



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

**LABOUR, SCIENCE  
AND ENTERPRISE**

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# **Steel Reinforcing Bar and Coil from China and Malaysia – Dumping Final Report**

**Dumping and Countervailing Duties Act 1988**

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February 2018

**Non- Confidential**



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## Abbreviations

The following abbreviations are used in this Report:

ACRS	Australian Certification Authority for Reinforcing and Structural Steels
Act (the)	Dumping and Countervailing Duties Act 1988
AD Agreement (the)	WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994
AS/NZS	Australia/New Zealand Standard
Australian ADC	Australian Anti-Dumping Commission
CBSA	Canadian Border Services Agency
Chief Executive (the)	Chief Executive of the Ministry of Business, Innovation and Employment
China	People's Republic of China
CNY	Chinese Yuan
Customs	New Zealand Customs Service
EBIT	Earnings Before Interest and Tax
EC	European Commission, the EU investigating authority
EU	European Union
FY	Financial year
GOC	Government of China
Hebei Jingye	Hebei Jingye Iron and Steel Co Ltd
MBIE	Ministry of Business, Innovation and Employment, the
MT	Metric ton (tonne)
NZ	New Zealand
NZD	New Zealand dollar
p.a.	Per annum
Pacific Steel	Pacific Steel (NZ) Ltd
PF	Public File
POI	Period of investigation
Rebar	Steel reinforcing bar and coil

RM	Malaysian Ringgit
SCM Agreement, the	The WTO Agreement on Subsidies and Countervailing Measures (also the SCM Agreement)
Secretary, the	Chief Executive, Ministry of Business, Innovation and Employment
US	United States
USD	United States dollar
VAT	Value-added tax
VFD	Value for Duty
WTO	World Trade Organisation
WTO Agreement	The Agreement establishing the World Trade Organisation adopted at Marrakesh on 15 April 1994

#### **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.

## EXECUTIVE SUMMARY

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### Introduction

On 15 August 2017 the Ministry of Business, Innovation and Employment (MBIE) initiated an investigation under the Dumping and Countervailing Duties Act 1988 (the Act<sup>1</sup>) into steel reinforcing bar and coil (rebar) from the People's Republic of China (China) and Malaysia, following the receipt of an application for a dumping investigation from Pacific Steel (NZ) Limited (Pacific Steel).

On 1 February 2018, in accordance with section 10A of the Act, MBIE provided the parties to the investigation written advice of the essential facts and conclusions (EFC Report) that will likely form the basis for any final determination to be made under section 13 of the Act.

This Final Report is based on the EFC Report and comments on that report from interested parties.

### Goods Subject to the Investigation

The goods which are the subject of the investigation (the subject goods) are:

*Steel reinforcing bar and coil with a diameter equal to or greater than 5mm.*

Pacific Steel is the sole producer of rebar in New Zealand, and constitutes the domestic industry for the purposes of the investigation.

### Proceedings

Following the initiation of the investigation on 15 August 2017, MBIE requested information from identified importers, intermediary exporters, and Chinese and Malaysian manufacturers. Responses were received from one Chinese manufacturer and from the sole Malaysian manufacturer. MBIE sent supplementary questionnaires to the responding manufacturers.

Verification visits were undertaken to the applicant, Pacific Steel, and to the responding manufacturers in China and Malaysia.

Pacific Steel requested that a determination on provisional measures be made. Such a determination was not made because rebar is classified as a residential building material and anti-dumping duties on residential building materials are currently suspended in order to reduce pressures on building costs. The suspension runs until 30 June 2019 and therefore prevents any provisional anti-dumping duties being imposed during the period of this investigation. Since there is no possibility of applying provisional anti-dumping measures, there was no basis for a determination to be made.

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<sup>1</sup> This investigation was initiated under the Dumping and Countervailing Duties Act 1988. The Trade (Anti-dumping and Countervailing Duties) Act 1988 (the Amended Act), amended a number of the provisions of the Act, from 29 November 2017, but under clause 2 of Schedule 1 of the Amended Act, an investigation initiated before the commencement of the Amended Act must be continued, completed, determined and enforced as if the provisions of the Act (as in force immediately before commencement) were still in force. Clause 3 of Schedule 1 of the Amended Act provides that an investigation under the public interest test introduced in the amended Act may be started by the chief executive within 6 months from the date of any anti-dumping duty imposed as a result of the current investigation.

The Essential Facts and Conclusions Report (EFC Report) provided to interested parties on 1 February 2018 met the requirements of section 10A of the Act that parties to the investigation are to be given written advice of the essential facts and conclusions that will likely form the basis for any final determination.

This Final Report is prepared on the basis of the EFC Report and submissions received from interested parties on the matters covered in the EFC Report. The Final Report will inform the final determination to be made by the Minister of Commerce and Consumer Affairs by 3 March 2018.

## **Dumping**

The basis for determining the existence and amount of any dumping is governed by the provisions of the Act and the World Trade Organisation (WTO) Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade (the AD Agreement), and is informed by findings in WTO dispute settlement proceedings.

Dumping occurs when the export price of the subject goods is less than the normal value of like goods when sold in the country of export, following a fair comparison, with due allowance being made for differences affecting price comparability.

MBIE has ascertained the export prices under section 4 of the Act, and ascertained the normal values under section 5 of the Act for the subject goods and has concluded that, on the basis of a weighted-average export price to weighted-average normal value comparison, there was no dumping of the subject goods occurring on imports from China or Malaysia during the period of investigation (POI) of dumping.

## **Injury**

Despite the conclusion that there is no dumping, MBIE has nevertheless assessed the extent to which imports of the subject goods may be causing material injury to Pacific Steel, based on the provisions of section 8 of the Act, and whether there may be causes to which injury may be attributable other than dumped imports of rebar from China and Malaysia.

### ***Volume effects***

MBIE has concluded that there has been an increase in the volume of imports from China and Malaysia in absolute terms, but no significant increase in relation to production or consumption (i.e. as a share of the total market) in New Zealand and, as no dumping was found, there is no basis to conclude that dumping has had a material effect on import volumes.

### ***Price effects***

MBIE has concluded that:

- Pacific Steel's prices have been undercut by the prices of imports from China and Malaysia, but, since no dumping was found, that undercutting cannot be attributed to any dumping of imports of rebar from China and/or Malaysia;
- Pacific Steel has experienced price depression, but, since no dumping was found, that price depression cannot be attributed to any dumping of imports of rebar from China and/or Malaysia; and

- Pacific Steel did experience some significant price suppression in 2016, but, since no dumping was found, that price suppression cannot be attributed to any dumping of imports of rebar from China and/or Malaysia.

The overall conclusion on price effects is that as dumping did not occur it cannot be concluded that the dumping of imports of rebar from China and/or Malaysia has had any effect on prices in New Zealand for like goods.

### ***Consequent impact on the industry***

MBIE has concluded that since no dumping has been established for imports from China and/or Malaysia:

- There is no decline in output and sales that can be attributed to any dumping of imports of rebar from China and/or Malaysia.
- There is no decline in Pacific Steel's market share, while any failure to achieve a larger market share cannot be attributed to any dumping of imports of rebar from China and/or Malaysia.
- While there was a significant decline in profits and profitability in 2015-2016, this cannot be attributed to the effects of dumping of imports of rebar from China and/or Malaysia.
- There is no evidence that productivity has been adversely affected by any dumping of imports of rebar from China and/or Malaysia.
- There is no evidence that any dumping of imports of rebar from China and/or Malaysia has contributed to a decline in return on investments.
- There is no evidence that any dumping of imports of rebar from China and/or Malaysia has contributed to a decline in utilisation of production capacity.
- There is no evidence that any dumping of imports of rebar from China and/or Malaysia has had an economic impact on the industry through factors affecting domestic prices.
- There is no evidence that any dumping of imports of rebar from China and/or Malaysia has contributed to any actual or potential effects on cash flow, inventories, employment, wages, growth, ability to raise capital, or investments.

Overall, any negative effect on the above factors including output and sales, market share, profits and profitability, and productivity experienced by Pacific Steel can only be accounted for by factors other than dumping as no dumping was found.

## **Conclusion**

There is no basis to conclude that material injury to an industry has been or is being caused by means of the dumping of imports of rebar from China and/or Malaysia.

## **Final Determination**

This Final Report sets out the basis for MBIE's recommendation to the Minister that, in light of the conclusions reached, he should make a final determination that the investigation into the dumping of imports of rebar from China and Malaysia should be terminated.

Notice of the final determination will be provided to the parties in accordance with section 13(2) of the Act.

# 1. Introduction

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## 1.1 Proceedings

### Application

1. On 5 April 2017 MBIE accepted a properly documented application from Pacific Steel, alleging that rebar from China and Malaysia is being dumped and by reason thereof causing material injury to the New Zealand industry.
2. Pacific Steel claimed that the alleged dumping of rebar from China and Malaysia is causing the company material injury through:
  - increased imports
  - price undercutting
  - price depression
  - price suppressionResulting in:
  - a decline in profits and profitability
  - a decline in return on invested capital
  - a decline in ability to raise capital.
3. Pacific Steel stated in its application that the material injury resulting from the importation of allegedly dumped rebar commenced in 2012.
4. Pacific Steel's application also covered alleged subsidisation of rebar from China, and a parallel subsidy investigation is being carried out by MBIE.

### Initiation

5. On 15 August 2017, the Secretary<sup>2</sup> initiated an investigation under section 10(1) of the Act, being satisfied that for the purpose of initiation the industry had provided sufficient evidence to support its application. This included evidence that:
  - rebar from China and Malaysia was being dumped, and
  - material injury to the New Zealand industry was being caused by dumped goods imported from China and Malaysia.
6. In accordance with section 10 of the Act, MBIE's investigation is to determine both the existence and effect of any dumping of rebar from China and Malaysia.

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<sup>2</sup> The Act includes references to decisions to be made by "the Secretary", who is defined in section 3 as "the Chief Executive of the Ministry". The "Ministry" is defined, in turn, as "the department of State that, with the authority of the Prime Minister, is responsible for the administration of the Act." MBIE is the department that administers the Act. In this Report, where actions, conclusions and determinations are attributed to MBIE they are actions, conclusions and determinations made in accordance with delegated authority from the Chief Executive of the Ministry to the signatory of this Report.

## Essential Facts and Conclusions Report

7. In accordance with the requirements of section 10A of the Act, the EFC Report was sent to interested parties on 1 February 2018. Submissions made by interested parties in response to that report, and MBIE's comments on them, are set out in Annex 1 to this report, and reflected in the body of this Report where necessary and relevant.

## Purpose of this Report

8. This Report provides the basis for the final determination to be made by the Minister under section 13 of the Act. It should be noted that this Report is intended to provide a summary of the information, analysis and conclusions relevant to this investigation, and should not be accorded any status beyond that.
9. In order to ensure that this Report provides a full account of the findings and conclusions that form the basis for any final determination, relevant material from the EFC Report has been carried over into this Report, modified as necessary as a result of submissions made on the EFC Report.

## 1.2 Information

### Availability of Information

10. Section 6 of the Act provides:

*(1) Where the Secretary 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 Secretary having regard to all available information.*

*(2) For the purposes of subsection (1), the Secretary may disregard any information that the Secretary considers to be unreliable.*
11. Article 6.8 of the AD Agreement provides:

*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 shall be observed in the application of this paragraph.*
12. Annex II to the AD Agreement requires investigating authorities to specify in detail the information required from interested parties and to ensure that the parties are aware that if information is not supplied within a reasonable time, the authorities will be free to make determinations on the basis of the facts available, including those contained in the application by the domestic industry. The Annex includes provisions relating to the medium in which responses to requests for information are provided, and states that even though the information provided may not be ideal in all respects, this should not justify the authorities in disregarding it, provided the interested party has acted to the best of its ability.

13. The Annex provides that if the authorities base their findings, including those with respect to normal value, on information from a secondary source, including information supplied in the application, they should be treated with special circumspection. In such cases, the authorities should, where practicable, check the information from other independent sources at their disposal. However, if an interested party does not cooperate and relevant information is withheld from the authorities, this situation could lead to a result which is less favourable to the party than if the party did cooperate.
14. Following initiation, MBIE requested information from importers, intermediary exporters, and a sample of Chinese and Malaysian manufacturers (see footnote 10).
15. Two importers provided information. Several of the intermediary exporters provided information, but only one manufacturer in each country responded to the questionnaire. Supplementary questionnaires were sent to the responding manufacturers.
16. Verification visits were undertaken to the applicant, Pacific Steel, and to responding manufacturers in China and Malaysia.
17. The information available to MBIE in investigating the dumping of rebar from China and Malaysia and its impact on the New Zealand industry includes:
  - Information contained in Pacific Steel's application and subsequent submissions, including comments on the EFC Report.
  - Information obtained during MBIE's verification visit to Pacific Steel.
  - Responses to importer/exporter/manufacturer questionnaires.
  - Information obtained from MBIE's verification visits to manufacturers in China and Malaysia.
  - Information from investigations undertaken by authorities in other jurisdictions.
  - Information sourced from the WTO, including reports of WTO dispute proceedings.
  - Information arising from MBIE's independent research into matters arising during the investigation.
18. Information relating to those parties who did not provide information is based on the facts available that MBIE considers to be reliable in accordance with the provisions of the Act and the AD Agreement.

### **Access to Information**

19. Section 10(6) of the Act provides:

*The Secretary, after initiating an investigation pursuant to subsection (1), shall ensure that all interested parties to the investigation are given reasonable opportunity—*

*(a) to present in writing all evidence relevant to the investigation, and, upon justification being shown, to present such evidence orally:*

*(b) unless the information may be withheld under the Official Information Act 1982, to have access to all non-confidential information relevant to the presentation of*

*their case and that is used by the Secretary in the investigation, and to prepare representations on the basis of that information:*

*(c) on request being made, to meet those parties with adverse interests in order to present opposing views.*

20. MBIE makes available all non-confidential information via the Public File (PF)<sup>3</sup> 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.

21. Sections 10(7) and 10(8) of the Act provide:

*(7) Where a party has submitted information to the Secretary, and has shown good cause for the Secretary to believe—*

*(a) that the information would be of significant competitive advantage to a competitor of, or the disclosure of the information would otherwise have a significant adverse effect upon,—*

*(i) the party who submitted the information; or*

*(ii) the party from whom the information was acquired by the party who submitted the information; or*

*(iii) any party to whom the information relates; or*

*(b) that the information otherwise should be treated as confidential,— the Secretary shall not disclose the information without the express permission of any such party that would be adversely affected by its release.*

*(8) The Secretary may request parties who have provided confidential information to furnish—*

*(a) a non-confidential summary of the information; or*

*(b) if it is claimed that the information is not susceptible of such summary, a statement of the reasons why such summary is not possible,—*

*and the Secretary may disregard any information for which the party submitting it fails to provide either a satisfactory summary or satisfactory reason why such summary cannot be provided.*

22. 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 effect on a party.

23. In the confidential version of this Report, such information is indicated by shading of the text. In the non-confidential version of the Report 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

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<sup>3</sup> Non-confidential information is contained on an 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.

percentage changes from a previous period. Shading has been used to show where this occurs. The text relating to tables or charts also summarises the information contained in those tables or charts.

24. In the non-confidential version of the Report, 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.

### **1.3 Report Details**

25. 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 the sum of individual figures because of rounding. The term VFD refers to value for duty for New Zealand Customs Service (Customs) purposes.
26. The period of investigation for dumping is the year ended 31 December 2016, while the investigation of injury involves evaluation of data for the period since July 2011.
27. All volumes are expressed on a metric ton (MT) basis unless otherwise stated. Exports to New Zealand were generally invoiced in United States dollars (USD) or in Chinese Yuan (CNY) and Malaysian Ringgit (MR). The exchange rates used are those relating to specific transactions, where available, or the Customs exchange rates, or the rate that MBIE considers most appropriate in the circumstances.

## 2. Subject Goods and New Zealand Industry

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### 2.1 Subject Goods

28. The imported goods that were the subject of the application are described as:

*Steel reinforcing bar and coil with a diameter equal to or greater than 5mm.*

29. The subject goods and their tariff classifications are described below:

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

### 2.2 Imports of Subject Goods

30. MBIE has identified imports entering under the tariff items and statistical keys listed above, adjusted to remove goods entering under tariff concessions,<sup>4</sup> but including the subject goods benefiting from the building products tariff concession that has been in place since July 2014. On this basis, Table 2.1 below shows imports in the years covering the period of investigation, based on Customs data adjusted to remove goods entering under tariff concessions.

31. With regard to official import statistics published by Statistics New Zealand, there has been a data-suppression order in place since February 2003 for tariff item and statistical keys 7214.20.90.01G and 7214.20.90.05K.<sup>5</sup>

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<sup>4</sup> Tariff concessions are generally approved for goods where no suitable alternative goods are produced or manufactured locally in New Zealand.

<sup>5</sup> Section 37 of the Statistics Act 1975 makes provision for the international trade statistics, together with local authority statistics and business lists, to be subject to less restrictive confidentiality rules than most other statistics. Aggregated data that discloses individual trade transactions is suppressed only if the exporter or importer requests suppression and an identification risk is confirmed. Suppression can be applied for up to 24 months (as is the case for the item here). For the 24-month option only, the importer/exporter will be

32. Under an import volume monitoring arrangement between MBIE and the steel industry, MBIE provides summaries of imports of goods subject to data suppression. Information is provided on a monthly basis for, *inter alia*, imports of rebar under tariff items and statistical keys 7214.20.90.01G and 7214.20.90.05K, showing quantities and values (VFD and cost, insurance and freight) for imports from Australia, Singapore and Other,<sup>6</sup> but marked 'CONFIDENTIAL' where there are three or fewer importers, plus a source ranking of exporting countries by volume from largest to smallest. The data suppression is the reason for the confidential treatment accorded to some of the information in this and other tables showing imports.

**Table 2.1: Import volumes of rebar to New Zealand (MT)**  
Customs data, adjusted\*<sup>7</sup>

	2009	2010	2011	2012	2013	2014	2015	2016
Australia	1000	1066	944	1307	2463	1205	1271	1078
China	1000	26691	940	931	1250	1466	790	1401
Indonesia	1000	1284	943	716	521	6026	463	933
Japan	1000	812	1356	949	520	1198	853	457
Korea	1000	1375	883	1052	1279	885	1091	1518
Malaysia	1000	1216	1186	1064	890	1111	1184	1054
Singapore	1000	1371	934	912	1124	1374	1181	1247
Taiwan	1000	1637	2906	1005	1080	594	699	1995
Other	1000	1039	594	1238	1083	668	734	1320
Total	1000	1373	1069	1016	1100	1269	1055	1141

*To protect confidential information figures are indexed year-on-year changes, 2009 base 1000*

\* Adjusted as described in paragraph 30 above.

33. Imports from China represented 12% of total imports in 2016, while imports from Malaysia represented 35%, neither of which is less than the individual import share of 3% or the collective share of 7% identified in Article 5.8 of the AD Agreement and therefore a basis for terminating an investigation under section 11(1)(a) of the Act due to insufficient evidence.

## 2.3 Like Goods and New Zealand Industry

34. Section 3A of the Act defines the term **industry** as:

- a. the New Zealand producers of like goods, or

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contacted before the suppression is lifted to see if they want to continue with the suppression. In practice this may result in data remaining confidential for much longer than 24 months.

