Reinforcing Steel Bar and Coil
from
Malaysia and Thailand

Non-Confidential Final Report

Dumping and Countervailing Duties Act 1988
Dumping Investigation

Trade Remedies Group

Ministry of Economic Development

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Abbreviations

The following abbreviations are used in this Report:

Act (the)	Dumping and Countervailing Duties Act 1988
Ad valorem	according to the value imposed at, a rate percent of value
the Agreement	WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994
Amsteel	Amsteel Mills Sdn Bhd
Amsteel Marketing	Amsteel Mills Marketing Sdn Bhd
ANZCERTA	Australia New Zealand Closer Economic Relations Trade Agreement
ASEAN	Association of South-East Asian Nations
ASTM	American Society for Testing and Materials
AS/NZ4671:2001	Joint Australia/New Zealand Standard Steel Reinforcing Materials
BIA	Building Industry Authority
BSI	British Standards Institute
[redacted]	[redacted]
CFR	Cost and Freight
Chief Executive	Chief Executive of the Ministry of Economic Development of New Zealand
CIF	Cost, Insurance and Freight
CMC	CMC (Australia) Pty Ltd
Customs	New Zealand Customs Service
De facto	being such in effect though not formally recognized
DITMC	Department of Internal Trade of the Ministry of Commerce of Thailand
EBIT	Earnings Before Interest and Taxation
EDI	Electronic Data Interchange
EFC	Essential Facts and Conclusions Report
Euro Corp	Euro Corporation Limited
FBL	Fletcher Building Ltd
FIS	Free-into-Store
FOB	Free on Board
Gayathri	Gayathri Steels
H J Asmuss	H J Asmuss & Co Ltd
INFOS	Statistics New Zealand *Te Tari Tatau*
IPP	Import Parity Pricing Model

JIS	Japanese Industrial Standard
Kiwi Steel	Kiwi Steel NZ Ltd
Malayawata	Malayawata Steel Berhad
MDTCA	Ministry of Domestic Trade and Consumer Affairs of Malaysia
Millennium	Millennium Steel Public Co. Ltd
Minister (the)	The Minister of Commerce of New Zealand
Ministry (the)	Ministry of Economic Development of New Zealand
MR Steel	MR Steel Ltd
Nauhria	Nauhria Building Supplies Ltd
NIFOB	Non-Injurious Free on Board
NIP	Non-Injurious Price
NV(VFDE)	Normal Value (Value for Duty Equivalent)
NZ	New Zealand
NZD	New Zealand Dollar
OANDA	www.oanda.com (the currency site™)
PS	Pacific Steel
POI	Period of investigation
PPI	Producers Price Index
Quail Glen	Quail Glen Industrial Ltd
Rebar	Reinforcing Steel Bar and Coil
Reo	Reo Services Ltd
RM	Malaysian Ringgit
Sanwa	Sanwa Pty Ltd
SCT	SCT Co Ltd
SCSC	Siam Construction Steel Co Ltd
SD	Thai Steel Standard
SK Global	SK Global Co Ltd
SteelPlus	SteelPlus Ltd
THB	Thai Baht
USD	United States of America Dollar
VFD	Value for Duty
Vulcan	Vulcan Steel Limited
WTO	World Trade Organisation

1. Executive Summary

Introduction

1. On 10 September 2003, the Ministry of Economic Development (the Ministry) initiated a dumping investigation into reinforcing steel bar and coil from Malaysia and Thailand, being satisfied that the application from Pacific Steel (PS), provided sufficient evidence that the imports were being dumped and were causing material injury to the New Zealand industry.

Goods Subject to the Investigation

2. The goods subject to the investigation are described as follows:

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

Dumping

3. The Ministry has received information from a Malaysian manufacturer, exporters, importers, PS and New Zealand Customs and has used this information to establish whether the subject goods were dumped during the period of investigation (POI).

4. Eighty-eight percent of the goods imported from Malaysia during the POI were dumped, with a weighted-average dumping margin of 9 percent.

5. Ninety-one percent of the goods imported from Thailand over the POI were dumped, with a weighted-average dumping margin of 13 percent

Injury

6. Import volumes of the subject goods have increased significantly.

7. The New Zealand industry's prices have been significantly undercut by the imports from Thailand and as a result prices have been depressed and suppressed by these imports resulting in significant declines in profit, return on investments, and a significant decrease in sales revenue.

8. There is no evidence of significant price undercutting by the imports from Malaysia therefore none of the effects in the other injury indicators can be attributed to the imports from this source.

Injury Factors Other Than the Dumped Goods

9. The Ministry has concluded that there are factors other than the dumped goods that are causing injury to the domestic injury. Such factors include the method of manufacture utilised by PS and scrap prices.

Price Undertaking

10. The Ministry has received an offer of a price undertaking from a Malaysian exporter. The undertaking has not been referred to the Minister due to the negative finding of injury caused by imports from Malaysia.

Causal Link

11. The Ministry is satisfied that there is a causal link between the injury that has been incurred by the domestic industry and the existence of the dumped imports from Thailand. The Ministry is not satisfied that there is a causal link between the dumped goods from Malaysia and the injury suffered by PS.

12. The Ministry notes that there are factors other than the dumped imports from Thailand that have caused material injury to the domestic industry, however is still satisfied that the dumped imports from Thailand are a cause of material injury.

Conclusion

13. The Ministry has concluded that:

- The subject goods are being dumped;
- Dumped goods from Thailand have caused injury to the New Zealand industry;
- Material injury cannot be attributed to dumped imports from Malaysia;
- Factors other the dumped goods have caused injury to the New Zealand industry.

2. Proceedings

2.1 Proceedings

14. On 27 May 2003, the Ministry of Economic Development of New Zealand (the Ministry) accepted a properly documented application from Pacific Steel (PS), a division of Fletcher Steel Limited. The application alleged that imports of reinforcing steel bar and coil (rebar) from Malaysia and Thailand were being dumped and by reason thereof causing material injury to the New Zealand industry.

15. On 10 September 2003, the Chief Executive of the Ministry of Economic Development of New Zealand (the Chief Executive), acting pursuant to section 10 of the Dumping and Countervailing Duties Act 1988 (the Act) formally initiated an investigation into the dumping of rebar from Malaysia and Thailand, on being satisfied that sufficient evidence had been provided that:

- The goods imported or intended to be imported into New Zealand are being dumped; and
- By reason thereof material injury to an industry has been or is being caused or is threatened or the establishment of an industry has been or is being materially retarded.

16. In accordance with section 10 of the Act the purpose of the Ministry's investigation is to determine both the existence and effect of the alleged dumping of the subject goods.

17. On 12 December 2003 the Minister of Commerce of New Zealand (the Minister) declined to impose provisional measures. The Minister provisionally found that the subject goods were being dumped and as a result had caused material injury to the New Zealand industry, but was not satisfied that provisional measures were necessary to prevent material injury during the remainder of the investigation.

18. On 2 February 2004 the Essential Facts and Conclusions Report (EFC) for this investigation was provided to all interested parties, in accordance with section 10A of the Act, being written advice to the parties to the investigation of the essential facts and conclusions that will likely form the basis for any final determination to be made under section 13 of the Act. All interested parties were given until 17 February 2004 to make submissions based on the content of the EFC. Only four parties provided responses to the EFC report, the domestic industry, a Malaysian manufacturer, one from an importer sourcing product from Malaysia and one from an importer sourcing product from Thailand.

Grounds for the Application

19. PS claimed that as a result of the alleged dumping, material injury is resulting from:

- the increased volume of the allegedly dumped imports;

- price undercutting, price depression, and price suppression;

and is resulting in:

- decline in sales volume and sales revenue (that would have been achieved but for the alleged dumped imports);
- decline in market share;
- decline in profits;
- decline in return on investments; and
- decline in utilisation of production capacity.

20. PS stated in its application that since 2000 it has experienced a decline in profitability, but material injury as a consequence of the importation of allegedly dumped goods became evident in [redacted].

2.2 Interested Parties

New Zealand Industry

21. The application was submitted by PS, a division of Fletcher Steel Limited. PS is the only company in New Zealand that produces rebar. The Chief Executive was satisfied that the application was made by or on behalf of the New Zealand industry producing like goods and had the amount of support required by section 10(3) of the Act.

Sample of Exporters

22. Due to the number of companies identified from New Zealand Customs Service (Customs) data as exporting the subject goods over the period of investigation (POI), the year ending 30 June 2003, the investigation of exporters has been limited to a sample in accordance with Article 6.10 of the World Trade Organisation (WTO) Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Agreement.) Those exporters within the sample represent the top 99 percent of imports, by volume, from both Malaysia and Thailand over the POI. These exporters, in alphabetical order, are:

Malaysia:

Amsteel Mills Sdn Bhd
CMC Australia Pty Limited
Gayathri Steels
Malayawata Steel Berhad
SK Global Co Limited

Thailand:

Sanwa Pty Limited
SCT Co Limited

23. All other exporters and importers had the opportunity to provide submissions on the investigation but these have not been directly solicited from them.

Exporters and Producers

Malaysia

Amsteel Mills Sdn Bhd

24. Amsteel Mills Sdn Bhd (Amsteel) also produced the subject goods it exported to New Zealand. Amsteel is a wholly owned subsidiary of Lion Industries Corporation Bhd, and sells product on the Malaysian domestic market through a wholly owned subsidiary company, Amsteel Mills Marketing Sdn Bhd.

25. Amsteel provided a full manufacturer's questionnaire response and fully co-operated in a verification visit carried out by the Ministry.

CMC Australia Pty Limited

26. CMC Australia Pty Limited (CMC) advised the Ministry that it is an Australian based trading company and the rebar it exported to New Zealand was manufactured by Amsteel. Customs data shows that the country of export for those goods is [redacted]. CMC did not provide a response to the Ministry's exporter's questionnaire.

Gayathri Steels

27. No information was provided by Gayathri Steels (Gayathri) in response to the Ministry's requests. Customs data shows that the country of export of the subject goods exported by Gayathri is Singapore. The importer who purchased from Gayathri advised that Gayathri is based in Singapore and that the manufacturer of the subject goods exported by Gayathri is [redacted] in Malaysia.

Malayawata Steel Berhad

28. Malayawata advised the Ministry that it is the producer of the subject goods it exported to New Zealand, but did not provide any further information. The importer who purchased subject goods from this company did not provide any information.

SK Global Co Limited

29. SK Global Limited (SK Global) advised that [redacted] manufactured the subject goods it exported to New Zealand, but did not provide any further information to the Ministry. The importer who purchased subject goods from this company did not provide any information.

Thailand

Sanwa Pty Limited

30. Sanwa Pty Limited (Sanwa) is an Australian based company. Sanwa advised that the subject goods it exported to New Zealand were supplied by [redacted], but declined to provide any further information because of the small volumes it exported to New Zealand during the POI, stating that [redacted] was better placed to supply information regarding the goods to the Ministry. The importer who purchased subject goods from this company also did not provide any information.

SCT Co Limited

31. SCT is a 100 percent owned subsidiary of the Siam Cement Group and acts as the Group's export arm. SCT advised that the subject goods it exported to New Zealand were manufactured by The Siam Construction Steel Co. Ltd (SCSC). SCT provided a full response to the Ministry's exporter's questionnaire and fully co-operated with a verification visit carried out by the Ministry.

The Siam Construction Steel Company Limited

32. SCSC manufactured the subject goods exported to New Zealand by SCT. Until January 2003 SCSC was a wholly owned subsidiary of The Siam Cement Group. In January 2003 SCSC became a wholly owned subsidiary of the Millennium Steel Public Co. Ltd (Millennium). The Siam Cement Group owns 45 percent of Millennium, the remainder of the shares being held by various shareholders through the Thai stock exchange.

33. SCSC declined to complete a manufacturers questionnaire, but did provide a very limited amount of information during a verification visit carried out at the premises of SCT.

Importers

34. Details of the companies importing from the exporters above are set out below in alphabetical order from each country.

Malaysia

Euro Corporation Ltd

35. Euro Corporation Ltd (Euro Corp) is a privately owned company specialising in the distribution and manufacture of steel, rural and fastening products. Euro Corp supplies rebar primarily to building supply merchants. Euro Corp is based in Auckland but also operates a warehouse in Christchurch. Over the POI Euro Corp imported from [redacted].

36. Euro Corp provided a full submission in response to the importer's questionnaire and has provided additional information and clarification as required. The Ministry met with Euro Corp, at its request, to discuss its response to the questionnaire and the impact of the investigation upon its business.

37. PS stated to the Ministry that it was concerned about comments made by Euro Corp, within a document to PS, that it is a manufacturer of rebar. The Ministry is satisified that Euro Corp is not a manufacturer of rebar and notes that all the conclusions reached and the facts upon which they were based for the investigation were included in the EFC report in which Euro Corp was treated as an importer and not a manufacturer.

Kiwi Steel Ltd

38. Kiwi Steel Ltd (Kiwi Steel), formerly Steelco Sunkyong Steel, advised it would not complete an importer's questionnaire because its import volumes were so small that any duties imposed would have a minimal impact on its business. In addition Kiwi Steel stated that the manufacturer from whom its product was sourced was participating directly in the investigation and would be better placed to provide the necessary information than Kiwi Steel or its exporter are. Kiwi Steel imported from [redacted] over the POI.

Nauhria Building Supplies Ltd

39. Nauhria Building Supplies Ltd (Nauhria) is an Auckland based company that sells rebar largely to fabricators, but also sells direct to builders. Nauhria provided a partial response to the Ministry's importer's questionnaire. Nauhria advised it no longer imports rebar from Malaysia, with all such imports now being made from Singapore. Over the POI Nauhria imported from Gayathri.

Reo Services Ltd

40. Reo Services Ltd (Reo) did not provide any information to the Ministry in relation to this investigation. Customs data shows that Reo imported from [redacted] over the POI.

Thailand

H J Asmuss & Co Ltd

41. H J Asmuss & Co. Ltd (H J Asmuss) is based in Auckland and sells a wide range of steel products, steel fittings, fencing products and valves. H J Asmuss provided a full response to the Ministry's importer's questionnaire and additional information as requested. H J Asmuss imported from SCT over the POI.

MR Steel Ltd

42. MR Steel Ltd (MR Steel) did not provide any information for the purposes of this investigation. Customs data shows that over the POI MR Steel imported from SCT.

Quail Glen Industrial Ltd

43. Quail Glen Industrial Ltd (Quail Glen) is based in Katikati and sells to a building supply merchant and to steel fabricators. Quail Glen provided a full response to the Ministry's importer's questionnaire. Over the POI Quail Glen imported from SCT.

Steel Plus Ltd

44. SteelPlus Ltd (SteelPlus) advised the Ministry that it would not complete an importer's questionnaire due to its small import volume of rebar and the long-term relationship with and loyalty to PS. SteelPlus imported from [redacted] over the POI.

Vulcan Steel Ltd

45. Vulcan Steel Ltd (Vulcan) is based in Auckland and has a warehouse in Christchurch and is primarily involved in merchandising and processing steel and related products throughout New Zealand. Vulcan sells rebar largely to fabricators, but also sells to building supply merchants. Vulcan also purchases rebar from PS. Over the POI Vulcan imported rebar from SCT.

46. Vulcan provided a full submission in response to the importer's questionnaire and has provided additional information and clarification as required. The Ministry also met with Vulcan, at its request, to discuss the investigation and the impact upon its business.

2.3 Imported Goods

47. The goods which are the subject of the investigation, 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*

48. The Ministry has taken all applicable tariff items and statistical keys into account in preparing this report. A list of tariff items and statistical keys under which Customs advised the subject goods could enter is set out below. Items that are in italics are included for completeness and comprehension of the tariff items and statistical keys that follow.

72.13			**Bars and rods, hot-rolled, in irregularly wound coils, Of iron or non-alloy steel:**
7213.10			- Containing indentations, ribs, grooves or other deformations produced during the rolling process:
7213.10.10			*- - Of cross-section in the shape of "flattened circles" or "modified rectangles"*
7213.10.90			- - Other
	01E	kg	. . . Of a circular cross-section measuring less than 14 mm in diameter
	09L	kg	. . . Other
7213.20			*- Of free cutting steel:*
7213.91			- - Of circular cross-section measuring less than 14 mm in diameter:
7213.91.10			*- - - Of cross-section in the shape of "flattened circles" or "modified rectangles"*
7213.91.90			- - - Other

	01J	kg	. . . . . Containing by weight less than 0.25% of carbon
	05A	kg	. . . . . Containing by weight 0.25% or more but less than 0.6% of carbon
	09D	kg	. . . . . Other
7213.99.10			*- - - Of cross-section in the shape of "flattened circles" or "modified rectangles"*
7213.99.90			- - - Other
	01E	kg	. . . . . Containing by weight less than 0.25% of carbon
	05H	kg	. . . . . Containing by weight 0.25% or more but less than 0.6% of carbon
	09L	kg	. . . . . Other
72.14			**Other bars and rods of iron or non-alloy steel, not further worked than forged, hot rolled, hot drawn or hot-extruded, but including those twisted after rolling:**
7214.10.00			*-Forged*
7214.20			- Containing indentations, ribs, grooves or other deformations produced during the rolling process or twisted after rolling:
7214.20.10			*- - Of cross-section in the shape of "flattened circles' or "modified rectangles"*
7214.20.90			- - Other
			. . . . Of circular cross-section measuring:
	01G	kg	. . . . . Less than 14 mm in diameter
	05K	kg	. . . . . 14 mm or more, but less than 42 mm in diameter
7214.30			*- Of free cutting steel:*
7214.91.00			*- - Of rectangular (other then square) cross section*
7214.99			- - Other:
7214.99.10			*- - - Of cross-section in the shape of "flattened circles" or modified rectangles"*
7214.99.90			- - - Other
			. . . . Containing by weight less than 0.25% of carbon:
			. . . . . Of circular cross-section measuring:
	01C	kg	. . . . Less than 14 mm in diameter
	03K	kg	. . . . 14 mm or more, but less than 42 mm in diameter
			. . . . Containing by weight 0.25% or more but less than 0.6% of carbon
			. . . . . Of circular cross-section measuring:
	11L	kg	. . . . Less than 14 mm in diameter
	13G	kg	. . . . 14 mm or more, but less than 42 mm in diameter
			. . . . Other:
	21H	kg	. . . . . Of circular cross-section
72.27			**Bars and rods, hot rolled, in irregularly wound coils, of other alloy steel:**
7227.10.00			*- Of high speed steel*
7227.20.00			*- Of silico-manganese steel*

7227.90.00			- Other
			. . Of cross-section in the shape of "flattened circles" or "modified rectangles":
			. . . Of a height of 80 mm or more:
			. . Other:
	11B	*kg*	*. . . Wire rod*
	19H	kg	. . . Other
72.28			**Other bars and rods of other alloy steel: angles, shapes and sections, of other alloy steel; hollow drill bars and rods, of alloy or non-alloy steel:**
7228.10.00			*- Bars and rods, of high speed steel*
7228.20.00			*- Bars and rods, of silico-manganese steel*
7228.30.00			- Other bars and rods, not further worked than hot-rolled, hot-drawn or extruded
			. . Of cross-section in the shape of "flattened circles" or "modified rectangles":
			. . . Of a height of 80 mm or more:
			. . Other:
	11J	*kg*	*. . . Wire rod*
	19D	kg	. . . Other
7228.50.00			- Other bars and rods, not further worked than cold-formed or cold-finished:
			. . Of cross-section in the shape of "flattened circles" or "modified rectangles":
	19A	kg	. . Other
7228.60.00			- Other bars and rods
			. . Of cross-section in the shape of "flattened circles" or "modified rectangles":
			. . Other:
	11K	*kg*	*. . . Welding*
	19E	kg	. . . Other

49. Applicable duty rates are:

Normal	5 %
Australia	Free
Canada	Free
Less Developed Countries	Free
Least Developed Countries	Free

Other Preferential Sources	Free
Forum Members of the South Pacific Regional Trade and Economic Co-operation Agreement	Free

50. Data obtained by the Ministry from Customs on imports of the subject goods from Malaysia and Thailand indicates that imports are entering under the normal tariff rate of 5 percent.

51. PS provided data from Statistics New Zealand (INFOS) on the volume of imports classified under the tariff items and statistical keys subject to the investigation from all sources. This data was presented in calendar years from 1999 to 2002 and updated to May 2003. The Ministry obtained Customs data for all the 21 tariff items initially under investigation for the period 1 July 1998 to 13 November 2003, and for the 19 tariff items currently under investigation, until 31 January 2004.

52. Subsequent to the initiation of the investigation it became apparent from discussions with interested parties that tariff items and statistical keys 7228.30.00 11J and 7227.90.00 11B containing the description wire rod, do not appear to cover goods subject to the investigation. The Ministry asked Customs to comment on the inclusion of these 2 tariff items in its original tariff advice for the investigation.

53. Customs responded the items were included to cover all possible connotations that could be placed on the term "bar." Noting that the legal notes to Chapter 72 classify bars and rods together and as there is no separate definition for wire rod in the Tariff it could therefore be classified as rebar.

54. PS and importers were asked to comment on whether the 2 identified tariff items and statistical keys should be included in the investigation. The importers who responded stated that they should not be included as they do not cover goods subject to the investigation. PS also stated that the items did not seem to cover goods subject to the investigation, however for the purposes of comprehensiveness they should continue to be included. In addition, where suppliers invoices were available to the Ministry for imports classified under these 2 tariff items and statistical keys, it was noted that the invoices described the product as wire rod.

55. The Ministry has consequently excluded imports classified under 7228.30.00 11J and 7227.90.00 11B from the investigation, leaving 19 tariff items covering subject goods.

56. Due to the suppression of tariff items and statistical keys 7214.20.90.01 and 7214.20.90.05 from February 2003 for 24 months, until February 2005, by INFOS the Ministry has used Customs data rather than INFOS data for the purpose of all analysis in the investigation. The Customs data includes the suppressed tariff items and statistical keys and therefore reflects more accurately actual trade for the period to which the suppression applies.

2.4 Investigation Details

57. In this report years are ended June and dollar values are New Zealand Dollars (NZD) unless otherwise stated. In tables, column totals may differ from individual figures because of rounding.

58. The period for considering claims of dumping is the year ended 31 July 2003, while the consideration of injury involves the evaluation of data from 1 July 1998 to 30 June 2003.

59. All amounts of the subject goods are expressed in tonnes.

2.5 Exchange Rates

60. Article 2.4.1 of the Anti-Dumping Agreement provides as follows:

> When the comparison under paragraph 4 [of Article 2] requires a conversion of currencies, such conversion should be made using the rate of exchange on the date of sale[8], provided that when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used. Fluctuations in exchange rates shall be ignored and in an investigation the authorities shall allow exporters at least 60 days to have adjusted their export prices to reflect sustained movements in exchange rates during the period of investigation.
>
> [8] Normally, the date of sale would be the date of contract, purchase order, order confirmation, or invoice, whichever establishes the material terms of sale.

61. In this report when converting export prices from United States of America Dollars (USD) to Malaysian Ringgit (RM) the exchange rates used are the interbank rates listed at www.oanda.com/converter/classic (OANDA) at the date of sale. When converting export prices from USD to Thai Baht (THB), where the sale was covered by a forward exchange contract, the exchange rate in the forward contract was used. Where the forward exchange contract did not cover the entire invoiced amount, or there was no forward cover, the amount with no forward cover was converted from USD to THB at the interbank rate listed by OANDA at the date of sale.

62. In this report normal values are expressed in RM and THB, export transactions take place in USD and any injurious effect is reflected in NZD.

2.6 Disclosure of Information

63. The Ministry makes available all non-confidential information to any interested party through its Public File system.

64. Article 6.7 of the Agreement provides as follows:

> In order to verify information provided or to obtain further details, the authorities may carry out investigations in the territory of other Members as required, provided they obtain the agreement of the firms concerned and notify the representatives of the government of the Member in question, and unless

> that Member objects to the investigation. The procedures described in Annex I shall apply to investigations carried out in the territory of other Members. Subject to the requirement to protect confidential information, the authorities shall make the results of any such investigations available, or shall provide disclosure thereof pursuant to paragraph 9, to the firms to which they pertain and may make such results available to the applicants.

65. Verification visits were carried out at Amsteel and SCT. Copies of Verification Reports were provided to the exporters visited, and non-confidential copies placed on the Public File.

66. Article 6.8 of the Agreement provides as follows:

> In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available. The provisions of Annex II shall be observed in the application of this paragraph.

67. Section 6 of the Act reflects this and states in relation to export prices and normal values:

> (1) Where the [Chief Executive] is satisfied that sufficient information has not been furnished or is not available to enable the export price of goods to be ascertained under section 4 of this Act, or the normal value of goods to be ascertained under section 5 of this Act, the normal value or export price, as the case may be, shall be such amount as is determined by the [Chief Executive] having regard to all available information.
>
> (2) For the purposes of subsection (1) of this section, the [Chief Executive] may disregard any information that the [Chief Executive] considers to be unreliable.

68. As noted in section 2.2 above, information was requested, but not received, or not received to the extent required, from CMC, Gayathri, Malayawata, SK Global, Sanwa, SCSC, Kiwi Steel, Nauhria, Reo, MR Steel and SteelPlus. In view of the failure to provide all of the necessary information, decisions regarding these businesses 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. Details of the information used and the conclusions drawn are shown in section 4 of this report.

3. New Zealand Industry

69. 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.

“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:

3.1 Like Goods

70. In order to establish the existence and extent of the New Zealand industry for the purposes of an investigation into injury, and having identified the subject goods, it is necessary to determine whether there are New Zealand producers of goods which are like those goods in all respects, and if not, whether there are New Zealand producers of other goods which have characteristics closely resembling the subject goods.

The Subject Goods

71. The subject goods have been identified (in paragraph 47) as:

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

Imported Goods

72. Information available from importers and exporters (and from Customs data where no other information was available) shows that over the POI subject goods were imported in the form of mild steel deformed bars from 10 to 20mm in diameter, high tensile deformed bars from 10 to 32mm in diameter, and coils of less than 14mm in diameter.

New Zealand Production

73. PS produces rebar in straight lengths (bars) or in coil form. PS’s rebar is available in the following forms:

- With surface deformations, in straight lengths;
- Without surface deformations, in straight lengths;
- With surface deformations, in coiled form;
- Without surface deformations, in coiled form.

74. The rebar size range currently produced by PS is 6 -16mm in coil form and 6 - 40mm in bar form. PS has advised that coils can be straightened and cut to form bars, however it is not possible to produce coils from bars. PS produces rebar in Grades 300, 430 and 500. Grade 500 is high tensile rebar for use where high strength is required. Grade 300 is a mild steel, more ductile product for use where the strength requirement is not as high as that for Grade 500. Grade 430 was the previous alternative to mild steel prior to the introduction of Grade 500. PS still manufactures Grade 430 on request but this grade has largely been replaced by the Grade 500 product.

75. PS considers its rebar may not be the same in all respects to the subject goods but have characteristics that closely resemble the subject goods and therefore are like goods within the definition of section 3 of the Act. PS considers its product has the same end use, method of manufacture and distribution system as the subject goods. PS considers its basic chemistry, deformations, types, sizes and physical form closely resemble the imported product.

Like Goods Considerations

76. In identifying like goods the Ministry uses the following framework to consider what goods produced in New Zealand are like goods to the subject goods.

    a. Physical characteristics. This covers appearance, size and dimensions, composition, production methods and technology.

    b. Function/usage. This covers consumer perceptions/expectations, end uses, and will lead to any conclusions on the issue of substitutability where relevant.

    c. Pricing structures.

    d. Marketing. This covers distribution channels, customers and advertising.

    e. Other. This can include tariff classification if applicable, and any other matters which could be applicable in the circumstances.

Physical Characteristics

Size and Dimensions

77. As outlined above, PS produces rebar in diameters ranging from 6 – 16mm in coil form and from 6 – 40mm in bar form. These diameters all fall within those

specified for the subject goods and are of a similar diameter to the rebar actually imported over the POI.

Composition

78. The Grade 500 rebar manufactured by PS is a micro-alloyed product made by adding vanadium during the smelting process to provide the necessary strength and ductility required for this product. On its website PS stated that Grade 500 is a “micro-alloyed product conforming to the chemical composition requirements of the new joint Australia/New Zealand Steel Reinforcing Materials standard (AS/NZ4671:2001). The carbon content and the carbon equivalent are maintained within the maximum limits set by the standard to allow weldability of the product.”

79. Amsteel and SCT advised that the high tensile rebar they export to New Zealand, that is the equivalent of Grade 500, is manufactured using the tempcore method, which achieves the same strength and ductility as the PS product but without the use of alloys. The tempcore method involves the use of a heat treatment process, which is explained further in paragraph 92.

80. PS advised that its micro-alloy product differs from rebar produced using the tempcore method only in that it contains between [redacted] and [redacted] percent vanadium, i.e. by weight about [redacted] percent.

81. Neither the Grade 300 product manufactured by PS nor the equivalent product imported from Malaysia and Thailand are micro-alloyed or produced by the tempcore method. There are therefore no significant differences in the composition of this grade of steel between the PS and imported product.

Product Specifications

82. PS produces rebar in Grade 300 and Grade 500 to comply with AS/NZ4671:2001. This new standard came into effect in April 2001 and was phased in until April 2002 and all earlier standards for steel reinforcing materials have been withdrawn.

83. PS said that there are a variety of steel specifications used for rebar worldwide. Common accreditations are JIS (Japanese Industrial Standard), ASTM (American Society for Testing and Materials), and BSI (British Standards Institute). PS advised that rebar imported into New Zealand is required to comply with the AS/NZ4671:2001 standard.

84. Amsteel advised that the rebar it exports to New Zealand complies with AS/NZ4671:2001. Amsteel said the high tensile bar it exports to New Zealand has parallel and continuous longitudinal rib markings required to comply with the standard and these markings are manufactured specifically for the New Zealand market. Amsteel said that the mild steel bars (equivalent to Grade 300) are produced to the British standard BS4449:1997, which its importer uses in New Zealand as being equivalent to the AS/NZ4671:2001 Grade 300, as the strength and other relevant physical properties of both bars are the same and no special markings are required for the New Zealand market.

85. The importer who purchased subject goods from Amsteel over the POI, also advised that its rebar is tested regularly by SGS NZ Ltd to ensure it complies with the standard and stated that the test results show that its imports far exceed the relevant New Zealand standard requirements. The importer provided a copy of a recent test certificate from SGS to substantiate this.

86. SCT also advised that the rebar it exports to New Zealand complies with the AS/NZ4671:2001 standard. SCT said that a separate production run is required to manufacture rebar to New Zealand standards and that special rollers are required for the New Zealand product to put the New Zealand standard rib markings on the rebar. The major importer from SCT also advised that the product complies with AS/NZ4671:2001 and that they have it tested by TELARC Limited, a materials and testing authority, to ensure compliance.

87. The evidence indicates that, in terms of meeting AS/NZ4671:2001, there is nothing to differentiate the product manufactured by PS from the imported product.

Appearance

88. PS marks its product with its brand name SEISMIC® and the respective grade of the bar on each bar. This brand marking is in addition to distinctive mill bar markings that are intended to differentiate the PS product from any other product.

89. Rebar is a commodity product and apart from brand marking, the New Zealand produced and imported products are very similar in appearance.

Production Methods

90. PS manufactures rebar from steel billets that it produces in an electric arc furnace from scrap. Rebar in both bar and coil form is produced from billets in a rolling mill.

91. Amsteel uses essentially the same method of production as PS, except that, as noted above, Grade 500 product is produced using the tempcore method, rather than a micro-alloy method.

92. Amsteel advised that the tempcore process means that bar leaving the last stand of the rolling mill is submitted to a special heat treatment process involving 2 stages:

- A quenching stage, where drastic water cooling is applied to the bar as it leaves the last finishing stage stands. The water cooling system must be efficient to produce a very hard cooling on the bar surface, faster than the critical rate, to form martensite on the surface of the bar.
- At the tempering stage, the bar leaves the water quenching line and is exposed to air. The heat from the still hot core re-heats the quenched surface by conduction and the martensite formed in the first stage is subjected to self-tempering, which ensures adequate ductility while maintaining high yield strength levels.

93. Amsteel stated that rebar manufactured via the micro-alloy method is more ductile than rebar of the same strength that is manufactured by the tempcore method. Amsteel said however that tempcore manufacture has several benefits for manufacturers. It reduces the consumption of micro-alloys, gives increased weldability and bending properties (due to decreased carbon, manganese, and silicon content) which in turn can create improved mechanical properties along the bar length, and higher tolerances in chemical analysis are acceptable due to flexibility of the cooling process, meaning that one steel grade can be used for different qualities of strength. Amsteel also stated that the tempcore method is a lower cost production method, as there is no additional cost of the micro-alloys.

94. No information is available from SCSC on its production method, except as noted in paragraph 79, SCT advised that the Grade 500 product it exports to New Zealand is manufactured by the tempcore method. The evidence available indicates that the process for producing rebar is similar world-wide and there is no evidence to suggest that SCSC uses a production method that is significantly different from that used by PS, other than the use of the tempcore method.

95. PS said that manufacturers using the tempcore method can achieve the yield strength, ductility and other characteristics within the levels specified by AS/NZ4671:2001 up to 20mm in diameter but are on the edge of allowable and required limits. The Ministry notes that no imports over the POI of Grade 500 product exceeded 20mm in diameter.

Technology

96. PS upgraded its rolling mill in the mid-1990s and uses Danieli equipment within the steel train used for rolling rebar. PS said that the steel industry is one in which technological advances are continuous and noted there have been advances in technology since its plant was upgraded, mainly in the areas of speed, tolerance, computerisation and billet welding.

97. Amsteel advised that the tempcore method of manufacture is relatively new and that as recently as 2002 it had still been controlled by patents and licences.

98. Neither Amsteel nor SCT claimed that there were significant differences in the technology they used and that used by PS such as to affect the physical characteristics of the product, other than the differences noted in relation to the product resulting from the tempcore method of manufacture in paragraph 93.

Function and Usage

99. PS advised that its rebar is used in reinforced ferro-cement construction, embedded in concrete to give a concrete structure critical aspects of its structural integrity. The majority of a rebar’s surface area features surface ribs and indentations, which grip the surrounding concrete.

100. No information is available concerning consumer perceptions or expectations, but given the commodity nature of the product and its clear end-use, this is not considered relevant as there is little opportunity for branding, advertising or creating product differentiation. Imported rebar has the same intended function

and usage as the product manufactured by PS. The imported product and that produced by PS are clearly substitutable for one another.

Pricing

101. The price undercutting analysis shows there are differences in prices between the imported product and PS's product. However, the same analysis shows the goods are competing in the same market and are clearly not differentiated on the basis of price to the extent that they could be considered not like goods, and this would not be expected with a commodity product such as rebar.

Marketing Issues

102. PS sells rebar to distributors and fabricators. Distributors sell to building merchants and direct to end-users such as construction companies and builders. Fabricators cut, bend and join rebar to their customer's requirements before selling. The customers of fabricators are mainly construction companies.

103. The major importers of rebar from Malaysia and Thailand sell to building supply merchants and fabricators. One of the major importers, Vulcan Steel, also purchases rebar from PS.

104. PS said that as a manufacturer of a commodity product it focuses most of its marketing on those who specify its use, such as designers. Most of promotional and marketing activity is designed to promote the use of reinforced concrete structural solutions in construction. PS bars have the brand names SEISMIC 300® and SEISMIC 500® on their deformed coils and bars denoting respectively, Grade 300 and Grade 500.

105. There is no information available on the marketing undertaken by the importers, but there is no evidence to suggest that marketing is so different as to differentiate PS's product from the imported product such that it could not be considered a like good, and this would not be expected with a commodity product.

