



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
HĪKINA WHAKATUTUKI

**LABOUR, SCIENCE  
AND ENTERPRISE**

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# **Non-confidential Final Report**

## **DUMPING INVESTIGATION**

### **Hollow Steel Sections from China and Malaysia**

**Trade (Anti-dumping and Countervailing Duties) Act 1988**

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November 2018

**NON-CONFIDENTIAL**

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### **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 For example, in tables, where possible, actual figures have been replaced by figures showing indexed or percentage changes from the previous period.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.

## Abbreviations and Acronyms

This report contains the following abbreviations and acronyms:

Acronym	Meaning
<b>Act, the</b>	The <i>Trade (Anti-dumping and Countervailing Duties) Act 1988</i>
<b>AFA</b>	Adverse facts available
<b>AD Agreement, the</b>	The WTO Agreement on Implementation of Article VI of the GATT
<b>ADC</b>	Anti-Dumping Commission (the Australian investigating authority)
<b>AUD</b>	Australian dollar
<b>CBSA</b>	Canadian Border Service Agency (the Canadian investigating authority)
<b>China</b>	People's Republic of China
<b>CHS</b>	Circular hollow sections
<b>CIF</b>	Cost, Insurance, Freight
<b>CITT</b>	Canadian International Trade Tribunal
<b>Customs</b>	New Zealand Customs Service
<b>EBIT</b>	Earnings Before Interest and Taxes
<b>EC</b>	European Commission (the EU investigating authority)
<b>EU</b>	European Union
<b>FIS</b>	Free into store
<b>FY</b>	Financial Year
<b>GATT 1994</b>	General Agreement on Tariffs and Trade 1994
<b>GOC</b>	Government of China
<b>HDG</b>	Hot-dipped galvanised
<b>HRC</b>	Hot rolled coil
<b>HS</b>	Harmonised System, a multipurpose international product nomenclature developed by the World Customs Organization (WCO).
<b>HSS</b>	Hollow steel sections
<b>ILG</b>	In-line galvanised
<b>MBIE</b>	Ministry of Business, Innovation and Employment
<b>MPa</b>	MegaPascals (measurement of pressure/stress)
<b>MT</b>	Metric ton (tonne)
<b>MYR</b>	Malaysian ringgit
<b>NB</b>	Nominal bore
<b>NZ</b>	New Zealand

<b>NZ Steel</b>	New Zealand Steel Limited
<b>NZD</b>	New Zealand Dollar
<b>NOPC</b>	Not oiled, painted or coated
<b>OD</b>	Outer diameter
<b>PBOC</b>	People's Bank of China
<b>Rebar</b>	Steel reinforcing bar and coil
<b>RHS</b>	Rectangular hollow section
<b>RMB</b>	Renminbi
<b>ROI</b>	Return on investment
<b>SHS</b>	Square hollow sections
<b>SIMA</b>	Canadian Special Import Measures Act 1985
<b>Statistics NZ</b>	Statistics New Zealand
<b>TECFA</b>	Trade and Economic Cooperation Framework Agreement between New Zealand and China, May 2004
<b>T/T</b>	Telegraphic transfer
<b>US/USA</b>	United States of America
<b>USD</b>	United States Dollar
<b>USDOC</b>	US Department of Commerce (the US investigating authority)
<b>VAT</b>	Value-added-tax
<b>VFD</b>	Value for Duty
<b>WCCCC</b>	Wellington City Council Compliance and Consents
<b>WTO</b>	World Trade Organisation

## EXECUTIVE SUMMARY

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**MBIE has investigated the level and effect of dumping of HSS from China and Malaysia.**

The Ministry of Business, Innovation and Employment (MBIE) has investigated allegations of the dumping of hollow steel sections (HSS) exported from the People's Republic of China (China) and Malaysia to New Zealand. This report provides the basis for determinations to be made by the Minister of Commerce and Consumer Affairs (the Minister) under section 10D(1) of the *Trade (Anti-dumping and Countervailing Duties) Act 1988* (the Act) on whether the goods are dumped and whether material injury to an industry has been or is being caused by the dumping, and under section 11(1)(g) of the Act relating to the termination of an investigation.

**This Final Report addresses the matters that are required to be investigated, and sets out MBIE's findings and conclusions. This report modifies the findings and conclusions from the EFC Report as a result of consideration of matters raised by parties in response to the EFC report.**

This Final Report sets out the findings of the investigation of the dumping of HSS imported from China and Malaysia. Annex 1 is MBIE's review of the subject goods and like goods; and Annex 2 is the summary of MBIE's responses to matters raised in submissions on the Essential Facts and Conclusions Report (EFC Report).

The conclusions contained in this Final Report differ from those set out in the EFC Report. This is because an adjustment to the export price for one exporter has been modified, meaning that for that exporter the dumping margin is *de minimis*. The consequence is that material injury to a domestic industry cannot be attributed to the dumping of imports of HSS from China. The volume of dumped imports of HSS from Malaysia is negligible and material injury to a domestic industry cannot be attributed to the dumping of HSS from Malaysia.

**MBIE issued a Supplement to the EFC Report to identify the modified findings and set out the consequences, and to invite submissions on these matters.**

A Supplement to the EFC Report was provided to interested parties on 1 October 2018, identifying the modification to the basis on which MBIE calculated dumping by one of the Chinese sample manufacturers, and setting out the consequences of that modification in terms of the margins of dumping and the injury analysis. Interested parties were invited to submit comments on the matters raised in the Supplement. This process followed the judgment in *Heinz Wattie's Ltd v MBIE*.<sup>1</sup>

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<sup>1</sup> Available at <http://www.nzlii.org/nz/cases/NZHC/2018/2309.html>.

**The assessment of dumping and injury is carried out according to the Act and the AD Agreement.**

The basis for determining the existence and amount of any dumping and injury is governed by the provisions of the Act and the World Trade Organisation (WTO) Agreement on the Implementation of Article 6 of the GATT 1994 (AD Agreement), and is guided by findings in WTO dispute settlement proceedings.

**MBIE initiated an investigation on the basis of an application from NZ Steel.**

On 9 April 2018 MBIE started (initiated) an investigation under the Act into HSS from China and Malaysia, following the receipt of an application for a dumping investigation from New Zealand Steel Ltd (NZ Steel). On the same date, MBIE initiated an investigation into NZ Steel's claims that subsidised imports of HSS from China are causing material injury to the domestic industry.

**The Minister determined that there were grounds for the imposition of provisional measures on HSS from Malaysia.**

NZ Steel requested that provisional measures be imposed on the allegedly dumped imports. On the basis of the provisional conclusion that imports from Malaysia were dumped and that some injury was being caused to the domestic industry, the Minister determined that there were grounds for the imposition of provisional measures on imports from Malaysia in order to prevent material injury being caused by dumped imports during the remaining period of investigation. Provisional anti-dumping duties were imposed on 27 July 2018.

**MBIE reviewed the goods covered by the investigation and has established the description of the subject goods being investigated and the like goods produced by the New Zealand industry.**

MBIE undertook an analysis to ensure that the imported goods covered by the investigation, the subject goods, matched the like goods produced by the New Zealand industry. The analysis showed that the subject goods description provided by NZ Steel should be modified to match the goods produced by the New Zealand industry.

The subject goods as determined by MBIE are:

*Certain electric resistance welded pipe and tube made of carbon steel, comprising circular and noncircular hollow sections, collectively referred to as hollow steel sections (HSS)*

*The characteristics of HSS in the description of subject goods are:*

**Sizes:**

**Circular products** – nominal bore diameters of 15mm or more but less than 102mm with wall thicknesses from 1.0 to 6.0mm

**Square and rectangular products** – external perimeters of 100mm or more up to and including 400mm with wall thicknesses of 1.0 to 6.0mm

**Oval products** – external perimeters up to and including 314mm with wall thicknesses of 1.0 to 3.0mm.

**Finish types:** galvanised including in-line galvanised, pre-galvanised or hot-dipped galvanised; or non-galvanised, including but not restricted to, painted, black, lacquered or oiled finishes.



	<p>The goods may also be categorised according to minimum yield strength, the most common classification being 250 and 350 MPa<sup>2</sup>.</p>
<p><b>The subject goods are considered to be covered by the definition of residential building materials</b></p>	<p>MBIE is satisfied, on the basis of information available, that some HSS is covered by the definitions of “building material” and “residential building material” in section 3(1) of the Act, and is capable of being incorporated into or associated with a residential dwelling. Under section 14AA of the Act, anti-dumping duties on residential building materials are suspended until 30 June 2019.</p>
<p><b>NZ Steel’s share of production is sufficient to constitute the New Zealand industry.</b></p>	<p>MBIE is satisfied that NZ Steel and two other smaller producers produce like goods to the subject goods, and that NZ Steel’s share of production is sufficient to constitute the New Zealand industry.</p>
<p><b>The information used in this Report is based on information available to MBIE.</b></p>	<p>This report and its conclusions are based on information available to MBIE including the NZ Steel application; information received from identified importers, intermediary exporters, Chinese manufacturers, and the Malaysian manufacturer; information from counterpart investigating authorities in other jurisdictions; WTO dispute findings; and other information obtained by MBIE.</p>
<p><b>The investigation of dumping is based on information relating to a sample of Chinese manufacturers, and the single Malaysian manufacturer.</b></p>	<p>MBIE identified a sample of four Chinese manufacturers responsible for around 92 per cent of exports to New Zealand from China in 2017, and the single Malaysian manufacturer.</p> <p>MBIE received full cooperation from three of the Chinese sample manufacturers and the single Malaysian manufacturer.</p>
<p><b>Where sufficient information is not available, the export price or normal value can be determined on the basis of the information available that is considered to be reliable.</b></p>	<p>Section 6 of the Act provides that where the chief executive is satisfied that sufficient information has not been furnished or is not available to enable the export price or the normal value of the goods to be ascertained for the purposes of the Act, the export price or the normal value shall be such amount as is determined by the chief executive having regard to all available information. The chief executive may disregard any information considered to be unreliable. This reflects provisions of the AD Agreement.</p>
<p><b>A particular issue in the</b></p>	<p>A particular issue arising in the investigation of dumping arises from</p>

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<sup>2</sup> MegaPascals measure the intensity of pressure (stress).

**investigation of dumping of goods from China by other jurisdictions is their treatment of China as a non-market economy and their conclusions as to the extent of GOC control over prices of the subject goods.**

**MBIE has concluded that there is dumping by one of the Chinese manufacturers and the Malaysian exporter.**

**MBIE has concluded that imports of subject goods from Malaysia are negligible.**

**MBIE has assessed the volume and price effects of the dumping of HSS from China, and the consequent impact on the domestic industry, and has concluded that dumping is not causing material injury to a domestic industry.**

**MBIE's conclusions provide a basis for negative determinations relating to imports from China and Malaysia.**

**A negative determination**

the approach taken by some other jurisdictions on the issue of the extent to which the Government of China (GOC) exercises control over steel prices. New Zealand recognises that China is a market economy, and in section 4.4.1 this report includes a summary of the considerations behind MBIE's approach, and explains the basis for reaching the conclusion that normal values could be established on the basis of prices in China.

MBIE's investigation has established that one of the Chinese sample manufacturers was dumping in 2017 at a level above *de minimis*, with a dumping margin of 19 per cent. The manufacturer concerned was responsible for 100 per cent of total imports of HSS from China. On the basis of this finding, and pursuant to the requirements of the AD Agreement, the dumping margin for non-investigated suppliers is zero.

The Malaysian exporter had a dumping margin of 9 per cent.

MBIE has established that imports of dumped subject goods from Malaysia made up 2.2 per cent of total imports, which is negligible in terms of the AD Agreement, and provides a basis for the termination of the investigation relating to Malaysia.

MBIE's injury investigation has examined the volume and price effects attributable to dumped imports of HSS from China, and has assessed the consequent impact on the domestic industry in accordance with the factors identified in the Act. MBIE concludes that while there has been an adverse impact on NZ Steel in relation to a number of injury factors arising from the price effects of imports of HSS from China, these effects cannot be attributed to the dumping of imports from one supplier.

The investigation has established that imports from one Chinese manufacturer are dumped but are not causing injury to a domestic industry because of dumping. This finding provides a basis for a negative determination by the Minister in respect of imports of HSS from China.

The investigation has established that the volume of dumped imports from Malaysia is negligible and consequently there should be a negative determination in respect of imports of HSS from Malaysia.

Where the Minister makes a negative determination under section

**means that an investigation must be terminated.**

10D(1) of the Act, the Minister must terminate the investigation under section 11 of the Act.

Termination of the investigation in regard to Malaysia will require the termination of provisional anti-dumping duties and the refund of all such duties paid since their imposition on 27 July 2018.



# 1. Introduction

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## 1.1 Purpose

1. On 6 December 2017, MBIE accepted a properly documented application from NZ Steel, alleging that HSS from China and Malaysia is being dumped and by reason thereof causing material injury to the New Zealand industry.
2. On 9 April 2018, the chief executive of MBIE initiated an investigation pursuant to section 10 of the Act, being satisfied that for the purpose of initiation the industry had provided sufficient evidence to support its application. This included evidence which suggested that:
  - HSS from China and Malaysia is being dumped, and
  - material injury to the New Zealand industry is being caused by dumped goods imported from China and Malaysia.
3. The investigation was carried out according to the requirements of the Act and the AD Agreement, bearing in mind that section 1A of the Act describes its purpose as “to enable New Zealand to apply anti-dumping and countervailing duties in accordance with its obligations as a party to the WTO Agreement.”<sup>3</sup> Where the Act is silent, or its interpretation and that of the AD Agreement requires context, WTO dispute settlement findings provide guidance.
4. The EFC Report, provided to parties on 5 September 2018, met the requirement set out in section 10C(2) of the Act that the chief executive must, within 150 days after starting an investigation give the notified parties written advice of the essential facts and conclusions that are likely to form the basis for a determination to be made by the Minister under section 10D(1) of the Act. This provision reflects Article 6.9 of the AD Agreement which provides that the authorities shall, before a final determination is made, inform all interested members and interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures, and such disclosure should take place in sufficient time for the parties to defend their interests.
5. A Supplement to the EFC Report was provided to interested parties on 1 October 2018. The Supplement identified a modification to the basis set out in the EFC Report on which MBIE calculated dumping by one of the sample manufacturers, and set out the consequences of that modification in terms of the margins of dumping and the injury analysis. Interested parties were invited to submit comments on the matters raised in the Supplement.<sup>4</sup>

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<sup>3</sup> The Agreement establishing the World Trade Organisation adopted at Marrakesh on 15 April 1994.

<sup>4</sup> See the recent decision of Dobson J in *Heinz Wattie's Ltd v MBIE* [2018] NZHC 2309, regarding investigation timeframes and consultation obligations, and in particular at [37]: “On the basis of the authorities reviewed, I treat the basic test as requiring a decision-maker to afford an interested party a further opportunity to make submissions where the decision-maker has received material relevant to a proposed changed outcome, after it

6. The issuing of the Supplement to the EFC Report and the need to allow time for interested parties to make submissions meant that the statutory timeframe of 180 days could not be met, due to extenuating circumstances.
7. This Final Report provides the basis for the Minister to make a determination under section 10D(1) of the Act as to whether, in relation to HSS imported into New Zealand from China and Malaysia, the goods are being dumped, and material injury to an industry has been or is being caused because of the dumping.
8. The conclusions contained in this Final Report differ from those set out in the EFC Report. This is because an adjustment to the export price for one exporter has been modified, meaning that for that exporter the dumping levels are *de minimis*. The consequence is that the dumping margin for non-investigated suppliers is zero, meaning in turn that dumped imports make up only a small proportion of total imports and the total market for the subject goods. The conclusion is that material injury to a domestic industry cannot be attributed to the dumping of imports of HSS from China and Malaysia.

## 1.2 Grounds for the Application

9. NZ Steel claimed that the alleged dumping of HSS from China and Malaysia is causing the company material injury through:
  - price undercutting
  - price depression
  - price suppressionresulting in:
  - adverse consequences upon sales
  - adverse consequences upon profit, both per unit (e.g. EBIT<sup>5</sup>/tonne) and overall (e.g. EBIT)
  - adverse consequences upon return on investment
  - adverse consequences upon cashflow.
10. NZ Steel stated in its application that the material injury resulting from the importation of allegedly dumped HSS commenced in 2012.

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has indicated a provisional stance to the interested parties. If the proposed outcome would not have changed without reliance on the new material, then interested parties will arguably be deprived of an adequate opportunity to make submissions. On the other hand, if the change in outcome between an interim and final determination was in prospect without the new material, which is no more than corroborative of reasoning that was in contemplation, then a further round of consultation is unlikely to be required.” See also [73]: “...MBIE is obliged to commence and complete such investigations within 180 days unless extenuating circumstances require it to go beyond that period.”

<sup>5</sup> Earnings before interest and taxation (EBIT).

### 1.3 Proceedings

11. MBIE initiated the investigation on 9 April 2018, which meant that the 180-day investigation period was to be concluded by 5 October 2018. The EFC Report was provided to parties on 5 September 2018.
12. Questionnaires were sent to importers, Chinese and Malaysian manufacturers, and trading intermediaries.
13. NZ Steel requested that provisional anti-dumping duties be imposed in order to prevent material injury being caused to the domestic industry during the period of investigation. A Provisional Measures Report, based on information available to MBIE up to 7 June 2018, provided to the Minister on 12 July 2018, concluded that provisional measures should be imposed on imports from Malaysia. The Minister subsequently directed the imposition of provisional anti-dumping duties from 27 July 2018.
14. Verification visits were undertaken to two Chinese manufacturers and the Malaysian manufacturer, and reports of those visits are available on the Public File.<sup>6</sup>
15. The EFC Report was provided to notified parties on 5 September 2018, with submissions requested by 14 September 2018 (extended to 17 September 2018). For the reasons set out in section 1.1, a Supplement to the EFC Report was issued on 1 October 2018. A summary of the submissions received on both the Supplement and the EFC Report, and MBIE's comments on them, is included as Annex 2 to this Report.

#### Residential Building Material

16. Section 14AA of the Act provides for the temporary suspension of anti-dumping duties on residential building material from 1 June 2014 to 30 June 2019 (the specified period). The Act requires that no new anti-dumping duty, including provisional measures, be applied during the specified period. Section 14AA(3) provides:

*If the Minister notifies a rate or amount of anti-dumping duty on any residential building material during the specified period, the new duty is imposed and takes effect on and from 1 July 2019.*

17. The temporary suspension of anti-dumping duties, accompanied by the temporary introduction of tariff concessions on a wide range of building materials, is in place to "remove a cost on the importation of building materials, which will promote competition in the residential construction sector and ultimately lower the cost of building new homes."<sup>7</sup> The suspension of anti-dumping duties was implemented in the context of the Canterbury

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<sup>6</sup> Non-confidential information is contained in the investigation's Public File, which is available to any interested party or member of the public to view or copy. Copies of documents held on the Public File are available by specific request or at MBIE's office in Wellington during normal office hours.

<sup>7</sup> <https://www.beehive.govt.nz/release/anti-dumping-and-countervailing-duties-bill-passes-final-reading>

post-earthquake rebuild and a need to increase residential construction, particularly in Auckland.

18. Section 3(1) of the Act defines “building material” and “residential building material” as follows:

***building material—***

- (a) *means any structural or non-structural component and assembly incorporated into, associated with, or capable of being incorporated into or associated with a building*
- (b) *includes. . .[a non-exhaustive list is provided of products that are included or excluded from the definition]*

***residential building material means any building material that is capable of being incorporated into or associated with a residential dwelling (regardless of whether it is also capable of being incorporated into or associated with commercial premises).***

19. The Act provides a non-exhaustive list of materials that are included within or excluded from the definition. Materials that are included are: roofing, roofing underlay, flashing, cladding, building wrap, rainwater systems, trusses, framing and framing elements, supporting beams, partitioning, plasterboard and other internal linings, architraves, and other trim, windows, doors, and insulation; sanitaryware; pipes, tubing, pipe fittings, tapware, hot water storage systems, hot water heating systems, and other plumbing fixtures; electrical material other than heating materials and appliances; fixed cabinetry, bench tops, and splashbacks; sinks, hand basins, and washbasins; paint and varnish; reinforcing steel bar and coil; reinforcing steel mesh; cement; adhesives and sealants; nails, screws, nailplates, and hinges; locksets, passage sets, handles, door stops, and other builders hardware.
20. NZ Steel has submitted that it “considers that the goods covered by this application are not goods of a kind typically used in residential construction.” NZ Steel listed a wide range of uses for HSS: air compressor handles; air conditioning components; automotive and boat trailers; bus and truck skeletons; framing and ancillary mounts; child playground equipment (e.g. trampoline guards, frames and legs); communication and TV aerial supports; cowshed equipment; equipment and furniture frames; fencing posts, rails, bracing and stays; flagpoles; gantries; gates and agricultural plant and equipment; general manufacturing; glass-house components; hand trucks and dollies; industrial and safety guarding and rails; irrigation componentry; lawnmower handles; light engineering structures; lighting and electric pole extensions; livestock handling equipment (drafting yards); mechanical and industrial equipment; outdoor furniture; railway electrification arms; scaffolding and scaffolding systems; security camera supports; service bridges; shop-fittings, and sign gantries.
21. MBIE understands that some circular hollow sections (CHS) are used for reticulation, but most HSS, whether CHS or rectangular hollow sections (RHS), is processed or fabricated to meet a wide range of end uses and applications, such as agricultural, automotive, mechanical handling, engineering, general manufacturing, and construction. Submissions indicate that there are broadly two market segments for HSS, namely manufacturing and



construction. Construction is a broad term that MBIE understands to cover many types of construction, whether for commercial, residential or infrastructural purposes.

22. In the Provisional Measures Report, MBIE acknowledged that there is potential for some HSS to be incorporated into a residential building. The non-exhaustive list of building materials in the Act includes a number of products that could be made of HSS, such as framing and framing elements, supporting beams, partitioning, pipes, tubing, pipe fittings and fixed cabinetry. These building materials or products are also made of materials other than HSS such as timber or plastic or other forms of steel. In the Provisional Measures Report MBIE noted (on the basis of information available to that point in the investigation) the extensive range of uses for HSS and that the overwhelming majority of end uses did not result in incorporation into or association with a building or residential dwelling. On the basis of this position and its understanding of the purpose of the Act and of the temporary suspension of anti-dumping duties on residential building materials, MBIE did not consider that there was sufficient evidence to justify treating HSS as a residential building material.
23. MBIE indicated in the Provisional Measures Report, however, that it would seek further information on the extent to which HSS could be used as a residential building material.
24. Referring to its text on residential building materials in the Provisional Measures Report, MBIE asked New Zealand importers about the extent to which they consider HSS is used as a residential building material. Conflicting information was received from importers:
  - in [REDACTED] view, “HSS is never used in residential house builds. . . . Even steel framed houses would not use HSS they roll-form the component pieces from flat steel product.”
  - [REDACTED] advised that its fabricator customers had advised that a substantial quantity of 89x89x6, 100x100x6, 125x125 sizes are used [frequently] for posts as an alternative to timber in residential construction sometimes substituting from smaller Universal Columns [H-beams] for aesthetic reasons.
25. MBIE also asked Dalian Steelforce and Steelforce Trading, particularly because of Steelforce Trading’s experience in selling into the New Zealand market, for their comments on whether HSS is used in the construction of residential buildings:
  - Dalian Steelforce and Steelforce Trading considered there was extensive use of HSS in residential buildings, such as for house piling, house posts, tubing in the centre of roller doors, some external framing, such as in the corners, sliding doors, and spanning wide windows. The companies observed a move from timber to steel for framing, but HSS would only be used in the corners of a steel-framed house. They noted that in apartments, HSS use is considerable for structural sections and fire systems and HSS is also used in decking and pergolas.
26. MBIE sought advice from Auckland Council Building Control and Wellington City Council Compliance and Consents (WCCCC) to gain more clarity around the current use of HSS in residential buildings. While not keeping figures on HSS use to allow an assessment of the prevalence of HSS in residential buildings, WCCCC described the following uses in certain applications in residential buildings:
  - load bearing support for trusses, usually with HSS of 90 x 90mm

- posts for roof span overhangs, with HSS often enclosed within the external cladding
  - support for point loads in a corner, such as in the corner of aluminium windows to act like a mullion where the HSS would be powder coated to match the framing
  - support for decks and carports
  - in walls where load is being transferred to the ground from overhead, such as to stiffen over-height walls to meet wind loading requirements
  - for structural purposes in apartment buildings, either externally or internally, such as for diagonal bracing - often 90mm diameter to fit within framing
  - in external applications, such as for balconies when converting a hotel to apartments.
27. WCCCC considered that timber would generally be used for houses but steel may be used depending on design and loading requirements. Steel channels would tend to be used before HSS unless there was a direct gravity load. WCCCC also noted that lintels for wide spans, such as garage doors, would normally be I-beams or C-beams/channels.
28. In light of further information about uses of HSS in residential buildings, MBIE has reconsidered its view in the Provisional Measures Report as follows:
- The definitions of “building material” and “residential building material” are broad in statement and intent. In summary, a residential building material may be:
    - structural or non-structural
    - a component or assembly
    - incorporated into or associated with a building
    - capable of being incorporated into or associated with a building
    - capable of being incorporated into or associated with a residential dwelling
    - considered as such, regardless of whether it is also capable of being incorporated into or associated with commercial premises.
29. MBIE observes that HSS is capable of a wide range of uses, but that some HSS is clearly incorporated into some residential dwellings. Examples include corner posts for framing; piping for fire systems in apartment buildings; supports for roof overhangs; windows; decking and carports; balcony rails; television aerial supports; some lintels pipes, tubing for support or aesthetics; and fixed cabinetry.
30. MBIE considers that, notwithstanding that HSS is capable of a wide range of uses, all of the HSS subject to investigation is “capable of being incorporated into or associated with a residential dwelling” even if in practice only some of the HSS is actually used in residential buildings.
31. On the basis of the information now available, MBIE considers that HSS is a residential building material and therefore, under section 14AA(2)(a) of the Act, no new anti-dumping duty may be imposed on HSS until 1 July 2019. The suspension of anti-dumping measures includes provisional measures, so any provisional anti-dumping duties paid on HSS imported from Malaysia following the Minister’s provisional duty determination on 26 July 2018 should be refunded.

## Availability of Information

32. Article 6.1 of the AD Agreement provides that all interested parties in an anti-dumping investigation shall be given notice of the information which the authorities require and ample opportunity to present in writing all evidence which they consider relevant in respect of the investigation in question. Subject to the requirement to protect confidential information, evidence presented in writing by one interested party shall be made available promptly to other interested parties participating in the investigation. Article 6.4 states that the authorities shall whenever practicable provide timely opportunities for all interested parties to see all information that is relevant to the presentation of their cases, that is not confidential, and that is used by the authorities in an anti-dumping investigation, and to prepare presentations on the basis of this information.
33. MBIE meets these obligations through the provision of questionnaires and makes available all non-confidential information via the Public File for this investigation. Any interested party is able to request both a list of the documents on this file and copies of the documents on it, with commercially confidential information redacted.
34. Article 6.6 of the AD Agreement provides that except in circumstances provided for in Article 6.8, the authorities shall during the course of an investigation satisfy themselves as to the accuracy of the information supplied by interested Members or interested parties upon which their findings are based. Article 6.8 states that in cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available. The provisions of Annex II are to be observed in applying this provision.
35. Annex II to the AD Agreement sets out procedures to be followed regarding the request for and provision of information from interested parties. Paragraph 7 of Annex II provides:
- If the authorities have to base their findings, including those with respect to normal value, on information from a secondary source, including the information supplied in the application for the initiation of the investigation, they should do so with special circumspection. In such cases, the authorities should, where practicable, check the information from other independent sources at their disposal, such as published price lists, official import statistics and customs returns, and from the information obtained from other interested parties during the investigation. It is clear, however, that if an interested party does not cooperate and thus relevant information is being withheld from the authorities, this situation could lead to a result which is less favourable to the party than if the party did cooperate.*
36. Section 6 of the Act provides:
- (1) *Where the chief executive is satisfied that sufficient information has not been furnished or is not available to enable the export price of goods to be ascertained under section 4, or the normal value of goods to be ascertained under section 5, the normal value or export price, as the case may be, shall be such amount as is determined by the chief executive having regard to all available information.*

(2) *For the purposes of subsection (1), the chief executive may disregard any information that the chief executive considers to be unreliable.*

37. Information relating to those parties who have not provided information is based on the facts available that MBIE considers reliable. MBIE notes that three of the sample manufacturers whose information was considered in this Report cooperated fully, but one of the sample manufacturers did not cooperate and information relating to that company is based on available information.

## **1.4 Report Details**

38. In this report, unless otherwise stated, years are calendar years ending 31 December and dollar values are New Zealand dollars (NZD). In tables, column totals may differ from individual figures because of rounding. The term VFD refers to value for duty for New Zealand Customs Service (Customs) purposes.
39. The period of investigation (POI) for dumping is the year ended December 2017, while the investigation of injury involves evaluation of data for the period since January 2011.
40. All volumes are expressed on a metric ton (MT or tonne) basis unless otherwise stated. Exports to New Zealand were generally invoiced in United States dollars (USD) or Australian dollars (AUD), while values and prices in China are expressed in renminbi (RMB). The exchange rates used are those relating to specific transactions, where available, or Customs exchange rates or the rate that MBIE considers most appropriate in the circumstances, as indicated in the text.
41. Annex 1 to this Report contains MBIE's analysis of subject goods and like goods. Annex 2 is the summary of submissions received on the EFC Report, and the Supplement to the EFC Report, and MBIE's comments on them.
42. Clerical errors in the EFC Report have been corrected.
43. It should be noted that this Final Report provides a summary of the information, analysis and conclusions relevant to this particular investigation, and should not be accorded any status beyond that.

## 2. Subject Goods and New Zealand Industry

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### 2.1 Subject Goods

44. In its application NZ Steel identified the subject goods it considered should be subject to investigation, including the finishes and sizes of the goods.
45. Early in the investigation questions were raised about the scope of the description of subject goods:
- Some interested parties submitted that the New Zealand industry is unable to produce goods of certain specifications required to meet market demand, including steel of the greater dimensions described by NZ Steel as the subject goods.
  - Some other differences in the characteristics of imported versus New Zealand-produced HSS were also raised, such as production methods for galvanised products and available finishes.
46. MBIE undertook a detailed examination of the goods in this investigation to ensure that there is a proper correlation between the goods produced by the domestic industry to which injury claims apply (the like goods), and the imported goods which are said to be causing that injury (the subject goods). The analysis included the preparation of an Issues Paper which was provided to interested parties for their comment. On the basis of that paper and the comments received in response to it, MBIE has concluded the subject goods should be defined as:
- Certain electric resistance welded pipe and tube made of carbon steel, comprising circular and noncircular hollow sections, collectively referred to as hollow steel sections (HSS)*
- The characteristics of HSS in the description of subject goods are:*
- Sizes:**
- Circular products** – nominal bore diameters of 15mm or more but less than 102mm with wall thicknesses from 1.0 to 6.0mm
- Square and rectangular products** – external perimeters of 100mm or more up to and including 400mm with wall thicknesses of 1.0 to 6.0mm
- Oval products** – external perimeters up to and including 314mm with wall thicknesses of 1.0 to 3.0mm.
- Finish types:** galvanised including in-line galvanised, pre-galvanised or hot-dipped galvanised; or non-galvanised, including but not restricted to, painted, black, lacquered or oiled finishes.
47. Annex 1 to this Report summarises the analysis undertaken.
48. The New Zealand tariff concessions system provides for tariff-free entry of goods that are not available from New Zealand producers. MBIE considers, as explained in Annex 1, that the subject goods description should exclude goods subject to tariff concessions other than goods subject to the temporary tariff concession for residential building materials, and any concessions that cover goods that are clearly produced by the New Zealand industry.

## Tariff Items

49. In its application, NZ Steel noted that the New Zealand tariff classification, including statistical keys, does not fully align with the subject goods description.
50. In 2017, the four tariff item/statistical keys were split out into 24 tariff item/ statistical keys in the New Zealand Tariff. These tariff items and statistical keys cover the dimensions of goods produced by the New Zealand industry, namely circular HSS with a nominal internal diameter under 102mm and rectangular/square HSS up to 400mm, and with thicknesses up to 6mm.
51. The tariff items and statistical keys that cover the revised description of the subject goods are set out below, and include oval sections. Some of the statistical keys relating to non-circular goods do cover goods that NZ Steel does not produce (Ex 73066100 63 to 70 to the extent that the perimeter exceeds 400mm, or the thickness exceeds 6mm).

HS2017	Description
<b><i>Circular sections</i></b>	
<b><i>Previously 7306301911</i></b>	
<b>73063019 23</b>	Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, plated or coated with zinc, screwed, welded, of circular cross-section, of a nominal internal diameter under 102mm
<b>73063019 41</b>	Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, plated or coated with metals other than zinc, screwed, welded, of circular cross-section, of a nominal internal diameter under 102mm
<b>73063019 61</b>	Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, painted, lacquered or similarly coated, screwed, welded, of circular cross-section, of a nominal internal diameter under 102mm
<b>73063019 81</b>	Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, screwed, welded, of circular cross-section, of a nominal internal diameter under 102mm [other]
<b><i>Previously 7306301921</i></b>	
<b>73063019 31</b>	Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, plated or coated with zinc, unscrewed, welded, of circular cross-section, of a nominal internal diameter under 102mm
<b>73063019 51</b>	Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, plated or coated with metals other than zinc, unscrewed, welded, of circular cross-section, of a nominal internal diameter under 102mm
<b>73063019 71</b>	Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, painted, lacquered or similarly coated, unscrewed, welded, of circular cross-section, of a nominal internal diameter under 102mm

<b>73063019 91</b>	Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, unscrewed, welded, of circular cross-section, of a nominal internal diameter under 102mm [other]
<b>Square and rectangular sections</b>	
<b>Previously 7306610019</b>	
<b>73066100 51</b>	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension under 102mm, plated or coated with zinc, of wall thickness not over 2.6mm
<b>Ex 73066100 53</b>	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension under 102mm, plated or coated with zinc, of wall thickness over 2.6mm
<b>73066100 54</b>	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension under 102mm, plated or coated with metals (excluding zinc), of wall thickness not over 2.6mm
<b>Ex 73066100 55</b>	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension under 102mm, plated or coated with metals (excluding zinc), of wall thickness over 2.6mm
<b>73066100 56</b>	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension under 102mm, (painted, lacquered or similarly coated), of wall thickness not over 2.6mm
<b>Ex 73066100 57</b>	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension under 102mm, (painted, lacquered or similarly coated), of wall thickness over 2.6mm
<b>73066100 58</b>	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension under 102mm, not elsewhere classified in subheading 7306.61, of wall thickness not over 2.6mm [other]
<b>Ex 73066100 59</b>	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension under 102mm, not elsewhere classified in subheading 7306.61, of wall thickness over 2.6mm [other]
<b>Previously 7306610027</b>	
<b>Ex 73066100 63</b>	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension at least 102mm but under 128mm, plated or coated with zinc, of wall thickness not over 2.6mm
<b>Ex 73066100 64</b>	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension at least 102mm but under 128mm, plated or coated with zinc, of wall thickness over 2.6mm
<b>Ex 73066100 65</b>	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension at least 102mm but under 128mm, plated or coated with metals (excluding zinc), of wall thickness not over 2.6mm

<b>Ex 73066100 66</b>	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension at least 102mm but under 128mm , plated or coated with metals (excluding zinc), of wall thickness over 2.6mm
<b>Ex 73066100 67</b>	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension at least 102mm but under 128mm , (painted, lacquered or similarly coated), of wall thickness not over 2.6mm
<b>Ex 73066100 68</b>	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension at least 102mm but under 128mm, (painted, lacquered or similarly coated), of wall thickness over 2.6mm
<b>Ex 73066100 69</b>	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension at least 102mm but under 128mm , not elsewhere classified in subheading 7306.61, of wall thickness not over 2.6mm [other]
<b>Ex 73066100 70</b>	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension at least 102mm but under 128mm , not elsewhere classified in subheading 7306.61, of wall thickness over 2.6mm [other]
<b>Oval sections</b>	
<b>Ex 73066900 19</b>	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, of other non-circular cross-section; of a nominal internal diameter less than 102mm [other]
<b>Ex 73066900 21</b>	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, of other non-circular cross-section; of a nominal internal diameter of 102mm or more but less than 229mm
<b>Ex 73066900 29</b>	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, of other non-circular cross-section [other]

- 52. Note that the tariff descriptions of the goods are indicative only and are not dispositive of the description of the subject goods.
- 53. Goods entering under these tariff items/statistical keys have provided the basis for the import data used below.

**Duties**

- 54. The following are the rates of Customs duty applicable to the subject goods.

Tariff Item	Normal Tariff (MFN) - %	Preferential Tariff - %
7306.30.19	5	Free* CA Free
7306.61.00	5	Free* CA Free
7306.69.00	5	Free* CA Free

\*CA – Canada. Unless otherwise indicated, the following rates in the Preferential Tariff are Free:



- AAN – ASEAN, Australia, New Zealand Free Trade Agreement (AANZFTA): from 2012 - Free
- AU – NZ-Australia Closer Economic Relations (CER): from 1990 - Free
- CN – NZ-China Free Trade Agreement (FTA): 2008 – 5%; 2009 – 5%; 2010 – 3%; 2011 – 2%; from 2012 - Free
- HK – NZ-HK China Closer Economic Partnership (CEP): from 2011 - Free
- KR - NZ-Korea FTA: from 2016 - Free
- LLDC – Least Developed Countries: from 2005 - Free
- MY – NZ-Malaysia FTA: 2010 – 5%; 2011 – 3%; from 2012 - Free
- Pac – South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA): from 1981 - Free
- SG – NZ-Singapore CEP: from 2001 - Free
- TH – NZ-Thailand CEP- 2005 – 5.5%; 2006 - 5.5%; 2007 – 5.5%; 2008 – 5%; 2009 – 5%; 2010 - Free
- TPA – P4 (Trans-Pacific Strategic Economic Partnership): 2006 - 5.5%; 2007 – 5.5%; 2008 – 5%; 2009 – 5%; 2010 - Free
- TW – Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Cooperation (ANZTEC): from 2014 - Free

Note: there are no Less Developed Country (LDC) rates for these goods.

### Imports of Subject Goods

55. Based on the revised definition of subject goods, MBIE has identified imports of the subject goods from the sample manufacturers in 2017. With three exceptions, there are only minor differences between the Customs data for the statistical keys identified above and the revised information excluding non-subject goods on the basis of an analysis of individual shipments and invoices for sample manufacturers.
56. There appears to have been some tariff misclassification in that when compared with Customs data, all 2017 imports from one sample manufacturer, and significant levels of imports from another sample manufacturer, were not identified in Customs data for the statistical keys identified above. It appears that in both cases the issue arose following the introduction of new statistical keys in 2017.
57. In the absence of details of import shipments from sample manufacturers in years prior to 2017, it is difficult to determine the extent to which any tariff misclassification may have affected Customs data for those years. It does appear that imports from the sample manufacturer which were not included in 2017 are identifiable in Customs data in previous years, so the remaining issue relates to imports from the other sample manufacturer, and how to treat imports from other Chinese exporters and imports from other countries.
58. For the purposes of the analyses required in this Report, the figures for imports from other countries, and from other Chinese exporters, use Customs data for the statistical keys identified above, with imports from Malaysia covering only the subject goods (based on data from the Malaysian exporter). The figures for imports from China for years prior to 2017 are similarly based on Customs data. As discussed in the subject goods analysis, these figures do not exclude all goods entering under tariff concessions.

59. On this basis, Table 2.1 below shows imports in the years covering the period of investigation, adjusted as noted above.

**Table 2.1: Import volumes of HSS to New Zealand (MT)**

	2010	2011	2012	2013	2014	2015	2016	2017
Australia	10054	9742	9041	10643	8565	2424	2448	3084
China	4565	4873	7130	8637	8791	10727	10451	19265
Malaysia	282	106	253	364	358	287	404	529
Other	932	495	758	427	1049	485	653	1055
Total	15834	15215	17182	20071	18763	13922	13956	23933

60. Imports from China represented 83 per cent of total imports in 2017, which is not less than the import share of 3 per cent identified in Article 5.8 of the AD Agreement as the basis for terminating an investigation, as referred to in section 11(2)(c) of the Act. However, imports from Malaysia represented 2.2 per cent, which is a negligible level.

### **Negligible Imports**

61. Section 11 of the Act requires the Minister, at any time before making a final determination, to terminate an investigation where the Minister is satisfied that there is insufficient evidence of dumping to justify proceeding with the investigation; or there is insufficient evidence that material injury to a New Zealand industry is being caused or threatened.
62. Article 5.8 of the AD Agreement requires that an investigation be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or injury to justify proceeding with the case. There shall be immediate termination in cases where the margin of dumping is *de minimis*, or where the volume of dumped imports, actual or potential, or the injury, is negligible. The *de minimis* level of dumping is a margin less than 2 per cent of the export price. The volume of dumped imports is negligible if it represents less than 3 per cent of total imports of the like product, unless countries that individually account for less than 3 per cent of imports collectively account for more than 7 per cent of imports.
63. As noted in the analysis above, the conclusion reached is that dumped imports from Malaysia, at 2.2 per cent of total imports, are negligible. This finding provides a basis for the Minister to terminate the investigation under section 11 of the Act. The finding also means that, in accordance with Article 3.3 of the AD Agreement, imports of HSS from Malaysia should not be included in the injury investigation into the effects of dumping.
64. A consequence of termination is that any provisional anti-dumping duties paid as a result of the Minister's provisional measure determination on 26 July 2018 will need to be refunded.

