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INNOVATION & EMPLOYMENT**  
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**TRADE  
AND REGULATORY  
COOPERATION**  
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# Reinforcing steel bar and coil from Thailand non-confidential final report

**Dumping and Countervailing Duties Act 1988**  
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# Table of contents

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<b>ABBREVIATIONS.....</b>	<b>3</b>
<b>1. EXECUTIVE SUMMARY .....</b>	<b>5</b>
<b>2. INTRODUCTION.....</b>	<b>7</b>
2.1 Temporary suspension of anti-dumping duties .....	7
2.2 Application.....	7
2.3 Reviews.....	7
2.4 Ministry's approach to sunset reviews.....	8
2.5 Grounds for the review .....	9
2.6 Reassessment of anti-dumping duties .....	10
2.7 Disclosure of information .....	10
2.8 Report details .....	10
<b>3. INTERESTED PARTIES .....</b>	<b>13</b>
3.1 New Zealand industry.....	13
3.2 Exporters .....	13
3.3 Importers.....	13
3.4 Imported goods .....	13
<b>4. NEW ZEALAND INDUSTRY .....</b>	<b>15</b>
4.1 Like goods.....	15
4.2 Imports of rebar .....	16
<b>5. DUMPING INVESTIGATION .....</b>	<b>17</b>
5.1 Purpose of a review of dumping .....	17
5.2 Likelihood of continuation or recurrence of dumping .....	17
5.3 Export prices.....	18
5.4 Normal values.....	21
5.5 Comparison of export price and normal value.....	24
5.6 Conclusions relating to dumping.....	24
<b>6. INJURY INVESTIGATION .....</b>	<b>25</b>
6.1 The 2009 review of injury .....	25
6.2 Injury in a review .....	25
6.3 Injury information submitted by Pacific Steel.....	26
6.4 Import volumes .....	27
6.5 Other injury factors .....	54
6.6 Conclusions relating to injury.....	54
<b>7. CONCLUSIONS .....</b>	<b>55</b>

## Abbreviations

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The following abbreviations are used in this Report:

Act (the)	Dumping and Countervailing Duties Act 1988
Anti-Dumping Agreement (the)	WTO Agreement on Implementation of Article VI of GATT 1994
Chief Executive (the)	Chief Executive of Ministry of Business, Innovation and Employment
CIF	Cost, Insurance and Freight
CITT	Canadian International Trade Tribunal
EBIT	Earnings Before Interest and Tax
FOB	Free on Board
Ministry (the)	Ministry of Business, Innovation and Employment
POR(D)	Period of Review for Dumping (1 November 2013 to 30 September 2014)
POR(I)	Period of Review for Injury (years ended June 2012 to 2014)
Pacific Steel	Pacific Steel (New Zealand) Ltd
RIS	Regulatory Impact Statement
Tata	Tata Steel (Thailand) Ltd



# 1. Executive summary

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## Introduction

1. The Ministry of Business, Innovation and Employment (the Ministry) initiated a sunset review into the anti-dumping duties applying to rebar from Thailand on 6 November 2014, following an application by Pacific Steel (New Zealand) Limited (Pacific Steel). Pacific Steel is the only New Zealand producer of reinforcing steel bar and coil (rebar). The duties under review have been in place since 2004 and were last reviewed in 2009.

2. Anti-dumping duties on residential building materials (which includes the anti-dumping duty on rebar from Thailand) were suspended for three years from 1 June 2014 through an amendment to the Dumping and Countervailing Duties Act 1988. This means that importers are not required to pay the anti-dumping duty on rebar imported from Thailand for the duration of the suspension period.

3. This report considers the likelihood of a continuation or recurrence of dumping causing a continuation or recurrence of material injury, should the current anti-dumping duties be removed permanently.

## Rebar subject to the investigation

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

*Reinforcing steel bar and coil with a diameter equal to or greater than 5mm and less than or equal to 40mm*

## Dumping

5. There were no exports of the subject goods from Thailand to New Zealand over the period of review for dumping. The Ministry has therefore established an export price on the basis of the weighted average export prices of rebar from Thailand to other export destinations.

6. No information on normal values was provided by Thai producers and exporters of rebar. A normal value was therefore established on the basis of information provided by Pacific Steel in its application which was based on the published prices of a Thai rebar producer.

7. The dumping margin established on the basis outlined above is five percent.

8. The Ministry has concluded that, should the anti-dumping duties be removed and should imports of rebar from Thailand resume, it is likely the goods will be imported at dumped prices.

## Injury

9. There have been no imports of rebar from Thailand since late 2006. Consequently Pacific Steel has not claimed that it is currently being injured by imports from Thailand and there is no evidence of any such injury.

10. The review of injury has therefore focused on the likelihood of material injury to the domestic industry recurring should the current anti-dumping duties be removed permanently.

11. The Ministry has concluded that there is not likely to be a resumption of imports of rebar from Thailand if the duties are removed permanently. This conclusion is largely based on the lack of any imports of rebar from Thailand since the duties were suspended with effect from 1 June 2014. The

Ministry considers that sufficient time has elapsed since the suspension of the duties for importers to have arranged for and imported rebar if the absence of the duties was to provide a reason to do so.

12. In reaching this conclusion the Ministry has taken into account submissions by Pacific Steel that a recurrence of injurious dumped imports is likely if the duties are removed. This includes the submission by Pacific Steel that the initiation of a dumping investigation by the Australian Anti-Dumping Commission into rebar from Thailand and various other countries in October 2014 and the consequent imposition of provisional anti-dumping duties (by way of a requirement for importers to provide securities) in March 2015, will likely result in rebar exports from Thailand to Australia being diverted to the New Zealand market. The Ministry considers that while there is evidence that such a diversion of rebar exports is possible, there is not sufficient evidence to demonstrate that it is likely.

13. Because the Ministry has concluded that there is not likely to be a resumption of dumped imports of rebar from Thailand if the duties are removed permanently, the Ministry does not consider it is necessary to consider the other injury factors that would normally be examined in a review because if there is not likely to be a recurrence of injurious dumped imports there can be no recurrence of material injury caused by such imports that could be reflected in those factors.

## **Conclusion**

14. The Ministry has concluded there is not likely to be a recurrence of dumped imports of rebar from Thailand in sufficient volumes to cause a recurrence of material injury to the New Zealand industry if the duty is permanently removed and the duties should therefore be terminated.

## **2. Introduction**

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### **2.1 Temporary suspension of anti-dumping duties**

15. Anti-dumping duties applying to residential building materials were suspended for three years with effect from 1 June 2014 by an amendment to the Dumping and Countervailing Duties Act 1998. This suspension of anti-dumping duties included those applying to rebar from Thailand which are the subject of this review. The suspension of these duties means that importers are not required to pay the duties for the duration of the suspension period. It also means that the duties are not payable retrospectively once the suspension period ends.

16. The amendment to the Act did not remove the right of interested parties to seek a review of suspended duties. Should this review find that the duties should remain in place, they will continue to be suspended until the end of the suspension period on 31 May 2017. The suspension of these anti-dumping duties is intended to lower the cost of imported residential building materials on which the duties were applied, primarily to assist with the Christchurch rebuild.

### **2.2 Application**

17. On 18 September 2014, the Chief Executive received an application from Pacific Steel (New Zealand) Limited (Pacific Steel), for a review of the anti-dumping duties that currently apply to imports of reinforcing steel bar and coil (rebar) from Thailand.

18. Anti-dumping duties have been in place on rebar from Thailand since 2004. The current duties have been in place since 2009, following a sunset review and reassessment although, as noted above, these duties were suspended for three years from 1 June 2014.

19. On 6 November 2014, the Ministry initiated a review of the continued need for the imposition of the anti-dumping duties, pursuant to s. 14(8) of the Dumping and Countervailing Duties Act 1988 (the Act). The Ministry was satisfied that sufficient evidence had been provided in the application, justifying the need for the review.

20. The purpose of the Ministry's review is to examine whether dumping and injury would be likely to continue or recur if the duties were removed, in accordance with Article 11 of the World Trade Organisation Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Anti-Dumping Agreement).

### **2.3 Reviews**

21. In terms of sections 14(9) and 14(9A) of the Act, the anti-dumping duties relating to rebar from Thailand, in the absence of a review, would have ceased to apply from 17 November 2014. The existing anti-dumping duties will continue to apply, albeit that the duties are not payable because they are suspended as noted above, pending the outcome of this review and any reassessment that may follow it.

22. Interested parties were advised of the initiation of this review in writing and provided with the opportunity to make written submissions to the Ministry. Interested parties were also provided with a written interim report setting out the Ministry's findings on the review and provided with an opportunity to make written submissions on this report. The submissions received have been taken into account in this final report.

## 2.4 Ministry's approach to sunset reviews

23. The Ministry carries out sunset reviews under the provisions of Section 14(8) of the Act, which states as follows:

The Secretary may, on his or her own initiative, and shall, where requested to do so by an interested party that submits positive evidence justifying the need for review, initiate a review of the imposition of anti-dumping duty or countervailing duty in relation to goods and shall complete that review within 180 days of its initiation.

24. In applying the provisions of Section 14(8), in the absence of any specific provisions relating to sunset reviews, the Ministry has had regard to the provisions of Article 11.3 of the Anti-Dumping Agreement. In interpreting Article 11.3, the Ministry takes guidance from New Zealand legal reports, WTO Panel reports and approaches taken by other WTO member countries.

25. Article 11.3 requires that a duty be terminated 5 years after it was imposed or last reviewed unless an investigating authority determines in a review that "... the expiry of the duty *would be likely* to lead to continuation or recurrence of dumping and injury" [emphasis added]. Some guidance regarding the interpretation of the phrase "would be likely" has been provided by the New Zealand Court of Appeal which interpreted the phrase to mean 'a real and substantial risk..., a risk that might well eventuate' (Commissioner of Police vs Ombudsman [1988] 1 NZLR 385). Guidance can also be found in WTO jurisprudence e.g. *United States – Sunset Reviews of Anti-dumping Measures on Oil Country Tubular Goods from Argentina*<sup>1</sup> and *United States Anti-Dumping Duty on Dynamic Random Access Memory Semi-Conductors (DRAMs) from Korea*<sup>2</sup>.

26. For example, in *Oil Country Tubular Goods*, the Appellate Body stated (at paragraph 308) "[W]e agree with Argentina that, in *US – Corrosion – Resistant Steel Sunset Review*<sup>3</sup>, the Appellate Body equated "likely", as it is used in Article 11.3, with "probable". We also agree with Argentina that this interpretation of "likely" as "probable" is authoritative in relation to injury as well, given that the term "likely" in Article 11.3 applies equally to dumping and injury." The Appellate Body also noted in *Oil Country Tubular Goods* (at paragraph 340) that an investigating authority's likelihood determinations under Article 11.3 must be based on "positive evidence" and quoted with approval the following statement by the Appellate Body in *US – Hot Rolled Steel*:

"The term "positive evidence" relates . . . to the quality of the evidence that authorities may rely upon in making a determination. The word "positive" means . . . that the evidence must be of an affirmative, objective and verifiable character and must be credible."

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<sup>1</sup> Report of the Panel – United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina – WT/DS268/R – Circulated 16 July 2004. Report of the Appellate Body – WT/DS268/AB/R – Adopted 17 December 2004.

<sup>2</sup> Report of the Panel – United States – Anti-Dumping Duty on Dynamic Random Access Memory Semi-Conductors (DRAMs) of One Megabit or Above from Korea – WT/DS99/R – Adopted 19 March 1999.

<sup>3</sup> In that case the Appellate Body stated (at paragraph 111): "... an affirmative likelihood determination may be made only if the evidence demonstrates that dumping would be probable if the duty were terminated – and not simply if the evidence suggests that such result might be possible or plausible."



27. The Ministry has also referred to the approaches taken by the European Union, United States, Canada and Australia to sunset reviews.

28. The Ministry notes that the consideration of whether duties should be removed does not exist in isolation but is dependent on whether the evidence shows that the expiry of duty would be likely to lead to a continuation or recurrence of dumping and injury. In determining “likelihood”, it is considered that regard should be had to the timeframe within which an event may occur. Article 11.3 of the Anti-Dumping Agreement makes no express reference to the length of time within which a continuation or recurrence of injury has to take place.

29. Mindful of the different factors involved in each case, and taking guidance from the sources referred to above, the Ministry approaches all investigations and reviews on a case-by-case basis. Based on its interpretation of the Anti-Dumping Agreement, the Ministry adopts the following general principles in considering injury in sunset reviews:

- The Ministry is required to establish whether the expiry of the anti-dumping duty would be likely to lead to a continuation or recurrence of dumping and injury.
- The test to be applied in respect of the likelihood of a continuation or recurrence of dumping and material injury is a positive one, i.e., the Ministry needs to be satisfied, based on positive evidence, that certain events are likely to occur, and that those events will cause dumping and material injury to the industry to continue or recur in the absence of anti-dumping duties.
- Interpretation of the phrase “would be likely” is guided by a court judgement referring to “a real and substantial risk..., a risk that might well eventuate” and by relevant WTO jurisprudence.
- In considering the likelihood of injury, the Ministry may refer for guidance to provisions in the Anti-Dumping Agreement that may be helpful in assessing that likelihood and those provisions may include, if appropriate, the factors used in Article 3.7 in assessing a threat of injury. The test to be applied, however, is not that for establishing whether there is a threat of injury.
- In considering whether removal of the duty would be likely to lead to a recurrence of dumping and injury, the Ministry considers what is likely to happen in the foreseeable future. The extent to which the Ministry is able to make judgements on the likelihood of events occurring in the foreseeable future will depend on the circumstances of each case and, therefore, the foreseeable future will range from the imminent to longer timeframes.

30. To gauge the extent to which the removal of the anti-dumping duties will likely cause material injury to the domestic industry in the foreseeable future, the Ministry generally requires the domestic industry to provide projections or forecasts of the injury it considers it will suffer as a result of the removal of the duties. The Ministry will examine these projections in light of the company’s past performance (with the duties in place to prevent injurious dumping) and projected future performance (both with the presence and absence of duties) in order to assist it in making a likelihood of recurrence of injury determination.

## 2.5 Grounds for the review

31. Pacific Steel claims that as a result of a likely recurrence of dumping, there is likely to be a recurrence of material injury as a result of:

- increased volume of the dumped imports;
- price undercutting, price depression, and price suppression,

which will likely result in:

- decline in output and sales;
- decline in market share;
- decline in profits;
- decline in return on investments;
- decline in utilisation of production capacity; and
- adverse effects on cash flow, inventories, employment, and growth.

## 2.6 Reassessment of anti-dumping duties

32. If the outcome of this review indicates that anti-dumping duties should continue to be applied, then the rate or amount of duty can be reassessed in accordance with section 14(6) of the Act. The suspension of the duties referred to above does not prevent the duties from being reassessed although the reassessed duties will continue to be suspended until 31 May 2017.

## 2.7 Disclosure of information

33. The Ministry makes available all non-confidential information via the Public File for this review. Any interested party is able to request both a list of the documents on this file and copies of the documents.

34. Article 6.6 of the Anti-Dumping Agreement provides as follows:

Except in circumstances provided for in paragraph 8, the authorities shall during the course of an investigation satisfy themselves as to the accuracy of the information supplied by interested parties upon which their findings are based.

35. A verification visit was carried out at Pacific Steel's premises in order to verify the information provided by the company in its application for a review and its response to the Ministry's request for further information. A copy of the verification report was provided to the company and a non-confidential version was placed on the public file.

36. Where no information has been made available, the findings in this report have been made having regard to all available information, that is, on the basis of the best information available in accordance with section 6 of the Act and Article 6.8 and Annex II of the Anti-Dumping Agreement. The information relied on by the Ministry is detailed in the relevant sections in this report.