Other

106. The subject goods are classified according to the Tariff of New Zealand under the tariff item and statistical keys as set out under paragraph 48.

107. PS advised that its product, if imported into New Zealand, would be classified under the following tariff items and statistical keys:

Plain bars ≤ 12mm	7214.99.90.01G
Deformed bars ≤ 12mm	7214.20.90.01G
Plain bars 16mm ≥ ≤ 40mm	7214.99.90.03K
Deformed bars 16mm ≥ ≤ 40mm	7214.20.90.05K
Reinforcing Coil ≤ 14mm	7213.10.90.01E
Reinforcing Coil ≥ 14mm	7213.10.90.09L

108. The above tariff items and statistical keys are included within those set out in paragraph 48, and therefore do not differentiate the PS product from the subject goods.

Conclusions Relating to Like Goods

109. When the rebar produced by PS is considered in relation to the subject goods it is identical or similar in the following respects:

- It has the same appearance, is identical or similar in size and dimensions and the Grade 300 is similar in composition, method of production and technology.
- It has the same end use and is substitutable.
- It is priced at a level that is in the same general area as that in which the imported goods are priced.
- It is distributed in a similar way and has the same end-customers.
- It would be subject to the same tariff classification, if imported.

110. The Grade 500 rebar produced by PS differs from the imported Grade 500 as it contains micro-alloys and is produced in a different way insofar as it has micro-alloys added, rather than being produced using the tempcore method. However, the rebar manufactured via each method of manufacture results in products that in all respects have the same end use and are substitutable for one another.

111. Rebar is a relatively uncomplicated commodity product and is similar worldwide. The differences in the product resulting from the use of either the micro-alloy or tempcore method to produce Grade 500 are minor, and are not considered sufficient to outweigh the significant similarities. There are no significant differences between the imported and domestically produced Grade 300 product.

112. The Ministry concludes that rebar produced by PS has characteristics closely resembling the subject goods and are therefore like goods.

3.2 New Zealand Industry

113. An investigation may not be initiated unless the Chief Executive is satisfied that the requirements of section 10(3) of the Act are met. These requirements are that the collective output of those New Zealand producers who have, in writing, expressed support for the application constitutes:

a. Twenty-five percent or more of the total New Zealand production of like goods produced for domestic consumption (assessed during the most recent representative period, being not less than 6 months); and

b. More than 50 percent of the total production of like goods produced for domestic consumption (as so assessed) by those New Zealand producers who have, in writing, expressed support for or opposition to the application.

114. The applicant, PS, stated it is the only New Zealand manufacturer of rebar. The Ministry has found no evidence of any other company in New Zealand that manufactures like goods. The Ministry is satisfied the application met the domestic industry standing requirements of section 10(3)(a) of the Act.

3.3 New Zealand Market

115. PS's application included INFOS data for import volumes for calendar years 1999 to 2003. In response to the classification advice from Customs, PS provided updated INFOS data for the period January 1999 to May 2003 for all tariff items and statistical keys identified as relevant to the subject goods description. The Ministry has used Customs data for import volumes. The figures involved were higher than those originally provided by the applicant, but this was due in large part to the addition of further tariff items and statistical keys relevant to the subject goods description.

116. Table 3.1 below shows import volume figures for all tariff items and statistical keys under investigation taken from the Customs data. The New Zealand sales volume figures were supplied by PS.

Table 3.1: New Zealand Market for Years ended June (Tonnes)

	1999	**2000**	**2001**	**2002**	**2003**
Imports from Malaysia	1,144	458	104	2,204	3,869
Imports from Thailand	3,781	8,029	4,133	5,482	4,941
Other Imports	19,349	10,771	17,751	10,222	
Total Imports	24,274	19,258	21,988	17,908	
NZ Industry Sales					
NZ Market					

4. Evidence of Dumping

117. Section 3(1) of the Act states:

> “Dumping”, in relation to goods, means the situation where the export price of goods imported into New Zealand or intended to be imported into New Zealand is less than the normal value of the goods as determined in accordance with the provisions of this Act, and ‘dumped’ has a corresponding meaning:

4.1 Introduction

118. This section of the report explains how the Ministry established whether rebar from Malaysia and Thailand was being dumped, and the extent of any dumping, in the year ended 31 July 2003.

119. The Ministry compared export prices and normal values on a transaction-to-transaction basis. This basis of comparison involves selecting (or, when no information was provided by the exporter, estimating) an appropriate domestic transaction value for comparison with each export transaction value. The investigating team was then able to compare the 2 values to establish whether or not each transaction was dumped and the extent of any dumping.

120. Export prices and normal values were compared at the ex-factory level, which is the normal point of comparison referred to in Article 2.4 of the Agreement. To arrive at the ex-factory values, the Ministry made a number of deductions from the base prices. The Ministry has also made adjustments to ensure that a fair comparison was made between export prices and normal values.

121. Amsteel was the only manufacturer from Malaysia to provide a response to a manufacturer’s questionnaire and to agree to a verification visit. SCT was the only exporter from Thailand to provide a response to an exporter’s questionnaire and to agree to a verification visit. The manufacturer that supplied SCT, SCSC, did not provide a manufacturer's questionnaire response, although it is part of the same group of companies as SCT, and SCT was not able to provide information on normal values as it deals only with exports. Not all importers provided a full response to an importer’s questionnaire.

122. As outlined in paragraph 66, in the absence of required information, section 6 of the Act provides for a decision to be made having regard to all available information, that is, on the basis of the best available information. In view of the failure of interested parties referred to in paragraph 68 to provide all of the necessary information the Ministry has used relevant information provided by Customs, PS, Amsteel, SCT, and the co-operating importers.

4.2 Export Prices

123. Section 4 of the Act provides, *inter alia*, as follows:

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

(a) Where the purchase of the goods by the importer was an [arm's] length transaction, the price paid or payable for the goods by the importer other than any part of that price that represents-
(i) Costs, charges, and expenses incurred in preparing the goods for shipment to New Zealand that are additional to those costs, charges, and expenses generally incurred on sales for home consumption; and
(ii) Any other costs, charges, and expenses resulting from the exportation of the goods, or arising after their shipment from the country of export; or

124. In the normal course of events, export prices are determined in accordance with section 4 of the Act, which states that the export price shall be, in arm's length sales made to a known importer in New Zealand, the price paid by the importer. Export prices established on this basis were calculated using information provided in submissions made by the relevant overseas producers, exporters and New Zealand importers in response to the Ministry's questionnaires.

125. As referred to in paragraph 122, in certain circumstances, export prices can be established under section 6 of the Act, (which are detailed in paragraph 66). Where information on individual export transaction prices was not provided by either the exporter or importer, export prices were established using the foreign value for duty (VFD) from the Customs data.

Malaysia

Amsteel Mills Sdn Bhd

Export Sales Distribution

126. Amsteel exported to [redacted] during the POI. Amsteel exported the largest volume of rebar from Malaysia to New Zealand over the POI, representing [redacted] percent of imports of the subject goods from Malaysia.

Base Prices

127. Amsteel invoiced [redacted] on a [redacted] basis in USD for all of its exports to that company over the POI and provided invoices to the Ministry covering all of these exports. The base price for Amsteel's exports to [redacted] is the [redacted] USD invoice price.

Adjustments

Inland Freight

128. An adjustment was made for the cost of inland freight from the factory to the port of export, on the basis of verified information, at RM[redacted] per tonne.

Wharfage and Handling

129. An adjustment was made for the cost of wharfage and handling, on the basis of verified information, at RM[redacted] per tonne.

Communications Charge

130. An adjustment has been made for a communications fee charged by Amsteel's customs agent, on the basis of verified information, at RM[redacted] per shipment. The cost per tonne depended on the number of containers per shipment and varied from RM[redacted] to [redacted] per tonne.

Customs Clearance Costs

131. An adjustment has been made for customs clearance costs at RM[redacted] per bill of lading, on the basis of verified information. The cost per tonne depended on the number of tonnes per bill of lading and varied from RM[redacted] to [redacted] per tonne.

Forwarding Fee

132. An adjustment has been made for a forwarding fee charged by Amsteel's customs agent, on the basis of verified information, at RM[redacted] per tonne.

Documentation Fee

133. An adjustment has been made for a documentation fee charged by Amsteel's customs agent, which covers the cost of bill of lading and electronic data interchange (EDI) fee, on the basis of verified information, at RM[redacted] per bill of lading. The cost per tonne depended on the number of tonnes per bill of lading and varied from RM[redacted] to [redacted] per tonne.

Taxes

134. Part of the cost of export packing (being a carpenter's fee of RM[redacted] per shipment), the forwarding fee and the documentation fee, are subject to a 5 percent government tax. An adjustment has been made for this tax at this rate, on the basis of verified information. As the costs per tonne of the charges subject to this tax varied according to the number of containers per shipment, the adjustment for tax also varied accordingly, and ranged from RM[redacted] to [redacted] per tonne.

Export Packaging and Labelling

135. An adjustment has been made for the additional cost of export packaging and labelling, on the basis of verified information, at RM[redacted] per tonne.

Bar Marking

136. High tensile deformed rebar must be marked to show it complies with the relevant Australia and New Zealand standard. An adjustment has been made for the additional cost of this marking for high tensile deformed rebar exports only, on the basis of verified information, at RM[redacted] per tonne.

Cost of Credit

137. An adjustment has been made for the length of credit extended to [redacted] [redacted] for each shipment made over the POI, the length of credit being taken from the date the goods left the factory. The interest cost incurred by Amsteel was

established on the basis of verified information. The amount of the adjustment ranged from RM–[redacted] (where payment was made in advance of the goods leaving the factory) to [redacted] per tonne.

Export Prices

138. The adjustments outlined above were deducted from base prices to arrive at ex-factory export prices that provide a fair basis for comparison with normal values. The range of export prices is shown in Table 4.1 following paragraph 332.

Malayawata Steel Berhad

Export Sales Distribution

139. Malayawata advised it was the manufacturer of the rebar it exported to New Zealand over the POI, but did not respond to the Ministry's manufacturer's questionnaire. The importer who purchased subject goods from this company did not provide a response to the Ministry's importer's questionnaire. Exports by Malayawata represented [redacted] percent of all exports of the subject goods from Malaysia over the POI.

Base Prices

140. Base prices were established from the foreign VFD in Customs data. The date of sale was taken as the date of shipment, which was estimated as being 3 weeks prior to the date of importation, based on data from other exporters.

Adjustments

Inland Freight

141. An adjustment for inland freight was made at RM[redacted] per tonne, on the basis of information provided by Amsteel.

Wharfage and Handling

142. An adjustment was made for wharfage and handling at RM[redacted] per tonne, on the basis of information provided by Amsteel.

Communications Charge

143. An adjustment was made for a communications charge at RM[redacted] per shipment, on the basis of information provided by Amsteel. Customs data shows that there was [redacted] [redacted] [redacted] made by Malayawata over the POI, totalling [redacted] tonnes. Amsteel advised that one 20-foot container can hold 22 tonnes of rebar. On this basis the Ministry has estimated that there were [redacted] containers in [redacted] shipment and at 22 tonnes per container has calculated an adjustment of RM[redacted] per tonne.

Customs Clearance Costs

144. An adjustment was made for customs clearance costs at RM[redacted] per shipment, on the basis of information provided by Amsteel. On the basis of the shipment consisting of [redacted] containers at 22 tonnes per container, an adjustment has been made at RM[redacted] per tonne.

Forwarding Fee

145. An adjustment was made for a forwarding fee at RM[redacted] per tonne, on the basis of information provided by Amsteel.

Documentation Fee

146. An adjustment was made for a documentation fee at RM[redacted] per shipment, on the basis of information provided by Amsteel. On the basis of the shipment consisting of [redacted] containers at 22 tonnes per container, an adjustment has been made at RM[redacted] per tonne.

Taxes

147. An adjustment was made for taxes on the same basis as that on which the adjustment was made for Amsteel as outlined in paragraph 134. Where the tax applied to a cost charged on a per shipment basis, the cost has calculated on the basis of [redacted] containers at 22 tonnes per container. On this basis an adjustment for taxes was made at RM[redacted] per tonne.

Export Packaging and Labelling

148. An adjustment was made for export packaging and labelling at RM[redacted] per tonne, on the basis of information provided by Amsteel.

Bar Marking

149. In the absence of any information from the exporter or importer on the type of rebar exported by Malayawata, it has been assumed to be high tensile deformed rebar. An adjustment has been made for bar marking at RM[redacted] per tonne on the basis of information provided by Amsteel.

Cost of Credit

150. In the absence of any information from the exporter or importer on credit terms, an adjustment has been made using the maximum amount of credit extended by Amsteel ([redacted] days), and using the interest rate provided by Amsteel of [redacted] percent. The amount of the adjustment ranged from RM[redacted] to [redacted] per tonne.

Export Prices

151. The adjustments outlined above were deducted from base prices to arrive at ex-factory export prices that provide a fair basis for comparison with normal values. The range of export prices is shown in Table 4.2 following paragraph 333.

CMC Australia Pty Ltd

Export Sales Distribution

152. CMC is an Australian based company and advised that it is an exporter only and exported rebar manufactured by [redacted]. CMC did not provide a response to the Ministry's questionnaire or provide any other information. The importer that purchased subject goods from CMC did not provide any information to the Ministry. Exports by CMC represented [redacted] percent of all exports of the subject goods from Malaysia over the POI.

153. Customs data shows there were [redacted] importations of the subject goods from CMC over the POI, [redacted] being exported from Malaysia and [redacted] from [redacted]

Base Prices

154. Base prices were established from the foreign VFD in the Customs data. The date of sale was taken as the date of shipment, which was estimated as being 3 weeks prior to the date of importation, based on data from other exporters.

Adjustments

Exporter's Margin

155. It was not possible to match any of the sales made by [redacted] to CMC with the exports by CMC to New Zealand. [redacted] The difference in [redacted] USD FOB price to CMC and the average USD FOB price of the importation in Customs data, was used to estimate a margin for CMC of [redacted] percent. This percentage was calculated as a percentage of the USD FOB value of the goods in the Customs data.

Cost of Shipping and Handling Singapore to Malaysia

156. In the absence of any information from CMC, for the exports made from [redacted], the cost of shipping the goods from Malaysia to [redacted] and related costs such as handling, was taken as the difference in the FOB value of the goods exported from [redacted] and those exported from Malaysia. The costs estimated on this basis amounted to USD[redacted] and USD[redacted] per tonne. These amounts were converted to RM at the exchange rate at the date of sale to give adjustments of RM[redacted] and [redacted] per tonne.

Inland Freight

157. An adjustment for inland freight was made at RM[redacted] per tonne, on the basis of information provided by Amsteel.

Wharfage and Handling

158. An adjustment was made for wharfage and handling at RM[redacted] per tonne, on the basis of information provided by Amsteel.

Communications Charge

159. An adjustment was made for a communications charge at RM[redacted] per shipment, on the basis of information provided by Amsteel. Customs data shows there were [redacted] shipments made by CMC over the POI. [redacted] totalled [redacted] tonnes and [redacted] tonnes. Amsteel advised that one 20-foot container can hold 22 tonnes of rebar. On this basis the Ministry has estimated that there were [redacted] containers in [redacted] and [redacted] containers in [redacted] At 22 tonnes per container an adjustment has been made at RM[redacted] per tonne for [redacted] and at RM[redacted] per tonne for [redacted]

Customs Clearance Costs

160. An adjustment was made for customs clearance costs at RM[redacted] per shipment, on the basis of information provided by Amsteel. On the basis of the shipments consisting of [redacted] and [redacted] containers outlined in paragraph 159 at 22 tonnes per container, an adjustment has been made at RM[redacted] per tonne for [redacted] and RM[redacted] per tonne for [redacted]

Forwarding Fee

161. An adjustment was made for a forwarding fee at RM[redacted] per tonne, on the basis of information provided by Amsteel.

Documentation Fee

162. An adjustment was made for a documentation fee at RM[redacted] per shipment, on the basis of information provided by Amsteel. On the basis of the shipments consisting of [redacted] and [redacted] containers as above at 22 tonnes per container, an adjustment has been made at RM[redacted] per tonne for [redacted] and RM[redacted] per tonne for [redacted]

Taxes

163. An adjustment was made for taxes on the same basis as that on which the adjustment was made for Amsteel as outlined in paragraph 134. Where the tax applied to a cost charged on a per shipment basis, the cost has calculated on the basis of [redacted] and [redacted] containers at 22 tonnes per container. On this basis an adjustment for taxes was made at RM[redacted] per tonne for [redacted] and RM[redacted] per tonne for [redacted]

Export Packaging and Labelling

164. An adjustment was made for export packaging and labelling at RM[redacted] per tonne, on the basis of information provided by Amsteel.

Bar Marking

165. In the absence of any information from the exporter or importer on the type of rebar exported by CMC, it has been assumed to be high tensile deformed rebar.

An adjustment has been made for bar marking at RM[redacted] per tonne on the basis of information provided by Amsteel.

Cost of Credit

166. In the absence of any information from the exporter or importer on credit terms, an adjustment has been made using the maximum amount of credit extended by Amsteel ([redacted] days), and using the interest rate provided by Amsteel of [redacted] percent. The amount of the adjustment ranged from RM[redacted] to [redacted] per tonne.

Export Prices

167. The adjustments outlined above were deducted from base prices to arrive at ex-factory export prices that provide a fair basis for comparison with normal values. The range of export prices is shown in Table 4.3 following paragraph 334.

Gayathri Steels

Export Sales Distribution

168. Gayathri provided no information to the Ministry in relation to this investigation. The importer who purchased subject goods from Gayathri provided only a partial response to an importer's questionnaire, but this did not include invoices from Gayathri. The importer advised that the manufacturer of the rebar it imported from Gayathri was [redacted]. Customs data shows the country of export as [redacted]. Exports by Gayathri represented [redacted] percent of all exports of the subject goods from Malaysia over the POI.

Base Prices

169. Base prices were established from the foreign VFD in the Customs data. The date of sale was taken as the date of shipment, which was estimated as being 3 weeks prior to the date of importation, based on data from other exporters.

Adjustments

Exporter's Margin

170. In the absence of any information from Gayathri, the exporter's margin has been taken at the rate estimated for CMC of [redacted] percent of the FOB value of the goods.

Cost of Shipping and Handling Singapore to Malaysia

171. The cost of shipping the goods from Malaysia to [redacted] and related costs such as handling, was taken as the largest of the amounts estimated for CMC in paragraph 156 of USD[redacted] per tonne. This amount was converted into RM at the exchange rate at the date of sale to give adjustments of RM[redacted] and [redacted] per tonne.

Inland Freight

172. An adjustment for inland freight was made at RM[redacted] per tonne, on the basis of information provided by Amsteel.

Wharfage and Handling

173. An adjustment was made for wharfage and handling at RM[redacted] per tonne, on the basis of information provided by Amsteel.

Communications Charge

174. An adjustment was made for a communications charge at RM[redacted] per shipment, on the basis of information provided by Amsteel. Customs data shows there were [redacted] shipments made by Gayathri over the POI. One shipment totalled [redacted] tonnes and [redacted] [redacted] totalled [redacted] tonnes. Amsteel advised that one 20-foot container can hold 22 tonnes of rebar. On this basis the Ministry has estimated that there were [redacted] containers in [redacted] shipments. At 22 tonnes per container an adjustment has been made at RM[redacted] per tonne.

Customs Clearance Costs

175. An adjustment was made for customs clearance costs at RM[redacted] per shipment, on the basis of information provided by Amsteel. On the basis of the shipments consisting of [redacted] containers as above at 22 tonnes per container, an adjustment has been made at RM[redacted] per tonne.

Forwarding Fee

176. An adjustment was made for a forwarding fee at RM[redacted] per tonne, on the basis of information provided by Amsteel.

Documentation Fee

177. An adjustment was made for a documentation fee at RM[redacted] per shipment, on the basis of information provided by Amsteel. On the basis of the shipments consisting of [redacted] containers as above at 22 tonnes per container, an adjustment has been made at RM[redacted] per tonne.

Taxes

178. An adjustment was made for taxes on the same basis as that on which the adjustment was made for Amsteel in paragraph 134. Where the tax applied to a cost charged on a per shipment basis, the cost has been calculated on the basis of [redacted] containers at 22 tonnes per container. On this basis an adjustment for taxes was made at RM[redacted] per tonne.

Export Packaging and Labelling

179. An adjustment was made for export packaging and labelling at RM[redacted] per tonne, on the basis of information provided by Amsteel.

Bar Marking

180. In the absence of any information from the exporter or importer on the type of rebar exported by Gayathri, it has been assumed to be high tensile deformed rebar. An adjustment has been made for bar marking at RM[redacted] per tonne on the basis of information provided by Amsteel.

Cost of Credit

181. In the absence of any information from the exporter or importer on credit terms, an adjustment has been made using the maximum amount of credit extended by Amsteel ([redacted] days), and using the interest rate provided by Amsteel of [redacted] percent. The amount of the adjustment ranged from RM[redacted] to [redacted] per tonne.

Export Prices

182. The adjustments outlined above were deducted from base prices to arrive at ex-factory export prices that provide a fair basis for comparison with normal values. The range of export prices is shown in Table 4.4 following paragraph 335.

SK Global Co Ltd

Export Sales Distribution

183. No information has been provided by SK Global. The importer who purchased subject goods from this company did not provide a response to the Ministry's importers questionnaire. However the importer did advise that SK Global is a trader only and that the manufacturers of the rebar it imported were [redacted] and [redacted]. The importer did not identify which imports were provided by which manufacturer. NZ Customs data shows the country of export as Malaysia for exports by SK Global. Exports by SK Global represented [redacted] percent of all exports of the subject goods from Malaysia over the POI.

Base Prices

184. Base prices were established from the foreign VFD in the Customs data. The date of sale was estimated as being 3 weeks prior to the date of importation, based on data from other exporters.

Adjustments

Exporter's Margin

185. In the absence of any information from SK Global, the exporter's margin has been taken at the rate estimated for CMC of [redacted] percent of the FOB value of the goods.

Inland Freight

186. An adjustment for inland freight was made at RM[redacted] per tonne, on the basis of information provided by Amsteel.

Wharfage and Handling

187. An adjustment was made for wharfage and handling at RM[redacted] per tonne, on the basis of information provided by Amsteel.

Communications Charge

188. An adjustment was made for a communications charge at RM[redacted] per shipment, on the basis of information provided by Amsteel. Customs data shows there were [redacted] shipments made by SK Global over the POI. One shipment totalled [redacted] tonnes and [redacted] totalled [redacted] tonnes. Amsteel advised that one 20-foot container can hold 22 tonnes of rebar. On this basis the Ministry has estimated that there were [redacted] containers in [redacted] and [redacted] containers in [redacted] At 22 tonnes per container an adjustment has been made at RM[redacted] per tonne for [redacted] and at RM[redacted] per tonne for [redacted]

Customs Clearance Costs

189. An adjustment was made for customs clearance costs at RM[redacted] per shipment, on the basis of information provided by Amsteel. On the basis of the shipments consisting of [redacted] and [redacted] containers as above at 22 tonnes per container, an adjustment has been made at RM[redacted] per tonne for [redacted] and RM[redacted] per tonne for [redacted]

Forwarding Fee

190. An adjustment was made for a forwarding fee at RM[redacted] per tonne, on the basis of information provided by Amsteel.

Documentation Fee

191. An adjustment was made for a documentation fee at RM[redacted] per shipment, on the basis of information provided by Amsteel. On the basis of the shipments consisting of [redacted] and [redacted] containers, as above, at 22 tonnes per container, an adjustment has been made at RM[redacted] per tonne for [redacted] and RM[redacted] per tonne for [redacted]

Taxes

192. An adjustment was made for taxes on the same basis as that on which the adjustment was made for Amsteel as in paragraph 134. Where the tax applied to a cost charged on a per shipment basis, the cost has been calculated on the basis of [redacted] and [redacted] containers at 22 tonnes per container. On this basis an adjustment for taxes was made at RM[redacted] per tonne for [redacted] and RM[redacted] per tonne for [redacted]

Export Packaging and Labelling

193. An adjustment was made for export packaging and labelling at RM[redacted] per tonne, on the basis of information provided by Amsteel.

Bar Marking

194. In the absence of any information from the exporter or importer on the type of rebar exported by SK Global, it has been assumed to be high tensile deformed bar. An adjustment has been made for bar marking at RM[redacted] per tonne on the basis of information provided by Amsteel.

Cost of Credit

195. In the absence of any information from the exporter or importer on credit terms, an adjustment has been made using the maximum amount of credit extended by Amsteel ([redacted] days), and using the interest rate provided by Amsteel of [redacted] percent. The amount of the adjustment ranged from RM[redacted] to [redacted] per tonne.

Export Prices

196. The adjustments outlined above were deducted from base prices to arrive at ex-factory export prices that provide a fair basis for comparison with normal values. The range of export prices is shown in Table 4.5 following paragraph 336.

Thailand

The Siam Construction Steel Co. Ltd/SCT Co. Ltd

Export Sales Distribution

197. SCSC exports the subject goods through SCT, which is the export arm of the Siam Cement Group. The relationship between SCSC and SCT is outlined in paragraph 31. SCSC did not provide a response to the Ministry's manufacturers questionnaire. SCT did provide a questionnaire response and fully co-operated with a verification visit.

198. SCT purchases from SCSC at a [redacted] price from SCSC, the price being [redacted] SCSC, and on-sells at the best price it can achieve. SCT operates as a separate profit centre within the Siam Cement Group, and its profits are consolidated into the Group's profit.

199. SCT exported to Vulcan Steel Ltd, Quail Glen Industrial Ltd, H.J. Asmuss & Co. Ltd and MR Steel Ltd during the POI. SCT exported the largest volume of rebar from Thailand to New Zealand over the POI, representing [redacted] percent of imports of the subject goods from Thailand. In all cases the date of sale is the date of the invoice, which is dated on the date of shipment of the goods.

Base Prices

200. SCT acts in a similar way to an export division within a manufacturing company. The first arm's length sale is made from SCT to the New Zealand importers. Base prices have therefore been established at the invoiced price from SCT to the importers, as set out below.

201. SCT invoiced Vulcan Steel Ltd on an FOB basis in USD for all of its exports to that company over the POI and the FOB invoice price was used as the base price.

202. SCT invoiced [redacted] and [redacted] on a [redacted] basis in USD for all of its exports to those companies over the POI and the [redacted] invoice price was used as the base price.

203. SCT invoiced Quail Glen Industrial Ltd on both a [redacted] and [redacted] basis in USD over the POI and the [redacted] and [redacted] invoice prices were used as the base price.

Adjustments

Inland Freight

204. SCT was not able to substantiate the amount it had estimated for inland freight from the factory to the port of export. The Ministry has therefore made an adjustment using information provided by PS in its application for which documentary evidence was provided. On the basis of the information provided by PS, an adjustment has been made at THB[redacted] per tonne.

Terminal Handling Charge

205. An adjustment has been made for terminal handling charges, on the basis of verified information, at THB[redacted] per tonne for rebar of 6m in length, which is shipped by container. For rebar of lengths greater than 6m, which is shipped break bulk rather than containerised, an adjustment has been made on the basis of verified information at THB[redacted] per tonne.

Container Handling and Stuffing

206. For rebar of 6 metres or less in length, an adjustment has been made for container handling and stuffing at THB[redacted] per tonne, on the basis of verified information. Rebar greater than 6 metres in length is not transported by container, so no adjustment has been made for such lengths of bar.

207. In response to the EFC PS stated, at paragraph 22 of its submission, that adjustments should be made to the Thai export prices for the extra cost of bar marking and export labelling and packaging, as was undertaken for Malaysian export prices at paragraphs 135 and 136.

208. The adjustments made for Thailand under the headings inland freight, terminal handling charge and container handling and stuffing largely cover the costs that are included within the Malaysian adjustment titled export packaging and labelling. However there is one component within the Malaysian adjustment that is not covered by the adjustments listed above, that is the charge for the additional tie and label which Amsteel provides on its exported product. Amsteel indicated to the Ministry that the extra tie and label is an additional service that it provides to its export customers and did not give any indication that this is an industry standard. Likewise there was no mention of the extra labelling by SCT or any of its New Zealand importers and PS did not allow for any adjustment to be made for extra packaging in its application.

209. Therefore the Ministry, in the absence of any positive evidence to the contrary, has not made any adjustment for this second tie and label for exports from Thailand. Given the size of the adjustment made for Malaysia any adjustment made for Thailand would be made at THB[redacted] and would not materially affect the level of the export prices.

Bar Markings

210. The Ministry however believes it should make an adjustment for the extra bar markings cost, as suggested by PS, due to the indication SCT gave, as shown in paragraph 86, that the rebar it exports to New Zealand does meet the AS/NZ4671:2001 standard and hence would have the unique bar marking.

211. Therefore an adjustment has been made on the basis outlined in paragraph 136 from verified information from Amsteel converted to THB at the average exchange rate for the POI, which comes to THB[redacted]. The adjustment has been applied to all exports that were identified as Grade 500 from the invoices provided by SCT.

Bill of Lading

212. An adjustment was made for bill of lading fees at THB[redacted] per shipment, on the basis of verified information. The number of containers in each shipment was estimated from Customs data assuming there were 22 tonnes per container. On the basis of the estimated number of containers per shipment and assuming 22 tonnes per container an amount per tonne was calculated for each shipment. The amount of the adjustment ranged from THB[redacted] to [redacted] per tonne.

Customs Clearance

213. An adjustment was made for customs clearance costs at THB[redacted] per tonne, on the basis of verified information for rebar of 6m in length, which is shipped by container. For rebar of lengths greater than 6m, which were shipped break bulk, an adjustment has been made on the basis of verified information at THB[redacted] per tonne.

Sea Freight

214. For those transactions invoiced on a CFR basis, an adjustment has been made for sea freight at USD[redacted] per tonne, on the basis of verified information. The USD amount was converted to THB at the exchange rate used to convert the base export price to THB.

Cost of Credit

215. The length of credit extended by SCT to its New Zealand customers varies with each customer, and for one customer has varied over the POI. The credit terms are shown on the invoice and shows the number of days from the bill of lading date (which is the same as the invoice date) by which payment is required. One customer did not receive credit, payment being required when the bill of lading was issued. The maximum length of credit provided was [redacted] days.

216. SCT declined to provide its exact cost of working capital, but advised that the Siam Commercial Bank is its preferred lender and said that the bank's lending rate would be a reasonable estimate of its working capital cost. The Ministry has obtained the Siam Commercial Bank's minimum overdraft rate from its website (www.scb.co.th), which is 6 percent, effective from 18 August 2003. The Ministry was unable to obtain this rate for the POI. The Ministry notes, however, that in its application, PS estimated that the cost of working capital in Thailand at [redacted] percent, so the current rate of 6 percent is considered reasonable.

217. An adjustment has been made for cost of credit at 6 percent of the base price for the number of days credit extended to each importer, as shown on SCT's invoice to the importer. The amount of the adjustment ranged from nil to THB[redacted] per tonne.

Export Prices

218. The adjustments outlined above were deducted from base prices to arrive at ex-factory export prices that provide a fair basis for comparison with normal values. The range of export prices is shown in Table 4.6 following paragraph 337.

Sanwa Pty Ltd

Export Sales Distribution

219. Sanwa advised that it is an exporter only and that the manufacturer of the rebar it exported to New Zealand was [redacted]. Sanwa declined to complete an exporter's questionnaire. No information is available from [redacted] on the exports by Sanwa. No information was received from the New Zealand importer who purchased subject goods from Sanwa. Customs data shows Thailand as the country of export for Sanwa's exports, which represented [redacted] percent of all exports of the subject goods from Thailand over the POI.

Base Prices

220. Base prices were established from the foreign VFD in the Customs data. The date of sale was taken as the date of shipment, which was estimated as being 3 weeks prior to the date of importation, based on data from other exporters.

Adjustments

Exporter's Margin

221. In the absence of any information from Sanwa, the exporter's margin has been taken at the rate estimated for CMC of [redacted] percent of the FOB value of the goods.

Inland Freight

222. An adjustment for inland freight was made at THB[redacted] per tonne, on the same basis on which an adjustment was made for SCSC in paragraph 204.

Terminal Handling Charge

223. In the absence of any information from Sanwa or the importer, it has been assumed all of the exports were 6m in length, and an adjustment for terminal handling charges was made at THB[redacted] per tonne, on the basis of information provided by SCT.

Container Handling and Stuffing

224. An adjustment for container handling and stuffing charges was made at THB[redacted] per tonne, on the basis of information provided by SCT. In the absence of any information on the lengths of rebar exported by Sanwa, this adjustment has been made for all transactions.

Bar Marking

225. An adjustment has been made for the reasons outlined in paragraph 210 on the basis of verified information from Amsteel, as discussed in paragraph 136, converted to THB at the average exchange rate for the POI, giving an adjustment of THB[redacted]. In the absence of any information from Sanwa and its importer, it has been assumed that all exports by Sanwa were of Grade 500 product, and the adjustment has therefore been applied to all of Sanwa's exports.

Bill of Lading

226. An adjustment was made for bill of lading fees at THB[redacted] per shipment, on the basis of information provided by SCT. Customs data shows that there was [redacted] made by Sanwa over the POI which totalled [redacted] tonnes. On the basis that one 20-foot container can hold 22 tonnes of rebar the Ministry has estimated that there were [redacted] containers in [redacted] shipment. At 22 tonnes per container an adjustment has been made at THB[redacted] per tonne.

Customs Clearance

227. In the absence of any information from Sanwa or the importer it has been assumed all exports were of 6m lengths, and an adjustment has been made for customs clearance costs at THB[redacted] per tonne, on the basis of information provided by SCT.

Cost of Credit

228. In the absence of information from Sanwa and the importer, an adjustment has been made for cost of credit on the basis of the greatest length of credit extended by SCT ([redacted] days). The interest rate used was that used for SCT of 6 percent.

Export Prices

229. The adjustments outlined above were deducted from base prices to arrive at ex-factory export prices that provide a fair basis for comparison with normal values. The range of export prices is shown in Table 4.7 following paragraph 338.

4.3 Normal Values

230. Normal values are determined in accordance with section 5 of the Act, which inter alia, provides as follows:

> (1) Subject to this section, for the purposes of this Act, the normal value of any goods imported or intended to be imported into New Zealand shall be the price paid for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arm's length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.
>
> (3) Where the normal value of goods imported or intended to be imported into New Zealand is the price paid for like goods, in order to effect a fair comparison for the purposes of this Act, the normal value and the export price shall be compared by the [Chief Executive]-
> (a) At the same level of trade; and
> (b) In respect of sales made at as nearly as possible the same time; and
> (c) With due allowances made as appropriate for any differences in terms and conditions of sales, levels of trade, taxation, quantities, and physical characteristics, and any other differences that affect price comparability.
>
> (5) Where-
> (a)The actual country of export of goods imported or intended to be imported into New Zealand is not the county of origin of the goods; and
> (b) The [Chief Executive] is of the opinion that the normal value of the goods should be ascertained for the purposes of this Act as if the country of origin were the country of export,-
> the [Chief Executive] may direct that the normal value of the goods shall be so ascertained.

231. The normal value of any goods imported or intended to be imported into New Zealand is the price paid for like goods sold in the ordinary course of trade for domestic consumption in the country of export, in sales that are arm's length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.

232. In the normal course of events normal values would be determined in accordance with section 5 of the Act using information provided by the relevant suppliers in response to questionnaires. None of the exporters or producers in Thailand provided any information on normal values, and only Amsteel provided information on normal values in Malaysia.

