



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

**Anti-Dumping  
Commission**

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*CUSTOMS ACT 1901 - PART XVB*

**STATEMENT OF ESSENTIAL FACTS**  
**NO. 559**

**ALLEGED DUMPING AND SUBSIDISATION OF ALUMINIUM  
ZINC COATED STEEL OF A WIDTH LESS THAN 600  
MILLIMETRES**

**EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA AND  
THE SOCIALIST REPUBLIC OF VIETNAM**

**22 September 2021**

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## ABBREVIATIONS

\$	Australian dollars
ABF	Australian Border Force
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
AFP	Anti-Finger Print
AM	Aluminium magnesium (coating type)
AUD	Australian dollar
AZ	Aluminium zinc (coating type)
BMT	Base Metal Thickness
BlueScope	BlueScope Steel Limited
CRC	cold rolled coil
CSBA	Canada Border Services Agency
CON 559	Consideration Report No. 559
CTM	Cost to make
CTMS	Cost to make & sell
China	People's Republic of China
Ferrostaal	Ferrostaal Metals GmbH
FIS	Free Into Store
FOB	Free On Board
GOC	Government of China
GOV	Government of Vietnam
the goods	the goods the subject of the application (also referred to as the goods under consideration or GUC)
HRC	Hot rolled coil
HSG	Hoa Sen Group Joint Stock Company
HSS	Hollow structural sections
MCC	model control code
MT	Metric tonnes
mm	Millimetres
Material Injury Direction	Ministerial Direction on Material Injury 2012
NIP	Non-injurious price
Nam Kim	Nam Steel Joint Stock Company
OCOT	Ordinary course of trade
PAD	Preliminary Affirmative Determination
REQ	response to exporter questionnaire
SIE	state invested enterprises
SEF	Statement of Essential Facts

SCM agreement	<i>Article XVI:1 of the GATT 1994 and Article 25 of the WTO Agreement on Subsidies and Countervailing Measures.</i>
Subject countries	China and Vietnam
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 Manual	<i>Anti-Dumping Commission Dumping and Subsidy Manual (November 2018)</i>
the Minister	the Minister for Industry, Science and Technology
USD	United States dollar
USP	Unsuppressed selling price
Vietnam	Socialist Republic of Vietnam
VN Steel	Vietnam Steel
VSA	Vietnam Steel Association
WTO	World Trade Organization
YE	Year ending

# 1 SUMMARY AND RECOMMENDATIONS

## 1.1. Preliminary finding

This statement of essential facts (SEF) No. 559 has been prepared in response to an application from BlueScope Steel Limited (BlueScope) regarding aluminium zinc coated steel of a width less than 600 millimetres (the goods, or the subject goods). The application seeks the publication of a dumping duty notice and a countervailing duty notice in respect of the goods exported to Australia from the People's Republic of China (China) and the Socialist Republic of Vietnam (Vietnam) (the subject countries).

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

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

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

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

The commission has preliminarily found that injury, if any, caused to the Australian industry from dumped exports from China and Vietnam, as well as subsidised exports from China, was negligible.

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

- terminate the investigation as it relates to Nam Kim on the basis that its exports were not at dumped or subsidised prices
- terminate the countervailing investigation as it relates to exports from Vietnam on the basis that there was a negligible level of subsidisation and
- terminate the investigation as it relates to the remaining exporters from China and Vietnam on the basis that dumped and/or subsidised exports caused negligible injury to the Australian industry.

## 1.2 Authority to make decision

Division 2 of Part XVB of the *Customs Act 1901* (Cth) (the Act) describes, among other things, the procedures to be followed and the matters to be considered by the

Commissioner when conducting investigations in relation to the goods covered by an application under section 269TB(1).<sup>1</sup>

### 1.2.1 Application

On 4 June 2020, BlueScope lodged an application alleging that the goods exported to Australia from China and Vietnam at dumped and subsidised prices is causing material injury.

Having considered the application, the Commissioner decided not to reject the application and initiated Investigation No. 559 on 30 June 2020.

Consideration Report No. 559 (CON 559) and Anti-Dumping Notice (ADN) No. 2020/068 provide further details relating to the initiation of the investigation.<sup>2</sup>

## 1.3 Findings and conclusions

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

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

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

### 1.3.2 The Australian market (chapter 5)

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

### 1.3.3 Dumping margins (chapter 6)

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

Country	Exporter	Dumping margin (%)
China	Uncooperative exporters	2.9
Vietnam	HSG	9.3
	Nam Kim	-7.2
	Uncooperative exporters	12.5

**Table 1 – Dumping Margins**

### 1.3.4 Subsidy margins (chapter 7)

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

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

<sup>2</sup> Electronic Public Record (EPR) No. 559, document 002 and 003.

Entity	Subsidy Margin (%)
Uncooperative Chinese exporters	20.8
Uncooperative Vietnamese exporters	0.2

**Table 2 – Subsidy Margins**

### **1.3.5 Economic condition of the Australian industry (chapter 8)**

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

- reduced volume
- reduced market share
- price suppression
- price depression

### **1.3.6 Have dumping and subsidies caused material injury? (chapter 9)**

The Commissioner is not satisfied that the Australian industry has suffered material injury in relation to the exported goods at dumped and/or subsidised prices from Chinese and Vietnamese exporters.

### **1.3.7 Proposal to terminate the investigation (chapter 9.9)**

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

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

- the dumping investigation in relation to cooperative Vietnamese exporter Nam Kim, on the basis that Nam Kim exports of the goods to Australia during the investigation period were not at dumped prices, in accordance with section 269TDA(1)(b)(i)
- the countervailing investigation in relation to all exporters from Vietnam, on the basis that:
  - in respect of Nam Kim and HSG, no countervailable subsidy has been received in respect of any of those goods pursuant to section 269TDA(2)(b)(i) and
  - in respect of non-cooperative entities, a countervailable subsidy has been received in respect of some or all of those goods but it never, at any time during the investigation period, exceeded the negligible level, pursuant to section 269TDA(2)(b)(ii).
- the dumping and countervailing investigation in relation to all exporters from China, and the dumping investigation in relation to exporters from Vietnam (except Nam Kim), on the basis that the injury, if any, to the Australian industry that has been caused is negligible in accordance with 269TDA(13A) and 269TDA(14).



## **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 and countervailing notice in respect of the goods exported to Australia from China and Vietnam.

Having considered the application, the Commissioner decided not to reject the application. The Commissioner initiated Investigation 559 on 30 June 2020. CON 559 and ADN No. 2020/068 provide further details relating to the initiation of the investigation.<sup>3</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 the goods at dumped and/or subsidised prices has caused material injury to the Australian industry is from 1 April 2016.

### **2.2 Previous cases**

There have been no previous cases in relation to the goods.

### **2.3 Conduct of the investigation**

#### **2.3.1 Australian industry**

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

#### **2.3.2 Importers**

The commission identified several importers in the Australian Border Force (ABF) import database that imported the goods from China and Vietnam during the investigation period. The Commission forwarded importer questionnaires to 5 importers and placed a copy of the importer questionnaire on the Commission's website for other importers (who were not contacted directly) to complete.

One response was received from Ferrostaal Metals GmbH (Ferrostaal). The verification report relating to Ferrostaal is available on the public record.

#### **2.3.3 Exporters**

The Commission forwarded questionnaires to 5 suppliers identified in the ABF import database at the beginning of the investigation. No exporters completed an exporter

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<sup>3</sup> EPR 559, document 002 and 003.

questionnaire response (REQ) prior to the due date of 6 August 2020. Two entities were granted extensions to provide a REQ, with 2 responses received. These entities are:

Exporter name	Questionnaire submission date
Vietnam	
HSG	4 September 2020
Nam Kim	31 August 2020

**Table 3 – Entities who provided a REQ**

The commission notes that no exporter from China provided a REQ.

#### **2.3.4 Foreign Governments**

The Commission forwarded questionnaires to the Government of China (GOC) and the Government of Vietnam (GOV) at the beginning of the investigation. The commission has considered the response received from the GOV in reaching the conclusions contained within this SEF.

The GOC did not provide a response to the government questionnaire.

### **2.4 Submissions received from interested parties**

The Commission received the following submissions from interested parties prior to the publication of this SEF. The Commissioner has considered these submissions in reaching the conclusions contained within this SEF.

Public record document no.	Interested Party	Date published
004	Government of China	07/07/2020
005	Government of Vietnam	08/07/2020
006	BlueScope	10/07/2020
007	BlueScope	27/07/2020
017	BlueScope	28/05/2021
019	BlueScope	13/07/2021
024	Ferrostaal	14/09/2021

**Table 4 – Submissions considered in this SEF**

### **2.5 Statement of essential facts**

The Commissioner must, within 110 days after the initiation of an investigation, or such longer period as the Minister allows under section 269ZHI(3), place on the public record a SEF on which the Commissioner proposes to base a recommendation to the Minister in relation to the application.<sup>4</sup>

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<sup>4</sup> This power has been delegated to the Commissioner. See ADN No. 2017/010, refer also section 269TDAA(1).

In formulating the SEF, the Commissioner must have regard to the application, and any submissions concerning publication of the notice received within 37 days of the date of initiation of the investigation.<sup>5</sup> The Commissioner may also have regard to any other matters considered relevant.<sup>6</sup>

The SEF was originally due 19 October 2020. The commission obtained multiple extensions of time for this due date.<sup>7</sup> In the most recent extension, as advised in ADN No. 2021/115, the Commissioner approved an extension of time for the publication of the SEF until 22 September 2021.

## 2.6 Preliminary Affirmative Determination

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

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

A PAD may be made no earlier than day 60 of the investigation (in relation to this investigation, a date no earlier than 31 August 2020). The Commonwealth may require and take securities at the time a PAD is made or at any time during the investigation after a PAD has been made, if the Commissioner is satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues.

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

On 31 August 2020, the Commissioner published a Day 60 Status Report in ADN No. 2020/087.<sup>8</sup> In that report, the Commissioner set out that he did not make a PAD because he was not satisfied that, at that stage of the investigation, there appeared to be sufficient grounds for the publication of a dumping duty or countervailing duty notice.

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

For the reasons set out in this SEF, the Commissioner is not satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice or countervailing duty notice in relation to the goods exported to Australia from China and Vietnam.

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<sup>5</sup> Section 269TDAA(2)(a).

<sup>6</sup> Section 269TDAA(2)(b).

<sup>7</sup> EPR 559, document 013, 014 and 023.

<sup>8</sup> EPR 559, document 010.

## 2.7 Responding to this SEF

This SEF sets out the essential facts on which the Commissioner proposes to terminate the investigation in its entirety.

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

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

Interested parties have 20 days to respond to the SEF. The Commissioner will consider these responses in making his final report. The report will recommend whether or not a dumping duty notice and/or a countervailing duty notice should be published, and the extent of any interim duties that are, or should be, payable.

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

Submissions should preferably be emailed to [investigations4@adcommission.gov.au](mailto:investigations4@adcommission.gov.au).

Alternatively, interested parties may post submissions to:

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

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

A guide for making submissions is available at the commission's website via:  
[www.adcommission.gov.au](http://www.adcommission.gov.au)

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

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

## **2.8 Report to the Minister**

The Commissioner was initially due to provide his report in relation to this investigation to the Minister on or before 19 October 2020. However, as noted above, the commission obtained multiple extensions of time.<sup>9</sup>

The Commissioner is now due to provide his report and recommendations to the Minister on or before 15 November 2021, unless the investigation is terminated earlier.<sup>10</sup>

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<sup>9</sup> EPR 559, document 013, 014 and 023.

<sup>10</sup> Under section 269TEA.

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

### **3.1 Preliminary finding**

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

### **3.2 Legislative framework**

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

In making this assessment, the Commissioner must firstly determine that the goods the Australian industry produced are 'like' to the imported goods. Section 269T(1) defines like goods as:

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

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

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

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

### **3.3 The goods**

#### **3.3.1 The goods description in the application**

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

Flat rolled iron and steel products (whether or not containing alloys), of a width less 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

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- 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 5 - 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 *Customers Tariff Act 1995*.

Tariff classification (Schedule 3 of the Customs Tariff Act 1995)		
Tariff Subheading	Statistical Code	Description
7212.50.00		FLAT-ROLLED PRODUCTS OF IRON OR NON-ALLOY STEEL, OF A WIDTH OF LESS THAN 600 mm, CLAD, PLATED OR COATED
	66	Otherwise plated or coated
7226.99.00		FLAT-ROLLED PRODUCTS OF OTHER ALLOY STEEL, OF A WIDTH OF LESS THAN 600 mm
	71	Other

Table 6 – The goods and general tariff classification for the goods

## 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>11</sup>

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 share the same Australian standards). This is 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, designated as the coating type ‘AM’. The goods under consideration, designated using the coating type AZ, do not contain magnesium. Both coating types fall under the same Australian Standard (AS/NZS 1397).

### 3.4.2 Commercial likeness

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

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<sup>11</sup> See Chapter **Error! Reference source not found.** for further discussion on the Australian industry.



### 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>12</sup> Hot rolled coil (HRC) or cold rolled coil (CRC) are the major raw material input.

### 3.4.5 Like goods assessment

Based on the findings above, the commission considers that the goods the Australian industry produces 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
- 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' to the goods the subject of the application, as defined in section 269T.

## 3.5 Model control codes

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

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<sup>12</sup> See section 4.3 for further discussion on the production process.

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	$\leq 100 \text{ g/m}^2$	1	Mandatory	Mandatory	Yes
		$>100 \text{ g/m}^2$ to $\leq 165 \text{ g/m}^2$	2			
		$>165 \text{ g/m}^2$	3			
3	Steel Grade	G2 / SGLCC	A	Mandatory	Mandatory	Yes
		G3 / SGLCD	B			
		G250 / SGLC 340	C			
		G300 / G350 / SGLC 400 / SGLC 440 / SGLC 490	D			
		G450 / G500	E			
		G550 / SGLC 570	F			
		Other	G			
4	Base Metal Thickness (BMT)	$< 0.40 \text{ mm}$	1	Mandatory	Mandatory	Yes
		$\geq 0.40 \text{ mm}$ to $< 0.50 \text{ mm}$	2			
		$\geq 0.50 \text{ mm}$ to $< 0.75 \text{ mm}$	3			
		$\geq 0.75 \text{ mm}$ to $< 1.00 \text{ mm}$	4			
		$\geq 1.00 \text{ mm}$ to $< 2.00 \text{ mm}$	5			
5	Width	$< 600 \text{ mm}$	1	Mandatory	Mandatory	No
		$\geq 600 \text{ mm}$	2			
6	Form	Coil	C	Mandatory	Optional	No
		Sheet	S			

**Table 7 – MCC Structure**

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

In its submission of 27 July 2020, BlueScope stated that the categorisation of the MCC Category 4 (BMT) did not contain a sub-category to accommodate for any BMTs over 2.00 mm.<sup>13</sup> As a result, BlueScope suggested that an additional identifier (6) be added for any BMT above 2.00 mm.

### 3.5.2 Commission's assessment in respect of the MCC structures

The commission notes that the goods description listed within ADN 2020/068 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>14</sup>

The commission considers 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

<sup>13</sup> EPR 559, document 007.

<sup>14</sup> Chapter 14.1, the Manual.

interested party, have been addressed in the relevant verification reports available on the public record for this investigation.

## **4 THE AUSTRALIAN INDUSTRY**

### **4.1 Preliminary finding**

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

### **4.2 Legislative framework**

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

### **4.3 Production process**

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

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

### **4.4 Preliminary conclusion**

The Commissioner is satisfied that:

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

## **5 AUSTRALIAN MARKET**

### **5.1 Preliminary finding**

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

### **5.2 Background**

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

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

The largest 2 exporters of aluminium zinc coated steel supplying the Australian market are in Vietnam.

There are no anti-dumping measures applicable to imports of the goods.

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

### **5.3 Market structure**

The 2 key markets in Australia for the goods under consideration are:

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

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

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

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

### **5.3.1 Marketing and distribution**

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

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

The commission understands that, based on an assessment of data from the ABF import database, exporters appear to generally export their goods to Australian end-users or fabricators, who then on-sell value-added products.

### **5.3.2 Supply**

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

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

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

### **5.3.3 Demand**

The primary demand drivers for aluminium zinc coated steel are the demand for residential and commercial construction.

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

The commission reviewed the sales data for the current investigation and data provided with respect to the most recent review of measures for aluminium zinc coated steel

(≥ 600 mm).<sup>15</sup> Some seasonal variation was observed. The commission observed that the majority of sales were to the building industry or to distributors.