## **2.2 Like Goods and New Zealand Industry**

65. Section 3A of the Act defines the term **industry** as:
- a. the New Zealand producers of like goods, or
  - b. such New Zealand producers of like goods whose collective output constitutes a major proportion of the New Zealand production of like goods.

66. 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.

### **2.2.1 Like Goods**

67. To establish the existence and extent of the New Zealand industry for the purposes of an investigation into injury, and having identified the subject goods, it is necessary to determine whether there are New Zealand producers of goods which are like those goods in all respects, or have characteristics which closely resemble the subject goods.
68. The scope of the subject goods is defined in section 2.1 above.
69. In its application, NZ Steel identified the characteristics that it considered provided the basis for concluding that the goods it produces are like the subject goods. These characteristics included physical characteristics and likeness, commercial likeness, function/substitutability and end-use likeness, production likeness, and substitutability and price transparency/spillover.

#### **MBIE Consideration**

70. As described in section 2.1 above, MBIE has reviewed and amended the scope of the subject goods to match the like goods produced by the domestic industry. The bases for this conclusion were set out in the “Issues Paper on Like Goods” circulated to interested parties on 13 June 2018, and the comments received in response to that paper have been incorporated into the resulting analysis included as Annex 1 to this Report.
71. 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.

#### ***Physical Characteristics***

72. Products made locally by NZ Steel have the same physical characteristics as the allegedly dumped goods from China and Malaysia, including size and finish characteristics.

#### ***Production Methods***

73. Production methods for the locally produced steel coil and the allegedly dumped goods from China and Malaysia are substantially similar.

#### ***Function and Usage***

74. Both the locally produced and allegedly dumped goods have comparable or identical end uses.

#### ***Pricing***

75. The allegedly dumped goods have a similar pricing structure to NZ Steel’s manufactured products.

## 2.2.2 New Zealand Industry

76. Section 3A of the Act sets out the meaning of industry:

*For the purposes of this Act, the term industry, in relation to any goods, means—  
(a) the New Zealand producers of like goods; or  
(b) such New Zealand producers of like goods whose collective output constitutes a major proportion of the New Zealand production of like goods.*

77. In its application, NZ Steel identified three other producers of HSS products, and concluded that two of them produced like goods. Letters of support for the application from these producers were included in the application. NZ Steel estimated that the combined production of these two companies was equivalent to 10 per cent of New Zealand production of like goods.

78. MBIE has obtained further information on the production of the other two companies producing HSS.

79. The assessment of injury to the domestic industry is required to address the industry as a whole, but in accordance with section 3A of the Act any finding of injury can relate to those New Zealand producers of like goods whose collective output constitutes a major proportion of the New Zealand production of like goods. MBIE has established that the two other companies' combined production is equivalent to 10 per cent of New Zealand production of like goods. In this case, NZ Steel production, at 10 per cent of such production, would be sufficient to constitute the industry.

### 3. Interested Parties

#### 3.1 Legal Requirements

80. Section 3 of the Act identifies the parties who are to be given notice under section 3E of the Act, including:

- the Government of the country of export
- exporters and importers known by the chief executive to have an interest in the goods
- the applicant in relation to the goods.

81. Article 6.11 of the AD Agreement provides:

*For the purposes of this Agreement, "interested parties" shall include:*

- (i) an exporter or foreign producer or the importer of a product subject to investigation, or a trade or business association a majority of the members of which are producers, exporters or importers of such product;*
- (ii) the government of the exporting Member; and*
- (iii) a producer of the like product in the importing Member or a trade and business association a majority of the members of which produce the like product in the territory of the importing Member.*

*This list shall not preclude Members from allowing domestic or foreign parties other than those mentioned above to be included as interested parties.*

82. Notice of initiation of the investigation was provided to the parties listed in section 9 of the Act.

#### 3.2 New Zealand Producers

83. In its application NZ Steel identified other producers of like goods. The producers making up the New Zealand industry are identified below.

**Table 3.1: New Zealand Producers of HSS**

Manufacturing Company	2017 MT
NZ Steel (applicant)	
Industrial Tube Manufacturing Co Ltd (Industrial Tube)	
New Zealand Tube Mills Ltd (NZ Tube Mills)	
Total production	

84. MBIE sent questionnaires to the producers identified above in order to verify the information provided by NZ Steel and to obtain information relevant to the investigation.<sup>8</sup> The production figures above are based on responses from manufacturers.
85. Information provided by NZ Steel includes:
- the application which provided the basis for the Initiation Report
  - information verified by MBIE during a visit to the company's premises on 27-29 May 2018.
86. Information provided by other New Zealand producers included information on products produced, sales and volumes.

### 3.3 Manufacturers

87. Chinese and Malaysian manufacturers supplying HSS to New Zealand via a range of intermediary exporters were identified from Customs data and questionnaire responses provided by intermediary exporters and importers. For the purposes of the investigation, a sample of the main Chinese suppliers to New Zealand was identified, making up 92 per cent of 2017 imports of the subject goods from China, while there was one Malaysian manufacturer responsible for the manufacture of exports to New Zealand.

#### China

88. The AD Agreement, at Article 6.10, provides that authorities may limit their examination either to a reasonable number of interested parties by using samples which are statistically valid on the basis of information available to the authorities at the time of the selection, or to the largest percentage of the volume of exports which can reasonably be investigated. MBIE has adopted this latter approach in the investigations of both dumping and subsidisation of HSS from China, which reflects past practice. Customs data indicates that in 2017 there were 22 suppliers of HSS from China, some of which are likely to have been trading intermediaries, supplying 24 importers. The majority of such suppliers were responsible for less than 50 tonnes each of exports in 2017. In these circumstances, and in view of the time and effort required to track down each supplier in order to obtain details

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<sup>8</sup> Relevant WTO dispute findings can be found in *EC – Bed Linen*, "[I]t is clear from the language of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (GATT) 1994 (the AD Agreement), in particular Articles 3.1, 3.4, and 3.5, that the determination of injury has to be reached for the domestic industry that is the subject of the investigation. ... In our view, it would be anomalous to conclude that, because the [investigating Member] chose to consider a sample of the domestic industry, it was required to close its eyes to and ignore other information available to it concerning the domestic industry it had defined. Such a conclusion would be inconsistent with the fundamental underlying principle that anti-dumping investigations should be fair and that investigating authorities should base their conclusions on an objective evaluation of the evidence. It is not possible to have an objective evaluation of the evidence if some of the evidence is required to be ignored, even though it relates precisely to the issues to be resolved." (Panel Report, WTO document WT/DS141/R, at para 6.180)

of the manufacturer concerned, it was considered to be impracticable and unnecessary to examine all manufacturers.

89. The Chinese manufacturers were identified as either supplying direct to New Zealand importers or through the intermediaries handling their goods. There were some difficulties in quickly identifying the manufacturer supplying the intermediary Sanwa Pty Ltd, and it was not until their questionnaire response was received that the identity of the relevant manufacturer was confirmed. Another manufacturer which was initially believed to be supplying the subject goods through Sanwa Pty Ltd has therefore been excluded from the sample. Also, one manufacturer identified itself as providing the subject goods despite not appearing in Customs data for the tariff items/statistical keys concerned, and has been included in the sample on the basis of the volume of goods it stated had been exported. The four manufacturers now identified as the sample are shown in Table 3.2 below. The companies are listed alphabetically.

**Table 3.2: Sample of Chinese Manufacturers of HSS**

Manufacturing Company	Company Location	2017 MT
Dalian Steelforce Hi-Tech Co Ltd (Dalian Steelforce)	No 26, Number 2 Street Dalian Development Zone Dalian, Liaoning Province	[REDACTED]
Hengshui Jinghua Steel Pipe Co., Ltd (Hengshui Jinghua)	Taocheng North Road Hengshui City Hebei Province	[REDACTED]
Jinan MECH Piping Technology Co Ltd (Jinan Mech)	Meigui Zone of Industrial Park Pingyin Jinan, Shandong Province	[REDACTED]
Tianjin Youfa Steel Pipe Group (Tianjin Youfa)	15 Floor Guotou Building Dafeng Road Tianjin Municipality	[REDACTED]

90. Information was sought from all manufacturers. Dalian Steelforce, Jinan Mech and Tianjin Youfa responded to the Ministry's request for information. Because of the belated identification of Hengshui Jinghua the questionnaire response was not required at the same time as the other sample manufacturers. However, no response was received from Hengshui Jinghua. This lack of response means that Hengshui Jinghua was regarded as a non-cooperating manufacturer and in ascertaining the existence and amount of any dumping, MBIE has had regard to all available information that was considered to be reliable.

### ***Dalian Steelforce***

91. Dalian Steelforce is a wholly-owned foreign enterprise, [REDACTED]. Dalian Steelforce was established in June 2005, and operates a high precision cold rolling steel mill in Dalian in Liaoning Province. The company produces cold rolled galvanized and painted hollow sections and fabricated products, with high integration of production, processing, sales and exportation.
92. Production includes galvanised and painted sections, ranging in size from [REDACTED] mm to [REDACTED] mm; pipe from [REDACTED] NB (nominal bore) to [REDACTED] OD (outside diameter);

finishes including no coating (NOPC or black), in-line paint, pre-galvanised and hot-dipped galvanised; and round, square, rectangular and oval pipe and tube. All products are made to order and comply with relevant Australian and New Zealand standards.

93. During the POI, Dalian Steelforce supplied HSS of the following types subject to investigation for export to New Zealand:
- circular products – nominal diameters of [REDACTED] mm to [REDACTED] mm
  - rectangular products – perimeters from [REDACTED] mm to [REDACTED] mm
  - oval products – perimeters from [REDACTED] mm to [REDACTED] mm.
94. Exports to New Zealand were made through an intermediary, the related company Steelforce Trading. The main New Zealand customers in 2017 were [REDACTED].
95. Dalian Steelforce was a party to the Australian Anti-Dumping Commission (ADC) investigation into HSS.
96. Dalian Steelforce and Steelforce Trading provided detailed responses to the Manufacturer and Exporter Questionnaires, and Dalian Steelforce also provided a submission on injury-related issues that was received on 6 June 2018 (but dated 6 May 2018). A verification visit to Dalian Steelforce's premises was undertaken on 1-3 August 2018, and the report of the visit is available on the Public File.

### **Hengshui Jinghua**

97. Hengshui Jinghua Pipe Co., Ltd. was founded in 1993, under Jinghua Innovation Group, and is a private company located in Hengshui City, Hebei Province.
98. Because Hengshui Jinghua was not initially identified as a major supplier of HSS exported to New Zealand, the despatch of a Manufacturer Questionnaire was delayed. However, no response was received, and Hengshui Jinghua was treated as a non-cooperating manufacturer. The best information available has been used to fill any information gaps regarding Hengshui Jinghua.
99. Hengshui Jinghua was a party to the ADC investigation of HSS.

### **Jinan Mech**

100. Jinan Mech is a subsidiary of [REDACTED].
101. Jinan Mech specializes in manufacturing welded steel pipes. It is located in the Meigui Zone of Industrial Park, Pingyin, Shandong Province, and has an annual capacity of up to [REDACTED] MT of various steel pipes.
102. Jinan Mech did not appear in the original list of manufacturers identified on the basis of Customs data for imports of the subject goods, but approached MBIE independently following publication of advice of the initiation of the investigation. Following this approach, MBIE checked information available and established that imports from Jinan Mech had been misclassified, and should have been included in the subject goods.



103. Jinan Mech exports direct to [REDACTED] in New Zealand and through a trader, [REDACTED], which supplied an unknown New Zealand importer in 2017.
104. Jinan Mech provided a detailed response to the Manufacturer Questionnaire.

### **Tianjin Youfa**

105. Tianjin Youfa is a large-scale steel pipe manufacturing enterprise producing ERW (electric resistance welding) steel pipes, hot-dip galvanized steel pipes, oil casing pipes, SSAW (spiral submerged arc welded) steel pipes, square/rectangular steel pipes and steel-plastic complex steel pipes. Tianjin Youfa is located in in Daqiuzhuang Village, Jinghai County, Tianjin City.
106. The Youfa Group has nine subsidiaries related to HSS production and sales:
- Branch No. 1, located in Youfa Industrial Park, Daqiuzhuang, Jinghai, Tianjin
  - Branch No. 2, located in Daqiuzhuang, Jinghai, Tianjin
  - Dezhong, located in Caigongzhuang Industrial Park, Jinghai, Tianjin
  - Tangshan Youfa, located in Fengnan Development Zone, Tangshan, Hebei Province
  - Zhengyuan, located in Coastal Industrial Park, Fengnan District, Tangshan, Hebei Province
  - Handan Youfa, located in Shangcheng Industrial Park, Chengan, Handan, Hebei Province
  - Youfa Sales, located in Daqiuzhuang, Jinghai, Tianjin
  - Youfa International Trade, located in Hongqiao, Tianjin
  - Youfa Hongtuo, located in Youfa Industrial Park, Daqiuzhuang, Jinghai, Tianjin.
107. Exports to New Zealand were produced mainly by Tangshan Youfa, but by other plants for some products. Financial information was provided for each individual subsidiary. Tianjin Youfa's exports to New Zealand were made through Tianjin Youfa International Trade (International Trade), which established Youfa Hongtuo (Hongtuo) as a processing factory in 2016, and all sales made by International Trade also pass through Hongtuo. Hongtuo completes the final processing on the exported goods such as oiling, lacquering, painting, producing screwed ends, and packing.
108. Exports to New Zealand were undertaken through an intermediary. In 2017 the main New Zealand customers were [REDACTED].
109. Tianjin Youfa was a party to the ADC's Continuance Review of HSS.
110. Tianjin Youfa provided a detailed response to the Manufacturer Questionnaire. A verification visit was undertaken to Tianjin Youfa on 25-27 July 2018, and a report of the visit is available on the Public File.

### **Malaysia**

111. As noted above, there is only one Malaysian manufacturer of the goods exported to New Zealand, identified as Alpine Manufacturing Sdn Bhd (Alpine Pipe), of Selangor Darul Eihсан, Malaysia.

**Alpine Pipe**

- 112. Alpine Pipe is a large scale HSS manufacturer operating in Klang, Malaysia.
- 113. Alpine Pipe exports to New Zealand direct to New Zealand importers [redacted] and through trading intermediaries [redacted]. These intermediaries supply the following New Zealand importers: [redacted].
- 114. Alpine Pipe provided a detailed response to the Manufacturer Questionnaire. A verification visit to Alpine Pipe’s premises was undertaken on 8-10 August 2018, and a report of the visit is available on the Public File.

**3.4 Trading Intermediaries**

- 115. Trading intermediaries (exporters) were identified from Customs data and from questionnaires sent to known importers and manufacturers.
- 116. Table 3.3 below shows the exporters, primarily trading companies acting as intermediaries between Chinese and Malaysian producers and New Zealand importers of the subject goods from the sample manufacturers in 2017. The companies are listed alphabetically.

**Table 3.3: Trading Intermediaries for HSS**

Exporting company	Company Location	2017 MT
<b>China</b>		
Datum Ltd	Hong Kong	[redacted]
Sanwa Pty Ltd	Australia	[redacted]
Steelforce Trading Pty Ltd (Steelforce Trading)	Australia	[redacted]
Other		[redacted]
<b>Malaysia</b>		
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
Other		[redacted]

- 117. Information was sought from all of the trading intermediaries. Only Datum Ltd did not respond. Some invoices were provided by Sanwa. There was a limited response from one trading intermediary for Malaysian HSS.

**3.5 Importers**

- 118. New Zealand-based importers were identified from Customs data. Table 3.4 below shows the main importers that MBIE has identified.





## 4. Dumping Investigation

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### 4.1 Dumping

121. Section 3 of the Act includes the following definitions:

***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 this Act, and **dumped** has a corresponding meaning.*

122. The dumping investigation determines export prices and normal values in accordance with the provisions of the Act and the AD Agreement, and makes a proper comparison between them in order to establish whether and to what extent any dumping is occurring.

123. MBIE has compared export prices to normal values on a weighted-average to weighted-average basis. The basis of this method involves comparing the weighted-average export price and the weighted-average normal value across the POI (dumping). The weighted-average to weighted-average methodology is used by MBIE when there are a high number of export transactions or where there are a large number of different model types at different prices making up the goods under investigation. Using the weighted-average to weighted-average prices, MBIE is then able to establish whether or not the goods were dumped across the POI.

124. The dumping analysis includes imports from Malaysia, despite the import volumes from that source being negligible and therefore a basis for termination of the investigation.

### 4.2 Basis for Investigation of Dumping

125. The information available to MBIE in investigating the alleged dumping of HSS from China and Malaysia included:

- information contained in NZ Steel's application and subsequent submissions, and from MBIE's verification visit to NZ Steel
- information from other New Zealand manufacturers of subject goods
- responses to importer/exporter/manufacturer questionnaires and subsequent submissions, and information arising from verification visits
- information from investigations undertaken by other jurisdictions
- information from previous MBIE investigations
- information from WTO jurisprudence and other documents
- information from industry reports and other published material relating to the Chinese and Malaysian steel industries
- information from NZ Customs
- information arising from MBIE's independent research.

126. The objective of the investigation was to establish if there was dumping, i.e. the export price of the goods is less than the normal value when a fair comparison is made.

127. In an investigation MBIE seeks and obtains information directly relevant to that investigation, and satisfies itself as to the accuracy of the information provided. Such

primary information includes questionnaire responses from interested parties; laws, regulations and other official documents; relevant WTO documents, such as notifications; Customs and statistical data; and other relevant data such as exchange rates, interest rates and prices. MBIE uses verification visits and the review of evidence available to substantiate information provided by interested parties.

128. The use of “facts available” is limited to instances where information is not available because an interested party refuses access to, or otherwise does not provide the necessary information within a reasonable period or significantly impedes the investigation. In such circumstances, the levels of export prices and normal values are determined having regard to all available information that MBIE considers to be reliable.
129. In considering “facts available” MBIE can take into account secondary information, such as the application (in relation to dumping); information from previous MBIE investigations; information from investigations undertaken by counterpart authorities in other jurisdictions; and information from reports and publications covering matters related to the subject matter of the investigation. In using secondary information, MBIE undertakes a process of reasoning and evaluation of which “facts available” constitute reasonable replacements for missing information and can be considered reliable. In this context, MBIE notes that secondary information that is not based on positive evidence but relies on inferences and assumptions may not be considered to be reliable.

#### **4.2.1 Questionnaire Responses**

130. Exporter Questionnaires were sent to the main suppliers identified in Customs data. These companies were primarily trading intermediaries, and in two cases they were associates of the manufacturers. Only one of the main trading intermediaries for goods from China did not respond to the questionnaire. The responses from the trading intermediaries for Malaysian HSS were limited but did include some invoice information.
131. Importer questionnaires were sent to the importers of HSS from the sampled manufacturers. Responses were received from two of the main importers and a voluntary submission was received from a smaller importer.
132. MBIE sent manufacturer questionnaires to each of the sample manufacturers identified in section 3.4 above. Detailed responses were received from Alpine Pipe, Dalian Steelforce, Jinan Mech and Tianjin Youfa. Hengshui Jinghua did not respond and is regarded as non-cooperating.

### **4.3 Export Price**

133. Section 4 of the Act provides that export prices are:

*(1) Subject to this section, for the purposes of this Act, the export price of any goods imported or intended to be imported into New Zealand which have been purchased by the importer from the exporter shall be—*

*(a) where the purchase of the goods by the importer was an arm’s length transaction, the price paid or payable for the goods by the importer other than any part of that price that represents—*

- (i) costs, charges, and expenses incurred in preparing the goods for shipment to New Zealand that are additional to those costs, charges, and expenses generally incurred on sales for home consumption; and
- (ii) any other costs, charges, and expenses resulting from the exportation of the goods, or arising after their shipment from the country of export; or
- (b) where the purchase of the goods by the importer was not an arm's length transaction, and the goods are subsequently sold by the importer in the condition in which they were imported to a person who is not related to the importer, the price at which the goods were sold by the importer to that person less the sum of the following amounts:
- (i) the amount of any duties and taxes imposed under any Act; and
- (ii) the amount of any costs, charges, or expenses arising in relation to the goods after exportation; and
- (iii) the amount of the profit, if any, on the sale by the importer or, where the Secretary so directs, an amount calculated in accordance with such rate as the Secretary determines as the rate of profit on the sale by the importer having regard to the rate of profit that would normally be realised on sales of goods of the same category by the importer where such sales exist; or
- (c) where the purchase of the goods by the importer was not an arm's length transaction, and the goods are subsequently sold by the importer in a condition different from the condition in which they were imported, a reasonable price determined by the Secretary in the circumstances of the case.
- (2) Where—
- (a) goods are or are to be shipped to New Zealand on consignment and there is no known purchaser in New Zealand for the goods; or
- (b) there is no exporter's sale price or no price at which the importer or a person not related to the importer, has purchased or agreed to purchase the goods,—
- the export price, for the purposes of this Act, shall be determined in such manner as the Secretary considers appropriate having regard to all the circumstances of the exportation.

134. The starting point for MBIE is the documentation (usually invoices) for each shipment, which shows the price paid or payable for the goods by the purchaser. MBIE requests this information from both exporters and importers in its questionnaires. It also requests documentation of other costs incurred in exportation of the goods. The purchase price paid, whether by the importer or an intermediary, is the starting point for the calculation of the export price and is referred to as the "base price".
135. Adjustments are then made to take the base price back to the ex-factory level and to ensure a fair comparison with the normal value. Adjustments to calculate an ex-factory price generally cover costs such as inland freight between the factory and the port, port charges and bank charges. Most fair comparison adjustments are made to the normal value, but those relating to differences in the cost of credit and packaging are usually made to the full extent of the costs involved to both the export price and normal value.
136. In some cases there is an intermediary involved which acts as a facilitator of the sales and shipment of the goods. Where the exporter is a trader rather than the manufacturer of the

goods, adjustments are made for the trader's profit margin and any other costs associated with the trade to ensure an ex-factory equivalent is achieved.

137. In order to ensure a fair comparison between similar goods, the analysis has identified nine categories of goods, based on the shape (circular/CHS, RHS/SHS, oval) and the finish (galvanised, painted, black/NOPC).<sup>9</sup> Export prices and normal values for each of these categories have been established and the final dumping margin for each sample manufacturer is based on the weighted average across all categories where subject goods have been exported.

### 4.3.1 Export Price – China

#### *Dalian Steelforce*

138. Dalian Steelforce was the largest exporter of HSS to New Zealand from China during the POI. Dalian Steelforce's exports to New Zealand consisted of circular, rectangular and oval HSS.

#### **Base Prices**

139. Dalian Steelforce invoiced Steelforce Trading in AUD on a [REDACTED] basis. Steelforce Trading sold to unrelated New Zealand importers in AUD on a [REDACTED] basis. Exports are invoiced in MT on a theoretical weight basis. Dalian Steelforce and Steelforce Trading provided a selection of invoices for their exports to New Zealand and MBIE selected further invoices.
140. MBIE is satisfied that Dalian Steelforce's sales to Steelforce Trading were at arm's length on the basis that the companies operate separately, the companies comply with transfer pricing requirements and that both companies make a reasonable profit.
141. The base prices for Dalian Steelforce's sales for export to New Zealand would normally be the prices paid by importers as invoiced by Steelforce Trading. For this producer and exporter however MBIE has decided to use Dalian Steelforce's net invoiced [REDACTED] prices in AUD as the starting point to work back to ex-factory export prices. MBIE is satisfied that Dalian Steelforce's [REDACTED] prices represent the prices paid by importers less all the costs that are incurred by Steelforce Trading between [REDACTED] prices to importers.
142. The base prices for establishing export prices are Dalian Steelforce's net invoiced [REDACTED] prices in AUD. These prices were converted to RMB using monthly exchange rates published by the People's Bank of China (PBOC), Monetary Policy Department.

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<sup>9</sup> CHS: circular hollow sections; RHS: rectangular hollow sections; SHS: square hollow sections; NOPC: not oiled, painted or coated.



**Adjustments**

*Freight, Export Packing, Port Charges and Handling*

143. An adjustment was made for the costs of local transport to the port of export, port charges, handling and the additional cost of export packing. These costs were verified by MBIE against Dalian Steelforce’s general ledger and management accounts. MBIE calculated these costs as RMB [REDACTED]/MT.

*Cost of Credit*

144. An adjustment was made for credit costs for the period between Dalian Steelforce’s invoice date and date of payment by Steelforce Trading. The interest rates used in the calculations were the interest rates charged to Dalian Steelforce for working capital loans during the POI, namely [REDACTED] per cent from July 2016 to July 2017 and [REDACTED] per cent from August 2017 to date. MBIE verified these rates against loan documents. The cost of credit varies for each transaction depending on the number of days between invoice and final payment.

*Value Added Tax*

145. There is no value-added-tax (VAT) on export sales but HSS sold on the Chinese domestic market is subject to VAT at 17 per cent. VAT is, however, paid on inputs to manufacturing and when finished products are exported a VAT rebate of 9 per cent of the FOB price was provided to Dalian Steelforce according to a Government of China schedule. MBIE verified the payment of VAT rebates to Dalian Steelforce. The 9 per cent rebate effectively means that Dalian Steelforce pays 8 per cent VAT on exports. MBIE has made a deduction to export prices of 8 per cent of the FOB price for the VAT paid but not rebated to ensure a fair comparison with Chinese domestic VAT-exclusive sales prices.

*Weight*

146. Dalian Steelforce invoices HSS on a theoretical weight basis. [REDACTED] Chinese producers sell steel on their domestic market on an actual weight basis. MBIE made an upward adjustment of 4 per cent to reflect that export prices per tonne on the basis of actual weight are higher than prices per MT calculated on a theoretical weight basis. The level of adjustment is based on the maximum tolerance allowed by AS/NZS1163.

**Export Prices**

147. The adjustments outlined above for freight, export packing, port charges, handling, cost of credit and VAT were deducted from base prices to arrive at ex-factory export prices that provide a fair basis for comparison with normal values. The weighted average export prices in RMB/MT are shown in the table below.

**Table 4.1: Export prices – Dalian Steelforce**  
RMB/MT

Circular/CHS	NOPC	Painted	Galvanised
Export Prices	[REDACTED]	[REDACTED]	[REDACTED]

RHS/SHS	NOPC	Painted	Galvanised
Export Prices			
Oval	NOPC	Painted	Galvanised
Export Prices			

**Hengshui Jinghua**

148. Hengshui Jinghua exported [redacted] of galvanised circular HSS in 2017, with a range of bores and thicknesses. Hengshui Jinghua sold through [redacted] with main New Zealand importers being [redacted].

149. Hengshui Jinghua did not provide a response to the questionnaire sent by MBIE, so information for the calculation of dumping margins is based on the facts available, in this case information from invoices provided by [redacted] and information from other Chinese manufacturers.

**Base prices**

150. Hengshui Jinghua invoiced [redacted] on an [redacted] basis in USD, and these prices have been used as the base price.

**Adjustments**

*Exchange rates*

151. The [redacted] values were converted to RMB on the basis of the PBOC exchange rates identified for Dalian Steelforce.

*Cost of Credit*

152. An adjustment was made for credit costs for the period between Hengshui Jinghua’s invoice date and date of payment by [redacted]. The interest rates used in the calculations were the interest rates charged to [redacted].

*Freight, Export Packing, Port Charges and Handling*

153. An adjustment was made for the costs of local transport to the port of export, port charges, handling and the additional cost of export packing. These costs were based on those verified by MBIE against [redacted] general ledger and management accounts. MBIE calculated these costs as RMB [redacted] per metric tonne.

*Value Added Tax*

154. There is no VAT on export sales but HSS sold on the Chinese domestic market is subject to VAT at 17 per cent. VAT is, however, paid on inputs to manufacturing and when finished products are exported a VAT rebate of 9 per cent of the FOB price is provided to exporters according to a Government of China schedule. MBIE verified the payment of VAT rebates to [redacted]. The 9 per cent rebate effectively means that exporters pay 8 per cent VAT on exports. MBIE has made a deduction to export prices of 8 per cent of

the FOB price for the VAT paid but not rebated to ensure a fair comparison with Chinese domestic VAT-exclusive sales prices.

*Weight*

155. Hengshui Jinghua invoices HSS on a theoretical weight basis. [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 Chinese producers sell steel on their domestic market on an actual weight basis. MBIE made an upward adjustment of 4 per cent to reflect that export prices per MT on the basis of actual weight are higher than prices per MT calculated on a theoretical weight basis. The level of adjustment is based on the maximum tolerance allowed by AS/NZS1163.

**Export Price**

156. The adjustments outlined above for freight, export packing, port charges, handling, cost of credit, VAT and weight were deducted from base prices to arrive at ex-factory export prices that provide a fair basis for comparison with normal values. The weighted average export prices in RMB/MT are shown in the table below.

**Table 4.2: Export price – Hengshui Jinghua RMB/MT**

Circular/CHS	NOPC	Painted	Galvanised
Export Prices	[REDACTED]	[REDACTED]	[REDACTED]
RHS/SHS	NOPC	Painted	Galvanised
Export Prices	[REDACTED]	[REDACTED]	[REDACTED]
Oval	NOPC	Painted	Galvanised
Export Prices	[REDACTED]	[REDACTED]	[REDACTED]

**Jinan Mech**

157. Jinan Mech exported [REDACTED] HSS to New Zealand in several sizes and finishes during the POI amounting to [REDACTED] MT. The [REDACTED] ranged from [REDACTED] mm to [REDACTED] mm. MBIE has categorised these products into three different categories of [REDACTED], namely NOPC, painted (including epoxy coated) and HDG. Jinan Mech sold mainly to a New Zealand importer and distributor, [REDACTED].
158. Sales were also made to trading company, [REDACTED], which did not appear as a supplier in 2017 in data requested from Customs. [REDACTED] did however appear in Customs data in previous years as a supplier to New Zealand importer [REDACTED].

**Base Prices**

159. Jinan Mech invoiced [REDACTED] on an [REDACTED] basis in [REDACTED] and [REDACTED] [REDACTED] on a [REDACTED] basis. The base prices for Jinan Mech’s exports to the importer [REDACTED] are the invoiced [REDACTED] prices in USD.
160. MBIE does not have information on the prices paid to [REDACTED] by the New Zealand importer. These exports were made in [REDACTED] 2017 but did not appear in the importer [REDACTED] response and may have been imported by another importer.

MBIE has therefore used the [REDACTED] amounts invoiced in [REDACTED] to [REDACTED] and has assumed that the difference between [REDACTED] purchase price and its selling price to the New Zealand importer covers all of its costs to export, including its margin.

161. Jinan Mech provided MBIE with invoices for all exports to New Zealand for 2017 and relevant bank records.

### **Adjustments**

#### *Overseas Freight*

162. For sales made on a [REDACTED] basis, the cost of overseas freight was deducted from base prices.

#### *Marine Insurance*

163. For sales made on a [REDACTED] basis, the cost of insurance was deducted from base prices.

#### *Inland Freight*

164. A deduction was made for the cost of inland freight from the factory to the port of export.

#### *Loading and Handling Charges*

165. A deduction was made for loading and handling charges.

#### *Ancillary Expenses*

166. A deduction was made for ancillary expenses associated with exporting.

#### *Bank Charge*

167. A deduction was made for a bank charge.

#### *Credit costs*

168. Terms of payment for sales to [REDACTED] were [REDACTED] but payment was made between [REDACTED] and [REDACTED] days after the invoice date. For sales to the importer [REDACTED], a deduction was made for credit costs for the period between the invoice date (establishing the material terms of sale) and the payment date for the goods. Terms of payment for sales to the trader [REDACTED] were [REDACTED] and payment was made [REDACTED]. No cost of credit adjustment was made for sales to this trader.

#### *VAT Rebate*

169. There is no VAT on export sales but HSS sold on the Chinese domestic market is subject to VAT at 17 per cent. VAT is, however, paid on inputs to manufacturing and a rebate of VAT is given when finished products are exported.
170. Jinan Mech claimed that it receives a VAT refund of 13 per cent and provided a Chinese tariff schedule in support of this percentage of refund. The 13 per cent rebate applies to steel of HS 7306.19 and not 7306.30/61/69 for HSS of the types subject to investigation, so this rate was not used.
171. In the EFC Report, MBIE applied the same deduction of 8 per cent that it had applied to other sample manufacturers on the basis that this was the rate applicable to HSS classified

under HS 7306.30 and 7306.61, which covered the subject goods. However, for the reasons outlined in Annex 2:II, MBIE has now accepted that it should apply the rate of 4 per cent, which is applicable where the goods have been classified by Customs China under HS 7306.19, and where that rate has been the basis for the pitching of the level of the selling price by Jinan Mech.

- 172. MBIE has made a deduction to export prices of 4 per cent of the FOB price for the VAT paid but not rebated to ensure a fair comparison with Jinan Mech’s domestic VAT-exclusive sales prices.

**Export Prices**

- 173. The adjustments outlined above were deducted from base prices to arrive at weighted average ex-factory export prices that provide a fair basis for comparison with normal values. The weighted average export prices in RMB/MT are shown in the table below.

**Table 4.3: Export price – Jinan Mech  
RMB/MT**

Circular/CHS	NOPC	Painted	Galvanised
Export Prices			
RHS/SHS	NOPC	Painted	Galvanised
Export Prices			
Oval	NOPC	Painted	Galvanised
Export Prices			

**Tianjin Youfa**

- 174. Tianjin Youfa exported [redacted] MT of subject goods in 2017. Tianjin Youfa’s exports to New Zealand consisted of [redacted] main categories of HSS by shape and finish.

**Base Prices**

- 175. Tianjin Youfa International Trade (International Trade) invoiced trading intermediaries and direct New Zealand customers in USD on [redacted] basis. Exports are invoiced in MT on a theoretical weight basis exclusive of VAT. International Trade provided MBIE with all export invoices to New Zealand for the POI.
- 176. MBIE was provided with invoices for all export sales to New Zealand during the POI. All export sales are on a per MT basis and are exclusive of VAT.
- 177. The base price for Tianjin Youfa’s export sales to New Zealand are the net invoiced [redacted] or [redacted] price in USD, converted to RMB at exchange rates provided by Tianjin Youfa for each transaction. Exchange rates are the rates published at the beginning of each month by the PBOC. This is in accordance with Generally Accepted Accounting Principles in China. Bank remittance notices were provided by Tianjin Youfa for each export sale.

## Adjustments

### *Exporter's Margin*

178. As International Trade acts as an exporter for Tianjin Youfa, MBIE considers that it is appropriate to make an adjustment to take into account International Trade's margin. MBIE verified information relating to the margin International Trade takes for export sales as an average across all of its sales. MBIE considers that an appropriate adjustment for International Trade's margin is [REDACTED] per cent derived from the margin shown by their income statement for the 2017 calendar year.
179. An adjustment of [REDACTED] per cent has therefore been made to export prices based on Tianjin Youfa's base price.

### *Export Packing*

180. An adjustment has been made for packing costs. Hongtuo processes all goods for export to New Zealand and charges International Trade for the cost of packing. Hongtuo also provides a processing service for export goods. Where Hongtuo has provided a processing service, the cost of packing is included in the processing cost.
181. MBIE has therefore made an adjustment of RMB [REDACTED]/MT to the export price for the cost of packing for goods that did not undergo any processing by Hongtuo.

### *Inland Freight*

182. An adjustment has been made for inland freight charges for the goods to be sent from Hongtuo to the port. The average cost of inland freight is RMB [REDACTED]/MT. Inland transportation costs are paid by Tianjin Youfa on a monthly basis for all transport for the previous month. Tianjin Youfa therefore does not maintain accurate costs of inland transportation per shipment. This information was verified through both Tianjin Youfa's general ledger and VAT receipts from the transport company.

### *Handling, Loading, and Ancillary Charges*

183. An adjustment has been made for handling, loading, and ancillary charges prior to shipment. MBIE verified the costs of handling, loading, and ancillary charges for specific costs for each invoice from Tianjin Youfa. The average cost of handling, loading, and ancillary charges was RMB [REDACTED]/MT, however, prices varied based on the size of each individual shipment. Adjustments have been made based on actual cost per transaction.

### *Value Added Tax*

184. There is no VAT charged on exports, but HSS sold on the Chinese domestic market is subject to VAT at a rate of 17 per cent. VAT is also paid on inputs to manufacturing and when finished products are exported a VAT rebate is provided according to a Government of China Schedule which differs depending on the product.
185. Tianjin Youfa received a VAT rebate of 9 per cent of the FOB price at which it purchases from Hongtuo. MBIE verified the VAT rebate amount from a government published list of rebate amounts and from a tax summary showing a breakdown of the 9 per cent rebate that was returned to the company.

186. MBIE has made an adjustment to the export price for VAT paid but not rebated. As 8 per cent of the FOB price is irrecoverable VAT an 8 per cent adjustment has been made to the export price based on 8 per cent of the FOB price International Trade purchased from Hongtuo.

*Overseas Freight*

187. As Tianjin Youfa exports to New Zealand on a [REDACTED] basis an adjustment has been made for overseas freight. The amount of overseas freight was verified through VAT invoices and the general ledger. The average cost of overseas freight is USD [REDACTED]/MT, but adjustments have been made based on verified costs specific to each export transaction.

*Overseas Insurance*

188. An adjustment has been made for overseas insurance. Tianjin Youfa provided overseas insurance costs in Appendix 4 of its questionnaire response. The average amount of overseas insurance was USD [REDACTED] MT. However, overseas insurance amounts varied depending on the size of individual shipments.

*Theoretical Weight Adjustment*

189. Tianjin Youfa sells HSS on an actual weight basis on the Chinese domestic market whereas it sells on a theoretical weight basis for exports. The company explained that because the relevant standards provide for a weight tolerance the company is able to [REDACTED] within the weight tolerance as per the standard.

190. MBIE has therefore made an upward adjustment to the export price of 4 per cent. The AS/NZS standards allow a weight tolerance of 4 per cent. Based on the information provided by Tianjin Youfa regarding theoretical and actual wall thickness, MBIE considers a 4 per cent adjustment appropriate.

*Cost of Credit*

191. MBIE has made an adjustment for the cost of credit on export sales. The cost of credit has been calculated based on the number of days between the invoice date and the payment date. An appropriate commercial interest rate of [REDACTED] per cent has been used to calculate these costs. This is an average interest rate Tianjin Youfa has been charged over the POI.

*Processing Costs*

192. Hongtuo provides a processing service for International Trade prior to the goods being exported. The processing fees account for the costs charged to International Trade by Hongtuo for the additional processing completed on the goods. Processes include, threading, pressing groove, lacquering, painting and PVC cloth wrapping.
193. The amount of the processing costs varies depending on the processes completed. MBIE made the adjustments based on verified costs from the general ledger, VAT invoices and production information from Hongtuo.

**Export Price**

194. The adjustments outlined above for exporter margin, export packing, inland freight, handling, loading, and ancillary charges, value added tax, overseas freight, overseas insurance, theoretical weight, cost of credit, and processing costs were made to base prices to arrive at ex-factory export prices that provide a fair basis for comparison with normal values. The weighted average export prices are shown in the table below.

**Table 4.4: Export price – Tianjin Youfa  
RMB/MT**

Circular/CHS	NOPC	Painted	Galvanised
Export Prices			
RHS/SHS	NOPC	Painted	Galvanised
Export Prices			
Oval	NOPC	Painted	Galvanised
Export Prices			

**4.3.2 Export Price – Malaysia**

***Alpine Pipe***

195. Alpine Pipe was the only Malaysian company to export to New Zealand during the POI. Alpine Pipe exported both square and rectangular NOPC hollow sections. Alpine Pipe invoiced trading intermediaries and direct New Zealand customers in USD on a [REDACTED] basis. Exports are invoiced in MT on a theoretical weight basis exclusive of VAT. Alpine Pipe provided MBIE with all export invoices to New Zealand over the POI.

196. The base prices for Alpine Pipe’s export sales to New Zealand are the net invoiced [REDACTED] prices in USD but converted to Malaysian ringgit (MYR) using exchange rates published by the Central Bank of Malaysia.

197. Alpine Pipe’s sales to New Zealand are made on a theoretical weight basis, as are domestic sales (see “normal value” section below). These weights are listed in the relevant export and domestic standards. The standard allows for a 10 per cent tolerance in thickness, and weights may vary up to 4 per cent from the standard weight (standard deviation). Theoretical weight is therefore the weight a shipment of HSS calculated, based on the diameters and lengths of HSS ordered. All Alpine’s customers are invoiced based on this theoretical weight and contracts state that there may be a variation in the actual weight delivered.

**Adjustments**

***Inland Freight***

198. Alpine Pipe arranges transport from its factory to the port at Klang. MBIE made an adjustment for the cost of inland transport based on information provided by Alpine and verified at the company’s premises. This cost amounted to approximately [REDACTED]/MT although it varied slightly over the POI depending on [REDACTED] and [REDACTED].



*Handling, Loading, and Ancillary Charges*

199. Alpine Pipe also incurs port handling, clearance and loading charges and ancillary charges. MBIE made adjustments for these costs based on information provided by Alpine and verified at the company’s premises. These costs amounted to approximately [REDACTED]/MT although they varied slightly over the POI depending on [REDACTED] and [REDACTED].

