



Australian Government  
Department of Industry, Science,  
Energy and Resources

Anti-Dumping  
Commission

*CUSTOMS ACT 1901 - PART XVB*

# **TERMINATION REPORT**

## **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**

**15 November 2021**

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## ABBREVIATIONS

\$	Australian dollars
ABF	Australian Border Force
ADN	Anti-Dumping Notice
AFP	Anti-Finger Print
aluminium zinc coated steel ( $\geq 600$ 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
KG 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
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
ROK	Republic of Korea
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	ROK, Taiwan and Vietnam
SYSCO	Sheng Yu 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, Energy and Emissions Reduction
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 CONCLUSIONS

## 1.1. Introduction

The Anti-Dumping Commission (the commission) has prepared this *Termination Report No 558* (TER 558) 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 (ROK), Taiwan, and the Socialist Republic of Vietnam (Vietnam) (collectively, the subject countries) and
- a countervailing duty notice in respect of the goods exported 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.

This report follows the commission's publication of the *Statement of Essential Facts No 558* (SEF 558) for this investigation on 22 September 2021.<sup>1</sup>

## 1.2. Scope of this report

TER 558 sets out the reasons why the Commissioner of the Anti-Dumping Commission (the Commissioner) is terminating the dumping investigation in relation to Taiwan and Vietnamese exporter Nam Kim Steel Joint Stock Company (Nam Kim), and the subsidy investigation in relation to Vietnam.

The commission will address findings and recommendations in respect of the ROK and Vietnam (other than Nam Kim), in a separate report.

## 1.3. Authority to make decision

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

## 1.4. Application

On 4 June 2020, BlueScope lodged an application alleging that the goods exported to Australia from the ROK and Taiwan at dumped prices, as well as the goods from Vietnam at dumped and subsidised prices, are causing 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.

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<sup>1</sup> Electronic Public Record (EPR) 558, document 057.

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

Consideration Report No 558 (CON 558) and Anti-Dumping Notice (ADN) No 2020/067 provide further details regarding the initiation of the investigation.<sup>3</sup>

#### **1.4.1 Preliminary affirmative decision**

In accordance with section 269TD, the Commissioner may make a preliminary affirmative determination (PAD) if satisfied there appears to be sufficient grounds for the publication of a dumping duty notice and/or a countervailing duty notice. The Commissioner may also make a PAD if satisfied that it appears there will be sufficient grounds for the publication of such a notice subsequent to the importation of the goods into Australia.

Where the Commissioner does not make a PAD within 60 days after initiation of the investigation, the *Customs (Preliminary Affirmative Determinations) Direction 2015* (PAD Direction) directs the Commissioner to publish a status report providing reasons why the Commissioner did not do so.

On 27 July 2020, being 60 days after the initiation of the investigation, the Commissioner published a status report.<sup>4</sup>

As required by section 9 of the PAD Direction, if the Commissioner has published a status report in relation to an investigation, the Commissioner must reconsider whether to make a PAD at least once prior to the publication of the statement of essential facts (SEF).

As the commission is terminating the investigation in relation to exports from Taiwan and Vietnamese exporter Nam Kim, no PAD has been made in respect of these exports.<sup>5</sup>

#### **1.4.2 Statement of essential facts**

Within 110 days after the initiation of an investigation, or such longer period as the Minister allows under section 269ZHI(3)<sup>6</sup>, the Commissioner must place on the public record a SEF on which the Commissioner proposes to base a recommendation to the Minister in relation to the application.<sup>7</sup>

The Commissioner was originally due to publish a SEF on the public record by 19 October 2020. The commission obtained multiple extensions of time for this due date.<sup>8</sup> The Commissioner placed SEF 558 on the EPR on 22 September 2021.

#### **1.4.3 Termination of part of the investigation**

The Commissioner was due to provide a report to the Minister on or before 15 November 2021. As outlined in this report, the Commissioner has terminated parts of

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<sup>3</sup> EPR 558, document 002 and 003.

<sup>4</sup> EPR 558, document 011.

<sup>5</sup> The Commissioner published *Preliminary Affirmative Determination No 558* (PAD 558) on 22 September 2021 in relation to certain exports of the goods, having been satisfied that there appeared sufficient grounds for the publication of a dumping duty notice. ADN No 2021/123 refers.

<sup>6</sup> The former Assistant Minister for Industry, Innovation and Science and the Parliamentary Secretary to the Minister for Industry, Innovation and Science delegated the Minister's powers to the Commissioner. See ADN No 2017/010.

<sup>7</sup> Section 269TDAA(1).

<sup>8</sup> EPR 558, document 023, 029 and 054.

this investigation. A report to the Minister is to be provided in relation to those parts of the investigation that have not been terminated.

## 1.5 Findings and conclusions

A summary of the Commissioner's findings is set out below and in later chapters in this report.

### 1.5.1 The goods and like goods and the Australian industry (chapter 3)

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.

### 1.5.2 Dumping margins (chapter 4)

The Commissioner found that:

- exports from cooperating exporters Nam Kim, Sheng Yu Steel Co., Ltd (SYSCO) and Yieh Phui Enterprise Co Ltd (Yieh Phui) were not at dumped prices, and
- there were negligible volumes (ie less than 3%) of dumped goods exported to Australia from Taiwan during the investigation period.

The commission has summarised the dumping margins relevant to TER 558 in Table 1.

Country	Exporter	Dumping margin (%)
Taiwan	SYSCO	-5.6
	Yieh Phui	-4.4
	Uncooperative exporters	3.5
Vietnam	Nam Kim	-9.6

Table 1 – Dumping Margins

### 1.5.3 Subsidy margins (chapter 5)

The Commissioner has found that the goods exported to Australia from Vietnam during the investigation period were either not subsidised or subsidised at negligible levels.

The commission has summarised the subsidy margins relevant to TER 558 in Table 2.

Exporter	Subsidy Margin (%)
Nam Kim	N/A
Hoa Phat Steel Sheet Co. Ltd (Hoa Phat)	N/A
Hoa Sen Group Joint Stock Company (HSG)	N/A
Non-cooperative Vietnamese exporters	0.4

Table 2 – Subsidy Margins (only relevant to Vietnamese exporters)<sup>9</sup>

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<sup>9</sup> 'N/A' in Table 2 indicates that these exporters were not in receipt of countervailable subsidies. Therefore no subsidy margin is determined for these exporters.



