc with a nominal element of 5% aluminium and less than 1% of minor additions of controlled elements
- fall within the coating category of zinc aluminium (ZA) as per section 1.3.3 of Australian Standard (AS) 1397 and
- are classified under subheading 7210.61.00 of Schedule 3 of the *Customs Tariff Act 1995*.¹⁵

Additionally, Yieh Phui submitted that:

- BlueScope produces and sells only aluminium magnesium (AM) coated steel and perhaps some aluminium zinc (AZ) coated steel in Australia.
- Yieh Phui's exports do not meet the goods description and do not share characteristics with BlueScope's AM/AZ coated steel under the 4 likeness tests the commission considers.
- The ZA coated goods it exports to Australia should be exempt from any measures that imposed on the subject goods.¹⁶

¹⁵ EPR 558, document 010.

¹⁶ The commission notes that the likeness characteristics are detailed at section 3.2 of this SEF.

The commission received a response from BlueScope in response to Yieh Phui's exemption request for product PhuizerFan on 8 October 2020. BlueScope stated:

- PhuizerFan is simply a variant of the aluminium-zinc coated steel (with or without magnesium) and this good is essentially the same product as GALFAN which a number of other steel makers sell.
- This product is essentially a superior version of zinc coated (i.e. galvanised or GI) steel and complies with the AS 1397.
- Steel products coated with an alloy of aluminium and zinc also compete against steel goods with an alloy of aluminium, zinc and magnesium in Australia.
- The goods not being identical to BlueScope is irrelevant for the purposes of the investigation and the commission is required to assess whether the Australian industry manufactures like goods to those imported.
- PhuizerFan shares the characteristics as BlueScope's products having regard to the physical, commercial, functional and production likeness factors.¹⁷

The commission received a submission from Yieh Phui, dated 10 November 2020, in response to BlueScope's submission. Yieh Phui provided detailed information and attachments supporting its position that PhuizerFan differs from products which BlueScope produces and sells across the 4 likeness factors.¹⁸

3.3.3.2 Submissions received on the goods – PosMAC

In its REQ on 28 September 2020, POSCO stated that:

- it does not produce aluminium-zinc coated steel (known as 'galvalume'), being the goods subject to Investigation 558
- POSCO produces aluminium zinc and magnesium coated steel product known as 'PosMAC'
- due to the composition being a majority of zinc and magnesium (also known as a coating type of ZM) it cannot be described as aluminium zinc coated steel and therefore does not fall within the categories of zinc/aluminium/magnesium coated steel described in AS 1397.¹⁹

In a submission provided on 8 October 2020 BlueScope responded:

- PosMAC is one of a variety of aluminium zinc alloy coated steel products manufactured and sold around the world with or without magnesium.
- PosMAC competes with similar products such as Mittal's Magnelis®, Tata Corus's Magi Zinc®, Nippon Steel's 'SuperDyma® and Nishan's ZAM®' product which each have a coating comprising of aluminium zinc.
- While PosMAC does not fit the current version of AS 1397 standard due to its portion of aluminium, it does conform to the Korean Standards Association's KS D 3030 standard.²⁰

¹⁷ EPR 558, document 021.

¹⁸ EPR 558, document 025.

¹⁹ EPR 558, document 014.

²⁰ EPR 558, document 022.

Consequently, BlueScope considers in its submission that, despite POSCO's claim that PosMAC is 'different' to the goods the subject of BlueScope's application, the commission is required to examine whether the Australian industry manufactures like goods to the imported goods. BlueScope states that it is reasonable to conclude that the locally produced goods are alike in all respects to the imported goods.

POSCO responded to BlueScope in a submission provided on 28 October 2020.²¹ POSCO submitted that within the public notice given under section 269TC(4), the commission sets out the particulars of the goods the subject of the application. POSCO claims it would be unlawful for the commission to revise those particulars or interpret them to enlarge the scope of the investigation from the particularisation of the goods.

The submission outlines reasons why PosMAC is not within the scope of the goods subject to the application. POSCO states that:

- PosMAC is plated or coated with zinc, magnesium and aluminium alloys.
- The coating on PosMAC is ZM and not AM. The goods in the section 269TC(4) notice are particularised as having an AZ coating.
- PosMAC does comply with the definition of zinc-magnesium-aluminium alloy coated steel stipulated in AS 1397, and the Korean standard that BlueScope quoted is not cited in the section 269TC(4) notice.
- The coatings listed for PosMAC are physically different to those listed in galvanised steel (GI) and aluminium zinc alloy coated steel (GL) with PosMAC having 5 to 10 times greater corrosion resistance compared to GI and GL.
- PosMAC does not fit the tariff codes listed in the section 269TC(4) notice.

In a submission from the ASA provided on 10 November 2020, it stated that its understanding is that the following goods are not 'aluminium-zinc' alloy coated steel as per the goods under consideration:

- PosMAC® (POSCO)
- Magnelis® (Arcelormittal)
- Magi Zinc® (Tata Corus)
- SuperDyma® (Nippon) and
- ZAM® (Nishan).²²

In addition, the ASA advised there are significant differences in the following areas:

- Physical likeness – BlueScope are not able to produce the same dimensions as the products above, with the above products produced in wider dimension ranges (thickness and width) than the BlueScope equivalent.
- Commercial likeness – the above products have a range of uses, including air-condition ducting, composite decking, composite walling, and purlins and grits. BlueScope's sales are predominantly into roofing and walling applications and therefore do not compete with the above goods.

²¹ EPR 558, document 024.

²² EPR 558, document 026.

- Functional likeness – the locally produced goods are not used interchangeably with the same applications as the abovementioned products and therefore do not compete for sales with the same customers.
- Production likeness – the production processes are similar but the raw material inputs not the same. BlueScope's assertion that everything is 'aluminium zinc' alloy coated steel is not technically correct with significant differences in Base Metal Thickness (BMT), coating compositions and standards.²³

In BlueScope's submission provided on 26 November 2020 in response, BlueScope sets out additional reasons for its contention that PosMAC is the goods under consideration:

- A key consideration is what constitutes an 'alloy' as included in the goods description. BlueScope defines an alloy as a mixture of 2 or more metals or metallic elements with non-metallic elements, which encompasses variants of aluminium zinc alloy coated steel as subject goods.
- Definitions from the British Dictionary, Cambridge Dictionary, Collins Dictionary and Merriam-Webster Dictionary all have similar explanations/characterisations of the word 'alloy'.
- Aluminium zinc alloy coatings that contain magnesium (i.e. PosMAC) are alloys that contain either 3 or 4 metals or elements.
- BlueScope manufactures aluminium zinc magnesium alloy coated steel (Next Generation ZINCALUME® steel) which is the only variant of aluminium zinc alloy coated steel which BlueScope has manufactured and sold since 2013.
- PosMAC does not meet the requirements of AS 1397 or JIS G3323, however the issue is whether the local industry manufacturers a like good to the imported good and whether they are sold in the same end-use applications.
- While PosMAC is imported under tariff classification code 7210.4, which relates to zinc coated or 'galvanised iron' steels, it should be classified under tariff classification code 7210.6 which is for goods 'plated or coated with aluminium zinc alloys.'²⁴

BlueScope reiterate that PosMAC and BlueScope's ZINCALUME® steel share similar essential characteristics of physical, commercial, function and production likeness.

The commission published a file note on 1 February 2021 in response to the above submissions regarding coating types. Therein, the commission acknowledges the definition of an alloy that BlueScope provided, however the commission stated that the definition does not render PosMAC to automatically fall within the scope of the goods description.²⁵ It further stated that the standards provided in the goods description are an exhaustive list, and PosMAC does not comply with the standards listed in the goods description. The commission's preliminary conclusion was that PosMAC is not the goods subject to the investigation.

BlueScope made a further submission in response to the file note on 2 March 2021. BlueScope stated that:

²³ Ibid.

²⁴ EPR 558, document 027.

²⁵ EPR 558, document 028.

- aluminium zinc magnesium coated steel is a trade or generic name listed within the goods description in ADN No. 2020/067
- PosMAC does not fit the standards listed in AS 1397, ASTM A792, or JIS 3321 however it does comply and meet all the requirements of the listed EN 10346
- PosMAC is listed as a trade or generic name in the goods description, and should be included within the goods listed in the section 269TC(4) notice.²⁶

On 5 March 2021 POSCO responded to BlueScope's points:

- The EN 10346 standard included within the goods description, includes all coating (zinc coated (Z), zinc-iron alloy coated (ZF), zinc-aluminium coated (ZA), zinc-magnesium coated (ZM), aluminium-zinc coated (AZ) and aluminium-silicon coated (AS).
- The goods description mentions the goods being under the prefix AZ (aluminium zinc).
- The relevant standards included in the goods description should be read within the context provided i.e. they are mentioned as relevant standards to aluminium zinc coated steel also referred to as the prefix AZ therefore the standards are to relate to goods with the prefix AZ.
- Subsequently the rest of the goods description uses the terminology AZ which is defined in EN 10346 as AZ coated steel whereas PosMAC's prefixes are ZM.²⁷

BlueScope's response on 17 March 2021 raised the following points:

- In POSCO's submissions, POSCO omitted the inclusion of trade or generic names to describe the subject goods which include PosMAC under its generic name 'aluminium zinc magnesium coated steel'.
- As this trade and generic name is mentioned above the international standards, the context in which they are to be interpreted should also encompass PosMAC.
- The commission states in its file note that the international standards listed in the goods description are an exhaustive list and PosMAC is a good covered under the trade and generic names within the goods description and listed within the applicable international standards.
- ZINCALUME and ZAM are trade names covered in the goods description with a coating composition of aluminium zinc magnesium coated steel (ZM).
- GALFAN (essentially the same product as Yieh Phui's PhuizerFan) is a registered trade name covered in the goods description for one type of zinc and aluminium coated product subject to measures in Investigation 190
- GALVALUME®, and Superlume® are registered trade names for the other type of aluminium and zinc coated steel product and were subjected to measures in Investigation 190
- The notice also identifies excluded goods as 'un-passivated aluminium zinc alloy coated steel' or unchromated surface finish which PosMAC is not.

²⁶ EPR 558, document 031.

²⁷ EPR 558, document 032.

- The exempt goods do not exclude any particular type of coating, whether or not it includes magnesium.²⁸

In a submission provided on 24 March 2021, POSCO responded that:

- BlueScope's assertion that PosMAC is 'aluminium zinc magnesium coated steel' is incorrect, PosMAC is 'zinc magnesium aluminium' coated steel
- it agrees with the commission's statement in relation to alloys that an alloy, if a mixture of elements, does not mean one mixture is the same as another mixture
- 'aluminium zinc' alloys do not equate to 'zinc magnesium aluminium' alloys from a technical standpoint and there are various physical and chemical differences between the 2 coating types
- the assertion that 'aluminium zinc magnesium coated steel' is a generic trade name for 'Flat rolled iron and steel products... plated or coated with aluminium zinc alloys' is incorrect
- PosMAC is not included as a trade or generic name in the section 269TC(4) notice
- the international standards cover the goods that are not with the prefix of AZ.²⁹

In a submission provided on 1 April 2021, BlueScope submits that:

- irrespective of the amount of aluminium contained within aluminium zinc magnesium alloy coatings, all variants of aluminium zinc magnesium alloy coated steel products are the goods subject to this investigation;
- the international standard EN 10346 details a range of coated products including aluminium zinc magnesium coated steel which includes PosMAC
- POSCO fails to demonstrate why PosMAC is not captured under standard EN 10346.³⁰

3.3.3.3 *Commission's assessment of coating types*

As outlined in the file note of 1 February 2021, the commission acknowledges that 'alloys' are a metal constituting 2 or more metallic elements. An alloy of aluminium and zinc (and other metallic or non-metallic elements) captures a broad range of coating types. That is, not all alloys are alike, and an alloy containing aluminium and zinc does not of itself constitute the vital characteristic determinative of whether a good meets the goods description or not. The commission considers the goods description in its entirety and within the context provided.

The commission observes that the opening passage of the goods description does not reference coatings containing alloys of aluminium and zinc generally. Instead, it states that the coating type relevant to the goods under consideration is 'aluminium-zinc alloys'. The commission considers that the specific assignment of metallic elements in this phrase conforms to the practice utilised in the Australian Standard of the metallic element having the highest proportion appearing first (in this case 'A'), then the metallic element having the second highest proportion appearing second ('Z'). The phrasing 'aluminium

²⁸ EPR 558, document 033.

²⁹ EPR 558, document 034.

³⁰ EPR 558, document 036.

zinc alloys' indicates coating type AZ as the relevant coating type to the goods description.

Further, the commission has assessed the standards outlined in the goods description. Two of the standards (ASTM A792 and JIS 3321) are relevant to coatings prefixed as AZ and do not include any other coating type. The other 2 standards (AS/NZS 1397 and EN10346) cover a range of alloys. Some of these coating types appear to relate to the goods description, as they contain varying proportions of primarily aluminium and zinc, and other metallic elements. Some of the coating types are obviously not the goods under consideration (e.g. coating prefix 'Z' and 'ZF' that do not contain any aluminium). Based on the variety of coating types included in the standards (some of which are obviously not the goods under consideration) the commission is of the view that a coating type specified in the indicated standards does not, of itself, qualify that coating type as being the goods under consideration. The commission considers that since coating type AZ is contained in all 4 standards, then AZ would be at least one of the coating types to which the goods description refers.

On consideration of the above assessment of standards, the commission agrees that PosMAC does fit within the standard EN 10346, as a good with a prefix of ZM. However, this does not necessarily render PosMAC to be the goods.

In addition to its assessment of the standards, the commission has considered the phrasing used in BlueScope's goods description in respect of the coating mass for the goods under consideration (commission emphasis added):

*The amount of aluminium zinc coating on the steel is described as its coating mass and is nominated in grams per meter squared (g/m^2), **with the prefix being AZ (Aluminium Zinc)**. Common coating masses used are: AZ200, AZ150, AZ100, and AZ70.*

This passage from the goods description indicates that the coating type AZ is the only coating type that the goods description captures.

The commission acknowledges that the goods description includes various trade and generic names which seek to assist to identify the goods under consideration. Some of these trade or generic names include alloys of varying proportions of aluminium and zinc (and magnesium as another indicated metallic constituent). However, the commission is of the view that on balance the goods description is in reference to coating type AZ and not any other alloy.

Therefore, the commission finds that any coating type not prefixed with AZ is not the goods. Both Yieh Phui's PhuizerFan and POSCO's PosMAC are not the subject of this investigation.

3.4 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.³¹

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 whether they are therefore like goods.

3.4.1 Physical likeness

The primary physical characteristics of the goods and the locally produced goods are similar (having similar available size, shape, total weight, strength rating, appearance, and sharing the same Australian standards), notwithstanding variations in individual customer or technical specifications such as differences in diameter or finish. The goods and the locally produced goods differ only in the chemical composition of the coating. The locally produced aluminium zinc coated steel contains magnesium with the coating type 'AM'. The goods under consideration, designated using the coating type AZ, do not contain magnesium. Both coating types fall under the same Australian Standard (AS/NZS 1397).

3.4.2 Commercial likeness

The commission has found that the locally produced goods compete in the same or similar market sector, have the same or similar packaging and distribution channels, and appear to be interchangeable with the goods under consideration. For example, BlueScope's undercutting examples in its application refer to competitive quotes against imports of goods with coating type AZ.

3.4.3 Functional likeness

The commission found the locally produced goods have the same or similar end uses as the goods under consideration. BlueScope's technical sheets for aluminium zinc coated steel of type AZ (which BlueScope previously produced) and for AM (which BlueScope now produces) show the same applications. In addition, the Australian Standard for the goods show near identical uses for goods designated as AZ and goods designated as AM.

3.4.4 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.³² Hot rolled coil (HRC) or cold rolled coil (CRC) are the major raw material input.

3.4.5 Like goods assessment

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

³¹ See Chapter 4 for further discussion on the Australian industry.

³² See section 4.3 for further discussion on the production process.

- 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 and
- the goods and the domestically produced goods are manufactured in a similar manner.

Based on the analysis above, the Commissioner is satisfied that the Australian industry produces ‘like goods’ the subject of the application to the goods as defined in section 269T.

3.5 Model control codes

The commission has used a model control codes (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 Anti-Dumping Commission *Dumping and Subsidy Manual* (the Manual). All interested parties participating in this inquiry were requested to provide sales and cost data in accordance with the MCC structure detailed in the table below:

Item	Category	Sub-Category	Identifier	Sales Data	Cost Data	Key category
1	Prime	Prime	P	Mandatory	Not applicable	Yes
		Non-Prime	N			
2	Coating Mass	≤ 100 g/m ²	1	Mandatory	Mandatory	Yes
		>100 g/m ² to ≤ 165 g/m ²	2			
		>165 g/m ²	3			
3	Steel Grade	G2 / SGLCC	A	Mandatory	Mandatory	Yes
		G3 / SGLCD	B			
		G250 / SGLC 340	C			
		G300 / G350 / SGLC 400 / SGLC 440 / SGLC 490	D			
		G450 / G500	E			
		G550 / SGLC 570	F			
		Other	G			
4	Base Metal Thickness (BMT)	< 0.40 mm	1	Mandatory	Mandatory	Yes
		≥ 0.40 mm to < 0.50 mm	2			
		≥ 0.50 mm to < 0.75 mm	3			
		≥ 0.75 mm to < 1.00 mm	4			
		≥ 1.00 mm to < 2.00 mm	5			
5	Width	< 600 mm	1	Mandatory	Mandatory	No
		≥ 600 mm	2			
6	Form	Coil	C	Mandatory	Optional	No
		Sheet	S			

Table 8 - MCC Structure

3.5.1 Submissions received in respect of the MCC structure – Base Metal Thickness

In its submission of 27 July 2020, BlueScope stated that the categorisation of the MCC Category 4 (BMT) did not contain a sub-category to accommodate for any BMT over 2.00 mm.³³ As a result, BlueScope suggested that an additional identifier (6) be added for any BMT that's above 2.00 mm.

POSCO responded to BlueScope's request for the amendment to the BMT sub-category on 28 September 2020, in its REQ. POSCO stated that BlueScope do not produce goods above 2.00 mm and cited BlueScope's application that the locally produced subject goods are with a BMT of between 0.30 mm to 1.60 mm.³⁴ POSCO does not agree with BlueScope's request for an addition to the MCCs, citing the thickness being outside BlueScope's manufacturing capacity.

3.5.2 Commission's assessment in respect of the MCC structures

The commission notes that the goods description listed within ADN 2020/067 did not describe any limitations on BMT. As outlined in the Manual:

Modifications to the MCC structure may be considered based on the facts and evidence pertaining to a particular exporter³⁵

BlueScope's request to amend the MCC and any changes to the proposed MCC structure, or alterations in terms of its application in respect of each interested party, have been addressed in the relevant verification reports. The verification reports are available on the public record for this investigation.

3.5.3 Submissions received in respect of POSCO's MCCs

The commission received multiple submissions in relation to POSCO disclosing its MCCs in its REQ.³⁶ The commission has made an assessment of the relevant information and does not consider the goods (refer to section 3.3.3.3 above) that POSCO sold to be the goods under consideration and therefore no further action is required regarding POSCO disclosing its MCCs.

³³ EPR 558, document 006.

³⁴ EPR 558, document 014.

³⁵ Chapter 14.1, the Manual.

³⁶ EPR 558, document 020, 022 and 041.

4 THE AUSTRALIAN INDUSTRY

4.1 Preliminary finding

The Commissioner is satisfied that there is an Australian industry, consisting wholly of BlueScope, producing like goods, and that the like goods are wholly manufactured in Australia.

4.2 Legislative framework

The Commissioner must be satisfied that the 'like' goods are produced in Australia. Sections 269T(2) and 269T(3) of the Act specify that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

4.3 Production process

The production process of BlueScope's like goods comprises the following steps:

- The input steel product is slab. Slab is heated in a furnace to around 1,200°C then passed through a series of rollers at pressure to reduce the thickness from 230 mm to below 5 mm. It is then control cooled, and wound up as a coil of steel (hot rolled coil or HRC).
- The HRC is then further processed. It is passed through hydrochloric acid baths to remove surface scale then edge trimmed to the customer-specified width.
- The processed HRC is cold-rolled (reduced in thickness when passing through a series of rollers at ambient temperature) to the customer's requirements, generally 0.3 to 3.5 mm BMT.
- The cold rolled steel coil is used as the input feed material to the continuous coating line. During this process, the coil is run continuously through several key processes. The coil is cleaned, annealed, passed through a molten bath mixture of zinc, antimony and other trace metals. Then, once coated, the product can receive various surface treatments, according to the customer's specific requirements.
- Additional production steps may be undertaken according to a range of product options. These include a 'skin passed' or 'un-skin passed' surface, chromated or unchromated surface, an 'oiled surface' or 'dry surface', or 'resin coated' (or 'anti-finger print' coating) or 'not resin coated'.

4.4 Preliminary conclusion

The Commissioner is satisfied that:

- the like goods are wholly manufactured in Australia
- there is an Australian industry, consisting wholly of BlueScope, producing like goods to the goods exported to Australia.

5 AUSTRALIAN MARKET

5.1 Preliminary finding

The Commissioner has found the Australian industry and imports from a number of countries, including the subject countries, supply the Australian market for aluminium zinc coated steel.

5.2 Background

The sources of supply for the Australian market for aluminium zinc coated steel are:

- a single domestic producer (BlueScope – the Australian industry)
- producers from other countries who supply Australian distributors or end-users via multiple channels (direct from overseas mill, via international traders, or via stockists and resellers who may or may not be affiliated with the mill).

The largest 3 exporters of aluminium zinc coated steel supplying the Australian market originate from Korea, Taiwan and Vietnam.

Anti-dumping measures are currently applicable to all imports of the goods from the People's Republic of China (China).

The commission understands that customers are readily able to change supplier.

5.3 Market structure

The 2 key markets in Australia for aluminium zinc coated steel are:

- the building and construction industry, consisting of residential construction, and industrial/commercial segments and
- the manufacturing industry, which produces non-construction related products.

In the building and construction industry, the main uses for aluminium zinc coated steel are for roll formed roof and wall cladding, rain water goods such as guttering and downpipes, roof flashing and trims, residential roof trusses, residential roofing battens, ceiling battens, residential house framing, wall structural sections, office wall framing, garden sheds, and garage door panels. In the general manufacturing industry, the main uses are for components in domestic appliances, hot water system components, cabinets, flues, ducting, grain silos and general manufactured articles.

The building and construction industry is BlueScope's largest consumer of the like goods, in terms of sales volume. The remaining sales to the general manufacturing industry are the smaller segment of BlueScope's volume of like goods.

In the Australian market, locally produced goods and imports are used interchangeably across the 2 key market segments.

5.3.1 Marketing and distribution

BlueScope sells aluminium zinc coated steel under several brand names. The different brands are sold into different market sectors, which enables BlueScope to develop marketing strategies that target particular market sectors. ZINCALUME® and TRUECORE® are the main brands of BlueScope's like goods. ZINCALUME® is the largest selling brand relevant to this investigation. Both brands have the same active surface properties but TRUECORE® is targeted at the house framing market. TRUECORE® is slit to sizes that are appropriate for application in the framing market, and is coated with a blue tinted resin.³⁷ Downstream fabricators or manufacturers slit BlueScope's like goods.

BlueScope primarily sells its like goods to customers in Australia via national service centres and steel distribution businesses. Some like goods are sold to customers directly from the mills. BlueScope provided examples for undercutting which indicate that BlueScope is aware of the end-user of the goods when supplying its like goods via its distribution channels.

Exporters were found to generally export their goods to Australian steel distribution businesses, who then on-sell the goods to end-users. There were also direct sales to end-users.

5.3.2 Supply

The commission understands that there are limited ways in which suppliers can differentiate their offering beyond price and service. In most circumstances, customers can easily change suppliers.

Within the building and construction market, a major proportion of the sales of BlueScope's like goods are directly to the building product manufacturing industry in Australia. This industry roll-forms the goods into building products (such as roof cladding) and then distributes the manufactured products downstream (to builders, home owners etc.).

Otherwise, BlueScope's like goods are sold to the local distribution market (via distributor/resellers who on-sell BlueScope's like goods into the building and construction market), or the like goods are sold to the general manufacturing industry.

Producers from other countries supply the Australian market to their Australian customers through Australian steel distributors, the majority of which are supplied via the importers that participated in the investigation. A small proportion of the goods under consideration enter the Australian market directly from the mill to the end-user or distributor. Overseas producers supply the same market segments as the Australian industry and in some instances the same customers.

³⁷ Aluminium zinc coated steel (≥ 600 mm) is slit by BlueScope to produce aluminium zinc coated steel of a width less than 600 mm, which is the subject of a separate investigation (Investigation 559, dumping and subsidisation investigation of aluminium zinc coated steel of a width less than 600 mm exported from China and Vietnam).

Importers of the goods often source from numerous mills and countries.

5.3.3 Demand

The primary demand driver for aluminium zinc coated steel is the demand for residential and commercial construction.

A number of factors impact on the market for the aluminium zinc coated steel. This includes factors that impact residential and commercial construction such as seasonal fluctuations (wet/dry seasons, holiday season shutdown), economic factors (availability for capital, domestic conditions, consumer confidence), and government regulation (standards, policies).

The commission reviewed BlueScope's sales data for the current investigation and data provided with respect to the most recent review of measures relevant to BlueScope's like goods of aluminium zinc coated steel (≥ 600 mm).³⁸ Some seasonal variation was observed. The commission observed that the majority of sales were to the building industry or to distributors.

5.4 Pricing

BlueScope manufactures the majority of its goods to order. It releases price lists monthly with the base price based on the manufacturing cost, and negotiates directly with the customer. In price negotiation, BlueScope will consider the price offerings of import competition where this information is available.

The commission understands that, for the supply of the goods via the national network of steel distributors and importers, prices are set in different ways. Some importers of the goods rely on price lists from the mills, which they distribute to customers (end user or distributors). Others rely on more direct customer engagement, whether the customer approaches them or they approach the customer to supply the goods, and a price is sought from the mill. The commission understands that, irrespective of the approach adopted, customers are readily able to switch suppliers in most instances. Customers can negotiate price, delivery terms and payment terms. The commission understands that the price, service, availability, range and quality of the goods are factors that are important in achieving the sale. The commission understands that the majority of the goods are supplied to order.

5.5 Market size

The commission has evaluated the size of the Australian market for aluminium zinc coated steel. This captures sales volume data from BlueScope's application and import volumes from the ABF import database.

In its application, BlueScope identified the following tariff classifications as being relevant to the goods

³⁸ Review no. 522, review of the Anti-Dumping measures applying to the same goods the subject of this investigation, aluminium zinc coated steel (≥ 600 mm), exported to Australia from China.

- 7210.61.00 statistical codes 60, 61 and 62 and
- 7225.99.00 statistical code 39.

The commission agrees that these tariff classifications are suitable for determining the size of the Australian market.

The commission has cleansed the ABF data to ensure, as far as practicable, that only the goods relevant to the application have been included. The data has been cleansed with reference to the goods description listed against each shipment, with consideration of an appropriate range of free on board unit price, and with consideration of the data obtained from importers and exporters verified with respect to the investigation.³⁹

Figure 1 shows the trends in the volumes of the Australian market participants in the injury period. The Australian market for the subject goods has increased 13% over the injury period, however it underwent a period of flattening and decline from year ending (YE) March 2018.

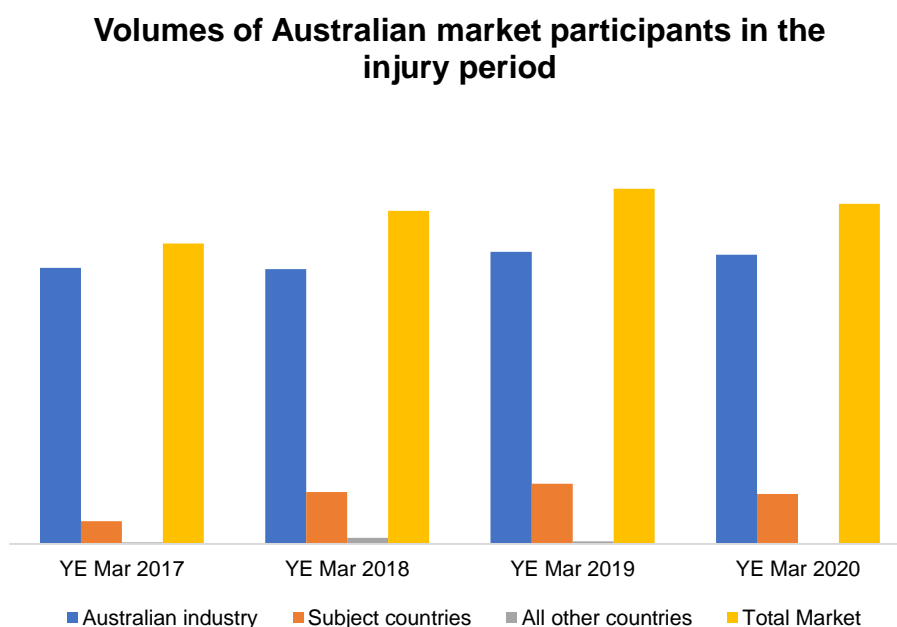


Figure 1 – Australian market trends over the injury period

The commission's analysis of the Australian market is in **Confidential Attachment 1**.

³⁹ A filter to remove FOB unit prices greater than 1600 AUD/MT was applied to be the ABF data. There was no lower limit filter applied since the commission's cleansing of the data (which included an examination of the description of the goods recorded against each shipment) removed low priced items.

6 DUMPING INVESTIGATION

6.1 Preliminary finding

The commission has found that the goods exported to Australia from Korea, Taiwan (except Taiwanese exporters SYSCO and Yieh Phui), and Vietnam (except Vietnamese exporter Nam Kim) have been dumped.

The commission's assessment of the dumping margins is set out in the table below.

Country	Exporter	Dumping Margin (%)
Korea	KG Dongbu	2.5
	Dongkuk	6.9
	Uncooperative exporters	13.7
Taiwan	SYSCO	-5.6
	Yieh Phui	-4.4
	Uncooperative exporters	3.5
Vietnam	Hoa Phat	12.5
	HSG	5.2
	Nam Kim	-9.7
	Uncooperative exporters	20.6

Table 9 – Dumping Margins

6.2 Legislative and policy framework

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 exporters exported dumped goods to Australia.

Section 269TDA(1) also requires that the Commissioner must terminate the investigation, in so far as it relates to an exporter, if satisfied that the exporter has not dumped the goods, or there has been dumping during the investigation period, but the dumping margin is less than 2%.

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.

6.2.1 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 purchased by the importer from the exporter in 'arms length' transactions.

6.2.2 Normal value

The normal value is determined in accordance with section 269TAC.