*Costs of Credit*

200. MBIE calculated cost of credit based on the number of days between invoice date and payment date using the interest rate of [REDACTED] provided by Alpine Pipe as an appropriate short term commercial interest rate over the POI.

**Export Price**

201. One single weighted average export price was calculated for Alpine’s exports of the subject goods. After making the above adjustments, MBIE calculated a weighted average export price for Alpine’s sales to New Zealand. The weighted average export price in MYR/MT is shown in the table below.

**Table 4.5: Export price – Alpine Pipe  
MYR/MT**

	HSS
Export Price	[REDACTED]

**4.4 Normal Value**

202. Section 5 of the Act provides the basis for determining normal values:

*(1) Subject to this section, for the purposes of this Act, the normal value of any goods imported or intended to be imported into New Zealand shall be the price paid for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arm’s length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.*

*(2) Where the Secretary is satisfied that the normal value of goods imported or intended to be imported into New Zealand cannot be determined under subsection (1) because—*

*(a) there is an absence of sales that would be relevant for the purpose of determining a price under that subsection; or*

*(b) the situation in the relevant market is such that sales in that market that would otherwise be relevant for the purpose of determining a price under subsection (1) are not suitable for use in determining such a price; or*

*(c) like goods are not sold in the ordinary course of trade for home consumption in the country of export in sales that are arm’s length transactions by the exporter and it is not practicable to obtain within a reasonable time information in relation to sales by other sellers of like goods that would be relevant for the purpose of determining a price under subsection (1),—*

*the Secretary may determine that the normal value, for the purposes of this Act, shall be either—*

*(d) the sum of—*

- (i) such amount as is determined by the Secretary to be the cost of production or manufacture of the goods in the country of export; and*
- (ii) on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export,—*

*(A) such amounts as the Secretary determines would be reasonable amounts for administrative and selling costs, delivery charges, and other charges incurred in the sale; and*

*(B) an amount calculated in accordance with such rate as the Secretary determines would be the rate of profit on that sale having regard to the rate of profit normally realised on sales of goods (where such sales exist) of the same general category in the domestic market of the country of export of the goods; or*

*(e) the price that is representative of the price paid for similar quantities of like goods sold at arm's length in the ordinary course of trade in the country of export for export to a third country.*

*(3) Where the normal value of goods imported or intended to be imported into New Zealand is the price paid for like goods, in order to effect a fair comparison for the purposes of this Act, the normal value and the export price shall be compared by the Secretary—*

*(a) at the same level of trade; and*

*(b) in respect of sales made at as nearly as possible the same time; and*

*(c) with due allowances made as appropriate for any differences in terms and conditions of sales, levels of trade, taxation, quantities, and physical characteristics, and any other differences that affect price comparability.*

*(4) Where the normal value of goods exported to New Zealand is to be ascertained in accordance with subsection (2), the Secretary shall make such adjustments as are necessary to ensure that the normal value so ascertained is properly comparable with the export price of those goods.*

*(5) Where—*

*(a) the actual country of export of goods imported or intended to be imported into New Zealand is not the country of origin of the goods; and*

*(b) the Secretary is of the opinion that the normal value of the goods should be ascertained for the purposes of this Act as if the country of origin were the country of export,—*

*the Secretary may direct that the normal value of the goods shall be so ascertained.*

*(6) Where the Secretary is satisfied, in relation to goods imported or intended to be imported into New Zealand, that—*

*(a) the price paid for like goods—*

*(i) sold for home consumption in the country of export in sales that are arm's length transactions; or*

*(ii) sold in the country of export to a third country in sales that are arm's length transactions,—*

*is, and has been for an extended period of time and in respect of a substantial quantity of like goods, less than the sum of—*

*(iii) such amount as the Secretary determines to be the cost of production or manufacture of the like goods in the country of export;*

*and*

*(iv) such amounts as the Secretary determines to be reasonable amounts for administrative and selling costs, delivery charges, and other charges necessarily incurred in the sale of the like goods by the seller of the goods; and*

*(b) it is likely that the seller of those like goods will not be able to fully recover the amounts referred to in subparagraphs (iii) and (iv) of paragraph (a) within a reasonable period of time,—  
the price so paid for those like goods shall be deemed not to have been paid in the ordinary course of trade.*

#### **4.4.1 Normal Value - China**

##### ***Basis for Normal Values***

##### **MBIE Position**

203. In this investigation MBIE has applied section 5(1) of the Act because it is satisfied that on the basis of the information available, normal values can be based on the prices paid for like goods sold in the ordinary course of trade for home consumption in China in sales that are arm's length transactions by the exporter or by other sellers of the like goods. MBIE is satisfied that the information available confirms that the situation in the Chinese market is not such that sales in that market are not suitable for use in determining such a price, and it is not necessary to establish normal values on the basis provided for in section 5(2)(b) of the Act.
204. MBIE has assessed HSS domestic prices in China on the basis of the information provided by cooperating manufacturers, and has found that 2017 prices of the two companies involved when compared on the basis of weighted average monthly prices across all product types, followed similar trends and were within a broadly comparable range. MBIE added domestic prices from the Malaysian manufacturer to the analysis, and found that they were similarly within a broadly comparable range, especially during the second part of the year when the Malaysian prices also fell below Chinese prices. MBIE considers that this evidence supports its view that HSS prices in China are not affected by a particular market situation, and do permit a proper comparison with export prices.
205. MBIE is aware that a number of countries define China as a non-market economy, and have developed particular methodologies for addressing the determination of normal value in such cases on the basis of an assumption that prices in a non-market economy are not in the ordinary course of trade. New Zealand does not treat China as a non-market economy, and determines normal value on the basis of primary information from cooperating sample manufacturers and from its assessment of factors affecting the steel industry in China and the HSS market in particular. This approach is based on MBIE's assessment of the evidence before it in this case and the applicable legislative provisions, and on MBIE's experience obtained from anti-dumping investigations involving China undertaken since 1995.. On this basis MBIE does not consider that there is a situation in the Chinese HSS market such that sales in that market are not suitable for use in determining prices for the purposes of comparison with export prices, in order to establish whether or not dumping is occurring.

**NZ Steel Application**

206. In its application, NZ Steel used a constructed value for establishing normal values for China because it was not able to obtain a relevant local Chinese market price, since it was not confident that the pricing of comparable volumes of the like goods could be adequately identified in sales of goods of the same general category in China. NZ Steel also claimed that the nature of the Chinese steel industry gives rise to the situation provided for in section 5(2)(b) of the Act, whereby there was an absence of relevant and suitable sales in the ordinary course of trade.
207. NZ Steel argued that continued intervention by the GOC in the Chinese iron and steel industry has distorted the price of HSS and other precursor steel goods. In support of its position, NZ Steel noted evidence in reports by various economic commentators and in applications to, and reports by, trade remedies authorities in other jurisdictions, in particular Canada and Australia. In its application NZ Steel provided, as annexes, an excerpt from the report “Analysis of Steel and Aluminium Markets: Report to the Commissioner of the Anti-Dumping Commission” (the ADC Report), published in August 2016 by the Australian Anti-Dumping Commission (ADC),<sup>10</sup> and an excerpt from a Canadian Border Service Agency (CBSA) Statement of Reasons in its *Concrete Reinforcing Bar* investigation in 2014.
208. NZ Steel also noted that the ADC, in its original *HSS* investigation in 2012, in its investigation of *Hot Rolled Plate Steel* in 2014, and in its *Galvanised Steel Coil* investigation in 2015, found that there was a particular market situation in China such that prices in the domestic market were not suitable for establishing normal value. In the *HSS* case, exporters’ production costs were used but with hot rolled coil (HRC) costs based on prices in Korea, Malaysia and Taiwan. The Continuance Review of *HSS* in 2015 also found that there was still a particular market situation in China.
209. NZ Steel’s submission of 15 August 2018 expressed disagreement with MBIE’s approach (but did pick up an error in the Provisional Measures Report in referring to Australian recognition of China as a “developing country” when it should have stated “market economy”; this has been corrected), and referred to matters raised in its submission of 2 July 2018.
210. MBIE has considered the matters raised, but does not find any reason to modify its overall approach. MBIE’s approach is based on section 5 of the Act and Article 2 of the AD Agreement. MBIE seeks to establish, on the basis of the information from cooperating sample manufacturers, whether or not the price paid for like goods sold in the ordinary course of trade are sales that are arm’s length transactions, and are suitable for use in determining normal value.

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<sup>10</sup> References to the ADC also refer to its predecessor the Australian Customs and Border Protection Service.

211. The following sections set out the background to the treatment of non-market economies, the approaches and methodologies adopted by some countries, and the relevant WTO jurisprudence. The secondary information from these countries is not sufficient for MBIE to consider that it needs to change its view that the prices in the relevant market provide a proper basis for establishing normal values in this case.

### **Background**

212. The debate over the use of the provision of the AD Agreement relating to “particular market situation” arises from the treatment of non-market economies, the use of information from surrogate countries, and the change in situation brought about by the expiry of certain provisions in China’s Protocol of Accession to the WTO.
213. The use of surrogate countries is based on the provisions of paragraph 2 of AD Article VI.1 of GATT 1947 (the Interpretative Note), which provides:

*It is recognized that, in the case of imports from a country which has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State, special difficulties may exist in determining price comparability for the purposes of paragraph 1, and in such cases importing contracting parties may find it necessary to take into account the possibility that a strict comparison with domestic prices in such a country may not always be appropriate.*

214. On the basis of this provision, many countries developed an approach to “non-market economies” which permitted the use of information from surrogate countries for the determination of normal values. As outlined in *Guide to International Anti-Dumping Practice*,<sup>11</sup> earlier versions of New Zealand’s legislation, up to 1994, included specific provisions for the establishment of normal values in situations where the government of the country of export had a monopoly or substantial monopoly of the trade of the country and determined or substantially influenced the domestic price of goods in that country. In such cases, normal values could be ascertained on the basis of prices of like goods in a third country sold in the ordinary course of trade for home consumption, or sold to another country, or constructed on the basis of third country producer costs, charges and profits.
215. The position outlined above reflected the provisions of the Interpretative Note, and under these provisions New Zealand did use surrogate country prices in a number of cases involving China. However, when the Act was amended in 1994, the provisions relating to non-market economies were omitted. It was considered that in situations where the government of a country did not have a complete or substantially complete monopoly of its trade and the State did not fix all domestic prices, then it would not be possible to apply the provisions of the Note and conclude that prices in such a country could not be used as the basis for determining normal values. It was proposed that with regard to investigations

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<sup>11</sup> Kluwer Law International, 2013, pp 483-4

involving China, account would be taken of the situation applying in the case of each industry and each exporter.

216. The 2001 Protocol of Accession of China to the WTO included section 15, dealing with price comparability in determining subsidies and dumping. That section provided that, in determining price comparability in a dumping investigation of goods from China, authorities in an importing country would use either Chinese prices or costs, or a methodology not based on a strict comparison with domestic prices and costs in China if the producer under investigation could not show that market economy conditions prevailed in the industry producing the product. These provisions would not apply once China had established, under the national law of the importing country, that it is a market economy, or could establish that market economy conditions prevailed in a particular industry or sector. These provisions expired after 15 years, i.e. at the end of 2016.
217. Paragraph 10 of the Trade and Economic Cooperation Framework Agreement (TECFA) between New Zealand and China, signed in May 2004, formalised the approach adopted by the New Zealand trade remedy authorities, and noted that New Zealand recognised that China had established a market economy system, and New Zealand would not apply sections 15 and 16 of the Protocol of Accession. This agreement ruled out the use of surrogate countries on the basis provided for in China's Protocol of Accession.

#### **Australia**

218. Australia is in a similar situation as New Zealand in regard to its recognition that China is a market economy.
219. The ADC Report identified by NZ Steel reviewed evidence of government interventions and trade restrictions in steel-producing countries and identified evidence that such interventions influenced market behaviours and decision-making by producers in Asian steel and aluminium markets in ways that diverge from competitive market behaviours and commercial decisions. The analysis in relation to China considered:
- evidence of a range of different subsidies and tax concessions provided by the GOC to the Chinese steel industry, with an identification of the kinds of subsidies concerned
  - GOC involvement as owner of steel producers accounting for a significant share of total steel production
  - the plans and directives of the GOC for the steel industry, with specific plans and directives identified.

#### **Canada**

220. In Canada, the provisions of section 20 of the Special Import Measures Act 1985 (SIMA) allow the determination of normal values on a basis other than domestic prices in the country of export where the country is a "prescribed country" (as is China), and where the CBSA considers that domestic prices in the country of export are substantially determined by the government of that country, and there is reason to believe that prices are not substantially the same as they would be if they were determined in a competitive market.
221. In CBSA *Line Pipe*, the CBSA sought information from exporters and the GOC to assist its consideration under section 20 and in the absence of satisfactory responses relied on its

own research to obtain more comprehensive data. The CBSA considered that, based on the information on record, the scope of the GOC's macro-economic policies and measures indicated that the GOC was influencing the Chinese steel industry. It suggested that the use of such policies and measures could dramatically change the demand and supply balance in the domestic market and could influence the domestic prices of steel products such as steel pipe. The CBSA also considered that the GOC's actions to eliminate obsolete steel production and reduce energy-emissions, as well as the plans for mergers and acquisitions, were compelling facts that the GOC is firmly in charge of the reform of the Chinese steel industry. The CBSA suggested that the cumulative effect of the GOC's numerous macro-economic policies and measures has resulted in an environment where enterprises have conflicting objectives, which can affect the products produced, production volumes and ultimately prices. The CBSA believed that the cumulative impact of GOC measures and control indicated that prices of line pipe in China were being indirectly determined by the GOC. The CBSA also compared prices for line pipe in China with prices in other countries, and found that they were significantly lower.

222. Based on its conclusions, the CBSA determined normal values for the exporter from China that submitted a complete response, using a surrogate country methodology pursuant to section 29 of SIMA, based on the average of the normal values from the producers in Turkey and the Republic of Korea that provided complete responses to requests for information.

#### **Other Jurisdictions**

223. In its various submissions NZ Steel referred to additional material from other jurisdictions, including a report prepared by the EU (EC Staff Report). In this section MBIE summarises the relevant legislation and processes of the EU and the USA.

#### *EU*

224. In December 2017 the EU amended its Regulation<sup>12</sup> addressing the dumping of imports to take account of developments with respect to certain countries in setting out the basis for establishing normal values. In particular, new Article 2(6a) of the Regulation was inserted to cover the situation where it is not appropriate to use domestic prices and costs in the exporting country due to the existence in that country of significant distortions. In such cases the normal value is to be constructed exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks in an appropriate representative country, undistorted international prices or benchmarks, or domestic costs to the extent that it is established that they are not distorted.
225. Significant distortions are said to occur when reported prices or costs are not the result of free market forces because they are affected by substantial government intervention. In assessing distortion regard is to be had to:

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<sup>12</sup> Regulation (EU) 2016/1036 of 8 June 2016, amended by Regulation (EU) 2017/2321 of 12 December 2017.

- the extent to which the market is served by enterprises which operate under the ownership or control or policy supervision or guidance of the authorities of the exporting country
  - State presence in firms which allows the State to interfere with respect to prices of costs
  - public policies or measures which discriminate in favour of domestic suppliers or otherwise influence free market forces
  - shortcomings in the application or enforcement of bankruptcy, corporate or property laws
  - distorted wage costs, and
  - access to finance granted by financial institutions which implement public policy objectives or otherwise do not act independently of the State.
226. The new regulations require the Commission to produce, make public and regularly update a report describing the market circumstances in a country or sector, which can be placed on the investigation file. The EC Staff Report is the relevant report in respect to China.
227. The EC Staff Report examined the core features of the Chinese economy, including the concept of a “socialist market economy”, the role of the Chinese Communist Party (CCP) in relation to the economy, the extensive system of plans issued and followed up by various levels of government under the leadership of the CCP, the extensive State-owned sector including the various supervision and control mechanisms, the financial market, the procurement system and the system of investment screening. The EC Staff Report noted that the overall picture that was emerging concerning the framework in which economic activity takes place in China is one where the State continues to exert decisive influence on the allocation of resources and on their prices.
228. The EC Staff Report also reviewed the factors of production, including the provision of land, energy, capital, material inputs (including raw materials) and labour. The conclusion was that the allocation and pricing of the various factors of production was influenced by the State in a very significant manner.
229. Finally, the EC Staff Report examined a number of sectors, including the steel sector. The examination found that there were significant distortions resulting from the specific features of the Chinese economy and those found in relation to the various factors of production.
230. The EC Staff Report included a detailed examination of the players and practices in the financial sector, including banks. It noted that despite a number of transformations throughout the last thirty years the current Chinese financial system is still characterised by a strong presence of State-owned banks, and a widespread influence of the State which imposes a number of policy objectives on the financial system. It is acknowledged that various legal provisions refer to the need to respect normal banking behaviour and prudential rules such as the need to examine the creditworthiness of the borrower. The EC Staff Report found that the evidence, including findings from trade defence investigations, suggests that these provisions play only a secondary role in the application of the various legal instruments, which stress the priority of the needs of national economic and social



development and the industrial policies of the State. The conclusion reached in the EC Staff Report is that the financial system remains highly distorted.

231. In examining the factors of production, the EC Staff Report noted that rules on land provision and acquisition are often unclear and non-transparent, and prices for land are often set by the authorities on the basis of non-market considerations. On energy, electricity prices are still largely controlled by the State, with price differentiation occurring in the market between types of customers and locations. For water, there is a comprehensive water pricing framework which may not reflect the real cost.
232. A detailed examination of the steel sector was included in the EC Staff Report. This examination reviewed the regulatory framework, considered the presence of SOEs in the steel market, looked at State support measures and raw material and input distortions, and outlined the current situation. The EC Staff Report noted the findings in EC trade defence investigations which, it suggested, established that the GOC exercises meaningful control over steel SOEs, which are obliged to follow the government plans and policies. Much of the evidence referred to in this section was derived from the EU investigations discussed above (*EC Organic Coated Steel* and *EC Hot-Rolled Flat Products*), or referred to investigations undertaken by Australia and Canada, as support for claims that there are widespread State support measures in the Chinese steel sector.
233. The EC Staff Report concluded that the steel industry is regarded as a key/pillar industry by the GOC, which guides the development of the sector in accordance with a broad range of policy tools and directives relating to market composition and restructuring, raw materials, investment, capacity elimination, product range, relocation and upgrading. It was suggested that by these means the GOC directs and controls virtually every aspect in the development and functioning of the sector. Financial institutions, following the government's direction, provide access to finance to implement the government's policy objectives, while Chinese steel producers benefit from a wide array of State support measures and other market distortive practices. It is concluded that the overarching control of the government prevents free market forces from prevailing in the steel sector in China.

#### USA

234. Section 773(c) of the Tariff Act of 1930 covers the situation of non-market economies and provides that if the subject merchandise is exported from a non-market economy country, and the administering authority finds that available information does not permit the normal value of the subject merchandise to be determined under the standard approach, normal value shall be determined on the basis of the value of the factors of production plus an amount for general expenses and profit plus the cost of containers, coverings, and other expenses. The valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority. The US Department of Commerce (USDOC) regulation, 19 CFR 351.408(a), further provides that "(i)n identifying dumping from a non-market economy country, the Secretary normally will calculate normal value by valuing the non-market economy producers' factors of production in a market economy" under section 773(c) of the Act.

235. The USDOC considers China to be a non-market economy (NME) country. In accordance with section 771(18)(C)(i) of the Trade Act of 1930, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, USDOC continues to treat China as an NME country. In proceedings involving NME countries, USDOC has a rebuttable presumption that all companies within China are subject to government control and, thus should be assessed a single anti-dumping duty rate.<sup>13</sup>
236. The USA amended its anti-dumping legislation in the Trade Preferences Act of 2015. That Act amended relevant sections of the Tariff Act of 1930 to provide for the establishment of normal values when the administering authority determines that the particular market situation prevents a proper comparison with the export price. If a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology. With regard to prices and costs in non-market economies, in valuing the factors of production for the subject merchandise, the administering authority may disregard price or cost values without further investigation if the administering authority has determined that broadly available export subsidies existed or particular instances of subsidisation occurred with respect to those price or cost values or if those price or cost values were subject to an antidumping order.
237. In 2017, the USDOC applied these amendments for the first time in its investigation of oil country tubular goods from Korea. In that case, the final results of an administrative review reversed a preliminary determination that the US petitioners failed to support the allegation that the Korean market was subject to a “particular market situation”. Given the USDOC position on China as a non-market economy, it is not clear if, or when, the “particular market situation” provision will be applied to non-market economies.

### WTO Requirements

238. There is no WTO jurisprudence of direct application to the determination of what might constitute a “particular market situation” although a number of cases have addressed the consequences in terms of the construction of normal values. For example, the Panel in *EU – Biodiesel (Argentina)*,<sup>14</sup> in a finding upheld by the Appellate Body, found that the European Commission (EC) acted inconsistently with Article 2.2 by basing the cost of the main raw material used by biodiesel producers on international prices, as opposed to the prices in the Argentine market. The Appellate Body also agreed with the Panel's view that Article 2.2 of the Anti-Dumping Agreement and Article VI:1(b)(ii) of the GATT 1994 do not limit the sources of information that an investigating authority may use in establishing the

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<sup>13</sup> Decision Memorandum for the Preliminary Results of the 2016-2017 Antidumping Duty Administrative Review: Certain Steel Nails from the People's Republic of China, A-570-909, 4 September 2018.

<sup>14</sup> WTO documents WT/DS473/R at paragraphs 7.258-259 and WT/DS473/AB/R at paragraphs 6.81-6.82.

cost of production in the country of origin. Specifically, the Appellate Body pointed out that an authority may use information from outside the country of origin, provided such information is adapted as necessary in order to determine the cost of production in the country of origin.<sup>15</sup>

239. These findings suggest that the approaches adopted by Australia, Canada the EU and the USA to use surrogate values for prices and cost elements may not be consistent with the AD Agreement. A number of challenges to the methodologies used by these authorities have been launched in the WTO.

#### **MBIE Comment**

240. In respect of NZ Steel's first claim, i.e. that it was not confident that pricing of comparable HSS (to that exported to New Zealand) could be adequately identified in sales of goods of the same general category in China, MBIE was able to source Chinese prices of comparable HSS exported to New Zealand from cooperating manufacturers. This pricing information (both domestic and export) was subject to verification by MBIE officials at the companies' premises in China.
241. In respect of NZ Steel's second concern, i.e. that the nature of the Chinese steel industry gives rise to the situation whereby there is an absence of relevant and suitable Chinese sales in the ordinary course of trade, MBIE has examined the arguments raised by NZ Steel but does not consider there are sufficient grounds for supporting the company's viewpoint. More specifically, MBIE does not consider that domestic prices of HSS, or prices of primary inputs such as HRC, are substantially determined or distorted by the GOC, or that they are not determined in a competitive market to the extent that they should be eliminated for the purposes of calculating normal values. On this basis, MBIE does not consider that it should deviate from establishing normal values in China on the basis of domestic selling prices (where appropriate), rather than basing Chinese normal values on constructed prices or other approaches involving surrogate country information. While this conclusion is specific to the present case, this approach is consistent with the Act, and with New Zealand's 2004 decision to recognise China as a market economy country, and is also consistent with the approach the New Zealand authorities have applied since 1995. This current investigation is the eleventh anti-dumping investigation involving China initiated since 1995, and in none of those cases has it been found that the involvement of the GOC in the market has required the determination of normal value on the basis of a constructed price.
242. Article 2(2) of the AD Agreement relates to the identification of sales used for the purposes of determining the normal value. Therefore the matters to be considered are whether there is a particular market situation which causes distortions in the domestic prices of the subject goods, and whether any such distortion affects the comparability between the

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<sup>15</sup> WTO Document WT/DS473/ABR at paragraphs 6.70-6.74.

- domestic and export prices of the goods. MBIE's consideration of the approaches followed in some other jurisdictions reflects this understanding.
243. NZ Steel points to findings of other jurisdictions to support its view, but MBIE considers there are certain aspects of those findings which makes it disinclined to rely on them as a basis for moving away from establishing normal values on the basis of section 5(1) of the Act.
244. MBIE has undertaken its own research into the Chinese steel market, including the relevant Chinese legislation, regulations, plans and directives. MBIE does not consider that the matters raised provide compelling evidence that prices for HSS in China are significantly distorted by GOC interventions, and that prices in that market are not suitable for determining a normal value for comparison with export prices to New Zealand in order to determine if dumping is occurring. In particular, MBIE notes that in addition to relevant legislation covering banking and state-owned assets, it has reviewed the 12th and 13th Five-year Plans, covering 2011-2015 and 2016-2020 respectively, and the "Temporary Provisions on Promoting Industrial Structure Adjustment" (Decision 40) and the "Guidance Catalogue for Industrial Structure Adjustment" (Guidance Catalogue). The "Policies for the Development of Iron and Steel Industry" (the Steel Plan), was issued by the National Development and Reform Commission (NDRC) in 2005, and identifies the iron and steel industry as an important basic industry and sets out policies for its development in accordance with the relevant laws and regulations. In considering the totality of the information available, MBIE considers that the Five-Year Plans provide the overview authority and guidance for economic development, and thus the basis for particular instruments relating to aspects or areas of the economy. In the case of industrial structure, development and adjustment, this is provided by Decision 40 and the Guidance Catalogue, while the Steel Plan clarifies objectives within that sector, with the identification of particular activities and assistance being confirmed in the subsequent Decision 40. However, none of these plans or instruments provides any basis for concluding that the level and nature of GOC involvement in the steel sector is such that HSS prices are substantially distorted by GOC interventions to the extent that they do not provide a basis for determining normal values for the purposes of establishing the existence of dumping.
245. MBIE notes that there are differences between Canada and New Zealand in the legislative context within which the determination of normal values can be undertaken, including that Canada defines China as a non-market economy in its legislation and applied section 15 of China's Protocol of Accession to the WTO. For instance, in respect of the CBSA conclusion that the GOC exerts control over the Chinese steel industry, and substantially determines prices, the information related to various plans and policies, and levels of government ownership and control, which indicated that the GOC was influencing the Chinese steel industry, such that prices of pipe in China were indirectly influenced by the GOC. MBIE does not consider that this provides a sufficiently compelling case that a "particular market situation" exists in relation to HSS prices in China.
246. MBIE has also reviewed the matters raised in the ADC Report in the light of its consideration of similar matters in MBIE's subsidy investigation into HSS from China (conducted parallel to this dumping investigation). On the basis of that consideration, MBIE

notes that that the subsidies identified by the ADC were frequently not applicable or did not have any significant impact, and that the ownership of steel producers by the GOC did not have an impact on prices for particular steel products. MBIE considers that while the plans and directives for the Chinese steel industry may have a broad impact on the level of activity in the sector, they do not influence prices for particular products to the extent that the situation in the relevant market is such that sales in the Chinese market are not suitable for use in determining prices paid in the ordinary course of trade for like goods sold in the ordinary course of trade for home consumption.

247. MBIE notes that the EU approach, which does not refer specifically to a “particular market situation”, raises some issues, with the new Regulations providing basically a repackaging of the criteria previous applying to non-market economies. Some commentators have noted the wide scope for discretionary application, and have expressed serious doubts as to the consistency of the measures with the AD Agreement, and with WTO jurisprudence.<sup>16</sup> Indeed, the previous version of the Regulations has been challenged in the WTO by China in DS516, *EU — Price Comparison Methodologies*. The point has been made that a determination of a particular market situation must be based on an assessment of the comparability between the domestic sale price and the export price of the subject goods, and the existence of a situation in a market such as government intervention does not by itself constitute a particular market situation.<sup>17</sup>
248. The US legislation and practice also operate from a different legal perspective compared with New Zealand, in particular the US rebuttable presumption that all companies within China are subject to government control.
249. In considering information from investigations undertaken by other jurisdictions, MBIE accepts that they can provide a valid source of secondary information when information is not available because an interested party refuses access to, or otherwise does not provide the necessary information within a reasonable period or significantly impedes the investigation. That is not the case in the current investigation. Information from such secondary sources can also be considered, on its merits, in order to provide a basis for confirming or otherwise the accuracy of primary information obtained by MBIE. The extent to which “facts available” can replace missing information requires a process of reasoning and evaluation which takes account of the circumstances of the particular case. These circumstances can include the nature of the product concerned, whether the investigation covered the same manufacturers, and whether similar transactions and adjustments were

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<sup>16</sup> For example, Edwin Vermulst, “The birth of a monstrosity: The EU’s ‘significant distortions’ proposal”, *Regulating for Globalization*, 27/11/2017, at <http://regulatingforglobalization.com/2017/11/27/birth-monstrosity-eus-significant-distortions-proposal/>.

<sup>17</sup> Zhou, Weihuan and Percival, Andrew, “Debunking the Myth of ‘Particular Market Situation’ in WTO Antidumping Law”, *Journal of International Economic Law* 2016, Vol 19 Issue 4, 863-892

involved, and to the extent that the information from other jurisdictions is considered to be reliable and relevant.

250. However, MBIE does not consider that this means that there is any requirement on it to go beyond an assessment of evidence, and to accept interpretations of relevant law and WTO jurisprudence that New Zealand does not share on the basis of a reasoned and adequate analysis of the situation as it relates to the investigation concerned. This reflects the fact that other jurisdictions operate under different legal frameworks and contexts, and that the investigations concerned are likely to involve different products and different interested parties. In addition, in considering the reliability of secondary information from other jurisdictions, MBIE must assess the extent to which findings, and interpretations, are based on reliable information and not on the basis of non-factual assumptions or speculation. Where such findings or interpretations are based on “facts available” or “adverse facts available” (AFA) in the case of the USA, MBIE considers the process and context of any failure by interested parties to provide information which has led to the use of “facts available” or AFA.
251. In conclusion, MBIE notes that it applies section 5(1) of the Act to determine normal values either through actual prices, or by construction on a case-by-case basis when there is evidence that an alternative approach is required under section 5(2). In all of the cases involving China since 1995, there has not been compelling evidence to suggest that prices are not market prices, and MBIE has established normal values on the basis of either sales on the Chinese domestic market (by the investigated manufacturer or by other manufacturers) or, when such information is not available, on the basis of constructed values using information from within the Chinese market.
252. Having considered the matters raised by NZ Steel, MBIE has based its determination of normal value on prices in the Chinese market, and has not used prices from third countries. Where there were no sales in the domestic market that were suitable, or where the sales at a loss provision of the AD Agreement was applicable, MBIE used sales by other producers, in accordance with section 5(1) of the Act.

#### **Sales at a Loss**

253. Sales in the ordinary course of trade do not include sales at a loss. Article 2.2.1 of the AD Agreement allows sales at a loss to be disregarded if the authorities determine that such sales are made within an extended period of time (6-12 months) in substantial quantities (not less than 20 per cent of the transactions under consideration), and are at prices that do not provide for the recovery of all costs within a reasonable period of time.

#### ***Dalian Steelforce***

##### **Domestic Sales Distribution**

254. During the POI, Dalian Steelforce sold both downgrades (damaged or sub-standard) and prime HSS (that is, made to AS/NZS standards) on the domestic market in China. Sales of prime HSS were made direct by Dalian Steelforce to Chinese customers and HSS downgrades were sold to [REDACTED] for sale to domestic customers. Dalian Steelforce advised that weights for domestic sales are theoretical, except from October 2017 when the company used actual weight.

**Base Prices**

255. Domestic sales of goods equivalent to those subject to investigation (including downgrades) totalled [REDACTED] metric tonnes which is [REDACTED]% of Dalian's export sales of equivalent HSS to NZ. This is less than the 5 per cent guideline in the AD Agreement.<sup>18</sup> MBIE considers that such a small volume of sales is insufficient to permit a proper comparison with export prices.
256. In this situation, in accordance with section 5(1) of the Act, MBIE used sales made by another producer or producers in China to establish normal values. If those sales are not suitable for a particular category of HSS, MBIE may construct normal values and use those values.
257. Domestic sales information was available to MBIE for [REDACTED] Chinese producers, [REDACTED]  
[REDACTED]  
[REDACTED], MBIE has used the weighted average normal values for [REDACTED] as appropriate normal values for Dalian Steelforce. These normal values reflect sales to distributors in China.
258. [REDACTED] sold both NOPC CHS and painted CHS but did not provide information to distinguish between the selling prices of each type, so one weighted average normal value was used for both types of CHS. In the absence of information about domestic sales of oval HSS, MBIE has used normal values for CHS on the basis that costs of production for oval products are unlikely to be higher than for CHS.

**Adjustments**

259. Adjustments have been made to [REDACTED] domestic selling prices to arrive at weighted average normal values. Adjustments were made for [REDACTED]  
[REDACTED]. No further adjustments are considered necessary to reflect appropriate normal values for Dalian Steelforce.

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<sup>18</sup> Footnote 2 of the AD Agreement states: "Sales of the like product destined for consumption in the domestic market of the exporting country shall normally be considered a sufficient quantity for the determination of the normal value if such sales constitute 5 per cent or more of the sales of the product under consideration to the importing Member, provided that a lower ratio should be acceptable where the evidence demonstrates that domestic sales at such lower ratio are nonetheless of sufficient magnitude to provide for a proper comparison."

**Normal Values**

260. Weighted average normal values at the ex-factory level that are considered to provide a fair basis for comparison with export prices are the normal values for [REDACTED] shown later in this report.

**Hengshui Jinghua**

261. In the absence of any information from Hengshui Jinghua, MBIE has been unable to calculate a normal value based on the company's information. In accordance with section 5(1) of the Act, MBIE has used sales made by another producer, [REDACTED], on the Chinese domestic market as an appropriate normal value for Hengshui Jinghua.
262. The adjusted normal value for [REDACTED] for [REDACTED] is set out later in this report.

**Jinan Mech**

263. [REDACTED] Jinan Mech made significant sales of circular HSS on the domestic market in China to distributors and end users. Jinan Mech sold CHS in NOPC, epoxy coated, painted, HDG and plastic-lined finishes with nominal bores ranging from [REDACTED] mm to [REDACTED] mm.
264. Jinan Mech made some sales of HSS to its related companies [REDACTED].

**Base Prices**

265. MBIE excluded domestic sales to related parties and also sales to end users to ensure a fair comparison, given that sales to New Zealand were made to importer/distributors. The base prices for establishing normal values for Jinan Mech are the prices paid by unrelated distributors in China for HSS of the dimensions included in the description of the subject goods.
266. The base prices are domestic sales to distributors in China on an [REDACTED] or [REDACTED]<sup>19</sup> basis.

**Methodology**

267. MBIE calculated the weighted average domestic selling price over the POI for each model (by finish NOPC, painted/epoxy, HDG and size) and compared the average cost to make and sell for each model with the weighted average domestic selling price for each model over the POI. This analysis showed that the average price was below the average cost to make and sell the good for [REDACTED] of [REDACTED] models of HSS sold domestically

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<sup>19</sup> Source: ICC website. The full text of the 2010 edition of the Incoterms rules is available at <http://store.iccwbo.org/>



(there were no domestic sales of a further [redacted] models equivalent to those exported to New Zealand).

- 268. For the models sold at a loss, MBIE then compared the average cost to make and sell for each model with each domestic sale made over the period of investigation in order to identify the individual transactions that were sold at a loss. For these models, the volume of sales that were made at a loss was [redacted] per cent of the domestic sales under consideration, exceeding 20 per cent of the volume of sales for each of these models.
- 269. Sales at a loss were therefore disregarded in determining normal values for these models because MBIE determined that these sales were made within an extended period of time in substantial quantities and at prices which do not provide for the recovery of all costs within a reasonable period of time.
- 270. The remaining domestic sales of like goods to unrelated distributors far exceeded the volume exported to New Zealand during the POI, so there are sufficient volumes of domestic sales to make a comparison with export prices.

**Adjustments**

*Physical Difference*

- 271. A physical difference deduction was made on a few transactions to account for the difference between the greater thickness of HDG coating for domestically sold HSS of [redacted] g/m<sup>2</sup> compared with the lighter HDG coating of [redacted] g/m<sup>2</sup> for HSS exported to New Zealand.

*Cost of Credit*

- 272. The terms of payment for domestic distributors were “payment by [redacted] days” and payment was made on a [redacted] basis. Jinan Mech used an interest rate of [redacted] per cent to make a cost of credit adjustment. The company provided benchmark interest rates from the PBOC for financial institutions’ loans updated in late 2015 which showed a range of interest rates from 4.35 to 4.9 per cent for different loan periods. In the absence of information about the actual dates of payments MBIE made a deduction for the cost of credit on domestic sales for [redacted] days at an interest rate of [redacted] per cent.

*Inland Freight*

- 273. The actual inland freight cost for each [redacted] transaction was provided and allocated to different types of HSS by weight. MBIE deducted transport costs to bring domestic prices back to the ex-factory level.

**Normal Values**

- 274. The adjustments outlined above were deducted from the base prices to arrive at ex-factory normal values that provide a fair basis for comparison with export prices. Normal values in RMB/MT are shown in the table below.

Circular/CHS	NOPC	Painted	Galvanised
Normal Values	[redacted]	[redacted]	[redacted]

RHS/SHS	NOPC	Painted	Galvanised
Normal Values			
Oval	NOPC	Painted	Galvanised
Normal Values			

**Tianjin Youfa**

- 275. Tianjin Youfa sold HSS for home consumption in China to distributors and users on an [redacted] basis with customers to pick-up the goods when they are made. Tianjin Youfa provided a list of its sales in 2017 to all domestic customers. The sales information provided was for the [redacted] categories of HSS that are comparable in nominal bore and finish to those HSS products it exported to New Zealand.
- 276. Tianjin Youfa provided a breakdown of its costs to make and sell in 2017 for HSS sold on the domestic market in China by shape and finish. Costs were provided for each of the [redacted] categories of steel product comparable to those categories exported to New Zealand. The quantity of domestic sales of the comparable and like product was more than 5 per cent of the quantity of goods exported to New Zealand.
- 277. A comparison of the weighted average price for each category against the ex-factory cost for that category showed that [redacted] per cent of HSS was sold at a loss. A comparison of the weighted average of sales of all comparable domestic sales to the weighted average cost to make and sell for all categories showed however that sales of like product were made at a profit.
- 278. MBIE used the selling prices net of VAT to distributors and users in China in RMB as the base prices for normal values.

**Methodology**

- 279. MBIE calculated the weighted average domestic selling price over the POI for each model (by finish NOPC/HDG and shape) and compared the average cost to make and sell for each model with the weighted average domestic selling price for each model over the POI. This analysis showed that the average price was above the average cost to make and sell the good for [redacted] of [redacted] models of HSS sold domestically.
- 280. For the models sold at a loss, MBIE then compared the average cost to make and sell for each model with each domestic sale made over the period of investigation to identify the individual transactions that were sold at a loss. For these models, the volume of sales that were made at a loss was [redacted] of the domestic sales under consideration, exceeding 20 per cent of the volume of sales for each of these models.
- 281. Sales at a loss were therefore disregarded in determining normal values for these models because MBIE determined that these sales were made within an extended period of time in substantial quantities and at prices which do not provide for the recovery of all costs within a reasonable period of time.

282. The remaining domestic sales of like goods to unrelated distributors far exceeded the volume exported to New Zealand during the POI, so there are sufficient volumes of domestic sales to make a comparison with export prices.

**Adjustments**

*Inland Transport*

283. An adjustment has been made for inland transport. The majority of domestic sales made by Tianjin Youfa are on an [REDACTED] with [REDACTED]. However, some customers [REDACTED]. Tianjin Youfa accounts for inland transportation as a whole rather than on an individual transaction basis.

284. MBIE verified the amounts of inland transportation in the general ledger and through VAT invoices. The average amount of inland transportation across all of Tianjin Youfa’s domestic sales is RMB [REDACTED]/MT.

*Rebates/Discounts*

285. Tianjin Youfa provided [REDACTED]

286. Information on [REDACTED] is held in the main sales spreadsheet. MBIE has made an adjustment to the normal value based on the total amount of [REDACTED] provided and spread this across all sales on a per MT basis.

**Normal Values**

287. The adjustments outlined above were deducted from the base prices to arrive at ex-factory normal values that provide a fair basis for comparison with export prices. Normal values are shown in the table below.

**Table 4.7: Normal value – Tianjin Youfa  
RMB/MT**

Circular/CHS	NOPC	Painted	Galvanised
Normal Values	[REDACTED]	[REDACTED]	[REDACTED]
RHS/SHS	NOPC	Painted	Galvanised
Normal Values	[REDACTED]	[REDACTED]	[REDACTED]
Oval	NOPC	Painted	Galvanised
Normal Values	[REDACTED]	[REDACTED]	[REDACTED]

**4.4.2 Normal Value – Malaysia**

288. During the POI, Alpine Pipe sold like goods on the Malaysian domestic market to the HSS subject goods exported to New Zealand. The company advised that all sales on the

domestic market are sold on a theoretical weight basis (as are exports to New Zealand). The base prices for Alpine Pipe’s domestic sales of HSS are the VAT exclusive net invoiced [REDACTED] prices in MYR.

