



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

**Anti-Dumping
Commission**

CUSTOMS ACT 1901 - PART XVB

**TERMINATION REPORT
NO. 550**

**ALLEGED DUMPING OF
PRECISION PIPE AND TUBE STEEL
EXPORTED TO AUSTRALIA FROM TAIWAN AND
THE SOCIALIST REPUBLIC OF VIETNAM**

AND

**ALLEGED SUBSIDISATION OF
PRECISION PIPE AND TUBE STEEL
EXPORTED TO AUSTRALIA FROM
THE SOCIALIST REPUBLIC OF VIETNAM**

10 August 2021

CONTENTS

ABBREVIATIONS	3
1 SUMMARY AND CONCLUSIONS	5
1.1 INTRODUCTION	5
1.2 SCOPE OF THIS REPORT	5
1.3 AUTHORITY TO MAKE DECISION	5
1.4 CONCLUSION	7
2 BACKGROUND	8
2.1 INITIATION	8
2.2 CONDUCT OF THE INVESTIGATION	8
2.3 SUBMISSIONS RECEIVED FROM INTERESTED PARTIES	10
3 THE GOODS AND LIKE GOODS	12
3.1 THE GOODS	12
3.2 MODEL CONTROL CODES	14
3.3 AUSTRALIAN INDUSTRY FOR LIKE GOODS	15
4 DUMPING INVESTIGATION	17
4.1 FINDINGS	17
4.2 LEGISLATIVE AND POLICY FRAMEWORK	17
4.3 PARTICULAR MARKET SITUATION	19
4.4 EXPORTERS	24
4.5 DUMPING ASSESSMENT – TAIWAN	26
4.6 DUMPING ASSESSMENT – VIETNAM	34
5 SUBSIDY INVESTIGATION	45
5.1 FINDING	45
5.2 LEGISLATIVE AND POLICY FRAMEWORK	45
5.3 INVESTIGATED PROGRAMS	46
5.4 SUMMARY OF PROGRAMS	46
5.5 INFORMATION CONSIDERED BY THE COMMISSION	46
5.6 SUBSIDY ASSESSMENT	47
6 NON-INJURIOUS PRICE	49
7 PARTIAL TERMINATION OF THE INVESTIGATION	50
7.1 TERMINATION	50
ATTACHMENTS	52

ABBREVIATIONS

2013 Vietnam Subsidy Notice	<i>New and Full Notification Pursuant to Article XVI.1 of the GATT and Article 25 of the Agreement on Subsidies and Countervailing Measures</i> published in March 2013
2020 Vietnam Subsidy Notice	<i>New and Full Notification Pursuant to Article XVI.1 of the GATT and Article 25 of the Agreement on Subsidies and Countervailing Measures</i> published in February 2020
ABF	Australian Border Force
the Act	<i>Customs Act 1901 (Cth)</i>
ADN	Anti-Dumping Notice
the applicant	Orrcon Manufacturing Pty Ltd
Austube Mills	Austube Mills Pty Ltd
CBSA	Canada Border Services Agency
CBSA Cold-rolled steel case	CBSA investigation into the subsidising of cold-rolled steel from China, South Korea and Vietnam
CBSA Copper pipe case	CBSA investigation into the subsidising of certain copper pipe fittings originating in the Socialist Republic of Vietnam
CBSA COR case	CBSA investigation into the subsidising of certain corrosion-resistant steel sheet originating in Turkey, the United Arab Emirates and Vietnam
CBSA Oil tubes case	CBSA investigation into the subsidising of certain oil country tubular goods originating in or exported from India, Indonesia and Vietnam
China	the People's Republic of China
CDI	Chinh Dai Industrial Co., Ltd.
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
CRC	cold rolled coil
CTM	cost to make
CTMS	cost to make and sell
Dalian Steelforce	Dalian Steelforce Hi-Tech Co., Ltd
Dumping Duty Act	<i>Customs Tariff (Anti-Dumping) Act 1975</i>
EPR	electronic public record
FOB	free on board
GAAP	generally accepted accounting principles
the goods	the goods (also referred to as the goods under consideration)
GOV	Government of Vietnam
Hoa Phat Binh Duong	Hoa Phat Binh Duong Steel Pipe Co., Ltd
Hoa Phat Da Nang	Hoa Phat Da Nang Steel Pipe Co., Ltd
Hoa Phat Long An	Hoa Phat Long An Steel Pipe Co., Ltd
Hoa Phat Steel	Hoa Phat Steel Pipe Co., Ltd

HRC	hot rolled coil
HSS	hollow structural sections
HSS countries	China, Korea, Malaysia, Taiwan and Thailand
investigation period	1 January 2019 to 31 December 2019
Korea	the Republic of Korea
the Manual	<i>Dumping and Subsidy Manual</i>
MCC	model control code
the Minister	the Minister for Industry, Science and Technology
Nguyen Minh Steel	Nguyen Minh Steel Group Joint Stock Company
NIP	non-injurious price
OCOT	ordinary course of trade
Orrcon Manufacturing Pty Ltd	Orrcon
RCR	RCR International Pty Ltd
the Regulation	<i>Customs (International Obligations) Regulation 2015 (Cth)</i>
REQ	response to the exporter questionnaire
REV 529	Review No 529 into hollow structural sections from China, Korea, Malaysia, Taiwan and Thailand
RGQ	response to the government questionnaire
RHS	rectangular or square hollow sections
SEF	statement of essential facts
SOE	state-owned enterprise
SG&A	selling, general and administrative
Ta Fong	Ta Fong Steel Co., Ltd
Thailand	the Kingdom of Thailand
USP	unsuppressed selling price
Vietnam	the Socialist Republic of Vietnam
Vina One	Vina One Steel Manufacturing Corporation
VSA	Vietnam Steel Association
WTO	World Trade Organization

1 SUMMARY AND CONCLUSIONS

1.1 Introduction

The Anti-Dumping Commission (the Commission) has prepared this *Termination Report No. 550* (TER 550) in response to an application by Orrcon Manufacturing Pty Ltd (Orrcon).

Orrcon's application requests the publication of:

- a dumping duty notice in respect of precision pipe and tube steel (the goods) exported to Australia from the People's Republic of China (China), the Republic of Korea (Korea), Taiwan and the Socialist Republic of Vietnam (Vietnam) (collectively, the subject countries), and
- a countervailing duty notice in respect of the goods exported to Australia from China and Vietnam.

Orrcon, the sole member of the Australian industry manufacturing like goods, claims that it suffered material injury because of dumped and subsidised imports of the goods.

TER 550 follows the Commissioner's publication of *Statement of Essential Facts No. 550* (SEF 550) for this investigation¹ on 1 June 2021.

1.2 Scope of this report

TER 550 sets out the reasons why the Commissioner of the Anti-Dumping Commission (the Commissioner) is terminating the dumping investigation in relation to Taiwan and Vietnam and the subsidy investigation in relation to Vietnam.

The Commission will address findings and recommendations in respect of China and Korea, in a separate report.

1.3 Authority to make decision

Division 2 of Part XVB of the *Customs Act 1901*² (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).

The Commission has prepared this report to support the Commissioner in his consideration of the application, pursuant to the Commission's function specified in section 269SMD.

¹ Electronic public record (EPR) 550, Item 57.

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

1.3.1 Application

On 16 March 2020, Orrcon lodged an application alleging that the Australian industry has suffered material injury caused by the goods exported to Australia from the subject countries at dumped prices, and from China and Vietnam at subsidised prices.

The Commissioner considered the application and decided not to reject it. The Commissioner initiated this investigation, Investigation No. 550, on 31 March 2020. On the same date, the Commissioner published *Consideration Report No. 550* (CON 550) and a public notice (Anti-Dumping Notice (ADN) No. 2020/030) providing further details regarding the initiation of the investigation.³

1.3.2 The goods and like goods (Chapter 3)

Chapter 3 of this report discusses the goods and like goods.

1.3.3 Dumping assessment (Chapter 4)

The Commissioner found that:

- exports of the goods to Australia from Taiwan and Vietnam were not at dumped prices during the investigation period, and
- accordingly, there were negligible volumes (i.e. less than 3%) of dumped goods exported to Australia from Taiwan and Vietnam during the investigation period.

Accordingly, the Commissioner must terminate the dumping investigation:

- in relation to all exporters from Taiwan and Vietnam, pursuant to section 269TDA(1)(b)(i), and
- in relation to Taiwan and Vietnam, pursuant to section 269TDA(3).

The Commission has summarised the dumping margins relevant to TER 550 below.

Country	Exporter	Dumping Margin (%)
Taiwan	Ta Fong	- 9.0
	Uncooperative exporters	- 8.6
Vietnam	CDI	- 12.2
	Vina One	- 12.0
	Residual exporters	- 6.5
	Uncooperative exporters	- 6.5

Table 1 - Dumping margins

³ EPR 550, Items 2 and 3.

1.3.4 Countervailing assessment (Chapter 5)

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

The Commission has summarised the subsidy margins relevant to TER 550 in Table 2.

Country	Exporter	Subsidy margin (%)
Vietnam	CDI, Vina One, residual exporters	0.0
	Non-cooperative exporters	0.01

Table 2 - Subsidy margins

Accordingly, the Commissioner must terminate the countervailing investigation regarding:

- CDI, Vina One and residual exporters, pursuant to section 269TDA(2)(b)(i), and
- non-cooperative exporters, pursuant to section 269TDA(2)(b)(ii).

1.4 Conclusion

The Commissioner is terminating the dumping investigation with respect to all exporters from Taiwan and Vietnam under section 269TDA(1)(b)(i).

The Commissioner is terminating the dumping investigation with respect to Taiwan and Vietnam under section 269TDA(3).

The Commissioner is terminating the countervailing investigation with respect to CDI, Vina One and residual exporters from Vietnam under section 269TDA(2)(b)(i) and non-cooperative exporters from Vietnam under section 269TDA(2)(b)(ii).

2 BACKGROUND

2.1 Initiation

On 16 March 2020, Orrcon lodged an application under section 269TB(1) seeking the publication of a dumping duty notice in respect of the goods exported to Australia from the subject countries, and a countervailing duty notice in respect of the goods from China and Vietnam.

The Commissioner considered the application and subsequently decided not to reject the application. The Commissioner initiated Investigation 550 on 31 March 2020 and published notification of the initiation on 31 March 2020. CON 550 and ADN No. 2020/030 provide further details relating to the initiation of the investigation.⁴

The Commissioner examined:

- an investigation period of 1 January 2019 to 31 December 2019 for the purpose of assessing dumping and subsidisation
- an injury analysis period from 1 January 2016 for determining whether exports of dumped and subsidised goods caused material injury to Australian industry.

2.2 Conduct of the investigation

2.2.1 Statement of essential facts

The initiation notice advised that the Commissioner would place the SEF on the public record by 20 July 2020. However, the Delegate for the Commissioner extended the due date for the SEF.⁵ The Commissioner published SEF 550 on the EPR on 1 June 2021.⁶ Following its publication, interested parties had until 21 June 2021 to respond to SEF 550.⁷ The Commissioner considered submissions received in response to SEF 550 when making this report.

2.2.2 Importers

The Commission identified several importers in the Australian Border Force (ABF) import database that imported the goods from Taiwan and Vietnam during the investigation period. The Commission forwarded importer questionnaires to these importers and placed a copy of the importer questionnaire on the Commission's website for completion by other importers the Commission did not contact directly.

Four importers provided responses, including RCR International Pty Ltd (RCR), B&D Metal Group Pty Ltd, Marubeni Itochu Steel Oceania Pty Ltd, which all imported from

⁴ EPR 550, Items 2 and 3.

⁵ EPR 550, Items 19, 41 and 43.

⁶ EPR 550, Item 57.

⁷ Unless the Delegate of the Commissioner granted an extension.

Vietnam, and Austube Mills Pty Ltd (Austube Mills) which imported from Taiwan. The Commission verified the responses provided by RCR and Austube Mills.

Verification reports relating to these 2 importers are available on the EPR.⁸

2.2.3 Exporters

At the outset of the investigation, the Commission forwarded questionnaires to 15 exporters from Taiwan and Vietnam that it identified from the ABF import database. The Commission also placed a copy of the exporter questionnaire on the Commission's website for completion by other exporters whom the Commission did not contact directly.

The Commission granted extensions to 11 entities to provide a response to the exporter questionnaire (REQ). The Commission received ten REQs. Table 3 below summarises the responding entities:

Exporter name	REQ submission date
Vietnam	
Vina One Steel Manufacturing Corporation (Vina One)	15 Jun 2020
M&H Vietnam Trading and Services Co., Ltd. (M&H)	5 Jun 2020
Hoa Phat Binh Duong Steel Pipe Co., Ltd (Hoa Phat Binh Duong)	10 Jun 2020
Hoa Phat Steel Pipe Co., Ltd (Hoa Phat Steel)	10 Jun 2020
Hoa Phat Long An Steel Pipe Co., Ltd (Hoa Phat Long An)	10 Jun 2020
Hoa Phat Da Nang Steel Pipe Co., Ltd (Hoa Phat Da Nang)	10 Jun 2020
Chinh Dai Industrial Co., Ltd. (CDI)	9 Jun 2020
Chinh Dai Steel Technology Co., Ltd (CDT)	9 Jun 2020
Nguyen Minh Steel Group Joint Stock Company (Nguyen Minh Steel)	29 May 2020
Taiwan	
Ta Fong Steel Co., Ltd (Ta Fong)	20 May 2020

Table 3 - Entities who provided a REQ

The Commission published non-confidential versions of the REQs on its website.⁹

The Commission verified the REQs provided by CDI and Vina One from Vietnam, and Ta Fong from Taiwan and published exporter verification reports on its website.¹⁰

2.2.4 Foreign Governments

The Commission forwarded questionnaires to the Government of China and the Government of Vietnam (GOV) at the beginning of the investigation. The GOV responded to the questionnaire, which the Commissioner has considered in reaching the conclusions contained within this report.¹¹

⁸ EPR 550, Items 49 and 50.

⁹ EPR 550, Items 25, 26, 28 to 35.

¹⁰ EPR 550, Items 44, 45, and 47.

¹¹ EPR 550, Item 36.

2.3 Submissions received from interested parties

The Commission received 24 submissions from interested parties prior to the publication of SEF 550. The Commissioner considered these submissions in reaching the conclusions contained within SEF 550. These submissions are available on the EPR.

The Commission received 6 submissions from interested parties following the publication of SEF 550. The Commissioner considered these submissions in reaching the conclusions contained within TER 550.

Public Record Item No.	Interested Party	Date Received
59	GOV	11 Jun 2021
60	Orrcon	21 Jun 2021
61	Dalian Steelforce Hi-Tech Co., Ltd (Dalian Steelforce)	21 Jun 2021
62	Yantai Aoxin International Trade Co., Ltd	9 Jun 2021
63	DITH Australia Pty Ltd	22 Jun 2021
64	Vina One	23 Jun 2021

Table 4 – Submissions considered after the SEF

2.3.1 Submission by Orrcon

In its submission, Orrcon made the following comments in relation to SEF 550:

- Orrcon welcomes an affirmative finding by the Commission that air heater tubes fall within the goods description. Orrcon submits that it offers like or directly competitive goods to air heater tubes for sale in Australia, and refutes the evidence used by the Commission in SEF 550 to conclude that Orrcon does not offer air heater tubes for sale in Australia
- the Commission should not terminate the dumping and countervailing investigation into exports of the goods from Vietnam
- the Commission should determine that a particular market situation for the goods exists in Vietnam, and a benchmark hot rolled coil/cold rolled coil (HRC/CRC) price should be included in the constructed normal value for all exporters from Vietnam, resulting in a dumping margin above negligible levels (see chapter 4.3.3.1)
- the Commission should not terminate the dumping investigation for Taiwan, as the methodology used by the Commission to calculate the dumping margin for uncooperative exporters from Taiwan is not correct or preferable
- the export price and normal value for uncooperative exporters from Taiwan should be ascertained by the Commission using the same methodology it applied to uncooperative Korean exporters (see chapter 4.5.3.1)
- it is unclear as to Orrcon the nature of 'other costs' adjustments made by the Commission to determine the normal value for CDI (see chapter 4.6.1.1).

The Commission considered the issues raised by Orrcon in preparing TER 550 and addressed them where relevant throughout.

Orrcon made further submissions in respect of the investigation into exporters from China and Korea. The Commission will address those submissions in a separate report.

