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

**LABOUR, SCIENCE
AND ENTERPRISE**

Trade (Anti-dumping and Countervailing Duties) Act 1988

Initiation Report: Application for Countervailing Duties

Certain Hollow Steel Sections from China

April 2018

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Abbreviations and Acronyms

This report contains the following abbreviations and acronyms:

Acronym	Meaning
Act, the	The Trade (Anti-dumping and Countervailing Duties) Act 1988
AFA	Adverse facts available
AD Agreement, the	The WTO Agreement on Implementation of Article VI of the GATT
Australian ADC	Australian Anti-Dumping Commission, the Australian investigating authority
CBSA	Canadian Border Services Agency, the Canadian investigating authority
China	People's Republic of China
CIF	Cost, Insurance, Freight
CITT	Canadian International Trade Tribunal
CMC	Commercial Metals Company
Customs	New Zealand Customs Service
Dalian Steelforce	Dalian Steelforce Hi-Tech Co Ltd
EBIT	Earnings Before Interest and Taxes
FIS	Free into store
FY	Financial Year
GATT 1994	General Agreement on Tariffs and Trade 1994
GOC	Government of China
HDG	Hot-dipped galvanised
HRC	Hot rolled coil
HSS	Hollow steel sections
ILG	In-line galvanised
MBIE	Ministry of Business, Innovation and Employment
MPa	MegaPascals (measurement of pressure/stress)
MT	Metric ton (tonne)
NZ	New Zealand
NZ Steel	New Zealand Steel Limited
NZD	New Zealand Dollar
Rebar	Steel reinforcing bar and coil

ROI	Return on investment
SCM Agreement, the	The WTO Agreement on Subsidies and Countervailing Measures
SIC	Steel Industry Coalition (United States)
SIE	State-invested enterprise
SOCB	State-owned commercial bank
Statistics NZ	Statistics New Zealand
USDOC	United States Department of Commerce, International Trade Administration, the United States investigating authority
USD	United States Dollar
VFD	Value for Duty
WTO	World Trade Organisation

Confidentiality of Information

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

In these instances, the information has been redacted or where possible has been summarised in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. For example, in tables, where possible, actual figures have been replaced by figures showing 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

MBIE recommends initiating an investigation into the alleged subsidisation of certain hollow steel sections from China

This report recommends that the General Manager of the Science, Innovation and International Branch of the Ministry of Business, Innovation and Employment (MBIE), acting under delegated authority from the chief executive, initiates an investigation of alleged subsidisation of certain hollow steel sections (HSS) from the People's Republic of China (China).

MBIE has assessed the accuracy and adequacy of the evidence provided by New Zealand Steel Limited (NZ Steel) in terms of the criteria in sections 10 and 10A of the *Trade (Anti-Dumping and Countervailing Duties) Act 1988* (the Act), and the World Trade Organisation (WTO) Agreement on Subsidies and Countervailing Measures (the SCM Agreement).

MBIE is satisfied that NZ Steel has provided sufficient evidence to justify initiating an investigation of claims that imports of allegedly subsidised HSS from China are causing material injury to the New Zealand industry. An investigation would establish whether or not allegedly subsidised imports are, in fact, subsidised; whether such imports are causing material injury to the domestic industry (NZ Steel); and whether countervailing duties should be imposed to remedy such injury.

NZ Steel alleges injurious subsidisation of HSS from China

On 6 December 2017, MBIE accepted a properly documented application from NZ Steel for countervailing duties on HSS from China. NZ Steel claimed that imports of Chinese HSS are being subsidised by the Government of China (GOC) and have caused material injury to the New Zealand industry.

The subject goods include certain specifications of HSS

The imported goods covered by the application, the subject goods, are:

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

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

The sizes of the goods are: circular products with a nominal diameter up to and including 150mm; or oval, square and rectangular products with a perimeter up to and including

520mm.

The goods may also be categorised according to minimum yield strength, the most common classification being 250 and 350 MPa.

**New Zealand industry –
NZ Steel**

The application was made by NZ Steel, which estimates that it is responsible for 80 per cent of New Zealand production of HSS. This constitutes a major proportion of domestic production of like goods to the subject goods. This meets the requirements of section 10A of the Act, which outlines the minimum level of support required from the domestic industry for the application for an investigation.

**Consultations with the
Government of China**

In consultations between the New Zealand government and the GOC, required under the SCM Agreement, the GOC challenged the factual basis for the application and claimed that there was a lack of any real evidence of subsidisation, injury or a causal link. MBIE has addressed the matters raised by the GOC but concludes that for the purposes of initiation there is sufficient evidence of subsidisation, injury and causal link.

**Applications for
countervailing duties
must meet certain
criteria for MBIE to
initiate an
investigation**

MBIE's chief executive may initiate an investigation to determine the existence and effect of alleged subsidisation of goods when satisfied that the application meets the criteria of:

- sufficient evidence of subsidisation, and
- sufficient evidence of material injury to the domestic industry, and
- sufficient evidence of a causal link between the alleged subsidisation and the injury.

**NZ Steel has provided
sufficient evidence of
subsidisation**

For the purpose of initiation, MBIE is satisfied that NZ Steel has provided sufficient evidence of subsidisation of Chinese HSS producers.

The evidence of subsidisation submitted by NZ Steel consists mainly of information sourced from subsidy applications made by steel industries in other countries, and resulting subsidy investigations by the relevant authorities, which found that the GOC was subsidising Chinese HSS producers to the detriment of domestic producers in those countries.

**NZ Steel has provided
sufficient evidence of
material injury**

Material injury is not defined in the Act, or the SCM Agreement, but is taken to mean injury of a reasonably significant nature. It is the level of injury which can be demonstrated as material by an objective and unbiased investigating authority on the basis of an assessment of

the factors set out in the Act, and in the context of the circumstances of the industry concerned. Injury is normally analysed in terms of how an industry has performed, financially, over time, especially in competition with the allegedly subsidised imports.

MBIE has analysed the information provided by NZ Steel covering the last seven financial years to June 2017, and for the purpose of initiation considers that NZ Steel has provided sufficient evidence that it is incurring material injury from the alleged subsidisation of Chinese HSS producers.

There is evidence of volume and price effects and a consequent impact on NZ Steel

MBIE's analysis shows that for the period examined:

- there has been a significant increase in the volume of imports of HSS from China, in absolute terms and in relation to production and consumption in New Zealand
- there is evidence of some price undercutting of NZ Steel's prices by the prices of imports of HSS from China
- there is evidence of price depression, in that NZ Steel's average prices have decreased significantly
- there is evidence of price suppression to the extent that NZ Steel's average unit revenue did not reflect the same extent of the margins over costs per unit achieved in the earlier part of the period
- there is evidence that NZ Steel has experienced a decline in sales volume and sales revenue
- there is evidence of a significant decrease in total profit
- there is evidence of adverse effects on cash flow and return on investments
- there are additional factors affecting domestic prices related to the pricing of imports of HSS from China

However, MBIE also notes that:

- there is no significant decline in market share that can be attributed to the allegedly subsidised imports of HSS from China
- NZ Steel does not consider that it has suffered impaired productivity or utilisation of production capacity; has not identified any adverse effects on inventories, employment and wages; and has not provided evidence of any effect on growth, the ability to raise capital or investments.

MBIE has examined other factors which may be causing injury

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

MBIE's analysis supports the conclusion that, for the purpose of

initiation, there is sufficient evidence that material injury to NZ Steel is attributable to allegedly subsidised imports from China over the period examined.

NZ Steel has requested provisional measures be imposed

NZ Steel is seeking the imposition of provisional countervailing duties. Provisional measures may be applied if certain conditions are met at any time after 60 days from the date on which an investigation has been initiated in order to prevent material injury being caused during the period of investigation. This request will be addressed in any investigation.

1. Introduction

1.1 Application

1. On 3 November 2017, MBIE received an application for countervailing duties to be imposed on HSS from China. The application was submitted by NZ Steel, a producer of HSS in New Zealand.
2. On 6 December 2017 MBIE accepted the application as properly documented.
3. Under section 10 of the Act, MBIE's chief executive may start (initiate) an investigation to determine the existence and effect of any alleged subsidisation of any goods on being satisfied that sufficient evidence has been provided that the goods are being subsidised and, by reason thereof, material injury has been or is being caused or is threatened to the domestic industry.
4. Article 11 of the SCM Agreement deals with the initiation of an investigation, and requires that any application include sufficient evidence of: a subsidy, and its amount; injury to a domestic industry in competition with the allegedly subsidised imports; and a causal link between the allegedly subsidised imports and the alleged injury. Article 11 also sets out the kind of evidence, reasonably available to the applicant that is required, and states at Article 11.2 that "Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements for initiation." Article 11.3 requires investigating authorities "to review the accuracy and adequacy of the evidence provided in the application to determine whether the evidence is sufficient to justify the initiation of an investigation."
5. With regard to the sufficiency of evidence, MBIE takes guidance from the 1988 judicial review case of *Kerry (New Zealand) Ltd v Taylor* in which Gault J said that in order to initiate a dumping investigation, the authority must be satisfied "that there is evidence beyond a mere assertion and of a nature and extent that indicate a likelihood of dumping and material injury, requiring investigation." The Court also found that "the evidence should be scrutinised with due scepticism, bearing in mind the commercial context," but emphasised that the assessment is one of sufficiency of evidence, not of dumping.¹ MBIE considers this ruling is equally relevant to an application for countervailing duties as it is to an application for anti-dumping duties.
6. This report assesses, against the requirements in the Act, the application submitted by NZ Steel for an investigation of alleged subsidisation of HSS imported from China. The report outlines the basis for determining if sufficient evidence has been presented to justify the initiation of a subsidy investigation.

¹ (1988) 3 TCRL 265 at page 17, accessed from www.nzlii.org/nz/cases/NZHC/1988/595.pdf

7. Subsidies are defined in section 3(1) of the Act and are essentially any financial or other commercial benefit supplied by a foreign Government to the foreign producers and exporters of the subject goods. MBIE's consideration is also subject to the SCM Agreement, which outlines how investigating authorities should conduct investigations into subsidised imports, including consulting the government of the country of export.
8. NZ Steel claims that the alleged subsidisation of HSS from China is causing the company material injury principally through:
 - price undercutting
 - price depression
 - price suppressionresulting principally in:
 - adverse consequences upon sales
 - adverse consequences upon profit, both overall (e.g. EBIT²), and per unit (e.g. EBIT per tonne)
 - adverse consequences upon return on investment
 - adverse consequences upon cashflow.
9. NZ Steel has requested that provisional measures in the form of countervailing duties be imposed to prevent material injury being caused to the domestic industry during the period of investigation.
10. NZ Steel has also applied for the imposition of anti-dumping duties on HSS from China and Malaysia. That application is treated as a separate matter by MBIE.

1.2 Consultations with the Government of China

11. Section 10A(2) of the Act requires the chief executive to notify the Government of the country of export of the goods that are the subject of the proposed investigation, and give that Government a reasonable opportunity for consultations with the aim of clarifying the situation and arriving at a mutually agreed solution.
12. On 6 December 2017, MBIE informed the GOC that it had accepted a properly documented application for countervailing duties on HSS and invited it to enter into consultations under Article 13.1 of the SCM Agreement. Article 13.1 of the SCM Agreement states:

As soon as possible after an application under Article 11 is accepted, and in any event before the initiation of any investigation, Members the products of which may be subject to such investigation shall be invited for consultations with the aim of clarifying the situation as to the matters referred to in paragraph 2 of Article 11 and arriving at a mutually agreed solution.
13. On 8 March 2018, the GOC provided MBIE with written consultation points in lieu of a meeting or teleconference. In the consultation points, the GOC stated that NZ Steel had

² EBIT – earnings before interest and taxes.

