



PUBLIC RECORD VERSION

SUBMISSION ON BEHALF OF HOA SEN GROUP

Continuation Inquiry No. 698 - Aluminium zinc coated steel exported from the Republic of Korea and the Socialist Republic of Vietnam

Response to Statement of Essential Facts No. 698

The Director
Investigations 1
Anti-Dumping Commission
GPO Box 2013
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A. SUMMARY

1. Hoa Sen Group (HSG) is a Vietnamese exporter of aluminium zinc coated steel (the goods). It cooperated fully with the Anti-Dumping Commission (the Commission) in Continuation Inquiry No. 698 (the inquiry). This submission responds to Statement of Essential Facts No. 698 (the SEF), which was placed on the public record on 24 September 2026.
2. The SEF accepts that HSG was not dumping. HSG's dumping margin for the inquiry period is negative 0.9 per cent. The Commission verified HSG's data and found its export sales to unrelated Australian customers to be at arm's length. It also found that HSG's production records 'reasonably reflect competitive market costs'. Even so, the SEF proposes to keep the measures in place against HSG by way of a floor price.
3. HSG's position, in short, is as follows:
 - (a) the SEF identifies no evidence that HSG would be likely to dump if the measures expired. The measures should therefore cease to apply to HSG.
 - (b) what the SEF finds about Vietnamese volumes and prices is a possibility of injury, not a likelihood.
 - (c) no attempt is made in the SEF to separate the effects of other factors from any projected injury.
 - (d) if the measures do continue for HSG, the floor price at normal value proposed in the SEF is the only form that can properly apply.

B. THE STATUTORY TEST

4. Under section 269ZHF(1)(a)(ii) of the *Customs Act 1901* (Cth) (the Act), the Commissioner may recommend 'that the notice cease to apply to a particular exporter'. Section 269ZHF(2) then limits any recommendation to continue the measures. The Commissioner must not make one

'unless the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent'.
5. For an exporter that was not dumping in the inquiry period, the statutory question is a narrow one. It is whether the evidence shows that dumping by that exporter would be likely to recur. The Review Panel has answered it exporter by exporter.
6. ADRP Report 121 concerned hot rolled structural steel sections. On reinvestigation the Commission found that an exporter with a negative margin had 'no economic incentive' to lower its prices to Australia 'when it already had a price advantage over the Australian industry'.¹ The Panel member agreed, relying among other things on 'the lack of evidence that TS would decrease its prices' and 'the level of the negative dumping margin'.² The recommendation was that the Minister 'decide to not secure the continuation of the measures relating to goods exported to Australia by TS Steel'.³
7. In ADRP Report 100, on wind towers from China, the exporter's margin had become negative on review. The Panel held that the earlier dumping finding was then 'no longer applicable' and that, '[c]onsequently, the reasoning in REP 487 regarding whether the expiration of the measures would be likely to lead to dumping and material injury attributable to TSP's exports is no longer applicable'.⁴
8. ADRP Report 126 put the question as 'whether the Commissioner was satisfied, based on positive evidence, that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping'.⁵
9. The WTO position is the same, and according to the Appellate Body, an affirmative likelihood determination 'may be made only if the evidence demonstrates that dumping would be probable if the duty were terminated', and 'not simply if the evidence suggests that such a result might be possible or plausible'.⁶

C. THE SEF DOES NOT SHOW THAT HSG IS LIKELY TO DUMP

10. The SEF explains its recurrence finding against HSG in one sentence. The view, it says,

'is based on Hoa Sen's continued participation in the Australian market, its established distribution channels, and the likelihood that the removal of

¹ Anti-Dumping Review Panel Report No. 121, *Hot Rolled Structural Steel Sections*, paragraph 92 (recording the Commission's finding on reinvestigation).

² Ibid, paragraph 93.

³ Ibid, paragraph 94.

⁴ Anti-Dumping Review Panel Report No. 100, *Wind Towers exported from the People's Republic of China*, paragraph 134.

⁵ Anti-Dumping Review Panel Report No. 126, *Hollow Structural Sections from the Kingdom of Thailand* (October 2021), paragraph 58.

⁶ Appellate Body Report, *United States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan*, WT/DS244/AB/R, paragraph 111.

measures would permit increased price competition and downward pressure on export prices'.