2.3.2 Submission by the Government of Vietnam

In its submission, the GOV made the following comments in respect of SEF 550:

- the GOV welcomed the findings by the Commission in respect of the alleged countervailable subsidies and requested that the Commission immediately terminate the investigation into Vietnam in accordance with the Act and the *Agreement on Subsidies and Countervailing Measures*
- this is the third case where the Commission has investigated an allegation of the existence of a particular market situation in Vietnam and found none to exist. The GOV considers that the Commission's findings confirm that it does not interfere in the operation of any manufacturing or exporting section in Vietnam or implement any policy that results in market distortion
- the GOV hopes that the Commission will consider the findings in this investigation as evidence when examining future allegations of countervailable subsidies or a particular market situation in Vietnam. The GOV considers that this would mitigate potentially frivolous applications and minimise the trade distorting effects that such investigations may have on bilateral trade between Australia and Vietnam.

2.3.3 Submission by Vina One

Vina One provided a submission after the 20-day period interested parties had to respond to SEF 550. The Commission has considered the submission in preparing TER 550 but has not addressed the issues raised in the submission directly, noting that the Commissioner is terminating the investigation in respect of Vina One.

2.3.4 Remaining submissions

The Commission will publish a separate report addressing other submissions the Commission received from Dalian Steelforce, DITH Australia Pty Ltd and Yantai Aoxin International Trade Co., Ltd. These submissions do not relate to the termination of the dumping investigation in relation to Taiwan and Vietnam or the termination of the subsidy investigation in relation to Vietnam.

3 THE GOODS AND LIKE GOODS

3.1 The goods

3.1.1 The goods the subject of the application

The application defined the goods as:

Certain electric resistance welded pipe and tube made of carbon steel, whether or not including alloys, comprising circular, rectangular and square hollow sections in metallic coated and non-metallic coated finishes. Metallic finish types for the goods include galvanised and aluminised. Non-metallic finishes include hot-rolled and cold-rolled.

Sizes of the goods are, for circular products, those equal to or less than 21 millimetres ("mm") in outside diameter. Also included are air heater tubes to Australian Standard (AS) 2556, up to and including 101.6 mm outside diameter. For rectangular and square products, those with a thickness of less than 1.6 mm (being a perimeter up to and including 260 mm).

Included within the goods are end-configurations such as plain, square-faced and other (e.g. threaded, swaged and shouldered).

The goods include all electric resistance welded pipe and tube made of steel meeting the above description of the goods (and inclusions), including whether the pipe or tube meets a specific structural standard or is used in structural applications.

Oval and other shaped hollow sections which are not circular, rectangular or square, are excluded from the goods.

The subject goods are covered by a range of Australian Standards including but not limited to: AS 1450 'Tube for Mechanical Purposes', AS 2556 'ERW Steel Air Heater Tubes' and AS/NZS 2053.1 'Conduits and fitting for electrical installations – General requirements.' Precision pipe and tube steel is a light gauge product, with tight dimensional tolerances used in structural customised applications such as gates and fencing, furniture, racking and shelving, automotive components, conduit and heat exchangers.

3.1.2 Clarification of the goods description

The Commission published an issues paper¹² in response to a number of submissions provided during the investigation¹³ regarding the scope of the goods under consideration and like goods. In the issues paper, the Commission invited submissions from interested parties concerning whether the thickness parameters for rectangular or square hollow sections (RHS) referred to in the goods description for precision pipe and tube steel (i.e. "those with a thickness of less than 1.6 mm") are nominal or actual.

¹² EPR 550, Item 20.

¹³ EPR 550, Items 8, 13 and 16.

Based on submissions received to the issues paper, the Commission considers that the thickness parameters for RHS referred to in the goods description are nominal. Interested parties can determine whether RHS is the goods under consideration or like goods based on the nominal thickness.

The goods description for hollow structural sections (HSS), a separate set of anti-dumping measures currently applicable to certain exports¹⁴, is consistent with the Commission's interpretation because it specifically excludes "precision RHS with a nominal thickness of less than 1.6 mm" [emphasis added].

Accordingly, the Commission has clarified the goods description for this investigation to include the word 'nominal', as follows:

Certain electric resistance welded pipe and tube made of carbon steel, whether or not including alloys, comprising circular, rectangular and square hollow sections in metallic coated and non-metallic coated finishes. Metallic finish types for the goods include galvanised and aluminised. Non-metallic finishes include hot-rolled and cold-rolled.

Sizes of the goods are, for circular products, those equal to or less than 21 millimetres ("mm") in outside diameter. Also included are air heater tubes to Australian Standard (AS) 2556, up to and including 101.6 mm outside diameter. For rectangular and square products, those with a nominal thickness of less than 1.6 mm (being a perimeter up to and including 260 mm).

Included within the goods are end-configurations such as plain, square-faced and other (e.g. threaded, swaged and shouldered).

The goods include all electric resistance welded pipe and tube made of steel meeting the above description of the goods (and inclusions), including whether the pipe or tube meets a specific structural standard or is used in structural applications.

Oval and other shaped hollow sections which are not circular, rectangular or square, are excluded from the goods.

3.1.3 Tariff classification of the goods

The goods are generally, but not exclusively, classified to the following tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995*:¹⁵

¹⁴ The goods description for HSS can be found on the Commission's Dumping Commodity Register at: [https://www.industry.gov.au/sites/default/files/adc/measures/dcr - hollow structural sections 3.pdf](https://www.industry.gov.au/sites/default/files/adc/measures/dcr_-_hollow_structural_sections_3.pdf)

¹⁵ These tariff classifications and statistical codes may include goods that are both subject and not subject to the anti-dumping measures. The listing of these tariff classifications and statistical codes is for convenience and reference only and does not form part of the goods description. Please refer to the goods description for authoritative detail regarding goods subject to the anti-dumping measures.

Tariff Subheading	Statistical Code	Description
7306		OTHER TUBES, PIPES AND HOLLOW PROFILES (FOR EXAMPLE, OPEN SEAM OR WELDED, RIVETED OR SIMILARLY CLOSED), OF IRON OR STEEL:
7306.30.00		Other, welded, of circular cross-section, of iron or non-alloy steel:
	30	Not exceeding 21 mm external diameter
7306.50.00		
	45	<i>Other, welded, of circular cross-section, of other alloy steel</i>
7306.6		Other, welded, of non-circular cross-section
7306.61.00		<i>Of square or rectangular cross-section, of iron or non-alloy steel, not exceeding 279.4 mm perimeter:</i>
	21	Wall thickness not exceeding 2 mm
7306.69.00	10	Of other non-circular cross-section

Table 5 - General tariff classification for the goods

3.2 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 Commission's *Dumping and Subsidy Manual* (the Manual) explains the basis for using an MCC structure and the Commission's practice. The Commission requested that all interested parties provide sales and cost data in accordance with the MCC structure detailed in the table below.

	Category	Sub-Category	Identifier	Sales Data	Cost Data
1	Prime	Prime	P	Mandatory	Not applicable
		Non-Prime	N		
2	Steel Base/Type * Batch Hot Dipped Galvanised abbreviated as 'Batch HDG', Electro Galvanised abbreviated as 'EG', Continuously Galvanised abbreviated as 'CG', Mild Steel Galvanised as 'MSGB'.	Hot Roll	H	Mandatory	Mandatory
		Cold roll (Semi Bright)	C		
		Galvanised (Batch HDG, EG, CG or MSGB)	G		
		Other (e.g. alloy steel)	A		
3	Steel Grade	C200	1	Mandatory	Mandatory
		C250	2		
		C350	3		
		C450	4		
		Other	5		
4	Surface Protection	Oiled	O	Mandatory	Mandatory
		Clear or painted	P		
		No oil or paint	N		
5	Coating Mass	<20 g/m ² (including none)	1	Mandatory	Mandatory
		≥20 g/m ² to <100 g/m ²	2		
		≥100 g/m ² to <275 g/m ²	3		
		≥275 g/m ²	4		
6	Shape	Circular	C	Mandatory	Mandatory

		Rectangular or Square	R		
7	Circular size * outside diameter ** Circular products with an outside diameter between >21 mm to ≤101.6 mm which are not air heater tubes are not the goods.	Not circular	N	Mandatory	Mandatory
		≤16 mm	1		
		>16 mm to ≤21 mm	2		
		>21 mm to ≤101.6 mm (Air Heater Tubes)	3		
8	Rectangular/Square/ Oval/Other size * outside perimeter	Not rectangular/square	N	Mandatory	Mandatory
		≤40 mm	1		
		>40 mm to ≤80 mm	2		
		>80 mm to ≤260 mm	3		
9	Thickness	<1.6 mm	A	Mandatory	Mandatory
		≥1.6 mm to <3.2 mm	B		
		≥3.2 mm	C		
10	Length	≤4 m	1	Mandatory	Optional
		>4m to ≤8 m	2		
		>8 m to ≤12.0 m	3		
		>12.0 m	4		
11	End configuration	Plain end	P	Optional	Optional
		Threaded/flanged/swaged	T		
		Other (e.g. square faced)	O		

Table 6 - MCC Structure

The Commission addressed proposed changes to the MCC structure in respect of each interested party in verification reports that it made available on the EPR. Relevantly, the Commission considered it necessary to make amendments to the MCC structure for its determination of the variable factors for CDI.¹⁶ The Commission made this change having regard to price analysis it undertook in respect of the goods under consideration.

3.3 Australian industry for like goods

Under sections 269TG, 269TJ and 269TJA, one of the matters that the Minister for Industry, Science and Technology (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, material injury has been, or is being caused, or is threatened to the Australian industry producing like goods.¹⁷

As the Commissioner is terminating the investigation in respect of exports from Taiwan and Vietnam on the basis of no dumping and Vietnam on the basis of no or negligible

¹⁶ CDI's verification report at EPR 550, Item 45 discusses this in detail.

¹⁷ Section 269TJA relates to concurrent dumping and countervailable subsidisation. It provides that where goods are both dumped and subsidised, and because of the combined effects of the dumping and subsidisation, material injury to Australian industry 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 Vietnam.

subsidisation, the Commissioner has not considered whether there is an Australian industry producing like goods in TER 550.

4 DUMPING INVESTIGATION

4.1 Findings

The Commission has found that exporters from Taiwan or Vietnam did not export the goods to Australia during the investigation period at dumped prices.

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

Country	Exporter	Dumping Margin (%)
Taiwan	Ta Fong	- 9.0
	Uncooperative exporters	- 8.6
Vietnam	CDI	- 12.2
	Vina One	- 12.0
	Residual exporters	- 6.5
	Uncooperative exporters	- 6.5

Table 7 - Dumping Margins

4.2 Legislative and policy framework

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

When reporting to the Minister, pursuant to 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 there are dumped goods.

Section 269TDA(1) requires that the Commissioner must terminate the investigation, in so far as it relates to an exporter, if satisfied that there has been no dumping by the exporter, or there has been dumping during the investigation period, but the dumping margin is less than 2%.

Section 269TDA(3) requires that 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.

4.2.1 Export price

Export price is determined in accordance with section 269TAB, taking into account whether the purchase or sale of goods are 'arms length' transactions under section 269TAA.

Section 269TAB(1)(a) generally provides that the export price of any goods exported to Australia is the price paid (or payable) for the goods by the importer, where the goods

have been exported to Australia otherwise than by the importer, and purchased by the importer from the exporter in 'arms length' transactions.

Section 269TAB(1)(b) provides that the export price of goods is the price that the importer sold the goods, less prescribed deductions, where the goods:

- have been exported to Australia otherwise than by the importer
- have been purchased by the importer from the exporter, but not at 'arms length', and
- are then subsequently sold in the condition they were imported to a party not associated with the importer.

Section 269TAB(1)(c) provides that, in any other case, the export price is the price that the Minister determines having regard to all the circumstances of the exportation.

4.2.2 Normal value

Section 269TAC(1) provides that 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 (OCOT) for home consumption in the country of export, in sales that are 'arms length' transactions by the exporter, or if like goods are not so sold by the exporter, by other sellers of like goods.

4.2.2.1 Low volume of domestic sales

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

Domestic sales of the 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).

4.2.2.2 Particular market situation

Section 269TAC(2)(a)(ii) provides that the normal value of goods exported to Australia cannot be ascertained under section 269TAC(1) where the 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 section 269TAC(1). The Commission refers to this as a 'particular market situation' in TER 550.

Orrcon alleged in its application that a particular market situation exists in relation to the domestic market for the goods in Vietnam. Chapter 4.3 discusses the Commission's conclusion regarding Orrcon's particular market situation claims.

4.2.3 Dumping margin

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

4.3 Particular market situation

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.¹⁸

4.3.1 Significance of HRC costs in the production of the goods

The Commission has found that steel coil is the major raw material input used in the production of the goods, as either HRC, CRC, or pre-galvanised coil.

HRC undergoes further processing to make both CRC and pre-galvanised coil, either in the form of:

- rolling at low temperatures, generally to alter its thickness, provide a smoother surface and increase yield strength and hardness (cold rolling), or
- galvanising in a thin layer of zinc to prevent corrosion (among other things).

The Commission considers that CRC and pre-galvanised coil costs, while generally higher than HRC due to the additional processing, are closely related to the costs of HRC, with any influence on the HRC market also affecting their costs so a similar extent.

The Commission has verified the HRC associated with the production of the goods during the investigation period for all producers. The Commission found that coil costs represented a significant and broadly consistent proportion of the cost to make (CTM) of the goods.

Producer	Country	Percentage of total CTM made up by steel coil costs	Percentage of raw material costs made up by steel coil
Orrcon	Australia	64%	92%
Dalian Steelforce	China	88%	99%
CDI	Vietnam	87%	95%
Vina One	Vietnam	91%	99%
Ta Fong	Taiwan	91%	100% ¹⁹

Table 8 – Raw material coil as a proportion of CTM of the goods²⁰

The percentage of CTM made up by raw material costs for Orrcon is lower than that for Chinese, Taiwanese and Vietnamese producers, primarily due to higher manufacturing overheads, which accounts for 30% of the total cost in Australia.

Cooperating exporters advised the Commission that raw material prices are influential in setting selling prices for the goods, with lower raw material prices resulting in lower prices for the goods.

Given the high cost proportion of steel coil in the production of the goods and its influence on pricing decisions, the Commission considers that the HRC price (and through it, the price of CRC and pre-galvanised coil) has a significant impact on both the production cost and selling price of the goods.

¹⁸ The Manual, p. 36.

¹⁹ HRC here includes further treated HRC, for example, cold rolled steel, pickled and oiled steel.

²⁰ Confidential Attachment 2 – CTM breakdown.

4.3.2 Vietnam

Orrcon claimed in its application that the GOV intervenes in the domestic iron and steel industry raw material supply market. As a result, Orrcon considers that the prices of precision pipe and tube steel have been distorted by the GOV, resulting in a particular market situation in the Vietnamese domestic market for like goods that renders sales in that market unsuitable for determining normal values under section 269TAC(1).

Orrcon has claimed the GOV has intervened in the domestic steel industry through:

- electricity prices
- Steel Master Plans
- Industrial Development Strategy
- State ownership of precision tube manufacturers
- domestic price stabilisation initiatives
- steel industry construction project and investment control
- steel industry subsidisation.

Orrcon made a submission to the Commission on 9 April 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 2018.²¹

Orrcon made a further submission to the Commission on 18 August 2020.²² In it, Orrcon submitted that:

- Orrcon was unable to source domestic selling price information for the goods sold in Vietnam, and would expect the Commission to have similar difficulties
- a recent Canada Border Services Agency (CBSA) investigation found HRC prices in Vietnam are 18% to 19% lower than average world prices. Orrcon submitted that this difference in raw material costs is indicative of lower than competitive market price for the subject goods in Vietnam
- Orrcon has compiled data on domestic HRC prices in Vietnam, against those prices in China, South Korea, Japan and Taiwan. This data, if viewed in the context of a particular market situation in Vietnam, is evidence of lower input costs for the manufacture of the goods
- a particular market situation in Vietnam means it is not suitable to compare the prices of exported goods with those sold on the domestic market, as domestic prices are materially and artificially lower than export prices.

The GOV made a submission to the Commission on 21 January 2020 in respect of another application for similar goods (noting that the applicant subsequently withdrew the relevant application). At the request of the GOV, the Commission considered the submission in this investigation.²³ In the submission, the GOV expressed a view that a particular market situation does not exist in the Vietnam market for precision pipe and tube steel. The GOV has indicated to the Commission that there have been changes to

²¹ EPR 550, Item 6.

