



NON-CONFIDENTIAL



Non-confidential Initiation Report: Application for Countervailing Duties

Reinforcing Steel Bar and Coil from China

August 2017

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Abbreviations

This report contains the following abbreviations:

ACRS	Australian Certification Authority for Reinforcing and Structural Steels
Act, the	The <i>Dumping and Countervailing Duties Act 1988</i>
Anti-Dumping Agreement, the	The WTO Agreement on Implementation of Article VI of the GATT
AS/NZS	Australia/New Zealand standard
ASX	Australian Stock Exchange
Australian ADC	Australian Anti-Dumping Commission, the Australian investigating authority
BIA	Best information available
CBSA	Canadian Border Services Agency
China	People's Republic of China
CIF	Cost, Insurance, Freight
CNY	Chinese Yuan, the primary unit of account of the renminbi (RMB), the currency of the People's Republic of China
Customs	New Zealand Customs Service
EBIT	Earnings Before Interest and Taxes
EU	European Union
FIE	Foreign-invested enterprise
FOB	Free on Board
FY	Financial Year
GATT 1994	General Agreement on Tariffs and Trade 1994
GOC	Government of China
Hebei Jingye	Hebei Jingye Iron and Steel Co Ltd
MBIE	Ministry of Business, Innovation and Employment
MPa	MegaPascals (measurement of pressure/stress)
NZ	New Zealand
NZD	New Zealand Dollar
Pacific Steel	Pacific Steel (NZ) Limited
Rebar	Reinforcing steel bar and coil
ROI	Return on investment
Subsidies Agreement, the	The WTO Agreement on Subsidies and Countervailing Measures

TTZ	Tianjin Tiante Zhaer Steel Production Company Limited
US DOC	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 For example, in tables, where possible, actual figures have been replaced by figures showing percentage changes from the previous period.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

<p>The trade remedies investigating team recommends initiating an investigation into the alleged subsidisation of reinforcing steel bar and coil from China</p>	<p>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 the alleged subsidisation of reinforcing steel bar and coil (rebar) from the People’s Republic of China (China).</p> <p>This report has assessed the accuracy and adequacy of the evidence provided by Pacific Steel (NZ) Limited (Pacific Steel) in terms of the criteria in section 10 of the <i>Dumping and Countervailing Duties Act 1988</i> (the Act).</p> <p>MBIE is satisfied that the company has provided sufficient evidence to warrant initiating an investigation of claims that imports of allegedly subsidised rebar from China are causing material injury to the New Zealand industry. An investigation would establish whether or not allegedly subsidised imports are causing material injury and whether countervailing duties should be imposed.</p>
<p>Pacific Steel alleges injurious subsidisation of rebar from China</p>	<p>On 5 April 2017, MBIE accepted a properly documented application from Pacific Steel for countervailing duties on rebar from China. Pacific Steel claimed that imports of Chinese rebar are being subsidised by the Government of China (GOC) and have caused material injury to the New Zealand industry.</p>
<p>Imported goods – rebar</p>	<p>The imported goods covered by the application are:</p> <p><i>Reinforcing steel bar and coil with a diameter equal to or greater than 5mm.</i></p> <p>The subject goods have been and are being imported from China.</p>
<p>New Zealand industry – Pacific Steel</p>	<p>The application was made by Pacific Steel, which stated that it is the only producer of rebar in New Zealand. Section 10(3) of the Act outlines the minimum level of support required from the domestic industry for the application for an investigation. This requirement has been met as Pacific Steel is the only producer of rebar in New Zealand.</p>
<p>Consultations with the Government of China</p>	<p>During consultations between the New Zealand government and the GOC, required under the World Trade Organisation (WTO) Agreement on Subsidies and Countervailing Measures (the Subsidies Agreement), the GOC challenged the factual basis for the application and claimed that there was a lack of any real evidence of</p>

subsidisation, injury or a causal link.

Criteria for the initiation of 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 below:

- Sufficient evidence of subsidisation
- Sufficient evidence of material injury to the domestic industry
- Sufficient evidence of a causal link between the allegedly subsidised goods and the injury

Pacific Steel has provided sufficient evidence of subsidisation

For the purpose of initiation, MBIE is satisfied that Pacific Steel has provided sufficient evidence of subsidisation of Chinese rebar producers by the GOC.

The evidence of subsidisation submitted by Pacific Steel consisted 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 rebar producers to the detriment of domestic producers in those countries.

Pacific Steel has provided sufficient evidence of material injury

Material injury is not defined in the Act, or the Subsidies 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 alleged imports.

MBIE has analysed the information provided by Pacific Steel covering the last seven financial years to June 2016, and for the purpose of initiation considers that it has provided sufficient evidence that it is incurring material injury from the alleged subsidisation of Chinese rebar producers.

The analysis shows that:

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

earlier part of the period being examined.

- There is evidence of a decrease in total profit in FY2016, and a per unit decrease in profit over the period.
- There is evidence that the decrease in profit has adversely affected cash flow.

However, the analysis also shows that:

- Chinese imports represented a small percentage of the total market over the period examined and there has not been a significant increase in Chinese imports in absolute terms or when compared to either domestic production or total market size in New Zealand.
- Pacific Steel has experienced increases in both total sales volume and total sales revenue over the period.
- Pacific Steel has not experienced a decline in market share.

No specific evidence has been provided to support Pacific Steel's claim that it has suffered impaired returns on investments or that it may have suffered impaired productivity or production capacity.

Basis for assessing whether injury is caused by allegedly subsidised imports

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

MBIE must also consider factors other than the 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 Pacific Steel is attributable to allegedly subsidised imports from China over the period examined.

Request for provisional measures

Pacific 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.

1. Introduction

1.1 Application

1. On 10 March 2017, MBIE received an application for countervailing duties to be imposed on reinforcing steel bar and coil (rebar) from China. The application was submitted by Pacific Steel, the sole producer of rebar in New Zealand.
2. On 5 April 2017, MBIE accepted Pacific Steel's application for countervailing duties on rebar from China as properly documented.
3. Under section 10 of the Act, MBIE's Chief Executive¹ may 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 allegedly 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 Subsidies 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 Comptroller of Customs* 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 dumping². MBIE considers this ruling is equally relevant to a countervailing duties application as it is to a dumping application.

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

² (1988) 3 TCRL 265 at page 17.

6. This report assesses, against the requirements in the Act, the application submitted by Pacific Steel for an investigation of alleged subsidisation of rebar imported from China. The report outlines the basis for determining if sufficient evidence has been presented to justify the initiation of a subsidy investigation.
7. Subsidies are defined in section 3(1) of the Act and are essentially any financial or commercial benefit supplied by a government, to the foreign producers of the exported good. MBIE's consideration is also subject to the Subsidies Agreement, which outlines how countries should conduct investigations into allegedly subsidised imports, including consulting the relevant government.
8. Pacific Steel claims that the alleged subsidisation of rebar from China is causing the company material injury through:
 - price undercutting
 - price depression
 - price suppressionresulting principally in:
 - adverse consequences upon sales
 - adverse consequences upon profit, both in per unit (e.g. EBIT³ per tonne) and overall (e.g. EBIT)
 - adverse consequences upon return on investment
 - adverse consequences upon cashflow.
9. Pacific Steel has requested that provisional countervailing duties be imposed to prevent material injury being caused to the domestic industry during the period of investigation.
10. Pacific Steel has also applied for the imposition of anti-dumping duties on rebar from China and Malaysia. That application is treated as a separate matter by MBIE.

1.2 Matters relating to the evidence provided

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

1.2.1 Findings in other jurisdictions

12. Pacific Steel has referred to investigations carried out by other jurisdictions into rebar and similar goods from China, including Australia, Canada, the European Union (EU), Malaysia and the United States. It also outlined in more detail the similarities between the Australian and New Zealand trade remedies regimes, and suggested that because of the

³ EBIT – earnings before interest and taxes.

