



Australian Government
Anti-Dumping Review Panel

ADRP Decision No. 65

Certain Zinc Coated (Galvanised) Steel
exported from the Republic of India,
Malaysia and the Socialist Republic of
Vietnam

October 2017

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Decision

This is a review of the decision of the Commissioner of the Anti-Dumping Commission to terminate that part of Investigation 370 which related to the dumping of zinc coated (galvanised) steel by Hoa Sen Group and Nam King Steel Joint Stock Company.

I consider that the decision was the correct and preferable decision and I affirm it.



Scott Ellis
Panel Member
Anti-Dumping Review Panel
30 October 2017

Summary

- 1 During the course of Investigation 370, the Commissioner of the Anti-Dumping Commission (Commissioner) concluded that Hoa Sen Group (Hoa Sen) and Nam King Steel Joint Stock Company (Nam King), had not dumped galvanised steel into Australia and, accordingly, terminated that part of the Investigation which related to dumping by those companies. He did so under s 269TDA(1)(b)(i) of the *Customs Act 1901*¹ (Reviewable Decision).²
- 2 BlueScope Steel Limited (BlueScope) sought review of the Reviewable Decision.
- 3 BlueScope's grounds were that the Commissioner:
 - (a) should have concluded that there was a "market situation" in Vietnam and calculated the normal value under s 269TAC(2)(c);
 - (b) wrongly had regard only to sales of the goods effected at Hoa Sen's Di An branch in calculating Hoa Sen's dumping margin, when he should have had regard to all of Hoa Sen's sales of the goods; and
 - (c) failed to make an appropriate adjustment to the normal value on account of export credit costs.
- 4 I am not persuaded that the Commissioner's findings and approach were wrong. I consider that the decision to terminate that part of the Investigation which related to Hoa Sen and Nam King under ss 269TDA(1)(b)(i) was the correct and preferable decision.

Background

- 5 The goods the subject of this review are:

flat rolled iron or steel (whether or not containing alloys) that are plated or coated with zinc exported to Australia from India, Malaysia, and Vietnam
- 6 BlueScope is the sole Australian manufacturer of the goods.
- 7 Hoa Sen and Nam King are two Vietnamese exporters of the goods to Australia.

¹ References to sections in this Decision are references to sections of the *Customs Act 1901*.

² The Reviewable Decision was the subject of ADN 2017/98.

- 8 By application dated August 2016, BlueScope applied for the imposition of dumping and countervailing measures in respect of the goods. The application covered exports from the Republic of India, Malaysia, and the Socialist Republic of Vietnam (Vietnam).
- 9 On 7 October 2016, the Commissioner initiated an investigation.³
- 10 A combined Statement of Essential Facts and Preliminary Affirmative Determination was published on 31 May 2015 (SEF 370).
- 11 On 17 July 2017, the Commissioner published a Partial Termination Report (TER 370) in which he concluded that the dumping margin for Hoa Sen was negative 0.7% and for Nam King, was negative 8.4%. Consequently, the Commissioner terminated the Investigation in respect of Hoa Sen and Nam King under s 269TDA(1)(b)(i) of the Act.
- 12 The application for review of the Reviewable Decision was made on 15 August 2017.⁴
- 13 The Senior Member determined that I should constitute the panel for this review.

The grounds of review

- 14 The grounds of review are summarised at paragraph 3. I will deal with them in turn.

Market situation

Introduction

- 15 The Commissioner determined the normal value of the goods exported by the Vietnamese exporters by reference to the sales of like goods in the ordinary course of trade for home consumption in Vietnam, under s 269TAC(1) of the Act. BlueScope's first ground of review was that the Commissioner was wrong to do so because there was a "market situation" within s 269TAC(2)(a)(ii) of the Act.

³ ADN 2016/105.