<sup>6</sup> The import monitoring programme was introduced in June 2002 to monitor steel imports so that any increases in imports that could seriously injure the industry could be detected early and the need for safeguard action considered. Under respective bilateral agreements, safeguard measures cannot be taken against imports from Australia and Singapore, hence the need to separate out such imports in the monitoring process.

<sup>7</sup> Information is confidential for the reasons explained in paragraphs 30 and 31. The non-confidential summary will be by way of indexation of the figures.

- b. such New Zealand producers of like goods whose collective output constitutes a major proportion of the New Zealand production of like goods.
35. 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.

### 2.3.1 Like Goods

36. 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.
37. The scope of the subject goods is defined in section 2.1 above.
38. Pacific Steel has confirmed that it is the only producer of rebar in New Zealand.
39. In its application Pacific Steel provided information on the rebar it produces.<sup>8</sup> The company produces a range of low and high tensile, standard and high ductile, plain carbon steel for the reinforcing of concrete. The finished product comes in the form of either plain or deformed bars or coils and includes product where the steel has been micro-alloyed with small vanadium additions for superior strength.
40. Pacific Steel produces rebar and coil in diameters ranging from 6 to 50mm in bar form and 6 to 16mm in coil form. Bar lengths range from 6 to 18 metres.
41. In its application Pacific Steel outlined the relevant standards, accreditation and ductility requirements for reinforcing steel for the New Zealand market. The relevant standard is the joint Australia/New Zealand Standard (AS/NZS) 4671, which specifies requirements for the chemical composition and the mechanical and geometrical properties of deformed reinforcing bars and coils used for the reinforcement of concrete. The Australia/New Zealand Standard specifies three levels of yield strength – 250 MPa<sup>9</sup>, 300 MPa, and 500 MPa. Three ductility classes are specified for rebar, and designated as L (low), N (normal) and E (earthquake). The N class ductility is used in the Australian market, and has a minimum 5% ductility, while E class (AS/NZS 4671 500E), with a minimum 10% ductility is the prevailing class in New Zealand, reflecting the differing levels of seismic activity.
42. The Australian Certification Authority for Reinforcing and Structural Steels (ACRS) administers an independent, expert-based product certification scheme. It certifies manufacturers and suppliers of rebar, pre-stressing and structural steels to Australian and

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<sup>8</sup> More details of Pacific Steel's products can be found at <http://www.pacificsteel.co.nz/products/> accessed on 14 July 2017.

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

New Zealand standards. Pacific Steel notes that it is possible for rebar to be imported into New Zealand from mills that do not have ACRS accreditation but did not suggest that non-ACRS accredited goods were not “like goods” to the domestically-produced rebar.

43. The applicant noted that the Chinese reinforcing standard GB1499 and the Malaysian reinforcing standard MS146 are not equivalent to AS/NZS 4671 500E, and provided a detailed analysis of the differences in an Appendix to its application. The application also noted that manufacturing to the Australia/New Zealand Standard can incur additional costs compared with manufacturing to the Chinese or Malaysian standards.
44. Pacific Steel submits that the rebar it produces has the same form, function and use as the allegedly dumped goods and is therefore “like goods” to the imported goods, as defined under section 3(1) of the Act.

### **MBIE Consideration**

45. 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***

46. Products made locally by Pacific Steel have the same physical characteristics as the subject goods from China and Malaysia.

### ***Production Methods***

47. Production methods for the locally produced steel rebar and the subject goods from China and Malaysia are substantially similar.

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

48. Both the locally produced and subject goods have comparable or identical end uses, with the reinforcement of concrete being the primary use.

### ***Pricing***

49. The subject goods have a similar pricing structure to Pacific Steel’s manufactured products. An illustration of this is that, in order to maintain market share (sales) in New Zealand, Pacific Steel claims that it is forced to meet prevailing import offers in respect to pricing of particular goods supplied to particular customers.

## **2.3.2 New Zealand Industry**

50. Pacific Steel has stated that it believes it is the only producer of rebar in New Zealand. MBIE is not aware of any other producers of rebar in New Zealand.
51. Section 10(3) of the Act outlines the minimum level of support required from the domestic industry for the application for an investigation. This requirement has been met as Pacific Steel is the only producer of rebar in New Zealand.

### 3. Interested Parties

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#### 3.1 Legal Requirements

52. Section 9 of the Act identifies the parties who are to be given notice for the purposes of the Act, including:

- The Government of the country of export
- Exporters and importers known by the Secretary to have an interest in the goods
- The applicant in relation to the goods.

53. 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*
- (ii) 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.*

#### 3.2 New Zealand Producer

54. Pacific Steel is an interested party, as it is the sole New Zealand producer of rebar and the applicant in this proceeding.

55. Information provided by Pacific Steel includes:

- The application which provided the basis for the Initiation Report
- Subsequent submissions, including comments on the EFC Report
- Information verified by MBIE during a visit to the company's premises on 21-22 September 2017.

#### 3.3 Suppliers

56. Suppliers to the New Zealand market include Chinese and Malaysian manufacturers, trading intermediaries, and importers.

##### **Manufacturers**

57. Chinese and Malaysian manufacturers supplying rebar to New Zealand via a range of intermediary exporters were identified from Customs data and questionnaire responses provided by intermediary exporters and importers.

## China

58. For the purposes of the investigation, a sample of the main suppliers to New Zealand was identified, making up 90 per cent of 2016 imports of rebar from China.<sup>10</sup>
59. Four manufacturers were identified, as shown in Table 3.1 below. The companies are listed alphabetically.

**Table 3.1: Chinese manufacturers of rebar**

Manufacturing Company	2016 export volume (MT)
Hebei Jingye Group (Hebei Jingye)	
Hesteel Co Ltd, Chengde Branch (Hesteel Chengde)	
Jiangsu Yonggang Group Co Ltd (Jiangsu Yonggang)	
Shandong Shiheng Special Steel Group Co Ltd (Shandong Shiheng)	
Other manufacturers	

60. Information was sought from all manufacturers, but only Hesteel Chengde responded to the Ministry's request for information. A verification visit was made to Hesteel Chengde on 12-14 December 2017.

## Malaysia

61. Only one Malaysian manufacturer was identified as providing exports of rebar to New Zealand.

**Table 3.2: Malaysian manufacturer of rebar**

Manufacturing Company	2016 export volume (MT)
Amsteel Mills Sdn Bhd (Amsteel)	

<sup>10</sup> The Act does not include provisions relating to the use of samples. However, 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 rebar from China, which reflects past practice. Customs data indicates that in 2016 there were 40 suppliers of rebar from China, some of which are likely to have been trading intermediaries, supplying 39 importers. The majority of such suppliers were responsible for less than 10 tonnes each of exports in 2016. In these circumstances, and in view of the time and effort required to track down each supplier in order to obtain details of the manufacturer concerned, it was considered to be impracticable and unnecessary to examine all manufacturers.

62. Information was sought and received from Amsteel. A verification visit was made to Amsteel on 22-24 November 2017.

### Trading Intermediaries

63. Trading intermediaries (exporters) were identified from Customs data and from questionnaires sent to known importers and manufacturers.
64. Table 3.2 below shows eight exporters, primarily trading companies acting as intermediaries between Chinese producers and New Zealand importers, who were originally identified as exporting the subject goods in FY2016 (there were no intermediaries involved in imports from Malaysia). The companies are listed alphabetically.

**Table 3.3: Trading Intermediaries for rebar imports from China**

Exporting company	Company Location	2016 export volume (MT)
Chengdesteel Logistics Co., Ltd	Shuangluan District, Chengde City, Hebei Province	██████████
Sunshine (China) Ltd	Zibo City, Shandong Province	██████████
Shanghai Jingye International Trading Co Ltd (Shanghai Jingye)	Zhabei District, Shanghai Municipality	██████████
Sino Golden Sunshine (Group) Stock Company Limited	Hexi District, Tianjin Municipality	██████████
Stemcor (S.E.A) Pte Ltd (Stemcor)	Singapore	██████████
Other trading intermediaries		██████████

65. Information was sought from all of the trading intermediaries. Two of those trading intermediaries (Chengde Steel Logistics Co Ltd and Shanghai Jingye International Trading Co Ltd) are related companies to Hesteel Chengde and Hebei Jingye respectively, and are covered by the questionnaires sent to those companies (Hebei Jingye did not respond to the questionnaire). Stemcor provided a detailed response to the Ministry's request for information. No responses were received from Sunshine (China) Limited or Sino Golden Sunshine (Group) Stock Company Limited.

### Importers

66. New Zealand-based importers were identified from Customs data. Table 3.3 below shows the importers that MBIE has identified.

**Table 3.4: Importers of rebar**

Importing company	2016 import volume (MT)	
	China	Malaysia
Brilliance International Limited	██████████	
Euro Corporation Ltd (Euro Corp)	██████████	██████████
NZ Steel Distributor Limited (Timber King Ltd)	██████████	
United Steel Limited	██████████	
Steel & Tube Holdings Ltd	██████████	
Other importers	██████████	

67. Information was sought from all of the importers, but responses were received only from Euro Corporation Ltd and United Steel Limited.

### 3.4 Other Interested Parties

68. No other interested parties were identified.

## 4. Dumping Investigation

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### 4.1 Dumping

69. 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.*

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

71. MBIE 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.

### 4.2 Basis for Investigation of Dumping

72. The information available to MBIE in investigating the dumping of rebar from China and Malaysia includes:

- Information contained in Pacific Steel's application and subsequent submissions
- Information obtained during MBIE's verification visits to Pacific Steel, Amsteel, and Hesteel Chengde
- Responses to importer/exporter/manufacturer questionnaires
- Information from investigations undertaken in other jurisdictions
- Information sourced from the WTO, including reports of WTO dispute proceedings
- Information arising from MBIE's independent research into the matters arising from the investigation
- New Zealand Customs data.

#### 4.2.1 Pacific Steel Application and Submissions

##### ***Application***

73. In its application, Pacific Steel set out the sources of information it used to gather evidence of the existence of dumping of the subject goods from China and Malaysia. These sources included dumping applications by industries and investigations undertaken by Australian,

Canadian, Malaysian, and United States investigating authorities, and reports and commentaries on the Chinese and Malaysian steel industries.

### **Verification visit**

74. MBIE undertook a verification visit to Pacific Steel on 21-22 September 2017, when information provided by the company was reviewed, updated and verified. A verification report was prepared and is available through the Public File.

### **Submissions**

75. Pacific Steel lodged subsequent submissions which have been taken into account by MBIE where relevant and appropriate. These submissions include:
- Verification Supplement – 26 October 2017
  - Trade Case Submission – 24 November 2017
  - Provisional Measures and Public File (PF) Submission – 22 December 2017
  - Response to EFC Report – 15 February 2018.

## **4.2.2 Exporter/Manufacturer/Importer Questionnaire Responses**

76. Exporter Questionnaires were sent to known exporters, but these companies were intermediaries and, in two cases, associates of the manufacturers. One non-related exporter/intermediary, Stemcor, provided a questionnaire response.
77. MBIE sent Manufacturer Questionnaires to each of the sample manufacturers identified in section 3.3 above. Detailed responses were received from Amsteel Mills and Hesteel Chengde. No other sample manufacturers provided questionnaire responses. Supplementary questionnaires were sent to Hesteel Chengde and Amsteel and responses were received.
78. Amsteel's questionnaire responses related to Amsteel and Amsteel Mills' marketing arm, Amsteel Mills Marketing Sdn Bhd. It did not include information relating to its parent, Lion Group, or associated companies as these associated companies were not involved in the production, sales and administration of the subject goods and were not involved in the export of the subject goods.
79. Hesteel Chengde's questionnaire responses related to Hesteel Chengde and its export agency, Chengdesteel Logistics, but did not include parent companies Hesteel Co Ltd and Chengde Iron & Steel Group Co Ltd. Hesteel Chengde noted that the parent companies were not involved in the production, sales and administration of the subject goods, and were not involved in the export of the subject goods.
80. Importer Questionnaires were sent to the importers of rebar from the sampled manufacturers. Responses were received from Euro Corporation Ltd and United Steel Ltd.

### **Verification visits**

81. MBIE undertook verification visits to both Amsteel (22-24 November 2017) and Hesteel Chengde (12-14 December 2017). During these visits information provided by the company was reviewed, updated and verified.

### **Submissions**

82. In addition to the the responses in the Manufacturer Questionnaire and verification visit, Amsteel also provided a submission focusing on issues relating to the methods and information used to determine whether dumping is occurring.

## **4.3 Export Price**

83. 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.*

84. The starting point for MBIE is the import documentation (usually invoices) for each shipment, which shows the price paid or payable for the goods by the importer. 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 by the importer is the starting point for the calculation of the export price and is referred to as the “base price”.
85. 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.
86. 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.

#### **4.3.1 Export Price – China**

##### ***Hesteel Chengde***

87. Hesteel Chengde was the largest exporter of rebar to New Zealand from China during the POI. Hesteel Chengde exported to [REDACTED]. Sales to [REDACTED] are made through Hesteel Chengde's wholly owned subsidiary, Chengdesteel Logistics. Chengdesteel Logistics acts only as an export agency and there are no direct sales between Hesteel Chengde and Chengdesteel Logistics.

##### **Base Prices**

88. Hesteel Chengde invoiced [REDACTED] on an [REDACTED] basis in USD for all of its exports to that company over the POI and Hesteel Chengde provided MBIE with invoices which covered all of these exports. All export sales are made on an actual weight basis which was stipulated on the sales contracts. The base price for Hesteel Chengde's exports to [REDACTED] is the [REDACTED] USD invoice amount. Invoiced amounts were verified against bank records held by the company showing payment amounts and dates.

## Adjustments

### *Inland freight*

89. An adjustment was made for the cost of inland freight from the factory to the port of export. This information was verified by MBIE during the verification visit by sighting invoices for inland freight. The cost of inland freight is [REDACTED] per metric tonne.

### *Handling, Loading and Ancillary Expenses*

90. An adjustment was made for the cost of handling, loading and ancillary expenses at the port of export. This information was verified by MBIE during the verification visit by sighting invoices for these costs. The cost of handling, loading and ancillary expenses is [REDACTED] per metric tonne.

### *Credit costs*

91. An adjustment 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. MBIE verified invoice and payment records and calculated these expenses based on the number of days between the invoice date and final payment. The credit costs apply to [REDACTED] per cent of the invoice amount as Hesteel Chengde requires a [REDACTED] deposit on the ordered goods. The interest rate is [REDACTED] per cent p.a. This rate was verified by MBIE during the verification visit. The approximate credit cost is [REDACTED] per metric tonne, however, this amount varies depending on the number of days between invoice and final payment.

### *Commission*

92. An adjustment was made for commission fees Hesteel Chengde paid to Chengde Logistics for acting as its export agency. MBIE verified this information during the verification visit through sighting invoices and contracts between the parties. The commission rate paid to Chengde Logistics is [REDACTED] per cent of the invoice value. The approximate commission cost is [REDACTED] per metric tonne, however, this amount varies depending on the value of products invoiced.

## Export Prices

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

**Table 4.1: Hesteel Chengde – Export Prices**

Export model (grade/diameter)	Weighted Average export price (CNY/tonne)
300E 12mm	[REDACTED]
300E 16mm	[REDACTED]
500E 12mm	[REDACTED]
500E 16mm	[REDACTED]
500E 20mm	[REDACTED]

500E 32mm		
500E 12mm Coil		

### **Hebei Jingye**

94. Hebei Jingye did not respond to MBIE's Manufacturer Questionnaire. The company exported rebar to New Zealand through [REDACTED] intermediary exporters which on-sold the rebar to [REDACTED] different New Zealand importers. Only one of the intermediary exporters, [REDACTED], provided information on its exports to New Zealand but this information had limited use in establishing export prices from Hebei Jingye. [REDACTED] provided MBIE with details of its imports from [REDACTED] but this information had limited use in establishing export prices from Hebei Jingye.
95. Hebei Jingye made some exports to New Zealand through another trading company, [REDACTED], which on-sold to the New Zealand importer, [REDACTED]. However, neither [REDACTED] nor [REDACTED] provided a response to MBIE's exporter's and importer's questionnaire and MBIE was required to establish export prices for Hebei Jingye on the basis of information provided by Hesteel Chengde (see above). Exports by Hebei Jingye represented [REDACTED] per cent of all exports of the subject goods from China.

### **Base Prices**

96. Base prices for Hebei Jingye were those calculated for Hesteel Chengde for the particular models exported to New Zealand by Hebei Jingye. For those shipments where the export model was unable to be ascertained, a weighted average export price for all Hesteel Chengde's export models to New Zealand was used.

### **Adjustments**

97. Adjustments to export prices for costs, charges, and expenses incurred in preparing the goods for shipment to New Zealand included inland freight, handling, loading and ancillary expenses, credit costs, and a commission.

#### *Inland Freight*

98. An adjustment was made for the cost of inland transportation from the factory to the port of shipment. The adjustment made was [REDACTED] per metric tonne, on the basis of information provided by Hesteel Chengde.

#### *Handling, Loading and Ancillary Expenses*

99. An adjustment was made for handling, loading and ancillary expenses incurred at the port of shipment. The adjustment made was [REDACTED] per metric tonne, based on information provided by Hesteel Chengde.

**Credit Costs**

100. An adjustment was made for credit costs incurred between invoice date and the date of payment. The adjustment made was [REDACTED] per metric tonne, based on information provided by Hesteel Chengde.

**Commission**

101. An adjustment was made for commission costs paid to an export agency. The adjustment made was [REDACTED] per cent of the total invoice amount, based on information provided by Hesteel Chengde.

**Export Prices**

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

**Table 4.2: Hebei Jingye – Export Prices**

Export model (grade/diameter)	Weighted Average export price (CNY/tonne)
Not ascertained*	[REDACTED]
500E 12mm	[REDACTED]
500E 16mm	[REDACTED]

\* a weighted average export price for all Hesteel export models to New Zealand was used.

**Shandong Shiheng**

103. Shandong Shiheng did not respond to MBIE's Manufacturer Questionnaire. The importer which purchased subject goods from this company did not provide a response to MBIE's Importer Questionnaire. Shandong Shiheng made exports to New Zealand through an intermediary trading company, [REDACTED], but this company did not provide a response to MBIE's exporter's questionnaire. On the basis of using the best information available MBIE was required to establish export prices for Shandong Shiheng on the basis of information provided by Hesteel Chengde (see below). Exports by Shandong Shiheng represented [REDACTED] per cent of all exports of the subject goods from China.

**Base Prices**

104. Base prices for Shandong Shiheng were those calculated for Hesteel Chengde but the particular models exported to New Zealand by Shandong were unable to be ascertained from information sourced by MBIE. Therefore, a weighted average base price for all Hesteel Chengde's export models to New Zealand was used.

## Adjustments

### *Inland Freight*

105. An adjustment was made for the cost of inland transportation from the factory to the port of shipment. The adjustment made was [REDACTED] per metric tonne, on the basis of information provided by Hesteel Chengde.

### *Handling, Loading and Ancillary Expenses*

106. An adjustment was made for handling, loading and ancillary expenses incurred at the port of shipment. The adjustment made was [REDACTED] per metric tonne, based on information provided by Hesteel Chengde.

### *Credit Costs*

107. An adjustment was made for credit costs incurred between invoice date and the date of payment. The adjustment made was [REDACTED] per metric tonne, based on information provided by Hesteel Chengde.

### *Commission*

108. An adjustment was made for commission costs paid to an export agency. The adjustment made was [REDACTED] per cent of the total invoice amount, based on information provided by Hesteel Chengde.