## 2.8 Report details

37. In this report, unless otherwise stated, years for evaluating injury are years ending 30 June. Dollar values are in New Zealand Dollars (NZD), United States Dollars (USD) or Thai baht (THB), and have been specified in each instance. In tables, column totals may differ from individual figures due to rounding. The term VFD refers to value for duty for New Zealand Customs Service (NZCS) purposes.

38. The period of review for dumping (POR(D)) is from 1 October 2013 to 30 September 2014, while the period of review for injury (POR(I)) involves an evaluation of the data submitted by Pacific Steel for financial years 2012 to 2014 (Pacific Steel's financial year is the year to 30 June). The Ministry has also evaluated Pacific Steel's budget for 2015 and its forecast for 2016 in terms of the impact on Pacific Steel's domestic operation, should the anti-dumping duties remain and should they be removed.



### 3. Interested parties

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#### 3.1 New Zealand industry

39. The application for the review was submitted by Pacific Steel. The Chief Executive was satisfied in initiating the review that the application was made by or on behalf of the New Zealand industry producing like goods. Pacific Steel was acquired by New Zealand Steel, which is ultimately owned by an Australian company, BlueScope Steel, on 3 June 2014. However its manufacture of rebar remains in New Zealand.

40. The Ministry is satisfied in terms of section 3A of the Act that Pacific Steel is the only New Zealand producer of like goods and, therefore, that Pacific Steel constitutes the New Zealand industry for the purpose of this investigation.

#### 3.2 Exporters

41. The Ministry has found that there were no exports of the subject goods from Thailand to New Zealand over the POR(D). The Ministry requested information from Thai exporters that had been involved in the last sunset review or in the original investigation. Only Tata Steel (Thailand) Ltd (Tata) provided any information to the Ministry.

#### 3.3 Importers

42. Because there have been no imports of the subject goods over the POR(D), the Ministry requested information from importers that had been involved in the last sunset review or in the original investigation; however, none of these companies provided any information to the Ministry.

#### 3.4 Imported goods

43. The goods which are the subject of the application, hereinafter referred to as rebar, or “subject goods”, are:

*Reinforcing steel bar and coil with a diameter equal to or greater than 5mm and less than or equal to 40mm*

44. The New Zealand Customs Service has stated that the rebar enters under the following tariff classifications:

7213.10.90 01E	7213.10.90 09L	7213.91.90 01J	7213.91.90 05A
7213.91.90 09D	7213.99.90 01E	7213.99.90 05H	7213.99.90 09L
7214.20.90 01G	7214.20.90 05K	7214.99.90 01C	7214.99.90 03K
7214.99.90 11L	7214.99.90 13G	7214.99.90 21H	7227.90.00 19H
7228.30.00 19D	7228.50.00 19A	7228.60.00 19E	

45. The Normal tariff rate is either 5 percent or free for rebar imported under the tariff items above. Where the Normal tariff of 5 percent applies, imports of rebar of Thai origin are eligible for duty free entry under either the New Zealand – Thailand Closer Economic Partnership Agreement or the ASEAN-Australia-New Zealand Free Trade Agreement.



## 4. New Zealand industry

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46. Section 3A of the Act provides the definition of “industry”:

**3A. Meaning of “industry”**—For the purposes of this Act, the term “industry”, in relation to any goods, means—

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

47. “Like goods” is defined in section 3 of the Act:

“Like goods”, in relation to any goods, means—

- (a) Other goods that are like those goods in all respects; or
- (b) In the absence of goods referred to in paragraph (a) of this definition, goods which have characteristics closely resembling those goods:

### 4.1 Like goods

48. In order to establish the existence and extent of the New Zealand industry for the purposes of a review into whether the injury would be likely to continue or recur if the anti-dumping duties were removed permanently, 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, and if not, whether there are New Zealand producers of other goods which have characteristics closely resembling the subject goods.

49. The subject goods have been identified in section 3.4 of this Report as:

*Reinforcing steel bar and coil with a diameter equal to or greater than 5mm and less than or equal to 40mm*

50. Pacific Steel is New Zealand’s sole manufacturer of hot rolled reinforcing steel products. It produces reinforcing bars and coils (rebar) to comply with AS/NZS 4671. Rebar is produced either in straight lengths or coiled, with or without surface deformations.

51. Pacific Steel produces reinforcing steel bar and coil in diameters ranging from 6 to 40mm in bar form and 6 to 16 mm in coil form. Lengths available are full metres from 6 to 21 and most of the finished products are sold in 2 tonne bundles.

52. Pacific Steel no longer produces Quench and Tempered (QT) reinforcing products for the domestic market although it still produces QT products for export. All of the rebar sold by Pacific Steel on the New Zealand domestic market is micro-alloyed.

53. The Ministry considers that Pacific Steel continues to produce a like good and as a consequence remains the New Zealand industry in terms of section 3A of the Act.

## 4.2 Imports of rebar

54. There have been no imports of the subject goods from Thailand over the review period for injury and in fact no such imports since late 2006. Table 3.1 shows total imports of rebar from 1 July 2011 to 30 June 2014. Indonesia, China, Australia, Singapore and Malaysia are significant exporters of rebar to New Zealand (by quantity).

**Table 3.1: Total imports of rebar**

	<b>2011/12</b>	<b>2012/13</b>	<b>2013/14</b>
Total imports (tonnes)	27,065	29,028	30,163



## 5. Dumping investigation

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55. Dumping occurs when an exporter sells rebar to New Zealand at a price lower than it is sold for in Thailand. The price at which rebar is sold in Thailand is referred to as the normal value. In essence dumping is price discrimination between an export and a domestic market.

### 5.1 Purpose of a review of dumping

56. A sunset review is intended to determine whether the expiry of the existing anti-dumping duties after five years would likely lead to a continuation or recurrence of dumping and injury and therefore whether there is a continued need for the imposition of anti-dumping duties. The general principles concerning the Ministry's approach to sunset reviews are set out in section 1.3 of this report. The Ministry's usual approach is to establish if rebar is being dumped into New Zealand, the extent of any dumping and then analyse whether there is a likelihood of a continuation or recurrence of dumping, if the duties were removed.

### 5.2 Likelihood of continuation or recurrence of dumping

#### Introduction

57. This section of the report explains the method of comparing export prices with normal values and how these prices have been established over the POR(D), i.e. the year ended 30 September 2014, to determine whether rebar from Thailand was imported into New Zealand at dumped prices.

58. The Ministry will usually examine the imports during the POR(D) to establish whether or not goods are being dumped. In this case, however, there have been no imports of the subject goods over this period. The Ministry has therefore been unable to analyse the extent to which goods are currently being dumped and the likelihood of continuation of any dumping. The Ministry's analysis has instead concentrated on assessing whether there is a likelihood of a recurrence of dumping, if the duties were removed permanently. This section of the report explains how the Ministry established whether or not that likelihood exists.

#### Methodology

59. The Ministry would normally undertake the comparison of export prices and normal values on either a weighted-average-to-weighted-average or transaction-to-transaction basis.

60. In the present review, the Ministry was unable to select appropriate Thai domestic sales which it could compare with export transactions, or likely export transactions should duties be removed, because no information was provided by the Thai exporters that participated in the original investigation or last sunset review on normal values. As a result, the Ministry is not able to conduct a transaction-to-transaction analysis, nor is there any information on which to conduct a weighted average-to-weighted average analysis.

61. Instead, the Ministry has chosen to base its dumping analysis on information sourced during the review from a variety of other sources, including the information on export prices and normal values Pacific Steel provided in its application. The Ministry considers that this is the best information available, and has used this information in accordance with section 6 of the Act and Article 6.8 of the Agreement, which allow for a decision to be made having regard to all available information.

62. Likely export prices and normal values have been established based on information from the following sources:

- Pacific Steel's application for a sunset review;
- the [REDACTED] database;
- information from a Thai company's web site;
- information obtained in the 2009 sunset review and updated to 2014 values using the Thai consumer price index.

### 5.3 Export prices

63. Export prices are determined in accordance with section 4 of the Act. Export prices are the prices at which rebar are exported from the country of export to New Zealand, that are arm's length transactions, adjusted to allow a fair comparison with the prices of rebar sold in the exporting country.

64. The Ministry has constructed export prices on the basis of likely export prices if rebar was shipped from Thailand to New Zealand, as there were no exports of the subject goods to New Zealand over the POR(D). The following paragraphs provide an analysis of export prices.

#### Introduction

65. Export volumes and values from Thailand to other countries are considered to be the best information available to calculate a likely export price to New Zealand.

#### Base prices

66. In its application for this review, Pacific Steel calculated export prices using Thai export data compiled from [REDACTED] for exports to Pakistan and Indonesia for the 12 months to 31 March 2014 for the following 6 digit HS codes: 721310, 721391, 721399, 721420, and 721499. Pacific Steel also calculated a separate export price using Thai export data from [REDACTED] for exports to Australia over the same period, for the HS 6 digit code 722830.

67. The Ministry considers that the export price should be based on data for the HS codes 721310, 721391, 721399, 721420, and 721499 for exports from Thailand to all countries other than Australia and on data for the HS code 722830 for exports to Australia. Rebar can be classified under four other tariff items (at the 6 digit level) which cover bars and coils of alloy steel. Pacific Steel advised that these tariff items are 722 codes for what may be described as "pure" alloy/special purpose steels which are never used for or fulfil the needs of concrete reinforcing customers. Pacific Steel said that the 722 codes are intended to encompass steels where highly material proportions of alloying elements are included so that it has very hard wearing properties or is very hard for impact resistance use. Pacific Steel commented that rebar does not require these properties. Pacific Steel said that while the 722 codes may be used for rebar, they normally should not be so used.

68. The Ministry notes that in the Ministry's final report on the 2009 review, likely export prices were based on export data from Thailand under tariff item 721420 only. At the pre-initiation stage of this review, the Ministry analysed imports of rebar into New Zealand over the year ended August 2014 by tariff item. This showed that imports under the five tariff items used by Pacific Steel represented 85 percent of all imports under the tariff items under which the subject goods can be classified and that the majority of these imports entered under the 721420 tariff item used in the 2009 review. The Ministry further notes that the value for duty (VFD) per kilogram of imports for the year ended August 2014 under the 722 steel alloy tariff items was twice that of the imports under the 721 tariff items, which suggests that imports under the 722 tariff items may not be rebar.

69. On the basis of the above considerations the Ministry considers that it is reasonable to estimate an export price based on exports from Thailand to all countries other than Australia under the relevant 721 tariff items. The Assessment Team notes that rebar of diameters greater than the maximum diameter of rebar to which the duty applies can be imported under these tariff items, but this is unavoidable within the limitations of the data available.

70. Pacific Steel said it used export data to Australia under the 722830 tariff item because [REDACTED]

71. The Ministry has accessed the [REDACTED] data and confirmed that most of the exports to Australia are recorded under the 722830 tariff item. The Ministry notes that Pacific Steel is owned by Bluescope, a major Australian listed company involved in the steel industry. It is therefore reasonable to assume that [REDACTED]. The Ministry considers on the basis of the foregoing considerations that it is reasonable to estimate an export price on the basis of export sales to Australia under the 722830 tariff item.

72. Pacific Steel has submitted that the export price should exclude goods which, as is apparent from their price, are clearly not comparable goods. Pacific Steel has provided a copy of a graph from Platts Steel Business briefing of rebar prices in 3 OECD countries or regions from May 2013 to September 2014 which shows that prices were all below [REDACTED] per tonne over this period. Pacific Steel said that if data from countries where the monthly average price exceeds [REDACTED] per tonne are excluded then the export prices would more closely reflect the export price of rebar of the type subject to the duty. For the reasons provided by Pacific Steel, the Ministry considers that it would be reasonable to exclude data in those months where the average price per tonne exceeds [REDACTED].

73. The Ministry has therefore calculated from [REDACTED] data, on the basis set out above, the weighted average FOB export price per tonne in US dollars of Thai exports of rebar for the 12 months ended 30 September 2014. The figure calculated on this basis is US\$ [REDACTED] per tonne. The Ministry has converted this amount to baht using the average US\$/baht exchange rate for the year ended 30 September 2014 taken from the OANDA web site<sup>4</sup> of 1US\$ = 32.1867 baht to derive a base FOB export price of [REDACTED] baht per tonne.

### Adjustments

74. Having established base prices at the FOB level, the next step is to deduct any costs between FOB and ex-factory incurred by the exporter in preparing the goods for shipment to New Zealand and to make any other relevant adjustments required to ensure fair comparison with normal values. The Ministry considers that the best source of information for adjustments to the export price is the

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<sup>4</sup> <http://www.oanda.com/currency/converter/>

information supplied by Pacific Steel and information from the 2009 review. These adjustments are outlined below.

#### *Customs costs*

75. These costs cover terminal handling charges, 'Gate', 'Customs' and bill of lading and assumes [REDACTED]. Pacific Steel advised that these costs are [REDACTED].

76. Pacific Steel provided a copy of a spread sheet showing [REDACTED] in US dollars, the calculation of the average costs and the conversion of the costs to Thai baht using an exchange rate obtained from OANDA. The cost calculated on this basis is [REDACTED] baht per tonne and an adjustment has been made at this amount.

#### *Transport from factory to port*

77. The Ministry has calculated the cost of transport from factory to port by updating this cost from the 2009 review by the increase in the Thai consumer price index since then. The cost calculated on this basis is [REDACTED] baht per tonne and an adjustment has been made at this amount.

#### *Cost of credit*

78. Pacific Steel advised this adjustment is based on an estimated credit term of [REDACTED] days (taken from credit terms offered in [REDACTED] export trade, which was substantiated by a quote from an [REDACTED] for an export sale to Australia) and an interest rate of 7.32 percent, which is a simple average of two interest rates. Pacific Steel provided a reference to the web site for Trading Economics<sup>5</sup> from which the two interest rates relating to bank lending rates in Thailand were taken. The cost of credit calculated on this basis is [REDACTED] baht per tonne and an adjustment has been made at this amount.

#### *Other miscellaneous costs*

79. Pacific Steel advised this relates to tie, label and dunnage (relating to [REDACTED]) which it estimated to be [REDACTED] per tonne or [REDACTED] baht per tonne. Pacific Steel said the cost is based on costs it incurs on its exports of rebar to Australia. An adjustment for these costs has been made of [REDACTED] baht per tonne.

#### **Export price**

80. The following table shows the calculation of the export price on the basis outlined above (all amounts are in baht per tonne).

Base export price	[REDACTED]
Less:	
- Customs costs	[REDACTED]
- Transport from factory to port	[REDACTED]
- Cost of credit	[REDACTED]

<sup>5</sup> See web site at: <http://www.tradingeconomics.com/thailand/bank-lending-rate>

- Other miscellaneous costs	
Export price	

81. Tata Steel (Thailand) Ltd (Tata) provided details of some of its exports of rebar by quantity and price to various Asian countries in September 2014. Most of these exports were made on an ex-works basis. The Ministry does not consider these exports provide sales over a sufficient time period to be used to establish export prices. The Ministry has, however, calculated an average ex-works price for those sales that were made on this basis and compared it to the price calculated above, as a check on its reasonableness. The price calculated from Tata's data is [REDACTED] baht per tonne which is close to the price calculated above.

## 5.4 Normal values

### Introduction

82. The normal value is usually the price at which the rebar manufacturers sell rebar in the domestic market in Thailand. The types of sales that can be used to determine normal values are set out in section 5 of the Act, which can generally be described as arm's length sales of like goods in the ordinary course of trade for home consumption in the country of export, in this case Thailand. Where an exporter makes no such sales, sales by other sellers of like goods in Thailand can be used to establish normal values.