⁴ The Commissioner also terminated so much of Investigation 370 as related to the receipt of countervailable subsidies by Vietnamese exporters. This decision was also the subject of AND 2017/98 and TER 370. BlueScope did not challenge termination of this part of the Investigation.

The legislation

- 16 Section 269TAC(1) sets out the ordinary way of ascertaining the normal value of goods. It provides:

Subject to this section, for the purposes of this Part, the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade 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.

- 17 Section 269TAC(2)(a) provides that the normal value may be determined otherwise than in accordance with s 269TAC(1) where the Minister:

(a) is satisfied that:

- (i) because of the 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 subsection (1); or
- (ii) because the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under subsection (1);

the normal value of goods exported to Australia cannot be ascertained under subsection (1)...

The Issue

- 18 The issue in relation to this ground is whether the situation in the Vietnamese domestic market for the goods was such that sales of the goods in that market were not suitable for use in determining a price under s 269TAC(1).

Discussion

- 19 BlueScope argued that sales in the domestic market were not suitable for use because:

- (a) Hot Rolled Coil (HRC) is the primary component of the goods. Consequently, the cost of HRC has a significant impact on the cost of producing the goods;
- (b) Vietnam does not have a domestic industry producing HRC. HRC used in Vietnam to make the goods is imported;

- (c) the domestic Chinese HRC price was artificially low because there was a “market situation” in the steel industry in China;
- (d) the market situation in respect of HRC in the Chinese domestic market affected the Chinese export prices for HRC which were also artificially low;
- (e) Chinese exporters of HRC were price setters in the Vietnamese market for HRC; and
- (f) as a consequence, the Vietnamese HRC price was artificially low as well, so that a market situation existed in respect of the goods in the Vietnamese market.

20 The propositions set out at 19(a) and (b) were not in dispute. The existence of a market situation in China, referred to at paragraph 19(c), and the effect of that market situation on the domestic Chinese HRC market were the subject of prior investigations, including Investigation 190, upon which BlueScope relied. The Commissioner did not reinvestigate in this matter the findings of Investigation 190.

21 As indicated above, the Commissioner declined to find that there was a “market situation” within s 269TAC(2)(a)(ii) in the Vietnamese domestic market for the goods. The Commissioner did not provide substantive reasons for reaching this conclusion in the Termination Report. The issue was discussed at greater length in SEF 370 at section 6.8.5.2(i) and in Non-Confidential Attachment 2 to the SEF, “Assessment of a Particular Market Situation – Vietnam”.

22 Three aspects of the Commissioner’s reasoning in the SEF are relevant for present purposes.

23 First, the Commissioner “did not find any evidence to support a finding that the [Government of Vietnam] policies created a “particular market situation”.⁵ In its letter of 10 February 2017⁶ BlueScope said that there was evidence of the “Government of China’s ... broad, overarching macroeconomic policies and plans for the domestic iron and steel industry, along with the various taxes, tariffs, and export and import quotas that have influence the prices for raw materials (specifically HRC and domestic equivalents)”. BlueScope did not allege that there was conduct of that nature or extent by the Government of Vietnam. BlueScope pointed out that Vietnam had not imposed trade barriers restricting Chinese imports into Vietnam and had entered into trade agreements which did not involve such barriers. BlueScope also noted that other countries in the region had taken

⁵ At page 102.

⁶ Document 65 in the Electronic Public Record maintained by the ADC.

safeguard action in respect of imports of HRC. In the absence of a domestic HRC industry or the intention to establish such an industry, such action may have been difficult for Vietnam to justify. The situation in Vietnam is, therefore, different from the situation found to exist in Investigation 190. The Government of Vietnam had not actively suppressed prices for the goods or HRC in Vietnam.