233. Where sufficient information has not been provided or is not available in an investigation, normal values can be established under section 6 of the Act. The provisions of section 6 are shown in paragraph 67, and allow the Chief Executive to ascertain normal values having regard to all available information. As a result of having no information available from some suppliers, the Ministry has had to derive normal values for the POI on the basis of the best information available. These derived normal values have been based either on information provided by another producer or on information provided by the applicant.

Information Provided for Initiation

234. In its application, in relation to Thailand, PS provided information on domestic free-into-store (FIS) prices from [redacted] in Thailand.

Information Available in the Investigation

235. In the case of Thailand the Ministry has no information on normal values other than that provided by PS in its application. Amsteel provided detailed and verified information on normal values in Malaysia. The Ministry has borne in mind the commercial context within which information has been provided by interested parties.

236. Article 6.8 of the Agreement as set out in paragraph 66 covers such situations.

237. The Ministry, in accordance with Article 6.1 of the Agreement, notified Malayawata, CMC, Gayathri, SK Global, SCSC and Sanwa of the information which was required and provided ample opportunity to present in writing all evidence that they as interested parties considered relevant to the investigation. Notice of the necessary information was given in the form of a questionnaire and the Ministry also followed the more detailed requirements of Annex II.1 of the Agreement relating to provision of information and the consequences of not providing timely information. Despite being informed of the potential consequences of not responding all of these companies declined to complete the Ministry's questionnaires.

Malaysia

Malaysian Government Price Ceilings

238. The Malaysian Government operates a system of price ceilings for a number of "essential items" including rebar of the type under investigation. The system sets a maximum selling price for rebar that cannot be exceeded without permission from the government agency that administers the price ceiling programme, the Ministry of Domestic Trade and Consumer Affairs (MDTCA).

239. The Ministry has considered whether the existence of price ceilings means that sales on the Malaysian domestic market are no longer "in the ordinary course of trade" in terms of section 5(1) of the Act and Article 2.1 of the Agreement, as set out below.

Information Provided by Interested Parties

240. Amsteel advised that ceiling prices on rebar have been in place since the early 1970's. Amsteel said that the last increase in the ceiling price was in April 2003 following an application by the Malaysian steel industry requesting an increase. Amsteel observed, however, that prior to this the last increase in the ceiling price was in 1989.

241. Amsteel advised that the steel industry had not applied for an increase in the ceiling price between 1989 and April 2003. Amsteel explained that at the time the

ceiling price was set in 1989 scrap prices and consequently rebar prices were high, but that subsequently scrap prices fell, leaving room to make acceptable margins within the ceiling, until a sharp increase in the price of scrap occurred in 2002. Amsteel said the increase in the price of scrap in 2002 prompted the request for an increase in the ceiling that was approved in April 2003. Amsteel also advised that the steel industry has a further application for an increase in the ceiling prices with the MDTCA on which it is still awaiting a decision.

242. Amsteel said it did not know the exact criteria used by government to set ceiling prices, but based on the information it is required to provide, [redacted]

243. Amsteel submitted that there is intense competition in the rebar market in Malaysia, which usually prevents mills from obtaining prices at the ceiling. Amsteel said its long standing practice is to set its real prices at [redacted] percent below the ceiling prices (which are equal to its list prices), and from this point to offer other discounts depending on market conditions. Amsteel said the competition arises from the number of rebar mills operating in Malaysia. Amsteel noted there currently are 15 operating with up to another 27 that are mothballed [redacted].

244. Amsteel noted that as part of the control regime on prices there are also import controls on rebar in Malaysia in the form of quantity restrictions and tariffs. Amsteel observed that all rebar mills in Malaysia operate in the same environment where price ceilings exist and imports of rebar are generally not permitted, so the domestic price is not driven down by imports. Amsteel argued that this is the environment in which it operates and is in the normal course of trade in Malaysia.

245. Amsteel also produces wire rod and flats that are not subject to price ceilings. Amsteel provided data on the gross margins it achieved for each of the 3 categories of product (rebar, wire rods and flats) from 1997 to 2003 (years-ended June). This data shows that the percentage gross margin achieved on wire rod was [redacted] than that achieved on rebar in 1997, 1998, 2002, and was [redacted] in 1999, 2001, and 2003. The data shows that the percentage gross margin achieved on flats was [redacted] than achieved on rebar in 1998, 1999, 2000, 2001 and 2002 (no data was available for flats in 1997).

246. Amsteel submitted that this data on gross margins shows that margins are determined more by supply and demand and competition rather than by the existence of price ceilings.

247. The Ministry also sought information from the MTDCA on the operation of the price ceilings. The MTDCA advised that a maximum price is set on the sale of rebar to safeguard consumer interest and noted that rebar is considered an essential item in the socio-economic development of Malaysia and the price ceiling is designed to avoid excess profiteering. The MTDCA said that open and competitive market forces drive the actual selling price by each producer in

Malaysia and that producers are free to sell at any price as long as they do not exceed the maximum price.

248. The MTDCA said that therefore the actual selling price of rebar in the Malaysian domestic market is a true market price resulting from the forces of supply and demand. In the view of the MTDCA "the selling price of rebar in the Malaysian market is therefore appropriate and proper, for establishing normal value in accordance with Article 2 of WTO Agreement".

249. The MTDCA also advised that the criteria it uses when considering a request for an increase in the ceiling price for rebar are:

- A comparison of the selling prices in the Malaysian market with those in other Association of South-East Asian Nations (ASEAN) countries.
- Production factors, including scrap prices, electricity costs, interest rates, electrode and refractory costs and other costs (alloys, fluxes, coke and breezes).
- Capacity utilisation and production by the five major steel producers.
- The total demand and consumption, financial position and the increase in the price of billet based products in Malaysia.
- The movement of RM against the USD and other world currencies.

250. The MTDCA advised that over the period from July 2002 to July 2003 selling prices of rebar on the Malaysian domestic market ranged between 3 and 18 percent below ceiling prices. The MTDCA also explained that the current application from the Malaysian steel industry is a request "for an automatic price formula mechanism for scrap to be attached to the current formula and not for an increase per se". The MTDCA noted that is mainly due to the current high volatility of scrap prices not previously experienced in the world market.

Ministry's Consideration of the Issues

251. In considering this issue the Ministry has examined precedents where a similar situation existed or where the meaning of "in the ordinary course of trade" was considered. In 1993 the Ministry carried out a review of the anti-dumping duty on refined sugar from Malaysia, Thailand, Germany, the Netherlands, Belgium and Denmark. At the time the review was carried out refined sugar was subject to a price ceiling in Malaysia, although it is unclear if the price control regime then operating in Malaysia was the same as that which now applies in Malaysia.

252. In that review an importer submitted that legislation (as it then stood) concerning non-market economies should be invoked, and consequently normal values should not be established on the basis of sales on the Malaysian domestic market. This submission was based on the fact that maximum prices for refined sugar sold on the Malaysian domestic market were set by the Malaysian Government. In the final report on that review the Ministry noted that the then legislation was intended to apply only to non-market economies and stated " . . .

the Malaysian Government does not have monopoly or substantial monopoly of the trade of the country nor does it determine or substantially determine or substantially influence the domestic price of goods in Malaysia."

253. While this review considered the ceiling price regime in Malaysia under different New Zealand legislative provisions than now apply, and in the context of whether Malaysia was a non-market economy, the findings of the review nevertheless indicate that the effect of the price ceiling did not amount to a substantial determination or influence of the price of refined sugar on the Malaysian domestic market.

254. This issue was not considered in a subsequent review of the anti-dumping duty on refined sugar carried out in 1999. This was so because that review concluded there was not likely to be significant imports of refined sugar should the duties be removed, and it was therefore not necessary to establish export prices and normal values.

255. The Ministry has also referred to a 1983 European Commission case taken against Australia, *Pears in Syrup*[1], where the Commission considered claims that domestic market prices should not be used to determine normal value because the Australian government set minimum prices and therefore such prices were not in the ordinary course of trade. The Commission noted that:

> The Commission does not consider that the term 'ordinary course of trade' presupposes the existence of perfect competition and is of the opinion that, even where competition is restricted by situations such as a cartel or a monopoly, selling prices are in the ordinary course of trade provided that they are generally available to all actual and potential customers, and cover the total cost of production. The Commission has taken into account that, in the present case, the restriction on competition results from State rather than private intervention. However, the evidence available to the Commission indicates that the domestic price for canned pears is fixed bearing in mind competition from other fruits, on the one hand, and the costs of production of the canners, on the other hand, and thus takes market considerations into account.

256. The Commission consequently concluded that it could use domestic selling prices to determine normal values in that case.

257. The Ministry has also referred to a decision by the WTO Appellate Body in United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan, WT/DS184/AB/R. In this case one of the issues before the Appellate Body was the use by the United States of a test (referred to as the "99.5 percent" test or "arm's length" test) to establish whether sales between affiliated companies were made "in the ordinary course of trade" in terms of Article 2.1 of the Agreement.

258. In considering this issue, at paragraph 140 of its report, the Appellate Body stated that " . . . Article 2.1 requires investigating authorities to exclude sales not

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[1] Reported at pages 178 - 179 in "E.C. Anti-Dumping Law and Practice" by Edwin Vermulst and Paul Waer, published in 1996 by Sweet & Maxwell Ltd.

made "in the ordinary course of trade", from the calculation of normal value, precisely to ensure that normal value is, indeed, the "normal" price of the like product, in the home market of the exporter. Where a sales transaction is concluded on terms and conditions that are incompatible with "normal" commercial practice for sales of the like product, in the market in question, at the relevant time, the transaction is not an appropriate basis for calculating "normal value"".

259. The evidence from Amsteel shows that the selling prices it achieved on the domestic market were in all cases at least [redacted] percent (and often further) below the ceiling prices. The evidence from Amsteel on its gross margins indicates that the existence of the price ceilings has generally not had a significant impact on rebar margins when compared with products that are not subject to price control. The evidence available indicates there is significant competition in the rebar market in Malaysia, that the rebar sold by Amsteel is generally available to all actual and potential customers, and is sold at prices that cover the total cost of production. In addition, evidence from the MTDCA is that market factors are taken into account in the setting of price ceilings.

260. At the same time there is also evidence that the existence of the price ceilings during 2002 and early 2003 (until the increase in the ceiling was approved in April) may have acted to constrain prices and thereby reduce margins, such that the industry sought an increase in the price ceilings. However, selling within the confines of the price ceilings, taking account of the comments by the Appellate Body referred to above, in the view of the Ministry does represent the "normal" price of the like product in the Malaysian domestic market. Consequently the Ministry is satisfied that sales by Amsteel on the Malaysian domestic market are in the ordinary course of trade and can therefore be used to establish normal values.

Amsteel Mills Sdn Bhd

Domestic Sales Distribution

261. Amsteel sells rebar on the Malaysian domestic market through a wholly owned subsidiary company, Amsteel Mills Marketing Sdn Bhd (Amsteel Marketing). Product is transferred from Amsteel to Amsteel Marketing at Amsteel Marketing's net delivered selling price less [redacted] percent of that selling price.

262. Amsteel Marketing has approximately [redacted] domestic customers, which it terms distributors. While sales are made through Amsteel Marketing, it does not physically handle the goods, nor does the distributor, who merely takes a margin. The goods are delivered directly from the mill to the distributors' customer, often straight to a construction site. All sales are made on a delivered basis.

263. Amsteel Marketing therefore effectively acts as the domestic marketing division of Amsteel, and the first arm's length transaction is from Amsteel Marketing to its distributors.

Base Prices

264. During the verification visit to Amsteel a domestic customer was selected that was at the same level of trade as [redacted] and which was comparable to [redacted] in terms of the volume of sales, type of product purchased and in the timing of sales throughout the POI. The Ministry is satisfied that the selected customer is not related to Amsteel and that sales are at arm's length.

265. Base prices were established at the invoiced price of like goods from Amsteel Marketing to the selected customer in sales made at as nearly as possible the same time as each export sale to [redacted].

Adjustments

Discounts

266. All distributors are invoiced at a list price, and all distributors subsequently qualify for a standard [redacted] percent discount. Additional discounts may be given, depending on market conditions and sales volumes.

267. An adjustment was made, on the basis of verified information, for the actual discount given on each domestic sale selected to establish base normal values. The adjustment for discounts ranged from [redacted] to [redacted] percent of the base price.

Inland Freight

268. As all sales are made on a delivered basis, an adjustment was made for inland freight, on the basis of verified information, of RM[redacted] per tonne.

Handling

269. An adjustment was made for the cost of loading the product onto the truck and other handling that is required prior to the product leaving the mill, at RM[redacted] per tonne, on the basis of verified information.

Cost of Credit

270. An adjustment has been made for the length of credit extended to the selected domestic customer on each sale used to establish a base price, i.e. from the date of invoice (which is the date the goods leave the mill) and the date payment was made. The calculation used the same interest cost as that used for the cost of credit adjustment under export price. The amount of the adjustment ranged from RM[redacted] to [redacted] per tonne.

Normal Values

271. The adjustments outlined above were deducted from base prices to arrive at ex-factory normal values that provide a fair basis for comparison with export prices. The range of normal values is shown in Table 4.1 following paragraph 332.

Malayawata Steel Berhad

Domestic Sales Distribution

272. As noted above, no information has been provided by Malayawata other than it is the manufacturer of the rebar it exported to New Zealand.

Base Prices

273. In the absence of information from Malayawata, base normal values have been set at the list prices provided by Amsteel, using the list price for sales as near as possible to the date of Malayawata's export sales to New Zealand. As noted above under export price in relation to bar markings, in selecting relevant list prices it has been assumed that the product exported to New Zealand was high tensile deformed bar. The tariff classification shows that the product exported to New Zealand was less than 14mm in diameter and between 14mm and 42mm in diameter.

274. For those transactions where the diameter was less than 14mm, the list price used was that for high tensile bar of 12mm diameter, being the diameter of bar where a sale was available as close as possible to the date of the export sales. For those transactions where the diameter was between 14mm and 42mm, the list price used was that of the 16mm high tensile bar, being the diameter of bar where a sale was available as close as possible to the date of the export sales.

Adjustments

Discounts

275. It is considered likely that Malayawata would need to provide at least the standard [redacted] percent discount provided by Amsteel, and an adjustment has been made at this rate. However, in the absence of any information from Malayawata, no adjustment for any additional discounts has been made.

Inland Freight

276. As the base price is a delivered price, a deduction has been made for inland freight at the same amount as that made for Amsteel of RM[redacted] per tonne.

Handling

277. A deduction has been made for handling at the same amount as that made for Amsteel of RM[redacted] per tonne.

Cost of Credit

278. It is considered likely that Malayawata provided credit on its domestic sales over the POI. An adjustment has been made for cost of credit using the shortest length of credit extended by Amsteel of [redacted] days, at the interest rate used to calculate the cost of credit for Amsteel.

Normal Values

279. The adjustments outlined above were deducted from base prices to arrive at ex-factory normal values that provide a fair basis for comparison with export prices. The range of normal values is shown in Table 4.2 following paragraph 333.

CMC Australia Pty Ltd

Domestic Sales Distribution

280. CMC is an Australian based company that exported rebar manufactured by [redacted]. As noted above, CMC did not provide a questionnaire response.

Base Prices

281. It is considered that the relevant normal values for this exporter are those established for Amsteel, using the list price for sales as near as possible to the date of CMC's export sales to New Zealand. As noted above under export price in relation to bar markings, it has been assumed, in selecting relevant list prices, that the product exported to New Zealand was high tensile deformed bar. The tariff classification shows that the product exported to New Zealand was less than 14mm in diameter and between 14mm and 42mm in diameter.

282. For those transactions where the diameter was less than 14mm, the list price used was that for high tensile bar of 12mm diameter, being the diameter of bar where a sale was available as close as possible to the date of the export sales. For those transactions where the diameter was between 14mm and 42mm, the list price used was that for high tensile bar of 16mm, being the diameter of bar where a sale was available as close as possible to the date of the export sales.

Adjustments

Discounts

283. An adjustment has been made for discounts using the actual discount provided by Amsteel on the sale used to establish base prices. The adjustment for discounts was [redacted] percent in all cases.

Inland Freight

284. As the base price is a delivered price, a deduction has been made for inland freight at the same amount as that made for Amsteel of RM[redacted] per tonne.

Handling

285. A deduction has been made for handling at the same amount as that made for Amsteel of RM[redacted] per tonne.

Cost of Credit

286. An adjustment has been made for cost of credit using the cost of credit adjustment made for Amsteel for the transactions used to establish base prices. The amount of the adjustment ranged from RM[redacted] to [redacted] per tonne.

Normal Values

287. The adjustments outlined above were deducted from base prices to arrive at ex-factory normal values that provide a fair basis for comparison with export prices. The range of normal values is shown in Table 4.3 following paragraph 334.

Gayathri Steels

Domestic Sales Distribution

288. Gayathri is based in Singapore. As noted above Gayathri provided no information, but the importer who purchased subject goods from this company advised that Malayawata manufactured the rebar exported by this company.

Base Prices

289. In the absence of information from Gayathri and Malayawata, base normal values have been set at the list prices provided by Amsteel, using the list price for sales as near as possible to the date of Gayathri's export sales to New Zealand. As noted above under export price in relation to bar markings, it has been assumed, in selecting relevant list prices, that the product exported to New Zealand was high tensile deformed bar. The tariff classification shows that the product exported to New Zealand was less than 14mm in diameter and between 14mm and 42mm in diameter.

290. For those transactions where the diameter was less than 14mm, the list price used was that for high tensile bar of 12mm diameter, being the diameter of bar where a sale was available as close as possible to the date of the export sales. For those transactions where the diameter was between 14mm and 42mm, the list price used was that for high tensile bar of 16mm, being the diameter of bar where a sale was available as close as possible to the date of the export sales.

Adjustments

Discounts

291. An adjustment has been made for discounts using the actual discount provided by Amsteel on the sale used to establish base prices. The adjustment for discounts was [redacted] percent in all cases.

Inland Freight

292. As the base price is a delivered price, a deduction has been made for inland freight at the same amount as that made for Amsteel of RM[redacted] per tonne.

Handling

293. A deduction has been made for handling at the same amount as that made for Amsteel of RM[redacted] per tonne.

Cost of Credit

294. An adjustment has been made for cost of credit using the cost of credit adjustment made for Amsteel for the transactions used to establish base prices. The amount of the adjustment ranged from RM[redacted] to [redacted] per tonne.

Normal Values

295. The adjustments outlined above were deducted from base prices to arrive at ex-factory normal values that provide a fair basis for comparison with export prices. The range of normal values is shown in Table 4.4 following paragraph 335.

SK Global Co Ltd

Domestic Sales Distribution

296. As noted above no information has been provided by SK Global but the importer who purchased subject goods from it advised that SK Global is a trader only and that the manufacturers of the rebar it imported were [redacted] and [redacted]. The Ministry has been unable to determine which company manufactured which shipment.

Base Prices

297. Base normal values have been set at the list prices provided by Amsteel, using the list price for sales as near as possible to the date of SK Global's export sales to New Zealand. As noted above under export price in relation to bar markings, it has been assumed, in selecting relevant list prices, that the product exported to New Zealand was high tensile deformed bar. The tariff classification shows that the product exported to New Zealand was less than 14mm in diameter and more than 14mm in diameter.

298. For those transactions where the diameter was less than 14mm, the list price used was that for high tensile bar of 12mm diameter, being the diameter of bar where a sale was available as close as possible to the date of the export sales. For those transactions where the diameter was between 14mm and 42mm, the list price used was that for high tensile bar of 16mm, being the diameter of bar where a sale was available as close as possible to the date of the export sales.

Adjustments

Discounts

299. An adjustment has been made for discounts using the actual discount provided by Amsteel on the sale used to establish base prices. The adjustment for discounts ranged from [redacted] to [redacted] percent.

Inland Freight

300. As the base price is a delivered price, a deduction has been made for inland freight at the same amount as that made for Amsteel of RM[redacted] per tonne.

Handling

301. A deduction has been made for handling at the same amount as that made for Amsteel of RM[redacted] per tonne.

Cost of Credit

302. An adjustment has been made for cost of credit using the cost of credit adjustment made for Amsteel for the transactions used to establish base prices. The amount of the adjustment ranged from RM[redacted] to [redacted] per tonne.

Normal Values

303. The adjustments outlined above were deducted from base prices to arrive at ex-factory normal values that provide a fair basis for comparison with export prices. The range of normal values is shown in Table 4.5 following paragraph 336.

Thailand

Thai Government Price Ceilings

304. The Thai Government also operates a system of price ceilings for rebar that cannot be exceeded. The Ministry has considered whether the existence of price ceilings means that sales on the Thai domestic market are no longer "in the ordinary course of trade" in terms of section 5(1) of the Act and Article 2.1 of the Agreement, as set out below.

Information Provided by Interested Parties

305. SCSC advised that the ceiling prices were increased in April 2003, but said that prior to this, the last increase in ceiling prices was about 30 years ago. SCSC said that the reason ceiling prices did not change for about 30 years before the April 2003 increase was that supply exceeds demand in Thailand, and the market is consequently very competitive, which acts as a natural constraint on prices. SCSC also advised there are no government price controls on any of its major inputs, and noted that imports of rebar are subject to only a 5 percent tariff, which it said adds to the competitive nature of the market.

306. SCSC commented that it does not know what criteria the government uses when considering a request for an increase in the ceiling prices, but said when it applied for the last increase it was required to provide details of its costs of production. SCSC said that each mill has its own ceiling prices and is required to submit details to the government each month of its actual selling prices. SCSC declined to provide its ceiling prices to the Ministry, but advised that ceiling prices are controlled by the Department of Internal Trade of the Ministry of Commerce (DITMC).

307. The Ministry subsequently approached the DITMC for information concerning the operation of ceiling prices for rebar, but no information was provided. The Ministry was unable to locate any information through its own research on the operation of price ceilings for rebar in Thailand.

Ministry's Consideration of the Issues

308. The precedents outlined following paragraph 251, except that relating to the 1993 refined sugar review, are also relevant to the consideration of the price ceilings operated by the Thai Government. The Ministry firstly notes there is considerably less information available on the operation of price ceilings in Thailand than there is for Malaysia, given that SCSC for the most part did not co-operate with the investigation and that no information was received from the DITMC.

309. However, the evidence that is available from SCSC is that the Thai domestic market for rebar is very competitive, and includes significant import competition that enters under a low tariff. The Ministry's own research, taken from the internet site of the Iron and Steel Institute of Thailand (at www.isit.or.th), shows there are at least 10 companies in Thailand producing rebar, indicating there is likely to be significant competition.

310. There is no evidence available to suggest that SCSC's rebar sales on the Thai domestic market are not generally available to all actual and potential customers. The evidence from SCSC is that the same ceiling prices were in effect for about 30 years until the increase in April 2003, which suggests that rebar producers were able to operate and compete within the ceiling profitably. It is likely that the request, which resulted in an increase in the ceiling in April 2003, was prompted by the same forces that applied in Malaysia, i.e. an increase in the price of scrap. It is also likely that the increase in the price of scrap and the existence of the ceiling prices, may have imposed some constraint on prices until the ceiling prices were increased in April 2003.

311. The evidence available, however, indicates that sales made within a price ceiling do represent the "normal" price of the like product in the Thai domestic market set under competitive market conditions. The Ministry is consequently satisfied that evidence of sales made on the Thai domestic market are in the ordinary course of trade and can therefore be used to establish normal values.

The Siam Construction Steel Co Ltd/SCT Co. Ltd

Domestic Sales Distribution

312. SCSC manufactured the rebar that was exported by SCT over the POI. As noted above, SCT is the export arm of the Siam Cement Group, and was not able to provide any information relating to normal values. SCSC, although it is also part of the Siam Cement Group, did not provide a questionnaire response. There is consequently no information available on domestic sales distribution in Thailand.

Base Prices

313. In the absence of information from either the exporter or the manufacturer, base normal values have been established on the basis of information provided by PS in its application. In its application PS provided base ex-factory normal values based on an [redacted] steel purchaser, [redacted] on [redacted] 2003. PS was advised that the current ex-factory price of rebar manufactured to the Thai Standard SD40 is THB[redacted] per tonne, but it increased to this level from THB[redacted] per tonne around December 2002. PS was also advised that the price was THB[redacted] per tonne in the early part of 2002 with a price reduction to THB[redacted] per tonne in the later part of 2002, reflecting seasonal differences.

314. Base ex-factory normal values for the purposes of the initiation report were consequently established at THB[redacted] per tonne from January to July 2002 and at THB[redacted] per tonne from August to December 2002 (as normal values were established only to December 2002 for the purposes of initiation).

315. Base ex-factory normal values have been set at THB[redacted] per tonne up to July 2002 (although the POI covers imports into New Zealand from August 2002 to July 2003, the dates of sale start from July 2002), THB[redacted] per tonne from August to December 2002 and at THB[redacted] per tonne from January 2003 onwards.

Adjustments

Volume Discount

316. In its application PS considered that the Thai steel purchaser from whom it obtained base prices, [redacted], would be entitled to a volume discount, therefore any volume discount inherent in the base price needed to be added back into a standard price, as a New Zealand importer would not be eligible for any volume discounts. PS estimates [redacted] volume discount from [redacted] suppliers at [redacted] percent.

317. An adjustment has been made for volume discount by adding [redacted] percent of the base price to the base price.

Short Length Premium

318. In [redacted] with [redacted] PS was advised that 6-metre lengths attract an extra charge of THB[redacted] per tonne. Considering that this is the length that the importer purchases, PS stated an adjustment of THB[redacted] per tonne should be added back to the base price.

319. An adjustment has been for short length premium for those transactions relating to 6-metre lengths by adding THB[redacted] per tonne to the base price.

Cost of Credit

320. PS was advised by [redacted] that it receives [redacted] days credit. An adjustment has been made for cost of credit on the basis of credit being extended for [redacted] days,

calculated at 6 percent of the base price plus the volume discount and (where relevant) the short length premium. The basis on which the interest rate of 6 percent was established is set out in paragraph 216.

Normal Values

321. The adjustments outlined above were deducted from base prices to arrive at ex-factory normal values that provide a fair basis for comparison with export prices. The range of normal values is shown in Table 4.6 following paragraph 337.

Sanwa Pty Ltd

Domestic Sales Distribution

322. Sanwa is an Australian based company that exported rebar manufactured by [redacted]. As noted above, Sanwa did not provide a questionnaire response.

Base Prices

323. In the absence of information from Sanwa and [redacted], base prices have been established on the basis of information provided by PS in its application. The information provided by PS is outlined in paragraph 313.

324. There was [redacted] made by Sanwa over the POI, and the estimated date of sale was [redacted] Normal values have therefore been set at THB[redacted] per tonne.

Adjustments

Volume Discount

325. An adjustment was made for volume discount on the same basis as the adjustment for SCSC above, by adding [redacted] percent of the base price to the base price.

Short Length Premium

326. In the absence of any information from Sanwa or the importer, it has been assumed that all of the rebar exported by Sanwa was 6 metres in length. An adjustment was made for short length premium on the same basis as the adjustment for SCSC above, by adding THB[redacted] per tonne to the base price.

Cost of Credit

327. An adjustment was made for cost of credit on the same basis as the adjustment for SCSC above, i.e. on the basis of credit being extended for [redacted] days, calculated at 6 percent of the base price plus the volume discount and short length premium.

Normal Values

328. The adjustments outlined above were deducted from base prices to arrive at ex-factory normal values that provide a fair basis for comparison with export prices. The range of normal values is shown in Table 4.7 following paragraph 338.

4.4 Comparison of Export Price and Normal Value

Margins of Dumping

329. The Ministry has determined dumping margins for the POI by comparing export prices established in section 4.2 and normal values established in section 4.3. Comparisons of export prices and normal values and the calculation of dumping margins have to the extent possible been done on a transaction-to-transaction basis.

330. Company specific overall weighted-average dumping margins have been calculated using the transaction-to-transaction data for that company, and have been calculated as a means only of summarising the individual transactions examined. Such weighted-average calculations do not represent the application of the methodology set out in Article 2.4.2 of the Agreement which allows dumping margins to be established on the basis of a comparison of weighted-average normal value with a weighted-average of prices of all comparable export transactions. In calculating company-specific overall weighted-average dumping margins from the individual transactions, the Ministry has used all export prices and normal values in its calculations, including those where no dumping or negative dumping was found.

Malaysia

Amsteel Mills Sdn Bhd

331. There were [redacted] transaction lines related to Amsteel. Of these 86 percent by volume were dumped with a weighted-average dumping margin over the POI of 6 percent. Of the total volume exported by Amsteel over the POI, 22 percent showed a *de minimis* dumping margin (i.e. a dumping margin of less than 2 percent).

332. The following table shows the ranges of provisional normal values, export prices and dumping margins for Amsteel.

Table 4.1: Ranges of Data for Amsteel
(RM per Tonne)

Normal Values	[redacted] – [redacted]
Export Prices	[redacted] – [redacted]
Dumping Margins	[redacted] – [redacted]
Margin as % of Export Price	-5 – 27

Malayawata Steel Berhad

333. There were [redacted] transaction lines related to Malayawata. Of these 100 percent were dumped with a weighted-average dumping margin over the POI of 9 percent. Of the total volume exported by Malayawata over the POI, 13 percent showed a *de minimis* dumping margin (i.e. a dumping margin of less than 2 percent).

Table 4.2: Ranges of Data for Malayawata (RM per Tonne)

Normal Values	[redacted] - [redacted]
Export Prices	[redacted] – [redacted]
Dumping Margins	[redacted] – [redacted]
Margins as % of Export Price	2 – 13

CMC Australia Pty Ltd

334. There were [redacted] transaction lines related to CMC. Of these 100 percent by volume were dumped with a weighted-average dumping margin over the POI of 34 percent. All of the dumping margins were greater than *de minimis* over the POI.

Table 4.3: Ranges of Data for CMC (RM per Tonne)

Normal Values	[redacted] – [redacted]
Export Prices	[redacted] – [redacted]
Dumping Margins	[redacted] - [redacted]
Margins as % of Export Price	28 – 38

Gayathri Steels

335. There were [redacted] transaction lines related to Gayathri. Of these 100 percent by volume were dumped with a weighted-average dumping margin over the POI of 39 percent. All of the dumping margins were greater than *de minimis* over the POI.

Table 4.4: Ranges of Data for Gayathri (RM per Tonne)

Normal Values	[redacted] – [redacted]
Export Prices	[redacted] – [redacted]
Dumping Margins	[redacted] - [redacted]
Margins as % of Export Price	35 – 42

SK Global Co Ltd

336. There were [redacted] transaction lines related to SK Global. Of these 100 percent by volume were dumped with a weighted-average dumping margin over the POI of 12 percent. All of the dumping margins were greater than *de minimis* over the POI.

Table 4.5: Ranges of Data for SK Global (RM per Tonne)

Normal Values	[redacted] - [redacted]
Export Prices	[redacted] – [redacted]
Dumping Margins	[redacted] - [redacted]
Margins as % of Export Price	3 – 20

Thailand

The Siam Construction Steel Co Ltd/SCT Co Ltd

337. There were [redacted] transaction lines related to SCSC/SCT. Of these 91 percent by volume were dumped with a weighted-average dumping margin over the POI of 13 percent. Of the total volume exported by SCSC/SCT over the POI, 15 percent showed a *de minimis* dumping margin (i.e. a dumping margin of less than 2 percent).

Table 4.6: Range of Data for SCSC/SCT (THB per Tonne)

Normal Values	[redacted] – [redacted]
Export Prices	[redacted] – [redacted]
Dumping Margins	[redacted] – [redacted]
Margins as % of Export Price	-3 - 35

Sanwa Pty Ltd

338. There were [redacted] transaction lines related to Sanwa. Of these 100 percent by volume were dumped with a weighted-average dumping margin over the POI of [redacted] percent. All of the dumping margins were greater than *de minimis* over the POI.

Table 4.7: Range of Data for Sanwa
(THB per Tonne)

Normal Values	[redacted] – [redacted]
Export Prices	All [redacted]
Dumping Margins	[redacted] – [redacted]
Margins as % of Export Price	All [redacted]

4.5 Volume of Dumped Imports

339. Section 11(1) of the Act provides that where the Minister is satisfied in respect of some or all of the goods under investigation, that there is insufficient evidence of dumping or injury to justify proceeding with the investigation then it shall be terminated. Section 11(2) of the Act provides that evidence of dumping shall be regarded as insufficient if the volume of imports of dumped goods, expressed as a percentage of total imports of like goods into New Zealand, is negligible, having regard to New Zealand's obligations as a party to the Agreement. The Agreement deals with the negligibility of dumped imports under Article 5.8 as follows:

> 5.8 An application under paragraph 1 shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case. There shall be immediate termination in cases where the authorities determine that the margin of dumping is *de minimis*, or that the volume of dumped imports, actual or potential, or the injury, is negligible. The margin of dumping shall be considered to be *de minimis* if this margin is less than 2 per cent, expressed as a percentage of the export price. The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 per cent of imports of the like product in the importing Member, unless countries which individually account for less than 3 per cent of the imports of the like product in the importing Member collectively account for more than 7 per cent of imports of the like product in the importing Member.

340. The volume of dumped goods and the volume of non dumped goods as well as other imports for the investigation period from 1 August 2002 to 31 July 2003, and the percentage of total dumped and non dumped imports of the subject goods is shown in Table 4.8.

Table 4.8: Volume of Dumped Imports

	Tonnes	%
Dumped Imports from Malaysia	3,187	
Dumped Imports from Thailand	4,757	
Non-Dumped Imports from Malaysia	428	
Non-Dumped Imports from Thailand	923	
Other Imports		
Total Imports		100%

341. On the basis of this information, dumped imports of the subject goods from both Malaysia and Thailand are not negligible.

4.6 Conclusions Relating to Dumping

342. The Ministry concludes that rebar imported from Malaysia and Thailand over the POI has been dumped.

5. Evidence of Injury

5.1 Material Injury

343. 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.

344. 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. In the case of threat of material injury the Ministry considers the likely effect on the industry, of future volumes of dumped goods and their effect on prices. This is consistent with Article 3 of the Agreement.

345. The Act sets 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 including:

- the extent to which there has been or is likely to be a significant increase in the volume of dumped goods, either in absolute terms or relative to production or consumption;
- the extent to which the prices of dumped goods represent significant price undercutting in relation to prices in New Zealand;
- the extent to which the effect of the dumped goods is or is likely significantly to depress prices for like goods of New Zealand producers or significantly to prevent price increases for those goods that otherwise would have occurred;
- the economic impact of the dumped goods on the industry, including actual or potential decline in output, sales, market share, profits, productivity, return on investments, and utilisation of production capacity; factors affecting domestic prices; and actual and potential effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments.

346. In addition factors other than dumping which may be injuring the industry have to be considered and it must be demonstrated that the dumped imports are, causing or threatening to cause material injury. The demonstration of a causal

relationship between the dumped imports and the injury or threat thereof must be based on an examination of all relevant evidence and any known factors other than the dumped imports, which are injuring, or threatening to injure, the domestic industry. Any injury caused or threatened by these other factors must not be attributed to the dumped imports. Factors which may be relevant include, *inter alia*, the volumes and prices of non-dumped imports, contraction in demand or changes in the patterns of consumption, trade restrictive practices, developments in technology and the export performance and productivity of the domestic industry.

347. PS advised the Ministry that since 2000 “there has been a [redacted] decline in profitability, and injury has become particularly significant in [redacted]

348. The historical financial information and import information in the injury analysis section of this report is presented in years ended 30 June, which aligns with PS’s financial year.