## Export Prices

109. The adjustments outlined above were deducted from the weighted average base price to arrive at a weighted average ex-factory export price that provide a fair basis for comparison with normal values. The weighted average export price was [REDACTED] per metric tonne.

## *Jiangsu Yonggang*

110. Jiangsu Yonggang did not respond to MBIE's manufacturer's questionnaire. The importer which purchased subject goods from this company did not provide responses to MBIE's importer's questionnaire. Jiangsu Yonggang made exports to New Zealand through an intermediary trading company, [REDACTED]. [REDACTED] provided MBIE with a response to the exporter's questionnaire but this information had limited use in establishing export prices for Jiangsu Yonggang. Exports by Jiangsu Yonggang represented [REDACTED] per cent of all exports of the subject goods from China.

## Base Prices

111. MBIE was required to use the best information available to establish base prices for Jiangsu Yonggang and used those calculated for Hesteel Chengde for the particular models exported to New Zealand by Jiangsu Yonggang. For those shipments where the export model was unable to be ascertained, a weighted average export price for all Hesteel Chengde's export models to New Zealand was used

## Adjustments

### *Inland Freight*

112. An adjustment was made for the cost of inland transportation from the factory to the port of shipment. The adjustment made was [REDACTED] per metric tonne, on the basis of information provided by Hesteel Chengde.

### *Handling, Loading and Ancillary Expenses*

113. An adjustment was made for handling, loading and ancillary expenses incurred at the port of shipment. The adjustment made was [REDACTED] per metric tonne, based on information provided by Hesteel Chengde.

### *Credit Costs*

114. An adjustment was made for credit costs incurred between invoice date and the date of payment. The adjustment made was [REDACTED] per metric tonne, based on information provided by Hesteel Chengde.

### *Commission*

115. An adjustment was made for commission costs paid to an export agency. The adjustment made was [REDACTED] per cent of the total invoice amount, based on information provided by Hesteel Chengde.

## Export Prices

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

**Table 4.3: Jiangsu Yonggang – Export Prices**

Export model (grade/diameter)	Weighted Average export price (CNY/tonne)
500E 12mm	[REDACTED]
500E 16mm	[REDACTED]

### 4.3.2 Export Price - Malaysia

#### ***Amsteel***

117. Amsteel was the only Malaysian company to export to New Zealand during the POI. Amsteel exported directly to [REDACTED].

#### **Base Prices**

118. Amsteel invoiced [REDACTED] on a [REDACTED] basis in USD for all of its exports to that company over the POI and both Amsteel and [REDACTED] provided MBIE with invoices which covered all of these exports. The base price for Amsteel's exports to [REDACTED]

is the [REDACTED] USD invoice price. Invoiced amounts were verified against bank records held by the company showing payment amounts and dates.

119. All export sales to New Zealand are made on a theoretical weight basis, as are domestic sales (see “normal value” section below). As the cross section (diameter) of rebar cannot be accurately measured weight per meter is used to ensure the correct diameter. These weights are listed in AS/NZS 4716:2001. The standard allows weights to vary up to 4.5 per cent from the standard weight (standard deviation). Theoretical weight is therefore the weight a shipment of rebar calculated, based on the sizes and lengths of rebar ordered. As per standard practice, for both domestic and export sales, all Amsteel’s customers are invoiced based on this theoretical weight and contracts state that there may be a 4.5 per cent variation in the actual weight delivered.

## Adjustments

### *Inland Freight*

120. An adjustment was made for the cost of inland freight from the factory to the port of export. This information was verified by MBIE during the verification visit by sighting invoices for inland freight. The cost of inland freight is [REDACTED] per tonne.

### *Port Handling*

121. An adjustment was made for port handling charges. This information was verified during the verification visit by sighting invoices from service providers for shipments to [REDACTED]. The cost of handling is [REDACTED] per 40 foot container. This cost is approximately [REDACTED] per metric tonne, but this amount varies slightly depending on the total weight of each container or shipment.

### *Fees and Charges*

122. An adjustment was made for freight forwarding fees and other charges. This information was verified by the Ministry during the verification visit. The charges include forwarding fees ([REDACTED] per 20 foot container and [REDACTED] per 40 foot container); documentation fees ([REDACTED] per shipment); customs information system ([REDACTED] per shipment); container weighing ([REDACTED] per container); verified gross mass submission [REDACTED] per container); fuel adjustment factor ([REDACTED] per container); stuffing charges ([REDACTED] per 20 foot container and [REDACTED] per 40 foot container); depot gate charges ([REDACTED] per container); and container haulage ([REDACTED] per 20 foot container and [REDACTED] per 40 foot container). These costs are approximately [REDACTED] per metric tonne, although this amount varies slightly depending on the total weight of each container or shipment.

### *Local Liner Fee*

123. An adjustment was made for local liner fees. This includes terminal handling charges ([REDACTED] per container), bills of lading ([REDACTED] per shipment), Electronic Data Interchange charges ([REDACTED] per shipment), and container sealing fees ([REDACTED] per container). These costs are approximately [REDACTED] per metric tonne, but this amount varies depending on the total weight of the container or shipment.

*Surveying Fee*

124. An adjustment was made for surveying fees. This information was verified through invoices provided by Amsteel during the verification visit. Survey fees were (██████████ per container, minimum charge of ██████████ per invoice). This cost is approximately ██████████ per metric tonne, however, this amount varies depending on the total weight of each container and whether the minimum charge amount is met based on the number of containers in a shipment.

*Credit Cost*

125. An adjustment has been made for credit costs for the period between the contract date (establishing the material terms of sale) and the payment date. MBIE verified invoice and payment information and calculated these expenses based on the number of days between the invoice date and final payment. The credit costs apply to the full value of the invoice. The interest rate is ██████████ per cent p.a. This rate was verified by MBIE during the verification visit. The approximate credit cost is ██████████ per metric tonne but this amount varies depending on the number of days between contract date and final payment.

**Export Prices**

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

**Table 4.4: Amsteel – Export Prices**

<b>Export model (grade/diameter)</b>	<b>Weighted Average export price (CNY/tonne)</b>
300E 10mm	██████████
300E 12mm	██████████
300E 16mm	██████████
500E 12mm	██████████
500E 16mm	██████████
500E 20mm	██████████
500E 25mm	██████████
500E 32mm	██████████

**4.4 Normal Value**

127. 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.*

128. In the normal course of events, normal values would be determined in accordance with section 5 of the Act using information provided by the relevant suppliers in response to questionnaires. Hesteel Chengde was the only Chinese manufacturer to provide information on normal values in China. Amsteel, as the only Malaysian manufacturer to export to New Zealand, provided information on normal values in Malaysia.
129. Where sufficient information has not been provided or is not available in an investigation, normal values can be established under section 6 of the Act. Section 6 of the Act allows the Secretary to ascertain normal values having regard to all available information. As a result of having no information available from some suppliers, MBIE has had to derive normal values for the POI for some manufacturers from China that did not provide any information. These derived normal values have been based on information provided by another producer.

#### **4.4.1 Normal Value – China**

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

130. In its application, Pacific 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. Pacific 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.

131. Sections 5(2)(b) and (d) of the Act permit the Secretary to determine the normal value on the basis of a constructed value or on prices to third country markets if the Secretary is satisfied that the normal value of the goods cannot be determined on the basis of sales in the ordinary course of trade in the home market because the situation in the relevant market is such that sales in that market that would otherwise be relevant for the purposes of determining such a price, are not suitable for such use.
132. Pacific Steel argues that continued intervention by the GOC in the Chinese iron and steel industry has distorted the price of rebar and other steel goods. In support of its position, Pacific Steel 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 Pacific Steel provided, as annexes, an excerpt from a Canadian Border Service Agency (CBSA) Statement of Reasons in its *Concrete Reinforcing Bar* investigation in 2014, and from the report "Analysis of Steel and Aluminium Markets: Report to the Commissioner of the Anti-Dumping Commission", published in August 2016 by the Australian Anti-Dumping Commission (Australian ADC).

### **Canada**

133. 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), 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. The CBSA sought information from exporters and the Government of China (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. On the basis of that research, the CBSA concluded that the GOC exerts control over the Chinese steel industry and substantially determines prices, and that prices for rebar in China were consistently lower when compared to pricing in other markets.
134. Based on its conclusions, the CBSA determined normal values for the exporter from China that submitted a complete response by 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.

### **Australia**

135. Australia is in a similar situation as New Zealand in regard to its recognition that China as a market economy country.
136. The Australian ADC Report identified by Pacific 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.

### Surrogate Countries

137. 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 contacting 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.*

138. On the basis of this provision, many countries developed an approach to “non-market economies” which permitted the use of prices from surrogate countries for the determination of normal values. As outlined in Guide to International Anti-Dumping Practice, 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.
139. 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 Interpretative 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 regards to investigations involving China, account would be taken of the situation applying in the case of each industry and each exporter.

140. The 2001 Protocol of Accession of China to the WTO included section 15, dealing with price comparability in determining subsidies and dumping 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.
141. The Trade and Economic Cooperation Framework Agreement between New Zealand and China, signed in May 2004, formalised the approach adopted by the New Zealand trade remedy authorities at paragraph 10 of the Agreement, 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 rules out the use of surrogate countries, on the grounds provided for in the Interpretative Note.

### **MBIE Position**

142. In respect of Pacific Steel's first claim, that it was not confident that pricing of comparable rebar (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 rebar exported to New Zealand once an investigation was initiated. Furthermore, the pricing information (both domestic and export) was verified on a visit by MBIE officials to the company's premises in China and is therefore considered accurate and reliable.
143. In respect of Pacific Steel's second concern, 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 Pacific Steel but does not consider there are sufficient grounds for supporting the company's viewpoint. More specifically, MBIE does not consider that domestic prices in China for rebar 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 its usual practice of establishing normal values in China on the basis of domestic selling prices (where appropriate) rather than base Chinese normal values on surrogate country information. While this determination is specific to the present case, this approach is consistent with New Zealand's 2004 decision to recognise China as a market economy country.
144. Pacific Steel points to findings of other jurisdictions to support its view, but, MBIE considers there are certain flaws in those findings which makes it averse to relying on them. For instance, in respect of the CBSA conclusion that the GOC exerts control over the Chinese steel industry, and substantially determines prices, MBIE notes that the research relied on for that decision was based on secondary information rather than information sourced

direct from the Chinese producers and the GOC itself. While the CBSA sought information from certain Chinese exporters and the GOC to assist its consideration, the absence of satisfactory responses from these parties meant that the CBSA was forced to rely on secondary sources of information to obtain the data used to make its findings. MBIE also notes that there are differences between Canada and New Zealand in the legislative and treaty context within which the determination of normal values can be undertaken.

145. MBIE has also reviewed the matters raised in the Australian ADC Report in the light of its consideration of similar matters in MBIE's subsidy investigation into rebar from China (conducted parallel to this dumping investigation). On the basis of that consideration, MBIE notes that it has found in its investigation that the subsidies identified by the Australian 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.
146. In conclusion, MBIE notes its practice has long been to determine normal values either through prices or by construction on a case-by-case basis. In all of the cases involving China since May 2004, there has been no 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 or, when such information is not available, on the basis of constructed values.
147. Having considered the matters raised by Pacific Steel, MBIE has based its determination of normal value on prices in the Chinese market, and has not used prices from third countries. Constructed values have been used in the case of one product type from one manufacturer on the basis that sales were made at a loss, i.e. were not in the ordinary course of trade.

#### **4.4.2 Normal Value Calculation**

##### ***Hesteel Chengde***

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

148. Hesteel Chengde makes sales to domestic customers directly. Sales are made on an actual weight basis (as are export sales to New Zealand) and on an [REDACTED] and customers are responsible for [REDACTED]. Sales are made to distributors and end users. MBIE used sales to unrelated distributors in its calculation of normal values as export sales to New Zealand are made to distributors/traders. *[The redacted information relates to commercially sensitive terms of sale]*
149. MBIE compared the average cost to make and sell the rebar under investigation over the period of investigation with the average domestic selling price over the same period for

each model (including grade and diameter) of product to determine whether sales were made below cost. This information showed that the average price was below the average cost to make and sell the good for two models of rebar sold domestically. For these two models, 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 both models, the volume of sales that were made at a loss exceeded 20 percent of the volume of sales for that model. For one of the models, those sales which were made at a loss were disregarded and the normal value was determined on the basis of the remaining sales which were not made at a loss. For the other model (coil), all transactions over the POI were made at a loss so MBIE constructed a normal value for this model by using the actual costs of production and selling, general and administration expenses verified for this model and added a reasonable profit amount as required under section 5(2) of the Act. A reasonable profit amount was derived by calculating average profit margins achieved for those of Hesteel Chengde's models that were sold at a profit over the POI. The profit margin thus calculated was [REDACTED] percent.

### Base Prices

150. Base prices were established on a weighted-average basis for like goods from Hesteel Chengde to all unrelated domestic distributors. During the verification visit MBIE verified domestic sales information for a range of domestic sales invoices to a range of customers. Invoiced amounts were verified against bank records and accounts receivable records held by the company showing payment amounts and dates.

### Adjustments

151. Hesteel Chengde sells to domestic customers on an [REDACTED] basis, so, no adjustment for internal freight was required. As payment is required [REDACTED], and before [REDACTED], no adjustment for credit costs was required. Payment dates and amounts were verified from bank records and accounts receivable records held by the company. [REDACTED] are offered to domestic customers, therefore, no adjustment to the base price was required. *[The redacted information relates to commercially sensitive terms of sale]*

### Non-refundable VAT

152. Export goods from China incur value added tax (VAT) at the ordinary rate of 17 per cent. However, certain export goods receive a partial refund of the VAT. Alloyed steel products are included in the export goods that receive a partial refund and Hesteel receives a VAT refund of 13 per cent on exported goods for straight bar. An upward adjustment of 4 per cent of the net invoice amount was made to the normal value to account for the 4 per cent VAT payable on export goods to New Zealand. Where the goods are coil Hesteel receives a VAT partial refund of 9 per cent. For these goods an upward adjustment of 8 per cent of the net invoice amount was made to normal value to account for the 8 per cent VAT payable on the export of coil to New Zealand.

*Physical Difference Adjustments***HRB400**

153. A physical difference adjustment was made to account for the difference between HRB400 GB1499.2 (the closest domestic equivalent to the exported model) and G300E AS/NZS4671:2001 (the export model) to account for the [REDACTED] required to meet the G300E AS/NZS4671:2001 export standard. This was based on cost information verified by MBIE at the verification visit to the company's premises.
154. G300E AS/NZS4671:2001 from Hesteel Chengde contains [REDACTED] per cent [REDACTED] whereas HRB400 GB1499.2 contains no [REDACTED]. The average price for [REDACTED] over the POI was [REDACTED]/MT. The adjustment amount is therefore [REDACTED]/MT.

**HRB500**

155. A physical difference adjustment was made to account for the difference between HRB500 GB1499.2 (the closest domestic equivalent to the exported model) and G500E AS/NZS4671:2012 (the export model) to account for the additional [REDACTED] required to meet the G500E AS/NZS4671:2001 export standard. This was based on cost information verified by MBIE during the verification visit to the company's premises.
156. G500E AS/NZS4671:2001 requires approximately [REDACTED] per cent [REDACTED], [REDACTED] more than HRB500 GB1499.2. The average price for [REDACTED] over the POI was CNY [REDACTED]/MT. The adjustment amount is therefore CNY [REDACTED]/MT.

**Normal Values**

157. The adjustments outlined above were added to the base prices to arrive at ex-factory normal values that provide a fair basis for comparison with export prices. The range of normal values is shown in table 4.5 below.

***Hebei Jingye***

158. As noted above, no information has been provided by Hebei Jingye on its domestic prices to enable MBIE to calculate company-specific normal values. MBIE has therefore based normal values for Hebei Jingye on information provided by Hesteel Chengde.

**Base Prices**

159. In the absence of information provided by Hebei Jingye, MBIE has used the best information available. Base normal values have been set at the invoice prices provided by Hesteel Chengde for the closest equivalent models to those exported to New Zealand. As MBIE has information on the specific models exported to New Zealand, through [REDACTED], MBIE can use the weighted average price obtained for Hesteel Chengde's equivalent domestic product based on the grade and diameter exported to New Zealand.

**Adjustments**

160. As noted above, no adjustment for [REDACTED] needed to be made to domestic prices as Hesteel Chengde's sales were made on a [REDACTED] basis. As payment is required

[REDACTED], and before [REDACTED], no adjustment for credit costs was required. Hesteel Chengde offered [REDACTED] adjustment was made for [REDACTED] in relation to the base prices established for Hebei Jingye. [The redacted information relates to commercially sensitive terms of sale]

#### *Non-refundable VAT*

161. As noted above, export goods from China incur VAT at the ordinary rate of 17 per cent. However, certain export goods receive a partial refund of the VAT. Alloyed steel products are included in the goods that receive a partial refund, and exports of these products receive a VAT refund of 13 per cent. An upward adjustment of 4 per cent of the net invoice amount was made to account for the 4 per cent VAT payable on export goods to New Zealand.

#### *Physical Difference Adjustments*

##### **HRB500**

162. A physical difference adjustment was made to account for the difference between HRB500 GB1499.2 (the closest domestic equivalent to the exported model) and G500E AS/NZS4671:2001 (the export model) to account for the additional [REDACTED] required to meet the G500E AS/NZS4671:2001 export standard. An adjustment was made based on information provided by Hesteel Chengde (see above).

##### **Normal Values**

163. The adjustments outlined above were added to the base prices to arrive at ex-factory normal values that provide a fair basis for comparison with export prices.

#### ***Shandong Shiheng***

164. As noted above, no information has been provided by Shandong Shiheng on its domestic prices to enable MBIE to calculate company-specific normal values. MBIE has therefore based normal values for Shandong Shiheng on information provided by Hesteel Chengde.

##### **Base Prices**

165. In the absence of information provided by Shandong Shiheng, base normal values have been set at the invoice prices provided by Hesteel Chengde for the closest equivalent models to those exported to New Zealand. While MBIE has assumed that all exports to New Zealand were of high tensile deformed bar, the specific models exported to New Zealand by Shandong Shiheng were unable to be ascertained from information sourced by MBIE. Therefore, MBIE has used the weighted-average prices obtained for all Hesteel Chengde's domestic products equivalent to those exported to New Zealand.

##### **Adjustments**

166. As noted above, no adjustment for [REDACTED] needed to be made to domestic prices as Hesteel Chengde's sales were made on an [REDACTED] basis. As payment is required [REDACTED], and before [REDACTED], no adjustment for credit costs was required. Hesteel Chengde offered [REDACTED]

adjustment was made for discounts and rebates in relation to the base prices established for Shandong Shiheng. [The redacted information relates to commercially sensitive terms of sale]

#### *Non-refundable VAT*

167. As noted above, export goods from China incur VAT at the ordinary rate of 17 per cent. However, certain export goods receive a partial refund of the VAT amount. Alloyed steel products are included in the goods that receive a partial refund, and exports of these products receive a VAT refund of 13 per cent. An upward adjustment of 4 per cent of the net invoice amount was made to account for the 4 per cent VAT payable on export goods to New Zealand.