11. With respect, none of these is evidence that HSG would dump. Any exporter that keeps trading has a presence in the market and distribution channels, whether or not it is dumping. They are in fact what allowed HSG to sell in Australia at undumped prices during the inquiry period.
12. The third reason assumes what it sets out to prove. That removing the measures would permit lower export prices says nothing about whether HSG would actually price below normal value, and the SEF points to no evidence that it would.
13. The SEF goes further and accepts that HSG's negative margin, taken alone, does not show that HSG would cut its prices: 'the commission does not consider that the negative dumping margin, by itself, establishes that Hoa Sen would reduce its prices if the measures expired'. What is left, on the SEF's own reasoning, is that HSG 'would remain capable of competing for Australian sales and responding to changes in relative market prices'. HSG does not dispute that it can compete, but every exporter is capable of lowering its prices, and section 269ZHF(2) is concerned with likelihood.
14. According to the SEF, HSG, while not dumping, 'continued to supply the Australian market at competitive price levels, including at prices below those of the Australian industry in the December quarter'. Those were the facts before the Panel in ADRP Report 121. An exporter able to win business at prices above its normal value has no commercial reason to sell below it. The SEF draws a different inference, namely that the absence of dumping 'does not detract from the likelihood that Hoa Sen would continue to compete actively on price'. Price competition at undumped prices is not dumping, though, and it is not what the measures are directed at.
15. The SEF also records that the dumping margins 'have decreased since the original investigation (REP 558)'. HSG's margin is now negative. If the record shows any trend, it is away from dumping.

D. REP 532

16. The closest precedent is the Commission's continuation inquiry into hollow structural sections from Thailand. In that inquiry 'all HSS exported from Thailand to Australia has been at undumped prices during the inquiry period'.⁷ One of the two active exporters was 'subject to a floor price',⁸ which is what the SEF now proposes for HSG. The Australian industry contended that 'the negative dumping margins in the inquiry demonstrate the effectiveness of the current measures'.⁹ BlueScope may say the same here.
17. The Commission did not accept that contention. It reasoned that 'whilst the presence (or absence) of dumping during the inquiry period may be indicative of future behaviour, this

⁷ ADC Report No. 532- *Continuation into hollow structural sections from the Kingdom of Thailand*, page 46.

⁸ *Ibid*, page 46.

⁹ *Ibid*, page 46.

factor alone is not determinative',¹⁰ and it went on to ask whether there was evidence of an incentive to dump. It found:

'[t]he high degree of price competition and the apparent price advantage that Thai exporters have consistently had in the Australian market does not satisfy the Commission that there is an incentive for Thai exporters to recommence dumping should the anti-dumping measures expire'.¹¹

18. There was a second, separate finding: '[E]ven if dumping was to recur, the evidence suggests that the undumped price advantage enjoyed by Thai exporters and the low volume of exports has a negligible connection with the economic performance of the Australian industry and hence is unlikely to result in material injury'.¹² The Commissioner was accordingly 'not satisfied that the expiration of the anti-dumping measure would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping and material injury that the anti-dumping measure is intended to prevent'.¹³
19. Each of those features is present in this inquiry. HSG sold at undumped prices, and the SEF would place it on a floor price at its normal value. It competed on price without dumping, and its prices were below the Australian industry's in the December quarter. From CY24, Vietnamese subject exports were negligible. The SEF also records no evidence that the subject exports caused material injury while the measures were in force.

E. VIETNAMESE VOLUMES AND PRICES

20. Three findings in the SEF are relevant to Vietnam. Imports from Vietnam 'declined between CY22 and CY23 and were negligible from CY24 onwards'. They 'did not undercut the Australian industry on a full-year weighted-average basis'. And 'the evidence does not demonstrate sustained undercutting by Vietnamese exporters during the inquiry period but indicates the potential for price competition should the measures expire'.
21. A potential for price competition does not establish that injury caused by dumping is likely. Elsewhere the SEF describes the December quarter undercutting by Vietnamese imports as 'demonstrating the potential for undercutting should the measures expire'. Section 269ZHF(2) asks whether expiry 'would lead, or would be likely to lead' to a recurrence of material injury.
22. Findings framed as a potential describe what is possible. That is the line the Appellate Body drew between what is possible and what is probable.¹⁴

F. CAUSATION

23. The SEF does not show that any projected material injury would be caused by dumping. It records that '[t]here is no evidence that the Australian industry experienced material

¹⁰ Ibid, page 62.

¹¹ Ibid.

¹² Ibid, page 61.

¹³ Ibid, page 62.