## 5.4 Pricing

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

Due to the limited data available to the commission, (only one participating importer whose volumes and sales processes may not be representative of the market for the goods more broadly), there was limited information with respect to pricing of the goods. The commission considers it reasonable to assume that, similar to 'wide' aluminium zinc coated steel products, there is a high degree of price visibility in the market and the customer has the ability to negotiate price.<sup>16</sup> However, a key difference between wide and slit aluminium zinc coated steels is that, based on ABF data, it appears that a large proportion of the subject goods are sold directly from the mill to end-users/manufacturers whose pricing considerations are not known to the commission.

## 5.5 Market size

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

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

- 7212.50.00 statistical code 66
- 7226.99.00 statistical code 71.

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

The commission has cleansed the ABF data to ensure, as far as practicable, that only the goods relevant to the application have been included. The data has been cleansed with reference to the goods description listed against each shipment, with consideration of an appropriate range of free on board unit priced, and with consideration of the data obtained from the importer with respect to the investigation.<sup>17</sup>

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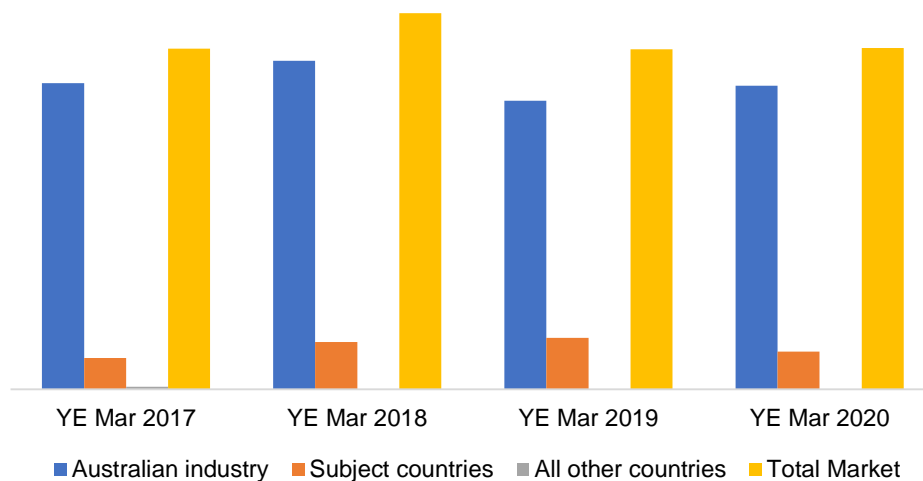
<sup>15</sup> Review no. 522, review of the Anti-Dumping measures applying to aluminium zinc coated steel (≥ 600 mm), exported to Australia from China. Since the goods the subject of this investigation and those the subject of Review 522 are similar (differing only in their width), the verification team were able to make a reasonable comparison for the purposes of assessing longer term demand trends.

<sup>16</sup> The commission has examined the pricing information of wide aluminium zinc coated steel products in a parallel investigation, Investigation 558 (aluminium zinc coated steel (≥600mm) from Korea, Taiwan, Vietnam)

<sup>17</sup> A filter to remove FOB unit prices greater than 1600 AUD/MT was applied to be the ABF data. There was no lower limit filter applied since the commission's cleansing of the data (which included an examination of the description of the goods recorded against each shipment) removed low priced items.

Figure 1 shows the trends for the volumes of the Australian market participants in the injury period. While the market fluctuated in the injury period, there was no overall change in the size of the market. Imports from the subject countries increased year ending (YE) Mar 2017 to YE Mar 2019 before declining, though their volumes increased 13% over the injury period. BlueScope's volumes have fluctuated over the injury period with an overall decrease of approximately 1%.

**Volumes of Australian market participants in the injury period**



**Figure 1 – Australian market trends over the injury period**

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



## 6 DUMPING INVESTIGATION

### 6.1 Preliminary finding

The commission has found that the goods exported to Australia from China and Vietnam (except from the Vietnamese exporter Nam Kim) have been dumped.

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

Country	Exporter	Dumping Margin (%)
China	Uncooperative exporters	2.9
Vietnam	HSG	9.3
	Nam Kim	-7.2
	Uncooperative exporters	12.5

**Table 8 – Dumping Margins**

### 6.2 Legislative and policy framework

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

Under section 269TG, one of the matters the Minister must be satisfied of in order to publish a dumping duty notice is that exports to Australia were at dumped prices.

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

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

#### 6.2.1 Export price

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

#### 6.2.2 Normal value

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

Section 269TAC(1) provides that:

*...[T]he normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade [(OCOT)] for home consumption in the country of export in sales that are arms length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.*

### Low volume of domestic sales

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

Domestic sales of like goods are taken to be in a low volume where the total volume of like goods is less than 5% of the total volume of the goods under consideration that are exported to Australia (unless the Minister is satisfied that the volume is still large enough to permit a proper comparison). As per the Manual, where the total volume of relevant sales is 5% or greater than the total volume of the goods under consideration, and where comparable models exist, the commission also considers the volume of relevant domestic sales of like goods for each model (or MCC).<sup>18</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.

### 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>19</sup>

## **6.2.3 Dumping margin**

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

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<sup>18</sup> Chapter 7, the Manual.

<sup>19</sup> Referred to in this report as a 'particular market situation'.

## 6.3 Particular market situation

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

As there are no cooperating exporters from China, as detailed in section 6.5.1, the normal value for exporters from China has been calculated under 269TAC(6). As such, the commission has not considered the allegation of a particular market situation with respect to China any further.

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

## 6.4 Exporters

### 6.4.1 Cooperative exporters

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

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

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

Country	Exporter
Vietnam	HSG
	Nam Kim

**Table 9 – Summary of exporters that provided a REQ**

### 6.4.2 Uncooperative exporters

Section 269T(1) provides that an exporter is an 'uncooperative exporter' where the Commissioner is satisfied that an exporter did not give the Commissioner information that the Commissioner considered to be relevant to the investigation within a reasonable period, or if satisfied that an exporter significantly impeded the investigation. Section 8 of the *Customs (Extensions of Time and Non-cooperation) Direction 2015* (the Customs Direction) sets out that the Commissioner must determine an exporter to be an uncooperative exporter, in certain circumstances. In particular, if the exporter provides no relevant information in a reasonable period, if that exporter fails to provide a response, or fails to request a longer period to do so, within the legislated period.

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

- Provide a REQ to the commission.
- Request a longer period to provide a response within the legislated period.
- Address requests for further information from the commission after submitting an REQ to the commission.<sup>20</sup>

## **6.5 Dumping assessment – China**

### **6.5.1 Uncooperative and all other exporters**

The commission has determined that all exporters of the goods from China are uncooperative exporters for the purposes of this investigation.<sup>21</sup>

Section 269TACAB(1) sets out the provisions for calculating export prices and normal values for uncooperative exporters.

#### Export price

The commission has determined an export price pursuant to section 269TAB(3), having regard to all relevant information. The commission considers that the most reliable and relevant information it possesses in relation to exports of the goods from China over the investigation period is the import data in the ABF import database. This contains detailed importation data from import declarations that importers have made to the ABF. Therefore, for imports of the goods from China during the investigation period, the commission has calculated the export price based on the weighted average Free on Board (FOB) export price declared in the ABF import database.

#### Normal value

The commission has established the normal value under section 269TAC(6) having regard to all relevant information. The commission considers that the most reliable and relevant information it possesses in relation to the normal value of the goods in China over the investigation period is the verified normal value information from Review 522.<sup>22</sup> Therefore, the commission has calculated the normal value based on the normal value calculated in respect of uncooperative exporters from China from Review 522.

In recognition of the impact HRC prices have on the prices of the goods, the commission has made an adjustment based on the movement in HRC between the review period in Review 522 and the current investigation period. The commission considers it appropriate to index the normal value used for uncooperative exporters in Review 522. The indexation has been applied with reference to the movement in HRC prices between cooperating exporters' from Korea and Taiwan from Review 522 to those from Investigation 558.<sup>23</sup>

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<sup>20</sup> Requests for further information are contained in deficiency letters.

<sup>21</sup> Refer to section 6.4.2.

<sup>22</sup> Review 522, a review of aluminium zinc coated steel of a width equal to or greater than 600 mm.

<sup>23</sup> Korean and Taiwanese HRC price data was used as the basis for the cost replacement in Review 522.

The commission considers this an appropriate method of indexation because the goods the subject of Review 522 and the subject goods are identical (are both aluminium zinc coated steel), differing only in their width.

To account for the expected price differences between the goods the subject of Review 522 and the subject goods, resulting from the differing widths, the commission has applied a specification adjustment. The commission has relied on the difference between the Australian industry's sales of its like goods and the Australian industry's sales of aluminium zinc coated steel of a width equal to or greater than 600 mm to make a specification adjustment.<sup>24</sup>

### Dumping margin

The dumping margin for all exporters from China was established in accordance with section 269TACB(2)(a). The commission has compared the weighted average export price and weighted average normal value.

The dumping margin for all exporters of aluminium zinc coated steel from China is **2.9%**.

Details of the dumping margin calculations for all exporters from China are at **Confidential Attachment 2**.

### **6.5.2 Level of dumping**

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

- there has been no dumping by the exporter of any of those goods
- there has been dumping by the exporter of some or all of those goods, but the dumping margin for the exporter is less than 2%.

As detailed in this chapter, the commission is satisfied that all exports of the goods from China to Australia were at dumped prices during the investigation period and the dumping margin for all Chinese exporters of the goods is more than 2%.

### **6.5.3 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.

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<sup>24</sup> Sourced from data available from Investigation 558, a dumping and subsidisation investigation of aluminium zinc coated steel of a width equal to or greater than 600 mm exported from the Republic of Korea, Taiwan and Vietnam. Investigation 559 has been conducted in parallel with Investigation 558.

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 China and dumped was 3% or greater of the total import volume
- has determined that the volume of dumped goods is not negligible.

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

## **6.6 Dumping assessment – Vietnam**

### **6.6.1 Hoa Sen Group Joint Stock Company**

#### Verification

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

The commission is satisfied that HSG is the producer of the goods and like goods. The commission is further satisfied that the information that HSG provided is accurate and reliable 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>25</sup>

#### Export price

The commission considers HSG to be the exporter of the goods, as HSG 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
- arranges and pays for the ocean freight and marine insurance.

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

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

- there was any consideration payable for, or in respect of, the goods other than price
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller

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<sup>25</sup> EPR 559, document 018.

- 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.<sup>26</sup>

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

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

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

#### Normal value

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

- there was any consideration payable for, or in respect of, the goods other than price
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller
- the buyer, or an associate of the buyer, was not directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.

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

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

- there was any consideration payable for, or in respect of, the goods other than their price
- the buyer, or an associate of the buyer, was directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.<sup>27</sup>

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

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

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<sup>26</sup> Section 269TAA refers.

<sup>27</sup> See section 269TAA(1)(c).

The prices for unrelated and related customers were not comparable. The commission therefore considers that HSG's domestic sales to its related customers during the period were not 'arms length' transactions, pursuant to section 269TAA(1)(b).<sup>28</sup> Domestic sales from related customers have not been included in the normal value calculation.

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

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

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

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

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-4-1-C	N	N	Surrogate model P-2-G-4-1-C a with specification adjustment under TAC(8).
P-2-E-5-1-C	N	N	Surrogate model P-2-G-5-1-C a with specification adjustment under TAC(8).
P-2-F-2-1-C	N	N	Surrogate model P-2-G-3-1-C a with specification adjustment under TAC(8).
P-2-F-3-1-C	N	N	Surrogate model P-2-G-3-1-C a with specification adjustment under TAC(8).
P-2-F-4-1-C	N	N	Surrogate model P-2-G-4-1-C a with specification adjustment under TAC(8).

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<sup>28</sup> The commission notes that the finding in this report that the sales to domestic customers did not take place on an 'arms length' basis relates to the assessment of normal values for anti-dumping purposes under section 269TAC. It is not an assessment of the exporter's transfer pricing policy with respect to compliance with the revenue laws of any jurisdiction.



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

**Table 10 – Domestic volumes – HSG**

### Adjustments

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

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

**Table 11 – Summary of adjustments – HSG**

### Dumping margin

The dumping margin in respect of the goods HSG exported to Australia during the investigation period is **9.3%**.

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

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

### Verification

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

The commission is satisfied that Nam Kim is the producer of the goods and like goods. The commission is further satisfied that the information Nam Kim provided is accurate and reliable 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>29</sup>

### 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 sales to Australia 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 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.<sup>30</sup>

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

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

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

### Normal value

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

- there was any consideration payable for, or in respect of, the goods other than price
- the price appeared to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller
- the buyer, or an associate of the buyer, was not directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.

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<sup>29</sup> EPR 559, document 020.

<sup>30</sup> Section 269TAA refers.

The commission therefore considers that all of Nam Kim's domestic sales to its unrelated domestic customers during the 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.<sup>31</sup>

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), and that a market situation applies in accordance with section 269TAC(2)(a)(ii). The application also claimed that Nam Kim's records do not reasonably reflect competitive market costs associated with the production or manufacture of like goods.

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

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

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

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

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<sup>31</sup> Section 269TAA of the Act refers.

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

**Table 12 – Domestic volumes – Nam Kim**

### Adjustments

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

Adjustment Type	Deduction/addition
Domestic credit terms	Deduct an amount for domestic credit
Domestic packaging	Deduct an amount for domestic packaging
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
Specification	Add or deduct an amount for specification differences
Timing differences	Add or deduct an amount in relation to sales occurring at different times

**Table 13 – Summary of adjustments – Nam Kim**

### Dumping margin

The dumping margin in respect of the goods Nam Kim exported to Australia during the investigation period is **negative 7.2%**.

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

#### **6.6.3 Uncooperative exporters**

The commission has determined that all exporters of the goods from Vietnam, other than HSG and Nam Kim, are uncooperative exporters for the purposes of this investigation.<sup>32</sup>

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

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<sup>32</sup> Refer to section 6.4.2.

### Export prices

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

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

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

### Normal value

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

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

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

### Dumping margin

The dumping margin in respect of the goods that uncooperative exporters exported to Australia during the investigation period is **12.5%**.

The commission's calculations are included in **Confidential Attachment 6**.

#### **6.6.4 Summary of dumping margins**

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

Exporter	Dumping margin (%)
HSG	9.3
Nam Kim	-7.2
Uncooperative exporters	12.5%

**Table 14 – Summary of dumping margins for Vietnam**

### 6.6.5 Level of dumping

Section 269TDA(1)(b)(i) 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.

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

### 6.6.6 Volume of dumped imports

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

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

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

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

## 7 SUBSIDY INVESTIGATION

### 7.1 Preliminary finding

#### 7.1.1 China

The commission has preliminarily found that in respect of the goods exported to Australia from China during the investigation period:

- countervailable subsidies have been received
- the volume of subsidised goods was not negligible.

The commission determined the subsidy margin for non-cooperative exporters is 20.8%.

#### 7.1.2 Vietnam

The commission has preliminarily found that:

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

Accordingly, the Commissioner is preliminarily satisfied that:

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

### 7.2 Relevant legislation

#### 7.2.1 Countervailable subsidies

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

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

(a) a financial contribution:

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

that involves:

- (iv) a direct transfer of funds from that government or body or
- (v) the acceptance of liabilities, whether actual or potential, by that government or body or

- (vi) the forgoing, or non-collection, of revenue (other than an allowable exemption or remission) due to that government or body or
- (vii) the provision by that government or body of goods or services otherwise than in the course of providing normal infrastructure or
- (viii) the purchase by that government or body of goods or services or
- (b) any form of income or price support as referred to in Article XVI of the General Agreement on Tariffs and Trade 1994 that is received from such a government or body;

if that financial contribution or income or price support confers a benefit (whether directly or indirectly) in relation to the goods exported to Australia.<sup>33</sup>

Section 269TACC 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:
  - (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.
- (4) The Minister may, having regard to:
  - (a) the fact that the subsidy program benefits a limited number of particular enterprises or
  - (b) the fact that the subsidy program predominantly benefits particular enterprises or
  - (c) the fact that particular enterprises have access to disproportionately large amounts of the subsidy or
  - (d) the manner in which a discretion to grant access to the subsidy has been exercised;
 determine that the subsidy is specific.

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<sup>33</sup> Section 269TACC sets out the steps for working out whether a financial contribution or income or price support confers a benefit.



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

## **7.2.2 Non-cooperative entities**

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

- has not given the Commissioner information the Commissioner considers to be relevant to the investigation, review or inquiry within a period the Commissioner considers to be reasonable
- has significantly impeded the investigation, review or inquiry.<sup>34</sup>

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

## **7.3 Subsidy assessment - China**

### **7.3.1 Investigated programs**

The applicant alleged the existence of a total of 51 programs in relation to exports of aluminium zinc coated steel from China, based on the commission’s previous findings in respect of subsidies received for other products manufactured in China from HRC, such as hollow structural sections (HSS).<sup>35</sup> The applicant argued that such subsidies would be applicable to the goods. Like HSS, aluminium zinc coated steel is manufactured from HRC. Both HSS and HRC have been the subject of previous findings in relation to countervailable subsidies from China. Accordingly, the applicant considers that the goods from China would be expected to be in receipt of the same benefits.