#### **1.5.4 Termination and effect for certain exporters (chapter 7)**

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

The Commissioner must 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 Hoa Phat, HSG and Nam Kim, no countervailable subsidy has been received in respect of the goods, pursuant to section 269TDA(2)(b)(i), and
  - in respect of non-cooperative exporters, 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 the ROK, 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.<sup>10</sup>

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 reviews. 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 <sup>11</sup>	5 August 2013	China, ROK, Taiwan	<ul style="list-style-type: none"><li>• IDD imposed on China and the ROK</li><li>• Interim countervailing duty (ICD) imposed on China</li><li>• Measures not imposed on Taiwan</li></ul>
456 (Review) and 450 (Continuation)	2018/095 (Review) <sup>12</sup> , 2018/097 (Continuation) <sup>13</sup>	12 July 2018	China, ROK	<ul style="list-style-type: none"><li>• IDD varied for China</li><li>• Measures ceased for the ROK</li></ul>

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

<sup>10</sup> EPR 558, document 002 and 003.

<sup>11</sup> EPR 190, document 143.

<sup>12</sup> EPR 456, document 019.

<sup>13</sup> EPR 450, document 013.

Further information regarding the measures on aluminium zinc coated steel is also available on the commission's website.<sup>14</sup>

## **2.3 Conduct of the investigation**

### **2.3.1 Statement of essential facts**

On 22 September 2021, the Commissioner placed a SEF on the public record, on which the Commissioner proposed to base his recommendations to the Minister.<sup>15</sup> The SEF informs interested parties of the facts established and enables them to make submissions in response.

Following its publication, interested parties had 20 days to respond to the SEF. Responses to the SEF were to be provided to the Commissioner by no later than 12 October 2021. The Commissioner has had regard to submissions received in response to the SEF in preparing this report.

### **2.3.2 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.

### **2.3.3 Importers**

The commission identified several importers in the Australian Border Force (ABF) import database that imported the goods from the ROK, 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 the ROK, Taiwan and Vietnam
- DITH Australia Pty Ltd (DITH), importing from the ROK
- 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 the ROK.

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.

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<sup>14</sup> Available on the commission [website](#).

<sup>15</sup> EPR 558, document 057.

### 2.3.4 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
<b>ROK</b>	
Dongkuk Steel Mill Co., Ltd (Dongkuk)	9 June 2020
KG Dongbu Steel Co., Ltd (KG Dongbu)	10 September 2020
POSCO	31 August 2020
<b>Taiwan</b>	
Prosperity Tieh Enterprise Co., Ltd (Prosperity)	13 August 2020
SYSCO	26 August 2020
Yieh Phui	6 August 2020
<b>Vietnam</b>	
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 3.3.3.4, POSCO's exports of aluminium zinc coated steel did not meet the goods description and
- the commission established that Prosperity's exports of aluminium zinc coated steel were chromated and therefore do not meet the goods description.

### 2.3.5 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 findings contained within this report.

## 2.4 Submissions received from interested parties

The commission received 22 submissions from interested parties prior to the publication of SEF 558. The Commissioner considered these submissions when reaching the conclusions contained within SEF 558 and in this termination report. The submissions are available on the EPR.

The commission received 4 submissions from interested parties following the publication of SEF 558. The Commissioner also considered these submissions in reaching the conclusions contained within TER 558.

EPR Item No	Interested Party	Date Received
26	Nam Kim	26 September 2021
27	BlueScope	12 October 2021
28	HSG	12 October 2021
29	HSG	20 October 2021

**Table 5 – Submissions received following the SEF**

## 2.5 Public record

The public record contains non-confidential submissions by interested parties, the commission's verification visit reports, and other publicly available documents. It is available online at: [www.adcommission.gov.au](http://www.adcommission.gov.au). Parties should read documents on the public record in conjunction with this report.

## **3 THE GOODS AND LIKE GOODS**

### **3.1 Finding**

The commission is satisfied that locally manufactured aluminium zinc coated steel goods are '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 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 produced by the Australian industry are 'like' to the imported goods. Section 269T(1) of the Act 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. In doing so, the Commissioner has regard for 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 ( $\text{g/m}^2$ ), 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 &amp; 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*.

TER 558 Aluminium zinc coated steel  $\geq 600$  mm – ROK, Taiwan and Vietnam

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 – pre-SEF

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*.<sup>16</sup>

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.<sup>17</sup>

<sup>16</sup> EPR 558, document 010.

<sup>17</sup> The commission notes that the likeness characteristics are detailed at section 3.2 of this TER.



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 (ie 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.<sup>18</sup>

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 that BlueScope produces and sells across the 4 likeness factors.<sup>19</sup>

### 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.<sup>20</sup>

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.<sup>21</sup>

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<sup>18</sup> EPR 558, document 021.

<sup>19</sup> EPR 558, document 025.

<sup>20</sup> EPR 558, document 014.

<sup>21</sup> 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.<sup>22</sup> 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 Australian Steel Association (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).<sup>23</sup>

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.

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<sup>22</sup> EPR 558, document 024.

<sup>23</sup> 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.<sup>24</sup>

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 (ie 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.'<sup>25</sup>

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.<sup>26</sup> 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 conclusion was that PosMAC is not the goods subject to the investigation.

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<sup>24</sup> Ibid.

<sup>25</sup> EPR 558, document 027.

<sup>26</sup> EPR 558, document 028.

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

- 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.<sup>27</sup>

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 ie 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.<sup>28</sup>

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 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 No 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 No 190.

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<sup>27</sup> EPR 558, document 031.

<sup>28</sup> EPR 558, document 032.

- The notice also identifies excluded goods as ‘un-passivated aluminium zinc alloy coated steel’ or unchromated surface finish which PosMAC is not.
- The exempt goods do not exclude any particular type of coating, whether or not it includes magnesium.<sup>29</sup>

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.<sup>30</sup>

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.<sup>31</sup>

### 3.3.3.3 *BlueScope’s submission on the goods in response to the SEF*

In a submission provided on 12 October 2021, BlueScope contends that the commission’s exclusion of PhuizerFan and PosMAC from the scope of the inquiry is incorrect.<sup>32</sup> To support its view that these products should be considered as ‘the goods’, BlueScope submitted that:

- as a matter of commercial and marketplace reality in Australia, the goods which the commission has excluded from the inquiry can compete with, and interchange with, the included goods, and so are alike and injurious to the domestic industry
- the commission’s main substantive consideration needs to be that the scope of the goods investigated be sufficient to encompass like goods produced by the Australian industry

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<sup>29</sup> EPR 558, document 033.