- failed to provide any sufficient and accurate evidence to prove the alleged subsidies, injury and causal link. The GOC claimed that this meant that the application did not meet the evidential requirements for initiation set out in the Act and the SCM Agreement. The GOC claimed that the application had no merit and no evidence to support the accusations made; it merely recited and repeated old or irrelevant information on subsidies, which has been proved to be untrue in recent investigations undertaken by Australia; and the material injury allegations were incredibly weak and entirely premised on an unreasonable “but-for” assumption. The GOC requested that MBIE reject the application.
14. In particular, the GOC claimed that publicly available information makes it clear that allegations of subsidisation are not supported in the case of the predominant Chinese exporter, Dalian Steelforce Hi-Tech Co Ltd (Dalian Steelforce). The GOC claims that the applicant’s statements with regard to this company are misleading, since it is not subject to countervailing duties following the Australian investigation into HSS. The GOC provided a confidential attachment which, it is claimed, demonstrates that Dalian Steelforce did not benefit from the alleged subsidies.
 15. With regard to the subsidy programmes identified by the applicant as being investigated by the Australian and US authorities, the GOC claimed that the decisions of those investigating authorities were applied in ways that do not reflect applicable WTO norms. In addition, the reports relied upon were outdated and were not current. The GOC pointed out that because the investigations undertaken by the US authorities were for different products and in a jurisdiction that does not accept China as a market economy, they should not be considered relevant or positive support of the applicant’s claims. The GOC states that the estimates of subsidy levels are “simple assertion”.
 16. The GOC claimed that the application fails to make any causal link allegation, and strongly disagrees with the applicant’s proposal that material injury be assessed on the basis of a counterfactual analysis instead of a coincidence analysis. The GOC suggested that the applicant’s causation assessment is supported by nothing more than mere conjecture and remote possibilities, which do not comply with the requirements of Article 11.2 of the SCM Agreement.
 17. MBIE has taken account of the consultation points in its consideration of the application, but considers that for the purposes of initiation there is sufficient evidence of subsidisation, injury and a causal link.
 18. One of the issues raised in the consultation points was the claim that the application does not conform to New Zealand’s public policy in the residential building materials sector. The GOC noted that anti-dumping duties on construction materials are suspended in order to gain benefits from lower prices for building materials.
 19. MBIE notes that the duty suspension does not apply to countervailing duties. The public interest considerations set out in the Act will be triggered once any final determination has been made that dumped or subsidised goods are causing material injury to a domestic industry. The requirement to undertake a public interest test does not affect the decision whether or not to initiate an investigation.

1.3 Report Details

20. In this report, unless otherwise stated, years (FY) are years ending 30 June and dollar values are New Zealand dollars (NZD). In tables, column totals may differ from the sum of individual figures because of rounding.
21. 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). The exchange rates used are those relating to specific transactions, where available, or the New Zealand Customs Service (Customs) exchange rates, or the rate that MBIE considers most appropriate in the circumstances, as indicated in the text.
22. Any investigation will likely use the calendar year 2017 as the period of investigation of subsidisation.

2. Goods Description

2.1 Imported Goods

23. In its application, NZ Steel has described the subject goods as:

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

24. NZ Steel has specified that the **finish** types of the goods are: galvanised including in-line galvanised (ILG), pre-galvanised or hot-dipped galvanised (HDG); or non-galvanised, including but not restricted to, painted, black, lacquered or oiled finishes.

25. NZ Steel has specified that the **sizes** of the goods are: circular products with a nominal diameter up to and including 150mm; or oval, square and rectangular products with a perimeter up to and including 520mm.

26. NZ Steel notes that the goods may also be categorised according to minimum yield **strength**, the most common classification being 250 and 350 MPa.³

Tariff classification

27. NZ Steel notes that New Zealand's tariff classifications do not align with the description of the subject goods outlined above. Up to the end of 2016, assuming that the goods have been correctly coded, then all goods in the following tariff items and statistical keys will be subject goods.

Tariff Item	Statistical Key	Description
73063019	11	Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, screwed, welded, of circular cross-section, of a nominal internal diameter less than 102mm
73063019	21	Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, unscrewed, welded, of circular cross-section, of a nominal internal diameter less than 102mm
73066100	19	Iron or steel (excluding cast iron); rectangular hollow sections (other than stainless steel or seamless), welded, of maximum dimension less than 102mm, not elsewhere

³ 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.

classified in chapter 73		
73066100	27	Iron or steel (excluding cast iron); rectangular hollow sections (other than stainless steel or seamless), welded, of maximum dimension of 102mm or more but less than 128mm, not elsewhere classified in chapter 73

28. It should be noted that the above statistical keys may not cover all of the sizes identified in NZ Steel's description of the subject goods.
29. From 1 January 2017, the tariff keys were changed as part of a periodic review of tariff descriptions by the World Customs Organization. The four above statistical keys are now equivalent to 24 statistical keys in the 2017 Harmonised System Classification, as listed below. However, it appears that there are additional tariff keys covering sizes other than those covered by the 24 tariff keys.
30. The tariff items and statistical keys applying from 2017 are:

HS2017	Description
7306301911	7306301923 Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, plated or coated with zinc, screwed, welded, of circular cross-section, of a nominal internal diameter under 102mm
	7306301941 Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, plated or coated with metals other than zinc, screwed, welded, of circular cross-section, of a nominal internal diameter under 102mm
	7306301961 Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, painted, lacquered or similarly coated, screwed, welded, of circular cross-section, of a nominal internal diameter under 102mm
	7306301981 Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, screwed, welded, of circular cross-section, of a nominal internal diameter under 102mm [OTHER]
HS2017	Description
7306301921	7306301931 Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, plated or coated with zinc, unscrewed, welded, of circular cross-section, of a nominal internal diameter under 102mm
	7306301951 Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, plated or coated with metals other than zinc, unscrewed, welded, of circular cross-section, of a nominal internal diameter under 102mm
	7306301971 Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, painted, lacquered or similarly coated, unscrewed, welded, of circular cross-section, of a nominal internal diameter under 102mm

	7306301991	Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, unscrewed, welded, of circular cross-section, of a nominal internal diameter under 102mm [OTHER]	
	HS2017	Description	
7306610019	7306610051	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension under 102mm, plated or coated with zinc, of wall thickness not over 2.6mm	
	7306610053	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension under 102mm, plated or coated with zinc, of wall thickness over 2.6mm	
	7306610054	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension under 102mm, plated or coated with metals (excluding zinc), of wall thickness not over 2.6mm	
	7306610055	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension under 102mm, plated or coated with metals (excluding zinc), of wall thickness over 2.6mm	
	7306610056	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension under 102mm, (painted, lacquered or similarly coated), of wall thickness not over 2.6mm	
	7306610057	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension under 102mm, (painted, lacquered or similarly coated), of wall thickness over 2.6mm	
	7306610058	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension under 102mm, not elsewhere classified in subheading 7306.61, of wall thickness not over 2.6mm [other]	
	7306610059	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension under 102mm, not elsewhere classified in subheading 7306.61, of wall thickness over 2.6mm [other]	
		HS2017	Description
	7306610019	7306610063	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension at least 102mm but under 128mm, plated or coated with zinc, of wall thickness not over 2.6mm
7306610064		Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension at least 102mm but under 128mm, plated or coated with zinc, of wall thickness over 2.6mm	
7306610065		Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension at least 102mm but under 128mm, plated or coated with metals (excluding zinc), of wall thickness not over 2.6mm	
7306610066		Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension at least 102mm but under 128mm, plated or coated with metals (excluding zinc), of wall thickness over 2.6mm	

7306610067	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension at least 102mm but under 128mm , (painted, lacquered or similarly coated), of wall thickness not over 2.6mm
7306610068	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension at least 102mm but under 128mm, (painted, lacquered or similarly coated), of wall thickness over 2.6mm
7306610069	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension at least 102mm but under 128mm , not elsewhere classified in subheading 7306.61, of wall thickness not over 2.6mm [other]
7306610070	Iron or steel (excluding cast iron); tubes and pipes, seamless and welded, rectangular hollow sections, of maximum dimension at least 102mm but under 128mm , not elsewhere classified in subheading 7306.61, of wall thickness over 2.6mm [other]

31. There were no imports in 2017 under a number of the statistical keys listed in paragraph 30.
32. The additional statistical keys which partly cover the subject goods are:

HS2017	Description
Ex 7306301925	Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, plated or coated with zinc, screwed, welded, of circular cross-section, of a nominal internal diameter 102mm or more but less than 229mm
Ex 7306301935	Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, plated or coated with zinc, unscrewed, welded, of circular cross-section, of a nominal internal diameter 102mm or more but less than 229mm
Ex 7306301945	Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, plated or coated with metals other than zinc, screwed, welded, of circular cross-section, of a nominal internal diameter 102mm or more but less than 229mm
Ex 7306301955	Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, plated or coated with metals other than zinc, unscrewed , welded, of circular cross-section, of a nominal internal diameter 102mm or more but less than 229mm
Ex 7306301965	Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, painted, lacquered or similarly coated, screwed, welded, of circular cross-section, of a nominal internal diameter 102mm or more but less than 229mm
Ex 7306301975	Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, painted, lacquered or similarly coated, unscrewed , welded, of circular cross-section, of a nominal internal diameter 102mm or more but less than 229mm

Ex 7306301985	Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, screwed, welded, of circular cross-section, of a nominal internal diameter 102mm or more but less than 229mm [OTHER]
Ex 7306301995	Iron or non-alloy steel (excluding cast iron); tubes, pipes and hollow profiles (not seamless), not elsewhere classified in chapter 73, unscrewed, welded, of circular cross-section, of a nominal internal diameter 102mm or more but less than 229mm [OTHER]

Duties

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

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

*Unless otherwise indicated, following rates in the Preferential Tariff are Free:

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

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

Imports

34. In its application, NZ Steel provided HSS import data over the period FY2012-FY2017, with FY2017 estimated. MBIE obtained data from Customs over the same period, with actual data for FY2017, but not including the statistical keys referred to in paragraph 32. This data is shown in Table 2.1.

**Table 2.1: Imports of HSS
Financial years, tonnes**

	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017	FY2017 %
Application (NZ Stats)							
China	6912	8657	8146	10739	9987	10979	68.9%
Other	11719	9500	14121	5697	3711	4948	31.1%
Total	18631	18157	22267	16436	13698	15927	100.0%
Customs data							
China	6861	8784	8088	10673	9858	11075	67.5%
Other	11706	9510	14113	5686	3996	5333	32.5%
Total	18567	18294	22201	16360	13854	16408	100.0%

35. Imports from China in FY2017 individually accounted for more than 4 per cent of imports of the like product. Article 27 of the SCM Agreement provides that imports of less than 4 per cent of total imports are considered to be negligible and therefore a basis for rejection of an application.