The commission has not previously investigated subsidy programs relevant to the subject goods exported from China. However, the commission has previously assessed subsidy programs in respect of aluminium zinc coated steel of a width equal to or greater than 600 mm imported from China, most recently in Review 522.<sup>36</sup> The commission considers that subsidy programs relevant to aluminium zinc coated steel of a width equal to or greater than 600 mm would be relevant to the subject goods, which differ only in their physical width and are otherwise identical. As there were no cooperative entities from

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<sup>34</sup> Entities contemplated by section 269TAACA(1) are also described in section 269TAACA(2).

<sup>35</sup> The applicant cited Review 419, a review of hollow structural sections, and Review 456, a review of aluminium zinc coated steel.

<sup>36</sup> The applicant cited Review 522, a review of aluminium zinc coated steel

China and the GOC did not participate in the investigation, the commission considers it reasonable to assess the programs relevant to aluminium zinc coated steel of a width equal to or greater than 600 mm from China which were examined in Review 522.

The commission has examined the subsidy programs which were assessed in Review 522 (refer to Table 15). Given the similarity between the subject goods and the goods relevant to Review 522, the commission assessed whether any of the programs from Review 522 would not be relevant to the subject goods on account of their differing width. There was no program assessed in Review 522 which would not be relevant to the subject goods. The commission is satisfied that any subsidies identified in previous aluminium zinc coated steel cases would also be applicable to the goods.

The commission has investigated each of the 94 subsidy programs assessed in Review 522.

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

Program Number	Program name	Program Type	Countervailable subsidy received? (Yes/No)
1	Hot rolled steel provided by government at less than fair market value	Tax and raw material	Yes
2	Coking coal provided by government at less than adequate remuneration	Tax and raw material	No
3	Coke provided by government at less than adequate remuneration	Tax and raw material	No
4	Preferential tax policies enterprises with foreign investment established in the coastal economic open areas and in the economic and technological development zones	Tax	No
5	Preferential tax policies for foreign invested enterprises - reduced tax rate for productive FIEs scheduled to operate for a period of not less than 10 years	Tax	Yes
6	Preferential tax policies enterprises with foreign investment established in special economic zones (excluding Shanghai Pudong area)/ Preferential Tax Policies for Enterprises with Foreign Investment which are Technology- Intensive and Knowledge Intensive	Tax	No
7	Preferential tax policies enterprises with foreign investment established in Pudong area of Shanghai	Tax	No
8	Preferential Tax Policies for Western Development “Go West” strategy	Tax	No
10	Preferential Tax Policies for High and New Technology Enterprises	Tax	No
11	VAT and tariff exemptions on imported equipment	Tax	Yes
9	Land Use Tax Deduction	Grant	No

Program Number	Program name	Program Type	Countervailable subsidy received? (Yes/No)
12	One-time Awards to Enterprises Whose Products Qualify for 'Well-Known Trademarks of China' and 'Famous Brands of China'	Grant	Yes
13	Matching Funds for International Market Development for Small and Medium Enterprises	Grant	Yes
14	Superstar Enterprise Grant	Grant	Yes
15	Research & Development (R&D) Assistance Grant	Grant	Yes
16	Patent Award of Guangdong Province	Grant	Yes
17	Innovative Experimental Enterprise Grant	Grant	Yes
18	Special Support Fund for Non-State-Owned Enterprises	Grant	Yes
19	Venture Investment Fund of Hi-Tech Industry	Grant	Yes
20	Grants for Encouraging the Establishment of Headquarters and Regional Headquarters with Foreign Investment	Grant	Yes
21	Grant for Key Enterprises in Equipment Manufacturing Industry of Zhongshan	Grant	Yes
22	Water Conservancy Fund Deduction	Grant	Yes
23	Wuxing District Freight Assistance	Grant	Yes
24	Huzhou City Public Listing Grant	Grant	Yes
25	Huzhou City Quality Award	Grant	Yes
26	Huzhou Industry Enterprise Transformation & Upgrade Development Fund	Grant	Yes
27	Wuxing District Public List Grant	Grant	Yes
28	Anti-dumping Respondent Assistance	Grant	Yes
29	Technology Project Assistance	Grant	Yes
30	Capital injection	Grant	Yes
31	Environmental Protection Grant	Grant	Yes
32	High and New Technology Enterprise Grant	Grant	No
33	Independent Innovation and High-Tech Industrialisation Program	Grant	Yes
34	VAT Refund on Domestic Sales by Local Tax Authority	Tax	No
35	Environmental Prize	Grant	Yes
36	Jinzhou District Research and Development Assistance Program	Grant	Yes
37	Assistance for fixed assets investment project	Grant	Yes
38	Funding for "application of high precision optical comb coherent imaging analyser and its engineering development"	Grant	No
39	Funding for "ship ballast tank resistant microbial corrosion steel and its application technology research"	Grant	No

Program Number	Program name	Program Type	Countervailable subsidy received? (Yes/No)
40	Patent expenses assistance	Grant	Yes
41	Funding for “study on stability of multi-level nanostructure and industrial application exploration for part of the multi-level nano-metal materials”	Grant	No
42	Funding for “composite rolling technology of high-performance composite steel materials manufacturing technology research”	Grant	No
43	High-tech achievement financial support fund	Grant	Yes
44	Funding for “research and development of control model and process key technology in metallurgical process”	Grant	Yes
45	Funding for “development and application research on slab continuous casting crystal multi-magnetic field control device”	Grant	Yes
46	Funding for “high-efficiency, low-loss silicon steel research and development”	Grant	No
47	Funding for “arctic and ultra-low temperature marine steel research and applications”	Grant	No
48	Funding for “sintering machine intelligent multi-component pollutant flue gas treatment island”	Grant	Yes
49	Financial funds for “high-strength spring steel and cutting steel key-tech development and application demonstration”	Grant	No
50	Funding for “high-precision shipboard key manufacturing technology research”	Grant	No
51	Financial funds for the special adjustment of industrial enterprises structural adjustment	Tax	Yes
52	Promotion special funds of Shanghai	Grant	Yes
53	Trade remedy cases legal fee assistance	Grant	Yes
54	Funding for “technology research on thick plate continuous casting large pressure and slab internal quality control”	Grant	No
55	Funding for “research and development of continuous heat treatment of new heating and cooling technology”	Grant	Yes
56	Environmental protection assistance allocated from Shanghai Municipal Environmental Protection Bureau	Grant	Yes
57	Environmental protection special funds - mine OC, OD material C-type closed transformation and coal field E, F material conversion silo project in phase I and II	Grant	Yes
58	Decentralized jobs	Grant	Yes
59	Funding for “key technology research on risk prevention and control of special equipment with high parameter and pressure”	Grant	No
60	Special funds by the Shanghai Municipal Human Resources and Social Security Bureau	Grant	Yes

Program Number	Program name	Program Type	Countervailable subsidy received? (Yes/No)
61	Income tax return paid by the Shibao Mountain District Finance Bureau	Tax	Yes
62	2016 Shanghai Skills Master Studio construction and additional assistance by Shanghai Municipal Employment Promotion Centre	Grant	No
63	Sulfur dioxide over-emission awards	Grant	Yes
64	Funding for “renovation project relating to seamless steel tube plant finishing area”	Grant	No
65	Funding for “localization development project of large diameter and high - grade pipeline pipe forming mould for oil and gas transportation”	Grant	No
66	Funding for “steel products, energy conservation & environment protection comprehensive technology upgrade project”	Grant	Yes
67	Funding for “no. 3 sintering machine flue gas desulfurization project”	Grant	Yes
68	Industrial adjustment and revitalization special guidance fund	Grant	Yes
69	Stable employment assistance – good jobs subsidy	Grant	Yes
70	2016 government assistance (Yuhuatai District)	Grant	No
71	2016 scientific and technological achievements for industrialization fund	Grant	No
72	New industry guidance special fund	Grant	Yes
73	Patent special fund of Zhejiang Province	Grant	No
74	Matching Funds for International Market Development for small and medium size enterprises	Grant	No
75	Special Funds for Promoting Employment of Employment Management Service Office in Fuyang District of Hangzhou City	Grant	Yes
76	Capital market supporting fund	Grant	Yes
77	Patent special fund of Hangzhou City	Grant	Yes
78	Patent special fund of Hangzhou Fuyang	Grant	No
79	Foreign trade development fund of Central government	Grant	No
80	Open economy subsidy of Hangzhou Fuyang	Grant	Yes
81	Finance Subsidy Fund of Hangzhou Fuyang District Finance Bureau for the Pilot Project of Factory Internet of Things and Industrial Internet in 2017	Grant	Yes
82	Subsidy for 1,000,000 tonne precision cold rolled plate project	Grant	Yes
83	Subsidy for 1,000,000 tonne precision cold rolled plate project (Phase 2)	Grant	Yes

Program Number	Program name	Program Type	Countervailable subsidy received? (Yes/No)
84	Reconstruction of coal-fired boilers with 10 or less tons of steam	Grant	Yes
85	Special Fund for the Creation, Protection and Management of Intellectual Property Rights in Zhejiang Province in 2018	Grant	Yes
86	Business Bureau of Fuyang District, Hangzhou (Special Fund for the Development of Foreign Trade and Economic Cooperation of the Central Government in 2018)	Grant	Yes
87	Water-saving subsidy in Zhejiang Province	Grant	Yes
88	Safety Production Standardization Level II	Grant	Yes
89	Patent Funding in 2018	Grant	Yes
90	Commendation fund	Grant	Yes
91	Special Subsidy Fund for Open Economy and Finance in 2018	Grant	Yes
92	Financial Support Funds for Key Industrial Inputs and Machine Replacement Projects in 2018	Grant	Yes
93	Employee Unemployment Insurance Fund	Grant	Yes
94	Deduction and withholding of tax handling fees	Tax	No

**Table 15 – Investigated subsidy programs – China**

The commission's findings in relation to each program investigated are outlined in section A2 of **Non-confidential Appendix 2**.

### **7.3.2 Information the commission considered**

#### *7.3.2.1 Information from exporters*

There were no cooperating exporters from China in this investigation.

#### *7.3.2.2 Information from the Government of China*

In accordance with section 269TB(2C), the commission invited the GOC for consultations, during the consideration phase of the investigation, regarding Blue Scope's claims in relation to countervailable subsidies.

The GOC responded to the initiation of the investigation in a public submission.<sup>37</sup> There, the GOC outlined that a number of the programs BlueScope noted in its application are either expired (preferential tax programs for foreign invested enterprises) or lack evidence (in relation to government provision of goods at less than adequate remuneration and whether state-owned raw material suppliers are public bodies). The GOC also submitted that many of the alleged programs are relevant to districts ('the lowest administrative level

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<sup>37</sup> EPR 559, document 004.

in China'). It is therefore unlikely that any responding enterprises are located in the same district and are in receipt of the alleged programs.

On 30 July 2020, the commission sent a Government Questionnaire to the GOC, which included questions relating to each of the alleged subsidy programs identified in the application. The commission did not receive a completed questionnaire from the GOC.

#### *7.3.2.3 Other information considered as part of this assessment*

The commission also considered as part of this assessment:

- Information provided in the application.
- The GOC's information provided to the WTO in July 2019
- The commission's previous investigations into subsidies provided to Chinese exporters.

### **7.3.3 Chinese exporters**

#### *7.3.3.1 Non-cooperative Chinese entities*

The subsidy margin for non-cooperative entities is determined, pursuant to section 269TAACA, on the basis of all facts available and having regard to reasonable assumptions.

When determining the countervailable subsidies for non-cooperative entities, the Commissioner has made reasonable assumptions, so as to determine whether a countervailable subsidy has been received in respect of the goods and the amount of the countervailable subsidy.

Specifically, the commission has made the same assumptions as those made in Review 522. The commission has assumed that non-cooperative entities benefited from non-regional countervailable subsidies and the highest region-specific subsidy. The commission considers that this approach avoids the potential for double-count of similar programs between regions.

Additionally, the subsidy margin for each program is the higher of the margins applicable to each program based the commission's previous findings in respect of subsidies received for aluminium zinc products manufactured in China, consistent with the approach taken in Review 522.

Based on the information available to the commission, the commission has calculated a subsidy margin for non-cooperative entities of **20.8%**.

The commission's countervailable subsidy calculations are contained in **Confidential Attachment 7**.<sup>38</sup>

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<sup>38</sup> This attachment has been kept confidential as it contains commercially sensitive information relating to exporters.

## 7.4 Subsidy assessment - Vietnam

### 7.4.1 Investigated programs

BlueScope alleged the existence of a total 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>39</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	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
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

<sup>39</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)



Program Number	Program name	Program Type	Countervailable subsidy received? (Yes/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
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

Program Number	Program name	Program Type	Countervailable subsidy received? (Yes/No)
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 16 – Investigated subsidy programs – Vietnam**

The commission's findings in relation to each program investigated are outlined in section A3 of **Non-confidential Appendix A**.

## **7.4.2 Information the commission considered**

### **7.4.2.1 Information exporters provided**

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

### **7.4.2.2 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>40</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>41</sup>

#### **7.4.2.3 Other information considered as part of this assessment**

The commission also considered as part of this assessment:

- Information provided in the application.
- GOV's information provided in February 2020 in its notifications in the SCM Agreement.
- The commission's previous investigations into subsidies provided to Vietnamese exporters.

#### **7.4.3 Vietnamese exporters**

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

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

##### **7.4.3.2 Hoa Sen Group Joint Stock Company**

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

##### **7.4.3.3 Non-cooperative Vietnamese entities**

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

The commission has determined that non-cooperative entities may be in receipt of a benefit under Program 18 (Incentives on corporate income tax for enterprises operating in regions or sectors entitled to incentives) and that this program is countervailable.

As discussed in **Non-confidential Attachment A** (section A3), the commission has found the lowest preferential tax rate that eligible entities may receive is 10%. The commission considers that non-cooperative entities 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.

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

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<sup>40</sup> EPR 559, document 005.

<sup>41</sup> EPR 559, document 016.

average FOB export price for the investigation period of 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, based on the information before the commission.

Based on the information available to the commission, the commission has calculated a subsidy margin for non-cooperative entities of **0.2%**.

The commission's countervailable subsidy calculations for non-cooperative entities is contained in **Confidential Attachment 8**.<sup>42</sup>

## 7.5 Summary of subsidy margins

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

Exporter	Programs	Subsidy margin (%)
<b>China</b>		
Non-cooperative entities	Programs 1,5, 11-31, 33, 35-37, 40, 43-45, 48, 51-53, 55-58, 60-61, 63, 66-69, 72, 75-77 and 80-93.	20.8
<b>Vietnam</b>		
Nam Kim	None.	N/A
HSG	None.	N/A
Non-cooperative exporters	Program 18.	0.2

**Table 17 - Countervailable subsidies and subsidy margins for exporters<sup>43</sup>**

## 7.6 Volume of subsidised imports

Section 269TDA(7) provides that the Commissioner must terminate a countervailing investigation, in so far as it relates to a country, if satisfied that the total volume of goods that has been, or may have been, exported to Australia during a reasonable examination period and in respect of which a countervailable subsidy has been, or may be, received, is negligible.

Pursuant to section 269TDA(8), a negligible volume for both China and Vietnam is a volume less than 4% of the total volume of goods imported into Australia over a reasonable examination period.<sup>44</sup>

Using the ABF import database and having regard to the information collected and verified from the importers and exporters, the commission determined the volume of goods exported to Australia from China and Vietnam during the investigation period.

<sup>42</sup> This attachment is confidential as it contains commercially sensitive information relating to exporters.

<sup>43</sup> Full list of program names may be found at Table 15 (China) and Table 16 (Vietnam).

<sup>44</sup> China and Vietnam are classified as Developing Countries under Part 4, Division 1 of the *Customs Tariff Regulations 2004*.

Based on this information, the commission is satisfied that, when expressed as a percentage of the total Australian import volume of the goods and excluding Vietnamese cooperating entities, which were found not to have imported subsidised goods, the volume of subsidised goods from both China and Vietnam was 4% or greater of the total Australian import volume and is therefore not negligible.<sup>45</sup>

Accordingly, the Commissioner does not propose to terminate the subsidy investigation under section 269TDA(7).

## **7.7 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 both China and Vietnam is negligible if, when expressed as a percentage of the export price of the goods, the level of the subsidy is not more than 2%.<sup>46</sup>

### **7.7.1 China**

For all Chinese exporters, the commission is satisfied that the total level of countervailable subsidies, when expressed as a percentage of the export price of the goods, was 2% or more throughout the investigation period.