“Inter-Government Memorandum of Understanding Between the Government of New Zealand and the Government of Australia in the Coordination of Business Law” there is an expectation by the two governments that administration of business rules, which includes anti-dumping and countervailing rules, should be generally consistent. Pacific Steel notes that findings in Australia take account of findings in cognate jurisdictions, with the implication that New Zealand should follow suit.

MBIE Comment

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

1.2.2 Trade statistics used in considering initiation of an investigation

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

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

⁵ Value for duty (VFD) is the value of goods which New Zealand Customs uses as a basis for calculating duties (see Schedule 2 to the Customs and Excise Act 1996). This is similar to the free on board (FOB) price, which is a price basis that does not include freight and other cost elements after loading goods on the vessel for transportation to New Zealand.

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

MBIE Comment

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

25. With regard to official import statistics published by Statistics New Zealand, there has been a data-suppression order⁶ in place for tariff items 7214.20.90.01 and 7214.20.90.05, but not for the other 20 tariff items and statistical keys identified as covering the subject goods.
26. Under an import volume monitoring arrangement between MBIE and the steel industry, MBIE provides summaries of imports of goods subject to data-suppression. Information is provided on a monthly basis for, *inter alia*, imports of rebar of items 7214.20.90.01 and 7214.20.90.05, showing quantities and values (VFD and CIF) for imports from Australia, Singapore and Other,⁷ but marked 'CONFIDENTIAL' where there are three or fewer importers, plus a source ranking of exporting countries by volume from largest to smallest.
27. It appears that imports of goods subject to data suppression represent a high proportion of imports of the subject goods. This means that to the extent that Trade Map relies on official trade figures from Statistics New Zealand, which do not include a high proportion of imports of the subject goods, the Trade Map data has serious deficiencies.
28. With regard to exchange rates, MBIE recognises that there are a number of dates which might be relevant for currency conversion. However, and bearing in mind that in a subsidy investigation the main concern with export prices is to assess the sufficiency of evidence regarding price effects, MBIE considers that the date of entry into the New Zealand market is appropriate to use for those purposes.
29. MBIE also recognises that errors in data entry at various points in the chain of documentation can have an effect on the data used. However, the possibilities of such errors are known and will be accounted for where identified, and will apply to both Trade Map and Customs data.
30. MBIE is not persuaded that the matters raised by Pacific Steel provide a sufficient basis to conclude that Customs data is not suitable for use in checking the accuracy and adequacy of the claims made in the application. Any investigation will establish the accuracy of the trade data used.

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

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

1.3 Consultations with the Government of China

31. Section 10(9) of the Act requires the Secretary 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.
32. On 12 April 2017, MBIE informed the GOC that it had accepted a properly documented application for countervailing duties and invited it to enter into consultations under Article 13.1 of the Subsidies Agreement. Article 13.1 of the Subsidies 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.
33. On 1 June 2017, the GOC provided MBIE with written consultation points in lieu of a meeting or teleconference. In the consultation points, the GOC stated that the applicant had 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 Subsidies Agreement.
34. One of the issues raised in the consultation points was the claim that the application did not conform to New Zealand's public policy in the residential building materials sector. It was noted that anti-dumping duties on construction materials were suspended, while under new legislation the investigating authority is required to take the public interest into account in considering trade remedy decisions.
35. MBIE notes that the duty suspension does not apply to countervailing duties, while the public interest test requirement will not come into effect until 29 November 2017. From that time, the public interest considerations set out in the *Trade (Anti-Dumping and Countervailing Duties) Amendment Act 2017* will be triggered once any final determination has been made that allegedly 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.
36. MBIE has taken account of the consultation points in its consideration of the application.
37. Pacific Steel's comments on the GOC Consultation Points were received by MBIE on 7 July 2017, and to the extent they are relevant those comments have been taken into account in the preparation of this report, and will be addressed in any investigation.

1.4 Report Details

38. 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.
39. All volumes are expressed on a tonne basis unless otherwise stated. Exports to New Zealand were generally invoiced in United States dollars (USD). The exchange rates used are those relating to specific transactions, where available, or the Customs exchange rates,

or the rate that MBIE considers most appropriate in the circumstances, as indicated in the text.

40. Any investigation will use the calendar year 2016 as the period of investigation of subsidisation.

2. Goods Description

2.1 Imported Goods

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

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

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

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

43. Pacific Steel states that this list arises from Customs Service advice in the Ministry of Economic Development's 2004 *Final Report on Reinforcing Steel Bar and Coil from Malaysia and Thailand*, with the addition of rebar with greater thicknesses, reflecting the types of rebar that Pacific Steel advises that it now produces.
44. MBIE has established from Customs data that the subject goods have been and are being imported from China.

2.2 Like goods

45. 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.
46. Section 3(1) of the Act defines **like goods**, in relation to any goods, as:
- 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.
47. The scope of the subject goods is defined in section 2.1 above.
48. Pacific Steel has confirmed that it is the only producer of rebar in New Zealand. Further, Pacific Steel has confirmed that there are no other goods with the same form, function or usage and therefore considers that its goods are “like goods” to the subject goods as required under section 3(1) of the Act.
49. In its application Pacific Steel provided information on the rebar it produces. The company produces a range of low and high tensile, standard and high ductile, plain carbon steel for reinforcing concrete. The finished product comes in the form of either plain or deformed bars or coils and includes product where the steel has been micro-alloyed with small vanadium additions for superior strength.
50. Pacific Steel produces rebar and coil in diameters ranging from 6 to 50mm in bar form and 6 to 16mm in coil form. Bar lengths range from 6 to 18 metres.
51. In its application, Pacific Steel outlined the relevant standards, accreditation and ductility requirements for rebar for the New Zealand market.
52. The relevant standard is the joint Australia/New Zealand Standard AS/NZS 4671, which specifies requirements for the chemical composition and the mechanical and geometrical properties of deformed reinforcing bars and coils used for reinforcement concrete. The Australia/New Zealand Standard specifies three levels of yield strength – 250 MPa⁸, 300 MPa, and 500 MPa. Three ductility classes are specified for rebar, and designated as L (low), N (normal) and E (earthquake). The N class ductility is used in the Australian market, and has a minimum 5% ductility, while E class (AS/NZS 4671 500E), with a minimum 10% ductility is the prevailing class in New Zealand, reflecting the differing levels of seismic activity.
53. The Australian Certification Authority for Reinforcing and Structural Steels (ACRS) administers an independent, expert-based product certification scheme. It certifies manufacturers and suppliers of rebar, pre-stressing and structural steels to Australian and New Zealand standards. Pacific Steel notes that it is possible for rebar to be imported into New Zealand from mills that do not have ACRS accreditation.
54. The application notes that the Chinese reinforcing standard GB1499 is not equivalent to AS/NZS 4671 500E, and provides a detailed analysis of the differences in an Appendix to its application. The application also noted that manufacturing to the Australia/New Zealand Standard can incur additional costs compared with manufacturing to the Chinese standard.

⁸ 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.

MBIE Consideration

55. 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.
56. On the basis of these considerations, and in particular the physical characteristics and function and usage of the goods, MBIE concludes that, for initiation purposes, Pacific Steel produces like goods to the goods imported from China, and, as a consequence, constitutes the New Zealand industry in terms of section 3A of the Act.

3. Interested Parties

3.1 Applicant

57. Pacific Steel submitted the application. Pacific Steel is a wholly owned subsidiary of New Zealand Steel Holdings Limited whose ultimate parent company is BlueScope Steel Limited. BlueScope is an ASX-listed company based in Australia.

3.2 New Zealand industry

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

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

59. Pacific Steel has stated that it believes it is the only producer of rebar in New Zealand.

60. In 2014, MBIE conducted a review investigation into dumped rebar from Thailand. In that investigation, MBIE found that Pacific Steel was the only producer of rebar in New Zealand. Pacific Steel has stated that since the 2014 investigation, no investments in production equipment have been made by any other party in New Zealand.