2.2 Like Goods

36. In order 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. 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.
38. The scope of the subject goods is defined in section 2.1 above.
39. NZ Steel considers that the HSS goods that it produces are “like goods” to the subject goods, as required under section 3(1) of the Act.
40. In its application NZ Steel advises that it uses hot-rolled coil (HRC) semi-finished steel to produce HSS with wall thicknesses between 2.00mm and 6.0mm.
41. NZ Steel claims that the goods it produces have the same **physical characteristics** as the subject goods and are made to and meet New Zealand/Australia standards. The subject goods are label-identified as having been made to the New Zealand/Australian standards or to now-outdated British standards that previously applied to NZ Steel’s goods. The

grades, shape and appearance are alike. NZ Steel notes that domestic goods are produced in sizes up to 114.9mm outer diameter for circular products, and up to 127mm dimension and 400mm perimeter for non-circular products. The application covers goods up to 30 per cent greater than these values in order to address the “price spillover” and injury caused by goods of greater diameter. NZ Steel cites findings by the Canadian International Trade Tribunal (CITT) in support of its arguments.⁴

42. NZ Steel claims that the domestic and subject goods **compete** with one another in the same New Zealand market, with strong price competition and using the same distributor route to market.
43. NZ Steel claims that the domestic and subject goods have comparable or identical **end-uses** and are functionally substitutable, and lists a wide range of end-uses. It is suggested that the high degree of product substitutability arises from like mechanical performance.
44. In terms of **manufacturing processes**, NZ Steel notes that both the domestic and subject goods are produced from carbon steel, with the input arising from smelting or through ferrous scrap waste recovery to produce carbon steel slabs which are converted into steel plate, thence to hot-rolled/cold-rolled carbon steel coil for feed into an HSS plant.
45. NZ Steel provided specifications for the HSS products that it produces.

MBIE Consideration

46. 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.
47. On the basis of these considerations, and in particular the physical characteristics and function and usage of the goods, MBIE concludes that, for initiation purposes, NZ Steel produces like goods to the goods imported from China.
48. However, while NZ Steel sets out arguments for concluding that the goods it produces are like subject goods of dimensions greater than those of the goods produced domestically, it is likely that a detailed like goods analysis will be required to ensure that any investigation is properly directed in terms of the goods that it covers.

⁴ The issues raised at the CITT hearings related to the production of unfinished seamless line pipe in the form of mother tubes and the substitutability of welded and seamless line pipes for certain end-uses, as well as the ability of producers to start producing other size ranges.

3. Interested Parties

3.1 Applicant

49. NZ Steel submitted the application. NZ Steel is a wholly owned subsidiary of New Zealand Steel Holdings Limited whose ultimate parent company is BlueScope Steel Limited, an Australian based company listed on the Australian Stock Exchange.

3.2 New Zealand Industry

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

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

51. NZ Steel has identified three other New Zealand companies involved in the manufacture of steel pipes – **Steelpipe**, **Industrial Tube Manufacturing Co Ltd**, and **New Zealand Tube Mills Ltd**:

- NZ Steel notes that production by **Steelpipe** is based on HRC but is not like goods to the subject goods because the diameters of the goods produced are significantly larger and the goods are used for different purposes than the HSS goods made by NZ Steel.
- NZ Steel considers that goods produced by **Industrial Tube Manufacturing Co Ltd** are like goods to the subject goods because they have a physical, commercial and functional likeness to the goods made by NZ Steel, with overlaps in the range of wall thicknesses of the goods produced.
- NZ Steel considers that the goods produced by **New Zealand Tube Mills Ltd** are like goods to the subject goods because they have a physical, commercial and functional likeness to the goods made by NZ Steel, with overlaps in the range of wall thicknesses of the goods produced.

52. NZ Steel has advised that on the basis of the information reasonably available to it, it has estimated that the New Zealand production shares for FY2017 are as indicated in the table below.

Company name	Production shares for FY2017 (%)
NZ Steel	██████████
Industrial Tube Manufacturing Co Ltd	██████████
New Zealand Tube Mills Ltd	██████████

53. Letters of support for the application have been provided by Industrial Tube Manufacturing Co Ltd and New Zealand Tube Mills Ltd.
54. MBIE is satisfied that, in accordance with section 10A(1)(b) of the Act, the collective output of those New Zealand producers who have expressed support for the application in writing constitutes 25 per cent or more of the total New Zealand production of like goods and more than 50 per cent of the total production of the goods by those New Zealand producers who have, in writing, expressed support for or opposition to the application.

3.3 Exporters

55. NZ Steel has provided information identifying the following HSS suppliers to the New Zealand market:
- Dalian Steelforce Hi-Tech Co Ltd (Dalian Steelforce), associated with the Australian company Steelforce Pty Ltd; address Dalian, Jinzhou, Liaoning Province.
 - Stemcor Global Holdings Ltd (Stemcor), an independent steel trader which has offices in New Zealand, Australia and Singapore.
 - Commercial Metals Company (CMC), a USA-based steel manufacturer and trader with corporate headquarters in Texas.
56. Where intermediary traders are involved, MBIE will need to establish which Chinese manufacturers are supplying the subject goods concerned.
57. NZ Steel notes that an application made to the Australian Anti-Dumping Commission (Australian ADC) regarding HSS included the following Chinese mills, which may be exporting to New Zealand. These mills are listed below with locations ascertained by MBIE:
- Hengshui Jinghua Steel Pipe Co Ltd, Hengshui City, Hebei Province
 - Huludao City Steel Pipe Industrial Co Ltd, Beigang Industrial Park, Taishan Street, Longgang District, Huludao, Liaoning Province
 - Qingdao Xiangxing Steel Pipe Co Ltd, Chengyang District, Qingdao, Shandong Province
 - Dalian Steelforce Hi-Tech Co Ltd, Jinzhou, Dalian, Liaoning Province
 - Zhejiang Kingland & Pipeline Technologies Co Ltd, Huzhou, Zhejiang Province
 - Tianjin Youfa Steel Pipe Co Ltd, Daqiuzhuangzhen, Jinghai, Tianjin Municipality

3.4 Importers

58. NZ Steel has not identified any importers.

3.5 The Government of China

59. The Government of China is considered an “interested Member” under the SCM Agreement.

4. Evidence of Subsidisation

60. Section 10 of the Act outlines the evidence and information that is required in a properly documented application for a subsidy investigation, which includes such evidence of the existence, amount and nature of the subsidies as is reasonably available to the applicant. MBIE also takes into account section 7 of the Act, which provides that the amount of the subsidy is the amount determined by the chief executive as being the benefit conferred on the recipient of the subsidy.
61. The Act defines 'subsidy', 'subsidised goods' and 'specific subsidy' in section 3 in terms of a financial or other commercial benefit provided directly or indirectly by a foreign Government. A foreign Government is defined to include the Government of a foreign country; a sub-national Government or authority; a body exercising authority for an association of foreign countries; and a person, agency or institution acting for, or on behalf of, a Government or body set out in the definition.
62. These definitions reflect the definitions and descriptions set out in the SCM Agreement. In particular, under the Agreement a subsidy is deemed to exist if:
- there is a financial contribution by a government or any public body, including a direct transfer of funds (eg grants, loans, equity infusions), government revenue that is foregone or not collected (eg tax credits), and the provision or purchase by government of goods or services; and
 - the financial contribution confers a benefit.
63. Such subsidies are countervailable only if they are specific, ie the subsidy is limited to an enterprise or industry or group of industries or enterprises, including geographical limitation, or if the subsidies are contingent on export performance or the use of domestic over imported goods.

4.1 Existence of Subsidies

Application

64. In its application, NZ Steel has set out the sources of information it has used in seeking to identify subsidies available to manufacturers and exporters of the subject goods. These sources include subsidy notifications to the WTO by China, applications by industry and investigations undertaken by investigating authorities in other jurisdictions, and reports and commentaries on the Chinese steel industry.
65. In the application, NZ Steel provides comments on findings in other jurisdictions that Chinese State-invested enterprises (SIEs) are public bodies.
66. NZ Steel considers that the information it has provided is adequate positive evidence to justify the need for an investigation of Chinese subsidisation of HSS.

WTO Subsidy Notifications

67. In the first instance NZ Steel addresses the subsidy notifications required to be submitted to the WTO by its members, including China, under Article XVI:1 of the General Agreement

on Tariffs and Trade 1994 (the GATT 1994) and Article 25.2 of the SCM Agreement (WTO document G/SCM/N/123/CHN). The first notification was in 2006 and covered the time period from 2001 to 2004. China submitted its second notification (WTO document G/SCM/N/155/CHN) in 2011 which covered the time period from 2005 to 2008. NZ Steel also notes that a further notification was made in October 2015, but claims that it was deficient in that it did not meet the requirements of Article 25 of the SCM Agreement.

68. NZ Steel notes that the United States and several other Members have expressed serious concerns about the lateness and incompleteness of these notifications, and suggests that the matters raised in that document regarding steel programmes represent further evidence that a particular market situation exists in China. NZ Steel claims that the subsidy notifications by the GOC are unreliable.
69. NZ Steel references a June 2015 report commissioned by AEGIS Europe which noted specifically that “Information provided on subsidy schemes administered by central government authorities was again found to have large gaps and again, not a single programme run by sub-central government bodies was mentioned.”

Precedents in other Jurisdictions

70. In its application, NZ Steel notes that it is itself unable to obtain information or inquire into the financial accounts of Chinese suppliers, and has therefore sought to identify precedents in other jurisdictions regarding investigations and findings of countervailable subsidies in the Chinese steel industry. NZ Steel has used the programmes identified in these investigations as the basis for its claims regarding subsidisation.
71. Appendix Six to the application lists 240 alleged subsidy programmes NZ Steel has identified from applications to the Canadian Border Services Agency (CBSA) and the Australian ADC in 2014 and 2015 respectively for countervailing duties on steel reinforcing bar from China. Pacific Steel Ltd, NZ Steel’s associated company, provided this same list in its application for countervailing duties on steel reinforcing bar (rebar) from China in 2017. NZ Steel also refers to the Australian ADC report on its sunset review of countervailing duties on HSS from China (Report 379), and sets out the applicant’s summary of Chinese subsidy programmes found to be countervailable in the original Australian HSS investigation and identified as countervailable in subsequent investigations.

Canadian Border Services Agency Investigation

72. NZ Steel cites content in four subsidy investigations completed by the CBSA:
- A 2014 investigation into dumping and subsidisation of imports of concrete reinforcing bar from China and other countries. The application was filed by ArcelorMittal LCNA, Gerdau Longsteel North America and Alta Steel Inc. The CBSA initiated the investigation on 13 June 2014 and on 23 December 2014 concluded that rebar was subsidised (document 4214-42 AD/1403 V/138). The CBSA found a weighted average subsidy of 6.1 per cent.
 - A 2012 investigation into dumping and subsidisation of galvanised wire from China and other countries. The CBSA received an application from Tree Island Steel Ltd on

March 23, 2012. The CBSA made a positive subsidy finding of weighted average 14.9 per cent on August 20, 2013 (Inquiry No. NQ-2013-001).

- An investigation, completed in 2016, into certain carbon and alloy steel line pipe, which is a “near same” product to HSS. The CBSA concluded that the subsidy margin was 7.6 per cent based on a period of investigation (POI) of 1 January 2014 to 30 June 2015.
- An investigation completed in 2016 into certain welded large diameter carbon and alloy steel line pipes from China. The CBSA reported a weighted average subsidy of 30.3 per cent.