²² EPR 550, Item 39.

²³ EPR 550, Item 4.

Steel Master Plans and the Industrial Development Strategy that means they no longer apply to the steel industry. The GOV referred to previous findings of the Commission concerning zinc coated (galvanised) steel in Vietnam, which found that a particular market situation did not exist for that product.

The Commission also sent the GOV a questionnaire requesting further information in relation to the precision pipe and tube steel market in Vietnam. The GOV provided a response to the questionnaire to the Commission on 7 June 2020.²⁴

The GOV made a further submission to the Commission regarding the claim of a particular market situation on 7 August 2020.²⁵

RCR International Pty Ltd (RCR) made a submission to the Commission (published on 12 May 2020)²⁶ supporting the GOV submission in relation to whether a particular market situation for precision pipe and tube steel exists in Vietnam. RCR noted that evidence used by Orrcon in its application does not accurately reflect the current situation in the Vietnamese market, as well as referring to previous investigations where the Commission found no particular market situation in Vietnam.

In assessing whether a particular market situation exists in relation to the Vietnamese precision pipe and tube steel market in the investigation period, the Commission has relied on all the evidence available to it, including questionnaires and the submissions made in this investigation along with desktop research. This includes:

- the Commission's previous investigations which did not find there to be a particular market situation in respect of other goods
- that the GOV's Steel Master Plans expired in late 2018 with no apparent evidence of any ongoing influence in respect of those plans
- the expiry of legislation in Vietnam implementing price stabilisation measures in 2014
- the right of enterprises in Vietnam to determine their own prices at which goods and services which they manufacture are sold
- the lack of evidence of a significant role for Vietnamese State-owned Enterprises in the steel, HRC or precision pipe and tube steel market
- the minimal levels of subsidisation the Commission has found in respect of upstream raw materials or the goods themselves in Vietnam
- the level of import penetration in the domestic steel Vietnamese market
- evidence that raw material costs purchased by Vietnamese exporters from Vietnamese suppliers are consistent with raw material costs purchased from other countries, excluding China.

The Commission's complete examination of the evidence for this finding is set out in **Non-confidential APPENDIX A**.

²⁴ EPR 550, Item 36.

²⁵ EPR 550, Item 38.

²⁶ EPR 550, Item 11.

4.3.3 Submissions to the SEF

4.3.3.1 Submission by Orrcon

In its submission of 21 June 2021²⁷, Orrcon claims that the Commission should determine a particular market situation for the goods existed in Vietnam during the investigation period, and that a benchmark HRC/CRC price be included in the constructed normal value for all Vietnamese exporters for the following reasons:

- the Commission has not taken fully into account the influence and impact of the recently expired GOV programs, including the Steel Master Plan and price stabilisation initiatives, which continue to influence the domestic steel prices in Vietnam
- the GOV interferes and influences the daily operation and price setting of steel in the Vietnamese market. Recent publications show a push by the GOV to increase domestic steel production and limit export of steel products that are high in demand to keep prices steady.

4.3.4 Commission assessment – particular market situation

The Commission has considered Orrcon's submission on the continuing impact of the Steel Master Plans and evidence of recent GOV interference in its domestic steel market, specifically Document no. 2612/BCT-CN issued by the Vietnam Ministry of Industry and Trade to the Vietnam Steel Association (VSA) on 11 May 2021. The Commission notes that Orrcon did not provide this document to the Commission and the Commission has been unable to locate the document itself through the GOV legal document portal²⁸, from the Ministry of Industry and Trade website²⁹, the VSA website³⁰ or from other desktop research. Nonetheless, from the materials provided by Orrcon, the Commission considers that Document no. 2612/BCT-CN requests that VSA review and consider the various issues identified by Orrcon,³¹ rather than require steel manufacturers to take any specific action as contended by Orrcon. Further, Document no. 2612/BCT-CN relates to activity falling outside of the investigation period; it is not evidence of a particular market situation existing during the investigation period.

Orrcon has submitted that the specific legislative instruments and timing of alleged GOV interference is less relevant than the actual existence of ongoing governmental intervention. The fact that the current investigation period has fallen at a time of minimal official governmental directives (according to the GOV, at least) is a moot point and does not detract from the GOV's overall and long-term intent.

In order for the Commission to conclude there is government interference, it must receive evidence of such interference affecting the investigation period. The evidence provided, in this case, is of limited probative value, consisting mostly of media reports and

²⁷ EPR 550, Item 60.

²⁸ <http://vbpl.vn/TW/Pages/vbpgen.aspx>

²⁹ <https://moit.gov.vn/>

³⁰ <http://vsa.com.vn/>

³¹ Non-Confidential Attachment 8 to Orrcon's submission to the SEF

speculation. Primary evidence examined by the Commission, consisting of various legislative instruments issued by the GOV, does not indicate that such interference exists, at least in respect of the investigation period.

Further, subsequent to the 11 May 2021 document, the Vietnam Ministry of Industry and Trade clarified the actions it is taking in respect of steel prices.³² Among other things, the Ministry confirmed:

- that the establishment of a steel price stabilisation fund was not GOV policy
- it has asked various levels of the GOV to report on the steel price situation and propose solutions
- it has directed various units and agencies within the Ministry to research, review and implement the construction of technical barriers and quality standards, create a healthy competitive environment to ensure the interests of consumers and proactively implement trade remedies for steel products in accordance with trade regulations and international laws.

The Commission does not consider that the actions listed above constitute government interference that would contribute to the existence of a particular market situation.

Based on the information before the Commission, including submissions received in response to SEF 550, the Commission has found that a particular market situation did not exist in respect of the domestic market for precision pipe and tube steel in Vietnam for the investigation period.

4.4 Exporters

4.4.1 Cooperative exporters

Section 269T(1) provides that, in relation to a dumping investigation, an exporter is a 'cooperative exporter' where 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 exporters of the goods and invited them to complete an exporter questionnaire. Following receipt of the REQs, the Commission determined that the number of exporters from Vietnam was so large that it would not be practicable to examine the exports of all responding Vietnamese exporters. Accordingly, pursuant to section 269TACAA(1), the Commission carried out the investigation in respect of Vietnam and made its findings based on information obtained from an examination of CDI and Vina One, as they are the 2 largest cooperating Vietnamese exporters of the goods to Australia and together represent the majority of exports.³³

Ta Fong from Taiwan was also a cooperative exporter.

The Commission verified the REQs of CDI, Vina One and Ta Fong.

³² Non-confidential Attachment 1 – VSA media release, "The Ministry of Industry and Trade confirmed that it did not propose to establish a Steel Price Stabilization Fund", 7 June 2021.

³³ Confidential Attachment 1 – Australian market analysis.

4.4.2 Residual exporters

Hoa Phat Steel, Hoa Phat Long An and Nguyen Minh Steel are considered residual exporters from Vietnam.

There were no other residual exporters from any of the other subject countries.

4.4.3 Trading entities

The Manual provides that the Commission generally identifies the exporter as a principal in the transaction, located in the country of export:

- from where the goods were shipped and who knowingly placed the goods in the hands of a carrier, courier, forwarding company, or its own vehicle for delivery to Australia, or
- who owns, or previously owned, the goods, but need not be the owner at the time the goods were shipped.

Typically, the manufacturer, as a principal who knowingly sent the goods for export to any destination, will be the exporter.

The Manual notes that it is common for traders or other intermediaries to play a role in the exportation of the goods.

The Commission has determined that a number of REQs received in this investigation were from entities who were not exporters of the goods during the investigation period, but were instead acting as an intermediary for the actual exporter, who may or may not have submitted an REQ to the investigation. The Commission determined Vietnamese entities **CDT, Hoa Phat Binh Duong, and M&H were trading entities.**

The detailed findings regarding these entities are set out in **SEF 550, Chapter 6.6.5.**³⁴

4.4.4 Other entities – Hoa Phat Da Nang

The Delegate for the Commissioner granted an extension to Hoa Phat Da Nang to provide an REQ to the Commission and it did so before the extended deadline. The Commission identified a number of deficiencies in the REQ. Hoa Phat Da Nang was requested to address these deficiencies in a revised REQ, which it subsequently did.³⁵

A review of Hoa Phat Da Nang's revised REQ indicated that **it did not export the goods to Australia during the investigation period.**

4.4.5 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 period the Commissioner considered to be reasonable, or where the Commissioner is satisfied that

³⁴ EPR 550, Item 57.

³⁵ EPR 550, Item 29.

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:

- if no relevant information was provided in a reasonable period
- if that exporter fails to provide a response, or
- if that exporter fails to request a longer period to provide a response 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, or
- address requests for further information after providing an REQ to the Commission.³⁶

4.5 Dumping assessment – Taiwan

4.5.1 Ta Fong

Verification

The Commission verified Ta Fong's REQ.

The Commission is satisfied that Ta Fong is the producer of the goods and like goods. The Commission is further satisfied that the information provided by Ta Fong is accurate and reliable for ascertaining the variable factors applicable to its exports of the goods.

The Commission's verification report for Ta Fong is available on the EPR.³⁷

Submission in response to the verification report

In a submission dated 1 March 2021,³⁸ Orrcon made the following comments:

- the Commission's offsetting of scrap costs in Ta Fong's cost to make and sell (CTMS) differs from its findings in Review 529 into HSS (REV 529),³⁹ where the Commission made no adjustments for Ta Fong's lack of scrap allocation. Orrcon submits that Ta Fong's scrap allocation is consistent in its manufacture of HSS and precision pipe and tube steel. Accordingly, the method used in REV 529 should be followed, and no scrap adjustment made in the current investigation
- the allocation of costs in Ta Fong's CTMS is based on sales revenue, which is inconsistent with the allocation for Ta Fong in REV 529 and other exporter verifications in this investigation for Dalian Steelforce and CDI

³⁶ Requests for further information are contained in deficiency letters.

³⁷ EPR 540, Item 44.

³⁸ EPR 550, Item 51.

³⁹ Review 529 into HSS from China, Korea, Malaysia, Taiwan and Thailand, available on the Commission's website.

- in considering whether there are insufficient domestic sales of similar models, the Commission does not need to look further if there are no models in the same “key” MCC category
- the Commission will need to ensure that products which are not the goods are not included in Ta Fong’s domestic sales listing and will need to examine mill certificates to confirm that the goods have been manufactured to a recognised Taiwanese standard for precision pipe and tube
- the Commission ought to review its dumping margin calculations given the large discrepancy between the dumping margins found in this investigation and REV 529.

Commission’s assessment

Scrap costs

In REV 529, the Commission found that Ta Fong produced scrap as part of the slitting and welding process in producing HSS.⁴⁰ The Commission noted that Ta Fong did not account for scrap revenue in its production costs for HSS and so made no adjustment.⁴¹

In its REQ for this investigation, Ta Fong advised it was unable to distinguish revenue derived from sales of scrap from the production of the goods and revenue from scrap sales from all other production, and accordingly made no offset to its CTM for the goods. During verification,⁴² the Commission verified revenue derived by Ta Fong from the sale of scrap from all general production. The Commission then proceeded to estimate revenue from Ta Fong’s scrap sales from the production of the goods based on the proportion of the goods to general production in order to account properly for this cost offset to the CTM. The Commission considers this approach accurately states the CTM of the goods, and that not offsetting scrap costs would result in a higher CTM than was actually incurred.

The Commission further notes that removal of the scrap adjustment results in no change to Ta Fong’s dumping margin.

Allocation of costs

Ta Fong allocates costs in its CTMS data based on sales quantity, not sales revenue as stated by Orrcon in its submission.

As noted in Exception 3 to the Commission’s verification report for Ta Fong⁴³, the Commission was initially unable to reconcile the CTM as presented in Ta Fong’s REQ to Ta Fong’s audited accounts.

The Commission explored alternative options, including actual cost of goods sold data from Ta Fong’s sales system. Ta Fong provided an updated CTM using the cost of goods sold data, which the Commission considers is the best available information. The

⁴⁰ EPR 529, Item 36.

⁴¹ Ibid, page 9.

⁴² EPR 550, Item 44.

⁴³ Ibid, page 11.

Commission verified this information. The Commission considers that Ta Fong's sales system is a reliable and accurate basis in which to make findings in respect of Ta Fong's costs for this investigation.

MCC matching

The Manual provides that where there are no sales or insufficient sales of identical models of the goods exported to Australia that are sold in the ordinary course of trade on the domestic market, the Commission may use a surrogate model.

In this instance, the Commission chose MCC P-H-2-N-1-C-1-N-A-2-P as the surrogate model for P-H-2-N-1-C-1-N-B-2-P. The variance between these models was the product thickness. Analysis of the domestic selling prices of the exported model and the surrogate model revealed pricing was within 0.2%, which the Commission considered negligible.

The Commission also notes it identified no key MCC categories in this investigation.

Goods verification

During verification, the Commission selected 15 domestic sales by Ta Fong for testing downwards to source documents. Ta Fong provided purchase orders, internal order acceptance documents, ERP system order entry details, packing lists, commercial invoices and proof of payment as part of this process. The Commission verified the product codes, base, shape, diameter, thickness, volume, pieces and values back to the sales listing. From this examination, Ta Fong satisfied the Commission that the domestic sales listing appropriately represents domestic sales of the goods.

Dumping margin

The Commission reviewed the dumping margin calculations for Ta Fong for quality and accuracy, as per its standard operating procedures.

Export price

The Commission considers Ta Fong to be the exporter of the goods, as Ta Fong 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 investigation period, Ta Fong was the exporter of the goods.

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

In respect of Ta Fong's Australian sales of the goods to its unrelated customers during the period, the verification team 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, or
- 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.⁴⁴

The Commission therefore considers that all export sales made by Ta Fong to its Australian customers during the period were 'arms length' transactions.

In respect of Australian sales of the goods by Ta Fong, the Commission has determined an export price under section 269TAB(1)(a), being the price paid by the importer to the exporter, less transport and other costs arising after exportation.

Normal value

The Commission did not find any evidence of related party transactions related to Ta Fong's domestic sales.

In respect of Ta Fong'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, or
- 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.⁴⁵

The Commission therefore considers that all domestic sales made by Ta Fong to its domestic customers during the period were 'arms length' transactions.

As detailed in the Ta Fong verification report, 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%.

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. The Commission will consider whether it can make a proper comparison at the MCC level where the volume of domestic sales of an exported model is less than 5% of the volume exported. In these situations, the Commission may consider

⁴⁴ Section 269TAA refers.

⁴⁵ Section 269TAA refers.

using a surrogate domestic model to calculate normal value for the exported model. The table below provides details.

Export MCC	Comment	Surrogate MCC
P-H-2-N-1-C-1-N-B-2-P	No domestic sales in the OCOT.	The Commission used P-H-2-N-1-C-1-N-A-2-P as it is the next most comparable model. Domestic sales of this model are greater than 5% of the exported volume.

Table 9 – Surrogate export model – Ta Fong

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 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 inland transport	Deduct an amount for domestic inland transport
Export inland transport	Add an amount for export inland transport
Export port and handling charges	Add an amount for port charges
Export credit terms	Add an amount for export credit terms

Table 10 – Summary of adjustments – Ta Fong

Dumping margin

The Commission has calculated a dumping margin in respect of the goods exported to Australia by Ta Fong for the investigation period. The dumping margin is **negative 9.0%**.

The Commission's calculations are included at **Confidential Attachments 3 to 6**.

4.5.2 Residual exporters – Taiwan

There were no residual exporters from Taiwan.

4.5.3 Uncooperative exporters – Taiwan

As detailed in chapter 4.4.5, the Commission has found that all exporters of the goods from Taiwan, other than Ta Fong, are uncooperative exporters for the purposes of this investigation.

4.5.3.1 Submissions to SEF 550

In its submission⁴⁶, Orrcon disagreed with the method used by the Commission to calculate the dumping margin for uncooperative Taiwanese exporters. According to Orrcon, the Commission should ascertain the export price and normal value for uncooperative Taiwanese exporters using the same methodology as the Commission used for uncooperative Korean exporters in this investigation. Orrcon submits that it is not

⁴⁶ EPR 550, Item 60.

correct or preferable to rely on verified data from Ta Fong, the only cooperative exporter, to determine the export price and normal value for uncooperative Taiwanese exporters. Orrcon has based this assertion on the following considerations:

- Ta Fong's export volume is only a small proportion of the total export volume from Taiwan, and the export product differences amongst the uncooperative Taiwanese exporters is not represented in the export price
- the Commission's application of statistical standard deviation to the export price is inconsistent with other Taiwanese-related quantitative assessments on price and price comparisons
- the method used in SEF 550 to calculate normal value for uncooperative Korean exporters, where there was a lack of available information, would, if applied to uncooperative Taiwanese exporters, be indicative of a price at which an uncooperative Taiwanese exporter may sell the goods for in the domestic Taiwanese market, and provide a more accurate and reliable basis for the normal value
- Annex II of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* states that, if a party does not cooperate with an investigating authority, it could lead to a less favourable result for that party. Orrcon submits that a preliminary 0.4% dumping margin difference is a less favourable outcome for Ta Fong, a cooperative exporter.