#### *Physical Difference Adjustments*

168. A physical difference adjustment was made to account for the difference between HRB400 GB1499.2 (the closest domestic equivalent to the exported model) and G300E AS/NZS4671:2001 (the export model) to account for the required to meet the G300E AS/NZS4671:2001 export standard. Similarly, a physical difference adjustment was made to account for the difference between HRB500 GB1499.2 (the closest domestic equivalent to the exported model) and G500E AS/NZS4671:2001 (the export model) to account for the additional required to meet the G500E AS/NZS4671:2001 export standard. The physical difference adjustments were based on cost information provided by Hesteel Chengde (see above).

#### **Normal Values**

169. The adjustments outlined above were added to the base prices to arrive at ex-factory normal values that provide a fair basis for comparison with export prices.

#### ***Jiangsu Yonggang***

170. As noted above, no information has been provided by Jiangsu Yonggang on its domestic prices to enable MBIE to calculate company-specific normal values. MBIE has therefore based normal values for Jiangsu Yonggang on information provided by Hesteel Chengde.

#### **Base Prices**

171. In the absence of information provided by Jiangsu Yonggang, base normal values have been set at the invoice prices provided by Hesteel Chengde for the closest equivalent models to those exported to New Zealand. As MBIE has information on the specific models exported to New Zealand, through , MBIE can use the weighted average price obtained for Hesteel Chengde's equivalent domestic product based on the grade and diameter exported to New Zealand.

#### **Adjustments**

172. As noted above, no adjustment for needed to be made to domestic prices as Hesteel Chengde's sales were made on an basis. As payment is required , and before , no adjustment for

credit costs was required. Hesteel Chengde offered [REDACTED] adjustment was made for discounts and rebates in relation to base prices established for Jiangsu. [The redacted information relates to commercially sensitive terms of sale]

#### *Non-refundable VAT*

173. As noted above, export goods from China incur VAT at the ordinary rate of 17 per cent. However, certain export goods receive a partial refund of the VAT amount. Alloyed steel products are included in the goods that receive a partial refund, and exports of these products receive a VAT refund of 13 per cent. An upward adjustment of 4 per cent of the net invoice amount was made to account for the 4 per cent VAT payable on export goods to New Zealand.

#### *Physical Difference Adjustments*

##### **HRB500**

174. A physical difference adjustment was made to account for the difference between HRB500 GB1499.2 (the closest domestic equivalent to the exported model) and G500E AS/NZS4671:2001 (the export model) to account for the additional [REDACTED] required to meet the G500E AS/NZS4671:2001 export standard. An adjustment was made based on information provided by Hesteel Chengde (see above).

##### **Normal Values**

175. The adjustments outlined above were added to the base prices to arrive at ex-factory normal values that provide a fair basis for comparison with export prices.

### **4.4.3 Normal Value – Malaysia**

#### ***Amsteel***

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

176. Amsteel sells rebar on the Malaysian domestic market through a wholly-owned subsidiary company, Amsteel Marketing. Product is transferred from Amsteel to Amsteel Marketing at Amsteel Marketing's [REDACTED] selling price less [REDACTED] per cent of that selling price. Amsteel Marketing has approximately [REDACTED] customers which it terms distributors. While sales are made through Amsteel Marketing, it does not physically handle the goods. The goods are often delivered directly to the distributors' customer, often straight to a construction site. All sales are made on a theoretical weight basis (as are export sales) and on a delivered basis.
177. Amsteel Marketing therefore effectively acts as the domestic marketing division of Amsteel, and the first arms-length transaction is from Amsteel Marketing to distributors.
178. MBIE compared the average cost to make and sell the rebar under investigation over the period of investigation with the average domestic selling price over the same period for each model (including grade and diameter) of product to determine whether sales were

made below cost. This information showed that the average price was above the average cost to make and sell the good for all models of rebar sold domestically.

### **Base Prices**

179. Base prices were established on a weighted-average basis for like goods from Amsteel Mills Marketing to all unrelated domestic distributors. During the verification visit MBIE verified domestic sales information for a range of domestic invoices to a range of customers. Invoiced amounts were verified against bank records held by the company showing payment amounts and dates. Base prices were established on a weighted-average basis for like goods from Amsteel Marketing to domestic customers.

### **Adjustments**

180. All customers are invoiced at a list price, however, [REDACTED] on market conditions and sales volumes.
181. An adjustment was made, on the basis of verified information, for the actual discount given in each domestic sale to establish base normal values. The adjustment for discounts ranged from [REDACTED] to [REDACTED] percent of the base price.

#### *Inland Freight*

182. As all sales are invoiced on a [REDACTED], an adjustment was made for inland freight on the basis of verified information. Inland freight charges ranged from [REDACTED] to [REDACTED] per metric tonne depending on the delivery distance.

#### *Handling*

183. An adjustment was made for the cost of port handling charges for those customers located in East Malaysia on the basis of verified information. The adjustment made for handling charges was [REDACTED] per metric tonne.

#### *Port Charges*

184. An adjustment was made for port charges for those goods delivered to East Malaysia, based on verified information. The adjustment made for port charges was [REDACTED] per metric tonne.

#### *Forwarding Fee*

185. An adjustment was made for forwarding fees for those goods delivered to East Malaysia, on the basis of verified information. The adjustment made for forwarding fees ranged from [REDACTED] to [REDACTED] per metric tonne.

#### *Ocean Freight*

186. An adjustment was made for ocean freight for those goods delivered to East Malaysia, on the basis of verified information. The adjustment made for ocean freight ranged from [REDACTED] to [REDACTED] per metric tonne depending on the size of the shipment.

### *Bill of Lading*

187. An adjustment was made for bill of lading fees for those goods delivered to East Malaysia, on the basis of verified information. The adjustment made for bill of lading fees ranged from [REDACTED] to [REDACTED] per metric tonne depending on the size of the shipment.

### *Insurance*

188. An adjustment was made for insurance costs for those goods delivered to East Malaysia, on the basis of verified information. The adjustment made for insurance ranged from [REDACTED] to [REDACTED] per metric tonne depending on the size of the shipment.

### *Credit Cost*

189. An adjustment was made for credit costs for the period between the purchase order date (establishing the material terms of sale) and the payment date. MBIE verified invoice and payment information and calculated these expenses based on the number of days between the purchase order date and final payment. The credit costs apply to the full value of the sale. The interest rate is [REDACTED] per cent p.a. This rate was verified by MBIE during the verification visit. The approximate credit cost is [REDACTED] per metric tonne, however, this amount varies depending on the number of days between the purchase order date and final payment.

### *Physical Difference Adjustment*

#### **HTD500**

190. A physical difference adjustment was made to account for the difference between HTD500 MS146:2006 (the closest domestic equivalent to the exported model) and G500E AS/NZS4671:2001 (the export model) to account for the [REDACTED] required to meet the G500E AS/NZS4671:2001 export standard. This was based on cost information verified by MBIE during the verification visit to the company's premises.
191. HTD500 MS146:2006 does not require [REDACTED] whereas G500E AS/NZS4671:2001 requires around [REDACTED] percent [REDACTED]. The adjustment made for [REDACTED] was [REDACTED] which represented the average vanadium cost over the POI.

#### **Normal Values**

192. The adjustments outlined above were made to the base prices to arrive at ex-factory normal values that provide a fair basis for comparison with the export prices. The range of normal values is shown in table 4.5 below under "Margins of dumping".

## **4.5 Determination of Dumping**

### **4.5.1 Margins of dumping**

193. 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 model-by-model, 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 certain models were dumped for certain exporters, in each case exporters were found not to be dumping when the dumping margins for each model were combined and an overall weighted average dumping margin was calculated across all models. 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. It should be noted that a negative value indicates no dumping.

## 4.5.2 China

### *Hesteel Chengde*

194. On a weighted-average to weighted-average basis there was no dumping of the subject goods occurring on imports from Hesteel Chengde. The following table shows the ranges of normal values, export prices and dumping margins for Hesteel Chengde.

**Table 4.5: Dumping Margins – Hesteel Chengde**

Product	Weighted average export price (CNY/tonne)	Weighted average normal value (CNY/tonne)	Dumping margin (%)
300E/HRB400E 12mm			
300E/HRB400E 16mm			
500E/HRB500E 12mm			
500E/HRB500E 16mm			
500E/HRB500E 20mm			
500E/HRB500E 32mm			
500E/HRB500+V 12mm Coil			
<b>Weighted Average Dumping Margin</b>			<b>-1.21%</b>

### *Other Chinese manufacturers*

195. Comparing the weighted-average export price with the weighted-average normal value established for the three remaining Chinese manufacturers investigated, there was no dumping of the subject goods occurring on imports from these companies. The following table shows the dumping margins established for Hebei Jingye, Shandong Shiheng and Jiangsu Yonggang.

**Table 4.6: Dumping Margin – Other Chinese Manufacturers**

Manufacturer	Dumping margin (%)
Hebei Jingye	-6.4%
Shandong Shiheng	-9.9%
Jiangsu Yonggang	-3.3%

196. The overall dumping margin for sample manufacturers from China was -3.88%.

### 4.5.3 Malaysia

#### ***Amsteel***

197. On a weighted-average to weighted-average basis there was no dumping of the subject goods occurring on imports from Amsteel. The following table shows the ranges of normal values, export prices and dumping margins for Amsteel.

**Table 4.7: Dumping Margins - Amsteel**

Product	Weighted average export price (RM/tonne)	Weighted average normal value (RM/tonne)	Dumping margin (%)
300E/HTD500 10mm			
300E/HTD500 12mm			
300E/HTD500 16mm			
500E/HTD500 12mm			
500E/HTD500 16mm			
500E/HTD500 20mm			
500E/HTD500 25mm			
500E/HTD500 32mm			
<b>Weighted Average Dumping Margin</b>			<b>-4.70%</b>

## 4.6 Conclusions Relating to Dumping

198. MBIE concludes that on a weighted-average to weighted-average basis, rebar imported from China and Malaysia over the POI has not been dumped.

## 5. Injury Investigation

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### 5.1 Basis for Investigation

199. Despite the conclusion that there is no dumping MBIE has nevertheless assessed the extent to which imports of the subject goods from China and Malaysia may be causing material injury to Pacific Steel, in accordance with section 8 of the Act, and whether there may be causes other than dumping to which injury may be attributed.
200. 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 Secretary 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.*
201. 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. 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 either 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.
202. The Act sets out a number of factors and indices which the Secretary shall have regard to in considering volume and price effects and the economic impact of dumped goods on the industry, although noting that this is without limitation as to the matters the Secretary 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.

203. In addition, under section 8(2)(e) of the Act, the Secretary 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.
204. 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.
205. The Secretary 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. Material injury is normally assessed by comparing data for an injury factor against the data in a period unaffected by dumping.
206. In submissions made to MBIE, Pacific Steel made a number of arguments relating to the basis for the analysis of injury including that injury to a domestic industry should be examined on the basis of a counterfactual or “but for” analysis.
207. Material injury is normally assessed by comparing 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 in section 8(2)(d) of the Act which refers to “actual and potential decline” 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,” 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.
208. In its application, Pacific Steel referenced the Australian approach in support of its case. The Australian ADC *Manual* notes that where no coincidence is found or a “coincidence analysis” has not been possible, the Australian ADC may accept an alternate analytical method, such as the “but for” analysis, when examining causation. The Australian ADC will conduct such investigations in accordance with WTO jurisprudence which requires that any other method, other than the coincidence analysis, will require “compelling evidence” as to why causation exists notwithstanding the absence of any coincidence. The Australian ADC requires parties submitting information to demonstrate injury based on “but for” grounds to provide and explain the evidence on which the claim exists, including using

suitable accounting methods and counterfactual analysis. It is not sufficient to simply assert such an effect as this will not meet the evidentiary requirement.

209. Bearing in mind the above, a counterfactual analysis of the impact of dumped imports of steel rebar from China would examine the claims of unrealised sales revenue and profit attributable to dumped goods, and their economic impact on the industry. Since a counterfactual analysis necessarily relies on assumptions, the guidance provided by the Appellate Body<sup>11</sup> needs to be borne in mind, and “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...”.
210. In undertaking a counterfactual analysis, the investigating authority must assess the claims relating to the level of prices that would otherwise have been achieved, and seek to identify and quantify the extent to which the price effects attributable to the dumped goods have had an economic impact on the industry in the areas identified in the Act. 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.
211. In its submission of 26 October 2017 following the verification visit<sup>12</sup>, Pacific Steel provided a detailed analysis of the factors and assumptions relevant to a counterfactual analysis. The analysis discusses the factors and assumptions in terms of the impact of unfairly traded goods from China (subsidy and dumping) and Malaysia (dumping). The outcome of the analysis was expressed in terms of the estimated level of earnings before interest and taxation (EBIT) that would have been achieved but for the unfairly traded goods.
212. MBIE notes that, in the absence of dumping, there is no basis for an analysis of the position but for dumping.

## 5.2 Import Volumes

213. Section 8(2)(a) of the Act provides that the Secretary shall have regard to the extent to which there has been or is likely to be a significant increase in the volume of imports of dumped goods either in absolute terms or in relation to production or consumption in New Zealand.

### 5.2.1 Imports

214. The following table shows imports from China and Malaysia in absolute terms and in relation to production and consumption in New Zealand for the period 2012-2016. This

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<sup>11</sup> Appellate Body in *Mexico – Anti-Dumping Duties on Rice*, WTO document WT/DS295/AB/R at page 69, paragraph 204.

<sup>12</sup> Reproduced as section 3 of the Verification Report “Matters raised after the visit”.

information is based on Customs data, adjusted by the removal of imports under concessions other than the building-materials concession, and on information from Pacific Steel.

**Table 5.1: Import volumes of rebar (MT)**  
Customs data, adjusted

	2012	2013	2014	2015	2016
<b>MT:</b>					
Imports from China/Malaysia		952	1192	1074	1126
Other imports		1297	1345	1039	1155
Pacific Steel sales		1130	1351	1012	1034
NZ market		1122	1330	1023	1061
<b>Change on previous year - MT:</b>					
Imports from China/Malaysia					
Other imports					
Pacific Steel sales					
NZ market					
<b>China/Malaysia imports as percentage of:</b>					
Pacific Steel sales					
NZ market					
<i>To protect confidential information, figures are shown as index of previous year</i>					

215. The information shows that imports from China and Malaysia have increased over the period 2012 to 2016 in absolute terms, but not in relation to production or consumption in New Zealand. The figures also indicate that Pacific Steel had a greater volume share in market growth than imports from China and Malaysia did, except in 2015 when the volume shares in market growth were similar and both less than the volume share in the growth held by imports from other sources.
216. In its questionnaire response, and communication at the verification visit, Hesteel Chengde noted that its exports of rebar to New Zealand were made on the basis of orders by customers, and had remained stable in recent years. Hesteel Chengde stated that it had [REDACTED] export volume of rebar to New Zealand, and that it sold the vast majority of its production domestically. Hesteel Chengde noted that it had no freely disposable capacity and that its rebar mills were constrained by the amount of billet the company could produce which was in turn constrained by the amount of iron-ore it could procure. This company stated that its domestic rebar prices had increased since the POI, in line with increased prices charged by its domestic competitors, and that export markets were currently much less attractive than during the POI.
217. In its questionnaire response, and communication at the verification visit, Amsteel noted that its exports of rebar to New Zealand were made on the basis of orders from customers. Amsteel noted [REDACTED] and that its core focus is on the domestic market. Euro Corp is Amsteel's sole export customer as a result of Amsteel's focus on the Malaysian domestic market, especially as there had been a marked improvement in the domestic market conditions since the Malaysian government imposed safeguard measures on

imports or rebar (mainly from China) in April 2017. The duties had gone a long way in enabling the company to increase its domestic rebar prices since the POI. Export markets are currently much less attractive than during the POI which was illustrated by the decreased exports of rebar to New Zealand since 2016. *[The redacted information relates to commercially sensitive business operations]*

## 5.2.2 Conclusion on Import Volumes

218. On the basis of the information on import volumes, MBIE concludes that over the period 2012-2016 imports from China and Malaysia increased in absolute terms, but not in relation to production or consumption in New Zealand. Domestic production has also increased in absolute terms, while imports from other countries have increased more than imports from China and Malaysia of the subject goods.
219. Imports from China and Malaysia have had the lowest average unit values of all imports, but, in the absence of dumping, the increase in import volumes cannot be attributed to dumping.

## 5.3 Price Effects

220. Section 8(1) of the Act requires that, in determining whether or not material injury is being caused to an industry, the Secretary shall examine the effect of the dumped goods on prices in New Zealand for like goods.

### 5.3.1 Price Undercutting

221. Section 8(2)(b) of the Act provides that the Secretary shall have regard to the extent to which the prices of the dumped goods represent significant price undercutting in relation to prices in New Zealand (at the relevant level of trade) for like goods of New Zealand producers. It should be noted that the determination that price undercutting exists is not by itself a determination of the 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 in terms of the factors and indices set out in section 8(2)(d) of the Act.
222. MBIE has used data from Chinese and Malaysian manufacturers, intermediary traders and importers to establish prices of imports at the ex-wharf level in New Zealand, and verified information from Pacific Steel, to establish the extent of price undercutting. MBIE has compared prices at Pacific Steel's ex-factory price (i.e. its FIS price less freight) and the ex-wharf level for imports to ensure that differences in distribution costs and importer margins do not affect the comparison.
223. The table below shows the outcome of the comparison made at the importer level, and including, to the extent possible, all exports from the sample manufacturers in China and the manufacturer in Malaysia. The comparison was made at the level of four specific item classes or categories of rebar reflecting the different grades, specifications, and sizes of rebar Pacific Steel produces with the ranges shown reflecting the outcomes over these specific item classes.

Table 5.2: Price Undercutting

Importer (China)	Import volume (MT)	Undercutting margin (%)*	% of imports undercutting domestic prices
Brilliance International			
Euro Corporation			
NZ Steel Distributor			
Steel and Tube			
United Steel			
Total volume (5 importers)			
<b>Importer (Malaysia)</b>			
Euro Corporation			
* nil denotes no undercutting for some shipments			

224. The information shows that there has been significant price undercutting by imports of rebar from China (■ ■ %) and Malaysia (■ ■ %) [*nil – 59% for China/Malaysia combined*]. MBIE notes that Pacific Steel has advised that its pricing policy is based on import parity pricing plus a premium for the benefits of local supply. The evaluation of the significance of the extent of price undercutting should take this premium into account. However, since no dumping has been established, dumping has had no material effect on the price of imports from China and Malaysia and consequently has not contributed to the price undercutting experienced by Pacific Steel.
225. MBIE cannot conclude that price undercutting can be attributed to the dumping of imports of rebar from China and Malaysia. Other possible causes of injury are addressed in section 6 of this Report.

### 5.3.2 Price Depression

226. Price depression occurs when prices are lower than those in a market unaffected by dumping, usually in a previous period. In this context, price depression refers to reductions in prices made by domestic producers in order to deal with competition from prices of dumped goods. Section 8(2)(c) of the Act provides that the Secretary shall have regard to 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. Price depression is not in itself a determinant of the existence or extent of injury. There must be a consequential impact on the industry, measured primarily in terms of the factors set out in section 8(2)(d) of the Act.
227. Pacific Steel provided information, updated and verified during the verification visit, to demonstrate the extent of price depression experienced. The following table shows Pacific Steel's average prices achieved for rebar for rolling 12-month totals for 2012-2017.

