



MINISTRY OF INDUSTRY AND TRADE  
TRADE REMEDIES AUTHORITY OF VIET NAM

Ha Noi, 26<sup>th</sup> June, 2020

To:  
Anti-Dumping Commission  
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***Subject: The applications for anti-dumping and countervailing duty investigations into aluminium zinc coated steel exported to Australia from the Socialist Republic of Viet Nam***

Dear Sir/Madam,

The Trade Remedies Authority of Viet Nam (TRAV) under the Ministry of Industry and Trade of Viet Nam would like to extend its compliments to the Australia Anti-dumping Commission (ADC). By this letter, the TRAV would like to raise its concerns regarding two applications for anti-dumping and countervailing duty investigations into **aluminium zinc coated steel** (one application is for width less than 600mm and the other one is for equal to or greater than 600mm) exported to Australia from the Socialist Republic of Viet Nam.

At the outset, for the purpose of initiating an investigation, ADC shall comply with Article 11.3 of the WTO Agreement on Subsidies and Countervailing Measures (SCM): "The authorities shall review ***the accuracy and adequacy*** of the evidence provided in the application to determine whether the evidence is sufficient to justify the initiation of an investigation". Moreover, Article 11.2 of SCM provides that:

"An application under paragraph 1 shall include sufficient evidence of the existence of (a) a subsidy and, if possible, its amount, (b) injury within the meaning of Article VI of GATT 1994 as interpreted by this Agreement, and (c) a causal link between the subsidized imports and the alleged injury. ***Simple assertion,***

***unsubstantiated by relevant evidence cannot be considered sufficient to meet the requirements of this paragraph."***

[emphasis added]

Articles 5.2 and 5.3 of the WTO Anti-dumping Agreement (ADA) also refer to the sufficiency of initiating an investigation.

Taking two applications under thorough consideration, the TRAV deems that the applications contained several simple assertions and unsubstantiated evidence that could not meet the requirements to initiate an investigation as prescribed by the ADA and the SCM. The detailed concerns are provided as follows:

#### **I. Applicant**

Article 4.1 of the ADA stated that:

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

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

....."

[emphasis added]

In the applications, it is stated that BlueScope is the **sole** Australian manufacturer of aluminium zinc coated steel.<sup>1</sup> If BlueScope is **related to the exporters or importers or are themselves importers of the allegedly dumped product**, there may be none of the Australian manufacturers who is qualified to represent the domestic industry as defined in Article 4.1 of the ADA. As far as the TRAV knows, BlueScope has a subsidiary in Viet Nam named NS BlueScope Viet Nam which is also

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<sup>1</sup> AlZn 600mm Wide & Greater AD\_CVD Application - Public version, page 16  
AlZn Less than 600mm Wide AD\_CVD Application - Public version, page 16



a coated steel manufacturer. If NS BlueScope Viet Nam is an exporter of subject goods in Australia, it could be interpreted that the term “domestic industry” was not satisfied. Besides, it may be unreliable if the data provided by solely BlueScope due to the monopoly in the domestic market. Therefore, the TRAV kindly requests ADC to carefully verify information provided by BlueScope before taking any further steps of the proceeding.

## II. Particular market situation (PMS) allegation

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

“When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, **because of the particular market situation** or the low volume of the sales in the domestic market of the exporting country, **such sales do not permit a proper comparison**, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country, provided that this price is representative, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits”.

[emphasis added]

As the text of Article 2.2, there are two mandatory elements of the PMS including the assessment of the existence of PMS and, more important, the effect of PMS that makes an improper comparison between normal value and export price<sup>2</sup>. In both of the applications, BlueScope only provided some, in our view, incorrect evidence for the allegation of PMS’s existence. BlueScope did not explain how the PMS might impact on the normal price in Viet Nam.

As mentioned in the applications, BlueScope only submitted that domestic prices of aluminium zinc coated steel in Viet Nam are lower than prevailing world prices due to the intervention of the Government of Viet Nam (GOV) without pointing out any reasonable basis.<sup>3</sup> Thus, it alleged that domestic prices of subject goods in Viet Nam

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<sup>2</sup> EEC-Brazil yarn, Panel report, Note 206

<sup>3</sup> AlZn 600mm Wide & Greater AD\_CVD Application - Public version, page 40  
AlZn Less than 600mm Wide AD\_CVD Application - Public version, page



are not suitable for the determination of normal values in comparison with export prices in calculation of dumping margins.

Initially, the TRAV would like to confirm that this is the third consecutive on-going case which PMS allegation raised in (previous applications for precision pipe and tube steel, and painted steel strapping). Moreover, the allegation of PMS existing in Viet Nam is similar in these applications and the TRAV has stated in the prior consultation letters about the inaccuracy and inadequacy of PMS information. Therefore, the TRAV kindly requests the Commission to review the available information provided by the TRAV to avoid making a bad precedent in later cases as PMS allegation would be used as a benefit of domestic manufacturers.