Section 269TAC(1) provides that:

...[T]he 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.

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).⁴⁰

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 a proper comparison can be made at the MCC level. In these situations, the commission may consider whether a surrogate domestic model is required to calculate the normal value for the exported model.

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 Minister is satisfied that because of a situation in the market of the country of export, such sales in that market are not suitable for use in determining a price under section 269TAC(1).⁴¹

⁴⁰ Chapter 7, the Manual.

⁴¹ Referred to in this report as a 'particular market situation'.

6.2.3 Dumping margin

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

6.3 Particular market situation

BlueScope alleged in its application that a particular market situation exists in relation to the domestic market for like goods for Vietnam such that sales are unsuitable for determining normal value under section 269TAC(1).

As set out in **Non-confidential Appendix A**, it is the commission's view that a particular market situation did not exist in respect of the domestic market for aluminium zinc coated steel in Vietnam for the investigation period.

6.4 Exporters

6.4.1 Cooperative exporters

Section 269T(1) provides that, in relation to a dumping investigation, an exporter is a 'cooperative exporter' if the exporter's exports were examined as part of the investigation and the exporter was not an 'uncooperative exporter'.

At the commencement of the investigation, the commission contacted a number of entities it had identified as possible exporters of the goods, based on information in the ABF import database and from BlueScope's application, and invited them to complete an exporter questionnaire.

The following exporters provided REQs that did not contain any deficiencies and were considered capable of verification:

Country	Exporter
Korea	Dongbu
	Dongkuk
Taiwan	SYSCO
	Yieh Phui
Vietnam	Hoa Phat
	HSG
	Nam Kim

Table 10 – Summary of exporters that provided a REQ

6.4.2 Uncooperative exporters

Section 269T(1) provides that an exporter is an 'uncooperative exporter' where the Commissioner is satisfied that an exporter did not give the Commissioner information that the Commissioner considered to be relevant to the investigation within a reasonable period, or if satisfied that an exporter significantly impeded the investigation. Section 8 of the *Customs (Extensions of Time and Non-cooperation) Direction 2015* (the Customs

Direction) sets out that the Commissioner must determine an exporter to be an uncooperative exporter, in certain circumstances. In particular, if the exporter provides no relevant information in a reasonable period, if that exporter fails to provide a response, or fails to request a longer period to do so, within the legislated period.

The Commissioner considered the Customs Direction and determined that any exporter, which did not do any of the following, is an uncooperative exporter for the purposes of this investigation:

- Provide a REQ to the commission.
- Request a longer period to provide a response within the legislated period.
- Address requests for further information from the commission after submitting an REQ to the commission.⁴²

6.5 Dumping assessment – Korea

6.5.1 Dongbu Steel Co., Ltd.

Verification

The commission conducted a remote verification of KG Dongbu's REQ.

The commission is satisfied that KG Dongbu is the producer of the goods and like goods. The commission is further satisfied that KG Dongbu's information is accurate and reliable to ascertain the variable factors applicable to Dongbu's exports of the goods.

A report covering the verification findings is available on the public record.⁴³

Submission in response to the verification report

KG Dongbu provided a submission in response to the verification report. It contends that the commission ought to reconsider the calculation of KG Dongbu's normal value on the basis of 2 calculation errors.⁴⁴ These are as follows:

- The commission incorrectly calculated the unit amounts (relating to handling and brokerage expenses) in applying a section 269TAC(8) upward adjustment to the normal value. The amounts were calculated using both the actual amounts relevant to FOB sales and the amounts the Commission applied to sales having FCA delivery terms. KG Dongbu considers that the calculation should be based on the actual amounts incurred, that being the amounts against FOB sales only.
- The gross margin applied in the calculation of specification adjustments is incorrect. The gross margin should be an amount for SG&A plus the OCOT profit.

⁴² Requests for further information are contained in deficiency letters.

⁴³ EPR 558, document 047.

⁴⁴ EPR 558, document 051.

In the commission's opinion, consideration of KG Dongbu's normal value calculation would prevent the timely publication of this SEF on the public record.⁴⁵ The commission will consider KG Dongbu's normal value calculation in preparing the Final Report.

Export price

The commission considers KG Dongbu to be the exporter of the goods, as KG Dongbu is:

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

The commission is satisfied that for all Australian export sales during the investigation, KG Dongbu was the exporter of the goods.

In respect of KG Dongbu's direct 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 price
- 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
- 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.

KG Dongbu did not have export sales of the goods to any related customers in Australia during the period.

The commission considers that KG Dongbu's export sales to its Australian customers and those via unrelated Korean-based traders during the period were 'arms length' transactions.

For KG Dongbu's sales of the goods made directly to Australian customers, the commission has determined the export price under section 269TAB(1)(a), as the price the importer paid to the exporter less transport and other costs arising after exportation.

For KG Dongbu's sales of the goods to Australian customers via Korean-based traders, the commission has determined the export price under section 269TAB(1)(c) having regard to all the circumstances of the exportation. Specifically, the commission has calculated the export price based on the price between KG Dongbu and the Korean-based trader, adjusted to FOB terms so as to include port, handling, brokerage and other expenses.

⁴⁵ Section 269ZHE(3) of the Act refers.

Normal value

In respect of KG Dongbu's domestic sales of like goods to its unrelated domestic customers during the period, the commission found no evidence that

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

The commission therefore considers that KG Dongbu's domestic sales to its unrelated domestic customers during the period were 'arms length' transactions.

In respect of KG Dongbu'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 price
- 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
- 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.

The commission therefore considers that all of KG Dongbu's domestic sales to its related customer during the period were 'arms length' transactions.

The commission 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 sales was not less than 5%. The commission has considered whether each exported MCC was sold on the domestic market and the volume of domestic sales in the table below.

Export MCC	Is model sold domestically in OCOT?	Is volume of domestic sales of same MCC 5% or greater as a proportion of export volume?	Treatment of normal value
P-1-F-3-2-C	N	N	Surrogate model P-1-F-1-2-C with a specification adjustment under TAC(8).
P-2-F-1-2-C	N	N	Surrogate model P-1-F-1-2-C with a specification adjustment under TAC(8).
P-2-F-2-2-C	N	N	Surrogate model P-2-B-3-2-C with a specification adjustment under TAC(8).
P-3-F-4-2-C	N	N	Surrogate model P-2-B-4-2-C with a specification adjustment under TAC(8).

Export MCC	Is model sold domestically in OCOT?	Is volume of domestic sales of same MCC 5% or greater as a proportion of export volume?	Treatment of normal value
P-2-D-2-2-C	N	N	Surrogate model P-2-D-5-2-C with a specification adjustment under TAC(8).
P-2-D-3-2-C	N	N	Surrogate model P-2-D-5-2-C with a specification adjustment under TAC(8).
P-2-D-4-2-C	N	N	Surrogate model P-2-D-5-2-C with a specification adjustment under TAC(8).
P-2-F-4-2-C	N	N	Surrogate model P-2-A-4-2-C with a specification adjustment under TAC(8).
P-2-F-5-2-C	N	N	Surrogate model P-2-D-5-2-C with a specification adjustment under TAC(8).
P-2-D-5-2-C	Y	Y	-

Table 11 - Surrogate models – KG Dongbu

Adjustments

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

Adjustment Type	Deduction/addition
Domestic credit terms	Deduct an amount for domestic credit
Domestic packaging	Deduct an amount for domestic packaging
Domestic warranty expenses	Deduct an amount for domestic warranty expenses
Export packaging	Add an amount for export packaging
Export inland transport	Add an amount for export inland transport
Export port charges	Add an amount for export port charges
Export brokerage expenses	Add an amount for export brokerage expenses
Export packaging	Add an amount for export packaging
Export bank charges	Add an amount for export bank charges
Specification	Add or deduct an amount for specification

Table 12 - Summary of adjustments – KG Dongbu

Dumping margin

The dumping margin in respect of KG Dongbu's exports of the goods to Australia during the investigation period is **2.5%**.

The commission's calculations are at **Confidential Attachment 2**.

6.5.2 Dongkuk Steel Mill Co., Ltd

Verification

The commission conducted a remote verification of Dongkuk's REQ.

The commission is satisfied that Dongkuk is the producer of the goods and like goods. The commission is further satisfied that Dongkuk's information is accurate and reliable for the purpose of ascertaining the variable factors applicable to its exports of the goods.

A report covering the verification findings is available on the public record.⁴⁶

Submission in response to the verification report

Dongkuk submitted that the calculation of its normal value should be re-assessed.⁴⁷ In its REQ, Dongkuk claimed a 269TAC(8) adjustment for differences in indirect selling expenses between export and domestic sales. For the purpose of verification, the verification team considered an adjustment was not warranted. However, the verification team was satisfied that there were differences in indirect selling costs between the two markets, specifically that there was a larger amount of indirect selling costs relevant to domestic sales, and allocated costs to Dongkuk's domestic SG&A to take into account this difference. Following verification, Dongkuk made a submission claiming the SG&A allocated to domestic sales was inflated and reiterated their claim for a TAC(8) adjustment in relation to its indirect selling costs.

In the commission's opinion, consideration of Dongkuk's normal value calculation would prevent the timely publication of this SEF on the public record.⁴⁸ The commission will consider Dongkuk's normal value calculation in preparing the Final Report.

Export price

The commission considers Dongkuk to be the exporter of the goods, as Dongkuk:

- is the manufacturer of the goods
- is named on the commercial invoice as the supplier
- knows that goods are destined for Australia, including the identity of the end customer in Australia.

In addition, other than sales made on ex-works terms, Dongkuk:

- 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
- arranges and pays for the ocean freight for sales made on cost and freight terms.

⁴⁶ EPR 558, document 049.

⁴⁷ EPR 558, document 055.

⁴⁸ Section 269ZHE(3) of the Act refers.

The commission is satisfied that for all Australian export sales during the period, Dongkuk was the exporter of the goods.

In respect of Dongkuk's Australian sales of the goods to its customers during the period, the commission found no evidence that:

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

The commission therefore considers that Dongkuk's export sales to Australian customers during the period were 'arms length' transactions.

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

In respect of Dongkuk's Australian sales of the goods sold directly to the importer, the commission has determined the export price under section 269TAB(1)(a), as the price the importer paid to the exporter less transport and other costs arising after exportation.

In respect of Dongkuk's Australian sales of the goods sold through intermediaries, the importer has not purchased the goods from the exporter, therefore, export prices cannot be determined under sections 269TAB(1)(a) or 269TAB(1)(b). The commission has determined the export price under section 269TAB(1)(c) having regard to all the circumstances of the exportation. Specifically, the commission has used the price on the commercial invoice from Dongkuk to its customers (the intermediaries to the sale of the goods to Australia), less transport and other costs arising after exportation. For those sales that are at ex-works terms, the commission adjusted the price to the free-on-board level, based on Dongkuk's weighted average inland transport cost.

Normal value

In respect of Dongkuk's domestic sales of like goods to its customers during the period, the commission found no evidence that:

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

The commission therefore considers that all of Dongkuk's domestic sales to its domestic customers during the period were 'arms length' transactions.

The commission 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 sales was not

less than 5%. The commission has considered whether each exported MCC was sold on the domestic market and the volume of domestic sales the table below.

Export MCC	Is model sold domestically in OCOT?	Is volume of domestic sales of same MCC 5% or greater as a proportion of export volume?	Treatment of normal value
P-1-F-1-2-C	N	N	Surrogate model P-1-A-1-2-C with a specification adjustment under TAC(8).
P-1-F-3-2-C	N	N	Surrogate model P-1-B-3-2-C with a specification adjustment under TAC(8).
P-2-D-1-2-C	N	N	Surrogate model P-2-D-3-2-C with a specification adjustment under TAC(8).
P-2-D-3-2-C	Y	Y	-
P-2-D-4-2-C	N	N	Surrogate model P-2-D-5-2-C with a specification adjustment under TAC(8).
P-2-D-5-2-C	Y	Y	-
P-2-F-1-2-C	N	N	Surrogate model P-2-A-1-2-C with a specification adjustment under TAC(8).
P-2-F-2-2-C	N	N	Surrogate model P-2-A-2-2-C with a specification adjustment under TAC(8).
P-2-F-3-2-C	N	N	Surrogate model P-2-A-3-2-C with a specification adjustment under TAC(8).
P-2-F-4-2-C	N	N	Surrogate model P-2-A-4-2-C with a specification adjustment under TAC(8).
P-2-F-5-2-C	N	N	Surrogate model P-2-A-5-2-C with a specification adjustment under TAC(8).

Table 13 - Domestic volumes - Dongkuk

Adjustments

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

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

Adjustment Type	Deduction/addition
Export bank charges	Add an amount for export bank charges
Specification	Add or deduct an amount for specification differences
Timing differences	Add or deduct an amount in relation to sales occurring at different times

Table 14 - Summary of adjustments – Dongkuk

Dumping margin

The dumping margin in respect of Dongkuk's exports of the goods to Australia during the investigation period is **6.9%**.

The commission's calculations are at **Confidential Attachment 3**.

6.5.3 Uncooperative exporters

The commission has determined that all exporters of the goods from Korea, other than Dongbu and Dongkuk, are uncooperative exporters for the purposes of this investigation.⁴⁹

Section 269TACAB sets out the provisions for calculating export prices and normal values for uncooperative exporters.

Export prices

Pursuant to section 269TACAB(1)(d), the commission has determined the export price for the uncooperative exporters pursuant to section 269TAB(3), having regard to all relevant information.

The commission has chosen the lowest verified weighted average export price on the basis that this export price demonstrates a price at which an uncooperative exporter may export the goods to Australia, based on the information before the commission.

Normal value

Pursuant to section 269TACAB(1)(e), the commission has determined the normal value for the uncooperative exporters pursuant to section 269TAC(6) after having regard to all relevant information.

The commission has used the highest verified normal value of the cooperating Korean exporters who exported to Australia during the investigation period. The commission chose this approach on the basis that:

- the commission does not have specific information relating to the uncooperative exporters, relevant to the calculation of the normal value

⁴⁹ Refer to section 6.4.2.

- the highest normal value of cooperating exporters demonstrates a price at which an uncooperative exporter may sell the goods in the domestic Korean market, based on the information before the commission.

Dumping margin

The dumping margin in respect of exports of the goods from uncooperative exporters in Korea during the investigation period is **13.7%**.

The commission's calculations are included in **Confidential Attachment 4**.

6.5.4 Summary of dumping margins

The commission has assessed that the goods exported to Australia from Korea during the investigation period had dumping margins as follows.

Exporter	Dumping margin (%)
Dongbu	2.5
Dongkuk	6.9
Uncooperative exporters	13.7

Table 15 - Summary of dumping margins for Korea

6.5.5 Level of dumping

Section 269TDA(1) 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
- that there has been dumping by the exporter of some or all of those goods, but the dumping margin for the exporter is less than 2%.

As detailed in this chapter, the commission is satisfied that all goods exported from Korea were at dumped prices during the investigation period and the dumping margin for all Korean exporters of the goods is 2% or more.

6.5.6 Volume of dumped imports

Pursuant to section 269TDA(3), the Commissioner must terminate the investigation, in so far as it relates to a country, if satisfied that the total volume of goods that have been or may be dumped is a negligible volume. Section 269TDA(4) defines a negligible volume as less than 3% of the total volume of goods imported into Australia over the investigation period. Section 269TDA(5) does not apply to this investigation.

Using the ABF import database and having regard to the information collected and verified during the investigation, the commission determined the volume of imports in the Australian market. Based on this information, the commission is satisfied that, when expressed as a percentage of the total Australian import volume of the goods, the volume of goods that have been exported from Korea at dumped prices was 3% or greater of the total import volume. The volume of dumped goods exported from Korea is therefore not negligible.

The commission's calculations are at **Confidential Attachment 5**.

6.6 Dumping assessment – Taiwan

6.6.1 Sheng Yu Steel Co Ltd

Verification

The commission conducted a remote verification of SYSCO's REQ.

The commission is satisfied that SYSCO is the producer of the goods and like goods. The commission is further satisfied that the information SYSCO provided is accurate and reliable for the purpose of ascertaining the variable factors applicable to its exports of the goods.

A report covering the verification findings is available on the public record.⁵⁰

Export price

The commission considers SYSCO to be the exporter of the goods, as SYSCO is:

- the manufacturer of the goods
- named on the commercial invoice as the supplier
- 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.⁵¹

The commission is satisfied that for all Australian export sales during the period SYSCO was the exporter of the goods.

In respect of SYSCO'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 price
- 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
- 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.

The commission therefore considers that SYSCO's export sales to its unrelated Australian customers during the period were 'arms length' transactions.

⁵⁰ EPR 558, document 048.

⁵¹ The commission generally identifies the exporter as a principal in the transaction, located in the country of export from where the goods were shipped, that gave up responsibility by knowingly placing the goods in the hands of a carrier, courier, forwarding company, or its own vehicle for delivery to Australia; or a principal in the transaction, located in the country of export, that owns, or previously owned, the goods but need not be the owner at the time the goods were shipped.

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

In respect of SYSCO's Australian sales of the goods, the commission has determined the export price under section 269TAB(1)(a), as the price the importer paid to the exporter less transport and other costs arising after exportation.

Normal value

In respect of SYSCO'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 price
- 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
- 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.

The commission therefore considers that all of SYSCO's domestic sales to its unrelated domestic customers during the period were 'arms length' transactions.

In respect of SYSCO'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 price
- 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
- 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.

The commission therefore considers that all of SYSCO's domestic sales to its related customer during the period were 'arms length' transactions.

The commission 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 sales was not less than 5%. All export MCCs were sold on the domestic market in the OCOT. The commission has considered the domestic volume of each exported MCC in the table below.

Export MCC	Is volume of domestic sales of same MCC 5% or greater as a proportion of export volume?
P-2-A-7-2-C	Y
P-2-F-2-2-C	Y
P-2-F-3-2-C	Y

Table 16 - Domestic volumes – SYSCO

Adjustments

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

Adjustment Type	Deduction/addition
Domestic packaging	Deduct an amount for domestic packaging
Domestic inland transport	Deduct an amount for domestic inland transport
Domestic warranty charges	Deduct an amount for domestic warranty charges
Domestic bank charges	Deduct an amount for domestic bank charges
Export inland transport	Add an amount for export inland transport
Export commission	Add an amount for commission
Export handling and other charges	Add an amount for handling and other charges
Export packaging	Add an amount for export packaging
Export bank charges	Add an amount for export bank charges
Level of trade	Deducted an amount for level of trade
Timing differences	Add or deduct an amount in relation to sales occurring at different times

Table 17 - Summary of adjustments – SYSCO

Dumping margin

The dumping margin in respect of SYSCO's exports of the goods to Australia during the investigation period is **negative 5.6%**.

The commission's calculations are at **Confidential Attachment 6**.

6.6.2 Yieh Phui Enterprise Co Ltd

Verification

The commission conducted a remote verification of Yieh Phui's REQ.

The commission is satisfied that Yieh Phui is the producer of the goods and like goods. The commission is further satisfied that Yieh Phui's information is accurate and reliable for the purpose of ascertaining the variable factors applicable to its exports of the goods.

A report covering the verification findings is available on the public record.⁵²

Export price

The commission considers Yieh Phui to be the exporter of the goods, as Yieh Phui is:

- the manufacturer of the goods

⁵² EPR 558, document 039.

- named on the commercial invoice to Asiazone and between Asiazone, and the Australian based importer CITIC Australia Steel Product Pty Ltd (CITIC), as the manufacturer
- named as shipper on the bill of lading
- arranges and pays for the inland transport to the port of export and
- arranges and pays for the port handling charges at the port of export.

The commission is satisfied that for all Australian export sales during the investigation period, Yieh Phui was the exporter of the goods.

In respect of the Yieh Phui's export sales of the goods to Asiazone during the period, the commission considers that the price appeared to be influenced by a commercial or other relationship between the buyer and the seller. The commission found that the Asiazone's margin in relation to these sales was insufficient to cover Asiazone's SG&A expenses. Therefore, the commission considers that the transactions between Yieh Phui and Asiazone were not 'arms length' transactions.

In respect of Asiazone's export sales of the goods to CITIC during the period, the commission found no evidence that:

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

The commission therefore considers that the transactions between Asiazone and CITIC during the period were 'arms length' transactions.

In respect of Yieh Phui's Australian sales of the goods, the importer has not purchased the goods from the exporter. Therefore, export prices cannot be determined under sections 269TAB(1)(a) or 269TAB(1)(b). The commission has determined the export price under section 269TAB(1)(c) having regard to all the circumstances of the exportation. Specifically, the commission has used the price CITIC paid less an amount for Asiazone's SG&A, transport and other costs arising after exportation.

Normal value

In respect of Yieh Phui'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 price
- 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
- 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

The commission therefore considers that all of Yieh Phui's domestic sales made to its unrelated domestic customers during the investigation period were 'arms length' transactions.

In respect of Yieh Phui'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 price
- 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
- 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.

The commission therefore considers that all of Yieh Phui's domestic sales made to its related customer during the period were 'arms length' transactions.

The commission 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 sales was not less than 5%. The commission has considered whether each exported MCC was sold on the domestic market and the volume of domestic sales in the table below.

Export MCC	Is model sold domestically in OCOT?	Is volume of domestic sales of same MCC 5% or greater as a proportion of export volume?	Treatment of normal value
P-2-B-3-2-C	Y	Y	-
P-2-D-1-2-C	N	N	Surrogate model P-2-D-3-2-C with a specification adjustment under 269TAC(8).
P-2-D-3-2-C	Y	Y	-
P-2-D-4-2-C	Y	N	Volume of domestic sales allows for a proper comparison as: <ul style="list-style-type: none"> • the total volume for this MCC is close to 5%; • the price is trending similar to P-2-D-5-2-C; and • the quarter in which there were no domestic sales of the MCC also had no export sales.
P-2-D-5-2-C	Y	Y	-
P-2-E-5-2-C	N	N	Surrogate model P-2-D-5-2-C with a specification adjustment under 269TAC(8).
P-2-F-2-2-C	Y	Y	-
P-2-F-3-2-C	N	N	Surrogate model P-2-F-2-2-C with a specification adjustment under 269TAC(8).
P-2-F-4-2-C	N	N	Surrogate model P-2-F-2-2-C with a specification adjustment under 269TAC(8).
P-2-F-5-2-C	Y	Y	-

Table 18 - Domestic volumes – Yieh Phui

Adjustments

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

Adjustment Type	Deduction/addition
Domestic packaging	Deduct an amount for domestic packaging
Domestic inland transport	Deduct an amount for domestic inland transport
Export inland transport	Add an amount for export inland transport
Export packaging	Add an amount for export packaging
Export handling	Add an amount for port and handling charges
Export trade promotion fee	Add an amount for export trade promotion fee
Bank charges	Add an amount for bank charges
Export Other selling expenses	Add an amount for export other selling expenses
Specification	Add or deduct an amount for specification
Timing differences	Add or deduct an amount in relation to sales occurring at different times

Table 19 – Summary of adjustments – Yieh Phui

Dumping margin

The dumping margin in respect of the goods Yieh Phui exported to Australia during the investigation period is **negative 4.4%**.

The commission's calculations are at **Confidential Attachment 7**.

6.6.3 Uncooperative exporters

The commission has determined that all exporters of the goods from Taiwan, other than SYSCO and Yieh Phui, are uncooperative exporters for the purposes of this investigation.⁵³

Section 269TACAB sets out the provisions for calculating export prices and normal values for uncooperative exporters.

Export prices

Pursuant to section 269TACAB(1)(d), the commission has determined the export price for the uncooperative exporters pursuant to section 269TAB(3), having regard to all relevant information.

The commission has chosen the lowest verified weighted average export price on the basis that this export price demonstrates a price at which an uncooperative exporter may export the goods to Australia, based on the information before the commission.

⁵³ Refer to section 6.4.2.

Normal value

Pursuant to section 269TACAB(1)(e), the commission has determined the normal value for the uncooperative exporters pursuant to section 269TAC(6) after having regard to all relevant information.

The commission has used the highest verified normal value of the cooperating Taiwanese exporters who exported to Australia during the investigation period. The commission chose this approach on the basis that:

- the commission does not have specific information relating to the uncooperative exporters, relevant to the calculation of the normal value
- the highest normal value of cooperating exporters demonstrates a price at which an uncooperative exporter may sell the goods in the domestic Taiwanese market, based on the information before the commission.

Dumping margin

The dumping margin in respect of exports of the goods from uncooperative exporters in Taiwan during the investigation period is **3.5%**.

The commission's calculations are included in **Confidential Attachment 4**.

6.6.4 Summary of dumping margins

The commission has assessed that the goods exported to Australia from Taiwan during the investigation period had dumping margins as follows.

Exporter	Dumping margin (%)
SYSCO	-5.6
Yieh Phui	-4.4
Uncooperative exporters	3.5%

Table 20 - Summary of dumping margins for Taiwan

6.6.5 Level of dumping

Section 269TDA(1) 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
- that there has been dumping by the exporter of some or all of those goods, but the dumping margin for the exporter is less than 2%.

The commission is satisfied that the exports from SYCO and Yieh Phui during the investigation period were not at dumped prices. Accordingly, the Commissioner proposes to terminate the dumping investigation as it relates to these 2 Taiwanese exporters, pursuant to section 269TDA(1)(b)(i).

6.6.6 Volume of dumped imports

Pursuant to section 269TDA(3), the Commissioner must terminate the investigation, in so far as it relates to a country, if satisfied that the total volume of goods that have been or may be dumped is a negligible volume. Section 269TDA(4) defines a negligible volume as less than 3% of the total volume of goods imported into Australia over the investigation period. Section 269TDA(5) states that if the volume of all countries with dumped volumes of less than 3% sum up to more than 7%, then the aggregation of the volumes of dumped goods is not negligible.

Using the ABF import database and having regard to the information collected and verified during the investigation, the commission determined the volume of imports in the Australian market. Based on this information, the commission

- has determined that section 269TDA(5) does not apply to this investigation
- is satisfied that, when expressed as a percentage of the total Australian import volume of the goods, the volume of goods that have been exported from Taiwan and dumped was less than 3% of the total import volume and
- has determined that the volume of dumped goods is negligible.

Accordingly, the Commissioner proposes to terminate that part of the investigation that relates to all exporters from Taiwan.

The commission's calculations are at **Confidential Attachment 5**.

6.7 Dumping assessment – Vietnam

6.7.1 Hoa Phat Steel Sheet Co., Ltd

Verification

The commission conducted a benchmark verification of Hoa Phat's REQ.

The commission is satisfied that Hoa Phat is the producer of the goods and like goods. The commission is satisfied that Hoa Phat's export and domestic sales information is accurate and reliable for the purpose of ascertaining the variable factors applicable to its exports of the goods. The commission is not satisfied that the cost to make (CTM) data provided for 1 April 2019 to 31 December 2019 is reliable. However, the cost information provided for 1 January 2020 to 31 March 2020 was found to be reliable.

A file note covering the verification findings is available on the public record.⁵⁴

Export price

The commission considers Hoa Phat to be the exporter of the goods, as Hoa Phat is:

- the manufacturer of the goods
- named as the seller on the commercial invoice
- named as the shipper on the bill of lading
- knowingly exported the goods destined for Australia.

The commission is satisfied that for all Australian export sales during the period, Hoa Phat was the exporter of the goods and the goods were sold to unrelated parties.

In respect of Hoa Phat'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 price
- 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
- 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.

The commission therefore considers that all of Hoa Phat's exports to Australian customers, all of whom were unrelated, during the investigation period were 'arms length' transactions.

In respect of Hoa Phat's Australian sales of the goods, the commission has determined the export price under section 269TAB(1)(a), as the price the importer paid to the exporter, less transport and other costs arising after exportation.

⁵⁴ EPR 558, document 052.

Normal value

In respect of Hoa Phat's domestic sales of like goods to its customers during the period, the commission found no evidence that:

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

The commission therefore considers that all of Hoa Phat's domestic sales to its domestic customers during the investigation period were 'arms length' transactions.

Hoa Phat did not have domestic sales of the goods to any related customers during the period.

The application claimed that the market in the country of export is such that sales in that market are not suitable for use in determining a normal value under section 269TAC(1), in accordance with section 269TAC(2)(a)(ii). The application also claimed that Hoa Phat's records do not reasonably reflect competitive market costs associated with the production or manufacture of like goods.

As outlined in **Non-confidential Appendix A** the commission considers a particular market situation did not exist in respect of the domestic market for the goods under consideration in Vietnam for the investigation period. In addition, the available evidence indicates that the HRC costs that Hoa Pat incurred are consistent with exporters from other countries, and appears to reflect competitive market costs.

The commission 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 sales was not less than 5%. The commission has therefore determined a normal value for Hoa Phat under section 269TAC(1), as the price paid or payable for like goods sold in the ordinary course of trade for consumption in the country of export in sales that are 'arms length' transactions.

For the purpose of determining a normal value under section 269TAC(1), the commission has only relied on sales made between 1 January 2020 to 31 March 2020. The volume of these sales was not less than 5% of the volume of goods exported to Australia. Sales in other parts of the investigation period are considered not reliable for the purpose of calculating a normal value under section 269TAC(1) as the commission was unable to rely on Hoa Phat's cost data to determine whether sales were in the OCOT.

The commission has considered whether each exported MCC was sold on the domestic market and the volume of domestic sales in the table below.

Export MCC	Is model sold domestically in OCOT?	Is volume of domestic sales of same MCC 5% or greater as a proportion of export volume?	Treatment of normal value
P-2-F-1-2-C	Y	Y	-
P-2-F-2-2-C	N	N	Surrogate model P-2-F-1-2-C with a specification adjustment under TAC(8).

Table 21 - Domestic volumes – Hoa Phat

Adjustments

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

Adjustment Type	Deduction/addition
Domestic inland transport	Deduct an amount for domestic inland transport
Domestic other expenses	Deduct an amount for other expenses
Export inland transport	Add an amount for export inland transport
Export handling charges	Add an amount for handling charges
Specification	Add or deduct an amount for specification differences
Timing differences	Add or deduct an amount in relation to sales occurring at different times

Table 22 - Summary of adjustments – Hoa Phat

Dumping margin

The dumping margin in respect of Hoa Phat's exports of the goods to Australia during the investigation period is **12.5%**.

The commission's calculations are at **Confidential Attachment 8**.

6.7.2 Hoa Sen Group Joint Stock Company

Verification

The commission conducted a remote verification of HSG's REQ.

The commission is satisfied that HSG is the producer of the goods and like goods. The commission is further satisfied that the information that HSG provided is accurate and reliable to ascertain the variable factors applicable to its exports of the goods.

A report covering the verification findings is available on the public record.⁵⁵

Export price

The commission considers HSG to be the exporter of the goods, as HSG is:

⁵⁵ EPR 558, document 040.