The Commission has addressed each of these points in the following chapter.

4.5.3.2 Dumping margin calculation

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

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 considered 2 options for determining an export price for uncooperative Taiwanese exporters using relevant information available:

- using the verified export price of the cooperating exporter, or
- using the lowest weighted average free on board (FOB) export price for the investigation period of Taiwanese exporters who exported to Australia during the investigation period, as reported in the ABF import database (this is the method advocated by Orrcon in its submission to SEF 550).

The goods imported from Ta Fong are a small, but not insignificant, volume of exports of the goods from Taiwan during the investigation period. However, the Commission considers that the use of verified exporter data is preferable because:

- the Commission has a high degree of confidence in the accuracy of the data for Ta Fong's exports of the goods to Australia as a result of the verification process

- Ta Fong’s export price as calculated by the Commission is within the range of FOB export prices for Taiwanese exporters based on ABF import data.

The Commission notes Orrcon’s submission that there are “*distinct Taiwanese Australian export product differences (defined by the Model Control Codes) evidenced between the Austube Mills Pty Ltd importer verification report and those above for Ta Fong*” and for this reason, the Ta Fong export price does not represent product specifics of the larger proportion of Taiwanese exporters. However, the Austube Mills verification report⁴⁷ shows Austube Mills importing 2 MCCs during the investigation period, one of which Ta Fong also exported to Australia. Without verification of other Taiwanese exporters, there is no further evidence that the larger proportion of Taiwanese exporters export different MCCs to Australia.

SEF 550 stated that 81% of export volumes from other Taiwanese exporters are within one standard deviation of Ta Fong’s export price. This statement remains accurate, but the Commission acknowledges that the referral to standard deviation is inconsistent with other qualitative assessments on price that refer to percentage difference. The Commission has therefore further broken down this analysis on a percentage basis as depicted in the table below.

Difference between Ta Fong verified EP and EP based on ABF import database	Export volumes
Less than 2%	79%
Between 2% and 4% (inclusive)	2%
More than 4%	19%

Table 11 – Export volumes within certain ranges of Ta Fong export price⁴⁸

The Commission considers that the volume of exports from Taiwanese exporters within 2% of Ta Fong’s verified export price is further support that verified Ta Fong data is relevant to the export price for uncooperative Taiwanese exporters.

The use of Ta Fong’s verified export price as a basis for that of uncooperative exporters is distinguished from the approach taken in respect of uncooperative Korean exporters in SEF 550 because no cooperative Korean exporters provided data that the Commission could use to determine an export price. Exports by the Korean exporter with the lowest weighted average FOB export price, as reported in the ABF database also represented a significant majority of exports from Korea, which is not the case with Taiwan. Accordingly, data from the ABF database was the most reliable and relevant information at hand for uncooperative Korean exporters.

The Commission considers that the verified export price of Ta Fong is the most relevant information for determining an export price for uncooperative Taiwanese exporters of the goods during the investigation period after considering the following:

- the volume of Taiwanese exports made up by Ta Fong exports

⁴⁷ EPR 550, Item 50.

⁴⁸ Confidential Attachment 7.

- the similarity of the export price with other exporters as reported in the ABF database
- the level of confidence the Commission has in verified exporter data compared to data from the ABF import database.

The Commission further notes that use of the lowest weighted average FOB export price, as advocated by Orrcon in its submission, would produce a dumping margin in respect of uncooperative Taiwanese exporters below 2%, which would also result in the termination of the investigation in respect of these exporters.

Normal value

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

In SEF 550, the Commission used the normal value established for the sole cooperating Taiwanese exporter in the investigation period, less favourable adjustments.

Orrcon has submitted that the method used in SEF 550 to calculate normal value for uncooperative Korean exporters would provide a more accurate and reliable basis for the normal value for uncooperative Taiwanese exporters, which entails using a constructed normal value.

It is the Commission's preferred practice when there is a cooperative exporter from a country under investigation (as in the current circumstance for Taiwan) to calculate the uncooperative and all other exporters rate using the weighted average normal value from the cooperating exporter, removing any favourable adjustments. This was the approach taken in SEF 550. The Commission chose to use the normal value of the sole cooperating exporter 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 normal value of the cooperating exporter, less favourable adjustments, demonstrates a price at which an uncooperative exporter may sell the goods in the domestic Taiwanese market, based on the information before the Commission.

Orrcon has not provided any additional information in its submission that the Commission considers would justify a change from its preferred position taken in SEF 550. The Commission verified Ta Fong's domestic sales and in the Commission's opinion, these sales represent the most relevant information to determine the normal value of uncooperative Taiwanese exporters.

Dumping margin

The Commission has calculated a dumping margin in respect of the goods exported to Australia by uncooperative Taiwanese exporters for the investigation period. The dumping margin is **negative 8.6%**.

The Commission's calculations are included in **Confidential Attachment 7**.

4.5.4 Summary of dumping margins

The Commission has assessed that the goods exported to Australia from Taiwan during the investigation period by:

- Ta Fong were not dumped, as the dumping margin for this exporter was negative (i.e. -9.0%)
- Uncooperative exporters from Taiwan were not dumped, as the dumping margin was negative (i.e. -8.6%).

4.6 Dumping Assessment – Vietnam

4.6.1 CDI

4.6.1.1 Submissions to SEF 550

In its submission⁴⁹, Orrcon sought clarification as to the nature of the ‘other costs’ adjustments made in calculating the normal value for CDI. Orrcon noted the Commission did not make this adjustment for Vina One, the other cooperative Vietnamese exporter.

During verification of CDI, the Commission identified that CDI incurred ‘other costs’ in connection with the sale of the goods. These ‘other costs’ included, among other things, marketing costs. The Commission was satisfied that there was a difference between the costs incurred between exported and domestically sold goods and that CDI incurred these costs in connection with the sale of the goods. Therefore, an adjustment was necessary to ensure a fair comparison of normal values and export prices.

Vina One also incurred marketing costs, but treated such costs as part of its selling, general and administrative (SG&A) costs, as they were a general cost of business rather than as a direct selling expense. The Commission determined that it did not need to make an adjustment to ensure a fair comparison for sales by Vina One.

4.6.1.2 Dumping margin calculation

Verification

The Commission verified CDI’s REQ.

The Commission is satisfied that CDI is the producer of the goods and like goods. The Commission is further satisfied that the information provided by CDI is accurate and reliable for ascertaining the variable factors applicable to its exports of the goods.

The Commission’s verification report for CDI is available on the EPR.⁵⁰

Export price

The Commission considers CDI to be the exporter of the goods as CDI:

⁴⁹ EPR 550, Item 60.

⁵⁰ EPR 550, Item 45.

- is the manufacturer of the goods
- knowingly sent the goods for export to Australia or a third country. During the investigation period, CDI sometimes exported the goods directly and in other cases, through CDT.

The Commission is satisfied that for all Australian export sales during the investigation period, CDI was the exporter of the goods.

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

In respect of CDI's direct 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, or
- 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.⁵¹

The Commission has found that all direct export sales made by CDI to its unrelated Australian customers during the period were 'arms length' transactions.

In respect of Australian sales of the goods by CDI, where CDI exported the goods directly, the Commission has determined an export price under section 269TAB(1)(a), being the price paid by the importer to the exporter, less transport and other costs arising after exportation.

In respect of Australian sales of the goods by CDI, where CDI indirectly exported through CDT, the Commission has determined an export price under section 269TAB(1)(c), being the price determined having regard to all the circumstances of the exportation. This is because the importer purchased these particular goods from CDT instead of from the exporter. The Commission has determined an export price for these goods, as the price paid to CDI by CDT plus inland transport and port handling costs, in order to make these sales on the same terms as goods exported directly by CDI.

Normal value

Section 269TAA provides that if like goods are sold in the country of export in 'arms length' transactions and in substantial quantities, and are sold at a price less than the cost of such goods and the cost is unrecoverable within a reasonable period, they are taken not to have been sold in the ordinary course of trade.

⁵¹ Section 269TAA refers.

In the verification report for CDI⁵², the Commission found no evidence that domestic sales made by CDI to its related customers during the period were not 'arms length' transactions. However, as noted in its submission of 9 March 2021, CDI advised the Commission that domestic sales made by CDI to a related party, CDT, were not 'arms length' as consideration other than price was payable, in the form of internal profit-sharing arrangements between family members with shares in both companies

Accordingly, the Commission does not consider domestic sales between CDI and CDT are 'arms length' and excluded these from the calculation of normal value.

In respect of CDI'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 its 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, or
- 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.⁵³

The Commission therefore considers that all domestic sales made by CDI to its unrelated customers during the period were 'arms length' transactions.

The Commission assessed whether there were domestic sales of the goods by CDI in substantial quantities at a price less than the cost of such goods, and if so, whether that cost was recoverable within a reasonable period (which for the purposes of this investigation is the investigation period). The Commission considered that those sales found not to be profitable or recoverable, were not 'sold in the ordinary course of trade' and therefore excluded from the calculation of normal value.

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

The Commission considered whether CDI's records reasonably reflected competitive market costs associated with the production or manufacture of like goods. Section 43(2) of the *Customs (International Obligations) Regulation 2015* (Cth) (the Regulation) requires that the Minister must work out the cost of production or manufacture using the information set out in the exporter or producer's records if:

- an exporter or producer of the goods keeps records relating to the goods that are in accordance with generally accepted accounting principles (GAAP) in the country of export

⁵² EPR 550, Item 45.

⁵³ Section 269TAA refers.

- those records reasonably reflect competitive market costs associated with the production or manufacture of the goods.

As noted in the CDI verification report⁵⁴, the Commission considers that the accounting records held by CDI are in accordance with the GAAP of Vietnam.

The Commission also determined that a particular market situation did not exist in respect of the domestic market for precision pipe and tube steel in Vietnam for the investigation period. This analysis included an examination of competition within the Vietnamese HRC market. The Commission is satisfied, based on the similarity of Vietnamese HRC prices with the price of HRC imported from other countries and the level of import volumes observed, that the prices paid by CDI reasonably reflect competitive market costs.

This analysis is set out in **Non-confidential Appendix A3**.

No other evidence was presented that would indicate CDI's costs did not otherwise reasonably reflect competitive market costs associated with the production or manufacture of the goods.

In light of the above, the Commission therefore considers it appropriate to calculate a normal value under section 269TAC(1), excluding those sales to its related party CDT.

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%.

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 it can make a proper comparison at the MCC level. In these situations, the Commission may consider whether it should use a surrogate domestic model to calculate normal value for the exported model. The table below provides details.

Export MCC	Comment	Surrogate MCC
G-C-N-1-N-L2-T1 G-C-N-2-N-L2-T1	Volume of domestic sales model is less than 5% of the exported volume.	The Commission used G-R-N-N-3-L2-T1 as a surrogate to make a specification adjustment, as it is the next most comparable model. Domestic sales of the surrogate model are greater than 5% of the exported volume.
G-R-N-N-3-L1-T2	Volume of domestic sales model is less than 5% of the exported volume.	The Commission used G-R-N-N-3-L2-T1 as a surrogate to make a specification adjustment and timing adjustment. Due to a lack of sales data for G-R-N-N-3-L2-T1 in the Dec-19 quarter, the Commission has used the difference in the production costs for the surrogate model between quarters to

⁵⁴ EPR 550, Item 45.

		make the timing adjustment. Domestic sales of the surrogate model are greater than 5% of the exported volume.
G-R-O-N-2-L2-T2	Volume of domestic sales model is less than 5% of the exported volume.	The Commission used G-R-N-N-2-L2-T2 as a surrogate to make a specification adjustment, as it is the next most comparable model. Domestic sales of the surrogate model are greater than 5% of the exported volume.
G-R-O-N-3-L2-T2	Volume of domestic sales model is less than 5% of the exported volume.	The Commission used G-R-N-N-3-L2-T2 as a surrogate to make a specification adjustment, as it is the next most comparable model. Domestic sales of the surrogate model are greater than 5% of the exported volume.

Table 12 - Surrogate export model - CDI

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 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 other costs	Deduct an amount for domestic other costs
Export inland transport	Add an amount for export inland transport
Export port charges	Add an amount for port charges
Export other costs	Add an amount for 'other costs'

Table 13: Summary of adjustments - CDI

Dumping Margin

The Commission has calculated a dumping margin in respect of the goods exported to Australia by CDI for the investigation period. The dumping margin is **negative 12.2%**.

The Commission's calculations are included at **Confidential Attachments 8 to 11**.

4.6.2 Vina One

Verification

The Commission conducted a remote verification of Vina One's REQ.

The Commission is satisfied that Vina One is the producer of the goods and like goods. The Commission is further satisfied that the information provided by Vina One 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.⁵⁵

Submission in response to the verification report

In a submission dated 1 March 2021⁵⁶, Orrcon requested that the source used by the Commission in comparing Vina One's HRC purchase price against benchmark prices be disclosed to enable all interested parties to validate the Commission's finding that Vina One's CTMS data was accurate. This request arises from Orrcon's allegation that *"... Vietnamese HRC pricing is lower than available Asia-regional price benchmarks, and that this therefore translates into a lower than-competitive market price for subject goods selling prices in Vietnam."*

Commission's assessment

The Commission used prices out of Vietnam obtained from an independent supplier of steel market data as a benchmark. The Commission notes that the comparison to the benchmark was for the purposes of verifying the accuracy of Vina One's CTMS data and was not in relation to whether these costs were representative of a competitive market price. Having been satisfied that the data was accurate and reliable, the use of a benchmark from a different market to that in which Vina One actually purchased HRC would not be informative for the purpose of verification.

Whether Vina One's costs were representative of a competitive market price is discussed further below.

Export price

The Commission considers Vina One to be the exporter of the goods because Vina One:

- is the principal located in Vietnam, the country of export
- is the manufacturer of the goods
- is named on the commercial invoice as the supplier
- is named as consignor on the bill of lading
- arranges transportation of the goods to the port of export in Australia
- knowingly placed the goods in the hands of a freight company for delivery to Australia.

The Commission is satisfied that, for all Australian export sales during the investigation period, Vina One was the exporter of the goods.

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

In respect of Vina One'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

⁵⁵ EPR 550, Item 47.

⁵⁶ EPR 550, Item 51.

- 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, or
- 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.⁵⁷

The Commission therefore considers that all export sales made by Vina One to its Australian customers during the period were ‘arms length’ transactions.

In respect of Australian sales of the goods by Vina One, the Commission has determined an export price under section 269TAB(1)(a), being the price paid by the importer to the exporter, less transport and other costs after exportation.

Normal value

Section 269TAA provides that if like goods are sold in the country of export in ‘arms length’ transactions and in substantial quantities, and are sold at a price less than the cost of such goods and the cost is unrecoverable within a reasonable period, they are taken not to have been sold in the ordinary course of trade.

The Commission did not find any evidence of related party transactions in respect of Vina One’s domestic sales.

In respect of Vina One’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, or
- 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.⁵⁸

The Commission therefore considers that all domestic sales made by Vina One to its domestic customers during the period were ‘arms length’ transactions.

The Commission assessed whether there were domestic sales of the goods by Vina One in substantial quantities at a price less than the cost of such goods, and if so, whether that cost was recoverable within a reasonable period (which for the purposes of this investigation is considered to be the investigation period). Sales found not to be profitable or recoverable were excluded from the calculation of normal value, as they were considered to have not been sold in the ordinary course of trade.

⁵⁷ Section 269TAA refers.

⁵⁸ Section 269TAA refers.

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

The Commission considered whether Vina One's records reasonably reflected competitive market costs associated with the production or manufacture of like goods. Section 43(2) of the Regulation requires that the Minister must work out the cost of production or manufacture using the information set out in the exporter or producer's records if:

- an exporter or producer of the goods keeps records relating to the goods that are in accordance with GAAP in the country of export
- those records reasonably reflect competitive market costs associated with the production or manufacture of the goods.