- 289. Alpine Pipe sold HSS for home consumption in Malaysia to distributors and end users on a [REDACTED] basis. For the purposes of comparing normal values with export prices, MBIE chose the most equivalent domestic HSS to that exported to New Zealand. These were domestic sales of NOPC RHS and SHS conforming to the standards BSEN 10219 S275 JOH and BSEN 10219 S355 JOH. As with the export price, MBIE calculated a sole weighted average normal value for Alpine’s domestic sales of these goods.
- 290. Alpine Pipe provided a breakdown of its costs to make and sell HSS for the domestic market over the POI. A comparison of the weighted average net selling price for HSS against the CTMS showed that Alpine Pipe was making sales at a loss. MBIE calculated the volume of sales made at a loss on the domestic market to be in the vicinity of [REDACTED] per cent. MBIE therefore excluded sales made at a loss when calculating normal value. The quantity of remaining domestic sales made at a profit and in the ordinary course of trade far exceeded the quantity of goods exported to New Zealand so there are sufficient volumes of domestic sales to make a comparison with export prices. A weighted average normal value was calculated from these remaining sales.

**Adjustments**

*Discounts*

- 291. Discounts are provided off a list price and are provided depending on the customer’s order size and market conditions. The invoice records both the list and discounted price. As the base price is net of discounts, there is no need to make an adjustment for discounts.

*Inland transport*

- 292. As Alpine Pipe’s terms of trade are [REDACTED], MBIE made an adjustment for inland transportation costs based on information provided by the company in its questionnaire response and verified at the company’s premises. The amount verified was [REDACTED]/MT.

*Cost of Credit*

- 293. Alpine Pipe’s payment terms to domestic customers are subject to a customer’s creditworthiness and range [REDACTED]. MBIE calculated cost of credit based on the number of days between invoice date and payment date using the interest rate of [REDACTED]% provided by Alpine Pipe as an appropriate short term commercial interest rate over the POI.
- 294. After making the above adjustments, MBIE calculated a weighted average normal value for HSS as follows:

**Table 4.8: Normal Value – Alpine Pipe  
MYR/MT**

	HSS
Normal Value	[REDACTED]

## 4.5 Determination of Dumping

295. MBIE has established dumping margins for the POI by comparing the export prices established in section 4.3 and the normal values established in section 4.4. Comparisons of export prices and normal values and the calculation of dumping margins have been done on a product category (CHS, RHS, oval), weighted-average to weighted-average basis for each exporter investigated based on the methodology set out in Article 2.4.2 of the AD Agreement. This means that while some transactions in some categories of HSS may have been dumped for certain exporters, in each case an overall weighted average dumping margin was calculated across all product categories. Article 2.4.2 allows dumping margins to be established on the basis of the comparison of weighted-average normal values with a weighted-average of prices of all comparable export transactions. Weighted average-to-weighted average transactions must include all transactions and may not include zeroing (where non-dumped transactions are allocated a value of zero).

### 4.5.1 China – Margins of Dumping

296. MBIE has established dumping margins for the POI by comparing the export prices established in section 4.3 and the normal values established in section 4.4. For purposes of this Report, comparisons of export prices and normal values and the calculation of dumping margins have been done for categories of HSS on a weighted-average to weighted-average basis for each producer. The outcome for the subject goods, on a weighted average basis for each producer, is set out in Table 4.9.

297. Article 9.4 of the AD Agreement sets out the basis for identifying anti-dumping duties for exporters or producers not included in the examination. The duty level so established is not to exceed the weighted average margin of dumping established with respect to the sample, provided that any zero or *de minimis* margins and margins established on the basis of facts available due to non-cooperation, shall be disregarded. On this basis, the establishment of the All Others rate included in Table 4.9 excludes Dalian Steelforce and Tianjin Youfa (zero rates), Jinan Mech (*de minimis*) and Hengshui Jinghua (facts available) from the calculation.

**Table 4.9: Dumping Margins – China**

Producer	Weighted average normal value (RMB/MT)	Weighted average export price (RMB/MT)	Dumping margin (%)
Dalian Steelforce			No dumping
Hengshui Jinghua			19%
Jinan Mech			<i>de minimis</i>
Tianjin Youfa			No dumping
All others			Nil

### 4.5.2 Malaysia – Margins of Dumping

298. MBIE has used the same methodology to establish dumping margins for Malaysia as it used for China.

Table 4.10: Dumping Margins – Malaysia

Producer	Weighted average normal value (MYR/MT)	Weighted average export price (MYR/MT)	Dumping margin (%)
Alpine Pipe			9%

## 4.6 Conclusions Relating to Dumping

299. Based on the analysis summarised above:

- imports of the subject goods from one of the sample manufacturers in China are being dumped, at a dumping margin of 19 per cent of the export price, with the volume dumped accounting for 100 per cent of imports from China.
- imports of the subject goods from Malaysia are being dumped at a dumping margin of 9 per cent of the export price with the dumped volume accounting for 100 per cent of imports from Malaysia.

300. Article 5.8 of the AD Agreement requires that a determination of an individual *de minimis* dumping margin in respect to a supplier requires the immediate termination of an investigation.<sup>20</sup> This requirement applies to Dalian Steelforce, Jinan Mech and Tianjin Youfa, and also means that exports from those suppliers are not included in the analysis of injury attributable to imports of dumped goods. The immediate termination is at the time of the final determination.

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<sup>20</sup> Panel Report, *Canada — Welded Pipe*, WT/DS482/R, paragraph 7.37.

## 5. Injury Investigation

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### 5.1 Material Injury

301. MBIE's assessment of injury is based on the level of dumping established on the basis set out in section 4, and the level of imports affected by that dumping.
302. The basis for considering material injury is set out in section 8(1) of the Act:
- 8. Material injury to industry—(1) In determining for the purposes of this Act whether or not any material injury to an industry has been or is being caused or is threatened or whether or not the establishment of an industry has been or is being materially retarded by means of the dumping or subsidisation of goods imported or intended to be imported into New Zealand from another country, the chief executive shall examine—*
- (a) The volume of imports of the dumped or subsidised goods; and*
- (b) The effect of the dumped or subsidised goods on prices in New Zealand for like goods; and*
- (c) The consequent impact of the dumped or subsidised goods on the relevant New Zealand industry.*
303. MBIE interprets this to mean that injury is to be considered in the context of the impact on the industry arising from the volume of the allegedly dumped goods, their effect on prices, and the consequent impact on the industry. This is consistent with Article 3 of the AD Agreement.
304. The Act goes on to set out a number of factors and indices which the chief executive shall have regard to, although noting that this is without limitation as to the matters the chief executive may consider. These factors and indices include:
- the extent to which there has been or is likely to be a significant increase in the volume of dumped goods, either in absolute terms or relative to production or consumption
  - the extent to which the prices of dumped goods represent significant price undercutting in relation to prices in New Zealand
  - the extent to which the effect of the dumped goods is or is likely significantly to depress prices for like goods of New Zealand producers or significantly to prevent price increases for those goods that otherwise would have occurred
  - the economic impact of the dumped goods on the industry, including actual or potential decline in output, sales, market share, profits, productivity, return on investments, or utilisation of production capacity; factors affecting domestic prices; the magnitude of the margin of dumping; and actual and potential effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments.
305. In addition, the chief executive must have regard to factors other than dumping which may be injuring the industry since, in accordance with Article 3.5 of the AD Agreement, it must be demonstrated that the dumped imports are, through the effects of dumping, causing material injury.

306. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry must be based on an examination of all relevant evidence before the authorities, who must examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, *inter alia*, the volumes and prices of non-dumped imports of the product in question, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.
307. The chief executive is also required to have regard to the nature and extent of importations of dumped goods by New Zealand producers of like goods, including the value, quantity, frequency, and purpose of any such importation.

### **Basis for Injury Analysis**

308. Throughout its application, NZ Steel emphasised that because of the approach it has taken to maintaining sales by meeting price competition, the injurious effects of allegedly 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, NZ Steel focussed on the evolution of unit prices and per unit levels of revenue and profits as key indicators of injury.
309. NZ Steel argued that the counterfactual approach is best suited to the circumstances of the case, and provided 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 matters downstream
  - 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
  - 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 HSS 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 NZ Steel the counterfactual analysis is the most suitable in the circumstances of the New Zealand HSS industry, and has been used previously by MBIE.



## MBIE Practice

310. MBIE interprets section 8(1) of the Act to mean that injury is to be considered in the context of the impact on the industry arising from the volume of the allegedly dumped goods, their effect on prices, and the consequent impact on the industry. This is consistent with Article 3 of the AD Agreement. A finding of injury does not require that both volume and price effects should have a consequent impact on the industry, but that impact must be attributable to at least one of volume or price effects, which also means that for injury to be determined any volume and/or price effects must result in adverse consequences for the industry.
311. The Act goes on to set out a number of factors and indices which the chief executive shall have regard to, although noting that this is without limitation as to the matters the chief executive may consider. These factors and indices include:
- the extent to which there has been or is likely to be a significant increase in the volume of dumped goods, either in absolute terms or relative to production or consumption
  - the extent to which the prices of dumped goods represent significant price undercutting in relation to prices in New Zealand
  - the extent to which the effect of the dumped goods is or is likely significantly to depress prices for like goods of New Zealand producers or significantly to prevent price increases for those goods that otherwise would have occurred
  - the economic impact of the dumped goods on the industry, including actual or potential decline in output, sales, market share, profits, productivity, return on investments, and utilisation of production capacity; factors affecting domestic prices; the magnitude of the margin of dumping; and actual and potential effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments.
312. What this means for any analysis of claims of injury is that price undercutting on its own is not sufficient evidence of injury, since the material injury is manifested in the consequent impact on the industry of any volume and price effects of dumped goods. Also, MBIE is required to examine and report on all of the factors and indices set out in the Act and the extent to which they are attributable to the dumping of imports.

## Basis for Analysis

313. In applying the requirements of section 8 of the Act when determining whether there is evidence that the New Zealand industry has suffered material injury, MBIE normally compares data for an injury factor against the data in a period unaffected by dumping (a coincidence analysis). This approach takes account of the clear wording of the Act in section 8(2)(d)(i) which refers to “actual and potential decline”, and section 8(2)(d)(iv) which refers to “actual and potential negative effect”, in a series of factors, but also considers the trend experienced over the period for the factors concerned, and is not simply a binary comparison of the beginning and end points of the period investigated. In considering the extent of the effect of dumped imports in contributing to an “actual or potential decline” or “actual and potential negative effect” the analysis can also be

undertaken on the basis of the position that the industry would have been in but for the dumping, requiring inferences to be drawn as to the counterfactual situation.

314. 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 allegedly dumped 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 allegedly 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*,<sup>21</sup> agreed that the AD Agreement did not prescribe a methodology that must be followed by an investigating authority in conducting an injury analysis and noted, “Thus, when, in an investigating authority's methodology, a determination rests upon assumptions, these assumptions 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.”
315. 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 undertaking this assessment MBIE needs to consider the influence of factors other than the dumped goods in preventing price expectations from being achieved, as well as the level of dumping established. The assumptions derived as reasonable inferences from a credible basis of facts need to be identified and explained.

## 5.2 Import Volume Effects

316. Using information from Chinese and Malaysian sample manufacturers and Customs data, as described in section 2.1 of this report, MBIE identified imports from China and Malaysia, in absolute terms and in relation to production and consumption in New Zealand, as shown in Table 5.1 below.

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<sup>21</sup> *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.*

**Table 5.1: HSS imports by origin  
(Calendar years, tonnes)**

	2012	2013	2014	2015	2016	2017
China	7130	8637	8791	10727	10451	19265
Malaysia	253	364	358	287	404	529
Other countries	9799	11070	9614	2909	3101	4139
Total Imports	17182	20071	18763	13922	13956	23933
NZ Steel sales	Index prev. yr	982	989	820	1008	947
NZ market	Index prev. yr	1056	965	787	1006	1254
Change on previous year - tonnes:						
China		121%	102%	122%	97%	184%
Malaysia		144%	98%	80%	141%	131%
Other countries		113%	87%	30%	107%	133%
Total Imports		117%	93%	74%	100%	171%
NZ Steel sales		98%	99%	82%	101%	95%
NZ market		106%	96%	79%	101%	125%
China imports as percentage of						
Total imports	41%	43%	47%	77%	75%	80%
NZ Steel sales						
NZ market						
Malaysia imports as percentage of						
Total imports	1%	2%	2%	2%	3%	2%
NZ Steel sales						
NZ market						
China and Malaysia imports as percentage of:						
Total imports	43%	45%	49%	79%	78%	83%
NZ Steel sales						
NZ market						

317. The information in this table, in particular for imports from China in 2015 and 2016, may have been affected by misclassification of imports, and the analysis below should be read in that context.
318. The table shows that in absolute terms the volume of imports from China has generally increased over the full period, with a sharp increase in 2017, while the volume of imports from Malaysia has generally increased over the full period and more so in 2016 and 2017. Other imports have decreased over the period.
319. Relative to New Zealand production, imports from China have increased sharply in 2015-2017, reflecting a decrease in New Zealand production as well an increase in imports from China. Imports from Malaysia showed a similar pattern at a much lower level of imports.
320. As a percentage of domestic consumption (the New Zealand market), imports from both China and Malaysia have followed a similar pattern, with a sharp increase in 2017 for China.
321. Since the volume of imports from Malaysia is negligible, Article 3.3 of the AD Agreement provides that the effect of such imports may not be cumulatively assessed with imports from China. Given this situation, it cannot be concluded that imports of dumped subject

goods from Malaysia are contributing in any significant way to volume effects which may be leading to injury to NZ Steel.

322. The dumping analysis indicates that dumped imports from China made up █ per cent of total imports from China. This is not a significant level of imports compared with non-dumped imports, and it means that there may be other causes of volume effects that need to be taken into account.

## 5.3 Price Effects

323. In its application, NZ Steel explained that its pricing strategy is based on maintaining market share by responding to prevailing HSS price offers and import product flow. NZ Steel pricing to the merchant distributor and end user market is based on import parity pricing and is reviewed █ to ensure competitiveness. A premium is applied over import pricing to reflect the benefits of local supply and NZ Steel's market offer, including short lead times, order flexibility, small order item quantities, product quality, technical service and customer service, and New Zealand currency pricing.

### 5.3.1 Price Undercutting

324. 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 extent 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 set out in section 8(2)(d) of the Act, outlined in section 5.4 of this Report.
325. In its application NZ Steel noted that the level of trade at which imported HSS first competes with domestically-produced HSS has been considered by MBIE as the relevant level of trade for the purpose of assessing price undercutting. The relevant price levels are ex-wharf for imports and NZ Steel's ex-factory price (i.e. its free-into-store (FIS) price less freight).
326. In its application NZ Steel developed price undercutting tables based on the information available to it, and noted that the figures for the 2017 quarters reflected abnormally lower ex-works values for NZ Steel because it needed to absorb higher freight costs to South Island buyers resulting from the Kaikōura earthquake in November 2016. Also, NZ Steel considered that the CIF prices for China for the same two quarters were unusually high and were believed to be incorrect. NZ Steel considered that these two factors contributed to lower price undercutting margins in 2017.
327. MBIE prepared the following table on the basis of data provided by NZ Steel, and information from questionnaire responses and verification visits to HSS manufacturers in China and Malaysia. Ex-wharf prices have been calculated on the basis of invoice prices to importers, with the addition of landing costs for CIF/CFR prices and the deduction of delivery costs for DAP as appropriate. Where information was not available, the best information available was used, which included information from other parties which had provided questionnaire responses. The volumes indicated are based on information

provided by sample manufacturers, intermediary traders and importers. Note that the amended export price adjustments do not affect the price undercutting analysis.

**Table 5.2: Price Undercutting  
Company data, average values  
(NZD/MT, %)**

Category		Galvanised circular	Painted circular	Black circular	Galvanised RHS/SHS	Painted RHS/SHS	Black RHS/SHS	Galvanised oval	Painted oval	Black oval
<b>China</b>										
NZ Steel	Volume - MT									
	Price - NZD/MT									
Dalian Steelforce	Volume - MT									
	Price - NZD/MT									
	Undercutting NZD									
	Undercutting %									
Hengshui Jinghua	Volume - MT									
	Price - NZD/MT									
	Undercutting NZD									
	Undercutting %									
Jinan Mech	Volume - MT									
	Price - NZD/MT									
	Undercutting NZD									
	Undercutting %									
Tianjin Youfa	Volume - MT									
	Price - NZD/MT									
	Undercutting NZD									
	Undercutting %									
<b>Malaysia</b>										
Alpine	Volume - MT									
	Price - NZD/MT									
	Undercutting NZD									
	Undercutting %									

The information on which this table was based, including price and sales information, was provided on a confidential basis by parties to this investigation.

The figures shown in this table are not susceptible of a numerical summary through the use of indexes or other tools, since even that level of summary would be of a significant competitive advantage to a competitor and its disclosure would have a significantly adverse effect on the supplier of the information.

A textual summary is provided below.

- 328. This table shows evidence that there was price undercutting of NZ Steel’s average selling prices for some categories of HSS imported from China, but not from Malaysia. For NZ Steel’s main product areas, there was price undercutting by all sample manufacturers from China for [REDACTED], but none for [REDACTED], and by one sample manufacturer for [REDACTED]. However, the level of price undercutting by dumped goods in the POI was significant only in the case of [REDACTED] products. For this category, the level of price undercutting exceeded the level of dumping where dumping was occurring, suggesting that dumping may have been only one contributor to price undercutting over the full range of the subject goods. It is also relevant that non-dumped imports were undercutting NZ Steel’s prices in some categories, especially [REDACTED], which suggests that price undercutting may be attributable to causes other than dumping.
- 329. Over all categories, and on the basis of the weighted averages for subject goods from China and from NZ Steel sales, there was no price undercutting. An analysis of the impact of Hengshui Jinghua pricing indicates that the price undercutting level attributable to that company is [REDACTED] percent above the level for all imports from sample manufacturers.
- 330. The price levels for NZ Steel do not take account of the level of any premium available to NZ Steel as a benefit of local supply. NZ Steel did not provide any information on the level of the premium, and MBIE understands from a previous investigation (*Steel Reinforcing Bar*) that the level will vary according to circumstances for any individual transaction. Although information from other sources suggested that the premium might be in the range of [REDACTED] per cent, MBIE does not consider that there is sufficient firm evidence of the level of premium to apply it to price undercutting comparisons.

331. MBIE concludes that on the basis of information available there is some price undercutting by imports from one Chinese manufacturer (but not the Malaysian manufacturer). However, the margin of dumping for the dumped goods is less than the margin of price undercutting, and non-dumped imports are also undercutting prices in the relevant product category. The evidence indicates that the dumping has not contributed materially to price undercutting across the totality of the subject goods.

### 5.3.2 Price Depression

332. Price depression occurs where prices achieved by the New Zealand manufacturers are lower than those achieved in a period unaffected by allegedly dumped or subsidised goods. Price depression is not in itself a determinant of the existence or extent of injury. There must be a consequent impact on the industry, measured primarily in terms of the factors set out in section 8(2)(d) of the Act.
333. The following table shows NZ Steel's average domestic selling prices for HSS from 2011 to 2017, with index values based on 2011.

**Table 5.3: Price Depression  
(NZD per tonne)**

	Revenue NZD/MT	Index 2011=1000
2011		1000
2012		948
2013		913
2014		889
2015		809
2016		731
2017		790

*Confidential summary: Index summarises commercial-in-confidence information.*

334. Table 5.3 shows that NZ Steel's average selling price decreased over the whole period with a slight recovery in 2017. By 2017, NZ Steel's average selling price had dropped to 79 per cent of its 2011 average selling price.
335. MBIE concludes that on the basis of information available NZ Steel has experienced price depression, in that average prices have decreased significantly over the period. However, in light of the price comparisons shown in Table 5.2, it is difficult to conclude that this outcome can be materially attributed to the dumping from one Chinese exporter in one product category.

### 5.3.3 Price Suppression

336. 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 consequent impact on the industry, measured in terms of the factors set out in section 8(2)(d) of the Act.

337. MBIE has compared NZ Steel's total costs as a percentage of sales revenue from 2011 to 2017. The following table shows the resulting calculations.

**Table 5.4: Price Suppression  
(NZD per tonne)**

	Revenue NZD/MT	Cost of Production NZD/MT	% of Revenue <i>Indexed</i>
2011			1000
2012			1044
2013			1072
2014			1154
2015			1292
2016			1382
2017			1277

*Confidential summary: Indexed (2011=1000) summarises table.*

338. Table 5.4 shows that NZ Steel's total costs per unit fluctuated over the period but have not increased significantly. However, average sales revenue per MT has decreased significantly, and costs as a percentage of sales revenue per unit consequently increased over the period to 2016, and especially between 2014 and 2016, but declined in 2017.
339. MBIE concludes that on the basis of information available NZ Steel has experienced price suppression to the extent that 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. However, in light of the price comparisons shown in Table 5.2, it is difficult to conclude that this outcome can be materially attributed to the dumping from one Chinese exporter in one product category.

#### **5.3.4 Conclusion on Price Effects**

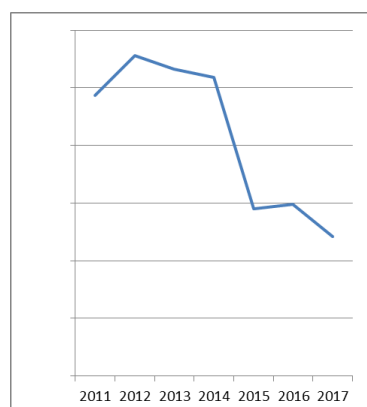
340. Average prices of HSS imports from China show undercutting of NZ Steel's average selling prices for some categories of HSS by some sample manufacturers in 2017, and that NZ Steel experienced price depression and price suppression over the same period.
341. MBIE concludes that on the basis of information available the dumping by one sample manufacturer in one category of HSS imported from China has not contributed materially to the price effects experienced by NZ Steel.
342. As noted earlier, the price effects examined above are not in themselves a determinant 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.

## 5.4 Consequent Impact

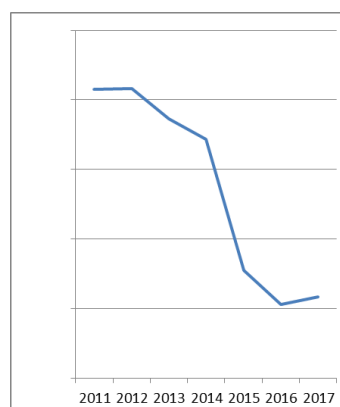
### 5.4.1 Output and Sales

343. Movements in sales revenue can reflect changes in output/sales 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.
344. NZ Steel provided sales volume and sales revenue information covering 2011 to 2017. NZ Steel has submitted 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.
345. The following charts illustrate the sales volume and sales revenue information provided by NZ Steel.

**Chart 5.1: NZ Steel Output  
MT**



**Chart 5.2: NZ Steel Sales  
NZD000**



*Confidential summary: Y axis values deleted; minimum value not 0.*

346. The information clearly shows that NZ Steel's annual output and sales declined over the whole period, following a slight increase in volumes between 2011 and 2012, but with static sales revenue over this period. Both volume and value of sales declined sharply from 2013 before revenue recorded some recovery in 2017.
347. MBIE concludes that on the basis of information available NZ Steel experienced declines in output and sales over the period of investigation. Imports from China increased in 2017 compared with previous years, although most of the imports in 2017 were related to sample manufacturers that were not dumping. The level of imports from the single manufacturer found to be dumping is not significant over the totality of imports of the subject goods. It cannot be concluded that dumping has contributed materially to the declines in output and sales experienced by NZ Steel.

### 5.4.2 Market Share

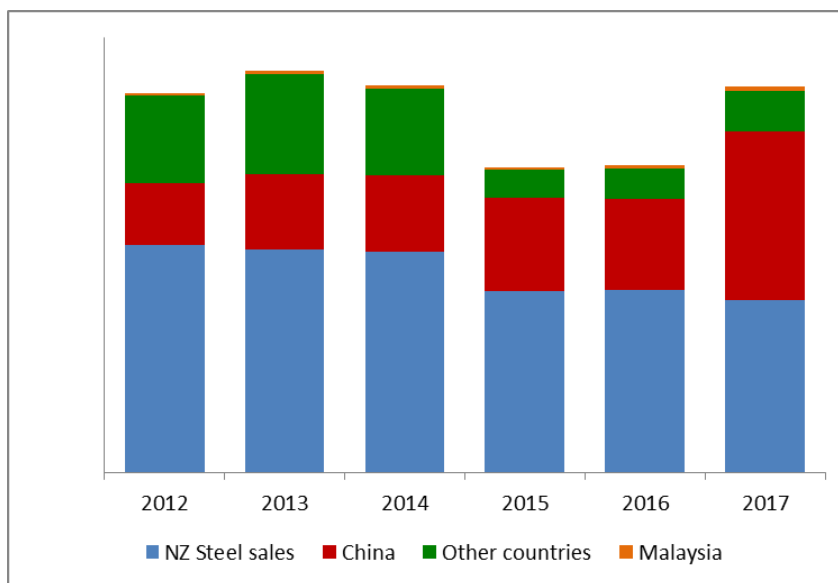
348. Analysis of market share must consider changes in the size of the total market. A decline in the domestic industry's market share when the total market is expanding will not necessarily indicate that material injury is being caused, particularly if the domestic



industry's sales are also growing, because the New Zealand industry is not entitled to a particular market share.

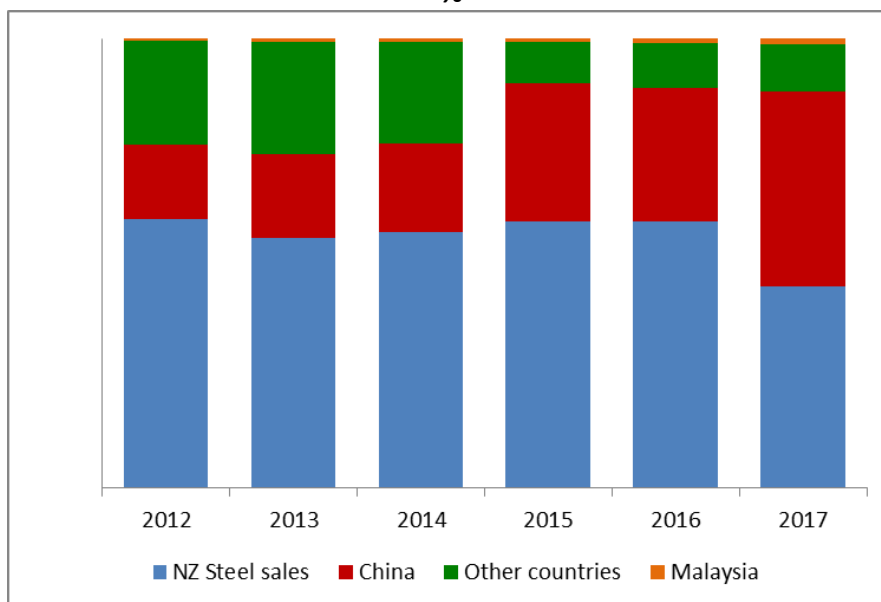
349. The following charts illustrate market share information for HSS from 2011 to 2017 using Customs data, NZ Steel sale, and information from sample manufacturers.

**Chart 5.3 Market Share (MT)**



Confidential summary: Y axis values removed.

**Chart 5.4: Market Share (%)**



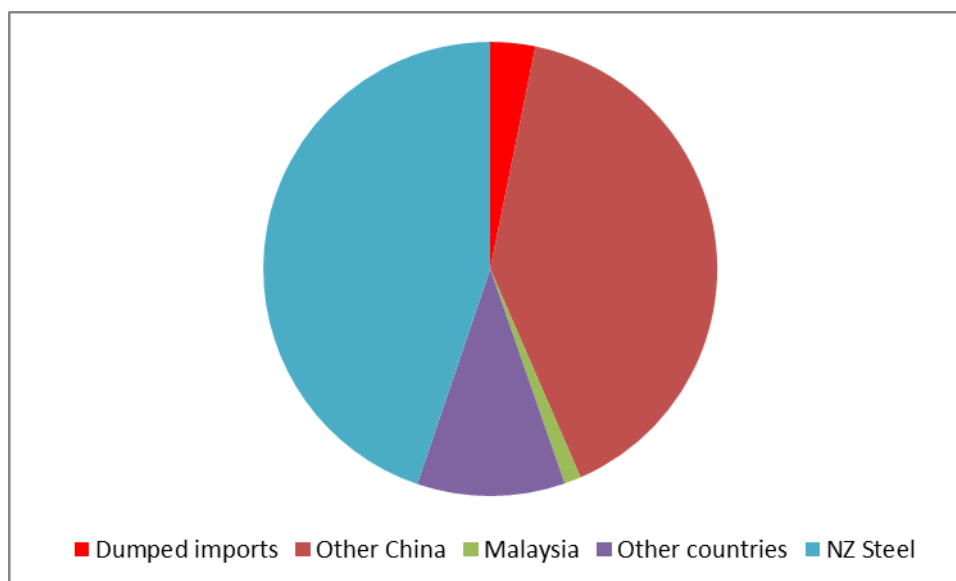
Confidential summary: Y axis values removed.

350. Information on sales by other New Zealand producers across the whole period reviewed is not included in the above tables.
351. The charts show that NZ Steel’s market share operated within a range of [redacted] per cent over 2012-2016, but appears to have declined to [redacted] per cent in 2017. For the reasons

noted in section 2.1, some caution needs to be exercised regarding actual import levels, if there was significant misclassification of import entries. NZ Steel sales did decline in the period 2015-17. The decrease in market share in 2013 reflected an increase in imports from countries other than China. The Chinese market share increased significantly in relative terms over the period, and particularly in 2015-2017.

352. The 2017 market shares are set out in Chart 5.5, which shows that over the totality of the subject goods, the volume of dumped imports was relatively less significant than imports from other Chinese suppliers.

**Chart 5.5: 2017 Market Shares**



353. MBIE concludes that on the basis of information available there has been a decline in NZ Steel's market share. Imports from one Chinese sample manufacturer may have been found to have been dumped, but it cannot be concluded that dumping has contributed materially to the loss of market share.

### 5.4.3 Profits

354. Dumped or subsidised imports can affect gross profit and net profit via the impact on sales prices and volumes.
355. NZ Steel claimed that it has suffered material injury against profit as a result of the presence in the New Zealand market of unfairly traded imports, induced in particular by price suppression. NZ Steel argued that its unrealised higher selling price is necessarily reflected in the economic consequence of foregone EBIT. NZ Steel also noted that material injury arises from significantly lower per unit profitability in 2016 and 2017 compared with previous years.
356. NZ Steel illustrated the extent of the injury by applying the differential in EBIT between 2011 and later years to the volume of 2017 sales. NZ Steel used a similar approach to identify significantly adverse effects on gross profits.
357. MBIE has constructed the following table from NZ Steel's EBIT figures from 2011 to 2017.

**Table 5.5: Profit and Profitability  
(NZD000, %)**

	2011	2012	2013	2014	2015	2016	2017
Sales revenue		slight increase	decrease	slight decrease	large decrease	decrease	slight increase
EBIT		large decrease	large decrease	large decrease	large decrease	large decrease	large increase
EBIT/MT		large decrease	large decrease	large decrease	large decrease	large decrease	large increase
EBIT as % of revenue		decrease	decrease	decrease	decrease	decrease	increase

*Confidential summary: Summarised results compared to previous year.*

358. All measures of profit and profitability declined significantly over the period.
359. MBIE concludes that on the basis of information available NZ Steel has experienced a significant decline in profit, as measured by EBIT, and in profitability. However, in light of the findings regarding the limited volumes of dumped imports of HSS from China and the limited price effects that can be attributed to them, it is concluded that dumping has not contributed materially to reduced profit and profitability.

#### 5.4.4 Productivity

360. 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.
361. NZ Steel noted that it does not consider material injury to be related to productivity, and any injury to productivity will be less than the effects of unfairly traded goods on HSS selling price and profitability.
362. MBIE concludes that on the basis of information available there is no adverse economic impact relating to productivity that can be attributed to dumped imports from China.

#### 5.4.5 Return on investment (ROI)

363. An analysis of 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.
364. NZ Steel claims that it has suffered an economic impact in the form of a diminished return on investments, as evidenced by the level of EBIT expressed as a return on assets. The following table is based on information from NZ Steel for financial years FY2011 to FY2017 (and therefore differs from the calendar year information in Table 5.5).

**Table 5.6: Return on Investment  
(NZD000, %)**

	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017
EBIT		large decrease	large decrease	decrease	large decrease	decrease	large decrease
Fixed assets		decrease	increase	decrease	large decrease	decrease	slight increase
EBIT % Fixed assets		decrease	large decrease	decrease	large decrease	large decrease	decrease

*Confidential summary: Summarised results compared to previous year.*

365. NZ Steel has suggested that an alternative assessment could incorporate the undercutting suppressive effect, which would indicate a potential for a 23 per cent improvement in ROI compared with the actual outcome.
366. MBIE concludes that on the basis of the information NZ Steel has experienced a significant decline in return on investments. However, the extent to which this decline can be attributed to dumped imports of HSS from depends on the causal link between such imports and the effect on prices and profits.

#### **5.4.6 Utilisation of production capacity**

367. 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.
368. NZ Steel has stated that it does not consider production capacity and any injury to production capacity to be a material injury factor in the particular circumstances of this case. During the verification visit NZ Steel advised that it was steadily increasing the efficiency of its Pipe Mill, but it was difficult to provide a meaningful production capacity figure, since the facility produced a range of pipe and RHS sizes, and weight would depend on the range of sizes and wall thicknesses produced. Also, the company produced to order and throughput was largely based on consumer demand.
369. MBIE concludes that on the basis of information available there is no adverse economic impact relating to the utilisation of production capacity by NZ Steel as a result of dumped imports of HSS from China.

#### **5.4.7 Factors affecting domestic prices**

370. The Act lists this matter as one of the various factors and indices to which the chief executive must have regard when assessing the economic impact of dumped goods on the industry. MBIE examines this factor in the context of the economic impact of dumped goods on the industry.
371. NZ Steel considered that the primary factor affecting domestic prices is the price of the unfairly traded imports.
372. MBIE's consideration of the price effects of imports is summarised above in section 5.3. The requirements in relation to this factor go more broadly to encompass NZ Steel's pricing policy, and the New Zealand and global market situations.
373. NZ Steel has outlined its import parity pricing policy as being based on [REDACTED] reviews of market offer feedback from New Zealand distributors of imported products, and pricing from international steel review publications and from BlueScope overseas offices. Prices are converted to NZD free into store (FIS) levels by adding freight charges, port service charges and handling costs, import duty where applicable, and domestic cartage to distributor's store to determine a nominal FIS price. A premium is then added to reflect the benefits of local supply, and the outcome is a NZ Steel distributor price, less any rebates, to

be compared with the nominal FIS import price, and a market price adjustment is made if necessary to reflect any change in import pricing, or any movement in exchange rates.

374. Other matters affecting domestic prices include the impact of events in New Zealand, such as the Kaikōura earthquake, which is identified in the application as having affected NZ Steel's sales in the South Island.
375. MBIE notes that in light of NZ Steel's import parity pricing policy, prices of imports clearly affect domestic prices, and such effects and the impact of domestic and global factors influencing prices have been addressed in the investigation. MBIE concludes that on the basis of the information available, prices in New Zealand are likely to have been affected by prices of imports, but in light of the findings regarding the limited volumes of dumped imports of HSS from China and the limited price effects that can be attributed to them, it cannot be concluded that dumping has had a material effect on domestic prices in New Zealand.

#### **5.4.8 Magnitude of the margin of dumping**

376. Section 8(2)(d)(iii) of the Act refers to the magnitude of the margin of dumping as a factor the chief executive is to have regard to. The magnitude of the margin of dumping can be an indicator of the extent to which injury can be attributed to dumping.
377. MBIE has established that the margins of dumping for HSS imported from China is 19 per cent for one of the sample manufacturers, and for Malaysia is 9 per cent. These margins of dumping of HSS are not insignificant, but are less than the margins of undercutting by the Chinese manufacturer concerned (but there was no price undercutting by the Malaysian manufacturer).
378. MBIE concludes that on the basis of the information available the magnitude of the margin of dumping of some HSS imported from China is not contributing materially to the price effects attributable to dumped imports being experienced by NZ Steel.

#### **5.4.9 Other Adverse Effects**

##### ***Cash Flow***

379. MBIE is required to have regard to the economic impact of dumped goods on the industry through actual and potential effects on cash flow. Cash flow is the total amount of money being transferred into and out of a business, especially as it affects liquidity, and provides an indication of the ability of producers to self-finance their activities.
380. NZ Steel claimed that it has suffered a material-level economic impact from unfairly traded imports as diminished cash flow as a result of the presence in the New Zealand market of unfairly traded goods. NZ Steel attributes the effects on cash flow to induced price suppression as a result of unrealised higher prices.
381. The following table is based on information provided by NZ Steel covering financial years FY2011 to FY2017. Cash flow is based on EBIT plus depreciation.

**Table 5.7: Cash flow**  
**NZD000**

	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017
Cash flow		large decrease	large decrease	decrease	large decrease	decrease	large decrease
Change on previous year			large decrease	large increase	large decrease	large increase	large decrease

*Confidential summary: Summarised results compared to previous year.*

382. The information provided by NZ Steel indicates that cash flow has been declining for most of the period, and has been negative since FY2015.
383. MBIE concludes that on the basis of the information available NZ Steel has experienced a significant negative effect on cash flow, but the extent to which these effects can be attributed to the dumping of HSS from China depends on the causal link between the price effects of those imports and the revenue and profit achieved by NZ Steel.

### ***Inventories***

384. MBIE is required to have regard to the economic impact of dumped goods on the industry through actual and potential effects on inventories.
385. NZ Steel has noted that the product is made to order so inventories are not considered to be a useful material injury factor in the particular circumstance of this case.
386. MBIE concludes that on the basis of the information available there is no adverse economic impact relating to inventories that can be attributed to the dumping of imports from China.

### ***Employment and Wages***

387. MBIE is required to have regard to the economic impact of dumped goods on the industry through actual and potential effects on employment and wages.
388. NZ Steel does not consider that employment and wages have a material economic impact.
389. MBIE concludes that on the basis of the information available there is no adverse economic impact relating to employment and wages that can be attributed to the dumping of imports from China.

### ***Growth and Ability to Raise Capital and Investments***

390. NZ Steel has observed that the availability of unfairly traded HSS on the New Zealand market adversely affects growth prospects for its business and for any requests that NZ Steel might make to its owners for more capital. NZ Steel has suggested that the unremedied degree of economic damage from unfairly traded imports is inevitably considered by NZ Steel's parent company when growth and further investment in New Zealand are being considered. NZ Steel notes that its potential source of growth funding has a choice to direct capital to geographies where unfairly traded imports of HSS are being trade-remedied.
391. NZ Steel did not provide any specific evidence in support of these observations.
392. MBIE concludes that on the basis of the information available there is no adverse economic impact relating to growth and the ability to raise capital that can be attributed to the dumping of imports from China.

#### 5.4.10 Conclusion on Consequent Impact

393. MBIE has concluded that on the basis of information available:

- there has been a significant increase in the volume of imports of subject goods from China in absolute terms and in relation to production and consumption in New Zealand, but dumped imports were not at such levels as to constitute a significant increase in dumped imports, and the greater volume of non-dumped goods means that there may be other causes of volume effects that need to be taken into account
- NZ Steel has experienced adverse price effects through price undercutting, price depression and price suppression, but in light of the findings regarding the limited price effects that can be attributed to dumped imports from China, it is concluded that dumping has not contributed materially to reduced prices
- NZ Steel has experienced declines in output and sales over the period of investigation, but in light of the findings regarding the limited volume and price effects that can be attributed to dumped imports from China, it is concluded that dumping has not contributed materially to declines in output and sales NZ Steel has experienced a significant decline in market share in 2017 but in light of the findings regarding the limited volume and price effects that can be attributed to dumped imports from China, it is concluded that dumping has not contributed materially to declines in market share
- NZ Steel has experienced a significant decline in profit, as measured by EBIT, and in profitability, but in light of the findings regarding the limited volume and price effects that can be attributed to dumped imports from China, it is concluded that dumping has not contributed materially to declines in profits and profitability
- NZ Steel has experienced a significant decline in return on investment and cash flow, but in light of the findings regarding the limited volume and price effects that can be attributed to dumped imports from China, it is concluded that dumping has not contributed materially to declines in return on investment and cash flow
- there has been no adverse economic impact on NZ Steel relating to productivity, utilisation of production capacity, inventories, employment and wages, growth and the ability to raise capital and investment
- in light of NZ Steel's import parity pricing policy, prices of imports clearly affect domestic prices, but in light of the findings regarding the limited volume and price effects that can be attributed to dumped imports from China, it is concluded that dumping has not materially affected domestic prices.

394. Overall, MBIE concludes that on the basis of the information available, the dumping of some imports from China has not contributed to an adverse economic impact on the New Zealand industry.

395. MBIE also concludes that since the effects of negligible volumes of dumped Malaysian imports cannot be cumulated with the effects of dumped imports from China, and since dumped imports from Malaysia were not undercutting NZ Steel prices, it cannot be concluded that dumped imports from Malaysia have caused material injury to the New Zealand industry.

## 5.5 Conclusions Relating to Material Injury

396. Material injury is not defined in either the Act or the AD 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.
397. Because imports from Malaysia are negligible, and were not undercutting NZ Steel's prices, the contribution to injury of any dumping of imports from Malaysia has not been included in the conclusions reached regarding material injury.