Mexico

73. NZ Steel cites a Metal Bulletin press report that the Mexican Government had started an anti-dumping investigation into imports of welded tubes from China, including alloy and non-alloy square, circular and rectangular tubes.

United States Department of Commerce – International Trade Administration (USDOC)

74. NZ Steel cites content in two subsidy investigations completed by the USDOC.
- In a 2014 subsidy investigation into steel wire rod from China the USDOC published a final determination that countervailable subsidies were being provided to producers and exporters of steel wire rod from China. The USDOC found a net subsidy rate found for Hebei Iron and Steel of 178.46 per cent.
 - In a 2012 subsidy investigation into galvanised steel wire from China the USDOC published a final determination that countervailable subsidies were being provided to producers and exporters of galvanised steel wire from China. The net subsidy rate ranged from 19 to 223 per cent.

Australian ADC

75. NZ Steel cites a subsidy investigation conducted by the Australian ADC into subsidy and dumping of imports of rebar and rod in coil from China. On 5 August 2016 the Australian ADC found subsidy margins of 0.26 to 25.22 per cent for investigated exporters of bar and 1.60 to 26.46 per cent for rod in coil exporters investigated.

General Commentary on the Chinese steel industry

76. In relation to the existence of subsidisation, NZ Steel refers to the significant volume of general commentary about the level of subsidisation received by the Chinese steel industry. NZ Steel believes this is contextual evidence to assist MBIE in forming a view that the GOC does subsidise the Chinese steel industry. NZ Steel provides a 2014 commentary from Reuters, which includes a comment from Liu Haiming, the Deputy Director of the China Steel Development and Research Institute, concerning subsidisation. NZ Steel also provides a PRNewswire report on a 2007 report by Wiley Rein LLP, updated in 2010, and references other reports on Chinese subsidies to its steel industry, including a 2016 report issued by the Steel Industry Coalition (SIC) in the USA, and a 2016 report by the Australian ADC on steel and aluminium markets.

MBIE Consideration

WTO Subsidy Notifications

77. Article 25.2 of the SCM Agreement requires Members to notify specific subsidies granted or maintained in their territories, and sets out the information required to be included. The notifications by most countries state that the programmes notified may or may not be subsidies or specific subsidies but are included in the interests of transparency.
78. MBIE notes that China's third notification (WTO document G/SCM/N/220/CHN, G/SCM/N/253/CHN and G/SCM/N/284/CHN) was submitted in 2015 and covered the time period from 2009 to 2014. A further notification was submitted by China on 29 July 2016, which covered programmes at the sub-central level in China.⁵
79. MBIE has reviewed all of the Chinese notifications under Article 25.2 of the Agreement, and accepts that, on the basis of the information provided in them, it is difficult for the applicant to use the notifications as the basis for identifying subsidies applicable to the subject goods. This arises primarily from the nature of the information that is required to be provided in such notifications, and the notifications by the GOC are not dissimilar to those provided by other WTO members in terms of the level of detail. It is noted that at least two of the programmes identified in the 2015 notification were covered in the Australian countervailing duty investigation into rebar from China, cited by the applicant, and others may also be included in the list of subsidy programmes provided in Appendix Six to the application.
80. MBIE also notes that the extent to which any WTO Member is in full compliance with its notification obligations is not relevant to the consideration of the sufficiency of evidence, since there is no requirement in the SCM Agreement, or elsewhere, to rely on such notifications as the basis for determining the sufficiency of evidence of subsidisation. Also, questions raised by other Members with regard to the notifications will not, by themselves, represent sufficient evidence of subsidies.

Findings from other jurisdictions

81. MBIE considers that the investigations and findings of counterpart authorities provide supporting evidence of the possible existence of subsidisation that is sufficient for initiation purposes.⁶ MBIE notes that in many cases conclusions on the existence or possible existence of subsidies were based on assumptions arising from the failure of Chinese

⁵ WTO Document G/SCM/N/220/CHN/Suppl.1

⁶ WTO case DS437 *United States – Countervailing duties on certain products from China*. The Panel noted that the United States had accepted applications which relied on “evidence such as research reports and the financial statements of Chinese companies ... and on prior USDOC determinations” and concluded that the USDOC had not acted inconsistently with the US obligations under Article 11 of the SCM Agreement to initiate the challenged investigations without sufficient evidence of specificity.

parties to provide information to the investigating authorities⁷ resulting in use of adverse facts available (AFA). Accordingly, care needs to be taken when assessing the information from counterpart authorities.

General commentary on the Chinese steel industry

82. Reports and news articles will not normally by themselves provide sufficient evidence of the existence of subsidies, but need to be considered in the context of other sources of information, and an understanding of the perspective of the authors of the reports. In this respect, MBIE notes that Wiley Rein LLP is a major Washington DC law firm that has represented the United States steel industry in anti-dumping and countervailing duty cases, and sponsors of the report include United States steel industry groups. Similarly, the SIC Report was prepared for a coalition of US steel industry interests. While this does not necessarily negate the validity of the report cited, MBIE must consider the perspective of the report in assessing the extent to which it supports NZ Steels arguments.

Findings from other New Zealand proceedings

83. MBIE notes that the application largely repeats claims relating to subsidy programmes that have been the subject of previous applications considered and investigated by MBIE. This application relates to different goods, with different suppliers, and potentially different situations with regard to the existence and level of subsidisation, e.g. subsidies related to the location of manufacturers. In these circumstances it may not always be appropriate to transfer conclusions reached in other proceedings, which relate to a particular set of facts.

Conclusion

84. MBIE recognises the difficulties NZ Steel has experienced in obtaining information regarding subsidy programmes in China. MBIE accepts that there is evidence beyond a mere assertion and of a nature and extent that indicates a likelihood of the existence of subsidisation affecting the subject goods (see below under section 4.2).

4.2 Amount and Nature of Subsidies

Application

85. NZ Steel notes that the 2012 Australian ADC investigation of HSS from China found a range of subsidisation of 2.2 to 54.8 per cent, with 11.1 per cent being found for Dalian Steelforce. The average subsidy rate was 16.1 per cent. NZ Steel suggests that there is no evidence that a subsidy rate for exports to New Zealand would differ from the rate found for exports to Australia.
86. NZ Steel provides a schedule of 240 subsidies in Appendix Six of its application, which it considers the GOC provides to the Chinese steel industry. The schedule is compiled from

⁷ Decisions made on the basis of the facts available are permissible, in certain circumstances, under Article 12.7 of the SCM Agreement, and covered by section 7(5) of the Act.

information provided by Canadian and Australian domestic industries in their applications to CBSA and the Australian ADC respectively for countervailing duties on rebar in 2014 and 2015. This schedule includes identification of the type of subsidy, the reason for considering that it is specific, and the level of subsidy identified (where available). NZ Steel notes that the relevant investigating authorities determined specific subsidy rates for 91 of the 240 programmes. NZ Steel has calculated a rate of 11.23 per cent based on the totals of single values and the lower rate of any range. The rate based on the total of a single value and the higher end of any range is 115.85 per cent.

87. NZ Steel has compiled a table of the rates found in other jurisdictions, assessed against an estimated export price based on a FY2016 quarterly raw average of value for duty (VFD) amounts, to provide an overall average of 18.5 per cent. The investigations used relate to HSS (Australia), steel reinforcing bar (Australia, Canada), welded steel pipe/steel line pipe (Canada), galvanised wire (Canada), and the 240 programmes derived from the application in Canadian and Australian investigations into rebar. The raw average of the rates identified is 27.5 per cent, or 18.5 per cent for steel pipe goods.
88. An alternative approach is based on the 2016 USDOC investigation into corrosion-resistant steel products from China, resulting in a subsidy level of 38.99 per cent; or the European Commission investigation into hot-rolled flat products, for the same programmes as in the USDOC investigation, which resulted in a subsidy level of 19.90 per cent. Details of the programmes concerned are set out in Appendix Five to the application.
89. NZ Steel also refers to the May 2017 final report of the Australian ADC continuation review 379 into HSS, which identified a dumping margin for Dalian Steelforce, but noted that a separate subsidy margin was not published because it was subsumed into the dumping margin of 18.7 per cent and double-counting of anti-dumping and countervailing duties is not permitted. NZ Steel notes that in Case 379 the Australian ADC found 50 countervailable subsidies being received by Chinese HSS manufacturers.
90. NZ Steel submits that the subsidies at Appendix Six are being granted by Chinese public bodies to the Chinese steel industry, and are conferring a benefit and are therefore countervailable. It is suggested that a subsidy type in one province may be mirrored in other provinces.

MBIE Consideration

91. The information provided by NZ Steel identifies the types of subsidy that could be available for the exporter and estimated levels of subsidy, based on information relating to findings from subsidy investigations undertaken in other jurisdictions.
92. MBIE has reviewed the information contained in Appendixes Five and Six to the application, and the arguments made by the applicant.
93. With regard to the Appendix Five programmes, which also provided the basis for NZ Steel's subsidy claims in its 2016 application regarding galvanised steel coil from China, MBIE notes that it has previously determined that Chinese 'policy banks' are public bodies, but that State-owned Commercial banks (SOCBs) are not; that State-Invested Entities (SIEs) that provide input materials to the producers of the subject goods are not 'public bodies';

and notes that the provision of export buyer's credits is subject to conditions governing the volume of trade involved. However, MBIE has also previously established that a range of tax programmes and grants are subsidies, and considers that the position with regard to the provision of land-use rights and services at less than adequate remuneration will depend on the facts and circumstances of the case. MBIE has also previously found that a number of tax-related programmes were terminated some years ago.

94. With regard to the programmes listed in Appendix Six, MBIE notes that of the 240 programmes listed, it has identified 122 as being regionally specific, while 116 were based on the use of the best information available, frequently using AFA. MBIE will need to carefully examine the extent to which any of these programmes are applicable to Chinese manufacturers of HSS exported to New Zealand in any investigation. Of the 240 programmes, 163 involved the provision of grants and 63 the foregoing of revenue by the government, again with a high proportion involving use of AFA. Such programmes may be applicable to manufacturers of HSS exported to New Zealand, but their applicability in terms of the kinds of entities entitled to receive such benefits and whether the programmes are still in existence, will need to be carefully examined in any investigation.
95. MBIE notes the points made by the GOC regarding the findings in the Australian ADC expiry review, and also notes NZ Steel's claim that the Dalian Steelforce subsidy margin from the provision of inputs is accommodated in the treatment of costs in the constructed normal value in the related dumping investigation. MBIE has been unable to confirm NZ Steel's claim from the records of the Australian ADC review. MBIE also notes that while Dalian Steelforce is a significant exporter to New Zealand, there are other exporters which may be receiving the subsidies identified in the application.

4.3 Conclusion on Subsidisation

96. NZ Steel has compiled a list of subsidies that it considers to be benefiting the Chinese exporter of HSS to New Zealand identified in its application. The information comes from United States, Canadian and Australian subsidy investigations into steel products from China.
97. MBIE notes that it is possible that many of the programmes identified by the applicant will not be applicable to Chinese manufacturers exporting HSS to New Zealand, but that the applicability and level of any subsidies can be established only through investigation. Accordingly, MBIE is satisfied that the applicant has supplied information that is reasonably available to it, on the existence, amount and nature of the subsidisation by the GOC of HSS manufactured China and exported to New Zealand. Therefore, the application meets the necessary requirements of section 10(2) of the Act and Article 11.2 of the SCM Agreement.
98. MBIE also considers that the relevant sources of information, assumptions and adjustments made by the applicant in estimating the existence, amount and nature of the subsidisation, have been made on a reasonable basis. Accordingly, MBIE is satisfied that, after examining the accuracy and adequacy of the evidence provided by the applicant, there is sufficient evidence of subsidisation on which to base a decision on the initiation of an investigation.