- the manufacturer of the goods
- named on the commercial invoice as the supplier
- 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
- arranges and pays for the ocean freight and marine insurance.

The commission is satisfied that for all Australian export sales during the investigation period HSG was the exporter of the goods.

In respect of HSG'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 price
- 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
- 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.

The commission therefore considers that all of HSG's export sales to its unrelated Australian customers during the investigation period were 'arms length' transactions.

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

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

Normal value

In respect of HSG'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
- 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
- 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.

The commission therefore considers that all of HSG's domestic sales to its unrelated domestic customers during the period were 'arms length' transactions.

In respect of HSG's domestic sales of like goods to its related customers during the period, the commission found no evidence that:

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

- 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.

However, the commission found evidence that the price appeared to be influenced by a commercial or other relationship between the buyer and the seller, as:

- HSG has a controlling or significant interest in the related parties
- HSG is the supplier of the goods to the related parties
- prices between HSG and the related parties are determined according to an internal pricing guideline.

The prices for unrelated and related customers were not comparable. The commission therefore considers that HSG's domestic sales to its related customers during the period were not 'arms length' transactions, pursuant to section 269TAA(1)(b).⁵⁶ Domestic sales from related customers have not been included in the normal value calculation.

The application claimed that the market in the country of export is such that sales in that market are not suitable for use in determining a normal value under section 269TAC(1), in accordance with section 269TAC(2)(a)(ii). The application also claimed that HSG's records do not reasonably reflect competitive market costs associated with the production or manufacture of like goods.

As outlined in **Non-confidential Appendix A**, the commission considers that a particular market situation did not exist in respect of the domestic market for the goods under consideration in Vietnam for the investigation period. In addition, the available evidence indicates that the HRC costs that HSG incurred are consistent with exporters from other countries, and appears to reflect competitive market costs.

The commission 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 sales was not less than 5%. The commission has therefore determined a normal value for HSG under section 269TAC(1), as the price paid or payable for like goods sold in the ordinary course of trade for consumption in the country of export in sales that are 'arms length' transactions.

The commission has considered whether each exported MCC was sold on the domestic market and the volume of domestic sales in the table below.

⁵⁶ The commission notes that the finding in this report that the sales to domestic customers did not take place on an 'arms length' basis relates to the assessment of normal values for anti-dumping purposes under section 269TAC. It is not an assessment of the exporter's transfer pricing policy with respect to compliance with the revenue laws of any jurisdiction.

Export MCC	Is model sold domestically in OCOT	Is volume of domestic sales of same MCC 5% or greater as a proportion of export volume?	Treatment of normal value
P-2-D-3-3-C	Y	Y	-
P-2-F-2-2-C	N	N	Surrogate model P-2-F-2-3-C with a specification adjustment under TAC(8).
P-2-F-2-3-C	Y	Y	-
P-2-F-4-3-C	Y	N	Surrogate model P-2-F-3-3-C with a specification adjustment under TAC(8).

Table 23 - Domestic volumes – HSG

Adjustments

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

Adjustment Type	Deduction/addition
Domestic credit terms	Deduct an amount for domestic credit
Domestic Insurance	Deduct an amount for domestic insurance
Domestic inland transport	Deduct an amount for domestic inland transport
Domestic bank fee	Deduct an amount for bank fees
Domestic commission	Deduct an amount for commissions
Export inland transport	Add an amount for export inland transport
Export port handling	Add an amount for port handling charges
Export bank charges	Add an amount for bank charges
Specification	Add or deduct an amount for specification differences
Timing differences	Add or deduct an amount in relation to sales occurring at different times

Table 24 – Summary of adjustments – HSG

Dumping margin

The dumping margin in respect of the goods HSG exported to Australia during the investigation period is **5.2%**.

The commission's calculations are at **Confidential Attachment 9**.

6.7.3 Nam Kim Steel Joint Stock Company

Verification

The commission conducted a remote verification of Nam Kim's REQ.

The commission is satisfied that Nam Kim is the producer of the goods and like goods. The commission is further satisfied that the information Nam Kim provided is accurate and reliable to ascertain the variable factors applicable to its exports of the goods.

A report covering the verification findings is available on the public record.⁵⁷

Export price

The commission considers Nam Kim to be the exporter of the goods, as Nam Kim is:

- the manufacturer of the goods
- named on the commercial invoice as the seller
- named as the shipper on the bill of lading.

The commission is satisfied that for all Australian export sales during the investigation period Nam Kim was the exporter of the goods.

In respect of Nam Kim's Australian sales of the goods to its unrelated customers during the investigation period, the commission found no evidence that:

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

The commission therefore considers that all of Nam Kim's export sales to its unrelated Australian customers during the period were 'arms length' transactions.

Nam Kim did not have export sales of the goods to any related customers in Australia during the period.

In respect of Nam Kim's Australian sales of the goods, the commission has determined the export price under section 269TAB(1)(a), as the price the importer paid to the exporter, less transport and other costs arising after exportation.

Normal value

In respect of Nam Kim'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 price
- 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
- 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.

⁵⁷ EPR 558, document 043.

The commission therefore considers that all of Nam Kim's domestic sales to its unrelated domestic customers during the investigation period were 'arms length' transactions.

In respect of Nam Kim'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 price
- 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
- 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.

The commission therefore considers that all of Nam Kim's domestic sales to its related customer during the period were 'arms length' transactions.

The application claimed that the market in the country of export is such that sales in that market are not suitable for use in determining a normal value under section 269TAC(1), in accordance with section 269TAC(2)(a)(ii). The application also claimed that Nam Kim's records do not reasonably reflect competitive market costs associated with the production or manufacture of like goods.

As outlined in **Non-confidential Appendix A**, the commission considers that a particular market situation did not exist in respect of the domestic market for the goods under consideration in Vietnam for the investigation period. In addition, the available evidence indicates that Nam Kim's HRC costs are consistent with exporters from other countries, and appears to reflect competitive market costs.

The commission 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 sales was not less than 5%. The commission has therefore determined a normal value for Nam Kim under section 269TAC(1), as the price paid or payable for like goods sold in the ordinary course of trade for consumption in the country of export in sales that are 'arms length' transactions.

The commission has considered the volume of domestic sales of exported MCCs in the table below.

Export MCC	Is model sold domestically in OCOT	Is volume of domestic sales of same MCC 5% or greater as a proportion of export volume?	Treatment of normal value
P-2-D-1-2-C	Y	Y	-
P-2-E-5-2-C	Y	Y	-
P-2-F-1-2-C	Y	Y	-
P-2-F-2-2-C	Y	Y	-
P-2-F-3-2-C	Y	Y	-
P-2-F-5-2-C	Y	Y	-

Table 25 - Domestic volumes – Nam Kim

Adjustments

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

Adjustment Type	Deduction/addition
Domestic credit terms	Deduct an amount for domestic credit
Domestic packaging	Deduct an amount for domestic packaging
Domestic commissions	Deduct an amount for commission costs
Domestic inland transport	Deduct an amount for inland transport costs
Export inland transport	Add an amount for export inland transport
Export container loading costs	Add an amount for export container loading costs
Export port and handling charges	Add an amount for port and handling charges
Export packaging	Add an amount for export packaging
Export bank charges	Add an amount for export credit terms
Timing differences	Add or deduct an amount in relation to sales occurring at different times

Table 26 - Summary of adjustments – Nam Kim

Dumping margin

The dumping margin in respect of the goods Nam Kim exported to Australia during the investigation period is **negative 9.7%**.

The commission's calculations are at **Confidential Attachment 10**.

6.7.4 Uncooperative exporters

The commission has determined that all exporters of the goods from Vietnam, other than Hoa Phat, HSG and Nam Kim, are uncooperative exporters for the purposes of this investigation.⁵⁸

Section 269TACAB sets out the provisions for calculating export prices and normal values for uncooperative exporters.

Export prices

Pursuant to section 269TACAB(1)(d), the commission has determined the export price for the uncooperative exporters pursuant to section 269TAB(3), having regard to all relevant information.

The commission has used the lowest verified weighted average FOB export price for the investigation period of the cooperating Vietnamese exporters who exported to Australia during the investigation period.

⁵⁸ Refer to section 6.4.2.

The commission has chosen the lowest verified weighted average export price on the basis that this export price demonstrates a price at which an uncooperative exporter may export the goods to Australia, based on the information before the commission.

Normal value

Pursuant to section 269TACAB(1)(e), the commission has determined the normal value for the uncooperative exporters pursuant to section 269TAC(6) after having regard to all relevant information.

The commission has used the highest verified normal value of the cooperating Vietnamese exporters who exported to Australia during the investigation period. The commission chose this approach on the basis that:

- the commission does not have specific information relating to the uncooperative exporters, relevant to the calculation of the normal value
- the highest normal value of cooperating exporters demonstrates a price at which an uncooperative exporter may sell the goods in the domestic Vietnamese market, based on the information before the commission.

Dumping margin

The dumping margin in respect of exports of the goods from uncooperative exporters in Vietnam during the investigation period is **20.6%**.

The commission's calculations are included in **Confidential Attachment 4**.

6.7.5 Summary of dumping margins

The commission has assessed that the goods exported to Australia from Vietnam during the investigation period had dumping margins as follows.

Exporter	Dumping margin (%)
Hoa Phat	12.5
HSG	5.2
Nam Kim	-9.7
Uncooperative exporters	20.6

Table 27 - Summary of dumping margins for Vietnam

6.7.6 Level of dumping

Section 269TDA(1) 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
- there has been dumping by the exporter of some or all of those goods, but the dumping margin for the exporter is less than 2%.

The commission is satisfied that Nam Kim did not export the goods to Australia at dumped prices during the investigation period. Accordingly, the Commissioner proposes to terminate the dumping investigation, as it relates to Nam Kim, pursuant to section 269TDA(1)(b)(i).

6.7.7 Volume of dumped imports

Pursuant to section 269TDA(3), the Commissioner must terminate the investigation, in so far as it relates to a country, if satisfied that the total volume of goods that have been or may be dumped is a negligible volume. Section 269TDA(4) defines a negligible volume as less than 3% of the total volume of goods imported into Australia over the investigation period. Section 269TDA(5) states that if the volume of all countries with dumped volumes of less than 3% sum up to more than 7%, then the aggregation of the volumes of dumped goods is not negligible.

Using the ABF import database and having regard to the information collected and verified during the investigation, the commission determined the volume of imports in the Australian market. Based on this information, the commission:

- has determined that section 269TDA(5) does not apply to this investigation
- is satisfied that, when expressed as a percentage of the total Australian import volume of the goods, the volume of dumped goods that have been exported from Vietnam was 3% or greater of the total import volume
- has determined that the volume of dumped goods is not negligible.

The commission's calculations are at **Confidential Attachment 5**.

7 SUBSIDY INVESTIGATION

7.1 Preliminary finding

The commission has preliminarily found that:

- no countervailable subsidies have been received in respect of the goods that Hoa Phat, HSG and Nam Kim exported to Australia during the investigation period and
- non-cooperative entities received countervailable subsidies in respect of the goods exported to Australia from Vietnam during the investigation period, at negligible levels.

Accordingly, the Commissioner is preliminarily satisfied that:

- it is necessary to terminate the subsidy investigation under section 269TDA(2)(b)(i) in respect of Nam Kim, Hoa Phat and HSG and
- it is necessary to terminate the subsidy investigation under section 269TDA(2)(b)(ii) in respect of non-cooperative and all other exporters from Vietnam.

7.2 Relevant legislation

7.2.1 Countervailable subsidies

Section 269T(1) defines 'subsidy' as follows:

subsidy, in respect of goods exported to Australia, means:

(a) a financial contribution:

- (i) by a government of the country of export or country of origin of the goods; or
- (ii) by a public body of that country or a public body of which that government is a member; or
- (iii) by a private body entrusted or directed by that government or public body to carry out a governmental function;

that involves:

- (iv) a direct transfer of funds from that government or body; or
- (v) the acceptance of liabilities, whether actual or potential, by that government or body; or
- (vi) the forgoing, or non-collection, of revenue (other than an allowable exemption or remission) due to that government or body; or
- (vii) the provision by that government or body of goods or services otherwise than in the course of providing normal infrastructure; or
- (viii) the purchase by that government or body of goods or services; or

(b) any form of income or price support as referred to in Article XVI of the General Agreement on Tariffs and Trade 1994 that is received from such a government or body;

if that financial contribution or income or price support confers a benefit (whether directly or indirectly) in relation to the goods exported to Australia.⁵⁹

Section 269TAAC defines a 'countervailable subsidy' as follows:

- (1) For the purposes of this Part, a subsidy is a countervailable subsidy if it is specific.
- (2) Without limiting the generality of the circumstances in which a subsidy is specific, a subsidy is specific:
 - (a) if, subject to subsection (3), access to the subsidy is explicitly limited to particular enterprises; or
 - (b) if, subject to subsection (3), access is limited to particular enterprises carrying on business within a designated geographical region that is within the jurisdiction of the subsidising authority; or
 - (c) if the subsidy is contingent, in fact or in law, and whether solely or as one of several conditions, on export performance; or
 - (d) if the subsidy is contingent, whether solely or as one of several conditions, on the use of domestically produced or manufactured goods in preference to imported goods.
- (3) Subject to subsection (4), a subsidy is not specific if:
 - (e) eligibility for, and the amount of, the subsidy are established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification; and
 - (f) eligibility for the subsidy is automatic; and
 - (g) those criteria or conditions are neutral, do not favour particular enterprises over others, are economic in nature and are horizontal in application; and
 - (h) those criteria or conditions are strictly adhered to in the administration of the subsidy.
- (4) The Minister may, having regard to:
 - (i) the fact that the subsidy program benefits a limited number of particular enterprises; or
 - (j) the fact that the subsidy program predominantly benefits particular enterprises; or
 - (k) the fact that particular enterprises have access to disproportionately large amounts of the subsidy; or
 - (l) the manner in which a discretion to grant access to the subsidy has been exercised;determine that the subsidy is specific.
- (5) In making a determination under subsection (4), the Minister must take account of:
 - (a) the extent of diversification of economic activities within the jurisdiction of the subsidising authority; and
 - (b) the length of time during which the subsidy program has been in operation.

Section 269TACD provides that if the Minister is satisfied that a countervailable subsidy has been received in respect of the goods, the Minister must, if the amount of the subsidy

⁵⁹ Section 269TACC sets out the steps for working out whether a financial contribution or income or price support confers a benefit.

is not quantified by reference to a unit of the goods, work out how much of the subsidy is properly attributable to each unit of the goods.

7.2.2 Non-cooperative entities

Section 269TAACA(1) provides that, when determining whether a countervailable subsidy has been received in respect of particular goods, or when determining the amount of a countervailable subsidy in respect of particular goods, the Commissioner may act on the basis of all the facts available and may make such assumptions as the Commissioner considers reasonable. In particular, in circumstances where an entity:

- has not given the Commissioner information the Commissioner considers to be relevant to the investigation, review or inquiry within a period the Commissioner considers to be reasonable; or
- has significantly impeded the investigation, review or inquiry.⁶⁰

Such entities are referred to in this report as ‘non-cooperative entities’.

7.2.3 Vietnam

BlueScope alleged the existence of 44 unique programs in relation to exports of the goods under consideration from Vietnam. This was based on:

- the Canada Border Services Agency’s (CBSA) findings of anti-dumping and countervailing cases in relation to the provision of subsidies granted from the GOV and
- Vietnam’s notifications in March 2013 and September 2015 to the World Trade Organization (WTO) Committee on Subsidies and Countervailing Measures pursuant to *Article XVI:1 of the GATT 1994 and Article 25 of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement)*.⁶¹

The commission has investigated each of the 44 alleged subsidy programs.

The commission has set out each program investigated in respect of exports of the goods from Vietnam and its finding in respect of each program in the table below.

Program Number ⁶²	Program name	Program Type	Countervailable subsidy received? (Yes/No)
Programs included in questionnaires			
1	Preferential Import Tariff Rates contingent upon Localisation Ratios with respect to products and Parts of Mechanical-Electric-Electronic Industries (updating Programme II of Notification of Subsidies period 2003-2004)	Tariff policy	No

⁶⁰ Entities contemplated by section 269TAACA(1) are also described in section 269TAACA(2).

⁶¹ Both are available on the WTO website at: https://www.wto.org/english/tratop_e/scm_e/scm_e.htm.

⁶² The commission has maintained the Program Number used in the application.

Program Number ⁶²	Program name	Program Type	Countervailable subsidy received? (Yes/No)
2	Support for the Implementation of Projects Manufacturing Priority Industrial Products (Updating Programme III of 2003-2004)	Financial grant	No
3	Investment Incentives Contingent upon Export Performance For Domestic Businesses (Updating Programme IV of 2003-2004)	Financial grant	No
4	Other Investment Incentives for Domestic Businesses (Updating Program V of Period 2003-2004)	Financial grant	No
5	Investment Incentives Contingent upon Export Performance for Foreign Invested Enterprises (Updating Programme VI of the Period 2003-2004)	Financial grant	No
6	Other Investment Incentives for Foreign Invested Enterprises (Updating Programme VII for Period 2003-2004)	Financial grant	No
7	Preferential Investment Credit for Development Contingent upon Export Criteria (Updating Programme VIII of Period 2003-2004)	Financial grant	No
8	Preferential Development Credit for Investment Contingent Upon Localisation Ratios (Updating Programme IX of Period 2003-2004)	Financial grant	No
9	Other Preferential Investment Credit for Development (Updating Program X of Period 2003-2004)	Financial grant	No
10	Export Promotion	Financial grant	No
11	Trade Promotion (Updating of Programme XIII of Period 2003-2004)	Financial grant	No
12	Support for Mechanical Products (Updating Program XV of Period 2003-2004)	Financial grant	No
13	Support for Shipbuilding Industry (Updating of Programme XV of Period 2003-2004)	Financial grant	No
14	Assistance for Commercial Development in Mountainous, Island and Ethnic Minority Areas (Updating Programme XVI of Period 2003-2004)	Financial grant	No
15	Assistance to Enterprises Facing Difficulties due to Objective Reasons	Financial grant	No
16	Incentives for Investment Projects in Science and Technology (Updating Programme XVIII of Period 2003-2004)	Financial grant	No
17	Preferential Import Tariff Rates for enterprises investing in regions or sectors entitled to investment incentives	Tariff policy	No
18	Incentives on corporate income tax for enterprises operating in regions or sectors entitled to incentives	Tax benefit	Yes
19	Incentives on non-agricultural land use	Tax benefit	No
20	Grants to Firms that Employ more than 50 Employees	Financial grant	No
21	Investment Support (consisting of 2 separate programs)	Tax benefit	Covered under Program 18
22	Acquisition of State Assets at Less Than Fair Market Value	LTAR	No
23	Export & Import Support in the Form of Preferential Loans, Guarantees, and Factoring (consisting of 5 separate programs)	Preferential loan/interest	No
24	Export Support Loans at Preferential Rates	Preferential loan/interest	No

Program Number ⁶²	Program name	Program Type	Countervailable subsidy received? (Yes/No)
25	Interest Rate Support Program under the State Bank of Vietnam	Preferential loan/interest	No
26	Preferential Lending under the Viet Bank Export Loan Program	Preferential loan/interest	Covered under Program 24
27	Accelerated Depreciation of Fixed Assets	Tax benefit	No
28	Additional Income Tax Preferences for Exporters	Tax benefit	No
29	Enterprise Income Tax Exemption/Reduction for Business Expansion and Intensive Investment Projects	Tax benefit	Covered under Program 18
30	Enterprise Income Tax Preferences, Exemptions, and Reductions (consisting of 7 separate programs)	Tax benefit	No
31	Establishments Dealing with Exported Goods	Tax benefit	Covered under Program 28
32	Exemption of Import Tax on Equipment and Machinery Imported to Create Fixed Assets	Tax benefit	Covered under Program 17
33	Exemptions/reductions of Land Rent, Tax, and Levies (consisting of 5 separate programs)	Tax benefit	No
34	Land-Use Levy Exemptions/Reductions	Tax benefit	No
35	Preferential Income Tax Rates for Enterprises within Economic Zones or Industrial Parks	Tax benefit	Covered under Program 18
36	Preferential Provisions for Carry-forward of Losses	Tax benefit	No
37	Tax Exemptions and Reductions for Encouraged Sectors	Tax benefit	Covered under Program 18
38	Tax Exemptions and Reductions for Foreign-Invested Enterprises	Tax benefit	No
39	Tax Exemptions and Reductions for Investment in Disadvantaged Regions	Tax benefit	Covered under Program 18
40	Tax Exemptions and Reductions for Investments in Economic Zones or High-Tech Industrial Parks	Tax benefit	Covered under Program 18
41	Tax Preferences for Investors Producing and/or Dealing in Export Goods	Tax benefit	Covered under Program 28
42	Excessive Duty Exemptions for Imported Raw Materials for Exported Goods	Tariff policy	No
43	Exemptions of Import Duty (consisting of 7 separate programs)	Tariff policy	No
44	Refund of Import Duty	Tariff policy	No

Table 28 - Investigated subsidy programs – Vietnam

Non-confidential Appendix B outlines the commission's findings in relation to each investigated program.

7.3 Information the commission considered

7.3.1 Information from exporters

The commission has relied upon information from cooperating exporters when assessing the alleged subsidy programs for Vietnam. This included information provided in the REQ of cooperating exporters as well as further information provided during verification.

7.3.2 Information from the Government of Vietnam

The commission invited the GOV for consultations regarding BlueScope's claims in relation to countervailable subsidies. The GOV responded to the initiation of the

investigation with a submission, which included its views regarding the allegation of its provision of subsidies in relation to the goods.⁶³ On 30 June 2020, the commission sent a Government Questionnaire to the GOV, which included questions relating to each of the alleged subsidy programs identified in the application. The commission received the GOV's response to the questionnaire on 21 September 2020.⁶⁴

7.3.3 Other information considered as part of this assessment

The commission also considered as part of this assessment:

- Information provided in the application.
- Submissions received in relation to subsidies provided to Vietnamese exporters.
- Information provided from the GOV to the WTO in February 2020 in their respective notifications in the SCM Agreement.

7.4 Subsidy assessment – Vietnam

7.4.1 Nam Kim Steel Joint Stock Company

The commission has found no evidence that Nam Kim received any subsidies.

7.4.2 Hoa Phat Steel Sheet Co. Ltd

The commission has found no evidence that Hoa Phat received any subsidies.

7.4.3 Hoa Sen Group Joint Stock Company

The commission has found no evidence that HSG received any subsidies.

7.4.4 Non-cooperative Vietnamese exporters

As discussed in section 7.2.2, the subsidy margin for non-cooperative entities is determined on the basis of all facts available and based on reasonable assumptions.

7.4.4.1 *Program 18 – Incentives on corporate income tax for enterprises operating in regions or sectors entitled to incentives*

The commission has determined that non-cooperative entities may be in receipt of a benefit under this program and that this program is countervailable.

As discussed in **Non-confidential Appendix B** (section B2), the commission has found the lowest preferential tax rate that eligible entities may receive is 10%. The commission considers that non-cooperative exporters in Vietnam may have received the most favourable preferential rate of 10% during the investigation period.

Accordingly, in working out the benefit received during the investigation period, the commission has determined the benefit received from non-cooperative exporters under

⁶³ EPR 558, document 004.

⁶⁴ EPR 558, document 035.

this program and applied a preferential rate of 10% to the weighted average verified taxable income of the cooperating exporters for the investigation period.

The amount received under this program has been attributed to the value of all of the cooperating exporters' total company sales. It was then allocated to the goods based on the cooperating exporters' export revenue over the investigation period.

The subsidy margin for non-cooperative entities has then been calculated using the amount of the unit benefit expressed as a percentage of the lowest verified weighted average FOB export price for the investigation period from cooperating Vietnamese exporters.

The commission has chosen the lowest verified export price on the basis that the lowest weighted average export price demonstrates a price at which a non-cooperative entity may export like goods to Australia, based on the information before the commission.

7.4.4.2 Subsidy margin

Based on the information available and as outlined above, the commission has calculated a subsidy margin for non-cooperative entities of **0.4%**.

The commission's countervailable subsidy calculations for non-cooperative entities is contained in **Confidential Attachment 11**.⁶⁵

7.5 Summary of subsidy margins

The table below summarises the countervailable programs and the corresponding subsidy margins found for each exporter.

Exporter	Programs	Subsidy margin (%)
Nam Kim	None	N/A
Hoa Phat	None	N/A
HSG	None	N/A
Non-cooperative exporters	Program 18	0.4

Table 29 - Countervailable subsidies and subsidy margins exporters received

7.6 Level of subsidisation

Section 269TDA(2) provides that the Commissioner must terminate a countervailing investigation, in so far as it relates to an exporter of the goods, if satisfied either that:

- no countervailable subsidy was received in respect of the goods or
- if a subsidy was received, the level of the subsidy did not at any time during the investigation period exceed a negligible level.

Pursuant to section 269TDA(16)(b), a countervailable subsidy received in respect of goods exported to Australia from Vietnam is negligible if, when expressed as a

⁶⁵ This attachment is confidential as it contains commercially sensitive information relating to exporters.

percentage of the export price of the goods, the level of the subsidy is not more than 2%.⁶⁶

The commission has preliminarily found that:

- no countervailable subsidies have been received in respect of the goods that Hoa Phat, HSG and Nam Kim exported to Australia during the investigation period and
- non-cooperative entities received countervailable subsidies in respect of the goods exported to Australia from Vietnam during the investigation period, at negligible levels.

Accordingly, the Commissioner is preliminarily satisfied that:

- it is necessary to terminate the subsidy investigation under section 269TDA(2)(b)(i) in respect of Nam Kim, Hoa Phat and HSG and
- it is necessary to terminate the subsidy investigation under section 269TDA(2)(b)(ii) in respect of non-cooperative and all other exporters from Vietnam.

⁶⁶ Vietnam is classed as a Developing Country under Part 4, Division 1 of the *Customs Tariff Regulations 2004*.

8 ECONOMIC CONDITION OF THE INDUSTRY

8.1 Preliminary finding

Based on an analysis of the information contained in BlueScope's application and information obtained during Australian industry verification, the Commissioner is preliminarily satisfied that the Australian industry has, during the investigation period, experienced injury in the form of:

- reduced sales volume
- price depression
- reduced profit
- reduced profitability.

8.2 Approach to injury analysis

The commission considers that the Australian industry is comprised solely of BlueScope.

The commission relied on verified financial information from BlueScope in undertaking this injury analysis. The injury analysis period is from 1 April 2016.

The data supporting the commission's analysis of the Australian market and the economic condition of the Australian industry is at **Confidential Attachment 1**.

8.3 Volume effects

8.3.1 Sales volume

BlueScope claims it experienced a reduction in sales volume as a result of increased imports from the subject countries.

The table below depicts the change in BlueScope's total sales volumes for the injury period, with YE Mar 2017 as the base period.

Period	YE Mar 2017	YE Mar 2018	YE Mar 2019	YE Mar 2020
Index of sales volume	100.0	99.5	105.8	104.8

Table 30 – Injury period change in sales volume

BlueScope's volumes of its like goods over the injury period have generally trended upwards having overall increased approximately 4.8%. BlueScope's volumes of its like goods over the injury period have generally trended upwards having increased overall by approximately 4.8%.

Based on this analysis, the commission considers that BlueScope has not experienced injury in the form of loss of sales over the injury analysis period, however has experienced a reduction during the investigation period.

8.3.2 Market share

BlueScope claims it suffered a reduction in its market share as a result of increased imports from the subject countries.

Figure 2 sets out the commission’s assessment of the market share of the Australian industry (consisting solely of BlueScope), imports from the subject countries, and imports from all other countries since 1 April 2016.

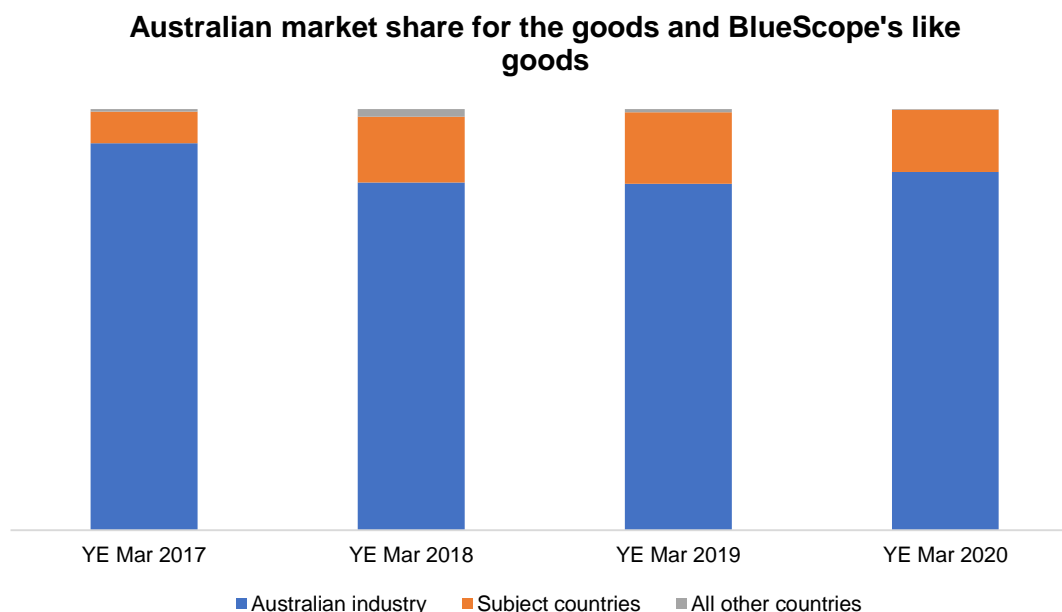


Figure 2 – Australian market share

The commission notes that BlueScope’s market share dropped between YE March 2017 and YE March 2018 after which it has trended upwards. However, the market share in YE March 2020 did not recover from that recorded in YE March 2017. The market share for subject countries has increased overall. The market share for non-subject countries has declined over the injury period, and has remained a small proportion of the market.

Based on this analysis, the commission considers that BlueScope has experienced injury in the form of reduced market share across the injury analysis period, however has not experienced injury during the investigation period.

8.4 Price suppression and depression

BlueScope claims that it has experienced injury in the form of both price depression and price suppression.

Price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when price increases, which otherwise would have occurred, have been prevented. An indicator of price suppression may be the margin between prices and costs.

Figure 3 compares the movement in weighted average unit cost to make and sell (CTMS) and unit selling prices over the injury analysis period.