As noted in the Vina One verification report⁵⁹, the Commission considers that the accounting records held by Vina One are in accordance with the GAAP of Vietnam.

The Commission also determined that a particular market situation did not exist in respect of the domestic market for precision pipe and tube steel in Vietnam for the investigation period. This analysis included an examination of competition within the Vietnamese HRC market. The Commission is satisfied, based on the similarity of Vietnamese HRC prices with the price of HRC imported from other countries and the level of import volumes observed, that the prices paid by Vina One reasonably reflect competitive market costs.

This analysis is set out in **Non-confidential Appendix A3**.

No other evidence was presented that would indicate Vina One's costs did not otherwise reasonably reflect competitive market costs associated with the production or manufacture of the goods.

In light of the above, the Commission therefore considers it appropriate to calculate a normal value under section 269TAC(1).

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%.

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. The Commission will consider whether it can make a proper comparison at the MCC level where the volume of domestic sales of an exported model is less than 5% of the volume exported. In these situations, the Commission may consider using a surrogate domestic model to calculate normal value for the exported model.

⁵⁹ EPR 550, Item 47.

Export MCC	Comment	Surrogate MCC
P-G-3-N-3-R-N-2-A-1-P	Volume of domestic sales model is less than 5% of the exported volume.	The Commission used P-G-3-N-3-R-N-3-A-1-P, as it is the next most comparable model. Domestic sales of this model are greater than 5% of the exported volume.
P-G-3-N-3-R-N-2-A-2-P	Volume of domestic sales model is less than 5% of the exported volume.	The Commission used P-G-3-N-3-R-N-3-A-1-P, as it is the next most comparable model. Domestic sales of this model are greater than 5% of the exported volume.
P-G-3-N-3-R-N-3-A-2-P	Volume of domestic sales model is less than 5% of the exported volume.	The Commission used P-G-3-N-3-R-N-3-A-1-P, as it is the next most comparable model. Domestic sales of this model are greater than 5% of the exported volume.

Table 14 - Surrogate export model - Vina One

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 necessary to ensure a fair comparison of normal value and export prices.

Adjustment Type	Deduction/addition
Domestic credit terms	Deduct an amount for domestic credit
Domestic inland transport	Deduct an amount for domestic inland transport
Export inland transport	Add an amount for export inland transport
Export handling and other	Add an amount for export handling and other

Table 15 : Summary of adjustments - Vina One

Dumping margin

The Commission has calculated a dumping margin in respect of the goods exported to Australia by Vina One for the investigation period. The dumping margin is **negative 12.0%**.

The Commission's calculations are included at **Confidential Attachments 12 to 15**.

4.6.3 Uncooperative exporters – Vietnam

As detailed in chapter 4.4.5, the Commission has found all exporters of the goods from Vietnam are uncooperative exporters for the purposes of this investigation, other than:

- CDI
- Vina One
- Hoa Phat Steel (residual exporter)
- Hoa Phat Long An (residual exporter)
- Nguyen Minh Steel (residual exporter).

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

Export prices

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

The Commission has used the lowest verified weighted 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 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. Specifically, the Commission has used the highest verified normal value for the investigation period of cooperating Vietnamese exporters who exported to Australia during the investigation period, less favourable adjustments. This 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, less favourable adjustments, 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 Commission has calculated a dumping margin in respect of the goods exported to Australia by uncooperative Vietnamese exporters for the investigation period. The dumping margin is **negative 6.5%**.

The Commission's calculations are included in **Confidential Attachment 7**.

4.6.4 Residual exporters – Vietnam

Hoa Phat Steel, Hoa Phat Long An and Nguyen Minh Steel were selected as residual exporters from Vietnam.

As the Commission has calculated a negative dumping margin for all exporters, including uncooperative exporters from Vietnam, it has not calculated a separate dumping margin for residual exporters and has instead set the dumping margin for residual exporters at the same rate as for uncooperative exporters.

Dumping margin

The dumping margin in respect of the goods exported to Australia by residual Vietnamese exporters for the investigation period is **negative 6.5%**.

4.6.5 Summary of dumping margins

The Commission has assessed that exporters from Vietnam did not export dumped goods to Australia.

5 SUBSIDY INVESTIGATION

5.1 Finding

The Commission has found that:

- no countervailable subsidies have been received in respect of the goods exported to Australia from Vietnam during the investigation period by CDI, Vina One and residual exporters
- non-cooperative entities from Vietnam received countervailable subsidies in respect of the goods exported to Australia during the investigation period, albeit at negligible levels.

The Commission has found that the volume of subsidised goods exported to Australia from Vietnam by non-cooperative entities during the investigation period was not negligible.

The subsidy margin determined by the Commission in respect of non-cooperative exporters is negligible.

5.2 Legislative and policy framework

A subsidy is present where an entity that is producing or exporting the goods to Australia receives a contribution from a government or public body, or a private body under instruction from a government or public body, which confers a benefit, whether direct or indirect, to that company in respect of the goods. A benefit results when the entity is financially better off for having received the contribution than they would have been had they had to turn to the market instead. Section 269T(1) defines a subsidy in more detail.

Further, a subsidy must be specific in order to be countervailable. Specific subsidies are those targeted at individual entities or certain sections of the economy, as described in section 269TAAC.

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 countervailing duty notice under section 269TJ.

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.

Section 269TDA(2) requires that the Commissioner must terminate the investigation, as it relates to an exporter, if satisfied that no countervailable subsidy has been received by the exporter in respect of the goods, or a countervailable subsidy has been received during the investigation period, but the subsidy never exceeded the negligible level outlined in section 269TDA(16).

5.3 Investigated programs

The applicant alleged the existence of 44 unique programs in relation to exports of precision pipe and tube steel from Vietnam. The applicant's allegation was based on:

- anti-dumping and countervailing cases conducted by the CBSA in relation to the provision of subsidies granted by the GOV
- 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*.⁶⁰

The Commission has investigated each of the 44 alleged subsidy programs.

5.4 Summary of programs

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

5.5 Information considered by the Commission

5.5.1 Information provided by exporters

The Commission has relied upon information provided by the cooperating exporters in assessing the alleged subsidy programs. This included information provided by exporters in the REQs, as well as information provided by exporters during verification.

5.5.2 Information provided by the Government of Vietnam

The Commission invited the GOV for consultations on the claims made by the applicant in relation to countervailable subsidies. On 24 March 2020, the GOV advised the Commission that the Commission could also consider its submission dated 20 January 2020 in relation to a similar investigation (which the applicant later withdrew) for the purposes of Investigation 550.⁶¹

On 31 March 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 GOV provided a response to the questionnaire to the Commission on 10 June 2020.⁶²

5.5.3 Other information considered as part of this assessment

The Commission also considered as part of this assessment:

- information provided in the application

⁶⁰ Available on the WTO website at: https://www.wto.org/english/tratop_e/scm_e/scm_e.htm

⁶¹ EPR 550, Item 4.

⁶² EPR 550, Item 36.

- submissions received in relation to subsidies provided to Vietnamese exporters⁶³
- information provided to the WTO by the GOV in February 2020 in their respective notifications in the *New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures*.

5.6 Subsidy assessment

5.6.1 Chinh Dai Industrial

5.6.1.1 Program 43 – Exemptions of Import Duty⁶⁴

During verification, the Commission considered that CDI had received a subsidy under this program. After further examination, the Commission has determined that no exporter received a countervailable subsidy under this program. **Non-confidential Appendix B** discusses the findings in relation to this program.

5.6.1.2 Subsidy margin

Based on the information available to the Commission, the Commission did not find that CDI received any countervailable subsidies. See **Confidential Attachment 16**.

5.6.2 Vina One Steel Manufacturing

The Commission has found no evidence that Vina One received a subsidy in relation to any of the alleged programs.

5.6.2.1 Subsidy margin

Based on the information available to the Commission, the Commission did not find that Vina One received any countervailable subsidies. See **Confidential Attachment 17**.

5.6.3 Residual exporters

The Commission has determined that the residual exporters have not received benefits, having regard to the examination of the selected cooperative exporters. As the selected cooperative exporters for Vietnam were not in receipt of any countervailable subsidies, the Commission has determined that residual exporters have also not received any countervailable subsidies in respect of the goods during the investigation period.

5.6.4 Non-cooperative Vietnamese entities

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

⁶³ EPR 550, Item 4 – GOV submission in response to application; EPR 550, Item 38 – GOV submission regarding particular market situation and countervailable subsidies and EPR 550, Item 39 – Orrcon submission regarding Chinese and Vietnamese particular market situation.

⁶⁴ The Commission has combined programs 42, 43 and 44 because they all provide for the same form of subsidy, in the form of a refund of import duty, and are governed by the same legislation.

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

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.

5.6.4.1 Program 18 – Incentives on corporate income tax for enterprises operating in regions or sectors entitled to incentives

The Commission has determined that non-cooperative entities may be in receipt of a benefit under this program and that this program is countervailable.

As discussed in **Non-confidential Appendix B**, 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 by non-cooperative entities under this program by applying a preferential rate of 10% to the weighted average verified taxable income of the cooperating exporters for the investigation period.

The Commission attributed the amount received under this program to a weighted average of all of the cooperating exporters' sales. The Commission then allocated the amount to the goods based on the weighted average of the cooperating exporters' export revenue over the investigation period.

The Commission calculated the subsidy margin for non-cooperative entities using the amount of the unit benefit expressed as a percentage of the lowest verified weighted 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.

5.6.4.2 Subsidy margin

Based on the information available to the Commission, the Commission has calculated a subsidy margin for non-cooperative entities of **0.01%**.

The Commission's countervailable subsidy calculations for non-cooperative entities is contained in **Confidential Attachment 18**.⁶⁵

⁶⁵ The Commission has kept this attachment confidential as it contains commercially sensitive information relating to exporters.

6 NON-INJURIOUS PRICE

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

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

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

However, pursuant to sections 8(5BAA), 8(5BAAA) and 10(3DA) of the Dumping Duty Act, the Minister is not required to have regard to the lesser duty rule where one or more of the following circumstances apply:⁶⁶

- the normal value of the goods was not ascertained under section 269TAC(1) because of the operation of section 269TAC(2)(a)(ii)
- there is an Australian industry in respect of like goods that consists of at least 2 small-medium enterprises, whether or not that industry consists of other enterprises⁶⁷
- if a countervailing subsidy has been received in respect of the goods – the country in relation to which the subsidy has been provided, has not complied with Article 25 of the *WTO Agreement on Subsidies and Countervailing* for the compliance period.

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

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

⁶⁶ Sections 8(5BAAA)(a) to (c) of the Dumping Duty Act concern the calculation of dumping duty and sections 10(3DA)(a) to (c) of the Dumping Duty Act concern the calculation of countervailing duty.

⁶⁷ As defined in the *Customs (Definition of “small-medium enterprise”) Determination 2013*.

7 PARTIAL TERMINATION OF THE INVESTIGATION

7.1 Termination

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

7.1.1 Termination of dumping investigation

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

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

Country	Exporter	Dumping margin (%)
Taiwan	Ta Fong	-9.0
	All Other exporters	-8.6
Vietnam	CDI	-12.2
	Vina One	-12.0
	Residual exporters	-6.5
	All Other exporters	-6.5

Table 16 – Dumping margins

Based on the findings in this report, as outlined in the table above, the Commissioner is satisfied that no Taiwanese or Vietnamese exporter has exported dumped goods to Australia during the investigation period. Therefore, in accordance with section 269TDA(1)(b)(i), the Commissioner terminates the dumping investigation in relation to all exporters from Taiwan and Vietnam.

Further, section 269TDA(3) provides that the Commissioner must terminate the investigation, so far as it relates to a country, if satisfied that the total volume of goods that have been or may be dumped is a negligible volume⁶⁸.

Based on the findings in this report, the Commissioner is satisfied that the total volume of dumped goods exported to Australia from Taiwan and Vietnam during the investigation

⁶⁸ Section 269TDA(4) defines a negligible volume as less than 3% of the total volume of goods imported into Australia over the investigation period, where section 269TDA(5) does not apply. Section 269TDA(5), which concerns aggregation of dumped goods, does not apply to this investigation.

period is negligible. Therefore, in accordance with section 269TDA(3), the Commissioner terminates the dumping investigation so far as it relates to Taiwan and Vietnam.

7.1.2 Termination of subsidy investigation

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

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

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

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

Country	Exporter	Subsidy margin (%)
Vietnam	CDI, Vina One, Residual exporters	0.0
	Non-cooperative exporters	0.01

Table 17 – Subsidy margin

Based on the findings in this report, the countervailable subsidy received by all Vietnamese exporters in relation to the goods, never at any time during the investigation period exceeded a negligible level. Accordingly, the Commissioner terminates the subsidy investigation in relation to CDI, Vina One and residual exporters pursuant to section 269TDA(2)(b)(i), and in relation to non-cooperative exporters pursuant to section 269TDA(2)(b)(ii).

ATTACHMENTS

Confidential Attachment 1	Australian market analysis
Confidential Attachment 2	CTM breakdown
Confidential Attachment 3	Ta Fong Export Price
Confidential Attachment 4	Ta Fong CTMS
Confidential Attachment 5	Ta Fong Normal Value
Confidential Attachment 6	Ta Fong Dumping Margin
Confidential Attachment 7	All other exporters dumping margin
Confidential Attachment 8	CDI Export Price
Confidential Attachment 9	CDI CTMS
Confidential Attachment 10	CDI Normal Value
Confidential Attachment 11	CDI Dumping Margin
Confidential Attachment 12	Vina One Export Price
Confidential Attachment 13	Vina One CTMS
Confidential Attachment 14	Vina One Normal Value
Confidential Attachment 15	Vina One Dumping Margin
Confidential Attachment 16	CDI subsidies
Confidential Attachment 17	Vina One subsidies
Confidential Attachment 18	All other entities subsidy analysis
Confidential Attachment 19	Vietnamese electricity prices
Confidential Attachment 20	Preferential loan benchmark calculation
Confidential Attachment 21	Raw material cost analysis and benchmark calculation
Non-confidential Attachment 1	MoIT Vietnam – Statement on steel price stabilization fund
Non-confidential Attachment 2	Vietnam Steel Master Plan 2015-2025
Non-confidential Attachment 3	GOV Decision 4977/QD-BCT 2018
Non-confidential Appendix A	Assessment of particular market situation - Vietnam
Non-confidential Appendix B	Assessment of alleged subsidy programs

APPENDIX A ASSESSMENT OF PARTICULAR MARKET SITUATION – VIETNAM

This appendix sets out the Commission's assessment of whether a particular market situation existed in the Vietnamese market for the goods during the investigation period.

A1 Introduction

In its submission⁶⁹, Orrcon alleged that the domestic prices of precision pipe and tube are not suitable for the determination of normal values, on the basis that intervention by the GOV in the iron and steel industry raw material supply markets has distorted the prices of the subject goods during the investigation period.

Orrcon's submission quotes the terms set out in Vietnam's Protocol of Accession to the 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 an importing Member may "...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."⁷⁰

Under these terms, the burden of proof lies with the Vietnamese exporter to show that market conditions prevail, with the assumption otherwise being that the market conditions in Vietnam are not representative of a properly competitive market. However, this was not in force during this investigation as the provision expired on 31 December 2018.

Further, Orrcon submits that prices in Vietnam for the goods are "artificially low, or lower than they would otherwise be in a competitive market". Specifically, Orrcon points to GOV influence in the areas of:

- electricity prices
- Steel Master Plans
- industrial development strategy
- state ownership of precision tube producers
- domestic price stabilisation initiatives
- steel industry construction project and investment control
- steel industry subsidisation

⁶⁹ INV 550 application by Orrcon, available on the Commission's website

⁷⁰ WTO, Report of the Working Party on the Accession of Vietnam, WT/AA/VNM/48, 27 October 2006, at para 255

A2 The GOV role in the Vietnamese steel market

A2.1 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.”⁷¹ As a result, the Commission substituted the price of electricity with a market rate as determined by the World Bank. Orrcon here asserts that, in respect of the goods under consideration in this case, “cost distortions in the Vietnamese electricity market have a significant impact on the production costs of Vietnamese precision tube manufacturers, and that competitive conditions do not exist for domestic electricity prices in Vietnam.”⁷²

The Commission notes that the production process for steel rod in coil differs significantly to that of the goods in this case. The production of billet from iron ore and metallurgical coke in the steel making process for rod in coil is more energy intensive than that for precision pipe and tube steel. Raw material costs, rather than manufacturing overheads (which usually include electricity) also make up a larger proportion of the CTM for the goods, compared to steel rod in coil, as detailed in chapter 4.3.1.