**Table 5.3: Price Depression  
NZD/MT and index – rolling 12-month totals**

	Revenue NZD/tonne	Index 2012/2=1000
2012/2		1000
2013/1		939
2013/2		915
2014/1		900
2014/2		874
2015/1		857
2015/2		832
2016/1		787
2016/2		781
2017/1		839

228. The information shows that Pacific Steel experienced a steady decline in prices over the period, but with some recovery in 2017, and that there was price depression. However, since no dumping has been established, dumping has no material effect on the price of imports from China and Malaysia, and consequently has not contributed to the price depression experienced by Pacific Steel.
229. MBIE cannot conclude that price depression can be attributed to the dumping of imports of rebar from China and Malaysia. Other possible causes of injury are addressed in section 6 of this Report.

### 5.3.3 Price Suppression

230. Section 8(2)(c) of the Act also provides that the Secretary shall have regard to the extent to which the effect of the dumped goods is or is likely to significantly prevent price increases for those goods that otherwise would have been likely to have occurred. 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 primarily in terms of the factors set out in section 8(2)(d) of the Act.
231. Price suppression can result from an inability to recover cost increases. Pacific Steel provided information, updated and verified during the verification visit, to demonstrate the extent of price suppression experienced. The following table shows the evolution of production costs as a percentage of average revenue per tonne for rebar for rolling 12-month totals for 2012-2017.

**Table 5.4: Price Suppression  
NZD/tonne and percentages – rolling 12-month totals**

	Revenue NZD/tonne	Cost of production NZD/tonne	Cost of production as % of Revenue (indexed)
2012/2			1000
2013/1			996
2013/2			989
2014/1			978
2014/2			1007
2015/1			1008
2015/2			1015
2016/1			1091
2016/2			1105
2017/1			981

232. The information shows that cost of production as a percentage of revenue remained within a band of [REDACTED] per cent for most of the period, with a significant change in 2016 indicating that there was price suppression during this period. However, since no dumping has been established, dumping has had no material effect on the price of imports from China and Malaysia, and consequently has not contributed to the price suppression experienced by Pacific Steel.
233. MBIE cannot conclude that price suppression can be attributed to the dumping of imports of rebar from China and Malaysia. Other possible causes of injury are addressed in section 6 of this Report.

### 5.3.4 Conclusion on Price Effects

234. On the basis of the information on prices, MBIE concludes that:
- Pacific Steel's prices have been undercut by the prices of imports from China and Malaysia, but that undercutting cannot be attributed to any dumping of imports of rebar from China and Malaysia.
  - Pacific Steel has experienced price depression, but that price depression cannot be attributed to any dumping of imports of rebar from China and Malaysia.
  - Pacific Steel did experience some price suppression in 2016, but that price suppression cannot be attributed to any dumping of imports of rebar from China and Malaysia.
235. MBIE's overall conclusion regarding price effects is that in light of the conclusions reached on the absence of dumping of imports of rebar from China and Malaysia, it cannot be concluded there are any significant effects of dumped goods on prices in New Zealand for the like goods. It seems likely that the price effects experienced by Pacific Steel reflect the global market situation for rebar during the period under review.

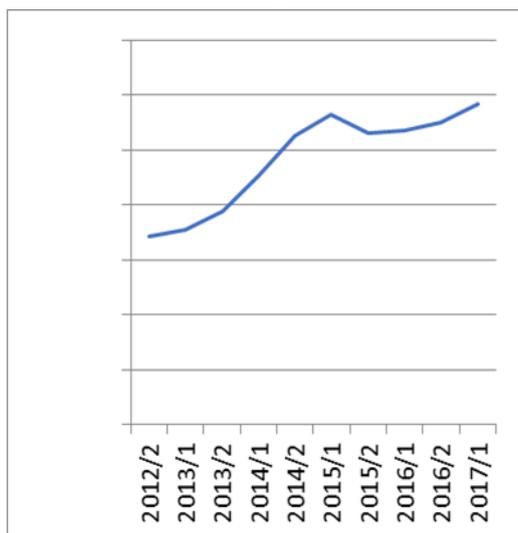
## 5.4 Consequent Economic Impact

236. Section 8(1) of the Act requires the Secretary to examine the volume and price effects of the dumped goods, and the consequent impact of the dumped goods on the relevant New Zealand industry. Section 8(2)(d) outlines matters relating to the economic impact of the dumped goods on the industry that the Secretary shall have regard to. As noted in section 8(2), the matters listed in that section are those that the Secretary shall have regard to, but are not a finite list of the matters to be considered.
237. Article 3.4 of the AD Agreement includes a similar listing of relevant economic factors and indices having a bearing on the state of the industry, but emphasises that the list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance. In *EC – Countervailing Measures on DRAMs* the Panel agreed with the view expressed by the Appellate Body, that the factors listed are deemed to be relevant in every investigation and must always be evaluated by the investigating authorities. However, the obligation of evaluation imposed by Article 3.4 is not confined to the listed factors, but extends to all relevant economic factors. The Panel went on to note “We consider that, in the context of trade remedies investigations, which are subject to multilateral rules and multilateral review, a Member is placed in a difficult position in rebutting a prima facie case that an evaluation of a given factor has not taken place if it is unable to direct the attention of a Panel to some contemporaneous written record of that process.”
238. In applying the requirements of the Act, MBIE examines all of the matters listed in section 8(2)(d) as well as any other relevant matters, and records its considerations and conclusions in the record of the investigation, whether or not the matters are found to be germane to the determination of injury. MBIE also notes that a determination of injury does not require findings that all of the examined factors are contributing to injury, but only that where there is a causal relationship between the examined factors and the industry, the totality of such effects is to cause material injury to the domestic industry.

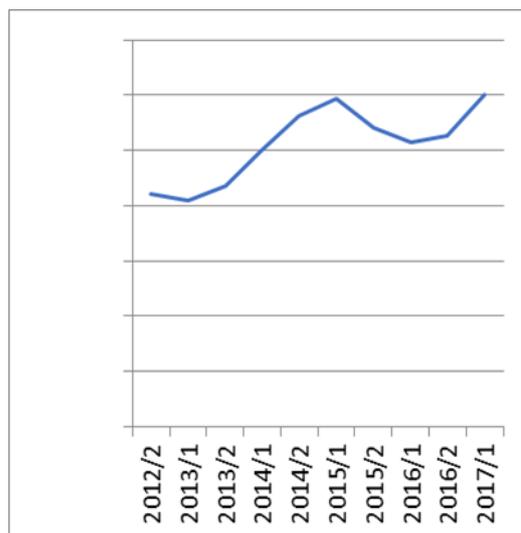
### 5.4.1 Output and Sales

239. Movements in sales revenue reflect changes in volumes 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.
240. The following charts show updated sales volume and sales revenue information provided by Pacific Steel during the verification visit, using rolling 12-month totals. The charts show that both sales volume and revenue increased between 2012 and 2015, with a slight decrease in 2016 and recovery in 2017. The slight differences in the revenue curve is attributable to the lower prices received in the second half of 2015 through to the second half of 2016, as well as the lower sales volumes over the same period.

**Chart 5.1: Sales Volume  
MT, rolling 12-month totals**



**Chart 5.2: Sales Revenue  
NZD000, rolling 12-month totals**



241. In its application, Pacific Steel noted that it has a [REDACTED], plus other assured quality and service elements, so injury effects are therefore reflected in sales revenue decrease rather than in sales volume. This position was reiterated at the verification visit when Pacific Steel indicated that it did not consider output to be a material injury factor in the particular circumstances of this investigation. *[The redacted information relates to commercially sensitive business operations]*
242. A coincidence analysis indicates that there has been no trending decline in sales volume or revenue over the whole period 2012-2017, although in 2015-2016 Pacific Steel did experience a decline in both volume and revenue. A counterfactual analysis would consider the position but for the dumping of imports from China and Malaysia, but since no dumping has been established, dumping has no material effect on the volume or price of imports from China and Malaysia, and consequently there is no impact on Pacific Steel's sales volume and revenue.
243. MBIE cannot conclude that any decline in output and sales can be attributed to the dumping of imports of rebar from China and Malaysia.

## 5.4.2 Market Share

244. The analysis of market share must take account of changes in the growth of the market as a whole. A decline in the share of the market held by the domestic industry in a situation where the market as a whole is growing will not necessarily indicate that injury is being caused to the domestic industry, particularly if the domestic industry's sales are also growing. There is no "entitlement" to a particular market share.
245. The following charts show the evolution of market shares during the period 2012-2016 by tonnes and by percentage shares held by imports from China and Malaysia, other sources, and Pacific Steel.

Chart 5.3: Market Share - MT



Chart 5.4: Market Share - Percentages



246. The information confirms that the market has grown since 2012, and that Pacific Steel's market share has remained fairly constant over the period, although in 2016 its market share was slightly lower than in previous years.
247. In its application, Pacific Steel went to some lengths to outline its thesis that in a growing market it is reasonable to expect the market share held by domestic industry to be at least constant. As explained in the Initiation Report,<sup>13</sup> Pacific Steel appears to have interpreted MBIE's approach to analysing market share in previous investigations to mean that no change to the market share at a point in time can be contemplated but, as noted in the Initiation Report, this is not correct. MBIE's view that there is no entitlement to a particular

<sup>13</sup> See paragraph 222 of the Initiation Report, August 2017.

market share reflects the reality that any market will be dynamic and that market shares will reflect a range of factors that make it difficult, if not impossible, to make assumptions about the market share that might be achieved by the domestic industry in the future, or in the absence of dumped goods.

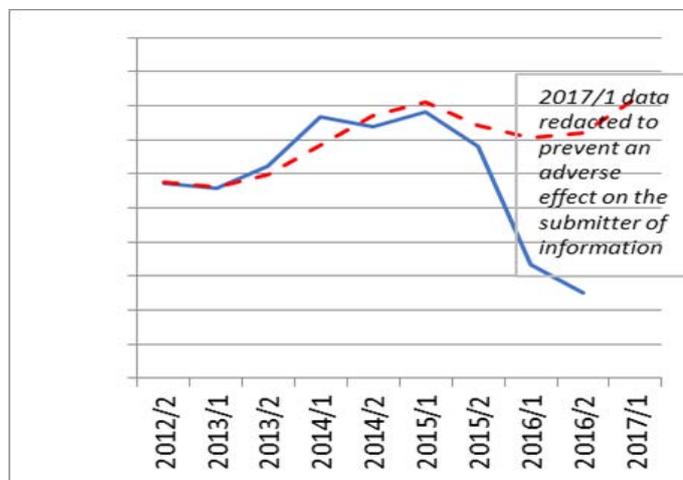
248. During the verification visit, Pacific Steel noted that maintaining market share was important, as it needed to maximise production to make the most efficient use of its plant, and it sought to maintain market share across times of both market expansion and market contraction. In the absence of any particular cause for a specific market share change, and since it was not aware of any such change, Pacific Steel considered that its market share did not bear upon the injury analysis in this case.
249. A coincidence analysis indicates that there is no material decline in the market share held by Pacific Steel over the period 2012-2016, that is, in a growing market the market share held by the domestic industry has been constant. A counterfactual analysis would consider the position but for the dumping of imports from China and Malaysia, but since no dumping has been established, dumping has no material effect on the volume or price of imports from China, and consequently there is no impact on Pacific Steel's market share, whether that impact is a decline in market share or a failure to achieve a larger market share.
250. MBIE cannot conclude that there is any decline in Pacific Steel's market share, and any failure to achieve a larger market share, cannot be attributed to the dumping of imports of rebar from China and Malaysia.

### 5.4.3 Profits

251. Changes in net profit reflect changes in prices, sales volumes or costs. Dumped imports can impact on any or all of these. Normally, the extent of a decline in profit will be measured against the level achieved in the period immediately preceding the commencement of dumping.
252. MBIE has generally used earnings before interest and taxation (EBIT) as the measure of profitability because it reflects operating profits for the activity under investigation, excluding the costs and expenses relating to that activity, and before tax, interest and other enterprise factors arise. In its application, Pacific Steel emphasised the impact on EBIT of price undercutting and the resulting price suppression and depression attributable to the presence of dumped and subsidised imports on the New Zealand market. Information was provided to support its claims that prices of imports were affecting selling prices to New Zealand customers as those customers leveraged import offers to negotiate lower prices from Pacific Steel. In its submission of 26 October 2017, Pacific Steel undertook a counterfactual analysis and concluded that but for the unfairly trade goods, EBIT in 2016 would have been   higher than the achieved level.
253. The following chart, based on rolling 12-month totals, shows the evolution of Pacific Steel's total EBIT on domestic rebar sales. EBIT per tonne shows a similar curve. The dotted line

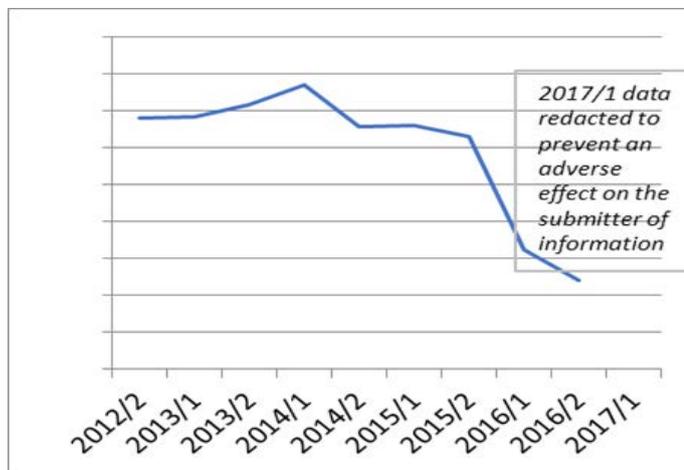
indicates the level of EBIT that would have been achieved if the average percentage of cost of sales to revenue for 2012-2015 had applied across the whole period.

**Chart 5.5: Profits - EBIT  
NZD000**



- 254. The information shows that EBIT declined significantly in 2015-2016 compared with 2012-2014, but has recovered to higher levels in 2017 (outside the POI for dumping).
- 255. Profitability is expressed as EBIT as a percentage of revenue, as shown in the chart below. The shape of the curve is similar to total EBIT.

**Chart 5.6: Profitability – EBIT/Revenue  
Per cent**



- 256. MBIE notes that while there was a significant decline in EBIT in 2015-2016, this cannot be attributed to the effects of dumping of imports from China and Malaysia since no dumping has been established. This suggests that there may be other factors contributing to the decline in EBIT, including factors relating to prices achieved and to changes in production costs. These factors are addressed in section 5.3 above and in section 6 of this Report. A counterfactual analysis identifies the level of EBIT that might have applied if the relationship between costs and prices from earlier in the period could have been

maintained, but the possible impact cannot be attributed to the dumping of rebar from China and Malaysia.

257. MBIE cannot conclude that the decline in profit and profitability experienced in 2015-2016 can be attributed to the dumping of imports of rebar from China and Malaysia.

#### 5.4.4 Productivity

258. Productivity is the relationship between the output of goods and the inputs of resources used to produce them. Changes in productivity are affected by output levels and by the level of capacity utilisation.
259. In the application Pacific Steel noted that it may have suffered an economic impact on productivity as a result of dumping, but considered that any such effects would be less than the effects on sales revenue and profits. No evidence was provided to support this view. During the verification visit, Pacific Steel noted that it considered that the investigation should focus on price-related injury and consequential effect at the nexus of import price competition from China and Malaysia, and in that context, productivity, being based on production per employee, was not germane to the case.
260. MBIE is satisfied that there is no evidence that productivity has been adversely affected by the dumping of imports of rebar from China. In any event, since no dumping has been established, dumping can have no material effect on productivity.

#### 5.4.5 Return on Investments

261. A decline in return on invested capital (ROIC) will result from a decline in returns with or without a relative increase in the investment factor being used. Movements in the return on investments affect the ability of the industry to retain and attract investment.
262. In the application and during the verification visit, Pacific Steel claimed that it had suffered an economic impact in the form of diminished return on investments, proportional to the injury to price and EBIT margins. It noted that it was difficult to provide sensible evidence because of the sale of the business, and the [REDACTED]. The asset figures for FY2016 and FY2017 would also be affected by the [REDACTED] in September 2015 with subsequent years applying to the rolling mill only. Pacific Steel suggested that evidence on EBIT and gross profit and cashflow could serve as a proxy for return on investment matters. *[The redacted information relates to commercially sensitive business operations]*
263. In the absence of relevant information, MBIE is unable to reach any conclusion on whether there has been a decline in return on investment. In any event, since no dumping has been established, dumping has had no material effect on the EBIT, cashflow or gross profit.
264. MBIE cannot conclude that the dumping of imports of rebar from China and Malaysia has contributed to a decline in return on investments.

#### 5.4.6 Utilisation of Production Capacity

265. The utilisation of production capacity reflects changes in the level of production, although in some cases it will arise from an increase or decrease in production capacity. In either case, a decline in the utilisation of production capacity will lead to an increase in the unit cost of production, and a consequent loss of profit.
266. During the verification visit Pacific Steel provided information on its production capacity, noting that available capacity had remained reasonably static since 2009, and that the level of production capacity utilisation was a theoretical concept since the product mix and frequency of changes to produce different sizes or types of rebar affected capacity utilisation.
267. As stated in the application and confirmed during the verification visit, Pacific Steel does not consider that utilisation of production capacity is relevant to the case. Pacific Steel suggested that the investigation should focus on price-related injury and consequential effect at the nexus of import price competition from China and Malaysia, and in that context, production capacity utilisation, being based on production volumes, was not germane to the case.
268. MBIE agrees that in the circumstances of the industry being examined, the impact of dumped imports on the utilisation of production capacity may not be a relevant factor. In any event, since no dumping has been established, dumping has no material effect on production capacity.
269. MBIE cannot conclude that the dumping of imports of rebar from China and Malaysia has contributed to a decline in utilisation of production capacity.

#### 5.4.7 Factors Affecting Domestic Prices

270. The Act lists this matter as one of the various factors and indices to which the Secretary must have regard to in assessing the economic impact of the dumped goods on the industry. However, the WTO publication “A Handbook on Anti-Dumping Investigations” appears to treat factors affecting domestic prices as a factor other than the dumped imports that is likely to affect domestic prices. Since the factor appears in Article 3.4 of the AD Agreement, and not in Article 3.5, which deals with causes of injury other than subsidisation (or in Article 3.2 which deals with volume and price effects), and since this is also in the Act, with the factor included in section 8(2)(d) and not section 8(2)(e), MBIE examines it in the context of the economic impact of subsidised goods on the industry.<sup>14</sup>

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<sup>14</sup> The Panel in *EC — Tube or Pipe Fittings* (WT/DS219/R, paragraph 7.335 at pp 92-93) stated that it saw no basis in the text of the Agreement for Brazil’s argument that would require an analysis of factors affecting domestic prices beyond an Article 3.2 price analysis, and observed that certain factors potentially affecting price may be more in the way of causal factors to be analysed under Article 3.5, rather than under 3.4. In MBIE’s view this approach cannot be sustained, because it suggests that the phrase “factors affecting domestic prices” in Article 15.4 is redundant, since it is covered by Articles 15.1, 15.2 or 15.5. In *US — Gasoline*

271. MBIE's analysis of price effects is set out in section 5.3 above. This provides a basic analysis of the existence of price undercutting, price suppression and price depression, and the extent to which these effects can be attributed to rebar imports from China and Malaysia.
272. In its application, and subsequently during the verification visit and in other submissions, Pacific Steel has emphasised the significance of the price effects of unfairly traded exports in causing injury. Pacific Steel has provided a description of the bases and mechanisms for its pricing decisions under its Import Price Parity approach, and has provided evidence of the way in which customer interactions have driven its pricing responses. The pricing approach also accounts for a premium for local goods, which covers benefits to customers of timeliness, ability to get emergency supplies, the credibility of testing, and available technical expertise. Pacific Steel does not have exclusivity contracts with its customers, while in some cases [REDACTED]. [The redacted information relates to commercially sensitive business operations]
273. Thus, the relevant factors affecting domestic prices, which are supplementary to the price effects already addressed, include the pricing policy itself and the mechanism by which prices to individual customers are arrived at, and the nature of the market for rebar in New Zealand.
274. The pricing policy is driven by Pacific Steel's response to prices available to its customers from international suppliers, conditioned by other considerations favouring a local supplier. To that extent, the availability of rebar at lower prices, whether or not that availability is reflected in orders by New Zealand customers, is the main driver of the prices achieved by Pacific Steel. This goes beyond the impact of lost sales due to price undercutting, and is reflected in price suppression and price depression. Given the context of the factors affecting domestic prices, the issue to be addressed is the extent to which imports of rebar helps outweigh the considerations favouring the local supplier to the New Zealand market.
275. MBIE notes that Pacific Steel has provided evidence of the way in which its pricing policy works, and the factors that influence the prices it receives, with consequent effects for sales not achieved, and for revenue and profits. However, since no dumping has been established, dumping has no material effect on pricing decisions.
276. MBIE cannot conclude that the dumping of imports of rebar from China and Malaysia has had an economic impact on the industry through factors affecting domestic prices.