Unit price and unit CTMS for BlueScope's like goods

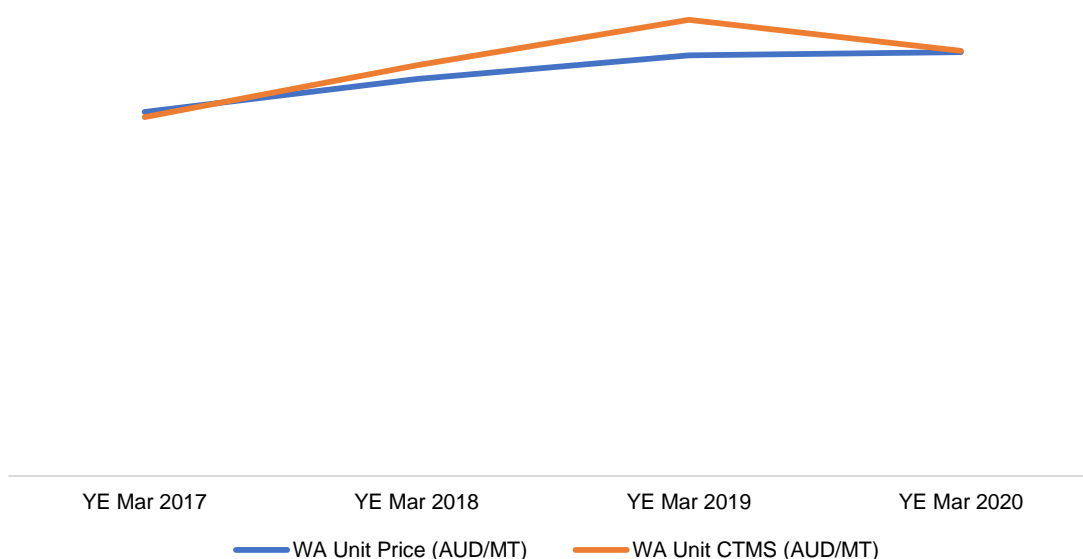


Figure 3 – Injury period unit price and unit CTMS comparison

Figure 3 indicates that that BlueScope has experienced improving unit selling prices across the injury analysis period. Between YE Mar 2017 and YE Mar 2019, the increase in unit CTMS was greater than the increase in unit prices, which is indicative of price suppression across that period. In YE Mar 2020 the margin between unit price and unit CTMS narrowed due primarily to a significant improvement in unit CTMS.

To further test BlueScope's claims of price depression and suppression, the commission undertook the same comparison of unit selling prices and unit CTMS across the investigation period. Figure 4 charts this relationship.

Investigation period quarterly unit price and unit CTMS (AUD/MT)

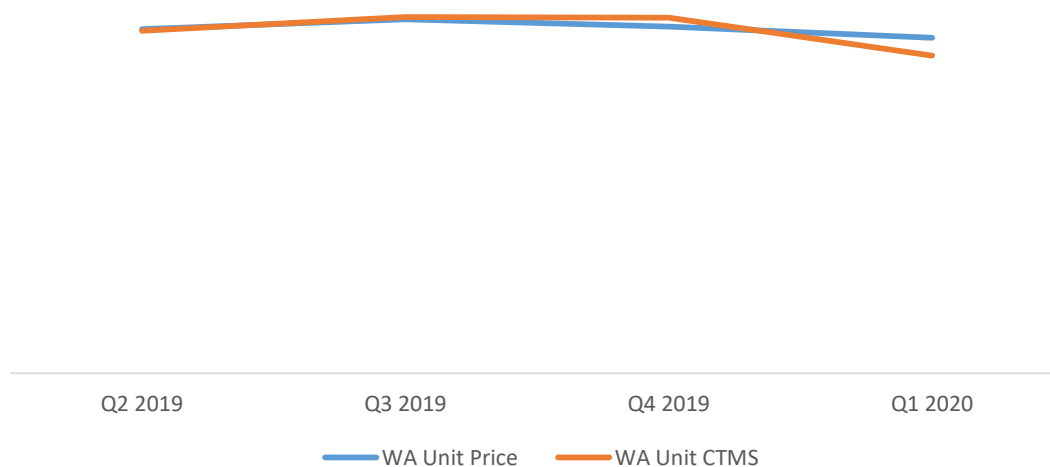


Figure 4 – Period of investigation quarterly unit price and unit CTMS comparison

Figure 4 indicates that during the investigation period BlueScope experienced:

- an increase in unit selling prices and unit CTMS across the first quarter
- a reduction in unit selling prices and unit CTMS after the second quarter
- a greater fall in unit selling prices than unit CTMS in the third quarter and
- a pronounced reduction in unit CTMS in the fourth quarter.

8.4.1 Conclusion – price effects

After assessing the analysis presented in respect of the injury analysis period, as well as the more granular analysis for the investigation period, the commission considers that:

- price depression is not evident across the injury analysis period, however appears to be emerging during the investigation period
- price suppression is evident throughout the injury analysis period into the early stages of the investigation period, however appears to have dissipated toward the latter stages of the investigation period.

8.5 Profits and profitability

BlueScope claims it has experienced material injury in the form of lost profit and profitability.

Figure 5 shows BlueScope's total profit and unit profitability in respect of its like goods during the injury analysis period.

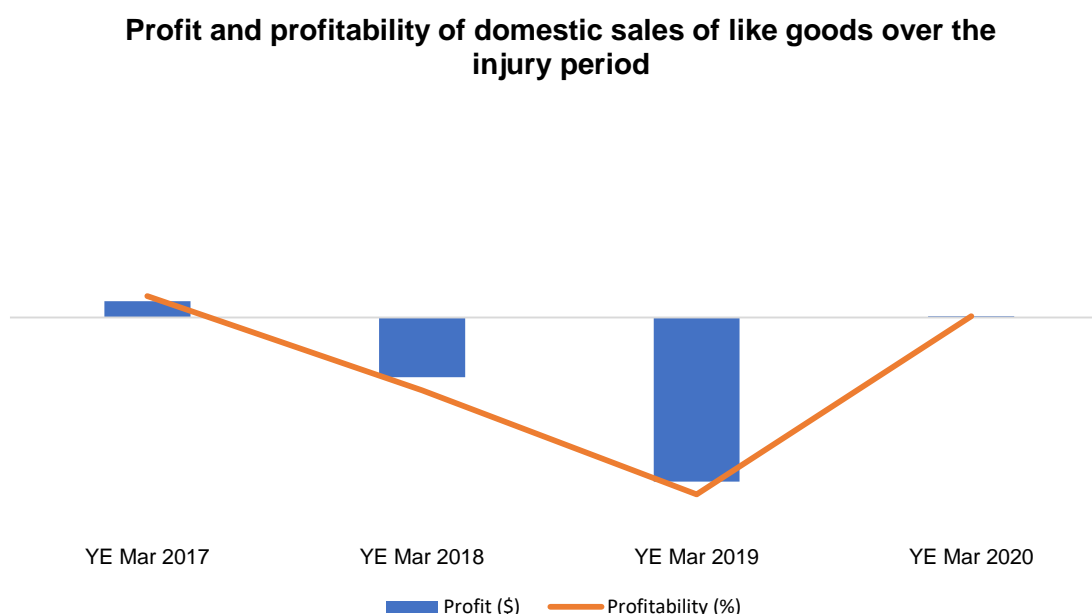


Figure 5 – Profit and profitability

BlueScope incurred losses and negative profitability in respect of its like goods during the injury period. The losses and negative profitability peaked at YE Mar 2019 with partial recovery in the period of investigation.

8.5.1 Conclusion – profit and profitability

Based on this analysis, the commission considers that BlueScope has experienced injury in the form of loss of profits and reduced profitability during the injury analysis period and an improvement in the period of investigation. The commission notes its finding that BlueScope has experienced price depression during the investigation period, and considers that while profit and profitability have improved during the investigation period, the evident price depression has curtailed the extent of that improvement.

8.6 Other economic factors

BlueScope also claims injury in the form of

- reduced return on investment
- reduced productivity and
- reduced capital investment.

The commission has examined BlueScope's verified data in respect of each of these claims.

8.6.1 Return on investment

BlueScope's return on investment for its like goods was negative at the start of the injury analysis period and has reduced overall during the injury analysis period (refer Figure 6). BlueScope's return on investment improved in the investigation period.

Return on investment over the injury period

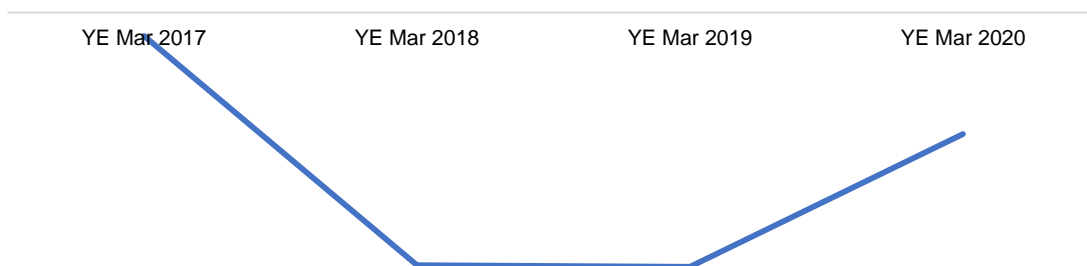


Figure 6 – Return on investment

BlueScope has experienced injury in the form of reduced return on investment with respect to its like goods in the injury analysis period, however has experienced improved return on investment during the investigation period.

8.6.2 Productivity

BlueScope claimed in its application that it had experienced injury in the form of reduced productivity and provided data in support of this claim. The productivity trend for the injury analysis period is at Figure 7. BlueScope's productivity for its like goods has remained relatively constant over the injury analysis period, with an improvement in the investigation period.

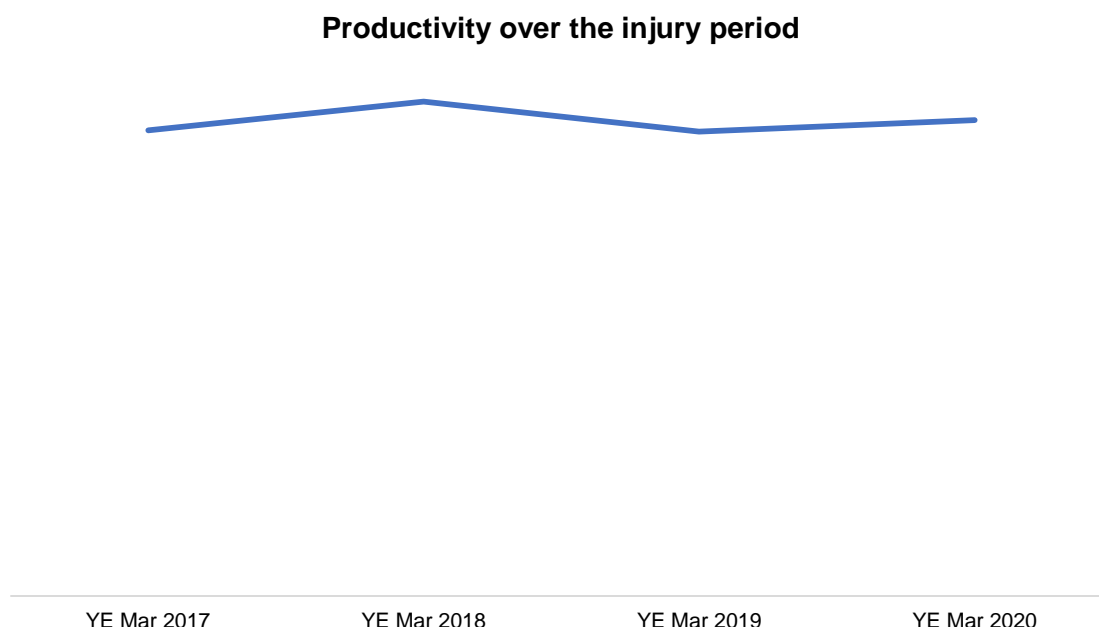


Figure 7 – Productivity

BlueScope has not experienced injury in the form of reduced productivity with respect to its like goods in the injury analysis period, nor the investigation period.

8.6.3 Capital investment

BlueScope's capital investment for its like goods has declined during the injury analysis period, with a pronounced drop at YE Mar 2018 (refer Figure 8).

Capital investment over the injury period

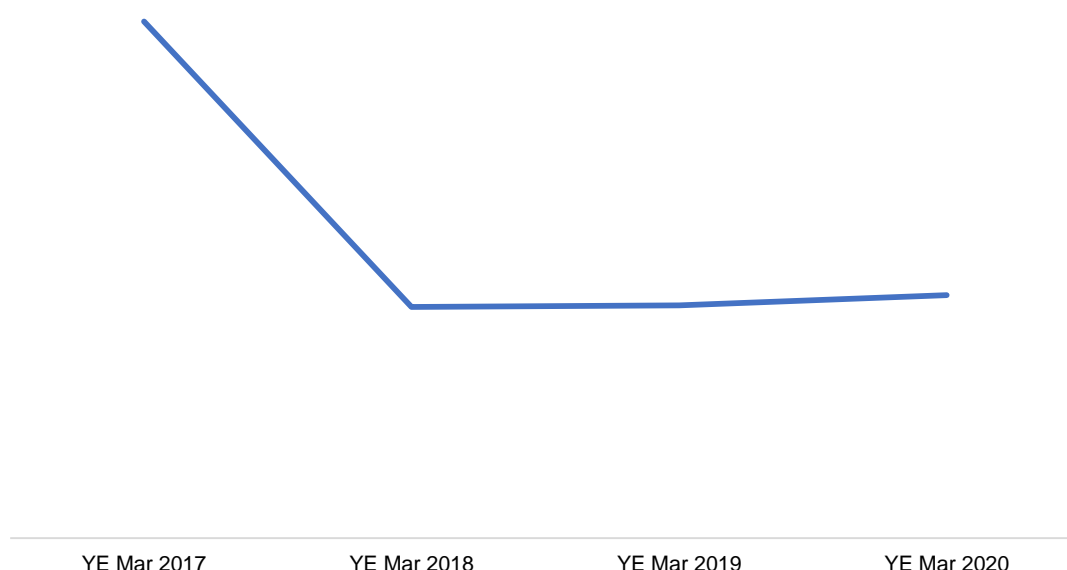


Figure 8 – Capital investment

BlueScope has experienced injury in the form of reduced capital investment with respect to its like goods in the injury analysis period, however no such injury is apparent in the investigation period.

8.6.4 Conclusion – other economic factors

The commission is satisfied that BlueScope experienced injury in the form of reduced return on investment and reduced capital investment in the injury analysis period, however the evidence does not support a finding of injury in respect of these factors during the investigation period.

8.7 Submission regarding BlueScope's injury

In its submission, Dongbu asserts that:

- A comparison of financial indicators between the 2 recently completed financial years shows record improvement in BlueScope's company-wide performance, and 'Australian Steel Products' segment which would be relevant to the goods under consideration.
- If BlueScope did experience any injury, that injury was transitory as BlueScope reports its performance subsequent to the period of investigation as being at record levels.
- BlueScope's record sales revenue of coated steel products is largely due to extraordinary steel trading conditions that began in early 2020, with the following factors driving raw material and prices to unprecedented levels:

- the confluence of global steel shortages (due to the COVID-19 pandemic from major steel mill production and supply chains disruptions) and increased export and domestic demand stemming from economic recovery and major infrastructure initiatives
- iron ore and coking coal shortages
- soaring freight rates.
- BlueScope is unable to meet growing demand.⁶⁷

The commission has assessed BlueScope's injury position relating to its sales of like goods. That assessment is with respect to the injury analysis and investigation periods. BlueScope's subsequent overall company performance is not necessarily directly relevant to the considerations that apply to this investigation because a company may be profitable overall and yet still suffer injury. Furthermore, the commission notes that there is a lack of evidence to support the reasons that Dongbu indicated Dongbu's reasons for BlueScope's improved economic position, if any, subsequent to the investigation period.

⁶⁷ EPR 558, document 051.

9 HAS DUMPING CAUSED MATERIAL INJURY?

9.1 Preliminary assessment

The Commissioner is preliminarily satisfied that dumped exports of the goods from Korea and Vietnam caused material injury to the Australian industry.

9.2 Legislative framework

Under sections 269TG, one of the matters that the Minister must be satisfied of in order to publish a dumping duty notice is that, because of dumping, the Australian industry has experienced material injury.

Section 269TAE(1) outlines the factors to which the Commissioner has had regard, and that may be taken into account, when determining whether material injury to an Australian industry has been, or is being, caused or threatened.

Section 269TAE(2A) requires that regard be had to the question as to whether any injury to an industry is due to a factor other than the exportation of the goods, and provides examples of such factors.

When assessing material injury, the commission also has regard to the *Ministerial Direction on Material Injury 2012* (Material Injury Direction).⁶⁸

As set out in chapter 7 of this report, in accordance with section 269TDA(2), the Commissioner proposes to terminate the investigation into subsidised goods from Vietnam, subject to submissions, on the basis that there has been no or negligible subsidisation from those exporters of the goods. The commission has not considered whether subsidised imports have caused injury due to the proposed termination of that part of the investigation.

9.3 Cumulative effect of injury

Section 269TAE(2C) provides that when determining whether material injury to an Australian industry has been, or is being, caused or threatened due to exports to Australia from different countries, the Minister should consider the cumulative effect of those exports only if the Minister is satisfied that:

- the margin of dumping established for each exporter is not negligible
- the volume of dumped imports from each country is not negligible and
- a cumulative assessment is appropriate in light of the conditions of competition between the imported goods, and between all of the imported goods and the like domestic goods.

As detailed in Table 31, the commission assessed the dumping margins for Korean and Vietnamese exporters and found that they were above negligible levels.

⁶⁸ ADN 2012/024.

The commission ascertained that the volume of dumped exports from Korea and Vietnam were not negligible.⁶⁹

The Commissioner has assessed the conditions of competition between the goods exported from Korea and Vietnam, and the goods exported from Korea and Vietnam and the Australian industry's like goods.

Due to the nature of the goods, customers can purchase aluminium zinc coated steel from a range of sources. ABF data shows that importers have sourced the goods from more than one country during the injury analysis period. The commission is aware of customers in Australia advising the Australian industry of a range of available import sources from the subject countries. Similarly, domestically produced goods compete against exports from Korea and Vietnam for sales in Australia.

Having regard to the above analysis, the Commissioner's view is that it is appropriate to consider the cumulative effects of exports from Korea and Vietnam.

9.4 Approach to causation analysis

As outlined in section 8.1 above, the commission considers that the Australian industry has experienced injury in the investigation period and this injury has coincided with the presence of dumped goods from Korea and Vietnam. This section will analyse whether the dumped goods caused injury to the Australian industry and whether that injury is material.

The commission considered the following evidence for the purposes of assessing injury and causation:

- Verified data for the volume, price, and profit effects of the Australian industry during the injury analysis period and investigation period.
- Verified sales data from cooperating exporters and participating importers, to determine the relevant selling prices and volumes of the goods.
- Information from the ABF import database to determine import volumes and export prices.
- The broader context of the economic condition of the Australian industry.

The data supporting the commission's analysis of causation (volume and price effects), as detailed in the remainder of this chapter, is at **Confidential Attachment 12**.

⁶⁹ Confidential Attachment 1 – Australian market.

9.5 Size of dumping margins

Section 269TAE(1)(aa) provides that regard may be given to the size of each of the dumping margins worked out in respect of the goods of that kind that have been exported to Australia. The dumping margins are summarised in Table 31.

Country	Exporter	Dumping margin (%)
Korea	Dongbu	2.5
	Dongkuk	6.9
	Uncooperative exporters	13.7
Taiwan	SYSCO	-5.6
	Yieh Phui	-4.4
	Uncooperative exporters	3.5
Vietnam	Hoa Phat	12.5
	HSG	5.2
	Nam Kim	-9.7
	Uncooperative exporters	20.6

Table 31 – Summary of dumping and subsidy margins

As set out in section 6.6.5 above, in accordance with section 269TDA(1), the Commissioner has preliminarily determined that the investigation into dumped goods from Taiwan will be terminated in its entirety, subject to submissions, on the basis that there has been no dumping from those exporters of the goods.

As set out in section 6.7.6 above, in accordance with section 269TDA(1), the Commissioner has preliminarily determined that the investigation as it relates to Nam Kim will be terminated, subject to submissions, on the basis that Nam Kim did not export the goods to Australia at dumped prices.

The Commissioner has not attributed injury to the Australian industry in relation to exports of the goods from Taiwan and from Nam Kim.

The Commissioner has had regard to the greater than de minimis dumping margins from Korea and Vietnam in assessing whether the Australian injury has experienced material injury in relation to those goods.

9.6 BlueScope's examples of competition with imports

BlueScope provided examples to evidence the influence of allegedly dumped exports of the goods from the subject countries.

The commission examined the examples and were satisfied that the examples represent price negotiations relevant to the investigation period.

BlueScope provided 4 examples in its application. Of the 4 examples, 2 of the examples referred to negotiations relevant to aluminium zinc coated steel of a width less than 600 mm ('slit' aluminium zinc coated steel), which are not relevant to this investigation.⁷⁰

Of the remaining 2 examples BlueScope provided in its application, one referred to negotiations with BlueScope's customers where imports of the goods from Vietnam were considered in BlueScope's price offering to its customers. There was no evidence of the specific mill, however the commission notes that the goods from one Vietnamese exporter (Nam Kim) have been found to be un-dumped, and all other exporters from Vietnam have been found to be dumped in the investigation period. The other example referred to competition with the Vietnamese exporter HSG. This example relates to competition between BlueScope's like goods and slit aluminium zinc coated steel. Slit aluminium zinc coated is not captured in the goods description in this investigation. The commission considers this a factor other than dumping of the subject goods causing injury (refer section 9.9).

The commission considers that the examples indicate the price sensitivity of the market. The examples evidence BlueScope having consideration for competitor pricing in its negotiations, where its competition may be from dumped or un-dumped sources. None of the examples evidenced BlueScope losing sales volumes to dumped goods.

The commission's assessment of BlueScope's price negotiation examples is at **Confidential Attachment 13**.

9.7 Volume effects

In its application, BlueScope asserted that it has experienced a reduction in its market participation rate over the injury analysis period, due to an increasing volume of imports from the subject countries.

Figure 9 below illustrates the size and composition of the Australian market during the injury analysis period:

⁷⁰ These goods are the subject of Investigation 559, a dumping and subsidy investigation of aluminium zinc coated steel of a width less than 600 mm exported from the China and the Vietnam. Investigation 559 has been conducted in parallel with Investigation 558.

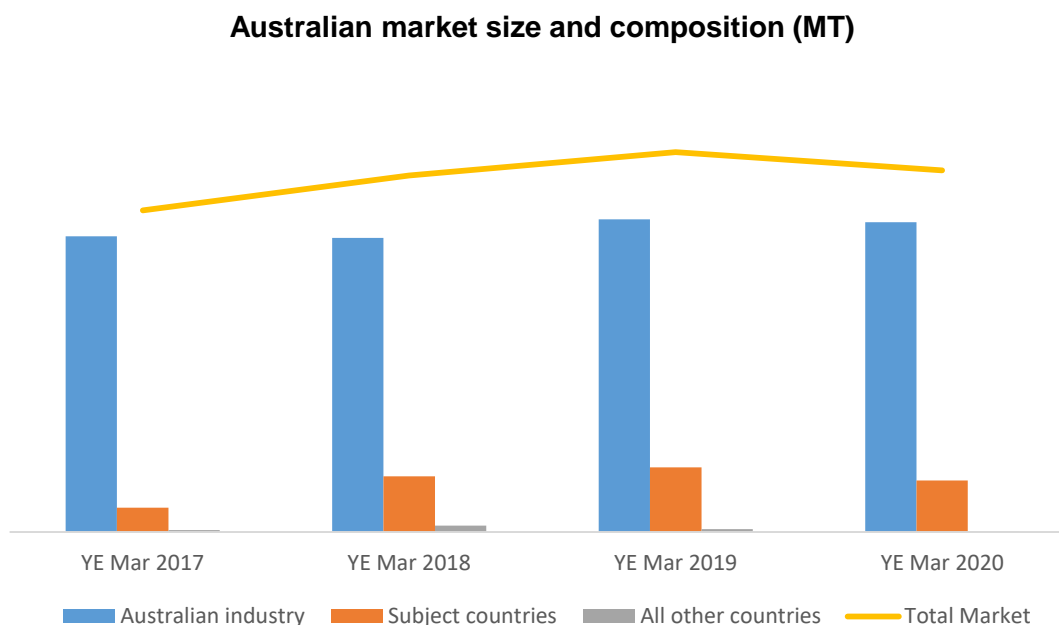


Figure 9 – Australian market size and composition (MT)

Figure 9 indicates that the Australian market increased in size across the period YE Mar 2017 to YE Mar 2019 and this growth coincided with a rise in imports from the subject countries. The volume of imports from the subject countries increased 122% over the injury analysis period. BlueScope's volume increased 4% over the injury analysis period.

During the investigation period (YE Mar 2020) there was a 5% reduction in the Australian market. In section 8.3 the commission found that BlueScope has experienced a reduction in sales volume during the investigation period of approximately one per cent. For comparison, during the investigation period, imports from the subject countries experienced a reduction in sales volume of approximately 20% and imports from other sources experienced a reduction of approximately 80% to a negligible volume. As a result of these movements in sales volumes, and as discussed in section 8.3.2, the Australian industry's market share increased in the investigation period, though it remains below the share held at the outset of the injury analysis period.

Figure 10 illustrates the composition of imports from the subject countries during the injury analysis period:

Imports from subject countries (MT)

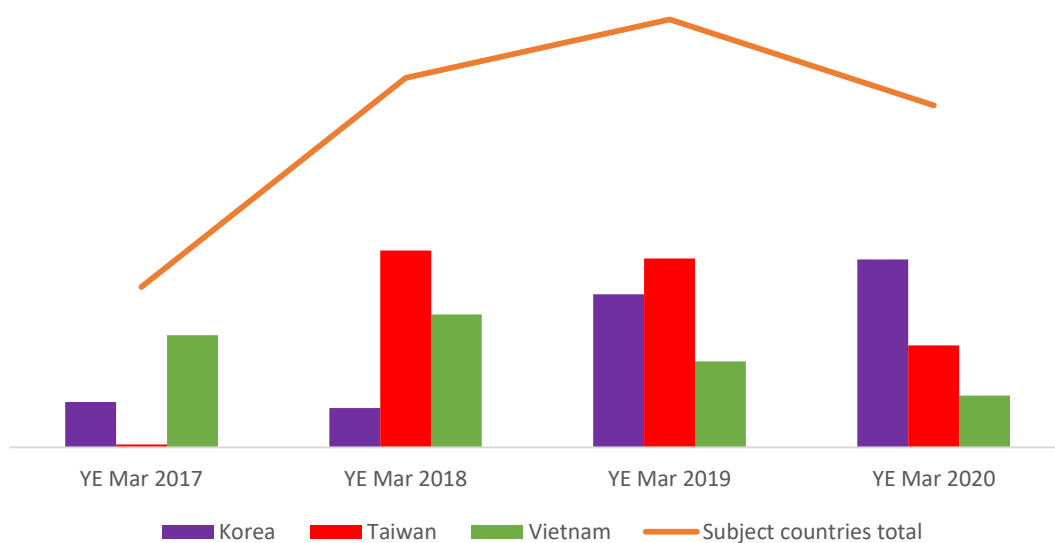


Figure 10 – Composition of imports from subject countries (MT)

Figure 10 shows that imports of the goods from Taiwan and Vietnam collectively increased at its highest rate between YE Mar 2017 and YE Mar 2018, with volume reaching a maximum at YE Mar 2018, after which time import volumes from those sources declined. In contrast, imports from Korea have been increasing throughout the injury analysis period, and accounted for over half of the imports from the subject countries during the investigation period.

Figure 11 illustrates the changing composition of sales within the Australian market across the period of investigation:

Investigation period quarterly sales volumes by source (MT)

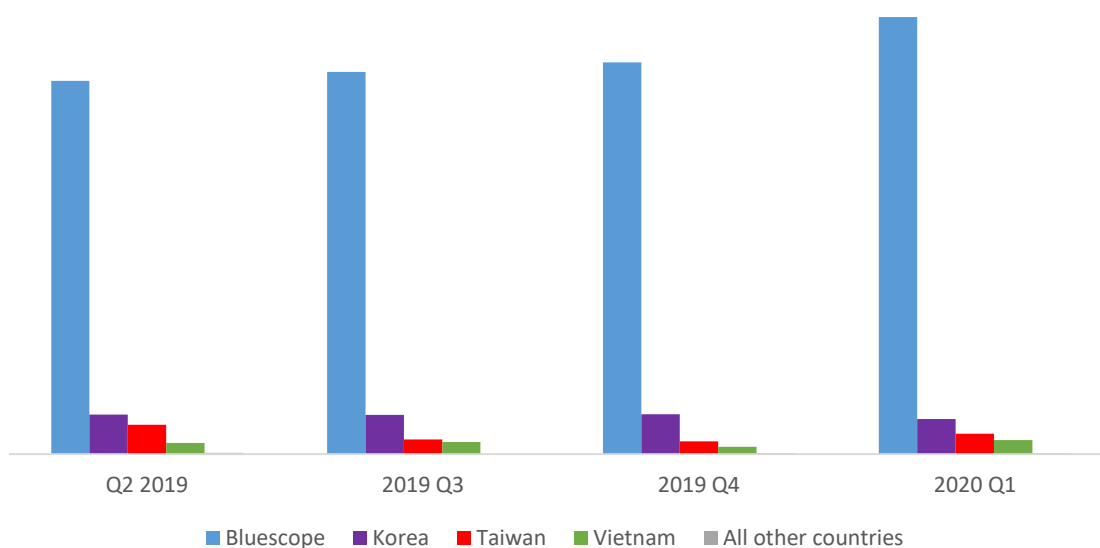


Figure 11 – Period of investigation quarterly volumes and their source (MT)

SEF 558 Aluminium zinc coated steel ≥ 600 mm – Korea, Taiwan and Vietnam

Figure 11 shows that during the investigation period:

- BlueScope increased its sales volume in each quarter
- the volumes of exports from Korea and Taiwan were steady, though with an overall decline into the fourth quarter
- the volume of exports from Vietnam was steady with an increase in the fourth quarter.

All imports from Korea, and the majority of those from Vietnam (86% of the total import volume from Vietnam), were at dumped prices during the investigation period, while those from Taiwan were not at dumped prices. In total, 70% of the volume of the goods exported from the subject countries to Australia during the investigation period were at dumped prices.

BlueScope provided the commission with several examples of injury experienced during the investigation period due to allegedly dumped goods from the subject countries (refer to section 9.6 below). The commission notes that the examples provided relate to the price effects of those dumped goods. None of these examples evidenced BlueScope losing sales volumes to dumped goods.

