



NON-CONFIDENTIAL



Non-confidential Initiation Report: Application for Anti-dumping Duties

Reinforcing Steel Bar and Coil from China and Malaysia

August 2017

Table of Contents

ABBREVIATIONS	3
EXECUTIVE SUMMARY	4
1 INTRODUCTION	8
1.1 Application	8
1.2 Matters relating to the evidence provided	9
Findings in other jurisdictions.....	10
Pacific Steel’s use of trade statistics.....	10
1.3 Report Details.....	13
2 GOODS DESCRIPTION	14
2.1 Imported Goods	14
2.2 Like goods.....	14
3 INTERESTED PARTIES	17
3.1 Applicant and New Zealand Industry (Pacific Steel)	17
3.2 Exporters.....	17
3.3 Importers.....	17
3.4 The Governments of China and Malaysia	17
4 EVIDENCE OF DUMPING	18
4.1 Export Prices	18
4.1.1 Malaysia.....	18
4.1.2 China	20
4.1.3 Conclusion on Export Prices	21
4.2 Normal Values.....	21
4.2.1 Malaysia.....	22
4.2.2 China	27
4.3 Dumping Margins.....	33
4.4 Import Volumes.....	36
5 EVIDENCE OF MATERIAL INJURY.....	38
5.1 Financial information provided by Pacific Steel	38
5.2 Basis for Injury Analysis.....	39
5.3 Cumulation of the Effects of Dumping and Subsidisation	41
5.4 Import Volume Effects.....	42
5.5 Price Effects.....	45
5.5.1 Price Undercutting.....	45
5.5.2 Price Depression	47
5.5.3 Price Suppression	48
5.5.4 Conclusion on Price Effects.....	48
5.6 Consequent Impact	49
5.6.1 Sales Volume and Sales Revenue	49
5.6.2 Market Share.....	50
5.6.3 Profits	52
5.6.4 Other Economic Impacts.....	54
5.6.5 Other Adverse Effects	55

5.6.6	Conclusion on Consequent Impact.....	56
5.7	Conclusion on Material Injury.....	56
5.7.1	Import Volumes.....	57
5.7.2	Price Effects	57
5.7.3	Economic Impact.....	57
5.7.4	Conclusion.....	57
6	EVIDENCE OF CAUSAL LINK.....	59
6.1	Dumped Imports	59
6.2	Other Imports.....	59
6.3	Demand and Consumption	60
6.4	Trade Practices.....	60
6.5	Developments in Technology.....	60
6.6	Exports of New Zealand Producers	61
6.7	Conclusions on Causal Link.....	61
7	CONCLUSION.....	62
8	RECOMMENDATION.....	63

Abbreviations

This report contains the following abbreviations:

ACRS	Australian Certification Authority for Reinforcing and Structural Steels
Act, the	The <i>Dumping and Countervailing Duties Act 1988</i>
Amsteel	Amsteel Mills Sdn Bhd
Anti-Dumping Agreement	The WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994
Australian ADC	Australian Anti-Dumping Commission
Bluescope	Bluescope Steel Limited
CBSA	Canadian Border Services Agency
Chief Executive, the	The Chief Executive of the Ministry of Business, Innovation and Employment. The Act's references to the Secretary are interpreted to mean the Chief Executive.
China	People's Republic of China
CIF	Cost, Insurance, Freight
Customs	New Zealand Customs Service
EBIT	Earnings Before Interest and Taxes
EBITDA	Earnings Before Interest, Taxes, Depreciation and Amortisation
Eurocorp	Euro Corporation
FOB	Free on Board
FTA	Free Trade Agreement
FY	Financial Year
GATT 1994	General Agreement on Tariffs and Trade 1994
GOC	Government of China
Hebei Jingye	Hebei Jingye Iron & Steel Company Limited
Investigating team, the	The Trade and Regulatory Cooperation Team; Science, Innovation and International Branch; MBIE
IRD	Inland Revenue Department
Masteel	Malaysia Steelworks Kuala Lumpur Bhd

MBIE	Ministry of Business, Innovation and Employment
NZ	New Zealand
NZD	New Zealand Dollar
Pacific Steel	Pacific Steel New Zealand Limited
Rebar	Reinforcing steel bar and coil
TTZ	Tianjin Tiantie Zhaer Steel Production Company Limited
SGA	Selling, General and Administration Expenses
Subsidies Agreement	The WTO Agreement on Subsidies and Countervailing Measures
USD	United States Dollar
WTO	World Trade Organisation

Confidentiality of Information

In a number of instances, information in this report, including figures in the tables, is considered confidential because the release of this information would be of significant competitive advantage to a competitor or its release would otherwise have a significant adverse impact on a party.

In these instances, the information has been redacted or where possible has been summarised in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. For example, in tables, where possible, actual figures have been replaced by figures showing percentage changes from the previous period. Shading has been used to show where this occurs.

Where it has not been possible to show summaries in this manner, the information has not been susceptible of summary because to do so would unnecessarily expose the provider of the information to commercial risk.

Executive Summary

The trade remedies investigating team recommends initiating an investigation into the alleged dumping of reinforcing steel bar and coil from Malaysia and China

This report recommends that the General Manager of the Science, Innovation and International Branch of the Ministry of Business, Innovation and Employment (MBIE), acting under delegated authority from the Chief Executive, initiates an investigation into the alleged dumping of reinforcing steel bar and coil (rebar) from the People's Republic of China (China) and Malaysia.

This report considers the accuracy and adequacy of the evidence that Pacific Steel (NZ) Zealand Limited (Pacific Steel) has provided in terms of the criteria in section 10 of the *Dumping and Countervailing Duties Act 1988* (the Act).

MBIE is satisfied that the company has provided sufficient evidence to warrant initiating an investigation of claims that imports of dumped rebar from China and Malaysia are causing material injury to the New Zealand industry. The investigation will need to establish to a higher standard of proof that dumped imports are causing material injury before anti-dumping duties can be imposed.

Pacific Steel alleges injurious dumping of rebar from China and Malaysia

On 5 April 2017, MBIE accepted a properly documented application for anti-dumping duties on imports of rebar from China and Malaysia. Pacific Steel claimed that imports of rebar from China and Malaysia are being dumped and are causing material injury to Pacific Steel, which constitutes the New Zealand industry.

Imported goods – rebar

The imported goods covered by the application are:

Reinforcing steel bar and coil with a diameter equal to or greater than 5mm

The application meets all three criteria for the initiation of an investigation

MBIE's Chief Executive may initiate an investigation to determine the existence and effect of alleged dumping of goods when satisfied that the application meets the criteria below:

- Sufficient evidence of dumping
- Sufficient evidence of material injury to the domestic industry
- Sufficient evidence of a causal link between the dumped goods and the injury.

The investigating team has determined that Pacific Steel's application meets all three criteria. The sections below briefly explain the evidence that Pacific Steel provides in its application.

Pacific Steel provides sufficient evidence that rebar from China and Malaysia has been dumped

MBIE is satisfied that Pacific Steel provides sufficient evidence, for initiation purposes, to show that rebar exported to New Zealand from Malaysia and China was dumped over financial year (FY) 2016. Pacific Steel provided evidence by estimating Chinese and Malaysian normal values using the constructed normal value approach, showing that this normal value is above the export price.

Export prices

Pacific Steel estimated export prices to New Zealand based on Trade Map data. Trade Map is an on-line database which provides registered users with global trade data. MBIE compared the export price information provided by Pacific Steel with import statistics sourced from New Zealand Customs Service (Customs). These data are more accurate than Trade Map data.

Constructed Normal Values

Pacific Steel constructed normal values in both Malaysia and China because it was unable to source relevant and suitable Malaysian and Chinese pricing of rebar for a comparable volume of like goods to those exported to New Zealand.

To construct a normal value, Pacific Steel built a domestic selling price (in China and Malaysia) by estimating material input costs and adding a reasonable amount for selling, general and administration (SGA) expenses and a profit margin.

MBIE accepts Pacific Steel's constructed normal value for the purposes of initiating an investigation. However, MBIE notes that accepting Pacific Steel's use of a constructed normal value in its application, does not bind it to using the same method throughout the subsequent investigation.

Dumping Margins

MBIE has calculated weighted average dumping margins for Malaysia and China of 5.7% and 5.6%, respectively. These calculations are based on:

Pacific Steel's calculation of quarterly constructed normal values, weighted to import volumes to arrive at weighted average constructed normal value figures.

New Zealand Customs import statistics, calculated to USD FOB price per tonne.

Pacific Steel's calculation of costs between FOB and ex-factory prices.

These calculations are above *de minimis* levels outlined in the Act and meet the standard of proof for initiation. However, the subsequent investigation will examine actual dumping margins, if any, and may reach different conclusions.

Pacific Steel has provided sufficient evidence that it is incurring material injury

MBIE's analysis of the injury information provided by Pacific Steel shows that, for initiation purposes, Pacific Steel has incurred material injury over the period examined.

Material Injury requirement

Before initiating a dumping investigation, MBIE must be satisfied that any dumping of rebar exported to New Zealand from China and Malaysia is resulting in, or threatens to result in, material injury to

Pacific Steel.

Material injury is not defined in the Act, but MBIE interprets it to mean a significant negative impact on how an industry has performed financially over a fixed period of time in competition with the allegedly dumped imports.

MBIE has analysed the information provided by Pacific Steel covering company's information from FY2010 to FY2016, which is the most recent financial information provided by Pacific Steel. MBIE considers that the company has provided sufficient evidence, for initiation purposes, that it is incurring material injury from the alleged dumping of Chinese and Malaysian rebar.

Pacific Steel has provided sufficient evidence that this injury is caused by dumped rebar

The analysis shows that:

- Imports of steel from China and Malaysia have been undercutting Pacific Steel's prices.
- Pacific Steel's average prices have decreased over the period (price depression);
- There is evidence of some price suppression, where Pacific Steel has been unable to cover the increase in production costs per unit.
- Profit per unit has decreased over the period.

Basis for assessing whether injury is caused by dumped imports

MBIE normally assesses injury analysis using 'coincidence' analysis. This involves assessing a series of data starting from a financial year which was not affected by dumped imports through until the most recent financial year. Coincidence analysis compares the industry's performance before and after the start of the allegedly injurious imports.

MBIE must also consider factors other than the dumped goods which may be causing injury to the domestic industry.

MBIE's analysis supports the conclusion that, for the purpose of initiation, there is sufficient evidence that material injury to Pacific Steel is attributable to dumped imports from China and Malaysia over the period examined.

1 Introduction

1.1 Application

1. On 10 March 2017, MBIE received an application for anti-dumping duties to be imposed on reinforcing steel bar and coil (rebar) from China and Malaysia. The application was submitted by Pacific Steel, the sole producer of rebar in New Zealand.
2. On 5 April 2017, MBIE accepted Pacific Steel's application for anti-dumping duties on rebar from China and Malaysia as properly documented.
3. This report assesses the application against the requirements to initiate a dumping investigation in the Dumping and Countervailing Duties Act 1988 (the Act). The report outlines the basis for determining if sufficient evidence has been presented to justify the initiation of a dumping investigation.
4. A second report presents the investigating team's assessment of the evidence provided in the application to consider initiating an investigation into the alleged subsidisation of rebar from China. This is because subsidy and dumping investigations are investigated separately.
5. Under section 10 of the Act, MBIE's Chief Executive¹ may initiate an investigation to determine the existence and effect of any alleged dumping of any goods, once the Chief Executive is satisfied that:
 - the applicant has provided sufficient evidence that the goods are being dumped, and
 - the applicant has provided sufficient evidence that the dumped goods are causing or threatening to cause material injury to the domestic industry.
6. Article 5 of the Anti-Dumping Agreement describes the requirements for the initiation of an investigation. It requires that any application include sufficient evidence of dumping; injury to a domestic industry in competition with the dumped imports; and a causal link between the dumped import and the alleged injury. Article 5 also sets out the kind of evidence, reasonably available to the applicant, that is required, and Article 5.2 states that "simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements for initiation." Article 5.3 requires investigating authorities to "examine the accuracy and adequacy of the evidence provided in the application to determine whether the evidence is sufficient to justify the initiation of an investigation."
7. With regard to the sufficiency of evidence, MBIE takes guidance from the 1988 judicial review case of *Kerry (New Zealand) Ltd v Comptroller of Customs*. In this case, Gault J said that in order to initiate a dumping investigation, the authority must be satisfied "that there

¹ The Act includes references to decisions to be made by "the Secretary", who is defined in section 3 as "the Chief Executive of the Ministry". The "Ministry" is defined, in turn, as "the department of State that, with the authority of the Prime Minister, is responsible for the administration of the Act." MBIE is the department that administers the Act.

is evidence beyond a mere assertion and of a nature and extent that indicate a likelihood of dumping and material injury, requiring investigation.” The Court also found that “the evidence should be scrutinised with due scepticism, bearing in mind the commercial context,” but emphasised that the assessment is one of sufficiency of evidence, not of dumping.² MBIE considers this ruling on a dumping claim under the Customs Act 1966 to be informative to assessing an anti-dumping duties application under the Act.

8. Dumping is defined in section 3(1) of the Act as “the situation where the export price of goods imported into New Zealand or intended to be imported into New Zealand is less than the normal value of the goods as determined in accordance with the provisions of this Act.” MBIE’s consideration is also subject to the World Trade Organisation (WTO) Anti-Dumping Agreement, which outlines how countries should conduct investigations into dumped imports.
9. Pacific Steel claims that the alleged dumping of rebar from China and Malaysia is causing the company material injury through:
 - price undercutting
 - price depression
 - price suppression
10. Pacific Steel claims that this injury is resulting in:
 - adverse effects on sales
 - adverse effects on profits per unit (EBIT³/tonne) and overall (EBIT)
 - adverse effects on return on investment
 - adverse effects on cashflow.
11. Pacific Steel has not requested that provisional measures be applied but has sought a provisional measures determination. Currently, anti-dumping duties on building materials are suspended under section 14AA of the Act until 30 June 2019. Pacific Steel has also applied for the imposition of countervailing duties on rebar from China. That application is treated as a separate matter by MBIE.

1.2 Matters relating to the evidence provided

12. In its application, Pacific Steel raised two matters that it suggested should be taken into account by MBIE in its consideration of the evidence provided. These matters were firstly actions taken by other jurisdictions, and in particular consistency of approach with Australia, and secondly, the trade statistics to be used in assessing the sufficiency of evidence required for initiation.

² (1988) 3 TCLR 265 at page 17.

³ EBIT – earnings before interest and taxation.

Findings in other jurisdictions

13. Pacific Steel has referred to investigations carried out by other jurisdictions into rebar and similar goods from China, including Australia, Canada, the European Union (EU), Malaysia and the United States. It also outlined in more detail the similarities between the Australian and New Zealand trade remedies regimes, and suggested that because of the “Inter-Government Memorandum of Understanding Between the Government of New Zealand and the Government of Australia in the Coordination of Business Law” there is an expectation by the two governments that administration of business rule, which includes anti-dumping and countervailing rules, should be generally consistent. Pacific Steel notes that findings in Australia take account of findings in cognate jurisdictions, with the implication that New Zealand should follow suit.