Once again, the TRAV would like to assert the incorrect evidence and insufficient information supplied by BlueScope as follows:

**First**, BlueScope referred *Viet Nam' Protocol of Accession to the WTO in paragraph 225* to consider that domestic sales in Viet Nam are not suitable for determining normal values in dumping margins calculation. The TRAV would like to state again that this statement related to paragraph 225 **has been expired on 31<sup>st</sup> December 2018**. Therefore, WTO members could not use it in any further anti-dumping proceeding.

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

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

- (i) the evidence ***does not support a conclusion that***  
the GOV substantially determines the domestic



price in the carbon steel welded pipe sector in Viet Nam.<sup>4</sup>

- (ii) the CBSA *did not* form the opinion that the **GOV's involvement has substantially determined prices** in the carbon steel welded pipe sector in Viet Nam<sup>5</sup>.

[emphasis added]

The TRAV noted that the period of 2017 – 2020 is not a specific period to make any significant change in the policy circumstances, and most of them are still unchanged.

**Forth**, the TRAV stated that information about *The Steel Master Plans* provided in pages 50-53 is not correct. The Steel Master Plan 2007-2015 complied with Decision No. 145/2007/QD-TTg which was terminated and replaced by Decision No. 694/QD-BCT dated 31<sup>st</sup> January 2013. However, according to Law on Planning No. 21/2017/QH14 dated 24<sup>th</sup> November 2017, manufacturing industries, including the steel industry, have no longer considered as the subject of master plans developed by the GOV. Consequently, the Ministry of Industry and Trade promulgated Decision No. 4977/QD-BCT dated 27<sup>th</sup> December 2018 to repeal specific product planning under the provisions on Law on Planning No. 21/2017/QH14, including Decision No. 694/QD-BCT. Therefore, *The Steel Master Plans* mentioned in the applications are invalid from the beginning of the year of 2019.

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

### III. Subsidy allegation

**First**, the TRAV would like to emphasize that Article 11.2 of SCM requires sufficient evidence, not a simple assertion in the application. However, in the applications, BlueScope has not referred to any legislative documents of the GOV, lack of evidence of specificity as well as benefits conferred from these programs, which is

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<sup>4</sup> Paragraph 156 of Statement of reasons of antidumping investigation of CSWP

<sup>5</sup> Paragraph 157 of Statement of reasons of antidumping investigation of CSWP



mandatory to define a subsidy according to Article 1 of SCM. In fact, the allegation of subsidies of export from Viet Nam is merely based on:

- (i) The conclusion of some anti-subsidy investigations from Canada. The TRAV is in view that different investigations have different facts, industries, products under consideration, the period of investigations, allegation of subsidy programs, etc. Thus, BlueScope could not refer to these facts as evidence for the current allegation.
- (ii) The notifications of Viet Nam to WTO. The TRAV is in the position that several notifications related to legal documents issued and repealed before Viet Nam's accession to the WTO (*such as Investment Incentives Contingent upon Export Performance For Domestic Businesses [Updating Programme IV of 2003-2004]; Investment Incentives Contingent upon Export Performance for Foreign Invested Enterprises [Updating Programme VI of the Period 2003-2004], etc*). Basically, the Commission should not initiate an investigation on programs under such legal documents. After its accession to the WTO in 2007, Viet Nam has conducted a number of reforms to comply with its WTO commitments, including amendments to its legislation. Under its WTO commitments in 2007, Viet Nam has committed to eliminate all prohibited subsidies, immediately eliminate the investment incentives contingent on export performance.

**Second,** the TRAV share the views that the initiation of antidumping or countervailing investigation is the right of WTO member. The initiation, however, should be based on sufficient information and data. The applicant could not provide a little information and simply request the Commission to conduct the investigation which may lead to inconsistency with WTO obligation and relevant regulations of ADA and SCM.

**Third,** BlueScope listed several subsidy programs based on the investigation of Canada. Among these programs, many programs were terminated or expired. In the Questionnaire Response of GOV for anti-dumping and countervailing duty investigation into precision pipe and tube steel (Case 550) on 7<sup>th</sup> June 2020, Viet Nam clarified details of 44 subsidy programs.

Therefore, in this context, the TRAV respectfully requests ADC to consider thoroughly the Response and remove the subsidy programs which have no longer

been valid until the period of investigation. It would not only mitigate the burden for the TRAV when completing a massive work but also help ADC to focus effectively on valid information within the limitation of time.

#### **IV. Public interests**

Applying anti-dumping and countervailing duties with the imports of aluminium zinc coated steel from alleged countries (if any) would lead to the monopoly in the domestic market due to BlueScope will become the only provider in Australia. This would also significantly influence the downstream industries in Australia which use the subject goods for the building and construction industry segment and the colour coated steel industry.

In conclusion, for the above-mentioned arguments, the TRAV respectfully requests that the Commission review the accuracy and adequacy of the evidence provided in the applications to determine whether the evidence is sufficient to justify the initiation of investigations.

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

Yours sincerely,



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

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