While the proportion of dumped imports in the Australian market during the investigation period is significant, the commission observes that, during the investigation period:

- BlueScope increased its sales volume in each quarter and increased its market share in a declining market
- there was a reduction in the volume of imported goods of approximately 20%
- no specific examples of sales volumes being lost to dumped goods have been provided.

Consequently, the commission considers that dumped exports did not cause volume injury to the Australian industry during the investigation period.

9.8 Price effects

BlueScope claimed in its application that it has been unable to increase selling prices, in a period where its production costs have risen, due to dumped and subsidised imports from the subject countries undercutting its selling prices.⁷¹

As detailed in section 8.4.1 the commission considers that:

- price depression is not evident across the injury analysis period, however, it appears to be emerging during the investigation period
- price suppression is evident throughout the injury analysis period into the early stages of the investigation period, however it appears to have dissipated toward the latter stages of the investigation period.

To evaluate whether dumped exports from the subject countries caused these price effects, the commission has undertaken a price undercutting analysis. Price undercutting

⁷¹ The commission has not considered whether subsidised imports have caused injury due to the proposed termination of that part of the investigation.

occurs when imported goods are sold at a price below that of the Australian produced like goods.

The commission's price undercutting analysis has compared the quarterly weighted average Free into Store (FIS) selling price of BlueScope's like goods against the weighted average FIS selling price of the goods imported from the subject countries.

The commission undertook this analysis at:

- an aggregated level across all MCCs imported during the period of investigation that BlueScope also manufactured
- an individual MCC level
- a customer and MCC level.

To inform its causation analysis, the commission conducted the undercutting analysis inclusive of both dumped and un-dumped imports from the subject countries.

The commission used verified importer sales data to determine FIS selling prices where that data was available.⁷² Where verified importer sales data was not available, the commission calculated the FIS selling price for imports as the sum of:

- the weighted average FOB export price verified during exporter verification, or, if not available, the FOB export price from the ABF import database
- the weighted average post FOB exportation costs applicable to each country of export based on verified importer importation costs and
- an amount for SG&A and profit for each country based on verified importer data.

9.8.1 Price undercutting at an aggregate level

The commission compared the aggregate weighted average selling price of BlueScope's entire range of like goods against the aggregate weighted average selling price of imported goods, for each country, to assess price undercutting at an aggregated level. The commission also considered whether the goods were dumped or un-dumped.

Figure 12 below illustrates the commission's price undercutting analysis at an aggregate level:

⁷² Due to the nature of the data available to the commission, it has been necessary to rely on a combination of verified importer sales data, derived sales data, and CRE data in assessing prices. The assumptions underpinning the commission's calculations are detailed in Confidential Attachment 1.

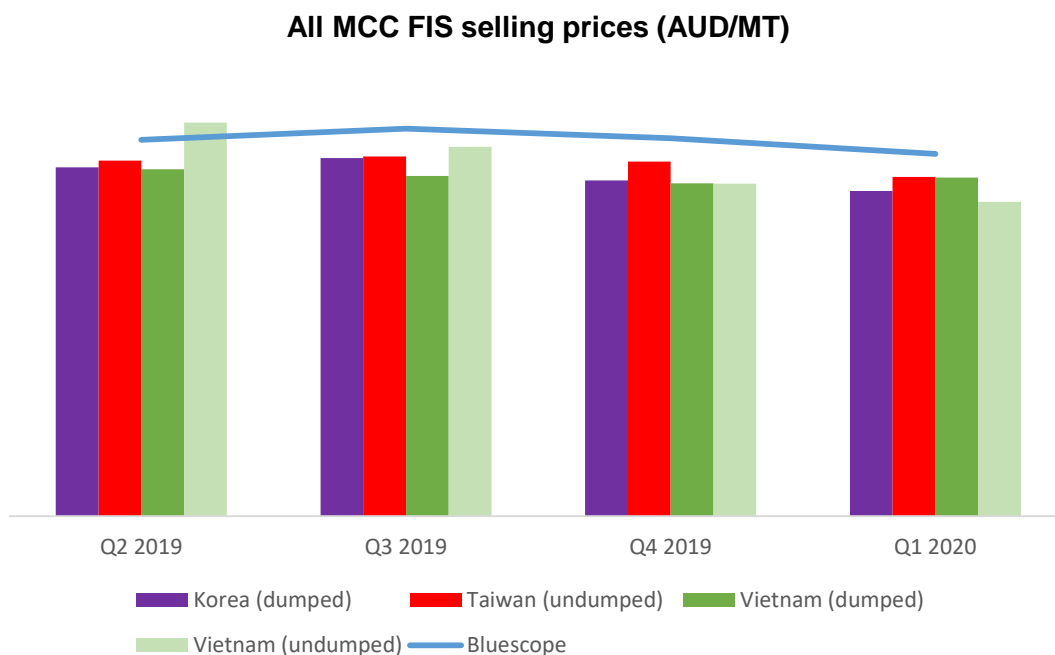


Figure 12 – Price comparison for subject countries – all sales (WA FIS selling price AUD/MT)

Figure 12 demonstrates that, other than for un-dumped goods exported from Vietnam in the first quarter of the investigation period, all other exports from the subject countries have undercut BlueScope's selling prices in all quarters of the investigation period. The range of undercutting is between 3% and 17%. In all quarters, Vietnamese exporters were the lowest priced in the Australian market, with dumped imports from Vietnam the lowest priced in Q2 2019 and Q3 2019, and un-dumped imports the lowest priced in Q4 2019 and Q1 2020.

The relationship between dumped and un-dumped exports across the investigation period at an aggregate level is in Figure 13.

All MCC FIS selling prices (AUD/MT)

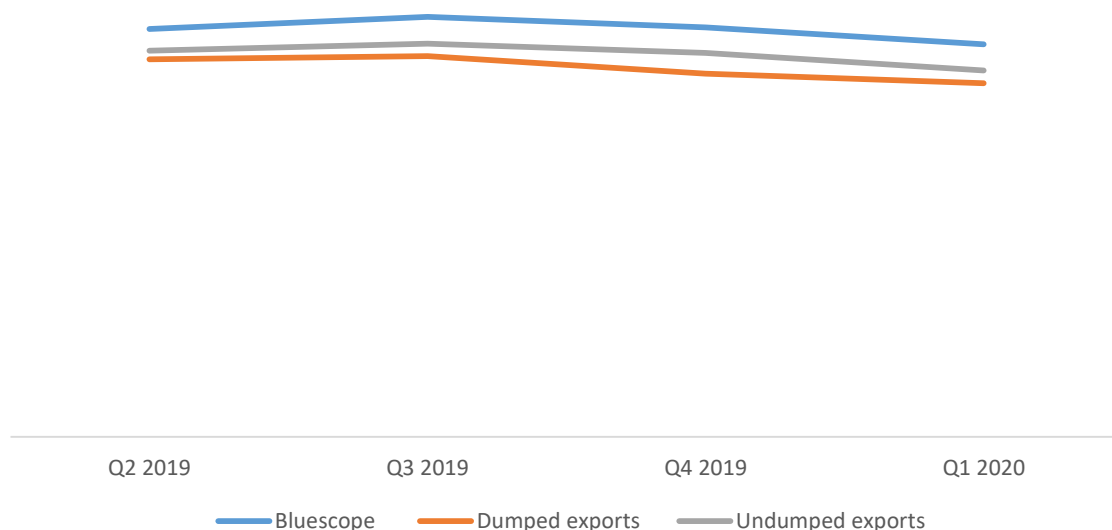


Figure 13 – Price comparison between dumped and un-dumped exports – all sales (WA FIS selling price AUD/MT)

Figure 13 demonstrates that in aggregate terms, dumped exports were the lowest priced in the Australian market in all quarters of the investigation period, and there is a close correlation between BlueScope's selling prices and the price of imported goods.

The commission considers that Figure 13 and Figure 14 indicate that the Australian market is highly price sensitive. The commission notes, from the information gathered from the 5 importers examined during the investigation, that:

- these importers accounted for approximately 90% of the volume of imports from the subject countries
- 60% of the volume of imports are sourced from importers sourcing from multiple suppliers
- 55% of the volume of imports comes from importers who source from multiple suppliers across multiple countries.

The commission considers that in this environment importers have high visibility in respect of price between competing exporters and would be able to leverage that visibility when making supply decisions and negotiating purchase prices. As such, the commission accepts that goods exported from the subject countries will have exerted an influence on pricing within the market, including the selling prices that BlueScope may be able to achieve. BlueScope's examples of price undercutting, provided with its application, supports this conclusion (refer to section 9.6).

9.8.2 Price undercutting at an MCC level

Noting the commentary in the aggregate price undercutting analysis above, and the diversity of MCCs sold within the Australian market that are included within that analysis,

the commission has also undertaken a more granular price undercutting analysis at the MCC level.

The commission identified the 6 most commonly sold MCCs within the Australian market, which accounted for over 90% of BlueScope's sales in the investigation period, as well as over 90% of the volume of imports for the 4 importers where verified MCC data was available.

Table 32 illustrates the commission's price undercutting analysis in respect of these MCCs. For each listed MCC, and for each quarter, the lowest priced import source and its level of undercutting against BlueScope's price is indicated.⁷³ Highlighted cells indicate goods that were not at dumped prices.

MCC	Q2 2019		Q3 2019		Q4 2019		Q1 2020	
	Source	%	Source	%	Source	%	Source	%
MCC 1	Vietnam B	13%	Vietnam A	13%	Vietnam A	11%	Vietnam B	17%
MCC 2	Korea B	10%	Korea B	2%	Korea A	8%	Korea B	8%
MCC 3	Korea A	5%	Vietnam A	5%	Vietnam B	11%	Korea A	12%
MCC 4	N/A	N/A	Vietnam C	3%	Korea B	0%	Korea A	13%
MCC 5	Korea B	1%	Korea A	6%	Korea B	0%	Korea A	2%
MCC 6	Korea B	2%	Vietnam A	6%	Vietnam A	13%	Korea B	13%
All MCCs	Korea B	8%	Vietnam A	11%	Korea A	17%	Vietnam C	13%

Table 32 – Magnitude of price undercutting at the MCC level and showing the (de-identified) export source of goods.

Table 32 demonstrates that imports from the subject countries undercut BlueScope's selling prices for these MCCs in all quarters of the investigation period. The level of undercutting is up to 17%. The commission notes that, across the investigation period, 5 different exporters from both Korea and Vietnam were responsible for the lowest priced goods in the market at one time or another. Of those 5 exporters, 4 exported dumped goods.

The commission considers that this analysis further indicates the high degree of price competition within the Australian market and that there was not a single price leader in the Australian market during the investigation period. The commission considers that importers are able to leverage the market intelligence available to them, as a result of sourcing supply from a range of entities at the most competitive price. In the majority of instances, the most competitive price in the market related to dumped goods. The commission considers that in this environment price pressure from dumped imports from Korea and Vietnam has impacted the prices achievable for other participants in the market, including BlueScope and exporters of un-dumped goods.

⁷³ For the purposes of confidentiality, individual exporters have been de-identified. Therefore, for example, 'Korea A' refers to an individual exporter from Korea while 'Korea B' refers to a different exporter.

9.8.3 Price undercutting at a customer level

The commission compared sales data from BlueScope against the sales data of the importers examined during the investigation.⁷⁴ The commission identified 15 common customers.

The commission observed that 17% of imports from the subject countries related to a single MCC that could be tracked to 5 common customers of BlueScope, and further that BlueScope's sales of this MCC to these 5 common customers amounted to 15% of BlueScope's total sales volume during the period of investigation. The commission focussed its price undercutting analysis on this MCC and these customers.

Table 33 illustrates the commission's price undercutting analysis in respect of these customers. For each listed customer, and for each quarter, the lowest priced import source and its level of undercutting in relation to those imports is indicated.⁷⁵ Highlighted cells indicate goods that were not at dumped prices.

Customer	Q2 2019		2019 Q3		2019 Q4		2020 Q1	
	Source	%	Source	%	Source	%	Source	%
Customer A	Korea B	9%	NA	NA	NA	N/A	N/A	N/A
Customer B	Korea B	8%	Taiwan A	6%	Taiwan A	8%	N/A	N/A
Customer C	N/A	N/A	Korea B	1%	Korea B	1%	Korea B	0%
Customer D	Korea B	20%	Korea B	23%	N/A	N/A	Taiwan A	20%
Customer E	Taiwan A	10%	Korea A	11%	Taiwan A	9%	Taiwan A	10%

Table 33 – Magnitude of quarterly investigation period price undercutting at customer level and (de-identified) export source of goods.

Table 33 demonstrates that both dumped and un-dumped goods undercut BlueScope's selling prices to these customers for the relevant MCC. The level of undercutting is up to 23%. The commission notes that across the investigation period:

- these customers were collectively supplied from 4 different importers sourcing the goods from 6 different exporters from the subject countries
- BlueScope was the largest customer in terms of volume of purchases from all sources, in addition to 4 exporters spanning each of the subject countries
- three different exporters from 2 countries were responsible for the lowest priced goods in the market at one time or another and
- of those 3 exporters, 2 exported dumped goods.

The commission considers this analysis at the customer level indicates that all participants in the market have undercut BlueScope. BlueScope is in direct competition with exports from the subject countries. The commission notes that on 6 occasions in this analysis un-dumped goods undercut BlueScope. However, in the majority of instances where BlueScope is competing with both dumped and un-dumped goods, the dumped

⁷⁴ The commission notes that MISO did not supply information that identified its customers and as such this analysis could only be undertaken in respect of the 4 importers who did provide this data.

⁷⁵ For the purposes of confidentiality, individual exporters have been de-identified. Therefore, for example, 'Korea A' refers to an individual exporter from Korea while 'Korea B' refers to a different exporter.

goods were responsible for the greatest extent of undercutting. Where un-dumped goods were in direct competition with dumped goods the commission observed that the difference in pricing between the dumped and un-dumped goods did not exceed 2.5%.

The commission considers that, at a customer level, price pressure from dumped imports from Korea and Vietnam has impacted the prices achievable for other participants in the market, including BlueScope and exporters of un-dumped goods.

9.8.4 Other factors affecting price

The commission observed that during the investigation period BlueScope experienced reduced costs of production. The commission considered whether this reduction in the cost of production resulted in BlueScope's reduced selling prices.

The commission compared BlueScope's unit selling prices and unit CTM, against the weighted average unit selling prices (in the Australian market) and unit CTM of cooperating exporters. The commission's comparison is in Figure 14:

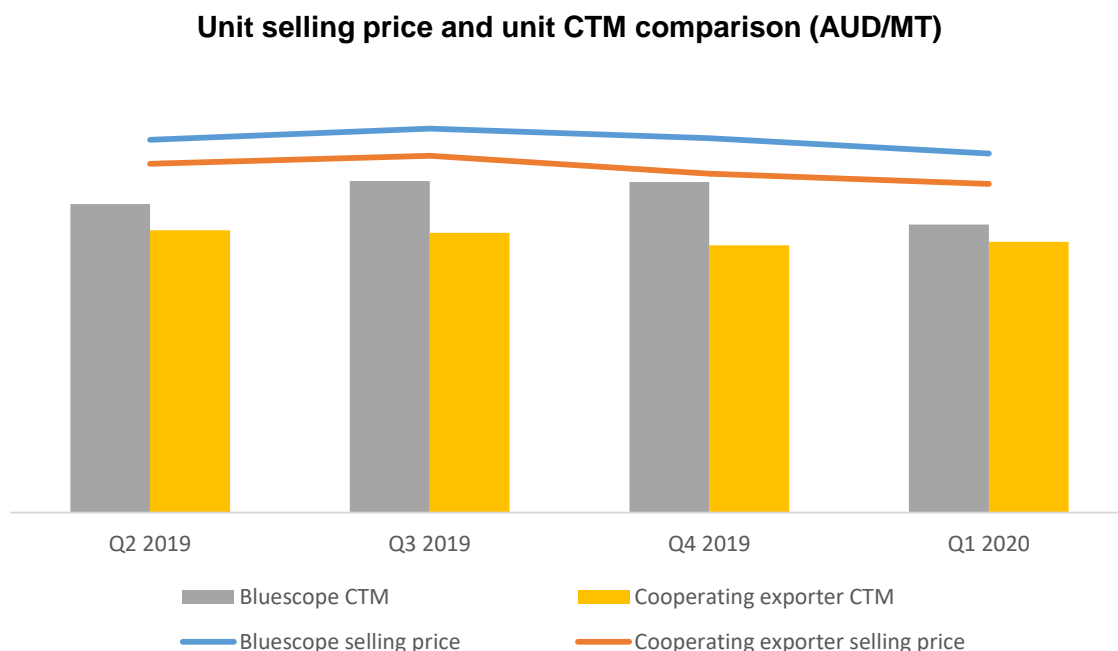


Figure 14 – Unit selling price and CTM of BlueScope and cooperating exporters

Figure 14 demonstrates that during the investigation period:

- BlueScope's unit selling prices closely correlate with the unit selling prices of the cooperating exporters
- cooperating exporters' unit CTM remained relatively stable, while BlueScope's unit CTM fluctuated
- BlueScope absorbed the increases in its unit CTM across quarters 1 to 3 of the investigation period (diminishing margin between selling prices and CTM), however was able to recover the margin in quarter 4 when unit CTM reduced to a greater degree than unit selling prices and

- cooperating exporters' unit selling prices reduced over the investigation period despite the relative stability of the unit CTM.

This analysis indicates that BlueScope's selling prices have a closer correlation with the selling prices of exporters than with BlueScope's own costs of production. The commission considers that while BlueScope experienced reduced costs of production in the final quarter of the investigation period which may have given it a greater margin for price negotiation, that price negotiation would nonetheless be undertaken within the context of the imports from the subject countries undercutting its selling prices. As detailed in the preceding sections, the commission considers that dumped imports from Korea and Vietnam have impacted upon the prices achievable for other participants in the market.

The commission notes that despite the reduction in BlueScope's costs of production, BlueScope was only able to return to a break-even point at the conclusion of the investigation period, as opposed to a position of profitability. The commission considers that BlueScope would have endeavoured to maintain higher selling prices to achieve profitability in the absence of competition with dumped imports undercutting its selling prices.

As such, the commission does not consider that the reduction in BlueScope's prices in the investigation period were in response to an improvement in its cost of production, but rather due to the presence of dumped imports in the Australian market.

9.8.5 Price effects - conclusion

The commission's price undercutting analysis, at an aggregate level, and both the MCC and customer level, indicates that the Australian market has high price competition and price transparency. The commission considers that BlueScope's selling prices have a close correlation with the price of imported goods in the Australian market. The commission notes that the Australian market is subject to competition from both dumped and un-dumped imports. The commission's price undercutting analysis indicates that at an aggregate level, as well as at the MCC and customer level, dumped goods have exerted the greatest extent of price undercutting. Given this observation, and the fact that dumped goods account for approximately 70% of the volume of imported goods from the subject countries, the commission considers that, for BlueScope to remain competitive against dumped imports, its pricing must be responsive to the prices of those dumped imports.

The commission considers that, during the investigation period, BlueScope has experienced price depression (reduced selling prices), in order to compete with dumped imports at prices that undercut its own.

9.8.6 Profit effects

BlueScope claims it has experienced material injury in the form of lost profit and profitability.

As detailed in section 8.5, BlueScope experienced a downward trend in profit and profitability during the first 3 years of the injury analysis period. However, during the

investigation period, BlueScope has returned to profitability though at a very marginal level.

As detailed in section 9.8.5, the commission considers that BlueScope suffered price injury due to dumped imports.

The commission considers that while BlueScope experienced an improvement in profit and profitability during the investigation period, the extent of that improvement diminished as BlueScope reduced selling prices to compete with dumped imports.

As such the commission considers that BlueScope has experienced injury due to dumped exports in the form of lost profit and profitability in the investigation period.

9.9 Factors other than dumping causing injury

9.9.1 Introduction

Subsection 269TAE(2A) requires the Minister to consider whether injury to an industry is due to factors other than the exportation of the goods. This provision contains a list of factors that the Minister may have regard to when considering whether injury is due to factors other than exportation of the goods, but it is not an exhaustive list. The commission considered the following factors as possible causes of injury:

- un-dumped goods
- slit aluminium zinc coated steel
- energy costs.

The commission's consideration of these factors are detailed in the remainder of this chapter.

9.9.2 Submissions regarding factors other than dumping causing injury

Dongkuk submitted that BlueScope's competition with timber framing and its commercial strategy for the like goods, not dumped goods from Korea, are injurious.⁷⁶

Dongkuk considers that BlueScope targets its TRUECORE® brand into the framing market, where it prices aggressively against its competition of lower priced timber framing. Therefore, there is a 'substantial loss-making position for the like goods' where price variation data available in the application evidences BlueScope seeking to suppress the prices of its TRUECORE® product at the expense of sales of its other products in the same business unit, in order to gain market share.

Subsequent to the application, the commission verified BlueScope's model-level price variation data. The verification process resulted in the amending of the price variation values.⁷⁷ Table 34 summarises the revised and verified model-level price variation values.

⁷⁶ EPR 558, document 056.

⁷⁷ The Australian industry verification report for BlueScope (EPR 558, document 050) details an exception to BlueScope's data in relation to sales revenue and sales quantity. Accordingly, the data presented in the application was amended. Exception no. 2 in the verification report refers.

Model categories	2016/17	2017/18	2018/19	2019/20
TrueCore	100.00	104.52	112.19	119.01
Zincalume G550 0.42x940	100.00	110.62	118.59	118.68
Zincalume G550 0.48x940	100.00	110.88	119.25	113.54
Zincalume G300 0.55x1200	100.00	111.59	119.57	117.04
Other	100.00	111.11	117.65	116.16
Total	100.00	109.23	115.73	116.86

Table 34 – Verified price variation at model level for BlueScope’s like goods in the injury period

The revised and verified data differs from the data presented in the application. Notably, the revenue of BlueScope’s like goods now increases in the investigation period. In contrast, the trend in the application, which Dongkuk uses to evidence a loss making position for BlueScope’s like goods in its submission, decreased. The commission considers that the verified price and variation data does not support the assertion that BlueScope positions itself into a loss making position on account of its marketing strategy.

9.9.3 Un-dumped goods

The commission has found that exports from Taiwan and from Nam Kim were not at dumped prices during the investigation period. These goods accounted for approximately 30% of the total volume of goods exported from the subject countries. Further, the commission established that imports from these exporters, despite being un-dumped, had nevertheless undercut BlueScope’s selling prices.

As such, the commission considers that un-dumped goods may also have contributed to the injury BlueScope experienced.

However, the commission’s price undercutting analysis indicates that, at an aggregate level, as well as at the MCC and customer level, dumped goods have exerted the greatest extent of price undercutting during the investigation period. The commission has therefore attributed injury to BlueScope from those dumped imports.

The commission observes that, as stated in the Material Injury Direction, injury from dumping need not be the sole cause of injury to the industry, where injury due to dumping is material in degree.⁷⁸

9.9.4 Slit aluminium zinc coated steel

BlueScope indicated in its application that competition with slit aluminium zinc coated steel puts downward pressure on BlueScope’s like goods. Specifically, the application alleges that Vietnamese importers offered slit product (which is generally a higher priced product compared to the subject goods) at ‘wide’ (the subject goods) aluminium zinc coated steel prices.⁷⁹ BlueScope provided an example in support of price undercutting of

⁷⁸ ADN No. 2012/024.

⁷⁹ ‘Wide’ refers to aluminium zinc coated steel of a width equal to or greater than 600 mm, that is, the goods the subject of this investigation.

dumped imports relating to competition with Vietnamese exporter HSG's slit aluminium zinc coated steel.

Dongkuk submitted that the impact of slit goods on BlueScope would be a factor other than dumping, and would be an injurious factor instead of imports from Dongkuk and Korea.⁸⁰

The commission notes that HSG's exports of slit aluminium zinc coated steel were at dumped prices during the investigation period.⁸¹

The commission has considered this claim within the context of factors other than dumping. To assess this claim, the commission utilised Vietnamese export price data available from this investigation and Investigation 559 (two exporters cooperated in both investigations). The commission calculated FIS prices from the Vietnamese exporters' export sales data, and compared the prices between slit and wide goods for width-invariant MCCs. The commission observed that the pricing differential between BlueScope and Vietnamese exporters' wide and slit goods was similar for the same MCCs. The commission has also found in the investigation that imports of wide goods, and in Investigation 559 imports of slit goods, were undercutting BlueScope. Generally, the degree of undercutting between imports the subject of the investigation and those the subject of Investigation 559 are similar. As such, the commission considers that the observation of slit goods being offered at wide prices appears to be an artefact of imports undercutting BlueScope generally.

The commission did not find any additional evidence of competition between slit and wide aluminium zinc coated steel that would be injurious. The commission considers that offers of slit goods that compete with wide goods is not significantly influencing the prices of the BlueScope's like goods to a degree that is material compared to the price effects detailed in section 9.8.

The commission's assessment of competition between wide and slit goods is at **Confidential Attachment 14**.

9.9.5 Energy costs

BlueScope's application outlined that energy cost increases may be a factor other than dumping that may have caused it injury.

The commission has assessed BlueScope's verified data and estimated that while electricity costs are not an immaterial cost component of BlueScope's like goods, the year-to-year costs attributable to electricity have not varied considerably over the injury analysis period. Therefore, the commission is of the view that any injury attributable to electricity cost variations is immaterial.

The commission's assessment of energy costs is at **Confidential Attachment 14**.

⁸⁰ EPR 558, document 056.

⁸¹ Investigation 559 is being conducted in parallel to this investigation and shares the same investigation period.

9.9.6 Materiality of injury

9.9.6.1 Submissions regarding materiality of injury

Dongkuk submitted that BlueScope was not materially injured and that the commission should terminate on the basis that the injury from dumped imports from Korea during the investigation period, if any, was negligible.⁸²

Dongkuk provides information regarding BlueScope's financial performance in the financial year that succeeds the investigation period (drawing on BlueScope's financial year (FY) 2021 Financial Report) to support its contention. Dongkuk submits that BlueScope's like goods and its painted products are reported within the same business unit, and since BlueScope's like goods are the feed for its painted products, the performance of that business unit (Australian Steel Products) is relevant. According to BlueScope's FY2021 Financial Report BlueScope has reported, in the period succeeding the investigation period, increases in domestic sales volumes and sales revenue. Dongkuk also refers to BlueScope's Australian industry verification report, which indicates that BlueScope has experienced injury in the periods prior to the investigation period. Dongkuk highlights that in the investigation period BlueScope has experienced 'sharp growth and strong recovery'. Dongkuk states that BlueScope's performance during the investigation period was the start of a strong growth cycle representing the 'continuation of an uninjured economic condition that shows no sign of abating'.

9.9.6.2 The commission's assessment of materiality of injury

The Material Injury Direction provides that the materiality of injury caused by a given degree of dumping (and subsidisation, though subsidisation is not relevant to the investigation as the commission proposes to terminate that part of the investigation) can be judged differently, depending on the economic condition of the Australian industry suffering the injury. In considering the circumstances of each case, the commission must consider whether an industry that at one point in time is healthy and could shrug off the effects of the presence of dumped products in the market, could at another time, weakened by other events, suffer material injury from the same amount and degree of dumping.

The commission calculated dumping margins ranging between 2.5% and 13.5% for Korea and 5.2% and 20.6% for Vietnam in the investigation period. Both Korea and Vietnam maintained sales volumes throughout the injury analysis period, and were the largest and third largest exporters of the goods to Australia respectively.⁸³ In total, dumped goods were 70% of the goods imported into the Australian market during the investigation period.

The commission's analysis of the economic condition of the Australian industry found that during the investigation period BlueScope experienced:

- a reduction in sales volumes of approximately 1%, albeit in a market that contracted approximately 5%
- increased market share

⁸² EPR 558, document 056.

⁸³ Taiwan was the second largest exporter of the goods to Australia in the period.

- a reduction in unit selling prices and unit CTMS after the second quarter
- a greater fall in unit selling prices than unit CTMS in the third quarter
- a greater fall in unit CTMS than unit selling prices in the fourth quarter
- improved profit and profitability, such that a break-even point on sales had been achieved at the conclusion of the period
- dumped imports from Korea and Taiwan undercutting its price.

In addition, BlueScope provided evidence of the influence of competitor pricing in the market during the investigation period. These examples indicated that customers use import prices to negotiate prices. They also show that during the investigation period, BlueScope reduced its own selling prices in order to compete with consistently lower import prices.

The commission found that imports from each of the subject countries undercut the Australian industry's price during the investigation period. The commission's analysis indicated that despite the presence of both dumped and un-dumped imports within the Australian market, at an aggregate level, MCC level or customer level, the dumped goods were more often than not the lowest priced goods in the Australian market. Dumped imports also accounted for approximately 70% of the total volume of imports in the market. Given these factors, and the pricing visibility that importers of the goods from the subject countries enjoyed, the commission considers that the prices of dumped imports from Korea and Vietnam placed downward pressure on Australian industry prices during the investigation period.

The commission considers that the Australian industry would likely have achieved higher selling prices had the dumped imports not placed downward pressure on prices within the Australian market. Finally, the ability to sell at the higher prices would have translated into improved profit and profitability for the Australian industry.

When taken as a whole, the commission considers that the Australian industry's injury resulting from dumped goods being exported to Australia was material.

9.9.7 Conclusion

The commission has found that:

- the volume of dumped goods exported to Australia represents approximately 70% of all imports from the subject countries
- the Australian market is highly competitive with a high level of price transparency
- the Australian industry's selling prices are closely correlated with the prices of imported goods
- the goods exported to Australia from the subject countries (at dumped and un-dumped prices) have undercut the Australian industry's prices
- at an aggregate level, and at the level of MCC and customer, the dumped imports have undercut the Australian industry's prices to the greatest extent
- the dumped imports undercutting of the Australian industry's prices has caused the Australian industry to reduce selling prices to compete with the dumped imports
- in the absence of the dumped imports, the Australian industry would have been able to achieve higher selling prices

- the higher selling prices would have reflected positively on the Australian industry's profits and profitability over the investigation period and
- the injury due to goods exported to Australia at dumped prices can be separated from other potential causes of injury.

As such, the commission considers that the Australian industry has suffered material injury in the form of price depression and reduced profit and profitability. The commission further considers that dumped imports from the subject countries has caused this material injury.

9.10 Submissions regarding causation

9.10.1 Submission from Dongbu regarding causation

KG Dongbu submitted that its exports of the goods did not cause material injury to BlueScope. KG Dongbu noted as follows:

- KG Dongbu's dumping margin is only 0.5% greater than the 2% stipulated in the Anti-Dumping Agreement as being negligible.
- When expressed as a unit value against KG Dongbu's weighted average unit export price, this 0.5% represents a small amount that could not injure BlueScope.
- KG Dongbu understands that its prices and those of Taiwan, which are not at dumped prices and not injurious, have a similar FOB export price for comparable models.⁸⁴

In relation to KG Dongbu's dumping margin being only 0.5% greater than a negligible level of dumping, the commission notes that KG Dongbu's individual rate is considered within the context of section 269TAE(2C) of the Act. That is, the commission has had regard to the cumulative effect of dumped imports in making an assessment of whether material injury to BlueScope has been caused. As outlined in section 9.3, in the Commissioner's view it is appropriate to consider the cumulative effects of exports from Korea and Vietnam.