### **7.7.2 Vietnam**

For all Vietnamese exporters, the commission is satisfied that the total level of countervailable subsidies, when expressed as a percentage of the export price of the goods was never, at any time during the investigation period, 2% or greater.

Accordingly, the Commissioner proposes to terminate the countervailable subsidy investigation under section 269TDA(2) in respect of all Vietnamese exporters.

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<sup>45</sup> Confidential Attachment 3 – All other entities subsidy analysis, worksheet “All other entity import volume”.

<sup>46</sup> China and Vietnam are classified as Developing Countries under Part 4, Division 1 of the *Customs Tariff Regulations 2004*.

## 8 ECONOMIC CONDITION OF THE INDUSTRY

### 8.1 Preliminary finding

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

- reduced volume
- price suppression
- price depression
- loss of profits
- reduced profitability

### 8.2 Approach to injury analysis

The commission considers that the Australian industry consists solely of BlueScope.

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

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

### 8.3 Volume effects

#### 8.3.1 Sales volume

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

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

Period	YE Mar 2017	YE Mar 2018	YE Mar 2019	YE Mar 2020
Index of sales volume	100.0	107.3	94.2	99.1

Table 18 – Injury period change in sales volume

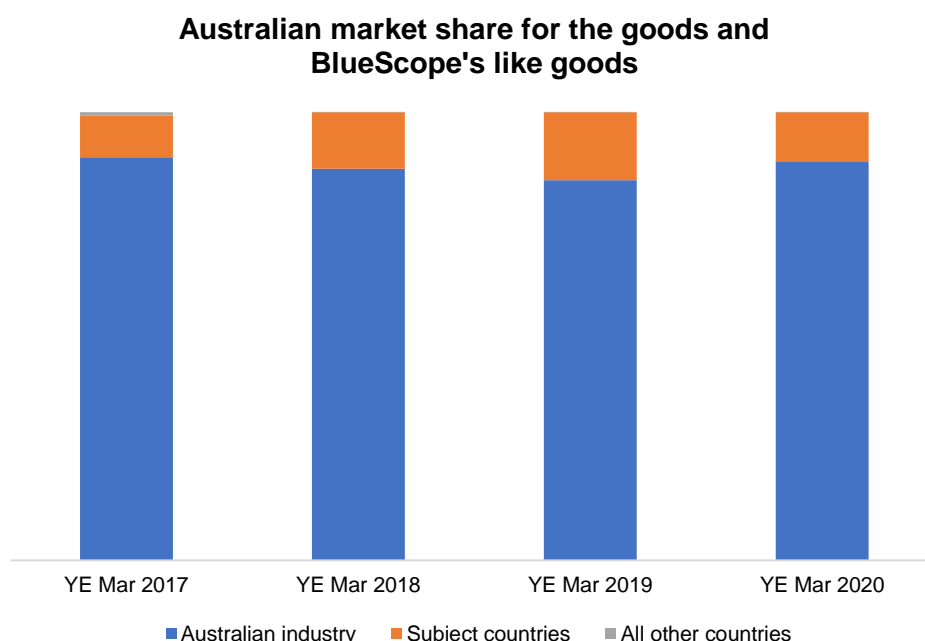
BlueScope's volumes of its like goods over the injury analysis period have generally trended downwards having decreased approximately 1%.

Based on this analysis, the commission considers that BlueScope has experienced injury in the form of loss of sales over the injury analysis period.

#### 8.3.2 Market share

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

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



**Figure 2 – Australian market share<sup>47</sup>**

The commission notes that BlueScope’s market share dropped between YE March 2017 and YE March 2019 after which it recovered to those recorded in YE March 2017 in the investigation period. The market share for subject countries has not changed overall, although it had increased to YE Mar 2019. The market share for non-subject countries has declined over the injury period such that there are no volumes in YE Mar 2019 and YE Mar 2020. During the injury analysis period the commission notes that imports from non-subject countries represented a miniscule proportion of the market (never more than 1% on the basis of volume).

Based on this analysis, the commission considers that BlueScope has experienced injury in the form of reduced market share during the injury analysis period, with a recovery in its market share during the investigation period.

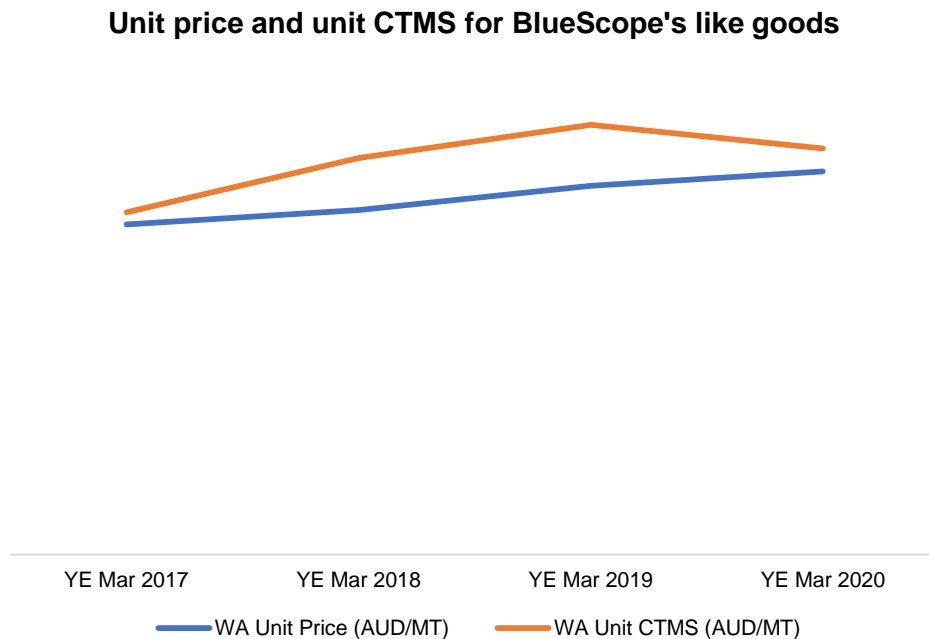
## 8.4 Price effects

### 8.4.1 Price suppression and depression

BlueScope claims that it has experienced injury in the form of both price depression and price suppression. Price depression occurs when a company, for some reason, lowers its prices. Price suppression occurs when price increases, which otherwise would have occurred, have been prevented. An indicator of price suppression may be the margin between prices and costs.

<sup>47</sup> Imports from non-subject countries are zero in YE March 2019 and YE March 2020.

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



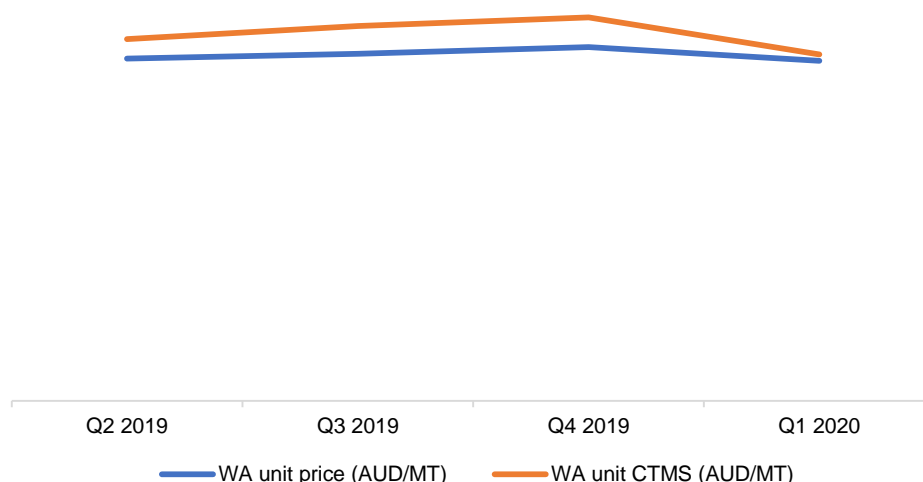
**Figure 3 – Injury period unit price and unit CTMS comparison**

Between YE Mar 2017 and YE Mar 2019, the increase in unit CTMS was greater than the increase in unit prices. However, between YE Mar 2019 and YE Mar 2020 the margin between unit price and unit CTMS narrowed. The unit selling price was below the unit CTMS for BlueScope’s like goods during the injury period. These observations are indicative of price suppression in the injury period. BlueScope’s prices increased overall during the injury period.

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



### Quarterly unit price and unit CTMS for BlueScope's like goods



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

Figure 4 indicates that during the investigation period BlueScope experienced:

- an increase in unit selling prices and unit CTMS from Q2 2019 to Q4 2019
- a reduction in unit selling prices and unit CTMS in the fourth quarter of the investigation period (Q1 2020)
- a pronounced reduction in unit CTMS in the fourth quarter
- a greater fall in unit selling prices than unit CTMS in the fourth quarter

#### 8.4.2 Conclusion – price effects

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

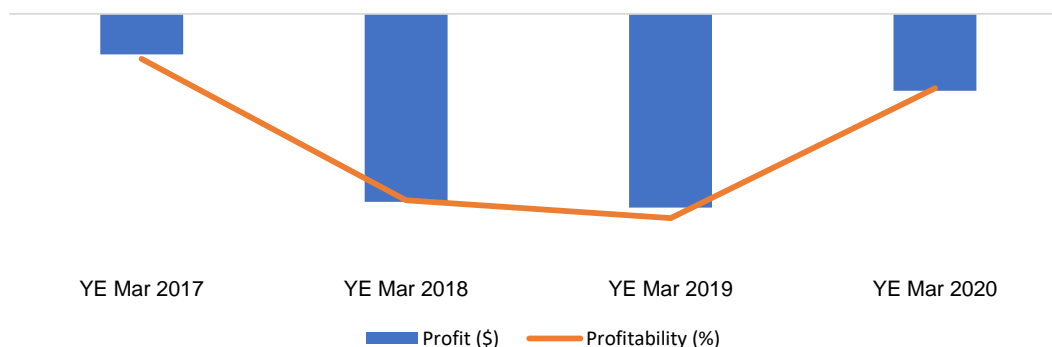
- price suppression is evident in the injury period
- price suppression and depression is evident in the fourth quarter of the investigation period.

### 8.5 Profits and profitability

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

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

## Profit and profitability of the goods over the injury period



**Figure 5 – Profit and profitability**

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

Based on this analysis, the commission considers that BlueScope has experienced injury in the form of loss of profits and reduced profitability during the investigation period.

## 8.6 Other economic factors

BlueScope also claims injury in the form of

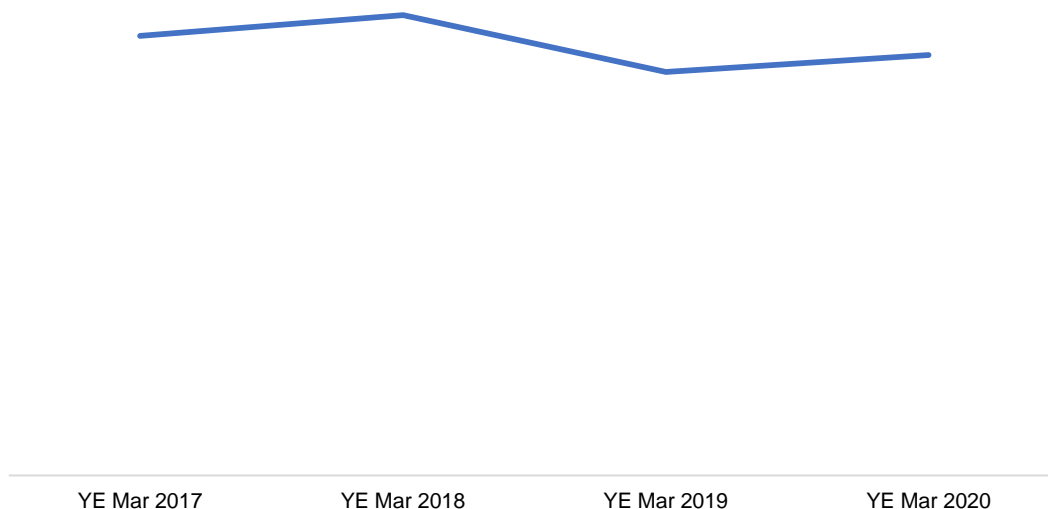
- reduced capacity utilisation
- reduced return on investment
- reduced productivity
- reduced capital investment.

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

### 8.6.1 Capacity utilisation

BlueScope's capacity utilisation for its like goods has fluctuated over the injury analysis period, declining overall but improving in the investigation period (refer to Figure 6 below).

### Capacity utilisation over the injury period



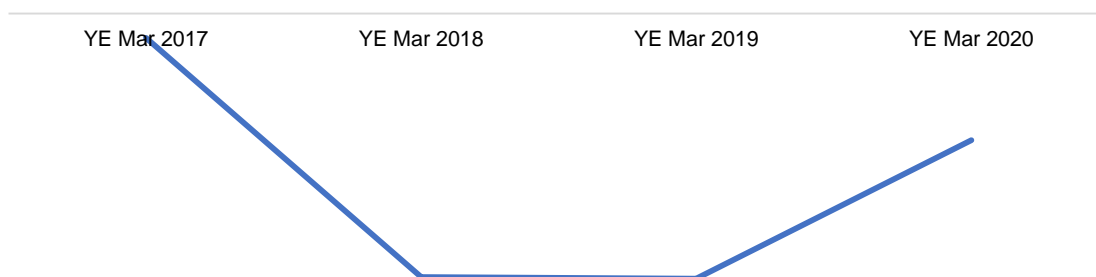
**Figure 6 – Capacity utilisation**

BlueScope has experienced injury in the form of reduced capacity utilisation with respect to its like goods in the injury period.

#### 8.6.2 Return on investment

BlueScope's return on investment for its like goods was negative at the start of the injury period and reduced overall during the injury analysis period (refer to Figure 7 below). BlueScope's return on investment has improved in the investigation period.

### Return on investment over the injury period

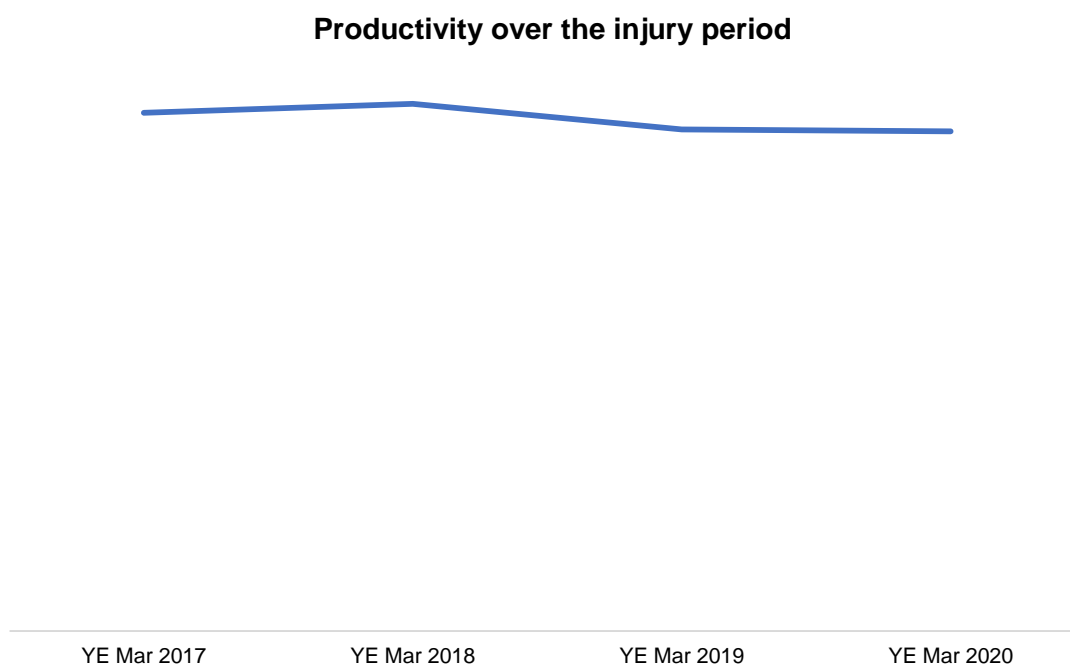


**Figure 7 – Return on investment**

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

### 8.6.3 Productivity

BlueScope claimed in its application that it had experienced injury in the form of reduced productivity and provided data in support of this claim. The productivity trend for the injury analysis period is at Figure 8. BlueScope's productivity for its like goods has declined 4% across the injury period.