In its Response to Government Questionnaire (RGQ), the GOV confirmed that the government regulates electricity prices. There are different prices to the manufacturing sector, administrative and governmental sector, trading sector and households. Within each sector, the government changes all entities the same rate.⁷³

The Commission has compared the prices provided by the GOV with prices provided by 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 provided by the GOV.

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.⁷⁴

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 precision tube manufacturers.

⁷¹ SEF 416 and Termination Report 416, available on the Commission website

⁷² EPR 550, Item 1, p. 48

⁷³ EPR 550, Item 36, Exhibit 45

⁷⁴ Confidential Attachment 19 – Vietnamese electricity prices

A2.2 Steel Master Plans

As detailed by the applicant, the GOV has detailed their plans for their domestic steel industry in a 2 stage Master Plan, as below:

- The Steel Master Plan 2007-2015 (Decree No. 145/2007/QD-TTg)⁷⁵
- The Steel Master Plan 2015-2025 (Decision No. 694/QD-BCT).⁷⁶

The original Steel Master Plan (2007-2015) contained production targets of 23 million tonnes of finished steel production by 2020 and 28 million tonnes by 2025.⁷⁷ Large investment projects were to achieve this 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 standards⁷⁸
- (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.⁷⁹

The Steel Master Plan 2015-2025 superseded the Steel Master Plan 2007-2015. 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 these claims by the applicant, the GOV submitted that the Steel Master Plans became redundant from the beginning of 2019, because of further laws passed by the GOV⁸⁰. The first, Law on Planning No. 21/2017/QH14, decreed that manufacturing industries, including steel, are no longer the subject of master plans developed by the GOV. Following that law, the Ministry of Industry and Trade promulgated Decision No.

⁷⁵ Available on the GOV legislative gazette at <http://vbpl.vn/TW/Pages/vbpgen-toanvan.aspx?ItemID=3341&Keyword=145/2007/QD-TTg>

⁷⁶ Non-confidential Attachment 2

⁷⁷ Steel Master Plan 2007-2015, Article 1(3)(a)

⁷⁸ Ibid, Article 1(3)(c)

⁷⁹ Ibid, Article 2

⁸⁰ INV 550 Document No. 004, GOV submission, available on the Commission website

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).⁸¹

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 annulled the *Steel production and distribution system development planning up to 2020, with a vision to 2025* on 27 December 2018.

Accordingly, the Commission is satisfied that the Steel Master Plans referenced by the applicant are no longer legally in force.⁸²

In its submission, dated 9 April 2020⁸³, Orrcon 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. Rather, the effects of the plans, which affected the structure and capacity of Vietnam's precision pipe and tube steel industry, continue beyond December 2019. Orrcon alleged that the plans, when in force, set production capacity goals and established guidelines for the development of Vietnam's steel distribution channels. According to Orrcon, the plans included market shares for distribution centres, 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. Orrcon 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 received no evidence during the investigation on the long-term effects of the Steel Master Plans on the Vietnamese steel industry. While there are forecasts for increased production to 2025, whether Vietnam met these production goals 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.

A2.3 Government Policies and Directives – Industrial Development Strategy

Orrcon's application details the GOV's industrial development strategy, as laid out in the Steel Master Plans. In particular, Orrcon highlights the strategic goals below:

⁸¹ Ibid, p240

⁸² Non-confidential Attachment 3 - GOV Decision 4977 _ QD-BCT 2018 abolishes planning for specific products and services

⁸³ EPR 550, Item 6

- to develop the industrial sector on the basis of effective mobilization 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 industrialization and modernization, on the basis of high-quality human resources and advanced technologies, regarding competition as a driving force for development
- to utilize 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 based on green growth, sustainable development and environmental protection.⁸⁴

As with the Steel Master Plans, the GOV submitted that Law on Planning No. 21/2017/QH14 and Decision No. 4977/QD-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 no evidence of the long-term effects of the strategies outlined above on the Vietnamese steel industry.

A2.4 State Ownership of Large Steel Tube Producers

Vina One

Orrcon submitted that Vina One, a co-operating exporter of precision pipe and tube in this investigation, is a State-owned Enterprise (SOE). Vina One's questionnaire response indicates that, while originally set up by the Department of Planning and Investment of Long An Province,⁸⁵ Vina One is now a privately owned enterprise, and is not controlled or influenced by the GOV. The Commission verified this during the investigation.

Vietnam Steel

The large integrated steel producer Vietnam Steel (VN Steel) manufactures a range of steel products, including both inputs for and finished products. VN Steel operates in accordance with a charter from the GOV. The GOV has an active role in VN Steel's management and daily operations.

In a paper by Nozomu Kawabata published in 2017, it was suggested 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

⁸⁴ VGP Prime Minister Nguyen Tan Dung on June 9, 2014 signed Decision No. 879/QDTTg to approve the Industrial Development Strategy through 2025, vision toward 2035

⁸⁵ INV 550 no. 35, available on the Commission's website

only be due to it falling into management crisis, itself a result of delays in corporate governance reforms.⁸⁶

VN Steel has an annual finished steel production capacity of 2.5 million tonnes, with an additional capacity to produce 1.5 million tonnes of billet. This compares to Hoa Phat Group, a private company, which has an annual steel production capacity of finished steel products of 2.77 million tonnes.⁸⁷ Hoa Phat now considers itself the market leader, above VN Steel, in construction steel companies.

Assessment

Based on the above, the Commission does not consider the GOV enacts large-scale policy initiatives through SOEs.

A2.5 GOV price stabilisation

Orrcon 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”⁸⁸
- 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 January 1, 2013) supersedes circular 122.⁸⁹

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 A2.4**, VN Steel does not have an influential impact on the Vietnamese steel industry.

⁸⁶ 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>

⁸⁷ Hoa Phat Annual Report 2019, p37, available at <https://file.hoaphat.com.vn/hoaphat-com-vn/2020/05/annual-report-2019.pdf>

⁸⁸ ThanhNien News, “Vietnam steel producers manipulating prices”, 9 April 2010

⁸⁹ Export.Gov, “Vietnam – Trade Barriers,” 24 August 2018

Price management

The Commission notes that the quote provided by Orrcon in the application regarding price management⁹⁰ is from 2010 and was in the context of allegations of steel price manipulation by Vietnamese metal producers. The Commission also understand that the powers referred to by the Price Management Department to stabilise prices come from Circular 122, as discussed further below.

Circular 122

The Commission examined Circular 122 and confirmed 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, forms and procedures for price registration and declaration of prices of goods and services.⁹¹ Such measures can be implemented where: ⁹²

- 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 75/2008.⁹³ Decree 75/2008 lists “Construction steel” as a good that is subject to price stabilisation.

However, both Decree 75/2008 and Circular 122 expired on 1 January 2014.

A2.6 GOV control over projects and investments

In its application, Orrcon provided the following examples of GOV control within the Vietnamese steel market:

- In April 2017, the GOV halted construction on the Hoa Sen Ca Na steel plant in Ninh Thuan Province, an approx. US\$10.6B project that had approval from almost 97% of Hoa Sen 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. Therefore, it is not likely to

⁹⁰ Thanhkien News, “Vietnam steel producers manipulating prices”, 9 April 2010, available at <http://www.thanhkiennews.com/business/vietnam-steel-producers-manipulating-prices-16995.html>

⁹¹ Article 1 of Circular No. 122/2010/TT-BTC, available at <http://vbpl.vn/TW/Pages/vbpq-toanvan.aspx?ItemID=25631>

⁹² Ibid, Article 2(2)

⁹³ Available at <http://vbpl.vn/TW/Pages/vbpq-toanvan.aspx?ItemID=12714>

result in lower steel prices in the country. Moreover, the GOV provided environmental and planning concerns as the reasons behind the decision.⁹⁴

- The GOV in 2016 removed 12 projects from the most recent Steel Master Plan due to “ineffective investments and incapable investors.”⁹⁵ The GOV also directs steel companies to upgrade their production technologies, find ways to save production costs, and require greater flexib[ility] in monthly and quarterly plans to better promote brands and build distribution networks.⁹⁶

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:⁹⁷

- Law on Investment 67/2014/QH13⁹⁸
- Decree 118/2015/ND-CP⁹⁹, 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.

A2.7 Vietnamese steel industry subsidisation

Orrcon 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:¹⁰⁰

- 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

⁹⁴ The Nation Thailand, “Vietnam PM halts \$10.6 billion steel plant”, 17 April 2017

⁹⁵ Viet Nam News, “Steel masterplan drops 12 projects”, 12 December 2016, available at <https://vietnamnews.vn/economy/347832/steel-masterplan-drops-12-projects.html>

⁹⁶ Vietnam Net, “Vietnam’s steel production set for 2017 surge, 10 January 2017, available at <http://english.vietnamnet.vn/fms/business/170953/vietnam-s-steel-production-set-for-2017-surge.html>

⁹⁷ EPR 550, Item 36, p.279

⁹⁸ EPR 550, Item 36, Exhibit 46

⁹⁹ EPR 550, Item 36 Exhibit 23

¹⁰⁰ The Commission has maintained CBSA numbering.

- 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

The CBSA found each program specific and therefore countervailable.

In its investigation, the CBSA received no response from the GOV to its request for information on 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. Chapter 5.6 and **Non-confidential Appendix B** details the Commission's findings. The Commission concluded that the level of subsidisation for all Vietnamese exporters is negligible.

A3 Competition in Vietnamese steel markets

In 2020, 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.¹⁰¹ The high level of import penetration indicates a high level of competition within the Vietnamese steel market.

With HRC being the major raw material input for the goods, a comparison of costs paid by verified Vietnamese exporters for Vietnamese HRC and HRC imported from other countries provides an indication of the relative CTM of precision pipe and tube steel.

¹⁰¹ 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/>

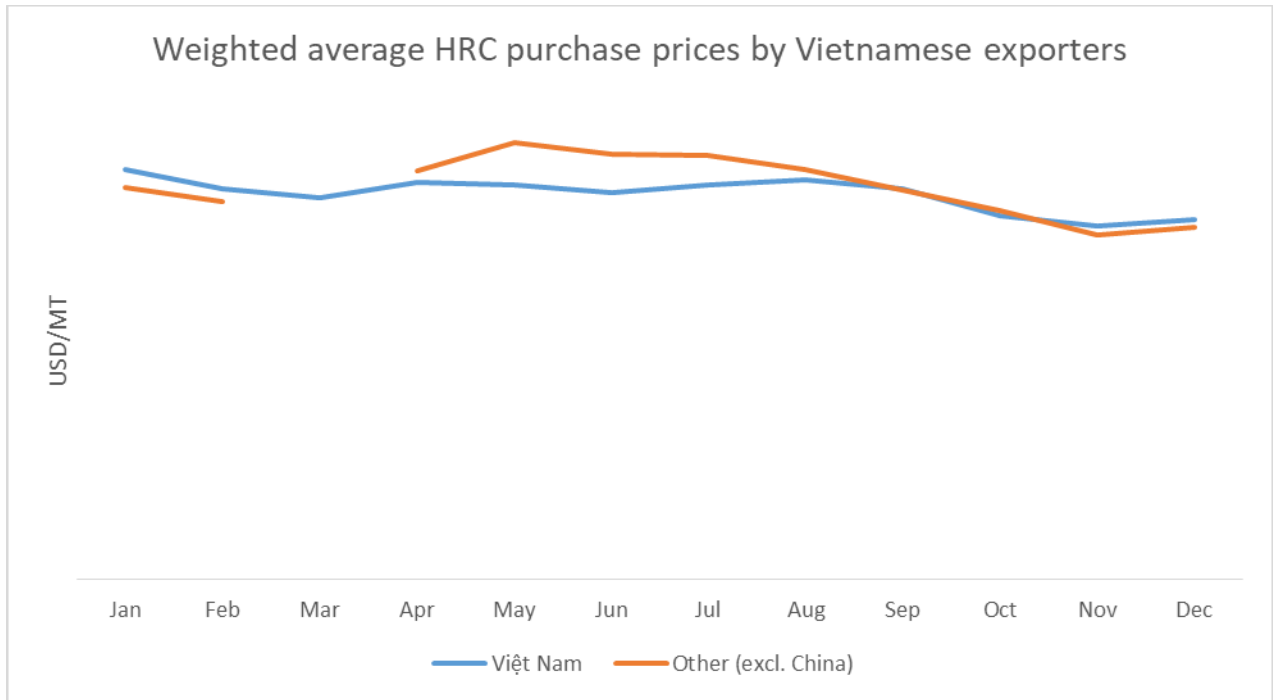


Figure 1 – Weighted average HRC purchase prices by Vietnamese exporters¹⁰²

Figure 1 shows weighted average HRC purchase prices paid by Vietnamese exporters over the investigation period, by country of supply. This shows that for the majority of the period, Vietnamese exporters paid a similar amount, or slightly less, for domestically sourced HRC as they did for HRC from other countries (excluding China). Vietnamese HRC costs were lower for 6 months of the investigation period. For 3 of those months, prices were less than 3% lower than other country prices, and for the other 3 months, prices were between 7% and 10% lower. For the remaining months, prices were on average 2.6% higher in Vietnam than HRC from other countries. However, over the course of the investigation period, Vietnamese prices were 0.2% lower overall.

The figure below depicts HRC purchase volumes based on source.

¹⁰² Confidential Attachment 21 – Raw material cost analysis and benchmark calculation

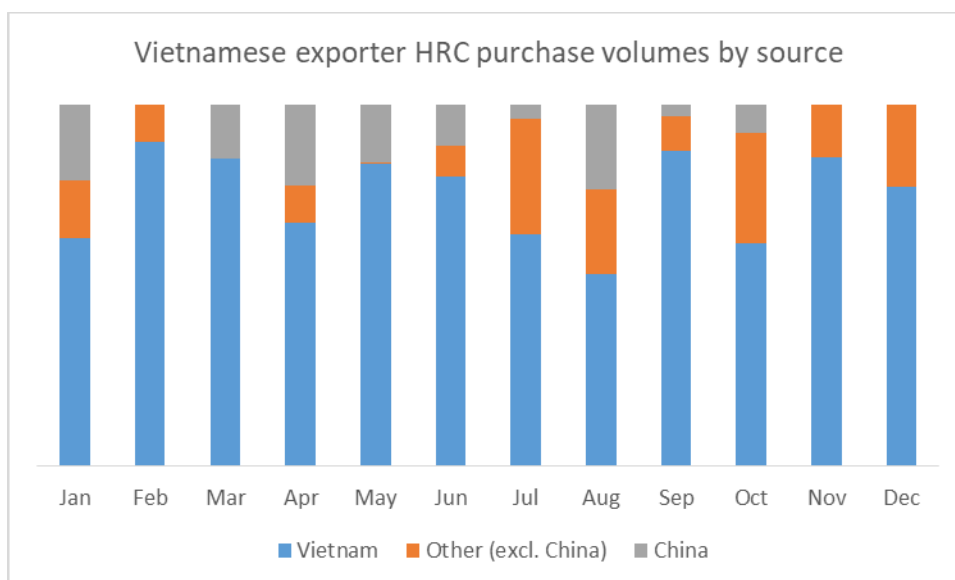


Figure 2 – Vietnamese exporter HRC purchase volumes by source¹⁰³

While the verified Vietnamese exporters sourced the majority of HRC domestically during the investigation period, the Commission observes that they also sourced a significant volume from outside of Vietnam.

Based on the similarity of Vietnamese HRC prices with the price of HRC imported from other countries and the level of import volumes observed, the Commission is satisfied that there is competition within the Vietnamese HRC market.

A4 GOV influence on the Vietnamese precision pipe and tube steel market

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 precision pipe and tube steel in Vietnam are unsuitable for use for determining a normal value under section 269TAC(1).

In respect of the applicant’s assertion that the Steel Master Plans developed by the GOV 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. The Commission is satisfied there is no market situation that makes calculating the normal value for Vietnamese exports under section 269TAC(1) inappropriate based on:

- there exists no official GOV 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 from distorted electricity prices on the CTM of the goods
- negligible subsidisation of the goods

¹⁰³ Ibid

- no evidence of significantly different prices for raw materials in Vietnam compared to other Asian countries.