In relation to the KG Dongbu's prices being similar to those of Taiwan, which are not dumped, the commission has conducted a price undercutting analysis and considers the prices of dumped and un-dumped goods in section 9.8. There, the commission finds that dumped exports generally have the lowest price in the market, including those of Korean exports. The commission's analysis demonstrates that dumped goods from Korea and Vietnam have exerted the greatest extent of price undercutting in the investigation period.

9.10.2 Submission from Dongkuk regarding causation

Dongkuk submitted that BlueScope's sales are based on a rebate structure in which customers benefit from buying in large quantities in regular amounts.⁸⁵ Dongkuk consider that this sales strategy disadvantages smaller customers who are unable to purchase in amounts that allow them to obtain the rebates. As a result of this rebate structure, and market factors that succeed the investigation period that has driven a surge in

⁸⁴ EPR 558, document 051.

⁸⁵ EPR 558, document 056.

BlueScope's prices, these smaller customers seek to obtain the goods from alternative sources, including Dongkuk.

The commission has examined common customers to BlueScope and imports of the goods. The commission finds that there was a material proportion of customers common to both BlueScope and imports of the goods from subject countries that received rebates from BlueScope in the investigation period. There does not appear to be evidence to suggest that customers of BlueScope that received rebates are customers exclusive to BlueScope. There appears to be a reasonable degree of overlap between customers of BlueScope receiving rebates and customers in receipt of subject country imports.

The commission notes that Dongkuk was one source of imports of the goods in the investigation period that had a higher degree of common customer volume that received rebates from BlueScope.

The commission's detailed assessment of whether dumping has caused material injury finds that BlueScope has suffered material injury in relation to dumped imports from Korea and Vietnam. As detailed, dumped imports undercut BlueScope in the investigation period at an MCC and common customer level.

10 WHETHER DUMPING MAY CONTINUE

10.1 Preliminary finding

The Commissioner is preliminarily satisfied that dumping may continue in relation to the export of goods from Korean and Vietnamese exporters.

10.2 Introduction

To publish a notice under sections 269TG(2) the Minister must be satisfied that, among other things, dumping may continue.

When assessing whether dumping may continue, the Commissioner considers the term 'may' to mean 'possible'.

10.3 Submission from BlueScope in relation to whether dumping will continue

BlueScope provided a submission detailing its views on whether dumping or subsidisation may continue:

- BlueScope has estimated dumping margins for the 12 months following the period of investigation (YE March 2021) with regard to the subject countries and finds that the margins are positive and trend upwards.
- The cumulative volumes of the goods from the subject countries has accelerated upwards in the 12 months following the investigation period.
- Domestic prices in the subject countries have increased in the 12 months following the investigation period, due to increases in HRC costs.⁸⁶

10.4 Whether dumping may continue

When assessing whether dumping may continue, the Commissioner considers prior evidence of dumping to be a relevant consideration.

The commission's analysis found dumping margins between 2.5% and 13.7% for Korean exporters and between 5.2% and 20.6% for Vietnamese exporters during the investigation period.

The commission examined import volumes from the ABF import database during and following the end of the investigation period. The commission observes that imports from Korea and Vietnam have continued.

The commission found that Korea and Vietnam are the largest and third largest exporters of the goods to Australia and, therefore, maintain an established share of the market. Both Korean and Vietnamese prices undercut Australian industry during the investigation period.

⁸⁶ EPR 558, document 037.

The commission's assessment of the market found that purchasers of the goods will change their sources of supply and price is a heavy influencer on purchase decisions. The commission received examples of customers requesting price reductions based on lower priced imports.

Based on the magnitude of the dumping margins found, the importance of price in this market, the evidence of price undercutting, the established links between suppliers and importers and Korean and Vietnamese exporters maintaining sales volumes, the Commissioner considers that dumping may continue.

10.5 Commissioner's assessment

Based on the available evidence, the Commissioner is satisfied that exports of the goods may continue in the future at dumped prices from Korea and Vietnam.

11 NON-INJURIOUS PRICE

11.1 Preliminary assessment of NIP

As the Commissioner proposes to terminate that part of the dumping investigation in relation to Taiwan and in relation to Vietnamese exporter Nam Kim, the Minister need not have regard to the desirability of the lesser duty rule for those exporters.

As the Commissioner proposes to terminate the countervailable subsidy investigation in respect of all Vietnamese exporters, the application of the lesser duty rule in respect of subsidies has not been considered.

For all exporters from Korea, because the NIP is not less than the normal value, the lesser duty rule does not apply.

For Vietnamese exporter HSG, because the NIP is not less than the normal value, the lesser duty rule does not apply.

For Hoa Phat and uncooperative exporters from Vietnam, the commission determined that the NIP is less than an amount equal to the sum of the ascertained export price and the interim dumping duty payable. The Commissioner therefore recommends that the Minister apply a lesser duty rule for these exporters.

11.2 Introduction

The NIP is defined in section 269TACA 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. The commission will generally derive the NIP from the Australian Industry’s unsuppressed selling price (USP).

11.3 Legislative framework

Where the Minister is required to determine the IDD, section 8(5B) of the Dumping Duty Act applies. A lesser dumping duty may be imposed where the NIP of the goods is less than the normal value of the goods (‘lesser duty rule’).

When the lesser duty rule applies, section 8(5B) of the Dumping Duty Act requires that the sum of the export price and the interim dumping duty payable does not exceed the NIP.

However, pursuant to section 8(5BAA), the Minister is not required to have regard to the lesser duty rule where one or more of the following circumstances apply:

- the normal value of the goods was not ascertained under section 269TAC(1) because of the operation of section 269TAC(2)(a)(ii)

- there is an Australian industry in respect of like goods that consists of at least two small-medium enterprises, whether or not that industry consists of other enterprises.⁸⁷

While the Minister is not required to consider imposing a lesser amount of duty, they may still exercise their discretion to do so.

11.4 Lesser duty rule

As the commission proposes to terminate the dumping investigation as it relates to Taiwan and Nam Kim, the commission has not had regard to the lesser duty rule for these exporters.

In respect of exports of the goods from Korea and the remaining Vietnamese exporters, the commission does not consider that any of the exceptions in the Dumping Duty Act apply. The commission therefore has considered whether to recommend that the Minister consider the desirability of applying a lesser rate of duty to these exports, if applicable.

11.5 Calculation of the non-injurious price

11.5.1 Approaches to calculating the NIP

The legislation does not prescribe the methods of calculating a NIP, however there are several methods outlined in the Manual.⁸⁸

The commission generally derives the NIP by first establishing a price at which the Australian industry might reasonably sell its product in a market unaffected by dumping. This price is referred to as the unsuppressed selling price (USP).

The commission's preferred approach to establishing the USP is set out in the Manual and observes the following hierarchy:

- industry selling prices at a time unaffected by dumping
- constructed industry prices – industry cost to make and sell plus profit or
- selling prices of un-dumped imports.

Having calculated the USP, the commission then calculates the NIP by deducting the costs incurred in transitioning the goods from the export FOB point (or another point if appropriate) to the relevant level of trade in Australia. The deductions normally include overseas freight, insurance, into-store costs and amounts for importer expenses and profit.

11.5.2 Commission's assessment of the calculation of the NIP

In following the hierarchy as set out above, the commission has considered whether the USP may be established using industry selling prices at a time unaffected by dumping.

⁸⁷ As defined in the *Customs (Definition of 'small-medium enterprise') Determination 2013*.

⁸⁸ Chapter 24, the Manual.

The commission considers that it is not practicable to establish a USP based on a time when the Australian industry's prices were not affected by dumping, because the goods have previously been found to be dumped and injurious to the Australian industry. The commission notes that the goods have been imported from a number of different countries over a sustained and lengthy period of time.⁸⁹

The next available option to establish the USP in the hierarchy set out above is to construct industry prices based on industry cost to make and sell plus an amount for profit. The commission considers that this approach is appropriate. The commission has applied an amount of profit based on the profit BlueScope achieved in the last quarter of the investigation period in respect of the goods, as this is the best available information.

Having calculated the USP, the Commissioner has calculated a NIP by deducting the costs incurred in getting the goods from the export FOB point (or another point if appropriate) to the relevant level of trade in Australia. The deductions include overseas freight, insurance, into-store costs and amounts for importer expenses and profit.

The commission has assessed that the calculated NIP is not less than the normal values ascertained for exporters from Korea. Therefore, the lesser duty rule does not apply.

The commission has assessed that the calculated NIP is less than the normal values ascertained for some exporters from Vietnam. As the Commissioner proposes to terminate the countervailable subsidy investigation in respect of all Vietnamese exporters, the application of the lesser duty rule in respect of subsidies has not been considered. There is no basis to apply a lesser rate of duty with respect to the Vietnamese exporter HSG, as the NIP is not less than the normal value. The commission finds that the NIP is the operative measure with respect to Hoa Phat and uncooperative Vietnamese exporters. As such, the commission recommends that a lesser rate of duty be applied to Hoa Phat and uncooperative Vietnamese exporters.

The commission's NIP calculation is at **Confidential Attachment 15**.

⁸⁹ At the time of publication of this SEF, measures only applied to the goods exported from China. However, measures have previously been imposed on exports from Korea (those measures were removed following Continuation 450).

12 PROPOSED MEASURES

12.1 Preliminary finding

The Commissioner proposes to recommend to the Minister that anti-dumping measures, using the combination duty method, be imposed in the form of a dumping duty notice in respect of dumping duty that may become payable by importers of the goods from Korea and Vietnam.

12.2 Forms of dumping duty available

The forms of duty available to the Minister when imposing dumping duty are prescribed in the *Customs Tariff (Anti-Dumping) Regulation 2013* and include:

- fixed duty method (\$X per tonne)
- floor price duty method
- combination duty method or
- *ad valorem* duty method (i.e. a percentage of the export price).⁹⁰

The various forms of duty all have the purpose of removing the injurious effects of dumping. However, in achieving this purpose, certain forms of duty will better suit particular circumstances than others. When considering which form of duty to recommend to the Minister, the Commissioner will have regard to the published *Guideline on the Application of Forms of Dumping Duty November 2013* (the Guidelines) and relevant factors in the market for the goods.⁹¹

12.2.1 Fixed duty method

A fixed duty method operates to collect a fixed amount of duty – regardless of the actual export price of the goods.

12.2.2 Floor price duty method

The floor price duty method sets a ‘floor’ – for example a normal value of \$100 per tonne – and duty is only collected when the actual export price is less than that normal value of \$100 per tonne. The floor price is either the normal value or the NIP, whichever is applicable under the duty collection system.

12.2.3 *Ad valorem* duty method

The *ad valorem* duty method is applied as a proportion of the actual export price of the goods.

12.2.4 Combination duty method

The combination duty method comprises 2 elements: the ‘fixed’ element and the ‘variable’ duty element. The fixed element is determined when the Minister exercises powers to

⁹⁰ Section 5 of the *Customs Tariff (Anti-Dumping) Regulation 2013*.

⁹¹ Available on the commission website.

‘ascertain’ an amount for the export price and the normal value. This may take the form of either a fixed duty or an *ad valorem* applied to the ascertained export price.

If the actual export price of the shipment is lower than the ascertained export price, the variable component works to collect an additional duty amount, i.e. the difference between the ascertained export price and the actual export price. It is called a ‘variable’ element because the amount of duty collected varies according to the extent the actual export price is beneath the ascertained export price.

12.3 Commission’s consideration

The commission considers that the combination duty method is the most appropriate method for determining the duty payable in this instance.

The combination duty method can be considered appropriate where, among other considerations, there are limited models or types of the goods with significantly different prices.⁹² The commission has not identified a significant difference in price between models.

A further consideration for applying the combination duty method relates to price trends in a particular market. At Figure 15 below, the commission examined the change in quarterly FOB prices over the injury analysis period and found that prices have generally increased over time, which suggests a rising market.



Figure 15 – Aggregate quarterly indexed FOB export price of subject countries (excluding Taiwan) over the injury period, base quarter 2016 Q2

⁹² Other considerations in the use of combination method of duty are where circumvention behaviour is likely (particularly because of related party dealings), and where complex company structures exist between related parties.

The Guidelines outline that, in a falling market, the combination duty method may be considered inappropriate, as it may be considered punitive due to the operation of the fixed element. Since the commission observes a rising market, it is unlikely that the subject exporters will be disadvantaged if the combination duty method is imposed. In addition, should the amount of interim duty an importer paid exceed the amount of final duty payable, importers can apply for a refund via a duty assessment.

The commission notes that the combination duty method is also consistent with measures already in place for exporters of the goods from China.

The commission's assessment of FOB export price movements is at **Confidential Attachment 16**.

12.4 Proposed recommendations

The Commissioner proposes that duties be calculated, in respect of any IDD that may become payable, using the combination duty method.

A summary of the proposed recommendations and effective rates of interim dumping duty are shown in the table below.

Country	Exporter	Proposed duty method	Fixed rate of IDD (%)	Variable component of IDD
Korea	Dongbu	Combination	2.5	Applicable only where the actual export price is below the ascertained export price.
	Dongkuk	Combination	6.9	
	Uncooperative exporters	Combination	13.7	
Vietnam	Hoa Phat	Combination	5.5	
	HSG	Combination	5.2	
	Uncooperative exporters	Combination	13.1	

Table 35 – Summary of proposed effective interim dumping duty

13 PRELIMINARY AFFIRMATIVE DETERMINATION

13.1 Introduction

The Commissioner may make a PAD if, at any time not earlier than 60 days after the date of initiation of an investigation, the Commissioner is satisfied:

- that there appears to be sufficient grounds or
- that it appears there will be sufficient grounds

for the publication of a dumping duty notice or countervailing duty notice in respect of the goods.⁹³

At the time of making a PAD (or at a later time during the investigation), the Commonwealth may require and take securities under section 42 of the Act. This is in respect of any IDD or ICD that may become payable, if the Commissioner is satisfied that it is necessary to do so, to prevent material injury to an Australian industry from occurring while the investigation continues.

13.2 Finding

In sections 6.5 and 6.7 of this SEF the Commissioner has found that:

- goods exported from Korea were at dumped prices and
- goods exported from Vietnam (except Nam Kim) during the investigation period were at dumped prices.

As outlined in chapter 8, the dumped exports have caused material injury to the Australian industry producing like goods.

The Commissioner has decided to make a PAD under section 269TD and is satisfied that it is necessary to require and take securities under section 42 to prevent material injury to the Australian industry occurring while this investigation continues.

13.3 Securities

Public notification of the PAD, including the level of securities, will be via an ADN.⁹⁴ Securities will be collected for all exports of the goods from Korea and Vietnam (except for Nam Kim) entered for home consumption on, or after, 23 September 2021.

The Commonwealth will calculate the amount of securities payable using the combination duty method. The securities applicable to the goods exported to Australia will apply as follows:

⁹³ Section 269TD(1) of the Act.

⁹⁴ In accordance with sections 269TD(4)(a) and 269TD(5).

Country	Exporter	Proposed duty method	Fixed rate of IDD (%)	Variable component of IDD
Korea	Dongbu	Combination	2.5	Applicable only where the actual export price is below the ascertained export price.
	Dongkuk	Combination	6.9	
	Uncooperative exporters	Combination	13.7	
Vietnam	Hoa Phat	Combination	5.5	
	HSG	Combination	5.2	
	Uncooperative exporters	Combination	13.1	

Table 36 – Summary of securities

14 TERMINATION

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.

Based on the findings in this SEF, and subject to any submissions received in response, the Commissioner proposes to terminate:

- the dumping investigation in relation to all exporters from Taiwan, on the basis that
 - there has been no dumping of the goods from SYSCO and Yieh Phui, in accordance with section 269TDA(1)(b)(i) and
 - there are negligible volumes of dumped goods from uncooperative exporters, in accordance with 269TDA(3)
- the dumping investigation in relation to Nam Kim, on the basis that Nam Kim's exports of the goods during the investigation period were not at dumped prices, in accordance with section 269TDA(1)(b)(i) and
- the countervailing investigation in relation to all exporters from Vietnam, on the basis that:
 - in respect of Nam Kim, Hoa Phat, and HSG, no countervailable subsidy has been received in respect of the goods pursuant to section 269TDA(2)(b)(i) and
 - in respect of uncooperative entities, a countervailable subsidy has been received in respect of some or all of those goods but it never, at any time during the investigation period, exceeded the negligible level, pursuant to section 269TDA(2)(b)(ii).

APPENDICES AND ATTACHMENTS

Non-confidential Appendix A	Market situation assessment - Vietnam
Non-confidential Appendix B	Assessment of subsidy programs
Confidential Attachment 1	Australian market analysis
Confidential Attachment 2	KG Dongbu – variable factors
Confidential Attachment 3	Dongkuk – variable factors
Confidential Attachment 4	Uncooperative and all other exporters – variable factors
Confidential Attachment 5	Volume of dumped imports
Confidential Attachment 6	SYSCO – variable factors
Confidential Attachment 7	Yieh Phui – variable factors
Confidential Attachment 8	Hoa Phat – variable factors
Confidential Attachment 9	HSG – variable factors
Confidential Attachment 10	Nam Kim – variable factors
Confidential Attachment 11	Uncooperative and all other exporters – subsidies
Confidential Attachment 12	Causation analysis
Confidential Attachment 13	BlueScope's price negotiation examples
Confidential Attachment 14	Factors other than dumping
Confidential Attachment 15	NIP and USP calculations
Confidential Attachment 16	Form of measures
Confidential Attachment 17	Vietnamese market situation analysis
Confidential Attachment 18	Preferential loan benchmark calculation

APPENDIX A ASSESSMENT OF PARTICULAR MARKET SITUATION – VIETNAM

The appendix sets out the commission's assessment of whether a particular market situation existed in the Vietnamese market for aluminium zinc coated steel during the investigation period.

A1 Introduction

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 particular market situation, sales in that market are not suitable for determining a price under section 269TAC(1).

If a particular 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 with 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 particular market situation. A particular 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 particular market situation, the commission may have regard to factors such as:

- whether the prices are artificially low
- 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.

When assessing whether a particular market situation exists due to government influence, the commission assesses whether government involvement in the domestic market has materially distorted market conditions. If government influence 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 particular market situation exists.⁹⁵

A2 Applicant's claims

In its application, BlueScope alleged that domestic prices of aluminium zinc coated steel in Vietnam are not suitable for the determination of normal values on the basis that intervention from the Government of Vietnam (GOV) in the iron and steel industry raw material supply markets has distorted the prices of the subject goods during the investigation period.⁹⁶

BlueScope quotes the terms set out in Vietnam's Protocol of Accession to the World Trade Organisation (WTO). The protocol, to which Vietnam agreed, permits other WTO Members to use special rules for the determination of whether non-market economy conditions exist in the context of anti-dumping cases. Specifically, Vietnam agreed that an importing Member would be permitted to '...use a methodology that is not based on a strict comparison with domestic prices or costs in Vietnam if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.'⁹⁷

Under these terms, the burden of proof lies with the Vietnamese exporter to show that market conditions prevail. However, this provision expired on 31 December 2018, and is not considered to be in force during this investigation.

BlueScope submits that the GOV substantially determines Vietnam's domestic prices for aluminium zinc coated steel, and that those prices are 'artificially low, or lower than they would otherwise be in a competitive market'. Specifically, BlueScope points to GOV influence in the areas of:

- electricity prices
- Steel Master Plans
- industrial development strategy
- state ownership of aluminium zinc coated steel producers
- domestic price stabilisation initiatives
- steel industry construction project and investment control and
- steel industry subsidisation.

BlueScope made a submission to the commission on 10 July 2020 in respect of the Vietnamese Steel Master Plans, which discussed the impact of the plans on capacity, growth, production, investment decisions and regional distribution beyond their revocation at the end of 2018.⁹⁸

⁹⁵ Chapter 7, the Manual.

⁹⁶ EPR 558, document 001.

⁹⁷ WTO, Report of the Working Party on the Accession of Vietnam, WT/AA/VNM/48, 27 October 2006, at para 255.

⁹⁸ EPR 558, document 005.

A further BlueScope submission was received on 13 July 2021.⁹⁹ In it, BlueScope submitted that the Ministry of Industry and Trade issued a document (No.2612/BCT-CN) on 11 May 2021 to the Vietnam Steel Association (VSA) and large steel manufacturers. This document proposes a range of solutions that include restricting the export of domestic steel products and other in-demand products.

In a submission, dated 27 July 2021, BlueScope submitted that the market situation in Vietnam has the effect of facilitating lower input substrate HRC feed costs for the manufacture of the subject goods.¹⁰⁰ BlueScope claims that in the absence of a market situation, this feed cost would otherwise be higher. BlueScope submits that this extends to the selling prices of aluminium zinc coated steel in the Vietnamese market also being lower.

A3 Government of Vietnam claims

The GOV made a submission to the commission dated 26 June 2020.¹⁰¹ In the submission, the GOV expressed a view that a particular market situation does not exist in the Vietnam market for aluminium zinc coated steel. The GOV has indicated to the commission that there have been changes to the Steel Master Plans and the Industrial Development Strategy which means they no longer apply to the steel industry. The GOV referred to previous findings of the CBSA concerning carbon steel welded pipe, which found that a particular market situation did not exist for that product.

The GOV was sent a questionnaire requesting further information in relation to the aluminium zinc coated steel in Vietnam. The GOV response to the questionnaire was provided to the commission on 1 April 2021.¹⁰²

A4 Commission's approach

In accordance with legislative requirements, the commission's market situation assessment is undertaken at the level of the goods and like goods.

The commission has given consideration to conditions:

- within the broader steel industry in Vietnam and the degree to which these may impact on prices and/or raw material costs
- in the Vietnamese market for the raw materials used to produce aluminium zinc coated steel and
- in the Vietnamese markets for aluminium zinc coated steel.

In undertaking its assessment of whether a market situation exists in Vietnam, the commission has considered the following:

- The information provided in the application.

⁹⁹ EPR 558, document 042.

¹⁰⁰ EPR 558, document 037.

¹⁰¹ EPR 558, document 004.

¹⁰² EPR 558, document 035.

- The GOV's submission and response to the government questionnaire (RGQ).
- REQs received from cooperating exporters.
- Previous market situation assessments of the commission.
- Desktop research, including information obtained from departmental resources and third party information providers.¹⁰³

A5 The GOV role in the Vietnamese steel market

A5.1 Electricity prices

The commission has previously considered the issue of GOV influence and control over electricity prices in Investigation 416 into steel rod in coils exported from Indonesia, Korea and Vietnam. In that investigation, the commission found that 'the level of control exercised by the GOV on electricity prices has artificially suppressed the price of electricity in Vietnam'.¹⁰⁴ As a result, the commission substituted the price of electricity with a market rate that the World Bank determined. BlueScope here asserts that, in respect of aluminium zinc coated steel 'cost distortions in the Vietnamese electricity market have a significant impact on the production costs of Vietnamese subject goods manufacturers, and that competitive conditions do not exist for domestic electricity prices in Vietnam.'¹⁰⁵

In its response to the RGQ, the GOV confirmed that the government does regulate electricity pricing, with different prices between the manufacturing sector, administrative and governmental sector, trading sector and households. Within each sector, all entities are charged at the same rate.¹⁰⁶

The commission has compared the prices the GOV provided with prices obtained from the World Bank. Noting that in Vietnam different rates apply to different sectors and are dependent on voltage, the commission is satisfied that the World Bank electricity price adequately reflects electricity prices in Vietnam and aligns with the data the GOV provided .

The commission has then examined the World Bank price for electricity for the investigation period and notes that prices in Korea, Malaysia and Taiwan are all cheaper than Vietnam, although it notes China and Australia are higher. The commission's assessment of electricity prices is at **Confidential Attachment 17**.

In light of the above, the commission is not satisfied that there are significant cost distortions in the Vietnamese electricity market and that, if there were distortions, they would have a significant impact on the production costs of Vietnamese aluminium zinc coated steel manufacturers.

¹⁰³ A number of cases have considered market situation findings concerning steel products in Vietnam, including: Investigation 370 (galvanised steel); Investigation 550 (precision pipe and tube steel); and Investigation 553 (painted steel strapping).

¹⁰⁴ SEF 416 and Termination Report 416, available on the commission website.

¹⁰⁵ EPR 558, document 001, p.43.

¹⁰⁶ EPR 558, document 035, Exhibit 45.

A5.2 Steel Master Plans

As the applicant details, the GOV has in recent decades detailed its plans for its domestic steel industry in a 2 stage Master Plan, as below:

- The Steel Master Plan 2007-2015 (Decree No. 145/2007/QĐ-TTg).
- The Steel Master Plan 2015-2025 (Decision No. 694/QĐ-BCT).¹⁰⁷

The Steel Industry Plan (2007-2015) contained production targets of 23 million tonnes of finished steel production by 2020 and 28 million tonnes by 2025.¹⁰⁸ This was to be achieved via 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 standards¹⁰⁹
- (ii) tasking various Ministries in the GOV with enacting various policies, including protecting domestic steel manufacture against competition from 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.¹¹⁰

The Steel Master Plan 2007-2015 was superseded by the Steel Master Plan 2015-2025. 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:

‘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 the applicant’s claims, the GOV submitted that the Steel Master Plans were made redundant from the beginning of 2019, as a result of further laws the GOV passed.¹¹¹ The first of these laws, Law on Planning No. 21/2017/QH14, decreed that

¹⁰⁷ The Steel Master Plan 2007-2015 is available on the GOV legislative gazette at <http://vbpl.vn/TW/Pages/vbpqentoanvan.aspx?ItemID=3341&Keyword=145/2007/QĐ-TTg>. The Steel Master Plan 2015-2025 was provided by GOV in its RGQ, EPR 558 document 035.

¹⁰⁸ Steel Master Plan 2007- 2015, Article 1(3) (a).

¹⁰⁹ Ibid, Article 1(3) (c).

¹¹⁰ Ibid, Article 2.

¹¹¹ EPR 558, document 004.

manufacturing industries, including steel, are no longer the subject of master plans the GOV developed. 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).¹¹²

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 that the applicant referenced are no longer in force.

In its submission, dated 10 July 2020, BlueScope submitted that the revocation of the Steel Master Plan in no way hinders or minimises the effects of the plan on Vietnamese production of the goods and prices over the investigation period.¹¹³ BlueScope submits that the effects of the plans, which impacted the structure and capacity of Vietnam’s aluminium zinc coated steel industry, continue long term. The plans, when in force, set production capacity goals, established guidelines for the development of Vietnam’s steel distribution channels, including distribution centre market shares, established forecasts and targets for steel product consumption to 2025, protected, expanded and stabilised the domestic steel market, mandated the removal of outdated production facilities and improved competitiveness, enabling the Vietnamese industry to garner a competitive advantage over foreign producers. BlueScope submits that the impact of the plans will significantly affect the Vietnamese steel industry, including producers of the goods, for years to come.

The commission has not been presented during the investigation with evidence regarding the long term effects of the Steel Master Plans on the Vietnamese steel industry. While there are 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 the increased production is, with respect to the information before the commission, merely speculation.

A5.3 Government Policies and Directives – Industrial Development Strategy

BlueScope’s application details the GOV’s industrial development strategy, as laid out in the Steel Master Plans. In particular, BlueScope highlights the strategic goals below:

¹¹² Ibid, p240.

¹¹³ EPR 558, document 005.

- To develop the industrial sector on the basis of effective mobilisation of resources from all economic sectors; to encourage the development of the private sector and foreign invested sector.
- To develop priority industries and industrial fields, primarily focusing on agricultural and rural industrialisation and modernization, on the basis of high-quality human resources and advanced technologies, regarding competition as a driving force for development.
- To utilise existing advantages and international opportunities; to associate production with services and trade, and to actively participate deeply into the world industrial production value chain.
- To focus on developing a number of dual-purpose industries to serve national defence and security.
- To develop the industrial sector on the basis of green growth, sustainable development and environmental protection.¹¹⁴

As with the Steel Master Plans, the GOV submitted that Law on Planning No. 21/2017/QH14 and Decision No. 4977/QĐ-BCT render the Industrial Development Strategy now unenforceable within the steel industry.

Similar to the ongoing effects of the Steel Master Plans, the commission has not been presented during the investigation with evidence regarding the long term effects of the strategies outlined above on the Vietnamese steel industry.

A5.4 State ownership of aluminium zinc steel producers

Nam Kim Steel

BlueScope submitted in its application that Nam Kim is one of Vietnam's largest manufacturers of metallic coated steel, including aluminium zinc coated steel. BlueScope submitted that Nam Kim's largest shareholder, Dragon Capital Management Co. Ltd is closely affiliated with the government-owned '*Ho Chi Minh City Securities Corporation*'. BlueScope asserts that, via this affiliation, the GOV may influence the price of the subject goods in Vietnam.

The commission has examined verified information that Nam Kim provided as part of its verification for this investigation. The commission has not found any evidence to suggest that '*Ho Chi Minh City Securities Corporation*' exerts any influence on Nam Kim.

Vina One Steel

BlueScope submitted in its application that Vina One Steel Manufacturing Corporation (Vina One), a large integrated steel producer that manufactures many steel products, including the subject goods, is an SOE.

¹¹⁴ Non-confidential attachment 15 to BlueScope's application – Development of the Vietnamese Iron & Steel Industry (EPR 558, document 001).

Vina One was not a cooperating exporter in this investigation. Vina One was a cooperating exporter with respect to Investigation 550 (a dumping and subsidy investigation in relation to precision pipe and tube). There, Vina One indicated in its REQ to that investigation that it was originally set up by the Department of Planning and Investment of Long An Province but is now a privately owned enterprise, and the GOV has no control or influence.¹¹⁵ That case team verified this information during that investigation. The commission finds that Vina One is now a privately owned enterprise, with the GOV having no control or influence.

Vietnam Steel

BlueScope submitted in its application that the large integrated steel producer Vietnam Steel (VN Steel) manufactures a range of steel products, including both inputs for and finished products and is operated in accordance with a charter from the GOV. It is claimed that the GOV has an active role in VN Steel's management and daily operations.