<sup>30</sup> EPR 558, document 034.

<sup>31</sup> EPR 558, document 036.

<sup>32</sup> EPR 558, document 062.

- the commission should have regard to world peer subject goods assessments; BlueScope provided examples of investigations undertaken in other jurisdictions such as the United States, Canada, India, Indonesia, Thailand and Malaysia
- as evidenced by a confidential attachment to its submission, the commission has deemed a zinc aluminium magnesium alloy coated steel, of a chemistry that has a dominant zinc content in its coating, as the subject goods.

#### 3.3.3.4 *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. Despite, any commercial or marketplace reality claimed by BlueScope's submission in response to the SEF, the commission's assessment of the goods has been based on the goods description. 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 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, 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<sup>2</sup>), **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.

In its consideration of this matter, the commission has also had regard to the points made by BlueScope in its submission in response to the SEF.

The 'world peer subject goods assessment' examples provided by BlueScope in its post-SEF submission have broad goods descriptions and thus cannot be compared to the goods description in relation to this investigation. While other countries may have mechanisms that allow them to refine the goods description as an investigation progresses, the Australian anti-dumping system is such that, as outlined in the Anti-Dumping Commission *Dumping and Subsidy Manual* (the Manual), it is generally not possible to alter the scope of the inquiry once the investigation is initiated.<sup>33</sup> The Manual further advises applicants that 'care needs to be taken to ensure the description of the goods is sufficiently accurate' for this reason.<sup>34</sup>

The commission has also examined the confidential attachment submitted by BlueScope to evidence BlueScope's view that the commission has deemed a zinc aluminium magnesium alloy coated steel as the goods. The commission finds that BlueScope has misinterpreted the contention of the confidential attachment, wherein the commission has made a determination on the basis of the widths of the goods in question and not the coating of the goods.

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.<sup>35</sup>

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<sup>33</sup> The Manual, section 1.2, p.8..

<sup>34</sup> Ibid.

<sup>35</sup> See Chapter 4 of SEF 558 for further discussion on the Australian industry.

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 sectors, 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 comparing quoted Australian prices with quotes for 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.<sup>36</sup> Hot rolled coil (HRC) or cold rolled coil (CRC) are the major raw material inputs.

#### **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:

- 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

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<sup>36</sup> See section 4.3 in the SEF for further discussion on the production process.



- 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 Manual.<sup>37</sup> 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 <sup>2</sup>	1	Mandatory	Mandatory	Yes
		>100 g/m <sup>2</sup> to ≤ 165 g/m <sup>2</sup>	2			
		>165 g/m <sup>2</sup>	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**

<sup>37</sup> The Manual, Chapter 14.

### **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.<sup>38</sup> As a result, BlueScope suggested that an additional identifier (6) be added for any BMT that is 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.<sup>39</sup> POSCO does not agree with BlueScope's request for an addition to the MCCs, citing the thickness being outside BlueScope's manufacturing capacity.

The commission has considered the matter of 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 exporter<sup>40</sup>*

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.

### **3.5.2 Submissions received in respect of POSCO's MCCs**

The commission received multiple submissions in relation to POSCO disclosing its MCCs in its REQ.<sup>41</sup> 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.

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<sup>38</sup> EPR 558, document 006.

<sup>39</sup> EPR 558, document 014.

<sup>40</sup> The Manual, section 14.1, p.60.

<sup>41</sup> EPR 558, document 020, 022 and 041.

## 4 DUMPING INVESTIGATION

### 4.1 Finding

The commission has found that the goods exported to Australia from Taiwan (except uncooperative exporters), and Vietnamese exporter Nam Kim, have not been dumped.

The commission's assessment of the dumping margins is set out in the Table 9.

Country	Exporter	Dumping Margin (%)
Taiwan	SYSCO	-5.6
	Yieh Phui	-4.4
	Uncooperative exporters	3.5
Vietnam	Nam Kim	-9.6

Table 9 – Dumping Margins

### 4.2 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.

#### 4.2.1 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.

#### 4.2.2 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.*

#### **4.2.2.1 Low volume of domestic sales**

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

Domestic sales of like goods are taken to be in a low volume where the total volume of like goods is less than 5% of the total volume of the goods under consideration that are exported to Australia (unless the Minister is satisfied that the volume is still large enough to permit a proper comparison). As per the Manual, where the total volume of relevant sales is 5% or greater than the total volume of the goods under consideration, and where comparable models exist, the commission also considers the volume of relevant domestic sales of like goods for each model (or MCC).<sup>42</sup>

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.

#### **4.2.2.2 Particular market situation**

Section 269TAC(2)(a)(ii) provides that the normal value of goods exported to Australia cannot be ascertained under section 269TAC(1) where the 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).<sup>43</sup>

### **4.2.3 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.

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<sup>42</sup> The Manual, section 7.3, p.35.

<sup>43</sup> Referred to in this report as a 'particular market situation'.

### 4.3 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.

### 4.4 Exporters

#### 4.4.1 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.

As relevant to this termination report, the commission verified the REQs of SYSCO and Yieh Phui from Taiwan and Nam Kim from Vietnam.

#### 4.4.2 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.<sup>44</sup>

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<sup>44</sup> Requests for further information are contained in deficiency letters.

## 4.5 Dumping assessment – Taiwan

### 4.5.1 Sheng Yu Steel Co., Ltd

#### 4.5.1.1 *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.<sup>45</sup>

#### 4.5.1.2 *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.<sup>46</sup>

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.

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<sup>45</sup> EPR 558, document 048.

<sup>46</sup> 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.

In a submission dated 12 October 2021 in response to SEF 558, BlueScope raised that in section B-1(1) of SYSCO's REQ it stated that sales to the Australian market were made to a trading company during the investigation period.<sup>47</sup> BlueScope states that this was not disclosed in SYSCO's verification report nor was it addressed in the SEF. BlueScope requests that the commission provide further detail, and whether there are any implications for the determination of SYSCO's Australian export price.

The commission clarifies that the relationship between SYSCO and the trading company was examined as part of verification. It was determined that the two parties had an 'arms length' relationship. The commission notes that the upwards adjustment to the normal value for export commissions (Table 11) relates to commissions paid in respect of sales involving this trading company.

#### 4.5.1.3 *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 to its related customer during the period were 'arms length' transactions.