83. In the absence of relevant and suitable sales in the ordinary course of trade, normal values can be either: (a) constructed on the basis of the sum of cost of production and, on the assumption that the goods had been sold for home consumption in the ordinary course of trade in Thailand, reasonable amounts for administrative and selling costs and other costs incurred in the sale, and a rate of profit normally realised on sales of goods of the same general category in the Thailand domestic market; or (b) established on the basis of selling prices to a third country.

84. Because no information on normal values was supplied by Thai producers or exporters, the Ministry has determined normal values under section 6(1) of the Act having regard to all available information. Details of the information used in conducting this analysis are set out below.

### Available information

#### Base price

85. The Ministry considers that information provided by Pacific Steel in its application for this review on normal values is the best information available. In its application, Pacific Steel estimated a normal value using published information on the selling prices of a Thai rebar manufacturer, Bangsaphan Barmill Public Company (BSBM), a company which is listed on the Thai stock exchange. Pacific Steel referred to an extract from BSBM's 2013 annual report which records the nature of its business as being the production of round and deformed steel bars of various diameters and lengths for use in concrete reinforcing.

86. Pacific Steel also referred to information in BSBM's 2013 annual report which suggests that it sells largely on the Thai domestic market. Pacific Steel has noted that BSBM did not disclose any information in its 2013 annual report on export sales. Pacific Steel said that it understands that Thai companies have a requirement to separately disclose domestic and export sales. Pacific Steel said that understanding arises from an analysis by the Ministry in its final report on the 2009 review. Pacific Steel said it therefore considers that BSBM's pricing information relates to its sales on the Thai domestic market.

87. Pacific Steel said that the best information on BSBM's selling prices is that available in a report by Maybank Kelive of 6 May 2014 which provides BSBM's average selling prices in baht per tonne for each quarter for the year ended 31 March 2014. Pacific Steel has estimated a normal value by calculating the simple average of each of these average quarterly prices – the normal value calculated on this basis is 20,837.75 baht per tonne. Pacific Steel also calculated two alternative normal value amounts - one from publicly available information on BSBM's sales volume and revenue data - and one taken from BSBM's 2013 annual report. The alternative normal value amounts are close to the amount taken from the Maybank Kelive report but Pacific Steel has noted that the Maybank Kelive figure is the most up-to-date and has therefore been used.

88. The Ministry notes that in the 2009 review the normal value was established on the same basis as that in Pacific Steel's application for this review, i.e. on the BSBM's selling prices obtained from publicly available sources and was premised on all of BSBM's sales being on the Thai domestic market at the ex-factory level.

89. The Ministry sighted the Maybank Kelive report on which the normal value is based and checked that the average selling price on which normal values are based agrees with that shown in the application. The Ministry also sighted on the internet both the data and the price on which the two alternative normal values were based to confirm these amounts in the application agree with the sources on which they are based.

90. The Ministry also referred to that part of the Ministry's final report on the 2009 review referred to by Pacific Steel concerning the Ministry's assessment of whether BSBM's sales are all or largely made on the Thai domestic market. The Ministry's assessment at that time was that based on the published information it was difficult to state with certainty that BSBM's sales are domestic only but as BSBM has published that its customers are nationwide rather than worldwide its focus therefore would appear to be mainly on domestic customers in Thailand. The Ministry consequently accepted that the normal value should be calculated on the assumption that all of BSBM's sales were on the Thai domestic market.

91. The Ministry referred to BSBM's web site for any information that indicates its sales are all made on the Thai domestic market. The 'Home' page of BSBM's web site notes that its distribution channel is mainly through major trading distributors who reach most retail shops as well as construction users nationwide. The Ministry also examined the information in BSBM's 2013 annual report referred to by Pacific Steel, which is similar in content to the information on its web site 'Home' page. The evidence available in Pacific Steel's application on the issue of whether BSBM's sales are largely or all on the Thai domestic market is similar to that available in the 2009 review.

92. The Ministry considers that it is still difficult to conclude with certainty that BSBM's sales are largely or only domestic, but is nevertheless the best information on normal values. The Ministry has therefore established a base normal value on the basis outlined above of 20,837.75 baht per tonne.

## **Adjustments**

### *Freight to customers*

93. If base normal values are established on the basis of sales made on a free-into-store (FIS) basis a downward adjustment is usually made for the cost of delivery to customers. Pacific Steel said in its application it could not find any reference to BSBM's sales being on an FIS basis so it has assumed no adjustment is required for freight costs. The Ministry has not found any evidence that BSBM's

domestic sales are made on a FIS basis. Therefore in the absence of specific information on this matter no adjustment has been made for the cost of freight.

#### *Volume discount*

94. In the 2009 review the Ministry considered whether there should be an upwards adjustment to the normal value because of the difference in the volume of sales on which export prices and normal values were based. The need for this adjustment was considered because such an adjustment was made in the original investigation. In the 2009 review export prices and normal values were established on a similar basis to the way in which they are established in this review.

95. In the 2009 review the Ministry noted that the number of customers that make up each of the export sale destinations to markets other than New Zealand was unknown, as was the volume that each customer purchases. The number of customers supplied on the domestic market and the volume each customer's purchases are similarly unknown. The Ministry concluded in 2009 that there was no evidence available that indicates there is a difference between volumes sold to export customers and volumes sold to domestic customers to warrant making an adjustment for fair comparison of export prices and domestic prices. In this review, Pacific Steel did not claim there should be an upwards adjustment for differences in volumes.

96. The Ministry considers that the situation in this review is unchanged from that in the 2009 review and therefore no adjustment for volume differences is warranted.

#### *Short length premium*

97. In the 2009 review, an upwards adjustment was made for a 'short length premium'. The basis of this adjustment goes back to the original investigation in 2004 when it was established that 6 meter lengths of rebar exported to New Zealand incurred extra costs which were not incurred on domestic sales and consequently an upwards adjustment was required to the normal value to ensure price comparability.

98. In the 2009 review the Ministry noted that some of the adjustments to export prices in the original investigation applied only when either short lengths of 6m or grade 500E were exported. The Ministry further noted in 2009 that if it was to adjust all normal values by the extra charge on 6m lengths it would be making an assumption that all export sales (should they recommence) would be 6m lengths, which did not occur in the original investigation. In the 2009 review the Ministry therefore took into consideration the proportion that export sales of 6m lengths represented of total sales in the original investigation. This proportion was applied to the cost from the original investigation, which was updated by the change in the Thai consumer price index, to establish an adjustment for a short length premium.

99. In its application for this review, Pacific Steel made an upwards adjustment for a short length premium, which is equal to the adjustment made in the 2009 review updated by the change in Thai consumer price index since then. The adjustment made by Pacific Steel on this basis in its application is ████████ baht per tonne. The Ministry agreed the amount of the adjustment to the figure used in Pacific Steel's application and checked the calculation of the updating of this figure by the change in the Thai CPI.

100. Because export prices are based on the price of Thai exports to all export destinations, this adjustment assumes that the proportion of short length rebar exported to all export destinations is similar to the proportion exported to New Zealand prior to original investigation. The Ministry is not aware of any other information that is available about the proportion of short length rebar exported from Thailand and therefore considers the proportion of short length rebar exported to New Zealand

prior to the original investigation is the best information available. The Ministry has consequently made an adjustment at the amount estimated by Pacific Steel in its application of [REDACTED] baht per tonne.

#### Cost of credit

101. In its application Pacific Steel made a downwards adjustment for the cost of credit based on a credit term of [REDACTED] days at an interest rate of 7.32 percent. The credit term was taken from the Maybank Kelve report referred to in paragraph 87 above. The interest rate is the same as that used in the cost of credit adjustment to the export price as outlined in paragraph 78 above. The cost of credit calculated on this basis is [REDACTED] baht per tonne and an adjustment has been made at this amount.

#### Normal value

102. The following table shows the calculation of the normal value on the basis outlined above (all amounts in baht per tonne).

Base normal value	20,837.75
Plus: short length premium	[REDACTED]
Less: cost of credit	[REDACTED]
Normal value	[REDACTED]

### 5.5 Comparison of export price and normal value

103. The following table shows a comparison of the export price with the normal value and the dumping margin.

Export price (baht per tonne)	[REDACTED]
Normal value (baht per tonne)	[REDACTED]
Dumping margin	[REDACTED]
Dumping margin as % of export price	5%

### 5.6 Conclusions relating to dumping

104. There were no imports of rebar from Thailand over the POR(D), so it was not possible to determine whether actual imports are dumped and therefore whether there is a likelihood of a continuation of dumping. However, on the basis of an export price and normal value determined having regard to all available information, the Ministry concludes that should anti-dumping duties be removed and should this result in a resumption of imports of rebar from Thailand, it will likely be imported at dumped prices.



## 6. Injury investigation

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### 6.1 The 2009 review of injury

105. The last sunset review of rebar from Thailand in 2009 found that:

- The volume of imports of rebar from Thailand has decreased to the extent that there had been no recorded imports since late 2006.
- Pacific Steel's domestic price of rebar had not been undercut by imports from Thailand because of the absence of rebar from Thailand. Pacific Steel had experienced no price depression and, although it had experienced price suppression, this could not be attributed to rebar of Thai origin.
- There was no positive evidence of any economic or other adverse impacts that could be attributed to imports of rebar from Thailand.
- Should the duties have been removed, it was likely that there would be a significant increase in import volumes of rebar from Thailand, and there would be price undercutting, depression and suppression.
- Consequent upon the likely price and volume effects should the duties have been removed, it was likely there would be an adverse impact on the industry's market share, sales volume and revenue, profits, productivity, utilisation of production capacity, cash flow, employment, return on investments, growth, ability to raise capital and investments.
- It was unlikely there would be an adverse effect on the industry's inventories and wages.
- Factors other than dumped imports were likely to continue in the same way to be a cause of injury to the industry whether duties were in place or were removed and therefore could be distinguished from the injurious effects likely to result from dumped imports from Thailand.

106. On the basis of the above considerations, the Ministry concluded that if anti-dumping duties were removed, material injury to the New Zealand industry due to dumped imports from Thailand was likely to recur.

### 6.2 Injury in a review

#### Introduction

107. The basis for considering material injury is set out in section 8(1) of the Act:

In determining for the purposes of this Act whether or not any material injury to an industry has been or is being caused or is threatened or whether or not the establishment of an industry has been or is being materially retarded by means of the dumping or subsidisation of goods imported or intended to be imported into New Zealand from another country, the Chief Executive shall examine—

- (a) the volume of imports of the dumped or subsidised goods; and
- (b) the effect of the dumped or subsidised goods on prices in New Zealand

- for like goods; and
- (c) the consequent impact of the dumped or subsidised goods on the relevant New Zealand industry.

108. The Ministry interprets this to mean that injury is to be considered in the context of the impact on the industry arising from the volume of the dumped goods and their effect on prices. This is consistent with Article 3 of the WTO Anti-Dumping Agreement.

109. The Act goes on to set out a number of factors and indices which the Chief Executive shall have regard to, although noting that this is without limitation as to the matters the Chief Executive may consider. These factors and indices are considered under the relevant headings below. Furthermore the demonstration of a causal relationship between the dumped imports and the injury, or a recurrence of injury should the duty be removed, must be based on an examination of all relevant evidence and any known factors other than the dumped imports which are injuring or likely to injure the domestic industry should the duty be removed. Any injury caused or likely to be caused should the duty be removed by factors other than dumping must not be attributed to the dumped imports.

110. The Ministry is satisfied that Pacific Steel is the only New Zealand producer of like goods, and therefore Pacific Steel constitutes the New Zealand industry for the purpose of this investigation.

111. The Ministry's approach to sunset reviews is recorded in section 1.4 above. In considering the likelihood of a continuation or recurrence of injury, the Ministry has applied the general principles set out in that section.

112. The Ministry carries out its injury analysis for reviews on the basis of Article 11 of the Anti-Dumping Agreement and section 8 of the Act. The Ministry interprets these provisions to mean that the likelihood of a continuation or recurrence of injury is to be considered in the context of the likely impact on the industry, arising from the likely volume of the dumped goods and their likely effect on prices.

113. In considering injury in a review, the Ministry examines whether the removal of the duties would be likely to lead to the continuation or recurrence of injury. If it is concluded that dumping and injury would likely continue or recur, the Ministry will undertake a reassessment of the rate or amount of duty under section 14(6) of the Act in order to establish whether the existing duty remains sufficient to prevent injury, or whether a different rate of duty is necessary.

### **6.3 Injury information submitted by Pacific Steel**

114. Pacific Steel provided financial information for the purpose of the injury analysis. The information provided is in line with Pacific Steel's financial year, which ends 30 June. Pacific Steel provided historical information for the financial years 2012 to 2014, and forecast information for the 2015 and 2016 financial years for the scenarios that duties remain in place and are removed.

115. The information provided by Pacific Steel includes details of production, revenue, cost of production, gross profit, material, fixed and variable costs, selling and administration costs, cost of sales and earnings before interest and tax (EBIT).

116. As there are anti-dumping duties in place it would not be expected that the industry would currently be suffering material injury from dumped goods. Moreover, there have not been any imports of subject goods from Thailand over the period under review for injury. The focus of the injury analysis is therefore on the likelihood of material injury recurring if the duties were removed.

117. The Ministry's evaluation of both the historical and forecast injury information provided by Pacific Steel is set out below.

## 6.4 Import volumes

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

119. As noted above, there were no imports of the subject goods over the period under review for injury and in fact there have been no imports of rebar from Thailand since late 2006. Table 6.1 shows import volumes of rebar into New Zealand from 1 July 2011 to 30 June 2014. The figures have been sourced from NZCS data that covers the goods imported into New Zealand under the tariff items and statistical keys shown in paragraph 44. These tariff items and statistical keys cover a wider range of goods than those under investigation, but descriptions of the goods in the NZCS data are generally not clear enough to exclude any non-subject goods. Indonesia, China, Australia, Singapore and Malaysia are significant exporters of rebar to New Zealand.

**Table 6.1: Import volumes (years ended June)**

	2011/12	2012/13	2013/14
Total imports	27,065	29,028	30,163
Sales by Pacific Steel			
New Zealand market			
<i>% change on previous year:</i>			
Total imports			
Sales by Pacific Steel			
New Zealand market			

120. In the absence of any imports of rebar from Thailand there can be no evidence that such imports have increased either in absolute terms or relative to production or consumption in New Zealand. The table above shows there has been an increase in total imports in absolute terms. Total imports have not, however, increased to the same extent as the increase in the size of the New Zealand market, meaning that total imports have declined relative to New Zealand production and consumption.

## Likely import volumes should duties be removed permanently

### Import volumes forecast by Pacific Steel in the absence of duties

121. Pacific Steel has noted that in the four years prior to the 2003/04 investigation, Thailand exported an average of 5,584 tonnes per annum of rebar to New Zealand. Pacific Steel has assumed that if the duty was removed permanently, then there would be a resumption of imports of [REDACTED] tonnes per annum. Pacific Steel has assumed that it would lose sales equal to this volume of imports in the 2015 and 2016 financial years, albeit in a total New Zealand market that Pacific Steel estimates will grow at [REDACTED] percent per annum over this period. Pacific Steel has not forecast import volumes from countries other than Thailand.

122. Pacific Steel's import volume forecasts outlined in the paragraph above do not take into account its subsequent submissions about the impact of the initiation of a dumping investigation by the Australian Anti-Dumping Commission into rebar from Thailand and various other countries in October 2014. In this subsequent submission Pacific Steel has claimed that the initiation of this investigation and the imposition of provisional anti-dumping duties in March 2015 on imports of rebar from all of the countries under investigation will likely result in the diversion of rebar from the Australian market to New Zealand. Details of Pacific Steel's submission and the Ministry's evaluation of it are set out below.