4.4 Levels of Subsidy and Imports

99. Section 10A of the Act provides that the chief executive must start an investigation on being satisfied that there is sufficient evidence in an application of subsidisation.
100. Section 11 of the Act reflects Article 11.9 of the SCM Agreement, which provides that an application shall be rejected and an investigation terminated promptly as soon as the authorities are satisfied that there is not sufficient evidence of subsidisation or injury to justify proceeding with the case. There shall be immediate termination in cases where the amount of a subsidy is *de minimis*, or where the volume of allegedly subsidised imports, actual or potential, is negligible.
101. Article 27.10 provides that in the case of investigations relating to products from a developing country Member, the *de minimis* level is 2 per cent of its export price, calculated on a per unit basis. China is a developing country in this context.
102. NZ Steel has calculated an average subsidy rate of 18.50 per cent of export price, on the basis outlined in the application. This estimate exceeds the *de minimis* level in the Agreement.
103. Article 27.10 also provides that in the case of investigations relating to products from a developing country Member (which includes China), the investigation is to be terminated as soon as the authorities determine that the volume of allegedly subsidised imports represents less than 4 per cent of the total imports of the like product.
104. Table 2.1 above sets out Customs data for the tariff items and statistical keys covering the subject goods, for the year ended 30 June 2017. This information has not been adjusted to account for any clarification of the goods entering under the relevant tariff classifications. Imports from China made up 68 per cent of total imports in FY2017. On this basis, MBIE considers that Chinese import volumes are not negligible under the SCM Agreement. Whether or not they are causing material injury to the domestic industry is considered in section 5 below.

5. Evidence of Material Injury

105. Under sections 10(2) and 10(3) of the Act, a properly documented application for countervailing duties must contain evidence of injury to a New Zealand industry caused by allegedly subsidised imports before an investigation may be initiated. In the present case, NZ Steel meets the requirements to be considered as the domestic industry.
106. Section 8(1) of the Act sets out the matters that must be examined when determining whether or not material injury to an industry is being caused by means of the subsidisation of goods imported into New Zealand, while section 8(2) sets out in more detail the matters that MBIE must have regard to in any investigation to establish if material injury exists. In determining whether the evidence provided by NZ Steel is sufficient in terms of section 10(2), MBIE therefore takes guidance from these provisions of section 8 of the Act.
107. Section 8(1) of the Act provides:
- 8. Material injury to industry—(1) In determining for the purposes of this Act whether or not any material injury to an industry has been or is being caused or is threatened or whether or not the establishment of an industry has been or is being materially retarded by means of the dumping or subsidisation of goods imported or intended to be imported into New Zealand from another country, the chief executive shall examine—*
- (a) the volume of imports of the dumped or subsidised goods; and*
 - (b) the effect of the dumped or subsidised goods on prices in New Zealand for like goods; and*
 - (c) the consequent impact of the dumped or subsidised goods on the relevant New Zealand industry.*

5.1 Basis for Injury Analysis

NZ Steel Application

108. In its application as it relates to injury, NZ Steel provides evidence of price undercutting, then discusses the analysis of material injury, including the use of coincidence or counterfactual analysis.
109. Throughout its application, NZ Steel emphasises that because of the approach it has taken to maintaining sales by meeting price competition, the injurious effects of allegedly subsidised imports are manifested through the price effects, and the levels of injury are best addressed through adopting a counterfactual approach which looks at the position the industry would be in but for the subsidisation. As a consequence, NZ Steel focuses on the evolution of unit prices and per unit levels of revenue and profits as key indicators of injury.
110. NZ Steel argues that the counterfactual approach is best suited to the circumstances of the case, and provides evidence to support its claims that:

- Injury is based upon selling price, which is mathematically and dynamically removed from sales revenue or EBIT, and the conditions of competition in the New Zealand market require a close focus on the price nexus, not on matters downstream.
- It is inappropriate to focus on one element, such as absolute profit, which is two points removed from the price nexus, out of the sixteen referred to in section 8(2) of the Act, for decisive guidance on economic impact.
- A very closely aligned case in Australia provides useful guidance for counterfactual analysis focusing on selling price.
- Coincidence analysis is at best a screening tool but its use is not required by the relevant treaties, and sole reliance on coincidence analysis may result in an incomplete assessment of material injury in the circumstances of the New Zealand HSS industry.
- The use of coincidence/trend analysis in safeguards investigations is not a sound basis to support its use in dumping and subsidisation investigations.
- On the basis of the supporting information and arguments provided by NZ Steel the counterfactual analysis is the most suitable in the circumstances of the New Zealand HSS industry, and has been used previously by MBIE.

MBIE Practice

111. MBIE interprets section 8(1) of the Act to mean that injury is to be considered in the context of the impact on the industry arising from the volume of the allegedly subsidised goods, their effect on prices, and the consequent impact on the industry. This is consistent with Article 3 of the SCM Agreement. A finding of injury does not require that both volume and price effects should have a consequent impact on the industry, but that impact must be attributable to at least one of volume or price effects, which also means that for injury to be determined any volume and/or price effects must result in adverse consequences for the industry.
112. The Act goes on to set out a number of factors and indices which the chief executive shall have regard to, although noting that this is without limitation as to the matters the chief executive may consider. These factors and indices include:
- The extent to which there has been or is likely to be a significant increase in the volume of subsidised goods, either in absolute terms or relative to production or consumption in New Zealand;
 - The extent to which the prices of subsidised goods represent significant price undercutting in relation to prices in New Zealand;
 - The extent to which the effect of the subsidised 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 subsidised 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.

113. What this means for any analysis of claims of injury is that price undercutting on its own is not sufficient evidence of injury, since the material injury is manifested in the consequent impact on the industry of any volume and price effects of subsidised goods. Also, MBIE is required to examine and report on all of the factors and indices set out in the Act and the extent to which they are attributable to the subsidisation of imports.

Basis for Analysis

114. In applying the requirements of section 10 of the Act when determining whether there is sufficient evidence that the New Zealand industry has suffered material injury, MBIE normally compares data for an injury factor against the data in a period unaffected by subsidisation (a coincidence analysis). This approach takes account of the clear wording of the Act in section 8(2)(d)(i) which refers to “actual and potential decline” 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 subsidised 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 subsidisation, requiring inferences to be drawn as to the counterfactual situation.
115. MBIE notes that a counterfactual analysis needs to be considered in light of the whole of the available evidence. Unrealised sales revenue and profit is unlikely, by itself, to constitute material injury in an industry where profits are increasing. However, the application can be evaluated for evidence of injury to the industry caused by unrealised sales revenue and profit, in terms of the factors relating to economic impact of the allegedly subsidised goods as set out in section 8(2)(d) of the Act. A counterfactual analysis also needs to take particular care in assessing the effect of factors other than the allegedly dumped or subsidised goods that might be injuring the industry. It should be noted that the WTO Appellate Body findings relating to the methodology to be used in an injury investigation in *Mexico – Anti-Dumping Measures on Rice*,⁸ agreed that the WTO Agreement on Implementation of Article VI of the GATT (the AD Agreement) did not prescribe a methodology that must be followed by an investigating authority in conducting an injury analysis and noted, “Thus, when, in an investigating authority's methodology, a determination rests upon assumptions, these assumptions should be derived as reasonable inferences from a credible basis of facts, and should be sufficiently explained so that their objectivity and credibility can be verified.”
116. The injury analysis outlined in this section of this report has been conducted primarily on the basis of a ‘coincidence’ analysis where the industry’s performance is analysed over

⁸ *Mexico – Definitive Anti-dumping Measures on Beef and Rice – Complaint with respect to Rice – AB-2005-6 – Report of the Appellate Body*, WT/DS295/AB/R, p.69.

time. Where injury is not apparent from such an analysis, or where the applicant has claimed that a counterfactual analysis should be used, MBIE can have regard to the position the industry would have been in but for the subsidisation, but in doing so would carefully examine the assumptions made. In undertaking this assessment MBIE needs to consider the influence of factors other than the subsidised goods in preventing price expectations from being achieved, as well as the level of subsidisation established. The assumptions derived as reasonable inferences from a credible basis of facts need to be identified and explained.

Cumulation of the Effects of Dumping and Subsidisation

117. NZ Steel's injury evidence relates to the effects of both dumping and subsidisation (unfairly traded goods), without seeking to make any differentiation between those effects.
118. On the face of it, sections 8, 10 and 10A of the Act do not appear to require any differentiation between the dumping and subsidisation of goods when assessing injury to a domestic industry. However, while both the SCM Agreement and the AD Agreement provide for the cumulation of the effects of dumping or subsidisation, as the case may be, from more than one country, cross-cumulation of the effects of allegedly dumped and subsidised goods is not permitted. This position was recently confirmed by the WTO Appellate Body in *US – CVDs on Carbon Steel Flat Products from India*⁹ (DS436).
119. Article VI of GATT 1994 requires, "No product of the territory any contracting party imported into the territory of any other contracting party shall be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping and export subsidisation."
120. In investigating concurrent claims of subsidisation and dumping relating to the same goods from the same country at the same time, MBIE must be careful to ensure that the requirements of GATT 1994 and the SCM and AD Agreements are met. It also means that in assessing any application involving such claims which might lead to an investigation, MBIE should ensure that, to the extent reasonable, it gives due weight to these requirements.
121. In this context, it is relevant to note that the Australian ADC's Final Report¹⁰ in its investigation of subsidisation of *Steel Reinforcing Bar from China* noted that isolating the individual effects of dumping and subsidisation was very difficult. It also noted that trying to apportion some of this injury arising from a single set of price and volume effects to the subsidisation as opposed to the dumping would require the Australian ADC to make a great deal of assumptions that would be arbitrary and imprecise. The Australian ADC concluded that it could not isolate the injury caused by subsidisation from the effect of it being dumped on to the Australian market, nor from the effects of other possible causes. The

⁹ WT/DS436/AB/R.

¹⁰ *Final Report No 322*, 19 September 2016, Australian ADC.

Australian ADC concluded that it could not be satisfied that in and of itself the subsidisation was causing injury to the domestic industry and whether the injury, if any, was material. It was therefore recommended that no countervailing duties be imposed.

122. With regard to the double-counting of the 'rates' of dumping and subsidisation, the Australian ADC, in its report referred to above, noted that the levels of subsidy in the Less Than Adequate Remuneration programmes considered in the investigation were effectively offset by the dumping margins calculated in the investigation into dumping of the same goods, and the level of countervailable subsidy would need to have been adjusted to remove the double-counting. This would have led to significantly reduced levels of countervailable subsidies, which, in the case of some cooperating exporters, would have been less than one per cent (which is *de minimis*).