### Import Volumes

398. MBIE concludes that there has been an increase in the volume of imports from China in absolute terms and in relation to production and consumption in New Zealand. However, dumped imports were not significant compared with non-dumped imports, which means that there may be other causes of volume effects that need to be taken into account.

### Price Effects

399. MBIE concludes that the dumping by one sample manufacturer of HSS imported from China has not contributed materially to the price effects experienced by NZ Steel.

### Consequent Economic Impact

400. MBIE concludes that there has not been a consequent impact on NZ Steel in relation to injury factors arising from the volume and price effects of dumped imports of HSS from China.

### Overall Injury Conclusions

401. MBIE concludes that there is no reasonable cause to believe that material injury to an industry has been or is being caused by means of the dumping of HSS imported from China and Malaysia.



## 6. Causal Link

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402. Sections 8(1) and 8(2) of the Act set out the matters to be examined and considered in determining whether or not material injury to an industry has been or is being caused by the dumping of goods.
403. Sections 8(2)(e) and (f) of the Act provide that the chief executive shall have regard to factors other than the dumped goods which have injured, or are injuring, the industry, including:
- the volume and prices of goods that are not sold at dumped prices
  - contraction in demand or changes in the patterns of consumption
  - restrictive trade practices of, and competition between, overseas and New Zealand producers
  - developments in technology
  - export performance and productivity of the New Zealand producers, and
  - the nature and extent of importations of dumped goods by New Zealand producers of like goods, including the value, quantity, frequency and purpose of any such importations.
404. Article 3.5 of the AD Agreement provides:

*It must be demonstrated that the dumped imports are, through the effects of dumping, causing injury within the meaning of this Agreement. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, inter alia, the volumes and prices of non-dumped imports of the product in question, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.*

### 6.1 Injury Attributable to Dumped Imports

405. MBIE's assessment of the injury factors in section 5 includes a discussion of the causal relationships of dumped imports on volume and price effects and the consequent impact on the domestic industry, on the basis of the dumping levels established.
406. MBIE has established that there is dumping of some imports of HSS from China and Malaysia, and has concluded that:
- The volume of dumped imports from Malaysia is negligible and those imports are therefore excluded from the examination of injury
  - the dumping of HSS imported from China has not contributed to material volume and price effects experienced by NZ Steel
  - any price effects attributable to the dumping of HSS from China are not contributing to the decline in market share, the significant decline in profit, as measured by EBIT,

and in profitability and the significant decline in return on investments and cash flow being experienced by NZ Steel

- in light of NZ Steel’s import parity pricing policy, prices of imports clearly affect domestic prices, but this cannot be attributed to dumping.

## 6.2 Other Causes of Injury

407. Sections 8(2)(e) and (f) of the Act set out matters that the chief executive is required to examine in considering whether factors other than dumping may be causing injury to the industry. In addition to those factors, the chief executive may consider other factors that are relevant to the examination of causality.

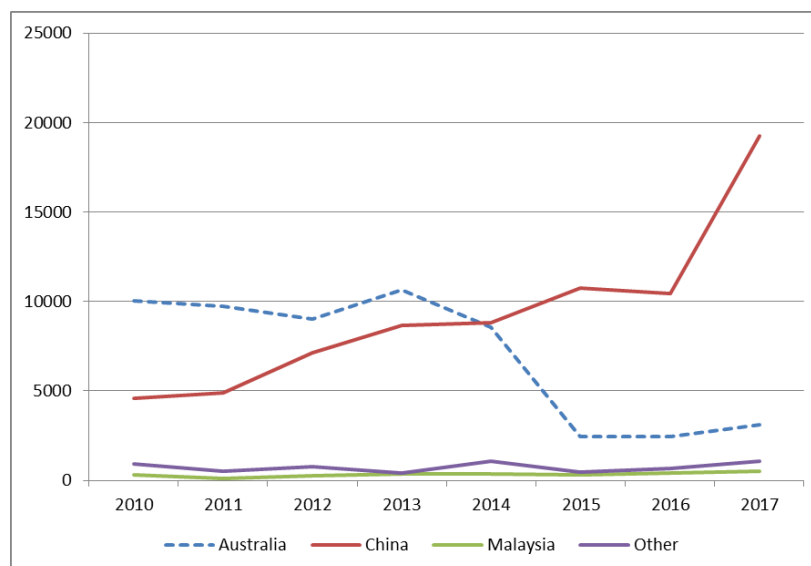
408. In light of the findings relating to volume effects, price effects, revenue and profits, the industry is experiencing adverse effects which may be attributable to factors other than dumping which are affecting the position of the domestic industry.

### 6.2.1 Non-Dumped Imports

409. Section 8(2)(e)(i) of the Act refers to the volume and prices of goods that are not dumped.

410. The following chart illustrates the trading pattern for HSS, and demonstrates that imports are dominated by Australia and China, with Malaysia and other suppliers providing only a very small share of the market. Imports from Australia declined significantly in 2015, while imports from China increased.

**Chart 6.1: Steel HSS imports: Source Customs (MT)**

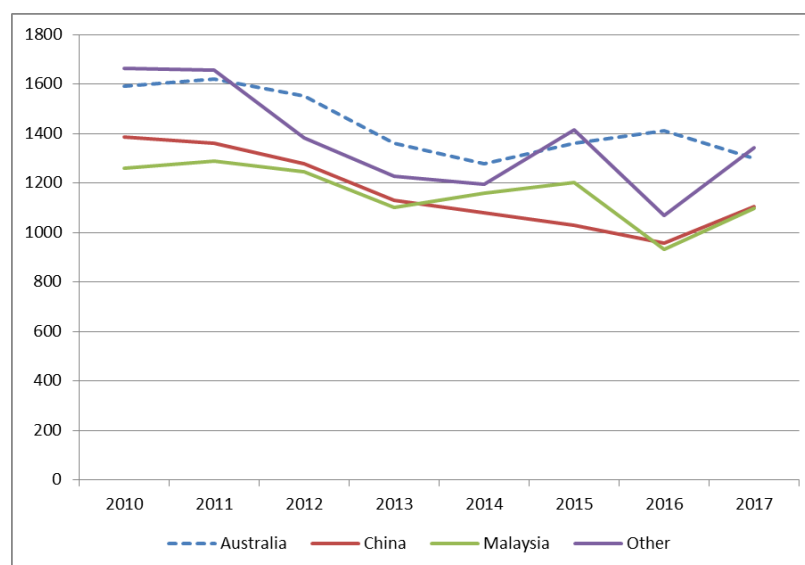


411. The bulk of the increase in imports from China was from manufacturers found not to be dumping, with dumped imports totalling only 10 per cent of 2017 imports from China. This means that 90 per cent of imports from China were not dumped. Non-dumped imports from China plus imports from other countries made up 50 per cent of the total New Zealand market in 2017. MBIE concludes that to the extent that imports of HSS from China that are not dumped have been entering New Zealand in quantities and at prices below

those of NZ Steel's products, then the adverse volume and price effects experienced by NZ Steel can in part be attributed to such imports, and cannot be attributed to dumping.

412. Average unit values from the main suppliers, based on Customs data for average VFD totals for each country, are illustrated below. This measure can be only indicative of trends because it does not take account of price variations because of different sizes of product, time of shipment, and other factors. However, the chart does illustrate an overall downward trend in prices in 2010-2016, but an increase in 2017, and the similarity of price trends from China, Malaysia and other suppliers.

**Chart 6.2: Steel HSS imports  
(NZD/MT, VFD)**



### ***Subsidised Imports***

413. MBIE is concurrently investigating allegations of subsidisation of HSS from China. That investigation remains to be completed.

## **6.2.2 Demand and Consumption**

414. Section 8(2)(e)(ii) of the Act refers to contraction in demand or changes in the patterns of consumption. Changes in the pattern of consumption or a reduction in demand can also be a potential cause of material injury to the New Zealand industry.

415. NZ Steel made no comment on these matters.

416. MBIE notes that overall demand for steel products in New Zealand, including HSS, is likely to be related to general economic activity, but there is no basis to conclude that changes in the pattern of demand and consumption have contributed to any adverse effects for NZ Steel.

## **6.2.3 Trade Practices**

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

418. NZ Steel has made no comment on these matters.

419. Restrictive trade practices of overseas or New Zealand producers, such as price ceilings, other statutory measures, or exclusive dealer arrangements, can negatively affect the financial position of New Zealand manufacturers when they are not the beneficiaries of the restrictions. Competition between overseas and New Zealand producers of HSS can be a cause of material injury independent of any dumping. For example, the existence of a price war or the constant threat of new competitors to the New Zealand market can cause a fiercely competitive environment where it is difficult for a New Zealand manufacturer to make a positive return. While this will generally be reflected in the price effects outlined in section 5.3 above, there may be factors other than straight pricing that can reflect competition between domestic and imported goods.
420. While there is no evidence of any restrictive trade practices which might be operating to advantage imports or disadvantage the New Zealand industry, there is clearly significant competition in the market, with New Zealand buyers of HSS conscious of the prices available to them from suppliers in other countries, but there is no evidence of this going beyond price effects.

#### **6.2.4 Developments in Technology**

421. Section 8(2)(e)(iv) of the Act refers to developments in technology. Technological developments can have an adverse impact on the New Zealand industry. Such developments could relate to the like goods themselves, through the development of alternative products or processes, or to the plant and production processes used to manufacture them. It is also possible that if a company chooses to be an early adopter of new technology, the cost of being the first to market with a technology can carry a cost that outweighs the return, while a late adopter may not be able to recapture lost markets.
422. NZ Steel has made no comment on these matters.
423. MBIE is not aware of any developments in technology that could be affecting the New Zealand HSS industry.

#### **6.2.5 Exports of New Zealand Producers**

424. Section 8(2)(e)(v) of the Act refers to the export performance and productivity of the New Zealand producers. Export performance and productivity of the New Zealand industry can be a cause of injury if its export performance is at the expense of its domestic performance.
425. NZ Steel advised that in FY2017 HSS export sales amounted to [REDACTED] MT out of total sales of [REDACTED] MT. Export-related costs are excluded from the financial data provided to support the application.
426. MBIE concludes that there is no evidence to suggest that NZ Steel's export performance contributes to any injury.

#### **6.2.6 Imports by the Industry**

427. MBIE is required to assess the nature and extent of importation of dumped goods by New Zealand producers of like goods, including the value, quantity, frequency and purpose of any such importations.

428. Customs data do not show any imports of subject goods by NZ Steel during 2017.

### 6.2.7 Other Factors

429. MBIE has sought to identify any other factors that could be contributing to the injury experienced by NZ Steel. One such factor could be the situation of the global steel market and the effect on HSS prices, through competition for HSS itself and also in relation to prices for the main input, HRC.

#### **Global Steel Market**

430. OECD reports on the global steel market<sup>22</sup> state:

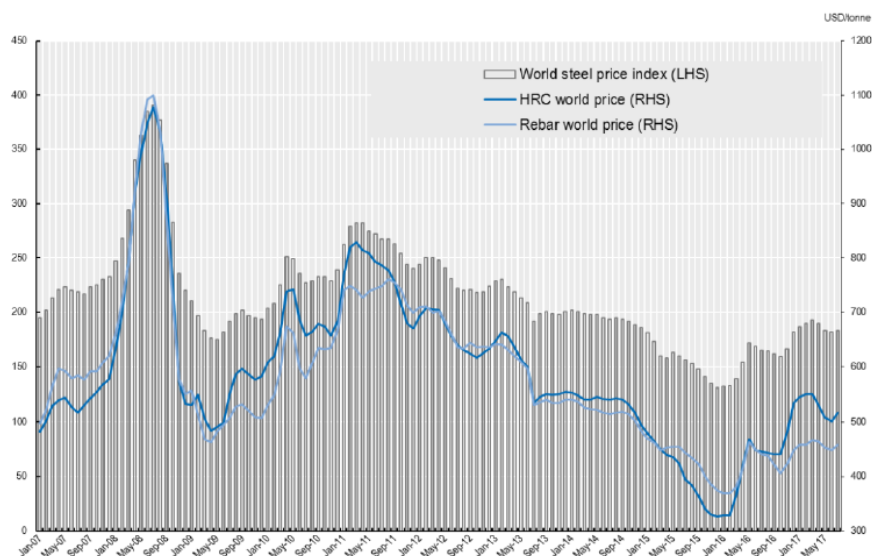
*The modest uptake in steel demand during the year 2016 has seen prices respond rapidly, even in a context of ample supply. The world steel price index, which had been trending downwards since the second quarter of 2011, reached a floor during December 2015, and seems to be climbing back, standing now around its 2014 levels. However, during the first half of 2017, world hot-rolled coil (HRC) prices have decreased by 52% and rebar prices by 22% from their levels at the end of 2016. This correction in steel prices could reflect previous expectations about a rapid adjustment of supply to demand that were not fully met. In June 2017, the world average HRC price stood at USD 501 (up from USD 449 in June 2016) and the world rebar price at USD 448 per tonne (up from USD 442 in June 2016). However, it is important to note that prices remain below those registered during the recent financial crisis.*

431. The following chart, taken from the Q4 2017 OECD report, shows that steel prices in the first half of 2016 were at historically low levels, but have begun to recover.

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<sup>22</sup> *Steel Market Developments:Q4 2017*, OECD, 2018, available through <http://www.oecd.org/sti/ind/steel-market-developments.htm>.

**Chart 6.3: World Steel Prices (from OECD)  
USD/tonne, July 2017**



Source: Platts Steel Business Briefing.

- 432. It is clear that low international prices for steel generally and for HRC in particular in 2015-2016, whether or not exacerbated by subsidisation or dumping, were a significant factor in the prices that NZ Steel could achieve for HSS. This is a consequence of its pricing policy and the extent to which international price pressure played a significant role in pricing decisions.
- 433. MBIE is satisfied that the international market situation for steel in 2015-2016 was a factor contributing to the adverse effects described in section 5 above.

### 6.3 Conclusions on Causal Link

- 434. MBIE concludes that there is no causal link between dumped imports of HSS from China and the volume and price effects and consequent impact on the domestic industry. Other possible causes of injury may be contributing to the adverse effects experienced by the domestic industry, and those effects should not be attributed to dumping.

## 7. Conclusions

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435. MBIE concludes that:

- imports of some HSS from China are dumped but material injury to an industry is not being caused because of the dumping.
- imports of the subject goods from Malaysia are at negligible volumes and while imports from Malaysia are dumped, they are not causing material injury to an industry as a result of dumping.

436. The consequences of these conclusions are that:

- with regard to the investigation of imports of HSS from China, there should be a negative determination of whether dumping is causing material injury, and the investigation into the dumping of HSS from China should be terminated.
- with regard to the investigation of imports of HSS from Malaysia, there should be a negative determination of whether dumping is causing material injury, and the investigation into the dumping of HSS from Malaysia should be terminated, with any provisional anti-dumping duties paid following the Minister's provisional direction being refunded.

## 8. Recommendations

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It is recommended that the Minister:

- (a) **Make a negative determination** under section 10D(1) of the Act, that in relation to imports of HSS from China into New Zealand while there is some dumping of goods material injury to an industry has not been and is not being caused because of the dumping.
- (b) **Make a negative determination** under section 10D(1) of the Act, that in relation to imports of HSS from Malaysia, the goods are dumped but that material injury to an industry has not and is not being caused because of the dumping of negligible levels of imports.
- (c) **Note** that if a negative determination under section 10D(1) is made, the Minister must terminate the investigation under section 11.
- (d) **Make a determination** under section 11(1)(f) of the Act to terminate the dumping investigation in respect of imports of HSS from China and Malaysia.
- (e) **Direct** that any security given pursuant to the provisional direction of 26 July 2018 be released and any provisional anti-dumping duties paid be refunded.
- (f) **Sign** a Gazette notice giving notice of the determinations and directions, in accordance with sections 10D(4) and 11(1)(g) of the Act.

Dr Peter Crabtree  
General Manager  
Science, Innovation and International Branch  
Labour, Science and Enterprise Group

12 November 2018



## ANNEX 1: SUBJECT GOODS AND LIKE GOODS

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### Summary

- A1.1. During the investigations, questions have been raised about the scope of the description of subject goods.
- Some interested parties submitted that the New Zealand industry is unable to produce goods of certain specifications required to meet market demand, including steel of the greater dimensions described by New Zealand Steel (NZ Steel) as the subject goods.
  - Some other differences in the characteristics of imported versus New Zealand-produced HSS were also raised, such as production methods for galvanised products and available finishes.
- A1.2. MBIE provided an Issues Paper to interested parties on 13 June 2018. That paper provided interested parties with an opportunity to comment on issues that have arisen around the scope of the imported goods subject to investigation in the current investigation of alleged dumping and subsidisation of certain HSS from China, and dumping of the same product from Malaysia.
- A1.3. This paper takes into account submissions received in response to the Issues Paper as well as other information received during the course of the investigations, including questionnaire responses that had not been analysed at the time the Issues Paper was drafted.
- A1.4. The paper concludes that the subject goods should be defined as:

*Certain electric resistance welded pipe and tube made of carbon steel, comprising circular and noncircular hollow sections, collectively referred to as hollow steel sections (HSS)*

*Circular products – nominal bore diameters of 15mm or more but less than 102mm with wall thicknesses from 1.0 to 6.0mm*

*Square and rectangular products – external perimeters of 100mm or more up to and including 400mm with wall thicknesses of 1.0 to 6.0mm*

*Oval products – external perimeters up to and including 314mm with wall thicknesses of 1.0 to 3.0mm.*

*The finish types of the goods are: galvanised including in-line galvanised, pre-galvanised or hot-dipped galvanised; or non-galvanised, including but not restricted to black, oiled, painted or lacquered finishes.*

### Responses

- A1.5. The Ministry of Business, Innovation and Employment (MBIE) received submissions in response to the Issues Paper from:
- Dalian Steelforce Hi-Tech Co., Ltd. and Steelforce Trading Pty Ltd (Steelforce)
  - [REDACTED]
  - New Zealand Steel Ltd (NZ Steel)
  - New Zealand Tube Mills Ltd (NZ Tube Mills)
  - [REDACTED]
  - [REDACTED]

A1.6. The Ministry has now also had the opportunity to consider and incorporate where appropriate any relevant comments from questionnaire responses it has analysed since the Issues Paper on subject goods was drafted.

### Subject goods at initiation

A1.7. The applicant, NZ Steel, stated that the goods subject to investigation should be:

*Certain electric resistance welded pipe and tube made of carbon steel, comprising circular and noncircular hollow sections, collectively referred to as hollow steel sections (HSS).*

A1.8. NZ Steel also stated that:

- The **finish** types of the goods are galvanised including in-line galvanised (ILG), pre-galvanised or hot-dipped galvanised (HDG); or non-galvanised, including but not restricted to, painted, black, lacquered or oiled finishes.
- The **sizes** of the goods for respective products are:
  - circular products – nominal [bore] diameter up to and including 150mm; or
  - oval, square and rectangular products – perimeter up to and including 520mm.
- The goods may also be categorised according to minimum yield **strength**, the most common classification being 250 and 350 MPa.

A1.9. NZ Steel noted that New Zealand tariff items and statistical keys do not align with the sizes of subject goods they have identified. NZ Steel identified two tariff items and four statistical keys, namely 7306.30.19 11 and 21, and 7306.61.00 19 and 27. NZ Steel also stated that “some subject goods are, or may be, in up to 114 other tariff classifications [tariff items and statistical keys] currently in the Tariff of New Zealand.”<sup>23</sup>

A1.10. These two tariff items and four statistical keys limit the dimensions of HSS to tubes and pipes with a nominal internal diameter of less than 102mm and rectangular hollow sections of a maximum dimension of less than 128mm. MBIE understands the dimension of rectangular HSS to refer to measurement of the side of the greatest size, therefore the maximum perimeter under these tariff classifications is less than 512mm.

A1.11. In 2017, the four statistical keys for the two tariff items were split out into 24 statistical keys in the New Zealand Tariff. These tariff items and statistical keys cover the dimensions produced by the New Zealand industry (see table below), namely circular HSS with a nominal internal diameter under 102mm and rectangular/square HSS up to 400mm.

A1.12. In the Initiation Report, MBIE referred to eight additional statistical keys that partly cover the subject goods. When calculating import volumes for the Initiation Reports, MBIE used only the statistical keys that included goods made by the New Zealand industry.

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<sup>23</sup> MBIE has since added tariff item 7306.69.00 for non-circular cross-section other than square or rectangular.

### Scope of the subject goods

- A1.13. A key issue is the extent to which imported goods that have wider dimensions (smaller or greater) than those produced domestically are “like” the goods produced by the New Zealand industry.<sup>24</sup> In other words, to what extent is there a New Zealand industry that produces like goods to imported HSS of greater dimensions than those produced domestically?
- A1.14. In determining like 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.
- A1.15. In the Issues Paper MBIE set out a number of questions for interested parties and summarises its findings on each of these questions below, before presenting the detailed analysis on which the findings are made. The questions related to the extent to which imported HSS of greater dimensions than New Zealand-produced HSS are “like” in terms of having “characteristics closely resembling” each other.

### Physical characteristics

- A1.16. To what extent are their physical characteristics similar or different, such as:

- Dimensions
- Composition and strength
- Appearance and finish
- Production methods and technologies
- Standards

#### *Dimensions*

- A1.17. MBIE considers that differences in cross-sectional and wall thickness measurements constitute a significant difference in physical characteristics, as they are related to strength, function, and usage.
- A1.18. MBIE confirms its view that length is not a defining factor for the scope of the description of subject goods.
- A1.19. As a consequence of considering all factors in this report, MBIE has made only one change to its proposed scope of the subject goods, namely increasing the maximum nominal bore size for CHS from 5.4mm to 6.0mm to clarify the boundary for those goods.

#### *Composition and strength*

- A1.20. MBIE confirms its view that composition and strength appear to be of little definitive value in deciding whether certain imported and New Zealand-produced HSS are not like goods

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<sup>24</sup> Injury to the domestic industry is assessed in relation to the impact of subject goods (the imported goods under investigation) on like goods produced in New Zealand, therefore the subject goods must be “like” the goods produced by the New Zealand industry.

*Appearance and finish*

- A1.21. MBIE considers that the evidence available does not support the exclusion of painted or inline painted HSS from the description of subject goods.
- A1.22. From the information available, MBIE is unable to conclude that pre-galvanised HSS is not a subject and like good.
- A1.23. MBIE considers that plastic-lined HSS is not like the HSS subject to investigation.

*Production methods and technologies*

- A1.24. MBIE considers that generally similar production processes and technologies do not assist significantly in distinguishing HSS that is like or not like the HSS subject to investigation.

*Standards*

- A1.25. MBIE finds no persuasive evidence on standards that assists significantly in distinguishing HSS that is like or not like the HSS subject to investigation.

**Function and usage**

- A1.26. MBIE notes that the New Zealand industry produces HSS for a wide range of uses, across two broad market segments (structural and manufacturing), and that function and usage overlap to some extent.
- A1.27. MBIE considers that function and usage in this case is not particularly helpful in drawing a bright line on the scope of subject and like goods when there is no evidence of a lack of some overlap between end-uses and potential end-uses between HSS of slightly different sizes and there appears to be some overlap.

**Pricing structures**

- A1.28. Submissions indicate that there are no apparent pricing structures or patterns that indicate significant differences between prices of smaller and larger dimensions of the same types of HSS.

**Marketing and distribution**

- A1.29. There are two broad market segments, namely manufacturing and construction/engineering.
- A1.30. To what extent do they share similar or different distribution channels?
- A1.31. Larger dimensions and smaller dimensions are sold through the same distribution channels and generally into the same market segment.

**Substitutability and commercial interchangeability**

- A1.32. The questions to be addressed are the extent to which imported HSS of greater dimensions is substitutable or commercially interchangeable with HSS of the dimensions produced in New Zealand; the extent to which downstream industries and end users would be likely to substitute imported HSS of greater dimensions if HSS of certain lesser dimensions were subject to duties; and whether any cases exist of HSS of greater dimensions than that produced by the New Zealand industry having specific applications that would exclude the use of HSS in the dimensions produced in New Zealand.

- A1.33. MBIE is not convinced that even if duties were to be imposed on subject goods of certain dimensions that substitutability and commercial interchangeability are realistic options in light of design constraints, aesthetics and demand from downstream processors and users.
- A1.34. To what extent is there price elasticity of demand or cross-price elasticity of demand in respect of the imported and locally-produced HSS?
- A1.35. The only submission on this matter was from an importer who does not believe there is any price elasticity of demand for HSS.

### **Competition and price interconnectivity**

- A1.36. MBIE is not convinced that the subject goods of greater dimensions than produced in New Zealand compete with HSS of the lesser dimensions produced locally.
- A1.37. To what extent are the prices of imported HSS of greater dimensions and NZ-produced HSS interconnected in the New Zealand market? For example, if duties were only imposed on imported goods of the dimensions produced locally, would importers purchase more imported goods of the greater dimensions because of price spillover effects?
- A1.38. MBIE is not convinced, even if there were price spillover on a per tonne basis in the presence of duties that importers would move significantly to purchases of larger dimensions of HSS.

### **Other considerations**

- A1.39. There were no submissions directly related to the question of what other characteristics or information are relevant and useful in deciding the extent to which imported HSS of greater dimensions than New Zealand-produced HSS are “like” in terms of having “characteristics closely resembling” each other.
- A1.40. NZ Steel disagreed with MBIE’s view that HSS subject to tariff concessions (other than the temporary concession for residential buildings) should be excluded from the scope of the subject goods. MBIE maintains its general position, noting that the criterion for granting tariff concessions, “suitable alternative,” implies matters within the consideration of like and subject goods such as substitutability, interchangeability, function and competition. MBIE does however consider that specific HSS subject to a tariff concession should be included where there is evidence of current production of such HSS.

### **Conclusion**

- A1.41. After taking account of all of the factors discussed in this report, MBIE considers that there is no reasonable basis for considering that HSS of certain greater dimensions than that produced locally should be included in the scope of the subject goods.
- A1.42. MBIE confirms its proposed description of subject goods with a slight increase (from 5.4mm to 6.0mm) for the wall thickness of CHS to allow for tolerances and ensure clarity at the boundary of the description of these products.

### **The New Zealand Industry**

- A1.43. The definition of “industry” is in section 3A of the Act.

**3A Meaning of industry**

For the purposes of this Act, the term **industry**, in relation to any goods, means—

- (a) the New Zealand producers of like goods; or
- (b) such New Zealand producers of like goods whose collective output constitutes a major proportion of the New Zealand production of like goods.

A1.44. “Like goods” are defined in section 3(1) of the Act.

**like goods**, in relation to any goods, means—

- (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

A1.45. There are three New Zealand producers<sup>25</sup> of HSS - NZ Steel, Industrial Tube Manufacturing Co Ltd (Industrial Tube), and New Zealand Tube Mills Ltd (NZ Tube Mills). These producers make HSS in the following dimensions.

	NZ Steel	Industrial Tube	NZ Tube Mills	NZ Industry
<b>CHS</b> (circular)				
NB	15 - 100mm	To 101.6mm OD	To 101.6mm NB	15 – 101.6mm
OD	21.3 – 114.3mm			
Thickness	2.0 - 5.4mm	1.0 - 2.5mm	1.0 - 3.0mm	1.0 - 5.4mm
Length	4.1 – 9.0m	5.0m standard 4.1 – 10m available	5.5 and 6.1m standard	4.1 – 10.0m
<b>SHS</b> (square)				
Perimeter	100 – 400mm	To 260mm	To 260mm	100 – 400mm
Thickness	2.00 - 6.00mm	1.2 - 2.5mm	1.0 - 3.0mm 5.5 and 6.1m	1.0 to 6.0mm

<sup>25</sup> Steelpipe Limited (Steelpipe) produces spiral welded pipes and tubes. MBIE considers that Steelpipe does not produce like goods to the subject goods, and is not therefore part of the New Zealand industry for this investigation, for the following reasons:

- Steelpipe produces mainly goods of larger dimensions than the subject goods.
- Its method of manufacture, namely subarc welding, is significantly different from electric resistance welding used to make circular hollow steel sections.
- Almost all of the pipes it makes within the dimensions of the subject goods are for water transmission, rather than for a wide range of applications such as for structural purposes.
- Steelpipe’s products are significantly more expensive than the subject goods.

Length	4.5 – 9.0m	5.0m standard 4 – 10m available	standard	4.0 – 10.0m
<b>RHS (rectangular)</b>				
Perimeter	150 – 400mm	To 222mm	To 241.4mm	150 – 400mm
Thickness	2.00 - 5.00 <sup>26</sup> mm	1.2 - 2.5mm	1.0 - 3.0mm	1.00 - 6.00mm
Length	4.5 – 9.0m	5.0m standard 4 – 10m available	5.5 and 6.1m standard	4.0 – 10.0m
<b>Oval</b>				
Perimeter	183mm	To 222mm	To 314mm	To 314mm
Thickness	2.0mm	1.2 - 2.5mm	1.0 - 3.0mm	1.0 - 3.0mm
Length	8.0m	5.0m standard 4 – 10m available	5.5 and 6.1m standard	4.0 – 10.0m

A1.46. One importer questioned whether NZ Steel can make RHS at the maximum dimension of 125 x 75mm or whether NZ Steel manufactures oval HSS given there is no reference to oval on its website. NZ Steel advised that it makes oval product for specific orders and RHS 125 x 75mm is listed on its website data sheet.

A1.47. Some interested parties consider that Industrial Tube and NZ Tube Mills should not form part of the New Zealand industry.

- [REDACTED] considers HSS produced by these two companies should be excluded from the investigation because they do not produce like goods in terms of standards, grades and third party accreditation requirements and they are not in the same market as HSS produced by NZ Steel and comparable imported goods.
- Dalian Steelforce notes that there are “two distinct market segments . . . which can be broadly referred to as manufacturing and construction” and the goods in each segment “exhibit very different product and market characteristics.” Dalian Steelforce refers to NZ Tube Mills’ production being “limited to thin gauge precision tube and carbon steel products meeting specific internal standards and for particular manufacturing applications,” which include furniture, outdoor products, exhaust systems and greenhouses and that Industrial Tube makes similar HSS. Dalian Steelforce considers that goods produced by Industrial Tube and NZ Tube Mills “do not possess characteristics closely resembling the imported goods, and as such, should not form part of the industry producing like goods.” Dalian Steelforce also

<sup>26</sup> One importer refers to the NZ Steel price list as suggesting NZ Steel does not offer RHS with a wall thickness of 6mm. MBIE notes that NZ Steel’s website also only refers to RHS up to 5mm.

refers to the fact that Industrial Tube and NZ Tube Mills do not make HSS to the same AS or AS/NZS standards as HSS produced by NZ Steel or Dalian Steelforce.

- At the verification visit in Dalian, Dalian Steelforce and Steelforce Trading noted that NZ Tube Mills and Industrial Tube do not produce HSS that is either structural or for fluid conveyancing, so they don't come up against these companies in the market as their HSS is for the manufacturing area. There is some overlap at the 2mm/2.5mm gauge (wall thickness), but the distinction is in whether the product meets the standards for fluid conveyancing (AS/NZS 1074) or structural (AS/NZS 1163).
  - [REDACTED] referred to HSS it purchases from Industrial Tube and NZ Tube Mills as "furniture tube" which is "thin wall", not structural and "not required to conform to the standards mentioned in this investigation." [REDACTED] noted that Industrial Tube and NZ Tube Mills manufacture precision tube whereas NZ Steel does not.
  - Industrial Tube also referred to two market areas, being "thin wall (0.8-2.5mm) and structural (>4.0)." NZ Tube Mills confirmed that its "production range is within what is known as 'Precision Tube' ...whereas this is the 'lighter wall' type of tubulars produced."
- A1.48. NZ Steel disagreed that goods produced by Industrial Tube and NZ Tube Mills are not like the imported goods and should not form part of the industry. NZ Steel suggested there could be three market sectors but considered analysis beyond the two sector market separation would not be useful. NZ Steel considered that delineation between two market segments "is not determinative as to goods coverage because of material overlap between them."
- A1.49. MBIE notes that the application for dumping and subsidy investigations was lodged by NZ Steel not just in respect of the HSS that it produces but on behalf of the New Zealand industry producing hollow steel sections, including Industrial Tube and NZ Tube Mills from which letters were provided in support of the application.
- A1.50. The application was for the investigation of the goods described above at the time of initiation of the investigations, which included HSS of dimensions similar to those made by Industrial Tube and NZ Tube Mills.
- A1.51. Dalian Steelforce considered that "the inherent nature of the NZTM and ITM products (small size, thin gauge, specialised surface finish) does not lend itself to importation, as these products are prone to damage during transit." NZ Steel notes the lack of supporting evidence for this contention.
- A1.52. The investigation has found that there have been importations of HSS of dimensions similar to those made by Industrial Tube and NZ Tube Mills and overlapping significantly the dimensions made by these companies (see the table below on dimensions of exports to New Zealand). For example, wall thicknesses produced by these two New Zealand manufacturers range from 1.0 to 3.0mm, and exports start from 1.6mm for both China and Malaysia. A submission from a New Zealand end user which makes greenhouses, [REDACTED], indicates that it uses imports of HSS of the type made by Industrial Tube and NZ Tube Mills.
- A1.53. MBIE notes that, while Industrial Tube and NZ Tube Mills supported the application, they did not provide full responses to MBIE's questionnaires. Despite this lack of full cooperation, the application by NZ Steel on behalf of the New Zealand HSS industry,



including Industrial Tube and NZ Tube Mills contained sufficient evidence to justify the initiation of dumping and subsidy investigations and any deficiency in evidence from the industry is addressed when assessing injury.

- A1.54. MBIE considers that there is no justifiable reason to exclude Industrial Tube and NZ Tube Mills from the New Zealand industry for these investigations as those companies are producing like goods to the goods subject to the application for dumping and subsidy investigations, and subject goods of dimensions overlapping significantly those made by those companies are being exported to New Zealand from China and Malaysia.

### **Analysis and Information**

- A1.55. MBIE notes that when deciding on matters of “subject goods” or “like goods”, the Act does not lay the burden of proof on any particular interested party or parties to an investigation. Nor in practice is there any basis for requiring any party or parties to bear the burden of proof.
- A1.56. NZ Steel claimed that HSS of greater dimensions than it produces should be included in the scope of the description of subject goods. NZ Steel disagreed with MBIE’s provisional proposal to limit the subject goods to what it describes as “exactly to the current website New Zealand industry plant dimension range” and considers that “[s]uch provisional view discounts injurious commercial, substitutable and functional likeness in goods analysis, and the Article 2.6 AD Agreement “close resemblance.”
- A1.57. Other parties, including [REDACTED], Dalian Steelforce, Alpine Pipe and [REDACTED], claimed that HSS of greater dimensions are not like to HSS of the smaller dimensions produced in New Zealand.
- Dalian Steelforce and Alpine Pipe consider that the scope of the investigation should be limited to the range of products that NZ Steel manufactures.
  - [REDACTED] considers that the definition of subject goods should exclude goods that, even though within the broad parameters of the dimensions for subject goods, are not of dimensions made by the New Zealand industry. [REDACTED] would increase the minimum wall thickness for HSS from 1mm to 2mm. [REDACTED] arguments are summarised below.
- A1.58. Dalian Steelforce, in a submission on injury, “contends that the limited range and production capability of NZ Steel prevents it from supplying HSS products required by a significant portion of the NZ market. Demand for products outside the scope of NZ Steel’s manufacturing capabilities is and must be entirely supplied by imports. It is also the case that the vast majority and predominant supply of exported HSS to New Zealand by Steelforce relate to HSS products for which NZ Steel does not and cannot offer like products as it simply does not produce such goods.”

### **Physical characteristics**

- A1.59. NZ Steel claimed that the imported and locally-made HSS have the same physical characteristics, and that the grades, shape and appearance are alike.
- A1.60. [REDACTED] disagreed with this assertion and considered the imported HSS of larger dimensions “are not like for like goods due to the differences in physical characteristics.”

Dalian Steelforce “contends that the goods subject to investigation should be limited to the product dimensions and finishes manufactured by NZS during the investigation period,” that is for the construction and engineering market segment, rather than including precision tube, of the type used in manufacturing and made by Industrial Tube and NZ Tube Mills.

#### *Dimensions*

A1.61. The New Zealand industry does not make the following HSS products that are included in the description of subject goods.

#### CHS

- Less than 15mm NB and greater than 101.6mm NB. There are some imports of 10mm NB and up to 200mm NB.
- While thicknesses are not mentioned in the description of subject goods, the New Zealand industry does not make CHS in thicknesses greater than 5.4mm nor in lengths greater than 10m. Imports include some product of greater thicknesses, such as 6.4mm, and lengths up to 12m.

#### SHS

- Perimeters less than 100mm or greater than 400mm. Imports include lesser perimeters, such as 80mm, and greater perimeters up to 700mm, exceeding the 520mm perimeter in the description of the subject goods.
- While not mentioned in the description of subject goods, the New Zealand industry does not make SHS in thicknesses less than 1.0mm or greater than 5.4mm, nor in lengths greater than 10m. Imports include some products of greater thicknesses, such as 6.0mm and 9.0mm.

#### RHS

- Perimeters less than 150mm or greater than 400mm. Imports include products up to 600mm, exceeding the 520mm perimeter in the description of the subject goods.
- While not mentioned in the description of subject goods, the New Zealand industry does not make SHS in thicknesses less than 1.0mm or greater than 6.0mm, nor in lengths greater than 10m. Imports include some products of greater thicknesses.

#### Oval

- Perimeters greater than 314m. Some imports are outside of this perimeter.
- While not mentioned in the description of subject goods, the New Zealand industry does not make oval products in thicknesses less than 1.0mm or greater than 3.0mm, or in lengths greater than 10m. Imports include some products of greater length, such as 12m.

A1.62. NZ Steel stated that “physical characteristics of goods <100mm and goods >100mm is not something inherent at that dimension, but is related to the steel mass, not per se the dimension of that mass,” in reference to using the same weight of steel per square metre in a structure whether using lesser or greater dimensions of HSS.

A1.63. NZ Steel agreed that the ability to produce HSS of greater dimensions would normally require capital investment, but that there were several reasons why a manufacturer may

- decide not to identify the availability of certain sizes, such as producer choice or grade considerations.
- A1.64. NZ Steel also cautioned against the use of minimum dimensions as HSS below those dimensions may be made, or may be able to be made, by the New Zealand producers, but did not provide any evidence of this. Likewise NZ Steel indicated larger sizes of oval product could be made by the New Zealand industry, but did not state what dimensions are or have been made.
- A1.65. NZ Steel refers to the difficulty of “hard adherence to made-goods boundary for this goods description purpose”, noting that “a 100mm CHS with 5.4mm wall thickness closely resembles one of 5.5mm wall thickness which would not be dutiable. It is difficult to agree that a further 100 microns thickness has made the 5.5mm thick goods definitively not resemble the 5.4mm thick goods.”
- A1.66. One New Zealand producer claimed it is capable of producing product of the greater dimensions set out in the description of subject goods, but provided no evidence to support this assertion and, in any case, indicated it has no plans to produce HSS in these greater dimensions.
- A1.67. Tianjin Youfa advised that “the goods Youfa Group produces have the same physical characteristics with the New Zealand industry produces. The grades, shape and appearance are alike,” but the company can produce tube in greater dimensions than the New Zealand industry.
- A1.68. Dalian Steelforce and Steelforce Trading, at the verification visit, emphasised that NZ Steel does not make HSS in larger dimensions. This claim was mirrored by Alpine Pipe, at the verification visit to Alpine’s premises.
- A1.69. Jinan Mech stated that it was “not aware of the range of dimensions of the HSS produced by the New Zealand industry. Without prejudice to any future submissions, our company does not intend to comment on the above issues at this stage of the investigation.”
- A1.70. MBIE notes that in the standards HSS tolerances for thicknesses may be up to minus 10 per cent or up to at least plus 10 per cent, which would mean that some HSS with a stated wall thickness of say 6.0mm could compete with the HSS with a wall thickness of 5.4mm produced by New Zealand Steel.

#### Width

- A1.71. NZ Steel provided an example of two options using lesser or greater dimensions of steel to achieve the same cost per square metre and the same load bearing capacity. NZ Steel use this example to “to illustrate that thinner wall but larger diameter goods are like thicker wall but smaller diameter goods.”
- A1.72. MBIE notes that NZ Steel’s example is a particular structure with a certain load bearing requirement. The ability to use different HSS sizes to create two different design options that cost the same per square metre and have the same load bearing capacity does not on its own equate to proof that larger dimensions of HSS have “characteristics closely resembling” smaller dimensions of HSS. There could be other materials that may result in a

structure having similar characteristics but which may not even be of steel and may not therefore be like HSS of smaller dimensions.

- A1.73. NZ Steel points to boundary issues in any definition of subject goods when a small difference in measurement may mean one HSS section is readily substituted for another. MBIE deals with this matter in addressing close dimensions of imported goods in its analysis below.