123. The likelihood of a recurrence of significant volumes of dumped imports of rebar from Thailand sufficient to cause material injury is related to factors such as:

- the price advantage (in the absence of duties) which such imports may hold, primarily in relation to the New Zealand industry's prices, but also in relation to the prices of imported rebar from countries other than Thailand;
- the capacity of the Thai industry to substantially increase its exports to New Zealand;
- the ease of entry into the New Zealand market, the ease with which rebar can be distributed and sold in the New Zealand market, and the ability of importers to handle a significant increase in imports;
- exchange rates; and
- the volume of imports of the subject goods subsequent to the suspension of the anti-dumping duty for three years with effect from 1 June 2014.

#### **Price advantage of imports (in the absence of duties)**

124. Pacific Steel has submitted that it is reasonable to conclude from the absence of imports of rebar from Thailand that the anti-dumping duty has been effective in reducing dumping into the New Zealand market and that if exports from Thailand to New Zealand resume they will be similar to Thai export prices to other countries. In its application Pacific Steel estimated that there would be significant price undercutting by imported rebar from Thailand.

125. Section 8(2)(b) of the Act provides that the Chief Executive shall have regard to the extent to which the prices of the dumped or subsidised goods represent significant price undercutting in relation to prices in New Zealand (at the relevant level of trade) for like goods of New Zealand producers. It should be noted that the determination that price undercutting exists is not by itself a determination of the extent of injury, i.e., the margin of price undercutting is not a measure of the extent of the economic impact on the industry. That impact is to be measured in terms of the factors and indices set out in section 8(2)(d) of the Act.

126. In considering price undercutting, the Ministry will normally seek to compare prices at the ex-wharf or ex-importer's store levels, to ensure that differences in distribution costs and margins do not confuse the impact of dumping. Accordingly, the Ministry's position is generally to compare importers' prices, including selling and administration costs where relevant, which involve similar cost elements to those in the New Zealand manufacturer's ex-factory price, but not including cost elements relating to the distribution of goods.

127. The purpose of the price undercutting comparison is to establish whether or not there is price undercutting attributable to dumping or whether, in a review, there would likely be price

undercutting if the duty was to be removed. The determination that price undercutting exists, or is likely if the duty was to be removed, is not by itself a determination of the extent of injury, that is, the margin of price undercutting is not a measure of the extent of the economic impact on the industry. Any impact is measured in terms of the factors and indices set out in s.8(2)(d) of the Act.

#### *Level of trade*

128. Pacific Steel sells to reinforcing steel processors and reinforcing steel merchants on a free-into-store (FIS) basis. Both processors and merchants on-sell to residential and commercial builders.

129. Pacific Steel competes with overseas suppliers of rebar directly. Reinforcing steel processors and merchants have the choice to buy the product either from Pacific Steel or to import it. The Ministry considers the relevant level of trade at which to compare prices is therefore ex-wharf for imports vs Pacific Steel's ex-factory price (that is, its FIS price less freight). The costs included in an ex-wharf price are those incurred for import of the goods into New Zealand such as overseas freight, insurance, port service charges and Customs' duty. This is consistent with the level of trade at which prices were compared in the 2009 review.

#### *Pacific Steel's prices*

130. Pacific Steel provided the Ministry with its average ex-factory selling prices for rebar for the year ended 30 September 2014, net of discounts and rebates. This information was provided by item class and by an overall price for all rebar types. In the absence of any imports of rebar from Thailand over the period of investigation, and given the broad nature of the pricing information available on likely export prices to New Zealand which does not distinguish prices by product type, the Ministry has used the overall average ex-factory price of \$[REDACTED] per tonne.

#### *Import prices of Thai rebar*

131. The Ministry has used the export price of Thai rebar calculated on the basis set out in the dumping section of this report. The base export price was based on export prices from Thailand to all export destinations for the year ended 30 September 2014. The price calculated on this basis is an FOB price of US\$ [REDACTED] per tonne which has been converted to NZ dollars using the average exchange rate for the year ended 30 September 2014 from the OANDA web site of 1US\$ = 1.1869NZ\$.

132. The Ministry has added to this amount costs between FOB and ex-wharf using estimated costs provided by Pacific Steel in its application. These costs relate to ocean freight (inclusive of a carrier security fee), [REDACTED] and total NZ\$ [REDACTED] per tonne.

133. The ex-wharf price calculated on the basis outlined above is NZ\$ [REDACTED] per tonne.

#### *Price undercutting comparison*

134. The following table shows a comparison of the estimated ex-wharf price of rebar from Thailand with Pacific Steel's average ex-factory selling price calculated on the basis outlined above.

**Table 6.2: Price undercutting (without duties) (year ended 30 Sept. 2014)**

Pacific Steel's average ex-factory selling price (NZ\$/tonne)	██████████
Estimated ex-wharf price of rebar from Thailand (NZ\$/tonne)	██████████
Price undercutting (NZ\$/tonne)	██████████
Price undercutting as % of Pacific Steel's price	██████████

135. The data in Table 6.2 indicates that rebar imported from Thailand, in the absence of anti-dumping duty, will likely undercut Pacific Steel's prices by a significant amount. The Ministry notes, however, that there are limitations on the prices compared in the table above. Both the Pacific Steel price and the estimated price of the Thai imports are based on a broad range of products and consequently may not be a comparison of like-to-like products.

136. Although the anti-dumping duty on rebar from Thailand is suspended, if it was payable at its current rate of 28 percent, there would still be a relatively small amount of price undercutting. Using the data in Table 6.2 but with addition of anti-dumping duty, there is price undercutting of \$██████████ per tonne which represents ██████████ percent of Pacific Steel's selling price.

137. The price undercutting analysis above indicates that should there be a resumption of imports of rebar from Thailand, such imports would likely undercut Pacific Steel's prices.

138. The Ministry has also calculated an average ex-wharf price for rebar from the five largest sources of rebar imported into New Zealand – Indonesia, China, Australia, Singapore and Malaysia. These ex-wharf prices were calculated from CIF Customs data for the year ended 30 September 2014 for the tariff items shown in paragraph 44 above plus the addition of an amount for costs between CIF and ex-wharf established on the same basis as these costs were established in the price undercutting analysis above. These prices have been compared to Pacific Steel's average ex-factory selling price for the year to September 2014. As noted previously, the tariff items and statistical keys which apply to this data cover a wider range of goods than the rebar that is considered subject goods, meaning that the price comparisons are not exact but nevertheless provide an indication of relative difference in the relevant prices. The analysis is shown in the table below, along with the estimated price undercutting for imports from Thailand.

**Table 6.3: Price undercutting by imports from major sources**

Country	Ex-wharf per tonne	Pacific Steel ex-factory price	% undercutting
Indonesia	██████████	██████████	██████████
China	██████████	██████████	██████████
Australia	██████████	██████████	██████████
Singapore	██████████	██████████	██████████
Malaysia	██████████	██████████	██████████
Thailand	██████████	██████████	██████████

139. The table shows that imports from Thailand are likely to be priced significantly lower than imports from other sources and consequently are likely have a more significant price advantage over Pacific Steel's prices than the goods from any other source. Imports from Singapore undercut Pacific Steel's price by only a relatively small amount, while imports from Indonesia, China and Malaysia

undercut Pacific Steel's prices by reasonably significant margins. Imports from Australia are priced higher than Pacific Steel's goods (i.e. there is no undercutting by imports from this source).

### *Conclusion*

140. The evidence indicates that if imports from Thailand resume, they are likely to significantly undercut Pacific Steel's prices and are also likely to be priced below imports from other countries. This indicates that the estimated price of imports from Thailand provides an incentive for importers to import rebar from Thailand. At the same time, since the suspension of the anti-dumping duties on 1 June 2014 there have been no rebar imports from Thailand. The lack of imports since the suspension of the duties may indicate that there are factors other than price which are influencing purchasing decisions. Because importers whom the Ministry asked to provide information (being importers of rebar from Thailand identified during the original investigation and the last review) declined to do so, it is not clear what those other factors might be.

### **Capacity of the Thai industry to substantially increase its exports to New Zealand and export intentions of Thai exporters**

#### *Capacity of the Thai industry*

141. Pacific Steel has noted that [REDACTED] data shows that exports of rebar from Thailand to Australia have grown from [REDACTED] tonnes in the year to March 2011 to [REDACTED] tonnes in the year to March 2014. Pacific Steel said this represents an increase in the share of the market held by rebar from Thailand as the Australian market for rebar has been roughly flat during this period.

142. Pacific Steel has also noted that the Thai rebar manufacturing industry is very large and in 2013 produced 3,364,090 tonnes, which is many times larger than the New Zealand market which Pacific Steel has estimated to be [REDACTED] tonnes. Pacific Steel commented that the [REDACTED] tonnes of rebar exported from Thailand to Australia in the year ended March 2014 would comprise a significant share of the New Zealand rebar market.

143. Pacific Steel said there is evidence that the major long steel maker in Thailand, Millennium Steel (a subsidiary of Tata Steel (Thailand) Public Company Ltd) has excess production capacity which it considers is an encouragement to seek export markets. Pacific Steel has referred to published information from Tata Steel Thailand which indicates that it has significant surplus capacity (although this appears to cover not only rebar but other products as well).

144. Pacific Steel has also referenced information published by Bangsaphan Barmill Public Company (BSBM) to the effect that there is an oversupply of rebar on the Thai domestic market resulting from excess production capacity in Thailand. Pacific Steel has also estimated that BSBM has significant surplus capacity based on published information relating to its production capacity and production volumes. Pacific Steel has referred to surplus capacity or impending surplus capacity in other Thai producers and other more general information about world-wide surplus capacity and the injurious effects this can have.

145. Pacific Steel said that Thai Steel Profile Co Ltd, a Thai producer of rebar, is currently adding 500,000 tonnes of rebar production capacity using an advanced plant design which will improve efficiency of the plant. Pacific Steel has provided references to a website to substantiate this. Pacific Steel submitted that the improved efficiency and the significant investment in the plant will mean that Thai Steel Profile Co Ltd will be highly motivated to sell the additional volume from this plant which could displace current suppliers who will in turn seek a new home for their displaced sales.

146. Pacific Steel also referenced evidence that a Thai manufacturer, Millcon Steel, has certification that its rebar meets the relevant standards in Australia and that “[i]s a means to achieve the relevant standard (AS/NZS4671) for reinforcing bar sale in New Zealand.” Pacific Steel also referred to the annual report for Tata Steel (Thailand) for 2013/14 where it is noted that it produces seismic grade rebar [REDACTED].

147. The evidence provided by Pacific Steel shows that the production of rebar by the Thai industry is many times larger than the entire rebar market in New Zealand and that some Thai producers have the ability to produce seismic rebar that meets the relevant standard in New Zealand. The broadly stated wish of Tata to export to New Zealand referred to below under ‘Export intentions of Thai exporters’ also indicates there is capacity to increase exports to New Zealand.

148. The evidence indicates that there is significant surplus capacity in Thailand for the production of rebar which is likely to increase in the foreseeable future. The evidence also suggests that there is a world-wide surplus capacity for the production of rebar, indicating that markets other than New Zealand are unlikely to absorb any increased production in Thailand resulting from the utilisation of surplus Thai capacity.

#### *Export intentions of Thai exporters*

149. Tata has made some comments about its intentions regarding exporting to New Zealand. Pacific Steel’s submissions in response to these comments and the Ministry’s evaluation of this evidence are set out below.

150. In response to the comments made by Tata about its intentions to export to New Zealand (which are expanded on below), Pacific Steel has stated that “[W]e note the comment of positive intent of a Thailand rebar maker to export those goods to New Zealand.” Pacific Steel has submitted, also in response to comments by Tata about its export intentions, “[T]hat positive statement is confirmation of there being a real and substantive risk, that is, a risk that might well eventuate, of rebar being dispatched from Thailand to New Zealand.”

151. In a subsequent submission, Pacific Steel has submitted that the statements made by Tata “[a]re positive evidence that the risk exceeds the threshold of “real and substantial”, or a “risk that might well eventuate”” and that it considers “a conclusion otherwise is unsafe”. Pacific Steel has highlighted some of the language used in an email from Tata which was signed by Tata’s Legal Officer which states in part “. . . our high intention to export goods to your country . . .”. Pacific Steel has stated that the writer of this email “[i]s senior in Tata, and, while the language is awkward, the meaning of that statement is clear and difficult to escape.”

152. Pacific Steel has further highlighted some of the language used by Tata’s Legal Officer in a subsequent email where the Legal Officer states: “Answer: we as TSTH [Tata Steel Thailand] has contacted with . . .”. Pacific Steel has noted that in the public file version of this document the remainder of this statement is redacted, but it is possible to observe two facts. Firstly, Pacific Steel has submitted that Tata has undertaken some proactive liaison on the matter of the flow of the goods to New Zealand. Secondly, Pacific Steel has submitted that such liaison is a consistent progression toward the end described by Tata’s Legal Officer and by Tata’s Vice President – Marketing and Sales [Pacific Steel’s submission on statements by Tata’s Vice President – Marketing and Sales is set out below]. Pacific Steel has also noted that Tata’s Legal Officer in the same email mentions Tata’s 2014 launch of rebar with seismic resistance qualities. Pacific Steel has submitted that [REDACTED].



153. Pacific Steel has referred to the language used in a letter from Tata's Vice President – Marketing and Sales where he states: “Eventually, the company highly wishes to export the steel to New Zealand later on.” Pacific Steel has observed that the writer is very senior in Tata, being one of Tata's eleven-person senior management team, reporting to the CEO/President. Pacific Steel has submitted that while the “[l]anguage is a little awkward, its meaning is clear and difficult to escape.” Pacific Steel has submitted that if there was no likelihood of Tata dispatching rebar to New Zealand then the language “[w]ould without doubt incorporate such ideas as “doesn't wish to”, won't, isn't going to, is not interested, can't, doesn't make” and the like.” Rather, Pacific Steel has observed that “[T]ata's statement does not incorporate those ideas, but in fact states the positive “highly wishes””. Pacific Steel has further submitted that if Tata was perhaps ambivalent about dispatching rebar to New Zealand then the Vice President's statement would incorporate ideas such as “may, might, could, perhaps” but does not do so.

154. The Ministry notes that the statement made by Tata's Legal Officer referred to by Pacific Steel on the basis set out in paragraph 151 above was made in an email to which was attached a letter from Tata's Vice President – Marketing and Sales. The full sentence from which Pacific Steel has quoted states as follows:

In accordance with the letter and documents about a review of the anti-dumping duty on reinforcing steel bar and coil of Ministry of Business, Innovation & Employment dated on 10 November, 2014 informing about initiation of review such products and requiring us to provide you with a formal document of our intention, we are very pleased to kindly give a document of our high intention to export the goods in your country as we attached hereinabove.

155. The meaning of this sentence is not clear, but in the Ministry's view appears to be simply a covering note referring to the letter attached from the Vice President - Marketing and Sales which relates to the subject of Tata's intentions about exporting to New Zealand. The Vice President's letter attached to this email comments that from 2012 to the present Tata has not exported rebar to New Zealand because of the anti-dumping duties, but has exported rebar to the region. The letter goes on to state that Tata “[h]as no single intention to dump the steel market or done anything harmful or cause damage in your country or others.” The letter further submits that there is no logical reason to continue the anti-dumping duties on rebar from Thailand “[b]ecause the company has not likely behaviour or any single intention to dump or possibly dump the steel market which might result in damage or dumping circumstance as claimed by Pacific Holdings Ltd. Eventually, the company highly wishes to export the steel to New Zealand later on.”