61. Section 10(3) of the Act outlines the minimum level of support required from the domestic industry for the application for an investigation. This requirement has been met as Pacific Steel is the only producer of rebar in New Zealand.

3.3 Exporters

62. Pacific Steel has provided information identifying the following mills as recent rebar suppliers to the New Zealand market:

- Tianjin Tiante Zhaer Steel Production Company Limited (TTZ)
- Hebei Jingye Steel Iron & Steel Co Ltd (Hebei Jingye).

63. Pacific Steel notes that TTZ is part of the state-owned Bohai Steel group, which was formed by combining four state-owned steel manufacturers in 2010. The applicant claims that the group has been approved and supervised by Tianjin Municipal Committee of the Communist Party of China and the Tianjin Municipal Government. While TTZ is a subsidiary of state-owned Bohai Steel, it is under Bohai Steel's collaborative control and management. Pacific Steel claims that TTZ goods despatched to New Zealand are identified as meeting AS/NZS 4671 500E, but the company is not ACRS accredited.

64. Pacific Steel identifies Hebei Jingye as a subsidiary of Hebei Jingye Group Co Ltd.

65. Pacific Steel states that it is likely that other companies in China are supplying the New Zealand rebar market but the mill tags might have been removed, making it difficult to track the origin of the rebar.

3.4 Importers

66. Pacific Steel has identified Brilliance Steel as importing rebar from Hebei Jingye, but has not identified any other importers.

3.5 The Government of China

67. The Government of China is considered an “interested Member” under the Subsidies Agreement.

4. Evidence of Subsidisation

68. 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 as being the benefit conferred on the recipient of the subsidy.
69. The Act defines 'subsidy', 'subsidised goods' and 'specific subsidy' in section 3, which reflect the definitions and descriptions set out in the Subsidies 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 (e.g. grants, loans, equity infusions), government revenue that is foregone or not collected (e.g. tax credits), and the provision or purchase by government of goods or services; and
 - The financial contribution confers a benefit.
70. Such subsidies are countervailable only if they are specific, i.e. 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

71. In its application, Pacific 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 commentary on the Chinese steel industry. Appendix Five to the application lists the alleged subsidy programmes Pacific Steel has identified.
72. Pacific Steel believes that the positive China steel subsidy findings by Canada and the United States, and the commentary by Liu Haiming, the Deputy Director of the China Steel Development and Research Institute, referred to below, are particularly compelling. Pacific Steel recognises that none of the preceding is determinative on whether the state-owned TTZ steel mill of Hebei province⁹, identified in its application as a producer of rebar exported to New Zealand, is receiving subsidies which confer a benefit to it, and are countervailable. However, in Pacific Steel's view the information above comprises reasonable evidence of a case requiring investigation.

⁹ MBIE notes that while Pacific Steel's application, in some places, identifies TTZ as being based in Hebei Province it is, in fact, located in Tianjin Municipality, which is a different sub-national jurisdiction.

4.1.1 WTO Subsidy Notifications

73. In the first instance Pacific Steel addressed 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 Subsidies 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. Pacific Steel also notes that a further notification was made in October 2015, but was deficient.
74. Pacific Steel notes that the United States and several other Members have expressed serious concerns about the lateness and incompleteness of these notifications - including China's failure to notify any subsidy measures at the sub-central levels of government - and have repeatedly requested that China submit its overdue subsidy notifications under Article 25.2 of the Subsidies Agreement. Pacific Steel quotes the notification obligations set out in the Subsidies Agreement, and suggests that the depth of detail required is not present in the GOC notifications. In particular, Pacific Steel refers to questions raised by the US regarding non-notified programmes (WTO document G/SCM/Q2/CHN/57 of 28 January 2016) and suggests that the matters raised in that document regarding steel programmes represent further evidence that a particular market situation exists in China.
75. Further, the applicant provided 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"¹⁰.
76. Pacific Steel has claimed that the lack of compliance by China with Article 25.2 of the Subsidies Agreement has impeded Pacific Steel's "ability to particularise the requirements of section 7 of the Act".

4.1.2 Precedents in other Jurisdictions

77. In its application, Pacific Steel turned to precedents in other jurisdictions regarding investigations and findings of countervailable subsidies in the Chinese steel industry. Pacific Steel has used the programmes identified in these investigations, set out in Appendix Five of the application, as the basis for its claims regarding subsidisation.

¹⁰ "Assessment of the normative and policy framework governing the Chinese economy and its impact on international competition" for AEGIS EUROPE by THINK!DESK China Research & Consulting Prof. Dr. Markus Taube & Dr. Christian Schmidkonz GbR Merzstrasse 18 81679 München. June 2015 at p 14. AEGIS Europe brings together nearly 30 European associations representing a broad variety of industries which highlights the necessity to effectively address distortions from state-run or other non-market economies.

Canadian Border Services Agency investigation

78. Pacific Steel cites content in two subsidy investigations completed by the Canadian Border Services Agency (CBSA).
79. An investigation into subsidy and dumping of imports of (a type of) **steel rebar** from China. The application was filed by ArcelorMittal LCNA, Gerdau Longsteel North America and Alta Steel Inc. The investigation was initiated on 13 June 2014 and a final positive subsidy finding was made on 23 December 2014 (document 4214-42 AD/1403 V/138). The weighted average subsidy found was 6.1%.
80. The CBSA investigation report noted that the GOC did not respond to a request for information relating to the subsidisation of steel rebar exports to Canada. The CBSA made a determination on the amount of subsidisation (and dumping) based on the best information available to it. However, one exporter was cooperative, providing complete responses to the CBSA's request for information. This exporter had a lower countervailing duty imposed on it by the CBSA. In the investigation, the CBSA identified 5 subsidies that the cooperative exporter had received during the period of investigation.
81. The CBSA also identified a further 176 potential subsidies and stated "the CBSA does not have sufficient information to determine that any of the (...) programmes should be removed from the investigation for purposes of the final determination". The CBSA used the mean subsidy from the cooperative exporter and applied it to the remaining 176 potential subsidies to arrive at the duty for all other exporters.
82. Of the 240 potential subsidies that Pacific Steel has identified in its application, 176 were also identified in the CBSA investigation report.
83. The second investigation was into dumping and subsidising of near-like goods (**galvanized wire**) from China and other countries. The CBSA received an application from Tree Island Steel Ltd. on March 23, 2012. A positive subsidy finding of weighted average 14.9% made on August 20, 2013 (Inquiry No. NQ-2013-001).

United States Department of Commerce – International Trade Administration (US DOC)

84. Pacific Steel cites content in two subsidy investigations completed by the US DOC.
85. In a subsidy investigation into **steel wire rod** from China, on 19 November 2014, the US DOC published a final determination that countervailable subsidies were being provided to producers and exporters of steel wire rod from China. The net subsidy rate found for Hebei Iron and Steel (which Pacific Steel claims is located in Hebei Province, the same province as Hebei Jingye Iron and Steel Co., Ltd) is 178.46%.
86. In a subsidy investigation into **galvanized steel wire** from China, on 26 March 2012, the US DOC published a final determination that countervailable subsidies were being provided to producers and exporters of galvanized steel wire from China. The net subsidy rate ranged from 19% to 223%. The net subsidy rate found the Huayuan Companies (which Pacific Steel claims are located in Hebei, the same province as TTZ) is 223%.

Australian Anti-Dumping Commission investigation (ADC)

87. Pacific Steel cites a subsidy investigation conducted by the Australian Anti-Dumping Commission (Australian ADC) into subsidy and dumping of imports of **steel rebar** from China. The application was filed by OneSteel Manufacturing Pty Ltd. On 5 August 2016, the Australian ADC notified that on the basis of the information and evidence available rebar and rod in coil were being exported from China at allegedly subsidised prices. A range of subsidy margins for specific exporters were identified. Pacific Steel notes that the number of subsidies under investigation was large, and the Australian ADC had investigated 177 programmes in respect of rebar and 273 in respect of rod in coil.