APPENDIX B ASSESSMENT OF ALLEGED SUBSIDY PROGRAMS

B1 Introduction

B1.1 Definition of Government, public and private bodies

In its assessment of each program, the Commission has had regard to the entity responsible for providing the financial contribution (if any) under the relevant program, as part of the test under section 269T(1) for determining whether a financial contribution is a subsidy. Under section 269T(1), for a contribution to be a subsidy, the following must provide the contribution:

- a government of the country of export or country of origin of the goods
- a public body of that country or a public body of which that government is a member, or
- a private body entrusted or directed by that government or public body to carry out a governmental function.

B1.2 Government

As described in section 16.2 of the Manual, the Commission considers that the term 'government' includes government at all different levels, including at a national and sub-national level.

B1.3 Public bodies

The Act does not define the term 'public body'. 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)*¹⁰⁴ In that case, the Appellate body referred to the following 3 indicia which may assist in assessing whether an entity is 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.

The Federal Court of Australia has also previously considered these principles.¹⁰⁵

B1.4 Private bodies

Where an entity is neither a government nor public body, the Commission will consider it a private body, in which case, a government direction to make a financial contribution in respect of the goods must be established in order for the contribution to be considered a subsidy, as defined by section 269T(1).

Pursuant to section 16.3 of the Manual, in determining the character of an entity that may have provided a financial contribution, the Commission will consider whether a private body has been:

- “entrusted” to carry out a government function, which occurs when a government gives responsibility to a private body, or
- “directed” to carry out a government function, which occurs in situations where the government exercises its authority over a private body.

Accordingly, not all government acts are 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. This test is satisfied where the private body is a proxy by government to give effect to financial contributions.

B2 Assessment of Programs - Vietnam

B2.1 Programs repealed as part of Vietnam's accession to the WTO

The following programs were listed in the *New and Full Notification Pursuant to Article XVI.1 of the GATT and Article 25 of the Agreement on Subsidies and Countervailing*

¹⁰⁴ DS379 United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China.

¹⁰⁵ See: *Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth* [2013] FCA 870, [27] - [70]; *Dalian Steelforce Hi Tech Co Ltd V Minister for Home Affairs* [2015] FCA 885, [50] - [73]

Measures published in March 2013 (2013 Vietnam Subsidy Notice).¹⁰⁶ The GOV repealed these programs 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)¹⁰⁷:

- Program 1 – Preferential Import Tariff Rates contingent upon Localisation Ratios with respect to products and Parts of Mechanical-Electric-Electronic Industries (updating Programme II of Notification of Subsidies period 2003-2004)
- Program 2 – Support for the Implementation of Projects Manufacturing Priority Industrial Products (Updating Programme III of 2003-2004)
- Program 3 – Investment Incentives Contingent upon Export Performance For Domestic Businesses (Updating Programme IV of 2003-2004)
- Program 4 – Other Investment Incentives for Domestic Businesses (Updating Program V of Period 2003-2004)
- Program 5 – Investment Incentives Contingent upon Export Performance for Foreign Invested Enterprises (Updating Programme VI of the Period 2003-2004)
- Program 6 – Other Investment Incentives for Foreign Invested Enterprises (Updating Programme VII for Period 2003-2004)
- Program 7 – Preferential Investment Credit for Development Contingent upon Export Criteria (Updating Programme VIII of Period 2003-2004)
- Program 8 – Preferential Development Credit for Investment Contingent Upon Localisation Ratios (Updating Programme IX of Period 2003-2004)
- Program 10 – Export Promotion
- Program 12 – Support for Mechanical Products (Updating Program XV of Period 2003-2004)
- Program 13 – Support for Shipbuilding Industry (Updating of Programme XV of Period 2003-2004)
- Program 14 – Assistance for Commercial Development in Mountainous, Island and Ethnic Minority Areas (Updating Programme XVI of Period 2003-2004)
- Program 15 – Assistance to Enterprises Facing Difficulties due to Objective Reasons

The Commission is satisfied that the above programs have ceased. The Commission did not find any evidence during verification of any exporters being in receipt of a financial benefit under any of these programs.

In light of the evidence before it, the Commission is not satisfied any Vietnamese exporter received a financial benefit in connection with any of the above programs.

¹⁰⁶ Available on the WTO website at

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

¹⁰⁷ Available on the WTO website at

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

B2.2 Corporate Income Tax Programs

The *Law Amending and supplementing a number of articles of Law on Corporate Income Tax 2008* (the Amended Law 2013)¹⁰⁸ and *Decree 218/2013/ND-CP* (Decree 218) detailing and guiding the implementation of the Law on Corporate Income Tax govern corporate income taxation in Vietnam. Pursuant to Article 1.6 of the Amended Law 2013 and Article 10 of Decree 218¹⁰⁹, 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

This program allegedly provides corporate income tax incentives to enterprises operating in certain regions or sectors in Vietnam.

The application did not identify Program 18, but the Commission identified and assessed this program in INV 370¹¹⁰ into zinc coated galvanised steel from India, Malaysia and Vietnam.

The following CBSA investigations identified programs 21, 29, 35, 37, 39 and 40:

¹⁰⁸ EPR 550, Item 36, GOV REQ, Exhibit 4

¹⁰⁹ EPR 550, Item 36, GOV REQ, Exhibit 2

¹¹⁰ Termination Report No. 370, p. 34. Available on the Commission website.

- 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

Article 15 of Decree 218 and Appendix II to Decree 118/2015/ND-CP (Decree 118) identifies eligible regions and sectors for incentives under this program.

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.¹¹¹

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 by 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 is 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 information provided by the GOV, the Commission has determined that uncooperative exporters may be in receipt of a benefit under this program.

Is the subsidy countervailable?

A subsidy is a countervailable subsidy if it is specific. Section 269TAAC defines specificity. Section 269TAAC(2)(b) provides that a subsidy is specific if, subject to section

¹¹¹ Refer to Decree 218 for full detail of eligibility criteria.

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, thereby 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 considers Amended Law 2013, Decree 118 and Decree 218 have objective and verifiable criteria to establish eligibility for this program. 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

Entities expense benefits for income tax programs to the year in which the entity receives the benefit, and the Commission considers an entity receives the benefit on the date on which the entity would otherwise have had to pay the taxes associated with the exemption.¹¹² Accordingly, the Commission has attributed any amount deductible under this program in relation to the investigation period (or a portion thereof) to the investigation period.

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.

¹¹² Part 17.3 of the Manual, p. 93

The Commission then applied this percentage 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.

B2.3 Import duty preferences

The Commission identified the following programs as providing possible exemptions to the payment of import duties for Vietnamese exporters:

- Program 17 – Preferential Import Tariff Rates for enterprises investing in regions or sectors entitled to investment incentives
- Program 32 - Exemption of Import Tax on Equipment and Machinery Imported to Create Fixed Assets
- Program 42 – Excessive Duty Exemptions for Imported Raw Materials for Exported Goods
- Program 43 – Exemptions of Import Duty
- Program 44 – Refund of Import Duty

The application did not identify program 17, but the Commission identified and assessed the program in INV 370. The application identified programs 32, 42, 43 and 44, 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 Law 107/2016/QH13 on export and import duties (Law 107)¹¹³ and Decree 134/2016/ND-CP providing guidelines for the Law on export and import duties (Decree 134)¹¹⁴ established these programs.

GOV also provided a combined response for Programs 42 and 44. The Commission confirmed that Law 107 and Decree 134 governed these programs.

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

¹¹³ 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 550, Item 36, GOV RGQ, Exhibit 22

¹¹⁴ EPR 550, Item 36, GOV RGQ, Exhibit 37

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 by the GOV to eligible entities, being the foregoing of revenue that 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 received 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.

An exporter must provide the following information to the GOV to receive a benefit under the program:

- Prior to the first import of raw materials, it must 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 evidence of payment for imported goods, import/export contracts, duties paid, and in respect of the manufacturing facilities.

Is there a subsidy?

The GOV provides import duty exemptions 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 guidance in the case of an exemption of import charges upon export, such as provided under this program. The Manual provides that 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
- the amount of charges other than import charges covered by 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 the production of the exported goods consumes such inputs, in what amounts, and the taxes imposed on the inputs. If the Commission finds 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 provided by producers
- Reports on the use of raw materials submitted by exporting producers are reconciled against financial reports
- Customs may carry out post-clearance examination of exporters 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 that the production of the exported goods consumes such inputs, in what amounts, and the taxes imposed on those inputs. The Commission is also satisfied that the system in place ensures that the GOV provides import duty refunds only 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 this program does not provide a countervailable subsidy.

B2.4 Other Programs

Program 11: Trade Promotion

The applicant requested that a program known as “Trade Promotion (Updating of Programme XIII of Period 2003-2004)” be included as part of the investigation into countervailable subsidies.

The basis for the applicant’s request was the inclusion of the program in the 2013 Vietnam Subsidy Notice. The 2013 Vietnam Subsidy Notice states that the GOV terminated this program in 2006 and the Commission notes it 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 following legislation governs the current iteration of the program:

- *Decision 5016/QD-BCT* dated 27 December 2018
- *Decision 72/2010/QD-TTg* dated 15 November 2010.¹¹⁵

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, enterprises submit applications to the Minister of Industry and Trade for funding in the following areas:

- market research
- advertising
- hire domestic and foreign experts to give advice on product development, enhancement of product quality, export development and entering foreign markets
- internal and external short-term training courses in trade promotion
- organise and participation in trade fairs
- trade delegations
- other trade promotion activities.

¹¹⁵ EPR 550, Item 36, GOV REQ, Exhibit 14

Is there a subsidy?

The Commission considers that the laws governing this program provide for a financial contribution by the GOV to eligible entities, by way of a direct grant paid to recipients.

From the information provided by the GOV, the Commission has determined that CDI and its related trading entity, CDT, have received a benefit under this program during the investigation period, by way of a direct grant in respect of a trade delegation to Korea. CDI did not provide any details in respect of its receipt of funding under this program. However, the Commission is satisfied that any contribution received by CDI under this program is not in respect of the export of the goods to Australia.

In light of the above, the Commission has determined that this program did not provide a subsidy 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 CBSA alleged the existence of the 5 separate programs below 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 by 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 due to their similarity.

The GOV advised in its RGQ that sub-programs (b), (c) and (e) relate to the provision of credit to exporters by the Vietnam Development Bank and 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 it 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 that the GOV or any other Vietnamese public body run. 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.*"¹¹⁶ As a result, the GOV has not provided a substantive response on this program.

¹¹⁶ EPR 550, Item 36, GOV RGQ, p.169

VietinBank

The Commission has found for the investigation period, VietinBank was majority owned by the GOV, through the State Bank of Vietnam, which is the central bank of Vietnam. VietinBank's 2019 Annual Report indicates the State Bank of Vietnam owns 64.46% of its shares.¹¹⁷

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.*"¹¹⁸ 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 Vietnam¹¹⁹
- 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%.¹²⁰

After considering **Non-confidential Appendix 0**, the Commission has determined that VietinBank is a public body, due to the contribution it makes to the pursuit of GOV policies and its majority ownership by the State Bank of Vietnam.

VietcomBank

The Commission has found for the investigation period, VietcomBank was 74.8% owned by the GOV, with the shares held through the State Bank of Vietnam.¹²¹ Through its shareholding, the GOV has appointed both the chair 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.¹²²

The report notes that the Ministry of Finance and the State Bank of Vietnam, through the GOV shareholding in VietcomBank, are related parties.¹²³

After considering **Non-confidential Appendix 0**, the Commission has determined that VietcomBank is a public body, due to the contribution it makes to the pursuit of GOV policies, it being majority owned by the GOV and the control of the GOV over appointments to the board and management.

¹¹⁷ VietinBank 2019 Annual Report, p.67, available at: <https://www.vietinbank.vn/sites/mediafile/VTB149105>

¹¹⁸ Ibid, p.14

¹¹⁹ Ibid, p.75

¹²⁰ Ibid, p.116

¹²¹ 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

¹²² Ibid

¹²³ 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. This guarantee allegedly provides a financial benefit to their customers. Customers are able to obtain credit at a lower level than would be otherwise available, with the benefit being the difference between the interest rate they are able to obtain with the aid of the guarantee, compared to the interest rate they would have otherwise been entitled.

Legal basis

The CBSA in its investigation of this program, when combined with the 4 other sub-programs, found the legal basis for the program to be:

- Decree No. 75/2011/ND-CP dated August 30, 2011, on state investment credit and export credit (Decree No. 75)¹²⁴
- Decree No. 151/2006/ND-CP dated December 20, 2006, on state investment credit and export credit (Decree No. 151).¹²⁵

The Commission notes that Decree No. 75 replaced Decree No. 151, which was itself repealed in 2017 pursuant to Decree 32/2017/ND-CP.¹²⁶

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 exist.

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 provided by cooperating and residual exporters in relation to loans they have sourced from VietinBank and VietcomBank, privately owned banks and government owned banks operating on a

¹²⁴ EPR 550, Item 36, GOV RGQ, Exhibit 28

¹²⁵ EPR 550, Item 36, GOV RGQ, Exhibit 10

¹²⁶ EPR 550, Item 36, GOV RGQ, Exhibit 28

commercial basis. The Commission established that interest rates differed between exporters and between banks, which it considers indicative of financial institutions setting lending rates based on 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 VietinBank and VietcomBank only had provided short-term loans to the cooperating exporters). The Commission then used the weighted value of each loan to establish a benchmark of market rates to compare to loans from VietinBank and VietcomBank over the investigation period.

The Commission considered this basis for the calculation of a benchmark rate more appropriate than the rate offered by the State Bank of Vietnam 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 VietinBank and VietcomBank provided the loan as a subsidy available under this program, as defined by section 269T.

The Commission's analysis is at **Confidential Attachment 20**.

Is the subsidy countervailable?

A subsidy is a countervailable subsidy if it is specific. Section 269TAAC defines specificity. 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 this program provided a countervailable subsidy, referred only to legislation since repealed. The CBSA made no examination of the terms and eligibility criteria under which VietinBank and VietcomBank provided the guarantees. The GOV RGQ also does not address this, on the basis that VietinBank and VietcomBank are not public bodies.

The Commission has examined information provided by the cooperating exporters for loans provided by VietinBank and VietcomBank. However, this did not indicate any specific eligibility criteria.

From the information before it, the Commission does not have any evidence indicating that guarantees offered by VietinBank and VietcomBank satisfy any of the criteria of section 269TAAC(2). Accordingly, the Commission considers that any benefit received under this program is not countervailable.



B2.5 Remaining programs where no subsidy was found

Program Number	Program Name	Background	Legal basis under Vietnamese Law	WTO notification	Eligibility criteria	Commission assessment
9	Other Preferential Investment Credit for Development (Updating Program X of Period 2003-2004) Current iteration: "Other Preferential Investment for Development, May 2017"	The application referred to this program as detailed 2013 Vietnam Subsidy Notice. 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.	Decree 32/2017/ND-CP dated May 15, 2017. ¹²⁷	This program was listed in the 2013 Vietnam Subsidy Notice. Despite still running, the program is not listed in the more recent 2020 Vietnam Subsidy Notice.	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: <ul style="list-style-type: none"> • pharmaceuticals • power supply • key mechanical products designated by the prime minister • energy efficiency • supporting industries designated by the prime minister • agriculture machinery • clean technology 	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.

¹²⁷ EPR 550, Item 36, GOV REQ, Exhibit 12

PUBLIC RECORD

Program Number	Program Name	Background	Legal basis under Vietnamese Law	WTO notification	Eligibility criteria	Commission assessment
					<ul style="list-style-type: none"> • hi-tech products • certain geographic areas • off-shore projects. 	
16	Incentives for Investment Projects in Science and Technology (Updating Programme XVIII of Period 2003-2004)	<p>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:</p> <ul style="list-style-type: none"> • Domestic enterprises were granted preferences in relation to land rent/use fees • Import duty exemptions • Investment credit • Financial support for scientific and technology research. 	<p>Established under Decree 119/1999/ND-CP dated 18 September 1999.¹²⁸</p> <p>Repealed in various stages from 2003 to 2014 pursuant to:</p> <ul style="list-style-type: none"> • The Law on Corporate Income Tax 2003¹²⁹ • Decree 142/2005/ND-CP dated 14 November 2005.¹³⁰ • Decree 149/2005/ND-CP dated 8 December 2005¹³¹ • Decree 08/2014/ND-CP dated 27 January 2014¹³² 	<p>This program was listed in the 2013 Vietnam Subsidy Notice.</p> <p>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.</p>	<p>A broad range of scientific and technology activities by domestically or foreign owned enterprises were eligible for this program.</p>	<p>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 <i>Other Preferential Investment for Development, May 2017</i> (see Program 9). The remainder of the program was terminated in 2014.</p> <p>The Commission did not find any evidence during verification of any exporters being in receipt of a financial benefit under this program.</p>

¹²⁸ EPR 550, Item 36, GOV REQ, Exhibit 21

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ Ibid.