156. In the later email from Tata's Legal Officer referred to by Pacific Steel in paragraph 152 above the ‘answer’ referred to by Pacific Steel was in response to a question from the Ministry about whether Tata has maintained relationships with New Zealand importers and whether Tata has any existing or forward orders with any New Zealand importers. The answer in full is: “We as TSTH [Tata Steel Thailand] has contacted with [REDACTED]” The Ministry acknowledges the difficulty Pacific Steel has in interpreting a document from which confidential information has been redacted, but does not consider the meaning Pacific Steel has inferred from this answer is correct, i.e. this statement cannot be reasonably interpreted to mean Tata has undertaken some proactive liaison on the matter of the flow of the goods to New Zealand with the aim of exporting rebar to New Zealand.

157. In relation to Tata's rebar with seismic resistant qualities to which Pacific Steel has referred in paragraph 152 above, the Ministry notes that Tata's Legal Officer states in that email that this “[n]ew rebar product complies with the international quality standard to provide seismic resistance and

thus provide higher safety and protection to the building structures in Thailand.” It would therefore appear likely that Tata has the ability to make rebar that would be suitable for use in New Zealand.

158. The Ministry further notes that in the later email from Tata’s Legal Officer referred to variously above, Tata comments that it intends to expand its market globally for both rebar and wire rod. Tata adds that “Moreover, if the chances arise, we always wish to explore market in Oceania. However, as of pricing structure in nowadays, we cannot totally compete with Chinese export material. Furthermore, according to the anti-dumping against Thailand, will bring further hurdle with our intentions to export to NZS/AS.” Although asked by the Ministry to do so, Tata did not comment on how the suspension of the anti-dumping duty has influenced its intentions to export rebar to New Zealand.

#### *Submissions following the release of the interim report*

159. Subsequent to the release of the interim report Tata provided on 6 May two further documents about its interest in the New Zealand market. One of these documents (headed “Non-Confidential: Initiation of Review”) duplicated in part some of the information already provided by Tata in earlier submissions but also contained some new information. The other document (not titled but signed by the Vice President – Marketing and Sales) was a response by Tata to the submissions outlined above by Pacific Steel regarding Tata’s earlier comments about its interest in the New Zealand market.

160. Pacific Steel subsequently made a further submission (on 15 May) in response to the two documents provided by Tata referred to in the paragraph above. In this submission Pacific Steel noted that the two documents provided by Tata constitute new information which the Ministry did not have available at the time the interim report was prepared. Pacific Steel has submitted that the “[n]ew Tata information is significant credible evidence of an affirmative, objective and verifiable character and is sufficiently material for the Ministry to conclude that there is “a real and substantial risk . . . , a risk that might well eventuate” of a substantial volume of dumped, injurious Thai rebar reappearing in New Zealand. As a result, the Ministry’s nil import volume conclusion at paragraph 238 (and elsewhere) must be set aside.”

161. In its 15 May submission Pacific Steel referred to the following statements made by Tata in the documents provided on 6 May:

- “We have only interest in rebar market of New Zealand and plan to export our product (Rebar) to New Zealand.” [Paragraph 12 of the document headed “Non-Confidential: Initiation of Review”.]
- “I would like to explain that honestly, we have only interest in rebar market of New Zealand and plan to export our products (Rebar) to New Zealand.” [Paragraph 1 of the document signed by the Vice President – Marketing and Sales.]

162. Pacific Steel said it considers that these statements by Tata mean Tata plans to export rebar to New Zealand. Pacific Steel said that because the Ministry was not convinced of the clarity of Tata’s earlier submissions, the Ministry sought clarification from Tata in an email of 9 April 2015 which included the following statement:

I have attached for your information a non-confidential version of a submission made by Pacific Steel on 25 March 2015 which includes Pacific Steel’s interpretation of comments made by Tata Steel Thailand about your company’s intentions to export rebar to New Zealand. We would appreciate any comments you wish make in response to Pacific Steel’s submission and any

comments more generally that you may wish to make about Tata Steel Thailand's intentions to export rebar to New Zealand.

163. Pacific Steel has noted that the two documents provided by Tata on 6 May were made after the prompt from the Ministry of 9 April referred to above and "[i]t is therefore reasonable to conclude that they address the matter, and represent the export intention clarity and verification sought by the Ministry." Pacific Steel has further submitted that as further positive evidence the documents provided by Tata on 6 May represent the clarity sought and thus verify Tata's intentions to export to New Zealand. Pacific Steel said this is made clear in one of the documents (being the document signed by Tata's Vice President – Marketing and Sales) which specifically states that it is a document to clarify the earlier assertions put by Pacific Steel that Tata intends to dispatch rebar to New Zealand.

164. Pacific Steel has noted that Tata, having seen Pacific Steel's earlier submissions which included those about Tata not including words such as "doesn't wish to" and so on (see paragraph 153 above), do not in their documents provided on 6 May use any such phrases. Pacific Steel has argued that instead Tata has omitted several qualifiers it had previously used such as "eventually", "highly wishes" and "later on".

165. Pacific Steel has claimed that Article 3.7 of the Anti-Dumping Agreement requires that the Ministry, in making a determination regarding the evidence of a threat of material injury, consider (among other things) the likelihood of a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation. Pacific Steel noted that because the Ministry had found there was not likely to be a resumption of dumped imports if the duties are removed permanently it did not in the interim report consider the other factors in Article 3.7.

166. Pacific Steel has further noted the Ministry undertook a verification visit to its operation which included an examination of the magnitude of the threatened injury, the injury factors and economic impact. Pacific Steel said none of the injury information has been contested by the Ministry or interested parties and has argued that "[I]n the absence of any verified evidence regarding injury and economic impact, the best available information on the matters at Article 3.7 is the verified information provided to the Ministry by Pacific Steel."

167. Pacific Steel has also commented that it agrees with the Ministry's conclusions in the interim report that:

- the Thai rebar industry has the capacity to resume exports of rebar to New Zealand in quantities that would be significant relative to the size of the production and consumption of rebar in New Zealand; and
- there is ready access into the New Zealand market for imports of rebar from Thailand, that there are established distribution systems that could be used to distribute such imports should they resume and that importers are likely to have the ability to deal with a resumption of significant volumes of rebar from Thailand.

168. Pacific Steel said it does not know what volume of exports is planned by Tata, but noted that the materially injurious volume of imports is very modest. Pacific Steel further noted that Tata is not the Thai manufacturer whose goods are at risk of diversion from Australia to New Zealand which latter goods are in addition to those which Tata plan to export to New Zealand. Pacific Steel has noted that in the interim report the Ministry considered that importers would instigate a resumption

of imports from Thailand.<sup>6</sup> Pacific Steel has argued that the new evidence outlined above from Tata is material confirmation of a recurrence of the flow of dumped goods being instigated by an exporter. Pacific Steel has argued this is particularly so when taken together with the Ministry's conclusions referred to in paragraph 167 above.

169. Pacific Steel has referred to the advice by Tata that it has no intention to dump in New Zealand. Pacific Steel said it [REDACTED] and that Pacific Steel concurs with the Ministry's conclusion that should anti-dumping duties be removed and should this result in a resumption of imports of rebar from Thailand, they will likely be imported at dumped prices.

170. Pacific Steel submitted that the Ministry's conclusion in the interim report on import volumes is shown by the new evidence from Tata to be unsafe. Pacific Steel concluded its submission by arguing that the new evidence from Tata that it plans to export rebar to New Zealand into a market offering ready access for Thai goods with established distribution systems and importers able to deal with a resumption in imports from Thailand, constitutes positive evidence that there is likely to be a recurrence of dumped imports of rebar from Thailand in sufficient volumes to cause a recurrence of material injury to the New Zealand industry, if the duty is permanently removed.

171. The Ministry has considered the two documents provided by Tata on 6 May and the submission by Pacific Steel regarding those documents. Pacific Steel has referred to a statement by Tata in paragraph 12 of the document headed "Non-Confidential: Initiation of Review" (see paragraph 161 above). This paragraph states in full:

We have only interest in rebar market of New Zealand and plan to export our product (Rebar) to New Zealand. We literally have not intention to dump or cause anything harmful in New Zealand's domestic steel industry at all. We deeply regret to hear Pacific Steel presumes that we are ruining steel industry in New Zealand.

172. Tata also repeated in this document (at paragraph 11) its comments from an earlier submission (which are shown in paragraph 158 above). In this document (at paragraph 13) Tata further commented as follows:

TSTH [Tata] always runs its business with fairness, transparency and integrity. The company never intends to exploit or take advantage of others. We ourselves have a code of conduct namely TCOC (Tata Code of Conduct) that we are sticking to. For these reasons and aforementioned information, we believe that there is no risk of dumping steel market incident in New Zealand.

173. Pacific Steel has referred to a statement taken from paragraph 1 of the document signed by the Vice President – Marketing and Sales (see paragraph 161 above). In this paragraph Tata has also referred to submissions made by Pacific Steel about earlier statements made by Tata about its "[h]igh intention to export the goods in your country" and "[E]ventually, the company highly wishes to export the steel to New Zealand later on" and goes on to state:

I would like to explain that honestly, we have only interest in rebar market of New Zealand and plan to export our products (Rebar) to New Zealand. We literally have not intention to dump or cause anything harmful in your domestic steel industry at all. We deeply regret to hear Pacific

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<sup>6</sup> The Ministry actually said in the interim report (at paragraph 232) that importers are more likely to instigate the import of rebar from Thailand than are Thai exporters.

Steel presumes that we are ruining steel industry in your country. [REDACTED]

[REDACTED], it is quite evident that as of today, we never export any kind of rebar to New Zealand at all.

174. In this document (at paragraph 4) Tata also commented that it runs its business with fairness, transparency and integrity and referred again to its code of conduct and said that “[I] really believe that there is no risk of dumping steel market incident in New Zealand.”

175. The Ministry agrees that the two documents provided by Tata on 6 May were largely provided in response to an email sent by the Ministry to Tata on 9 April. The Ministry has considered the significance of the absence of phrases such as “doesn’t wish to” [export rebar to New Zealand] in the documents provided by Tata on 6 May. The Ministry does not believe that the absence of such phrases carries significant evidential weight. In particular the Ministry does not consider that a statement by Tata that it does not intend to ever export rebar to New Zealand is required before it can be safely concluded that there is not likely to be a resumption of dumped imports in injurious quantities.

176. The Ministry notes that Article 3.7 of the Anti-Dumping Agreement relates to the determination of a threat of material injury in a new investigation. This article provides guidance on such a determination and sets out several matters an investigating authority should consider in making such a determination. As noted in section 1.4 of this report relating to the Ministry’s approach to sunset reviews, in considering whether the removal of the duties is likely to lead to a continuation or recurrence of dumping and injury, the Ministry may refer for guidance to provisions of the Anti-Dumping Agreement, including Article 3.7. The test to be applied in a sunset review is, however, not that for establishing whether there is a threat of injury.

177. The Ministry further notes that one of the factors in Article 3.7 that an investigating authority should consider is “a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation” rather than the *likelihood* of substantially increased importation as claimed by Pacific Steel. In other words Article 3.7 provides that authorities should consider the actual rate at which imports have increased and whether this indicates there is likely to be substantially increased imports. In this case, as noted elsewhere in this report, there have been no imports since the duty was suspended and in fact no imports since October 2006. There has therefore been no rate of increase in actual imports for many years which could provide an indication of the likelihood of substantially increased imports.

178. Pacific Steel has commented that because the Ministry found there was not likely to be a resumption of dumped imports it did not in the interim report consider the other factors in Article 3.7. As noted above, Article 3.7 relates to the determination of a threat of injury in a new investigation and is only relevant to the extent it might provide guidance in determining the likelihood of a continuation or recurrence of dumping and injury. Having found there was not likely to be a resumption of dumped imports if the duties were permanently removed, the Ministry did not consider in the interim report the other injury factors that would normally be considered in a review. These factors are price effects and the consequent economic impact arising from the volume and price effects as set out in section 8 of the Act rather than the threat of injury factors in Article 3.7. Should an examination of the other injury factors be required they would be assessed in terms of the likely impact should the duties be removed permanently. The lack of any such examination does not necessarily imply that the Ministry agrees with the forecasts provided by Pacific Steel of the impact of permanently removing the duties.

179. Pacific Steel has submitted that statements by Tata that it does not intend to dump into New Zealand [REDACTED]

[REDACTED]. The Ministry observes that on the one hand Pacific Steel is arguing that statements by Tata about exporting rebar to New Zealand should be considered as positive evidence that there is likely to be an injurious recurrence of dumped imports [REDACTED]

180. In evaluating the statements by Tata that it does not intend to dump into the New Zealand market, the Ministry notes that the dumping margin calculated in the dumping section of this report was, in the absence of any actual imports, done on the basis of the facts available. This dumping margin therefore does not relate specifically to Tata and does not necessarily indicate that any exports of rebar by Tata to New Zealand will be at dumped prices. The Ministry further notes that the dumping margin calculated on the basis of the facts available is small (5 percent), which suggests it would not be difficult for Tata to export at non-dumped prices.

181. This is reinforced by the price undercutting analysis above which indicates that exports from Thailand, based on the export price calculated in the dumping section of this report, would be competitive with imports from other countries and with Pacific Steel, and would remain so with the addition of a 5 percent dumping margin to bring the prices to a non-dumped level. At the same time, as noted in the price undercutting analysis above, the price competitiveness of Thai exports provides an incentive to import rebar from Thailand although such imports have not eventuated since the duties were suspended.

#### *Conclusion*

182. In considering the weight to place on the statements by Tata, including those made after the release of the interim report, the Ministry notes that the jurisprudence outlined in section 1 above indicates that the 'likely' test in Article 11.3 is to be interpreted to mean 'a real and substantial risk . . . , a risk that might well eventuate'. This jurisprudence also indicates that a continuation or recurrence of dumping and injury must be 'probable' (not simply possible or plausible) and that an affirmative determination must be based on positive evidence (i.e. evidence of an affirmative, objective and verifiable character and which is credible).

183. The statements made by Tata before the release of the interim report, while not always very clear, indicated a desire or wish by Tata to export rebar to New Zealand at some point in the future. Since the release of the interim report Tata has made further statements which, although they continue to be somewhat unclear, do indicate that Tata plans to export rebar to New Zealand. The evidence also indicates it is likely that Tata has the ability to produce rebar that would be suitable for the New Zealand market. There is, however, no evidence that Tata currently has any New Zealand customers or that there is any certainty that those plans will eventually result in exports of rebar to New Zealand.

184. In its statements post the interim report Tata has also reiterated that it will not export to New Zealand at dumped prices. The dumping margin calculated in the dumping section of this report is small and indicates that Tata could export at non-dumped prices and still be competitive in the New Zealand market. The Ministry consequently considers it is not unreasonable to conclude that Tata's statements about not intending to dump into the New Zealand market can be considered credible evidence of Tata's intention not to do so.

185. The evidence suggests that while it is possible or plausible that Tata may export rebar to New Zealand it is doubtful that it constitutes positive evidence that such a resumption of exports at dumped prices in quantities sufficient to cause material injury is likely or probable should the duty be permanently removed.

186. The Ministry also concludes that, while there have been no imports of rebar from Thailand since the suspension of the duties, the Thai rebar industry has the capacity to resume its exports of rebar to New Zealand in quantities that would be significant relative to the size of the production and consumption of rebar in New Zealand.

187. The Ministry further concludes that the evidence relating to the intentions of Tata to export to New Zealand does not on its own constitute positive evidence that there is likely to be a recurrence of injurious dumping by that exporter, although it does form part of the total evidence to be taken into account by the Ministry in determining whether there is likely to be a recurrence of injurious dumping if the duty was to be permanently removed.