#### Length

- A1.74. In the issues Paper, MBIE stated that it “is not convinced that length is a defining factor for the scope of the description of subject goods.” Dalian Steelforce disagreed and argued that HSS “in lengths outside NZS’s product offering should be excluded from the goods subject to investigation.” [REDACTED] also disagreed with MBIE on this point for similar reasons, noting that NZ Steel has never offered its HSS in the 9m lengths it claims to have available and that length is still far short of the 12m lengths available for importation.
- A1.75. At its verification visit, Dalian Steelforce claimed that length is a major factor in construction. The company said that steel fabricators like longer lengths so there is less welding, especially to maintain aesthetics. Dalian Steelforce produces HSS in lengths up to 12 metres, whereas NZ Steel only produces up to 8 or 9 metres in length. In its submission, Dalian Steelforce stated that “[p]roduct length is a factor to ensure unnecessary joins of the products do not have to be performed that can affect the fabricated structures integrity, the aesthetic looks if the steel is exposed, plus unnecessary costly fabrication works.” Dalian noted that a large portion of its sales to New Zealand are in precise lengths to match specific intended applications.
- A1.76. At its verification visit, Alpine Tube said that length is not a compelling factor in deciding whether HSS products differ or are similar, noting that dimension and wall thickness were more important considerations. The company stated this was because HSS of greater lengths could be cut down into shorter lengths after importation, however, the dimension and wall thickness of HSS could not be altered once the product has been manufactured.
- A1.77. NZ Steel considers that length is not a determinative factor in deciding whether HSS products differ or are similar, noting that as steel and HSS “is sold per unit of mass, which is pro-rata to length . . . . Introduction of a price differential per unit mass/length, will introduce substitution away from the New Zealand industry goods.”
- A1.78. MBIE has considered whether length of HSS contributes significantly to the overall consideration of whether different HSS products either have or do not have characteristics that closely resemble each other.
- MBIE acknowledges that some HSS will be imported in specific lengths to meet certain applications and that some of these lengths exceed those available from NZ Steel.
  - The inherent physical characteristics of the HSS may however in many cases be the same or similar (composition, diameter or perimeter, and wall thickness) so that HSS of greater lengths could be cut down into shorter lengths after importation.

- Often it may not be known at the time of exportation or importation whether the HSS is for specific engineered applications or for general use in construction or engineering.
- In MBIE’s view, length dimensions do not ascribe physical characteristics to HSS to anywhere near the same extent that cross-sectional and wall dimensions do.

A1.79. MBIE confirms its view that length is not a defining factor for the scope of the description of subject goods.

Dimensions Exported to New Zealand

A1.80. The following table shows the dimensions of HSS exported to New Zealand by the sample Chinese and Malaysian manufacturers who replied to questionnaires. Information in the table was compiled on the basis of the description of the subject goods at the time of initiation.

Dimensions exported with the subject goods description at initiation.	Dalian Steelforce	Tianjin Youfa	Jinan Mech	Alpine Pipe
<p><b>CHS (circular)</b></p> <p>NB</p> <p>Thickness</p> <p>Length</p> <p>% of exports<sup>27</sup> to NZ within NZ production dimensions</p> <p>Dimensions<sup>28</sup> outside but closest to NZ production sizes</p>				

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<sup>27</sup> Exports within the description of subject goods at the time of initiation, but not taking account of differences in length.

<sup>28</sup> Dimensions within the description of subject goods at the time of initiation.

<p><b>SHS (square)</b>                  Perimeter                  Thickness                  Length                  % of exports to NZ within NZ production dimensions                  Dimensions outside but closest to NZ production sizes</p>				
<p><b>RHS (rectangular)</b>                  Perimeter                  Thickness                  Length                  % of exports to NZ within NZ production dimensions                  Dimensions outside but closest to NZ production sizes</p>				
<p><b>Oval</b>                  Perimeter                  Thickness                  Length                  % of exports to NZ within NZ production dimensions                  Dimensions outside but closest to NZ</p>				

production sizes				
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*Information has been redacted because making the information available would give a significant competitive advantage to competitors of the submitters of the confidential information.*

A1.81. There may also be specific products within the broad parameters of HSS made by the New Zealand industry that are not made by the New Zealand industry. For example, [REDACTED] stated that NZ Steel does not produce SHS30x30, RHS 75x25 and NB90 galvanised pipe.

MBIE’s View on Dimensions

A1.82. MBIE notes the following in regard to dimensions:

- Circular products – New Zealand producers and exporters supply CHS with nominal bores from 15mm, so there is no need to change the minimum bore size in MBIE’s proposed scope of the subject goods. The closest bore size exceeding the 101.6mm bore size that is produced by the New Zealand industry is 114.1mm<sup>29</sup> and then 125mm. The maximum bore size could be extended to 115mm if the other factors relating to like goods support this extension, but the analysis below indicates the factors do not support this extension. The wall thickness of 5.4mm proposed by MBIE could be extended to 6.0mm to provide clarification and address the boundary issue raised by NZ Steel.
- Square and rectangular products – the closest perimeter being exported to New Zealand that exceeds the maximum perimeter produced by the New Zealand industry is 456mm. The analysis below supports MBIE’s view that 456mm SHS and RHS should not be included in the scope of the subject goods. All but one shipment was of HSS with a wall thickness of 1.0mm or above and MBIE sees no reason to adjust the minimum wall thickness of 1.0mm. The closest perimeter exported to New Zealand and exceeding the 6.0mm maximum thickness produced by the New Zealand industry is 9mm. MBIE sees no reason for extending the maximum wall thickness in this category above 6mm.
- Oval products – exports of HSS to New Zealand fall within the perimeter and wall thickness dimensions produced by the New Zealand industry. MBIE sees no reason to change its proposed scope of subject goods for this category.

*Composition and strength*

A1.83. In its application, NZ Steel referred to the production of HSS from hot rolled coil/cold rolled carbon steel coil. MBIE has received no information that HSS of the type under investigation is made by other interested parties from materials other than carbon steel, although some producers use different types of carbon steel.

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<sup>29</sup> CHS 114.3mm and RHS 150 x 100mm in a list of common HSS available in Australia and New Zealand in AS/NZS1163.

- A1.84. NZ Steel's product data sheets refer to various measurements of strength, such as minimum yield strengths, minimum tensile strengths and minimum elongation.
- A1.85. NZ Steel agreed with MBIE's view in the Issues Paper that composition and strength appear to be of little definitive value in deciding whether certain imported and New Zealand-produced HSS are not like goods.
- A1.86. [REDACTED] confirmed this view by noting that composition refers to chemical characteristics and strength refers to grade and that [REDACTED] has to comply with relevant standards in respect of both factors whether locally-produced or imported steel. [REDACTED] considered therefore that imported and locally-produced HSS is like in terms of composition and strength.
- A1.87. [REDACTED] also distinguished between strength and load-bearing capacity, noting that "imported HSS of greater dimensions would have significantly higher loadbearing capacity than locally produced HSS and as such does not have a close resemblance."

#### *Appearance and finish*

- A1.88. MBIE understands from submissions that there are two broad types of product finish, namely galvanised and non-galvanised, which can be further broken down into non-coated, painted, pre-galvanised and HDG.
- Black/NOPC (not oiled, painted or coated) – NZ Steel and imports
  - Painted - NZ Steel and imports
  - In-line galvanised (ILG) (Dalian Steelforce) and pre-galvanised (NZ Tube Mills, Industrial Tube and imports)
  - Hot dip galvanised (HDG) – NZ Steel and imports.
- A1.89. NZ Steel produces HSS coated with paint, oils or zinc (galvanised). NZ Steel's website page on pipe and hollow sections states that "[t]hese products are available black, pre-primed or galvanised." NZ Steel provides CHS with different end finishes, namely plain end (mill cut), screwed one or both ends, screwed and socketed, and swaged.<sup>30</sup> NZ Tube Mills offers aluminium coated and galvanised steel options.
- A1.90. Dalian Steelforce claims that NZ Steel does not produce inline painted product which is a preference of Steelforce Trading's customers. At the verification visit Dalian Steelforce stated that technology and market demands in New Zealand have changed towards coating and technology options of the type that it produces. Dalian Steelforce noted that its painting process is high-tech as HSS needs to be stripped for welding and other processes.
- A1.91. Dalian Steelforce did not explain the extent of any difference between HSS coated by inline primer and pre-primed HSS. Dalian Steelforce explained that "[c]oatings on HSS can greatly

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<sup>30</sup> Swaging is a forging process in which the dimensions of an item are altered using dies into which the item is forced. (Wikipedia)



enhance the steel's condition through transport, handling and the end application it is designed for.”

- A1.92. [REDACTED] noted the preference expressed by some of its customers for painted HSS includes cleanliness in transport, storage and handling, less susceptibility to oxidization, and easier to mark up for accuracy. [REDACTED] stated that painted HSS to meet its “requirements is not available in any dimensions from New Zealand producers.”
- A1.93. NZ Steel considered that the principal reason for imported HSS being painted is to protect against corrosion during transport to New Zealand.
- A1.94. MBIE considers that the evidence available does not support the exclusion of painted or inline painted HSS from the description of subject goods.

#### HDG and Pre-galvanised HSS

- A1.95. Dalian Steelforce argues that “pre-galvanised and HDG possess substantially different characteristics which support the view that they are not like goods to each other”. Dalian explains the differences between the two products as outlined below.

##### HDG HSS

- HSS is formed from non-galvanised coil.
- HDG HSS is made by dipping HSS into a bath of molten zinc followed by processes to smooth the zinc coverage.
- Coating thickness ranges from 30 microns to 77 microns.
- End uses involve applications where a high level of corrosion resistance is required, such as fencing, fluid conveyance and fire protection systems.

##### Pre-galvanised HSS

- Pre-galvanised HSS is formed from coil that is already galvanised.
  - Coating thickness is typically [REDACTED] microns.
  - Used for small structural applications where appearance is important.
- A1.96. MBIE has confirmed that the pre-galvanised coil referred to by Dalian Steelforce is not electro-galvanized steel.
- A1.97. The pre-galvanised HSS produced by NZ Tube Mills differs from the pre-galvanised product described by Dalian Steelforce because it has a greater coating depth in microns. Technical sheets on NZ Tube Mills’ website show that its pre-galvanised HSS is produced from galvanised steel coil sourced from NZ Steel which is produced by running steel coil through molten zinc as shown on its website.<sup>31</sup> The pre-galvanised HSS produced by NZ Tube Mills

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<sup>31</sup> <https://www.nzsteel.co.nz/new-zealand-steel/the-story-of-steel/the-steel-making-process/metal-coating-plant/>.

has a zinc coating of Z275 and Z450 (grams of zinc coat per square metre), namely 38.5 and 63 microns.<sup>32</sup> for the following applications and in the following shapes and dimensions:

- Applications - general engineering, handrails, greenhouses, agricultural buildings,<sup>33</sup> ladders, fencing, garage doors, AgBeam (horticultural) and cattle rail;
- Circular from NB 12.7 to 101.6mm;
- Square from a perimeter of 50.8 to 260mm;
- Rectangular from a perimeter of 76.2 to 190.4mm.

A1.98. Industrial Tube's website states that it purchases primarily pre-galvanised steel coil from NZ Steel and refers to its use of pre-galvanised commercial grade steel: G250 Z275 and G310 Z450,<sup>34</sup> which equates to the same thickness as the pre-galvanised HSS produced by NZ Tube Mills. Tube sizes range from 6.35mm to 203.2mm outside diameter, but it is not clear whether Industrial Tube offers pre-galvanised HSS across the range of these dimensions, nor is it clear what uses the pre-galvanised HSS may be put to.

A1.99. ██████████ stated that pre-galvanised HSS to meet its requirements "is not available in any dimensions from New Zealand producers", tending to confirm that the type of pre-galvanised HSS with thicker zinc coatings made by New Zealand producers is not the same as at least some of the pre-galvanised HSS that is imported.

A1.100. Dalian Steelforce also referred to commercial substitutability and pricing structures for HDG and pre-galvanised HSS which are discussed in the sections below.

A1.101. MBIE notes that pre-galvanised HSS appears to have different thicknesses of zinc coating, depending on the thickness of zinc coating on the input galvanised coil. From the information available, MBIE is unable to conclude that pre-galvanised coil, regardless of the thickness of zinc coating, is not a subject and like good. While MBIE's comments on pre-galvanised steel are included under the heading of "appearance and finish", MBIE has also taken into consideration other factors such as usage.

#### Plastic-lined

A1.102. During the investigation, MBIE also encountered sales of plastic-lined HSS by a Chinese producer on the Chinese domestic market. MBIE notes that plastic-lined pipes are not goods under investigation and have been mentioned by neither the New Zealand industry nor overseas producers or importers as being like goods. Plastic-lined pipes are specifically designed for conveying fluids, gas or oil used for heating, ventilation, and air conditioning systems. The Chinese producer's product catalogue noted the advantages of plastic-lined pipes for ensuring the quality of inside fluids, improving transport efficiency and having environmental and health advantages due to the smooth inside surface.

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<sup>32</sup> Coating Thickness (µm) = Coating Mass (g/m<sup>2</sup>) x 0.14.

<sup>33</sup> <http://nztubemills.co.nz/wp-content/uploads/2014/06/ProductCatalogueV11.pdf>.

<sup>34</sup> <https://www.industrialtube.co.nz/materials-and-quality>.

A1.103. Because of these differences, MBIE considers that plastic-lined HSS is not like the HSS subject to investigation.

*Production methods and technologies*

A1.104. Submissions analysed to date indicate that there are no significant differences in the production methods for HSS used by New Zealand producers and by producers in China and Malaysia, namely they all use a process of cold forming and electric-resistance welding.

A1.105. While the mechanical processes for production of HSS are very similar or the same, Tianjin Youfa noted that its raw material is narrow steel strip, so “there is one process less compared with the hot rolled coil that New Zealand industry used.”

A1.106. Dalian Steelforce noted that NZ Steel produces galvanised products by hot dipping and does not produce HSS from pre-galvanised coil. MBIE notes that other New Zealand producers, Industrial Tube and NZ Tube Mills, do however produce HSS made from pre-galvanised coil.

A1.107. As noted above, the coating thickness of the raw material pre-galvanised coil used for some imports appears to be different to the pre-galvanised coil used by Industrial Tube and NZ Tube Mills to produce HSS.

A1.108. MBIE considers that generally similar production processes and technologies do not assist significantly in distinguishing between HSS that is like or not like.

*Standards*

A1.109. Where standards are appropriate and when applied, New Zealand producers and importers reference three standards that are applied to HSS of the dimensions produced by the New Zealand producers and HSS of greater dimensions that are imported.

- AS 1074:1989 for “steel tubes and tubulars for ordinary service.”
- AS/NZS 1163:2016 (previously AS/NZS 1163:2009) for “cold-formed structural steel hollow sections.”
- AS/NZS 4792:2006 for “hot-dip galvanized (zinc) coatings on ferrous hollow sections, applied by a continuous or a specialized process.”

A1.110. NZ Steel’s online data sheets state that it manufactures HSS to AS/NZS1163:2009 grade C250/C350. [REDACTED] notes that imports of HSS are manufactured to AS/NZS1163:2016 grade C250/C350.

A1.111. Industrial Tube and NZ Tube Mills make tube to standard AS1450 for steel tubes for mechanical purposes. NZ Steel pointed out that NZ Tube Mills’ website also refers to selected sizes being available to AS1163<sup>35</sup> and considered that “the consequence of NZTM

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<sup>35</sup> <http://nztubemills.co.nz/specifications/>

making to AS/NZS1163 is that NZTM and its range competes in the same segment as NZS and imported Steelforce goods.”

- A1.112. Dalian Steelforce distinguishes standards for different products, applications and purposes in two market segments:
- AS1450:2007 for the manufacturing segment. Dalian Steelforce noted that AS1450:2007 specifies “the general technical delivery requirements for carbon and carbon-manganese steel tubes of round, square, rectangular or other non-circular cross-sections that have been either cold or hot formed.”
  - AS/NZS1163:2016 and AS1074:1989 for construction and engineering. AS/NZS1163:2016 specifies “the requirements for manufacturers and suppliers of longitudinal welded cold-formed structural hollow sections for general structural and engineering applications.” AS1074:1989 “specifies requirements for threaded steel tubes and tubulars, and plain-end steel tubes suitable for screwing...”. Dalian Steelforce advises that “these tubes are generally used for fluid reticulation (building sprinkler systems) as they are pressure tested, however, they are also used in fencing applications.”
- A1.113. NZ Steel considered there is difficulty in using AS1074 and AS/NZS1163 to assist in like goods delineation and stated that “[t]he difficulty with such premise is the cross-over in possible end use of those goods, and AS/NZS1163. Tube of say 2.6mm wall thickness 20mm diameter is available from the New Zealand industry in either AS1450 or AS/NZS1163, and can serve same in-use function.”
- A1.114. MBIE finds no persuasive evidence on standards that assists significantly in distinguishing between HSS that is like or not like and considers market segmentation below.

#### **Function and usage**

- A1.115. On function, [REDACTED] stated that “the difference would be in the ability to support structures of differing sizes and weights” but cautioned that the company is not a design engineer, consultant or specifier.
- A1.116. NZ Steel stated in its application that “both the locally produced and allegedly dumped goods have comparable or identical end uses and are functionally substitutable.” NZ Steel claimed that the example it provided of two options using different dimensions of steel demonstrated “[f]unctional likeness in that the larger dimension goods are shown to function to achieve” the same result in load-bearing capacity.
- A1.117. MBIE understands that some CHS is used for reticulation, but that most HSS is processed or fabricated to meet a wide range of end uses and applications, such as agricultural, automotive, mechanical handling, engineering, general manufacturing, and construction.
- A1.118. In the Issues Paper, MBIE asked interested parties for information on the extent to which HSS of dimensions covered by the description of subject goods is used for applications and end uses that differ from the dimensions available from the New Zealand industry, including not just width but other dimensions such as wall thickness. This information could include whether HSS of different widths and/or thicknesses to that produced in New Zealand are specified by engineers or designers and in what circumstances.

- A1.119. MBIE notes comments earlier in this report about the existence in New Zealand of two market segments, namely manufacturing and construction/engineering. [REDACTED] stated that “imported HSS of greater dimensions than NZ-produced HSS is typically used more in the construction sector” and “is regularly specified by engineers and designers.”
- A1.120. Dalian Steelforce stated that the batch hot dip galvanizing (used by NZ Steel) results in the end product and applications being different. MBIE understands that batch immersed galvanised products are more suitable for exterior environments. [REDACTED] stated that HDG HSS “is destined for applications that will be used in a “moderate to severe” corrosive environment” and that HDG and pre-galvanised HSS are used for different end uses and are not substitutable.
- A1.121. [REDACTED] stated that pre-galvanised HSS is used in “a “mild” corrosive environment” and is “more likely to have applied a finishing coat e.g. powder coated.”
- A1.122. MBIE points out that the other New Zealand producers, Industrial Tube and NZ Tube Mills form HSS from pre-galvanised coil, but this appears to have a coating of greater thickness than some imported pre-galvanised HSS.
- A1.123. MBIE notes that HSS can be sold broadly either for manufacturing or for construction/ engineering and that there is some overlap between these broad market segments. The New Zealand industry produces HSS for both broad market segments and therefore MBIE cannot exclude HSS on grounds of function or usage.
- A1.124. It is not clear whether there are significant differences in uses for pre-galvanised steel of different zinc coating thicknesses.
- A1.125. MBIE observes that dimensions are determinative of efficient design to meet structural requirements and also notes NZ Steel’s example of the effective use of different dimensions to achieve the same outcome. Function and usage is not particularly helpful in this case in deciding on the scope of subject and like goods when there is some overlap in end-uses and potential end-uses between HSS of different sizes.

### **Pricing structures**

- A1.126. MBIE understands that pricing structures for HSS are based on dollars per MT.
- A1.127. There are differences in pricing between different types of HSS. Dalian Steelforce stated that “pricing between HDG and pre-galvanised sections differ considerably . . . which reflects the different costs of production, different market segments and different end-use applications.” Pre-galvanised HSS will likely carry a price that is 30 per cent lower than HDG, according to [REDACTED], because of the lesser amount of zinc used.
- A1.128. Dalian Steelforce understands that there are “very different pricing structures with each segment”, namely manufacturing or construction and engineering.
- A1.129. NZ Steel referred to evidence in its application of different sizes of steel of adjacent dimensions being sold at the same (across sizes from 50x50mm to 500x300mm) or similar prices per tonne (across HSS between 80mm and 200mm).
- A1.130. [REDACTED] noted that it sells imported and locally-produced pipe at the same rate per tonne.

- A1.131. Tianjin Youfa stated that “length does not influence price a lot . . . .”
- A1.132. MBIE notes that pricing differs between HSS that is significantly different, for example between HDG and pre-galvanised HSS. Submissions indicate some similarity in prices per tonne of similar HSS. Submissions indicate that there are no apparent pricing structures or patterns that indicate significant differences between prices of smaller and larger dimensions of the same types of HSS.

### **Marketing and distribution**

- A1.133. NZ Steel claimed that the imported and locally-made HSS compete “with strong price competition” in the New Zealand market using the same distribution channels.
- A1.134. There is a lack of evidence in support of the claim that imported HSS of larger dimensions competes with HSS of the dimensions produced locally.
- A1.135. MBIE understands that imported HSS of the full range of dimensions, whether imported or produced in New Zealand, is distributed mainly through the same channels, namely through steel merchant distributors and direct to end user processors and fabricators.
- A1.136. Submissions received indicate that there are two broad market segments, namely manufacturing (generally thin wall (0.8-2.5mm – or 5.0mm according to [REDACTED] - and under 356mm in perimeter) and construction/engineering (generally a wall thickness of >4.0mm - >6.0mm according to [REDACTED] - and greater than 356mm in perimeter). [REDACTED] indicated there is some crossover between these market segments, which is reflected to some extent in the wall thicknesses it references.
- A1.137. MBIE notes that the New Zealand industry and importers supply HSS to both market segments and there is some overlap between the two segments. MBIE agrees that similar distribution channels are used for locally-produced and imported HSS. Larger dimensions and smaller dimensions are sold through the same distribution channels and generally into the same market segment.

### **Substitutability or commercial interchangeability**

- A1.138. In its application, NZ Steel claimed there is “product substitutability between locally produced and allegedly dumped goods across the product end uses.” In addition, NZ Steel claimed that HSS of larger dimensions can to some degree be substituted in applications where lesser dimensions may be used.
- A1.139. Substitutability includes the concept of functional likeness, that is, the extent to which two products perform the same function. In the Issues Paper, MBIE stated that it considers substitutability to be secondary to the physical characteristics of the goods. [REDACTED] agreed. In a limited review of wire nails in 2012, for example, MBIE considered that the difference in the design features of screws and nails was “so significant that substitutability is not a relevant factor in determining whether screws constitute “like goods”” to nails.
- A1.140. NZ Steel considered that the wire nails consideration does not assist in the case of HSS because the difference between screws and nails is manifest.
- A1.141. Submissions were divided on whether HSS of dimensions produced by New Zealand producers is substitutable for HSS of greater dimensions and vice versa.

- NZ Steel argued for substitutability.
- A foreign manufacturer, importers and an end user argued against NZ Steel's substitutability argument.

*NZ Steel*

- A1.142. NZ Steel claimed that there is commercial interchangeability between its HSS and the goods in its subject goods description. Considerations of commercial interchangeability include the extent to which downstream industries and end users would likely substitute imported HSS of different dimensions if HSS of certain lesser dimensions was subject to duties. Dalian Steelforce claims that "product substitution of HSS would typically require a re-evaluation and re-engineering of the structure by a certified Structural Engineer."
- A1.143. NZ Steel referred to its applications for the conceptual and engineering rationale of substitutability of goods that seeks material-use efficiency. In its applications NZ Steel stated that "[a]n OEM<sup>36</sup> Engineer can achieve the desired mechanical performance in a HSS application via design options comprising fewer, but larger dimension HSS, or, alternatively, a greater number of smaller dimension HSS members."
- A1.144. NZ Steel provided a commercial structural engineering example where two options were provided: the first using HSS within the range of dimensions produced by NZ Steel and the second option "using CHS sections of >100mm OD." NZ Steel claimed that this example provided evidence of "current product substitutability and likeness, functional likeness, and direct goods-goods competition and thus commercial likeness. In turn this evidences price spillover and injury matters." The cost per square metre in the example was almost identical and NZ Steel claimed that if duties are imposed on only steel of dimensions made by the New Zealand industry that steel of greater dimensions would be substituted. NZ Steel argued that this example showed "[c]ommercial likeness in that goods <100mm and >100mm both are shown to provide same design solution."
- A1.145. NZ Steel considered that this example provides evidence that "imported HSS of larger dimensions competes with HSS of the dimensions produced locally". MBIE disagrees. This is only one example and may not be replicable for other situations and applications. The example may provide evidence that imported HSS of larger dimensions can be substituted in some circumstances with HSS of the dimensions produced locally, but not evidence that it is being substituted in this way, nor evidence of actual competition between different dimensions.
- A1.146. No evidence is available about the extent to which there may be commercial substitutability between pre-galvanised HSS with thicker and thinner zinc coatings.

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<sup>36</sup> OEM: original equipment manufacturer.

*Importers*

- A1.147. [REDACTED] did not consider that HSS with different dimensions can be substituted by an end user. [REDACTED] noted that end users specify a certain dimension and type of product for particular applications and that the “choice to substitute a product remains with the end user not the manufacturer of one product vs. that of another.” [REDACTED] concluded that “substitutability and commercial interchangeability are not realistic options in light of design constraints and demand from downstream processors.”
- A1.148. [REDACTED] did not agree that there is a high degree of interchangeability. [REDACTED] referred to perimeter, wall thickness (WT), and length as the main differentiating factors between locally produced and imported HSS. [REDACTED] noted that “a section with a 6mm WT cannot simply be substituted for a 9mm WT (which is the next greater dimension WT imported and a 50% increase in WT) as key properties such as strength and load capacity would be compromised.” [REDACTED] also observed that “[I]t is often not practical to substitute products as this may require a re-evaluation and re-engineering of the entire structure.”

*Foreign Manufacturers*

- A1.149. Dalian Steelforce and Steelforce Trading, at the verification visit, claimed that substitution of larger dimensions looked possible to the uninitiated, but not in their experience. They said that consulting engineers say what can and cannot be used and the use of greater dimensions would depend on specific end use. The companies stated that the standard is more important for a structural application. For example, AS/NZS 1163 ensured that the 14 required chemical elements were included and that yield strength and tensile elongation (mechanical) strengths were met.
- A1.150. Dalian Steelforce stated that, for reasons of different galvanised coating thickness and different applications, “there is little commercial substitutability between HDG and pre-galvanised sections.”
- A1.151. Alpine Tube mirrored the views of importers and other foreign manufacturers. At the verification visit, the company stated that the dimensions and wall thickness of the HSS must meet the design specifications required by the customer. For example, if a customer wants HSS with a 9mm wall thickness to meet certain design specifications for a building or other structure using HSS, it must receive a HSS with a 9mm wall thickness. A 6mm wall thickness won’t be sufficient to fit the design specifications.
- A1.152. NZ Steel disagreed with Dalian Steelforce, estimating that the majority of the 38 end uses it identified in its application could be met by either HDG HSS or pre-galvanised HSS.

*End users*

- A1.153. [REDACTED] makes commercial greenhouses and animal shelters from galvanised HSS and noted that New Zealand steel manufacturers do not make all of the sizes and steel grades used in their structures. For site-specific engineered buildings, sections and steel grades are determined by engineers. [REDACTED] considered that the substitution of different HSS to avoid anti-dumping duties would require a significant redesign of their structures because of matching brackets. They would also encounter problems shaping steel of



different wall thicknesses through rollers. These issues point to significant difficulty and change being required to allow for the substitution of larger sizes for smaller sizes of HSS.

- A1.154. MBIE considers that, in the context of questions of subject or like goods, substitutability is just one factor that may be taken into account if the goods are found in fact to be substitutable. It is not just a question of whether the goods being compared could be substituted one for the other, but whether in practice they are being substituted one for the other. NZ Steel provides one example where HSS of different sizes could be substituted but no evidence that this is happening in practice. There is no apparent incentive at the moment for designers to specify a larger size instead of a smaller size. MBIE is not convinced, on the basis of one example, (even if duties were to be imposed on subject goods of certain dimensions) that substitutability and commercial interchangeability are realistic options in light of design constraints, aesthetics and demand from downstream processors.
- A1.155. From the evidence available, MBIE cannot make a clear distinction between HDG HSS and pre-galvanised HSS that would indicate they are not like goods to each other.

### **Competition and price interconnectivity**

#### *Competition*

- A1.156. NZ Steel claimed that the subject goods (of greater dimensions than produced in New Zealand) compete with locally-produced goods.
- A1.157. [REDACTED] and [REDACTED] considered that goods of greater dimensions do not compete with each other as they are not like for like goods. [REDACTED] stated that “[L]ocal and imported HSS do not compete as being of differing dimensions they have different load bearing capacities and applications.”
- A1.158. [REDACTED] indicated that NZ Steel will not supply it or other small-medium businesses with HSS, “forcing them to import like goods.”
- A1.159. [REDACTED] stated that “it is noted the investigation is about goods being like, not competition between locally and imported products.” It sells HSS from NZ or other countries [REDACTED], so does “not believe there is any price elasticity of demand.”
- A1.160. MBIE notes that the question is whether the imported HSS and locally produced HSS are like, not whether they are directly competitive. Competition is just one factor in the consideration of like goods. MBIE is not convinced that the subject goods of greater dimensions than produced in New Zealand compete with HSS of the lesser dimensions produced locally.

#### *Price interconnectivity and spillover*

- A1.161. NZ Steel, when noting that the imported HSS in its description of subject goods includes HSS of sizes up to 30 percent greater than that produced locally, claimed that the greater dimensions estimate the extent of possible price spillover and injury. NZ Steel referred to correspondence which does not differentiate in price per tonne between goods of larger and smaller dimensions.

- A1.162. Price spillover effects may occur when the pricing of different goods is not differentiated to the extent that a customer's product preference would not switch to different goods if the price of one good increases significantly. For example, if duties were only imposed on imported goods of the dimensions produced locally, would importers purchase more imported goods of the greater dimensions because of price spillover effects?
- A1.163. NZ Steel referred to correspondence where prices per tonne are the same for HSS regardless of their dimensions. ██████████ confirmed that "prices per tonne tend to be similar regardless of dimension," but differ between some coatings, such as pre-galvanised and HDG.
- A1.164. In reference to the description of subject goods including HSS of dimensions 30 per cent greater than those produced by NZ Steel, NZ Steel stated that "this estimates the extent of possible price spillover and injury . . . in the manner explained by the Canadian International Trade Tribunal" (CITT) in Carbon And Alloy Steel Line Pipe Inquiry No. NQ-2015-002 [CITT *Line Pipe*] and [*Certain Fasteners*] Inquiry No. RR-2014-001, underpinned in this case by some functional product substitutability."
- A1.165. The CITT *Line Pipe* reference is to the CITT's consideration of requests from several parties that certain goods should be excluded from its finding that the subject goods caused material injury to the domestic industry. The CITT noted that exclusions under Canadian legislation "are extraordinary measures that may be granted in exceptional circumstances at the Tribunal's discretion, specifically when the Tribunal is of the view that such exclusions are not likely to cause injury to the domestic industry."
- A1.166. The CITT's consideration was in respect of neither the scope of the descriptions of "subject goods" nor "like goods." The CITT had already found that "domestically produced line pipe, defined in the same manner as the subject goods, constitutes like goods in relation to the subject goods."
- A1.167. The CITT did however consider price spillover when some parties argued that it "should conduct a separate injury analysis for different types of line pipes and/or market segments" (i.e. seamless and welded, or different technical specifications) and/or different end uses for line pipe, rather than carry out its injury inquiry in respect of a single class of goods. Eighty-five percent of the goods were fully substitutable for each other. The CITT was "satisfied with its conclusions that the subject goods and the domestically produced like goods constitute a single class of goods." The CITT noted that additional factors that weighed against making product distinctions were "the responsiveness of pricing in the market and the potential for spillover effects on the price of line pipe generally."
- A1.168. The CITT's report noted the submissions of some parties that "the product definition was overly broad and captured all sorts of pipe products that are not necessarily "line pipe." The CITT was constrained to "conduct its [injury] inquiry on the basis of the product definition of the dumped or subsidized goods set out in the CBSA's [Canada Border Services

Agency] final determinations” and whether certain goods should “be excluded from the scope of the subject goods is a matter that falls under the CBSA’s exclusive jurisdiction.”<sup>37</sup>

- A1.169. The *Certain Fasteners* report referred to requests by some parties for exclusions of products from an order continuing an existing order, on the basis that certain specific products are not likely to cause injury.
- A1.170. NZ Steel considered that “CITT NQ-2015-002 and RR-2014-110 show that (while bifurcated between CBSA and CITT which is the structurally different arrangement to New Zealand) subject goods beyond the manufacturing scope of the domestic Canadian industries are remedy-able because of like goods substitutability considerations.”
- A1.171. NZ Steel stated that “subject goods consideration ought to reach to product substitution matters. Clearly therefore, subject goods need not necessarily be at the goods boundary of the domestic industry equipment and range produced at any point in time – which is the outcome in Canada and the Australian HSS approach through REP144 to now.” MBIE agrees that substitutability is a factor for consideration in deciding on the scope of subject goods and on the scope of like goods, but it is only one factor and a factor that is not solely determinative of whether the scope of the subject goods should be extended beyond the manufacturing scope of the domestic industry.
- A1.172. Dalian Steelforce rejected NZ Steel’s argument about pricing continuity across goods of adjacent dimensions, “as a primary driver for the purchase of HSS products is the dimensions for the specified end-use application” as per project specifications. Dalian Steelforce notes that “the nominated size, grade, length and coating finish is commonly calculated and verified by a structural engineer and specified in project drawings.”
- A1.173. NZ Steel claimed that the example it provided of two alternative options using steel of different dimensions “confronts close resemblance and empirically disagrees” with Dalian Steelforce’s contention.
- A1.174. Dalian Steelforce noted that “[g]iven that the intended application of HSS products is typically in a structural capacity of some kind, the nominated size, grade, length and coating finish is commonly calculated and verified by a structural engineer and specified in project drawings. The structural engineer will consider the most efficient steel section by size, grade, length and coating to perform the task required.”
- A1.175. MBIE’s initial conclusion was that price spillover has limited application when considering the scope of “subject goods.” Dalian Steelforce agreed with this view. MBIE observes that one importer imports only product outside of the NZ Steel range, which supports a view that there is not significant competition or price spillover between HSS of greater dimensions than those produced by NZ Steel.

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<sup>37</sup> CITT *Inquiry No. NQ-2015-002*, Finding issued 29 March 2016, Reasons issues 13 April 2016, para 22.

- A1.176. NZ Steel claimed that there is commercial interchangeability between its HSS and the goods in the subject goods description.
- A1.177. MBIE's analysis of exports shows that there is a significant difference between HSS of the maximum dimensions produced by the New Zealand industry and the closest larger dimensions being imported e.g. CHS of 101.6mm compared with 114.1mm and RHS of 400mm compared with 456mm. MBIE is not convinced, even if there were price spillover on a per tonne basis in the presence of duties, that importers would move significantly to purchases of larger dimensions of HSS.

### Other matters

#### *Tariff classification*

- A1.178. The subject goods are classified under the tariff items shown below in bold type:
- 73.06 Other tubes, pipes and hollow profiles (for example, open seam or welded, riveted or similarly closed), of iron or steel.
    - Line pipe of a kind used for oil or gas pipelines:
    - ...
    - Casing and tubing of a kind used in drilling for oil or gas:
    - ...
  - 7306.30 - Other, welded, of circular cross-section, of iron or non-alloy steel
  - 7306.30.01 -- Boiler tubes
  - 7306.30.09 -- High-pressure hydro-electric conduits of steel, whether or not reinforced
  - 7306.30.19 -- Other**
  - 7306.40 - Other, welded, of circular cross-section, of stainless steel
  - ...
  - 7306.50 - Other, welded, of circular cross-section, of other alloy steel
  - ...
  - Other, welded, of non-circular cross-section:
  - 7306.61.00** -- Of square or rectangular cross-section
  - 7306.69.00** -- Of other non-circular cross-section

- A1.179. During the investigations, to take account of oval shaped products included in the definition of subject goods, MBIE has added tariff item 7306.69.00 for non-circular cross-section other than square or rectangular.
- A1.180. MBIE makes a reasonable assumption that the tariff items for the HSS goods produced by the NZ industry are the same as those for the imported goods of greater dimensions, namely 7306.30.19, 7306.61.00, and 7306.69.00, but the statistical keys may differ depending on the dimensions of the goods.

#### *Tariff concessions*

- A1.181. Duty-free tariff concessions are available under Part II of the Tariff of New Zealand where suitable alternative goods are not locally produced or manufactured. Applications for tariff concessions on these grounds may be contested by local manufacturers.
- A1.182. The meaning of "suitable alternative" is explained on the Customs website as follows:

*Suitable alternative goods are defined as those goods which perform the same or a similar function to the imported goods for which a tariff concession is sought; and where the imported goods would compete directly in the same market with the New Zealand produced or manufactured goods. Price and quality are not normally taken into consideration when deciding on whether suitable alternative goods are produced or manufactured in New Zealand. The term “suitable alternative” is not interpreted in the narrow sense of requiring that the imported goods should be identical to locally produced or manufactured goods, but rather, that goods produced or manufactured in New Zealand are a suitable alternative<sup>38</sup>.*

- A1.183. The removal of tariffs on HSS when sourced from countries with which New Zealand has free trade agreements may have resulted in less use of the tariff concessions system in recent years. Nonetheless, it is reasonable to assume that the existence of tariff concessions for certain dimensions of HSS is indicative of a lack of local availability and also of a lack of substitutability or interchangeability.
- A1.184. Tariff concessions that are particularly indicative of constraints on New Zealand production of HSS are:

Tariff Item	Goods	Ref No
7304) 7305) 7306)	Exhaust tubing 127mm OD and 152.4mm OD	681190G
7306.61.00	Rectangular hollow sections, being: Rectangular hollow sections in sizes exceeding 127mm x 51mm; or square hollow sections in sizes exceeding 89mm x 89mm	310039B
7306.61.00) 7306.69.00)	Rectangular hollow sections: 64mm x 64mm x 6.3mm 51mm x 51mm x 6.3mm 89mm x 89mm x 6.3mm	601555H
7306.69.00	Carbon steel elliptical tubing of a nominal internal diameter exceeding 112mm x 75mm	302392D

- A1.185. NZ Steel considered that “[t]he assumption of lack of substitutability and interchangeability is not correct insofar as application of AD or CVD tests, because the tariff concession process does not reach to that construct. Tariff concessions ought not be read directly into this case.”
- A1.186. MBIE notes that NZ Steel produces some HSS that is subject to a tariff concession. NZ Steel produces some “square hollow sections in sizes exceeding 89mm x 89mm” (concession reference number 310039B), namely 100mm x 100mm. Since there is evidence NZ Steel produces these products, the tariff concession in this particular case is not useful in helping define the limits of New Zealand production.

<sup>38</sup> <https://www.customs.govt.nz/globalassets/documents/tariff-documents/tariff-concessions-guide.pdf>

A1.187. MBIE considers that tariff concessions for dimensions of HSS that are outside of known current production are however useful in confirming or defining constraints on local production. In support of its position, MBIE notes that “suitable alternative” implies that substitutability and interchangeability are considerations in granting tariff concessions, just as is function and competition as set out in the description above of “suitable alternative goods.”

### The Scope of Subject Goods

A1.188. MBIE has carried out some initial analysis of the circumstances in which it may be appropriate to change the description of subject goods.

### World Trade Organisation Jurisprudence

#### *Like Goods*

A1.189. “Like product” is defined in the AD Agreement and the Subsidies and Countervailing Measures Agreement (SCM Agreement).

- Article 2.6 of the AD Agreement provides that “[t]hroughout this Agreement the term “like product” (“produit similaire”) shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.”
- Footnote 46 to the SCM Agreement has text that is identical to Article 2.6 of the AD Agreement.

A1.190. In its application, in relation to physical characteristics and likeness NZ Steel noted that “the WTO Panel in *Indonesia - Autos*<sup>39</sup> held that the term “characteristics closely resembling” is “on its face... quite narrow” and “includes but is not limited to physical characteristics”<sup>[40]</sup>.” In the Panel’s view “the analysis as to which cars have “characteristics closely resembling” . . . logically must include as an important element the physical characteristics of the cars in question. This is especially the case because many of the other possible criteria identified by the parties are closely related to the physical characteristics of the cars in question.” Other possible criteria identified by the parties were uses to which a product may be put, the substitutability of products, price and tariff classification principles and Indonesia also mentioned consumer perceptions and preferences.

A1.191. The Panel also noted, *inter alia*, that:

- Differences in uses generally arise out of, and assist in assessing the importance of, different physical characteristics of products.

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<sup>39</sup> DS54/DS55/DS59/DS64 *Indonesia — Certain Measures Affecting the Automobile Industry*.