349. PS provided the Ministry with financial information as requested for the purposes of injury analysis. PS utilises a standard cost accounting system, the Ministry however requested the information to be based on actual cost, in addition to the standard cost figures, to ensure that no injury effects are either hidden or exaggerated by the use of standard cost system. All PS figures used for injury analysis are actual figures and for the purpose of this report standard figures have not been used.

5.2 Cumulation

350. The Act does not require sufficient evidence on a country-by-country basis on injury and causation for each country being investigated, but refers simply to a causal relationship between dumped imports and injury without specifying that such dumped imports must be from a single country. Injurious effects of imports from Malaysia and Thailand countries can, therefore, be cumulated provided the provisions of Article 3.3 of the Agreement are met.

351. The provisions of Article 3.3 of the Agreement state as follows:

> Where imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the investigating authorities may cumulatively assess the effects of such imports only if they determine that (a) the margin of dumping established in relation to the imports from each country is more than *de minimis* as defined in paragraph 8 of Article 5 and the volume of imports from each country is not negligible and (b) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product.

352. Goods from the two exporting countries, Malaysia and Thailand, are interchangeable. [redacted] sources from both countries and the channels of distribution are similar. Despite Vulcan’s assertion to the contrary, the Ministry is satisfied that the goods imported from Malaysia and Thailand compete both, with each other, and with the like goods made in New Zealand. The Ministry

is satisfied that the injurious effects of the imports from Malaysia and Thailand may be cumulated, but notes that it is not required to do so.

353. The Ministry has assessed the positive evidence of injury caused by the imports from the two countries separately and will if appropriate assess the effects of them at the end of the analysis cumulatively. If there has been no finding of adverse effects on any given factor the Ministry will not make any comment on the extent to which effects are attributable to each country.

5.3 Import Volumes

354. *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 goods either in absolute terms, or in relation to production or consumption in New Zealand.*

355. Table 5.1 shows the volume of subject goods imports into New Zealand that are dumped and compares them with PS's sales and the total New Zealand market. Dumping has been established for imports of the subject goods from Malaysia and Thailand for the POI, with 88 percent of imports from Malaysia and 91 percent from Thailand found to be dumped. For the purpose of Table 5.1 it has been assumed that the same is true for the other periods shown, that is, that 88 percent of Malaysian imports were dumped and 91 percent of Thai imports were dumped for 1999 to 2002.

Table 5.1: Import Volumes (Tonnes)

	1999	2000	2001	2002	2003
Dumped Malaysian Imports	1,007	403	92	1,940	3,405
Non-Dumped Malaysian Imports	137	55	12	264	464
Dumped Thai Imports	3,441	7,306	3,761	4,989	4,496
Non-Dumped Thai Imports	340	723	372	493	445
Other Imports	19,349	10,771	17,751	10,222	[redacted]
NZ Industry Sales	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
NZ Market	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Change in:					
Malaysian Dumped Imports		-604	-312	1,848	1,465
Thai Dumped Imports		3,866	-3,545	1,228	-492
Non-Dumped Subject Imports		382	-351	121	-49
Other Imports		-8,579	6,980	-7,529	
NZ Industry Sales					
NZ Market					
Malaysian Dumped Imports as % of:					
NZ Industry Sales					
NZ Market					
Thai Dumped Imports as % of:					
NZ Industry Sales					
NZ Market					

356. Table 5.1 shows that the dumped goods have increased significantly in absolute terms since 1999 from 4,448 tonnes, to 7,901 with 2001 the only interim year in which they experienced a decline. The dumped goods also increased both as a percentage of the total New Zealand market and relative to the share of the market held by PS, the New Zealand industry, from the share held in 1999. Dumped imports both as a percentage of the New Zealand industry's sales and the overall New Zealand market held the highest percentages in 2000 and in 2001 levels dropped below 1999 levels but subsequently rose to levels above the percentages held in 1999.

357. There is significant evidence that import volumes of the subject goods have increased significantly in absolute terms and relative to New Zealand domestic production and overall consumption over the period 1999 to 2003.

5.4 Price Effects

Price Undercutting

358. *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 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.*

359. Price undercutting occurs when the imported goods are presented for sale within the New Zealand market at a price lower than the domestically produced good, hence undercutting the price that the domestic manufacturer can obtain for the like goods.

360. PS has provided its average ex-factory selling prices for 1999 to 2003. PS provided weighted-average selling prices for its 4 product groups; small rounds (10mm and 12mm), mid-rounds (16mm), large rounds (25-40mm) and reinforcing coil.

361. For the purposes of price undercutting the Ministry has compared the prices of the dumped goods with those of the domestic industry for the first 3 of PS's product groups, that is, no price comparison has been undertaken for the reinforcing coil product group. The reason no price undercutting analysis has been undertaken on coil, is that, while a like good, there was only one import entry for coil during the POI, imported by [redacted] from [redacted]. The Ministry believes, given that [redacted] did not co-operate, and its correct level of trade for price undercutting is ex-store, that one import entry is not sufficient information from which the Ministry could construct a price at the ex-store level in New Zealand. Therefore no comparison can be made for price undercutting in the reinforcing coil sub-category of the subject goods.

362. Importers were asked to provide copies of invoices and a cost-build up of their sales in order to determine the price at which they purchase goods and sell them into the market for the purposes of price undercutting analysis.

Level of Trade

363. In order to assess price undercutting, prices of the imported and domestically manufactured product must be compared at the same level of trade to ensure that the existence and extent of any price undercutting is correctly assessed. This ensures that any remedy which may be applied at less than the margin of dumped goods, is calculated in such a way as to ensure that the prices of the dumped goods when imported do not undercut the New Zealand industry's non-injurious price (NIP.)

364. The level of trade for consideration of price undercutting injury equates to considering what is the first point of competition between the imported and domestically manufactured goods in the local market. The normal practice of the Ministry is to compare ex-importer's store and ex-factory prices and in doing so exclude any variances in distribution costs and margins, which may confuse the impact of dumping. While this is the normal approach of the Ministry, as it is the most suitable method in the majority of cases, the Ministry looks at the underlying trade reality in each investigation and determines the appropriateness of such a comparison in the circumstances of each case.

365. In the current investigation Euro Corp and PS have discussed what level of trade is correct to use for the purpose of comparing prices to determine price undercutting. The Ministry has considered submissions from both Euro Corp and PS on the matter. The approach taken by the Ministry in an earlier Plasterboard from Thailand Review and Reassessment (both 2000) and independent advice

commissioned in 1994 by the Ministry on level of trade in relation to a Dumping Investigation for South Pacific Tyres, (subsequently referred to as the Falconer advice) have also been considered. The Ministry's analysis reflects the underlying trade reality in the present investigation and follows the intent of the price undercutting analysis.

366. The relevant parts of the Act is s8(1)(b), as set out in paragraph 343, and s8(2)(b) are as set out below:

> 8 (2) Without limiting the generality of subsection (1) of this section, and without limiting the matters that the [Chief Executive] may consider, the [Chief Executive] shall have regard to the following matters:
>
> …
>
> (b)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:

367. Section 8 outlines matters that both shall and may be considered when determining whether material injury is being caused to the domestic industry by the dumped goods. Section 8(1)(b) states that one of the matters that **shall** be examined is " the effect of the dumped…goods on prices in New Zealand for the like goods…." The analysis requirement of s8(1)(b) is what the Ministry refers to as price effects and involves injury to the domestic industry that is reflected in its selling prices.

368. s(8)(2)(b) states that one of the matters that **shall** be examined is "the extent to which the prices of the dumped…goods represent significant price undercutting in relation to prices in New Zealand (at the relevant level of trade) for like goods of New Zealand producers:"

369. It is important when reading these legislative requirements to note that the wording of s(8)(2) begins with "Without limiting the generality of subsection (1) of this section, and without limiting the matters that the [Chief Executive] **may** consider…" (emphasis added.) Therefore s8(1)(b) of the Act requires the Ministry to look at the price effects of the dumped imports when assessing whether material injury has been caused to the domestic industry and s8(2)(b) requires price undercutting to be analysed, without either of these requirements limiting in any way the determination of the injury alleged.

370. Article 3.2 of the Agreement states:

> "With regard to the effect of the dumped imports on prices, the investigating authorities shall consider whether there has been significant price undercutting by the dumped imports as compared with the price of a like product of the importing Member,…"

The requirement of this article is hence reflected in s8 of the Act.

371. For the purposes of price undercutting the Ministry seeks to compare the price of the dumped product with the price of the domestically manufactured product **in** New Zealand. In analysing the effect of the dumped goods on the price of domestically manufactured products on the domestic market, or in New Zealand,

the Ministry looks at matters that affect the price that is achieved by PS for its rebar sold in New Zealand.

372. The most obvious effect that the dumped imports have had in the current case is PS's use of an Import Parity Pricing Model (IPP.) In using an IPP PS sets its sale price for rebar equal to a formula that contains the prices of rebar imports into New Zealand for the past quarter. PS's IPP is set equal to the [redacted]. In setting the price of its rebar in this way PS calculates the costs of purchasing the foreign manufactured product and bringing it to the local market then, what can be regarded as a [redacted] is added to this price. In pricing in such a manner PS is effectively pegging its selling, or ex-factory, price to that which the importer can offer ex-wharf.

373. In its EFC submission PS, at paragraph 18, commented that the introduction of the IPP was in response to the existence of the dumped imports. However the change in the way in which PS priced to the IPP, occurred at the same time as the senior management of the business changed and was part of a larger move to remedy customer perceptions that prices were uncompetitive and lacked transparency.

374. The Ministry also notes that PS had previously stated that the change in the pricing model was in response to "increased competition from imports" and that the increased competition from imports involves competition from a group much wider than just the imports from Malaysia and Thailand.

375. In its submissions PS stated that the correct level at which to compare prices for the purposes of price undercutting is at the ex-factory/ex-wharf level. Euro Corp claims that it does not compete with PS manufactured product at this level and the correct level at which to compare its prices for the purposes of price undercutting analysis, is its ex-store price with PS's distributors selling price to building supply merchants, as this is the only part of the market that Euro Corp sells to and it does not participate in any other part of the supply chain.

376. Level of trade is determined by competition points within any given market. Any product is likely to have several different distribution channels that operate within one market and often an imported product has less links in the distribution chain before it reaches the end-user, than a domestically produced one does. In determining the correct level of trade the Ministry looks at the first point at which the imported and domestically manufactured products compete in the New Zealand market.

377. The concept of competition is both abstract and familiar in the modern business environment. Competition can be defined as the effort of 2 or more parties acting independently to secure the business of a third party by offering the most favourable terms. In this sense competition can occur with a benign act of one party, inducing the other to respond in some fashion to counter the effect (whether real or perceived) of the action of the former party. The key to competition is that it is determined by the independent acts of 2 or more parties, or in the case of an anti-dumping investigation the availability, price, distribution chains and other

characteristics of the foreign produced goods against those that are produced domestically.

378. The first point of competition is not related to the actions of the importers, as entities, but the first point of competition between the domestically and foreign produced goods. This means that a sale does not necessarily occur at the first point of competition within a market and that the threat of a sale will be often the catalyst, as the possibility of an alternative is enough for competition to occur.

379. As competition does not mean that a sale has to occur “prices of the dumped goods”, as expressed in s8(2)(b) of the Act, does not mean that “prices” have to be demand based sell prices that have been achieved in a sale, but can also be a reference to the prices of the dumped goods in New Zealand at which they have been purchased and transported to New Zealand, that is, the buy price of the importer once it has been adjusted in order for fair comparison with the prices of the local manufacturer. Any other interpretation of the price in New Zealand would shift the price effects analysis away from the dumped goods and further towards the actions of the importers. PS’s use of an IPP means some form of competition is occurring at the ex-wharf level (as a driver of the price of the domestically manufactured product.) However for importers who do not also purchase from PS, competition is aggregated and alone this does not present justification for using ex-wharf/ex-factory price comparisons for importers who do not purchase from PS, as it cannot be described as a “point” of competition.

380. The Falconer advice states that “…[C]omparision of prices to the consumer (or of price lists) may be the first point at which the possibility of price undercutting may be signalled...but…this is not the first point of competition” and suggests in such situation the first point of competition at which the price undercutting analysis is undertaken is at the ex-factory and ex-store level.

381. Dumping is effectively about the export actions of a foreign manufacturer that may harm a domestic producer. The further analysis moves from the point of comparing the relevant prices from both manufacturers, the further it is removed from the dumping actions. Price undercutting looks at the injurious effects of the dumped imports (not the importer's actions or selling prices) on the prices of domestically manufactured product in New Zealand, amongst other injury indicators examined in the consideration of material injury. Therefore a price effect does not need to be caused by a selling price of an importer and (as in the present case given the IPP) the New Zealand industry is often harmed more by the importer’s purchase price, regardless of the importer’s ability or desire to purchase from the local manufacturer. Below is a discussion of the Ministry’s conclusions on the relevant level of trade for PS and each importer involved in the current investigation.

Pacific Steel

382. In the case of the New Zealand industry its selling price to the distributors and fabricators is clearly the point at which its product first enters the New Zealand market for rebar, and this price would be taken as ex-factory. PS stated that an ex-wharf/ex-factory comparison should be used for price undercutting purposes in its submissions upon the matter, as it claims that most of the importing entities

both purchase rebar from PS and import. However this is not correct either in terms of quantity of rebar or numbers of importers, but for those entities that do both import and purchase from PS ex-wharf/ex-factory is the correct level of trade at which to compare prices for the purposes of price undercutting analysis.

383. Rebar that PS sells with a project rebate is often [redacted] to the [redacted] of the [redacted] is one of the conditions of receiving the rebate, and effectively the distributor [redacted] the goods. This has no impact upon comparing prices at the ex-factory level as PS still invoices its customer who in turn invoices the end-user and a sale at the same level of trade as all other sales made by PS.

384. Within the New Zealand market there is a distinction between the roles of distributors and fabricators. Distributors, of both the imported product and the domestically produced product, act as an intermediary on-selling the rebar without changing it in any substantial way (noting that re-bundling may occur, which while making the product more convenient for end-users to use, creates no change in the physical characteristics of the product.) In contrast fabricators take the rebar purchased and add value to it by bending, cutting and welding it into a pre-fabricated structural steel inputs, hence adding value and selling a distinct product from the rebar as originally purchased, effectively becoming the end users of the goods in their ex-factory form.

385. PS stated that importers of rebar can sell it at any level within the domestic market, which is supported by the customers of various importers and what part of the market they constitute. As rebar is a commodity product there is no distinction between rebar of one grade that is sold to a fabricator, distributor or building supply merchant, however each group may have differing grade, diameter and length demands.

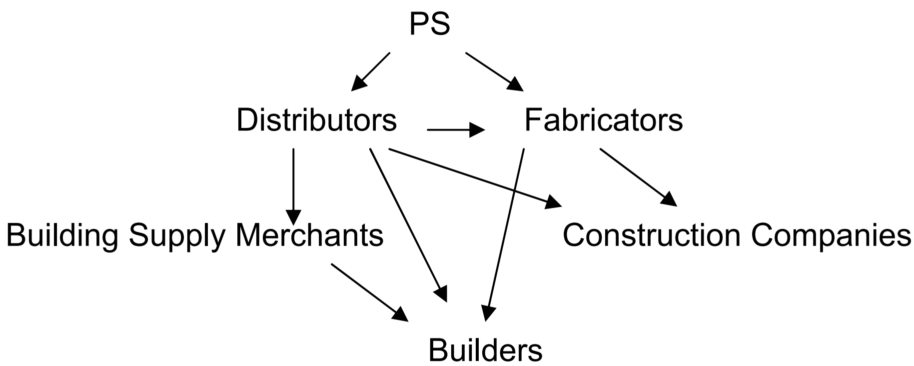
386. It is clear, from information provided both by PS and importers, that the end-users of rebar will alter sources due to price differentials. However due to integrated supply chains, related businesses agreements and PS's trade strategies it is more likely that one of PS's customers would switch to purchasing imported product, rather than the reverse, as PS does not actively pursue customers it does not currently have, but instead aims to supply as much product as possible to its existing customers. The possibility of PS customers switching to imported product is clearly demonstrated by PS's use of an IPP.

387. PS stated, at paragraph 9 of its response to the EFC, that the Ministry's statement that PS does not actively pursue customers it does not currently sell to is incorrect, citing the reduction of its minimum tonnage requirements in 2002 as positive evidence of pursuing new customers.

388. Euro Corp also responded to this point in its submission on the EFC and stated that the Ministry was correct in its statement and that PS's minimum tonnage buy requirements are evidence of PS's aim to maximise the amount it sells to its existing customers.

389. The Ministry notes that PS has stated in the same submission that it has not continually approached Euro Corp and Nauhria given those businesses indicated a preference for imported product (although some contradictory evidence has been presented in relation to Nauhria.) Additionally the businesses that PS listed as new customers since the reduction in its minimum tonnage requirements are all principally fabricators, not distributors like Euro Corp. The Ministry believes that there is evidence of PS not actively pursuing a rebar purchaser who currently imports, but accepts it may pursue other rebar users to become customers.

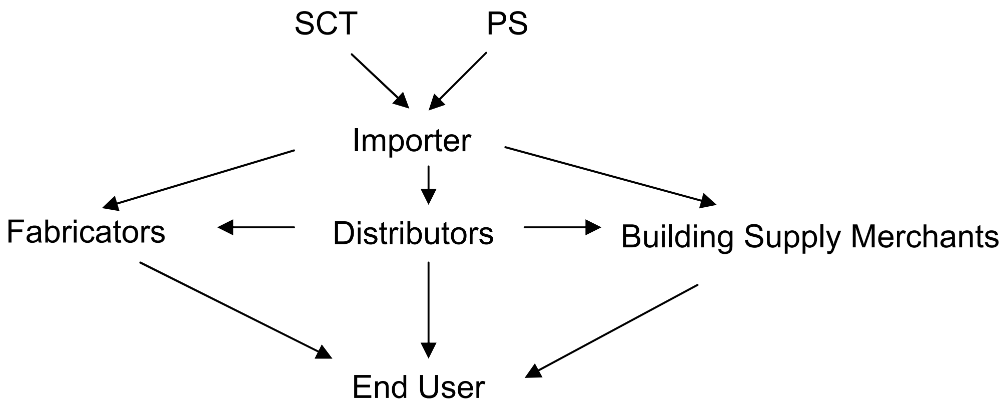
390. PS stated that to become a PS rebar customer requires a minimum annual tonnage of [redacted] tonnes, which was reduced from [redacted] tonnes per annum in 2002. In addition to the tonnage requirement PS also gives consideration to the investment and distribution channels and facilities available as well as credit checks. Below is a diagram of PS's distribution network.



Vulcan Steel Ltd and SteelPlus Ltd

391. Vulcan and SteelPlus both currently purchase from PS. Therefore the economic decision for these businesses is made between the ex-wharf price of the imported product and the ex-factory price of PS product, therefore it is at this point that the prices will be compared. Vulcan raised the issue of level of trade during a meeting with the Ministry at its premises, while SteelPlus did not make any submission on the level of trade. Vulcan stated that it is equivalent to a distributor within PS's distribution network structure. However Vulcan and SteelPlus represent two levels of the domestic industry as they import and resell as a distributor, as do most of the importers. Vulcan stated that it supplies its major customer on an [redacted] basis.

392. Vulcan stated that it is important to note that the Malaysian and Thai imported product does not predominately compete with each other, due to the customers of the importers from each source. A diagram of the distribution network for Vulcan and SteelPlus follows.

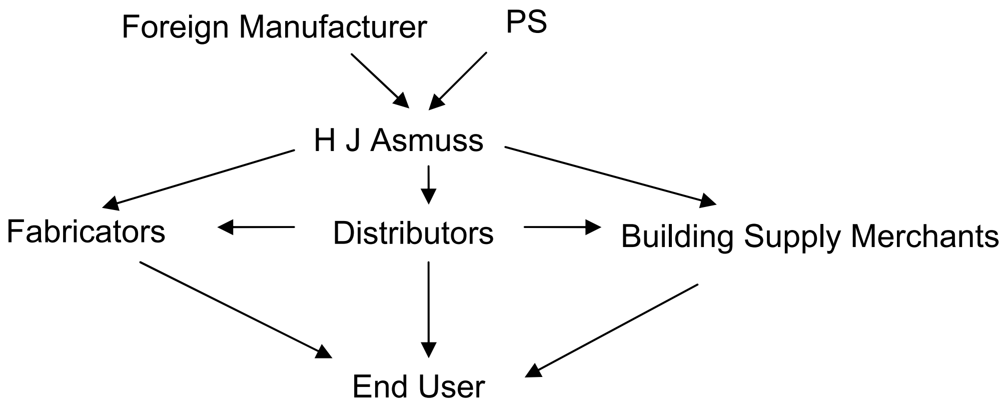


H J Asmuss Ltd

393. H J Asmuss has previously purchased domestically manufactured rebar in addition to imported product and was included in PS's customer list until [redacted]. However H J Asmuss advised the Ministry that it has not purchased rebar from PS for [redacted] and that the [redacted] and H J Asmuss' [redacted]. H J Asmuss also stated that "It should also be noted at this point that PS refuse(s) to supply this company for reasons we believe to be centred around market [redacted]."

394. PS provided rebar customer lists for 1999 to 2003 and H J Asmuss was included in the customer list for [redacted] and [redacted]. The Ministry asked PS to confirm the last time that H J Asmuss purchased rebar from them. PS replied that there were no sales of rebar to H J Asmuss in [redacted] (sales in that year to H J Asmuss were of other products) but that sales were made in 1999 and 2000.

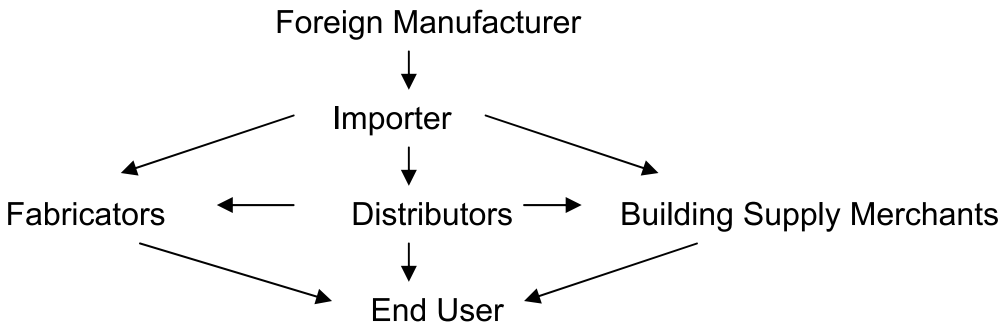
395. Given the discrepancy between the information provided by H J Asmuss and PS the Ministry looked at the Customs data which showed imports of rebar by H J Asmuss from 1998 onwards, which was the earliest Customs data the Ministry requested for the investigation. In the 1999 year H J Asmuss imported [redacted] tonnes, in 2000 it imported [redacted] tonnes, in 2001 it imported [redacted] tonnes, in 2002 it imported [redacted] tonnes and in 2003 [redacted] tonnes were imported by H J Asmuss. Given the Customs data, H J Asmuss' statement that PS will not sell rebar to it and has not for the past [redacted], and the information provided by PS the Ministry accepts that PS sold rebar to H J Asmuss in [redacted] and [redacted] The cessation of H J Asmuss' purchases of rebar from PS coincided with the decrease of the minimum buy requirements for PS's rebar customers and the Ministry believes that H J Asmuss made the decision to import in more significant quantities and terminate what it describes as a "[redacted]" with PS rather than continue to purchase from PS. Therefore the correct level of trade to compare H J Asmuss' sales of the domestically manufactured product is at the ex-wharf/ex-factory level.



Reo Services Ltd, Quail Glen Industrial Ltd, Kiwi Steel Ltd and M R Steel Ltd

396. Reo, Quail Glen, Kiwi Steel and M R Steel all have rebar purchase levels that are under the minimum tonnage required to purchase from PS. In addition Quail Glen has specifically stated that it cannot purchase product from PS and made a submission in response to the EFC that reiterated this point and provided [redacted] rebar. None of these importers made any specific submissions on the level of trade.

397. Given that they cannot purchase from the domestic producer, prices will be compared for these importers at the ex-store/ex-factory level. The following diagram illustrates the distribution network employed by these importers.



Euro Corporation Ltd

398. Euro Corp imports rebar and does not purchase any of its rebar requirements from PS. Euro Corp stated that it informally approached PS to enquire about purchasing rebar at a trade show but no price lists have been offered by PS. Euro Corp also stated that PS has made no attempt to secure Euro Corp's custom despite having excess capacity, which is currently exported, that could be sold to Euro Corp for a more profitable price. Euro Corp stated that PS would not sell to them under any circumstances due to the vertical alliances that PS's current customers are involved in and their associated effects for PS. Therefore Euro Corp stated that it has no choice but to purchase imported product in order to compete. Euro Corp has, by its own admission, never repeatedly approached PS to request supply of its rebar and has made a choice to search for foreign

sources, itself not a simple task, rather than attempt to persuade the local manufacturer to supply them.

399. At paragraph 17 of PS's comments on the EFC, it referred to the preceding sentence as a suggestion by Euro Corp that it was reluctant to purchase foreign manufactured rebar. PS stated, that as the Managing Director of Euro Corp was previously an export manager for Fletcher Steel, Euro Corp had access to foreign contacts from which to purchase its requirements. However, the intent of the statement in contention was to illustrate that a more complicated purchase route is employed by Euro Corp, than that which it would use if purchasing domestically manufactured product and in no way infers a reluctance by Euro Corp to purchase rebar from foreign sources.

400. In response to the EFC, at paragraph 1 of its submission, PS stated that Euro Corp's assertion that PS would not sell to them under any circumstances as stated above in paragraph 398 is incorrect. PS stated that the Ministry erroneously relied on this statement without any evidence, as there were no documents on the public file for this investigation that supported the statement. The Ministry notes that there is content within both Euro Corp's importer's questionnaire response and a note for file that was written following a meeting between Euro Corp and the Ministry (documents #295 and #470 on the public file respectively) that provides documentary evidence for such a statement and that the Ministry relied on sufficient evidence in making the above statement.

401. PS stated, in paragraph 3 of its submission on the EFC, that statements made by Euro Corp as recorded in paragraph 398 were inconsistent. In response to this claim the Ministry notes that the statement "by its own admission" refers solely to "never repeatedly approached PS to request the supply of rebar" any further commentary within the paragraph are conclusions based upon the Ministry's analysis.

402. PS stated, at paragraph 10 of its comments on the EFC, that the statement in paragraph 398 that PS would not sell to Euro Corp due to the vertical alliances its current customers are involved in is untrue. PS has not, however, advised if it would sell to Euro Corp at prices and terms and conditions that would match those it offers to existing distributors. PS stated that the introduction of [redacted] as a new customer illustrates that the vertical alignment argument is misplaced, as prior to being a PS customer [redacted] purchased from [redacted], a PS customer who has [redacted] imported rebar. In response to this comment the Ministry notes that statements made both by Euro Corp and other interested parties during the course of this investigation have provided numerous examples of the extent and effects of vertical integration, stating that the effect of a new fabricator as a PS customer, is much less significant than the effect of an additional distributor. As [redacted] is a fabricator the Ministry considers the acceptance of it as a new customer by PS is not positive evidence of the failure of the vertical alliances argument as the vertical alliances alleged are stated as being more sensitive to the introduction of a new distributor. This is so because steel distribution, not fabrication, is [redacted]'s and United Industries Ltd's main business.

403. Euro Corp does reach the tonnage requirements to become a PS rebar customer. The Ministry stated in the EFC that Euro Corp may fail PS's customer criteria on the distribution network requirements, as it is a private business with only two branches. PS stated, at paragraph 5 of its EFC submission, that the Ministry was incorrect to conclude that Euro Corp "may fail" to meet PS's distribution network requirements based on the fact that it is a private business and the number of branches that it has.

404. The Ministry was not presented with any detailed information on what constitutes PS's 'distribution network' customer criterion and therefore based its conclusion on the analysis of the facts available to it from interested parties to the investigation. PS, subsequent to the EFC, gave examples of businesses to whom it does sell and their sizes relative to that of Euro Corp. Of the five businesses listed only two were distributors, as opposed to fabricators. The two distributors were SteelPlus, who is part of the large United Industries Limited group, and the other was Vulcan who stated to the Ministry that the only way it was able to obtain PS supply was to coerce PS with the willingness of an Australian mill to supply it. Vulcan also stated that it was the last distributor accepted as a new customer by PS. Vulcan became a PS customer prior to 1999. The Ministry was not able to conclude anything from this information, although it does strengthen the statements made by Euro Corp and other interested parties that PS would not accept any new customers that were distributors due to the effects that it would have with its present customers.

405. The Ministry believes that PS's distribution network criteria **may** be a method of refusing supply when the addition of another distributor (or fabricator) to its customers would upset its larger customers. However PS explicitly stated that Euro Corp meets it requirements to be a customer and is welcome at any time to become a customer for rebar or wire products and that the refusal to supply argument has been engineered by Euro Corp for the purposes of this investigation.

406. PS stated that it is willing to sell to Euro Corp but it will not match dumped prices and believes it is entitled to include in any sales price, including any offered to Euro Corp, a local premium for the short lead-time and consistency of supply that is associated with PS supply in contrast to foreign supply.

407. PS presented, in paragraph 2 of its EFC submission, details of interaction between itself and Euro Corp, supported with evidence. However the interaction detailed was largely between another operating division of Fletcher Steel Ltd, Pacific Wire, in relation to wire sales. PS provided, as evidence that rebar was discussed with Euro Corporation, a note of a meeting between it and Euro Corp on 18 October 2000. The Ministry observes, however, that the reference to rebar in this meeting note consisted only of five words in a note which contained 16 brief points. There is no evidence of a substantial discussion of rebar between Euro Corp and PS.

408. In response to the EFC, and PS's submission thereon, Euro Corp stated that prior to a meeting held on 2 February 2004, between Maurice McKenzie, Managing Director of Euro Corp; Andrew Reding, Chief Executive Building Products; and Alan Pearson, General Manager PS and Pacific Wire, it had never

formally discussed purchasing rebar from PS. PS also pointed out that prior to this meeting it was unaware of any request from Euro Corp in relation to rebar. Informal contact had occurred between the two businesses, (as mentioned in paragraph 398) when they met at a trade show in 2002, subsequent to which a meeting was scheduled, with PS to be represented by one of its key wire account managers, however the meeting was cancelled and was not rescheduled.

409. The 2 February 2004 meeting was arranged subsequent to a letter dated 20 January 2004 from Euro Corp to PS, which outlined PS's refusal to supply Euro Corp with rebar. PS responded to Euro Corp's letter with its own letter dated 12 February 2004 countering the refusal to supply in which it "corrected some factual errors" and re-iterated that it wants Euro Corp as a customer. During the meeting a decision was made to meet again within the next few days and discuss establishing a business relationship.

410. PS stated that the reason for such a letter and the subsequent meeting was a mystery to it until reading the EFC report for this investigation, after which it stated the purpose of the letter became clear. When PS tried to arrange a second meeting with Euro Corp it was not available to meet until 17 February 2004, which was also the last day for submissions on the EFC to the Ministry for this investigation. The meeting for 17 February 2004 was cancelled and has, to the Ministry's knowledge, not yet been rescheduled. The Ministry has received conflicting evidence as to which party cancelled the meeting with Euro Corp stating mutual cancellation and PS stating that Euro Corp had cancelled.

411. Euro Corp, in its response to the EFC, stated that PS was confusing Euro Corp's past business relationship with Pacific Wire with PS, and pointed out that PS in its application illustrated that the two business units are distinct divisions within the Fletcher Steel Group.

412. PS stated at a very late stage in the investigation that PS and Pacific Wire are effectively one business and restated that at any time Euro Corp were purchasing wire from PS it could have also purchased rebar. However given that PS has stated that its "marketing team, credit management team and General Manager for PS and Pacific Wire are one and the same…" the fact that it did not raise the possibility of rebar sales with Euro Corp is even more unusual given the market situation as described below.

413. In paragraph 4 of PS's EFC submission, PS stated that the Ministry had incorrectly placed the onus of proving a potential sale to Euro Corp by PS upon PS. The Ministry accepts that when purchasing wire products, or discussing the possibility thereof, both Euro Corp and Pacific Wire were in a position to raise the possibility of rebar sales. The onus, however, rests upon the seller to raise this matter and PS's silence on the possible sale of rebar tends to indicates a refusal to supply.

414. PS stated that the steel industry is one in which buyers approach sellers and as it did not know the details of Euro Corp's requirements it was up to Euro Corp to initiate any discussions of sales. In a market where demand exceeds supply a buyer would be expected to pursue limited supply. However, this demand supply imbalance is not replicated in regard to rebar, in fact the imbalance is reversed.

There is currently a global shortage for some of the key input requirements (for electric-arc furnace mills) for steel making, those being scrap metal and vanadium. There is, however, a global over supply of rolling capacity, meaning that more rebar and other rolled products can be produced than demand exists for. While a scarcity of inputs does affect the outputs the scarcity of supply of steel has not been great enough to overcome the effect of the over supply of rolling capacity. Therefore in a market where the number of customers is much lower than the supply available it is expected that the sellers would pursue the limited number of buyers.

415. As a result of global excess supply it is completely feasible that manufacturers would search for purchasers in order to maximise their capacity utilisation and increase profitability. Indeed PS has illustrated doing so in developing its export markets, such as [redacted], which has been developed as an export market as part of PS's strategy "to counter the effect of the increased presence of the imports in the New Zealand marketplace." PS has stated that the "international steel market is short of supply" and that as a result PS has been experiencing increased demand from its export customers. PS stated that it is [redacted] it is at full capacity and PS "were/are expecting orders from Euro Corp." The Ministry believes from international steel market commentries, such as the Steel Business Briefing and the South-East Asian Steel Iron and Steel Institute, that the international market is currently under pressure. Input costs have risen (and may continue to do so) but the ability of manufacturers to recover these costs in finished products is somewhat limited due to the "disconnectness" that exists in the industry as a result of the over supply of rolling capacity.

416. PS stated that it is currently at full capacity and has [redacted] awaiting Euro Corp's orders. The Ministry requested further information from PS which showed that its total rebar production for the current year is at [redacted] percent of capacity with domestic rebar accounting for [redacted] percent. This means PS has excess capacity of approximately [redacted] tonnes, which contradicts its earlier statement that it is operating at full capacity.

417. In light of PS's statements on excess capacity and its desire to maximise domestic volumes (as exports are made if [redacted] and it would prefer to make [redacted] domestic sales rather than export), the neglect to raise the possibility of sales by another operating division of the company to a current or potential customer is inconsistent with a willingness to supply. Therefore, in the absence of any evidence to the contrary, it is not logical for the Ministry to conclude that sales which could be made to interested parties not currently purchasing from PS are available to those parties when no attempts have been made by PS to secure such sales, despite its own comments that domestic sales are [redacted] than export sales.

418. PS has also pursued another importer Nauhria (see paragraph 452), whose rebar is mainly used in **fabrication**, for its business, approaching it to create a business relationship numerous times. The lack of a corresponding effort in relation to Euro Corp illustrates a difference in intention of PS to obtain sales from those two businesses. This attempt to secure Nauhria's business was in spite of

PS's admission that Nauhria "is [redacted] purchase from PS."

419. In relation to the lack of any specific offer of a rebar price by PS to Euro Corp, PS noted that as Mr Maurice McKenzie was formerly employed by Fletcher Steel Ltd, which includes the PS business unit, he was aware of the types and prices of rebar offered by PS.