Further, BlueScope submitted that VN Steel has an interest in 2 known aluminium zinc coated steel producers, Ton Phuoc Nam (Southern Steel Sheet Co. Ltd) and Vnsteel Thang Long. Southern Steel Sheet Co. Ltd which is a joint venture between VN Steel and 2 foreign partners. Both companies had approximately 10.7 per cent of Vietnam's market share for surface treated sheets in 2016.¹¹⁶ In 2012, VN Steel had a 30 per cent share of Vietnam's cold-rolled steel market, the substrate material for aluminium zinc coated steel.¹¹⁷

The commission has assessed BlueScope's claim regarding VN Steel. In a paper that Nozomu Kawabata published in 2017, it was suggested that 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.¹¹⁸

Assessment

In light of the above, the commission finds that there is no evidence that the GOV influence Nam Kim and Vietnam Steel, and that Vina One is not itself an SOE nor does the GOV exercise any influence. Overall, the commission does not consider large scale GOV policy initiatives are enacted through SOEs.

¹¹⁵ EPR 550, document 035 – Vina One REQ.

¹¹⁶ Non-confidential attachment 24 to BlueScope's application – Development of the Vietnamese Iron & Steel Industry (EPR 558, document 001).

¹¹⁷ Non-Confidential Attachment 25 to BlueScope's application - About Vietnam Steel Corporation (EPR 558, document 001).

¹¹⁸ 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>.

A5.5 GOV price stabilisation

BlueScope submits evidence of the GOV engaging in price stabilisation initiatives in the steel industry, specifically noting the following:

- directives to the state owned VN Steel in 2008 to maintain unchanged steel prices for as long as possible
- a quote from the Price Management Department of the Ministry of Finance from April 2010 – ‘The government has long had steel on a list of products in need of price stabilisation...if there’re [are] sudden changes to the price, government agencies totally have the power to stabilise it’¹¹⁹
- Circular 122, which delegates authority to the Ministry of Finance to control price over an extensive list of goods when the prices of those goods increase or decrease without legitimate cause. Steel is among the list of goods subject to price controls. The Price Law (coming into effect on 1 January 2013) has superseded Circular 122.¹²⁰

VN Steel

The commission considers that the impact of any directives from the GOV to VN Steel in 2008 are unlikely to have a continuing impact during the investigation period. The commission also notes, as discussed in **Non-confidential Appendix A** (section A5.4), VN Steel does not have an influential impact of the Vietnamese steel industry.

Price management

The commission notes that the quote that BlueScope provided in the application regarding price management is from 2010 and was in the context of allegations of Vietnamese metal producers manipulating steel prices.¹²¹ The commission also understand that the powers that the Price Management Department referred to in order to stabilise prices come from Circular 122, which is discussed further below.

Circular 122

The commission has examined Circular 122 and confirms that 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.¹²² Such measures can be implemented where:

¹¹⁹ Non-Confidential Attachment 27 to BlueScope’s application – Vietnam Steel Producers Manipulating Prices (EPR 558, document 001).

¹²⁰ Non-Confidential Attachment 28 to BlueScope’s application – Export.gov Vietnam Trade Barriers (EPR 558, document 001).

¹²¹ Non-Confidential Attachment 27 to BlueScope’s application - Vietnam Steel Producers Manipulating Prices (EPR 558, document 001).

¹²² Article 1 of Circular No. 122/2010/TT-BTC, available at <http://vbpl.vn/TW/Pages/vbpqtoanvan.aspx?ItemID=2563>.

- 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.¹²³

Circular 122 also specifies that the measures relate only to certain goods and services, listed in Decree 75/2008.¹²⁴ Decree 75/2008 lists 'Construction steel' as a good which is subject to price stabilisation.

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

In its submission, dated 10 July 2020, BlueScope submitted that the Ministry of Industry and Trade ('MoIT') has recommended that the GOV develops policies that limit exports, which will encourage steelmakers to expand production and attract new enterprises to the steel industry.¹²⁵ BlueScope references an article which outlines that on 11 May ²⁰²⁰ the MoIT issued document No.2612/BCT-CN to the VSA and large steel manufacturers. This document proposes a range of solutions that include restricting the export of domestic steel products and other in-demand products. The commission has reviewed the information BlueScope provided and has concluded that it does not demonstrate that the GOV exerted influence on the Vietnamese steel market during the investigation period since this document was issued after the investigation period.

A5.6 GOV control over projects and investments

In its application, BlueScope provided the following examples of GOV control within the Vietnamese steel market:

- In April 2017, the GOV halted construction on the HSG Ca Na steel plant in Ninh Thuan Province, an approx. US\$10.6B project that had approval from almost 97% of HSG shareholders. The project is yet to receive GOV approval, however the impact of this decision is an overall reduction in steel production in Vietnam compared to if the project had gone ahead, and therefore not likely to result in lower steel prices in the country. Moreover, environmental and planning concerns have been quoted as the reasons behind the decision.¹²⁶
- The GOV in 2016 removed 12 projects from the most recent Steel Master Plan due to 'ineffective investments and incapable investors.'¹²⁷ The GOV also directs steel companies to upgrade their production technologies, find ways to save production

¹²³ Ibid, Article 2(2).

¹²⁴ Available at <http://vbpl.vn/TW/Pages/vbpq-toanvan.aspx?ItemID=12714>.

¹²⁵ EPR 558, document 037.

¹²⁶ Non-Confidential Attachment 29 to BlueScope's application – PM Halts Steel Plant (EPR 558, document 001).

¹²⁷ Non-Confidential Attachment 30 to BlueScope's application – Steel Master Plan Drops 12 Projects (EPR 558, document 001).

costs, and require greater flexibility in monthly and quarterly plans to better promote brands and build distribution networks.¹²⁸

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:¹²⁹

- Law on Investment 67/2014/QH13¹³⁰
- Decree 118/2015/ND-CP which details the implementation of a number of articles of the Law on Investment.¹³¹

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.

A5.7 Vietnamese steel industry subsidisation

BlueScope identified in its application that the Canada Border Services Agency CBSA recently published findings of countervailable subsidies from Vietnam. The CBSA investigation found that the following subsidies were in place:¹³²

- 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 to be 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 SG&A, and

¹²⁸ Non-Confidential Attachment 31 to BlueScope's application – Steel Production Set for Surge (EPR 558, document 001).

¹²⁹ EPR 558, document 035, p. 239.

¹³⁰ EPR 558, document 035, Exhibit 46.

¹³¹ EPR 558, document 035, Exhibit 23.

¹³² CBSA numbering has been maintained.

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 its own investigation into alleged subsidies in Vietnam, including those identified above. The commission's findings are detailed in section 7.6 and **Non-confidential Appendix B**. The commission concluded that the level of subsidisation for all Vietnamese exporters is negligible.

A5.8 Raw material costs

BlueScope has claimed that the market situation in Vietnam has the effect of facilitating lower input substrate HRC feed costs for the manufacture of the subject goods. It claims that this extends to the selling prices of aluminium zinc coated steel in the Vietnamese market also being lower.

The commission has found that steel coil, in the form of HRC, is the major raw material input used in the production of the goods.

The commission has verified the HRC associated with the production of the goods during the investigation period for cooperating exporters. The commission found that HRC represented a significant and broadly consistent proportion of the CTM of the goods. This is depicted in the table below.

Producer	Country	HRC as a percentage of total CTM ¹³³
BlueScope	Australia	69%
Dongbu	Korea	78%
Dongkuk	Korea	73%
HSG	Vietnam	96%
Hoa Phat	Vietnam	68%
Nam Kim	Vietnam	82%
SYSCO	Taiwan	73%
Yieh Phui	Taiwan	77%

Table A1 – HRC as a proportion of CTM of the goods¹³⁴

The percentage of CTM for BlueScope is lower than that for the verified Taiwanese, Korean and Vietnamese exporters, except for Hoa Phat.

Cooperating exporters advised the commission that raw material prices are influential in setting selling prices for the goods. Generally, lower raw material prices result in lower prices for the goods.

¹³³ Yieh Phui's HRC as a percentage of total CTM is inclusive of CRC.

¹³⁴ Confidential Attachment 17 to this SEF.

A5.9 Comparison of HRC costs

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

Therefore, the commission has compared:

- costs that verified Vietnamese exporters paid for Vietnamese HRC and
- costs incurred for verified Korean and Taiwanese exporters.¹³⁵

Hot rolled coil costs - Vietnamese exporters versus Korea and Taiwan exporters (combined) - delivered (USD/MT)

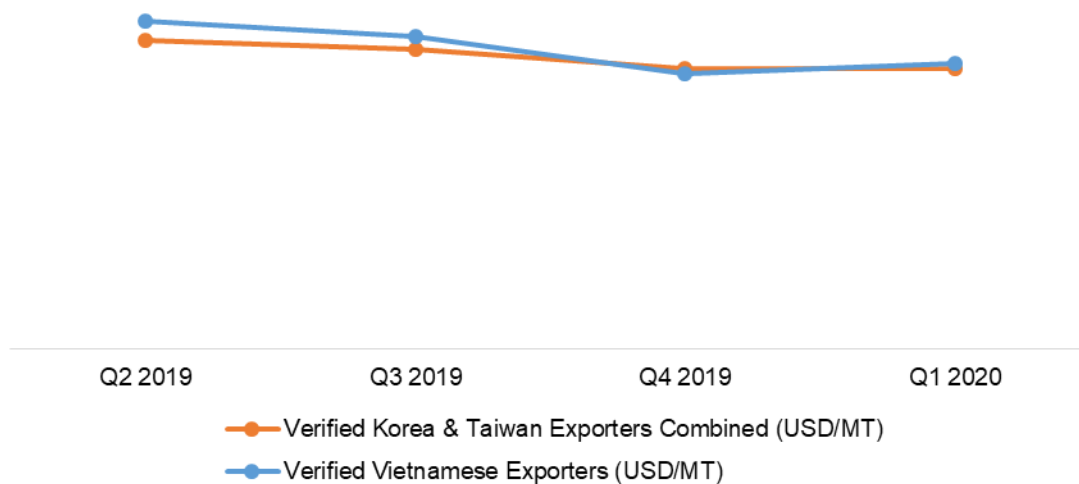


Figure A1 – Comparison of weighted average HRC purchase prices for Vietnamese exporters vs. Korean and Taiwan exporters (combined)

Figure A1 shows the weighted average HRC purchase price for verified Vietnamese, Korean and Taiwanese exporters over the investigation period, separated for country of supply. This shows that for the majority of the period, Vietnamese exporters paid a similar amount for domestically sourced HRC than Korean and Taiwanese exporters paid for domestically sourced HRC. Over the course of the investigation period, Vietnamese prices were 1% higher than Korean and Taiwanese prices.

A6 Competition in Vietnamese steel markets

The commission has found that 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.¹³⁶ In 2021 to July, Vietnam imported 7.1 million tonnes of steel, compared to

¹³⁵ Ibid.

¹³⁶ 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/>.

5.88 million tonnes of exports, valued at over USD\$5 billion and USD\$4 billion respectively.¹³⁷ The high level of import penetration indicates a high level of competition within the Vietnamese steel market.

A7 Conclusion

From the evidence available to it, the commission does not consider that the GOV exerts influence on the steel market in Vietnam such that domestic selling prices for aluminium zinc coated steel in Vietnam are not suitable for determining a normal value under section 269TAC(1).

In respect of the applicant's assertion that the Steel Master Plans that the GOV developed are evidence of GOV 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.

Given there exists no official Government plans to control or otherwise influence the Vietnamese steel industry, no positive evidence of a continuing impact as a result of the Steel Master Plans, no impact of distorted electricity prices on the CTM of the goods, negligible subsidisation of the goods and no evidence of significantly different prices for raw materials in Vietnam compared to other Asian countries, the commission is satisfied there is no market situation that makes calculating the normal value for Vietnamese exports under section 269TAC(1) inappropriate.

¹³⁷ Ibid.

APPENDIX B ASSESSMENT OF ALLEGED SUBSIDY PROGRAMS

B1 Introduction

B1.1 Definition of Government, public and private bodies

In its assessment of each program, the commission has had regard to the entity responsible for providing the financial contribution (if any) under the relevant program, as part of the test under section 269T(1) for determining whether a financial contribution is a subsidy. Under section 269T(1), for a contribution to be a subsidy, the contribution must have been made by:

- a government of the country of export or country of origin of the goods; or
- a public body of that country or a public body of which that government is a member; or
- a private body entrusted or directed by that government or public body to carry out a governmental function.

B1.2 Government

As described in section 16.2 of the Manual, the commission considers that the term 'government' is taken to include government at all different levels, including at a national and sub-national level.

B1.3 Public bodies

The term 'public body' is not defined in the Act. Determining whether an entity is a 'public body' requires evaluation of all available evidence of the entity's features and its relationship with government, including the following:

- (1) The objectives and functions performed by the body and whether the entity in question is pursuing public policy objectives. In this regard relevant factors include:
 - legislation and other legal instruments,
 - the degree of separation and independence of the entity from a government, including the appointment of directors, and
 - the contribution that an entity makes to the pursuit of government policies or interests, such as taking into account national or regional economic interests and the promotion of social objectives.
- (2) The body's ownership and management structure, such as whether the body is wholly- or part-owned by the government or whether the government has a majority of shares in the body. A finding that a body is a public body may be supported through:
 - the government's ability to make appointments,
 - the right of government to review results and determine the body's objectives, and
 - the government's involvement in investment or business decisions.

The commission considers this approach is consistent with the WTO Appellate Body decision of *United States – Countervailing Measures (China)*¹³⁸ In that case the Appellate Body referred to the following 3 indicia which may assist in assessing whether an entity was a public body vested with, or exercising, government authority:

- Where a statute or other legal instrument expressly vests government authority in the entity concerned;
- Where there is evidence that an entity is, in fact, exercising governmental functions; and
- Where there is evidence that a government exercises meaningful control over an entity and exercises governmental authority in the performance of government functions.

These principles have also previously been considered in the Federal Court of Australia.¹³⁹

B1.4 Private bodies

Where an entity is neither a government nor public body, the commission will consider it a private body, in which case, a government direction to make a financial contribution in respect of the goods must be established in order for the contribution to be considered a subsidy, as defined by section 269T(1).

Pursuant to section 16.3 of the Manual, in determining the character of an entity which may have provided a financial contribution, the commission will consider whether a private body has been:

- ‘entrusted’ to carry out a government function, which occurs when a government gives responsibility to a private body or
- ‘directed’ to carry out a government function, which occurs in situations where the government exercises its authority over a private body.

Accordingly, not all government acts will be considered as entrusting or directing a private body. Encouragement or mere policy announcements by government, of themselves, are not sufficient to satisfy this test. However, threats and inducements may be evidence of entrustment or inducements. It is where the private body is considered a proxy by government to give effect to financial contributions that this test will be satisfied.

B2 Assessment of Programs – Vietnam

B2.1 Programs repealed as part of Vietnam’s accession to the WTO

The following programs were listed in the *New and Full Notification Pursuant to Article XVI.1 of the GATT and Article 25 of the Agreement on Subsidies and Countervailing*

¹³⁸ DS379 United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China.

¹³⁹ See; *Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth* [2013] FCA 870, [27] - [70]; *Dalian Steelforce Hi Tech Co Ltd V Minister for Home Affairs* [2015] FCA 885, [50] - [73]

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Measures published in March 2013 (2013 Vietnam Subsidy Notice).¹⁴⁰ They were repealed as part of Vietnam's accession to the WTO in 2007. They are not listed in its more recent *New and Full Notification Pursuant to Article XVI.1 of the GATT and Article 25 of the Agreement on Subsidies and Countervailing Measures* published in February 2020 (2020 Vietnam Subsidy Notice)¹⁴¹:

- Program 1 – Preferential Import Tariff Rates contingent upon Localisation Ratios with respect to products and Parts of Mechanical-Electric-Electronic Industries (updating Programme II of Notification of Subsidies period 2003-2004).
- Program 2 – Support for the Implementation of Projects Manufacturing Priority Industrial Products (Updating Programme III of 2003-2004).
- Program 3 – Investment Incentives Contingent upon Export Performance For Domestic Businesses (Updating Programme IV of 2003-2004).
- Program 4 – Other Investment Incentives for Domestic Businesses (Updating Program V of Period 2003-2004).
- Program 5 – Investment Incentives Contingent upon Export Performance for Foreign Invested Enterprises (Updating Programme VI of the Period 2003-2004).
- Program 6 – Other Investment Incentives for Foreign Invested Enterprises (Updating Programme VII for Period 2003-2004).
- Program 7 – Preferential Investment Credit for Development Contingent upon Export Criteria (Updating Programme VIII of Period 2003-2004).
- Program 8 – Preferential Development Credit for Investment Contingent Upon Localisation Ratios (Updating Programme IX of Period 2003-2004).
- Program 10 – Export Promotion.
- Program 12 – Support for Mechanical Products (Updating Program XV of Period 2003-2004).
- Program 13 – Support for Shipbuilding Industry (Updating of Programme XV of Period 2003-2004).
- Program 14 – Assistance for Commercial Development in Mountainous, Island and Ethnic Minority Areas (Updating Programme XVI of Period 2003-2004).
- Program 15 – Assistance to Enterprises Facing Difficulties due to Objective Reasons.

The commission is satisfied that the above programs have ceased. The commission did not find any evidence during verification of any exporters being in receipt of a financial benefit under any of these programs.

In light of the evidence before it, the commission is not satisfied any Vietnamese exporter received a financial benefit in connection with any of the above programs.

¹⁴⁰ Available on the WTO website at

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/SCM/N155VNM.pdf&Open=True>

¹⁴¹ Available on the WTO website at

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/SCM/N284VNM.pdf&Open=True>

B2.2 Corporate Income Tax Programs

Corporate income taxation in Vietnam is governed under the *Law Amending and supplementing a number of articles of Law on Corporate Income Tax 2008* (the Amended Law 2013)¹⁴² and *Decree 218/2013/ND-CP* (Decree 218) detailing and guiding the implementation of the Law on Corporate Income Tax. Pursuant to Article 1.6 of the Amended Law 2013 and Article 10 of Decree 218¹⁴³, the standard tax rate applicable for corporate entities during the investigation period was 20%. The standard tax rate applies to all entities, regardless of whether they are manufacturers or traders and regardless of whether their products are steel pipes and tubes or not.

The commission identified the following programs as providing possible preferential treatment to exporters in respect of Vietnam's corporate income tax:

- Program 18 – Incentives on corporate income tax for enterprises operating in regions or sectors entitled to incentives.
- Program 21 – Investment Support (consisting of 2 separate programs).
- Program 29 – Enterprise Income Tax Exemption/Reduction for Business Expansion and Intensive Investment Projects.
- Program 35 – Preferential Income Tax Rates for Enterprises within Economic Zones or Industrial Parks.
- Program 37 – Tax Exemptions and Reductions for Encouraged Sectors.
- Program 39 – Tax Exemptions and Reductions for Investment in Disadvantaged Regions.
- Program 40 - Tax Exemptions and Reductions for Investments in Economic Zones or High-Tech Industrial Parks.

After reviewing the information provided for each program, the commission has determined that all programs provide for a similar benefit under the same legal basis, with broadly similar eligibility criteria. Accordingly, the commission considers it appropriate to address each of these programs under Program 18.

Program 18 – Incentives on corporate income tax for enterprises operating in regions or sectors entitled to incentives

It is alleged that this program provides corporate income tax incentives to enterprises operating in certain regions or sectors in Vietnam.

Program 18 was not alleged in the application, but the commission identified and assessed this program in INV 370¹⁴⁴ into zinc coated galvanised steel from India, Malaysia and Vietnam.

Programs 21, 29, 35, 37, 39 and 40 were alleged in the following CBSA investigations:

- The subsidising of cold-rolled steel from China, South Korea and Vietnam (CBSA Cold-rolled steel case).

¹⁴² EPR 558, document 035, GOV RGQ, Exhibit 4.

¹⁴³ EPR 558, document 035, GOV RGQ, Exhibit 2.

¹⁴⁴ Termination Report No. 370, p. 34. Available on the commission website.

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- The subsidising of certain copper pipe fittings originating in the Socialist Republic of Vietnam (CBSA Copper Pipe case).
- The subsidising of certain corrosion-resistant steel sheet originating in Turkey, the United Arab Emirates and Vietnam (CBSA COR case).
- The subsidising of certain oil country tubular goods originating in or exported from India, Indonesia and Vietnam (CBSA Oil Tubes case).

Eligibility criteria

Eligible regions and sectors for incentives under this program are identified in Article 15 of Decree 218 or Appendix II to Decree 118/2015/ND-CP (Decree 118).

Article 15 of Decree 218 provides a broad list of areas of eligibility, based on region, areas of new investment and levels of new investment.¹⁴⁵

Is there a subsidy?

The general corporate tax rate for the investigation period was 20%. Eligible entities may receive under this program preferential tax rates ranging from 10% to 17%.

The commission considers that the laws governing this program provide for a financial contribution from the GOV to eligible entities, being the foregoing of revenue, varying depending on which eligibility criteria have been met, which would be otherwise payable to the GOV from those entities.

As the deduction is available for income derived from export activities (among other things), the commission considers that a financial contribution under this program would be made in connection with all exports of goods.

Where received, this financial contribution is considered to confer a benefit because of the savings realised by the entity in not having to pay the full amount of tax on such income, which would otherwise be payable.

Where exporters of the goods have received a deduction under this program during the investigation period, that deduction confers a benefit in relation to the goods and the financial contribution satisfies the definition of a subsidy under section 269T.

The commission has determined that all Vietnamese cooperating exporters did not receive a benefit under this program and paid the full rate generally payable. However, based on information the GOV provided, the commission has determined that uncooperative exporters may be in receipt of a benefit under this program.

Is the subsidy countervailable?

A subsidy is a countervailable subsidy if it is specific. Specificity is defined under section 269TAAC. Section 269TAAC(2)(b) provides that a subsidy is specific if, subject to section 269TAAC(3), it is limited to entities carrying on business within a designated geographical region.

¹⁴⁵ Refer to Decree 218 for full detail of eligibility criteria.

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The commission is satisfied this program provides an exemption based on, among other things, the geographical location of entities, satisfying the criteria in section 269TAAC(2)(b).

Section 269TAAC(3) provides that a subsidy is not specific, subject to section 269TAAC(4), if:

- (a) eligibility for, and the amount of, the subsidy are established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification; and
- (b) eligibility for the subsidy is automatic; and
- (c) those criteria or conditions are neutral, do not favour particular enterprises over others, are economic in nature and are horizontal in application; and
- (d) those criteria or conditions are strictly adhered to in the administration of the subsidy.

The commission has examined the eligibility criteria for the program and considers that eligibility is established with reference to objective and verifiable criteria set out in the Amended Law 2013, Decree 118 and Decree 218. There is no application process to apply for the subsidy, with responsibility for seeking a benefit under the program resting with entities as part of their payment of tax. However, the taxation preferences available under the program are only available to certain sectors and locations as identified in Decree 118 and Decree 218.

Accordingly, having considered the factors set out in section 269TAAC(4), the commission is not satisfied that the requirements of section 269TAAC(3) have been met, therefore any subsidy available under this program is countervailable.

Amount of subsidy

Benefits for income tax programs are expensed to the year in which the benefit is received, and the benefit is taken to have been received on the date on which the entity would otherwise have had to pay the taxes associated with the exemption.¹⁴⁶ Accordingly, the commission has determined that any amount deductible under this program in relation to the investigation period (or a portion thereof) is to be attributed to the investigation period.

Non-cooperative entities

The commission has determined that uncooperative exporters received a benefit under this program during the investigation period, in accordance with section 269TACC(3)(b).

In accordance with section 269TACD(1), the amount of the subsidy has been determined. The commission considers that non-cooperative entities in Vietnam may have received the most favourable preferential rate of 10% during the investigation period.

¹⁴⁶ Chapter 17.3 of the Manual.

This percentage has then been applied to the weighted average verified taxable income of the cooperating exporters for the investigation period.

In accordance with section 269TACD(2), this amount has then been apportioned to each unit of the goods using the value of all products produced by each company during the investigation period.

B2.3 Import duty preferences

The commission identified the following programs as providing possible exemptions to the payment of import duties for Vietnamese exporters:

- Program 17 – Preferential Import Tariff Rates for enterprises investing in regions or sectors entitled to investment incentives.
- Program 32 - Exemption of Import Tax on Equipment and Machinery Imported to Create Fixed Assets.
- Program 42 – Excessive Duty Exemptions for Imported Raw Materials for Exported Goods.
- Program 43 – Exemptions of Import Duty.
- Program 44 – Refund of Import Duty.

Program 17 was not alleged in the application, but the commission identified and assessed this program in INV 370. Programs 32, 42, 43 and 44 were alleged in the application, based on findings in the in the CBSA Copper Pipe case, the CBSA Cold-rolled steel case and the CBSA Oil Tubes case.

Legal basis

In its RGQ, the GOV submitted that import duty preferences available under Programs 17, 32 and 43 are subject to the same governing legislation and therefore provided a single response for all 3 programs. The commission confirmed during the investigation that these programs were established under the Law 107/2016/QH13 on export and import duties (Law 107)¹⁴⁷ and Decree 134/2016/ND-CP providing guidelines for the Law on export and import duties (Decree 134)¹⁴⁸.

The commission also confirmed that Programs 42 and 44, for which the GOV has also provided a combined response, were governed under Law 107 and Decree 134.

WTO notification

Preferential policies on import tax under Law 107 and Decree 134 are included in the 2020 Vietnam Subsidy Notice.

Programs 17 and 32 – Preferential Import Tariff Rates

Articles 14 and 15 of Decree 134 provide for exemption of duties on imported fixed assets, raw materials, supplies and components for eligible investments. These are set

¹⁴⁷ Law 107 replaced the Law on Import Duty and Export Duty, No. 45/2005/QH11, which was the governing legislation for Program 17 in INV 370. Available on EPR 558, document 035, GOV RGQ, Exhibit 22.

¹⁴⁸ EPR 558, document 035, GOV RGQ, Exhibit 37.

out in Appendices I and II to Decree 118 and clause 11 of Article 16 of Law 107. This includes, among other things, investments in specified regions with deductions for *'Machinery and equipment; components, parts, spare parts for assembly or operation of machinery and equipment; raw materials for manufacture of machinery and equipment, components, parts, or spare parts of machinery and equipment'*.

Is there a subsidy?

The commission considers that the laws governing this program provide for a financial contribution from the GOV to eligible entities, being the foregoing of revenue which would be otherwise payable to the GOV by those entities.

As the exemption of import duty is available for machinery which may be used in connection with export activities (among other things), the commission considers that a financial contribution under this program would be made in connection with all exports of goods.

Where received, this financial contribution is considered to confer a benefit because of the savings realised by the entity in not having to pay the full amount of import duty which would otherwise be payable.

Where exporters of the goods have received an exemption under this program during the investigation period, that exemption confers a benefit in relation to the goods and the financial contribution satisfies the definition of a subsidy under section 269T.

The GOV advised that no exporter of the goods was in receipt of any benefit under this program.

The commission did not find any evidence during verification of any exporters being in receipt of a financial benefit under this program.

In light of the evidence before it, the commission is not satisfied any Vietnamese exporter received a financial benefit in connection with this program.

Programs 42, 43 and 44 – Refund of Import Duty

Eligibility criteria

Any exporter may apply to use the program.

Exporters must provide the following information to the GOV to receive a benefit under the program:

- Prior to the first import of raw materials, inform the GOV about its production facility, including storage arrangements for imported materials, finished export goods and installed manufacturing equipment and machinery.
- Maintain certain records regarding material consumption for each raw material type, required material to produce a unit of the relevant exported good, and rates of loss in production, including waste.

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- Provide reports on stock in, stock out for manufacturing and leftovers of imported materials for each finished product code, which is to be reconciled to finance documentation.
- Following export, the producer submits documentation to the GOV seeking a refund of the relevant import duty paid, including various evidence on payment for imported goods, import/export contracts, duties paid, and in respect of the manufacturing facilities.

Is there a subsidy?

Import duty exemptions are provided on imported raw materials used in the production of exported goods. The exemption amount is the amount of the duty corresponding to the value of imported materials actually used in the processing of the exported goods.

Section 17.3 of the Manual – *Remission or drawback of import charges upon export* provides that, in the case of an exemption of import charges upon export, such as provided under this program, a benefit exists to the extent that the exemption extends to inputs that are not consumed in the production of the exported product (making normal allowances for waste) or if the exemption covers charges other than import charges imposed on the input. The amount of the benefit will be the import charges that otherwise would have been paid on the inputs not consumed in the production of the exported product and the amount of charges other than import charges covered under the exemption.

However, the commission may determine that the entire exemption amount constitutes a benefit if the foreign government has not examined the inputs in order to confirm that such inputs are consumed in the production of the exported goods, in what amounts, and the taxes that are imposed on the inputs. If it is found that there is a system in place that confirms this information, the commission will examine that system to see if it is reasonable.

Based on the GOV RGQ and the provisions of Law 107 and Decree 134, the commission has determined that the GOV has a system in place for monitoring compliance under this program as follows:

- Details on production facilities used to produce exported goods are provided to the GOV, including information on the storage of raw materials, machinery used in production and details on the exported products.
- Facilities are inspected where necessary to verify information that producers provided.
- Reports on use of raw materials that exporting producers submitted are reconciled against financial reports.
- Customs post-clearance examination of exporters may be carried out where any information provided is suspect.

The commission is satisfied from the information available that the GOV has in place a reasonable system for confirming which inputs are consumed in the production of the exported goods, in what amounts, and the taxes that are imposed on those inputs. The commission is also satisfied that the system in place ensures that import duty refunds are only provided for those inputs consumed in the production of exported goods.

Accordingly, consistent with the approach set out in the Manual, the commission is satisfied that no subsidy is provided under this program.

B2.4 Other Programs

Program 11: Trade Promotion

The applicant requested that a program known as 'Trade Promotion (Updating of Programme XIII of Period 2003-2004)' be included as part of the investigation into countervailable subsidies.

The basis for the applicant's request was the inclusion of the program in the 2013 Vietnam Subsidy Notice. The 2013 Vietnam Subsidy Notice states that this program was terminated in 2006 and is not included in the 2020 Vietnam Subsidy Notice.

However, the GOV has advised that a Trade Promotion program is still available. Eligible organisations may apply under the program for government funding to engage in trade promotion activities, such as participation in trade delegations.

Legal basis

The current iteration of the program is governed under the following legislation:

- *Decision 5016/QD-BCT* dated 27 December 2018.
- *Decision 72/2010/QD-TTg* dated 15 November 2010.¹⁴⁹

WTO notification

The program is not included in the most recent WTO notification.

Eligibility criteria

The commission understands that this program is available to all Vietnamese enterprises, cooperatives and trade promotion organisations, for export and domestic promotion. In respect of export trade, applications are submitted to the Minister of Industry and Trade for funding in the following areas:

- Market research.
- Advertising.
- Hire domestic and foreign experts to give advice on product development, enhancement of product quality, export development and entering foreign markets.
- Internal and external short-term training courses in trade promotion.
- Organise and participation in trade fairs.
- Trade delegations.
- Other trade promotion activities.