MBIE Comment

14. It should be noted that in assessing evidence, and examining its accuracy and adequacy, MBIE does look at the findings of other jurisdictions, and takes such guidance as it considers appropriate to the case concerned. However, the Memorandum of Understanding referred to by Pacific Steel has no legal weight in terms of the policy and practices New Zealand uses in its trade remedy cases. The Memorandum of Understanding does not require or imply that New Zealand or Australian trade remedy officials should follow or adhere to or take guidance from the other in relation to the administration of business law. Accordingly, MBIE will not take the Memorandum of Understanding into account in making an assessment under section 10(1) of the Act.

Pacific Steel’s use of trade statistics

15. Pacific Steel’s application relies on Trade Map⁴ records for export volumes and values from China because Statistics New Zealand suppression orders obscure the data available to Pacific Steel. Pacific Steel claims that the question of whether to rely on Trade Map data as opposed to New Zealand Customs (Customs) data is a critical matter in the assessment of the sufficiency of evidence required to meet the initiation threshold.
16. Pacific Steel makes extensive arguments to support its view that it would be unsafe for MBIE to place definitive reliance on Customs data when evaluating initiation.
17. Pacific Steel accepts that both Trade Map data and Customs data will contain inaccuracies, but claims that there are specific additional inaccuracies in the latter which are not present in Trade Map data. In particular, Pacific Steel cites exchange rate base error, exchange rate timing error, and VFD-FOB⁵ uncertainty. The effect of these errors, Pacific Steel claims, can

⁴ Trade Map is an on-line market analysis and research tool produced by the International Trade Centre (ITC UNCTAD/WTO).

⁵ Value for duty (VFD) is the value of goods which New Zealand Customs uses as a basis for calculating duties. This is normally similar to the free on board (FOB) price, which is a price basis that does not include freight and other cost elements after loading goods on the vessel for transportation to New Zealand.

be to lead to export prices measured from Customs data being significantly higher than is the case when measured from the Trade Map data.

18. Pacific Steel suggests that recourse to Customs data is a matter to be addressed post-initiation, and not in the prima facie pre-initiation phase.
19. With regard to foreign exchange base error, Pacific Steel notes that the Customs data uses Customs rates of exchange which are different from the contemporaneous rates of exchange in the commerce of the exporting country. Pacific Steel notes that dumping margins relate to the economics of the exporting country, so New Zealand-side matters are not necessary.
20. On foreign exchange timing errors, Pacific Steel points out that the Customs data translates currencies at the time the goods enter the New Zealand market, which does not match the timing of export-side conditions involved in the dumping analysis. The difference relates to shipment times which can take from 34-44 days or more from China. Pacific Steel suggests that the Trade Map information is contemporaneous with normal values.
21. Pacific Steel notes that Trade Map data is valued at FOB, which relates to exporter-side export price adjustments, whereas Customs data is at VFD, which is only approximately equivalent to FOB, and therefore not appropriate to use in export price calculations.
22. Pacific Steel also claims that the tariff codes used to describe the goods are imprecise, and errors can arise through miscoding, and examples of such errors have been provided. These errors can affect the analysis of negligible import volumes and market share analysis.
23. Pacific Steel also claims that there is some China-side miscoding of goods in order to gain tax advantages, and points to GOC advice that exports of rebar from China were seven times the level in the New Zealand export records.
24. Pacific Steel makes specific references to differences between export prices calculated from Trade Map and Customs data for two quarters in FY2015, with higher prices from Customs data being attributed to the presence of non-rebar higher value miscoded goods.
25. In summary, Pacific Steel claims that definition-based errors within Customs data are not present in Trade Map data, and there is no evidence that Customs data is more accurate in any respect than the Trade Map data.

MBIE Comment

26. MBIE is required to examine the accuracy and adequacy of the evidence. This includes an examination of the accuracy of the trade figures, in particular because they can affect consideration of the negligibility of imports and *de minimis* dumping margins, which can determine whether or not an investigation may be initiated. The export price levels are also important for assessing price effects in the New Zealand market.

27. With regard to official import statistics published by Statistics New Zealand, there has been a data-suppression order⁶ in place for tariff items 7214.20.90.01 and 7214.20.90.05, but not for the other 20 tariff items and statistical keys identified as covering the subject goods.
28. Under an import volume monitoring arrangement between MBIE and the steel industry, MBIE provides summaries of imports of goods subject to data-suppression. Information is provided on a monthly basis for, *inter alia*, imports of rebar of items 7214.20.90.01 and 7214.20.90.05, showing quantities and values (VFD and CIF) for imports from Australia, Singapore and Other,⁷, but marked 'CONFIDENTIAL' where there are three or fewer importers, plus a source ranking of exporting countries by volume from largest to smallest.
29. It appears that imports of goods subject to data suppression represent a high proportion of imports of the subject goods. This means that to the extent that Trade Map relies on official trade figures from Statistics New Zealand, which do not include a high proportion of imports of the subject goods, the Trade Map data has serious deficiencies.
30. With regard to exchange rates, MBIE recognises that there are a number of dates which might be relevant for currency conversion. Given that Pacific Steel has constructed a normal value, thus approximating by using a series of assumptions, MBIE considers the date of entry (to New Zealand) to be an acceptable time to calculate prices in different currencies. MBIE also notes that for some transactions involving intermediaries, the VFD values may be affected by margins taken by the intermediaries, which will affect the calculation of export prices. This can be addressed in any investigation when more detailed transaction information can be obtained.
31. MBIE also recognises that errors in data entry at various points in the chain of documentation can have an effect on the data used. However, the possibilities of such errors are known and will be accounted for where identified, and will apply to both Trade Map and Customs data.
32. MBIE is not persuaded that the matters raised by Pacific Steel provide a sufficient basis to conclude that Customs data is not suitable for use in checking the accuracy and adequacy of the claims made in the application. As such, MBIE has made its recommendation in this

⁶ The Statistics Act 1975 makes provision for the international trade statistics, together with local authority statistics and business lists, to be subject to less restrictive confidentiality rules than most other statistics. Aggregated data that discloses individual trade transactions is suppressed only if the exporter or importer requests suppression and an identification risk is confirmed. Suppression can be applied for up to 24 months (as is the case for the item here). For the 24-month option, only the importer/exporter will be contacted before the suppression is lifted to see if they want to continue with the suppression. In practice this may result in data being confidential for much longer than 24 months.

⁷ The import monitoring programme was introduced in June 2002 to monitor steel imports so that any increases in imports that could seriously injure the industry could be detected early and the need for safeguard action considered. Under New Zealand's FTA obligations, safeguard action cannot be taken against imports from Australia and Singapore, hence the need to separate out such imports in the monitoring process.

report based on Customs data. Any investigation will examine the accuracy of the trade data used.

1.3 Report Details

33. In this report, unless otherwise stated, years (FY) are years ending June and dollar values are New Zealand dollars (NZD). In tables, column totals may differ from the sum of individual figures because of rounding. The term VFD refers to value for duty for Customs purposes.
34. All volumes are expressed on a tonne basis unless otherwise stated. Exports to New Zealand were generally invoiced in United States dollars (USD). The exchange rates used are those relating to specific transactions, where available, the Customs exchange rates, or the Inland revenue Service (IRD) exchange rates, or the rate that MBIE considers most appropriate in the circumstances, as indicated in the text.
35. Any investigation will use the calendar year 2016 as the period of investigation of dumping.

2 Goods Description

2.1 Imported Goods

36. The imported goods that are subject of the application (the subject goods) are described as:

Reinforcing steel bar and coil with a diameter equal to or greater than 5mm

37. Pacific Steel considers the subject goods fall under the following nine Customs tariff items, with a total of 22 statistical keys:

Tariff Item	Statistical key		Tariff Item	Statistical Key
7213.10.90	01E		7214.99.90	01C
	09E			03K
7213.91.90	01J			05F
	05A			11L
	09D			13G
7213.99.90	01E			15C
	05H			21H
	09L		7227.90.00	19H
7214.20.90	01G		7228.30.00	19D
	05K		7228.50.00	19A
	09B		7228.60.00	19E

38. Nineteen of the statistical keys are duplicates from the Ministry of Commerce’s 2004 *Final Report on Reinforcing Steel Bar and Coil from Malaysia and Thailand*. Pacific Steel added statistical keys 7214.20.90 09B, 7214.99.90 05F and 7214.99.90 15C in this application to include rebar with greater thicknesses, which it claims reflects the types of rebar which Pacific Steel produces.
39. MBIE has established from Customs data that the subject goods have been and are being imported from China.

2.2 Like goods

40. Pacific Steel has confirmed that it is the only producer of rebar in New Zealand, and that it makes “like goods” to the goods imported from China and Malaysia under the tariff codes and statistical keys above, as they have the same form, function and usage. MBIE accepts

this claim for the purposes of initiation. MBIE notes that it is likely to have to complete a like goods analysis during the subsequent investigation.

41. Section 3(1) of the Act defines **like goods**, in relation to any goods, as:
 - a. Other goods that are like those goods in all respects; or
 - b. In the absence of goods referred to in paragraph (a), goods which have characteristics closely resembling those goods.
42. To determine whether the goods produced in New Zealand are like goods to the subject goods, MBIE considers physical characteristics, function and usage, pricing structures, marketing and any other relevant considerations, with no single factor being necessarily determinative.
43. In its application Pacific Steel provides information on the rebar it produces. The company produces a range of low and high tensile, standard and high ductile, plain carbon steel for reinforcing concrete. The finished product comes in the form of either plain or deformed bars or coils and includes product where the steel has been micro-alloyed with small vanadium additions for superior strength.
44. Pacific Steel's website states that it produces rebar and coil in diameters ranging from 6 to 40mm in bar form and 6 to 16mm in coil form. Bar lengths range from 6 to 18 metres⁸.
45. Pacific Steel states in its application that it also produces rebar at 50mm in diameter.
46. In its application, Pacific Steel outlined the relevant standards, accreditation and ductility requirements for rebar for the New Zealand market.
47. The relevant standard is the joint Australia/New Zealand Standard AS/NZS 4671, which specifies requirements for the chemical composition and the mechanical and geometrical properties of deformed reinforcing bars and coils used for reinforcement concrete. The Australia/New Zealand Standard specifies three levels of yield strength – 250 MPa⁹, 300 MPa, and 500 MPa. Three ductility classes are specified for rebar, and designated as L (low), N (normal) and E (earthquake). The N class ductility is used in the Australian market, and has a minimum five per cent ductility, while E class (AS/NZS 4671 500E), with a minimum ten per cent ductility is the prevailing class in New Zealand, reflecting the differing levels of seismic activity.
48. The Australian Certification Authority for Reinforcing and Structural Steels (ACRS) administers an independent, expert-based product certification scheme. It certifies manufacturers and suppliers of rebar, pre-stressing and structural steels to Australian and New Zealand standards. Pacific Steel notes that it is nonetheless possible for rebar to be imported into New Zealand from mills that do not have ACRS accreditation.

⁸ Sourced from: <http://www.pacificsteel.co.nz/products/reinforcing-bar-and-coil/seismic-500e/> Retrieved on 2 May 2017

⁹ MegaPascals – a unit of pressure used to quantify internal pressure, stress, and Young's modulus (defines the relationship between stress and strain in a material), and ultimate tensile strength.

49. The application notes that the Chinese reinforcing standard GB1499 is not equivalent to AS/NZS 4671 500E, and provides a detailed analysis of the differences in an Appendix to its application. The application also noted that manufacturing to the Australia/New Zealand Standard can incur additional costs compared with manufacturing to the Chinese standard.

MBIE Consideration

50. To determine whether the goods produced in New Zealand are like goods to the subject goods, MBIE normally considers physical characteristics, function and usage, pricing structures, marketing and any other relevant considerations, with no one of these factors being necessarily determinative.
51. On the basis of these considerations, and in particular the physical characteristics and function and usage of the goods, MBIE concludes that, for initiation purposes, Pacific Steel produces like goods to the goods imported from China and Malaysia, and, as a consequence, constitutes the New Zealand industry in terms of section 3A of the Act.

3 Interested Parties

3.1 Applicant and New Zealand Industry (Pacific Steel)

52. Pacific Steel submitted the application. Pacific Steel is a wholly owned subsidiary of New Zealand Steel Holdings Limited whose parent company is BlueScope Steel Limited (Bluescope). BlueScope is a company based in Australia and listed on the Australian Stock Exchange.
53. MBIE accepts Pacific Steel's claim that it is the only producer of rebar in New Zealand, so meets the requirement in Section 10(3) of the Act outlining the minimum level of support required from the domestic industry.
54. In 2014, MBIE conducted a review investigation into dumped rebar from Thailand, and found that Pacific Steel was the only producer of rebar in New Zealand. Pacific Steel claims that since the 2014 investigation, no investments in production equipment have been made by any other company in New Zealand.

3.2 Exporters

55. Pacific Steel advises that that it considers the allegedly dumped goods from Malaysia are supplied by Amsteel Mills Sdn Bhd (Amsteel), citing the lion.com.my website.
56. Pacific Steel provides product labels identifying Tianjin Tiantie Zhaer Steel Production Company Limited (TTZ), and Hebei Jingye Iron & Steel Company Limited (Hebei Jingye) as suppliers of the allegedly dumped goods from China.
57. Pacific Steel states that it is likely that other companies in China are supplying the New Zealand rebar market but they are not easily visible to Pacific Steel, as it claims that imported goods can enter and be consumed in the New Zealand market at retail or into projects without wide visibility to the New Zealand industry. Pacific Steel also cites the data suppression order as restricting its ability to determine international suppliers of rebar to New Zealand.

3.3 Importers

58. Pacific Steel identifies Brilliance Steel as importing rebar from Hebei Jingye. Pacific Steel states that Brilliance Steel was its customer before changing its supply arrangements to importing rebar from China in 2010/11.
59. Pacific Steel identifies [REDACTED] ([REDACTED]) as importing rebar from Amsteel. Pacific Steel states that [REDACTED] Pacific Steel.
60. Pacific Steel does not identify any other importers.

3.4 The Governments of China and Malaysia

61. The governments of China and Malaysia are also considered interested parties under the WTO Anti-Dumping Agreement.

4 Evidence of Dumping

62. Section 10 of the Act outlines the evidence of dumping that is required in a properly documented application to warrant initiation of a dumping investigation and which is reasonably available to the applicant, which includes:
- (a) evidence of the normal values of the allegedly priced goods
 - (b) evidence of the export prices of the allegedly dumped goods.
63. The Act defines 'dumping' in section 3(1), which reflects the definition set out in the Anti-Dumping Agreement. In particular, 'dumping', in relation to goods, means the situation where the export price of goods imported into New Zealand or intended to be imported into New Zealand is less than the normal value of the goods as determined in accordance with the provisions of the Act, and 'dumped' has a corresponding meaning.