420. The Ministry notes that PS stated Mr McKenzie was last employed by Fletcher Steel Ltd early in 1993, over ten years ago, so while he may have been aware of PS's traditional operations and pricing methods there has been an introduction of a new standard in New Zealand (and a corresponding change in the method of manufacture used by PS) since 1993 and in 1999 PS introduced the new IPP pricing model and changed its rebate system. Therefore the Ministry concludes that by virtue of Mr McKenzie's former employment with PS he can be inferred to have a fairly solid understanding of the operations and products of PS. However that inference cannot be extended to include rebar pricing at any given point in time, in particular the cost of any order Euro Corp may place.

421. The Ministry questioned PS on the circumstances that surrounded Mr McKenzie's departure from the Fletcher Steel group. PS replied that none of the senior staff employed at the same time as Mr McKenzie was, are still employed at PS, and therefore any comments it made were based on second hand historical knowledge, however it believed "Mr McKenzie had [redacted]." PS further stated that some of the interaction between the [redacted] in Euro Corp.

422. Euro Corp responded to PS's comments on the EFC stating that when Mr McKenzie was employed within the Fletcher group it was by Wiremakers, which dealt solely with wire products and Mr McKenzie was not involved with the steel mill or the sale of rebar.

423. Euro Corp stated that the meeting on 2 February 2004 between PS and Euro Corp should not be taken into account when the Ministry considers whether a business relationship exists, given the Ministry's comments during a meeting with Euro Corp. The Ministry stated "that they would not normally examine price undercutting data (or data related to the determination of dumping) subsequent to the initiation of an investigation because the existence of the investigation could influence the behaviour of parties to the investigation." The meeting of 2 February 2004 itself is of little relevance to the Ministry's analysis as there was no substantive outcome from it but the positions taken by both parties involved in the meeting in regard to the historical business relationship between them is of relevance to the investigation.

424. Euro Corp stated that PS's use of its letter of 20 January 2004 to undermine Euro Corp's position, subsequent to the release of the EFC, is further evidence that PS is not interested in initiating a mutually beneficial business relationship. Euro Corp went onto state that PS is only interested in cutting off its supply chain

to prevent Euro Corp from servicing its customers and hence forcing them to purchase from PS's distributors.

425. The Ministry, however, cannot accept such an inference as in the course of an investigation interested parties are encouraged to provide all evidence to the Ministry that supports their view. PS's provision of Euro Corp's letter in fact supports Euro Corp's statements just as the corresponding reply supports PS's statements. The Ministry notes, however, that Euro Corp did not provide a copy of their letter of 20 January 2004, until after a copy of it had been presented to the Ministry by PS. The Ministry is unable to draw any conclusions regarding the intent or effect of the letters dated 20 January 2004 and 12 February 2004 other than both parties reinforced their previous statements on the potential and actual business relationship that exists between them.

426. PS's comments, in paragraph 11 of its EFC response, that the fact Malaysian companies manufacture the rebar that is purchased by Euro Corp and Nauhria is reason for using an ex-wharf/ex-factory comparison for the purposes of price undercutting. The Ministry is aware the subject goods were manufactured in Malaysia, however if it were to accept PS's reasoning on this point it would follow that ex-factory/ex-wharf is the correct point at which to compare prices for the purpose of price undercutting in all cases, which the Ministry does not accept is true.

427. In paragraph 12 of its comments on the EFC, PS stated that the Ministry did not present any evidence to counter the "fundamental reality" that the importers who purchased Malaysian rebar did so because they "know" it is lower cost than PS manufactured product and stated that this is the reason those companies do not purchase rebar from it. PS explained this knowledge of price by reference to [redacted] with Nauhria and, in relation to Euro Corp, by the fact that it has purchased from SteelPlus, a PS customer, in the past and that "discussion on the price of that transaction having reference to PS steel prices into SteelPlus."

428. In response to this point in PS's submission Euro Corp stated that any sourcing of rebar from Wireplus was the result of a "swap" in which Euro Corp provided Wireplus with rebar when approached by Wireplus as it had ran out of stock, with an agreement that Euro Corp could purchase back the same volume at the same price at a later date. Therefore any pricing within the agreement was dictated by Euro Corp's prices rather than those of Wireplus or PS. Euro Corp further added that as Wireplus also imported rebar from Thailand it expected that Euro Corp was receiving imported product rather than PS manufactured product. Euro Corp stated that since [redacted] it had only purchased [redacted] tonnes of rebar from Wireplus in accordance with the above agreement. The Ministry is satisfied that the transaction between Euro Corp and Wireplus did not involve an explict discussion of PS's prices.

429. Euro Corp stated that until it approached [redacted] for assistance in illustrating that Euro Corp does not undercut PS's prices, while completing its importer's questionnaire for this investigation, it did not know at what price PS sold its rebar. This lack of knowledge of prices is consistent with the fact that Euro Corp has never purchased rebar from PS nor been offered prices to do so by PS.

430. PS responded to Euro Corp's comments on the EFC stating that its comment "Euro Corp has never known PS's prices and has no reason or need to know these, because Euro Corp sell to a different market segment- building supply merchants" illustrates that Euro Corp has made a "conscious choice to import." The Ministry notes that Euro Corp's comment referred to by PS was made in regard to PS's comments outlined in paragraph 427, that is, that Euro Corp knows that the Malaysian imported product was lower cost than PS product. The Ministry does not believe that this comment by Euro Corp or the conscious choice to import argument has any effect, for reasons discussed below.

431. Despite Euro Corp having been in business for over nine years there has been no offer of a price list to them, in particular in response to Euro Corp's recent accusations of the refusal of PS to supply it. However [redacted], a much smaller importer, received a current quarterly pricing schedule for rebar in response to its first communication to PS that was [redacted], which was sent to PS about the same time as Euro Corp's letter. Furthering this inconsistency is the fact a brief meeting did occur between Euro Corp and PS and no price list was offered by PS which would have been a simple method of countering the refusal to supply argument and presented an opportunity or basis upon which to discuss future supply.

432. PS stated that it is unable to provide prices to Euro Corp as it is unaware of its exact rebar requirements. Rebar is a commodity product and PS sells it in four product categories, which are described according to the diameter of the product, and each product group is available in Grade 300 or Grade 500. For rebar PS produces a quarterly pricing schedule which is a generic list that is sent to all of its rebar customers, therefore no detailed costing or manufacture change is required in order to be able to provide a price list to a potential customer. Any rebates that may be awarded are additional to this pricing schedule and therefore a discussion of the net price that Euro Corp or any other potential customer would pay would be expected subsequent to the provision of a price list.

433. The way in which PS prepares its price list, and the method by which it makes it available to its customers, makes it unlikely that PS is unable to provide prices to Euro Corp just because it is unaware of its requirements. The Ministry accepts that PS may be unable to provide an exact net price to Euro Corp without knowing its exact requirements as varying volumes would mean differing rebates. However PS provided the Ministry with details of all rebates it awards, which it stated are applied on the same basis to all customers. All of PS's rebates are expressed in a formulaic way, meaning that it would be possible to present a price list based on the tonnage it has inferred Euro Corp would require.

434. The Ministry notes that there is no obligation upon any importer within the investigation to source its product from PS. While Nauhria and Euro Corp may know that the prices of the subject goods are lower than those presented by PS this may not necessarily be a decisive factor in choosing a supply source, as there are other non-dumped goods that are also available in the market (see paragraph 697), and the existence of other non-dumped goods within the market at lower prices than PS's prices means that this line of argument in relation to the dumped goods is not conclusive.

435. As outlined in paragraph 451, Nauhria confirmed that it had been repeatedly approached by PS with attempts to secure its rebar purchases. In its response to the EFC Euro Corp stated that the evidence of attempts to secure the business of Nauhria without replication in respect to Euro Corp indicates that there is an unwillingness to supply on behalf of PS in respect of Euro Corp. Euro Corp goes further to state that an attempt to secure its business would be a more effective way of negating the effects of Malaysian imports rather than initiating “a costly anti-dumping action.” Euro Corp reiterated its previous comments that PS will not supply to Euro Corp in fear of losing its largest non-associated customers [redacted] and that prior to PS’s reduction in minimum tonnage requirements in 2002 Euro Corp would have not met PS’s customer criteria.

436. The Ministry is satisfied from the evidence presented, by both Euro Corp and PS, that PS has not acted in a way that is consistent with a desire to sell rebar to Euro Corp. The argument raised by PS that Euro Corp has made a conscious choice to import and is able to purchase from PS is not sustainable in light of the evidence presented by Nauhria, as both Nauhria and Euro Corp are viewed by PS as conscious importers who make the choice or prefer to import rebar for cost reasons rather than purchase from PS. However PS has repeatedly approached Nauhria in attempts to gain its business and has a relationship with that business that would be conducive to rebar sales being made, but the same cannot be said in relation to Euro Corp. There is no evidence that has been presented by PS that amounts to genuine and substantive attempts to gain Euro Corp’s rebar business. In fact much of the submission that has been presented by PS relating to the Euro Corp level of trade and refusal to supply arguments have occurred in the last two weeks of the investigation, after PS had made its most substantial submission on the EFC. The evidence that has been provided by PS is not compelling and what has happened in the past does not indicate a willingness to establish a business relationship with Euro Corp. This assessment of the possibility and desire to establish a business relationship is based on the previous interaction between Euro Corp and PS and the interaction between PS and other businesses in particular Nauhria.

437. As a manufacturer or seller of goods it is a commercial reality that you market and sell the goods to potential and actual buyers. For whatever reason PS has chosen not to pursue the business of Euro Corp, yet has actively and repeatedly pursued the business of another importer who it classifies as having made a conscious decision to import rebar rather than purchase from PS. From such actions the argument presented by Euro Corp that it is unable to purchase from PS is entirely plausible and no substantive evidence to the contrary has been presented. As a result the conclusion on Euro Corp’s level of trade is unaltered by this analysis.

438. In summary the Ministry has concluded that Euro Corp are not able to purchase from PS because:

- PS has never pursued Euro Corp’s business, despite having pursued the business of other importers and the [redacted] export markets

- PS has never provided a rebar price list to Euro Corp despite having a generic price list which it has given to other importers

- The past business relationship between Euro Corp and PS has provided no evidence of a willingness to supply rebar.

439. Below is a diagram of Euro Corp's distribution network.

Foreign Manufacturer

↓

Euro Corp

↓

Building Supply Merchants

↓

End User

440. Euro Corp submitted that the level of trade at which its prices should be compared to those of PS is ex-store for its product and the ex-store selling price of PS's distributors. The basis of this argument is that Euro Corp sells to building supply merchants and that PS's product is supplied to building supply merchants through its distributors. Euro Corp therefore considers this is the first point at which the goods compete in the New Zealand market. The Ministry's consideration of this submission is set out below.

441. Euro Corp chooses to sell rebar only to the building supply merchant segment of the market, as it is this segment in which it states the [redacted] can be achieved. While Euro Corp does not sell to distributors and fabricators regularly, occasional sales are made to them when Euro Corp is approached by distributors and fabricators whose regular source of rebar is unable to supply their needs. This occasional event illustrates that the product sold to fabricators and distributors is the same as that sold to building supply merchants. It also demonstrates that Euro Corp, rather than being at an alternative level of trade than other market participants that sell to distributors and fabricators, focuses on an individual market segment for [redacted] reasons but is still viewed by fabricators and distributors as being a potential source for their rebar requirements.

442. Hypothetically, if businesses within the fabricating or distributor market segments came to Euro Corp for the quality of service or product that it has, or any other reason, and were willing to purchase rebar at the price which Euro Corp currently achieves for sales to building supply merchants Euro Corp would make sales to them. Euro Corp has stated to the Ministry that the reason it does not sell to fabricators on a more regular basis is that "they want rebar for nothing" indicating that sales at the correct price would not be turned away. Any such sales to distributors or fabricators would not be at an alternative level of trade, but rather to additional market segments at the same level of trade as current sales made to building supply merchants.

443. PS's submission on the EFC, at paragraph 15, endorsed the Ministry's conclusion in paragraph 442 that Euro Corp's sales to only one segment of the market, namely building supply merchants is irrelevant in determining the correct level of trade.

444. Euro Corp like other importers sells to intermediaries who then on-sell to the eventual end-user. It is true that the importer's distribution chain has one less link than the domestic manufacturer's does, but this alone is not justification for using an alternate level of trade. The Ministry has considered Euro Corp's argument that building supply merchants cannot purchase directly from PS but must purchase from a PS distributor instead.

445. In considering whether this is another level of trade the Ministry has looked at the other importers involved in the investigation and the types of customers that they sell to. The importers that responded to the Ministry's questionnaires all stated that they sell some product to the building supply merchant segment of the market, in addition to selling to fabricators and distributors as well. Effectively this means that for businesses that source rebar from foreign manufacturers the building supply merchant customers are fused into the same link in the distribution network as fabricators and distributors, whereas they form two links within PS's distribution network. However, given the conclusion reached on competition and what constitutes the **first point of competition between the dumped goods and the domestically produced ones** the shorter distribution chain for imported products is of little relevance for discussions of price undercutting.

446. Euro Corp also suggested that the prices for Grade 300 and Grade 500 should be compared separately as its business deals primarily with Grade 300 and Grade 500 is a stronger and more expensive product and any differences in product mix could sway the results of price undercutting. The Ministry has looked at pricing information for the two different grades and has undertaken price-undercutting analysis for the two different grades separately within PS's product groupings.

447. Given that an ex-wharf/ex-factory comparison is being made for importers who can, or have, sourced rebar from PS, it would be incorrect to use this level for importers who cannot or are unlikely to be able to secure PS product given the PS customer criteria and market realities. Instead for these importers prices of dumped goods will be compared ex-store/ex-factory. Euro Corp asserts that this is the correct level at which to compare imported product that is sold to fabricators, but not for its business. However as explained in paragraph 442 above, the Ministry views fabricators as at the same level of trade as Euro Corp, albeit in another market segment.

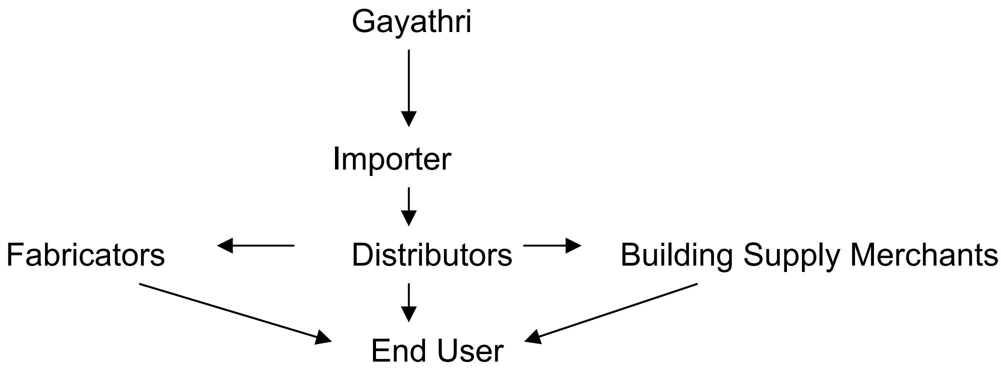
448. In responding to the EFC PS stated at paragraph 14 that the Ministry had erred in placing all importers into two groups (as shown in paragraph 447) and stated that there is another alternative; importers who can but choose not to purchase from PS. The Ministry notes that while the two groups were contrasted in paragraph 447 they are not in any way promoted as the only two alternatives to describe importers within the market but merely the only two options that exist following the Ministry's conclusion on the level of trade for reasons discussed above.

449. The further that the Ministry's analysis moves from the point of entry of the dumped goods the greater the risk of price effects being disguised. For example an importer would be able to hide inefficiencies or take greater profits and still have a greater sales price than the equivalent ex-factory, or further downstream, price of the domestically manufactured product, being made possible only by the purchase of dumped goods. However, the Ministry is required to determine the point at which imported and domestic goods first compete on the New Zealand market. This point will depend on the circumstances of each case and does not preclude a finding in other circumstances that the relevant level(s) of trade could be at points further downstream than is the case in this investigation.

450. Euro Corp claims that the fact it does not make sales on an indent basis, as other importers do, indicates that they are at another level of trade. The Ministry, while accepting that indent sales can be indicative of a level of trade, is of the view that indent sales are in essence a delivery method and can for large customers provide importers with advantages. The Ministry believes in the present investigation the existence or non-existence of indent sales is not helpful in identifying the correct level of trade at which to compare prices for the purpose of price undercutting analysis. Therefore Euro Corp's prices will be compared at the ex-store level with PS's ex-factory prices.

Nauhria Building Supplies Ltd

451. Nauhria did not supply a full response to any of the Ministry's enquiries and did not make a specific submission on the level of trade issue. However some information was given by Nauhria, from which, in addition to information provided by PS and the Customs data several conclusions can be reached. First Nauhria's volume of purchases of rebar exceeds the minimum level that PS requires in order to become a customer. In the EFC the Ministry stated that Nauhria does not currently, nor has it at any time from 1999 to 2003, purchased rebar from PS, which places them in the same situation as Euro Corp. The Ministry further noted in the EFC that it was unaware of any attempts made either by Nauhria or PS to establish a business relationship for the sale and purchase of rebar. The EFC concluded given that, like Euro Corp, Nauhria is an independent business it may be that they would fail to meet the additional investment and distribution requirements of PS's rebar customer criteria. From the pattern of business observed, in addition to the evidence presented by other importers, Nauhria was treated by the Ministry as being in the same position as Euro Corp for the purposes of determining the correct level of trade at which to compare prices for the purposes of analysing price undercutting. Therefore prices in the EFC were compared at the ex-factory/ex-store level. A diagram of Nauhria's distribution network follows.



452. Following the EFC Nauhria contacted the Ministry with some additional information concerning its purchasing options. Nauhria confirmed that "years ago" it had purchased from PS and that PS is very eager for Nauhria to purchase rebar from it at any time, having approached it about 10 times. Nauhria indicated that the reason it does not currently purchase from PS is that it can import rebar at prices that are a minimum of NZD[redacted] cheaper than the prices that are offered by PS. Nauhria indicated that this price difference was due to its success in negotiations.

453. PS, at paragraphs 6-8 of its comments on the EFC, discussed the inappropiateness of the Ministry's level of trade comparisions for Nauhria stating that the conclusion was not based on any evidence. PS went on to describe the relations between it and Nauhria as having a "[redacted]" and that it understands Nauhria to "prefer not to…[buy] PS rebar." PS stated that as Nauhria describes itself as an importer it "has not made definitive repeated efforts to secure [Nauhria] business." PS contrasts this with a refusal to supply. The Ministry notes that lack of continued effort to obtain sales with Nauhria and combined with a [redacted] is not necessarily of itself a persuasive argument, however given that both PS and Nauhria agree that PS would supply Nauhria if it so requested the Ministry accepts this is the case.

454. As a result of these comments the Ministry believes that the correct level of trade at which to compare the prices of PS and Nauhria is at the ex-factory and ex-wharf level.

Conclusion on Level of Trade

455. Price undercutting analysis needs to examine the extent to which the prices of the dumped imports are affecting the prices of the domestically manufactured product in New Zealand. While the indicators of price undercutting may first become apparent to the domestic industry at the level of sales to customers or the end user this is not necessarily the correct point at which to compare the prices. The correct point at which the prices of the dumped product and the domestically manufactured product should be compared is the first point at which they compete in New Zealand. As competition is a term that relates to activities much wider than sales made to customers, it is not necessary that a sale is made by either party at the first point of competition, but rather that something occurs which triggers a competitive reaction by the other party engaged in the rivalry.

456. As PS uses an IPP method to establish its selling prices, imports compete (in an aggregated form) with the domestically produced product at an ex-wharf level. However as not all of the importers are able to purchase domestically manufactured product under PS customer criteria for these importers the competition does not become a point, rather than an aggregation, until the ex-store level.

457. For the purposes of price undercutting analysis prices of the following importers will be compared at the listed level of trade:

- Vulcan, SteelPlus, H J Asmuss and Nauhria: ex-wharf / ex-factory.
- Reo, Quail Glen, Kiwi Steel, M R Steel, and Euro Corp: ex-store / ex-factory.

Price Undercutting

458. Kiwi Steel, M R Steel, Reo and SteelPlus did not provide responses to the Ministry's questionnaire, or any other requested information that allows the Ministry to examine its imports for the purposes of price undercutting. Therefore no comparison has been made for these importers given that SteelPlus is the only one of these importers whose price could be compared at the ex-wharf level and for the other importers too many constructed values or estimates would need to be used. The Ministry notes that imports by the importers not included account for only 9 percent of the subject goods during the POI. The Ministry has based the price undercutting analysis on the prices of those importers who co-operated with the investigation and provided information to the Ministry.

Differences in Credit terms

459. When there are differences in credit terms between those of the importers and those of PS which directly affect the price, the Ministry makes an adjustment in order to reflect the true price of the product for the purposes of price undercutting comparison.

460. Adjustments will be made to the importer's prices where there is a difference in credit terms on the basis of the cost of credit available to, or extended by the importer (as applicable) during the POI. The length of credit extended and the transit time taken for the goods to reach New Zealand have been taken from information provided by the importers, exporters and the Customs data. The Ministry has not allowed any further time, from the transit time, for the subject goods to clear customs as it received advice from a customs consultant that goods are normally cleared within 30 minutes of the import entry being made. In addition the Customs website has a declaration that sets 24 hours as the standard processing time which makes it unlikely that goods would take longer than a day to clear Customs.

Pacific Steel

461. PS provides three credit alternatives to its customers. Its standard credit terms are 20th of the month following invoicing. There is a [redacted] percent rebate available if

payment is received within 7 days of [redacted] and a late payment fee of [redacted] percent is charged for payment that is outside the standard terms.

462. PS stated that its [redacted] use the [redacted] customers usually [redacted] and the remaining [redacted] customers use the [redacted] option. On a weighted-average basis credit is extended for [redacted] days which demonstrates that most sales are made under the standard credit terms.

Euro Corporation Ltd

463. As Euro Corp's price is being compared with that of PS at the ex-store level the basis of the credit, for which any adjustment may be made, is that which Euro Corp extends to its customers.

464. Euro Corp informed the Ministry that its cost of credit was [redacted] percent per annum over the POI and that it extends credit to its customers [redacted]. The Ministry did not request any further information on the credit terms that Euro Corp provided including the weighted-average length of credit provided to its customers, (the only reason such information was requested from PS was that there are 3 options which are available to its customers) as it is presumed that as there is no benefit for paying early payment will be left until close to the due date. The Ministry takes the [redacted] as equalling [redacted] days, as on [redacted] most sales [redacted], giving [redacted] days credit [redacted] allowed in the [redacted] All further references [redacted] will be taken to be equal to [redacted] days credit.

465. An adjustment has been made for differences in credit based on [redacted] days, being the difference between PS's [redacted] days and the [redacted] days offered by Euro Corp, at [redacted] percent.

Nauhria Building Supplies Ltd

466. As Nauhria's price is being compared with that of PS at the ex-wharf level the basis of the credit, for which any adjustment may be made, is that which Nauhria receives from its Malaysian supplier.

467. Nauhria did not supply any information in regard to the credit terms it receives, its cost of credit or the length of time it takes for its goods to arrive from Malaysia. As Nauhria and Gayathri did not supply the Ministry with any invoices in regard to subject goods imported during the POI the Ministry has (from the information provided by Euro Corp, Amsteel and Customs data), estimated the number of days credit that is extended to Nauhria as [redacted] and transit time as [redacted] days.

468. An adjustment has been made for differences in credit based on [redacted] days, being the difference between PS's [redacted] days and the [redacted] days received by Nauhria, at [redacted] percent, which is considered to be an appropriate cost of credit given the

prevailing interest rates during the POI and the information on cost of credit provided by other importers.

H J Asmuss Ltd

469. As H J Asmuss' price is being compared with that of PS at the ex-wharf level the basis of the credit, for which any adjustment may be made, is that extended to H J Asmuss by SCT.

470. H J Asmuss pays for the purchase of its goods [redacted]. From the Customs data and invoices provided it appears that the goods land in New Zealand 24 days from [redacted], therefore H J Asmuss receives [redacted] days credit from the date it receives the goods.

471. An adjustment has been made on the basis of [redacted] days credit, being the difference between PS's [redacted] days and the [redacted] days offered by SCT, at [redacted] percent per annum, which is the cost of credit H J Asmuss stated it had available during the POI.

Quail Glen Industrial Ltd

472. As Quail Glen's price is being compared with that of PS at the ex-store level the basis of the credit, for which any adjustment may be made, is that which Quail Glen extends to its customers.

473. Quail Glen stated that it offers credit to its customers until [redacted] and that its cost of credit is [redacted] percent. However Quail Glen also stated that some customers "[redacted] charged. Quail Glen did not provide any further information on what percentage of its customers pay on time and what percentage of its sales that relates to.

474. The Ministry has made an adjustment for the cost of credit based on the assumption that most of Quail Glen's customers pay according to the standard terms. An adjustment has been made for differences in credit based on [redacted] days, being the difference between PS's [redacted] days and the [redacted] days offered by Quail Glen, at [redacted] percent.

Vulcan Steel Ltd

475. As Vulcan's price is being compared with that of PS at the ex-wharf level the basis of the credit, for which any adjustment may be made, is that extended to Vulcan by SCT.

476. Vulcan purchases from its supplying mill via telegraphic transfer 30 days from the bill of lading date. Vulcan's imports over the POI had an average of 22 days in transit, providing 8 days credit from the date it receives the goods before payment is due.

477. An adjustment has been made on the basis of [redacted] days credit, being the difference between PS's [redacted] days and the 8 days offered by SCT, at [redacted] percent per annum, which is the cost of credit Vulcan stated it had available during the POI.

Rebates

Pacific Steel

478. PS stated that it offers no discounts to its customers but that it has a multi-tiered rebate scheme which includes rebates for the following; volume, loyalty, export, marketing fund, projects and payment terms.

479. The volume rebate is based on entire purchases from PS and is paid quarterly. It is calculated as sales for the quarter (expressed as millions of dollars) divided by [redacted]. It has a cap of [redacted] percent for normal customers and [redacted] for large customers, which is a defined term.

480. The loyalty rebate is set at NZD[redacted] per tonne and [redacted] of their rebar needs from PS, however [redacted] of their needs from PS.

481. The export rebate is given upon proof of export, which is usually the bill of lading. PS did not provide any further details of this rebate.

482. The marketing fund rebate is a dollar for dollar amount up to [redacted] percent of the customers gross sales revenue. Only two customers utilise this rebate and they actually invoice PS for their portion of the costs.

483. The project rebate is, while classified as a rebate, actually more akin to a discount. The project rebate is negotiated on a case by case basis [redacted]. PS estimated the value of project rebates in 2003 at around NZD[redacted] per tonne.

484. The payment terms rebate is as described in paragraph 461 above.

485. All of the weighted-average revenue figures that were provided by PS are net of rebates. Therefore adjustments only need to be made if importers have provided weighted-average figures that are gross, not net, of any rebates or discounts allowed.

Euro Corporation Ltd

486. As Euro Corp's prices are being compared at the ex-store level the discounts and rebates that are offered by Euro Corp are of relevance for the figure to be used for price undercutting analysis. Euro Corp stated that it offers a rebate to its key customers, which [redacted] the customer and Euro Corp. The rebate is a percentage of gross sales and is paid quarterly, unless otherwise negotiated.

487. Euro Corp provided the Ministry with a sample of its invoices to customers for certain import shipments during the POI that displayed gross amounts. These amounts were then compared to the weighted-average prices that were net of rebates and the Ministry concludes that the weighted-average sales figures provided by Euro Corp are net of all rebates therefore no adjustment needs to be made.

Nauhria Building Supplies Ltd

488. Nauhria did not supply any information that specifically addressed the issue of rebates or discounts. From the information that was provided the ex-wharf price given appeared to be a net price, and other exporters involved in the investigation stated that none of the sales to New Zealand are subject to any discounts or rebates, therefore no adjustment has been made for any rebates or discounts.

H J Asmuss Ltd

489. H J Asmuss stated that it does not receive any "discounts, settlement discounts, rebates or any other incentives" from its supplier this is supported by the copies of invoices and the responses to the exporter's questionnaire that was supplied by SCT. Therefore no adjustment has been made for rebates or discounts.

Quail Glen Industrial Ltd

490. Quail Glen did not supply any information that specifically addressed the issue of rebates or discounts that may be provided to its customers. However from the information given the Ministry believes that the prices provided by Quail Glen are net prices and therefore no adjustments for any rebates or discounts have been made.

Vulcan Steel Ltd

491. Vulcan Steel did not directly state that it does not receive any rebates but merely confirms its purchase prices as "net FOB and payment is 30 days from bill of lading date." Vulcan did not provide any copies of invoices from its supplying mill, instead providing the information from its customs agent that was provided in the form of a spreadsheet. This spreadsheet detailed most of the information that would appear on an invoice, apart from the invoice date, and the goods description was broader than that which appeared on the invoices. However copies of most of its invoices were supplied by SCT within its response to the exporter's questionnaire, which supported the information received from the customs agent. SCT stated that none of its New Zealand customers receive rebates or discounts, therefore the Ministry has made no adjustment to Vulcan's prices for any rebates or discounts.

Freight

492. When there are freight costs involved that directly affect the price, an adjustment should be made to reflect the true price of the product for the purposes of price undercutting to ensure a fair comparison.

493. PS delivers rebar into customer's stores, or in some circumstances [redacted], either by truck or rail. There is a separate freight charge for all customers and freight has a separate general ledger account as verified during the visit to PS.

494. PS has two charges for freight, one for the South Island at NZD[redacted]/MT and a standard charge for the North Island at NZD[redacted]/MT, the same charge applies regardless of which mode of transportation is used. PS has in the past attempted to [redacted] the freight [redacted], as illustrated in a request within quarterly pricing advice to customers, stating an [redacted] of freight. PS's response to queries from the Ministry in relation to this, was that this price increase, albeit for freight costs, was not accepted by customers and that freight is not included in the rebar price given nor is there any over-recovery of freight to increase the price of the rebar sold.

495. As the price charged for freight to customers is a standard charge any gathering of an increased selling price is spread across all customers. In respect of any extra-recovery of revenue that may be made upon the freight charges, the Ministry is of the opinion that the charges appear reasonable and as they are consistently applied the Ministry is not in a position to second guess the appropriateness of the freight charges.

Euro Corporation Ltd

496. The weighted-average price that was supplied by Euro Corp was a delivered price therefore the cost of freight was subtracted to provide an ex-store price. Euro Corp has provided the cost of freight at NZD[redacted] per tonne separately in its build-up to the weighted-average selling price and this was subtracted to provide a net ex-store price.

Nauhria Building Supplies Ltd

497. The cost build-up provided by Nauhria illustrated that the price it receives from Gayathri is a cost, insurance, and freight (CIF) price and the cost build-up included a separate cartage to store cost in its price build-up which was not included in the ex-wharf price.

H J Asmuss Ltd

498. The cost build-up provided by H J Asmuss included a separate cartage to store cost of NZD[redacted], therefore, this was extracted to provide a net ex-wharf price of NZD[redacted] per tonne.

Quail Glen Industrial Ltd

499. The cost build-up provided by Quail Glen was net of freight for which it provided a separate charge. Therefore no adjustment needs to be made to the price provided as it is already net of freight charges.

Vulcan Steel Ltd

500. The Ministry calculated a net ex-wharf price for Vulcan from the spreadsheet information it provided. The prices used are net of inland freight, therefore no adjustment needs to be made.

Pacific Steel's Ex-factory Prices

501. PS provided the Ministry with information on its ex-factory prices for each of its four rebar product category groups for the year ended 31 July 2003 both on a per tonne basis and as total dollar amount. These figures were provided net of rebates and freight to provide an accurate ex-factory price per tonne.

502. The Ministry has compared the importer's prices at the level of trade previously identified for each importer with PS's ex-factory prices.

Table 5.2 Price Undercutting: Euro Corporation Imports from [redacted]

Bar size	Euro Corp's ex-store Cost per tonne		PS's Ex-factory Price Per tonne		Price Undercutting Per tonne	
	Grade 300	Grade 500	Grade 300	Grade 500	Grade 300	Grade 500
Small rounds 10, 12mm	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Mid rounds 16mm	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Large rounds 25-40mm	n/a	[redacted]	[redacted]	[redacted]	n/a	[redacted]

503. Euro Corp provided weighted-average prices for both the grades across the three product categories, with the exclusion of Grade 300 large rounds, which it did not sell during the POI. From these figures deductions were made for freight charges and differences in credit terms.

504. As illustrated in Table 5.2, and consistent with submissions made by Euro Corp in relation to this investigation there is no evidence of price undercutting by Euro Corp as PS's prices are lower than those offered by Euro Corp.

Table 5.3 Price Undercutting: Nauhria Imports from Gayathri

Bar size	Nauhria's ex-wharf Cost per tonne		PS's Ex-factory Price Per tonne		Price Undercutting Per tonne	
	Grade 300	Grade 500	Grade 300	Grade 500	Grade 300	Grade 500
Small rounds 10, 12mm	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Mid rounds 16mm	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Large rounds 25-40mm	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

505. Nauhria provided a single ex-wharf price of NZD[redacted] per tonne for all product categories of both grades. From this an adjustment was made for differences in credit terms giving a net ex-wharf price of NZD[redacted], which shows price undercutting ranging from NZD[redacted] to NZD[redacted] by Nauhria.

Table 5.4 Price Undercutting: Vulcan Imports from SCT

Bar size	Vulcan's ex-wharf Cost per tonne		PS's Ex-factory Price Per tonne		Price Undercutting Per tonne	
	Grade 300	Grade 500	Grade 300	Grade 500	Grade 300	Grade 500
Small rounds 10, 12mm	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Mid rounds 16mm	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Large rounds 25-40mm	n/a	[redacted]	[redacted]	[redacted]	n/a	[redacted]

506. The Ministry calculated a net ex-wharf price for Vulcan to which was added an adjustment for differences in credit terms. As illustrated in Table 5.4 Vulcan's product is undercutting that of PS across all grades and categories in which it competes. The extent of the price undercutting ranges from NZD[redacted] to [redacted].

Table 5.5 Price Undercutting: Quail Glen Imports from SCT

Bar size	Quail Glen's ex-store Cost per tonne		PS's Ex-factory Price Per tonne		Price Undercutting Per tonne	
	Grade 300	Grade 500	Grade 300	Grade 500	Grade 300	Grade 500
Small rounds 10, 12mm	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Mid rounds 16mm	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Large rounds 25-40mm	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

507. Quail Glen provided the Ministry with an average net ex-store price of NZD[redacted] for all diameters and grades. The Ministry then made a deduction for differences in credit which gives an average net ex-store price of NZD[redacted], which shows no price undercutting by Quail Glen across any of the grades or product categories provided by PS.

Table 5.6 Price Undercutting: H J Asmuss Imports from SCT

Bar size	H J Asmuss' ex-wharf cost per tonne		PS's Ex-factory Price Per tonne		Price Undercutting Per tonne	
	Grade 300	Grade 500	Grade 300	Grade 500	Grade 300	Grade 500
Small rounds 10, 12mm	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Mid rounds 16mm	[redacted]	n/a	[redacted]	[redacted]	[redacted]	n/a
Large rounds 25-40mm	[redacted]	n/a	[redacted]	[redacted]	[redacted]	n/a

508. H J Asmuss did not provide a detailed price breakdown for each of PS's four product categories and provided only a price build up in its importer's questionnaire response for 12mm rebar averaged across both grades. When further information was requested from H J Asmuss it provided some anecdotal evidence that there was a NZD[redacted] difference between the two grades of rebar that it purchased, however this price comparison was of different length bars and it stated that the price difference was due to the difference in length and the freight

method that needed to be employed as a result of such. H J Asmuss stated that there is no difference in the price between the grades and that the cost-build up and selling price provided in its questionnaire response would apply to both of the prices subsequently given. As the information that was subsequently provided was not in a form which made it suitable to use for price undercutting analysis the Ministry has used the information that was provided in H J Asmuss' original questionnaire response and taken this as the cost for all three product groupings for the Grade 300 product and to the small rounds group for the Grade 500 product, as H J Asmuss stated that it does not sell any other sizes of the Grade 500 product.