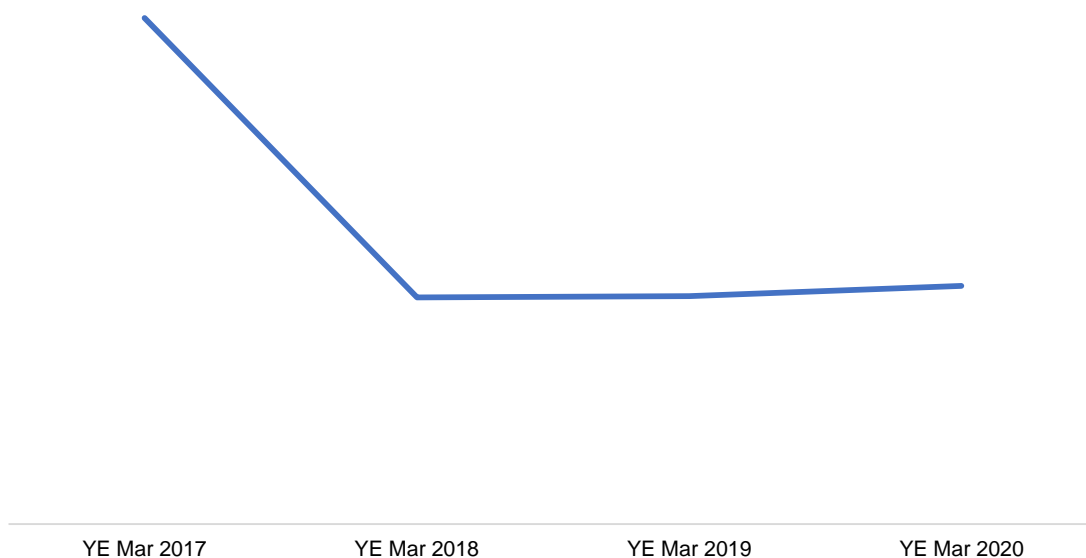
**Figure 8 – Productivity**

BlueScope has experienced injury in the form of reduced productivity with respect to its like goods in the injury analysis period.

### 8.6.4 Capital investment

BlueScope's capital investment for its like goods has declined overall during the injury analysis period, with a pronounced drop at YE Mar 2018 (refer to Figure 9).

### Capital investment over the injury period



**Figure 9 – Capital investment**

BlueScope has experienced injury in the form of reduced capital investment with respect to its like goods in the injury analysis period.

#### **8.6.5 Conclusion – other economic factors**

The commission is satisfied that BlueScope experienced injury in the form of reduced return on investment, reduced productivity and reduced capital investment in the injury analysis period.

## **9 HAVE DUMPING AND SUBSIDIES CAUSED MATERIAL INJURY?**

### **9.1 Preliminary assessment**

The Commissioner is preliminarily satisfied that the injury, if any, to the Australian industry from dumped and subsidised exports of the goods from China and dumped goods from Vietnam is negligible.

### **9.2 Legislative framework**

Under sections 269TG, 269TJ and 269TJA, one of the matters that the Minister must be satisfied of in order to publish a dumping duty and/or countervailing duty notice is that, because of dumping and subsidisation, the Australian industry has experienced material injury.<sup>48</sup>

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

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

In assessing material injury, the commission also has regard to the *Ministerial Direction on Material Injury 2012* (Material Injury Direction).<sup>49</sup>

### **9.3 Cumulative effect of injury**

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

- the margin of dumping established for each exporter and/or the amount of countervailable subsidy received is not negligible
- the volume of dumped and/or subsidised imports from each country is not negligible

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<sup>48</sup> Section 269TJA relates to concurrent dumping and countervailable subsidisation. This provision provides that, where goods are both dumped and subsidised, and because of the combined effects of the dumping and the amount of countervailable subsidy received in respect of the goods, material injury to an Australian industry producing like goods has been or is being caused, the Minister may publish a notice under either sections 269TG(1), 269TG(2), 269TJ(1) or 269TJ(2) or notices under such sections at the same time. Section 269TJA is relevant in this investigation due to the combined dumping and subsidisation in relation to goods exported to Australia from China and Vietnam by uncooperative exporters.

<sup>49</sup> ADN 2012/024.

- a cumulative assessment is appropriate in light of the conditions of competition between the imported goods, and between all of the imported goods and the like domestic goods.

As detailed in chapters 6 and 7 above, the commission assessed the dumping and subsidy margins for Chinese exporters and the dumping margins for Vietnamese exporters, and found that they were above negligible levels (except for Nam Kim).

The commission ascertained that the volume of dumped exports from China and Vietnam were not negligible.<sup>50</sup>

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

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

## 9.4 Approach to causation analysis

As outlined in chapter 8, the commission considers that the Australian industry has experienced injury in the investigation period in the form of price suppression, loss of profits and reduced profitability. This injury has coincided with the presence of dumped and subsidised goods from the subject countries - specifically dumped and subsidised goods from China, and dumped goods from Vietnam. This section will analyse whether dumping caused injury to the Australian industry and whether that injury is material.

The following evidence was examined for the purposes of assessing injury and causation in this SEF:

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

The data supporting the commission's analysis of causation (volume and price effects), as detailed in the remainder of this chapter, is at **Confidential Attachment 9**.

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<sup>50</sup> Confidential Attachment 1 – Australian market

## 9.5 Size of dumping and subsidy margins

Sections 269TAE(1)(aa) and 269TAE(1)(ab) provide that regard may be given to the size of each of the dumping and subsidy margins worked out in respect of the goods of that kind that have been exported to Australia. The dumping and subsidy margins are reproduced below.

Country	Exporter	Dumping margin (%)	Subsidy margin (%)
China	Uncooperative exporters	2.9	20.8
Vietnam	HSG	9.3	N/A
	Nam Kim	-7.2	N/A
	Uncooperative exporters	12.5	0.2

**Table 19 – Summary of dumping and subsidy margins**

As set out in section 6.6.5, in accordance with section 269TDA(1), the Commissioner has preliminarily determined that the investigation as it relates to Nam Kim will be terminated, subject to submissions, on the basis that Nam Kim did not export the goods at dumped prices.

As set out in section 7.7.2 of this report, in accordance with section 269TDA(2), the Commissioner has preliminarily determined that the investigation into subsidised goods from Vietnam will be terminated in its entirety, subject to submissions, on the basis that there has been no or negligible subsidisation from those exporters of the goods the subject of the application.

## 9.6 BlueScope's examples of competition with imports

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

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

In its application BlueScope provided 5 relevant examples of price negotiation.<sup>51</sup> During the Australian industry verification visit, BlueScope provided 2 additional relevant examples.<sup>52</sup>

Two of the examples include supporting evidence of price undercutting in which BlueScope alleges it reduced its prices to compete with dumped and subsidised goods imported from China. The commission is satisfied that both of the examples BlueScope provided in relation to China demonstrate price competition with dumped and subsidised Chinese imports of the goods where BlueScope experienced downward pressure to its sales offering.

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<sup>51</sup> A sixth example provided by BlueScope in its application referred to competition between its aluminium zinc coated steel greater than or equal to 600 mm, which are not goods relevant to this investigation.

<sup>52</sup> These examples were provided in BlueScope's application for Investigation 558, and were later indicated by BlueScope during the Australian Industry verification as being relevant to this investigation.



Five of the examples include supporting evidence of price undercutting in which BlueScope alleges it reduced its prices to compete with dumped goods imported from Vietnam. All of the examples referred to negotiations with BlueScope's customers where imports of the goods from Vietnam were considered in the prices BlueScope's customers offered.

Of BlueScope's examples of price competition with Vietnamese exports, BlueScope provided 4 examples that referred to competition with the Vietnamese exporter Nam Kim. Since Nam Kim's imports of the goods were found not to be dumped or subsidised in the investigation period, the commission has disregarded those examples as evidence of price undercutting from dumped or subsidised imports. However, the commission notes that the examples do evidence price competition between BlueScope and Vietnamese imports generally.

Of BlueScope's examples of price competition with Vietnamese exports, the commission is satisfied that one of BlueScope's examples evidences price competition with dumped imports from the Vietnamese exporter HSG that exerted downwards pressure on BlueScope's prices. However, this example also evidences price competition with imports of the goods from a non-subject country, priced at a similar level to HSG.

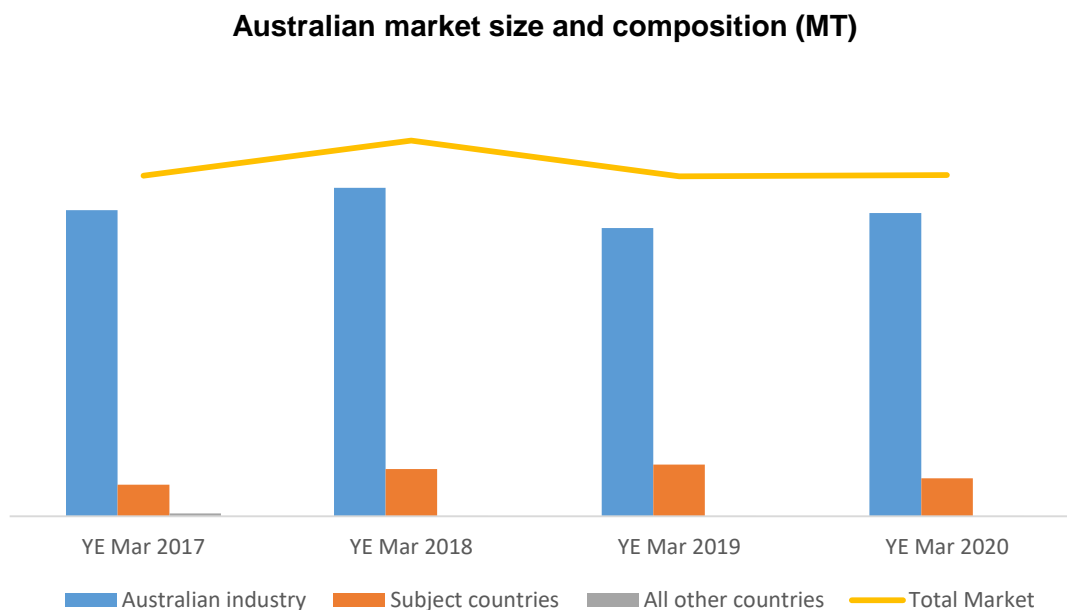
Overall, the commission finds that in BlueScope's provided examples of undercutting evidences price competition between BlueScope and both dumped and un-dumped imports.

The commission's assessment of BlueScope's price negotiation examples is at **Confidential attachment 10**.

## **9.7 Volume effects**

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

Figure 10 below illustrates the size and composition of the Australian market during the injury analysis period.



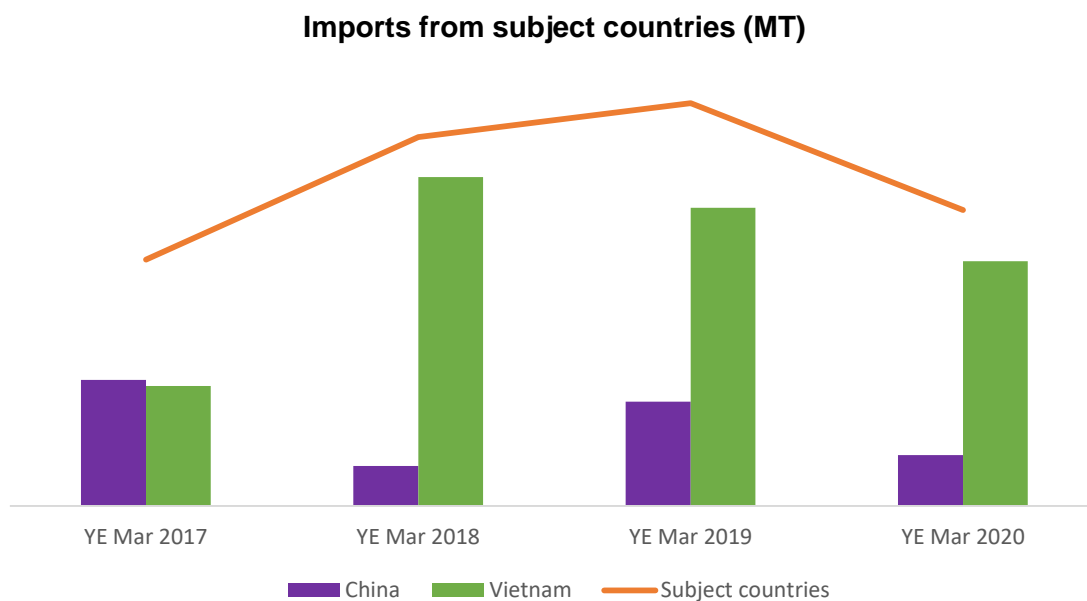
**Figure 10 – Australian market size and composition (MT)<sup>53</sup>**

Figure 10 indicates that the size of the Australian market was generally stagnant during the injury period. A period of growth observed at YE Mar 2018 appears to coincide with a rise in volumes for the Australian industry and from subject country imports. A decline in YE Mar 2019 back to YE Mar 2017 volumes is observed wherein the Australian industry lost volume, coinciding with a further increase in subject country import volumes. During the investigation period the Australian industry appears to have experienced a recovery back to its YE March 2017 volumes, having taken back volumes from imports. The Australian industry experienced no material change in sales volumes over the injury period. In comparison, imports from the subject countries experienced an increase in sales volume of approximately 20%. Imports from other sources were a negligible volume across the injury period.

Because of these movements in sales volumes, and as discussed in section 8.3.1, the Australian industry's market share has increased into the investigation period, though it remains below the share held at the outset of the injury analysis period. Non-subject countries that had a small presence at the start of the injury period have all but exited the market at the end of the injury period, with subject country imports taking that market share.

Figure 11 charts the subject country imports.

<sup>53</sup> Note that the volumes of all other countries are too small to resolve for YE Mar 2017 and YE Mar 2018, and are zero in the remaining periods.

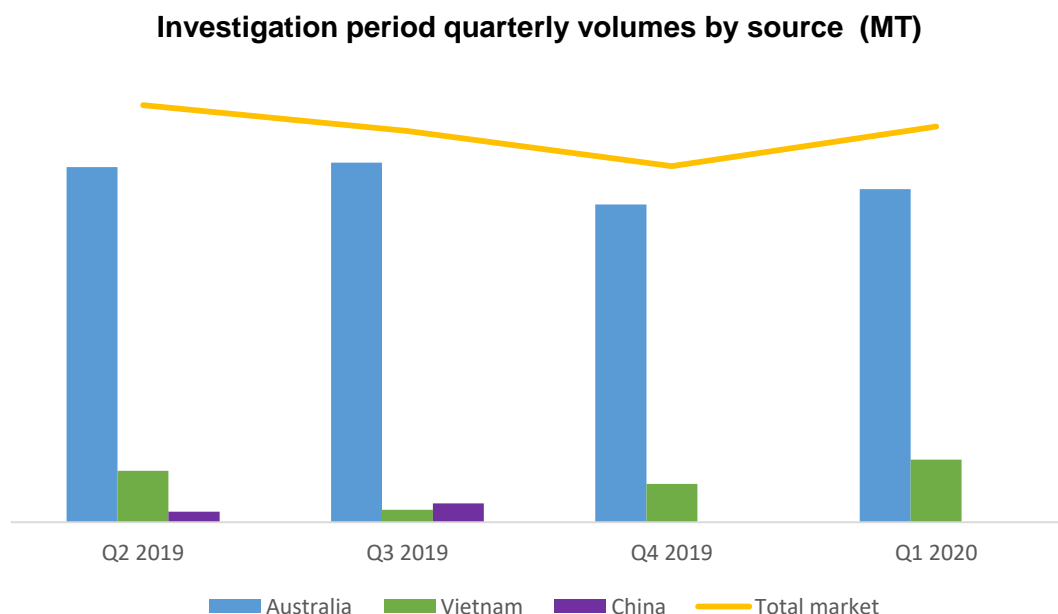


**Figure 11 – Composition of imports from subject countries over the injury period (MT)**

Figure 11 shows China and Vietnam had equivalent volumes at the start of the injury period. Imports of the goods from China and Vietnam collectively increased at its highest rate in YE Mar 2018 and reached a maximum at YE Mar 2019, after which time import volumes from those sources declined in the investigation period. Imports from China do not show any particular trend, whilst imports from Vietnam are the largest source of the goods in the injury period except YE Mar 2017, but have been declining since YE Mar 2018.