¹³² Ibid.

PUBLIC RECORD

Program Number	Program Name	Background	Legal basis under Vietnamese Law	WTO notification	Eligibility criteria	Commission assessment
						In light of the evidence before it, the Commission is not satisfied any Vietnamese exporter received a financial benefit in connection with this program.
19	Incentives on non-agricultural land use	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.	Law on Non-Agricultural Land Use Tax 48/2010/QH12 ¹³³ and Decree 53/2011/ND-CP ¹³⁴ 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. ¹³⁵	None	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.	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.
20	Grants to Firms that Employ More than 50 Employees	It is alleged that this program, which ceased in 2006, provides various forms of investment preferences and support for	The GOV advised in its RGQ that there has never been a grant program as described. Rather, this program, established under	None	Investment projects of any production and business sectors that had an average number of at least 50 employees was eligible for	The basis for alleging the existence of this program is CBSA investigations in 2018, which found the

¹³³ EPR 550, Item 36, GOV REQ, Exhibit 27

¹³⁴ Ibid.

¹³⁵ EPR 550, Item 36, GOV REQ, Exhibits 23 and 27

PUBLIC RECORD

Program Number	Program Name	Background	Legal basis under Vietnamese Law	WTO notification	Eligibility criteria	Commission assessment
		<p>firms employing more than 50 employees.</p> <p>The existence of this program was alleged in the CBSA Cold-rolled steel case and the CBSA Copper Pipe case.</p> <p>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.</p>	<p>Decree 51/1999/ND-CP¹³⁶ is an incentive program. This establishing legislation is the same identified in the CBSA investigations.</p> <p>The program was terminated in 2006 by Decree 108/2006/ND-CP.¹³⁷</p>		<p>investment incentives. These included:</p> <ul style="list-style-type: none"> • 3-year exemption of land rent • 2-year exemption of income tax with a 50% reduction for the subsequent 2 years. 	<p>program was terminated in 2006.</p> <p>The Commission has been provided evidence by the GOV confirming that the program was terminated in 2006.</p> <p>The Commission did not find any evidence during verification of any exporters being in receipt of a financial benefit under this program.</p> <p>In light of the evidence before it, the Commission is not satisfied any Vietnamese exporter received a financial benefit in connection with this program.</p>
22	Acquisition of State Assets at Less Than Fair Market Value	<p>The existence of this program was alleged in a 2015 investigation by the CBSA 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.</p> <p>During its investigation, no exporter in Vietnam provided sufficient information to the</p>	<p>The GOV advised in its REQ that there is no case of acquisition of state assets at less than fair market value.</p> <p>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</p>	None	N/A	<p>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</p>

¹³⁶ EPR 550, Item 36, GOV REQ, Exhibit 7

¹³⁷ Ibid.

PUBLIC RECORD

Program Number	Program Name	Background	Legal basis under Vietnamese Law	WTO notification	Eligibility criteria	Commission assessment
		<p>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.</p> <p>No further information was provided to the Commission in respect of this program.</p>	<p>November 2016¹³⁸ to be auctioned in an independent, honest, public, transparent, equal and objective way.</p>			<p>program or of any benefits received.</p> <p>The Commission has been provided evidence by the GOV indicating that this program does not exist, and that it is contrary to existing legislation.</p> <p>The Commission did not find any evidence during verification of any exporters being in receipt of a financial benefit under this program.</p> <p>In light of the evidence before it, the Commission is not satisfied any Vietnamese exporter received a financial benefit in connection with this program.</p>
24	Export Support Loans at Preferential Rates	<p>It is alleged that under this program, export credit or preferential lending for exporters was provided to certain sectors by the Vietnam Development Bank. Eligible borrowers were offered export credit amount up to 85% of the</p>	<p>Established under Article 16 of Decree 75/2011/ND-CP.¹³⁹</p> <p>Repealed in 2017 under Article 28 of Decree 32/2017/ND-CP.¹⁴⁰</p>	None	<p>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.</p>	<p>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</p>

¹³⁸ EPR 550, Item 36, GOV REQ, Exhibit 28

¹³⁹ EPR 550, Item 36, GOV REQ, Exhibit 28

¹⁴⁰ Ibid.

PUBLIC RECORD

Program Number	Program Name	Background	Legal basis under Vietnamese Law	WTO notification	Eligibility criteria	Commission assessment
		<p>value of the export contract at preferential interest rates.</p> <p>The existence of this program was alleged in the CBSA Oil Tubes case.</p> <p>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.</p>				<p>find positive evidence of the existence of this program or of any benefits received.</p> <p>The Commission has been provided evidence by the GOV indicating that this program no longer exists.</p> <p>The Commission did not find any evidence during verification of any exporters being in receipt of a financial benefit under this program.</p> <p>In light of the evidence before it, the Commission is not satisfied any Vietnamese exporter received a financial benefit in connection with this program.</p>
25	Interest Rate Support Program under the State Bank of Vietnam	<p>It is alleged that this program provided various levels of interest rate support depending on the length of the loan.</p> <p>The existence of this program was alleged in the CBSA Oil Tubes case.</p> <p>During its investigation, no exporter in Vietnam provided sufficient information to the</p>	<p>The program was implemented to provide short-term support following the 2009 global financial crisis. The program was established under:</p> <ul style="list-style-type: none"> • Decision 131/QD-TTg, dated January 23, 2009¹⁴¹ 	None	This program was available to enterprises of all manufacturing sectors.	<p>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</p>

¹⁴¹ EPR 550, Item 36, GOV REQ, Exhibit 27

PUBLIC RECORD

Program Number	Program Name	Background	Legal basis under Vietnamese Law	WTO notification	Eligibility criteria	Commission assessment
		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.	<ul style="list-style-type: none"> • Decision 443/QĐ-TTg, dated April 4, 2009¹⁴² • Decision 2072/QĐ-TTg, dated December 11, 2009¹⁴³ • Circular 05/2009/TT-NHNN dated 4 July 2009¹⁴⁴ • Circular 04/2009/TT-NHN dated 13 March 2009¹⁴⁵ <p>The final date for receiving support under the program was 31 December 2012, 24 months after the final disbursement of loans in 2010.</p>			<p>of the existence of this program or of any benefits received.</p> <p>The Commission has been provided evidence by the GOV indicating that this program no longer exists.</p> <p>The Commission did not find any evidence during verification of any exporters being in receipt of a financial benefit under this program.</p> <p>In light of the evidence before it, the Commission is not satisfied any Vietnamese exporter received a financial benefit in connection with this program.</p>
26	Preferential Lending under the Viet Bank Export Loan Program	See Program 24				
27	Accelerated Depreciation of Fixed Assets	It is alleged that under this program, any Vietnamese enterprise operating with “high economic efficiency” may accelerate their depreciation up	Accelerated depreciation of fixed assets is available under Circular 45/2013/TT-BTC. ¹⁴⁶	None	Under Circular 45/2013/TT-BTC, all enterprises operating in Vietnam are eligible for this program, if they are operating	The Commission considers that this program is not specific as it is available to all enterprises

¹⁴² EPR 550, Item 36, GOV REQ, Exhibit 27

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ EPR 550, Item 36, GOV REQ, Exhibit 30

PUBLIC RECORD

Program Number	Program Name	Background	Legal basis under Vietnamese Law	WTO notification	Eligibility criteria	Commission assessment
		<p>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.</p> <p>The existence of this program was alleged in 4 separate investigations by the CBSA: the CBSA COR case, the CBSA Cold-rolled steel case, the CBSA Copper Pipe case and the CBSA Oil Tubes case.</p>			with “high economic efficiency”.	established and operating in Vietnam and is therefore not countervailable.
28	Additional Income Tax Preferences for Exporters	<p>It is alleged that this program, repealed in 2006, provided income tax preferences to exporters.</p> <p>The existence of this program was alleged in the CBSA Oil Tubes case, which was conducted in 2015. During its investigation, no exporter in Vietnam provided sufficient information to the CBSA to determine an amount of subsidy. Therefore, the amount of subsidy for all Vietnamese exporters in that case was determined in accordance with a ministerial specification, pursuant to which the CBSA</p>	<p>Established under Chapter 5 of Decree 164/2003/ND-CP¹⁴⁷, detailing the implementation of the Law on Corporate Income Tax.¹⁴⁸</p> <p>Repealed in 2006 pursuant to Decree 108/2006/ND-CP.¹⁴⁹</p>	<p>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.</p> <p>It is not included in</p>	<p>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.</p>	<p>The CBSA re-examined this program in the CBSA COR case in 2019 and determined it was covered under other subsidy programs examined by the CBSA in respect of Vietnam.</p> <p>The Commission is satisfied that this program ceased in 2006.</p> <p>The Commission did not find any evidence during verification of any exporters being in receipt of a financial</p>

¹⁴⁷ EPR 550, Item 36, GOV REQ, Exhibit 31

¹⁴⁸ EPR 550, Item 36, GOV REQ, Exhibit 21

¹⁴⁹ EPR 550, Item 36, GOV REQ, Exhibit 31

PUBLIC RECORD

Program Number	Program Name	Background	Legal basis under Vietnamese Law	WTO notification	Eligibility criteria	Commission assessment
		found that all programs were countervailable.		the 2020 Vietnam Subsidy Notice.		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.
30	Enterprise Income Tax Preferences, Exemptions, and Reductions (consisting of 7 separate programs)	<p>The existence of the 7 separate programs below were alleged in the CBSA Cold-rolled steel case:</p> <ul style="list-style-type: none"> (a) Enterprise Income Tax preferences, exemptions and reductions (b) Enterprise Income Tax exemptions and reductions for business expansion and intensive investment (c) Enterprise income tax and import duty preferences (d) Tax preferences for investors producing and/or dealing in export goods (e) Income Tax Preferences under Chapter V of Decree 24 (f) Income Tax Preferences under Chapter IV of Decree 124 (g) Tax Exemptions and Reductions for Foreign-Invested Enterprises. 	Income Tax Preferences under Chapter V of Decree 24/2007/ND-CP ¹⁵⁰ , which was repealed by Income Tax Preferences under Chapter IV of Decree 124/2008/ND-CP ¹⁵¹ . Decree 124/2008/ND-CP was later repealed by Decree 218/2013/ND-CP. ¹⁵²	Various preferential policies on corporate income tax are included in the 2020 Vietnam Subsidy Notice.	Income tax preferences were only available to certain sectors and geographical areas.	<p>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.</p> <p>No exporters were identified as having received benefits under this program.</p> <p>In light of the evidence before it, the Commission is not satisfied any Vietnamese exporter received a financial benefit in connection with this program.</p>

¹⁵⁰ EPR 550, Item 36, GOV REQ, Exhibit 7

¹⁵¹ EPR 550, Item 36, GOV REQ, Exhibit 32

¹⁵² EPR 550, Item 36, GOV REQ, Exhibits 2, 9 and 32

PUBLIC RECORD

Program Number	Program Name	Background	Legal basis under Vietnamese Law	WTO notification	Eligibility criteria	Commission assessment
		<p>In its investigations, the CBSA combined these programs into one, on the basis they were very similar.</p> <p>The GOV advised in its RGQ that it has addressed:</p> <ul style="list-style-type: none"> • 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 and • sub-program (g) under Program 38. <p>Accordingly, its response for Program 30 has been limited to sub-programs (e) and (f).</p>				
33	Exemptions/reductions of Land Rent, Tax, and Levies (consisting of 5 separate programs)	<p>The existence of the 5 separate programs below was alleged in 4 separate investigations by the CBSA: the CBSA COR case, the CBSA Cold-rolled steel case, the CBSA Copper Pipe case and the CBSA Oil Tubes case:</p> <p>(a) Land rent reduction/exemption for exporters and land use</p>	<p>This program is governed by the following legislation:</p> <ul style="list-style-type: none"> • Decree 46/2014/ND-CP dated 15 May 2014¹⁵³ • Decree 135/2016/ND-CP dated 9 September 2016¹⁵⁴ 	None	<p>Appendices I and II of Decree No. 118/2015/ND-CP, define eligible sectors and regions.</p> <p>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.</p>	<p>The GOV advised that no exporter of the goods was in receipt of any benefit under this program.</p> <p>The Commission did not find any evidence during verification of any exporters being in receipt of a financial benefit under this program.</p>

¹⁵³ EPR 550, Item 36, GOV REQ, Exhibit 35

¹⁵⁴ EPR 550, Item 36, GOV REQ, Exhibit 35

PUBLIC RECORD

Program Number	Program Name	Background	Legal basis under Vietnamese Law	WTO notification	Eligibility criteria	Commission assessment
		<p>fees or leases exemptions/reductions</p> <p>(b) Land-use levy exemption/reduction</p> <p>(c) Land-rent exemption/reduction</p> <p>(d) Land use tax exemptions/reductions</p> <p>(e) Preferences related to land use tax, land use levy, land rent and water surface rent.</p> <p>In its investigation, the CBSA combined these programs into one, on the basis they were very similar.</p> <p>The GOV advised in its RGQ that it has addressed:</p> <ul style="list-style-type: none"> • sub-program (a) under Program 3 • sub-program (b) under Program 34 and • sub-program (d) under Program 19. <p>Accordingly, its response for Program 30 has been limited to sub-programs (c) and (e).</p> <p>This program provides for rent exemptions and reductions for various periods, depending on what eligibility criteria have been satisfied.</p>	<ul style="list-style-type: none"> • Decree 35/2017/ND-CP dated 3 April 2017¹⁵⁵ 			In light of the evidence before it, the Commission is not satisfied any Vietnamese exporter received a financial benefit in connection with this program.
34	Land-Use Levy Exemptions/Reductions	It is alleged that under this program, exemptions or reductions from payment of the	This program is governed by Decree	None	Exemptions to the land-use levy is available for various residential land and land	The GOV advised that no exporter of the goods was in receipt of

¹⁵⁵ Ibid.

PUBLIC RECORD

Program Number	Program Name	Background	Legal basis under Vietnamese Law	WTO notification	Eligibility criteria	Commission assessment
		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.	45/2014/ND-CP dated 15 May 2014. ¹⁵⁶		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.	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.
36	Preferential Provisions for Carry-forward of Losses	It is alleged that under this program preferential treatment is available in connection with the carrying forward of losses into future years for the determination of assessable taxable income. The existence of this program was alleged in the CBSA Oil Tubes case, which was conducted in 2015. During its investigation, no exporter in Vietnam provided sufficient information to the CBSA to determine an amount of subsidy. Therefore, the amount of subsidy for all Vietnamese exporters in that case was	The carrying forward of losses is permitted pursuant to Law 32/2013/QH13 of 19 June 2013. ¹⁵⁷	None	Available to all enterprises in all sectors and all locations who have incurred a loss in the previous 5 years.	While utilised by many exporters of the goods, the Commission considers that this program is not specific and is therefore not countervailable.

¹⁵⁶ EPR 550, Item 36, GOV REQ, Exhibit 36.

¹⁵⁷ EPR 550, Item 36, GOV RGQ, Exhibit 33.

PUBLIC RECORD

Program Number	Program Name	Background	Legal basis under Vietnamese Law	WTO notification	Eligibility criteria	Commission assessment
		determined in accordance with a ministerial specification, pursuant to which the CBSA found that all programs were countervailable.				
38	Tax Exemptions and Reductions for Foreign-Invested Enterprises	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.	The program was established under Decree 24/2000/ND-CP dated 31 July 2000 ¹⁵⁸ and was later terminated under Decree 164/2003/ND-CP dated 22 December 2003. ¹⁵⁹	None	A range of projects and geographical areas are set out in the appendices to Decree 24/2000/ND-CP where investment is encouraged.	The Commission is satisfied that this program ceased in 2004. The Commission did not find any evidence during verification of any exporters being in receipt of a financial benefit under this program. In light of the evidence before it, the Commission is not satisfied any Vietnamese exporter received a financial benefit in connection with this program.

¹⁵⁸ EPR 550, Item 36, GOV RGQ, Exhibit 34

¹⁵⁹ EPR 550, Item 36, GOV RGQ, Exhibit 7