#### **5.4.8 Magnitude of the Margin of Dumping**

277. In examining the impact of dumped imports, MBIE is required to have regard to the magnitude of the margin of dumping.

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(WT/DS2/AB/R, at page 23) the Appellate Body explained that "[a]n interpreter is not free to adopt a reading that would result in rendering whole clauses or paragraphs of a treaty to redundancy or inutility."

278. Since no dumping has been established, the margin of dumping is not a relevant factor.

#### 5.4.9 Other Adverse Effects

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

279. 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, which is the total amount of money being transferred into and out of a business, especially as affecting liquidity, provides an indication of the ability of producers to self-finance their activities.
280. Pacific Steel has claimed it has suffered an adverse economic impact through impaired cash flow, arising from the effects of the dumped goods on sales revenue and profits. During the verification visit to Pacific Steel, MBIE examined information provided relating to cash flow, expressed as EBIT plus depreciation as a proxy for cash flow, and relating to the rolling mill (including both rebar and wire rod). Pacific Steel noted that it was difficult to provide evidence of the impact on cash flow because of the change in ownership of the business.
281. The use of EBIT plus depreciation as the basis for identifying cash flow means that the data closely reflects the EBIT data, and indicates that cash flow declined in 2015-2016 before recovering in 2017. As advised by Pacific Steel, the sale of the business and steel plant transition arrangements meant that the cash flow position in 2014-2015 was unusual, and it is difficult to draw any meaningful conclusions. MBIE notes that with the exception of the affected period, cash flow remained largely positive, and that the main impact appears to have resulted from the changes in ownership of the company. In any event, since no dumping has been established, dumping has had no material effect on cash flow.
282. MBIE cannot conclude that the dumping of imports of rebar from China and Malaysia has contributed to any actual or potential effects on cash flow.

##### ***Inventories***

283. MBIE is required to have regard to the economic impact of dumped goods on the industry through actual and potential effects on inventories.
284. Pacific Steel did not identify effects on inventories as an injury factor. During the verification visit, Pacific Steel noted that inventories are the sum of domestic and export finished goods, with inventory reports being produced at 30 June for each financial year. Pacific Steel noted that it holds modest inventory amounts because it makes to order, and if it could not sell product domestically then it would [REDACTED]. Consequently, year-on-year changes in inventory are not claimed to be affected by imports of dumped goods, and Pacific Steel does not consider that inventories are a useful material injury factor in this case. In any event, since no dumping has been established, dumping has had no material effect on inventories.
285. MBIE cannot conclude that the dumping of imports of rebar from China and Malaysia has contributed to any actual or potential effects on inventories.

**Employment and Wages**

286. 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.
287. Pacific Steel has not identified any material-scale impairment related to employment and wages. During the verification visit, Pacific Steel provided detailed information on employee numbers, which showed [REDACTED]. Pacific Steel noted that the [REDACTED] the operational improvements and efficiencies it had made. Information on fixed labour costs for the rolling mill was also provided, which indicated [REDACTED]. [The redacted information relates to commercially sensitive business operations]
288. Pacific Steel considers that employee numbers and wages, because they are based on production volumes, are not material injury factors in the circumstances of this case, which should focus on price-related injury and its consequential effect. In any event, since no dumping has been established, dumping has had no material effect on employment and wages.
289. MBIE cannot conclude that the dumping of imports of rebar from China and Malaysia has contributed to any actual or potential effects on employment and wages.

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

290. MBIE is required to have regard to the economic impact of dumped goods on the industry through actual and potential effects on growth, ability to raise capital and investments. These factors have been grouped together because they have common characteristics.
291. Pacific Steel made no specific claims in respect of its ability to raise capital and investments, or in respect of the company's growth. However, Pacific Steel stated that the presence of unfairly traded rebar in the New Zealand market had adversely affected growth prospects for the business, and for any requests that Pacific Steel might make to its parent company for capital. Pacific Steel claims that it has suffered economic damage through effects on EBIT, gross profit, and cash flow and, that in the absence of remedies for unfair trade, its potential source of growth funding had the choice to direct capital to places where injurious unfairly traded goods are trade-remedied or to where they are not.
292. MBIE notes that no specific evidence was provided relating to the economic impact of dumped goods on growth, ability to raise capital and investments, but in any event, since no dumping has been established, dumping has had no material effect on growth, ability to raise capital or employment.
293. MBIE cannot conclude that the dumping of imports of rebar from China and Malaysia has contributed to any actual or potential effects on growth, ability to raise capital and investments.

#### 5.4.10 Conclusion on Consequent Economic Impact

294. MBIE has concluded that:

- There is no decline in output and sales that can be attributed to any dumping of imports of rebar from China and Malaysia.
- There is no decline in Pacific Steel's market share, and any failure to achieve a larger market share cannot be attributed to any dumping of imports of rebar from China and Malaysia.
- While there was a significant decline in profits and profitability in 2015-2016, this cannot be attributed to the effects of dumping of imports of rebar from China and Malaysia.
- There is no evidence that productivity has been adversely affected by any dumping of imports of rebar from China and Malaysia.
- There is no evidence that any dumping of imports of rebar from China and Malaysia has contributed to a decline in return on investments.
- There is no evidence that any dumping of imports of rebar from China and Malaysia has contributed to a decline in utilisation of production capacity.
- There is no evidence that any dumping of imports of rebar from China and Malaysia has had an adverse economic impact on the industry through factors affecting domestic prices.
- There is no evidence that any dumping of imports of rebar from China and Malaysia has contributed to any actual or potential effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments.

295. Overall, there is no basis to conclude that the dumping of imports of rebar from China and Malaysia has had an economic impact on the New Zealand industry, but where Pacific Steel is experiencing adverse effects these are likely to be attributable to other causes, including those outlined in section 6 below.

### 5.5 Conclusions Relating To Injury

#### Import Volumes

296. MBIE concludes that there has been an increase in the volume of imports from China and Malaysia in absolute terms, but not in relation to production or consumption in New Zealand. In any event, since no dumping has been established, it cannot be concluded that dumping has had a significant effect on import volumes of rebar from China and Malaysia.

#### Price Effects

297. MBIE's overall conclusion regarding price effects is that in light of the conclusions reached on the absence of dumping of imports of rebar from China and Malaysia, it cannot be concluded there are any significant effects of dumped goods on prices in New Zealand for the like goods.

### **Consequent Economic Impact**

298. There is no basis to conclude that the dumping of imports of rebar from China and Malaysia has had an economic impact on the New Zealand industry.

### **Overall Injury Conclusions**

299. There is no basis to conclude that material injury to an industry has been or is being caused by means of the dumping of rebar imported from China and Malaysia, and any injury being experienced by the domestic industry is attributable to other causes.

## 6. Causal Link

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301. Despite the conclusion that there is no dumping, MBIE has nevertheless assessed the extent to which factors other than the dumping of imports of the subject goods from China and Malaysia may be causing material injury to Pacific Steel, based on the provisions of section 8 of the Act, and whether there may be causes other than dumping to which injury may be attributable.
302. 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.
303. Sections 8(2)(e) and (f) of the Act provide that the Secretary 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.
304. Article 3.5 of the Anti-dumping 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 Imports

305. The assessment of injury in section 5 above 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.
306. MBIE has established that there is no dumping of imports of rebar from China and Malaysia. Accordingly, whether the injury analysis is undertaken on the basis of a

coincidence or counterfactual approach, no injury can be attributed to the dumping of imports of rebar from China and Malaysia.

## 6.2 Other Causes of Injury

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

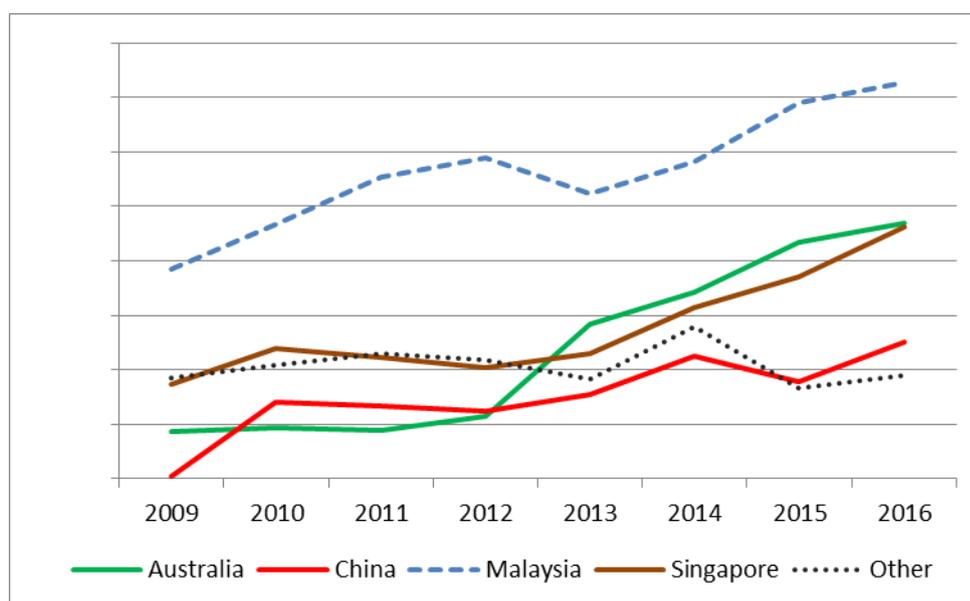
308. In light of the findings relating to price effects, revenue and profits, the industry is experiencing adverse effects. As dumping of imports is not causing these effects, there must be other factors in play.

## 6.3 Non-dumped Imports

309. Imports that are not dumped also have the potential to cause injury to the New Zealand industry.

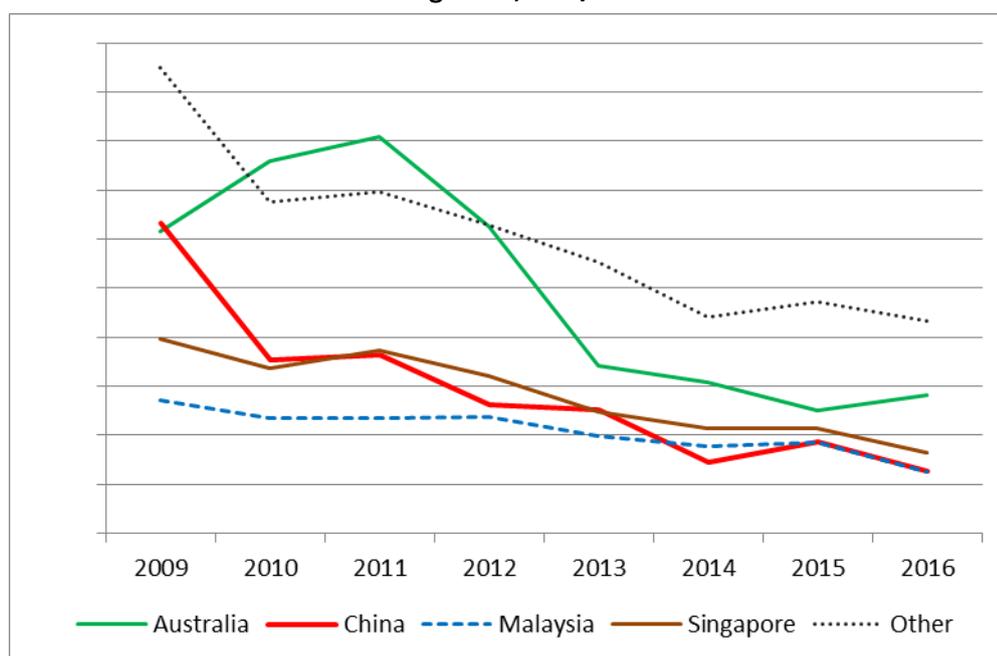
310. The following chart shows the evolution of imports from major suppliers, with China, Malaysia, Australia and Singapore all showing similar growth trends.

**Chart 6.1: Rebar Imports  
MT**



311. Responses to Importer Questionnaires have noted that prices for Chinese steel are not dissimilar to those from other countries around the world. Chart 6.2 shows the evolution in average values for NZD VFD per metric tonne in NZD for imports from the major supplying countries. This measure can be indicative of trends only 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 the overall downward trend in prices, and the similarity of price trends from China, Malaysia and Singapore.

**Chart 6.2: Rebar Imports  
Average VFD, NZD/tonne**



### ***Subsidised imports***

312. MBIE has concurrently investigated allegations of subsidisation of rebar from China. In that investigation, the conclusion reached was that there was no subsidisation of rebar from China during the period of investigation which exceeded the *de minimis* threshold.

### ***Other Imports***

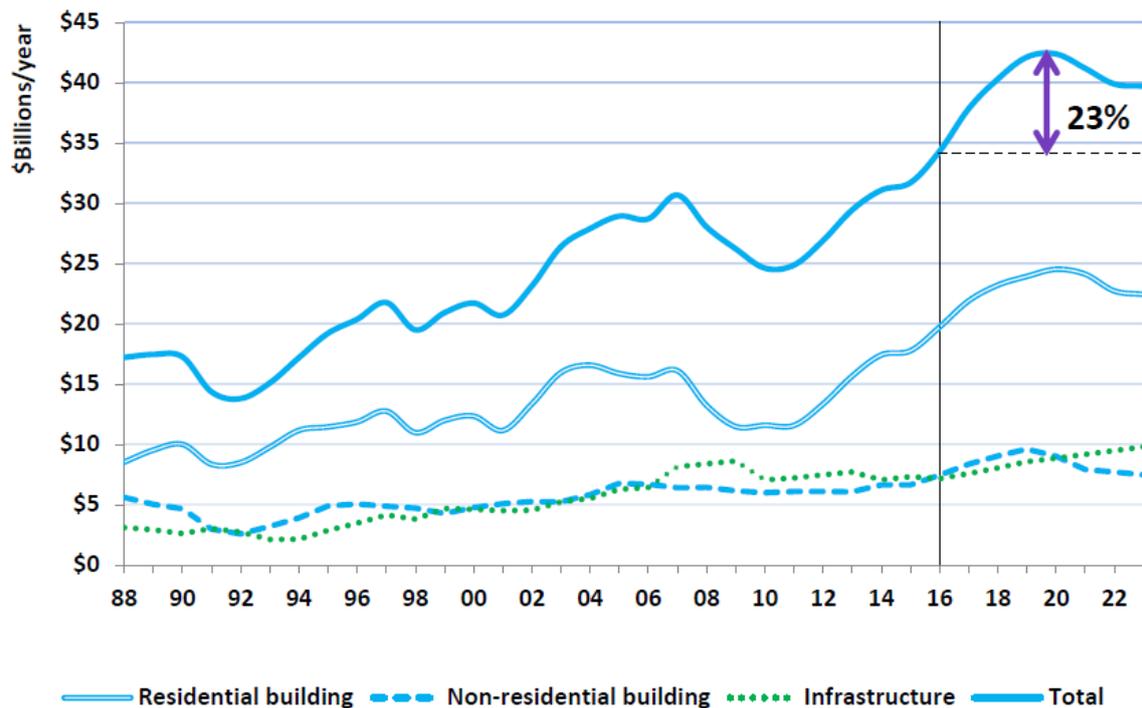
313. MBIE notes that the level and price of imports that are not dumped (or subsidised) may be a factor contributing to the adverse effects experienced by Pacific Steel.

### **6.3.1 Contraction in demand or changes in the patterns of consumption**

314. 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.
315. MBIE notes that overall demand for building material in New Zealand, including rebar, reflects the level of building activity. The following table, taken from MBIE's *National Construction Pipeline Report 2017*,<sup>15</sup> shows that overall construction activity has increased significantly since 2010, although this is attributed primarily to residential building and not to non-residential building or infrastructure. This indicates that any adverse economic effects being experienced by Pacific Steel are unlikely to have resulted from any contraction in demand or changes in the patterns of construction.

<sup>15</sup> Available at <http://www.mbie.govt.nz/publications-research/research/construction-sector-productivity/national-construction-pipeline-report-2017.pdf>.

**Chart 6.3: Construction Activity**  
NZD billion



Source: BRANZ / Pacifecon

### 6.3.2 Restrictive Trade Practices and Competition

316. 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 rebar 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.
317. 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 rebar conscious of the prices available to them from suppliers in other countries, but there is no evidence of this going beyond price effects. The impact of the international market situation for rebar is addressed in section 6.3.6 below.

### 6.3.3 Developments in Technology

318. Technological developments may have had 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.

319. Pacific Steel has made no comment on these matters, but has noted that there are no commercially significant product substitutes in New Zealand-made or imported carbon steel reinforcing bar and coil goods.
320. MBIE is aware that composite fibre rebar has been developed as an alternative to steel rebar, and that use of steel beams, as opposed to reinforced concrete, provides an alternative in some forms of construction. However, there is no evidence that developments in technology have affected Pacific Steel's rebar business during the POI of injury.

#### **6.3.4 Export Performance and Productivity of New Zealand Producers**

321. 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.
322. Pacific Steel has provided details of its export sales in its application and during the verification visit. Pacific Steel's exports of rebar are [REDACTED]. Pacific Steel's sales are currently [REDACTED] the domestic and export markets. Export related costs have been excluded from the financial data provided to support the application. *[The redacted information relates to commercially sensitive business operations]*
323. MBIE is satisfied that Pacific Steel's export activities are not a factor in the consideration of injury.

#### **6.3.5 Imports by the Industry**

324. 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.
325. Customs data shows that in 2016 Pacific Steel made one importation of [REDACTED] tonnes of rebar from [REDACTED] in Australia. There were no imports from China or Malaysia or any other country.
326. MBIE is satisfied that Pacific Steel's imports are not a factor in the consideration of injury.