4.1 Export Prices

64. Subsection 10(2)(b)(x) of the Act requires that an application include such information as is reasonably available to the applicant to determine the export price of the allegedly dumped goods.
65. MBIE is satisfied that Pacific Steel has supplied information that is reasonably available to it on Malaysian and Chinese export prices, including average free on board (FOB) values and the relevant adjustments required, to calculate ex-factory export prices.
66. However, the difference between the Trade Map data and Customs data will need to be taken into account in the comparison with Normal Values. As noted in the earlier section, MBIE has used Customs data to make its recommendation. Any investigation will need to take into account the extent of any intermediary margins in the calculation of export prices. Malaysian and Chinese export prices have been established, as described in the following sections:

4.1.1 Malaysia

Base Prices

67. Pacific Steel estimates export prices based on free-on-board (FOB) export prices (USD/tonne) from Malaysia to New Zealand for the four quarters of FY2016 (1 July 2015 – 30 June 2016). Pacific Steel sources this information from Trade Map¹⁰ which is an on-line market analysis and research tool. Trade Map records export data for the subject goods from various countries to New Zealand to the six-digit tariff key level.
68. In establishing export prices, MBIE accepts average per unit prices from import data if the subject product is closely aligned with the statistical keys from which the average FOB has been calculated. Pacific Steel has noted that some of the statistical keys likely include some higher unit value alloyed wire rod not used for reinforcing purposes.

¹⁰ Trade Map data is produced by the International Trade Centre (ITC UNCTAD/WTO).

69. MBIE accepts that statistics sourced from Trade Map are sufficiently reliable for the purposes of initiation. However, MBIE also notes that following initiation of an investigation, it would use Customs statistics.
70. MBIE checked the data that Pacific Steel has used against the Customs data. MBIE is aware of the possibility that the Customs data may contain imports of goods that fall outside of the goods description in the application. A more detailed analysis of individual imports would occur during an investigation.
71. The table below shows the average FOB export prices for imports of rebar from Malaysia during each quarter of FY2016. It compares the figures provided from Trade Map and the Customs data. The data is roughly equivalent for most quarters although there is a discrepancy in the figures for Q2-2016.

**Table 4.3: FOB Export Prices – Malaysia
(Financial year quarters)**

USD/tonne FOB	Q1-2016 (Jul-Sep)	Q2-2016 (Oct-Dec)	Q3-2016 (Jan-Mar)	Q4-2016 (Apr-Jun)
Trade Map (Pacific Steel-supplied)	522	491	445	539
Customs data	██████	██████	██████	██████
Customs data/Trade Map	██████%	██████%	██████%	██████%

Adjustments

72. To calculate an ex-factory export price, Pacific Steel deducts estimated costs between FOB and ex-factory in Malaysia. These costs are incurred by the exporter in preparing the goods for shipment to New Zealand. Pacific Steel sources information from two recent reviews conducted by MBIE, both involving steel products: galvanised wire from Malaysia (completed in December 2014) and rebar from Thailand (completed in May 2015).
73. Referencing the 2014 review of anti-dumping duties on galvanised wire from Malaysia, Pacific Steel states that galvanised wire exports are freighted and handled similarly to rebar, and therefore the use of this information is reasonable. Pacific Steel sources export packaging costs from the 2015 review of rebar from Thailand to reflect the rebar-specific nature of the packaging costs.
74. Using the above sources, Pacific Steel supplied information on the following ex-factory to FOB costs:
- cost of credit (USD ██████ per tonne),
 - export packaging (USD ██████ per tonne),
 - inland freight (from ex-factory to port) (USD ██████ per tonne),
 - export documentation, (USD ██████ per tonne)

- port handling (USD [REDACTED] per tonne)
- wharfage and customs clearance (USD [REDACTED] per tonne).

75. Pacific Steel stated that the total for such costs was USD33.67 per tonne. MBIE calculated a slight variation in the subtotal of these costs, from USD32.96 to USD33.67, but considers that the difference is not significant.

Ex-factory Export Prices

76. Set out in the table below are the FOB prices for rebar from Malaysia, adjustments submitted by Pacific Steel and the resulting ex-factory prices, from July 2015 to June 2016:

**Table 4.4: Ex-factory Export Prices – Malaysia
(Financial year quarters)**

USD/tonne	Q1-2016 (Jul-Sep)	Q2-2016 (Oct-Dec)	Q3-2016 (Jan-Mar)	Q4-2016 (Apr-Jun)
FOB value				
- Trade Map	522	491	445	539
- Customs data	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Adjustments to FOB, as outlined by Pacific Steel	33	33	33	33
Ex-factory Export price				
- Trade Map	489	458	412	506
- Customs data	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

4.1.2 China

Base Prices

77. Pacific Steel estimates export prices based on FOB prices USD/tonne from China to New Zealand for the four quarters of financial year 2016 (1 July 2015 – 30 June 2016), using Trade Map data.
78. The table below shows the average FOB export prices for imports of rebar from China during each quarter of FY2016. It compares the figures provided from Trade Map and the Customs data. There are some significant differences in all of the quarters. MBIE considers that the Customs statistics are more suitable for evaluating whether or not to initiate an investigation.

**Table 4.5: FOB Export Prices – China
(Financial year quarters)**

US\$/tonne FOB	Q1-2016 (Jul-Sep)	Q2-2016 (Oct-Dec)	Q3-2016 (Jan-Mar)	Q4-2016 (Apr-Jun)
Trade Map	489	435	386	433

Customs data				
Customs data/Trade Map	%	%	%	%

Adjustments

79. To derive ex-factory export prices, Pacific Steel has sourced China-side information from [REDACTED] in September 2016. This assesses a per-container rate on a slightly shorter distance to a China port than would be required on the purchase of the Chinese rebar most recently seen in New Zealand.
80. Using the above source, Pacific Steel supplied information on the following ex-factory to FOB costs: cost of credit, export packaging, cartage at origin, terminal handling charges, and wharfage and customs clearance. The total for such costs was USD49.15 per tonne.

Ex-factory Export Price

81. Set out in the table below are the FOB prices for rebar from China, adjustments submitted by Pacific Steel and the resulting ex-factory prices, from July 2015 to June 2016:

**Table 4.6: Ex-factory Export Prices – China
(Financial year quarters)**

USD/tonne	Q1-2016 (Jul-Sep)	Q2-2016 (Oct-Dec)	Q3-2016 (Jan-Mar)	Q4-2016 (Apr-Jun)
FOB value				
- Trade Map	489	435	386	433
- Customs data	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Adjustments to FOB	49	49	49	49
Ex-factory Export price				
- Trade Map	440	386	338	384
- Customs data	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

4.1.3 Conclusion on Export Prices

82. MBIE is satisfied that the applicant has provided information that is reasonably available to it on Malaysian and Chinese export prices, sufficient for initiation purposes, including average FOB values and the relevant adjustments required to calculate ex-factory export prices. However, the difference between the Trade Map data and Customs data will need to be taken into account in the comparison with Normal Values.

4.2 Normal Values

83. Subsection 10(2)(b)(ix) of the Act requires that an application include such information as is reasonably available to the applicant to estimate normal values of the allegedly dumped goods when destined for consumption in the domestic markets of the countries of origin or export (or, where appropriate, the prices based on a constructed value).

84. Pacific Steel has calculated Constructed Normal Values at between 483 and 577 USD/tonne for rebar from Malaysia, and between 488 and 535 USD/tonne for rebar from China. This approach is consistent with New Zealand legislation which allows the applicant to construct a normal value based on the cost of production of the goods in the country of export and reasonable amounts for administrative, delivery and selling costs, and profit.
85. MBIE is satisfied with the arguments provided by Pacific Steel to justify its use of the constructed normal value method for both Malaysia and China. MBIE is also satisfied that the relevant sources of information, assumptions and adjustments made by Pacific Steel, in constructing normal values, have been made on a reasonable basis, and is satisfied with the values Pacific Steel provides, for initiation purposes. Malaysian and Chinese normal values have been established, as described in the following sections.

4.2.1 Malaysia

Introduction

86. Pacific Steel claims that it sought to use domestic selling prices from reputable steel industry publications and commentators in Malaysia to establish Malaysian normal values. However, it claims that it could not find suitable pricing for a comparable volume of like goods (including the grade exported to New Zealand) sold in the ordinary course of trade for Malaysian consumption. Specifically, Pacific Steel sought but was unable to find any published Malaysian pricing of goods meeting the export AS/NZS 4671 500E standard.
87. Pacific Steel also claims that any Malaysian domestic prices, which it may have been able to source, would not be appropriate as a normal value because of the extended period of time which it considers Malaysian steel producers have been selling at less than the fully absorbed cost to make and sell steel on the Malaysian domestic market.
88. To substantiate its claim, Pacific Steel provides a summary table of six years (from 1 October 2009 to 30 September 2015) of the combined financial results for three Malaysian steel companies (Southern Steel, Masteel and Ann Joo) who publish their financial results.¹¹
89. Pacific Steel notes that, over this period, these three producers' average combined quarterly pre-tax profit changed from a sustained profit to five consecutive quarters of 'negative profit' (ending 30 September 2015). Pacific Steel claims that this is evidence that rebar has not been sold in Malaysia, in the ordinary course of trade, for an extended period of time. To further support its claim that the Malaysian steel industry is in serious difficulty, Pacific Steel notes a recent finding by the Malaysian government that its wire rod and rebar industry has incurred serious injury resulting in WTO safeguard measures being imposed on such imports.¹²

¹¹ The data for this table was sourced from: <http://klse.i3investor.com/index.jsp>

¹² WTO G/SG/N/7/MYS/2 G/SG/N/11/MYS/2 dated 29 September 2016.

90. For the above reasons, Pacific Steel uses the constructed normal value method to establish Malaysian normal values, using information based on production costs in Malaysia and its own costing information (where appropriate), with what it considers to be due allowances for likely differences in costs between New Zealand and Malaysian manufacture of the like goods.
91. MBIE checked the 2015 financial results for the three Malaysian steel producers that Pacific Steel names. The information showed that all three companies sustained losses over their 2015 financial years. While these losses were in respect of each company's total product range, each company did produce rebar over the period (some in more significant volumes than others). On this basis, it can be concluded that the companies' losses likely extend to rebar, which MBIE considers provides the applicant with reasonable grounds for constructing normal values over the four quarters. It should be noted, however, that MBIE would not accept amalgamated or averaged loss figures covering several entities without evidence that each of the entities involved was suffering losses.

Constructed Normal Value

92. Pacific Steel provided details of the costs used to construct the Malaysian normal value using the method described above. Set out in the table below is the company's constructed normal value for Malaysian rebar for FY2016. All costs are in United States dollars (USD) per metric tonne:

**Table 4.6: Malaysia – Constructed normal values
(Financial year quarters)**

(USD/tonne)	Q1-2016 (Jul-Sep)	Q2-2016 (Oct-Dec)	Q3-2016 (Jan-Mar)	Q4-2016 (Apr-Jun)
Billet (CIF)	360	277	276	341
Billet (transport to mill)				
Micro-alloy premium				
Billet handling and inventory				
<i>Billet – sub-total</i>				
Billet – post yield				
Conversion				
Theoretical weight				
SGA expenses				
ACRS	1	1	1	1
Plus separate inventory				
Less distribution	18	18	18	18
<i>Subtotal</i>	544	457	455	530
Profit	33	28	28	32
Constructed Normal Value	577	484	483	563

93. Pacific Steel provided the following explanation and evidence of the costs used to construct a Malaysian normal value for steel rebar. All costs were converted from New Zealand dollars to United States dollars using quarterly OANDA¹³ exchange rates for the four quarters Pacific Steel constructed normal values.

Cost of Production

94. For the *cost of billet*, Pacific Steel uses a combination of billet import cost, insurance and freight (CIF) prices from Trade Map and billet import cost and freight (CFR) price data from Steel Business Briefing (SBB).¹⁴ The Trade Map data are CIF prices from world sources to Malaysia and is used for the Q3-2015 and Q4-2015 periods. The SBB data is semi-finished/billet/East Asia import CFR prices and is used for the Q1-2016 and Q2-2016 periods. Imported billet prices have been sourced for each of the four quarters that Pacific Steel provides normal values. MBIE considers the published import statistics sourced from Trade Map and SBB that Pacific Steel provides in its application, to be a sufficient record of billet prices into Malaysia for the purpose of constructing a normal value.
95. Pacific Steel estimates *billet transport costs from port to mill* based on its own experience of the costs to import billet between CIF and the mill yard to the point where the billet is ready for acceptance into a reheat furnace. The costs provided are on a [redacted] tonne consignment and are the sum of port clearance, stevedore, inspection, road transport (Pacific Steel has assumed a maximum [redacted] km delivery), unloading, and billet sort by heat (which Pacific Steel claims is necessary to identify the cast number from the billet on the rolled bar). MBIE considers the costs and the amounts provided by the applicant are a reasonable representation of likely billet transport costs from Malaysian port to mill.
96. Pacific Steel estimates a cost for *micro-alloy premium* which is the average additional additives and alloying element cost which Pacific Steel incurs on billet used to make the higher strength and ductile weld-able G500E rebar over the additives and alloying element cost in the billet used to make G500N. Pacific Steel estimates the figure based on its own FY2015 costs. The New Zealand Steel (source of the billet) vanadium and additive costs in FY2016 are not used because, uniquely, the New Zealand iron sand Fe-source already contains surplus vanadium. Pacific Steel considers the FY2015 figures are reflective of the world open-market additives and alloying element cost, not the latter in the New Zealand integrated steel making process where the primary iron feed contains vanadium. Pacific Steel has converted the New Zealand costs used in this exercise to USD at the relevant OANDA exchange rate.
97. *Billet handling and inventory* costs arise from the dissimilarity of the goods sold on the domestic market in Malaysia. The more stringent testing and different billet chemistry mean that the New Zealand-destined AS/NZS 4761 grade 500E goods are made in separate runs commencing with the higher specification billet into the reheat furnace, with different handling and administration costs. The goods being made for New Zealand are increasingly

¹³ OANDA is an on-line currency converter (<https://www.oanda.com>).

¹⁴ Steel Business Briefing (SSB) is an industry news digest published by S&P Global Platts.

shipped on a [REDACTED] basis, which Pacific Steel considers provides reasonable grounds to conclude that there will, on the New Zealand destined goods, be additional billet-yard handling costs (billet handling is upstream of the re-heat furnace) and some additional billet inventory holding costs over and above the costs for the locally-sold Malaysian goods. Pacific Steel notes that it estimates the inventory based on an additional [REDACTED] days to build and/or hold stock of the particular specification billet for the 500E goods destined for shipment to New Zealand.