24 Second, the Commissioner noted that purchases by Vietnamese exporters of Chinese HRC appeared to be arms length transactions. The purchasers were not subsidiaries or affiliates of Chinese HRC producers.⁷

25 The market for the goods was not too small within s 269TAC(2)(a)(i) and s 269TAC(14). The market did not suffer from the various “technical” defects identified in the ADC’s Dumping and Subsidy Manual (Manual) being:

- differing patterns of demand in the exporter’s domestic market and the sales to Australia (including domestic sales significantly different in character or design features to the types exported; domestic sales through a single sales channel (including via a related party distributor); and unusual patterns of sales in the domestic market for the good). Implicit in such findings is the assumption that it is not possible to make reasonable adjustments to ensure comparability of the domestic sales prices;
- where only a single sale to one customer constitutes 5 per cent of the sales to Australia;
- significant barter trade; or
- non-commercial processing arrangements.⁸

26 These matters persuade me that the domestic market for HRC in Vietnam was a competitive one, in the sense that there were various independent purchasers and sellers of HRC who competed on price, unconstrained by actions of either the Vietnamese or Chinese Governments.⁹

27 BlueScope contended that the Commissioner’s analysis failed to adequately take into account:

- (a) the effect which Chinese prices had on other exporters in the area; and

⁷ At p101.

⁸ At p37.

⁹ Participants in the market no doubt competed on the basis of other factors as well, such as quality and reliability, but those considerations are not presently relevant.

(b) that Chinese HRC exports were price setters in the market.

It might be said that, even if the market was competitive in the sense I have outlined above, the various HRC suppliers in the Vietnamese domestic HRC market were competing at a price that was artificially low, because of the influence of artificially low priced Chinese HRC.

28 However, the Commissioner did not find any evidence that Chinese HRC prices had influenced HRC prices from other countries.¹⁰ Vietnamese producers sourced HRC from countries other than China. Fifty two percent of HRC purchases (by volume) were from China, 48% were from other countries. The Commissioner compared the weighted average HRC prices for purchases made from Chinese exporters of HRC with the weighted average HRC prices for purchases from other countries. For one co-operative producer, Chinese prices were slightly higher. For the other co-operative producer, Chinese prices were slightly lower than HRC from other countries. At p96 of the SEF, the Commissioner referred to a comparison between the Chinese import prices of two of the cooperating Vietnamese producers and the Korean and Taiwanese HRC unit prices. The Commission found that the disparity between the Chinese prices, on the one hand, and the Korean and Taiwanese prices, was negligible. It is not apparent, therefore, that the domestic Vietnamese HRC price was artificially low. Again, there is a substantial difference between the influence of the Government of China on the Chinese domestic market for HRC, where that influence may be assumed to affect all participants in that domestic market, and the Vietnamese domestic market, where only the Chinese participants were directly affected by the conduct of the Government of China.

29 The third component of the Commissioner's reasoning was a reference to an extract from the Manual:¹¹

The concept of a competitive market price is not taken to prevent an exporter buying inputs from arms length suppliers at the prevailing price even if that input had been sold at below cost or dumped. This is because a company should not be penalised for making commercial decisions to buy inputs at the best price, and a dumping authority would not be able to verify input costs from uncooperative and unrelated companies.

The footnote to this passage from the Manual is also relevant:

This is because a company should not be penalised for making a sensible commercial decision to buy inputs at the best possible price; or a dumping

¹⁰ SEF 370 at p35.

¹¹ At p 45.

authority would not be able to verify the cost of producing an input from a company not associated with the importer as such companies would not normally cooperate with a dumping inquiry; and finally there is recognition that dumping inquiries have to be conducted against a timetable that imposes limits on how much time can be spent on verification visits.