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<sup>47</sup> EPR 558, document 062.

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 SYSCO 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.

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 10 - Domestic volumes – SYSCO**

#### 4.5.1.4 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 11 - Summary of adjustments – SYSCO**

Subsequent to SEF 558, the commission has revisited the application of gross margin in calculating specification adjustments. The gross margin was based on the difference between the cost to make and the sales revenue of all sales in the investigation period. The gross margin was applied to the difference in CTM between the export MCC and the surrogate MCC. The commission has amended the application of the gross margin by utilising the difference in CTMS between the export MCC and the surrogate MCC and then by adding the OCOT profit.



#### 4.5.1.5 *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 1**.

#### 4.5.2 **Yieh Phui Enterprise Co Ltd**

##### 4.5.2.1 *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.<sup>48</sup>

##### 4.5.2.2 *Export price*

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

- the manufacturer of the goods
- 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.

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<sup>48</sup> EPR 558, document 039.

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.

#### 4.5.2.3 *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 therefore determined a normal value for Yieh Phui 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.

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"> <li>the total volume for this MCC is close to 5%;</li> <li>the price is trending similar to P-2-D-5-2-C; and</li> <li>the quarter in which there were no domestic sales of the MCC also had no export sales.</li> </ul>
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 12 - Domestic volumes – Yieh Phui**

#### 4.5.2.4 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 13 – Summary of adjustments – Yieh Phui**

Subsequent to SEF 558, the commission has revisited the application of gross margin in calculating specification adjustments. The gross margin was based on the difference between the cost to make and the sales revenue of all sales in the investigation period. The gross margin was applied to the difference in CTM between the export MCC and the surrogate MCC. The commission has amended the application of the gross margin by utilising the difference in CTMS between the export MCC and the surrogate MCC and then by adding the OCOT profit. This revision did not have any material impact on the dumping margin.

#### *4.5.2.5 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 2**.

### **4.5.3 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.<sup>49</sup>

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

#### *4.5.3.1 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 cooperating Taiwanese exporters that exported to Australia during the investigation period.

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.

#### *4.5.3.2 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

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<sup>49</sup> Refer to section 4.4.2.

- 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.

#### 4.5.3.3 *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 3**.

#### 4.5.4 **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 14 - Summary of dumping margins for Taiwan**

#### 4.5.5 **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%.

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

#### 4.5.6 **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) 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 must terminate that part of the investigation that relates to all exporters from Taiwan.

The commission's calculations are at **Confidential Attachment 4**.

## **4.6 Dumping assessment – Vietnam**

### **4.6.1 Nam Kim Steel Joint Stock Company**

#### *4.6.1.1 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.<sup>50</sup>

#### *4.6.1.2 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.

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<sup>50</sup> EPR 558, document 043.

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.

#### 4.6.1.3 *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.

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 SEF 558 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.<sup>51</sup> 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.

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<sup>51</sup> EPR 558, document 057.

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 15 - Domestic volumes – Nam Kim**

#### 4.6.1.4 Adjustments

In a submission dated 12 October 2021 in response to SEF 558, BlueScope queried the application of particular 269TAC(8) adjustments applied to Nam Kim’s normal value.

BlueScope queried the validity of the downward adjustment for commissions. BlueScope considers that no adjustment should be required if the commissions relate to a recipient/agent that is a related party, or where it relates to employees of Nam Kim. Additionally, BlueScope states, with reference to the Manual, that the commission did not detail in SEF 558 whether an ‘allowance’ has been made for, quoting the Manual, ‘the relevant selling expenses incurred on the Australian export market where the commission has not been paid.’<sup>52</sup>

BlueScope submitted that the downwards adjustment for inland transport has been incorrectly applied as a weighted average unit rate to all domestic sales. BlueScope asserts that the only point where this normal value adjustment should be made, is in relation the sales that incur inland transport as these are the transactions where price comparability is impacted.

The commission has reviewed the related party status of domestic customers in order to confirm the validity of downwards adjustment for commissions. Re-examination of the downwards adjustments for commissions identified an incorrect application to all sales, including sales where commissions were not incurred. The commission has revised the normal value calculation, applying the relevant downwards adjustments to those transactions where the commissions have been incurred.

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<sup>52</sup> The Manual, section 15.3, p. 78.



The commission has not applied the allowance referenced in the Manual (that seeks to account for relevant selling expenses incurred on the market where the commission has not been paid). A review of the available data identifies that sufficient information is unavailable to estimate an allowance of this type in these circumstances. Furthermore, the commission has assessed the materiality of such an allowance, and has identified that the commissions are only relevant to a small proportion of total sales. The commission also notes that Nam Kim's SG&A nominally captures these sales activities for domestic sales that do not have amounts for commissions (that is majority of the sales). Any amount applied for an allowance for relevant sales expenses would be of sufficiently low value to have a negligible impact on the dumping margin.

Furthermore, the commission has re-assessed the verified selling expenses incurred by Nam Kim and note that the commissions incurred on the domestic sales relate to an atypical arrangement that occurred in the investigation period in relation to the subject goods. Therefore, the commission is of the view that no equivalent selling expenses are incurred in relation to export sales. On the basis of these considerations, the commission has not applied an allowance for relevant sales expenses to Nam Kim's normal value.

The commission has reviewed Nam Kim's normal value calculation and identified an incorrect application of the inland transport adjustments. The commission has revised the inland transport adjustments so that they relate solely to transactions which incurred inland transport.

The commission is satisfied that 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 16 - Summary of adjustments – Nam Kim**

#### **4.6.1.5 Dumping margin**

The dumping margin in respect of the goods Nam Kim exported to Australia during the investigation period has changed since the publication of the SEF and is **negative 9.6%**.

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

## 5 SUBSIDY INVESTIGATION

### 5.1 Finding

The commission has 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 satisfied that:

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

### 5.2 Relevant legislation

#### 5.2.1 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.<sup>53</sup>

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

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<sup>53</sup> 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.

### 5.2.2 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.<sup>54</sup>

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

### 5.2.3 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)*.<sup>55</sup>

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 <sup>56</sup>	Program name	Program Type	Countervailable subsidy received? (Yes/No)
<b>Programs included in questionnaires</b>			
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
2	Support for the Implementation of Projects Manufacturing Priority Industrial Products (Updating Programme III of 2003-2004)	Financial grant	No

<sup>54</sup> Entities contemplated by section 269TAACA(1) are also described in section 269TAACA(2).