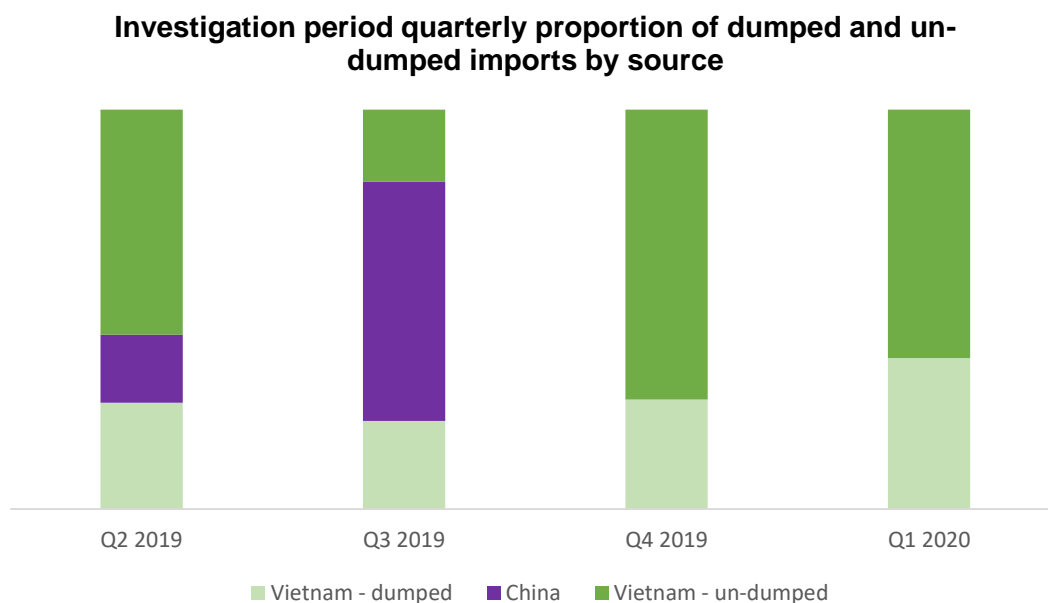
In the investigation period (as shown in Figure 12):

- BlueScope's sales volumes decreased to 2019 Q4, with a partial recovery in 2020 Q1 but an overall drop of 6%
- the volumes of exports from Vietnam declined to 2019 Q4 then recovered in 2020 Q1 with an overall increase of volumes of 20%
- the volume of exports from China declined to zero after 2019 Q3.



**Figure 12 – Investigation period quarterly volumes and their source (MT)<sup>54</sup>**

All imports from China were dumped and subsidised, and approximately 35% of imports from Vietnam were dumped, during the investigation period. In total, 45% of the volume of the goods exported from the subject countries to Australia during the investigation period were dumped or both dumped and subsidised (15% from China, 30% from Vietnam). On a quarterly basis this can be represented as per Figure 13.



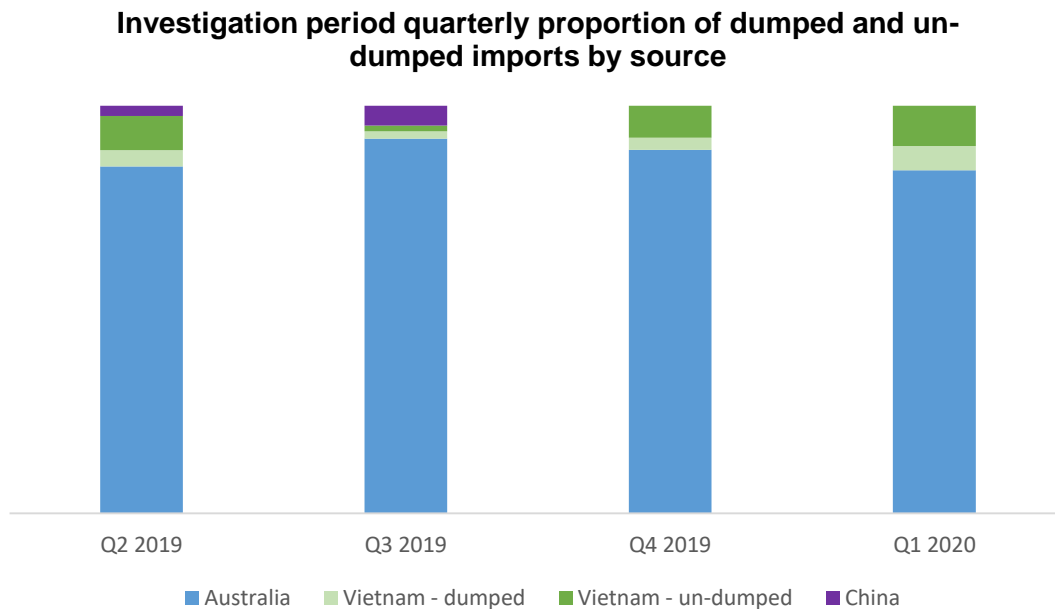
**Figure 13 – Investigation period quarterly import volumes, dumped and un-dumped, and their source<sup>55</sup>**

<sup>54</sup> There were no volumes from China in the last 2 quarters of the investigation period.

<sup>55</sup> There were no volumes from China in the last 2 quarters of the investigation period.

Figure 13 shows that except 2019 Q3 (where dumped and subsidised Chinese imports represented the majority of imports but have subsequently left the market), the majority of imports from the subject countries were un-dumped and not subsidised.

Figure 14 shows that BlueScope lost market share, which decreased from Q2 2019, to primarily un-dumped Vietnamese imports over the investigation period.



**Figure 14 – Investigation period quarterly market share and their source<sup>56</sup>**

The commission notes that dumped imports from Vietnam increase in market share at the end of the investigation period, however the rate of increase of un-dumped goods is larger than that for dumped goods. In the investigation period, import volumes from China represented less than 2% of the Australian market in the investigation period. In relation to Vietnam, dumped imports represent less than 4% of the Australian market.

The commission identified that the major source of exports from China was from an Australian importer who sourced the goods exclusively from the export market and, with regard to its imports from China, from one Chinese supplier. This importer was not a customer of BlueScope in the investigation period. Other than this importer, the commission observes that the remaining volumes from China are immaterial and unlikely to have an impact on either the market or on BlueScope's economic position.<sup>57</sup>

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

<sup>56</sup> There were no volumes from China in the last 2 quarters of the investigation period.

<sup>57</sup> The commission notes that the volumes from China following the investigation period were immaterial.

The commission considers that the proportion of dumped and subsidised imports in the Australian market during the period of investigation does not appear causally linked to any volume injury BlueScope may have experienced in the investigation period.

Consequently, the commission considers that dumped and subsidised imports from China or dumped imports from Vietnam have not caused volume injury to BlueScope.

## **9.8 Price effects**

### **9.8.1 Price undercutting assessment**

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

As detailed in section 8.4.1, the commission considers that price suppression and depression is evident in the fourth quarter of the investigation period.

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

In the absence of verified importer sales data, the commission calculated FIS selling prices for imports as the sum of:

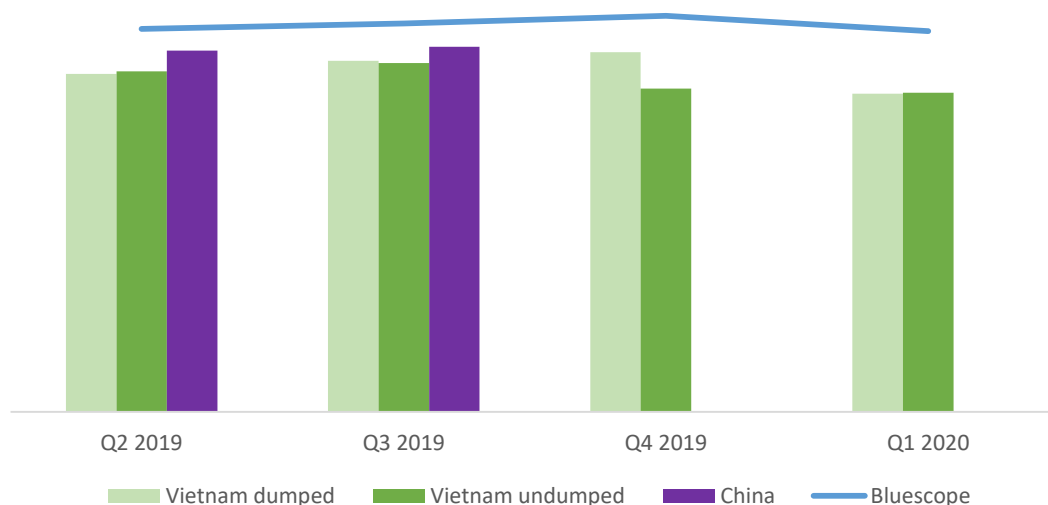
- the FOB export price from the ABF import database (for aggregate price comparisons), or the FOB export price from verified exporters data (for MCC level price comparison, using cooperative Vietnamese exporters' data)
- the weighted average post-FOB exportation costs applicable to each country of export based on the best available verified importer importation costs (for Vietnam data was available from the one participating importer, for China the best available information was from Review 522) and
- an amount for SG&A and profit for each country based on the best available verified importer SG&A and profit (for Vietnam data was available from the one participating importer, for China the best available information was from Review 522).<sup>58</sup>

Figure 15 illustrates the commission's price undercutting analysis at an aggregate level, with a comparison of dumped and un-dumped aggregate unit prices.

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<sup>58</sup> One importer from Vietnam participated in the investigation however its small volume did not allow for a sufficient representative sample of MCCs and prices that were suitable for comparison.

### Quarterly price comparison (all models)



**Figure 15 – Investigation period quarterly volumes and their source (MT)<sup>59</sup>**

The commission observes that import prices, whether they be dumped or un-dumped, undercut BlueScope in all quarters of the period of investigation. However, there is no clear price leader evident in this aggregate analysis as the lowest price alternates between dumped and un-dumped imports. The commission also observes that Chinese prices were undercutting BlueScope to a lesser degree than Vietnamese imports and are only present in the first 2 quarters of the investigation period. Price depression and suppression was only evident in the fourth quarter of the investigation period (refer to section 8.4.1).

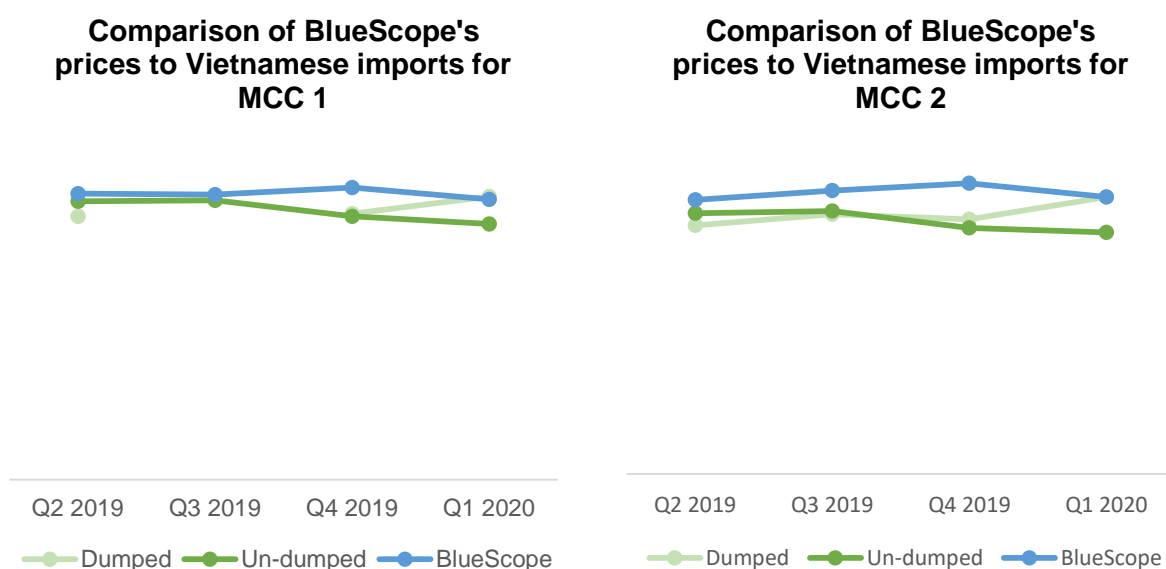
The commission undertook an MCC level price analysis. Since there were no cooperating Chinese exporters, the commission is unable to do a MCC level price analysis for Chinese imports. However, verified Vietnamese exporters' data can be utilised to conduct a MCC level price analysis. The commission calculated FIS prices of Vietnamese imports as described above. Verified Vietnamese exporters make up 88% of Vietnamese import volumes and 74% of total import volumes.

The commission notes that all of the import volumes from cooperating Vietnamese exporters compete against BlueScope at the MCC level. For the 2 largest MCCs sold by BlueScope (which constitute 59% of BlueScope's sales volume and 77% of verified Vietnamese imports), the commission find similar price trends. With reference to Figure 16:

- Vietnamese imports undercut BlueScope for MCC one and MCC 2 in every quarter of the investigation period.
- Dumped Vietnamese imports have the lowest price in the first quarter of the investigation period.

<sup>59</sup> There were no volumes from China in the last 2 quarters of the investigation period.

- Other than the first quarter, un-dumped imports are the lowest price for both MCC one and MCC 2.
- In the final quarter of the investigation period BlueScope and dumped Vietnamese imports had the same unit price. Un-dumped Vietnamese imports for MCC one and MCC 2 undercut BlueScope and dumped imports.
- BlueScope's unit price trend during the investigation period appears to be more closely aligned with the un-dumped Vietnamese imports than the dumped imports.



**Figure 16 – Comparison of BlueScope's FIS unit price to dumped and un-dumped FIS prices of verified Vietnamese imports for MCC 1 (left) and MCC 2 (right)**

Expanding this analysis to BlueScope's top 5 MCCs sold in the investigation period (which represents 90% of BlueScope's investigation period volumes), the commission has examined the degree of undercutting from the lowest priced dumped and un-dumped Vietnamese exporter on a quarterly basis (Table 20).

MCC	Q2 2019		Q3 2019		Q4 2019		Q1 2020	
	Source	%	Source	%	Source	%	Source	%
MCC 1	Dumped	8%	Un-dumped	2%	Un-dumped	9%	Un-dumped	9%
MCC 2	Dumped	9%	Dumped	8%	Un-dumped	15%	Un-dumped	13%
MCC 3	N/A	N/A	N/A	N/A	Un-dumped	10%	Dumped	14%
MCC 4	N/A	N/A	Dumped	21%	Un-dumped	20%	Un-dumped	20%

**Table 20 – Magnitude of quarterly price undercutting at the MCC level, with export source identified as being dumped or un-dumped.**

The analysis at Table 20 shows that BlueScope was undercut from mostly un-dumped Vietnamese imports, particularly in the latter half of the investigation period (with the maximum degree of undercutting ranging from 2% to 20%). Dumped imports generally undercut BlueScope in the first half of the investigation period (with the maximum degree of undercutting ranging from 8% to 21%). In the investigation period, there are more instances where un-dumped goods are the lowest price compared to dumped goods.



The commission's MCC level analysis demonstrates that Vietnamese imports undercut BlueScope in direct competition with BlueScope's product offering. As noted above, the volumes of un-dumped goods from Vietnam are greater than the proportion of the total dumped goods from Vietnam. This, along with the MCC level analysis, indicates that most of the competition between Vietnam and Australian industry in the investigation period appears to be with un-dumped goods.

BlueScope's examples of undercutting (refer to section 9.6) evidence BlueScope's consideration of import competition, specifically imports from the subject countries. As discussed in section 9.6, in relation to Vietnam, the undercutting examples evidence competition in the market, and not exclusively competition with dumped imports.

As indicated at section 9.6, the examples also evidence dumped imports from China putting downwards pressure on BlueScope's prices. The commission assessed that for one of the examples, BlueScope revised down its price offering approximately 2%. However as observed in Table 20 China's volumes have dropped to zero over the investigation period and as observed in Table 20 China's prices, while dumped and subsidised and undercutting BlueScope, were at no time during the investigation period the lowest price.

The commission finds that in relation to imports from China in the investigation period:

- dumped and subsidised Chinese imports represent less than 2% of the market for the goods
- Chinese imports undercut BlueScope in the first 2 quarters, after which China is not present in the market, whereas price injury was observed in the fourth quarter of the investigation period
- Chinese prices are never the lowest price in the market, being higher than dumped and un-dumped imports from Vietnam in the first 2 quarters
- any price injury to BlueScope from dumped and subsidised Chinese imports is considered negligible
- there appears to be no causal link between dumped imports from China and any injury BlueScope may have experienced

The commission finds that in relation to imports from Vietnam in the investigation period:

- dumped Vietnamese imports represent less than 4% of the market for the goods
- BlueScope competes directly with Vietnamese imports at an MCC level and dumped and un-dumped Vietnamese imports undercut BlueScope in every quarter
- un-dumped Vietnamese imports generally undercut BlueScope to a greater degree and more frequently than dumped imports
- BlueScope's prices do not appear to be closely aligned to the prices of dumped Vietnamese imports
- there appears to be no causal link between dumped imports from Vietnam and any injury BlueScope may have experienced
- the impact from dumped Vietnamese imports on BlueScope's prices is considered negligible.