98. Pacific Steel provides an amount for *billet yield* (the difference between the mass of billet into the reheat furnace and the mass of prime goods produced for sale) based on its own yield, including scrap credit ([REDACTED] per cent average in FY2016) which it believes would be similar to the yield incurred when billet is produced by the Malaysian mills. If anything, Pacific Steel considers that Malaysian yield may be inferior (resulting in a higher normal value) due to the smaller runs required to make the New Zealand destined 500E export rebar.
99. Pacific Steel provides an amount to *convert the billet to rolled steel* based on its own conversion rate for FY2016, but makes a downward adjustment (to [REDACTED] per cent) for the lower cost for Malaysia. The downward adjustment was based on the conversion-related constructed normal value figure established in MBIE's 2014 sunset review into Malaysian galvanised wire where MBIE checked the constructed normal value against other sources to gain a sense of the accuracy of the value. Pacific Steel provides information to support the billet to rolled steel conversion rate, including costs elements from monthly Rolling Mill Production Reports and conversion rates from its enterprise resource planning system ([REDACTED]).
100. Pacific Steel made an upward adjustment to the Malaysian constructed normal value based on its understanding that the Malaysian steel industry transacts the goods on the domestic market on a theoretical weight basis. Export goods (including those to New Zealand), however, are trade-recorded and valued on an actual weight basis. Applying a conservative manufacturing practice, Pacific Steel considers that for the Malaysian domestic market, an upward adjustment to the Malaysian normal value would be [REDACTED] per cent, because domestic sales revenue received will be [REDACTED] per cent greater than the equivalent actual weight exported order. In other words, for a 100 tonne order, the sales volume/mass supplied on a theoretical weight basis would be [REDACTED] tonnes.

Selling, General and Administration Expenses

101. Pacific Steel provides an amount for *selling, general and administration expenses* (SGA) based on an average of two figures. The first SGA figure is Pacific Steel average SGA for the financial years of 2012 to 2015 converted to USD per tonne. The second SGA figure is an identified SGA amount sourced from Masteel's FY2015 published Annual Report divided by the FY2016 monthly average world steel utilisation rate (68.36 per cent)¹⁵ to reflect a Malaysian steel producer's expected capacity utilisation rate. Pacific Steel stated that

¹⁵ <https://www.worldsteel.org/media-centre/press-releases.html>

68.36% is likely to be a conservatively high utilisation rate as press reports suggest that Malaysian steel making utilisation rates are somewhat lower. Pacific Steel considered this claim consistent with a recent WTO safeguard action taken by Malaysian steel producers (referenced in paragraph 89 above). Pacific Steel's estimated SGA figure ranged from [REDACTED] to [REDACTED] per cent of the Malaysian constructed normal value over the four quarters for which it constructed a normal value.

102. Pacific Steel adjusted the normal value upwards by a nominal amount for ACRS costs.¹⁶ Pacific Steel considers ACRS costs are not incurred on rebar sold on the Malaysian domestic market but are relevant to Malaysian export sales to New Zealand. The company also adjusted the normal value upwards by a nominal amount for *inventory (or stock holding)* costs which it estimated based on a difference of fourteen days inventory for goods exported to New Zealand as opposed to goods sold on the Malaysian domestic market.
103. Pacific Steel made a downward adjustment to the Malaysian normal value for distribution costs to account for the distribution component contained in the SGA figure it calculated to effectively bring the constructed normal value back to an ex-factory price. The company estimated distribution costs from FY2015 cost figures sourced from Masteel's published Annual Report, and divided this figure by the assumed 68.36 per cent utilisation rate referenced in paragraph 101 above. Pacific Steel's estimated distribution cost ranged from 3.1 to 3.7 per cent of the Malaysian constructed normal value (indicative selling price) over the four quarters in which it constructed a normal value.

Profit

104. Pacific Steel submits that a justifiable allowance for profit is a 17 per cent Earnings Before Interest, Taxes, Depreciation and Amortisation (EBITDA) margin. That is the level indicated by global management consulting firm McKinsey & Company to be required for long-term steel mill sustainability.¹⁷ However, in constructing a Malaysian normal value, Pacific Steel used the average profit achieved by the three Malaysian steel companies identified above who publish their financial results.¹⁸ The period chosen in which to calculate the average profit was the two year period ending 30 June 2011 because the published information showed that this period was the most recent period in which these companies were incurring profits over an extended period of time. Pacific Steel considers this to be a rate of profit (albeit less than the sustainable level identified by McKinsey and Company) which may normally be realised on sales of the same general category of goods in the Malaysian domestic market. Pacific Steel calculated the average profit margin for the three Malaysian firms over the two year period ending 30 June 2011 to be 6.1 per cent. The

¹⁶ Australasian Certification for Reinforcing and Structural Steels.

¹⁷ "Laying the foundations for a financially sound industry" presented to the Steel Committee meeting Paris, December 5th, 2013 at p5 and p7. McKinsey and Company.

¹⁸ The data, relating to Southern Steel, Masteel and Ann Joo, was sourced from: <http://klse.i3investor.com/index.jsp>

company provided information and calculations to support the average profit rates for each of the three firms over the period examined.

4.2.2 China

Introduction

105. Pacific Steel used a similar method to calculate normal values for rebar sold in China as it did with Malaysia. That is, Pacific Steel has used the constructed selling price method of establishing Chinese normal values for two reasons:
106. First, relevant and suitable pricing could not be obtained in China for a comparable volume of like goods to the grade exported to New Zealand. The Chinese rebar exported to New Zealand is identified as AS/NZS 4671 grade 500E, which is the > 10% ductile earthquake grade required in New Zealand. The nearest standard Chinese equivalent rebar is GB1499 (referenced at page 10 and Appendix 4 of the application) which Pacific Steel claims is of a lower standard to the AS/NZS 4671 export grade 500E rebar and which indicates that Chinese rebar prices in China are not reflective of the AS/NZS 4671 500E grade exported to New Zealand.
107. Secondly, Pacific Steel also considers that continued intervention by the Chinese Government in its iron and steel industry has distorted the price of rebar and other steel goods leading to such prices being unsuitable for the determination of normal values.
108. Pacific Steel claims that the Chinese government plays a significant role in influencing the domestic Chinese iron and steel industry through its numerous broad overarching macroeconomic policies and plans which are manifested in its National Steel Policy (NSP), its Blueprint for the Steel Industry Adjustment and Revitalization and its National and Regional five year plans.
109. As evidence, Pacific Steel cites recent Australian ADC findings that domestic prices for certain steel products were unsuitable for determining normal values, because of particular conditions in the Chinese market. Pacific Steel states that these same conditions are provided for under section 5(2)(b) of the New Zealand legislation. In particular, Pacific Steel point to the following summary from the Australian ADC's Final Report dated 13 April 2016:

Based on the proceeding analysis, the Commission has concluded that the Chinese Government materially influenced conditions within the Chinese rebar market during the investigation period. The mechanisms through which the Chinese Government exerted this influence include government directives and oversight, subsidy programs, taxation arrangements and the significant number of state owned steel companies.

The Commission also concludes that because of the significance of this influence over the Chinese rebar market, the domestic price for Chinese rebar was substantially different to what it would have been in the absence of these interventions by the Chinese Government. Based on this analysis, the Commission has determined that during the investigation period the domestic price for Chinese rebar was influenced by the Chinese Government to a degree which makes domestic sales of rebar unsuitable for use in determining normal values under subsection 269TAC(1).

110. Pacific Steel also provides commentary from various reports, published by economic commentators, supporting its claim that Chinese steel is not sold in the ordinary course of trade. One such report was published by the Australian ADC and addresses the nature of government intervention in the Chinese steel and aluminium industry.¹⁹ Pacific Steel considers the report is clear that Chinese government policies have distorted domestic Chinese steel prices and profitability. In particular, Pacific Steel points to the following excerpts from the Australian ADC Report:

Many of the policies adopted by Asian governments would meet the OECD's definition of being market distorting in that they have the effect of sustaining ongoing overcapacity by supporting the building of new capacity or keeping inefficient facilities in operation.

By altering the VAT rebates or export taxes applied to steel exports, the Chinese Government has altered the relative profitability of different types of steel exports and of exports compared to domestic sales. This has changed steel producers' relative incentives to sell steel products in domestic compared to export markets. Through these mechanisms for altering the relative supply of particular steel products in the domestic market, the Chinese Government has been able to influence the domestic price for those products.

111. Pacific Steel also references findings by other trade remedies authorities, such as the Canada Border Services Agency (CBSA), which according to Pacific Steel support its claim that the Chinese government plays a significant role in influencing the domestic Chinese iron and steel industry through its economic policies and measures.

112. Pacific Steel does not consider the fact that, in April 2004, the New Zealand Government acknowledged China as a market economy, as an impediment to the New Zealand trade remedies authority disregarding Chinese domestic sales in establishing normal values in China. This is because the granting of market economy status to China was not adopted into New Zealand's domestic legislation nor does it have an effect on New Zealand's trade remedies policy. The company cited the fact that the Australian government also recognises China as a market economy and that the Australian trade remedies legislation is very similar to New Zealand's, yet the Australian ADC has made recent findings that particular market situations exist in the Chinese steel industry to suggest that Chinese domestic prices are unsuitable to establish normal values.

113. In the absence of relevant and suitable domestic pricing for a comparable volume of like goods to the grade exported to New Zealand, Pacific Steel uses the constructed normal value method to establish Chinese normal values. Pacific Steel constructed Chinese domestic prices using its own costing information (where appropriate) and other cost information, with due allowances for likely differences in costs between New Zealand and Chinese manufacture of the like goods. Pacific Steel provides details (including an explanation and evidence) of the costs used to construct the Chinese normal value.

¹⁹ *Analysis of Steel and Aluminium Markets Report to the Commissioner of the Anti-Dumping Commission, Anti-dumping Commission (August 2016).*

Constructed Normal Value

114. Pacific Steel provides details of the costs used to construct the Chinese normal value. Set out in the table below is Pacific Steel’s constructed normal value for Chinese rebar for FY2016:

**Table 4.7: China – Constructed normal values
(Financial year quarters)**

(USD /tonne)	Q1-2016 (Jul-Sep)	Q2-2016 (Oct-Dec)	Q3-2016 (Jan-Mar)	Q4-2016 (Apr-Jun)
Billet (FOB)	340	295	264	329
Billet (transport to mill)				
Micro-alloy premium				
Billet handling and inventory				
<i>Billet – sub-total</i>				
Billet – post yield				
Conversion				
Theoretical weight				
SGA expenses				
ACRS	1	1	1	1
<u>Plus</u> separate inventory				
<u>Less</u> distribution	18	18	18	18
<i>Subtotal</i>	522	477	443	518
Profit	12	11	11	12
Constructed Normal Value	535	488	453	530

Cost of Production

115. Pacific Steel provides the following explanation and evidence of the costs used to construct a Chinese normal value for steel rebar. All costs were converted from New Zealand dollars to United States dollars using quarterly OANDA exchange rates for the four quarters Pacific Steel constructed normal values.
116. For the *cost of billet*, Pacific Steel submits that the cost and price of billet in China is directly affected by the government’s intervention in the Chinese iron and steel industry and that they are not appropriate for the purposes of determining a fair market value for these goods.

117. Pacific Steel was reluctant to use Asian billet prices as a benchmark substitute for Chinese billet prices on the grounds that Asian prices were likely to be affected by Chinese pricing (with China being the world's largest producer of iron and steel). Instead Pacific Steel has used Latin American FOB export prices (USD FOB/tonne) as a benchmark substitute for Chinese billet prices which it sourced from Trade Map using tariff codes 720711, 720712 and 720719. Pacific Steel noted this approach was consistent with the approach taken by the Australian ADC in its March 2016 report into the alleged dumping of steel rebar from China.
118. Section 5(2)(d) of the Act allows the Secretary to determine the normal value on the basis of a constructed value that includes the amount determined by the Secretary to be the cost of production or manufacture of the goods in the country of export. In the case of an application, where the applicant has provided evidence in support of its claims relating to the elements of the cost of production, MBIE considers that information that is reasonably available to the applicant in relation to such claims can include cost information derived from a variety of sources, including information relating to components or elements which come from outside the country of export, where a reasonable explanation has been provided in support of such claims. On this basis, MBIE is prepared to accept that prices for Latin American billets provide a reasonable basis for incorporation into a constructed normal value as indicative of world market prices for billet.
119. For the *billet transportation costs from port to mill*, Pacific Steel notes that the transport logistics involved are similar to those of the Malaysian mills and proposes that the figures calculated for Malaysia (see paragraph 95 above) are also used for China. Pacific Steel notes that because the distances involved in China are greater than Malaysia, the figures calculated for Malaysia are a conservative estimate of billet transport costs in China.
120. Pacific Steel estimates a cost for *micro-alloy premium* which is the cost incurred on additives and alloying in the billet used to make the higher strength and ductile weld-able G500E rebar over the additives and alloy mix in the billet used to make G500N. Pacific Steel estimates the figure based on its own FY2015 costs. Pacific Steel believes this additional cost will be similar in China and directly applicable to the New Zealand-destined AS/NZS4761 grade 500E goods. Pacific Steel considers the FY2015 figures are reflective of the world open-market additives and alloying element cost. Pacific Steel has converted the New Zealand costs used in this exercise to USD at the relevant OANDA exchange rate.
121. *Billet handling and inventory* costs arise from the dissimilarity of the goods sold on the domestic market in China which are made to GB1499.2-2007 standard. The more stringent testing and different billet chemistry mean that the New Zealand-destined AS/NZS4761 grade 500E goods are made in separate run with the higher specification billet into the reheat furnace, with different subsequent handling and administration costs. The goods destined for New Zealand are made less frequently than the goods destined for the Chinese market and involve more than a simple pass change on the final roll from the standard Chinese goods. The goods are shipped to New Zealand in an irregular pattern. Pacific Steel considers that this provides reasonable grounds to conclude that there will be additional billet-yard handling costs on the New Zealand destined goods, and additional billet inventory holding costs which are not incurred for the locally-sold goods. Billet

handling is a nominal amount per tonne, and the inventory cost has been estimated based on an additional [REDACTED] days to build or hold stock of the particular specification billet for the 500E goods destined for New Zealand.