<sup>55</sup> Both are available on the WTO website at: [https://www.wto.org/english/tratop\\_e/scm\\_e/scm\\_e.htm](https://www.wto.org/english/tratop_e/scm_e/scm_e.htm).

<sup>56</sup> The commission has maintained the Program Number used in the application.

<b>Program Number<sup>56</sup></b>	<b>Program name</b>	<b>Program Type</b>	<b>Countervailable subsidy received? (Yes/No)</b>
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
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

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Program Number <sup>56</sup>	Program name	Program Type	Countervailable subsidy received? (Yes/No)
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 17 - Investigated subsidy programs – Vietnam**

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

## **5.3 Information the commission considered**

### **5.3.1 Information from exporters**

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

### **5.3.2 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.<sup>57</sup> 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.<sup>58</sup>

### 5.3.3 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.

## 5.4 Subsidy assessment – Vietnam

### 5.4.1 Nam Kim Steel Joint Stock Company

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

### 5.4.2 Hoa Phat Steel Sheet Co. Ltd

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

### 5.4.3 Hoa Sen Group Joint Stock Company

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

### 5.4.4 Non-cooperative Vietnamese exporters

As discussed in section 5.2.2, the subsidy margin for non-cooperative entities is determined on the basis of all facts available and based on reasonable assumptions.

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

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<sup>57</sup> EPR 558, document 004.

<sup>58</sup> EPR 558, document 035.

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. This was applied to cooperating Vietnamese exporters who exported to Australia during the investigation period.

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. This assessment is based on the information before the commission.

#### 5.4.4.2 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 6**.<sup>59</sup>

## 5.5 Summary of subsidy margins

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

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

**Table 18 - Countervailable subsidies and subsidy margins exporters received<sup>60</sup>**

## 5.6 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

<sup>59</sup> This attachment is confidential as it contains commercially sensitive information relating to exporters.

<sup>60</sup> 'N/A' in Table 18 indicates that these exporters were not in receipt of countervailable subsidies. Therefore no subsidy margin is determined for these exporters.



percentage of the export price of the goods, the level of the subsidy is not more than 2%.<sup>61</sup>

The commission has 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 satisfied that:

- it is necessary to terminate the subsidy investigation under section 269TDA(2)(b)(i) in respect of Hoa Phat, HSG and Nam Kim, 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.

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<sup>61</sup> Vietnam is classed as a Developing Country under Part 4, Division 1 of the *Customs Tariff Regulations 2004*.

## 6 NON-INJURIOUS PRICE AND LESSER DUTY RULE

Section 269TACA defines the non-injurious price (NIP) as ‘the minimum price necessary to prevent the injury, or a recurrence of the injury’ caused by the dumped or subsidised goods, the subject of a dumping duty notice or a countervailing duty notice. The commission will generally derive the NIP from the Australian Industry’s unsuppressed selling price (USP).

Where the Minister is required to determine the interim dumping duty (IDD), section 8(5B) of the *Customs Tariff (Anti-Dumping) Act* 1975 (Dumping Duty Act) applies. Where the Minister is required to determine both interim countervailing duty (ICD) and IDD, sections 8(5BA) and 10(3D) of the Dumping Duty Act apply.

Sections 8(5B), 8(5BA) and 10(3D) require the Minister to have regard to the ‘lesser duty rule’ when determining the ICD and IDD payable. In relation to a dumping duty notice, the lesser duty rule requires consideration of whether the NIP is less than the normal value of the goods. In respect of concurrent dumping and countervailing notices, the lesser duty rule requires the Minister to consider the desirability of fixing a lesser amount of duty; such that the sum of the export price of the goods ascertained for the purposes of the Notices, ICD and IDD, do not exceed the NIP.

However, pursuant to sections 8(5BAA), 8(5BAAA) and 10(3DA) of the Dumping Duty Act, the Minister is not required to have regard to the lesser duty rule where one or more of the following circumstances apply:<sup>62</sup>

- 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 2 small-medium enterprises, whether or not that industry consists of other enterprises<sup>63</sup>
- if a countervailing subsidy has been received in respect of the goods – the country in relation to which the subsidy has been provided, has not complied with Article 25 of the *WTO Agreement on Subsidies and Countervailing* for the compliance period.

Nonetheless, the Minister is not required to consider imposing a lesser amount of duty, but may still wish to exercise the discretion to do so.

As the commission is terminating the dumping investigation, as it relates to exports from Taiwan and Nam Kim, and the subsidy investigation as it relates to all Vietnamese exporters, the commission has not had regard to the lesser duty rule for these exports.

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<sup>62</sup> Sections 8(5BAAA)(a) to (c) of the Dumping Duty Act concern the calculation of dumping duty and sections 10(3DA)(a) to (c) of the Dumping Duty Act concern the calculation of countervailing duty.

<sup>63</sup> As defined in the *Customs (Definition of “small-medium enterprise”) Determination 2013*.

## 7 PARTIAL TERMINATION OF THE INVESTIGATION

### 7.1 Termination

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

#### 7.1.1 Termination of dumping investigation

Section 269TDA(1)(b)(i) provides that the Commissioner must terminate an investigation, so far as it relates to an exporter, if satisfied that there has been no dumping by the exporter of the goods. Further, section 269TDA(3) provides that the Commissioner must terminate the investigation, 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.<sup>64</sup>

The commission has determined the following dumping margins for Taiwanese exporters and Vietnamese exporter Nam Kim in respect of the goods exported to Australia during the investigation period:

Country	Exporter	Dumping margin (%)
Taiwan	SYSCO	-5.6
	Yieh Phui	-4.4
	Uncooperative exporters	3.5
Vietnam	Nam Kim	-9.6

**Table 19 – Dumping Margins**

Based on the findings in this report, as outlined in the table above, the Commissioner is satisfied that Taiwanese exporters SYSCO and Yieh Phui, and Vietnamese exporter Nam Kim, did not export dumped goods to Australia during the investigation period. Therefore, in accordance with section 269TDA(1)(b)(i), the Commissioner must terminate the dumping investigation in relation to these exporters.

The commission notes that Nam Kim has submitted that it agrees with the commission's findings and conclusions in SEF 558 in relation to its dumping margin and the termination of the investigation in respect of its imports to Australia.<sup>65</sup>

Based on the findings in this report, as detailed at section 4.5.6, the Commissioner is satisfied that the total volume of dumped goods exported to Australia from uncooperative exporters from Taiwan during the investigation period is negligible. Therefore, in accordance with section 269TDA(3), the Commissioner must terminate the dumping investigation so far as it relates to these exporters.