¹⁴ WT/DS244/AB/R, paragraph 111.

injury from exports by the subject exporters while the measures were in force'. It then identifies other matters affecting the industry:

- (a) Imports from non-subject countries 'represented the largest source of import competition'.
 - (b) The Australian market 'contracted over the injury analysis period despite some recovery in the final year'.
 - (c) The fall in the industry's return on investment occurred 'despite increased investment in assets and capital expenditure'.
24. To the extent that BlueScope's position deteriorated in the inquiry period, the SEF's own findings place the cause outside the subject exports. The SEF found that 'selling prices declined during the injury analysis period', and that 'profit and profitability weakened in CY25 following an improvement in CY24'. Yet it found no evidence of injury from the subject exporters while the measures were in force. Something other than the subject exports must explain the deterioration.
25. The SEF's findings point first to imports from other countries. As noted above, those imports were the largest source of import competition. BlueScope, for its part, 'operates an import parity pricing mechanism where known import offers in the market are used to determine the level of pricing'. By its own design, then, BlueScope sets its prices against import offers, in a market where non-subject countries supplied most of the import competition. The price effects of those offers are effects of imports that the measures do not cover.
26. The SEF 'did not identify injury in the form of reduced sales volumes or market share during the injury analysis period'. The injury it found lies in prices and profit, and under import parity pricing, it is the price of competing offers that BlueScope uses to set its own.
27. The same is true within Vietnam. Nam Kim Steel Joint Stock Company (Nam Kim) 'remains exempt from the measures'. The SEF records that '[t]he export volumes observed from Vietnam during the inquiry period were largely attributable to exporters that were exempt from the measures'. Nam Kim is the only Vietnamese exporter shown as exempt. Whatever competitive pressure Vietnamese imports exerted in the inquiry period therefore came largely from an exporter outside the measures.
28. The SEF does not say whether its comparison of Vietnamese prices with BlueScope's prices includes Nam Kim's exports. If it does, the December quarter undercutting that it attributes to 'Vietnamese imports' may in part reflect Nam Kim's prices. Either way, expiry of the measures would not change Nam Kim's position. Its exports enter free of dumping duty now and would continue to do so. Any injury they cause is not injury 'that the anti-dumping measure is intended to prevent'.
29. HSG proposes that the final report:
- (a) find, consistently with section 7.8 of the SEF, that the fall in BlueScope's prices and profit in the inquiry period was not caused by the subject exports.

- (b) treat the price effects of non-subject imports, transmitted through BlueScope's import parity pricing, as a factor other than dumping, and attribute none of them to the subject exports.
 - (c) identify how much of the Vietnamese import volume, and of the Vietnamese price comparison, relates to Nam Kim, and exclude Nam Kim's exports from any assessment of the likely effect of Vietnamese subject exports.
 - (d) consider whether, without subject imports, BlueScope's prices would otherwise have risen in CY25, having regard to non-subject imports and the contraction of the market.
 - (e) unless that analysis shows that subject imports played a part in the CY25 narrowing, give the price suppression finding no weight in assessing whether material injury is likely to recur.
30. The Review Panel has held that the Commission must 'ensure that any material injury which was projected to occur was likely to be caused by the continuing or recurring dumping and not other factors'. The *Ministerial Direction on Material Injury 2012* says the same thing in fewer words: '[i]njury caused by other factors must not be attributed to dumping or subsidisation.'
31. The SEF does not carry out that separation. Until it does, the injury limb of section 269ZHF(2) is not made out for the subject exports as a whole, and still less for an exporter that was not dumping.

G. A FLOOR PRICE AT NORMAL VALUE

32. Should the Commissioner maintain the measures for HSG, it accepts that the proposed floor price form of measure is correct. Under the proposal the floor price would 'be set as equal to the ascertained normal value for Hoa Sen', and duty 'would only become payable if Hoa Sen exported goods at a price below the ascertained normal value'. The SEF reached that view 'noting the slightly negative dumping margin during the inquiry period'. The effect is to reduce HSG's effective rate from 8.1 per cent to nil.
33. Any other form would levy duty on goods the Commission has found were not dumped. If the measures continue, the final report should confirm the floor price at the ascertained normal value, and should not adopt a combination or fixed duty form, or a floor price set above normal value.
34. If the measures continue for HSG, the floor price should be set in US dollars. The SEF proposes a floor price for HSG with a fixed rate of interim dumping duty of 0.0 per cent. A fixed rate of nil follows from ascertaining HSG's export price at the same level as its normal value, so that the ascertained export price and the floor price are one amount.