122. Pacific Steel provides an amount for *billet yield* (the difference between the mass of billet into the reheat furnace and the mass of prime goods produced for sale) based on its own yield, including scrap credit ([REDACTED] per cent average in FY2016) which it believes would be similar to the yield of the Chinese mills.
123. Pacific Steel provides an amount to *convert the billet to rolled steel* based on its own conversion rate for FY2016. Pacific Steel provides information to support the billet to rolled steel conversion rate, including cost elements from monthly Rolling Mill Production Reports and conversion rates from its enterprise resource planning system (BPCS). Pacific Steel makes a downward adjustment (to [REDACTED] per cent) for the lower cost for China but, because it has not been able to locate a better data set on which to base the Chinese conversion rate, it has used the figure established in MBIE's 2014 sunset review into Malaysian galvanised wire where MBIE checked the constructed normal value against other sources to gain a sense of the accuracy of the value.
124. Pacific Steel makes an upward adjustment to the Chinese constructed normal value based on its understanding that the Chinese steel industry transacts the goods on the domestic market on a *theoretical weight basis*. Export goods (including those to New Zealand), however, are trade-recorded and valued on actual weight basis. Applying a conservative manufacturing practice, Pacific Steel considers that for the Chinese domestic market, an upward adjustment to the Chinese normal value would be [REDACTED] per cent, because domestic sales revenue received will be [REDACTED] per cent greater than the equivalent actual weight exported order. In other words, for a 100 tonne order, the sales volume/mass supplied on a theoretical weight basis would be [REDACTED] tonnes.

Selling, General and Administration Expenses

125. Pacific Steel provides an amount for *selling, general and administration expenses* (SGA) based on an average of two figures. The first SGA figure is Pacific Steel average SGA for the financial years of 2012 to 2015 converted to USD per tonne. The second SGA figure is an identified SGA amount sourced from Masteel's FY2015 published Annual Report divided by the FY2016 monthly average world steel utilisation rate (68.36 per cent)²⁰ to reflect a Chinese steel producer's expected capacity utilisation rate. Pacific Steel stated that the information provided is the best information available to it. Pacific Steel's estimated SGA figure ranged from [REDACTED] to [REDACTED] per cent of the Chinese constructed normal value over the four quarters for which it constructed a normal value.
126. *ACRS* is an additional cost not incurred on the goods sold on the Chinese domestic market.²¹ If this cost was relevant to goods exported to New Zealand, an upward

²⁰ <https://www.worldsteel.org/media-centre/press-releases.html>

²¹ Australasian Certification for Reinforcing and Structural Steels.

adjustment would be made to the constructed normal value to reflect the differences in the selling prices. However, Pacific Steel does not include this cost element in its constructed normal value because TTZ (the identified Chinese producer of the rebar exported to New Zealand) does not have ACRS-accreditation.

127. Pacific Steel adjusts the normal value upwards by a nominal amount for *inventory costs* which it estimates based on a difference of [REDACTED] days inventory for goods exported to New Zealand as opposed to goods sold on the Chinese domestic market.²²
128. Pacific Steel made a downward adjustment to the Chinese normal value for distribution costs to account for the distribution component contained in the SGA figure it calculated to effectively bring the constructed normal value back to an ex-factory price. The company estimated distribution costs from FY2015 cost figures sourced from Masteel's published Annual Report, and divided this figure by the assumed 68.36 per cent utilisation rate referenced in paragraph 125 above. Pacific Steel's estimated distribution cost ranged from [REDACTED] to [REDACTED] per cent of the Chinese constructed normal value (indicative selling price) over the four quarters in which it constructed a normal value.

Profit

129. Pacific Steel submits that the justifiable allowance for a reasonable profit is a 17 per cent EBITDA margin. That is the level indicated by global management consulting firm McKinsey & Company to be required for long-term steel mill sustainability.²³ However, in constructing a Chinese normal value, Pacific Steel uses the average operating profit (2.38 per cent) of the Chinese steel producers, Angang²⁴, Baosteel²⁵ and Maanshan²⁶ in the six years 2010 to 2015, which it considers conservative when compared to the sustainable level identified by McKinsey and Company.

Conclusion

130. MBIE is satisfied that the applicant has supplied information that is reasonably available to it to estimate Malaysian and Chinese normal values, by using the constructed normal value approach. MBIE also considers that the applicant was justified in using the constructed normal value approach and that, at this stage, the relevant sources of information, assumptions and adjustments made by the applicant, in constructing normal values, have been made on a reasonable basis. In particular:

²² Pacific Steel did not provide evidence to substantiate its calculated amount for inventory but both costs are negligible amounts per tonne (US\$1/tonne in each of the five quarters).

²³ "Laying the foundations for a financially sound industry" presented to the Steel Committee meeting Paris, December 5th, 2013 at p5 and p7. McKinsey and Company.

²⁴ See <http://angang.wspr.com.hk>.

²⁵ See http://www.baosteel.com/group_en/contents/2942/40191.html.

²⁶ See <http://www.magang.com.hk/>

- (i) The Act and the Anti-dumping Agreement provide for constructing a normal value (i.e. a domestic price based on costs of production, selling, general and administration expenses and a reasonable profit margin) in the absence of domestic market prices sold in the ordinary course of trade. In this case, the applicant constructed a normal value for the subject product in Malaysia and China because it was unable to source relevant and suitable Chinese pricing of rebar for a comparable volume of like goods to that exported to New Zealand.
 - (ii) In constructing a normal values, MBIE considers that the applicant is entitled to use information reasonably available to it if it cannot access actual information on the costs and expenses incurred by Malaysian or Chinese producers when producing the subject product for sale in their domestic markets, or if it doesn't have sufficient knowledge of the production inputs and production processes incurred by these producers.
 - (iii) MBIE considers the FOB export prices for Latin American billet, used by the applicant to construct a normal value for China, are a sufficient substitute for billet prices in China (in the absence of billet prices in China) whether or not Chinese billet prices are affected by the Chinese government's intervention in the Chinese iron and steel industry.
 - (iv) In accepting FOB export prices for Latin American billet in the applicant's constructed normal value for rebar in China, MBIE has paid special attention to section 10(1) of the Act and Article 5.3 of the Anti-Dumping Agreement and, in particular, the need to examine the information provided by an applicant in order to determine whether it constitutes "sufficient evidence" to justify the initiation of an investigation.
 - (v) WTO jurisprudence makes it clear that the quantity and quality of the evidence required to meet the threshold of sufficiency of the evidence needed to initiate a dumping investigation, is of a different standard to that needed for a preliminary or final finding.²⁷
127. On the basis of the WTO jurisprudence, MBIE considers the information provided by the applicant, including FOB prices for Latin American rebar, is sufficient for initiation purposes to construct a normal value for Chinese steel rebar.

4.3 Dumping Margins

131. Article 5.8 of the WTO Anti-Dumping Agreement requires that authorities shall immediately terminate a case if they determine that there is no dumping, or that the margin of dumping is *de minimis* (less than two per cent of the export price).
132. Based on the normal value and export price information provided by Pacific Steel, as described above, and an alternative calculation based on Customs data, dumping margins for Malaysia and China are as follows:

²⁷ See Panel Report, *United States – Final Dumping Determination on Softwood Lumber from Canada*, WT/DS264/R, adopted 31 August 2004, para 7.71; Panel Report, *Guatemala – Definitive Anti-dumping Measures on Grey Portland Cement from Mexico*, WT/DS156/R, adopted 17 November 2000, para 8.35; Panel Report, *Mexico – Anti-dumping duties on Steel Pipes and Tubes from Guatemala*, WT/DS331/R, adopted 24 July 2007, para 7.24.

**Table 4.8: Dumping Margins
(Financial year quarters)**

Malaysia (USD /tonne)	Q1-2016 (Jul-Sep)	Q2-2016 (Oct-Dec)	Q3-2016 (Jan-Mar)	Q4-2016 (Apr-Jun)
Using Trade Map data				
Ex-factory Export Price	489	458	412	506
Constructed normal value (at ex-factory level)	577	484	483	563
Dumping margin	88	26	71	57
Dumping margin (as % of EP)	18.0%	5.7%	17.2%	11.3%
Using Customs data				
Ex-factory Export Price				
Constructed Normal Value (at ex-factory level)	577	484	483	563
Dumping margin				
Dumping margin (as % of EP)	%	No dumping	%	%

China (USD /tonne)	Q1 2016 (Jul-Sep)	Q2 2016 (Oct-Dec)	Q3 2016 (Jan-Mar)	Q4 2016 (Apr-Jun)
Using Trade Map data				
Ex-factory Export Price	440	386	338	384
Constructed normal value	535	488	453	530
Dumping margin	95	102	115	146
Dumping margin (as % of EP)	22%	26%	34%	38%
Using Customs data				
Ex-factory Export Price				
Constructed Normal Value	535	488	453	530
Dumping margin				
Dumping margin (as % of EP)	%	No dumping	%	%

133. MBIE considers that the Customs data provides a more accurate basis for the calculation of export prices, and will proceed with its consideration of the application on the basis of the dumping margins established using that data.

134. The tables below outline the annual weighted average dumping margins. MBIE considers this to be the most relevant measure for assessing the dumping margin for the purpose of recommending initiating an investigation.

**Table 4.9: Annual Weighted Average Dumping Margins
(Financial year quarters)
Malaysia**

(USD /tonne)	Q1	Q2	Q3	Q4	FY2016
Normal Values					
CNV based on Pacific Steel assumptions	577	484	483	563	
Weighted to import volumes					528

Export prices					
Volumes					
USD FOB totals					
USD FOB per tonne					
Less estimated costs to ex-factory					

Dumping					
Dumping USD/tonne					
Dumping margin					5.7%

**Table 4.10: Annual Weighted Average Dumping Margins
(Financial year quarters)
China**

(USD /tonne)	Q1	Q2	Q3	Q4	FY2016
Normal Values					
CNV based on Pacific Steel assumptions	535	488	453	530	
Weighted to import volumes					504

Export prices					
Volumes					

USD FOB totals					
USD FOB per tonne					
Less estimated costs to ex-factory					

Dumping					
Dumping USD/tonne					
Dumping margin					5.6%

135. The dumping margins are 5.7 percent and 5.6 percent for Malaysia and China respectively. Those calculations are based on Pacific Steel’s calculations of a constructed normal value and customs statistics.

4.4 Import Volumes

136. Article 5.8 requires that authorities shall immediately terminate a case if they determine that the volume of dumped imports, actual or potential, is negligible (less than three per cent of total imports).

137. Imports of rebar from China and Malaysia during the quarters for which MBIE identified dumping made up 28 per cent of total imports of rebar in FY2016. All imports of rebar from China and Malaysia made up 46 per cent of total imports of rebar in FY 2016. On this basis, MBIE considers that Chinese and Malaysian import volumes are not negligible under the Anti-Dumping Agreement.

138. Customs data for the tariff items and statistical keys covering the subject goods for FY2016 is shown in the table below.

Table 4.9: Import Volumes of Rebar (FY2016, all quarters)

	MT	% of Total
Imports from Malaysia		34%
Imports from China		12%
Imports from China and Malaysia		46%
Other imports		54%
Total		

139. Customs data for the tariff items and statistical keys covering the subject goods for the period covered by the dumping calculation is shown in the table below.

**Table 4.10: Import Volumes of Rebar
(FY2016, dumped quarters only)**

	MT	% of Total
Imports from Malaysia, Q1, Q3 and Q4		18%
Imports from China Q1, Q3 and Q4		10%
Imports from China and Malaysia, dumped quarters		28%
All other imports		72%
Total		

4.5 Conclusions on dumping

140. MBIE concludes that Pacific Steel has provided sufficient information in relation to dumping to initiate an investigation. MBIE has calculated dumping margins for rebar imported from Malaysia and China, using Customs data and Pacific Steel’s Constructed Normal Values, to be 5.7% and 5.6% respectively.
141. These calculations are above *de minimis* levels outlined in the Act and meet the standard of proof for initiation. However, the subsequent investigation will examine actual dumping margins, if any, and may reach different conclusions. MBIE also concludes that the imports of rebar from China and Malaysia are large enough to meet the requirements to initiate an investigation.

that material injury can be found in circumstances where an industry suffers a loss of market share in a growing market without a decline in profits.²⁸

151. Pacific Steel notes that its **profitability** was significantly greater in the earlier period than during the later period, and that its profitability has been materially curtailed despite the strong growth in the size of the market and despite increased demand and greater plant utilisation. Pacific Steel attributes this situation to the presence of dumped and subsidised goods which undercut Pacific Steel's prices. In particular, reductions in unit material costs and operational efficiencies from a greater volume of sales was not translated into increased profitability.
152. The application relates the price effects to the economic impact on the industry in terms of **sales revenue** per tonne, and a decline in **profit** in terms of EBIT per tonne and material margin.
153. The application includes evidence relating to claims that **cashflow** has been impaired.
154. Pacific Steel notes that it has suffered diminished **returns on investments** and may have suffered impaired **productivity** and **utilisation of production capacity** but provided no specific evidence to substantiate these claims.
155. Pacific Steel notes that it is not claiming that there is any adverse economic impact relating to **inventory, employment and wages, or growth and ability to raise capital**.

5.2 Basis for Injury Analysis

156. Throughout its application, Pacific Steel emphasises that because of the approach it has taken to maintaining sales by meeting price competition, the injurious effects of dumped imports are manifested through the price effects, and the levels of injury are best addressed through adopting a counterfactual approach which looks at the position the industry would be in but for the dumping. As a consequence, Pacific Steel focuses on the evolution of unit prices and per unit levels of revenue and profits as key indicators of injury.
157. Pacific Steel argues that the counterfactual approach is best suited to the circumstances of the case, and provides evidence to support its claims that:
 - Injury is based upon selling price, which is mathematically and dynamically removed from sales revenue or EBIT, and the conditions of competition in the New Zealand market require a close focus on the price nexus, not on downstream matters.
 - It is inappropriate to focus on one element, such as absolute profit, which is two points removed from the price nexus, out of the sixteen referred to in section 8(2) of the Act, for decisive guidance on economic impact.
 - A very closely aligned case in Australia provides useful guidance to use of counterfactual analysis focusing on selling price.

²⁸ See Australian Customs Dumping Notice no. 2012/24 (New Ministerial Direction on Material Injury, June 2012).

- Coincidence analysis is at best a screening tool but its use is not required by the relevant treaties, and sole reliance on coincidence analysis may result in an incomplete assessment of material injury in the circumstances of the New Zealand rebar industry.
- The use of coincidence/trend analysis in safeguards investigations is not a sound basis to support its use in dumping and subsidisation investigations.
- On the basis of the supporting information and arguments provided by Pacific Steel the counterfactual analysis is the most suitable in the circumstances of the New Zealand rebar industry, and has been used previously by MBIE.