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<sup>64</sup> Section 269TDA(4) defines a negligible volume as less than 3% of the total volume of goods imported into Australia over the investigation period, where section 269TDA(5) does not apply. Section 269TDA(5), which concerns aggregation of dumped goods, does not apply to this investigation.

<sup>65</sup> EPR 558, document 059.

### 7.1.2 Termination of subsidy investigation

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

- there has been no countervailable subsidies received by the exporter of some or all of the goods, or
- a countervailable subsidy has been received by the exporter in respect of the goods but it never, at any time during the investigation period, exceeded the negligible level of countervailable subsidy under section 269TDA(16).

Pursuant to section 269TDA(16)(b), for Vietnam, a countervailable subsidy is negligible if the subsidy, when expressed as a percentage of the export price of the goods, is not more than 2%.

The Commission determined the subsidy margin for the following exporters in respect of the goods exported to Australia during the investigation period:

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

**Table 20 – Subsidy margins (only relevant to Vietnamese exporters)** <sup>66</sup>

Based on the findings in this report, the countervailable subsidy received by all Vietnamese exporters in relation to the goods, never at any time during the investigation period exceeded a negligible level. Accordingly, the Commissioner must terminate the subsidy investigation in relation to Hoa Phat, HSG and Nam Kim pursuant to section 269TDA(2)(b)(i), and in relation to non-cooperative exporters pursuant to section 269TDA(2)(b)(ii).

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<sup>66</sup> 'N/A' in Table 20 indicates that these exporters were not in receipt of countervailable subsidies. Therefore no subsidy margin is determined for these exporters.

## APPENDICES AND ATTACHMENTS

<b>Non-confidential Appendix A</b>	Market situation assessment - Vietnam
<b>Non-confidential Appendix B</b>	Assessment of subsidy programs
<b>Confidential Attachment 1</b>	SYSCO – variable factors
<b>Confidential Attachment 2</b>	Yieh Phui – variable factors
<b>Confidential Attachment 3</b>	Uncooperative exporters – variable factors
<b>Confidential Attachment 4</b>	Volume of dumped imports
<b>Confidential Attachment 5</b>	Nam Kim – variable factors
<b>Confidential Attachment 6</b>	Non-cooperative exporters – subsidies
<b>Confidential Attachment 7</b>	Vietnamese market situation analysis
<b>Confidential Attachment 8</b>	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.<sup>67</sup>

## **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.<sup>68</sup>

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.'<sup>69</sup>

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.<sup>70</sup>

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<sup>67</sup> The Manual, section 7.3.

<sup>68</sup> EPR 558, document 001.

<sup>69</sup> WTO, Report of the Working Party on the Accession of Vietnam, WT/AA/VNM/48, 27 October 2006, at para 255.

<sup>70</sup> EPR 558, document 005.

A further BlueScope submission was received on 13 July 2021.<sup>71</sup> In it, BlueScope submitted that the Ministry of Industry and Trade issued a document (No2612/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.<sup>72</sup> 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.<sup>73</sup> 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.<sup>74</sup>

### **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.

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<sup>71</sup> EPR 558, document 042.

<sup>72</sup> EPR 558, document 037.

<sup>73</sup> EPR 558, document 004.

<sup>74</sup> 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.<sup>75</sup>

## 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, the ROK 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'.<sup>76</sup> 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.'<sup>77</sup>

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.<sup>78</sup>

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 the ROK, 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 7**.

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.

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<sup>75</sup> 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).

<sup>76</sup> SEF 416 and Termination Report 416, available on the commission website.

<sup>77</sup> EPR 558, document 001, p.43.

<sup>78</sup> 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).<sup>79</sup>

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.<sup>80</sup> 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 standards<sup>81</sup>
- (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.<sup>82</sup>

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.<sup>83</sup> The first of these laws, Law on Planning No 21/2017/QH14, decreed that

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<sup>79</sup> The Steel Master Plan 2007-2015 is available on the GOV legislative gazette at <http://vbpl.vn/TW/Pages/vbpgentoanvan.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.

<sup>80</sup> Steel Master Plan 2007- 2015, Article 1(3) (a).

<sup>81</sup> Ibid, Article 1(3) (c).

<sup>82</sup> Ibid, Article 2.

<sup>83</sup> 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).<sup>84</sup>

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.<sup>85</sup> BlueScope submits that the effects of the plans, which affected 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.

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<sup>84</sup> Ibid, p240.

<sup>85</sup> EPR 558, document 005.

### **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:

- 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.<sup>86</sup>

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.

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<sup>86</sup> Non-confidential attachment 15 to BlueScope's application – Development of the Vietnamese Iron & Steel Industry (EPR 558, document 001).

### *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.

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.<sup>87</sup> 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.<sup>88</sup> 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.<sup>89</sup>

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.<sup>90</sup>

### *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

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<sup>87</sup> EPR 550, document 035 – Vina One REQ.

<sup>88</sup> Non-confidential attachment 24 to BlueScope's application – Development of the Vietnamese Iron & Steel Industry (EPR 558, document 001).

<sup>89</sup> Non-Confidential Attachment 25 to BlueScope's application - About Vietnam Steel Corporation (EPR 558, document 001).

<sup>90</sup> 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>.

the GOV exercise any influence. Overall, the commission does not consider large scale GOV policy initiatives are enacted through SOEs.

## **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’<sup>91</sup>
- 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.<sup>92</sup>

### *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.<sup>93</sup> 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,

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<sup>91</sup> Non-Confidential Attachment 27 to BlueScope’s application – Vietnam Steel Producers Manipulating Prices (EPR 558, document 001).

<sup>92</sup> Non-Confidential Attachment 28 to BlueScope’s application – Export.gov Vietnam Trade Barriers (EPR 558, document 001).

<sup>93</sup> Non-Confidential Attachment 27 to BlueScope’s application - Vietnam Steel Producers Manipulating Prices (EPR 558, document 001).

forms and procedures for price registration and declaration of prices of goods and services.<sup>94</sup> Such measures can be implemented where:

- 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.<sup>95</sup>

Circular 122 also specifies that the measures relate only to certain goods and services, listed in Decree 75/2008.<sup>96</sup> 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.<sup>97</sup> BlueScope references an article which outlines that on 11 May 2020 the MoIT issued document No2612/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.<sup>98</sup>

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<sup>94</sup> Article 1 of Circular No 122/2010/TT-BTC, available at <http://vbpl.vn/TW/Pages/vbpqtoanvan.aspx?ItemID=2563>.