- 30 These passages are not directly concerned with s 269TAC(2)(a)(ii). They are concerned with the related question whether records of producers and manufacturers reflect “competitive market costs” within Reg 43 of the Regulations, an issue which arises if s 269TAC(2)(a)(ii) applies. However, the general principle enunciated in these passages from the Manual is applicable in the present context. The role of the normal value is to be compared with the export price so as to arrive at a dumping margin under s 269TACB. The provisions of Part XVB of the Act dealing with dumping of goods are directed towards discouraging exporters from “introducing goods into the commerce of another country”¹² more cheaply than they sell the goods in the ordinary course of trade in their own country and towards mitigating the effect of such conduct through the imposition of duty on contravening imports. Further, the amount of dumping duty is primarily determined in respect of specific exporters, rather than on a country by country basis. The scheme is directed at the conduct of exporters and the transactions entered into by them. This is a reason why the basis for decisions of producers and exporters in the country of export is relevant and why the usual rule is to rely on transactions in the exporters’ domestic market to determine the normal value. Another reason is the practical limitations on the ADC’s ability to investigate markets other than the market of the exporting country. It may be that there are circumstances where the actions of the Government of one nation can result in a market situation in the domestic market of another country such that this renders s 269TAC(1) unsuitable for determining the normal value. But I am not persuaded that the circumstances in the present case are such as to warrant departure from the usual rule identified in s 269TAC(1).
- 31 BlueScope likened the present situation to contravention conduct. I do not consider that the analogy is appropriate. Circumvention conduct under the Act involves taking artificial steps to avoid measures imposed by Australia. Most relevantly, s 269ZDBB(4) involves sales made through a third country in order to avoid measures. Section 269ZDBB(4) does not apply because the goods exported from Vietnam are different from the goods imported into Vietnam. The Vietnamese exporters carry out a substantial manufacturing process on the HRC. More substantively, it was not shown that the Chinese exporters and the Vietnamese importers of HRC did anything other than enter into arms length transactions with purchasers of their product. It was not the case that HRC exported by China was

¹² See Art VI of the General Agreement on Trade and Tariffs.

always destined for Australia. In the case of Hoa Sen, the major Vietnamese exporter, only a small portion of the goods produced by it were exported to Australia. The bulk, by value, of the goods were not exported by Hoa Sen and were sold on the domestic market.

Conclusion

32 I am not persuaded that the situation in the Vietnamese domestic market for the goods was such that sales of the goods for home consumption in Vietnam were not suitable for use in determining a price under section 269TAC(1). Accordingly, I consider that the Commissioner was correct to determine the normal value under s 269TAC(1).

The Di An Branch

33 In calculating the normal value, the Commissioner only used sales from one of Hoa Sen's 15 branches, the "Di An" branch, which was the largest of Hoa Sen's branches. BlueScope contended that the Commissioner was wrong to do so. BlueScope contended that:

- (a) the Commissioner ought to have used sales from all branches; and
- (b) the Commissioner ought to have treated Hoa Sen as an uncooperative exporter, and applied the "all others" rate to it.

34 The circumstances surrounding the use of sales from the Di An branch are:¹³

- (a) the information Hoa Sen provided in response to the ADC questionnaire included information relating to sales to subsidiaries and related parties (subsidiaries) and to end users but did not distinguish between them;
- (b) subsidiaries purchasing the goods further processed the goods or some of them, so that items sold no longer fell within the definition of the goods the subject of the Investigation;
- (c) Hoa Sen provided a line by line listing of all domestic sales by its 15 largest branches to unrelated customers in the domestic market; and
- (d) the Di Anh branch was:
 - (i) by far the largest branch; and

¹³ See section 3.4.2(i) of the Termination Report and section 6.8.5.2(i) of the SEF.

- (ii) a warehouse facility, so that sales from the Di An branch would be sales of goods within the scope of the Investigation, rather than being substantially altered.