5.2 Import Volume Effects

123. For the purposes of this analysis, it is assumed, based on the analysis outlined in section 4 of this Report, that all imports from China are subsidised, and that the level of subsidisation is more than *de minimis*.
124. In its application NZ Steel notes that there was significant difficulty in obtaining correct import volume and value information, including miscoding of entries. The information provided was based on the four tariff keys covering imports up to December 2016, as identified in paragraph 27 above and the revised tariff keys for the first two quarters of calendar 2017. NZ Steel suggests that if correctly coded, the figures up to December 2016 are likely to be subject goods, but not all subject goods are likely to be covered by these tariff keys. This likelihood of miscoding was exacerbated by the 2017 changes. NZ Steel undertook a process to seek to clarify the revised coverage and has identified 22 tariff keys which are most likely to cover the subject goods in 2017. NZ Steel notes that the unit values for imports from China may be erroneously high.
125. NZ Steel's estimates of imports are set out in Table 5.1 below. NZ Steel notes that other exporters to New Zealand have included a wide range of countries but the volumes remain small compared with China and Malaysia. The figures are not dissimilar to those obtained by MBIE from Customs data.





Table 5.1: NZ Steel estimation of New Zealand import volumes by country (FY, tonnes)

	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017
China	6912	8657	8146	10739	9987	10979
Malaysia	279	292	359	409	237	703
Other	11440	9209	13762	5287	3744	4245
Total	18631	18158	22267	16435	13968	15927

126. Using Customs data, MBIE has identified imports from China, in absolute terms and in relation to production and consumption in New Zealand, as shown in Table 5.2 below.

**Table 5.2: HSS imports by origin: Customs data
(financial years, tonnes)**

	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017
Tonnes:						
China	6861	8784	8088	10673	9858	11075
Other	11706	9510	14113	5686	3996	5333
Total imports	18567	18294	22201	16360	13854	16408
NZ Steel sales	1000	1015	1045	947	792	835
NZ market	1000	1002	1109	919	772	856
Change on previous year - tonnes:						
China		1923	-696	2586	-815	1217
Other imports		-2204	4531	-8477	-1517	1033
NZ Steel sales						
NZ market						
China and Malaysia imports as percentage of:						
NZ Steel sales	1000	1261	1128	1642	1815	1933
NZ market	1000	1277	1063	1692	1860	1886
<i>To ensure confidentiality of commercially-sensitive information figures have been indexed with FY2012=1000.</i>						

127. The tables above show that in **absolute** terms the volume of imports from China has generally increased over the period, with a sharp increase in FY2015, followed by a decrease and a subsequent increase in FY2017 to even higher levels. Other imports have decreased significantly over the period, primarily as a result of decreases in imports from Australia.
128. Relative to New Zealand **production**, imports from China have increased steadily from FY2012 to FY2017. In FY2017, Chinese imports represented  per cent of domestic production as opposed to  per cent in FY2011.
129. As a percentage of domestic **consumption** (the New Zealand market), imports from China have followed a similar pattern. Chinese imports increased significantly over the full period from FY2012 to FY2017, with some fluctuations, reflecting primarily the changes in imports from Australia. In FY2017, Chinese imports represented  per cent of domestic consumption as opposed to  per cent in FY2011.
130. On the basis of this analysis, there is sufficient evidence to support a conclusion that there has been a significant increase in the volume of imports of allegedly subsidised goods from China in absolute terms and in relation to production and consumption in New Zealand.

5.3 Price Effects

131. In its application, NZ Steel explains that its pricing strategy is based on maintaining market share by responding to prevailing HSS price offers and import product flow. NZ Steel pricing to the merchant distributor and end user market is based on import parity pricing and is reviewed monthly to ensure competitiveness. A premium is applied over import pricing to reflect the benefits of local supply and NZ Steel's market offer, including short lead times,

order flexibility, small order item quantities, product quality, technical service and customer service, and New Zealand currency pricing.

5.3.1 Price Undercutting

132. Price undercutting refers to the extent to which the prices of the subject goods are lower than prices in New Zealand for like goods of New Zealand producers. Prices are compared at the point that the imported goods first compete with the goods made in New Zealand. Price undercutting is not in itself a determinant of the existence or extent of injury, ie the margin of price undercutting is not a measure of the extent of the economic impact on the industry. That impact is to be measured, *inter alia*, in terms of the factors set out in section 8(2)(d) of the Act, outlined in section 5.4 of this Report.
133. In its application NZ Steel notes that the level of trade at which imported HSS first competes with domestically-produced HSS has been considered by MBIE as the relevant level of trade for the purpose of assessing price undercutting. The relevant price levels are ex-wharf for imports and ex-factory for NZ Steel's products (i.e. its free-into-store (FIS) price less freight).
134. NZ Steel uses quarterly export statistics sourced from Statistics New Zealand (Statistics NZ) for the tariff items and statistical keys identified in section 2.1 above to estimate average cost, insurance and freight (CIF) prices from China. Estimated costs from China to the ex-wharf level in New Zealand, sourced from a third-party industry specialist, were then added to the CIF values to derive estimated ex-wharf values. These costs relate to New Zealand destination costs. NZ Steel then compares these ex-wharf prices with its ex-factory domestic prices to gauge the extent of any price undercutting.
135. Using the above information, the following table based on NZ Steel information compares the average ex-wharf prices of HSS from China with NZ Steel's average ex-factory prices to assess the extent of any price undercutting. The undercutting is measured as a percentage of NZ Steel's average ex-factory price.

**Table 5.3: Price Undercutting - NZ Steel data
(NZD/MT, calendar quarters)**

	China ex-wharf	NZ Steel ex-works	Difference	Undercutting
2015 Q3				
2015 Q4				No undercutting
2016 Q1				
2016 Q2				
2016 Q3				
2016 Q4				
2017 Q1				No undercutting
2017 Q2				

To ensure confidentiality commercially-sensitive information has been redacted and summarised below.

136. NZ Steel has noted that the figures for the 2017 quarters reflect abnormally lower ex-works values for NZ Steel because [REDACTED] higher freight costs to South

Island buyers resulting from the Kaikōura earthquake in November 2016. Also, NZ Steel considers that the CIF prices for China for the same two quarters are unusually high and are believed to be incorrect. NZ Steel considers that these two factors have contributed to lower price undercutting margins in 2017.

137. The following table was prepared by MBIE on the basis of Customs data for the tariff items listed in section 2.1 (but excluding the Ex items listed in paragraph 32); using a CIF value in the equation; and accepting NZ Steel's figures for destination costs.

**Table 5.4: Price Undercutting - Customs data
(Calendar quarters, NZD/MT, %)**

	China ex-wharf	NZ Steel ex-works	Difference	Undercutting
2015 Q3				
2015 Q4				No undercutting
2016 Q1				
2016 Q2				
2016 Q3				
2016 Q4				
2017 Q1				No undercutting
2017 Q2				No undercutting

To ensure confidentiality commercially-sensitive information has been redacted and summarised below.

138. Tables 5.3 and 5.4 above show prima facie evidence that for some of the period examined, the average price of HSS imported from China undercut the average selling price of HSS produced by NZ Steel. The information suggests that there was no price undercutting in the last two quarters of FY2017, but in view of the changes in tariff keys the position will need to be clarified in any investigation.
139. There is sufficient evidence of some price undercutting during the period examined, but in more recent quarters the level is not significant.

5.3.2 Price Depression

140. Price depression occurs where prices achieved by the New Zealand manufacturers are lower than those achieved in a period unaffected by allegedly dumped or subsidised goods. Price depression is not in itself a determinant of the existence or extent of injury. There must be a consequent impact on the industry, measured primarily in terms of the factors set out in section 8(2)(d) of the Act.
141. NZ Steel submits that it has suffered price undercutting and price depression at the level of trade at which it sells.
142. NZ Steel has provided financial information to enable MBIE to assess whether it has suffered price depression. The following table shows NZ Steel's average domestic selling prices for HSS from FY2011 to FY2017, with index values based on FY2011.

**Table 5.5: Price Depression
(NZD per tonne)**

	Revenue NZD/MT	Index 2011=1000
FY2011		1000
FY2012		991
FY2013		948
FY2014		920
FY2015		870
FY2016		779
FY2017		779

*To ensure confidentiality
commercially-sensitive information
has been redacted and summarised
below.*

143. Table 5.5 shows that NZ Steel's average selling price decreased over the period. By FY2016, NZ Steel's average selling price had dropped to 78 per cent of its FY2011 average selling price, but did not fall further in FY2017.
144. There is sufficient evidence that NZ Steel has experienced price depression, in that average prices have decreased significantly over the period.

5.3.3 Price Suppression

145. Price suppression occurs when New Zealand producers are unable to increase prices, for example, to recover cost increases. Price suppression is not in itself a determinant of the existence or extent of injury. There must be a consequent impact on the industry, measured in terms of the factors set out in section 8(2)(d) of the Act.
146. MBIE has compared NZ Steel's total costs as a percentage of sales revenue from FY2011 to FY2017. The following table shows the resulting calculations:

**Table 5.6: Price Suppression
(NZD per tonne)**

	Sales revenue NZD/MT	Cost of production NZD/MT	Cost of production as % of Revenue (Indexed)
FY2011			1000
FY2012			1019
FY2013			1055
FY2014			1059
FY2015			1237
FY2016			1310
FY2017			1310

To ensure confidentiality commercially-sensitive information has been redacted and summarised below.

147. Table 5.6 shows that NZ Steel's total costs per unit fluctuated over the period but did not increase significantly. However, average sales revenue has decreased significantly, and costs as a percentage of sales revenue per unit increased significantly over the period to FY2016, and especially between FY2014 and FY2015, but did not decline further in FY2017.
148. There is sufficient evidence that NZ Steel has experienced price suppression to the extent that average unit revenue did not reflect the extent of the same margins over costs per unit achieved in the earlier part of the period being examined.

5.3.4 Conclusion on Price Effects

149. There is evidence that the average prices of HSS imports from China have undercut NZ Steel's average selling prices for some of the period examined, and that there is price depression and price suppression. MBIE is satisfied that NZ Steel has provided sufficient evidence, for the purpose of initiation, that the allegedly subsidised Chinese imports may be causing these price effects.
150. As noted earlier, the price effects examined above are not in themselves a determinant of injury. There must be a consequent impact on the industry, in particular when measured, *inter alia*, in terms of the factors and indices set out in section 8(2)(d) of the Act. Injury caused to the New Zealand industry is assessed in terms of the economic impact in the following section of the report.

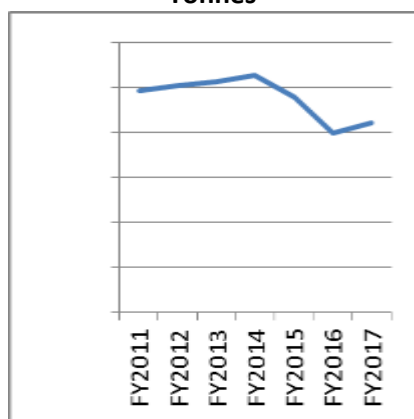
5.4 Consequent Impact

5.4.1 Sales Volume and Sales Revenue

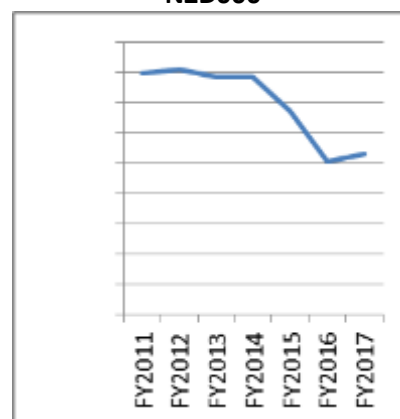
151. Movements in sales revenue can reflect changes in volume and prices of goods sold. Allegedly subsidised imports can affect both of these factors through increased supply of goods to the market and through price competition.