4.1.3 General Commentary on the Chinese steel industry

88. Pacific Steel also quotes a number of published articles on the Chinese steel industry, including from Reuters (UK), which quotes from Liu Haiming, the deputy director of China Steel Development and Research Institute confirming the existence of subsidies and the state of the Chinese steel industry. News agency summaries of a report by Wiley Rein LLP are also cited. The application states that these articles outline the extent and impact of the subsidisation of the Chinese steel industry, and extent of government involvement in the sector.

4.1.4 MBIE Consideration

WTO Subsidy Notifications

89. Article 25.2 of the Subsidies 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.
90. 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 China¹¹.
91. 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,

¹¹ WTO Document G/SCM/N/220/CHN/Suppl.1

and others may also be included in the list of subsidy programmes provided in Appendix Five to the application.

92. 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 Subsidies 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

93. The investigations and findings of counterpart authorities are considered by MBIE to provide sufficient supporting evidence of the possible existence of subsidisation¹², although it is also noted that in many cases conclusions on the existence or possible existence of subsidies were based on assumptions arising from the failure of Chinese parties to provide information to the investigating authorities¹³. Accordingly, care needs to be taken when assessing the use of information from counterpart authorities. MBIE also notes the points raised by the GOC in its consultation points regarding the laws and procedures applied in other jurisdictions.

General commentary on the Chinese steel industry

94. 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, it is noted 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. 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 the applicant's arguments.

Findings from other New Zealand proceedings

95. The GOC consultation points suggested that MBIE findings, in other investigations undertaken by MBIE, provided a good reference for assessing the accuracy of claims made

¹² 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 US-DOC determinations” and concluded that the US DOC had not acted inconsistently with the US obligations under Article 11 of the Subsidies Agreement to initiate the challenged investigations without sufficient evidence of specificity.

¹³ Decisions made on the basis of the facts available are permissible, in certain circumstances, under Article 12.7 of the Subsidies Agreement, and covered by section 7(5) of the Act.

in the application. MBIE notes that the current 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 be appropriate to transfer conclusions reached in other proceedings, which relate to a particular set of facts. In this context, the consideration of findings from other jurisdictions covering similar goods is carefully examined in section 4.2 below.

Conclusion

96. MBIE recognises the difficulties the applicant has experienced in obtaining information regarding subsidy programmes in China, but accepts that there is evidence beyond a mere assertion and of a nature and extent that indicate the likely existence of subsidisation affecting the subject goods (see below under section 4.2).

4.2 Amount and Nature of Subsidies

4.2.1 Specific Subsidy Programmes

97. Pacific Steel provided a schedule of 240 subsidies (Appendix Five of its application) which the company considers are being received by Chinese rebar manufacturers and exporters to New Zealand. 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).

Findings from other jurisdictions

98. The schedule provided by Pacific Steel is based on the work supplied by Canadian steel producers, ArcelorMittal LCNA, Gerdau Longsteel North America, and Alta Steel Ltd in their 2014 application to the CBSA for countervailing duties on rebar from China. An investigation was initiated (on the basis of this schedule of subsidies) and a final determination was made on 23 December 2014 which resulted in countervailing duties of CNY469 per tonne (USD74 per tonne).
99. The Canadian steel producers identified these subsidies based on previous CBSA decisions and similar information obtained by the relevant investigating authorities from the United States, the EU and Australia.
100. The Canadian steel producers provided details about the programmes, including descriptions, reasons the programmes were found to be specific so as to be countervailable, and where available, previously determined *ad valorem* subsidy rates.
101. Pacific Steel also provided (as part of Appendix Five of the application) reference to material provided to the Australian ADC by OneSteel Manufacturing Pty Ltd in its application for countervailing duties on imports of rebar from China. The relevant programmes are those numbered 82 and 221-240.
102. Pacific Steel submits that the subsidies at Appendix Five are being granted by Chinese public bodies to the Chinese steel industry, and are conferring a benefit and are therefore countervailable.

103. The applicant notes that Hebei Jingye is located in Hebei Province and TTZ is located in Tianjin Municipality. Pacific Steel claims that subsidy types 1 to 128 (in its list of 240 subsidies) appear to be available in Hebei. Subsidies 129 through to 223 (95 subsidies) may not be available in Hebei or Tianjin, because the named provider is elsewhere. However, Pacific Steel submits that those 95 subsidies may also be available to other Chinese steel makers who are supplying to New Zealand but whose identity and plant location is not available because the identifying mill tags have been removed from the goods present in the New Zealand market. Those suppliers may or may not be located in Hebei or Tianjin.
104. An analysis, by Pacific Steel, of the TTZ-made rebar being sold in New Zealand shows that it has been made by the integrated steel-making route. Pacific Steel thus contends that the TTZ-made rebar has been made in similar facilities to the large Chinese integrated mills producing goods subject to the CBSA rebar investigation and other CBSA steel investigations. Pacific Steel thus believes that the CBSA findings of subsidies in Chinese steel cases are applicable to producers of the goods in its application.
105. In particular, Pacific Steel contends that, in the 2013 CBSA galvanised wire subsidy investigation, the CBSA found 10 subsidy programmes to constitute a financial contribution and that the weighted average amount of subsidy was 14.9%. The CBSA found another 118 programmes for which insufficient information was provided so these programmes could not be ruled out as countervailable subsidies.
106. Pacific Steel was not able to determine the actual amounts of the subsidies received by TTZ and other Chinese rebar suppliers to New Zealand as this information has not been published. Pacific Steel estimated a lower and upper subsidy amount, for TTZ, by using the specific subsidy rates determined by the relevant authorities (EU, Canada, United States and Australia) for 91 of the 240 programmes identified in Appendix Five of its application. Rates are published for 57 of the 135 subsidies which appear to be available in Hebei, and 34 of the 105 subsidies which may not be available in Hebei.
107. The lower subsidy rate is the sum of the single values and the bottom value of the range (where a range exists) for those 56 subsidies which are rate-published and understood to be available in Hebei. That figure is 11.23%. The upper rate is the sum of the single values and the top values of the range (where a range exists) for all 91 subsidies which are rate-published. That figure is 115.58%.

Australian investigation

108. Pacific Steel suggests that an alternative test for the reasonableness of the subsidy estimates can be found in the Australian investigation of **rebar** from China which considered claims by the applicant in that case relating to the benefits to integrated Chinese steel manufacturers from billet, coking coal and coke inputs being provided at less than adequate remuneration, as well as a wide range of other programmes. In that investigation the subsidy margins identified ranged from 0.26% and 1.66% to 22.96% and 25.17% for named exporters, and an uncooperative and all other exporters rate of 29.61%.

Canadian Duty Rate

109. Pacific Steel also notes the outcome in October 2016 of the CBSA's investigation into subsidisation of *steel pipes* which set a countervailing duty rate of 30.3%.

Recorded events

110. Lastly, Pacific Steel provided a list of several "events" recorded by Bohai Steel, the state-owned parent of TTZ, the exporter of rebar to New Zealand, which the applicant considers is suggestive of possible subsidy programmes being offered to the parent company by the GOC. Pacific Steel considers the subsidies granted via these events may have conferred a countervailable benefit on exports to New Zealand, and identifies the subsidies from Appendix Five which may be applicable.

Level of subsidy

111. Pacific Steel suggests that the level of countervailable subsidy can be reasonably estimated by looking at the average of the subsidy rates established in the various counterpart investigations applied to the average FOB export price for Chinese exports to New Zealand identified by Pacific Steel. The average so calculated is 52.05%, which Pacific Steel notes is above the *de minimis* level applicable to China.