### **Ease of entry into the New Zealand market, ease of distribution and ability of importers to handle a significant increase in imports**

188. Pacific Steel has referred to findings by the Ministry in the original investigation and the 2009 review that the New Zealand market is open to rebar imports and that there are well developed distribution channels giving widespread access to the New Zealand market. Pacific Steel has submitted that the Ministry's conclusions then remain relevant now, i.e. that there are no significant impediments to the importation and distribution of rebar in New Zealand.

189. Pacific Steel has also noted that many of the importers and exporters who were previously involved in the export and import of rebar to New Zealand remain active. Pacific Steel has noted that [REDACTED] data records that [REDACTED] of steel goods under chapters 72 and 73 of the HS system were exported from Thailand to New Zealand in 2013. Pacific Steel has submitted this data shows, as the Ministry noted in its final report on the 2009 review, that importers continue to have the capability to import rebar, along with other steel products, from Thailand.

190. The Ministry notes that there are significant import volumes of rebar into New Zealand from other countries recorded under the tariff items covering the subject goods, as shown in Table 6.1 above. In 2013/14 such imports represented [REDACTED] percent of the total New Zealand rebar market.

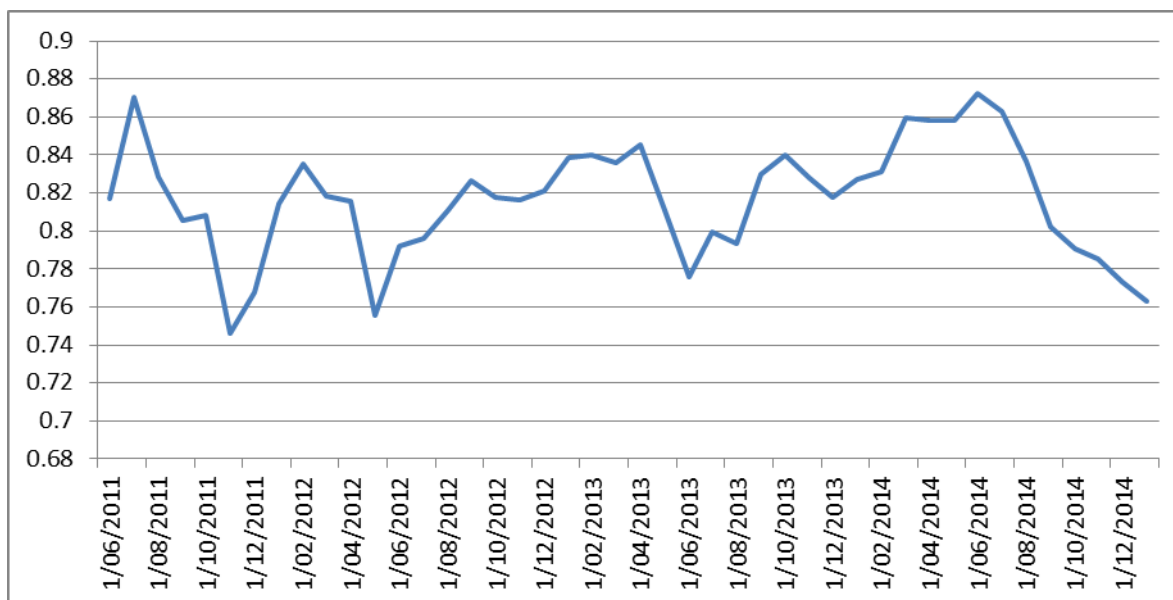
191. The Ministry has not received any information from New Zealand importers on the openness of the New Zealand market or on the availability of distribution systems. The Ministry is, however, not aware of any significant impediments to importing rebar into New Zealand from Thailand. The volume of rebar imported from other countries and the value of other steel products imported from Thailand indicates that distribution systems are likely to still exist that would allow rebar from Thailand to be distributed in New Zealand. This also indicates that importers are likely to have the ability to handle a significant increase in the volume of imports from Thailand.

### **Conclusion**

192. The Ministry concludes there is ready access into the New Zealand market for imports of rebar from Thailand and that there are established distribution systems that could be used to widely distribute such imports in the New Zealand market should such imports resume. The Ministry also concludes that importers are likely to have ability to deal with a resumption of significant import volumes of rebar from Thailand.

## Exchange rates

193. The Ministry has considered whether changes in exchange rates are likely to have any influence on likely import volumes of rebar from Thailand should the duties be removed permanently. NZCS data shows that rebar imported into New Zealand is largely invoiced in USD. The Ministry has examined the US\$/NZ\$ exchange rate over the injury period of 1 July 2011 to 31 January 2015, as shown in the graph below.



194. The graph shows significant fluctuations in the exchange rate over the period but that the NZD has depreciated against the USD, by 7 percent over all of the period, with a marked depreciation since about June 2014. Exchange rate conditions have therefore been less favourable for importers recently than they were in 2010.

195. As noted above, while imports of rebar since July 2011 have increased, they have increased at a rate that is less than the growth in the New Zealand market for rebar even though over most of this period the exchange rate has been favourable for importers (although not more recently as noted in the paragraph above). This suggests that other factors are drivers of the decision about whether to import rebar.

## Conclusion

196. Because most of the rebar exported to New Zealand is invoiced in US dollars, changes in exchange rates will generally have a similar effect on prices regardless of the country from which it is imported. To the extent that price influences an importer's purchasing decisions, the US dollar price of rebar is likely to be the prime consideration regardless of the country from which it is sourced. The Ministry consequently concludes that exchange rates are not likely to be a significant factor in an importer's decision to purchase from Thailand (as opposed to other countries), should the duties be removed permanently.

## Other matters

197. Pacific Steel has referenced various reports about economic uncertainty in Thailand and has submitted this will impact on demand in Thailand for rebar which will, when considered in conjunction with the surplus capacity, encourage Thai producers to export rebar.



198. Pacific Steel has also referenced various reports about the good growth prospects for the New Zealand economy and the projected growth in construction particularly in Christchurch and Auckland. Pacific Steel has submitted that this makes the New Zealand market attractive for Thai rebar exporters.

199. Pacific Steel has referred to evidence of a decline in world steel prices since February 2011. Pacific Steel has argued that New Zealand will be understood by Thai rebar exporters [REDACTED] which will further enhance the likelihood of a resumption of dumped goods to New Zealand.

200. Pacific Steel has referred to two news clippings from the SBB Daily Briefing dated 2 and 3 March 2015 about an increase in China's exports to Japan which Pacific Steel has argued has a domino effect and displaces current non-Chinese suppliers. Pacific Steel has submitted that these news items support its view regarding the likelihood of Thai exports being displaced from its current export markets to New Zealand.

201. Pacific Steel has also referred to a report from the International Rebar Producers and Exporters Association of 4 March 2015 which notes that there is a stronger presence of Chinese and Russian product in markets that were 'disputed' for example by the South Koreans and the Turkish. This report also notes that Chinese exporters can continue to push their exports far beyond their normal markets on the back of their weaker currency. Pacific Steel has claimed that this report is "[o]f relevance to the likelihood of Thailand rebar displacement to places like New Zealand from the China domino effect."

202. The Ministry considers that the factors referred to by Pacific Steel may lend some weight to the possibility that there may be a resumption of imports of Thai rebar. At the same time, the growth in the New Zealand rebar market is likely to ameliorate the injurious impact on Pacific Steel of any resumption of rebar imports from Thailand. The Ministry also notes the comments made by Tata (see paragraph 158) about the difficulty of competing with Chinese exports, which could suggest that there may be an increase in imports from China rather than a resumption of imports from Thailand as a result of Thai exporters being displaced from other export markets by Chinese product.

203. In its submissions below (see paragraphs 223 and 224) relating to the displacement of Thai rebar from the Australian to the New Zealand market as a result of the Australian Anti-Dumping Commission carrying out a dumping investigation, Pacific Steel referred to two US papers on the chilling effect on trade that can result from the carrying out of dumping investigations. The Ministry has considered whether the existence of the anti-dumping duty on rebar from Thailand, albeit it has been suspended for three years, may be having a similar chilling effect on trade.

204. In the absence of any co-operation from previous importers of rebar from Thailand, there is no information from importers on the extent to which the existence of the duty and the ending of its suspension on 1 June 2017, has been a factor in their decisions on whether to purchase rebar from Thailand. The Ministry considers that while the continued existence of the duties (even though temporarily suspended) may be a factor which influences purchasing decisions, there is not sufficient information to come to any conclusion on whether this is the case. The Ministry also notes that, even if the duties are removed permanently, there may still be a chilling effect on trade because of the possibility that Pacific Steel could seek the re-imposition of duties should imports of Thai rebar resume.

*Submission by Pacific Steel in response to interim report*

205. In response to the interim report Pacific Steel has submitted that if there are imports of rebar from Thailand in the period between the completion of the interim report and the completion of this final report that this will represent positive evidence of a recurrence of dumped imports. Pacific Steel submitted that any such imports will require the Ministry to set aside the primary conclusion in the interim report [that there is not likely to be a recurrence of dumped imports if the duties are removed permanently] and “[i]ssue a final report recommending re-imposition of duties on the dumped rebar from Thailand.”

206. The Ministry has examined Customs import data for April 2015 (the interim report considered imports up to 31 March 2015) and notes that there was one small importation from Thailand classified under the tariff items which include rebar of the type subject to duties. This importation is described as “hot worked alloy bars” and has a value for duty per tonne which is about five times the base FOB export price established in the dumping section of this report. The Ministry considers this importation is clearly not rebar of the type subject to the duties and therefore does not constitute evidence of a recurrence of imports of the subject goods.

207. The Ministry does not accept that any imports of rebar from Thailand subsequent to the completion of the interim report will necessarily constitute evidence that there is likely to be a recurrence of dumped imports from Thailand in sufficient volume to cause material injury to Pacific Steel. The significance of any such imports would need to be evaluated and would depend on factors such as the volume and price of the imports and the future intentions of the importer and Thai exporter.

**Suspension of anti-dumping duties on rebar from Thailand**

208. As outlined in section 2.1 above, the anti-dumping duties which are the subject of this review were suspended for three years with effect from 1 June 2014 through an amendment to the Act.

209. At the time this report was drafted, the most recent NZCS data relating to imports of rebar that was available to the Ministry covered imports up to 31 March 2015. This import data shows that over the period since the duties were suspended on 1 June 2014 until 31 March 2015 there were no imports of rebar originating from Thailand.

210. Unlike a ‘normal’ sunset review where the duties are not suspended, the suspension of the duties on rebar from Thailand affords the opportunity<sup>8</sup> for the Ministry to consider the actual effect of the removal of the duty, albeit on the basis of NZCS import data for an 11 month period and in a situation where the removal of the duty is for a temporary period of three years. This part of the report therefore considers the evidence relating to import volumes from Thailand since the duties were suspended and what this might mean for the likelihood that there will be a resumption of dumped imports should the duty be removed permanently.

***Submission by Pacific Steel***

211. Pacific Steel has made a submission on the absence of rebar imports from Thailand since the duties were suspended and the significance of this as to whether there is likely to be a recurrence of imports should the duty be removed permanently. This submission is summarised below.

Timing and communication

212. Pacific Steel has noted that the temporary nature of the suspension might on one hand suggest a rapid new flow of rebar exports from Thailand as Thai exporters take advantage of the hiatus

guaranteed by the suspension. On the other hand, Pacific Steel has commented that there may possibly be a more cautious approach by Thai exporters wishing to see what may occur at the end of the suspension (which may itself be affected by events during the suspension, including whether or not the mooted public interest test is introduced). Pacific Steel has noted that it was unable to find any precedent elsewhere in the world for the suspension of anti-dumping duties which might guide its analysis.

213. Pacific Steel has submitted that the date from which the suspension commenced of 1 June 2014 is not the point at which Thai exporters started considering sales to New Zealand. Pacific Steel said that while the suspension was notified on various New Zealand web sites and the WTO was notified of the change in New Zealand's legislation in June 2014, the Ministry did not communicate the suspension to the Thai steel industry until it sent the Initiation Report to three Thai steel companies on 6 November 2014. Pacific Steel said that the Ministry would need "[t]o be relying on other party communication, or some other means, in order for it to safely assume that the Thailand rebar industry has been knowledgeable since 1 June 2014 of particular opportunity to consider NZ market re-entry. Such reliance is considered unsafe."

214. Pacific Steel has submitted that it is not certain that post 6 November 2014 the Thai rebar industry would fully understand the nature of the suspension and the current sunset review and what it might mean regarding re-entry into the New Zealand market. Pacific Steel said that the Thai industry would need to do research to develop an understanding of the topic because the communication from the Ministry simply records the review as being of a "suspended" duty (as opposed to a review of an otherwise normal anti-dumping duty). Pacific Steel has argued that because suspension of anti-dumping duties is without precedent, Thai industry would not be knowledgeable about what happens with a temporary suspension, which is further complicated by being wrapped up with the tariff concessions scheme and a mooted public interest test.

215. Pacific Steel has further argued that there may be uncertainty amongst Thai exporters arising from the temporary suspension because of questions such as:

- Is there some volume cap or other volume related consideration buried in the detail?
- At the end of the temporary suspension might any goods imported during the suspension have duty retrospectively imposed if the dumping margin on those goods is greater than that found in the prior investigation?
- Might the suspension mean the duty is collected but reimbursed later?
- Will dumping margins in the temporary suspension period be taken into account when the duty is reimposed, "[o]r in any other then forward-looking exercise?"
- What process will the regulator follow at the end of the suspension period?<sup>7</sup>

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<sup>7</sup> Pacific Steel commented that the Cabinet paper which sought approval for the suspension of anti-dumping duties on residential building materials indicates that when the suspension ends the duties are simply reapplied, but other information from the Ministry suggests that it will likely carry out a new, self-initiated investigation before any reapplication of the duties. The Ministry notes that the amendment to the Act to suspend these duties does not prevent the Ministry from self-initiating a review before the suspension ends.

216. Pacific Steel commented that these are the types of uncertainties that a Thai exporter will probably want to understand before recommencing the export of rebar to New Zealand. Pacific Steel said it is not arguing these uncertainties make a resumption of exports of rebar from Thailand unlikely, but rather they drive a conclusion that the process will take some time.

217. Pacific Steel referred to a January 2015 Findings and Reasons report by the Canadian International Trade Tribunal (CITT) into rebar from China, Korea and Turkey<sup>8</sup> which considered whether dumped and subsidised imports were threatening to cause material injury. Pacific Steel has quoted an extract from this report where the CITT noted (at paragraph 213) that “[I]n assessing threat of injury, the Tribunal typically considers a time frame of 12 to 18 months, and no more than 24 months, beyond the date of its finding. The Tribunal is not necessarily bound by this time frame, as each case is unique.” Pacific Steel also quoted from this report (at paragraph 216) where the CITT said that “[t]he time lag between the placement of an order for the purchase of the subject goods from both China and Korea and their actual arrival in Canada varies between two and five months, depending on the specific product” and went on to conclude (at paragraph 217) that “[t]he Tribunal considers that it is appropriate to focus on the next 12 to 18 months to assess whether the dumping and subsidizing of the subject goods are threatening to cause injury to the domestic industry”.

218. Pacific Steel said it “[a]cknowledges that the 12 to 18 month period that the CITT is currently following is not solely for the purposes of assessing volume-related threat of injury. It is nonetheless a significantly longer time period for the assessment and conclusions regarding forward-looking injurious behaviours than that which is apparently guiding the New Zealand Ministry. If, as Pacific Steel asserts, the clock began sometime in November 2014, under CITT’s perspective the NZ Ministry should forecast NZ’s imports from Thailand in a period not ending before some time [between] November 2015 and June 2016.”