<sup>95</sup> Ibid, Article 2(2).

<sup>96</sup> Available at <http://vbpl.vn/TW/Pages/vbpq-toanvan.aspx?ItemID=12714>.

<sup>97</sup> EPR 558, document 037.

<sup>98</sup> Non-Confidential Attachment 29 to BlueScope's application – PM Halts Steel Plant (EPR 558, document 001).

- The GOV in 2016 removed 12 projects from the most recent Steel Master Plan due to 'ineffective investments and incapable investors.'<sup>99</sup> The GOV also directs steel companies to upgrade their production technologies, find ways to save production costs, and require greater flexibility in monthly and quarterly plans to better promote brands and build distribution networks.<sup>100</sup>

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:<sup>101</sup>

- Law on Investment 67/2014/QH13<sup>102</sup>
- Decree 118/2015/ND-CP which details the implementation of a number of articles of the Law on Investment.<sup>103</sup>

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:<sup>104</sup>

- 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.

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<sup>99</sup> Non-Confidential Attachment 30 to BlueScope's application – Steel Master Plan Drops 12 Projects (EPR 558, document 001).

<sup>100</sup> Non-Confidential Attachment 31 to BlueScope's application – Steel Production Set for Surge (EPR 558, document 001).

<sup>101</sup> EPR 558, document 035, p. 239.

<sup>102</sup> EPR 558, document 035, Exhibit 46.

<sup>103</sup> EPR 558, document 035, Exhibit 23.

<sup>104</sup> CBSA numbering has been maintained.



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 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 **Chapter 5** 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 <sup>105</sup>
BlueScope	Australia	69%
KG Dongbu	ROK	78%
Dongkuk	ROK	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 goods<sup>106</sup>**

The percentage of CTM for BlueScope is lower than that for the verified Taiwanese, Vietnamese and the ROK's 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.

<sup>105</sup> Yieh Phui's HRC as a percentage of total CTM is inclusive of CRC.

<sup>106</sup> Confidential Attachment 17 to this report.

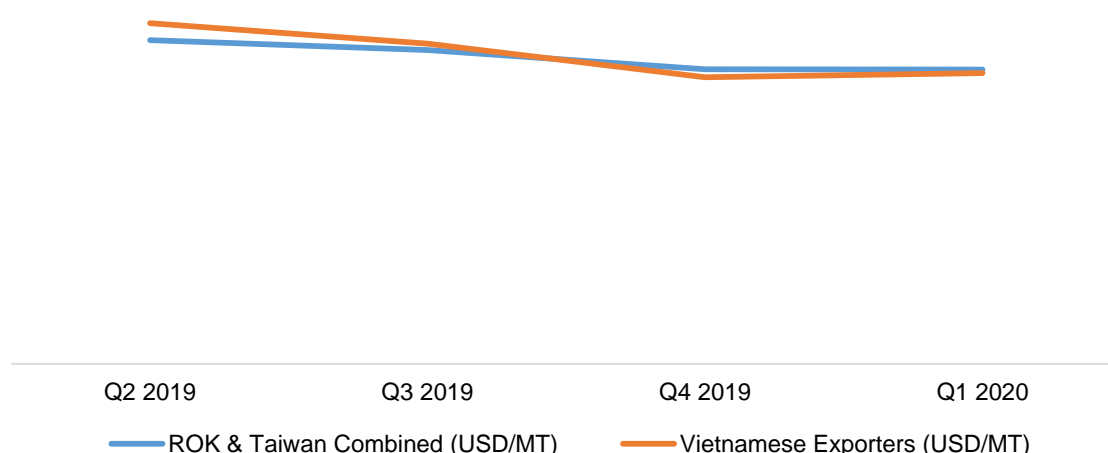
## A5.9 Comparison of HRC costs

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 exporters from the ROK and Taiwanese exporters.<sup>107</sup>

**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. ROK and Taiwan exporters (combined)**

Figure A1 shows the weighted average HRC purchase price for verified Vietnamese, Taiwanese and the ROK's 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 the ROK's and Taiwanese exporters paid for domestically sourced HRC. Over the course of the investigation period, Vietnamese prices were 1% higher than those of the ROK 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.<sup>108</sup> In 2021 to July, Vietnam imported 7.1 million tonnes of steel, compared to 5.88 million tonnes of exports, valued at over USD\$5 billion and USD\$4 billion

<sup>107</sup> Ibid.

<sup>108</sup> 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/>.

respectively.<sup>109</sup> 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.

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<sup>109</sup> 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)*<sup>110</sup> 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.<sup>111</sup>

#### **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*

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<sup>110</sup> DS379 United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China.

<sup>111</sup> 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].

*Measures* published in March 2013 (2013 Vietnam Subsidy Notice).<sup>112</sup> 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)<sup>113</sup>:

- 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.

## **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

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<sup>112</sup> Available on the WTO website at

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/SCM/N155VNM.pdf&Open=True>.

<sup>113</sup> Available on the WTO website at

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/SCM/N284VNM.pdf&Open=True>.

Law 2013)<sup>114</sup> 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 218<sup>115</sup>, 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 370<sup>116</sup> 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).
- 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).

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<sup>114</sup> EPR 558, document 035, GOV RGQ, Exhibit 4.

<sup>115</sup> EPR 558, document 035, GOV RGQ, Exhibit 2.

<sup>116</sup> Termination Report No 370, p. 34. Available on the commission website.

## PUBLIC RECORD

- 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.<sup>117</sup>

### 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 non-cooperative 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.

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).

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<sup>117</sup> Refer to Decree 218 for full detail of eligibility criteria.



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.<sup>118</sup> 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 non-cooperative 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.

This percentage has then been applied to the weighted average verified taxable income of the cooperating exporters for the investigation period.

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<sup>118</sup> The Manual, section 17.3.

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 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)<sup>119</sup> and Decree 134/2016/ND-CP providing guidelines for the Law on export and import duties (Decree 134)<sup>120</sup>.

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 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*

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<sup>119</sup> 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.

<sup>120</sup> EPR 558, document 035, GOV RGQ, Exhibit 37.

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*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.
- 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

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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.<sup>121</sup>

#### 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.

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<sup>121</sup> 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.*'<sup>122</sup> As a result, the GOV has not provided a substantive response on this program.