152. NZ Steel provides sales volume and sales revenue information covering its 2010 to 2017 financial years.
153. NZ Steel submits that its strategy is to retain volume by competing on price (plus other assured quality and service elements). Injury effects are therefore reflected in sales revenue decreases and loss of profits, rather than in volume effects.
154. The following charts illustrate the sales volume and sales revenue information provided by NZ Steel.

**Chart 5.1: Sales Volume
Tonnes**



**Chart 5.2: Sales Revenue
NZD000**



155. The information clearly shows that NZ Steel's annual sales volumes and revenues declined over the whole period, following a slight increase in volumes between FY2011 and FY2014, but with static sales revenue over this period. Both volume and value of sales declined sharply from FY2014 before recording some recovery in FY2017.
156. There is sufficient evidence that NZ Steel has experienced a decline in sales volume and sales revenue over the period of investigation.

5.4.2 Market Share

157. Analyses of market share must consider changes in the size of the total market. A decline in the domestic industry's market share when the total market is expanding will not necessarily indicate that material injury is being caused, particularly if the domestic industry's sales are also growing, because the New Zealand industry is not entitled to a particular market share.
158. NZ Steel provides market share information (total imports from all sources and domestic sales volumes from NZ Steel and other New Zealand producers). The information was shown in the form of a chart, and appears to confirm that there is little change in the market share held by New Zealand producers. NZ Steel notes that the material injury claims in its application relate to the downward pressure on NZ Steel's selling prices from the growing share held by Chinese (and Malaysian) HSS goods and not on market share-related matters.

159. The following charts illustrate market share information for HSS from FY2012 to FY2017 using Customs data and NZ Steel sales (information on sales by other New Zealand producers across the whole period reviewed was not included in the application).

Chart 5.3 Market Share (tonnes)

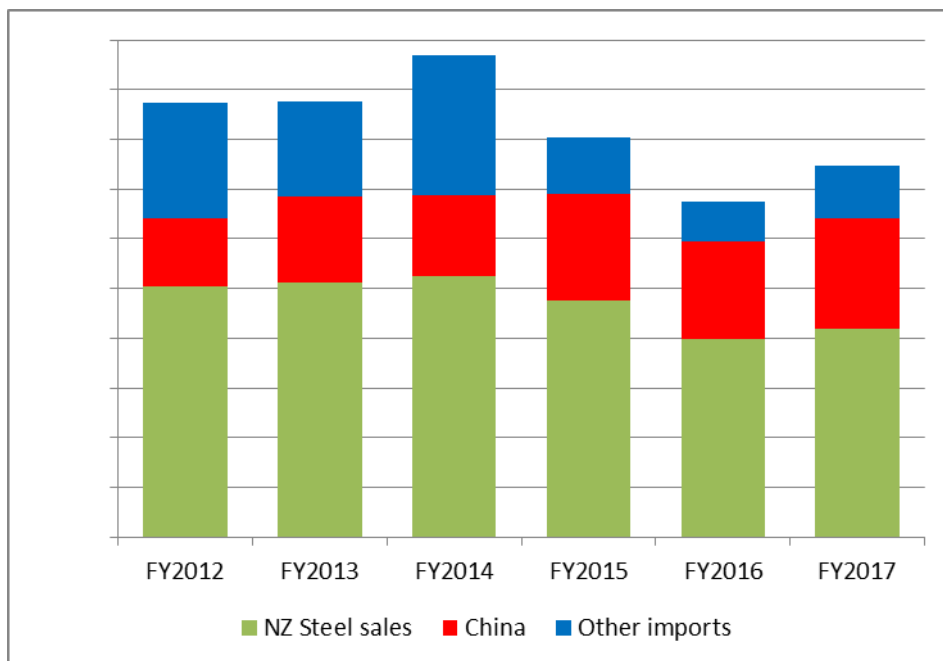
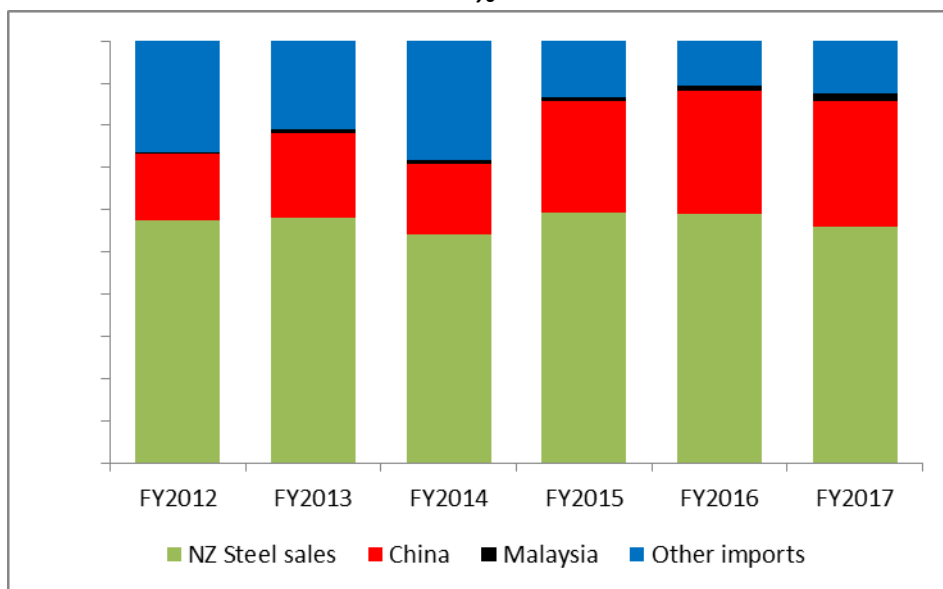


Chart 5.4: Market Share (%)



160. The charts show that the domestic industry’s market share fluctuated during the period FY2012-FY2017 within a range of [redacted]. The decrease in market share in FY2014 reflected an increase in imports from countries other than China. The Chinese market share nearly doubled over the period, as a result of a significant decrease in imports from Australia.

161. It cannot be concluded that there is a significant decline in market share that can be attributed to allegedly subsidised imports of HSS from China.

5.4.3 Profits

162. Dumped or subsidised imports can affect gross profit and net profit via the impact on sales prices and volumes.
163. NZ Steel claims that it has suffered material injury against profit as a result of the presence in the New Zealand market of unfairly traded imports, induced in particular by price suppression. NZ Steel argues that its unrealised higher selling price is necessarily reflected in the economic consequence of foregone EBIT. NZ Steel also notes that material injury arises from significantly lower per unit profitability in FY2016 and FY2017 compared with previous years.
164. To illustrate the extent of the injury, NZ Steel notes that EBIT in FY2017 is adverse relative to FY2011 and FY2012 by NZD [REDACTED] million and NZD [REDACTED] million respectively, established by applying the differential in EBIT to the volume of FY2017 sales. NZ Steel uses a similar approach to identify adverse effects on gross profits.
165. The following table shows NZ Steel's EBIT figures from FY2011 to FY2017.

**Table 5.7: Profit and Profitability
(NZD000, %)**

	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017
Sales revenue		102%	102%	103%	91%	84%	105%
EBIT		83%	52%	81%	-352%	111%	100%
EBIT/MT		81%	51%	78%	-388%	132%	95%
EBIT % of revenue		81%	51%	78%	-388%	132%	95%

To ensure the confidentiality of commercially sensitive information figures have been replaced with percentages changes from the previous year and summarised below

166. All measures of profit and profitability declined significantly over the period.
167. MBIE is satisfied that there is sufficient evidence that NZ Steel has experienced a significant decline in profit, as measured by EBIT, and in profitability.

5.4.4 Other Economic Impacts

168. NZ Steel's application lists the other factors referred to in section 8(2)(d) of the Act, with comments on whether or not the factors are affected by allegedly subsidised imports.

Productivity

169. Productivity is the relationship between goods produced and the inputs required to manufacture those goods. Productivity is affected by output/sales and capacity utilisation levels.
170. NZ Steel notes that it does not consider productivity to be relevant to the case, and any injury to productivity will be less than the effects of unfairly traded Chinese goods on HSS selling price and profitability.


Return on investment (ROI)

171. Return on investment measures profit against the value of the investment in a business. Changes in return in investment may impact the ability to retain current investment or attract new investment. Declines in return on investment can result from a decline in profit or an increase in the level of investment within the business.
172. NZ Steel claims that it has suffered an economic impact in the form of a diminished return on investments, as evidenced by the level of EBIT expressed as a return on assets.

**Table 5.8: Return on Investment
(NZD000, %)**

	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017
EBIT		83%	52%	81%	-352%	111%	100%
Fixed assets		93%	110%	95%	90%	91%	98%
EBIT % Assets		89%	47%	85%	-392%	121%	102%

To ensure the confidentiality of commercially sensitive information figures have been replaced with percentages changes from the previous year and summarised below

173. NZ Steel notes that an alternative assessment could incorporate the undercutting suppressive effect, which would indicate a  per cent improvement in ROI compared with the actual outcome.
174. MBIE notes that there is sufficient evidence that NZ Steel has experienced a significant decline in return on investments.

Utilisation of production capacity

175. The utilisation of production capacity reflects changes in production volumes or changes in capacity. A decline in production volumes will normally lead to a higher cost per unit due to increased fixed overheads per unit. This will lead to a decrease in profit level, unless offsetting savings are found elsewhere.
176. NZ Steel notes that it has not pointed to material injury related to production capacity, and does not consider it relevant to the case, and any injury to production capacity will be less than the effects of unfairly trade Chinese goods on HSS selling price and profitability.

Factors affecting domestic prices

177. The Act lists this matter as one of the various factors and indices to which the chief executive must have regard in assessing the economic impact of subsidised goods on the industry. MBIE examines this factor in the context of the economic impact of subsidised goods on the industry.
178. NZ Steel considers that the primary factor affecting domestic prices is the price of the unfairly traded imports from China (and Malaysia), which undercut NZ Steel prices, causing price depression and price suppression. NZ Steel notes that China and Malaysia have collectively about a 75 per cent share of imports, with the next largest share being from Australia. The average CIF price of Australian goods is significantly higher than that of goods from China and Malaysia. Other countries, including Korea, Thailand and the United

- Arab Emirates, have small import shares, and have also been low-priced. NZ Steel identifies the market pressure on its prices as coming from China and Malaysia.
179. MBIE's consideration of the price effects of imports is summarised above in section 5.3. The requirements in relation to this factor go more broadly to encompass NZ Steel's pricing policy, and the New Zealand and global market situations.
180. NZ Steel has outlined its import parity pricing policy as being based on [REDACTED] reviews of market offer feedback from New Zealand distributors of imported products, and pricing from international steel review publications and from BlueScope overseas offices. Prices are converted to NZD FIS levels by adding freight charges, port service charges and handling costs, import duty where applicable, and domestic cartage to distributor's store to determine a nominal FIS price. A premium is then added to reflect the benefits of local supply, and the outcome is an NZ Steel distributor price, less any rebates, to be compared with the nominal FIS import price, and a market price adjustment is made if necessary to reflect any change in import pricing, or any movement in exchange rates.
181. Other matters affecting domestic prices include the impact of events in New Zealand, such as the Kaikōura earthquake, which is identified in the application as having affected NZ Steel's sales in the South Island. The international supply of steel and pressures on prices globally may also be relevant.
182. MBIE notes that in light of NZ Steel's import parity pricing policy, prices of imports clearly affect domestic prices, and such effects and the impact of domestic and global factors influencing prices will need to be addressed in any investigation.