219. Pacific Steel also stated that “[I]n reference to the CITT’s finding regarding the time between order placement and arrival, at the most extreme of rapidity (i.e. the Thailand exporters had a NZ buyer ready, willing and able to place an order on 7 November 2014), those goods would not be expected in New Zealand until sometime between 7 January and 7 April 2015.”

220. Pacific Steel submitted “[t]hat the assessment of recurrence of dumping (as with recurrence of injury) is a forward looking exercise, assessing the economics and export industry dynamics in the future. Past events such as whether Thailand has yet recommenced are not completely determinative.”

#### Displacement of Thai rebar from Australia to New Zealand

221. Pacific Steel has referred to a dumping investigation initiated by the Australian Anti-Dumping Commission on 17 October 2014 into steel reinforcing bar from Korea, Malaysia, Singapore, Spain, Taiwan, Thailand and Turkey. Pacific Steel noted that in its application for this investigation the Australian industry had identified exports of rebar from Thailand to Australia of about 27,000 tonnes per annum<sup>9</sup>. Pacific Steel said that as the investigation was not initiated until 17 October 2014, Thai

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<sup>8</sup> Inquiry No. NQ-2014-001, available at: <http://www.citt-tcce.gc.ca/en/node/7150>

<sup>9</sup> This volume relates to imports for the year ended 30 June 2014 and was taken from Table B-1.5 at page 38 of the application which is available on the Australian Anti-Dumping Commission’s web site at: [http://www.adcommission.gov.au/cases/documents/001-Application-AustralianIndustry-OneSteelManufacturingPtyLtd\\_000.pdf](http://www.adcommission.gov.au/cases/documents/001-Application-AustralianIndustry-OneSteelManufacturingPtyLtd_000.pdf)

rebar exporters could not have reacted to the initiation until after this date and is therefore a new risk, arising much later than the 1 June 2014 date from which the duties were suspended, which involves the displacement of Thai rebar from Australia to New Zealand.

222. In support of its contention that this displacement is likely, Pacific Steel has referred to the CITT report into rebar from China, Korea and Turkey where the CITT notes (at paragraph 227) that there are a number of anti-dumping or countervailing measures in place against rebar from the three subject countries and that other countries (including Australia) have initiated dumping and safeguard investigations into rebar. Pacific Steel has noted that the CITT has stated in this report (at paragraph 228) “[T]hese trade measures and actions will limit the options of exporters from the subject countries and are likely to increase the likelihood that they will look to sell rebar in other export markets such as Canada.”

223. Pacific Steel has also referred to a 2013 US study<sup>10</sup>, which the Ministry referenced in its Regulatory Impact Statement (RIS) on “Options to Reduce Import Barriers in Relation to Residential Construction Materials”, which found that “[A]D investigations often drive export suppliers entirely out of the market” (page 1) and that “[E]xporters often cease serving the market *during* the investigation” (page 2). Pacific Steel has also quoted from another paper<sup>11</sup> on this issue released in 1994, where the authors state (at page 55): “[t]here appear to be important investigation effects associated with antidumping petitions: our results suggest that petitioning firms may enjoy import relief during the investigation period which amounts to about half of what they might expect from a positive final determination and duty imposition.”

224. Pacific Steel has submitted that it is reasonable to conclude from the above papers that the current Australian rebar dumping investigation will likely see the 27,000 tonnes currently exported from Thailand to Australia, or a material share thereof, displaced from Australia. Pacific Steel has argued that the diversion of this displaced rebar back to the Thai domestic market can be discounted because, as outlined above, Thailand’s domestic rebar capacity is already well in excess of consumption.

225. Pacific Steel has also submitted that Thailand is unlikely to reduce its production to compensate for the displacement of this rebar back to the Thai domestic market because of the economics of the steel industry. In support of this submission, Pacific Steel has quoted from the CITT report of January 2015 referred to above, where the CITT state (at paragraph 225):

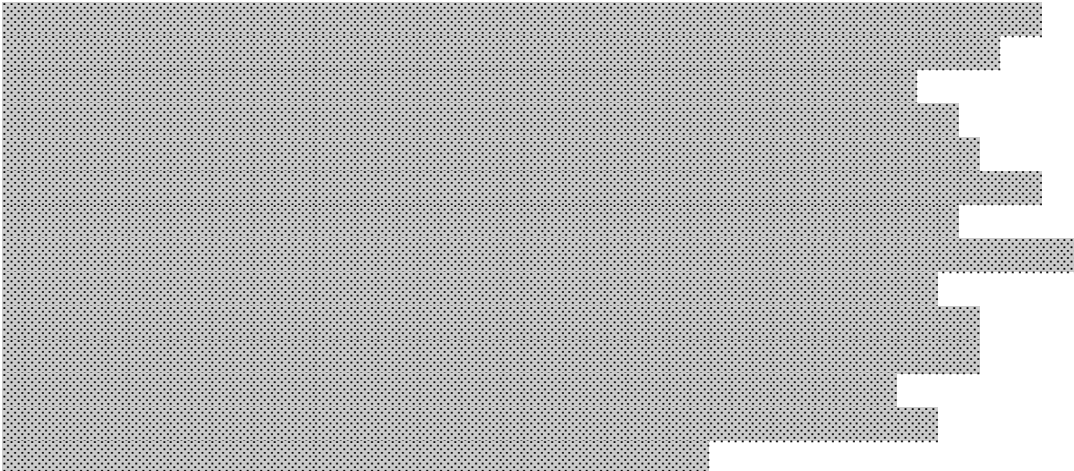
It is also well established that, in commodity product industries where there are high fixed costs, there is an incentive to maintain a high level of production and capacity utilization in order to achieve economies of scale and reduce average costs. It is generally recognized that this production imperative is operative in the steel industry. In this connection, as long as prices are above the marginal cost of production, a firm may lower its average costs by producing more product. In the face of weak demand or oversupply, a firm may try to export its production beyond the level that clears the domestic market.




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<sup>10</sup> Antidumping and the Death of Trade by Tibor Besedes and Thomas Prusa, available at: <http://www.nber.org/papers/w19555.pdf>

<sup>11</sup> Measuring Industry Specific Protection: Antidumping in the United States by Robert Staiger and Frank Wolak, available at: <http://www.nber.org/papers/w4696.pdf>

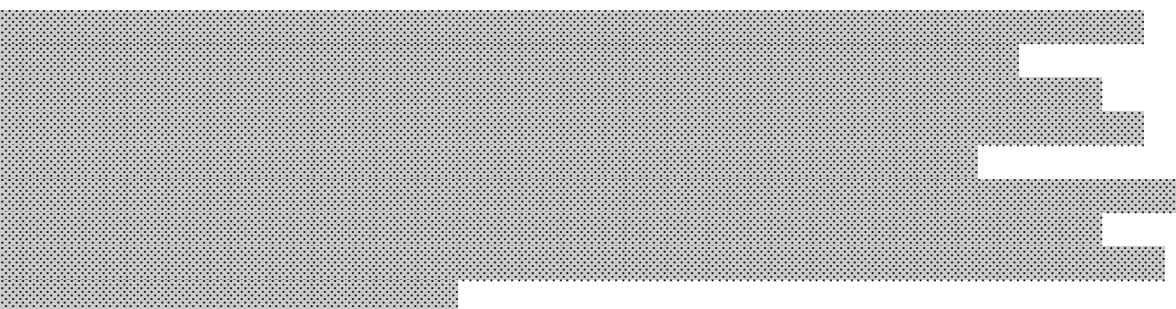
226. On the basis of the above considerations, Pacific Steel has submitted that the displaced rebar exports from Thailand to Australia are more likely to be exported to New Zealand than elsewhere because:

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227. Pacific Steel has noted that “[T]he 27,000 tonnes of likely displaced Thailand volume” would comprise about  percent of the New Zealand domestic market and is  times greater than the  tonnes originally estimated by Pacific Steel to be the sales volume it would lose as a result of rebar imports from Thailand if the duty was to be removed permanently.

228. Subsequent to the above submission, Pacific Steel made a further submission on this issue. Pacific Steel said that the Australian Anti-Dumping Commission on 13 March 2015 made a Preliminary Affirmative Determination on the dumping investigation referred to above. Pacific Steel said that the Commission was satisfied that Australian Customs should, with effect from 13 March 2015, require and take securities in respect of interim dumping duty that may become payable in relation to rebar exported to Australia from all countries examined in order to prevent material injury to the Australian industry occurring while the investigation continues.

229. Pacific Steel has referred to its previous submission about the risk of circa 27,000 tonnes per annum of rebar currently exported from Thailand to Australia being diverted to New Zealand. Pacific Steel has submitted that the Preliminary Affirmative Determination and the taking of securities is a salient and new development since its previous submission. Pacific Steel has submitted that:



#### Capacity of the Thai rebar industry

230. Pacific Steel has referred to earlier evidence it provided on the capacity of the Thai rebar industry (see paragraphs 141 to 147 above) and submitted that publicly available data indicates there is a surplus capacity of at least 1.5 million tonnes. Pacific Steel submitted that the 500,000 tonnes of steel bar capacity being installed by the Thai Steel Profile Company Ltd, referred to in

paragraph 145 above, cannot be absorbed by the Thai domestic market. Pacific Steel argued that some of this new capacity will therefore be exported or displace other Thai production on the Thai domestic market. Pacific Steel has noted that Thai Steel Profile Company Ltd's new capacity alone is several times greater than the entire New Zealand market and many times greater than the [REDACTED] tonnes it originally estimated to be the sales volume it would lose as a result of rebar imports from Thailand if the duty was to be removed permanently.

231. Pacific Steel has also submitted that the growth in consumption in Thailand out to 2018 can be inferred from the HIS Global Insight's December 2014 report to be not greater than 5 percent per year. Pacific Steel said that the growth in capacity being added by the Thai Steel Profile Company Ltd alone represents 17 percent growth, which is at the lower bound [of the growth in capacity] because it excludes all other projects and other currently unutilised capacity.

#### Other issues

232. Pacific Steel has referred to the Ministry's analysis in its Regulatory Impact Statement (RIS): Options to Reduce Import Barriers in Relation to Residential Construction Materials and the related Cabinet paper in which there is an estimate of the cost savings from removing the anti-dumping duties on rebar. Pacific Steel has argued that "[R]ecomenced rebar volume from Thailand is the expected outcome in the Cabinet paper and RIS, and it is the explicit justification for the legislative changes which were later made by Parliament."

233. Pacific Steel has noted that the test in a sunset review is whether a continuation or recurrence of dumping and injury is "likely" but has argued that the analysis in the RIS and Cabinet paper referred to in the paragraph above also incorporates the adjective "likely". Pacific Steel went on to say "[P]ut another way, the difference between processes which on the one hand have led to a legislative change, and on the other is a statute-based investigation, is one of form not substance."

234. In support of this argument, Pacific Steel has noted that for the purposes of the above RIS and Cabinet paper after analyses that were "*careful and robust*"<sup>12</sup> and that the case for amending the Act to suspend anti-dumping duties on residential building materials was also "*robust*"<sup>13</sup>. Pacific Steel has claimed that the recommencement of rebar exports from Thailand is described as "likely" in the above RIS (at paragraph 137). Pacific Steel also said that this likelihood followed an analysis in the RIS that "is sufficient to allow conclusions to be drawn"<sup>14</sup>, i.e. that a recommencement of rebar exports from Thailand is likely.

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<sup>12</sup> In support of this reference to "careful and robust" Pacific Steel has quoted the following from Part 2 of The Purpose of Regulatory Impact Analysis (RIA) in the Treasury's Regulatory Impact Analysis Handbook: "The purpose of Regulatory Impact Analysis (RIA) is to help achieve a high quality regulatory environment by ensuring that regulatory proposals are subject to careful and robust analysis".

<sup>13</sup> In support of this reference to "robust", Pacific Steel has quoted the following from Cabinet minute [13] 6/2B of 4 March 2013: "The agency should not propose regulatory change without: clearly identifying the policy or operational problem it needs to address, and undertaking impact analysis to provide assurance that the case for the proposed change is robust".

<sup>14</sup> This quote is taken from paragraph 3 of the Agency Disclosure Statement in the Ministry's RIS, where the Ministry states "Qualitative analysis has been used throughout this document and is sufficient for allowing conclusions to be drawn."

235. Pacific Steel said it therefore “[c]oncurs with the Ministry’s positive conclusion in the Cabinet papers and RIS that Thailand will again dispatch rebar to New Zealand.”

### ***Ministry’s consideration of submissions by Pacific Steel***

#### Timing and communication

236. The Ministry notes that Pacific Steel’s submission has focused on the timing of when Thai exporters may have become aware of the suspension of the anti-dumping duties. Pacific Steel has claimed that Thai exporters would not have become aware of the suspension of the duties until 6 November 2014 when the Ministry notified them of the initiation of this review, unless the Ministry had communicated with the Thai industry in some other way prior to this date. Pacific Steel has also claimed that even when the Thai industry became aware of the suspension, there would be some uncertainty about what it meant for the reasons set out in the submission.

237. The Ministry considers that New Zealand importers are more likely to be the instigators of rebar imports from Thailand than Thai rebar exporters. As Pacific Steel has noted elsewhere in its submissions, New Zealand importers already import significant quantities of other steel products from Thailand and would therefore likely have the relevant contacts and supply lines in place to enable them to import rebar from Thailand. The Ministry notes that New Zealand importers would also be aware of the relevant New Zealand building standards that rebar needs to comply with and of the availability of compliant rebar in Thailand.

238. The Ministry notes that the passage of the legislation to suspend the anti-dumping duties on residential building materials was publicised in the media at the time. The Ministry also notes that the suspension of these duties was also publicised in the New Zealand Customs Release of 30 May 2014 which also directed readers to more detailed information on the Ministry’s web site. The Ministry therefore considers it reasonable to assume that New Zealand importers would have become aware of the suspension of these duties soon after the suspension took effect. However, in the absence of any co-operation with this review from any importers who had previously imported rebar from Thailand, it has not been possible to confirm this with importers or to determine whether they intend to import rebar because of the suspension of the duties.

239. Because of the information made available to New Zealand importers, the Ministry does not consider they would have been uncertain about the effect of the suspension which Pacific Steel claimed may have been the case with Thai exporters. The Ministry also notes that anti-dumping duty is paid by importers rather than exporters and importers could therefore be expected to have a direct interest in understanding the effects of the suspension of the duties should they be considering a resumption of rebar imports from Thailand.

240. The Ministry has read the relevant parts of the CITT report referred to by Pacific Steel in support of its contention that the Ministry should be forecasting imports into New Zealand 12 to 18 months from November 2014, i.e. in a period not ending before some time between November 2015 and June 2016. As Pacific Steel has acknowledged in its submission the CITT report pertains to a new investigation where the CITT, having found no actual injury, was examining whether there was a threat of injury. In the circumstances of this case, the CITT concluded that it was appropriate to look forward for 12 to 18 months in order to determine whether dumping and subsidisation would cause injury which was clearly foreseen and imminent.

241. As outlined in paragraph 29 above, in considering the likelihood of injury, the Ministry may refer for guidance to provisions in the Anti-Dumping Agreement that may be helpful in assessing that likelihood and those provisions may include, if appropriate, the factors used in Article 3.7 in



assessing a threat of injury. The test to be applied, however, is not that for establishing whether there is a threat of injury.

242. As also outlined in paragraph 29 above, in considering whether removal of the duty would be likely to lead to a recurrence of dumping and injury, the Ministry considers what is likely to happen in the foreseeable future. The extent to which the Ministry is able to make judgements on the likelihood of events occurring in the foreseeable future will depend on the circumstances of each case and, therefore, the foreseeable future will range from the imminent to longer timeframes.