Finally, the commission also finds that in relation to imports from both China and Vietnam during the investigation period, the injury to the Australian industry that has been caused

by dumped and subsidised goods from both China and Vietnam, cumulatively taken together, is negligible. The commission makes this finding in accordance with section 269TDA(13) and (13A), and section 269TDA(14) and (14A) and section 269TDA(14B). The commission considers that the injury to the Australian industry that has been caused by un-dumped imports is having a greater impact than dumped imports.

### **9.8.2 Factors other than dumping causing injury**

Subsection 269TAE(2A) requires the Minister to consider whether injury to an industry is being caused or threatened by factors other than the exportation of the goods. This provision contains a list of factors that the Minister may have regard to when considering whether injury is being caused by factors other than exportation of the goods, but it is not an exhaustive list.

In its application, BlueScope indicated that other possible causes of injury might be energy costs. The commission also considers, based on its undercutting analysis at section 9.8.1, that un-dumped goods have also have caused injury to BlueScope.

Noting the commission's finding that the injury, if any, BlueScope experienced that dumped goods caused is negligible, the commission has not examined these factors in detail for the purposes of this SEF.

### **9.8.3 Preliminary findings**

The commission preliminarily finds that any injury that BlueScope experienced from dumped and subsidised imports from China or dumped imports from Vietnam is negligible.

## **9.9 Submission regarding material injury**

Ferrostaal submitted that several factors (global steel supply shortages, high demand for steel products, BlueScope operating at full capacity) that have put upward pressure on steel prices.<sup>60</sup> Ferrostaal consider that if the Australian industry was experiencing any injury due to imports in the investigation period, there is no evidence that they are experiencing injury subsequent to the investigation period.

The commission notes that BlueScope's subsequent overall company performance is not necessarily directly relevant to the considerations that apply to this investigation, in particular because a company may be profitable overall and yet still suffer injury. However, the commission preliminarily finds that any injury that BlueScope experienced from dumped and subsidised imports from China or dumped imports from Vietnam is negligible. Since the commission proposes to terminate the investigation in its entirety Ferrostaal's submission has not been considered any further.

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<sup>60</sup> EPR 559, document 024.

## 10 PROPOSAL TO TERMINATE THE INVESTIGATION

### 10.1 Overview of termination

Section 269TDA sets out the circumstances in which the Commissioner must terminate an investigation.

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

- the dumping investigation in relation to cooperative Vietnamese exporter Nam Kim, on the basis that Nam Kim's exports of the goods were not at dumped prices, in accordance with section 269TDA(1)(b)(i)
- the countervailing investigation in relation to all exporters from Vietnam, on the basis that:
  - in respect of Nam Kim and HSG, no countervailable subsidy has been received in respect of any of those goods pursuant to section 269TDA(2)(b)(i) and
  - in respect of non-cooperative entities, a countervailable subsidy has been received in respect of some or all of those goods but it never, at any time during the investigation period, exceeded the negligible level, pursuant to section 269TDA(2)(b)(ii).
- the dumping and countervailing investigation in relation to all exporters from China, and the dumping investigation in relation to exporters from Vietnam (except Nam Kim), on the basis that the injury, if any, to the Australian industry that has been caused is negligible in accordance with 269TDA(13A) and 269TDA(14).

### 10.2 Non-injurious price

As the Commissioner is proposing to terminate the investigation in its entirety, the Commissioner is not recommending that the Minister publish a notice under sections 269TG(1) or (2). As such, there is no requirement for the Commissioner to make a recommendation regarding whether the Minister should consider the desirability of fixing a lesser amount of duty for the purposes of removing injury, pursuant to the *Customs Tariff (Anti-Dumping) Act 1975*.

## APPENDICES AND ATTACHMENTS

<b>Non-confidential Appendix A</b>	Assessment of subsidy programs
<b>Non-confidential Appendix B</b>	Market situation assessment - Vietnam
<b>Confidential Attachment 1</b>	Australian market analysis
<b>Confidential Attachment 2</b>	China - uncooperative and all other export rate calculation
<b>Confidential Attachment 3</b>	Volume of dumped imports
<b>Confidential Attachment 4</b>	HSG – variable factors
<b>Confidential Attachment 5</b>	Nam Kim – variable factors
<b>Confidential Attachment 6</b>	Vietnam - uncooperative and all other export rate calculation
<b>Confidential Attachment 7</b>	China - uncooperative and all other exporters – subsidies
<b>Confidential Attachment 8</b>	Vietnam - uncooperative and all other exporters – subsidies
<b>Confidential Attachment 9</b>	Causation analysis
<b>Confidential Attachment 10</b>	BlueScope's price negotiation examples
<b>Confidential Attachment 11</b>	Preferential loan benchmark calculation
<b>Confidential Attachment 12</b>	Vietnamese market situation analysis

## **APPENDIX A ASSESSMENT OF ALLEGED SUBSIDY PROGRAMS**

### **A1 Introduction**

#### **A1.1 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.

#### **A1.2 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.

#### **A1.3 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>61</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.
- 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>62</sup>

#### **A1.4 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
- ‘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.

## **A2 Assessment of Programs – China**

There are 94 existing subsidy programs that currently apply to aluminium zinc coated steel exported from China, having been assessed in Review No. 522. The findings in relation to all 94 existing programs relevant to the subject goods exported from China, and the commission’s preliminary assessment of the countervailability of each, is outlined

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<sup>61</sup> DS379 United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China.

<sup>62</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]

in Table 17. An overview of the commission's considerations with respect to these existing programs follows below.

## **A2.1 Definition of Government, public and private bodies**

In Investigation No.193 Programs 1 to 3 were found countervailable with respect to Chinese exporters of aluminium zinc coated steel and zinc coated (galvanised) steel.<sup>63</sup> However, following a review of the findings made in Investigation No. 193 by the Anti-Dumping Review Panel (ADRP), the countervailing duty notice was altered so as to reduce the applicable countervailable subsidies by the amounts referable to Programs 1 to 3 as described in REP 193,<sup>64</sup> with retrospective effect from 5 August 2013. The ADRP found that the then International Trade Remedies Branch of the Australian Customs and Border Protection Service did not have a sufficient basis for finding that the state invested enterprises (SIEs) producing HRC, coking coal or coke could be considered public bodies in the meaning of section 269T(1).<sup>65</sup>

Subsequently, the countervailability of Programs 1 to 3 have been the subject of the commission's examination with aluminium zinc coated steel, and other goods besides the subject goods, exported from China to Australia. Most recently, the commission found that:

- In a Review of Anti-Dumping Measures in relation to hollow structural sections exported to Australia from China which concluded in 2018, a program entitled 'Hot rolled steel provided by government at less than fair market value' (corresponding to Program 1 as per Table 15, but designated Program 20 in *Anti-Dumping Commission Report No. 419*) was countervailable<sup>66</sup>
- In Investigation 466 in relation to railway wheels exported to Australia from China which concluded in 2019, a program entitled 'Coking coal provided by government at less than adequate remuneration' (corresponding to Program 2 as per Table 15, and designated Program 2 in *Anti-Dumping Commission Termination Report No. 466*) was countervailable<sup>67</sup>
- In Investigation 322 and 331 in relation to steel reinforcing bar and rod in coils, respectively, exported to Australia from China, both of which concluded in 2016,<sup>68</sup> a program entitled 'Coke provided by government at less than adequate remuneration' (corresponding to Program 3 as per Table 15, and designated Program 3 in *Anti-Dumping Commission Report No. 322* and *Anti-Dumping Commission Report No. 331*) was countervailable.

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<sup>63</sup> REP 193 investigated the subsidisation of aluminium zinc coated steel and galvanised steel exported from China.

Due to the close nature of these products and common interested parties, findings from both countervailing investigations were detailed in the one report.

<sup>64</sup> ADN 2014/012.

<sup>65</sup> ADRP recommendation report titled *Zinc Coated (Galvanised) Steel & Aluminium Zinc Coated Steel exported from the People's Republic of China*, 15/11/2013.

<sup>66</sup> EPR 419.

<sup>67</sup> EPR 466.

<sup>68</sup> EPR 322 and EPR 331.

Each of the aforementioned inquiries also assessed whether SIE's constitute public bodies in the meaning of section 269T(1) and found that SIE's producing steel raw materials continued to be considered as 'public bodies' for the purposes of the definition of 'subsidy' under the Act.

The commission considers that no new information has been provided that would warrant a reconsideration of the determinations made in previous inquiries and, in conjunction with the assessment of SIEs as public bodies for the current review (refer to Non-Confidential Appendix C), wherein it was found that SIE's constitute public bodies in the meaning of section 269T(1), the commission has maintained its position that Programs 1 to 3 are countervailable. No amount of countervailable subsidy was determined in relation to Programs 1 to 3 for the cooperative exporters during the investigation period.

The commission has examined the cooperating exporters' data from previous inquiries into the goods as there were no-cooperating exporters in this investigation. In these previous inquiries, the commission found that a majority of previous exporters were not vertically integrated and because coke and coking coal are not inputs to their production, none of the exporters could be in receipt of Programs 2 or 3. As such, the commission does not have sufficient relevant information to find that any exporters of the goods from China would have received a benefit in respect of Programs 2 and 3. Therefore, the commission has excluded Programs 2 and 3 from the calculation of the uncooperative subsidy rate.

## **A2.2 Assessment of existing preferential tax policies**

Programs 4-8 and 10 were found countervailable in the Investigation No. 193 and again in subsequent reviews for aluminium zinc coated steel. Programs 51 and 56 were found to be countervailable in the Review No. 409 and again in subsequent reviews for aluminium zinc coated steel.

The commission is not aware of the current status of the existing preferential tax policies given that the GOC has declined to participate in the current investigation. The commission considers that no new information has been provided that would warrant a reconsideration of the determinations made in previous inquiries, and has therefore maintained its position that these programs are countervailable.

Program 94 was not found to be countervailable in Review No. 522 for aluminium zinc coated steel. The commission considers that no new information has been provided that would warrant a reconsideration of the determinations made in previous inquiries, and has therefore maintained its position that this program is not countervailable.

## **A2.3 Assessment of existing tariff and VAT exemptions**

Programs 11 and 34 were found to be countervailable in the Investigation No. 193 and again in subsequent reviews for aluminium zinc coated steel.

The commission is not aware of the current status of these programs given that the GOC has declined to participate in this investigation. The commission considers it likely that these same or very similar programs are still operating in China and are either no longer being received by the selected cooperating exporters or were declared under new program titles.



The commission considers that no new information has been provided that would warrant a reconsideration of the determinations made in the previous inquiries, and has therefore maintained its position that these programs are countervailable.

#### **A2.4 Assessment of existing grant programs relevant to aluminium zinc coated steel**

Programs 9, 12 to 33 and 35 to 36 were found countervailable in the Investigation No. 193 and again in subsequent reviews for aluminium zinc coated steel.

The commission first assessed Programs 37 to 50, 52 to 60 and 62 to 72 in Review nos. 409 and 410 wherein Programs 37, 40, 43 to 45, 48, 52 to 53, 55 to 58, 60, 62, 63, 66 to 72 were found countervailable.

Programs 73 to 74 and 76 to 80 were first assessed and found countervailable by the commission in Accelerated Review No. 519.<sup>69</sup>

Programs 62, 70, 71, 73, 74, 78 and 79 appear to relate to particular periods of time (for example, particular calendar years) which are prior to the investigation period. The commission considers that these programs are no longer relevant or have been superseded (programs which have superseded some of these programs have been assessed as new programs in section B5.2).

As such, the findings made in prior inquiries regarding the countervailability of Programs 62, 70, 71, 73, 74, 78 and 79 is maintained, however since the commission considers that no exporters could have benefited from these programs in the investigation period, they have not been included in the calculation of the non-cooperative subsidy rate for exporters of aluminium zinc coated steel from China.

The commission is not aware of the current status of these programs given that the GOC did not provide evidence in relation to this investigation. The commission considers it likely that these same or very similar programs are still operating in China and are either no longer being received by the non-cooperating exporters or were declared under new program titles.

The commission considers that no new information has been provided that would warrant a reconsideration of the determinations made in the previous inquiries, and has therefore maintained its position that these programs are countervailable.

Programs 81 to 93 were found countervailable in the Review No. 522 for aluminium zinc coated steel.

The commission is not aware of the current status of the grant programs given that the GOC has declined to participate in the current investigation. The commission considers that no new information has been provided that would warrant a reconsideration of the

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<sup>69</sup> The program numbers used in Accelerated Review No. 519 differ from those used in the present investigation.

determinations made in previous inquiries, and has therefore maintained its position that these programs are countervailable.

## **A3 Assessment of Programs – Vietnam**

### **A3.1 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 Measures* published in March 2013 (2013 Vietnam Subsidy Notice).<sup>70</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>71</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.

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<sup>70</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>71</sup> Available on the WTO website at <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/SCM/N284VNM.pdf&Open=True>

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.

### **A3.2 Corporate Income Tax Programs**

Corporate income taxation in Vietnam is governed by the *Law Amending and supplementing a number of articles of Law on Corporate Income Tax 2008* (the Amended Law 2013)<sup>72</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>73</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>74</sup> into zinc coated galvanised steel from India, Malaysia and Vietnam.

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<sup>72</sup> EPR 559, document 016, GOV RGQ, Exhibit 4

<sup>73</sup> EPR 559, document 016, GOV RGQ, Exhibit 2

<sup>74</sup> Termination Report No. 370, p. 34. Available on the Commission website.

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);
- 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>75</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 by 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 and residual exporters did not receive a benefit under this program and paid the full rate generally payable. However, based on the GOV's provided information, the commission has determined that uncooperative exporters may be in receipt of a benefit under this program.

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<sup>75</sup> Refer to Decree 218 for full detail of eligibility criteria.

### 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).

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>76</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.

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<sup>76</sup> Chapter 17.3 of the Manual.

### *Non-cooperative entities*

The commission has determined that uncooperative exporters received a benefit under this program during the investigation period, in accordance with section 269TACC(3)(b).

In accordance with section 269TACD(1), the amount of the subsidy has been determined. The commission considers that non-cooperative entities in Vietnam may have received the most favourable preferential rate of 10% during the investigation period.

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

In accordance with section 269TACD(2), this amount has then been apportioned to each unit of the goods using the value of all products produced by each company during the investigation period.

### **A3.3 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>77</sup> and Decree 134/2016/ND-CP providing guidelines for the Law on export and import duties (Decree 134)<sup>78</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.

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<sup>77</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 559, Document 16, GOV RGQ, Exhibit 22

<sup>78</sup> EPR 559, document 016, GOV RGQ, Exhibit 37

## 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 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 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.

### **A3.4 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>79</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:

- 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

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<sup>79</sup> EPR 559, document 016, GOV GQR, Exhibit 14

- Organise and participation in trade fairs.
- Trade delegations.
- Other trade promotion activities.

#### 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>80</sup> As a result, the GOV has not provided a substantive response on this program.

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<sup>80</sup> EPR 559, document 016, 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>81</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>82</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>83</sup>
- 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>84</sup>

After considering section A1.3 of **Non-confidential Appendix A**, 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>85</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>86</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>87</sup>

After considering section A1.3 of **Non-confidential Appendix A** 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>81</sup> VietinBank 2019 Annual Report, p.67, available at: <https://www.vietinbank.vn/sites/mediafile/VTB149105>

<sup>82</sup> Ibid, p.14

<sup>83</sup> Ibid, p.75

<sup>84</sup> Ibid, p.116

<sup>85</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>86</sup> Ibid

<sup>87</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 four other sub-programs, found the legal basis for the program to be Decree No. 75/2011/ND-CP<sup>88</sup> dated August 30, 2011, on state investment credit and export credit (Decree No. 75)<sup>88</sup> and Decree No. 151/2006/ND-CP<sup>89</sup> dated December 20, 2006, on state investment credit and export credit (Decree No. 151).<sup>89</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>90</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

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<sup>88</sup> EPR 559, document 016, GOV RGQ, Exhibit 28.

<sup>89</sup> EPR 559, document 016, GOV RGQ, Exhibit 10.

<sup>90</sup> EPR 559, document 016, GOV RGQ, Exhibit 28.

banks, which it considers indicative of financial institutions setting lending rates based on 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 11**.

#### 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.

### **A3.5 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>91</sup>

Repealed in various stages from 2003 to 2014 pursuant to:

- The Law on Corporate Income Tax 2003<sup>92</sup>
- Decree 142/2005/ND-CP dated 14 November 2005.<sup>93</sup>
- Decree 149/2005/ND-CP dated 8 December 2005<sup>94</sup>
- Decree 08/2014/ND-CP dated 27 January 2014<sup>95</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>91</sup> EPR 559, document 016, GOV RGQ, Exhibit 21.

<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

<sup>94</sup> Ibid.

<sup>95</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>96</sup> and Decree 53/2011/ND-CP<sup>97</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>98</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.

There is no separate application process. Taxpayers are responsible for calculating their tax liability in accordance with the relevant tax law and regulations.