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<sup>122</sup> 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.<sup>123</sup>

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.*'<sup>124</sup> 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 Vietnam<sup>125</sup> 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%.<sup>126</sup>

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.<sup>127</sup> 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.<sup>128</sup>

The report notes that the Ministry of Finance and the State Bank of Vietnam, through the GOV shareholding in VietcomBank, are related parties.<sup>129</sup>

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.

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<sup>123</sup> VietinBank 2019 Annual Report, p.67, available at: <https://www.vietinbank.vn/sites/mediafile/VTB149105>.

<sup>124</sup> Ibid, p.14.

<sup>125</sup> Ibid, p.75.

<sup>126</sup> Ibid, p.116.

<sup>127</sup> 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](https://portal.vietcombank.com.vn/content/en-us/Investors/Investors/Annual%20Reports/Year%202019/20200730_AR_Vietcombank2019_English.pdf).

<sup>128</sup> Ibid.

<sup>129</sup> 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-CP<sup>130</sup> dated August 30, 2011, on state investment credit and export credit (Decree No 75)<sup>130</sup> and Decree No 151/2006/ND-CP<sup>131</sup> dated December 20, 2006, on state investment credit and export credit (Decree No 151).<sup>131</sup>

The commission notes that Decree No 75 replaced Decree No 151, which was itself repealed in 2017 pursuant to Decree 32/2017/ND-CP.<sup>132</sup>

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

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<sup>130</sup> EPR 558, document 035, GOV RGQ, Exhibit 28.

<sup>131</sup> EPR 558, document 035, GOV RGQ, Exhibit 10.

<sup>132</sup> 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 8**.

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.<sup>133</sup>

Repealed in various stages from 2003 to 2014 pursuant to:

- The Law on Corporate Income Tax 2003<sup>134</sup>
- Decree 142/2005/ND-CP dated 14 November 2005<sup>135</sup>
- Decree 149/2005/ND-CP dated 8 December 2005<sup>136</sup>
- Decree 08/2014/ND-CP dated 27 January 2014<sup>137</sup>

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

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<sup>133</sup> EPR 558, document 035, GOV RGQ, Exhibit 21.

<sup>134</sup> Ibid.

<sup>135</sup> Ibid.

<sup>136</sup> Ibid.

<sup>137</sup> Ibid.

### Eligibility criteria

A broad range of scientific and technology activities (for domestically or foreign owned enterprises) were eligible for this program.

### 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/QH12<sup>138</sup> and Decree 53/2011/ND-CP<sup>139</sup> 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.<sup>140</sup>

### 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.

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<sup>138</sup> EPR 558, document 035, GOV RGQ, Exhibit 27.

<sup>139</sup> Ibid.

<sup>140</sup> EPR 558, document 035, GOV RGQ, Exhibits 23 and 27.

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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.

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-CP<sup>141</sup> 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.<sup>142</sup>

#### **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.

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<sup>141</sup> EPR 558, document 035, GOV RGQ, Exhibit 7.

<sup>142</sup> Ibid.

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.

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 2016<sup>143</sup> 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

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<sup>143</sup> EPR 558, document 035, GOV RGQ, Exhibit 28.

## **PUBLIC RECORD**

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.

### **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.<sup>144</sup>

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.

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<sup>144</sup> EPR 558, document 035, GOV RGQ, Exhibit 28.

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.

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.<sup>145</sup>
- Decision 443/QD-TTg, dated April 4, 2009.<sup>146</sup>
- Decision 2072/QD-TTg, dated December 11, 2009.<sup>147</sup>
- Circular 05/2009/TT-NHNN dated 4 July 2009.<sup>148</sup>
- Circular 04/2009/TT-NHN dated 13 March 2009.<sup>149</sup>

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.

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<sup>145</sup> EPR 558, document 035, GOV RGQ, Exhibit 27.

<sup>146</sup> EPR 558, document 035, GOV RGQ, Exhibit 27.

<sup>147</sup> Ibid.

<sup>148</sup> Ibid.

<sup>149</sup> Ibid.



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 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.<sup>150</sup>

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'.

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<sup>150</sup> EPR 558, document 035, GOV RGQ, Exhibit 30.

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.

Legal basis

Established under Chapter 5 of Decree 164/2003/ND-CP<sup>151</sup>, detailing the implementation of the Law on Corporate Income Tax.<sup>152</sup>

Repealed in 2006 pursuant to Decree 108/2006/ND-CP.<sup>153</sup>

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.

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<sup>151</sup> EPR 558, document 035, GOV RGQ, Exhibit 31.

<sup>152</sup> EPR 558, document 035, GOV RGQ, Exhibit 21.

<sup>153</sup> EPR 558, document 035, GOV RGQ, Exhibit 31.

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.

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-CP<sup>154</sup>, which was repealed under Income Tax Preferences under Chapter IV of Decree 124/2008/ND-CP.<sup>155</sup>

Decree 124/2008/ND-CP was later repealed under Decree 218/2013/ND-CP.<sup>156</sup>

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<sup>154</sup> EPR 558, document 035, GOV RGQ, Exhibit 7.

<sup>155</sup> EPR 558, document 035, GOV RGQ, Exhibit 32.

<sup>156</sup> EPR 558, document 035, GOV RGQ, Exhibits 2, 9 and 32.

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.
- (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.<sup>157</sup>
- Decree 135/2016/ND-CP dated 9 September 2016.<sup>158</sup>
- Decree 35/2017/ND-CP dated 3 April 2017.<sup>159</sup>

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.

**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.

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<sup>157</sup> EPR 558, document 035, GOV RGQ, Exhibit 35.

<sup>158</sup> EPR 558, document 035, GOV RGQ, Exhibit 35.

<sup>159</sup> Ibid.

Legal basis

This program is governed under Decree 45/2014/ND-CP dated 15 May 2014.<sup>160</sup>

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 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.<sup>161</sup>

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<sup>160</sup> EPR 558, document 035, GOV RGQ, Exhibit 36.

<sup>161</sup> EPR 558, document 035, GOV RGQ, Exhibit 33.

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 2000<sup>162</sup> and was later terminated under Decree 164/2003/ND-CP dated 22 December 2003.<sup>163</sup>

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.

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.

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<sup>162</sup> EPR 558, document 035, GOV RGQ, Exhibit 34.

<sup>163</sup> EPR 558, document 035, GOV RGQ, Exhibit 7.