MBIE Practice

158. In applying the requirements of section 10 of the Act in determining whether there is sufficient evidence that the New Zealand industry has suffered material injury, MBIE normally assesses a series of data starting from a financial year which was not affected by dumped imports through until the most recent financial year. This is often referred to as a 'coincidence' analysis. Coincidence analysis is a trend analysis which shows how the industry has performed since the time it claims dumped imports began to cause injury. MBIE notes that this requires an assessment of the relationship between the dumping of goods and the injury effect.
159. MBIE notes that a counterfactual analysis needs to be considered in light of the whole of the available evidence. Unrealised sales revenue and profit is unlikely, by itself, to constitute material injury in an industry where profits are increasing. However, the application can be evaluated for evidence of injury to the industry caused by unrealised sales revenue and profit, in terms of the factors relating to economic impact of the dumped or subsidised goods as set out in section 8(2)(d) of the Act. A counterfactual analysis also needs to take particular care in assessing the effect of factors other than the dumped or subsidised goods that might be injuring the industry. It should be noted that the WTO Appellate Body findings relating to the methodology to be used in an injury investigation in *Mexico – Anti-Dumping Measures on Rice*,²⁹ agreed that the WTO Agreement on Implementation of Article VI of the GATT (the Anti-Dumping Agreement) did not prescribe a methodology that must be followed by an investigating authority in conducting an injury analysis. The findings also recognised that an authority may need to rely on reasonable assumptions, or even draw inferences, but if assumptions are relied on then they should be derived as reasonable inferences from a credible basis of facts, and should be sufficiently explained so that their objectivity and credibility can be verified.
160. The New Zealand approach to determining whether or not an industry has incurred material injury is not inconsistent with the United States, or with the Australian approach, which has certain parameters placed on the use of counterfactual analysis. For instance, the Australian ADC will consider alternative approaches to the coincidence analysis where

²⁹ *Mexico – Definitive Anti-dumping Measures on Beef and Rice – Complaint with respect to Rice – AB-2005-6 – Report of the Appellate Body*, WT/DS295/AB/R, p.69.

no coincidence has been found or a coincidence analysis is not possible. In such cases, the Australian ADC requires parties submitting information to demonstrate injury based on 'but for' grounds to provide and explain the evidence on which the claim rests, for example by using suitable accounting methods and counterfactual analysis. It is not sufficient to simply assert such an effect since this would not meet the evidentiary requirement.

161. It appears to be inherent in the arguments put forward by Pacific Steel that it believes that price effects alone are sufficient evidence of injury, such that evidence that dumped imports have affected prices is a sufficient basis for initiation of an investigation. This is not MBIE's view. Section 8(1) of the Act equires the Secretary to examine the volume of dumped imports, the effects of the dumped imports on prices in New Zealand, and the consequent impact of the dumped goods on the New Zealand industry. Section 8(2) of the Act sets out the matters that the Secretary shall have regard to in that examination.
162. The injury analysis outlined in this section of this report has been conducted primarily on the basis of a 'coincidence' analysis where the industry's performance is analysed over time. Where injury is not apparent from such an analysis, or where the applicant has claimed that a counterfactual analysis should be used, MBIE can have regard to the position the industry would have been in but for the dumping, but in doing so would carefully examine the assumptions made. In the event, the coincidence analysis provides sufficient evidence of injury to justify initiating an investigation.
163. The various other arguments raised by Pacific Steel can be addressed, if required, during the course of any investigation.

5.3 Cumulation of the Effects of Dumping and Subsidisation

164. Pacific Steel's injury evidence relates to the effects of both dumping and subsidisation, without seeking to differentiate between those effects.
165. Section 10(1) of the Act requires that in order to initiate an investigation the Secretary must be satisfied that sufficient evidence has been provided that material injury to an industry has been caused by reason of the importation of dumped or subsidised goods. It goes on, in section 10(2)(a), to outline the information required in an application, including evidence of the causal link between the alleged dumping or the alleged subsidisation and the alleged injury. Section 10(2)(b) sets out matters to be covered by the information provided, including references to the effects of the imports of the allegedly dumped or subsidised goods [section 10(2)(b)(xii)], and the consequent impact of those imports [section 10(2)(b)(xiii)].
166. On the face of it, the Act does not appear to require that there should be any differentiation between the dumping or subsidisation of goods when assessing injury to a domestic industry. However, while both the Subsidies Agreement and the Anti-Dumping Agreement provide for the cumulation of the effects of dumping or subsidisation, as the case may be, from more than one country, cross-cumulation of the effects of dumped and subsidised goods is not permitted. This position was recently confirmed by the WTO Appellate Body in *US – CVDs on Carbon Steel Flat Products from India* (WT/DS436/AB/R).

167. Article VI of GATT 1994 requires, “No product of the territory any contracting party imported into the territory of any other contracting party shall be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping and export subsidisation.”
168. In investigating concurrent claims of dumping and subsidisation relating to the same goods from the same country at the same time, MBIE must be careful to ensure that the requirements of GATT 1994 and the Subsidies and Anti-Dumping Agreements are met. It also means that in assessing any application involving such claims which might lead to an investigation, MBIE should ensure that, to the extent reasonable, it gives due weight to these requirements.
169. In this context, it is relevant to note that the Australian ADC’s Final Report³⁰ in its investigation of subsidisation of rebar from China, noted that isolating the individual effects of dumping and subsidisation was very difficult. It also noted that trying to apportion some of this injury arising from a single set of price and volume effects to the subsidisation as opposed to the dumping would require the Australian ADC to make a great deal of assumptions that would be arbitrary and imprecise. The Australian ADC concluded that it could not isolate the injury caused by subsidisation from the effect of it being dumped on to the Australian market, nor from the effects of other possible causes. The Commission concluded that it could not be satisfied that in and of itself the subsidisation was causing injury to the domestic industry and whether the injury, if any, was material. It was therefore recommended that no countervailing duties be imposed.
170. With regard to the double-counting of the ‘rates’ of dumping and subsidisation, the Australian ADC, in its report referred to above, noted that the levels of subsidy in the Less Than Adequate Remuneration programmes considered in the investigation were effectively offset by the dumping margins calculated in the investigation into dumping of the same goods, and the level of countervailable subsidy would need to have been adjusted to remove the double-counting. This would have led to significantly reduced levels of countervailable subsidies, which, in the case of some cooperating exporters, would have been less than 1% (which is *de minimis*).

5.4 Import Volume Effects

171. For the purposes of this analysis, MBIE has had regard to the levels and occurrence of dumping identified in section 4.
172. Pacific Steel has estimated export volumes of rebar from China and Malaysia to New Zealand based on information from Trade Map, Statistics Singapore and the Malaysian Department of Statistics. The table below shows Pacific Steel’s calculation over the period for which it provided information:

³⁰ Final Report No 322, 19 September 2016, Australian ADC.

Table 5.1: Estimation of New Zealand import volumes by supplier: Source Pacific Steel (financial years, tonnes)

	FY2009	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016
Australia	1969	254	1127	1275	3521	1377	995	7838
China	870	2298	3324	3381	2484	3636	5516	5910
Malaysia	7777	9914	9669	13094	10227	11895	11148	16355
Singapore	1967	3263	3467	4885	4194	3590	6000	12810
Other	3826	1475	6020	1729	2247	4742	1852	1699
Total	16409	17204	23607	24364	22673	25240	25511	44612

173. Using the figures in the table above MBIE has calculated the percentage import from each country. The table below displays these percentage amounts:

Table 5.2: Percentage imports by supplier: MBIE calculation from Pacific Steel information (financial years, %)

	FY2009	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016
Australia	12%	1%	5%	5%	16%	5%	4%	18%
China	5%	13%	14%	14%	11%	14%	22%	13%
Malaysia	47%	58%	41%	54%	45%	47%	44%	37%
Singapore	12%	19%	15%	20%	18%	14%	24%	29%
Other	23%	9%	26%	7%	10%	19%	7%	4%
Total	100%	100%	100%	100%	100%	100%	100%	100%

174. Pacific Steel notes that monitoring the market is a difficult exercise due to a data-suppression that has been in place on New Zealand import statistics since 2004. The position regarding data suppression is outlined in section 1 of this report. With regard to the subject goods, imports under the items subject to data suppression make up a significant proportion of total imports.
175. Customs collects data on imports by tariff key. Table 5.3 below aggregates the imports under the relevant tariff keys, identified by Pacific Steel, and under which the subject goods are imported. MBIE has sourced data from the Customs that covers the goods imported into New Zealand under the tariff items and statistical keys shown in section 2.1 above. These tariff items and statistical keys may cover a wider range of goods than the subject goods but descriptions of the goods in the Customs data are generally not specific enough to exclude any non-subject goods, and a definitive conclusion on coverage cannot be reached unless a full investigation is undertaken.

Table 5.3: Steel rebar import volume by origin: Customs data (financial years, tonnes)

	FY2009	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016
Australia		115%	62%	136%	253%	90%	190%	90%
China		153%	1021%	58%	154%	104%	134%	94%
Indonesia		66%	187%	73%	71%	172%	104%	65%
Japan		41%	180%	75%	90%	64%	94%	80%
Korea		13%	117%	91%	122%	81%	175%	119%
Malaysia		146%	82%	136%	81%	109%	123%	107%
Singapore		104%	119%	97%	87%	124%	116%	156%
Taiwan		65%	128%	227%	95%	84%	110%	75%
Other		68%	100%	99%	177%	66%	113%	81%
Total		94%	118%	106%	106%	103%	130%	104%
<i>* table displays percentage changes from previous year</i>								

176. MBIE has calculated this information on imports by origin as a percentage of total imports:

Table 5.4: Percentage imports by origin: MBIE calculation from Customs data (financial years, %)

	FY2009	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016
Australia								
China								
Indonesia								
Japan								
Korea								
Malaysia								
Singapore								
Taiwan								
Other								
Total	100%	100%	100%	100%	100%	100%	100%	100%

177. The tables above show that the volume of imports from Malaysia and China have each generally increased over the period, with some variation over the years. Their share of imports has followed a similar pattern. Imports from Australia have also increased significantly over the period, as have imports from Singapore. Import share from Malaysia and China have each gradually increased.

178. The following table shows imports of rebar and sales of domestically-produced rebar (all by Pacific Steel), on an annual basis, from FY2010. The import data has been sourced from the Customs and the imports relate to the Tariff Items and Statistical Keys identified in section 2.1 above. Domestic production data is from Pacific Steel.

**Table 5.5: Import volumes and domestic sales
(financial years, tonnes, %)**

	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016
Tonnes:							
Imports from China/Malaysia		1021%	58%	154%	104%	134%	94%
Other imports		101%	114%	101%	103%	130%	105%
Pacific Steel sales		79%	113%	104%	128%	124%	97%
NZ market		88%	111%	104%	120%	126%	98%
Change on previous year - tonnes:							
Imports from China/Malaysia							
Other imports							
Pacific Steel sales							
NZ market							
China/Malaysia imports as percentage of:							
Pacific Steel sales							
NZ market							
* table displays percentage changes from previous year							

179. In absolute terms, imports from China and Malaysia have increased gradually over the period. In FY2010, the total import volume from the two countries was [redacted] tonnes. In FY2016 this increased to [redacted] tonnes. However, over the same period there was an even larger increase in import volumes from other countries (from [redacted] to [redacted] tonnes) largely reflecting the increased size of the New Zealand market (from [redacted] to [redacted] tonnes). These figures include a decline in both domestic production and the total market in 2016.
180. Relative to New Zealand *production*, imports from China and Malaysia increased from FY2010 to FY2012 but have declined since. Since FY2011, imports from China and Malaysia, relative to New Zealand production, have declined. In FY2016, Chinese and Malaysian imports represented [redacted]% of domestic production as opposed to [redacted]% in FY2011.
181. As a percentage of domestic *consumption* (the New Zealand market), imports from China and Malaysia have followed a similar pattern. Chinese and Malaysian imports increased from FY2010 to FY2012 but declined to [redacted]% in FY2015, rising again to [redacted]% in FY2016.
182. On the basis of this analysis, there is sufficient evidence to support a conclusion that there has been a significant increase in imports of dumped goods from China and Malaysia in absolute terms but not in relation to production or consumption in New Zealand.

5.5 Price Effects

5.5.1 Price Undercutting

183. Price undercutting refers to the extent to which the prices of the subject goods are lower than prices in New Zealand for like goods of New Zealand producers. Prices are compared at the point that the imported goods first compete with the goods made in New Zealand. Price undercutting is not in itself a determinant of the existence or effect of injury, i.e., the margin of price undercutting is not a measure of the extent of the economic impact on the industry. That impact is to be measured, *inter alia*, in terms of the factors and indices set out in section 8(2)(d) of the Act, and outlined in section 5.4 of this Report.

184. In its application Pacific Steel said the level of trade at which imported rebar first competes with domestically-produced rebar has been the subject of extensive debate in previous rebar investigations. In past investigations, MBIE has considered the relevant level of trade for the purpose of this exercise is ex-wharf for imports vs Pacific Steel’s ex-factory price (i.e. its free-into-store (FIS) price less freight).

185. Pacific Steel used export statistics sourced from Trade Map for the tariff items and statistical keys identified in section 2.1 above to estimate average FOB prices from China and Malaysia. Estimated costs from China and Malaysia to the ex-wharf level in New Zealand, sourced from a freight company, were then added to the FOB values to derive estimated ex-wharf values. These costs relate to ocean freight and New Zealand destination charges. Pacific Steel then compared these ex-wharf prices with its ex-factory domestic prices to gauge the extent of any price undercutting.

186. Using the above information, the following table based on Pacific Steel information compares the average ex-wharf prices of rebar from China and Malaysia with Pacific Steel’s average ex-factory prices to assess the extent of any price undercutting. The undercutting is measured as a percentage of Pacific Steel’s average ex-factory price.

Table 5.6: Price Undercutting, Pacific Steel data (USD per tonne)

	FY2015	FY2016
Malaysia goods at ex-wharf NZ		
Pacific Steel selling price		
Undercutting amount		
Undercutting per cent		
China goods at ex-wharf NZ		
Pacific Steel selling price		
Undercutting amount		
Undercutting per cent		

187. On the basis of actual imports as derived from Customs entries for all of the tariff items listed in section 2.1, and using a CIF (cost, insurance and freight) price in the equation, accepting Pacific Steel’s figures for destination costs, and converting Pacific Steel’s ex-factory price to NZD at IRD exchange rates for the periods concerned, the following table is derived (NZD amounts are a better reflection of practice in the New Zealand market).

**Table 5.7: Price Undercutting – Revised by MBIE
(NZD per tonne)**

	FY2015	FY2016
Pacific Steel's ex-factory price		
Malaysia goods at ex-wharf NZ		
Undercutting NZD/tonne		
Undercutting per cent		
Pacific Steel's ex-factory price		
China goods at ex-wharf NZ		
Undercutting NZD/tonne		
Undercutting per cent		

188. Tables 5.6 and 5.7 above show prima facie evidence of significant undercutting of Pacific Steel's average selling prices by the average prices of rebar from China and Malaysia.
189. To check on the levels of prices of the other main suppliers, a similar exercise was undertaken for imports of rebar from Australia and Singapore. There was effectively no undercutting by steel from Singapore, and none from Australia. This supports a conclusion that imports of steel imported from China and Malaysia were undercutting prices of Pacific Steel.