- 35 BlueScope argued that the Commissioner should have calculated the normal value using all domestic sales. I do not consider that the Commissioner was required to have used all Hoa Sen's sales of the goods. In the SEF, the Commissioner referred to the ADC's experience in an earlier Investigation of Hoa Sen's sales, Investigation 249. The ADC had, in that Investigation, adopted the same methodology. In SEF 370, the Commissioner indicated that the ADC had formed the view that it would have been unreasonably burdensome to have calculated the normal value by reference to all transactions. The task would have involved considering transactions at different levels of trade and making different adjustments. It is reasonable for the ADC's approach to be informed by its experience with a previous investigation of the same exporter. The Commissioner is entitled to arrive at conclusions about the normal value on the basis of a subset of the total population of domestic transactions, if it considers that the methodology adopted is sufficiently reliable.
- 36 BlueScope argued that the smaller branches would have had a greater concentration of smaller transactions which would have had a higher price, so that the effect of focusing on the Di An branch was to lower the normal value. In SEF 370, the Commissioner noted the earlier analysis that it had carried out as part of Investigation 249, which indicated that there was no significant variation in the cost per tonne between the top 5 branches. There is no reason to think that the situation had changed since that Investigation. The information in the present Investigation showed that the top 5 branches accounted for the vast majority of all transactions, and that the other branches accounted for only a small portion of the total sales. Consequently, any price differential that might have existed between the small branches and the Di An branch would have had a correspondingly small impact on the weighted average normal value. It is also noted that the Hoa Sen exported [REDACTED] [REDACTED] by weight, to Australia than [REDACTED].
- 37 Given the comparative volume of the Di An transactions and the fact that the nature of its transactions make it particularly suitable for determining the normal value, I am not persuaded that the Commissioner adopted the wrong approach.
- 38 I do not consider that the Commissioner was obliged to treat Hoa Sen as an uncooperative exporter because the information it provided did not readily distinguish between types of sales. It provided information to the ADC and complied with the ADC's requests for information to overcome or mitigate the limitations of its records.

39 The matters raised by BlueScope do not persuade me that the Reviewable Decision was wrong.

Export Credit

40 BlueScope also complained that the Commissioner had failed to make an adjustment to the normal value to account for export credit terms. I do not consider that an upwards adjustment was required. The terms upon which Hoa Sen effected export sales appear functionally equivalent to cash terms, so that credit was not given.

41 BlueScope also complained that the cost of transacting export sales was ignored. Having had the benefit of an on-site investigation with an otherwise co-operative exporter, the Commissioner concluded that there was no evidence of additional costs. I am not persuaded that this conclusion was wrong. Nor am I persuaded that a failure to include the transaction costs associated with export sales would have resulted in a dumping margin in excess of 2%. Section 269TDA(1) requires the Commissioner to terminate the investigation in respect of an exporter if the dumping margin is less than 2%.

Conclusion

42 For the reasons given above, I consider that the decision of the Commissioner to terminate the Investigation in respect of Hoa Sen and Nam King was the correct and preferable decision.

43 I affirm the Reviewable Decision.



Scott Ellis
Panel Member
Anti-Dumping Review Panel
30 October 2017

Abbreviations

Term	Meaning
ADC	Anti-Dumping Commission
ADN	Anti-Dumping Notice
BlueScope	BlueScope Steel Limited, the Australian manufacturer of the goods
Commissioner	The Commissioner of the ADC
GATT	General Agreement on Tariffs and Trade
goods	flat rolled iron or steel (whether or not containing alloys) that are plated or coated with zinc exported to Australia from India, Malaysia, and Vietnam
Hoa Sen	Hoa Sen Group, a Vietnamese exporter of the goods
HRC	Hot rolled coil
Manual	The Dumping and Subsidy Manual published by the ADC
Nam King	Nam King Steel Joint Stock Company, a Vietnamese exporter of the goods
Reviewable Decision	The decision of the Commissioner to terminate so much of Investigation 370 as related to Hoa Sen and Nam Kin, notice of the decision was the subject of ADN 2017/98
SEF 370	The Statement of Essential Facts and Preliminary Affirmative Determination No. 370 dated May 2017
TER370	Partial Termination Report 370 published on 17 July 2017
Vietnam	The Socialist Republic of Vietnam