Magnitude of the margin of unfair trade

183. MBIE notes that section 8(2)(d)(iii) of the Act refers to the magnitude of the margin of dumping as a factor the chief executive is to have regard to, but there is no similar requirement in relation to the level of subsidisation. Nor does the SCM Agreement include such a requirement. In these circumstances, this factor is irrelevant to a consideration of an application for countervailing duties.

Cash Flow

184. Cash flow is the total amount of money being transferred into and out of a business, especially as it affects liquidity, and provides an indication of the ability of producers to self-finance their activities.
185. NZ Steel has claimed that it has suffered a material-level economic impact from unfairly traded imports as diminished cash flow as a result of the presence in the New Zealand market of unfairly traded goods. NZ Steel attributes the effects on cash flow to induced price suppression as a result of unrealised higher prices.
186. NZ Steel provides information on cash flow as shown in the table 5.9 below.

**Table 5.9: Cash flow
NZD000**

	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017
Cash flow	1000	863	504	505	-904	-1017	-1052
Change on previous year							

187. The information provided by NZ Steel indicates that cash flow [REDACTED] for most of the period, with some recovery in FY2014 but a very significant reverse in FY2015.

188. MBIE notes that there is sufficient evidence that NZ Steel has experienced a significant negative effect on cash flow, but any investigation will need to examine the basis for the figures provided.

Inventories

189. NZ Steel does not point to an adverse economic impact related to inventory.

Employment and Wages

190. NZ Steel does not point to material-scale economic impact related to employment and wages.

Growth and Ability to Raise Capital and Investments

191. NZ Steel observes that the availability of unfairly traded HSS on the New Zealand market has adversely affected growth prospects for its business and for any requests that NZ Steel might make to its owners for more capital. It is suggested that the unremedied degree of economic damage from unfairly traded imports is inevitably considered by NZ Steel's parent when growth and further investment in New Zealand are being considered. NZ Steel notes that its potential source of growth funding has a choice to direct capital to geographies where unfairly traded imports of HSS are being trade-remedied.

192. No specific evidence has been provided in support of these observations.

5.4.5 Conclusion on Consequent Impact

193. MBIE is satisfied that there is sufficient evidence that:

- NZ Steel has experienced a decline in sales volume and sales revenue over the period of investigation.
- There is not a significant decline in market share that can be attributed to imports from China.
- NZ Steel has experienced a significant decline in profit, as measured by EBIT, and in profitability.
- NZ Steel has experienced a significant decline in return on investments.
- In light of NZ Steel's import parity pricing policy, prices of imports clearly affect domestic prices.
- NZ Steel has experienced a significant negative effect on cash flow.

194. MBIE notes that NZ Steel is not claiming that it has suffered from an actual or potential decline in productivity or utilisation of production capacity.
195. MBIE notes that NZ Steel is not claiming that there are actual or potential negative effects on inventories, employment and wages, and has provided no evidence to support any conclusions on growth, the ability to raise capital and investments.
196. Overall, MBIE is satisfied that there is sufficient evidence that there has been a consequent impact on NZ Steel in relation to a number of injury factors arising from the volume and price effects of allegedly subsidised imports of HSS from China.

5.5 Conclusion on Material Injury

197. Material injury is not defined in either the Act or the SCM Agreement, but rather is the level of injury which can be demonstrated by an objective and unbiased investigating authority on the basis of an assessment of the factors set out in section 8 of the Act, and in the context of the circumstances of the industry concerned.

Import Volumes

198. There is sufficient evidence to support a conclusion that there has been a significant increase in the volume of imports of allegedly subsidised goods from China in absolute terms and in relation to production and consumption in New Zealand.

Price Effects

199. There is evidence that the average prices of allegedly subsidised HSS imports from China have undercut NZ Steel's average selling prices for some of the period examined, and that there is price depression and price suppression. MBIE is satisfied that NZ Steel has provided sufficient evidence, for the purpose of initiation, that the allegedly subsidised imports of HSS from China may be causing these price effects.

Economic Impact

200. MBIE is satisfied that there is sufficient evidence that there has been a consequent impact on NZ Steel in relation to a number of injury factors arising from the volume and price effects of allegedly subsidised imports of HSS from China. These injury factors include a decline in sales volume and sales revenue, significant declines in profits and return on investments and a negative effect on cash flow.

Conclusion

201. On the basis that there is sufficient evidence, for the purpose of initiation, that imports of HSS from China are subsidised, then with regard to the matters specified in the Act relating to the volume of imports of allegedly subsidised goods and the effect of allegedly subsidised goods on prices in New Zealand for like goods:
- there is sufficient evidence to support a conclusion that there has been a significant increase in imports of allegedly subsidised goods in absolute terms and in relation to production or consumption in New Zealand

- there is sufficient evidence that allegedly subsidised imports of HSS from China have been undercutting prices of NZ Steel
 - there is sufficient evidence that the effect of the allegedly subsidised imports of HSS from China is to depress and suppress prices for like goods in New Zealand
 - there is sufficient evidence that there has been a consequent impact on the New Zealand industry in terms of the matters that the chief executive is required to have regard to.
202. On the basis of its analysis, MBIE concludes that for the purposes of initiation there is sufficient evidence that the domestic industry has been materially injured by allegedly subsidised imports of HSS from China.

6. Evidence of Causal Link

203. Section 10A(a)(ii)(A) of the Act requires that sufficient evidence be provided that material injury **is caused by** the allegedly subsidised goods in order for an investigation to be initiated. This does not preclude any other factor(s) also being a cause of material injury, and section 8(2)(e) of the Act identifies those other factors that the chief executive shall have regard to in assessing injury. This reflects the requirements of Articles 11.2 and 15.5 of the SCM Agreement.
204. The assessment of the injury factors in section 5 above includes discussion of the causal relationships of allegedly subsidised imports on volume and price effects and their consequent impact on the domestic industry, as set out in the application and in MBIE's examination of the adequacy and accuracy of the claims made.
205. MBIE has also examined factors other than the subsidised goods that have injured or are injuring the industry.
206. In its application, NZ Steel's discussion of the causal link focussed on the price effects of the allegedly subsidised imports of HSS from China. NZ Steel illustrated this link with mathematical calculations to show the relationship, including evidence of a lagged effect. NZ Steel noted that some price decline could be attributed to world price changes, but the facts showed that NZ Steel was forced to respond to the significant price undercutting of Chinese and Malaysian goods, which caused adverse NZ Steel economic performance.

6.1 Subsidised Imports

207. As described in the preceding sections of this report, MBIE has examined the claims made by NZ Steel with regard to the volume and price effects of allegedly subsidised imports and the consequent impact on the domestic industry, including the extent and nature of any such effects and the causal relationship with the allegedly subsidised imports of HSS from China.
208. MBIE has identified that sufficient evidence has been provided, for initiation purpose, that there has been an increase in imports of HSS from China, and that price undercutting by allegedly subsidised imports from China has contributed to price depression and price suppression being experienced by NZ Steel. Sufficient evidence has been provided to support claims that the consequence of these price effects is actual declines in profits and flow-on effects on return on investments and cash flow.
209. MBIE notes that the information available indicates that price undercutting may have diminished or is not occurring in the last few quarters of FY2017. If this is confirmed in any investigation then doubt would be cast on the causal link between the allegedly subsidised imports of HSS from China and the consequent price depression, price suppression and consequent impact on the domestic industry.

6.2 Other Imports

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

211. The following table sets out the levels of imports from the main supplying countries and other sources for all of the subject goods. It should be noted that the information covers some goods which may not compete directly with the goods produced by NZ Steel, and are average values, but the information is provided as an indication of the potential impact of imported goods other than the allegedly subsidised goods from China.
212. The information indicates that imports from sources other than China were primarily from Australia, with much smaller volumes from sources other than China and Australia. Average unit values from China, Malaysia, Thailand, Japan and Korea were at broadly similar levels in FY2017. Australia was the primary source of HSS up to FY2014, with China taking over as the main supplier from FY2015, when imports from Australia diminished sharply.

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

	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017
Australia	10468	10312	7828	12176	3982	2499	2976
China	4893	6861	8784	8088	10673	9858	11075
Japan	88	32	167	49	51	289	357
Korea	848	287	279	385	143	96	181
Malaysia	27	279	287	359	409	237	540
Thailand	225	488	536	277	328	176	118
Chinese Taipei	143	151	170	281	275	259	588
Other	235	156	244	586	498	441	572
Total	16927	18567	18294	22201	16360	13854	16408

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

6.3 Demand and Consumption

214. Section 8(2)(e)(ii) of the Act refers to contraction in demand or changes in the patterns of consumption.
215. NZ Steel has made no comment on these matters, and MBIE notes that overall demand for steel products in New Zealand, including HSS, may have increased as a result of increased building activity over the period examined.

6.4 Trade Practices

216. Section 8(2)(e)(iii) of the Act refers to restrictive trade practices of, and competition between, overseas and New Zealand producers.
217. NZ Steel has made no comment on these matters, and MBIE is not aware of any developments which would affect the domestic industry.

6.5 Developments in Technology

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

219. NZ Steel has made no comment on these matters, and MBIE is not aware of any developments in technology that could be affecting the New Zealand industry.

6.6 Exports of New Zealand Producers

220. Section 8(2)(e)(v) of the Act refers to the export performance and productivity of the New Zealand producers.
221. NZ Steel has advised that in FY2017 HSS export sales amounted to [REDACTED] MT out of total sales of [REDACTED] MT. Export-related costs have been excluded from the financial data provided to support the application.
222. There is no evidence to suggest that NZ Steel's export performance has contributed to any injury.

6.7 Conclusions on Causal Link

223. MBIE is satisfied that there is sufficient evidence, for the purpose of initiation, of a causal link between the allegedly subsidised imports of HSS from China, and the volume and price effects and consequent impact on the domestic industry.
224. With regard to the other causes of injury identified in the Act, MBIE notes that any investigation will need to have regard to the extent to which imports from other sources and movements in export sales volumes and values might be affecting the state of the domestic industry. An investigation would also need to examine other factors, including the global steel market, to determine whether they are relevant.

7. Conclusion

225. On the basis of its examination of the information provided by the applicant, MBIE concludes that:
- a. Sufficient evidence has been provided for the purpose of initiation that HSS from China is being subsidised, and that;
 - b. Sufficient evidence has been provided for the purpose of initiation to show that material injury to the New Zealand industry is being caused by the alleged subsidisation of goods imported from China.
226. On this basis, an investigation should be initiated to determine the existence and effect of the alleged subsidisation of HSS imported from China.

8. Recommendation

227. Based on the above conclusions, MBIE recommends that the General Manager of the Science, Innovation and International Branch, acting under delegated authority from the Chief Executive of MBIE, initiate an investigation into alleged subsidisation of HSS imported from China.

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

..... March 2018

Agreed

Peter Crabtree
General Manager
Science, Innovation and International
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..... April 2018