40 Panel Report, *Indonesia – Autos*, at [14.172] – [14.173]

[https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds64\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds64_e.htm)

- Similarly, the extent to which products are substitutable may also be determined in substantial part by their physical characteristics.
- “The term "characteristics closely resembling" in its ordinary meaning includes but is not limited to physical characteristics, and we see nothing in the context or object and purpose of the SCM Agreement that would dictate a different conclusion.”<sup>41</sup>

#### *Subject Goods*

- A1.192. The term “subject goods” (also known as “products under consideration”) refers to “the product allegedly dumped and exported to the importing country and allegedly injuring the domestic industry producing a like product in the importing country”<sup>42</sup>. Article 2.1 of the AD Agreement states that “[f]or the purpose of this Agreement, a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country. . . .”
- A1.193. There is no guidance in the “like goods” article 2.6 of the AD Agreement on the way in which the “subject goods” should be determined. The Panel in *US – Softwood Lumber V* considered that once the product under consideration (the subject goods) is defined, the “like product” to the product under consideration has to be determined on the basis of Article 2.6, but there is no guidance in that Article on the way in which the 'product under consideration' should be determined.<sup>43</sup>
- A1.194. The “like goods” article (AD Agreement 2.6) does not apply to the determination of the scope of the subject goods, nor does it require the product under consideration in an investigation to be defined so as to only include products that are "like" within the meaning of Article 2.6. In *EC – Fasteners (China)*, the Panel rejected an argument that Articles 2.1 and 2.6 together required the product under consideration in an investigation to be defined so as to only include products that are "like" within the meaning of Article 2.6. The Panel stated: “[T]he subject of Article 2.6 is not the scope of the product that is the subject of an anti-dumping investigation at all.” The Panel further stated that “[w]hile it seems self-evident to us that an investigating authority must, at the time it initiates an anti-dumping investigation, make a decision as to the scope of that investigation, and give notice of the "product involved", we are not persuaded that either Article 2.1 or Article 2.6

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<sup>41</sup> Panel Report, *Indonesia – Autos*, at 14.173.

<sup>42</sup> Czako J, Human J, Miranda J, (2003) *A Handbook on Anti-Dumping Investigations*.

<sup>43</sup> Panel Report, *US – Softwood Lumber V*, para. 7.153 – “As the definition of 'like product' implies a comparison with another product, it seems clear to us that the starting point can only be the 'other product', being the allegedly dumped product. Therefore, once the product under consideration is defined, the 'like product' to the product under consideration has to be determined on the basis of Article 2.6. However, in our analysis of the AD Agreement, we could not find any guidance on the way in which the 'product under consideration' should be determined.”

of the AD Agreement establishes a requirement for making an elaborated determination in that regard.”<sup>44</sup>

A1.195. An investigating authority is not however precluded from refining the scope of description of the subject goods. While the AD Agreement does not appear to provide guidance about how to determine the “subject goods”, it likewise does not appear to limit an investigating authority when considering the scope of “subject goods” for an investigation. The Panel in *Mexico - Steel Pipes and Tubes* accepted that an investigating authority may modify its product scope after initiation and during the course of an investigation.<sup>45</sup>

#### **MBIE’s view on the scope of subject goods**

A1.196. There are good reasons why an investigating authority may change the definition of subject goods.

- “[A] wide product scope complicates the investigation as the requirement of making a fair comparison between normal value and export price becomes increasingly difficult.”<sup>46</sup>
- “[The] absence of a definition of what may constitute the product under consideration in the AD Agreement allows for the possibility of a disjoint in the types of products included in the scope of the like product and those included in the product under consideration.”<sup>47</sup> MBIE notes that such a disjoint could, for example, affect the injury analysis such as where price undercutting analysis could not be carried out for some product categories.
- MBIE considers the subject goods should be defined to include only those goods which are allegedly injuring a domestic industry, rather than those which might cause injury to the industry as result of changes in purchasing behaviour following the imposition of duties. The latter circumstance is related to potential circumvention of duties, rather than the focus of an investigation into whether dumping or subsidisation is causing material injury to an industry. ██████████ agreed with this view.

A1.197. NZ Steel agreed with the principle in the chapeau to the preceding paragraph, but considers the principle is not material in this case due to its demonstration of price continuity and connection across different sizes of HSS. NZ Steel did not agree with the third bullet point, because in its view HSS of greater than 100mm is injuring NZ Steel’s

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<sup>44</sup> Panel Report, *EC – Fasteners (China)*, paras. 7.267-7.268.

<sup>45</sup> Panel Report, *Mexico – Steel Pipes and Tubes*, para 7.105. Mexico expanded the definition and scope of the products covered by the investigation at two points during the investigation – in the Preliminary Determination and late in the investigation. The Panel noted that, making this factual finding is not “meant to imply that changing the product scope of an investigation, as such, is problematic under the *Anti-Dumping Agreement* . . . the parties are in agreement that the Agreement does not prohibit, as such, changes to the product scope of an investigation”.

<sup>46</sup> Mavroidis, P.C. et al, *The Law and Economics of Contingent Protection in the WTO*, p.162.

<sup>47</sup> *Ibid*, p.165



pricing in HSS less than 100mm “due to them being available now (pre any duty) and both goods being a functional equivalent option to meet the project brief [*in the examples of two options provided by NZ Steel*]. Spillover extends that injury; Second, we consider it persuasive that this MBIE view is not that of Canada and Australia [*where certain goods not made in Australia were considered like those made in Australia*].”

- A1.198. MBIE maintains its position that the subject goods should be defined to include only those goods which are allegedly injuring a domestic industry currently and prior to the imposition of any duties.
- A1.199. *An investigating authority is not precluded from using a definition of like goods to help it assess the scope of the description of subject goods.* There is nothing in the AD or SCM Agreements to preclude such use. In MBIE’s view, it is open to an investigating authority to decide that the scope of subject goods is so much greater than the like goods produced by the domestic industry, that certain subject goods are not like goods to those being produced domestically. Sections 10F(3) and 11(2)(c) of the Act refer to “like goods” as either all like goods or imports of like goods, not just the like goods produced by the New Zealand industry, confirming that the definition of “like goods” may be used to assess the scope of the subject goods.
- A1.200. *An investigating authority may refine the description of “subject goods.* The definition of “like goods” applies to goods being produced by the domestic industry. If the industry claiming injury does not produce “like goods” to some of the goods included in the description of “subject goods” MBIE considers that an investigating authority may then conclude that those particular subject goods should be excluded from the investigation, for example because there is not an industry that is producing like goods to those particular goods.
- A1.201. *The scope of an investigation should not be confused with potential circumvention of any duties that are imposed.* An industry may apply for action against a wider range of subject goods than the like goods it produces for a range of reasons. One of these reasons is that the industry may be concerned that any duties that are imposed may be circumvented.<sup>48</sup> The extended scope of subject goods in these circumstances is related to circumvention, rather than injury being caused by like goods, and MBIE considers that an investigating authority may therefore decide to exclude the wider range of goods from its investigation. ██████████ agreed with this view.
- A1.202. NZ Steel considered “it would be incorrect to consider the greater than 100mm goods scope is circumvention-related.” NZ Steel considers that subsequent price differential between lesser and greater dimensions of HSS “is an aspect of what may occur but we consider the commercial likeness, functional substitutability . . . are all pre-differential circumstances.” NZ Steel submits that “the MBIE circumvention suggestion would have the

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<sup>48</sup> Ibid, p. 162.

unintended consequence of unfairly traded and injurious goods being neither remediable via [anti-dumping or countervailing] duty, nor able to be redressed via an anti-circumvention claim.”

- A1.203. MBIE notes that this situation would not arise as MBIE’s stated view is that “the subject goods should be defined to include only those goods which are allegedly injuring a domestic industry”, not unfairly traded goods that are not injurious to the industry making application.

### **New Zealand investigations**

- A1.204. In its investigation into subsidisation of galvanised steel coil imports from China, MBIE refined the subject goods definition to limit the goods to an upper width of 1260mm, to reflect NZ Steel’s manufacturing capability, concluding that “galvanised steel coil of widths greater than 1260mm does not closely resemble lesser widths, so the latter are not like goods to the former.” This decision was subject to judicial review, but the judge made no finding on the matter of like goods/subject goods.
- A1.205. In 2012, MBIE concluded a limited review to determine whether the New Zealand industry produced like goods to several types of specialised wire nails imported from China. The review report found that four specialised nails imported from China should be exempted from the anti-dumping duty imposed on wire nails.
- A1.206. A key factor in determining the exemption of one type of nail was function. The review set out an important principle about whether like goods produced by the domestic industry are just those actually being produced or whether potential production could be included. The review’s final report stated that “[b]oth the Act and the Anti-Dumping Agreement are premised on the basis that the domestic industry is currently producing a purported “like good”, not a notional ability to do so. The Ministry considers that it can only compare existing goods with existing goods, and not those that are merely notional.”
- A1.207. NZ Steel considers the wire nails can be distinguished from the lesser/greater circumstance in this HSS case. “In this case the NZS position is that the goods >100mm are like goods <100mm, for all the commercial substitutability, functionality etc reasons that have been discussed.”

### **Australian investigations**

- A1.208. NZ Steel referred to a number of Australian trade remedy investigations into HSS as contextual evidence.
- A1.209. The ADC’s Dumping and Subsidy Manual (ADC Manual) contains no guidance about changing the scope of the product under consideration, other than that “[i]n order to determine whether there is, or may be established, an Australian industry producing like goods, the ADC will identify the imported goods (commonly referred to as the goods under consideration or the goods the subject of the application).”
- A1.210. The ADC Manual identifies the considerations the ADC takes into account when assessing whether the locally-produced goods and subject goods have characteristics closely resembling each other, namely, physical likeness, commercial likeness, functional likeness, production likeness and other considerations, such as marketing.

*Certain Hollow Steel Sections*

- A1.211. Although not referred to by NZ Steel in its application, MBIE notes that when the ADC was investigating alleged dumping and subsidisation of certain hollow structural sections (Investigation 144), it released an issues paper<sup>49</sup> in early 2009 on the goods under consideration and like goods. Some interested parties had raised issues alleging that the local producers may have included goods in the goods under consideration (the imported subject goods) when they may not be producing like goods.
- A1.212. The issues centred mainly around limitations in the dimensions of hollow structural sections produced by the Australian industry. The ADC called for submissions after identifying its practice to have regard to:
- physical likeness, including size, grade, shape and standards
  - commercial likeness (identifiable from market behaviour), such as direct competition in the same market sector, willingness of purchasers to switch, price competition and differentiation, and distribution channels
  - functional likeness, including end use, similar function and consumer preference
  - production likeness and other considerations.
- A1.213. The ADC maintained the definition of subject goods in its Statement of Essential Facts of 8 July 2009<sup>50</sup>. The ADC concluded that “the goods manufactured by the Australian industry are like goods to the goods under consideration for the following reasons:
- physical: the goods are produced in similar grades, weights, standards and appearance;
  - commercial: the goods directly compete with Australian produced goods and are interchangeable;
  - functional: the goods are used to perform the same function and have the same end-use; and
  - production: the goods are manufactured in a similar process.”
- A1.214. While this investigation was terminated due to negligible injury, MBIE notes that the dimensions of HSS in a subsequent investigation (Investigation 177), which resulted in the imposition of duties, remained the same.
- A1.215. NZ Steel referred to investigation 177 in its application. The ADC in its final report on this investigation into dumping and subsidisation of hollow structural sections from China, Korea, Malaysia, Taiwan and Thailand<sup>51</sup> of 7 June 2012 noted several submissions claiming

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<sup>49</sup> [http://www.adcommission.gov.au/adssystem/referencematerial/Documents/Microsoft\\_Word\\_-\\_Issues\\_paper\\_2008\\_144\\_Like\\_Goods\\_HSS.pdf](http://www.adcommission.gov.au/adssystem/referencematerial/Documents/Microsoft_Word_-_Issues_paper_2008_144_Like_Goods_HSS.pdf)

<sup>50</sup> <http://www.adcommission.gov.au/cases/Documents/EPR%20144/SEF%20No.%20144%20Malaysia-%20China%20Final.pdf>

<sup>51</sup> <http://www.adcommission.gov.au/cases/documents/REP177-FINAL.pdf>

that the Australian industry does not, or cannot, “supply certain models of HSS that would fit within the goods description.”

- A1.216. The ADC considered that such a claim, even if correct, would not allow it to change the description of the subject goods. Rather, it noted that it may be open to the Minister to exclude that subset from duty notices or separate non-injurious prices could be established to ensure that any measures are imposed in a manner that removes only the injury caused by dumping and subsidisation.
- A1.217. In considering whether the industry made HDG pipe, the ADC again appeared to make a judgment about whether those goods should be treated separately, but not excluded from, the investigation. The ADC concluded that, due to the fact that the Australian manufacturer produced HDG pipe in the investigation period that is “like” to imported HDG pipe, and they still had the capacity to produce this HDG pipe, the ADC did not consider that HDG pipe should be treated separately for purposes of the investigation.
- A1.218. Some interested parties also claimed the Australian industry was limited in its ability to produce products above certain thicknesses and cross-sectional sizes. The ADC rejected those claims because there was a manufacturer of larger size product during the period of investigation (even though since closed) and that the applicant producer “has the ability to modify its production facilities in order to manufacture an expanded range of sections.” It is unclear whether, if a case was justified, the ADC would have excluded the products of greater dimensions or dealt with them (as it could have done for the models referred to above) through injury analysis or at the time of imposing duties.
- A1.219. On the other hand, the ADC appeared open to excluding red painted CHS used in fire systems if sufficient information had been provided. The ADC found “no reason for it to be excluded from the investigation or from material injury considerations.”
- A1.220. The ADC assessed that the Australian industry produced like goods to the imported subject goods on grounds of physical likeness (it manufactured a wide variety of goods), commercial likeness (the industry’s product competed directly with imported subject goods), functional likeness and production likeness. The ADC noted that “[t]hese findings are not premised on a comparison of individual imported and domestically produced models, but rather represent a global consideration.” MBIE notes that the Australian HSS industry produces a wider range of dimensions than does the New Zealand industry.

### **Tariff Concessions**

- A1.221. The tariff concessions system provides for tariff free entry of goods that are not available from New Zealand producers, namely when there is no suitable alternative. MBIE considers therefore that the subject goods description should exclude goods subject to

tariff concessions other than goods subject to the temporary tariff concession for residential building materials.<sup>52</sup>

- A1.222. NZ Steel disagreed that HSS subject to general tariff concessions should be excluded on grounds that tariff concessions are provided under the Tariff Act 1988 in the form of “a limited review” rather than using the term “like goods”. NZ Steel considers that “like goods” goes beyond the Tariff Act by incorporating “likeness in terms of injury matters.”
- A1.223. MBIE refers to its explanation above about the description of “suitable alternative goods” including some of the factors considered when deciding on the scope of subject or like goods, such as implied substitutability and interchangeability, function and competition. MBIE also notes that New Zealand manufacturers may object to the granting of tariff concessions if they consider they make suitable alternative goods, indicating that a successful application for a tariff concession has raised no sustainable concerns from a New Zealand manufacturer that removal of tariff protection or assistance on suitable alternative goods will adversely affect their business.
- A1.224. MBIE considers that goods subject to tariff concessions should not be subject to the dumping and subsidy investigations into imported HSS. MBIE does however consider that specific HSS subject to a tariff concession should be included where there is evidence of current production of such HSS.

### **Conclusions**

- A1.225. The key question is what subject goods are required to be investigated to establish whether or not dumping or subsidisation of those goods is causing, or threatening to cause, material injury to a New Zealand industry.
- A1.226. Dumping and subsidy investigations are taken in respect of goods that are like. The domestic industry consists of those producers making like goods to the subject goods.
- A1.227. MBIE is satisfied that the New Zealand industry for these investigations consists of Industrial Tube, NZ Steel and NZ Tube Mills.
- A1.228. After considering the totality of factors analysed in this report, MBIE considers that:
- there is no reasonable basis for concluding that HSS of certain greater dimensions than those produced locally should be included in the scope of the subject imported goods being investigated
  - there is no reasonable basis for concluding that painted or pre-galvanised HSS should be excluded from the scope of the subject goods and the like goods.
- A1.229. MBIE therefore defines the subject goods as:

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<sup>52</sup> The rationale for the temporary tariff concession for residential building materials is not based on whether goods are unavailable from New Zealand producers. Many residential building materials under that tariff concession are made in New Zealand.

*Certain electric resistance welded pipe and tube made of carbon steel, comprising circular and noncircular hollow sections, collectively referred to as hollow steel sections (HSS)*

- *Circular products – nominal bore diameters of 15mm or more but less than 102mm with wall thicknesses from 1.0 to 6.0mm*
- *Square and rectangular products – external perimeters of 100mm or more up to and including 400mm with wall thicknesses of 1.0 to 6.0mm*
- *Oval products – external perimeters up to and including 314mm with wall thicknesses of 1.0 to 3.0mm.*

*The finish types of the goods are: galvanised including in-line galvanised, pre-galvanised or hot-dipped galvanised; or non-galvanised, including but not restricted to black, oiled, painted or lacquered finishes.*

## ANNEX 2: COMMENTS RECEIVED ON THE EFC REPORT

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Comments on the EFC Report including the Supplement to the EFC Report were received from:

- I Alpine Pipe
- II Dalian Steelforce/Steelforce Trading
- III Jinan Mech
- IV NZ Steel
- V Tianjin Youfa

This Annex summarises the points made in these comments and sets out MBIE's response to them.

### I. Alpine Pipe

#### *Negligible Imports*

- A2.1. Alpine Pipe's submission pointed out that the EFC Report showed that imports from Malaysia represented only 2.2 per cent, which is a negligible level. Alpine Pipe noted the provisions of Article 5.8 of the AD Agreement regarding the immediate termination of an investigation when the volume of dumped imports is negligible. Alpine Pipe considered that it had strong grounds to request MBIE to promptly terminate the investigation.

#### **MBIE Response**

#### *Negligible Imports*

- A2.2. MBIE agrees that the findings of the investigation are that imports of dumped HSS from Malaysia are negligible, and the investigation should therefore be terminated. MBIE has recommended that the Minister terminate the investigation.

### II. Dalian Steelforce/Steelforce Trading

#### *Normal Values*

- A2.3. The submission received from Dalian Steelforce/Steelforce Trading noted that MBIE appears to have correctly and accurately considered the relevant factors that gave rise to differences which have affected price comparability. The submission also fully supported MBIE's interpretation and application of the rules governing the determination of normal values, and sets out the arguments against the interpretation put forward by NZ Steel.

#### *Theoretical v Actual Weights*

- A2.4. Dalian Steelforce/Steelforce Trading commented on NZ Steel's submissions on the Supplement to the EFC Report relating to theoretical v actual weight.

#### **MBIE Response**

#### *Normal Values*

- A2.5. MBIE notes that the submission from Dalian Steelforce/Steelforce Trading supports MBIE's interpretation of the relevant agreements governing the establishment of normal values as set out in this Report.

*Theoretical v Actual Weights*

- A2.6. MBIE has noted the comments made by Dalian Steelforce/Steelforce Trading. The issue is addressed in section IV of this Annex concerning NZ Steel's submissions.

**III. Jinan Mech**

- A2.7. Jinan Mech raised two issues, the level of VAT rebate used in the export price calculation, and the exclusion of sales to end-users in the determination of normal value.

*VAT Rebate*

- A2.8. Jinan Mech noted that MBIE had disregarded the VAT rebate rate of 13 per cent reported by Jinan Mech, and had instead used the rate of 9 per cent reported by other Chinese manufacturers as the basis of the export price adjustment.
- A2.9. Jinan Mech submitted that it was not in dispute that Jinan Mech's exports of HSS to New Zealand were subject to the 13 per cent VAT rebate, since this was supported by the evidence on the record, including the Customs Declaration Forms, Chinese tariff Schedule and the VAT Refund declaration Form. This information demonstrated that Jinan Mech's HSS exported to New Zealand was declared under Harmonised System (HS) Code 7306.19, which was eligible for the 13 per cent VAT refund rate.
- A2.10. Jinan Mech claimed that China Customs was the appropriate authority under Chinese customs law to determine the tariff classification that corresponds to a specific VAT rebate rate, not MBIE. Jinan Mech's tariff classification had never been challenged or flagged as an issue by China Customs, and it was not appropriate for MBIE to assume that Jinan Mech's tariff classification was incorrect, ignoring the evidence in the records.
- A2.11. Jinan Mech pointed out that what matters in a fair comparison is the actually incurred cost by Jinan Mech that affects price comparability, and this was demonstrably the 4 per cent non-refundable VAT, rather than 8 per cent. Jinan Mech claimed that the 4 per cent non-refundable VAT was the cost that Jinan Mech took into account in setting its export prices.
- A2.12. Jinan Mech requested that MBIE make a price adjustment based on the 13 per cent VAT rate applied to Jinan Mech instead of the 9 per cent refund rate provided by other Chinese manufacturers.

*Sales to End-Users*

- A2.13. Jinan Mech noted that MBIE had excluded sales to end-users on the domestic market when determining base prices. Jinan Mech claims that this is inconsistent with Article 2.2 of the AD Agreement.
- A2.14. Jinan Mech noted that Article 2.2 provides for the exclusion of sales if they are not in the ordinary course of trade if they are not profitable. According to Jinan Mech, the level of trade is not a factor for deciding if domestic sales are in the ordinary course of trade, and there is no legal basis for excluding sales to end-users.
- A2.15. Jinan Mech referred to Article 2.4 of the AD Agreement which requires a fair comparison between the export price and the normal value at the same level of trade, and suggests that due adjustments should be made to the differences on levels of trade that affect price comparability. Such adjustments should not simply exclude all domestic sales not on the



same level of trade. Jinan Mech has quantified the differences arising from sales to distributors and to end-users, and claims an adjustment of [REDACTED] per cent of the sales price made to end-users.

- A2.16. Jinan Mech claimed that MBIE ignored Jinan Mech's claims and its methodology significantly and unduly inflated Jinan Mech's normal value by [REDACTED] per cent. Jinan Mech requests that MBIE rectify its methodology and revise the calculation of Jinan Mech's normal value accordingly.

**MBIE response**

*VAT rebate*

- A2.17. In the EFC Report MBIE based its allowance for the VAT rebate on the 9 per cent rebate rate applicable to HSS coming under the tariff headings of the subject goods. This meant a deduction of 8 per cent. MBIE noted that Jinan Mech claimed to have received a refund of 13 per cent and provided evidence that this is the rate applicable to HS 7306.19. Since the subject goods come under HS 7306.30/61/69 MBIE did not use this rate.
- A2.18. The rate claimed by Jinan Mech is applicable to line pipe, which comes under HS 7306.19. The goods exported by Jinan Mech entered New Zealand under HS 7306.30, which excludes line pipe, and the descriptions in the export documentation clearly identify them as subject goods.
- A2.19. MBIE notes that the Australian Department of Home Affairs (ADHA) in July 2018 published a draft "Tariff Classification Guide on Line Pipe of a Kind Used for Oil or Gas"<sup>53</sup> due to uncertainty over the type of steel pipe that is classified as line pipe of a kind used for oil or gas pipelines following the imposition of anti-dumping and countervailing duties on hollow structural sections. The draft noted that the term 'line pipe' in the context of the relevant subheadings of the Tariff means pipe that the oil or gas industry identifies as 'line pipe' for oil or gas pipelines. Oil and gas pipelines transport oil and gas over long distances. The draft identified the standards applicable to line pipe, but noted "Certification to these international Standards is of assistance but not enough to identify pipe as line pipe for oil and gas transmission (transportation) pipelines in Australia."
- A2.20. Jinan Mech has provided evidence that China Customs has accepted the HSS exported to New Zealand by Jinan Mech as being classified under HS 7306.19, and Jinan Mech claims that its export prices have been based on the refund level actually paid by China Customs on this basis.
- A2.21. Given these circumstances, including the lack of any definitive classification of the goods traded and Jinan Mech's reliance on the rebate level actually provided in establishing its prices, MBIE concludes that the appropriate level of the deduction for the VAT rebate is 4 per cent, based on the rebate level actually applied by China Customs. The export price

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<sup>53</sup> Available at <https://www.homeaffairs.gov.au/Tariffclassificationofgoods/Documents/tcg-line-pipe-draft.pdf>.

calculation undertaken by MBIE, and the consequent dumping margin, contained in the EFC Report have therefore been adjusted.

- A2.22. The consequence of this adjustment is that the overall dumping margin for Jinan Mech is 1.1 percent, which is *de minimis*. This also means that the All Others rate calculation should exclude Jinan Mech, meaning that there is no dumping attributable to non-sample manufacturers. This will leave Hengshui Jinghua as the only dumping manufacturer, responsible for 100 per cent of imports from China and 100 per cent of the HSS market. In these circumstances it is unlikely that material injury to an industry could be attributed to the dumping of HSS from China.
- A2.23. The Supplement to the EFC Report was issued in order to ensure that interested parties were informed of the consequential changes to the essential facts and conclusions likely to form the basis for a determination by the Minister under section 10D(1) of the Act.

#### *Sales to End-Users*

- A2.24. In the EFC Report, MBIE noted that in establishing base prices for the normal value calculation it had excluded domestic prices to related parties and also sales to end-users to ensure a fair comparison, given that sales to New Zealand were to importer/distributors. The base prices for establishing normal values for Jinan Mech were the prices paid by unrelated distributors in China for HSS of the dimensions included in the description of the subject goods.
- A2.25. Article 2.1 of the AD Agreement provides that a product is considered to be dumped if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.
- A2.26. In *US – Hot-Rolled Steel*, the Appellate Body considered that "[t]he text of Article 2.1 expressly imposes four conditions on sales transactions in order that they may be used to calculate normal value: first, the sale must be "in the ordinary course of trade"; second, it must be of the "like product"; third, the product must be "destined for consumption in the exporting country"; and, fourth, the price must be "comparable".<sup>54</sup>
- A2.27. MBIE considers that for sales to be comparable they should, where available, be compared at the same level of trade. Article 2.4 provides that "A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time." Where the comparability is affected by differences in the level of trade, then Article 2.4 provides the basis for making relevant adjustments, stating, "Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in ... levels of trade ..."

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<sup>54</sup> Appellate Body Report, *US – Hot-Rolled Steel*, para. 165

- A2.28. Both Article 2.1 and 2.4 address the comparison of normal values and export prices, and emphasis that they should be “comparable” and that the comparison should be made at the same level of trade. The need for any adjustments arises only if comparable sales are not available.
- A2.29. MBIE does not consider that Jinan Mech’s argument is well-founded, and does not consider it necessary to change its methodology.

#### **IV. NZ Steel**

- A2.30. NZ Steel’s submission covered matters relating to both the dumping and subsidy EFC Reports. This section addresses issues specifically relating to the dumping EFC Report, as well as other matters raised by NZ Steel which arise in both contexts, such as sampling and subject goods. NZ Steel also made submissions on the Supplement to the EFC Report in relation to the matters raised in the Supplement.
- A2.31. NZ Steel also made additional submissions on the Supplement to the EFC Report in the light of information it received from the Public File the day after its substantive submission, i.e. the Tianjin Youfa Verification Report. These submissions related to the volume of trade, theoretical weight, the subject goods covered in Table 2.1, and subject goods and tariff concessions. In the circumstances, MBIE has addressed these matters in this Annex.

##### **Residential Building Materials**

- A2.32. NZ Steel considered that MBIE’s new conclusion that HSS is a residential building material is incorrect. NZ Steel cited the purpose of the Act, and noted that the Government had not consulted with industry prior to imposing the residential building material suspension, and that there is uncertainty around the Act’s definition of ‘residential building material.’ NZ Steel claimed that HSS is overwhelmingly used for non-housing purposes and is rarely used in residential construction, and there is nothing in the information provided to MBIE to demonstrate that housing is more than a minor or incidental use of HSS in New Zealand. Where HSS is incorporated into a residential building it makes no more than a negligible contribution to overall building costs. NZ Steel referred to several website links for companies in the steel framing sector, noting that “[t]hese pages describe the materials used in steel framing, and none refer to the use of HSS. NZ Steel supported MBIE’s approach from the Provisional Measures Report which suggested that because a few HSS products can be incorporated into or associated with a residential dwelling would not meet the purposes of the Act nor the policy objective of section 14AA of the Act. NZ Steel suggested that there was no reasonable basis for MBIE to reverse that position.
- A2.33. NZ Steel’s submission went on to address the interpretation of ‘residential building material’ in light of the purpose of the suspension, and the need for a positive approach to meet Parliament’s objectives.
- A2.34. NZ Steel noted that MBIE had asked for submissions on the extent to which HSS is used in residential building. NZ Steel stated that in its experience HSS is rarely used in residential construction. NZ Steel noted the various comments made by submitters and suggested that they are incorrect or represent rare or unusual circumstances.

- A2.35. NZ Steel concluded that there is no evidence that HSS use in residential building is non-negligible, and it is difficult to see how including HSS within the definition of residential building material supports the policy objective of housing affordability. NZ Steel considered that the scope of residential building material should not be extended in the way MBIE has proposed, and the approach set out in the Provisional Measures report should apply.
- A2.36. In response to the Supplement to the EFC Report, NZ Steel submitted that the inclusion of HSS as a residential building material did not assist the objective of housing affordability, noted that HSS “is overwhelmingly used for non-housing purposes”, as listed in its application, and is “rarely used in house construction.” NZ Steel states that it asked a group house builder, ██████████, about the extent of use of HSS in residential buildings and received a reply that it is “rare or occasional”. NZ Steel provided an article about that company but did not state who it consulted within that company.
- A2.37. NZ Steel also referred to what it considers to be an apparent incongruity whereby some goods<sup>55</sup> that are excluded by the Act as residential building materials are used “prevalently” in residential buildings (from 25 to 95 per cent residential usage), whereas HSS use in residential building in is, NZ Steel’s estimate, “at most . . . in the very small single figures.” NZ Steel provides no further information in support of its estimate.


### **MBIE Response**

- A2.38. In the Provisional Measures Report, MBIE acknowledged that there is potential for some HSS to be incorporated into a residential building. On the basis of information available at the time of the Provisional Measures Report, MBIE considered “that the overwhelming majority of end uses did not result in incorporation into or association with a building or residential dwelling” and noted that it would seek further information on the extent to which HSS could be used as a residential building material.
- A2.39. MBIE considered that building consent authorities would have access to current information on the use of HSS in residential buildings and would have no conflict of interest in respect of whether duties would be imposed or not. MBIE asked WCCCC a number of questions and received responses which are recorded on the public file.
- A2.40. It is now quite clear to MBIE that some HSS is covered by the definition of “building material” in section 3(1) of the Act, and that all of the HSS subject to investigation is “capable of being incorporated into or associated with a residential dwelling” even if in practice only some of the HSS is actually used in residential buildings. MBIE has provided examples of a range of uses in residential dwellings.
- A2.41. In response to NZ Steel’s references to websites in the New Zealand steel framing sector, MBIE notes that materials are not set out in particular detail on these websites, nor on websites of building companies, such that it makes it easy or even possible to establish

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<sup>55</sup> Such as heating appliances, wall and floor coverings and smoke alarms.

whether or not some HSS is used in residential buildings. For example, one website noted by NZ Steel refers to installing “cold rolled formed galvanised steel structural columns” when forming the shell of a 4-bedroom 2-level house, but it is not clear whether or not this is HSS<sup>56</sup>. Another website not referred to by NZ Steel<sup>57</sup>, appears to include galvanised HSS in support poles. The information provided by WCCCC, however, does provide particularised information about the use of HSS in residential buildings.

- A2.42. In the Provisional Measures Report, MBIE explained that the “temporary suspension of anti-dumping duties, accompanied by the temporary introduction of tariff concessions on a wide range of building materials, is in place to “remove a cost on the importation of building materials, which will promote competition in the residential construction sector and ultimately lower the cost of building new homes.” The suspension of anti-dumping duties was also implemented in the context of the Canterbury post-earthquake rebuild and a need to increase residential construction, particularly in Auckland. In the Provisional Measures Report, MBIE suggested that the “temporary suspension of provisional measures on HSS as a whole, because a few HSS products can be incorporated into or associated with a residential dwelling, would meet neither the purpose of the Act nor the policy objective of section 14AA of the Act temporarily suspending anti-dumping duties on residential building material.”
- A2.43. The further information gathered by MBIE since the Provisional Measures Report has given MBIE a better understanding of the extent to which HSS is incorporated into, associated with, or capable of being incorporated into or associated with a building, and in particular of the extent to which such HSS is capable of being incorporated into or associated with a residential dwelling.
- A2.44. MBIE is not persuaded that NZ Steel’s statement from a group house builder should cause MBIE to change its view. MBIE recognises above that in practice only some of the HSS is actually used in residential buildings. The accompanying article provided by NZ Steel showed that the group house builder produces  per cent of New Zealand housing by value. The company’s builds may not be representative of all residential builds. MBIE considers the information provided by WCCC to be indicative of use across the residential building sector, including homes and apartments.
- A2.45. MBIE notes that the scheme suspending anti-dumping duties was not designed to include all goods involved in a residential building. The use of excluded goods in residential buildings does not represent an incongruity, but rather the design of the scheme to cover building materials rather than, for example, household furnishings and equipment.
- A2.46. The definitions of “building material” and “residential building material” are broad in statement and intent. Given this breadth and greater clarity about the extent to which HSS

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<sup>56</sup> <http://www.sfc.co.nz/index.php?page=4Bedroom2LevelHouse>

<sup>57</sup> <https://ieshahomes.co.nz/gallery/architectural-model-shots/>

is or may be used in residential dwellings, MBIE considers that HSS does fall within the relevant definitions.

- A2.47. In any event, since MBIE has concluded that anti-dumping duties do not need to be applied, the question has no direct relevance in this case.

#### **Export Price – VAT Rebate (Jinan Mech)**

- A2.48. In response to the Supplement to the EFC Report, NZ Steel disagreed with the VAT rebate change and queried whether there is evidence that all of Jinan Mech's exports to New Zealand were under HS Code 7306.19. NZ Steel also asked MBIE to "verify as to accuracy the VAT documents supplied by Jinan Mech.

#### **MBIE Response**

- A2.49. MBIE has accepted the documents provided by Jinan Mech in support of its claim that it receives a 13 percent rebate of VAT, based on the following documents:
- Import & Export Customs Tariff Schedule of the People's Republic of China page 496 which shows a 13 per cent VAT refund rate for goods of HS Code "7306.1900".
  - Chinese Customs Forms for Export for all Jinan Mech shipments sent to New Zealand in 2017. All of these forms state the HS Code "73061900.00".
  - A VAT Refund Declaration Form for the month of January 2017 with detail attached showing values for all export sales in that month, including sales to New Zealand. The sales to New Zealand refer to HS Code "73061900" and show the VAT rate of 17 per cent, the VAT rebate of 13 per cent and the amount rebated in yuan, being 13 per cent of the total price for the invoices for those sales.
- A2.50. MBIE carried out a desk verification of the documents provided by Jinan Mech to establish their consistency and accuracy. MBIE notes that there is no requirement in the Act or the AD Agreement to carry out verification visits.<sup>58</sup>
- A2.51. In summary:
- MBIE is satisfied that the information provided by Jinan Mech is accurate, based on its assessment of the documents provided and their consistency with other documents provided by Jinan Mech.
  - MBIE is satisfied, on the basis of positive evidence provided by Jinan Mech, that the rebate Jinan Mech received during the POI was 13 per cent.
  - MBIE has no evidence to indicate that the rebate will change in the future.

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<sup>58</sup> The panel in *US - DRAMS* was of the opinion that Article 6.6 of the AD Agreement does not explicitly require verification of all information relied upon. The Panel stated "Article 6.6 simply requires Members to 'satisfy themselves as to the accuracy of the information'. In our view, Members could 'satisfy themselves as to the accuracy of the information' in a number of ways without proceeding to some type of formal verification, including for example reliance on the reputation of the original source of the information. Indeed, we consider that anti-dumping investigations would become totally unmanageable if investigating authorities were required to actually verify the accuracy of all information relied on."

- MBIE notes that Jinan Mech claims that its export prices have been based on the refund level actually paid by China Customs on this basis.
- MBIE concludes that the appropriate level of the deduction for the VAT rebate for Jinan Mech is 4 per cent, based on the rebate level actually applied by China Customs.

### **Normal Value – Market Situation**

- A2.52. NZ Steel noted that MBIE has declined to use a constructed value under section 5(2)(b) of the Act, and suggested that it was on the basis that the 2004 TECFA rules out the use of a surrogate and there was insufficient evidence of GOC price distortion. NZ Steel then went on to repeat material from its submission of 15 August 2015, in particular in relation to TECFA and the use of surrogates. In particular, NZ Steel appeared to attach particular emphasis to a 2004 statement that recognising China as a market economy involved no change to present policy and no reduction in protections for the New Zealand domestic economy.
- A2.53. NZ Steel considered that MBIE “is required” to take account of the situation applying in the China HSS sector, and considered it regrettable that MBIE did not appear to have engaged with the 750 plus pages of reports and references which identify the means by which the GOC distorts Chinese HSS prices. NZ Steel claimed that there was no evidence that MBIE had engaged with information regarding HRC price differentials between China and other markets or had asked questions relating to the market situation in China.
- A2.54. NZ Steel does not accept MBIE’s suggestion that in all of its cases involving China there has not been compelling evidence to suggest that prices are not market prices. NZ Steel points out that non-steel cases involved industries that did not “have any of the extensive and particularised price-affecting dynamics or foundations which exist in the Chinese HSS industry”; in none of those cases was evidence provided by the applicant of the means and instruments by which the GOC affected the market situation; and none of those cases involved a Chinese industry where “comparator” jurisdictions of Canada, EC, USA and Australia, had accepted distortion of the market situation in China as requiring use of a constructed value.

### **MBIE Response**

- A2.55. NZ Steel’s submission does not correctly represent MBIE’s position. MBIE restated the background in the EFC Report and in section 4.4.1 of this Final Report. The facts are that under TECFA New Zealand agreed not to apply Sections 15 and 16 of the Protocol of Accession; and the provision relating to use of surrogate country information was not carried over into the amended Act in 1994. This does not mean that section 5 does not apply. Section 5(2) of the Act can always be applied when the chief executive is satisfied that normal values cannot be determined under section 5(1). In that case one option is to construct normal values on the basis of the cost of production or manufacture in the country of export, plus reasonable amounts for administrative and selling costs, delivery charges and other charges incurred in the sale, and profits established on the basis of the rate of profit normally realised on sales of goods of the same general category in the domestic market of the exporting country. Section 6 of the Act allows the chief executive to determine the normal value, having regard to all available information, if insufficient

information is available to enable the normal value to be ascertained under section 5. The AD Agreement also provides guidance on the establishment of normal values, and panel and Appellate Body findings provide guidance on the issue of benchmark information.

- A2.56. MBIE notes that it has undertaken investigations involving China that are not included on the list put up by NZ Steel. Investigations involving China have covered women's non-leather footwear, men's casual footwear, men's business shirts, disposable lighters, clear float glass, cement, lead acid batteries, and galvanised wire, in addition to those listed by NZ Steel. Other than the footwear cases, which were initiated before 1995, in none of those cases was it found necessary to resort to constructed normal values on the grounds that the GOC distorted prices in the domestic market.
- A2.57. The 2004 statement regarding the lack of change to New Zealand's policy reflected the 1994 amendment to the Act to remove the reference to economies where prices were controlled by the government, and the approach followed by the New Zealand authorities in investigations involving China since that time, as noted above.
- A2.58. The fact that some other jurisdictions have sought to apply a "particular market situation" as a basis for using external price or input information reflects, in some cases, their evolution from the non-market economy criteria that were previously provided for in their legislation. In this context, MBIE has reviewed the approach taken by other jurisdictions, including the material provided by NZ Steel relating to the views of other jurisdictions and in various reports on the Chinese steel market. This is reflected in additions to section 4.4.1. MBIE has found no reason to change its position as set out in section 4.4.1 of this Final Report. The approaches taken by some other jurisdictions by no means represent any form of consensus amongst WTO members that such approaches are consistent with the AD Agreement.

#### **Malaysia – Negligible Import Volumes**

- A2.59. NZ Steel noted that the finding of negligible imports from Malaysia arose from the increase in the volume of imports from China compared with the levels reported in the Provisional Measures Report. NZ Steel stated that this is very important matter and requested that the import data be reviewed, and noted, as an example, that imports from Australia might contain coding errors. NZ Steel requested that MBIE re-examine all of the exporter-side, New Zealand importer-side and Customs records to establish to a more definitive degree whether the country volume shares are correct. NZ Steel also suggested that the growth in imports from China in 2017 was very large and unusual.
- A2.60. In its additional submission NZ Steel noted that the Tianjin Youfa trade volume indicated that the vast majority of imports were from Dalian Steelforce, and claimed that MBIE had declined to explore an export value discrepancy relating to Dalian which, if it affected volumes, might be critical. NZ Steel also noted that the volume of subject goods showed a decline from the previous total goods, and suggested that similar declines could be expected in relation to imports from other sources. Also in the context of import data, NZ Steel queried the inclusion of goods subject to tariff concessions in Table 2.1.
- A2.61. In its submission on the Supplement to the EFC Report, NZ Steel claimed that the negligible volume figure [NZ Steel referred to 'de minimis' which relates to dumping margins not



*import volumes*], was based on incorrect figures. NZ Steel set out the basis for this belief, including the level of imports of the revised subject goods description, and in particular imports from Australia.

- A2.62. NZ Steel also noted that the import volumes in Table 3.1 of the Supplement to the EFC report did not add up correctly.