4.2.2 MBIE Consideration

112. The information provided by Pacific Steel identified the types of subsidy that could be available for the exporter and estimated levels of subsidy, based on information relating to findings from countervailing duty investigations undertaken in other jurisdictions.
113. MBIE has reviewed the information contained in Appendix Five to the application, and the arguments made by the applicant. Of the 240 programmes listed, 126 were not described as regionally-focussed, or were geographically specific to Tianjin or Hebei. The remaining programmes appear to relate to specific localities other than Tianjin or Hebei, although they may be applicable to exporters other than TTZ and Hebei Jingye.
114. Of the 126 programmes that could potentially apply to TTZ and Hebei Jingye, 78 involved a direct transfer of funds through grants, equity infusions or loans; 5 involved government provision or purchase of goods and services; and 43 involved government revenue foregone. These are all bases for considering that the programmes are subsidies.
115. The 126 programmes that could potentially apply to TTZ and Hebei Jingye were identified as specific, with 16 identified as being contingent on exports or the use of domestic over imported goods, 3 as being geographically specific, 43 with reasons provided for concluding specificity, 1 with reasons not specified, and 63 for which the conclusion of specificity was based on best information available (BIA) with adverse inferences drawn because of a lack of information from exporters and the GOC. It is noted that aspects of the determinations in many of these cases involving the United States have been challenged by China in WTO dispute cases.
116. MBIE notes that a number of programmes relate to "foreign invested enterprises" (FIEs), and since neither TTZ nor Hebei Jingye is an FIE, these programmes will not apply to those

- companies. Also, it is unlikely that all of programmes assumed to be countervailable subsidies by other jurisdictions on the basis of adverse inferences drawn from a failure of the Chinese firm to provide information, are all applicable to TTZ and Hebei Jingye.
117. The information provided by Pacific Steel identified levels of subsidy for 92 of the 240 programmes listed in Appendix Five, 57 of which relate to the 126 programmes noted above. The programmes for which rates were not listed were primarily for programmes included on a BIA basis. Programmes for which reasons for specificity were identified had higher proportions of rates listed.
118. Nevertheless, the level of subsidy found by other jurisdictions, drawn from the ranges as listed in Appendix 5 (with lower and upper levels of the range), totals 10.19% - 110.08% for the 126 programmes, and 6.6% - 91.51% if BIA findings are excluded. These levels reflect the total of the amounts of benefit provided by the subsidies concerned, as established by counterpart authorities.
119. The range of levels of subsidy for programmes identified as being contingent on exports was 0.61% - 0.83%, with the remainder of the total subsidy identified being attributable to domestic subsidies. Programmes where the determination of specificity was an adverse inference drawn from a lack of information provided by the Chinese firm may include programmes where the subsidy is contingent on exports.
120. For the purpose of initiation, MBIE considers that the information provided in the application provides sufficient evidence of the nature and amount of subsidisation available to the subject goods, including the types of subsidisation and the bases for concluding that they are specific subsidies. MBIE notes that confirmation of the existence and level of any countervailable subsidies applicable to manufacturers of the subject goods exported to New Zealand can be established only through investigation.

4.3 Conclusion on Subsidisation

121. Pacific Steel has compiled a list of subsidies that it considers to be benefiting the Chinese exporter of rebar to New Zealand identified in its application. The information comes from United States, Canadian and Australian subsidy investigations into steel products from China.
122. 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 rebar in China. Therefore, the application meets the necessary requirements of section 10(2) of the Act and Article 11.2 of the Subsidies Agreement.
123. 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

124. Article 11.9 of the Subsidies Agreement 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.
125. 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. Article 27.10 provides that in the case of investigations relating to products from a developing country Member, the *de minimis* level is 2% of its value, calculated on a per unit basis. China is a developing country in this context.
126. Pacific Steel has calculated an average subsidy rate of 52.05% of export price, on the basis outlined in the application. As noted above, information from other jurisdictions suggests that potential subsidies could fall, at a minimum, within the range of 6%-10%. All of these estimates exceed the *de minimis* level in the Agreement.
127. Article 11.9 further states there shall be immediate termination in cases where the authorities determine, *inter alia*, that the volume of allegedly subsidised imports, actual or potential, is negligible. Article 27.10 provides that in the case of investigations relating to products from a developing country Member, the investigation is to be terminated as soon as the authorities determine that the volume of allegedly subsidised imports represents less than 4% of the total imports of the like product.
128. Customs data for the tariff items and statistical keys covering the subject goods, as Pacific Steel claims, for the year ended 30 June 2016 is shown in the table below (this information has not been adjusted to account for any clarification of the goods entering under the relevant tariff classifications):

**Table 4.1: Import Volumes of Rebar
(Year to 30 June 2016)**

	Tonnes	% of Total
Imports from China		12%
Other imports		88%
Total		

129. Imports from China made up 12% of total imports in the year ended 30 June 2016. On this basis, MBIE considers that Chinese import volumes are not negligible under the Subsidies Agreement. Whether or not they are causing material injury to the domestic industry is considered in section 5 below.

5. Evidence of Material Injury

130. Under sections 10(1) and 10(2) of the Act, a properly documented application 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, the domestic industry consists of the sole New Zealand producer of rebar, Pacific Steel.
131. Section 8(1) of the Act sets out in the matters that must be examined in 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 Pacific Steel is sufficient in terms of section 10(1)(b), MBIE therefore takes guidance from these provisions of section 8 of the Act.

5.1 Financial information provided by Pacific Steel

132. The financial information provided by Pacific Steel relates only to rebar produced in New Zealand and sold on the New Zealand domestic market. Pacific Steel's injury analysis places particular reliance on a **counterfactual analysis**, with an assessment of the position the industry would or would likely be in 'but for' the subsidisation. In support of this approach the applicant referred to the Australian ADC's practice, the WTO Handbook on Anti-Dumping Investigations, academic articles, and a 1997 Settlement Agreement between the New Zealand Ministry of Commerce and Winstone Wallboards Limited (the applicant in a 1996 dumping investigation).
133. Pacific Steel claims its injury arises from **price undercutting**, with imported and domestic prices compared at the ex-wharf and ex-factory levels, illustrated with statements made about the loss of particular customers.
134. To establish price undercutting, Pacific Steel has calculated ex-wharf prices based on average FOB prices, to which it has added estimated ocean freight and New Zealand destination costs, and compared the resulting price with Pacific Steel's prices for the same periods. The estimated level of price undercutting for Chinese goods is $\text{■} - \text{■}\%$. Pacific Steel claims that **the price undercutting** has caused **price depression** and **price suppression**.
135. To demonstrate material injury, Pacific Steel provided financial information covering financial years from 2009 to 2016. After excluding FY2009 for reasons outlined in the application, Pacific Steel compares the position in the periods FY2010-2012 and FY2013-2016, with the earlier period being pre-injury (although Pacific Steel notes that injury may have occurred before then) and the latter affected by allegedly dumped and subsidised imports.
136. Pacific Steel notes that it has a strategy of retaining volume by competing on price, plus other assured quality and service elements, so injury effects are therefore reflected in sales revenue decrease rather than in sales volume.

137. Pacific Steel notes that its **market share** has been maintained in a growing market. Pacific Steel cites an Australian Ministerial Direction on Material Injury in support of the argument that material injury can be found in circumstances where an industry suffers a loss of market share in a growing market without a decline in profits.¹⁴
138. Pacific Steel notes that its **profitability** was significantly greater in the earlier period than during the later period, and that its profitability has been materially curtailed despite the strong growth in the size of the market and despite increased demand and greater plant utilisation. Pacific Steel attributes this situation to the presence of allegedly dumped and subsidised goods which undercut Pacific Steel's prices. In particular, reductions in unit material costs and operational efficiencies from a greater volume of sales was not translated into increased profitability.
139. The application relates the price effects to the economic impact on the industry in terms of **sales revenue** per tonne, and a decline in **profit** in terms of EBIT per tonne and material margin.
140. The application includes evidence relating to claims that **cashflow** has been impaired.
141. Pacific Steel notes that it has suffered diminished **returns on investments** and may have suffered impaired **productivity** and **utilisation of production capacity** but provided no specific evidence to substantiate these claims.
142. Pacific Steel notes that it is not claiming that there is any adverse economic impact relating to **inventory, employment and wages, or growth and ability to raise capital**.