5.5.2 Price Depression

190. Price depression occurs where prices achieved by the New Zealand manufacturers are lower than those achieved in a period unaffected by dumped or subsidised goods. Price depression is not in itself a determinant of the existence or extent of injury. There must be a consequential impact on the industry, measured, *inter alia*, in terms of the factors and indices set out in section 8(2)(d) of the Act.
191. Pacific Steel submits that it has suffered price undercutting (see above) for some time from the presence in New Zealand of the subject goods and that this price undercutting has resulted in price depression and price suppression.
192. Pacific Steel has provided financial information to enable MBIE to assess whether it has suffered price depression. The following table shows Pacific Steel's average domestic selling prices from FY2010 to FY2016.

**Table 5.8: Price Depression
(NZD per tonne)**

	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016
Average selling price							
As % of FY2010	100%	104%	96%	86%	82%	78%	72%

193. Table 5.8 shows that Pacific Steel's average selling price decreased over the period. By FY2016, Pacific Steel's average selling price had dropped to 72% of its FY2010 average selling price.
194. There is evidence of price depression, in that average prices have decreased over the period, but the extent to which any dumped imports from China and Malaysia have

contributed to this and the consequential impact of any price depression will need to be carefully assessed.

5.5.3 Price Suppression

195. Price suppression occurs when New Zealand producers are unable to increase prices, for example, to recover cost increases. Price suppression is not in itself a determinant of the existence or extent of injury. There must be a consequential impact on the industry, measured in terms of the factors and indices set out in section 8(2)(d) of the Act.

196. MBIE has compared Pacific Steel’s total costs as a percentage of sales revenue from FY2010 to FY2016. The following table shows the resulting calculations.

**Table 5.9: Price Suppression
(NZD per tonne)**

	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016
Average selling price*	100	104	96	86	82	78	72
Production costs							
Total costs as % of price*	100	108	115	113	111	114	123
* indexed: FY2010=100							

197. Table 5.9 shows that Pacific Steel’s total costs per unit did not increase over the period concerned, so the issue of an inability to recover cost increases does not arise. However, total costs as a percentage of sales revenue per unit increased over the entire period, with a particular increase in FY2016.

198. There is, therefore, evidence of price suppression to the extent that Pacific Steel’s average unit revenue did not reflect the extent of the same margins over costs per unit achieved in the earlier part of the period being examined.

5.5.4 Conclusion on Price Effects

199. There is evidence that the average prices of rebar imports from China and Malaysia are significantly undercutting Pacific Steel’s average selling prices.

200. Pacific Steel’s selling prices decreased overall between FY2010 and FY2016. Its average selling price in FY2016 represented 72% of its FY2010 average price and 75% of the FY2012 average price. Total costs as a percentage of sales revenue have increased over the entire period with a marked increase in FY2016. In FY2016, total costs represented 123% of sales revenue, compared with 100% in FY2010 and 115% in FY2012. There is evidence that Pacific Steel has suffered price depression and some price suppression, especially if price and cost movements are gauged over the entire period, and also since FY2012 (i.e. immediately prior to when the company is claiming injury commenced).

201. The margin of undercutting of imports from China was generally higher than the equivalent margin for imports from Malaysia, while there was minimal or no undercutting by imports from other sources. This suggests that there is sufficient evidence that there is a link between imports from China and Malaysia and price undercutting.

202. As noted earlier, the price effects examined above are not in themselves a measure of injury. There must be a consequent impact on the industry, in particular when measured, *inter alia*, in terms of the factors and indices set out in section 8(2)(d) of the Act. Injury

caused to the New Zealand industry is assessed in terms of the economic impact in the following section of the report.

5.6 Consequent Impact

5.6.1 Sales Volume and Sales Revenue

203. Movements in sales revenue can reflect changes in volume and prices of goods sold. Dumped imports can affect both of these factors through increased supply of goods to the market and through price competition.
204. Pacific Steel provided sales volume and sales revenue information covering its 2010 to 2016 financial years.
205. Pacific Steel submits that its strategy is to retain volume by competing on price (plus other assured quality and service elements). Injury effects are therefore reflected in sales revenue decreases and loss of profits, rather than in volume effects.
206. The following table sets out the sales volume and sales revenue information provided by Pacific Steel.

Table 5.10: Sales Volume (tonnes) and Sales Revenue (\$000, NZD)

	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016
Sales volume							
As % of FY2010	100%	79%	90%	93%	118%	147%	139%
Sales revenue							
As % of FY2010	100%	82%	86%	79%	97%	115%	100%
Revenue NZD/tonne							
As % of FY2010	100%	104%	96%	86%	82%	78%	72%

207. The information clearly shows that Pacific Steel's annual sales volumes and revenues increased over the period, although sales volume and value, decreased in FY2016, while revenue per unit decreased year-on-year. In FY2016, the company's revenue per unit represented 72% of its FY2010 figure. The company claims that, as there is evidence of significant price undercutting by Chinese and Malaysian imports, the decreased sales revenue experienced by Pacific Steel, as a result of lower sales prices per tonne, can only be attributed to dumped and subsidised imports from China and dumped imports from Malaysia. Pacific Steel claims that its decreasing per unit revenue is consistent with the strategy adopted by Pacific Steel to counter these imports, that is, to hold volume but to lower prices in order to maintain market share.
208. The figures provided in the application confirm that Pacific Steel has not experienced decreasing sales revenue over the period, even with lower sales prices per tonne. Rather, the figures show the company's total sales volume and sales revenue increased over the period FY2010 to FY2016. From FY2010 to FY2016, the company's sales volume increased by 39% while its sales revenue in FY2016 closely matched the FY2010 figure, although only in FY2015 did revenue exceed FY2010 levels, the revenue having declined in the intervening years.
209. Given this situation, Pacific Steel has argued that a counterfactual analysis should be used to assess injury, and that MBIE should have regard to the position the industry would have

been in but for the dumping and subsidisation. A counterfactual approach would seek to identify the level of sales revenue that might have been achieved but for the effect of the dumped goods on prices, and would focus on the decrease in the revenue per unit that could be attributed to the Chinese and Malaysian imports.

210. It cannot be assumed that there is a direct substitutability between Chinese, Malaysian and domestic sales, since the more likely substitutability is between Chinese, Malaysian and imports from other sources. It is likely that Pacific Steel would have gained some sales volume if dumped goods were not in the market, but in view of the low or non-existent levels of dumping established, in particular in the later part of the period examined, it is difficult to conclude that the revenue levels that might have been achieved are attributable to dumping, to the extent that in the absence of an actual decline in sales and revenue there is a compelling explanation as to why a causal link between dumping and possible increases in revenue is still present.

5.6.2 Market Share

211. Analysis of market share must consider changes in the size of the total market. A decline in the domestic industry's market share when the total market is expanding will not necessarily indicate that material injury is being caused, particularly if the domestic industry's sales are also growing - the New Zealand industry is not entitled to a particular market share.
212. Pacific Steel provided market share information (imports from all sources and domestic sales volumes). The company noted that monitoring of market share is a very difficult exercise due to the data suppression order in place since 2004 and, it believes, some miscoding of imported goods from certain countries.
213. Pacific Steel notes the position relating to no entitlement to market share, and accepts that some dynamics may set aside MBIE's approach to market share (which is that a New Zealand industry is not entitled to any particular market share per se). Pacific Steel provided examples of conditions of competition at the primary distributor/processor level of trade which it considers could be used to set aside the no entitlement construct. They are:
- The domestic industry lacking the necessary production capacity to service a growing volume of potential orders.
 - A step-change in product range or some technical development causing the domestic industry's product range to become less desired than the alternative import suppliers.
 - Diminished ability of the domestic industry to manufacture goods to the necessary domestic standard, in this case the AS/NZS 4671 grade 500E.
 - The domestic industry suffering loss of domestic marketplace confidence.
 - Loss of a major customer of the domestic industry followed by the domestic industry being unable to replace that loss of route-to-market.
 - A distribution or logistics constraint which limits the domestic industry's ability to deliver the desired volume of goods to a growing market.
 - Force Majeure, or circumstances near that state which materially constrain the ability of a domestic industry to supply goods to a domestic market.

214. Pacific Steel then provided arguments to support its view that none of the above examples apply in its case.
215. Pacific Steel also notes that there are some normal commercial realities where buyers at the primary distributor/processor level of trade typically qualify their suppliers against a range of factors such as quality, product support, and price. Such buyers may also have a purchase policy in favour of a particular supply-side mix, for example, using one primary supplier but having another pre-qualified supplier with ready ability to back-fill supply should the primary supplier suffer disruption.
216. Pacific Steel argues that none of these circumstances relate to change in market size such that ‘no entitlement’ would be the default position. It argues that the single dynamic of market growth will, in and of itself, and with all other things being equal, likely leave unchanged the preferences and practices which have led to a particular share level within it.
217. Pacific Steel also reiterates its policy of maintaining market share and price relativity, and provides evidence to show that there is a limited relationship between market size and market share, and between price and market share. Pacific Steel also argues that its goods are fully and directly substitutable for the dumped and subsidised goods, and it would be incorrect for MBIE, without positive evidence, to assume otherwise.
218. The following table provides market share information for rebar from FY2010 to FY2016 using Customs import statistics.

Table 5.11: Market Share (tonnes)

	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016
Imports from Malaysia		82%	136%	81%	109%	123%	107%
Imports from China		1021%	58%	154%	104%	134%	94%
Other imports		120%	100%	120%	100%	135%	104%
Pacific Steel sales		79%	113%	104%	128%	124%	97%
NZ market		88%	111%	104%	120%	126%	98%
<i>Change on previous year:</i>							
Imports from Malaysia							
Imports from China							
Other imports							
Pacific Steel sales							
NZ market							
<i>Percentage shares:</i>							
Imports from Malaysia							
Imports from China							
Other imports							
Pacific Steel sales							
<i>* table displays percentage changes from previous year</i>							

219. The figures in Table 5.11 show that the domestic industry’s market share decreased by █ percentage points when 2016 is compared with FY2010 (although there were fluctuations during this period). However, this decrease in market share reflects an increase in market share of imports from other sources rather than an increase in market share of imports from China and Malaysia.

220. While the domestic industry incurred a large drop in market share from FY2010 to FY2011, this was also due to both an increase in the market share of Chinese imports (from █ to █ per cent) and to an increase in the market share of imports from other countries (from █ to █ per cent). Since FY2011, the domestic industry's market share has increased by █ percentage points while the market share of imports from China has decreased by █ percentage point. Imports from Malaysia have remained reasonably steady as a percentage of the New Zealand market over FY2010 to FY2016, with an abnormally large year in FY2012.
221. There is some evidence that the domestic industry has lost market share to imports from Malaysia, China and other countries. Since FY2011, the domestic industry has increased its market share while the market share of Chinese and Malaysian imports and imports from other countries have both decreased. In 2016, Chinese imports were █ per cent of the total market as opposed to █ per cent in FY2011. Malaysian imports were █ per cent in FY 2011 and █ per cent in FY2016.
222. Pacific Steel appears to have interpreted MBIE's approach to mean that no change to the market share at a point in time can be contemplated. This is not correct. MBIE's view that there is no entitlement to a particular market share reflects the reality that any market will be dynamic and that market shares will reflect a range of factors that make it difficult, if not impossible, to make assumptions about the market share that might be achieved by the domestic industry in the future or in the absence of dumped goods. In its application, Pacific Steel puts forward a list of factors which would limit an industry's ability to maintain market share and notes that they do not apply in the current case. This may be so, but MBIE needs to look wider, and in particular to look at other factors that might be affecting the market, including the availability of like goods from other sources.
223. In the current case, the market share held by domestic production has increased since FY2011, and was █%, █%, █% and █% in the period FY2013 – 2016. Imports from China have been static at █% market share and imports from Malaysia decreased from █% to █%. Accordingly, it cannot be concluded that there is a decline in market share that can be attributed to dumped imports from China and Malaysia.

5.6.3 Profits

224. Dumped or subsidised imports can affect gross profit and net profit via the impact on sales prices and volumes.
225. Pacific Steel has provided gross profit and EBIT information covering its 2010 to 2016 financial years, both of which, it claims showed per unit declines over this period. Pacific Steel noted that it is not possible to identify a specific time that is "pre or post" injury. The adjustment period of FY2010-FY2012 is probably reflective of the pre-injury market dynamics, although dumping occurred in that period as well and contributed to downwards price and revenue trends during that time.
226. Pacific Steel emphasised that "material margin" (the difference between revenue and material costs) is considered to be the key driver of profitability in world steel and a useful measure to evidence profit injury.

227. Pacific Steel claims that unit profitability on its sales was significantly greater in the period FY2010-FY2012 than during subsequent periods, due, in large part, to dumped goods from China and Malaysia. Pacific Steel has noted that unit price and profitability has been on an ever-decreasing (and steeper) downward path than costs, in part due to the effect of dumped and subsidised goods but also in part a result of industry adjustment. Pacific Steel also points out that the New Zealand market was significantly smaller in FY2010-FY2012 than in more recent periods, but due to the presence of dumped and subsidised goods Pacific Steel’s profitability was materially curtailed in FY2015 and FY2016 as the effects of these volume increases has not occurred. Normally increased volumes would improve financial performance, even with flat pricing, but this has not occurred.
228. MBIE has historically focussed on EBIT as a measure of profitability because it reflects operating profits for the activity under investigation. It is considered that this is more relevant as a measure of profitability than the material margin, since the latter includes cost elements relating to the production and sale of the goods concerned, and is therefore only indirectly relevant as a measure of profitability. On the other hand, EBIT is the return on the activity under review exclusive of costs and expenses and before tax, interest and other enterprise factors arise.
229. The following table shows Pacific Steel’s EBIT figures from FY2010 to FY2016.

**Table 5.12: EBIT (Profit)
(NZD000, %)**

	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016
EBIT							
As % of FY2010	100%	57%	44%	44%	64%	67%	29%
EBIT/tonne							
As % of FY2010	100%	73%	49%	48%	54%	46%	21%
EBIT as % of sales							
As % of FY2010	100%	70%	51%	56%	66%	58%	29%

230. Total EBIT declined over the period mainly due to a significant decline from FY2010 to FY2011, and again from FY2015 to FY2016. The decline in EBIT from FY2010 to FY2011 coincided with a significant decrease in market size over the same period and a corresponding decrease in domestic sales indicating that the decrease in EBIT could be attributed, in part, to these factors and was not completely due to dumped imports from Malaysia and China. From FY2011 there was a gradual increase in EBIT to FY2015, but a significant decrease in FY2016. In FY2016, total EBIT was only 29% of the level achieved in FY2010 and 29% of the average of the previous six years.
231. The per unit figures for EBIT have also declined over the period, with a slight recovery in FY2014, but further decreases in FY2015 and a significant decrease in FY2016.
232. EBIT as a percentage of sales revenue has followed a similar pattern with the most significant decline being from FY2010 to FY2011. There was some slight recovery in FY2013 and FY2014 but further decreases in FY2015 and more so in FY2016. In FY2016, EBIT was 21% of sales revenue, as opposed to 73% in FY2010, and 46% over the previous five years.