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<sup>96</sup> EPR 559, document 016, GOV RGQ, Exhibit 27

<sup>97</sup> Ibid.

<sup>98</sup> EPR 559, document 016, GOV RGQ, Exhibits 23 and 27

### 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>99</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>100</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.

### 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.

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<sup>99</sup> EPR 559, document 016, GOV RGQ, Exhibit 7

<sup>100</sup> Ibid.

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>101</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 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.

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<sup>101</sup> EPR 559, document 016, GOV RGQ, Exhibit 28

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>102</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.

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.

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<sup>102</sup> EPR 559, document 016, GOV RGQ, Exhibit 28

## **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>103</sup>
- Decision 443/QD-TTg, dated April 4, 2009<sup>104</sup>
- Decision 2072/QD-TTg, dated December 11, 2009<sup>105</sup>
- Circular 05/2009/TT-NHNN dated 4 July 2009<sup>106</sup>
- Circular 04/2009/TT-NHN dated 13 March 2009<sup>107</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.

### **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.

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<sup>103</sup> EPR 559, document 016, GOV RGQ, Exhibit 27

<sup>104</sup> EPR 559, document 016, GOV RGQ, Exhibit 27

<sup>105</sup> Ibid.

<sup>106</sup> Ibid.

<sup>107</sup> Ibid.

In light of the evidence before it, the commission is not satisfied any Vietnamese exporter received a financial benefit in connection with this program.

### **Program 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>108</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'.

#### **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

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<sup>108</sup> EPR 559, document 016, GOV RGQ, Exhibit 30.

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>109</sup>, detailing the implementation of the Law on Corporate Income Tax.<sup>110</sup>

Repealed in 2006 pursuant to Decree 108/2006/ND-CP.<sup>111</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.

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.

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<sup>109</sup> EPR 559, document 016, GOV RGQ, Exhibit 31.

<sup>110</sup> EPR 559, document 016, GOV RGQ, Exhibit 21.

<sup>111</sup> EPR 559, document 016, GOV RGQ, Exhibit 31.

(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>112</sup>, which was repealed under Income Tax Preferences under Chapter IV of Decree 124/2008/ND-CP<sup>113</sup>. Decree 124/2008/ND-CP was later repealed under Decree 218/2013/ND-CP.<sup>114</sup>

#### 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.

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<sup>112</sup> EPR 559, document 016, GOV RGQ, Exhibit 7.

<sup>113</sup> EPR 559, document 016, GOV RGQ, Exhibit 32.

<sup>114</sup> EPR 559, document 016, GOV RGQ, Exhibits 2, 9 and 32



- (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>115</sup>
- Decree 135/2016/ND-CP dated 9 September 2016<sup>116</sup>
- Decree 35/2017/ND-CP dated 3 April 2017<sup>117</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.

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<sup>115</sup> EPR 559, document 016, GOV RGQ, Exhibit 35.

<sup>116</sup> EPR 559, document 016, GOV RGQ, Exhibit 35.

<sup>117</sup> Ibid.

## **Program 34 - Land-Use Levy Exemptions/ Reductions**

### **Background**

It is alleged that under this program, exemptions or reductions from payment of the land use levy are provided in certain circumstances.

The existence of this program was first alleged in the CBSA Copper Pipe case and later combined with other similar programs in the CBSA COR case.

The commission has combined sub-program (b) from Program 33 into its analysis of this program.

### **Legal basis**

This program is governed under Decree 45/2014/ND-CP dated 15 May 2014.<sup>118</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

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<sup>118</sup> EPR 559, document 016, GOV RGQ, Exhibit 36.

subsidy for all Vietnamese exporters in that case was determined in accordance with a ministerial specification, pursuant to which the CBSA found that all programs were countervailable.

#### Legal basis

The carrying forward of losses is permitted pursuant to Law 32/2013/QH13 of 19 June 2013.<sup>119</sup>

#### 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>120</sup> and was later terminated under Decree 164/2003/ND-CP dated 22 December 2003.<sup>121</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.

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<sup>119</sup> EPR 559, document 016, GOV RGQ, Exhibit 33.

<sup>120</sup> EPR 559, document 016, GOV RGQ, Exhibit 34.

<sup>121</sup> EPR 559, document 016, GOV RGQ, Exhibit 7.

The commission did not find any evidence during verification of any exporters being in receipt of a financial benefit under this program.

## APPENDIX B 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.

### B1 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 by reference to prices from a third country under section 269TAC(2)(d).

The Act does not prescribe what is required to reach a finding of a 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.

In assessing whether a particular market situation exists due to government influence, the commission has assessed whether government involvement in the domestic market has materially distorted market conditions. If government 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>122</sup>

## **B2 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 by 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>123</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>124</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 so 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
- 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>125</sup>

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<sup>122</sup> Chapter 7, the Manual.

<sup>123</sup> EPR 559, document 001.

<sup>124</sup> WTO, Report of the Working Party on the Accession of Vietnam, WT/AA/VNM/48, 27 October 2006, at para 255.

<sup>125</sup> EPR 559, document 006.

A further BlueScope submission was received on 12 July 2021.<sup>126</sup> In it, BlueScope submitted that the Ministry of Industry and Trade issued a document (No.2612/BCT-CN) on 11 May 2021 to the Vietnam Steel Association (VSA) and large steel manufacturers. This document proposes a range of solutions that include the 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>127</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.

### **B3 Government of Vietnam claims**

The GOV made a submission to the commission on 26 June 2020<sup>128</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 Canada Border Services Agency (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>129</sup>

### **B4 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
- in the Vietnamese market 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>126</sup> EPR 559, document 019.

<sup>127</sup> EPR 559, document 017.

<sup>128</sup> EPR 559, document 005.

<sup>129</sup> EPR 559, document 016.

- The submission and response to the government questionnaire (RGQ) from the GOV.
- REQs by cooperating exporters.
- Previous market situation assessments undertaken by the commission.<sup>130</sup>
- Desktop research, including information obtained from departmental resources and third party information providers.

## **B5 The GOV role in the Vietnamese steel market**

### **B5.1 Electricity prices**

The commission has previously considered the issue of GOV influence and control over electricity prices in Investigation 416 into steel rod in coils exported from Indonesia, Korea and Vietnam. In that investigation, the commission found that ‘the level of control exercised by the GOV on electricity prices has artificially suppressed the price of electricity in Vietnam’.<sup>131</sup> As a result, the commission substituted the price of electricity with a market rate as determined by the World Bank. 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>132</sup>

In its response to the government questionnaire (RGQ), the GOV confirmed that electricity pricing is regulated by the government, 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.

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

The commission has then examined the World Bank price for electricity for the investigation period and notes that prices in Korea, Malaysia and Taiwan are all cheaper than Vietnam, although it notes China and Australia are higher. The commission’s assessment of electricity prices is at **Confidential Attachment 12**.

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>130</sup> A number of cases have considered market situation allegations concerning steel products in Vietnam, including: Investigation 370 (galvanised steel) Investigation 550 (precision pipe and tube) and Investigation 553 (painted steel strapping).

<sup>131</sup> SEF 416 and Termination Report 416, available on the commission website

<sup>132</sup> EPR 559, document 001, p.43



## B5.2 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/QD-TTg).<sup>133</sup>
- The Steel Master Plan 2015-2025 (Decision No. 694/QD-BCT).<sup>134</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>135</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>136</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>137</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>138</sup> The first of these laws, Law on Planning No. 21/2017/QH14, decreed that

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<sup>133</sup> Available on the GOV legislative gazette at <http://vbpl.vn/TW/Pages/vbpqentoanvan.aspx?ItemID=3341&Keyword=145/2007/QD-TTg>.

<sup>134</sup> EPR 559, document 016 – Government of Vietnam Questionnaire

<sup>135</sup> Steel Master Plan 2007- 2015, Article 1(3) (a).

<sup>136</sup> Ibid, Article 1(3) (c).

<sup>137</sup> Ibid, Article 2.

<sup>138</sup> EPR 559, document 005.

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>139</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>140</sup> Rather, the effects of the plans, which impacted the structure and capacity of Vietnam’s aluminium zinc coated steel industry, continue long term. The plans, when in force, set production capacity goals, established guidelines for the development of Vietnam’s steel distribution channels, including distribution centre market shares, established forecasts and targets for steel product consumption to 2025, protected, expanded and stabilised the domestic steel market, mandated the removal of outdated production facilities and improved competitiveness, enabling the Vietnamese industry to garner a competitive advantage over foreign producers. BlueScope submits that the impact of the plans will significantly affect the Vietnamese steel industry, including producers of the goods, for years to come.

The commission has not been presented during the investigation with evidence regarding the long term effects of the Steel Master Plans on the Vietnamese steel industry. While there are forecasts for increased production to 2025, whether these production goals are met and whether there is then a causal link between the Steel Master Plans and the increased production is, with respect to the information before the commission, merely speculation.

### **B5.3 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

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<sup>139</sup> Ibid, p240.

<sup>140</sup> EPR 559, document 006.

- 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>141</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.

#### **B5.4 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>141</sup> Non-confidential attachment 15 to BlueScope's application – Development of the Vietnamese Iron & Steel Industry (EPR 559, 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>142</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% of Vietnam's market share for surface treated sheets in 2016.<sup>143</sup> In 2012, VN Steel had a 30% share of Vietnam's cold-rolled steel market, the substrate material for aluminium zinc coated steel.<sup>144</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>145</sup>

### *Assessment*

In light of the above, the commission finds that there is no evidence that the GOV influenced Nam Kim and Vietnam Steel, and that Vina One is not itself an SOE nor does

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<sup>142</sup> EPR 550, document 035 – Vina One REQ.

<sup>143</sup> Non-confidential attachment 24 to BlueScope's application – Development of the Vietnamese Iron & Steel Industry (EPR 558, document 001).

<sup>144</sup> Non-Confidential Attachment 25 to BlueScope's application - About Vietnam Steel Corporation (EPR 558, document 001).

<sup>145</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.

## **B5.5 GOV price stabilisation**

BlueScope submits evidence of the GOV engaging in price stabilisation initiatives in the steel industry, by referencing

- 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>146</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>147</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 B** (section B5.4), 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>148</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>146</sup> Non-Confidential Attachment 27 to BlueScope’s application – Vietnam Steel Producers Manipulating Prices (EPR 558, document 001).

<sup>147</sup> Non-Confidential Attachment 28 to BlueScope’s application – Export.gov Vietnam Trade Barriers (EPR 558, document 001).

<sup>148</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>149</sup> Such measures can be implemented where<sup>150</sup>

- 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
- unreasonable increase or decrease in prices due to abuse of monopoly position or market dominance.

Circular 122 also specifies that the measures relate only to certain goods and services, listed in Decree 75/2008.<sup>151</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>152</sup> BlueScope references an article which outlines that on 11 May 2020 the MoIT issued document No.2612/BCT-CN to the VSA and large steel manufacturers. This document proposes a range of solutions that include restricting the export of domestic steel products and other in-demand products. The commission has reviewed the information BlueScope provided and has concluded that it does not demonstrate that the GOV exerted influence on the Vietnamese steel market during the investigation period since this document was issued after the investigation period.

## **B5.6 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>153</sup>

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<sup>149</sup> Article 1 of Circular No. 122/2010/TT-BTC, available at <http://vbpl.vn/TW/Pages/vbpqtoanvan.aspx?ItemID=2563>.

<sup>150</sup> Ibid, Article 2(2).

<sup>151</sup> Available at <http://vbpl.vn/TW/Pages/vbpq-toanvan.aspx?ItemID=12714>.

<sup>152</sup> EPR 559, document 019.

<sup>153</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>154</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>155</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>156</sup>

- Law on Investment 67/2014/QH13<sup>157</sup> and
- Decree 118/2015/ND-CP<sup>158</sup>, which details the implementation of a number of articles of the Law on Investment.

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.

## **B5.7 Vietnamese steel industry subsidisation**

BlueScope identified in its application that the CBSA recently published findings of countervailable subsidies from Vietnam. The CBSA investigation found that the following subsidies were in place:<sup>159</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>154</sup> Non-Confidential Attachment 30 to BlueScope's application – Steel Master Plan Drops 12 Projects (EPR 558, document 001).

<sup>155</sup> Non-Confidential Attachment 31 to BlueScope's application – Steel Production Set for Surge (EPR 558, document 001).

<sup>156</sup> EPR 559, document 016, p. 239.

<sup>157</sup> EPR 559, document 016, Exhibit 46.

<sup>158</sup> EPR 559, document 016, Exhibit 23.

<sup>159</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 7.7.2 and section A3 of **Non-confidential Appendix A**. The commission concluded that the level of subsidisation for all Vietnamese exporters is negligible.

## **B5.8 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 hot rolled coil (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 cost to make (CTM) of the goods. This is depicted in the table below.

<b>Producer</b>	<b>Country</b>	<b>HRC as a percentage of total CTM</b>
BlueScope	Australia	63%
HSG	Vietnam	95%
Nam Kim	Vietnam	81%

**Table B1 – HRC as a proportion of CTM of the goods<sup>160</sup>**

The percentage of CTM for BlueScope is lower than that for the verified Vietnamese exporters.

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. Comparison of HRC costs

## **B5.9 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.

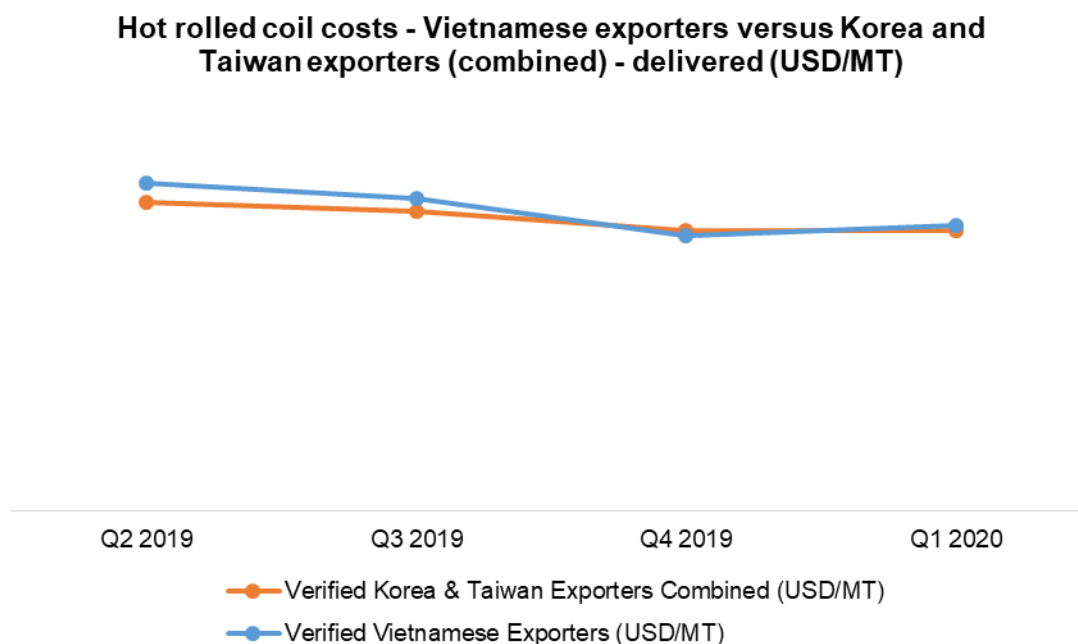
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<sup>160</sup> **Confidential Attachment 12** of this SEF.



Therefore, the commission has compared:

- costs that verified Vietnamese exporters paid for Vietnamese HRC and
- costs incurred for verified Korean and Taiwanese exporters.<sup>161</sup>



**Figure B1 – Comparison of weighted average HRC purchase prices for Vietnamese exporters vs. Korean and Taiwan exporters (combined, from Investigation 558)<sup>162</sup>**

Figure B1 shows the weighted average HRC purchase price paid by verified Vietnamese, Korean and Taiwanese exporters over the investigation period, separated for country of supply. This shows that for the majority of the period, Vietnamese exporters paid a similar amount for domestically sourced HRC than Korean and Taiwanese exporters paid for domestically sourced HRC. Over the course of the investigation period, Vietnamese prices were 1% higher than Korean and Taiwanese prices.

## **B6 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>163</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>161</sup> Ibid. The commission has relied on HRC price data from Investigation 558 (investigation of aluminium zinc coated steel of a width less than 600 mm, conducted in parallel to this investigation) to make a comparison of the Vietnamese HRC prices relevant to the subject goods.

<sup>162</sup> The commission has relied on HRC price data from Investigation 558 to make a comparison of the Vietnamese HRC prices relevant to the subject goods.

<sup>163</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>164</sup> The high level of import penetration indicates a high level of competition within the Vietnamese steel market.

## **B7 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>164</sup> Ibid.