¹⁴⁹ EPR 558, document 035, GOV GQR, Exhibit 14.

Is there a subsidy?

The commission considers that the laws governing this program provide for a financial contribution from the GOV to eligible entities, via a direct grant paid to recipients.

From the information the GOV and co-operating exporters provided, the commission has determined that no subsidy was provided under this program in respect of the goods during the investigation period.

Program 23 - Export & Import Support in the Form of Preferential Loans, Guarantees, and Factoring (consisting of 5 separate programs)

The existence of the 5 separate programs below were alleged in the CBSA Cold-rolled steel case and the CBSA COR case:

- (a) Interest rate support program under the State Bank of Vietnam.
- (b) Preferential Lending to Exporters.
- (c) Export Factoring.
- (d) Financial Guarantees from VietinBank and Vietcombank for Export Activity.
- (e) Export and Import Support in Forms of Preferential Loan, Guarantee and Factoring.

In its investigations, the CBSA combined these 5 programs into one, on the basis they were very similar.

The GOV advised in its RGQ that sub-programs (b), (c) and (e) relate to the provision of credit to exporters from Vietnam Development Bank and has relied upon its response to Programs 24 and 26 in addressing these elements of the program. The commission has also adopted a combined approach with these sub-programs, which are addressed under Program 24.

The GOV addressed sub-program (a) in its response to Program 25 and the commission has done the same.

Accordingly, the commission's examination of Program 23 is limited to sub-program (d) – 'Financial Guarantees by VietinBank and Vietcombank for Export Activity'.

The GOV submitted in its response that Vietinbank and Vietcombank are commercial joint stock banks and are not run by the GOV or any Vietnamese public body. It notes that both banks are subject to the Law on Credit Institution 2010 and the Law on Amendments to Some Articles of the Law on Credit Institutions 2017, Article 7 of which provides that credit institutions '*...have autonomy in their business activities and take accountability for their business results.*'¹⁵⁰ As a result, the GOV has not provided a substantive response on this program.

¹⁵⁰ EPR 558, document 035, GOV RGQ, p.169.

VietinBank

The commission has found for the investigation period the GOV, through the State Bank of Vietnam (the central bank of Vietnam), held a majority ownership in VietinBank. VietinBank's 2019 Annual Report indicates that the State Bank of Vietnam owns 64.46% of its shares.¹⁵¹

The report emphasises VietinBank's role as '*...the pioneering bank in implementing policies of the Government and the [State Bank of Vietnam] and contributed significantly to the country's socio-economic development.*'¹⁵² It also cites examples of where VietinBank has acted to implement GOV policy, including:

- prioritising a large proportion of loans to [the] manufacturing sector, as encouraged by the GOV and the State Bank of Vietnam¹⁵³ and
- initiating programs to promote socio-economic development in priority areas guided by the Government, which includes an interest rate ceiling for short-term loans of 6%.¹⁵⁴

After considering section B1.3 of **Non-confidential Appendix B**, the commission has determined that VietinBank is a public body, due to the contribution it makes to the pursuit of GOV policies and the State Bank of Vietnam holding majority ownership.

VietcomBank

The commission has found for the investigation period the GOV, through the State Bank of Vietnam, held 74.8% of VietcomBank.¹⁵⁵ Through its shareholding, the GOV has appointed both the chairman of the board and the Chief Executive Officer.

VietcomBank's 2019 Annual Report refers to it 'proactively implementing policies of government and [the State Bank of Vietnam]' including measures to support domestic enterprises through the reduction of loan interest pursuant to government guidance and government direction.¹⁵⁶

The report notes that the Ministry of Finance and the State Bank of Vietnam, through the GOV shareholding in VietcomBank, are related parties.¹⁵⁷

After considering section B1.3 of **Non-confidential Appendix B**, the commission has determined that VietcomBank is a public body, due to the contribution it makes to the pursuit of GOV policies, the majority ownership that the GOV holds and the control of the GOV over appointments to the board and management.

¹⁵¹ VietinBank 2019 Annual Report, p.67, available at: <https://www.vietinbank.vn/sites/mediafile/VTB149105>.

¹⁵² Ibid, p.14.

¹⁵³ Ibid, p.75.

¹⁵⁴ Ibid, p.116.

¹⁵⁵ VietcomBank 2019 Annual Report, p.56, available at: https://portal.vietcombank.com.vn/content/en-us/Investors/Investors/Annual%20Reports/Year%202019/20200730_AR_Vietcombank2019_English.pdf.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid, p.173.

Background

The commission understands that under this program, VietinBank and VietcomBank provide guarantees on behalf of customers to fulfil the financial requirements of those customers in the event that they are unable to meet fully their financial commitments. It is alleged that this guarantee provides a financial benefit to their customers in that they are able to obtain credit at a lower level than would be otherwise available, with the benefit being the difference between the interest rate they are able to obtain with the aid of the guarantee, compared to the interest rate they would have otherwise been entitled.

Legal basis

The CBSA in its investigation of this program, when combined with the 4 other sub-programs, found the legal basis for the program to be Decree No. 75/2011/ND-CP¹⁵⁸ dated August 30, 2011, on state investment credit and export credit (Decree No. 75)¹⁵⁸ and Decree No. 151/2006/ND-CP¹⁵⁹ dated December 20, 2006, on state investment credit and export credit (Decree No. 151).¹⁵⁹

The commission notes that Decree No. 75 replaced Decree No. 151, which was itself repealed in 2017 pursuant to Decree 32/2017/ND-CP.¹⁶⁰

The commission is not aware of any other legislation requiring VietinBank and VietcomBank to provide preferential guarantees. However, the involvement of both banks in the implementation of GOV policy, as indicated in their annual reports, suggests that such guarantees may be made.

WTO notification

None

Eligibility criteria

The commission is not aware of any eligibility for this program.

Is there a subsidy?

Section 269TACC(3)(c) provides that, when determining whether a financial contribution has conferred a benefit, the guarantee of a loan by a government or public body does not confer a benefit unless the recipient of the guarantee is required to repay on the loan a lesser amount than would have been required under a comparable commercial loan without a guarantee.

The commission has undertaken an analysis of the information that cooperating exporters provided in relation to loans they have sourced from VietinBank and VietcomBank, privately owned banks and government owned banks operating on a commercial basis. The commission established that interest rates differed between exporters and between banks, which it considers indicative of financial institutions setting lending rates based on

¹⁵⁸ EPR 558, document 035, GOV RGQ, Exhibit 28.

¹⁵⁹ EPR 558, document 035, GOV RGQ, Exhibit 10.

¹⁶⁰ EPR 558, document 035, GOV RGQ, Exhibit 28.

commercial risk assessments, which is a fundamental tenet of a functioning financial market.

The commission has used interest rate data from privately owned banks and government owned banks operating on a commercial basis for short-term loans (as these were the only loans that VietinBank and VietcomBank provided). The commission has weighted these interest rates against the value of each loan to establish a benchmark of market rates against which loans from VietinBank and VietcomBank can be compared over the investigation period.

The commission considered this basis for the calculation of a benchmark rate more appropriate than the rate the State Bank of Vietnam offered as it more accurately represents rates actually available to exporters in the market.

The commission has determined the differential between this benchmark rate and the rate actually charged at the time the loan was sourced from VietinBank and VietcomBank as a subsidy available under this program, as defined in section 269T.

The commission's analysis is at **Confidential Attachment 18**.

Is the subsidy countervailable?

A subsidy is a countervailable subsidy if it is specific. Specificity is defined under section 269TAAC. Section 269TAAC(2) provides that a subsidy is specific if, subject to section 269TAAC(3):

- (a) it is explicitly limited to particular entities;
- (b) it is limited to entities carrying on business in a designated geographical region;
- (c) it is contingent on export performance; or
- (d) it is contingent on the use of domestically produced goods over imported goods.

The CBSA COR case, which was the basis for alleging that a countervailable subsidy was provided under this program, referred only to legislation which has since been repealed. The CBSA did not examine the terms and eligibility criteria under which guarantees from VietinBank and VietcomBank were provided. The GOV RGQ also does not address this, on the basis that VietinBank and VietcomBank are not public bodies.

The commission has examined information that cooperating exporters provided for loans that VietinBank and VietcomBank provided. However, this did not indicate any specific eligibility criteria.

From the information before it, the commission does not have any evidence indicating that guarantees that VietinBank and VietcomBank offered satisfy any of the criteria of section 269TAAC(2). Accordingly, the commission considers that any benefit received under this program is not countervailable.

B2.5 Remaining programs where no subsidy was found

Program 9 - Export & Import Support in the Form of Preferential Loans, Guarantees, and Factoring (consisting of 5 separate programs)

Background

The application referred to this program as detailed in *New and Full Notification Pursuant to Article XVI.1 of the GATT and Article 25 of the Agreement on Subsidies and Countervailing Measures* published in March 2013. That iteration of the program ceased in 2007.

However, since 2017, the program has continued. Under the program, the Vietnam Development Bank provides state investment loans to eligible projects. Eligible projects must relate to socio-economic infrastructure, agriculture and industry, none of which directly related to the goods.

Legal basis

Decree 32/2017/ND-CP dated May 15, 2017.

WTO notification

This program, was listed in the '*New and Full Notification Pursuant to Article XVI.1 of the GATT and Article 25 of the Agreement on Subsidies and Countervailing Measures*' published in March 2013.

Despite still running, the program is not listed in the more recent '*New and Full Notification Pursuant to Article XVI.1 of the GATT and Article 25 of the Agreement on Subsidies and Countervailing Measures*' published in February 2020.

Eligibility criteria

The program is limited to investment projects identified in Decree 32/2017/ND-CP.

Eligible borrowers wishing to receive benefits under this program are required to follow Vietnam Development Bank's regulations and procedures of providing investment loan.

Eligible projects must relate to socio-economic infrastructure, agriculture and industry, which includes:

- Pharmaceuticals.
- Power supply.
- Key mechanical products that the prime minister designated .
- Energy efficiency.
- Supporting industries that the prime minister designated .
- Agriculture machinery.
- Clean technology.
- Hi-tech products.
- Certain geographic areas.
- Off-shore projects.

Commission assessment

The GOV advised that no exporter of the goods was in receipt of any benefit under this program. The commission did not find any evidence during verification of any exporters being in receipt of a financial benefit under this program.

In light of the evidence before it, the commission is not satisfied any Vietnamese exporter received a financial benefit in connection with this program.

Program 16 - Incentives for Investment Projects in Science and Technology (Updating Programme XVIII of Period 2003-2004)

Background

It is alleged that this program, which ceased in 2014, provided corporate tax preferences depending on whether entities were domestic and foreign owned. Such preferences included:

- Domestic enterprises were granted preferences in relation to land rent/use fees
- Import duty exemptions
- Investment credit

Financial support for scientific and technology research.

Legal basis

Established under Decree 119/1999/ND-CP dated 18 September 1999.¹⁶¹

Repealed in various stages from 2003 to 2014 pursuant to:

- The Law on Corporate Income Tax 2003¹⁶²
- Decree 142/2005/ND-CP dated 14 November 2005¹⁶³
- Decree 149/2005/ND-CP dated 8 December 2005¹⁶⁴
- Decree 08/2014/ND-CP dated 27 January 2014¹⁶⁵

WTO notification

This program, was listed in the 2013 Vietnam Subsidy Notice.

This program has not been listed in Vietnam's '*New and Full Notification Pursuant to Article XVI.1 of the GATT and Article 25 of the Agreement on Subsidies and Countervailing Measures*' since September 2015

Eligibility criteria

A broad range of scientific and technology activities (for domestically or foreign owned enterprises) were eligible for this program.

¹⁶¹ EPR 558, document 035, GOV RGQ, Exhibit 21.

¹⁶² Ibid.

¹⁶³ Ibid.

¹⁶⁴ Ibid.

¹⁶⁵ Ibid.

Commission assessment

The commission is satisfied that changes to the corporate income tax law in 2003 led to the removal of differences in tax treatment between domestic and foreign owned entities and the resulting termination of many parts of this program. Preferences in relation to Investment credit were replaced with *Other Preferential Investment for Development, May 2017* (see Program 9). The remainder of the program was terminated in 2014.

The commission did not find any evidence during verification of any exporters being in receipt of a financial benefit under this program.

In light of the evidence before it, the commission is not satisfied any Vietnamese exporter received a financial benefit in connection with this program.

Program 19 - Incentives on non-agricultural land use

Background

It is alleged that under this program, tax incentives are provided for non-agricultural land use.

The existence of this program was alleged in the CBSA Cold-rolled steel case, the CBSA Copper Pipe case and the CBSA COR case.

Legal basis

Law on Non-Agricultural Land Use Tax 48/2010/QH12¹⁶⁶ and Decree 53/2011/ND-CP¹⁶⁷ implementing this Law.

Non-agricultural land use tax benefits including tax exemption and reduction are provided under Article 9 and 10 of the Law and Article 8 of Decree 53.¹⁶⁸

WTO notification

The commission is not aware of any WTO notification of this program

Eligibility criteria

Appendix 1 of Decree No. 118/2015/ND-CP defines sectors eligible for investment promotion and sectors eligible for special investment preferences. Appendix 2 defines areas with extreme socio-economic difficulties and areas with socio-economic difficulties eligible for investment preferences.

There is no separate application process. Taxpayers are responsible for calculating their tax liability in accordance with the relevant tax law and regulations.

Commission assessment

The GOV advised that no exporter of the goods was in receipt of any benefit under this program.

¹⁶⁶ EPR 558, document 035, GOV RGQ, Exhibit 27.

¹⁶⁷ Ibid.

¹⁶⁸ EPR 558, document 035, GOV RGQ, Exhibits 23 and 27.

The commission did not find any evidence during verification of any exporters being in receipt of a financial benefit under this program.

In light of the evidence before it, the commission is not satisfied any Vietnamese exporter received a financial benefit in connection with this program.

Program 20 - Grants to Firms that Employ More than 50 Employees

Background

It is alleged that this program, which ceased in 2006, provides various forms of investment preferences and support for firms employing more than 50 employees.

The existence of this program was alleged in the CBSA Cold-rolled steel case and the CBSA Copper Pipe case.

In both investigations, based on the information before it, the CBSA found the program to be specific because it is limited to particular enterprises with a certain size. The CBSA also found that the last date a company could apply for a benefit under this program was 2006.

Legal basis

The GOV advised in its RGQ that there has never been a grant program as described. Rather, this program, established under Decree 51/1999/ND-CP¹⁶⁹ is an incentive program. This establishing legislation is the same identified in the CBSA investigations.

The program was terminated in 2006 under Decree 108/2006/ND-CP.¹⁷⁰

WTO notification

The commission is not aware of any WTO notification of this program.

Eligibility criteria

Investment projects of any production and business sectors that had an average number of at least 50 employees was eligible for investment incentives. These included:

- 3-year exemption of land rent
- 2-year exemption of income tax with a 50% reduction for the subsequent 2 years.

Commission assessment

The basis for alleging the existence of this program is CBSA investigations in 2018, which found the program was terminated in 2006.

The GOV provided evidence to the commission confirming that the program was terminated in 2006.

The commission did not find any evidence during verification of any exporters being in receipt of a financial benefit under this program.

¹⁶⁹ EPR 558, document 035, GOV RGQ, Exhibit 7.

¹⁷⁰ Ibid.

In light of the evidence before it, the commission is not satisfied any Vietnamese exporter received a financial benefit in connection with this program.

Program 22 - Acquisition of State Assets at Less Than Fair Market Value

Background

The existence of this program was alleged in a 2015 investigation the CBSA conducted into the subsidising of certain oil country tubular goods originating in or exported from the Republic of India, the Republic of Indonesia and the Socialist Republic of Vietnam.

During its investigation, no exporter in Vietnam provided sufficient information to the CBSA to determine an amount of subsidy. Therefore, the amount of subsidy for all Vietnamese exporters was determined in accordance with a ministerial specification, pursuant to which the CBSA found that all programs were countervailable.

No further information was provided to the commission in respect of this program.

Legal basis

The GOV advised in its RGQ that there is no case of acquisition of state assets at less than fair market value.

The GOV advised that the sale of state assets of property is required under Articles 4 and 6 of the Law on Property Auction dated 17 November 2016¹⁷¹ to be auctioned in an independent, honest, public, transparent, equal and objective way.

WTO notification

The commission is not aware of any WTO notification of this program.

Eligibility criteria

Not applicable.

Commission assessment

The basis for alleging the existence of this program is a CBSA finding based on the non-response of Vietnamese exporters during its investigation. The commission notes that the CBSA investigation did not find positive evidence of the existence of this program or of any benefits received.

The GOV has provided evidence indicating that this program does not exist, and that it is contrary to existing legislation.

The commission did not find any evidence during verification of any exporters being in receipt of a financial benefit under this program.

In light of the evidence before it, the commission is not satisfied any Vietnamese exporter received a financial benefit in connection with this program.

¹⁷¹ EPR 558, document 035, GOV RGQ, Exhibit 28.

Program 24 - Export Support Loans at Preferential rates

Background

It is alleged that under this program, the Vietnam Development Bank provided export credit or preferential lending for exporters in certain sectors. Eligible borrowers were offered export credit amount up to 85% of the value of the export contract at preferential interest rates.

The existence of this program was alleged in the CBSA Oil Tubes case.

During its investigation, no exporter in Vietnam provided sufficient information to the CBSA to determine an amount of subsidy. Therefore, the amount of subsidy for all Vietnamese exporters was determined in accordance with a ministerial specification, pursuant to which the CBSA found that all programs were countervailable.

Legal basis

Established under Article 16 of Decree 75/2011/ND-CP.¹⁷²

Repealed in 2017 under Article 28 of Decree 32/2017/ND-CP.

WTO notification

The commission is not aware of any WTO notification of this program.

Eligibility criteria

Article 16 of Decree 75 identified certain exporting sectors eligible for lending from the Vietnam Development Bank. These sectors are provided under Appendix II of Decree 75.

Commission assessment

The basis for alleging the existence of this program is a CBSA finding based on the non-response of Vietnamese exporters during its investigation. The commission notes that the CBSA investigation did not find positive evidence of the existence of this program or of any benefits received.

The GOV has provided evidence indicating that this program no longer exists.

The commission did not find any evidence during verification of any exporters being in receipt of a financial benefit under this program.

In light of the evidence before it, the commission is not satisfied any Vietnamese exporter received a financial benefit in connection with this program.

Program 25 - Interest Rate Support Program under the State Bank of Vietnam

Background

It is alleged that this program provided various levels of interest rate support depending on the length of the loan.

¹⁷² EPR 558, document 035, GOV RGQ, Exhibit 28.

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The existence of this program was alleged in the CBSA Oil Tubes case.

During its investigation, no exporter in Vietnam provided sufficient information to the CBSA to determine an amount of subsidy. Therefore, the amount of subsidy for all Vietnamese exporters was determined in accordance with a ministerial specification, pursuant to which the CBSA found that all programs were countervailable.

Legal basis

The program was implemented to provide short-term support following the 2009 global financial crisis. The program was established under:

- Decision 131/QD-TTg, dated January 23, 2009.¹⁷³
- Decision 443/QD-TTg, dated April 4, 2009.¹⁷⁴
- Decision 2072/QD-TTg, dated December 11, 2009.¹⁷⁵
- Circular 05/2009/TT-NHNN dated 4 July 2009.¹⁷⁶
- Circular 04/2009/TT-NHN dated 13 March 2009.¹⁷⁷

The final date for receiving support under the program was 31 December 2012, 24 months after the final disbursement of loans in 2010.

WTO notification

The commission is not aware of any WTO notification of this program.

Eligibility criteria

This program was available to enterprises of all manufacturing sectors.

Commission assessment

The basis for alleging the existence of this program is a CBSA finding based on the non-response of Vietnamese exporters during its investigation. The commission notes that the CBSA investigation did not find positive evidence of the existence of this program or of any benefits received.

The GOV has provided evidence indicating that this program no longer exists.

The commission did not find any evidence during verification of any exporters being in receipt of a financial benefit under this program.

In light of the evidence before it, the commission is not satisfied any Vietnamese exporter received a financial benefit in connection with this program.

¹⁷³ EPR 558, document 035, GOV RGQ, Exhibit 27.

¹⁷⁴ EPR 558, document 035, GOV RGQ, Exhibit 27.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

Program 26 - Preferential Lending under the Viet Bank Export Loan Program

Program 26 findings covered within Program 24.

Program 27 - Accelerated Depreciation of Fixed Assets

Background

It is alleged that under this program, any Vietnamese enterprise operating with 'high economic efficiency' may accelerate their depreciation up to double the normal rate, for fixed assets involved in business activities including machinery and equipment, experimental and measuring instruments, equipment and means of transport, management tools, animals, perennial orchards.

The existence of this program was alleged in 4 separate investigations the CBSA conducted: the CBSA COR case, the CBSA Cold-rolled steel case, the CBSA Copper Pipe case and the CBSA Oil Tubes case.

Legal basis

Accelerated depreciation of fixed assets is available under Circular 45/2013/TT-BTC.¹⁷⁸

WTO notification

The commission is not aware of any WTO notification of this program.

Eligibility criteria

Under Circular 45/2013/TT-BTC, all enterprises operating in Vietnam are eligible for this program, if they are operating with 'high economic efficiency'.

Commission assessment

The commission considers that this program is not specific as it is available to all enterprises established and operating in Vietnam and is therefore not countervailable.

Program 28 - Additional Income Tax Preferences for Exporters

Background

It is alleged that this program, repealed in 2006, provided income tax preferences to exporters.

The existence of this program was alleged in the CBSA Oil Tubes case, which was conducted in 2015. During its investigation, no exporter in Vietnam provided sufficient information to the CBSA to determine an amount of subsidy. Therefore, the amount of subsidy for all Vietnamese exporters in that case was determined in accordance with a ministerial specification, pursuant to which the CBSA found that all programs were countervailable.

¹⁷⁸ EPR 558, document 035, GOV RGQ, Exhibit 30.

Legal basis

Established under Chapter 5 of Decree 164/2003/ND-CP¹⁷⁹, detailing the implementation of the Law on Corporate Income Tax.¹⁸⁰

Repealed in 2006 pursuant to Decree 108/2006/ND-CP.¹⁸¹

WTO notification

Investment incentives contingent on export performance under Decree 164/2003/ND-CP and the repeal of that program under Decree 108/2006/ND-CP were included in the 2013 Vietnam Subsidy Notice.

It is not included in the 2020 Vietnam Subsidy Notice.

Eligibility criteria

This program was limited to sectors identified in Annex A to Decree 164/2003/ND-CP, which included exporters with an export value of more than 50% of their total production value.

Commission assessment

The CBSA re-examined this program in the CBSA COR case in 2019 and determined it was covered under other subsidy programs the CBSA examined in respect of Vietnam.

The commission is satisfied that this program ceased in 2006.

The commission did not find any evidence during verification of any exporters being in receipt of a financial benefit under this program.

In light of the evidence before it, the commission is not satisfied any Vietnamese exporter received a financial benefit in connection with this program.

Program 30 - Enterprise Income Tax Preferences, Exemptions, and Reductions (consisting of 7 separate programs)

Background

The existence of the 7 separate programs below were alleged in the CBSA Cold-rolled steel case:

- (a) Enterprise Income Tax preferences, exemptions and reductions.
- (b) Enterprise Income Tax exemptions and reductions for business expansion and intensive investment.
- (c) Enterprise income tax and import duty preferences.
- (d) Tax preferences for investors producing and/or dealing in export goods.
- (e) Income Tax Preferences under Chapter V of Decree 24.
- (f) Income Tax Preferences under Chapter IV of Decree 124.
- (g) Tax Exemptions and Reductions for Foreign-Invested Enterprises.

¹⁷⁹ EPR 558, document 035, GOV RGQ, Exhibit 31.

¹⁸⁰ EPR 558, document 035, GOV RGQ, Exhibit 21.

¹⁸¹ EPR 558, document 035, GOV RGQ, Exhibit 31.

PUBLIC RECORD

In its investigations, the CBSA combined these programs into one, on the basis they were very similar.

The GOV advised in its RGQ that it has addressed:

- sub-program (a) under Program 18
- sub-program (b) under Program 29
- sub-program (c) under Programs 18, 32, 42 and 44
- sub-program (d) under Programs 28, 31 and 41
- sub-program (g) under Program 38.

Accordingly, its response for Program 30 has been limited to sub-programs (e) and (f).

Legal basis

Income Tax Preferences under Chapter V of Decree 24/2007/ND-CP¹⁸², which was repealed under Income Tax Preferences under Chapter IV of Decree 124/2008/ND-CP.¹⁸³ Decree 124/2008/ND-CP was later repealed under Decree 218/2013/ND-CP.¹⁸⁴

WTO notification

Various preferential policies on corporate income tax are included in the 2020 Vietnam Subsidy Notice.

Eligibility criteria

Income tax preferences were only available to certain sectors and geographical areas

Commission assessment

The commission is satisfied this program is no longer in force and has been replaced by Decree 218/2013/ND-CP, which is discussed under Program 18.

No exporters were identified as having received benefits under this program.

In light of the evidence before it, the commission is not satisfied any Vietnamese exporter received a financial benefit in connection with this program.

Program 33 - Exemptions/reductions of Land Rent, Tax, and Levies (consisting of 5 separate programs)

Background

The existence of the 5 separate programs below was alleged in 4 separate investigations the CBSA conducted: the CBSA COR case, the CBSA Cold-rolled steel case, the CBSA Copper Pipe case and the CBSA Oil Tubes case:

- (a) Land rent reduction/exemption for exporters and land use fees or leases exemptions/reductions.
- (b) Land-use levy exemption/reduction.
- (c) Land-rent exemption/reduction.

¹⁸² EPR 558, document 035, GOV RGQ, Exhibit 7.

¹⁸³ EPR 558, document 035, GOV RGQ, Exhibit 32.

¹⁸⁴ EPR 558, document 035, GOV RGQ, Exhibits 2, 9 and 32.

(d) Land use tax exemptions/ reductions.

(e) Preferences related to land use tax, land use levy, land rent and water surface rent.

In its investigation the CBSA combined these programs into one, on the basis they were very similar.

The GOV advised in its RGQ that it has addressed:

- sub-program (a) under Program 3
- sub-program (b) under Program 34
- sub-program (d) under Program 19.

Accordingly, its response for Program 30 has been limited to sub-programs (c) and (e).

This program provides for rent exemptions and reductions for various periods, depending on what eligibility criteria have been satisfied.

Legal basis

This program is governed under the following legislation:

- Decree 46/2014/ND-CP dated 15 May 2014.¹⁸⁵
- Decree 135/2016/ND-CP dated 9 September 2016.¹⁸⁶
- Decree 35/2017/ND-CP dated 3 April 2017.¹⁸⁷

WTO notification

The commission is not aware of any WTO notification of this program.

Eligibility criteria

Appendices I and II of Decree No. 118/2015/ND-CP defines eligible sectors and regions.

Articles 19 and 20 of Decree 46 provides further eligibility criteria in addition to Appendices I and II of Decree 118. Those relevant to the goods are region specific, including industrial zones.

Commission assessment

The GOV advised that no exporter of the goods was in receipt of any benefit under this program.

The commission did not find any evidence during verification of any exporters being in receipt of a financial benefit under this program.

In light of the evidence before it, the commission is not satisfied any Vietnamese exporter received a financial benefit in connection with this program.

¹⁸⁵ EPR 558, document 035, GOV RGQ, Exhibit 35.

¹⁸⁶ EPR 558, document 035, GOV RGQ, Exhibit 35.

¹⁸⁷ Ibid.

Program 34 - Land-Use Levy Exemptions/ Reductions

Background

It is alleged that under this program, exemptions or reductions from payment of the land use levy are provided in certain circumstances.

The existence of this program was first alleged in the CBSA Copper Pipe case and later combined with other similar programs in the CBSA COR case.

The commission has combined sub-program (b) from Program 33 into its analysis of this program.

Legal basis

This program is governed under Decree 45/2014/ND-CP dated 15 May 2014.¹⁸⁸

WTO notification

The commission is not aware of any WTO notification of this program.

Eligibility criteria

Exemptions to the land-use levy is available for various residential land and land used for constructions of social housing.

Reductions in the levy is available for residential land owned by ethnic minorities or poor households, or to people with meritorious service to revolution.

Commission assessment

The GOV advised that no exporter of the goods was in receipt of any benefit under this program.

The commission did not find any evidence during verification of any exporters being in receipt of a financial benefit under this program.

In light of the evidence before it, the commission is not satisfied any Vietnamese exporter received a financial benefit in connection with this program.

Program 36 - Preferential Provisions for Carry-forward of Losses

Background

It is alleged that under this program preferential treatment is available in connection with the carrying forward of losses into future years for the determination of assessable taxable income.

The existence of this program was alleged in the CBSA Oil Tubes case, which was conducted in 2015. During its investigation, no exporter in Vietnam provided sufficient information to the CBSA to determine an amount of subsidy. Therefore, the amount of

¹⁸⁸ EPR 558, document 035, GOV RGQ, Exhibit 36.

subsidy for all Vietnamese exporters in that case was determined in accordance with a ministerial specification, pursuant to which the CBSA found that all programs were countervailable.

Legal basis

The carrying forward of losses is permitted pursuant to Law 32/2013/QH13 of 19 June 2013.¹⁸⁹

WTO notification

The commission is not aware of any WTO notification of this program.

Eligibility criteria

Available to all enterprises in all sectors and all locations who have incurred a loss in the previous 5 years.

Commission assessment

While many exporters of the goods utilised this program, the commission considers that this program is not specific and is therefore not countervailable.

Program 38 - Tax Exemptions and Reductions for Foreign-Invested Enterprises

Background

It is alleged that under this program, income tax preference were provided to enterprises with foreign investment.

The existence of this program was alleged in the CBSA Copper Pipe case and the CBSA Oil Tubes case.

Legal basis

The program was established under Decree 24/2000/ND-CP dated 31 July 2000¹⁹⁰ and was later terminated under Decree 164/2003/ND-CP dated 22 December 2003.¹⁹¹

WTO notification

The commission is not aware of any WTO notification of this program.

Eligibility criteria

A range of projects and geographical areas are set out in the appendices to Decree 24/2000/ND-CP where investment is encouraged.

¹⁸⁹ EPR 558, document 035, GOV RGQ, Exhibit 33.

¹⁹⁰ EPR 558, document 035, GOV RGQ, Exhibit 34.

¹⁹¹ EPR 558, document 035, GOV RGQ, Exhibit 7.

Commission assessment

The commission is satisfied that this program ceased in 2004.

The commission did not find any evidence during verification of any exporters being in receipt of a financial benefit under this program.