5.2 Basis for Injury Analysis

143. Throughout its application, Pacific Steel emphasises that because of the approach it has taken to maintaining sales by meeting price competition, the injurious effects of 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, Pacific Steel focuses on the evolution of unit prices and per unit levels of revenue and profits as key indicators of injury.
144. Pacific Steel argues that the counterfactual approach is best suited to the circumstances of the case, and provides evidence to support its claims that:
- Injury is based upon selling price, which is mathematically and dynamically removed from sales revenue or EBIT, and the conditions of competition in the New Zealand market require a close focus on the price nexus, not on matters downstream.

¹⁴ See Australian Customs Dumping Notice no. 2012/24 (New Ministerial Direction on Material Injury, June 2012).

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

MBIE Practice

145. 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 assesses a series of data starting from a financial year which was not affected by allegedly subsidised imports through until the most recent financial year. This is often referred to as a 'coincidence' analysis. Coincidence analysis is a trend analysis which shows how the industry has performed since the time it claims allegedly subsidised imports began to cause injury. MBIE notes that, as suggested by the GOC in its consultation points, this requires more than "a mere mathematical comparison", and requires an assessment of the relationship between the subsidisation of goods and the injury effect.
146. MBIE notes that a counterfactual analysis needs to be considered in light of the whole of the available evidence. Unrealised sales revenue and profit is unlikely, by itself, to constitute material injury in an industry where profits are increasing. However, the application can be evaluated for evidence of injury to the industry caused by unrealised sales revenue and profit, in terms of the factors relating to economic impact of the allegedly dumped or subsidised goods as set out in section 8(2)(d) of the Act. A counterfactual analysis also needs to take particular care in assessing the effect of factors other than the 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*,¹⁵ agreed that the WTO Agreement on Implementation of Article VI of the GATT (the Anti-Dumping Agreement) did not prescribe a methodology that must be followed by an investigating authority in conducting an injury analysis. The findings also recognised that an authority

¹⁵ *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.

may need to rely on reasonable assumptions, or even draw inferences, but if assumptions are relied on then they should be derived as reasonable inferences from a credible basis of facts, and should be sufficiently explained so that their objectivity and credibility can be verified.

147. The New Zealand approach to determining whether or not an industry has incurred material injury is not inconsistent with the United States, or with the Australian approach, which has certain parameters placed on the use of counterfactual analysis. For instance, the Australian ADC will consider alternative approaches to the coincidence analysis where no coincidence has been found or a coincidence analysis is not possible. In such cases, the Australian ADC requires parties submitting information to demonstrate injury based on 'but for' grounds to provide and explain the evidence on which the claim rests, for example by using suitable accounting methods and counterfactual analysis. It is not sufficient to simply assert such an effect since this would not meet the evidentiary requirement.
148. It appears to be inherent in the arguments put forward by Pacific Steel that it believes that price effects alone are sufficient evidence of injury, such that evidence that allegedly subsidised imports have affected prices is a sufficient basis for initiation of an investigation. This is not MBIE's view. Section 8(1) of the Act requires the Secretary to examine the volume of allegedly subsidised imports, the effects of the allegedly subsidised imports on prices in New Zealand, and the consequent impact of the allegedly subsidised goods on the New Zealand industry. Section 8(2) of the Act sets out the matters that the Secretary shall have regard to in that examination.
149. The injury analysis outlined in this section of this report has been conducted primarily on the basis of a 'coincidence' analysis where the industry's performance is analysed over time. Where injury is not apparent from such an analysis, or where the applicant has claimed that a counterfactual analysis should be used, MBIE can have regard to the position the industry would have been in but for the subsidisation, but in doing so would carefully examine the assumptions made. In the event, the coincidence analysis provides sufficient evidence of injury to justify initiating an investigation.
150. The various other arguments raised by Pacific Steel can be addressed, if required, during the course of any investigation.

5.3 Cumulation of the Effects of Dumping and Subsidisation

151. Pacific Steel's injury evidence relates to the effects of both dumping and subsidisation, without seeking to make any differentiation between those effects.
152. Section 10(1) of the Act requires that in order to initiate an investigation the Secretary must be satisfied that sufficient evidence has been provided that material injury to an industry has been caused by reason of the importation of allegedly dumped or subsidised goods. It goes on, in section 10(2)(a), to outline the evidence required in an application, including evidence of the causal link between the alleged dumping or the alleged subsidisation and the alleged injury. Section 10(2)(b) sets out matters to be covered by the information provided, including references to the effects of the imports of the allegedly

- dumped or subsidised goods (section 10(2)(b)(xii)), and the consequent impact of those imports (section 10(2)(b)(xiii)).
153. On the face of it, the Act does not appear to require that there should be any differentiation between the dumping or subsidisation of goods when assessing injury to a domestic industry. However, while both the Subsidies Agreement and the Anti-Dumping Agreement provide for the cumulation of the effects of dumping or subsidisation, as the case may be, from more than one country, cross-cumulation of the effects of 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* (WT/DS436/AB/R).
154. 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.”
155. 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 Subsidies and Anti-Dumping Agreements are met. It also means that in assessing any application involving such claims which might lead to an investigation, MBIE should ensure that, to the extent reasonable, it gives due weight to these requirements.
156. In this context, it is relevant to note that the Australian ADC’s Final Report¹⁶ in its investigation of subsidisation of rebar from China, noted that isolating the individual effects of dumping and subsidisation was very difficult. It also noted that trying to apportion some of this injury arising from a single set of price and volume effects to the subsidisation as opposed to the dumping would require the Australian ADC to make a great deal of assumptions that would be arbitrary and imprecise. The Australian ADC concluded that it could not isolate the injury caused by subsidisation from the effect of it being dumped on to the Australian market, nor from the effects of other possible causes. The Commission concluded that it could not be satisfied that in and of itself the subsidisation was causing injury to the domestic industry and whether the injury, if any, was material. It was therefore recommended that no countervailing duties be imposed.
157. 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

¹⁶ *Final Report No 322*, 19 September 2016, Australian ADC.

countervailable subsidies, which, in the case of some cooperating exporters, would have been less than 1% (which is *de minimis*).

5.4 Import Volume Effects

158. 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*.
159. Pacific Steel has estimated export volumes of rebar from China to New Zealand based on information from Trade Map, Statistics Singapore and Department of Statistics, Malaysia. Table below shows Pacific Steel's calculation over the period for which it provided information:

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

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

160. Using the figures in Table 5.1, MBIE has calculated the percentage import from each country. Table below displays these percentage amounts:

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

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

161. Pacific Steel notes that monitoring the market is a difficult exercise due to a data-suppression that has been in place on New Zealand import statistics since 2004. The position regarding data suppression is outlined in section 1.2.2 of this report. With regard to the subject goods, imports under the items subject to data suppression make up a significant proportion of total imports.
162. Customs collects data on imports by tariff key. Table 5.3 below aggregates the imports under the relevant tariff keys, identified by Pacific Steel, and under which the subject goods are imported. MBIE has sourced data from the Customs that covers the goods imported into New Zealand under the tariff items and statistical keys shown in section 2.1 above. These tariff items and statistical keys may cover a wider range of goods than the subject goods but descriptions of the goods in the Customs data are generally not specific

enough to exclude any non-subject goods, and a definitive conclusion on coverage cannot be reached unless a full investigation is undertaken.

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

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

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

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

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

164. The tables above show that the volume of imports from China have generally increased over the period, with a sharp increase in FY2011, followed by a decrease and a subsequent build-up to FY2015 and FY2016. The share of imports has followed a similar pattern. Imports from Australia have also increased significantly over the period, as have imports from Singapore, and these sources, along with Malaysia, provided greater volumes and shares of imports than did China.