509. The Ministry is unaware to what extent the prices provided by H J Asmuss are averages across all sizes, a weighted-average or a costing from one shipment of 12mm rebar. The variance in the price per tonne is likely to vary dependant on the diameter as illustrated by other information received yet the Ministry has no basis on which to make any adjustment to H J Asmuss' information and in light of the previous requests that have been made of H J Amsuss it is unlikely that any further information would be provided if requested.

510. Table 5.6 illustrates price undercutting by H J Asmuss across all the categories of rebar for which prices were compared. The extent of the price undercutting ranges from NZD[redacted] to [redacted].

Pacific Steel's Non-Injurious Price

511. In a situation where prices have been depressed or suppressed any price undercutting comparison using these prices will understate the level of price undercutting. In order to estimate the extent of price undercutting that would occur in the absence of dumped imports, the Ministry calculates an unsuppressed selling price.

512. The unsuppressed selling price refers to the price achievable in the absence of dumped product in the New Zealand market. The New Zealand industry's unsuppressed selling price is normally referred to as its NIP.

513. PS has submitted that the best method by which to calculate its NIP is to adjust pre-injury figures in 1999 by movements in the Producer's Price Index (PPI) Outputs indicator, in addition to making an adjustment for the introduction of the Grade 500 product in 2001 which sells at a higher price than other product grades. The NIP calculated on this basis is a net ex-factory price of NZD[redacted] per tonne across all grades.

514. During the investigation the Ministry advised PS that it was considering the appropriateness of calculating a NIP based on movements in the PPI, given:

- that no evidence had been provided that PS's rebar pricing prior to 1999 had moved in line with PPI changes; and
- evidence by PS of the "disconnectedness" between the price of billets and the price of rebar (i.e. rebar prices do not reflect the cost of billet from which it is manufactured), which could mean that the standard changes in

the PPI output levels may be affected by the difference in the cost of inputs and the selling prices achieved.

515. The Ministry also commented to PS that if it wished to provide information that correlated the movement in the PPI with its rebar selling prices for a period of several years prior to 1999, then this would be taken into consideration. PS did not, however, provide any evidence that prior to 1999 its rebar selling prices had moved in line with movements in the PPI.

516. The Ministry consequently considers that a NIP should be based on an IPP methodology and its considerations relating to such a methodology are set out below.

517. The Ministry also suggested to PS that as it uses an IPP to set its prices, price movements in imports (other than those from Malaysia and Thailand) would give a better indication of the prices it could achieve, as such non-dumped imports compete with its product and affect the prices it can achieve. The Ministry noted that PS had previously stated that it had no problem with competing with imports that are fairly priced such as those from Singapore.

518. Given the number of sources of imported rebar, the Ministry suggested to PS that the price of imports from the 3 largest sources of imports (excluding Malaysia and Thailand) could be used as a guide for the increase in price that would occur in the absence of dumped imports. The Ministry noted that the three largest such sources from 1999 to 2003 were Australia, Singapore and Indonesia, which accounted for approximately 50 percent of imports over this period.

519. In response to the matters outlined above, PS said that if there is a "disconnectedness" between the pricing of billets and rebar, then in a free market unaffected by dumped imports, the PPI which is more closely linked to output prices will give a better indication of likely movement in prices than input costs.

520. PS further stated that the Ministry's suggested approach of using the imports to create a NIP is basically flawed as it does not take into account the imports that are price setters within the market and the imports that are price followers. PS submitted that to use the prices of Australia is inappropriate as Australia has always been a price follower not a price setter and further noted that this may in part be due to the ANZCERTA agreement and the lack of barriers to reciprocal trade coupled with a desire to get the highest possible price. PS said as a result ". . . Australian market prices have always been marginally higher than others."

521. PS also said that its comments about competing with imports from Singapore were made because of the historically smaller volumes from Singapore and the fact that Singapore is also a price follower. PS noted that this in no way infers that imports from Singapore are not dumped. PS stated it is confident that the average price of imports since 1999 has been driven by the unfairly traded imports from three main sources, initially Indonesia and Thailand, and since 2001 Malaysia and Thailand. PS claimed that "Anti-dumping action has not been sought against Indonesia as while imports from there were undoubtedly dumped these imports ceased in late 2002, if they were to resume an application for anti-dumping remedies would be lodged."

522. PS stated that, while not accepting that a NIP based on an IPP is the correct method for this investigation, if the Ministry was to use this method then any calculation could not be based on the average price of imports from only one fairly traded source, namely Australia. PS opined it would have to be based on the average price of fairly traded imports from the price setting countries, namely Indonesia, Malaysia and Thailand.

523. PS submitted that with the recent lack of imports from Indonesia (which it claims have been replaced by imports from Malaysia) and because the NIP will be used to set remedies that will apply in the future, only imports from the most recent representative periods should be used. PS submitted "These would include Malaysia and Thailand and be based on the ex-factory normal values plus all applicable expenses, costs and duties etc between ex-factory and the level of trade at which the NIP is set."

524. In considering the submission by PS that its NIP should be calculated largely on the basis of adjusting its 1999 prices for movements in the PPI, the Ministry notes the following:

- The PPI is derived from a wide range of industry sectors which include those that have no connection with the manufacture of rebar, e.g. agriculture, forestry, fishing, mining, dairy products, textiles, apparel, paper and paper products, accommodation, cafes and restaurants and cultural and recreational services. Such a wide range of industry sectors are therefore unlikely to be subject to pricing changes similar to those that affect rebar manufacturing

- No evidence was presented to show that prior to the claimed commencement of injury from dumped imports there was any correlation between PS's rebar prices and changes in the PPI.

- A significant length of time has elapsed since 1999, making any correlation between the PPI and rebar prices over such a lengthy period more unlikely.

- PS itself uses an IPP method to set its own prices, rather than using any form of change in the PPI to gauge the extent to which it should change its prices, indicating that import prices drive the price of domestically produced rebar in New Zealand.

- There is global excess rolling mill capacity which has impacted on world prices of rebar as have increases in the price of scrap, which are unlikely to be reflected in movements in the PPI.

525. Taking the above factors into account, the Ministry considers that any PPI adjustment is likely to create a NIP that is neither realistic nor achievable and is therefore unlikely to represent a reasonable estimate of the prices that would have been achieved by PS in the absence of dumped imports from Malaysia and Thailand.

526. In its submission on the EFC PS stated that the Ministry should use the approach taken to reach a NIP in the dumping investigation into galvanised wire from South Africa, which used a pre-injury gross margin and applied that to costs

of manufacture and sale during the POI. PS did not develop this argument any further but calculated that the NIP under such a method was NZD[redacted]. In a meeting with PS the Ministry pointed out that there may be various changes in the market since 1999 that may make such a method untenable.

527. The Ministry notes that there have been several occurences within the market and product manufacture that would make a gross margin method as proposed in paragraph 526 unsuitable. First is the introduction of new Grade 500E product which is more expensive to manufacture; and as it competes with the cheaper tempcore manufactured product and in the absence of dumped imports, is unlikely to have been able to retain the margins achieved in pre-injury years. The improbabilty of pre-injury margins being obtained is further called into doubt by the expiry of the tempcore patents in Australia in the intervening period between the pre-injury 1999 year and the POI.

528. Further making a gross margin based NIP unsuitable is the sharp increase in the price of scrap that has ocurred since 2003 as outlined in paragraph 692. Given the increase in price of scrap and the corresponding international inability to raise finished product prices sufficently to offset the increased cost of scrap all manufacturers have experienced a reduction in the margins achieved. Hence using a pre-injury gross margin applied to the current cost of production would give PS a NIP that would be higher than what it could achieve in the absence of dumped imports.

529. At paragraph 19 of its response to the EFC, PS stated that using an IPP calculated NIP "…either definitively includes, or has the reasonable probability of including, the cost of dumped goods." The Ministry notes that the prices for Malaysia and Thailand it has used within the IPP calculated NIP are at undumped prices, and therefore the effect of imports from these sources have been raised to the same level as the effects from other sources, that is to non-dumped competition.

530. PS further stated that it was incorrect of the Ministry to conclude that all imports not subject to the investigation are not dumped and asserted that it has positive evidence to the contrary, involving imports from [redacted], and that it may consider filing a dumping investigation application against imports from that source in the future. The Ministry cannot in the absence of a dumping investigation conclude that imports from any source are dumped and therefore must in fact assume the contrary.

531. For the purpose of a price undercutting comparison with imports over the year ended 31 July 2003, the Ministry considers that a NIP should represent the price that PS would have achieved in the absence of dumped imports over the same period, rather than what it could currently achieve, to ensure that a fair comparison of prices is made.

532. The Ministry also notes that in the absence of an investigation that has concluded imports from Indonesia and [redacted] are dumped, it must treat imports from those countries as being undumped. The actual prices from Indonesia and [redacted] (rather than any adjusted price) will therefore be taken into account in applying an IPP methodology.

533. The rationale for PS's statements that Australia and Singapore are price followers is unclear. Such statements assume that if anti-dumping duties were put in place that effectively raised PS's selling prices that the prices of the Australian and Singapore product would follow the PS price upwards. Such a scenario presents a problem, it assumes that in order for prices to move up in such a fashion, the customers of the imported product are not price sensitive and will not switch sources in the event of a price increase in product from Australia and Singapore.

534. While issues of related ownership influence many of the purchase decisions, especially with the Australian imports, information has been presented in the course of this investigation that illustrates importers are price sensitive and will switch sources if the product becomes too expensive. This price sensitivity is somewhat tempered by the existence of the AS/NZ4671:2001 standard with its unique requirements, however evidence from the investigation indicated that the major difference in producing to this standard is the bar markings for the Grade 500 product and it does not in any way affect the basic product or the Grade 300 product.

535. The Ministry therefore does not accept that the price of rebar imported from Australia and Singapore should not be considered in assessing a NIP on an IPP basis.

536. PS argue that if an import based model is used to determine the NIP then it should involve the price setters of the market which it states are Indonesia, Malaysia and Thailand. The basis for PS declaring them price setters is unclear. However as the price setters are also among the countries with the lowest VFD per tonne it could be argued that they are price setters only by virtue of their prices and that if the dumped imports were extracted from the calculations that the extent to which they would be classified as price setters is less clear. A market in general will follow the source that has the lowest price for equivalent quality, therefore it is not the source that is the price setter rather a function of the price and the volume of product available that sets the price in the market.

537. Taking into account the matters outlined above, the Ministry considers that a NIP should be based on the import prices from Australia, Indonesia, Singapore, Malaysia and Thailand, with the prices available from Malaysia and Thailand being adjusted to an undumped level.

538. In considering how an IPP methodology should be applied to import prices from these countries, the Ministry has taken into account the basis on which PS applies this methodology in practice, as it is this practice that drives its price in the New Zealand market. PS calculates an IPP by establishing an average [redacted] to obtain a free-into-store cost. PS advised that the local premium is intended to represent the value of [redacted], which ". . . includes [redacted] PS said, however, the local premium is before rebates which vary from [redacted] to [redacted] percent, so the actual local premium it achieves is less than the [redacted] provided for in its pricing model.

539. In paragraph 456 the Ministry noted that PS's use of an IPP means that some form of competition is occurring at the ex-wharf level as a driver of the price of the domestically produced product. The Ministry also noted that for importers who do not also purchase from PS, competition is aggregated at the ex-wharf level with those imports from other sources. It was further noted, however, that this aggregation of competition did not alone justify the use of the ex-wharf level of trade for those importers who do not purchase from PS, as it could not be described as a point of competition.

540. The Ministry considers that in determining a NIP that is likely to represent the price that PS would achieve in the absence of dumped imports, given its IPP methodology, the calculation of a NIP should reflect the reality of the aggregation of competition from imports at the ex-wharf level, even though for some importers the first point of competition occurs at a different level of trade.

541. The Ministry therefore considers that the NIP should be based on the price at which undumped imports from Malaysia and Thailand, and imports from Australia, Indonesia and Singapore can be landed on the wharf in New Zealand.

542. Because the NIP will be compared to import prices for all of the POI, the calculation of landed on the wharf prices is based on the weighted-average normal values, of import prices over the same period, in order to ensure a fair comparison with import prices. The calculation of a NIP on this basis for price undercutting purposes does not preclude the calculation of a NIP based on the most recent normal values and import prices available for the purposes of establishing whether a lesser duty should apply (should anti-dumping duties be imposed).

543. The Ministry considered whether an adjustment should be made for the local premium that is incorporated in PS's IPP model. The Ministry notes that the actual premium achieved by PS is lower than the amount stated in its model because of rebates, which vary. The variability of the rebate indicates that the extent to which any premium would be achievable, should PS's prices rise in the future to a non-injurious level, is problematic. In the EFC the Ministry did not consider that an adjustment could be justified for a local premium. However in its response to the EFC PS stated at paragraph 21 that it was incorrect for the Ministry to not make an allowance within its NIP for the local premium content of PS's pricing "simply because it is problematic." The Ministry accepts that in principle, given its reasoning for using an IPP model to calculate the NIP, an adjustment should be made for the local premium.

544. The Ministry requested information from PS showing what the weighted-average rebates were for each product category and grade allowing it to calculate what premium was actually achieved by PS in 2003. The information provided by PS illustrated weighted-average rebates across the product categories and grades that ranged from [redacted] percent to [redacted] percent. Therefore as the allowance for the local premium within the IPP is [redacted] percent PS [redacted] any local premium in its pricing and the Ministry cannot make any adjustment to the NIP for the premium due to this. The Ministry did not receive any information from PS that indicated the local premium was [redacted] due to the presence of the dumped imports in the market.

545. The calculation of undumped prices from Malaysia, Thailand, Australia, Indonesia and Singapore landed on the wharf in New Zealand is set out below.

Imports from Malaysia

546. Table 5.7 shows the weighted-average normal value is that obtained from all of the normal values used to calculate dumping margins for Amsteel, weighted according to the volume of exports of the corresponding export transaction. The costs in RM used to build up the normal value from ex-factory are those supplied by Amsteel. Where those costs varied over the POI, the costs were calculated on a weighted-average basis, weighted according to the volume of exports.

547. The insurance and sea freight figures are weighted-averages calculated from Customs data over the POI for exports by Amsteel. Customs duty has been calculated at 5 percent of the estimated VFD. The figures for cartage to store, devanning fees, selling and administration and importer’s net profit were taken from figures provided by Euro Corp. The exchange rate used to convert costs from RM to NZD is the average interbank exchange rate over the POI taken from OANDA.

Table 5.7: Undumped Price of Rebar from Malaysia

Weighted-average Normal Value POI (RM)	[redacted]
Plus Costs from Ex-Factory to Wharf in NZ: (RM)	
- Export packaging and labelling	[redacted]
- Inland freight	[redacted]
- Wharfage and handling	[redacted]
- Communications charge	[redacted]
- Cost of credit	[redacted]
- Bar marking	[redacted]
- Customs costs	[redacted]
- Forwarding fee	[redacted]
- Documentation fee	[redacted]
- Taxes	[redacted]
Sub Total (RM)	[redacted]
RM/NZD Exchange Rate	2.01705
Sub Total (NZD)	[redacted]
Plus Costs from Port in Malaysia to Ex-store in NZ: (NZD)	

- Insurance	[redacted]
- Sea freight	[redacted]
- Duty @ 5%	[redacted]
- Port clearance fees	[redacted]
Undumped cost to ex-wharf (NZD)	[redacted]

Imports from Thailand

548. The weighted-average normal value in Table 5.8 is that obtained from all of the normal values used to calculate dumping margins for SCT, weighted according to the volume of exports of the corresponding export transaction.

549. The costs in THB used to build up the normal value from ex-factory are those supplied by SCT, except for inland freight which is based on information provided by PS (see paragraph 204) and bar markings as outlined in paragraph 211. Where those costs varied over the POI, or were applied to certain types of rebar, the costs were calculated on a weighted-average basis, weighted according to the volume of exports of each export transaction where the adjustment was made. The insurance and sea freight figures are weighted-averages calculated from Customs data over the POI for exports by SCT. Customs duty has been calculated at 5 percent of the estimated VFD. The figure for clearance and port service charges was taken from figures provided by Vulcan. The exchange rate used to convert costs from THB to NZD is the OANDA average interbank exchange rate over the POI.

Table 5.8: Undumped Price of Rebar from Thailand

Weighted Ave Normal Value in POI (THB)	[redacted]
Plus Costs from Ex-Factory to Wharf in NZ: (THB)	
- Inland freight	[redacted]
- Terminal handling charge	[redacted]
- Bar marking	[redacted]
- Container freight station	[redacted]
- Bill of lading	[redacted]
- Customs costs	[redacted]
- Cost of Credit	[redacted]
Sub-Total (THB)	[redacted]

THB/NZD Exchange rate	22.6745
Sub-Total (NZD)	[redacted]
Plus Costs from Port in Thailand to Wharf in NZ: (NZD)	
- Insurance	[redacted]
- Sea freight	[redacted]
- Clearance & port service charges	[redacted]
- Duty @ 5%	[redacted]
Undumped cost to ex-wharf (NZD)	[redacted]

Imports from Australia

550. The Ministry has calculated from Customs data the average CIF value per tonne of imports of goods of Australian origin over the year ended 31 July 2003 for all imports under the 19 tariff items and statistical keys that cover the subject goods. Fletcher Steel Ltd made [redacted] percent of imports by volume over this period. The inclusion of these imports in the calculation is not unreasonable as the prices that Fletcher Steel Ltd paid for the imported product appear to be in line with the prices that are paid by other importing entities from the same exporting entities.

551. It therefore does not appear from the import data that Fletcher Steel Ltd has any exclusive supply or purchase agreement with the Australian mills exporters from which it purchased, indicating that the prices paid are available on the market and hence will affect the prices that are paid by other importers who chose to import from the same source. The inclusion of imports by Fletcher Steel Ltd [redacted] the average CIF value per tonne by only [redacted] percent when compared to the figure obtained when its imports are excluded.

552. The average CIF value has been built up to an ex-wharf value by adding the cost of port clearance fees, which have been calculated by taking a simple average of this cost provided by Euro Corp and Vulcan. Qualifying goods of Australian origin enter free of customs duty and as nearly all imports over the year ended 31 July 2003 entered free of duty, no adjustment has been made for duty.

553. Table 5.9 shows the calculation of the undumped price for imports from Australia on the basis outlined above.

Table 5.9: Undumped Price of Rebar from Australia

Average CIF per tonne over POI (NZD)	[redacted]
Plus costs from CIF to wharf in NZ:	

- Port clearance fees	[redacted]
Cost to ex-wharf (NZD)	[redacted]

Imports from Indonesia

554. The Ministry has calculated from Customs data the average VFD per tonne of imports of goods of Indonesian origin over the year ended 31 July 2003 for all imports under the 19 tariff items and statistical keys that cover the subject goods. There were no imports by Fletcher Steel Ltd over this period. Nauhria [redacted] from Indonesia over the year ended 31 July 2003. Nauhria also imported from Malaysia over the POI and provided cost and profit information in relation to those imports. The average VFD has been built up to an ex-wharf value by adding the average cost of insurance and freight calculated from Customs data, the cost of port clearance fees taken from information provided by Nauhria, and Customs duty calculated at 5 percent of the average VFD per tonne.

555. Table 5.10 shows the calculation of the undumped price for imports from Indonesia on the basis outlined above.

Table 5.10: Undumped Price of Rebar from Indonesia

Average VFD per tonne over POI (NZD)	[redacted]
Plus costs from VFD to wharf in NZ:	
- Freight & Insurance	[redacted]
- Port clearance fees	[redacted]
- Duty @ 5%	[redacted]
Cost to ex-wharf (NZD)	[redacted]

Imports from Singapore

556. The Ministry has calculated from Customs data the average CIF value per tonne of imports of goods of Singaporean origin over the year ended 31 July 2003 for all imports under the 19 tariff items and statistical keys that cover the subject goods. Fletcher Steel Ltd made [redacted] percent of imports by volume over this period. For the reasons outlined in paragraph 550, the inclusion of these imports in the calculation is considered to be reasonable. The inclusion of imports by Fletcher Steel Ltd [redacted] the average CIF value per tonne by only [redacted] percent when compared to the figure obtained when its imports are excluded.

557. Nauhria was also a significant importer from Singapore over the year ended 31 July 2003 and the costs provided by Nauhria have therefore been used. The

average CIF value has been built up to an ex-wharf cost by adding the cost of port clearance fees provided by Nauhria.

558. Qualifying goods of Singaporean origin enter free of Customs duty and as the great majority of imports over the year ended 31 July 2003 entered free of duty, no adjustment has been made for duty.

559. Table 5.11 shows the calculation of the undumped price for imports from Singapore on the basis outlined above.

Table 5.11: Undumped Price of Rebar from Singapore

Average CIF per tonne over POI (NZD)	[redacted]
Plus costs from CIF to ex-store in NZ:	
- Port clearance fees	[redacted]
Cost to ex-wharf (NZD)	[redacted]

Calculation of Non-Injurious Price

560. A NIP has been calculated by weighting the ex-wharf costs from Malaysia, Thailand, Australia, Indonesia and Singapore by the volume of imports from each country over the year ended 30 June 2003. This calculation is shown in the table below.

Table 5.12 Non-Injurious Prices

	Undumped Price (NZD)	Imports y/e June 2003	Weighted-average (NZD)
Malaysia	[redacted]	3,869	[redacted]
Thailand	[redacted]	4,941	[redacted]
Australia	[redacted]	[redacted]	[redacted]
Indonesia	[redacted]	[redacted]	[redacted]
Singapore	[redacted]	[redacted]	[redacted]
Total		[redacted]	[redacted]

561. For the purposes of price undercutting comparisons, the NIP has been set at NZD[redacted] per tonne. The tables that follow compare the prices of importers, as used in the earlier price undercutting analysis and with the same adjustments, with PS's NIP.

Table 5.13 NIP Price Undercutting: Euro Corporation Imports from [redacted]

Bar size	Euro Corp's ex-store Cost per tonne		PS's Ex-factory NIP Price Per tonne		Price Undercutting Per tonne	
	Grade 300	Grade 500	Grade 300	Grade 500	Grade 300	Grade 500
Small rounds 10, 12mm	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Mid rounds 16mm	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Large rounds 25-40mm	n/a	[redacted]	[redacted]	[redacted]	n/a	[redacted]

562. Euro Corp's prices do not display any price undercutting when compared to PS's actual sell prices nor do they when compared to PS's NIP, as the PS prices are still lower than those of Euro Corp.

Table 5.14 NIP Price Undercutting: Nauhria Imports from Gayathri

Bar size	Nauhria's ex-wharf Cost per tonne		PS's Ex-factory Price Per tonne		Price Undercutting Per tonne	
	Grade 300	Grade 500	Grade 300	Grade 500	Grade 300	Grade 500
Small rounds 10, 12mm	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Mid rounds 16mm	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Large rounds 25-40mm	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

563. Nauhria's prices displayed price undercutting of NZD[redacted] to NZD[redacted] when compared with PS's actual sell prices, however when compared to the domestic industry's NIP price undercutting increases to NZD[redacted] per tonne.

Table 5.15 NIP Price Undercutting: Vulcan Imports from SCT

Bar size	Vulcan's ex-wharf Cost per tonne		PS's Ex-factory Price Per tonne		Price Undercutting Per tonne	
	Grade 300	Grade 500	Grade 300	Grade 500	Grade 300	Grade 500
Small rounds 10, 12mm	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Mid rounds 16mm	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Large rounds 25-40mm	n/a	[redacted]	[redacted]	[redacted]	n/a	[redacted]

564. Vulcan's prices displayed price undercutting ranging from NZD[redacted] to [redacted] when compared to PS's actual sell prices. The price undercutting range increases to NZD[redacted] to [redacted] when compared with PS's NIP.

Table 5.16 NIP Undercutting: Quail Glen Imports from SCT

Bar size	Quail Glen's ex-store Cost per tonne		PS's Ex-factory Price Per tonne		Price Undercutting Per tonne	
	Grade 300	Grade 500	Grade 300	Grade 500	Grade 300	Grade 500
Small rounds 10, 12mm	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Mid rounds 16mm	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Large rounds 25-40mm	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

565. Quail Glen's prices do not display any price undercutting when compared to PS's actual sell prices nor do they when compared to PS's NIP, as the PS prices are still lower than those of Quail Glen.

Table 5.17 NIP Price Undercutting: H J Asmuss Imports from SCT

Bar size	H J Asmuss' ex-wharf cost per tonne		PS's Ex-factory Price Per tonne		Price Undercutting Per tonne	
	Grade 300	Grade 500	Grade 300	Grade 500	Grade 300	Grade 500
Small rounds 10, 12mm	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Mid rounds 16mm	[redacted]	n/a	[redacted]	[redacted]	[redacted]	n/a
Large rounds 25-40mm	[redacted]	n/a	[redacted]	[redacted]	[redacted]	n/a

566. H J Asmuss' prices displayed price undercutting ranging from NZD[redacted] to [redacted] when compared to PS's actual sell prices. The price undercutting increases to NZD[redacted] when compared with PS's NIP.

Conclusion on Price Undercutting

Price Undercutting at actual PS prices

567. Of the Malaysian imports 96 percent of the imports assessed (which account for 88 percent of the total imports from Malaysia over the POI) were found not to be undercutting PS's prices.

568. Of the Thai imports 86 percent of the imports assessed (which account for 93 percent of the total imports from Thailand over the POI) were found to be undercutting PS's prices. The range of price undercutting was from NZD[redacted] to [redacted].

Price Undercutting at Pacific Steel's Non-Injurious Price

569. From the figures given in Tables 5.13 to 5.17 there is evidence of price undercutting of PS's NIP. Imports by Euro Corp and Quail Glen show no price undercutting when compared to either PS's current prices or its NIP. The Ministry notes that Euro Corp was the largest importer from Malaysia, it imported [redacted] percent of the subject goods from Malaysia during the POI.

570. Imported product sold by Nauhria did display price undercutting when compared to current prices and evidenced price undercutting of NZD[redacted] or [redacted] percent of the NIP. The Ministry notes that Nauhria was not a significant importer from Malaysia during the POI, accounting for only [redacted] percent of imports.

571. The Ministry concludes that there is no evidence of significant price undercutting by imports from Malaysia.

572. Imported product of H J Asmuss and Vulcan displayed price undercutting when compared to both PS's current sell prices and its NIP. The Ministry notes that Vulcan was the largest importer from Thailand, it imported [redacted] percent of the subject goods from Thailand during the POI. H J Asmuss imported [redacted] percent of total subject goods imports from Thailand during the POI. Combined imports by H J Asmuss and Vulcan account for [redacted] percent of total imports from Thailand which are illustrating price undercutting.

573. The Ministry concludes that there is sufficient evidence that imports from Thailand are undercutting the prices of the domestic industry.

Price Depression

574. *Section 8(2)(c) of the Act provides that the Chief Executive shall have regard to the extent to which the effect of the dumped goods is or is likely significantly to depress prices for like goods of New Zealand producers.*

575. Price depression occurs when prices are lower than those in a market unaffected by dumping, usually prices from a previous period.

576. PS stated it has had "to reduce its rebar prices in order to compete with the dumped imports", noting that it has had to "peg its rebar prices relative to import prices, which include the price of the dumped goods". PS stated that injury has occurred through price depression, and provided its average domestic ex-factory selling prices for its rebar for years 2000 to 2003 for the Grade 300, Grade 430, Grade 500 as well as a weighted-average price.

Table 5.18 Average Selling Price (NZD per Tonne)

	1999	**2000**	**2001**	**2002**	**2003**
Weighted Average Price	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Grade 300	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Grade 430	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Grade 500	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Increase/Decrease					
Weighted Average Price		[redacted]	[redacted]	[redacted]	[redacted]
Grade 300		[redacted]	[redacted]	[redacted]	[redacted]
Grade 430		[redacted]	[redacted]	[redacted]	[redacted]
Grade 500		[redacted]	[redacted]	[redacted]	[redacted]

Percentage Change				
Weighted Average Price	[redacted]	[redacted]	[redacted]	[redacted]
Grade 300	[redacted]	[redacted]	[redacted]	[redacted]
Grade 430	[redacted]	[redacted]	[redacted]	[redacted]
Grade 500	[redacted]	[redacted]	[redacted]	[redacted]

577. The Grade 500 product was introduced into the market as a regular product in September 2000 with the introduction of the new AS/NZ4671:2001 standard (but little of the new product was sold until July 2001) and at the same time the Grade 430 was phased out until April 2002. Therefore the prices of Grade 500 prior to 2002 and the prices of Grade 430 post 2002 cannot be seen as in the ordinary course of trade and isolated price effects of those grades in those years should not be taken as positive evidence of price depression, particularly the change in the price achieved for Grade 430 from 2002 to 2003.

578. PS told the Ministry that sales of Grade 500 did occur prior to its official launch in September 2000 but any such sales were small in volume. Likewise Grade 430 is still manufactured if a customer requests any and a small amount of the grade is held in stock. PS stated to the Ministry that the negative figure in percentage change to the price in 2003 for the Grade 430 product was due to a credit note.

579. Table 5.18 illustrates weighted-average unit prices decreased by [redacted] percent in 2000, which was followed by a smaller drop of [redacted] percent in 2001. In 2002 the price recovered slightly although only above the 2000 level and was still below the 1999 period not affected by the dumped goods. In 2003 the weighted-average selling price per tonne fell below the 2001 level and was the lowest price achieved since 1999.

580. The weighted-average price achieved in 2003 represents [redacted] percent of the 1999 weighted-average price, the 2003 price of Grade 300 is at [redacted] percent of the 1999 price for the grade, Grade 430 is excluded from any comparison of its 2003 price for the reasons given in paragraph 577 and the price that the Grade 500 product achieved in 2003 is compared to the 2001 price, when the grade was launched as a regular product, of which the 2003 price represents [redacted] percent.

581. There is sufficient evidence that prices were depressed in 2000, 2001, 2003. Prices were depressed in 2002 for Grade 500 product, however prices for the other grades and the weighted-average price were depressed only in comparison to the 1999 period as 2002 was the only year to register an increase in prices for the other three grades.

582. When comparing the 1999 prices to the Ministry's calculated NIP price depression would still be evident with the weighted-average selling price across all grades equalling only [redacted] percent of the same price in 1999.

Conclusion on Price Depression

583. PS's weighted-average selling price per tonne for rebar has fallen by [redacted] percent over the period 1999 to 2003. PS state that this is as a result of the Malaysian and Thai imports and is in no way attributable to the imports that are coming in from other sources. However based on PS's NIP, of the [redacted] percent decrease in the weighted-average selling price from 1999 to 2003 [redacted] percent of the price depression would occur at PS's NIP. Therefore price depression of [redacted] percent can be attributed to dumped imports, which is still significant.

584. Given the findings on price undercutting following paragraph 569, the Ministry concludes that the price depression effects can only be attributed to the dumped imports from Thailand and can not be attributed to the dumped imports from Malaysia, in addition to any other injury factors that are found.

Price Suppression

585. *Section 8(2)(c) of the Act also provides that the Chief Executive shall have regard to the extent to which the effect of the dumped goods is, or is likely significantly to, prevent price increases for those goods that otherwise would have been likely to have occurred.*

586. The Ministry generally bases its assessment of price suppression on positive evidence, in particular, the extent to which cost increases have not been recovered in prices. Cost increases not recovered in prices will be reflected in declines in gross profit and Earnings Before Interest and Taxation (EBIT) when expressed as a percentage of sales. Where costs savings have been made, the lack of any price increase will not normally be regarded as price suppression. While the inability to recover cost increases in prices is the main indicator of price suppression, the Ministry will consider any other factors raised as positive evidence of price suppression.

587. PS stated that "a progressive squeeze has occurred wherein the billet margin has progressively reduced." The billet margin is the difference between revenue and billet cost. PS notes that the scrap feed sold to it by a related company, Sims Pacific Metals, does not distort "the economics of production flow from scrap, through billet, into rebar." PS stated the lack of distortion of related party transactions is due to scrap being priced in a method that is an arm's length transaction and billet transfer price being at standard cost.

588. PS attempted to recover a portion of the electricity price increases in 2003 in the selling price per tonne. However customers responded stating that there was no mandate for the mill to pass on prices and ultimately the customers had to purchase rebar from a source whose purchase price would still allow its selling price to remain competitive.

589. Table 5.19 below shows PS's costs and gross profit relative to sales revenue.

Table 5.19 Price Suppression: Revenue, Costs and Gross Profit per Tonne

	1999	2000	2001	2002	2003
Ave. Selling Price	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Cost of Production	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Gross Profit	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
S & A Expenses	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Total Costs	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
As a % of Revenue					
- Cost of Production	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
- Gross Profit	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
- S & A Expenses	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
- Total Costs	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

590. Figures in Table 5.19 show that PS's cost of production per tonne decreased substantially in 2000 from 1999. Production costs per tonne then increased significantly in 2001 increasing slightly in 2002 and again in 2003 to a level much higher than in 1999. Therefore without any price suppression the average selling price would be expected to increase over the same period.

591. The increased costs are partially due to the introduction of the new Grade 500 product, which is more expensive to manufacture, and may also be due in part to the rising scrap prices. Cost of production as a percentage of sales revenue has increased every year, with the exception of a [redacted] percent decrease in 2002.

592. Consequently as costs of production have risen gross profit has declined with gross profit accounting for only [redacted] percent of the average selling price in 2003 as opposed to the [redacted] percent it occupied in 1999.

593. Selling and administration costs occupied [redacted] percent of revenue per tonne in 1999, and then fell by [redacted] percent in 2000 and a further [redacted] percent in 2002. In 2003 the selling and administration costs remained at the 2002 level, that is [redacted] percent of the average selling price.

594. The weighted-average selling price per tonne fell from NZD[redacted] in 1999 to NZD[redacted] in 2003. The weighted-average selling price did increase in 2002 but not to the extent required to recover increased costs of production per tonne with only a [redacted] percent improvement in the gross profit therefore still demonstrating price suppression. In 2003 the price achieved per tonne was lower than that received in 2001 and the increase in price from 2002 was not sustained with a [redacted] percent decrease in the weighted-average selling price accompanied by a [redacted] percent increase in the cost of production.

595. When comparing the costs of production to PS's NIP there would still be evidence of price suppression. Using the NIP, total costs would represent [redacted] percent of revenue, lower than the [redacted] percent it occupies when using actual prices but much higher than the 1999 figure of [redacted] percent.

596. Euro Corp stated in relation to the EFC that the comments made by SteelPlus at paragraph 44 regarding its loyalty to PS are intriguing. Euro Corp stated that its supplier had been approached by a foreign exporter for pricing and delivery details for a 1,500 tonne order of rebar for a project in Christchurch, which was won by Reo-Fab, part of the United Industries Ltd group. Euro Corp states that this query reflects the fact that PS is being injured by its own customers who are willing to purchase large quantities of dumped imports or to use the potential to do so to supress PS's sell prices, rather than being injured by Euro Corp.

Conclusions on Price Suppression

597. There is evidence indicating that prices have been suppressed since 2000. Price suppression has been displayed by the combination of decreasing weighted-average selling prices, and increasing total costs per tonne.

598. The comparison of total costs to PS's NIP indicates that factors other than dumped imports have been the cause of more than half of the price suppression. The price suppression which can be attributed to dumped imports is, however, still significant but for the reasons given following paragraph 569 cannot be attributed to the dumped imports from Malaysia.