### **MBIE Response**

- A2.63. The import levels for sampled manufacturers from China and Malaysia are based on a careful analysis of the goods actually imported from those manufacturers during 2017, based on invoice data which included detailed descriptions of the goods concerned. Imports from other sources, from China and from other countries, cannot be assessed in the same manner because invoice data is not available. The assumption was made that imports from other sources were like the subject goods. The total of the known subject goods and imports from other sources entering under tariff items and statistical keys covering the subject goods provided the basis for the conclusion regarding the negligibility of Malaysian imports.
- A2.64. MBIE notes that in order for the volume of imports from Malaysia to exceed the negligible level, it would be necessary for total volumes of subject goods to decrease by a volume greater than that of the total of other China and other countries, including Australia (see Table 2.1).
- A2.65. With regard to the Dalian value discrepancy referred to by NZ Steel, MBIE is satisfied that it was not significant and did not affect the level of import volumes of subject goods established by MBIE.
- A2.66. In response to the query raised by NZ Steel regarding the inclusion of imports under concession in the data in Table 2.1, MBIE has clarified that this does not exclude all concessions, bearing in mind that the concessions to be included are addressed in the discussion on subject goods in section 2.1 and Annex 1.
- A2.67. MBIE has reviewed imports from Australia and can confirm that virtually all such imports entered under statistical keys that are either fully within the scope of the subject goods or partially cover the subject goods. MBIE notes that even if all Australian imports were outside the scope of the subject goods, the total would still be insufficient to modify the conclusion regarding the negligibility of imports from Malaysia.
- A2.68. With regard to Table 3.1 (in the Supplement to the EFC Report), MBIE agrees that the figures for 'other countries' had double-counted imports from Malaysia. This clerical error has been corrected in Table 5.1 in this Final Report, but made no difference to any of the analysis or to the conclusion that imports from Malaysia were negligible.

### **Sampling**

- A2.69. NZ Steel referred to its submission of 15 August 2018 in which it commented on MBIE's approach to sampling. NZ Steel claims that MBIE can turn to sampling only when it is impracticable to investigate all producers. NZ Steel referred to the New Zealand country paper in a 2012 EC Report which referred to New Zealand practice in the use of samples. NZ Steel suggested that MBIE had had plenty of time to track down suppliers because of

the time that elapsed before initiation of the investigation, and provided a table comparing Canadian experience with that of New Zealand as indicated in the 2012 EC Report and in the current case.

### **MBIE Response**

- A2.70. MBIE balances the requirements of undertaking an effective investigation within deadlines with the desirability of obtaining as wide a range of information as is possible. This requires decisions on the practicability of the approach taken to identifying the foreign manufacturers to be approached for information. The sample process adopted means that very high proportions of goods are covered (92 per cent on the basis of the revised subject goods, and 18 per cent of the number of possible suppliers). The impact of not including very small suppliers is minimal in terms of the overall level of dumping.
- A2.71. The situation regarding *Diaries*, identified by NZ Steel, supports MBIE's approach. In that case, involving five countries, the selected Chinese manufacturers made up 8 per cent of the number, with the total final sample across five countries covering 17 per cent of the total number. In *Wire Nails*, the selected manufacturers from China were responsible for 93 per cent of exports.
- A2.72. Customs data does not provide information on manufacturers. The suppliers identified are most often not manufacturers, and MBIE cannot contact suppliers to ascertain the identity of manufacturers until the investigation is initiated. It is also noteworthy that one of the sample manufacturers would not have been identifiable in this way anyway, since its exports were not included in Customs data, and the company volunteered to participate. It is misleading of NZ Steel to make claims that MBIE could have established the full list of manufacturers prior to initiation, and to include that period when comparing the time available to establish a sample.

### **Customer Scale Dumping Margins**

- A2.73. NZ Steel claimed that the Chinese and Malaysian dumping margins were incorrect because MBIE had not taken account of the possible price difference due to customer size, and cited the 2012 EC Report and its discussion of the *Diaries* investigation. NZ Steel suggested that an additional adjustment would be needed.
- A2.74. In response to the Supplement to the EFC Report, NZ Steel expressed concern that MBIE had not taken account of possible price differences due to different volumes of sales to certain customers. NZ Steel referred to Tianjin Youfa's response of 29 June 2018 to MBIE's supplementary questions, which it did not receive until 3 October. In particular, NZ Steel referred to Tianjin Youfa's response to question 14, where MBIE asked the company to "explain the circumstances in which discounts are offered to domestic customers, including how your company determines the level of discount offered." Tianjin Youfa replied that it "did not grant discount to customers. For some long-cooperation customers who orders over certain amount, Youfa may grand reimbursement as some of value return to customers. The amount set for different customers may be various." Despite Tianjin Youfa stating that it does not grants discounts to its customers, NZ Steel considers that this answer "indicates that Tianjin Youfa does indeed offer volume discount."

**MBIE Response**

- A2.75. NZ Steel has not properly understood the matters described in the 2012 EC Report. The passage referred to by NZ Steel was in relation to a transaction-to-transaction comparison, which does require the identification of comparable sales, but does not apply to weighted average-to-weighted average comparisons of the kind used in the current investigation.
- A2.76. MBIE may make an adjustment to normal values for differences in quantities exported to New Zealand and quantities sold on the domestic market, if it can be demonstrated that quantity differences affect prices.
- A2.77. MBIE clarified at the verification visit that Tianjin Youfa gave reimbursements to some customers who ordered large volumes each month. The company explained that for most customers the price paid is fixed upon ordering and invoicing. [REDACTED]
- A2.78. MBIE's view is that these reimbursements are not equivalent to quantity discounts. They are not proportional or related to volume. They are not provided in months when [REDACTED]. They reflect prices adjusted for changing input costs for some large customers.
- A2.79. MBIE has used the net invoice prices (after reimbursements have been deducted) in its calculation of weighted average normal values and considers there is no justification for adjusting normal values on the basis of volume to ensure comparability with weighted average export prices.

**Theoretical v Actual Weight**

- A2.80. NZ Steel has asked MBIE to review the theoretical weight-actual weight adjustment, and the information relied upon to conclude that an upward adjustment to export price was required. NZ Steel noted that the ADC does not include an upward adjustment for theoretical (at export) versus actual (at normal value) weight in this goods type, and has sought clarification since it does not consider that the adjustment is correct.
- A2.81. In its additional submission, NZ Steel also queried "what documents and evidence MBIE has for Tianjin (and others) not also rolling light for domestic invoices" and sought positive evidence that Tianjin Youfa sells based on actual weight on the domestic market.
- A2.82. In its submission on the Supplement to the EFC Report, NZ Steel referred to the additional Public File documents it had now sighted, and raised a number of queries relating to information provided by Tianjin Youfa and Dalian Steelforce. NZ Steel insisted that an upward adjustment to export prices is not warranted on the following grounds:
- There is no document that "evidences that Tianjin Youfa sells all domestic at actual versus export."
  - Tianjin Youfa's reference to adopting theoretical wall thicknesses to identify size for export sales but actual wall thicknesses for domestic sales is not related to invoicing.

- The Tianjin Youfa verification report “does not particularise MBIE sighting evidence of Tianjin Youfa selling all domestic at actual, versus export pricing at theoretical.”
- Both the domestic Chinese standard GB-3091 and ASNZS 1163 allow rolling light.
- Tianjin Youfa “particularises value as being per piece, and customers “never argue the tolerance of weight”.” NZ Steel argues that this “is precisely why Tianjin domestic HSS is sold to theoretical, not actual.”
- Tianjin Youfa states in a submission that “there is no need to adjust.”
- As noted in Dalian Steelforce’s verification report, Dalian Steelforce had stated that “there is no difference between product sold on the domestic market and product sold for export to New Zealand that would affect the selling price of the goods.”
- Dalian Steelforce’s representative is reported as stating that “MBIE should use a common measure [when comparing normal values and export prices], for example both theoretical.”
- The ADC did not make an upward adjustment to Dalian Steelforce’s and Tianjin Youfa’s export prices for theoretical weight.
- NZ Steel considers that Dalian Steelforce “can’t be selling differently between domestic (alleged actual) and export (theoretical) because “Dalian doesn’t have actual-theoretical data in its management accounts.”
- “If anything, the normal value . . . should be adjusted upward”, because the scope for rolling light, in terms of mass tolerance, “is greater for domestic China-sold GB-3091 than it is for exported AS/NZS3091” [presumably NZ Steel means AS/NZS 1163].

### **MBIE Response**

- A2.83. MBIE was advised by Tianjin Youfa that it sells on an actual weight basis on the domestic market. A domestic sales contract for a Tianjin subsidiary, Tangshan Youfa Steel Pipe Manufacturing Co., Ltd, was provided by Tianjin Youfa and states that “[s]ettlement is according to the actual weight measured upon the recipient of the goods”, which supports that domestic sales are made on an actual weight basis.
- A2.84. MBIE has made an adjustment where it has found that export prices and normal values have been set on a different basis per tonne. Export prices were often set on a theoretical weight basis and normal values on an actual weight basis. An adjustment is required to ensure a fair comparison.
- A2.85. Where the actual weight of exports of HSS is less than the theoretical weight, the price per actual tonne will be higher than stated because the total price will be divided by a lower denominator. In this situation, MBIE will make an upward adjustment to export prices to reflect actual rather than theoretical tonnages and ensure a fair comparison with actual domestic prices/normal values.
- A2.86. MBIE’s upward adjustment of 4 per cent is a proxy based on the maximum tolerance allowed by AS/NZS1163 in table 4 of the standard for mass per unit length.
- A2.87. NZ Steel notes that the ADC “does not include an upward export price adjustment for theoretical (at export) versus actual (for normal value).” MBIE notes that, while no such adjustment was made in the ADC Final Report for Hollow Structural Sections investigation No 419 (ADC HSS 419) after a textual error was corrected, the Statement of Essential Facts

Report for the same investigation did contemplate (at page 26) an adjustment for the difference between theoretical and actual weight for one Chinese producer. The adjustment was in the form of a deduction from the normal value (which is the converse of an addition to the export price, and has a similar effect). It is not apparent from the Final Report of ADC HSS 419 why the ADC did not proceed with the adjustment.

A2.88. MBIE addresses the points made in NZ Steel's submission on the Supplement to the EFC Report in the order in which they were presented.

- MBIE refers to the domestic sales contract for Tianjin Youfa subsidiary Tangshan Youfa Steel Pipe Manufacturing that shows that domestic sales were made on the basis of actual weight.
- Tianjin Youfa's reference to the use of wall thicknesses to identify size for sales into different markets does not detract from the positive information that Tianjin Youfa's export sales are made on a theoretical weight basis and its domestic sales are made on an actual weight basis.
- Tianjin Youfa has stated, in the context of export sales, that "selling price is based on theoretical weight". For domestic sales, MBIE refers to the first bullet point as supporting evidence for Tianjin Youfa selling HSS on the domestic market on the basis of actual weight. In its questionnaire response at paragraph 29ff, Tianjin Youfa provided a table of the differences between theoretical and actual weights. MBIE is satisfied with the evidence provided.
- MBIE considers that the fact that both the domestic Chinese standard GBT-3091 and AS/NZS 1163 allow rolling light is irrelevant when HSS is sold domestically on an actual weight basis. The question is what tolerance is allowed and reasonable for export sales made on a theoretical weight basis, so that export prices can be adjusted for the purposes of a fair comparison with domestic prices where sales are on an actual weight basis.
- The statement that customers "never argue the tolerance of weight" was made by Tianjin Youfa in the context of export sales. Those customers are not making a comparison between export prices and normal values where it is important to use the same weight basis. Tianjin Youfa stated that "if the authority requests to calculate the price based on weight rather than pieces, we suggest to adopt actual weight to calculate, since it is more practical and fair." MBIE has adopted a comparison on the basis of actual weight.
- In the context of export sales, Tianjin Youfa stated that "the difference between theoretical weight and actual weight does not affect the total value. There is no need to adjust." MBIE understands this comment to refer to the fact that the prices for export customers is based on a theoretical weight basis and are not adjusted to reflect actual weight. To understand this statement as supporting no adjustment when comparing export prices and normal values would be inconsistent with other information provided by Tianjin Youfa.
- Dalian Steelforce explained that, when stating that "there is no difference between product sold on the domestic market and product sold for export to New Zealand that would affect the selling price of the goods," it was comparing its own domestic sales of HSS to its own HSS exports. "The reference to 'no differences' in its response did not relate to its NZ HSS exports and the HSS sold domestically by other Chinese

producers [which were used for normal values for Dalian Steelforce], as NZS appears to be suggesting.” MBIE agrees with this explanation.

- When referring to a common measure when comparing normal values and export prices, Dalian Steelforce considered NZ Steel had misunderstood these comments. “The point made on behalf of Steelforce was that in calculating a ‘weighted average dumping margin’, the unit normal values are required to be weighted by the export volumes. In doing so and to ensure proper comparison, the unit export prices and unit normal values are required to be weighted using a common unit of measure, whether that be pieces, length, theoretical weight or actual weight.” MBIE agrees and that is why it has made an adjustment when export prices are being compared with normal values using different measures, namely theoretical and actual weights respectively.
- MBIE’s approach is consistent with the ADC, except the ADC would make a downward adjustment to the normal value as MBIE has referred to above when the ADC was contemplating an adjustment. The effect on the calculation of the dumping margin is the same. Dalian Steelforce’s representative had referenced several other cases<sup>59</sup> where the ADC has made such an adjustment. Dalian Steelforce also noted that the ADC does not make an adjustment where export prices and normal values have been reported on the same weight basis, including for “Dalian Steelforce where the ADC has constructed normal values using its costs that align with export sales being recorded on a theoretical weight basis.” MBIE agrees with this explanation.
- While Dalian Steelforce was unable to provide figures on actual weight versus theoretical weight differences from its management accounts, MBIE considers this is understandable given it sells on a theoretical weight basis to both export customers and sales to its very few domestic customers were on a theoretical basis, except from October 2017 when they used actual weight. MBIE did not use Dalian Steelforce’s domestic sales as a basis for normal value for reasons set out in section 4.4.1 of this Final Report.
- MBIE does not see the relevance of NZ Steel’s observation about the different tolerances between the China GB-3091 standard and AS/NZS 1163. MBIE’s focus has been on the value differences between the goods being exported on a theoretical weight basis and those sold domestically on an actual weight basis.

### **Arm’s Length Sales**

- A2.89. NZ Steel stated that it considers that MBIE’s conclusions regarding Dalian Steelforce’s sales to Steelforce Trading are incorrect. NZ Steel noted that the matter was examined in some detail by the ADC in ADC HSS 419, and highlighted matters from that investigation which, it claimed, support the view that prices are influenced by the relationship between the entities.

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<sup>59</sup> Review of HSS from Korea (Review 266) – Kukje Steel; Review of HSS from China, Korea, Malaysia and Taiwan (Review 419) – Huludao City Steel Pipe Industrial Co Ltd; Review of HSS from Thailand (Review 445) – Pacific Pipe Public Co., Ltd; Accelerated review from Thailand (Review 382) – Thai Premium Pipe Co., Ltd.

A2.90. NZ Steel considers that the two parties' "awareness of each other's information delves to cost components, price and margin. That is strong evidence of an association of the type contemplated by AD [Agreement] Article 2.3 and s. 5(1) of the Act, and will call for price construction."

### **MBIE Response**

A2.91. MBIE notes that the existence of a relationship does not of itself mean that the price between the parties has been influenced by that relationship. Since NZ Steel has raised an Australian case, MBIE has examined the ADC Manual which, in relation to arm's length export sales, states in part:

*Whether transactions are at arms length is a matter of fact to be determined having regard to all the circumstances of the sales in question. . . . In practical terms, the mere fact parties are associated—and in a legal sense not at arms length—is not taken to automatically mean that they cannot be engaged in arms length transactions. In assessing whether transactions between related parties are at arms length, the Commission looks beyond the legal or functional relationship. It will determine whether the parties deal with each other as arms length parties would, and whether outcomes are the result of real bargaining.<sup>60</sup>*

A2.92. A key question for MBIE is whether "the price is influenced by a relationship between the buyer, or a related person, and the seller, or a related person" (Section 3(2)(b) of the Act).

A2.93. The similar provision on arm's length transactions in the Australian Customs Act 1901 is section 269TAA(1)(b). The Customs Amendment (Anti-dumping Measures) Act 2013 amended section 269TAA(1)(b) to omit "price is" and substitute "price appears to be". The amendment commenced on 1 January 2014, so Section 269TAA(1) now states "For the purposes of this Part, a purchase or sale of goods shall not be treated as an arms length transaction if" and (b) now states "the price appears to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller".

A2.94. The test<sup>61</sup> under Australian legislation is different from the test in New Zealand legislation, and is acknowledged by Australia as lower<sup>62</sup>. While the ADC concluded in Final Report of

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<sup>60</sup> ADC Manual, April 2017, "5.2 Policy."

<sup>61</sup> As part of their assessment of whether an export transaction is at arm's length, both Australia and New Zealand investigating authorities usually compare export prices to a related party with export prices to unrelated parties. This comparison was not possible for Dalian Steelforce because all of its export sales were to Dalian Steelforce.

<sup>62</sup> "The criterion in s269TAA(1)(b) requires only that the price *appears* to be influenced by a commercial or other relationship between buyer and seller. This lowering of the normal (civil) standard of proof of the balance of probabilities is consistent with Article 2.3 of the Anti-Dumping Agreement (setting procedures where export price "appears" unreliable) and requires that the Commission approach the issue, as stated in

ADC HSS 419 of 3 May 2018 that “Steelforce group prices clearly appear to be influenced,” it did not conclude that the prices are influenced.

- A2.95. The ADC’s conclusion was based on five points: (i) Dalian Steelforce and Steelforce Trading are related entities; (ii) there is a high degree of coordination between those companies and Steelforce Australia; (iii) Steelforce Australia understood the implications of transfer pricing in respect of potential anti-dumping duty liabilities; (iv) Steelforce Australia executives attended both importer and exporter visits; (v) supporting evidence did not show that there was any real bargaining or price negotiation process between the exporter and importer.
- A2.96. MBIE acknowledges Dalian Steelforce and Steelforce Trading are related in terms of section 3(4) of the Act, that the relationship is very close, that the companies operate together closely and that representatives from both companies attended the verification visit in Dalian. MBIE also, however, notes the information it was provided with at the verification visit in support of Dalian Steelforce’s assertion that sales were at arm’s length, namely: the companies have separate sources of finance, they engage in exchanges on price, and they comply with transfer pricing requirements. MBIE notes that each company makes a reasonable profit.<sup>63</sup>
- A2.97. MBIE considers that the exchanges the companies engage in are similar to what could be expected of unrelated parties trying to reach a mutually agreeable price. In email exchanges uplifted at the verification visit, for example, Steelforce Trading questions Dalian Steelforce’s prices, notes the impact prices will have on Steelforce Trading’s margins, provides information on competitors and requests competitive offers.
- A2.98. The ADC Manual sets out factors which the ADC considers when assessing whether a transaction is the result of real bargaining, noting that “these can vary between cases because of different circumstances. Relevant factors can include:
- whether or not negotiation has taken place between the buyer and seller
  - the manner in which the prices were determined as a result of that negotiation
  - whether those prices are comparable to those arrived at by parties that are at arms length
  - whether the margins made by the parties to the transaction are comparable to those made by parties that are at arms length.

Where, for example, it is not possible to assess whether those prices are comparable to those set by parties that are at arms length because no benchmark exists at that level of

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the relevant explanatory memorandum, “based on what the available information *suggests*” (emphasis added)” (footnotes omitted) – ADC Final Report 419, p.23.

<sup>63</sup> For the calendar year 2017, EBIT as a percentage of sales was [REDACTED] per cent for Dalian Steelforce and [REDACTED] per cent for Steelforce Trading.



trade and circumstances, the decision will be made having regard to all of the available evidence.”<sup>64</sup>

- A2.99. In the Final Report of ADC HSS 419, the ADC found that “supporting evidence provided did not show that there was any real bargaining.” In the verification report for Dalian Steelforce the ADC verification team “was unable to undertake a price comparison between related and non-related parties to obtain factual evidence of the price being influenced by the commercial relationship.” In response to an ADC request for “evidence of negotiation and real bargaining”, Dalian Steelforce provided email exchanges. The ADC found in the verification report that “Dalian’s [Dalian Steelforce] evidence only demonstrates that price information is shared by the related parties at a particular time each month. The evidence reflects an exchange of information between the related parties but does not demonstrate that any negotiation or real bargaining regarding price has taken place between Dalian and the related customer. Once this information is shared, Dalian set a price for HSS taking into account its relevant costs and prevailing market conditions in Australia.”
- A2.100. MBIE’s understanding of the price-setting process for sales made by Dalian Steelforce for export to New Zealand is as follows. At the beginning of the month Dalian Steelforce gets indicative pricing for the main input, steel coil. Steelforce Australia Pty Ltd oversees the mill’s selling prices independently of Steelforce Trading. Steelforce Australia updates monthly a template that records manufacturing costs for the month and exchange rates which forms the basis for a draft offer document. The draft offer build up is circulated to Steelforce Australia and Steelforce Trading for any comment. Steelforce Trading provides feedback, including any knowledge of competitors’ prices, so that Steelforce Trading can sell and achieve an acceptable margin. It is at this stage that MBIE considers the email exchanges it sighted show evidence of negotiation, namely Steelforce Trading questions the offer prices, provides information about market conditions in order to influence Dalian Steelforce’s price and requests competitive price offers. After this process, Dalian Steelforce then sends a final offer to Steelforce Trading. MBIE noted in its verification report that the email exchanges between Dalian Steelforce and Steelforce Trading were followed in one case by Dalian Steelforce price reductions the following month.
- A2.101. MBIE was advised at the verification visit that there have been some cases where Steelforce Trading has gone to another Chinese producer for supply of HSS for export rather than to Dalian Steelforce. MBIE notes that Dalian Steelforce invoiced Steelforce Trading for HSS for export to New Zealand in [REDACTED] of the months of the period of investigation, while in [REDACTED] months of the period of investigation, Steelforce Trading also shipped HSS to New Zealand from another Chinese supplier, [REDACTED].

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<sup>64</sup> ADC Manual, April 2017, p.26.

- A2.102. MBIE has compared the operating profits before tax of the Chinese manufacturers who provided financial statements. In the calendar year 2017, operating profits as a percentage of operating income were [REDACTED] per cent for Dalian Steelforce, [REDACTED] per cent for Jinan Mech and [REDACTED] per cent for Tianjin Youfa. Dalian Steelforce's profit level is consistent with the profit level being achieved by [REDACTED] and lower than that achieved by [REDACTED]. The profit level achieved by Dalian Steelforce provides no indication that its prices to Steelforce Trading are unreliable or higher than would be normal because of their relationship.
- A2.103. MBIE also assumes that the companies understand the implications of transfer pricing in respect of potential anti-dumping duty liabilities. MBIE considers there is positive evidence of a bargaining or negotiating process, which is explained below.
- A2.104. MBIE notes NZ Steel's comment that the transfer pricing review report examined by MBIE "does not relate to the correct entities". [REDACTED] carried out the review which stated that "the purpose of the transfer pricing report was to evaluate the transfer pricing processes employed by Steelforce Australia in light of both Australian and Organisation for Economic Cooperation and Development (OECD) transfer pricing requirements and guidance."
- A2.105. MBIE quoted the transfer pricing review report in its Dalian Steelforce Verification Report, namely:
- It appears reasonable to conclude that Steelforce China has generated an arm's length return for the year ended 30 June 2013. Accordingly, given almost all of Steelforce China's business dealings are with Steelforce Australia, the international related party pricing arrangements between Steelforce Australia and Steelforce China also appear to be in accordance with the arm's length principle.*
- A2.106. Steelforce Australia Pty Ltd (Steelforce Australia) is [REDACTED]. The transfer pricing review report focused on international related party transactions for product purchased by Steelforce Australia from Steelforce China and one other matter not related to this investigation. Steelforce Australia was the collective term used in the report for both Steelforce Australia and Steelforce Trading, although the international transaction trail flows from Dalian Steelforce (China) to [REDACTED] and then to the distributor in Australia, [REDACTED]. MBIE is satisfied that the transfer pricing report relates to the correct entities, namely the supplier Dalian Steelforce and the exporter Steelforce Trading.
- A2.107. While the transfer pricing review report is tax-related, it addresses OECD guidelines and Australian transfer pricing requirements in respect of the arm's length nature of international related party transactions. The transfer pricing review report explains how

prices are set and agreed between Dalian Steelforce and Steelforce Trading. The report refers to Steelforce Trading [REDACTED].<sup>65</sup> MBIE considers this is evidence relevant to whether prices are influenced by the relationship between the two companies in terms of section 5(3)(2)(b) and whether those prices should be regarded as reliable or unreliable in terms of AD Agreement Article 2.3.

A2.108. MBIE agrees with NZ Steel that there is strong evidence of an association, but MBIE has no positive evidence that this relationship is influencing the price of goods sold by Dalian Steelforce to Steelforce Australia. MBIE confirms its view that sales between Dalian Steelforce and Steelforce Trading are arm's length transactions.

### **All Others and Non-Cooperating Dumping Margins**

A2.109. NZ Steel stated its belief that the dumping margin information in the EFC Report foreshadowed an "incorrectness" in the All Others residual rates. NZ Steel considered that a simple weighted average for All Others and residual would be an incomplete analysis, and referred to matters raised in its submission of 15 August 2018. NZ Steel requested that MBIE apply a margin construction for uncooperating and all other exporters that does not include cooperating manufacturer data.

### **MBIE Response**

A2.110. The calculation of All Others rates is subject to Article 9.4 of the AD Agreement, which requires that such rates be based on the weighted average margin of dumping established for the selected producers, disregarding any zero or *de minimis* margins or margins established on the basis of the facts available due to non-cooperation. To proceed on the basis put forward by NZ Steel would be inconsistent with New Zealand's obligations under the AD Agreement.

### **Injury**

A2.111. NZ Steel raised a number of matters relating to the assessment of injury, including:

- Counterfactual analysis: NZ Steel does not accept MBIE's comments to the effect that an injury analysis can be undertaken on the basis of the position that the industry would have been in but for the dumping, and claims that MBIE does not engage with the matters raised by NZ Steel in its submission of 2 July 2018.
- Malaysia undercutting: NZ Steel notes that while Malaysian HSS may not be undercutting the NZ Steel HSS price the Malaysian pricing and goods flow may still cause price suppression and depression and have an economic impact.

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<sup>65</sup> The transfer pricing review report refers to the effect of anti-dumping duties, namely that "[REDACTED]"

- Profit effect: NZ Steel is concerned that MBIE's conclusion that dumped imports of HSS from China from some sample manufacturers "may have" contributed to reduced prices, is excessively cautious.

A2.112. In its comments on the Supplement to the EFC Report, NZ Steel disagreed with certain aspects of the MBIE analysis, and in particular reiterated previously stated concerns over the interpretation of section 8 of the Act, and MBIE's comments on market share.

### **MBIE Response**

A2.113. With regard to counterfactual analysis, MBIE's position is set out in section 5.1, and notes that MBIE can have regard to the situation an industry would have been in but for the dumping.

A2.114. The negligible level of imports from Malaysia means that there can be no material injury attributed to the dumping of such imports.

A2.115. In view of the circumstances where a significant proportion of imports from China are not dumped a degree of caution in attributing injury to any remaining proportion is justified.

A2.116. With regard to the submission on the Supplement to the EFC Report, MBIE reiterates that its comments on the use of counterfactual analysis are set out in section 5.1 of this Report, and use of such an analysis is not excluded. MBIE notes that the mandatory requirement in section 8(2) of the Act relates to the particular factors that, among others, the chief executive shall have regard to. MBIE meets this requirement by assessing and analysing all of the factors identified. The consideration of an actual and potential decline relates to the factors set out in section 8(2)(d)(i), which covers output, sales, market share, profits, productivity, return on investments, and utilisation of production capacity, while section 8(2)(d)(iv) refers to actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments. This covers most of the factors to be considered in assessing the economic impact of the dumped goods on the industry.

### **Subject and Like Goods**

A2.117. NZ Steel considered MBIE is incorrect in its view that the boundary of the scope of the subject and like goods is at the dimensional range of the New Zealand industry's production. NZ Steel considered there is good cause for reverting to the description of subject and like goods in the Provisional Measures Report. NZ Steel argues that MBIE's view is:

- unreasonable, "largely because it is disengaged with the resemblance, commercial reality and the evidenced facts"
- "Neither rational nor required by the Act or the SCM Agreement."

A2.118. NZ Steel stated that the correct focus is not the capability of the plant which made the goods, but rather "resemblance". NZ Steel considered that "New Zealand should address subject goods even more acutely to substitutability and injury, and with a wide lens" because some manufacturers in New Zealand "are smaller scale than overseas" and their capability may be "less than the full suite of New Zealand demand."

- A2.119. NZ Steel made a number of comments about information in the Subject Goods and Like Goods Annex. NZ Steel made the following comments and assertions:
- a. MBIE has incorrectly made a “single-factor determinative” judgment based on the current goods boundary at the New Zealand industry’s plant, setting all other factors aside.
  - b. It has not argued that substitutability is a sole factor, but that a “suite of factors *all* drive goods likeness <102mm with >102mm<sup>66</sup>.” In relation to substitutability, NZ Steel “stands by the worked structural engineering evidence it provided.”
  - c. MBIE appears to incorrectly “suggest a very high “significantly” threshold of [price] spillover consequence”.
  - d. MBIE’s logic about the possible use of other materials as an alternative in NZ Steel’s worked structural engineering example is incorrect.
  - e. It is regrettable and unreasonable that MBIE “reflects the NZ Steel evidence of effective use of different dimensions to achieve the same outcome as “not particularly helpful.””
  - f. MBIE omits comments on the consequences of a statement by an interested party that “it sells imported and locally-produced price at the same rate per tonne”.
  - g. NZ Steel, referring to its engineered example, disagreed with MBIE’s view that there is a lack of evidence that imported HSS of larger dimensions competes with HSS of the dimensions produced locally.
  - h. MBIE has omitted comment on the consequence of text that similar distribution channels are used, and generally into the same market segment, for locally-produced and imported HSS, whether of smaller or larger dimensions.
  - i. MBIE uses unreasonably “an incomparable nails-screw physical characteristics analogy” to set aside the perfect substitutability evidenced in NZ Steel’s engineered example.
  - j. It is not correct or reasonable to set aside NZ Steel’s engineered example as evidence, “particularly given that the record is absent any substantiated counter evidence.”
  - k. A redacted interested party’s comments about substitutability are oblique to the issue and are incorrect.
  - l. NZ Steel considered, in relation to specifications by consulting engineers, that the comment by a foreign manufacturer that “the standard is more important for a structural application” is oblique and does not assist.
  - m. Any difficulty faced by a downstream manufacturer in respect of substitutability or commercial interchangeability “ought not necessarily be afforded, what appears to be, wide and deep “significantly” weight.”

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<sup>66</sup> NZ Steel explains that in its submission “102mm is used . . . as proxy for both diameter and wall thickness matters”.

- n. NZ Steel disagreed with MBIE's view that it "is not just a question of whether the goods being compared could be substituted one for the other, but whether in practice they are being substituted one for the other" (emphasis added). NZ Steel argues that the current practice in its worked structural engineering example took place in SAP2000.
  - o. NZ Steel questioned whether goods of greater dimensions do not compete, referring to the worked structural engineering example.
  - p. MBIE is incorrect in its claim that the fact that one importer imports only HSS outside of the NZ Steel range supports a view that there is not significant competition or price spillover.
  - q. NZ Steel asserted its view about pricing across adjacent dimensions and noted that the "worked structural engineering example is very important as confirmed by Dalian Steelforce's comments about the HSS being commonly calculated and verified by a structural engineer".
- A2.120. In summary, NZ Steel submitted that its arguments "indicate that the EFC goods position does not have a sound foundation in many and material respects, and is thus not reasonable. NZ Steel considered that it is not the correct and preferable goods position.

### **MBIE Response**

- A2.121. The Provisional Measures Report described the subject goods as HSS of the same dimensions as NZ Steel included in its application [A1.7 to A1.8]. These dimensions were greater than the dimensions of the subject goods decided for the EFC Report. MBIE continued to use the description of subject goods of greater dimensions when carrying out its verification visits in China and Malaysia because it had not yet reached a conclusion on the matter of the scope of the subject and like goods. At the times of the Provisional Measures Report and the verification visits, MBIE had proposed in an Issues Paper that the dimensions of the subject goods should be more limited than in NZ Steel's application and was considering submissions on the scope of the subject and like goods.
- A2.122. MBIE has described a key issue in determining the scope of the subject goods, namely "the extent to which imported goods that have wider dimensions (smaller or greater) than those produced domestically are "like" the goods produced by the New Zealand industry. In other words, to what extent is there a New Zealand industry that produces like goods to imported HSS of greater dimensions than those produced domestically?"
- A2.123. This issue was identified in the Issues Paper following questions raised by interested parties about the scope of the description of subject goods, including that "the New Zealand industry is unable to produce goods of certain specifications required to meet market demand, including steel of the greater dimensions described by New Zealand Steel (NZ Steel) as the subject goods." MBIE's analysis focused on the extent to which the imported (subject) goods are "like" the goods produced by the New Zealand industry and the corollary, the extent to which the New Zealand industry produces like goods to the imported HSS.
- A2.124. MBIE disagrees with NZ Steel's assertion that "[t]he MBIE view distils to it asserting that the WTO's "close resemblance" concept will exactly coincide with a domestic industry plant". NZ Steel's view is incorrect as demonstrated by:

- MBIE's expressed understanding of the concept of like goods in the WTO AD and SCM Agreements [A1.189 to A1.191] in which MBIE refers to the term "characteristics closely resembling" and cites a WTO Panel which considers that term to be "on its face... quite narrow", "includes but is not limited to physical characteristics", and "logically must include as an important element the physical characteristics". MBIE notes that these comments, such as on the importance of physical characteristics, relate to a particular consideration of automobiles as like goods and like goods must be considered on a case-by-case basis.
  - In its analysis, MBIE made it very clear that the consideration of whether goods are like does not just relate to the capability of the New Zealand industry. MBIE set out factors it normally considers when determining like goods [A1.14], including physical characteristics, function and usage, pricing structures, and marketing. MBIE considered these and other relevant factors in its determination of the extent to which imported and domestically-produced goods are like.
- A2.125. NZ Steel argued that the correct focus in deciding on like goods is "resemblance" and that "neither the Act nor Agreements encourage goods analysis tracing back to the capability of the plant which made the goods." MBIE considers that "characteristics closely resembling", not just resemblance in a physical sense, is a key consideration when deciding on whether goods that are not identical are like goods. MBIE has considered all relevant characteristics when considering whether goods are like.
- A2.126. MBIE disagrees with NZ Steel's view that, because New Zealand manufacturing plants are smaller in scale than overseas plants and may not produce to meet the full range of New Zealand demand, New Zealand should "address subject goods even more acutely to substitutability and injury, and with a wide lens." There is no support in the Act or the WTO AD and SCM Agreements for such an approach. Rather, if an existing domestic industry is not producing like goods the Agreements do not provide for a remedy in respect of dumped or subsidised goods.
- A2.127. MBIE responds to the specific points made above by NZ Steel in the same order in which they were presented.
- a. MBIE points to its analysis to demonstrate that it has not made a "single-factor determinative" judgment based on the current goods boundary at the New Zealand industry's plant, setting all other factors aside. MBIE's analysis shows that all relevant known factors were taken into account.
  - b. MBIE understands, and has never been of any other understanding, that NZ Steel was not relying on substitutability as a sole factor. MBIE stands by its view that no one factor is necessarily determinative when deciding on like or subject goods and notes that it has considered many factors, including the factors listed by NZ Steel. While MBIE has considered several factors, these do not necessarily each contribute to the same extent to informing a decision on the scope of subject and like goods. The extent to which these factors contribute depends on the extent to which they are informative in determining whether the goods are either like in all respects or have characteristics closely resembling the subject goods. NZ Steel has provided commentary but no further evidence to change MBIE's views about substitutability,

commercial interchangeability and competition between goods of lesser and greater dimensions.

- c. MBIE considers that the evidence available does not support a view that any price spillover, even in the presence of duties, would lead to importers moving to purchases of more imported HSS of larger dimensions to any significant extent.
- d. MBIE is not stating that load bearing requirements in the worked structural engineering example can be met by other materials, but that NZ Steel's example is not proof *per se* that larger dimensions of HSS have "characteristics closely resembling" smaller dimensions of HSS. MBIE offers the possibility that other materials could meet the same structural requirements as an indication that NZ Steel's argument using the example is not persuasive absent other considerations.
- e. MBIE considers it reasonable to comment on the extent to which it has found particular factors and evidence useful in its analysis. In this case, MBIE has found the worked structural engineering example to be "not particularly helpful" because it is just one example of usage from which, in isolation from other factors, a general inference cannot be deduced.
- f. MBIE has mentioned all of the information provided to it on pricing structures and noted that "[s]ubmissions indicate some similarity in prices per tonne of similar HSS" and that "there are no apparent pricing structures or patterns that indicate significant differences between prices of smaller and larger dimensions of the same types of HSS". MBIE has noted at A1.177 that "there is a significant difference between HSS of the maximum dimensions produced by the New Zealand industry and the closest larger dimensions being imported" which left MBIE "not convinced, even if there were price spillover on a per tonne basis in the presence of duties, that importers would move significantly to purchases of larger dimensions of HSS."
- g. MBIE maintains its view that there is a lack of evidence that imported HSS of larger dimensions competes with HSS of the dimensions produced locally. The worked structural engineering example provided by NZ Steel is not an example of HSS of different sizes being in competition in practice. MBIE notes NZ Steel's comments that competition between different dimensions appears at the "design, steel selection stage" and "[i]t is never apparent in the marketplace". MBIE understands that the worked structural engineering example presents two options for one structure, but there is a lack of evidence that engineers, designers and specifiers are using, even to some extent, imported HSS of larger dimensions instead of HSS of dimensions produced locally.
- h. The fact that similar distribution channels are used, and generally into the same market segment, for locally-produced and imported HSS, whether of smaller or larger dimensions, may be a factor indicating that HSS of larger dimensions are like and subject goods. This is just one factor taken into account by MBIE.
- i. MBIE referred to its 2012 consideration of nails and screws as context for its discussion on substitutability, including MBIE's view that substitutability is secondary to the physical characteristics of goods. MBIE has not used the nails and screws reference to set aside other factors as NZ Steel alleges and MBIE has noted NZ Steel's view about the wire nails consideration [A1.140] preceding other comments about substitutability, including NZ Steel's structural engineering example at A1.144.



- j. MBIE has not set aside NZ Steel's structural engineering example as evidence, but rather has considered and commented on the extent to which it is relevant, including that it "may provide evidence that imported HSS of larger dimensions can be substituted in some circumstances with HSS of the dimensions produced locally" [A1.145].
- k. MBIE notes that NZ Steel disagrees with a redacted interested party's comments about substitutability as oblique to the issue and incorrect. NZ Steel states that it has focused on substitution at "the point where section choice/design takes place" rather than at the end user point, but that "substitution may also take place later if a change to material cost per tonne is introduced." MBIE notes NZ Steel's comments and confirms MBIE's view that "substitutability is just one factor that may be taken into account if the goods are found in fact to be substitutable. It is not just a question of whether the goods being compared could be substituted one for the other, but whether in practice they are being substituted one for the other" [A1.154].
- l. MBIE notes NZ Steel's view that a standard "is a feature of the material [within the analysis] and does not drive the material dimension." MBIE considers that the comment about the standard being "more important for a structural application" relates to requirements within the standard, such as yield and mechanical strengths, that ensure HSS is fit for certain structural purposes.
- m. MBIE considers that any difficulty faced by a downstream manufacturer in respect of substitutability or commercial interchangeability is a matter that should be considered in its like goods analysis and given weight appropriate to a limited situation.
- n. MBIE confirms its view that it "is not just a question of whether the goods being compared could be substituted one for the other, but whether in practice they are being substituted one for the other" , whether at the time of material specification or at a subsequent time. NZ Steel's structural engineering example appears to MBIE to be an example of what could occur, not what is occurring in practice in terms of designers or purchasers moving to larger dimensions of HSS outside of the scope of New Zealand production.
- o. MBIE has included a redacted party's comment that refers to a lack of competition between HSS of differing dimensions just as it has included various comments from other interested parties.
- p. MBIE confirms its comment that the fact that one importer imports only HSS outside of the NZ Steel range supports a view that there is not significant competition or price spillover. MBIE recognises that this is information about only one importer and any support of a view about price spillover or competition has to be viewed in that context.
- q. MBIE has taken account of comments about price continuity across adjacent dimensions in its report and has given due consideration to the worked structural engineering example.

A2.128. In summary, MBIE considers that it has taken a balanced approach to assessing the various factors when concluding which goods are like to other goods, and therefore which goods constitute the subject goods for this investigation.

#### **Miscellaneous**

A2.129. NZ Steel raised some miscellaneous matters relating to the deadline for responses for comments on the EFC Report and party identity redaction.

A2.130. In its submission on the Supplement to the EFC Report, NZ Steel also raised matters relating to the subsidy investigation, which are not relevant here.

#### **MBIE Response**

A2.131. The deadlines provided for comments on the EFC Report were tight but this reflected the very short time frame available to MBIE to address comments and prepare advice to the Minister.

A2.132. The redaction of the identity of parties making comments is based on their requests, good cause having been shown that making the information available would have a significant adverse effect on the submitter of the confidential information.

### **V. Tianjin Youfa**

A2.133. The submission from Tianjin Youfa focussed on matters relating to the subsidy investigation and did not specifically address dumping issues.