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

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

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

166. In absolute terms, imports from China increased significantly from FY2010 to FY2011 although from a negligible base in FY2010. Since FY2011 import volumes have fluctuated although there was a relatively large increase from FY2014 in FY2015 (when import volumes peaked), and a decline in FY2016. However, since the beginning of the period there has been an even larger increase in import volumes from other countries between FY2010 and FY2016 (from [redacted] tonnes to [redacted] tonnes) and domestic sales (from [redacted] to [redacted] tonnes) reflecting the growing New Zealand market for rebar (from [redacted] to [redacted] tonnes). These figures include a decline in both domestic production and the total market in 2016.
167. Relative to New Zealand *production*, imports from China increased from FY2010 to FY2011 from a negligible base in FY2010. Since FY2011, imports from China (relative to New Zealand production) have declined. In FY2016, Chinese imports represented [redacted]% of domestic production as opposed to [redacted]% in FY2011.
168. As a percentage of domestic *consumption* (the New Zealand market), imports from China have followed a similar pattern. Chinese imports increased significantly from FY2010 to FY2011 but this increase was from a negligible base. Since FY2011, imports from China (as a percentage of domestic consumption) have declined. In FY2016, Chinese imports represented [redacted]% of domestic consumption as opposed to [redacted]% in FY2011.
169. On the basis of this analysis, there is insufficient 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 or in relation to production or consumption in New Zealand.

5.5 Price Effects

5.5.1 Price Undercutting

170. Price undercutting refers to the extent to which the prices of the subject goods are lower than prices in New Zealand for like goods of New Zealand producers. Prices are compared

at the point that the imported goods first compete with the goods made in New Zealand. Price undercutting is not in itself a determinant of the existence or extent of injury, i.e. the margin of price undercutting is not a measure of the extent of the economic impact on the industry. That impact is to be measured, *inter alia*, in terms of the factors set out in section 8(2)(d) of the Act, outlined in section 5.4 of this Report.

171. In its application Pacific Steel said the level of trade at which imported rebar first competes with domestically-produced rebar has been the subject of extensive debate in previous rebar investigations. In past investigations, MBIE has considered the relevant level of trade for the purpose of this exercise is ex-wharf for imports vs Pacific Steel's ex-factory price (i.e. its free-into-store (FIS) price less freight).
172. Pacific Steel used export statistics sourced from Trade Map for the tariff items and statistical keys identified in section 2.1 above to estimate average FOB prices from China. Estimated costs from China to the ex-wharf level in New Zealand, sourced from a freight company, were then added to the FOB values to derive estimated ex-wharf values. These costs relate to ocean freight and New Zealand destination charges. Pacific Steel then compared these ex-wharf prices with its ex-factory domestic prices to gauge the extent of any price undercutting.
173. Using the above information, the following table based on Pacific Steel information compares the average ex-wharf prices of rebar from China with Pacific Steel's average ex-factory prices to assess the extent of any price undercutting. The undercutting is measured as a percentage of Pacific Steel's average ex-factory price.

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

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

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

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

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

175. Tables 5.6 and 5.7 above show prima facie evidence of significant price undercutting of Pacific Steel's average selling prices by the average prices of rebar from China.
176. In order to check on the levels of prices of the two other main suppliers, a similar exercise was undertaken for imports of rebar from Malaysia and Singapore. The undercutting margin was lower for Malaysia in both FY2015 and FY2016, while there was marginal or no undercutting by steel from Singapore, and none from Australia. This supports a conclusion that imports of steel from China were undercutting prices of Pacific Steel.

5.5.2 Price Depression

177. 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.
178. Pacific Steel submits that it has suffered price undercutting (see above) for some time from the presence in New Zealand of the subject goods and that this price undercutting has resulted in price depression and price suppression.
179. Pacific Steel has provided financial information to enable MBIE to assess whether it has suffered price depression. The following table shows Pacific Steel's average domestic selling prices for rebar from FY2010 to FY2016.

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

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

180. Table 5.8 shows that Pacific Steel's average selling price decreased over the period. By FY2016, Pacific Steel's average selling price had dropped to 72% of its FY2010 average selling price.
181. There is evidence of price depression, in that average prices have decreased over the period, but the extent to which any allegedly subsidised imports from China have contributed to this and the consequential impact of any price depression will need to be carefully assessed.

5.5.3 Price Suppression

182. 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.
183. MBIE has compared Pacific Steel's total costs as a percentage of sales revenue from FY2010 to FY2016. The following table shows the resulting calculations:

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

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

184. Table 5.9 shows that Pacific Steel's total costs per unit did not increase over the period concerned, so the issue of an inability to recover cost increases does not arise. However, total costs as a percentage of sales revenue per unit increased over the entire period, with a particular increase in FY2016.
185. There is, therefore, evidence of price suppression to the extent that Pacific Steel's average unit revenue did not reflect the extent of the same margins over costs per unit achieved in the earlier part of the period being examined.

5.5.4 Conclusion on Price Effects

186. There is evidence that the average prices of rebar imports from China are significantly undercutting Pacific Steel's average selling prices. MBIE is satisfied that Pacific Steel has provided sufficient evidence, for the purpose of initiation, that the allegedly subsidised Chinese imports are causing these price effects despite their low market share.
187. Pacific Steel's selling prices decreased overall between FY2010 and FY2016. Its average selling price in FY2016 represented 72% of its FY2010 average price and 75% of the FY2012 average price. Total costs as a percentage of sales revenue have increased over the entire period with a marked increase in FY2016. In FY2016, total costs represented 123% of sales revenue, compared with 100% in FY2010 and 115% in FY2012. There is evidence that Pacific Steel has suffered price depression and some price suppression, especially if price and cost movements are gauged over the entire period, and also since FY2012 (i.e. immediately prior to when the company is claiming injury commenced).
188. The margin of undercutting of imports from China was generally higher than the equivalent margin for imports from Malaysia, while there was minimal or no undercutting by imports from other sources. This suggests that there is sufficient evidence, for the purpose of initiation, that there is a link between imports from China and price undercutting.
189. 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.

5.6 Consequent Impact

5.6.1 Sales Volume and Sales Revenue

190. 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.
191. Pacific Steel provided sales volume and sales revenue information covering its 2010 to 2016 financial years.
192. Pacific Steel submits that its strategy is to retain volume by competing on price (plus other assured quality and service elements). Injury effects are therefore reflected in sales revenue decreases and loss of profits, rather than in volume effects.
193. The following table sets out the sales volume and sales revenue information provided by Pacific Steel.

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

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

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

identify the level of sales revenue that might have been achieved but for the effect of the allegedly subsidised goods on prices, and would focus on the decrease in the revenue per unit that could be attributed to the Chinese imports.

197. It cannot be assumed that there is a direct substitutability between Chinese and domestic sales, since the more likely substitutability is between Chinese and imports from other sources (probably from Malaysia because of prices). The level of additional sales that could have been expected in FY2015 and FY2016 is therefore likely to be somewhere between 0% and 100% (the maximum level of sales that would replace all imports from China), but with the lower end more likely given the price levels of other suppliers. The trend in sales revenue would remain the same, at a marginally higher level. In these circumstances it would be difficult to conclude that any increase in sales revenue that might have been achieved but for the allegedly subsidised imports from China would be sufficient to justify a definitive conclusion that the allegedly subsidised imports have caused a decline in sales.

5.6.2 Market Share

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

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

Table 5.11: Market Share (tonnes, %)

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

206. The figures in Table 5.11 show that the domestic industry’s market share decreased by 10 percentage points when FY2016 is compared with FY2010 (although there were

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

5.6.3 Profits

211. Allegedly dumped or subsidised imports can affect gross profit and net profit via the impact on sales prices and volumes.
212. Pacific Steel has provided gross profit and EBIT information covering its 2010 to 2016 financial years, both of which, it claims showed per unit declines over this period. Pacific Steel noted that it is not possible to identify a specific time that is "pre or post" injury. The adjustment period of FY2010-FY2012 is probably reflective of the pre-injury market dynamics, although dumping occurred in that period as well and contributed to downwards price and revenue trends during that time. It is not clear if Pacific Steel also attributes these trends to subsidisation.