243. The Ministry accepts that in the circumstances of this review where the duty under review was suspended for three years from 1 June 2014, there will be a delay between the date the suspension took effect and any resumption of imports of rebar. However, the lack of information from importers means there is no evidence from importers on how long it might take them to make decisions on whether to import rebar from Thailand or whether they are actively considering importing rebar from Thailand or have already arranged to do so.

244. Once a decision has been made by a New Zealand importer to order rebar, the Ministry can see no reason why the time lag between the placement of orders and the arrival of the orders noted by the CITT of between two to five months would be materially different for rebar orders placed by New Zealand importers. As noted above, the Ministry considers that importers would have been aware that the anti-dumping duty had been suspended soon after the suspension came into effect. Had importers placed orders for rebar with Thai rebar suppliers by October 2014 those orders would have arrived in New Zealand by the end of March 2015.

#### Displacement of Thai rebar from Australia to New Zealand

245. The Ministry has referred to the Australian Anti-Dumping Commission's web site relating to the dumping investigation into steel reinforcing bar from various countries (including Thailand) which confirms that the Commission initiated on 17 October 2014 an investigation into steel reinforcing bar from Korea, Malaysia, Singapore, Spain, Taiwan, Thailand and Turkey. The Commission's web site also records its Preliminary Affirmative Determination of 13 March 2015 and the imposition of provisional anti-dumping duties by means of requiring importers to provide a security equal to the amount of the provisional duty.

246. The Ministry notes that the rates of provisional duty imposed on Thai exporters are 2.2 percent for exports by Milcon Steel Public Company Ltd and 3.8 percent for 'un-cooperative exporters'. The Ministry further notes that the rates of duty for Thailand are the lowest rates imposed on any of the countries under investigation, the rates imposed on exporters from the other countries ranging from 4.5 to 25.5 percent.

247. The Commission's Preliminary Affirmative Determination Report does not show the extent of price undercutting by country so it is not possible to determine the extent to which Thai exporters are competitive with the Australian industry or with exporters from the other countries under investigation. The Commission's report does, however, record that the weighted average quarterly selling price per tonne for imported goods was approximately 5.5 percent below the OneSteel [the Australian industry] weighted average selling price. The report also records that the Commission was satisfied that the price undercutting related to a significant proportion of the overall market for rebar. The data in the Commission's report suggests that even after the imposition of provisional duties, Thai exporters may still be competitive with the Australian industry.

248. The Anti-Dumping Commission's web site records that the responsible Australian Minister has granted an extension to the date by which the Commission must provide a Statement of Essential

Facts (SEF) to no later than 1 July 2015, meaning that a recommendation to the Minister on the investigation is due on or before 17 August 2015. The SEF will set out the facts on which the Commission proposes to base its recommendations on the investigation to the Minister and is made available to interested parties for comment. This means that neither the SEF nor the final determination on the Australian investigation will be available in time to be taken into account in this review.

249. As noted in paragraph 237 above, the Ministry considers that New Zealand importers are more likely to be the instigators of rebar imports from Thailand than Thai rebar exporters. Even if the carrying out of the Australian investigation results in Thai exporters seeking alternative markets for their exports destined for Australia, the diversion of such exports to New Zealand would require a willingness by New Zealand importers to switch to sourcing from Thailand. There is no evidence from the one Thai exporter that has provided some information to the Ministry (Tata) that it is offering rebar for sale in New Zealand that was previously exported to Australia and in fact does not appear to currently export rebar to Australia. Because of a lack of co-operation from previous importers, there is no evidence that New Zealand importers are considering purchasing such rebar.

250. The Ministry has examined the CITT report and the 2013 and 1994 papers referred to by Pacific Steel in its submission. While the CITT report relates to an investigation that does not include Thailand, it does provide some support for the proposition that the carrying out of an investigation (whether it results in the imposition of duties or not) can result in exporters seeking other markets for their product, as do the 2013 and 1994 papers.

251. For the reasons set out by Pacific Steel in its submission, the Ministry considers it is unlikely that any Thai exports displaced from the Australian market will be readily sold on the Thai domestic market or that Thai producers will reduce their production to compensate for lost export sales to Australia. The Ministry also considers that Pacific Steel has provided plausible reasons for believing that the rebar exported from Thailand to Australia would be acceptable on the New Zealand market, although that would not necessarily preclude its sale in markets other than New Zealand.

252. The Ministry has examined Thai export statistics from [REDACTED] for the tariff item (722830) used to identify exports of rebar from Thailand to Australia in the dumping section of this report (publicly available Australian import data does not contain sufficient detail to separately identify imports of rebar). The most recent data at the time this report was prepared was to January 2015 and the Ministry examined import data for each month from January 2014 to January 2015.

253. The data shows that, while there is a considerable variation in the volume of exports from month to month, the average monthly volume of exports from January to October 2014 is significantly lower than the average monthly volume from November 2014 to January 2015, i.e. there is no evidence of any decline in Thai export volumes to Australia since the initiation of the Australian dumping investigation in October 2014, although three months may not be sufficient time for any impact resulting from the initiation of this investigation to become evident in the Thai export statistics.

#### Capacity of the Thai rebar industry

254. The Ministry had concluded at paragraph 186 above on the basis of an earlier submission by Pacific Steel that it is clear that the Thai rebar industry has the capacity to resume its exports of rebar to New Zealand in quantities that would be significant relative to the size of the production and consumption of rebar in New Zealand. The additional evidence provided by Pacific Steel in this submission on the suspension of the anti-dumping duties only serves to reinforce that earlier conclusion.

### Other issues

255. The Ministry has examined the RIS and Cabinet paper referred to by Pacific Steel in its submission which Pacific Steel claims supports its argument that there is likely to be resumption of imports of rebar from Thailand as a result of the suspension of the anti-dumping duties. The Ministry notes that the analyses in the RIS and Cabinet paper were based on information available at the time these documents were completed in May 2014. This necessarily meant that there was a degree of uncertainty in the analysis about the impact of the suspension of the duties and this is reflected in the RIS. For example the table in paragraph 137 which summarises the likely impact of the suspension of the anti-dumping duties on residential building materials states that “[R]emoving anti-dumping duties on wire nails from China and reinforcing steel bar and coil from Thailand is difficult to quantify but is expected to have a much smaller direct impact” [than the suspension of the anti-dumping duties on standard plasterboard].

256. In considering the likelihood of a recurrence of dumping and injury in this review, the Ministry must examine the evidence that is available at the time review is undertaken, including evidence of actual import volumes following the suspension of the duty. The suspension of the duty has in effect removed the uncertainty about the effect of suspending the duty that existed at the time the RIS and Cabinet paper were prepared, at least for the period from 1 June 2014 to 31 March 2015.

### *Conclusion*

257. The anti-dumping duties on rebar from Thailand were suspended for three years with effect from 1 June 2014. The suspension of these duties means that importers are not required to pay the duties for the duration of the suspension period. It also means that the duties are not payable retrospectively once the suspension period ends. These duties have in effect been removed for three years from 1 June 2014.

258. In spite of the effective removal of the duties, in the ten months from 1 June 2014 to 31 March 2015, there have been no imports of rebar from Thailand. The last time any rebar was imported from Thailand was in October 2006, although the last review in 2009 concluded that there was likely to be a recurrence of dumped imports should the duty be removed. In this review, rather than having to gauge the likelihood of a recurrence of dumped imports should the duty be removed, the removal of the duty for three years has provided an opportunity to examine the actual effects of the removal of the duties although this is limited to a 10 month period.

259. Pacific Steel has argued that Thai exporters would not have become aware of the suspension of the duty until this review was initiated in November 2014 and even then there would likely have been some uncertainty amongst Thai exporters about the exact effect of the suspension. The Ministry considers, however, that New Zealand importers are more likely to instigate the import of rebar from Thailand than are Thai exporters and that importers are likely to have been aware of the suspension of the duty soon after it came into effect. The Ministry therefore considers that importers have had ten months to consider the option of importing rebar from Thailand.

260. In relation to the initiation of a dumping investigation by the Australian Anti-Dumping Commission into rebar from various countries, including Thailand the following factors favour an argument that this investigation is likely to cause a recurrence of dumped imports from Thailand:

- There is some evidence that the initiation and carrying out of a dumping investigation, even before the imposition of any duties, can lead to at least a proportion of exporters exiting a market.

- Provisional anti-dumping duties have been imposed by the Australian Anti-Dumping Commission on exports from all of the countries under investigation.
- It is unlikely that any Thai rebar displaced from the Australian market will be readily sold on the Thai domestic market or that Thai producers will reduce their production to compensate for lost export sales to Australia.
- It is likely that the rebar exported from Thailand to Australia would also be acceptable on the New Zealand market.

261. On the other hand, the following factors favour an argument that the Australian investigation does not provide sufficient evidence that a recurrence of dumped imports is likely:

- The rates of provisional anti-dumping duty imposed on Thai exporters are low and are lower than the rates imposed on exporters from other countries.
- The data available on price undercutting suggests that Thai exporters may still be competitive with the Australian industry even after the imposition of provisional duties.
- Thai export statistics show that subsequent to the initiation of the Australian investigation there was no reduction in Thai exports of rebar to Australia, although export statistics are only available for three months (November 2014 to January 2015) since the investigation was initiated.
- If the initiation of a dumping investigation can lead to at least a proportion of exporters exiting a market (as suggested by the evidence provided by Pacific Steel) and it takes between two and five months between the ordering of rebar and its delivery, then sufficient time should have elapsed for at least some rebar diverted from the Australian market to have arrived in New Zealand since the Australian investigation was initiated.
- At the time this report was finalised, more than five months has elapsed since the Australian dumping investigation was initiated on 17 October 2014 without any rebar from Thailand being imported into New Zealand.

262. While the submission by Pacific Steel sets out a range of reasons why a resumption of imports of Thai rebar may be possible or plausible, the fact remains that there have been no imports of rebar since the duty was effectively removed on 1 June 2014. The Ministry considers that sufficient time should have elapsed since the duty was suspended, or even since the Australian dumping investigation was initiated, to allow for the resumption of imports of significant quantities of Thai rebar. In the Ministry's view therefore, the absence of imports of Thai rebar for a lengthy period since the duty was suspended constitutes positive evidence of the likely import volumes should the duty be removed permanently.

### **Conclusion on import volumes**

263. In respect of the likely import volumes of rebar from Thailand if the anti-dumping duties were to be removed permanently, the Ministry concludes that:

- Imports of rebar from Thailand are likely to be priced below the price of Pacific Steel's rebar, should imports of rebar from Thailand resume. Rebar imported from most of the significant sources of imports over the year ended 30 September 2014 is also likely priced below the price of Pacific Steel's rebar, though by a lesser amount than the estimated price of Thai

rebar. The lack of any imports since the suspension of the anti-dumping duty in spite of this price advantage may indicate that there are factors other than price which are influencing purchasing decisions although there is not sufficient evidence to determine what those factors might be.

- The Thai rebar industry has the capacity to resume its exports of rebar to New Zealand in quantities that would be significant relative to the size of the production and consumption of rebar in New Zealand.
- There is evidence that a significant Thai producer of rebar (Tata) has indicated it plans to export rebar to New Zealand at some point in the future although there is no evidence that Tata has any New Zealand customers or that such plans will actually result in rebar exports to New Zealand. There is evidence that Tata has the ability to produce rebar which would be suitable for the New Zealand market. Tata has also stated that it does not intend to do so at dumped prices and commented about the difficulty of competing with Chinese producers. The small size of the dumping margin and the price competitiveness of non-dumped rebar from Thailand indicates that it is not unreasonable to take Tata's stated intention not to dump as credible evidence of its intention not to do so. Taken together, this evidence suggests that it is possible or plausible that Tata may export rebar to New Zealand, but does not on its own constitute positive evidence that it is likely or probable that Tata will export rebar to New Zealand at dumped prices and quantities sufficient to cause material injury to Pacific Steel.
- There is ready access into the New Zealand market for imports of rebar from Thailand and there are established distribution systems that could be used to widely distribute such imports in the New Zealand market should such imports resume. Importers are likely to be able to deal with a resumption of significant import volumes of rebar from Thailand.
- Exchange rates are not likely to be a significant factor in an importer's decision to purchase from Thailand (as opposed to purchasing from other countries), should the duties be permanently removed.
- There is some evidence that economic growth in New Zealand and growth in the market for rebar makes New Zealand an attractive market for exporters although there is no compelling evidence that exporters could achieve higher prices in the New Zealand market than in other markets. At the same time, the growth in the New Zealand rebar market is likely to ameliorate the injurious impact on Pacific Steel of any resumption of rebar imports from Thailand.
- There is some limited evidence that exports of rebar by Chinese exporters may be placing pressure on rebar exporters from other countries which raises the possibility that this may displace Thai exports from other markets to New Zealand although it could also suggest that there may be an increase in imports from China rather than a displacement of Thai exports from other markets to New Zealand.
- While the continued existence of the duties (even though temporarily suspended) may be a factor which has a chilling effect on importer's decisions about whether to purchase rebar from Thailand, there is not sufficient information to come to any conclusion on whether this is the case.

- There have been no imports of rebar from Thailand since the anti-dumping duties were suspended for three years from 1 June 2014. The suspension of these duties means that importers are not required to pay the duties for the duration of the suspension period and will not be required to pay the duties retrospectively once the suspension ends.
- The Ministry considers that rebar imports are more likely to be instigated by New Zealand importers than Thai exporters and that importers would have been aware of the suspension of the duties soon after it came into effect. Because of a lack of co-operation from previous importers of rebar from Thailand, there is no evidence from importers on how long it might take them, as a result of the suspension of the duties, to make decisions on whether to import rebar from Thailand or on whether they are actively considering importing rebar from Thailand or have already arranged to do so. A significant period of time has, however, elapsed since the duties were suspended without any rebar imports from Thailand and the Ministry considers that this constitutes positive evidence of the likely import volumes should the duties be removed permanently.
- The Australian Anti-Dumping Commission's dumping investigation into rebar from Thailand and various other countries does not, for the reasons set out in this report, constitute sufficient positive evidence that a recurrence of dumped imports, through a displacement of Thai exports from Australia to New Zealand, is likely or probable.

264. Taking into account the evidence above, the Ministry concludes that, while there is evidence to suggest that a recurrence of injurious dumped imports is possible or plausible, the evidence does not demonstrate that a recurrence of injurious dumped imports is likely or probable, particularly in light of the absence of rebar imports from Thailand since the duty was suspended.

## 6.5 Other injury factors

265. The Ministry has concluded above that there is not sufficient evidence to demonstrate that a recurrence of dumped imports in sufficient volume to cause a recurrence of material injury to Pacific Steel is likely. The Ministry therefore does not consider it is necessary to consider the other injury factors that would normally be examined in a review because if there is not likely to be a recurrence of injurious dumped imports there can be no recurrence of material injury caused by such imports that could be reflected in those factors.

## 6.6 Conclusions relating to injury

266. There have been no imports of rebar from Thailand over the period of review for injury and no such imports since the anti-dumping duty was suspended for three years from 1 June 2014. There can therefore be no evidence of historical injury caused by dumped imports of rebar from Thailand.

267. The Ministry concludes there is not likely to be a recurrence of dumped imports of rebar from Thailand in sufficient volumes to cause a recurrence of material injury to the New Zealand industry if the duty is permanently removed.

## 7. Conclusions

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268. It is concluded that the continued imposition of anti-dumping duties is not necessary to prevent a recurrence of material injury to the New Zealand industry and therefore the duties should be terminated.

Investigating Team  
Trade and Regulatory Co-operation