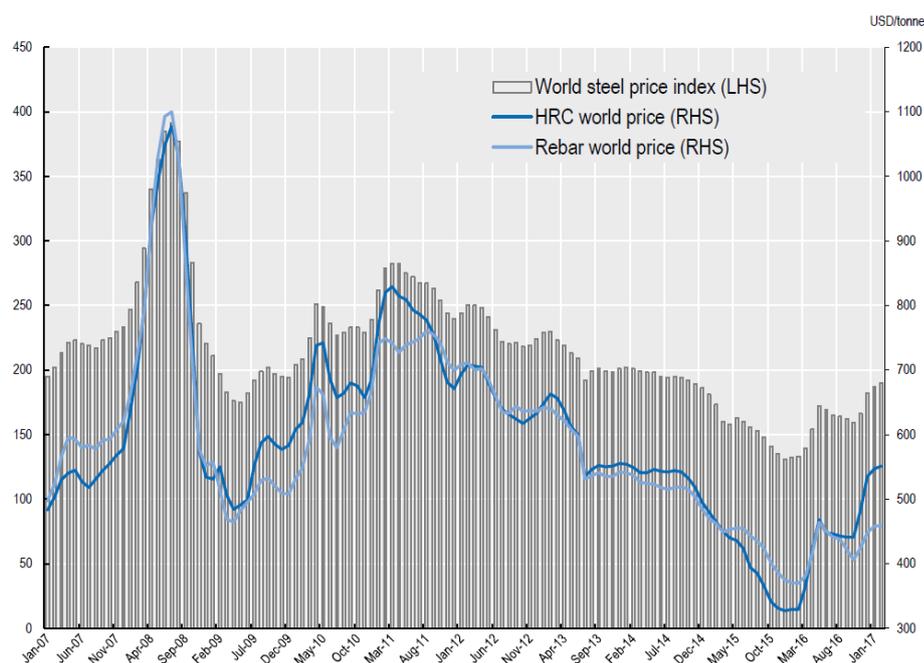
#### **6.3.6 Other factors**

327. MBIE has identified a number of other factors that could be contributing to the injury experienced by Pacific Steel. These include the situation of the global steel market and the effect on rebar prices, and the effects of changes in Pacific Steel's ownership and production processes.

### Global Steel Market

328. OECD reports on the global steel market<sup>16</sup> indicate that demand for steel was weak going into 2016 but some recovery is now being experienced. The reports noted that the world steel price index, which had been trending downwards since the second quarter of 2011, bottomed out in December 2015 and has been recovering since then. By June 2016 the world rebar price had moved from USD 370 per metric tonne in January to USD 442 per metric tonne, and by February 2017 had reached USD 459 per metric tonne.
329. The following chart, taken from the Q2 2017 OECD report, shows that rebar prices in the first half of 2016 were at historically low levels, but have begun to recover.

**Chart 6.4: World Steel Prices (from OECD)  
USD/tonne**



Source: Platts Steel Business Briefing.

330. It is clear that the low international prices for rebar in 2015-2016, whether or not exacerbated by subsidisation or dumping, were a significant factor in the prices that Pacific Steel could achieve. This is a consequence of its Import Price Parity approach to negotiating prices to customers, and the evidence provided by Pacific Steel regarding its interactions with customers confirms that international price pressure played a significant role in pricing decisions.
331. MBIE is satisfied that the international market situation for rebar in 2015-2016 was a significant factor in contributing to the adverse effects described in section 5 above.

<sup>16</sup> *Steel Market Developments: Q4 2016*, OECD, 2016, and *Steel Market Developments Q2 2017*, OECD, 2017, available through <http://www.oecd.org/sti/ind/steel-market-developments.htm>.

332. Accordingly, MBIE concludes that the international market situation for rebar was a significant factor in contributing to the adverse impacts experienced by Pacific Steel, but considers that it does not mean that injury cannot also be attributed to the effect of unfairly traded imports, if any. In any event, since no dumping has been established for imports of rebar from China and Malaysia, the question of non-attribution of the effects of other factors does not arise.

### ***Pacific Steel Economics***

333. An important factor in the performance of Pacific Steel has been the change in ownership and consequent changes in its economics, as described in Pacific Steel's submission of 26 October 2017.

334. Until 2015, Pacific Steel manufactured rebar from ferrous scrap-based ingots or billets. Scrap feed was [redacted]. This billet-making process was closed following the 2014 purchase of Pacific Steel by NZ Steel, and the migration of Pacific Steel's billet feed supply to NZ Steel's billet caster. This was a fundamental plant/supply configuration change. *[The redacted information relates to commercially sensitive business operations]*

335. The move to NZ Steel billet supply in October 2015 was to [redacted]. *[The redacted information relates to commercially sensitive business operations]*

336. Additional cost savings were achieved through a cost reduction programme including [redacted]. *[The redacted information relates to commercially sensitive business operations]*

337. Pacific Steel claims that these circumstances are not in any way connected with the adverse economic effect of unfairly traded goods which continue to injure Pacific Steel through import parity pricing. Pacific Steel argues that, in the absence of the benefits available from its cost-cutting, the adverse impact of unfair imports would have been even higher.

338. While this may be the case, the change of ownership, the changes in sources of raw materials, and the cost reduction programme have clearly affected Pacific Steel's economics to the extent that they indicate areas which impinge on the factors and indices of injury, and which are not related to the level of any subsidisation or dumping.

339. MBIE concludes that the change in ownership and consequent changes in its economics were factors that impact Pacific Steel's position, but considers that it does not mean that

injury cannot also be attributed to the effect of any unfairly traded imports. In any event, since no dumping has been established for imports of rebar from China and Malaysia, the question of non-attribution of the effects of other factors does not arise.

### **6.3.7 Conclusions on Other Causes of Injury**

340. MBIE is satisfied that in the absence of injury attributable to dumping of rebar from China and Malaysia, there may be other factors which are contributing to injury to the domestic industry, including the international market situation for rebar, and the changes in Pacific Steel's economics since its change of ownership.
341. MBIE does not consider that any injury can be attributed to 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; the export performance and productivity of New Zealand producers; and the nature and extent of importations of dumped goods by New Zealand producers.

## **6.4 Conclusions on Causal Link**

342. MBIE concludes that, in the absence of dumping of imports of rebar from China and Malaysia, there is no basis to attribute any injury caused by other factors to dumped imports. MBIE notes that there may be other factors to which injury can be attributed.

## 7. Conclusions

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343. On the basis of the best information available which is considered to be reliable, MBIE does not consider that material injury has been caused to the domestic industry by reason of imports of rebar from China and/or Malaysia being dumped.

## 8. Recommendations

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It is recommended that the Minister:

- (b) make a determination under section 13(1) of the Act, that in relation to the importation or intended importation of goods into New Zealand, that the goods are not dumped and are not by reason thereof causing material injury to an industry.
- (c) sign the attached Gazette notice giving notice of this final determination, in accordance with section 13(2) of the Act.

Peter Crabtree

General Manager

Science, Innovation and International Branch

Labour, Science and Enterprise Group

26 February 2018

## **ANNEX 1: COMMENTS RECEIVED ON THE EFC REPORT**

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Comments on the EFC Report were received from Pacific Steel on 15 February 2018. No comments were received from any other interested parties.

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

The Pacific Steel comments covered subsidy matters arising from the EFC Report on the parallel investigation into the alleged subsidisation of rebar from China; dumping matters arising from the EFC Report on the investigation into the alleged dumping of rebar from China and Malaysia; injury matters, generally common to both EFC Reports; and other comments on process and miscellaneous matters. This Annex addresses the comments other than those relating to the subsidy investigation.

### **A. Introduction**

1. In its introductory comments, Pacific Steel notes specific concerns with MBIE's approach to establishing normal values, including that it does not adequately address the specific dynamics and characteristics in the Chinese steel sector when determining normal values under section 5(1) of the Act; the treatment of un-cooperative exporters; and MBIE's approach to selecting export transactions to compare to domestic transactions.

### **B. Dumping Matters**

#### **Normal Value Benchmark Cost Data – China**

2. Pacific Steel notes its concerns regarding MBIE's approach to determining normal values in China in relation to the reliability of using domestic market selling prices. Pacific Steel considers that it is necessary to construct normal values for China because of the particular market situation and considers that third country billet prices should be used. To support its case, Pacific Steel refers to its application (pages 90-95) and an August 2016 Australian ADC Report containing a 15-page appendix which draws from other material. The company reiterates points made in those reports that Chinese prices are not market prices.
3. Pacific Steel further argues that MBIE's interpretation that the 2004 Trade and Economic Framework between New Zealand and China does not to apply sections 15 and 16 of China's Protocol of Accession to the WTO, is wrong. Pacific Steel considers that, where there is secondary evidence indicating that domestic prices are not suitable for determining normal value, MBIE ought to apply section 5(2) of the Act, notwithstanding that it has evidence of domestic prices.

#### *MBIE Response*

4. This issue is addressed in section 4.4.1 above. MBIE does not consider there is sufficient evidence to suggest that normal values in China are affected by government intervention. As noted in the report above, OECD data show steel prices globally were very low during

2016 and have since increased. During the verification visit to Hesteel Chengde, MBIE verified information relating to costs of production and selling prices for rebar and found no evidence to suggest prices were set, or artificially suppressed or otherwise influenced through government intervention. The information verified by MBIE indicated that Hesteel's prices were negotiated with its customers on the basis of competition with other Chinese suppliers and that the Chinese prices were therefore a reflection of supply and demand in China.

#### **Normal Value Adjustment for Volume – China and Malaysia**

5. Pacific Steel notes its concerns that MBIE has not made allowances for volume differences between New Zealand sales and larger domestic customers in China and Malaysia. It notes that prices are likely to be lower for large domestic customers because they purchase in large volumes and therefore are likely to receive volume discounts. Pacific Steel referred to the then Ministry of Economic Development's (MED) 2004 investigation approach which based Malaysian normal values on a particular domestic customer with a comparable volume of sales to the company's exports to New Zealand (using a transaction-to-transaction approach). In this manner, Pacific Steel considered that MED's 2004 approach satisfactorily addressed the quantity requirement of section 5(3)(c) of the Act.

#### *MBIE Response*

6. MBIE considers its approach is consistent with Section 5 of the Act and Article 2.4.2 of the AD Agreement. Article 2.4.2 of the Agreement provides that the existence of margins of dumping during the investigation phase shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction-to-transaction basis." MBIE has used both approaches in the past, depending on the particular circumstances of the case.
7. Sales information provided to MBIE by the two cooperating Chinese and Malaysian exporters included information on discounts provided to their customers. If any discounts were provided (including volume discounts) to domestic customers these were deducted from the base prices when calculating normal values. Additionally, MBIE determined that a weighted average-to-weighted-average approach to calculating dumping margins (rather than a transaction-to-transaction approach) was suited to both exporters owing to the large number of transactions at a domestic and export level. A weighted average-to-weighted average approach was also considered the most accurate and fairest means of comparing export prices with normal values. A transaction-to-transaction approach would necessitate choosing one particular domestic customer from a large number of domestic customers. This would likely result in highly inaccurate results given that only a small number of sample transactions could be used and that selling prices to that particular customer may not be reflective of the company's selling prices to the remainder of its domestic customers. Given the high number of domestic and export transactions, it would have also been extremely difficult and arbitrary to match export prices and normal values based on each transaction.

8. For both cooperative exporters, an analysis of domestic sales made to their full range of domestic customers showed there was no significant correlation between the selling price to particular customers and the volume of sales purchased by those customers. This indicated that a due allowance for quantities was not necessary when calculating normal values using the weighted average-to-weighted average approach.

#### **Timing of Export Price and Normal Value Weighted-Average**

9. Pacific Steel notes its concerns regarding the use of a 12-month average when comparing export prices and normal values and states that use of a weighted average comparison (over the 12-month dumping POI) does not free MBIE from the need to compare export prices and normal values at as nearly as possible the same time. The company notes that during 2016 there were significant changes in steel prices which means that there is a possibility that the comparisons made between export prices and normal values are not fair and rational. Pacific Steel notes that price comparisons should be free from timing error arising from differences in the export price and normal value weighted average through 2016 and notes the Panel decision in *US – Stainless Steel (Korea)* as an example of this. Pacific Steel goes on to suggest that a grade based methodology should be used for second-order analysis after first taking account of volume-weight through 2016.

#### *MBIE Response*

10. As noted above, MBIE considers that the use of weighted average-to-weighted average methodology in this case provided the most accurate and fairest basis for comparing export prices with normal values. Both foreign manufacturers that responded to MBIE's questionnaire had extremely high domestic sales volumes through the dumping POI (2016) which enabled an accurate weighted average normal value to be established for each grade and size of product. Exports sales to New Zealand by both manufacturers were also significant and evenly spread throughout the dumping POI which enabled an accurate weighted average export price to be established for each grade and size of product. MBIE considered there was insufficient grounds for deviating from its usual practice when calculating dumping margins on a weighted average-to-weighted average basis, that is, to compare the weighted average export price and the weighted average normal value across the full dumping POI rather than to apply multiple weighted average periods throughout the dumping POI.

#### **Non-Cooperation – Assessment of Export prices and Normal Values for Non-Cooperative and all Other Exporters**

11. Pacific Steel raises concerns that MBIE has not treated non-cooperative and all other Chinese manufacturers appropriately and considers MBIE out of step with generally accepted trade remedies practice. In particular, Pacific Steel is concerned that MBIE has found more favourable dumping margins for non-cooperative exports than those who cooperated.
12. Pacific Steel notes that conventionally, in other jurisdictions, regulators apply to uncooperative exporters high normal values and low export prices, selected from data

obtained from cooperating exporters. Pacific Steel notes Australian ADC case 384 (Alloy Steel) as evidence of this approach. Pacific Steel considers that MBIE should use the highest normal values and lowest export prices from Hesteel Chengde when determining dumping margins for non-cooperating Chinese manufacturers. Pacific Steel stated that MBIE's treatment of non-cooperating Chinese manufacturers is a significant public administration matter which requires reflection, and change.

#### *MBIE Response*

13. Section 6(1) of the Act provides that where the Secretary is satisfied that sufficient information has not been furnished or is not available to enable the normal value of the goods to be ascertained under section 5, the normal value shall be such amount as is determined by the Secretary having regard to all available information (section 6(1) also contains the same provisions relating to the export price). Section 6(2) provides that for the purposes of section 6(1) the Secretary may disregard any information that the Secretary considers to be unreliable. This reflects the provisions of Article 6.8 of the AD Agreement relating to recourse to "facts available".
14. In a dumping investigation, MBIE will request information from interested parties in order to assist it in making certain calculations, and in reaching a final conclusion in the investigation. Interested parties includes foreign manufacturers and exporters from the country where the allegedly dumped goods originate, and importers and domestic producers in New Zealand. For instance, in order for MBIE to calculate each exporter's individual dumping margin, information will be sought from these exporters on their domestic sales and costs and their export prices.
15. In many cases, MBIE may not be able to obtain all the information necessary to make these calculations, but nevertheless must undertake this process and complete it within the specific timeframes outlined in the Act. As explained by the Panel in *United States – Hot-rolled Steel from Japan*,<sup>17</sup> the objective in using "facts available" is to balance the need to calculate the dumping margins for each exporter and foreign manufacturer with the need to complete the dumping investigation within the timeframes prescribed in the AD Agreement.
16. The "facts available" can include information provided by other parties to the proceedings or other information to which MBIE has access. While it may be a practice for some investigating authorities to apply as "facts available", under Article 6.8 of the AD Agreement, the highest normal values and lowest export prices to uncooperative foreign exporters, this is not prescribed in the AD Agreement. MBIE will decide on a case-by-case basis what information is the most accurate and reliable to use in the absence of information provided by the foreign exporter from which the information has been sought.

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<sup>17</sup> *US - Certain Hot-Rolled Steel*, para 7.51.

17. MBIE notes that the unavailability of information in an investigation may not necessarily be due to “non-cooperation”. The non-availability of information in dumping investigations can be due to a number of reasons, including the authorities requesting parties to submit large amounts of information within a relatively short period of time (usually 30 days). Often these parties will not be able to submit all the requested information, in the format requested, within the time limits. Sometimes they will not provide any information at all. In New Zealand this problem is often exacerbated by the exporter in question having to expend a large amount of time and cost providing the information requested by MBIE when its exports to New Zealand are small (at least in comparison with its other export markets). Under these circumstances, some trade remedies authorities have used Article 6.8 of the AD Agreement as a reason to treat information provided by exporters as only partial, or even, full, non-cooperation, leading to the information provided by the exporters being disregarded entirely and substituted with other less favourable information.
18. It is not surprising, therefore, that Panels and the Appellate Body addressed the use of Article 6.8 in past WTO dispute settlement decisions and made a number of observations when doing so. In *Mexico – Anti-dumping Measures on Rice*<sup>18</sup> the Appellate Body examined the relevant provisions (Article 6.8 and Annex II of the AD Agreement and Article 12.7 of the SCM Agreements) related to the use of “facts available”. With respect to the AD Agreement, the Appellate Body said that an investigating authority may rely on facts available in appropriate circumstances, but subject to the conditions in Annex II (titled “Best Information Available in Terms of Paragraph 8 of Article 6”) of the AD Agreement. For instance:
- Paragraph 3 obliges an investigating authority to “take into account” the information supplied by a respondent,<sup>19</sup> even if other information requested has not been provided by the respondent and will need to be supplemented by facts available. Similarly, paragraph 5 prevents an investigating authority from rejecting the information supplied by a respondent, even if incomplete, where the respondent acted to the best of its ability. Finally, paragraph 7 mandates, where an investigating authority relies on data from a secondary source to fill in gaps resulting from a respondent’s failure to provide requested information, that the investigating authority examine such data ‘with special circumspection’.*
19. The Appellate Body continued, noting that “From these obligations, we understand that an investigating authority in an anti-dumping investigation may rely on the facts available to calculate [dumping] margins for a respondent that failed to provide some or all of the necessary information requested by the agency.” However, the Appellate Body stated that “... assuming a respondent acted to the best of its ability, an agency must generally use, in the first instance, the information the respondent did provide, if any.” The Appellate Body also stated that “With respect to the facts that an agency may use when faced with missing

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<sup>18</sup> Referenced by HWL in its submission on the Interim Report.

<sup>19</sup> The respondent in this context was the foreign exporter of the product under investigation to Mexico.

information, the agency's discretion is not unlimited. First, the facts to be employed are expected to be 'the best information available'. The Appellate Body agreed with the Panel's contention, in this case, that the best information means that the information must be the most fitting or most appropriate information available in the case at hand. The Appellate Body continued by stating, "Secondly, when culling necessary information from secondary sources, the agency should ascertain for itself the reliability and accuracy of such information by checking it, where practicable, against information contained in other independent sources at its disposal, including material submitted by interested parties. Such an active approach is compelled by the obligation to treat data obtained from secondary sources 'with special circumspection'."

20. Of the four Chinese producers that were investigated in the present case, only Hesteel Chengde cooperated in a manner which enabled MBIE to calculate its domestic selling prices and its export prices to New Zealand. The fact that there was only one cooperating Chinese exporter prevented MBIE from selecting the highest normal values and the lowest export prices from a selection of cooperating exporters which it could then apply to the uncooperating exporters. In other words, unlike the ADC and the EC (in the cases referred to by Pacific Steel), MBIE was unable to select normal values and export prices from a range of cooperating exporters when establishing normal values and export prices for the uncooperating exporters.
21. Pacific Steel also argued that if an investigating authority does not apply the highest dumping margins to non-cooperative exporters, it is in the exporters' interests *not* to cooperate in an investigation because they know they will receive a more favourable outcome by not cooperating. MBIE does not agree. A non-cooperating exporter will not know whether or not a cooperating exporter is dumping product into an export market, or is dumping to a lesser extent than itself, such that if it does not cooperate it will be assigned a more favourable dumping margin. Therefore, it will unlikely wish to rely on the cooperating exporter not dumping, or dumping to a lesser extent than itself, in deciding whether or not it should cooperate in the investigation.
22. The conclusions reached by MBIE in this investigation (including where certain Chinese producers have not furnished export price and normal value information) are based on all available information that MBIE considers to be accurate and reliable, and the information relied on is explained in the relevant sections of this Report. As detailed in sections 4.3 and 4.4 above, MBIE considers the best information available to establish normal values and export prices for the Chinese exporters which did not cooperate in the investigation, is the normal value and export price information sourced and verified for the one Chinese exporter that did cooperate.
23. In using the information it did rely on, MBIE considers that it acted in a manner totally consistent with section 6(1) of the Act and Article 6.8 and Annex II of the AD Agreement.