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

Table 5.12: EBIT (Profit)
(NZD 000, %)

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

217. Total EBIT declined over the period mainly due to a significant decline from FY2010 to FY2011, and again from FY2015 to FY2016. The decline in EBIT from FY2010 to FY2011 coincided with a significant decrease in market size over the same period and a corresponding decrease in domestic sales indicating that the decrease in EBIT could be attributed, in part, to these factors and was not completely due to allegedly subsidised imports from China. From FY2011 there was a gradual increase in EBIT to FY2015, but a significant decrease in FY2016. In FY2016, total EBIT was only 29% of the level achieved in FY2010 and 29% of the average of the previous six years.
218. The per unit figures for EBIT have also declined over the period, with a slight recovery in FY2014, but further decreases in FY2015 and a significant decrease in FY2016.

219. EBIT as a percentage of sales revenue has followed a similar pattern with the most significant decline being from FY2010 to FY2011. There was some slight recovery in FY2013 and FY2014 but further decreases in FY2015 and more so in FY2016. In FY2016, EBIT was 12% of sales revenue, as opposed to 22% in FY2010, and 12 - 15% over the previous five years.
220. Pacific Steel has provided information that assesses levels of EBIT in FY2015 and FY2016 against the levels that would have been achieved if the per unit levels of EBIT experienced in each of FY2010, FY2011 and FY2012 had continued. Similar information was provided in respect of gross profit.

Table 5.13: Implied EBIT
NZD million

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

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

5.6.4 Other Economic Impacts

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

Productivity

224. 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.
225. Pacific Steel noted that it may have suffered an economic impact on productivity as a result of dumping and subsidisation, but any such effects would be less than the effects on sales revenue and profits. No evidence was provided to support this claim.

Return on investment (ROI)

226. 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.

227. Pacific Steel claims that it has suffered an economic impact in the form of a diminished return on investments, proportional with the injury to price and EBIT margins. It notes that it is difficult to provide sensible evidence because the more recent years encompass a period pre the sale of the business, the sale/purchase event, and investments post the purchase. This means that the denominator in any ROI series is non-continuous. Pacific Steel suggests that evidence on EBIT and gross profit, and cashflow, can serve as a proxy for ROI matters.

Utilisation of production capacity

228. 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.
229. Pacific Steel notes that it may have suffered an adverse economic impact on utilisation of production capacity as a result of dumping and subsidisation, but any such effects would be less than the effects on sales revenue and profits. No evidence was provided to support this claim.

Factors Affecting Domestic Prices

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

5.6.5 Other Adverse Effects

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

Cash flow

232. Pacific Steel has claimed that it has suffered an economic impact via impaired cash flow, arising from the effects of allegedly dumped and subsidised goods on sales revenue and profit. It notes that it is difficult to provide evidence of this impact because the more recent years encompass a period pre the sale of the business, the sale/purchase event, and investments post the purchase. Nevertheless, Pacific Steel has provided a reasonable estimate of the adverse effect on cash flow.
233. Pacific Steel has provided information on cash flow which uses EBIT less a constant figure for depreciation as a proxy for cash flow. Accordingly, the outcome of the analysis closely reflects the information provided on profits, and indicates that cash flow has experienced a similar decline.

Inventories

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

Employment and Wages

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

Growth and Ability to Raise Capital

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

5.6.6 Conclusion on Consequent Impact

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

5.7 Conclusion on Material Injury

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

5.7.1 Import Volumes

242. There is evidence that Chinese imports have increased over the period from a very low base, although over the same period there was a much larger increase in import volumes from other countries largely reflecting the increased size of the New Zealand market. Since FY2011, imports from China have declined relative to production and consumption in New Zealand.

5.7.2 Price Effects

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

5.7.3 Economic Impact

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

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

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

- There has been an increase in sales volume since FY2011, and while there has been a decline in volume in FY2016, it is difficult to reach a definitive conclusion that imports from China have caused this decline, bearing in mind that Chinese import volumes also decreased in the period FY2015 to FY2016.
- There is no evidence of a decline in the domestic industry's market share that can be attributed to imports from China.

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

5.7.4 Conclusion

247. On the basis that there is sufficient evidence, for the purpose of initiation, that imports from China are allegedly 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 insufficient evidence to support a conclusion that there has been a significant increase in imports of allegedly subsidised goods in absolute terms or in relation to production or consumption in New Zealand.
- Imports of allegedly subsidised steel from China have been undercutting prices of Pacific Steel.
- There is evidence of price depression, in that average prices have decreased over the period.
- There is evidence of some price suppression to the extent that Pacific Steel's average unit revenue did not reflect the extent of the margins over costs per unit achieved in the earlier part of the period being examined.

248. With regard to the consequent impact of the volume and prices of allegedly subsidised goods:
- There is sufficient evidence at this stage to conclude that there has been a decline in sales revenue in FY2016 attributable to allegedly subsidised imports, but insufficient evidence of a decline in sales volume that can be attributed to allegedly subsidised imports.
 - It cannot be concluded that there is a decline in market share that can be attributed to allegedly subsidised imports from China.
 - There is sufficient evidence at this stage to support a conclusion that profits have declined as a result of allegedly subsidised imports from China.
 - There is sufficient evidence at this stage that the decline in profits has adversely affected cash flow.
 - No evidence has been provided to support Pacific Steel's claim that it has suffered impaired returns on investments and may have suffered impaired productivity and production capacity.
249. On the basis of its analysis, MBIE concludes, for the purpose of initiation, that there is sufficient evidence that the domestic industry has been materially injured by allegedly subsidised imports from China.

6. Evidence of Causal Link

250. Section 10(1)(b) 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 Secretary shall have regard to in assessing injury. This reflects the requirements of Articles 11.2 and 15.5 of the Subsidies Agreement.
251. 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.
252. MBIE has also examined factors other than the allegedly subsidised goods that have injured or are injuring the industry.

6.1 Subsidised Imports

253. As described in the preceding sections of this report, MBIE has examined the claims made by Pacific Steel with regard to the volume and price effects of allegedly subsidised imports and the consequent impact on the domestic industry. MBIE has identified that sufficient evidence has been provided, for the purpose of initiation, that price undercutting by allegedly subsidised imports from China has contributed to price depression and price suppression being experienced by Pacific Steel. Sufficient evidence has been provided to support claims that the consequences of these price effects are actual declines in profits and flow-on effects on cash flow.

6.2 Other Imports

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

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

	FY2013	FY2014	FY2015	FY2016
Volumes				
China		104%	134%	94%
<i>Other countries:</i>				
Australia		90%	190%	90%
Malaysia		109%	123%	107%
Singapore		124%	116%	156%
Other		93%	110%	77%
Total other countries		103%	130%	105%
NZD/tonne VFD				
China		91%	89%	97%
<i>Other countries:</i>				
Australia		98%	88%	94%
Malaysia		96%	99%	91%
Singapore		92%	99%	92%
Other		92%	90%	110%
Total other countries		93%	94%	93%
* table displays percentage changes from previous year				

256. 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

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

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

6.4 Trade Practices

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

260. Pacific Steel has indicated that it is not aware of any changes in the commercial activities and practices described in previous investigations into rebar¹⁷ and the conditions in the New Zealand industry.

6.5 Developments in Technology

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

¹⁷ Dumping investigation into rebar from Malaysia and Thailand (2004 and subsequent reviews).

262. Pacific Steel has made no comment on these matters, but has noted that there are no commercially significant product substitutes to the New Zealand-made or imported carbon steel reinforcing bar and coil goods.

6.6 Exports of New Zealand Producers

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

6.7 Conclusions on Causal Link

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

7. Conclusion

267. 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 rebar from China is being allegedly 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 allegedly subsidised goods imported from China.
268. On this basis, an investigation should be initiated to determine the existence and effect of the alleged subsidisation of rebar imported from China.

8. Recommendation

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

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

..... August 2017

Agreed

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

..... August 2017