Conclusion on Price Effects

599. Prices of the imported and domestically produced product's actual prices and NIP were compared for the year 31 July 2003 for the purposes of determining if price undercutting was occurring. There is evidence of price undercutting by 44 percent of the subject goods of PS's actual prices, largely by Thai imports and the percentage which display price undercutting when compared to PS's NIP is only slightly higher at 45 percent of subject imports over the POI. Only [redacted] percent of Malaysian imports undercut PS's NIP, therefore the Ministry concludes that any price effects cannot be attributed to dumped imports from Malaysia.

600. There is evidence of price depression and price suppression over the period 1999 to 2003 but, as noted above, this cannot be attributed to dumped imports from Malaysia. Prices are below those achieved in previous periods and increases in total costs have not been recovered in the selling prices. When PS's NIP is used for analysis both significant price depression and suppression would still be found to occur, but this analysis indicates that factors other than dumped imports have also contributed significantly to price depression and suppression. Reasons for these price effects are discussed in Section 5.6.

5.5 Economic Impact

601. *Section 8(2)(d) of the Act provides that the Chief Executive shall have regard to the economic impact of the dumped or subsidised goods on the industry, including—*

(i) Actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilisation of production capacity; and

(ii) Factors affecting domestic prices; and

(iii) The magnitude of the margin of dumping; and

(iv) Actual and potential effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments.

Output and Sales

602. Movements in sales revenue reflect changes in the volumes and prices achieved of goods sold. Dumped imports can affect both of these factors through increased supply of goods to the market and through price competition.

Output

603. PS has made no claims about production volumes, but has made claims it has lost sales volume due to the dumped imports. Given that PS manufactures to order a claim of loss in sales volume also corresponds to a claim of a decrease in output. PS has provided production figures for rebar for the New Zealand market.

Table 5.20 Output (Tonnes '000)

	1999	2000	2001	2002	2003
Rebar	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Increase/Decrease		[redacted]	[redacted]	[redacted]	[redacted]
Percentage Change		[redacted]	[redacted]	[redacted]	[redacted]
Change NZ market		[redacted]	[redacted]	[redacted]	[redacted]

604. The figures in Table 5.20 show that output for domestic consumption has fluctuated from 1999 to 2003 with a decrease in output for domestic consumption in 2000 but all other years experiencing an increase with the output in 2003 representing [redacted] percent of the 1999 output level.

605. PS's change in output in 2000 was [redacted] the decrease of the New Zealand market, in 2001 the increase in output was [redacted] the increase of the market, in 2002 PS experienced a gain in output when overall the New Zealand market contracted and in 2003 PS's increase in output levels was [redacted] percentage points above the market's expansion.

606. The New Zealand market contracted by [redacted] percent from 1999 to 2003 and PS has had an increase in domestic output levels of [redacted] percent over the same

period. This illustrates that any loss of output by PS has been in relation to the contraction of the New Zealand rebar demand and cumulatively over the period 1999 to 2003 the performance of PS has been better than the overall market performance. On this basis the Ministry concludes that no negative output effects can be illustrated.

Sales Volume and Revenue

607. PS claimed that sales volume has been lost because of the allegedly dumped imports. PS argues that if the dumped goods had not been in the New Zealand market "any other higher priced supply (such supply most likely being from PS) would have been sold in greater volumes". In other words, PS is arguing that, but for the dumping, its sales volumes would have been greater and that it has therefore lost sales equivalent to the volumes of dumped imports.

Table 5.21 Sales Volume and Sales Revenue

	1999	2000	2001	2002	2003
Sales Volume (Tonnes)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Increase/Decrease		[redacted]	[redacted]	[redacted]	[redacted]
Percentage Change		[redacted]	[redacted]	[redacted]	[redacted]
Change NZ market		[redacted]	[redacted]	[redacted]	[redacted]
Sales Revenue (000's)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Increase/Decrease		[redacted]	[redacted]	[redacted]	[redacted]
Percentage Change		[redacted]	[redacted]	[redacted]	[redacted]
Revenue per Tonne	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Increase/Decrease		[redacted]	[redacted]	[redacted]	[redacted]
Percentage Change		[redacted]	[redacted]	[redacted]	[redacted]

Sales Volume

608. The figures in Table 5.21 show that PS's sales volume decreased in 2000 from 1999, but then rose in 2001 to a level higher than in 1999. Sales decreased again in 2002 to below 1999 levels but remained above the 2000 levels. In 2003 sales volume rose to a level higher than in any of the four previous periods. The changes in sales volume experienced by PS must be considered in light of the changes in the New Zealand market. From 2000 to 2003 the changes in PS's sales volume, whether positive or negative, were better than the performance of the total market.

609. While there is evidence of a decline in sales volumes in 2000, the Ministry does not believe that any volume has been lost given that the dip in sales volume in

2000 has since been recovered and it occurred within a contracting market. From 1999 to 2003 PS's sales volume increased by a larger percentage than the New Zealand market did.

610. PS, at paragraph 23 of its submission on the EFC, stated that the Ministry had not accepted any volume displacement due to the lost sales caused by the dumped imports and referred the Ministry back to the arguments it had made within its application. The arguments referred to were that "import supply that is made available to the New Zealand market at a lower cost than the PS material, has replaced other supply that, ceteris paribus, would have most likely been made by PS." The argument can be described as but for the dumped imports higher sales volume would have been made by PS.

611. The Ministry has analysed the volume effect caused by the imports in relation to the level of trade at which importers compete with PS and the likelihood, in the absence of the dumped imports, of purchases of that rebar demand being made from PS. Given that the largest importer from Malaysia has been unable to purchase goods from PS, therefore, if the dumped imports had not been purchased that volume would have been replaced by imports from another source rather than PS. For the importers sourcing product from Thailand, as shown in paragraph 697 onwards, rebar from other non-dumped sources is available at a lower cost than PS manufactured product and therefore they would be the most likely source of an alternate purchase. The market share analysis from paragraph 620 shows that the increase in subject imports has occurred with a corresponding decrease in the other imports category, therefore it is the other imports that have lost volume as a result of the increase in the subject goods not PS.

612. PS has also adopted a strategy of retaining volume by competing on price and injury effects are therefore reflected in sales revenue decreases and loss of profit, rather than in volume effects.

Sales Revenue

613. Sales revenue decreased significantly in 2000 and recovered some of the loss in 2001, only to decrease again in 2002. In 2003 the sales revenue increased to the highest level since 2000 but is still below the sales revenue achieved in 1999. Most of the revenue fluctuations are directly linked to the corresponding tonnage sold. However the sales revenue per tonne declined significantly in 2000, falling further in 2001 but increasing in 2002. A further fall in price per tonne occurred in 2003 to a lower level than in 1999.

614. Sales revenue per tonne in 2003 was at [redacted] percent of its 1999 level, however PS's NIP places sales revenue per tonne at [redacted] percent of its 1999 level therefore only [redacted] percentage points of the drop may be attributable to the existence of the dumped imports.

615. There is evidence that total sales revenue has declined since 1999, although there was an increase in revenue in 2001 but not to the extent that it recovered to the pre-injury 1999 levels. Sales revenue per tonne has declined since 1999 with 2002 the only year in which the sales revenue per tonne increased

616. As there is no evidence of significant price undercutting by imports from Malaysia, the decrease in sales revenue experienced by PS, as a result of lower sales prices per tonne, can only be attributed to the imports from Thailand and not Malaysia, as the Malaysian imports can not be attributed with lowering the selling price of rebar in the New Zealand market.

Conclusion on Output and Sales

617. PS has not suffered any reduction in output in nominal terms over the period 1999 to 2003. Over the same period PS's output performance has changed relative to changes in the underlying market, with PS's performance exceeding that of the market.

618. The sales volume achieved by PS has fluctuated over the period 1999 to 2003 however the sales volume achieved in 2003 was greater than that experienced in 1999 in absolute terms. Relative to the performance of the New Zealand market sales volumes have mirrored output levels with PS's sales increasing by a larger percentage than the total market. Sales volumes have not been affected by the dumped imports.

619. Sales revenue has been negatively affected by the presence of the dumped imports from Thailand in the New Zealand market. Sales revenue is a function of the volume of product sold and the unit price achieved. As there have not been any negative effects on the volumes sold by PS it is evident that there have been negative effects experienced in the weighted-average selling price per tonne. Such a finding is consistent with the strategy adopted by PS to counter the dumped imports, that is, to maximise volume and lower prices to maintain market share and recover costs through volume rather than price.

Market Share

620. The analysis of market share must take account of changes in the growth of the market as a whole. A decline in the share of the market held by the domestic industry, in a situation where the market as a whole is growing, will not necessarily indicate that injury is being caused to the domestic industry, particularly if the domestic industry's sales are also growing. There is no "entitlement" to a particular market share.

621. PS claims that it has lost market share to dumped imports and that in turn has affected its ability to grow. PS accepts that while it is not entitled to any particular market share given the investment it has made in growing the market, via "[redacted]" it would expect to increase its market share as a result of these initiatives. While the Ministry accepts that by undertaking new marketing initiatives one would expect to gain market share it does not accept that this would grow the market for a commodity construction product such as rebar, where growth is driven by a variety of economic factors beyond a manufacturer's control. PS stated that all of the market growth has gone to the dumped imports.

Table 5.22 Market Share (Tonnes)

	1999	**2000**	**2001**	**2002**	**2003**
NZ Industry Sales	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Dumped Imports	4,447	7,709	3,853	6,928	7,901
Malaysian Imports	1,007	403	92	1,940	3,405
Thai Imports	3,441	7,306	3,761	4,989	4,496
Non-Dumped Subject Imports	478	778	384	758	909
Other Imports	19,349	10,771	17,751	10,222	[redacted]
NZ Market	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
As % of NZ Market					
NZ Industry Sales	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Dumped Imports	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
- Malaysian Imports	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
- Thai Imports	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Other Imports	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

622. Table 5.22 shows that the New Zealand industry's market share increased from [redacted] percent year upon year to [redacted] percent in 2003.

623. The market share for Thai imports rose substantially from the 1999 figures to [redacted] percent in 2000. Market share has since fluctuated with Thai imports holding [redacted] percent of the total New Zealand market for the 2003 year, up [redacted] percent from their 1999 market share.

624. The market share held by Malaysian imports was [redacted] percent in 1999, they maintained this level in 2000 and dropped to [redacted] percent in 2001. However market share occupied by Malaysian imports increased in 2002 and 2003 now accounts for [redacted] percent of the total New Zealand market in 2003.

625. The market share held by dumped imports in 2003 is [redacted] percent which is an increase from [redacted] percent in 1999.

626. The market share for other imports has fluctuated from [redacted] percent in 1999, decreasing in 2000, increasing close to 1999 levels in 2001 and falling again in 2002 to [redacted] percent. For the 2003 year Other imports held [redacted] percent of the total market share. Over the period 1999 to 2003 it is the Other imports category that

has lost market share with a drop of [redacted] percentage points from the market share held in 1999.

627. PS stated at paragraphs 13 and 16 of its submission on the EFC that the only reason that the businesses of Nauhria and Euro Corp have grown is due to the lower import costs. The Ministry notes that from 1999 to 2003 the market share held by dumped imports has increased from [redacted] percent to [redacted] percent and over the same time the New Zealand industry has experienced growth of [redacted] percentage points and during this period the New Zealand market has [redacted] by [redacted] percent. As Table 5.22 illustrates, any increase in the market share held by the dumped imports has been at the expense of other imports and not the domestic industry, which has experienced growth in a situation where overall the market is [redacted].

Conclusions on Market Share

628. There is not sufficient evidence that the New Zealand industry has suffered a significant decline in market share, in fact the evidence shows that PS has gained market share since 1999 with an increase of [redacted] percentage points.

Profits

629. Changes in net profit reflect changes in prices, sales volumes or costs and dumped imports can impact on any or all of these. Normally, the extent of any decline in profit will be measured against the level achieved in the period immediately preceding the alleged commencement of dumping.

630. PS claims that it has been injured by having to provide [redacted] to various [redacted].

Table 5.23 Earnings Before Interest and Tax (NZD000's)

	1999	2000	2001	2002	2003
Sales Revenue	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
EBIT	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
As % of Revenue	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Per Tonne EBIT	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
EBIT Change		[redacted]	[redacted]	[redacted]	[redacted]
% EBIT Change		[redacted]	[redacted]	[redacted]	[redacted]
Per Tonne Change		[redacted]	[redacted]	[redacted]	[redacted]
% Per Tonne Change		[redacted]	[redacted]	[redacted]	[redacted]

631. Table 5.23 shows EBIT declined significantly in 2000 to below its 1999 level. In 2001 EBIT decreased again. In 2002 EBIT rose above the 2001 level despite a

decrease in sales revenue, the increase in EBIT resulted from an increase in revenue per tonne greater than the increase in costs per tonne. However in 2003 EBIT fell to the lowest level since 1999 despite PS enjoying an increase in sales revenue. EBIT as a percentage of revenue was [redacted] percent in 1999 and in 2003 had dropped to [redacted] percent with EBIT per tonne at NZD[redacted]

Conclusion on Profits

632. The Ministry considers that there is evidence of a significant decline in profit, which is a reflection of the price depression and suppression that has been experienced by PS. However, as mentioned in paragraph 598, there may be other factors that have contributed to these price and economic effects.

633. The effects on profits cannot be allocated to the imports from Malaysia for the reasons outlined in paragraph 616. However there is evidence that the imports from Thailand have had a negative effect on PS's profitability.

Productivity

634. Productivity is the relationship between the output of goods and the inputs of resources used to produce them. Changes in productivity are affected by output levels and by the level of capacity utilisation.

635. PS has made no claims in respect of productivity. PS has provided productivity figures for its total operations, but not for rebar for domestic sale separately. The figures that PS has provided are in relation to entire bar operations, which includes both merchant bar and rebar that is manufactured for export. While this data is not ideal PS is unable to provide any further breakdown of productivity figures that relate solely to the manufacture of like goods. The Ministry believes the figures that were presented in relation to entire bar manufacture are likely to accurately reflect efficiencies of the individual bar products that comprise them. Productivity for PS's total operations is shown in Table 5.24.

Table 5.24 Productivity for Total Bar Operations (Tonnes 000's)

	1999	2000	2001	2002	2003
Tonnes Per Employee	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Increase/Decrease		[redacted]	[redacted]	[redacted]	[redacted]

636. Table 5.24 shows that overall output per employee has fluctuated. In 2000 the tonnes produced per employee decreased from the 1999 level but since has risen year on year to well above 1999 levels. The number of tonnes produced per employee in 2003 was at [redacted] percent of 1999 levels indicating the increase in productivity that has been enjoyed over the period.

Conclusion on Productivity

637. There is no evidence that productivity has been adversely affected by the dumped imports and there is in fact positive evidence that productivity has improved well above the 1999 pre-injury levels.

Return on Investments

638. A decline in return on investments will result from a decline in returns with or without a relative increase in the investment factor being used. Movements in the return on investments affect the ability of the industry to retain and attract investment.

639. PS claims that it has suffered a reduced return on assets, a decline in shareholders' funds and a declining return on shareholders' funds.

640. Table 5.25 shows changes in returns on assets employed in the production of rebar for the domestic market.

Table 5.25 Return on Assets ($000)

	1999	2000	2001	2002	2003
Average Assets	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
EBIT	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
EBIT as % of Assets	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

641. The figures in Table 5.25 show that return on assets fell from [redacted] percent in 1999 to [redacted] percent in 2000 and decreased further to [redacted] percent in 2001. The return then increased slightly in 2002 to [redacted] percent which was due to both a decline in average assets and an increase in EBIT. Return on assets decreased again in 2003 to [redacted] percent which was a combination of a [redacted] percent increase in average assets combined with an [redacted] percent decrease in EBIT.

642. Table 5.26 illustrates changes in returns on shareholders' funds employed in the production of rebar for the domestic market.

Table 5.26 Return on Shareholders' Funds ($000)

	1999	2000	2001	2002	2003
Average SF	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
EBIT	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
EBIT as % of SF	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

643. The Ministry questioned why the average shareholders' funds is higher than average assets for each period, as the reverse would be expected with assets

less liabilities equalling shareholders' funds. PS explained that the difference is due to a [redacted] that is included in the calculation of the average shareholders' funds but not within the average assets figure. The Ministry verified this information during its verification visit at PS.

644. Table 5.26 shows that return on shareholders' funds has decreased over the period 1999 to 2003. In 1999 EBIT was [redacted] percent of shareholders funds, which fell to [redacted] percent in 2000 and to [redacted] percent in 2001. In 2002 the return on shareholders funds increased to [redacted] percent this was however due to a [redacted] percent increase in EBIT levels, dampened only by a [redacted] percent increase in average shareholders funds. In 2003 the shareholders funds increased again this time by [redacted] percent, which was accompanied by an [redacted] percent drop in EBIT. In absolute terms average shareholders funds had its lowest point in 2001 since when it has been climbing. The return on average shareholders funds employed has decreased by [redacted] percentage points over the period 1999 to 2003 with only 2002 registering a positive change, although the extent to which the decrease appears is accentuated by the increased investment that occurred over the period as well.

Conclusion on Return on Investments

645. There is evidence of a significant decline in return on investments. As outlined in paragraph 616 there is no basis for allocating any of this decline to the imports from Malaysia, as there is no evidence of widespread price undercutting by dumped imports from Malaysia causing decreased revenue per tonne for PS. In turn the profitability effects which directly influence the return on investments cannot be linked to the Malaysian imports. There is evidence that the Thai imports have had a negative effect on the returns on investment for PS.

Utilisation of Production Capacity

646. The utilisation of production capacity reflects changes in the level of product produced, although in some cases it will arise from an increase or decrease in production capacity. A decline in the utilisation of production capacity will lead to an increase in the unit cost of production with overheads being spread across less units of manufacture, and a consequent loss of profit.

647. PS claimed that it has suffered reduced utilisation of production capacity as a result of the dumping.

648. Table 5.27 shows output of rebar for domestic consumption as a proportion of production capacity for all bar.

Table 5.27 Utilisation of Production Capacity (Tonnes 000)

	1999	2000	2001	2002	2003
Total rebar capacity	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Domestic rebar production	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
% of rebar capacity utilised for NZ market	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

649. Figures in Table 5.27 show that domestic rebar capacity utilisation increased from 1999 to 2003 as a result of a decline in domestic capacity and an increase in production.

650. There is no evidence of a decline in utilisation of production capacity by the manufacture of rebar for domestic consumption.

Factors Affecting Domestic Prices

651. The Ministry is not aware of any adverse economic impacts caused by the subject goods, or any other causes, relating to factors affecting domestic prices other than those listed above.

Magnitude of the Margin of Dumping

652. The magnitude of the margin of dumping can be a useful indicator of the extent to which injury can be attributed to dumping, particularly when it is compared with the level of price undercutting.

653. The weighted-average dumping margin for Malaysia is 9 percent and 13 percent for Thailand. The magnitude of dumping is relatively low and any injury impact caused by dumped imports would not necessarily be expected to have a large effect. Given that the majority of the subject goods are dumped, (at 88 percent from Malaysia and 91 percent from Thailand), and the volume of goods that are entering the market at dumped prices are significant enough in volume to change the supply characteristics of the market (accounting for [redacted] percent of the New Zealand market), the magnitude of the dumping margin indicates how large the effects will be. With a weighted-average dumping margin of 9 and 13 respectively the imports from Malaysia and Thailand are likely to cause a change in the market conditions, by lowering the price up to 13 percent, however as the dumped imports only account for [redacted] percent of the total market it is unlikely that any price effects would be to the full extent of the margin of dumping.

Other Adverse Effects

654. In considering other adverse effects, the Ministry considers actual and potential effects on cash flow, inventory, employment, wages, growth, ability to raise capital, and investments.

Cash Flow

655. PS has made no claim in respect of adverse impacts on cash flow. PS provided net cash flow figures for its total operation and allocated it to the production of rebar for domestic use on a percentage basis

Table 5.28 Cashflow (NZD 000's)

	1999	2000	2001	2002	2003
Domestic rebar cashflow	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Change domestic rebar		[redacted]	[redacted]	[redacted]	[redacted]
% Change domestic rebar		[redacted]	[redacted]	[redacted]	[redacted]

656. Table 5.28 shows the cashflow effects for the period 1999 to 2003. Given the basis upon which cashflow was allocated to the domestic rebar production the patterns of movement of the domestic rebar cashflow mirror those of the changes in the total net cashflow. 2000, 2001 and 2003 all recorded decreases in cashflow with the 2003 domestic rebar cashflow amount being only [redacted] percent of its 1999 level. 2002 was unusual in the fact that there was actually an increase in cashflow for that year. This is consistent with the [redacted] percent increase in the selling price per tonne that was achieved in 2002, which was coupled with a decrease in sales volume. The extent to which these cashflow effects are attributable to the presence of the dumped imports is unclear given the method of allocation of total net cashflow to the domestic production of rebar. However the patterns that emerge from the cashflow analysis are consistent with those that emerge from the price and volumes effects analysis.

Inventories

657. PS has made no claims in respect of inventories and does not have a continuous manufacturing process and is therefore able to manage inventory levels. PS manufactures to order, with its customers placing orders according to PS's published forecast rolling schedule. In 2002 PS made a deliberate effort to run down the level of inventories that it had on hand in order to improve cashflow. However most of the change in inventory levels was in relation to finished billet and not in relation to finished products, which it states are managed by the manufacture to order process.

658. In addition PS stated that any figures taken from the inventories figure is meaningless as it represents orders that have been manufactured but not yet delivered at balance date. However the Ministry also notes that small amounts of stock are built up with over-runs when production exceeds the amount required for an order. PS stated that the amount of any overruns is insignificant and does not contribute to inventory build-up. In addition since 2002 when PS introduced the retail 50-bar packs it has had this product available ex-stock. However the extent of these two components within the total inventories figure is unknown.

Table 5.29 Inventories ($000)

	1999	2000	2001	2002	2003
Finished goods (at balance date)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Change		[redacted]	[redacted]	[redacted]	[redacted]
As a % of 2000	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Finished Goods as % sales revenue	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Finished Goods as % production	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

659. Figures in Table 5.29 shows that inventory levels rose sharply in 2000 when the injury is alleged to have commenced. However inventories declined in 2001 to represent only [redacted] percent of production of like goods. In 2002 inventory levels rose to [redacted] percent of the production of like goods. For the 2003 year there was a substantial increase in inventories of finished goods that represented [redacted] percent of production of like goods, but also [redacted] percent of the finished goods for 2000.

Conclusion on Inventories

660. Given that the majority of inventories is comprised of orders that have been manufactured but not yet delivered and that over-runs do not contribute to inventory build-up in any substantial way, the patterns taken from the inventory figures are meaningless. The impact of holding the retail 50-bar packs as ex-stock is hidden within the total inventory figure and therefore the Ministry cannot determine to what extent any inventory effects for that product exist.

Employment and Wages

661. PS stated that [redacted] PS stated that the injury caused to it by dumping “has been significant enough to [redacted], and as a result places the [redacted]

662. PS stated it was making no claim of injury in relation to employment and wages. In response to the Ministry’s comments that over the period 1999 to 2003 there had been a drop in employee numbers by [redacted] but a corresponding increase in average wage of NZD[redacted] per employee PS stated that the rise was relative to the increase in the PPI over the same period and that as its staff are highly specialised an average salary of NZD[redacted] did not seem unusual.

663. Employee figures given are full time equivalent figures and exclude fixed-term, contract and temporary workers. Shared services staff (staff who work for both

PS and Pacific Wire in the Fletcher Steel Shared Services Department) are also excluded from these figures.

664. PS initiated a bonus regime for staff in 2000 and in 2002 the basis upon which it was awarded was changed to an amount based upon the tonnes produced per hour. PS stated that without these bonuses the efficiency savings that have been made would not have occurred.

Table 5.30 Employment

	1999	2000	2001	2002	2003
Employees	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Increase/Decrease		[redacted]	[redacted]	[redacted]	[redacted]
Percentage Change		[redacted]	[redacted]	[redacted]	[redacted]

665. Figures in Table 5.30 show that employment numbers fell in 2000 by [redacted] percent but then rose in 2001 to levels higher than in 1999. 2002 saw employee numbers decrease back to 2000 levels, below the number of employees in the non-injury period of 1999. In 2003 the employee numbers fell by a further [redacted] percent.

Conclusion on Employment

666. There has been an overall decline in the number of employees making rebar. However the extent to which that decline is attributable to the subject imports is unclear, as during the same period PS has achieved significant efficiency gains and has a higher level of automation in 2003 than in previous periods. In addition the reduction in the numbers employed may be distorted by those personnel now being employed via one of the methods that is precluded from the employee numbers as described in paragraph 663. The Ministry concludes that there have been no negative effects on employment.

Growth

667. PS claimed that the dumped imports have affected profit levels and therefore had an adverse impact on growth. No further information was provided on this injury factor. The Ministry concludes there is no evidence of an adverse impact on growth as a result of the imports.

Ability to Raise Capital

668. PS claims that Fletcher Building Ltd's (FBL) hurdle rate for investment is [redacted] percent and that PS needs to obtain that level of return on investment in order to raise any further capital from the company. However stay in business capital expenditure is allowed when the hurdle rate is not achieved but this is not a FBL defined term and equates to a method of persuading FBL to the necessity of PS's capital expenditure requests. Basically this equates to any capital expenditure being allowed to occur so long as it relates to the operation of the current

business in terms of products and volume, that is, no growth related capital expenditure is allowed without reaching the [redacted] percent return hurdle rate of FBL. Health and safety capital expenditure has also occurred without the hurdle rate being achieved. Another exception to the [redacted] percent hurdle rate is projects that are below NZD[redacted] and have a payback period of [redacted] months or less.

669. Specific examples of capital expenditure that have been declined were presented to the Ministry. In particular there has been a request for a new notch miller, to replace the 1958 one, and also a bar counting machine to help compete with the imported product presentation. Both of these requests appear in 2000 capital expenditure plans and are still in the 2004 year capital expenditure plan as neither of these projects have yet occurred. PS also claims that [redacted] by FBL. When questioned on the nature of the [redacted] the response was that the [redacted].

670. Capital expenditure is approved in principle by FBL against the budgets but the operating division must generate its own (surplus) cashflow to fund the investment. Additionally any projects NZD[redacted] or larger have to be approved by the FBL Major Investment Project Subcommittee.

671. PS stated that a sound business might expect to initiate capital expenditure at [redacted] percent of its annual depreciation costs in order to replenish its asset base. PS currently is investing in capital expenditure at [redacted] percent of its depreciation costs therefore the asset base of the business is [redacted] due to [redacted] of funds invested. PS did acknowledge however that large scale capital expenditure is "lumpy" in the steel industry and would not occur very often.

672. Average shareholders funds in Table 5.26 illustrate, that while there was a drop in equity in 2000, the average shareholders funds have been increasing every year since. The Ministry has no further information as to the nature of the increases in average shareholders funds over the period 1999 to 2003 but such an increase may indicate that growth related investment has occurred via an injection of capital into the business.

673. There is evidence that some capital expenditure has not taken place, but it is unclear to what extent, if at all, this can be attributed to dumped imports.

Investments

674. PS has made no claims in relation to investments and correspondingly the Ministry concludes there is no evidence of an adverse impact on investments.

5.6 Other Causes of Injury

675. *Sections 8(2)(e) and (f) of the Act provide that the Chief Executive shall have regard to factors other than the dumped goods which have injured, or are injuring, the industry, including—*

i. *The volume and prices of goods that are not sold at dumped prices; and*

ii. *Contraction in demand or changes in the patterns of consumption; and*

iii. *Restrictive trade practices of, and competition between, overseas and New Zealand producers; and*

iv. *Developments in technology; and*

v. *Export performance and productivity of the New Zealand producers; and*

vi. *the nature and extent of importations of dumped or subsidised goods by New Zealand producers of like goods, including the value, quantity, frequency and purpose of any such importations.*

Introduction

676. In considering whether factors other than dumping have had an adverse impact on the New Zealand industry, the Ministry does not need to be satisfied that factors other than dumping have not been a cause of injury to PS, and must only be satisfied that dumping has been a cause of material injury to PS. Dumping therefore does not need to be the only cause of material injury, or even the major cause of material injury, simply a cause of material injury. However where economic indicators show that an industry has suffered injury, if factors other than dumping have been the real cause of the injury, it is important that such injury not be attributed to dumping.

677. When examining injury, the Ministry normally seeks to review data over a period both before and after the time period when injury due to dumping is alleged to have commenced. Data over a period before the commencement of injury then serves as a baseline against which subsequent performance can be measured. In dumping investigations it is usual that the onset of injury claimed by an industry occurs within a reasonably well-defined time period and this is demonstrated by declines in various economic indicators. If it is claimed that factors other than dumping are the cause of that injury then those other factors could be expected to have had a particular impact within the period when the economic indicators show the onset of injury. If there are factors other than dumping causing injury to an industry, but those other factors have been constant over the period under review, then it is unlikely that the onset of injury could be attributed to those other factors.

Factors Other than Dumping

678. PS points to no other specific causes of injury than the dumped imports that have caused injury, and comments that any effect of recently increased electricity prices on it would only affect financial periods after those in the investigation and stated that the negative effects of the electricity crisis were offset by the large productivity gains PS achieved. PS supplied the Ministry with information as requested on the matters discussed below but stated that the dumped imports are the only cause of the injury that is demonstrated by the long-term price decrease experienced by PS.

Developments in Technology and Method of Manufacture

679. Suggestions were made by importers that PS is injured by the method of production that it utilises, that is, to manufacture its Grade 500 product via the micro-alloy method rather than utilise the cheaper and newer tempcore manufacturing technology. Vulcan stated that the mill used by PS is outdated and inefficient.

680. PS stated that it did not believe that any of the technology advances were significant enough in nature to grant any mills who have incorporated the newer technology into their plants any advantage, in particular any mill subject to this investigation in Malaysia and Thailand. PS stated that its manning levels are efficient by world standards and that its overall equipment efficiency was improved by [redacted] percent in 2001 and [redacted] percent in 2002, which it believes more than compensates for any technological advancements. PS does not see the micro-alloy method of manufacture as obsolete, however it did present the Ministry with evidence that illustrated a tempcore plant [redacted]

681. The Ministry did not see any evidence of efficiency or technology that showed PS was inefficient to the point of causing injury to its business. Discussions with a manufacturer in Malaysia, an importer and PS established an approximate figure for the additional cost of micro-alloy production versus tempcore production. PS stated the cost of micro-alloying is around NZD[redacted] more per tonne expensive to manufacture, Nauhria indicated it was around NZD[redacted] more expensive and Amsteel stated extra cost is around USD[redacted] per tonne. It is important to note that the distinction between micro-alloy and tempcore only applies to the Grade 500 product and the Grade 300 'mild steel' is produced without using either of these methods of manufacture.

682. As there is little distinction between the end products from the alternate methods of manufacture PS, like any micro-alloy producer, is unable to charge a premium for the product in the market as it must compete with rebar manufactured via the tempcore method with its associated lower cost of production and ability to obtain profits at a lower selling price. Therefore any decreases in EBIT and cost of production may be exaggerated due to the introduction of PS's Grade 500E product. Table 5.23 illustrates an [redacted] percent decrease in EBIT in 2001 when the Grade 500E became a regular product. Table 5.19 shows a corresponding increase of [redacted] percent in the cost of production in that same year.

683. Both of these changes illustrate an identifiable negative effect to PS from the introduction of the Grade 500E product, as the additional cost of vanadium which is required for its manufacture increased the costs of production, which also reduced the EBIT for the period. Given that micro-alloy products must compete in a market that also contains tempcore produced product it is unlikely that any manufacturer with the absence of dumped imports would be able to manufacture product via a micro-alloy method without producing negative EBIT effects.

Distribution Network

684. Some importers involved in this investigation commented that the method by which PS sells its product is causing injury to the business. Such a statement is a reference to both the minimum tonnage requirements of PS's customer criteria and the extent of vertical integration that occurs within the New Zealand market for rebar materials.

685. PS restricts the customers that it deals directly with by a minimum tonnage requirement for rebar customers, meaning that customers below a set annual tonnage must approach one of PS's downstream customers in order to purchase PS manufactured product. Importers stated to the Ministry that it is does not make business sense to purchase from an intermediary when they can import and purchase directly from the mill, with the same tonnage that PS will not accept. The Ministry while noting the point of importers in regard to direct sales does not view the customer criteria as a cause of injury to PS, as like any customer criteria, it involves weighing up business advantages with disadvantages and the Ministry is not in a position to question the reasoning of such criteria.

686. The vertical integration that occurs within the New Zealand market with the corresponding effects on the Australian market was also raised by several importers. Claims were made of standards capture, [redacted] by the Australasian industry as a whole. Importers allege that if these arrangements were not in place then PS would be free to sell to them and could obtain sales of rebar that is currently being exported as excess capacity for a selling price that is higher than that which is being gained in the export market.

687. The Ministry while mindful of the comments that have been made in this regard has not been provided with any evidence of any such arrangements and cannot undertake any analysis based upon these suggestions without any evidence to support them. It is worth noting that if a business makes a decision that it will not supply a customer in order to protect the supply of a larger customer that cannot be deemed a cause of injury and in fact is often the most astute business practice that could be followed.

688. Vulcan made a related claim that it is the intense competition at this next level of the market, that is between the fabricators and distributors that is driving rebar prices in New Zealand downwards and has nothing to do with the existence of dumped imports. Vulcan made another claim that PS's use of the project pricing rebate has caused it injury, as PS is often forced to make sales via this method that are either at a very low margin or at a non-profitable level. The Ministry has insufficient evidence on either of these claims to make a finding.

Product Delivery Programme

689. Several importers raised PS's forecast ordering requirements as harmful to customer's interests. PS require customers to order their rebar requirements 4 weeks (and sometimes more) in advance of delivery. Importers stated that this rolling cycle production schedule, based upon quarterly estimates, is inflexible and makes it extremely difficult for PS customers to accurately determine the

quantities of product they will require, especially when an unexpected boom or project arises and in these circumstances regular PS customers must search for alternate sources of product.

690. PS described the rolling schedule ordering system as being of benefit to its business as forecast accuracy has improved and allows for greater planning and budgeting. While the Ministry accepts that there may be short-term sales loss to PS as a result of its customers incorrectly forecasting their orders, PS believe that its product delivery programme is beneficial in the long-term and no evidence has been provided by any importers that any PS customers have switched to buying imported product in the long term because of the production schedule and its corresponding effects.

691. The Ministry is satisfied that no injury is being caused to PS by the use of its product delivery programme.

Rising Cost of Scrap

692. As Table 5.31 illustrates in 1999 the cost of scrap constituted [redacted] percent of total billet cost, which increased to [redacted] percent in 2000, rose to [redacted] percent in 2001, in 2002 had increased to [redacted] percent and for 2003 was at an all time high of [redacted] percent of total billet cost. It is worth noting that for 2003 the standard cost per tonne for scrap is [redacted] percent of billet cost, the same standard costing that was used in [redacted]

Table 5.31 Scrap Input Costs

	1999	2000	2001	2002	2003
Scrap Cost	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Average selling price	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Change in scrap cost		[redacted]	[redacted]	[redacted]	[redacted]
Scrap cost as % of total billet cost	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Scrap cost as % of average selling price	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

693. Foreign manufacturers that the Ministry spoke to during the investigation all mentioned the rising cost of scrap as a factor that was currently constraining the profitability of rebar manufacturers worldwide. Scrap prices are considered to be at an all time high, as a result of the high demand for scrap in China combined with export restrictions and duties in other high-demand scrap countries. From the information available to the Ministry it seems that there is no evidence that scrap prices will fall in the near future as the Chinese demand is forecast to remain high.