233. Pacific Steel has provided information that assesses levels of EBIT in FY2015 and FY2016 against the levels that would have been achieved if the per unit levels of EBIT experienced in each of FY2010, FY2011 and FY2012 had continued. Similar information was provided in respect of gross profit.

Table 5.13: Implied EBIT
NZD million

	FY2015 Actual	FY2015 Implied	FY2016 Actual	FY2016 Implied
At FY2010 EBIT/tonne				
At FY2011 EBIT/tonne				
At FY2012 EBIT/tonne				

234. The information provided confirms that in FY2016 there was a significant decline in profit. Pacific Steel has also provided analysis which supports its claim that price undercutting by dumped and subsidised goods has contributed to the decline in profit.
235. MBIE considers that in terms of profits, while there was no decline in the period FY2012 to FY2015, the evidence provided for FY2016 shows a significant decline in profits as measured by EBIT, and that the price effects of dumped imports have contributed to this decline.

5.6.4 Other Economic Impacts

236. Pacific Steel’s application listed the other factors referred to in section 8(2)(d)(i) and (ii) of the Act, with comments on whether or not they were affected by dumped imports.

Productivity

237. Productivity is the relationship between goods produced and the inputs required to manufacture those goods. Productivity is affected by output/sales and capacity utilisation levels.
238. Pacific Steel noted that it may have suffered an economic impact on productivity as a result of dumping and subsidisation, but any such effects would be less than the effects on sales revenue and profits. No evidence was provided to support this claim.

Return on investment (ROI)

239. Return on investment measures profit against the value of the investment in a business. Changes in return in investment may impact the ability to retain current investment or attract new investment. Declines in return on investment can result from a decline in profit or an increase in the level of investment within the business.
240. Pacific Steel claims that it has suffered an economic impact in the form of a diminished return on investments, proportional with the injury to price and EBIT margins. It notes that it is difficult to provide sensible evidence because the more recent years encompass a period pre the sale of the business, the sale/purchase event, and investments post the purchase. This means that the denominator in any ROI series is non-continuous. Pacific Steel suggests that evidence on EBIT and gross profit, and cashflow, can serve as a proxy for ROI matters.

Utilisation of production capacity

241. The utilisation of production capacity reflects changes in production volumes or changes in capacity. A decline in production volumes will normally lead to a higher cost per unit due to increased fixed overheads per unit. This will lead to a decrease in profit level, unless offsetting savings are found elsewhere.
242. Pacific Steel notes that it may have suffered an adverse economic impact on utilisation of production capacity as a result of dumping and subsidisation, but any such effects would be less than the effects on sales revenue and profits. No evidence was provided to support this claim.

Factors Affecting Domestic Prices

243. Pacific Steel has not raised any other factors affecting domestic prices in terms of the current performance of the company.

Magnitude of the Margin of Dumping

244. The magnitude of the margin of dumping can be a useful indicator of the extent to which injury can be attributed to dumping, particularly when it is compared with the level of price undercutting.
245. Pacific Steel estimated dumping margins on rebar exported from China fluctuating between 22 per cent and 38 per cent over the period reviewed and from Malaysia fluctuating between 6 per cent and 18 per cent over the period.
246. MBIE established revised dumping margins based on its assessment of the accuracy and adequacy of the information available, and these are shown in section 4.3 above, but for Malaysia show no dumping or *de minimis* margins in two of the quarters. While for China there was dumping in three of the four quarters. Weighted average margins for the full four quarters were 5.7% for Malaysia and 5.6% for China.
247. MBIE considers that for the purposes of evaluating the magnitude of the margin of dumping, these margins can be directly compared with the undercutting margins. The dumping margins established by MBIE are generally lower than the undercutting margins as identified in section 5.3.1 above, indicating that it is difficult to attribute all of the undercutting to dumped imports.

5.6.5 Other Adverse Effects

248. Pacific Steel's application listed the other factors referred to in section 8(2)(d)(iv) of the Act, with comments on whether or not they were affected by the imports.

Cash flow

249. Pacific Steel has claimed that it has suffered an economic impact via impaired cash flow, arising from the effects of dumped and subsidised goods on sales revenue and profit. It notes that it is difficult to provide evidence of this impact because the more recent years encompass a period pre the sale of the business, the sale/purchase event, and investments post the purchase. Nevertheless, Pacific Steel has provided a reasonable estimate of the adverse effect on cash flow.

250. Pacific Steel has provided information on cash flow which uses EBIT less a constant figure for depreciation as a proxy for cash flow. Accordingly, the outcome of the analysis closely reflects the information provided on profits, and indicates that cash flow has experienced a similar decline.

Inventories

251. Pacific Steel does not point to an economic impairment related to inventory.

Employment and Wages

252. Pacific Steel does not point to material-scale economic impairment related to employment or wages.

Growth and Ability to Raise Capital

253. Pacific Steel has stated that it has no comment to make on growth and capital-related matters during the period when it was not under its current ownership.
254. Nevertheless, Pacific Steel has observed that the availability of dumped and subsidised rebar on the New Zealand market has adversely affected growth prospects for its business and for any requests that Pacific Steel might make to its owners for more capital.

5.6.6 Conclusion on Consequent Impact

255. Pacific Steel's annual sales volumes and revenues increased over the period, although sales volume and value, and revenue per unit decreased in FY2016. However, it would be difficult to conclude that any increase in sales revenue that might have been achieved but for the dumped imports from Malaysia and China would be sufficient to justify a definitive conclusion that the dumped imports have caused a decline in sales.
256. There is some evidence that the domestic industry has lost market share to imports from China but only if the figures are gauged from FY2010. The evidence shows that the industry's loss of market share since FY2010 has also been at the expense of an increase in market share of imports from sources other than China (including Malaysia). Since FY2011, the domestic industry has increased its market share and it cannot be concluded that there is a decline in market share that can be attributed to dumped imports from China and Malaysia.
257. Pacific Steel's EBIT per tonne has shown a similar decline to sales revenue per tonne. EBIT, in absolute terms, decreased significantly from FY2010 to FY2011 but this decrease coincided with a significant decrease in market size over the same period and a corresponding decrease in domestic sales suggesting that the decrease in EBIT was caused by these factors rather than by imports from Malaysia and China. While there was no decline in the period FY2012 to FY2015, the evidence provided for FY2016 shows a significant decline in profits as measured by EBIT, and that the price effects of dumped imports may have contributed to this decline.

5.7 Conclusion on Material Injury

258. Material injury is not defined in either the Act or the Subsidy Agreement, but rather is the level of injury which can be demonstrated by an objective and unbiased investigating

authority on the basis of an assessment of the factors set out in section 8 of the Act, and in the context of the circumstances of the industry concerned.

5.7.1 Import Volumes

259. There is evidence that Chinese imports have increased over the period from a very low base, while Malaysian imports have slowly increased, although over the same period there was a much larger increase in import volumes from other countries largely reflecting the increased size of the New Zealand market. Since FY2010, imports from Malaysia and China combined have increased relative to production and consumption in New Zealand.

5.7.2 Price Effects

260. There is evidence of significant price undercutting by imports from Malaysia and China. There is evidence that Pacific Steel has suffered price depression and some price suppression, especially if price and cost movements are gauged over the entire period, and also since FY2012 (the year immediately prior to when the company is claiming injury commenced).

5.7.3 Economic Impact

261. There is evidence that the New Zealand industry has suffered the following adverse effects:

- A decline in sales revenue in FY2016, which could be attributed to the price effects of imports from Malaysia and China.
- A decline in total profits as measured by EBIT in FY2016, and a decline in per unit EBIT over the period examined, contributed to by the price effects of imports from Malaysia and China.
- An adverse effect on cash flow resulting from the decline in profit.

262. There is insufficient or no evidence of injury in relation to the following injury factors:

- There has been an increase in sales volume since FY2011, and while there has been a decline in volume in FY2016, it is difficult to reach a definitive conclusion that imports from Malaysia and China have caused this decline.
- There is no evidence of a decline in the domestic industry's market share that can be attributed to imports from Malaysia and China.

263. The industry has supplied no evidence that it has incurred a decline in productivity, return on investment, utilisation of production capacity, inventory levels, employment and wages, growth and ability to raise capital and investment.

5.7.4 Conclusion

264. On the basis that there is evidence that imports from Malaysia and China are dumped, then with regard to the matters specified in the Act relating to the volume of imports of dumped goods and the effect of dumped goods on prices in New Zealand for like goods:

- There is sufficient evidence to support a conclusion that there has been a significant increase in imports of dumped goods in absolute terms but not in relation to production or consumption in New Zealand.

- Imports of dumped steel from Malaysia and China have been undercutting prices of Pacific Steel.
- There is evidence of price depression, in that average prices have decreased over the period.
- There is evidence of some price suppression to the extent that Pacific Steel's average unit revenue did not reflect the extent of the margins over costs per unit achieved in the earlier part of the period being examined.

265. With regard to the consequent impact of the volume and prices of dumped goods:

- There is sufficient evidence to conclude that there has been a decline in sales revenue in FY2016 attributable to dumped imports, but insufficient evidence of a decline in sales volume that can be attributed to dumped imports.
- It cannot be concluded that there is a decline in market share that can be attributed to dumped imports from Malaysia and China.
- There is sufficient evidence to support a conclusion that profits have declined as a result of dumped imports from Malaysia and China.
- There is sufficient evidence that the decline in profits has adversely affected cash flow.
- No evidence has been provided to support Pacific Steel's claim that it has suffered impaired returns on investments and may have suffered impaired productivity and production capacity.

266. On the basis of its analysis, MBIE concludes that there is sufficient evidence that the domestic industry has been materially injured by dumped imports from Malaysia and China.

6 Evidence of Causal Link

267. Section 10(1)(b) of the Act requires that sufficient evidence be provided that material injury is caused by the allegedly dumped goods in order for an investigation to be initiated. This does not preclude any other factor(s) also being a cause of material injury, and section 8(2)(e) of the Act identifies those other factors that the Secretary shall have regard to in assessing injury. This reflects the requirements of Articles 5.2 and 3.5 of the Anti-Dumping Agreement.
268. The assessment of the injury factors in section 5 above includes discussion of the causal relationships of dumped imports on volume and price effects and their consequent impact on the domestic industry, as set out in the application and in MBIE's examination of the adequacy and accuracy of the claims made.
269. MBIE has also examined factors other than the dumped goods that have injured or are injuring the industry.

6.1 Dumped Imports

270. As described in the preceding sections of this report, MBIE has examined the claims made by Pacific Steel with regard to the volume and price effects of dumped imports and the consequent impact on the domestic industry. MBIE has identified that evidence has been provided that price undercutting by dumped imports from Malaysia and China has contributed to price depression and price suppression being experienced by Pacific Steel. Evidence has been provided to support claims that the consequence of these price effects are actual declines in profits and flow-on effects on cash flow.

6.2 Other Imports

271. Section 8(2)(e)(i) of the Act refers to the volume and prices of goods that are not dumped.
272. The following table sets out the levels of imports from the main supplying countries and other sources for all of the subject goods. It should be noted that the information covers a range of goods which may not compete directly with the goods produced by Pacific Steel, and are average values, but the information is provided as an indication of the potential impact of imported goods other than the possibly dumped goods from Malaysia and China. The information indicates that imports from sources other than Malaysia and China were increasing more than those from Malaysia and China.
273. Average unit values from Malaysia were higher than those from China in recent years, while unit values from other major suppliers were significantly higher. Values from other sources fluctuated and the reasons will need to be examined in any investigation.

Table 6.1: Steel rebar imports: Source Customs (tonnes)

	FY2013	FY2014	FY2015	FY2016
Volumes				
Malaysia		109%	123%	107%
China		104%	134%	94%
<i>Other countries:</i>				
Australia		90%	190%	90%
Singapore		124%	116%	156%
Other		93%	110%	77%
Total other countries		100%	135%	104%
NZD/tonne VFD				
Malaysia		96%	99%	91%
China		91%	89%	97%
<i>Other countries:</i>				
Australia		98%	88%	94%
Singapore		92%	99%	92%
Other		92%	90%	110%
Total other countries		93%	94%	93%
<i>* table displays percentage changes from previous year</i>				

274. MBIE is satisfied that information on the prices and volumes of imports other than the dumped goods does not provide a basis for changing the conclusions reached in this report.

6.3 Demand and Consumption

275. Section 8(2)(e)(ii) of the Act refers to contraction in demand or changes in the patterns of consumption.

276. MBIE notes that overall demand for building materials in New Zealand, including rebar, has likely increased as a result of increased building activity.

6.4 Trade Practices

277. Section 8(2)(e)(iii) of the Act refers to restrictive trade practices of, and competition between, overseas and New Zealand producers.

278. Pacific Steel has indicated that it is not aware of any changes in the commercial activities and practices described in previous investigations into rebar³¹ and the conditions in the New Zealand industry.

6.5 Developments in Technology

279. Section 8(2)(e)(iv) of the Act refers to developments in technology.

³¹ Dumping investigation into rebar from Malaysia and Thailand (2004 and subsequent reviews).

280. Pacific Steel has made no comment on these matters, but has noted that there are no commercially significant product substitutes to the New Zealand-made or imported carbon rebar.

6.6 Exports of New Zealand Producers

281. Section 8(2)(e)(v) of the Act refers to the export performance and productivity of the New Zealand producers.
282. Pacific Steel has provided details of export sales, noting that for FY2016 rebar export sales amounted to [REDACTED] tonnes (compared with [REDACTED] tonnes for domestic sales). Export-related costs have been excluded from the financial data provided to support the application.

6.7 Conclusions on Causal Link

283. MBIE is satisfied that there is sufficient evidence of a causal link between the allegedly dumped imports from Malaysia and China and the volume and price effects and consequent impact on the domestic industry.
284. With regard to the other causes of injury identified in the Act, MBIE notes that any investigation will need to have regard to the extent to which imports from other sources might be affecting the state of the domestic industry, and the effect of movements in export sales volumes and values on the business. It will also need to examine other elements to determine whether they are relevant factors.

7 Conclusion

285. On the basis of its examination of the information provided by the applicant, MBIE concludes that:
- a. sufficient evidence has been provided that rebar from China and Malaysia is being dumped, and that;
 - b. sufficient evidence has been provided to show that material injury to the New Zealand industry is being caused by dumped goods imported from China and Malaysia.
286. On this basis, an investigation should be initiated to determine the existence and effect of the alleged dumping of rebar imported from China and Malaysia.

8 Recommendation

287. Based on the above conclusions, MBIE recommends that the General Manager, Science, Innovation and International Branch, acting under delegated authority from the Chief Executive, initiates an investigation of the alleged dumping of imports of rebar imported from China and Malaysia.

Jim Robinson
Manager
Trade and Regulatory Cooperation
Labour, Science and Enterprise

..... August 2017

Agreed

Peter Crabtree
General Manager
Science, Innovation and Enterprise
Labour, Science and Enterprise

..... August 2017