#### **Theoretical Weight Adjustment – China**

24. Pacific Steel has raised concerns regarding the fact the MBIE did not make an adjustment for theoretical to actual weight for the non-cooperating Chinese manufacturers. Pacific

Steel considers it unlikely that all other Chinese manufacturers sell on an actual weight basis, like Hesteel Chengde, and note the Australian ADC 2015 investigation into rebar which included verification visits to Shandong Shiheng and Jiangsu Yonggang. Pacific Steel therefore considers that MBIE should apply a 4 to 7 per cent upward adjustment for the non-cooperating manufacturers to account for the use of theoretical weight in sales.

#### *MBIE Response*

25. Hesteel Chengde was the only Chinese exporter which cooperated in the investigation. The company stated in its Foreign Manufacturer Questionnaire response, in its reply to MBIE's request for further information and at the on-site verification visit that it sells on the Chinese domestic market on an actual weight basis and not on a theoretical weight basis. MBIE is aware from Australian ADC reports that some Chinese producers sell on a theoretical weight basis to their domestic and export customers but information sourced from Hesteel Chengde and verified at its premises in China shows that, during the dumping POI, the company sold to both its domestic and New Zealand customers on an actual weight basis. Normal values and export prices have been calculated for Hesteel Chengde on this basis.
26. MBIE also notes that theoretical weight that is defined in the various standards for rebar is plus or minus. This means that the actual weight of the goods is able to be a certain percentage (4 to 7 per cent for China and 4.5 per cent for New Zealand) above or below the weight set in the standard. Across all production it is more likely than not that actual weights will range across the theoretical weight spectrum, both above and below the standard weight (standard deviation). It would therefore be inaccurate to apply an upward adjustment of the maximum percentage weight variation allowed by the standard.

#### **VAT Adjustment – China**

27. Pacific Steel reiterates its submissions on Chinese VAT issues made on 1 December 2017. Pacific Steel notes that MBIE has made only 4 per cent upward adjustments for VAT and considers that for some grades (due to alloy content) an 8 per cent or even a 17 per cent upward adjustment may be warranted.

#### *MBIE Response*

28. MBIE established the correct VAT refund amounts during the verification visit to Hesteel Chengde. Alloyed steel products are subject to a 13 per cent VAT rebate (straight bar) and 9 per cent VAT rebate (coil) which makes the effective VAT rate on exports 4 per cent and 8 per cent, respectively. MBIE made an upwards adjustment to the Chinese normal values based on these VAT refund percentage amounts applicable to the exported goods to New Zealand. Hesteel Chengde's normal value was constructed for the equivalent domestic model of coil to that exported to New Zealand (as explained in section 4.4.2 above). However, for the purpose of the EFC Report, MBIE omitted to make the appropriate VAT adjustment but has since corrected this omission. This is why the normal value and dumping margin for steel coil and the weighted average dumping margin for Hesteel

Chengde has been changed since the release of the EFC Report. The new figures are reflected in section 4.4 and 4.5 above.

### **Physical Difference Adjustments – China and Malaysia**

29. Pacific Steel notes the Australian ADC 2015 Shandong Shiheng Verification Report stating that the Australian ADC considered it too difficult to calculate the cost differences relating to the microalloy content between domestic and exported rebar. The Report stated that it is therefore not possible to apply a reasonable specification adjustment and Shandong Shiheng's normal value was constructed as a result. With respect to the physical difference adjustment made by MBIE, for the cost of the microalloy content in the exported goods to New Zealand, Pacific Steel suggested that MBIE has insufficient metallurgical knowledge to confidently assess the model matching topic without providing all parties an informed, equal ability to contribute. Because certain information regarding the microalloy content of rebar has been redacted in certain documents placed on the public file, Pacific Steel claims that MBIE has not acted consistently with Articles 6.2 and 6.4 of the AD Agreement.

#### *MBIE Response*

30. MBIE is unaware why the Australian ADC was unable to calculate the cost differences relating to the microalloy content between Shandong Shiheng's exported rebar to Australia and its domestically-sold rebar. A review of the Australian ADC's verification report relating to Shandong Shiheng sheds little light on the difficulty experienced by the ADC in conducting this exercise although the report does indicate the reason may have been due to the exporter not maintaining detailed enough accounts and records relating to the amount and cost of the microalloy content in the export rebar. It is also surprising that the ADC was not able to calculate the cost of the microalloy component (for the purpose of making a physical difference adjustment) but was able to construct a normal value which is essentially a cost build-up to selling price of the exported product had it been sold on the domestic market in China. This exercise essentially entails having to identify and calculate the microalloy content of the export rebar. A review of the verification reports produced for the other Chinese producers investigated by the ADC seems to indicate that this particular problem was specific only to Shandong Shiheng. In other words, the ADC was able to identify and calculate the cost differences relating to the microalloy content between these exporters' rebar sales to Australia and their domestically-sold rebar.
31. Prior to the on-site verification visit to Hesteel Chengde, in the present case, MBIE corresponded with the company extensively to determine the exact nature of the chemical composition (including microalloy content) of the rebar exported to New Zealand and the rebar sold domestically. During the on-site verification visit to Hesteel Chengde, MBIE examined and verified detailed cost of production information from source documentation related specifically to the rebar under investigation. The cost of production information included the costs of the microalloys which differentiate the Chinese goods from those that are exported to New Zealand. The respective standards for the goods sold in each market show the different amounts of microalloy in the different goods. This information allowed

MBIE to make accurate adjustments to account for the physical differences between the goods sold on the Chinese domestic market and the goods exported to New Zealand.

32. With respect to Pacific Steel's claim that it should be allowed access to redacted information in documents sourced during the investigation, MBIE refers to its comments below under "Outstanding Information Requests".

### **Physical Difference Adjustment for Vanadium – China and Malaysia**

33. Pacific Steel notes its concerns regarding MBIE's use of average vanadium prices across 2016. It refers to its comments above in "Timing of Export Prices and Normal Value Weighted-Average" including that there were significant changes in steel prices during 2016.

#### *MBIE Response*

34. MBIE considers that using the average cost of vanadium over the dumping POI is the fairest and most reasonable and practical method to calculate the cost of vanadium for the purpose of making a physical difference adjustment to the normal values established over the POI. As noted above, in both China and Malaysia there were extremely high volumes of domestic sales, and a high number of export transactions. It would not be possible to make an adjustment (based on the cost of vanadium at a particular point in time) for each individual domestic and export transaction made over the POI. Using an average cost of vanadium across the POI allowed MBIE to make what it considers to be an accurate and reliable physical difference adjustment for the cost of vanadium which was applied to all relevant domestic transactions over the dumping POI.

### **Other Adjustments**

35. Pacific Steel requested to have the adjustments described in its application included in MBIE's determination of export prices and normal value (specifically - billet handling, yield, and ACRS accreditation). It notes that in the absence of information in the EFC Report and without a verification report having been completed by MBIE, Pacific Steel cannot determine how these potential adjustments have been treated by MBIE.

#### *MBIE Response*

36. During the verification visits to both China and Malaysia, MBIE examined, and verified detailed costing information and made adjustments to normal values and export prices where appropriate and necessary.
37. MBIE notes that some of the adjustments referred to by Pacific Steel were adjustments made by the company when constructing a normal value for the purpose of the application, rather than adjustments required when making a fair comparison between domestic prices in China and Malaysia and export prices to New Zealand for the purpose of establishing if the goods were dumped. In constructing normal values for the purpose of the application, Pacific Steel used its own production and selling costs (incurred in New Zealand) but adjusted these costs to reflect what it considered was a likely domestic selling price in China and Malaysia. MBIE considers that these adjustments were not relevant for

the purpose of making a fair comparison between normal values and export prices. Other adjustments specified by Pacific Steel were considered by MBIE but they were not considered differences between domestic and export sales for which an adjustment was required.

## C. Injury

38. Pacific Steel notes its appreciation that MBIE has offered some evaluation of injury matters despite finding that Malaysian and Chinese rebar is neither dumped nor subsidised above *de minimis* levels. However, Pacific Steel considers that applying an injury analysis such as the impact of world pricing built on the absence of Malaysian and Chinese goods from the New Zealand market does not assist, and assumes “an alternative economy, where rebar from Malaysia and China is not purchased in New Zealand and the market activity in the application for which Pacific Steel provided screenshot evidence did not occur.” Pacific Steel does not agree with MBIE’s conclusion that in the absence of subsidisation of imports then there must be other factors at play in causing the adverse effects noted by MBIE.
39. Pacific Steel suggests that it would be more correct for MBIE to conclude that the commercial behaviour in the New Zealand market results from the presence of Malaysian and Chinese rebar, causing the price effects experienced by Pacific Steel, but due to *de minimis* subsidy and dumping margins the injury to Pacific Steel cannot be attributed to Malaysian and Chinese dumping and subsidisation.

### *MBIE Response*

40. The injury analysis has not proceeded on the basis that imports from China and Malaysia are not in the market, but on the basis that the adverse effects identified cannot be attributed to dumping and subsidisation. If the injury cannot be attributed to dumping and subsidisation, but does exist, then clearly, and logically, it must be attributable to other factors. MBIE has provided additional text in section 6.2.1 above to clarify that imports other than dumped or subsidised imports may have been a contributing factor to injury.

## D. Other

### **Outstanding Information Requests**

41. Pacific Steel noted that it had requested a number of items from MBIE in its previous correspondence relating to:
- Hesteel Chengde grade redaction information (Anti-Dumping PF 100).
  - Appendix (b), (c) and (d) from Subsidy PF 88.
  - A review of redactions of Subsidy PF 87.
  - A review of redactions in Anti-Dumping PF 89 and Subsidy PF 97.
42. Pacific Steel claims that with regard to the above information MBIE has not acted consistently with Article 6 of the AD Agreement and Article 12 of the SCM Agreement.

*MBIE Response*

43. Anti-Dumping Public File 100: MBIE communicated with Hesteel Chengde (and other interested parties) throughout the investigation to obtain information necessary to establish if and to what extent the company was dumping its product into New Zealand. Each time the company provided confidential information, MBIE requested the company to provide an adequate non-confidential version of the confidential information it provided. This was requested by MBIE to satisfy the requirements of section 10(8) of the Act and article 6.2 of the AD Agreement. Often the company was requested to, and did, provide a more transparent (i.e. less redacted) non-confidential version of the confidential information where MBIE considered this was warranted. In these instances, the previous non-confidential version of the confidential information, which had been placed on the public file, was replaced with the more transparent non-confidential version and emailed to interested parties who had requested the public file. By undertaking this exercise, MBIE considers that it has acted in conformance with the requirements of section 10(8) of the Act and article 6.2 of the AD Agreement. While Pacific Steel has indicated that it is unhappy with certain redactions in certain non-confidential versions of confidential information provided by Hesteel Chengde, these redactions were considered necessary by Hesteel Chengde to maintain the confidentiality of the information it provided.
44. Subsidy Public File 88 (GOC Questionnaire response): The Appendix references are to the material provided in the body of the GOC Questionnaire response following the responses to B15 in relation to each tax programme, i.e. the information has been provided to Pacific Steel in PF 88.
45. Subsidy Public File 87 (Hesteel Chengde Questionnaire response) and Anti-Dumping Public File 89 and Subsidy Public File 97: As noted above, MBIE communicated with Hesteel Chengde and other interested parties throughout the investigation to obtain information necessary to establish if and to what extent the goods were being dumped into New Zealand. This exercise required that the interested parties provided non-confidential versions of the confidential information provided by them. Where warranted, the interested parties were requested to, and did, provide more transparent (i.e. less redacted) non-confidential versions of the confidential information they provided and these up-dated non-confidential versions were placed on the public file and emailed to those interested parties who requested the public file. By undertaking this exercise, MBIE considers that it has acted in accordance with the requirements of section 10(8) of the Act and Article 6.2 of the AD Agreement.

**Manufacturer Sampling**

46. Pacific Steel notes that it raised the matter of manufacturer sampling in its submission of 22 December 2017, when it identified specific adverse consequences to the investigation from MBIE omitting positive inquiry to all manufacturers identified. The Pacific Steel submission addressed three known manufacturers.
47. In its submission of 22 December 2017, Pacific Steel claimed that MBIE established a sample of four out of seven known exporters, with only one of the sample responding to

the questionnaire, and wonders why the other three were not questioned. Pacific Steel suggested that MBIE may have considered that sampling was required in order to reduce the number to a reasonable workload, but pointed out that an additional three would not have been unmanageable; or that the omission of the three would have a negligible effect on the analysis and recommendations, which Pacific Steel challenges. Pacific Steel also noted that there are more steel companies in China than in any other and that the widest information-gathering is required in order to get the most soundly-based all others rate. Pacific Steel requested that MBIE investigate all Chinese rebar suppliers to New Zealand.

#### *MBIE Response*

48. MBIE recognised that the Provisional Measure Report did not adequately explain the basis for the sample of manufacturers. For this reason, the EFC Report included a footnote which read as follows:

Neither the Act nor the SCM Agreement includes provisions relating to the establishment of samples. However, 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 rebar from China, which reflects past practice. Customs data indicates that in 2016 there were 40 suppliers of rebar from China, some of which are likely to have been trading intermediaries, supplying 39 importers. The majority of such suppliers were responsible for less than 10 tonnes each of exports in 2016. In these circumstances, and in view of the time and effort required to track down each supplier in order to obtain details of the manufacturer concerned, it was considered to be impracticable to examine all manufacturers.

49. This Final Report includes the same footnote.
50. A similar text was included in the EFC Subsidy Report.
51. The GOC Questionnaire response (in the subsidy investigation) identified three manufacturers and other traders involved in selling rebar to New Zealand. Only one of these companies was readily identifiable in Customs data as having exported a very small quantity of rebar in 2016. On this basis, and for the reasons outlined above, MBIE was satisfied that it had selected a representative sample.
52. Furthermore, once the dumping and subsidy investigations were initiated, the GOC was notified and provided with a complete list of Chinese exporters to New Zealand over the POI. The GOC replied that it had contacted or would contact these exporters to see if any of them were interested in cooperating in the investigations. At that time, the GOC stated that none of the exporters had expressed an interest in responding to MBIE's foreign manufacturer questionnaires as their exports to New Zealand accounted for a tiny share which had declined a lot in 2016. MBIE is satisfied that it has selected a representative sample of exporters and that the remaining exporters were aware of both the subsidy and dumping investigations but had chosen not to cooperate as their exports to New Zealand were not sufficiently large.

### Manufacturer Sampling Volume

53. Pacific Steel has noted a difference in the volumes of imports for sample manufacturers between the Provisional Measures Report (84%) and the EFC Report (90%), and sought clarification.

#### *MBIE Response*

54. The figure in paragraph 61 of the Provisional Measures Report was a clerical error resulting from a failure to update the reference to take account of the revised import totals arising from the adjustment to exclude imports under concessions other than the building materials concession, as set out in paragraph 31 of the Provisional Measures Report.

### Exporter Visit Reports

55. Pacific Steel claims that MBIE's decision not to publish exporter visit reports meant that parties could not examine full, confirmed Amsteel and Hesteel Chengde exporter visit information prior to the end of the 180 day investigation, making it difficult for Pacific Steel to satisfactorily particularise many of the dumping margin-related matters on which it has commented.
56. Pacific Steel considers that these circumstances are inconsistent with the requirements of Articles 6.1.2, 6.2 and 6.4 of the AD Agreement, and 12.1.2, 12.3 12.4.1 and 12.8 of the SCM Agreement, and section 10(6)(b) of the Act. Pacific Steel claims that these provisions oblige MBIE to provide throughout the investigation interested parties with timely visibility of all information which is not confidential so that parties can adequately defend their interests. Pacific Steel does not consider that limited information relating to overseas manufacturer visits included in EFC Reports reasonably satisfies those obligations.
57. Pacific Steel claims that a consequence of no visit reports is an asymmetry of information, in that publicly available information does not contain the information in respect of Amsteel and Hesteel Chengde which has been published on Pacific Steel, allowing those companies to comment on the basis of deep information but Pacific Steel is substantially less well informed. This constrains Pacific Steel's ability to understand and defend its interests in respect to normal value and export price adjustments which have already been compromised due to lack of response to matters referred to in **Outstanding Information Requests** above.

#### *MBIE Response*

58. Section 10(6)(b) of the Act provides that the Secretary, after initiating an investigation, shall ensure that all interested parties to the investigation are given reasonable opportunity, unless the information may be withheld under the Official Information Act 1982, to have access to all non-confidential information relevant to the presentation of their case and that is used by the Secretary in the investigation, and to prepare representations on the basis of that information. Section 10(6)(b) reflects Article 6.4 of the AD Agreement.

59. In order to fulfil this obligation, MBIE maintains a Public File which can be accessed at any time during the investigation by an interested party. The Public File contains hard copies of all pertinent non-confidential information used in the investigation including the application, questionnaire responses, important emails, and reports by the Ministry.
60. The Act does not include any verification provisions or instructions in respect of either verification visit itself or the disclosure of the details of the verification visit when such a visit is conducted at the premises of domestic or foreign producers. The Ministry completes its verification of information, including that at the premises of a firm, in line with the provisions of the AD Agreement.
61. Article 6.7 requires that investigating authorities make the results of any investigations in the territory of other Members available, or provide disclosure thereof to the firms to which they pertain pursuant to Article 6.9 (relating to the disclosure to interested parties of the essential facts on which final decisions on the investigation will be made), and may make the results available to the applicants. Annex 1 of the AD Agreement describes the procedures that must be followed when conducting on-the-spot investigations, otherwise known as verification visits. Issues covered include obtaining agreement, giving notices, and the inclusion of non-government experts but not the need to detail the results of the visit in the form of a report.
62. Under the Act and the AD Agreement, MBIE is under no obligation to produce a separate report detailing the results of the on-the-spot verification visit to a foreign producer or exporter. The AD Agreement clearly envisages that detailing the results of such a visit can be done through either a separate report or through the release of the essential facts of the investigation.
63. MBIE's practice is to complete verification reports where appropriate and if the circumstances of the case allow, bearing in mind the very tight statutory timeframes prescribed in the Act within which it must release the essential facts of the investigation (150 days) and make a final determination (180 days). In the present case, the verification visits to the Chinese (12-14 December 2017) and Malaysian (22-24 November 2017) manufacturers took place close enough to the release of the EFC Report (1 February 2018) that it was considered more appropriate to detail the results of the verification visit in that report rather than in separate reports to the two cooperating foreign manufactures. MBIE considers that it disclosed sufficient details of the verification visits in the EFC Report so that the foreign manufacturers, to whom the information related, and other interested parties (including Pacific Steel) were able to comment on the essential facts and provide comments if necessary.