694. In addition to the price of scrap being high there is a global excess of rolling capacity which means that re-rollers have to push up the tonnage produced to

recoup the costs of production and lower the overheads per tonne, which often means that profitability only comes with high volumes. As a result the cost of scrap makes the billet input expensive and the excess of rolling capacity means that prices are low and mills attempt to achieve profitability by pushing production as high as possible, resulting in large amounts of rebar available at low prices. PS termed this situation “disconnectedness.”

695. The extent therefore to which the price suppression and depression is due to dumped imports rather than the increasing price of scrap and the corresponding “disconnectedness” of the selling price for rebar is lessened. The Ministry believes the way in which the global market for rebar operates as defined in paragraph 693 when combined with increases in the price of scrap will necessarily emphasise the extent of any injury effects to the domestic industry that may be caused by the dumped imports.

696. Any economic effects, such as profitability and return on investment, would be negatively affected in a situation of increasing scrap prices and excess global rolling supply without the existence of any dumped imports. Hence the [redacted] percent decrease in EBIT from 1999 to 2003 has to be linked to the [redacted] percent increase in the cost of production per tonne. Information from foreign manufacturers and exporters, as well as the Ministry’s own research, indicated that scrap prices began to rise steeply in 2002. It is worth noting that since 2002 PS has incurred an increase in the scrap cost per tonne of [redacted] percent, which has magnified the decrease in EBIT over the same period.

Non-dumped Imports

697. PS claims that it has not been harmed by non-dumped imports. Imports from sources other than Malaysia and Thailand vary in their market share from [redacted] to [redacted] percent over the period 1999 to 2003 as shown above in Table 6.26. Other imports held [redacted] percent of the total market in 1999 declining in 2000, increasing in 2001 although not to 1999 levels and then falling to [redacted] percent of the total market in 2002. For 2003 other imports held [redacted] percent of the market, the same level as in [redacted].

698. Vulcan claimed that the price PS achieves for its sales of rebar are still well above the average global price and that in effect the application by PS for a dumping investigation equated to PS being not willing to face import competition.

699. PS stated at the time of the verification visit that it was not concerned with imports that came from other sources, specifically highlighting those from Singapore stating that such imports are at ”fair prices” and that competition from imports from other sources was not harming them. However in a subsequent submission regarding the correct method by which to determine a NIP PS stated that the only reason it can compete with the imports from Singapore is “…because of the historical low volumes and the fact that Singapore is also a price follower.” PS also stated that it “has not ruled out requesting anti-dumping measures against [Singaporean] imports if import volumes were to increase.” This statement contradicts the Customs data, which does not indicate the import volumes from Singapore as low when compared to the size of the New Zealand market, and PS’s earlier comments during the Ministry’s verification visit.

700. PS stated at paragraph 20 of its submission on the EFC that its "… original statement about fair trade and Singapore were introductory remarks and were [not] intended to reflect a view by [PS] that Singaporean rebar was not or is not dumped." The Ministry accepts that PS has, since making its earlier comments on imports from Singapore, clarified its position in regard to imports from that source, however as stated in paragraph 529 unless evidence to the contrary exists (in the form of a positive finding from a dumping investigation) the Ministry cannot treat imports from other sources as dumped. The Ministry does not believe that the fact that PS may be considering presenting an application for a dumping investigation for imports from Singapore is sufficent to counter any analysis.

Table 5.32 Other Imports

	1999	2000	2001	2002	2003
Other Imports	19,349	10,771	17,751	10,222	[redacted]
Total NZ Market	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
% of Total Market	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

701. Given that PS has not lost market share due to market price movements initiated by the subject goods over the period 1999-2003, as shown in Table 5.22, it is the Other Imports group that has lost substantial market share.

702. From the Customs data obtained by the Ministry the main sources of imports from other sources for 2003 were Australia, Indonesia and Singapore, who comprised 38, 2 and 18 percent of the Other imports respectively. Table 5.33 below shows the relevant tonnes and VFD's in NZD for those three countries when combined total 58 percent of the other imports for the 2003 year.

Table 5.33 Other Sources Substantial Imports

	Tonnes	Tonnes as % of Other	NZD VFD/ tonne	VFD% of Other	NZD above dumped goods VFD
Australia	[redacted]	38%	[redacted]	87%	348
Indonesia	[redacted]	2%	[redacted]	54%	6
Singapore	[redacted]	18%	[redacted]	59%	57
Total Other sources	[redacted]	100%	[redacted]	100%	480
Malaysia & Thailand	[redacted]	65%	[redacted]	54%	

703. As shown in Table 5.33 imports from Indonesia account for 2 percent of imports from other sources and have an average NZD VFD which is only NZD6 above the average VFD of the subject goods. However the imports from Singapore, which PS has specifically stated as being fairly priced have an average NZD VFD of NZD57 above the average NZD VFD of the dumped goods

704. Australian imports occupy the largest percent of any of the import sources for rebar occupying 38 percent of the other sources imports for the 2003 year and 23 percent of the total imports for the same period. The Australian imports are the largest in terms of volume, however they have an average VFD NZD348 above that of the dumped goods as illustrated in Table 5.33.

705. The Ministry concludes that non-dumped imports have had a significant effect on the price that PS has been able to achieve over the period 1999 to 2003. This is illustrated by PS's use of an IPP which takes into account the imports from all sources. In addition the price suppression and depression analysis carried out by the Ministry shows that PS's NIP would have still suffered negative effects in the absence of dumped imports, the reason for which is the existence of non-dumped imports and the prices at which they are available.

Imports by the New Zealand industry

706. Customs data shows PS has imported large volumes from [redacted] over the period 1999 to 2003 [redacted] tonnes in total.

Table 5.34 Pacific Steel's [redacted] Imports

	1999	2000	2001	2002	2003
Tonnes Imported	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Domestic Production	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Imports as % of domestic production	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

707. PS has also imported like goods from [redacted] over the period 1999 to 2003, however has not imported any subject goods from Malaysia or Thailand.

708. The Ministry believes that the imports made by the domestic industry were minimal in relation to overall import volumes for the same period and no imports of the subject goods have been made. While the domestic industry has excess capacity the level of imports in no way indicates that imports are necessary in order for the domestic industry to meet the demand of the New Zealand rebar market.

Export Performance

709. PS has provided figures for production for exports and the financial information provided relating to domestic production and sales of rebar does not include financial information relating to exports, which the Ministry confirmed during its verification visit to PS.

710. PS stated that there is no injury caused to its domestic production of rebar by its export production and that it would, if demand allowed, produce only for the

domestic market. As all costs are allocated on a standardised basis there is no incorrect allocation of export costs to domestic production, or vice versa.

711. There is no evidence that exports have impacted on the industry's domestic business.

Demand or Consumption Change

712. PS has not identified any changes in demand or consumption that have been a cause of injury to them, nor has any other interested party to the investigation raised any demand or consumption changes that have had an effect upon PS. Changes in the size of the total New Zealand market have been taken into account in the Ministry's analysis following paragraph 602.

Market Composition Changes

713. PS stated that there have been no major changes in the New Zealand rebar market over the period 1999 to 2003, but stated that there has been an increase in the number of fabricators, both within the market and those using imported rebar. Several of the interested parties to the investigation specifically mentioned the introduction of Reoco, a new fabricator, into the market as having a substantial effect on the competition for the supply of rebar to fabricators. Currently Reoco is supplied by [redacted] domestically manufactured goods.

714. PS changed its minimum tonnage buy requirements for rebar customers in 2002. Prior to 2002 a customer needed an annual rebar demand of [redacted] tonnes to purchase directly from PS but in 2002 this was lowered to [redacted] tonnes. As a result this allowed smaller businesses to purchase directly from PS, rather than purchase through one of its distributors, resulting in a cheaper rebar purchase price for those customers.

715. PS also introduced 50 bar retail packs in 2002 which it stated were intended to combat imported product. Retails packs are the only product PS manufactures that is available ex-stock and is targeted at the building supply merchants who require quick turnaround of products that are easy to dismantle and distribute to smaller purchasers.

716. PS, in conjunction with the introduction of the new AS/NZ4671:2001 standard, rationalised the sizes of rebar that it manufactures from those available in 1999. PS stated that this rationalisation has not caused it any harm as rebar sizes are interchangeable for example one 20mm rebar could be used instead of two 10mm bars in a reinforced concrete structure. PS has also ceased the manufacture of other product types since 1999, namely channels and angles. The Ministry queried whether the discontinuation of manufacturing these products meant that PS also lost some rebar customers. PS responded that customers who did purchase channels or angles and rebar from PS still continue to purchase rebar from PS and that the truncation of the products available has not meant the loss of any rebar customers. PS also noted that it is still capable of producing the discontinued products as all of the roll stands are mothballed.

717. Vulcan stated that the creation of New Zealand Reinforcing Incorporated indicated a change in the market composition between 1999 and 2003 which has resulted in a more cohesive industry for New Zealand reinforcing businesses. The Ministry has no other evidence of the impact of creation of this association and cannot state that it has had any effect on the market composition.

718. Euro Corp stated that the increase of vertical integration in the New Zealand and Australian market was affected by the change of ownership of Steel and Tube to OneSteel, an Australian steel producer, and Steel and Tube's subsequent acquisition of Hurricane Wire Products. All of the importers who responded to the Ministry's information requests referred to this increase in shareholding and acquisition as increasing the strength of the trans-Tasman relationship between the electric-arc-furnace mills who produce rebar, namely OneSteel, Smorgon Steel and PS. The Ministry notes that the rebar industry both in New Zealand and the Australasian market has a high level of vertical integration. Such levels of integration mean that the market will function in a manner different to an identical market with a lower degree of integration. However the Ministry believes that the New Zealand rebar market was already highly integrated prior to the business changes described above and that the changes described have only emphasised the impact of decisions made by the business involved on the market as a whole, not the market structure per se.

719. PS stated that since 1999 it has sought export markets for its product to offset the injury that it has suffered in the domestic market as a result of the dumped imports, but that its exports have not affected its domestic market performance or ability.

720. The Ministry has found no evidence of substantial changes in the market structure over the period 1999 to 2003. The only substantial changes that have affected market operations have been the introduction of the new AS/NZ4671:2001 standard and the corresponding product changes, which did not affect market structure and the increase in the vertical integration which has changed the influence weighting of certain participants within the market but not the market itself.

Grade 500E

721. The complete revision of the standard covering the design of reinforced concrete structures and Grade 500E problems was raised by the two largest importers involved in the investigation. Both stated that PS was having difficulty in manufacturing to the standard that they had helped to create, but did not provide any further evidence to the Ministry upon the matter.

722. PS is confident that the negative press surrounding the 500E product has caused no injury to the business.

723. PS stated that only ten "issues" arose in relation to the performance of the 500E product and of those 9 were found to be due to incorrect handling procedures. In order to remedy the negative publicity surrounding the problem and the handling issues PS undertook a seminar series around the country aimed at educating designers and construction companies as to the handling procedures that are

required to deal with the product. In addition to the seminars PS has co-operated with Heavy Engineering Research Association, Building Industry Authority (BIA), and the Concrete Association in their enquiries into the matter to remedy what PS views as perceived, rather than actual, problems with its product. PS stated that any high tensile bar has different properties to a lower tensile bar, which correlates to differences in the handling technique required, and that the “issues” around 500E were related to the handling of the product rather than any other cause.

724. The Ministry asked PS to quantify the loss of sales, if any, that had occurred as a result of the problems. PS stated that any sales loss would have been switched to Grade 300 product rather than a change to another source and therefore PS view was that there has been no loss of sales. Any changes away from the 500E product would occur at the design level and would not be the decisions of builders.

725. PS commented that the number of complaints as a percentage of overall sales of 500E was very small and therefore any additional costs or delays to the end users of the product would be almost nil as the volume of product affected by the problem was not significant.

726. There is currently a BIA investigation into the failure problems of the Grade 500E rebar initiated after a New Zealand Herald article on 17 July 2003 reported engineers’ safety concerns about new Grade 500E rebar produced by PS. At the time of writing this the BIA investigation had not been completed however a draft report was expected in the near future. At this stage, there is no evidence that PS’s sales have been adversely affected by negative publicity surrounding the Grade 500E product

727. PS raised the matter of the publication surrounding the 500E product failures and the effect that this had on business. PS stated that it is in its best interests to have 100 percent of the New Zealand rebar market, as then it can protect the quality of the steel and the associated marketing issues around it. PS stated that its quality reputation is being damaged by the import of lower quality product and its subsequent use and occasional failure within the market. PS mentioned its hosting of seminars around the country to explain the safe handling requirements of high tensile bar and its co-operation with the BIA in its investigation upon the matter and stated that it was carrying the cost of imported product failures.

Restrictive Trade Practices

728. PS has not identified any restrictive trade practices that are having an adverse impact on the industry, nor has the Ministry found any evidence of any restrictive trade practices during its investigation.

729. However several importers made claims to the Ministry that the extent of vertical integration in the domestic industry is effectively a restrictive trade practice from an importer’s point of view. The Ministry is aware of the extent of vertical integration that occurs within the domestic industry but has requested and received evidence that all PS’s sales are made on an equivalent basis regardless of the ownership of the entities concerned. Beyond the pricing of sales to related

parties and in the absence of any evidence to the contrary, the Ministry does not consider that there are any restrictive trade practices in operation that need to be taken into account for the purpose of this investigation.

FBL Management Fees

730. PS stated that it pays management fees to FBL. The fee was described as a head office expense and it is calculated on the same basis for all FBL businesses. The Ministry obtained the figures paid as FBL management fees over the period 1999 to 2003, which appear in Table 5.35 below.

Table 5.35 FBL Management Fees

	1999	**2000**	**2001**	**2002**	**2003**
FBL Management Fee	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Net Revenue	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
FBL Mgmt Fee as % net revenue	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
EBIT	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
EBIT & FBL Fee as % net revenue	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

731. The value of the FBL management fee is not considerable in either absolute or real terms however it may be effectively a transfer of profit to PS's parent company and could have an effect on EBIT for the period. However looking at the trend of the movements in the EBIT and FBL management fee combined still shows a significant decrease over the period 1999 to 2003 with a drop of [redacted] percentage points.

732. The Ministry concludes that PS has not been injured by the FBL management fee, however the existence of such a fee and more importantly the [redacted] of the fee in 2003 may constitute a transfer of profit and therefore exaggerate the extent to which EBIT has decreased.

Electricity Prices

733. The Ministry asked PS what effect the recent spikes in electricity prices had on PS operations. During 2003 electricity prices spiked with spot rates climbing due to the prediction of a dry winter. At this stage PS did not have complete [redacted] cover from any changes in price and was purchasing [redacted] percent of its electricity at the spot rate, with the remaining [redacted] percent [redacted]. In the mid-term of the electricity crisis PS were able to obtain a hedge for night operations and weekends and in late April they were able to obtain a hedge for Thursday night through to Monday night allowing the plant to operate a 5 day shift by working through the weekend. [redacted] its exposure to the spot prices and returned to the regular production pattern.

734. PS calculated the cost of the electricity crisis based on the downtime before the alternate hours hedge was entered into, loss of sales tonnage as a result of the lower production and the increased costs of overheads per tonne as a consequence.

735. Post-electricity crisis PS gained huge productivity benefits which had been sought to offset the increase in electricity prices prior to the hedge being entered into. Therefore the results for the year were not as adversely affected as expected due to the increased productivity delivering higher returns and the negative effects of the electricity prices were offset.

Forward Foreign Exchange Contracts

736. PS stated that it has no forward foreign exchange contracts in relation to its domestic manufacture of rebar.

Conclusion on Other Factors

737. There is no evidence that injury was being caused by the recent increases in electricity prices, PS's imports or exports, any demand or consumption changes within the New Zealand market, FBL management fees or any restrictive trade practices.

738. There is evidence that PS has been injured by the increase in global scrap prices, the more expensive micro-alloy method of manufacture and non-dumped imports.

739. At this stage there is insufficient evidence to conclude if there is any injury from the 500E failures and the surrounding publicity.

5.7 Causal Link

740. Article 3.5 of the WTO Agreement states as follows:

> It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs 2 and 4, causing injury within the meaning of this Agreement. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports…

741. Article 3.5 of the Agreement is reflected in section 13(1) of the Act that the goods are being dumped and "By reason thereof material injury to an industry has been...caused."

742. PS has provided evidence that material injury is being caused by dumping in extracts of [redacted] which anecdotally link the impact of the allegedly dumped imports on [redacted] sales for PS. PS highlights [redacted] of its [redacted]

[redacted] [redacted] [redacted], that indicates an intention to source both locally and through importation to take advantages of price differences. As PS also uses an IPP pricing model the effects of the dumped imports from both Malaysia and Thailand are taken into account when setting its prices and assessing at what level it can still achieve sales.

743. The Ministry considers that the dumping of goods must be a cause of material injury in its own right, for a positive finding of material injury to be made. However dumping does not need to be the singular cause of material injury, only that it is a cause of material injury to the domestic industry and any injury arising from other factors should not be attributed to the dumped imports.

744. The Ministry adopts a two-limb approach to determining causality. The first test focuses on the dumped imports and asks whether there has been material injury from the dumped goods and involves essentially the application of the criteria in section 8(1) and 2(a)-(d) of the Act. This test accepts that there is an inference that where material injury occurs it is caused by dumping. The second test examines whether there are any known factors apart from the dumped imports that are also injuring the industry. If there are such other factors, it must be established whether the injury caused by the other factors breaks the inferred "causal link" established under the first test. If there is no manifest cause of material injury apart from the dumped goods, then the causal link under the first test is confirmed.

First Causal Link Limb

745. The injury analysis shows that dumped imports from Malaysia and Thailand in 2003 increased by 16 percent from 2002 and have increased by 82 percent of their 1999 levels, as displayed in Table 5.1. The dumped imports as a percentage of the total New Zealand market have increased from [redacted] percent of the market in 1999 to [redacted] percent in 2003. Dumped imports as a percentage of PS's sales have increased from [redacted] percent in 1999 to [redacted] percent in 2003. In both nominal and relative terms the volume of dumped imports in the New Zealand market has increased.

746. The increase in the volume of the dumped imports is consistent with a finding of primary causality between the dumped imports and the material injury suffered by the domestic industry as dumped imports increased by 56 percent of their 1999 level in 2000, which is the year that PS claims the injury commenced.

747. The largest importer that imported subject goods from Malaysia and also co-operated with the investigation had prices above those of PS at the relevant level of trade. There was no evidence of price undercutting when the prices of its imports were compared to PS's actual prices. Its imports accounted for [redacted] percent of the subject imports from Malaysia over the POI and had prices that were above PS's NIP.

748. Nauhria, the other co-operating importer (who accounted for [redacted] percent of the subject imports from Malaysia over the POI) displayed price undercutting per tonne ranging from NZD[redacted] to NZD[redacted] at PS's actual selling prices and undercutting of NZD[redacted] of PS's NIP. The volume of dumped goods from Malaysia

undercutting PS's NIP is only [redacted] tonnes, which accounts for less than 0.2 percent of the New Zealand market. The Ministry believes that price undercutting of PS's NIP by [redacted] percent, by import volumes representing less than one percent of the New Zealand market is not sufficient to indicate that injury is being caused by that price undercutting. As a result of a lack of significant price undercutting by Malaysian imports the price depression and suppression effects cannot be attributed to them.

749. The Ministry notes that the largest importer from Malaysia has been treated, for the purposes of this investigation, as unable to purchase from PS and therefore the purchase of the dumped Malaysian goods can not be treated as an alternative to the purchase of the domestic product. If any displacement of sales has occurred, by the purchase of dumped goods from Malaysia by this importer, it has been from imports from other sources, rather than the domestic industry.

750. The Ministry consequently considers that material volume and price effects cannot be attributed to dumped imports from Malaysia, and therefore that the consequent economic impact cannot be attributed to dumped imports from Malaysia.

751. There is substantial price undercutting by dumped imports from Thailand. The companies who imported the great majority of rebar from Thailand also either purchase from PS or are able to purchase from PS, and therefore the purchase of dumped Thai goods can be treated as displacing potential purchases of the domestic product.

752. The Ministry consequently considers there is an inference that material volume and price effects and the consequent economic impact, reflected in declines in sales revenue, return on investments and profit, can be attributed to dumped imports from Thailand.

753. As the first limb of the causal link test did not result in a positive finding in respect of the dumped imports from Malaysia only the dumped goods from Thailand will be considered for the second limb of the causality test.

Second Causal Link Limb

754. The Ministry has found that factors other than dumped goods from Thailand are causing material injury to the New Zealand industry. The extent to which other factors have caused such injury can be approximated through the application of PS's NIP in the analysis of price depression and suppression, which shows that PS would have suffered price depression and suppression even if PS had been selling at its NIP. This analysis shows, however, that a significant part of the price depression and suppression can also be attributed to dumped imports from Thailand. The Ministry is consequently satisfied that the other causes of injury are not sufficient to break the inferred causal link that dumped imports from Thailand have caused material injury to the New Zealand industry.

755. As there has been no positive finding of material injury in respect of the dumped imports from Malaysia the Ministry is of the view that cumulating the injurious effects caused by the dumped imports from Malaysia and from Thailand is

inappropriate in the current circumstances and therefore cumulation has not been undertaken.

5.8 Conclusions Relating to Injury

Import Volumes

756. There is evidence that import volumes of the subject goods have increased significantly in absolute terms and relative to New Zealand production and consumption from 1999 to 2003. Dumped imports from Malaysia increased by 2,398 tonnes or 238 percent from 1999 to 2003 and dumped imports from Thailand increased by 1,056 tonnes or 31 percent over the same period. The level of dumped imports from Thailand was, in absolute terms, greater than those from Malaysia in 1999 and was still higher, in absolute terms, than those from Malaysia in 2003, despite the increase in dumped imports from Malaysia.

Price Effects

757. There is evidence of price undercutting by imports from Thailand, but no evidence of significant price undercutting by imports from Malaysia. There is also evidence of price depression and suppression but these price effects cannot be attributed to the Malaysian imports given the finding on price undercutting for the reasons set out from paragraph 747. Therefore any price effects, and the corresponding economic effects that they induce, are attributable only to the dumped imports from Thailand.

Economic Impact

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

- a decrease in sales revenue;
- a significant decline in profit; and
- a significant decline in return on investments.

759. There is insufficient or no evidence of:

- an overall decline in output and sales volumes;
- a decline in market share held;
- a decline in utilisation of production capacity;
- a decline in cashflow;
- an increase in inventories;
- a decline in the level of productivity;

- a negative effect on wages and employment;
- an adverse effect on ability to raise capital;
- decline in return on investments.
- an inability to grow and
- an adverse effect on its investments.

760. There is evidence of a decrease in sales revenue and profit that is attributable to the existence of dumped imports from Thailand.

Other Causes of Injury

761. There is evidence that injury has been caused by other factors specifically the increase in scrap prices, more expensive micro-alloy method of manufacture used and the volumes and prices of other imports in the New Zealand market.

Finding of Material Injury

762. The Ministry is satisfied, having considered all the mandatory requirements, in addition to considering other relevant factors, both as presented by interested parties to this investigation and those discovered in the course of the investigation, that the domestic industry has suffered material injury during the POI. The injury suffered was in significant part caused by the dumped imports from Thailand, such that the Ministry considers that the New Zealand industry has suffered material injury attributable to dumped imports from Thailand. The Ministry is not satisfied that the dumped imports from Malaysia have caused material injury to the domestic industry.

Threat of Material Injury from Dumped Imports from Malaysia

763. As there is no finding of material injury caused by the imports from Malaysia the Ministry must assess whether the Malaysian imports are the source of a threat of material injury.

764. Paragraph 7 of Article 3 of the Agreement sets out the requirements of analysis when considering the threat of material injury to a domestic industry:

> A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent.[10] In making a determination regarding the existence of a threat of material injury, the authorities should consider, *inter alia,* such factors as:
>
> (i) a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;

(ii) Sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to the importing Member's market, taking into account the availability of other export markets to absorb any additional exports;

(iii) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and

(iv) Inventories of the product being investigated.

No one of these factors by itself can necessarily give decisive guidance but the totality of the factors considered must lead to the conclusion that further dumped exports are imminent and that, unless protective action is taken, material injury would occur.

[10] One example, though not an exclusive one, is that there is convincing reason to believe that there will be, in the near future, substantially increased importation of the product at dumped prices.

765. Section 8 of the Act refers to material injury however does not list any specific matters which must be considered when assessing the threat of material injury as in the Agreement.

766. In assessing the likelihood of the factors listed above the Ministry has considered information presented by the Malaysian manufacturing exporter who co-operated with the investigation, information provided by the importers who imported subject goods over the POI and information that the Ministry has discovered in its own research.

Increase in Imports of Dumped Goods from Malaysia

767. Dumped import volumes from Malaysia have increased significantly since 2001, the volumes increasing from 2002 to 2003 by 1,465 tonnes or 76 percent. The Ministry, however, does not consider that this rate of increase indicates the likelihood of substantially increased importation, based on its analysis of the import patterns of the companies importing from Malaysia, as set out below.

768. Euro Corp, the largest importer from Malaysia, has not indicated to the Ministry that it will be increasing the volume of its imports from Malaysia and in fact has noted to the Ministry that as a result of PS selling rebar below the price that it does it has lost rebar customers. Euro Corp also mentioned that due to the cashflow and storage requirements of large rebar purchases it is unlikely to ever purchase rebar in excess of the level at which it knows it has customers for prior to ordering.

769. Nauhria informed the Ministry that it has ceased imports from Malaysia and now imports its rebar requirements from Singapore, which it states is better as they enter free of duty.

770. Kiwi Steel and Reo also imported small amounts of rebar from Malaysia during the POI but chose not to respond to the Ministry’s enquiries in relation to the investigation. Kiwi Steel and Reo, along with four other importers who were outside of the Ministry’s sample for the investigation, accounted for 12 percent of the total imports from Malaysia over the POI.

771. From the end of the POI until the 28 October 2003 the Customs data indicates that there were [redacted] tonnes of rebar imported from Malaysia. Kiwi Steel imported [redacted] tonnes, [redacted] of which were from [redacted] and [redacted] tonnes were from [redacted], Euro Corp imported [redacted] tonnes from [redacted] and Nauhria imported [redacted] tonnes from Gayathri.

772. The imports by Nauhria were consistent in their timing with its statement that it was no longer importing from Malaysia and the Ministry does not believe that there will be any further imports by Nauhria from Malaysia.

773. The imports from Euro Corp were consistent with the annual volumes of the company and the information that it provided on forward orders.

774. As Kiwi Steel did not provide any information in relation to the investigation the Ministry has used the Customs data to make a decision about the likely impact of its future imports. For 1999 to 2003 Kiwi Steel had an average rebar import volume per annum of [redacted] tonnes with 1999 to 2001 tonnage being substantially higher than that of the following years. From 1999 to 2002 none of the rebar imported by Kiwi Steel was sourced from Malaysia. In 2002 Kiwi Steel imported [redacted] percent of its total rebar imports from Malaysia and up to 28 October 2003, [redacted] percent of Kiwi Steel's purchases were from Malaysia. Given Kiwi Steel's total rebar imports the Ministry believes that it is unlikely to substantially increase its import levels from Malaysia, especially having regard to the available Malaysian capacity as discussed below.

775. The Ministry concludes that none of the importers who imported rebar from Malaysia during the POI are likely to increase the level of their imports in the near future.

Malaysian Capacity

776. Information presented by Amsteel at the time of the Ministry's verification visit indicated that it was operating at [redacted] percent of its full capacity. Amsteel has an annual billet making capacity of approximately [redacted] tonnes, which feeds into three rolling mills, which have a combined annual capacity of [redacted] tonnes. Of these three rolling mills Amsteel has two bar mills that are capable of producing rebar. In normal circumstances only bar mill 2 is used to manufacture rebar and bar mill 1 is only used when bar mill 2 cannot meet demand, as production of rebar utilising bar mill 1 is less efficient. Bar mill 2, used exclusively for rebar manufacture, has a [redacted] tonne annual capacity. Allocating the remaining [redacted] tonnes between the two rolling mills on the basis recommended by Amsteel, Amsteel's annual capacity for rebar production is [redacted] tonnes.

777. As Amsteel is currently running at [redacted] percent of capacity that leaves freely disposable capacity of [redacted] tonnes. Amsteel did not state where any rebar manufactured by utilising the surplus capacity would be sent but the climbing price of scrap has an effect on every rolling mill's level of production at the current time. Given the comments by [redacted] [redacted], Amsteel's [redacted] New Zealand customer, on its ability to take any further amounts of rebar than already being imported the Ministry is of the opinion that Amsteel would either place any extra

product in its domestic market, which is currently experiencing strong growth, or into a larger export market able to absorb large volumes of rebar.

778. The Ministry has collected information on the capacity of Malayawata, the other Malaysian manufacturer of rebar imported to New Zealand. The most recent information was from the SouthEast Asia Iron and Steel Institute website (www.seaisi.org), which contained an article titled ‘Malayawata Upgrades Billet Caster’ dated Thursday April 24 2003. The article referred to Malayawata having a combined bar and rod capacity of 450,000 tonnes per year and 180,000 tonnes per year of exclusively rebar capacity. The Ministry has no information on Malayawata’s capacity directly from the company but notes that the article states “…Malayawata’s Penang rolling mills are now running at full capacity” and that the 180,000 tonne rolling mill used exclusively for rebar was acquired to allow the business “…better access to the central area of Malaysia.”

779. Given the high scrap prices and global high market demand that has been dominant since April 2003 the Ministry believes that the statement that Malayawata is running at full capacity is more than likely still true, and that it has no freely disposable capacity which it could employ to greatly increase exports to New Zealand in the imminent future.

780. The Ministry concludes that while there is evidence of excess capacity in Malaysia, it is unlikely to be employed to substantially increase the level of exports to New Zealand.

Price Effects

781. The price undercutting analysis for imports from Malaysia displayed price undercutting for only [redacted] percent of imports when compared with the actual selling prices of the domestic industry, and when compared to PS’s NIP. As a result there was held to be no significant price effects caused by the prices of imports from Malaysia and the price depression and suppression effects found could not be attributed to the imports from Malaysia.

782. In order for the negative effects of price suppression and depression to be attributed to the dumped imports from Malaysia there would need to be clearly foreseen and imminent changes in the export price that would result in the price of the Malaysian imports undercutting the prices of PS.

783. The Ministry has received an offer of a price undertaking from Amsteel in relation to this investigation. The reason given for this price undertaking was that with the continuing increase in world scrap prices Amsteel has achieved export orders to New Zealand that are in excess of USD[redacted] a price at which the imports would not be dumped, given its current normal values in Malaysia.

784. The Steel Business Briefing of Tuesday 27 January 2004 contained an article titled ‘“The sky’s the Limit” for steel freight rates, says broker’ which outlined that freight rates for trans-oceanic shipments of steel products have increased “briskly” since the beginning of the year, as much as 17 percent, and are set to continue to rise with a shortage of vessels and the continued growth of China’s economy.

785. The rise of scrap prices is forecast to continue into the foreseeable future with Chinese demand driving prices high in a global market where demand already exceeds supply.

786. The Ministry concludes that given the price drivers of Malaysian rebar there is evidence that export prices to New Zealand will in fact increase and no evidence of any price decreases in the foreseeable future that would initiate price effects once the imports entered the New Zealand market, and is therefore unlikely to increase demand for further imports.

Inventories

787. The global price of scrap is climbing and there is no foreseeable decline in the future, therefore, as manufacturers do not have a continuous manufacture process, they produce to order to limit the cashflow consequences of holding large levels of inventories. The Ministry notes that it is not standard practice of any steel mills to hold large inventories and most of rebar manufacture is done to order.

788. Further decreasing the likelihood of any inventories that exist being sent to New Zealand is the unique bar markings that are required under AS/NZ4671:2001 for the Grade 500 product. This product is manufactured specifically for the orders by New Zealand importers and there is no stock held. However the unique bar markings do not apply to the Grade 300 product and inventories of Grade 300 would be able to be used for export to New Zealand.

789. From the information provided to the Ministry by the Malaysian manufacturing exporter and the associated New Zealand importer it is clear that the product that is exported to New Zealand is manufactured for the order and orders of Grade 300 rebar are not filled from inventories but rather from a production run (albeit perhaps only part thereof).

790. The Ministry concludes that there is no evidence from the level of inventories in Malaysia that points to a clearly foreseeable and imminent change in the level of imports from Malaysia that would cause material injury to the domestic industry.

Conclusion on Threat of Material Injury

791. The Ministry has found no evidence of a clearly foreseeable and imminent increase in the level of dumped imports from Malaysia. In reaching this conclusion the Ministry has regard to the freely disposable capacity of the Malaysian exporters exporting to New Zealand and their inventory levels, in addition to the prices at which any such imports would enter the New Zealand market and the effect such prices would have upon the prices that are able to be achieved by the domestic industry. The Ministry concludes that dumping from Malaysia is not threatening to cause material injury to the New Zealand industry.

6. Price Undertakings

792. Section 15 of the Act and Article 8 of the Agreement allows for an authority to enter into a price undertaking in relation to a dumping investigation if one is offered by an exporter involved in the investigation.

793. Under Article 8.1 of the Agreement, an investigation may be suspended or terminated without the imposition of measures upon receipt of satisfactory voluntary undertakings from any exporter to revise its prices or to cease exports to New Zealand at dumped prices. The Ministry would need to be satisfied that the injurious effect of the dumping on the New Zealand industry is eliminated as a result of the price undertaking.

794. The Ministry has received an offer to enter into a price undertaking from Amsteel in Malaysia. The basis put forward by Amsteel of giving a price undertaking is the rise in global scrap prices and the effect that this has upon its export price. Amsteel presented evidence to the Ministry of orders it has secured from its New Zealand customer that are in excess of the non-dumped price and therefore wanted to enter into a price undertaking that its price to New Zealand would not fall below this level.

795. Section 15(1A) of the Act requires, that before entering into an undertaking the Minister must have reasonable cause to believe that the goods are being dumped and that the dumping is causing material injury to the domestic industry.

796. As stated in paragraph 762 the Ministry is not satisfied that the goods imported from Malaysia are causing injury to the domestic injury, therefore under s15(1A) of the Act the Minister can not accept a price undertaking without any evidence that those dumped goods had caused material injury to the New Zealand industry.

7. Conclusions

797. On the basis of the information available, it is concluded that sufficient evidence has been provided that:

a. rebar from Malaysia and Thailand is being dumped; and

b. by reason thereof, material injury to the New Zealand industry has been, or is being caused by imports from Thailand; but

c. material injury to the New Zealand industry has not been, and is not being caused or is threatened to be caused, by imports from Malaysia.

8. Anti-Dumping Duties

8.1 Introduction

798. The Ministry has not found any evidence that the material injury suffered by the New Zealand industry has been caused or is threatened by the dumped imports from Malaysia, therefore no anti-dumping duties can be imposed upon them. However the Ministry has found evidence that the dumped imports from Thailand have been a cause of material injury to the industry and therefore duties may be applied to imports originating from Thailand. The discussion during the remainder of this section applies only to goods from Thailand.

Legislation

799. The provision of the Act relating to the imposition of anti-dumping duties is section 14, the relevant parts of which are set out below.

> (1) At any time after the Minister makes a final determination under section 13 (1) of this Act in relation to goods, the Minister may give notice of the rate or amount of duty determined under subsection (4) of this section (which notice may be given simultaneously with, or at any time after, the notice given under section 13 (2) of this Act) and there shall, with effect on and from the applicable date referred to in section 17 of this Act, be imposed,–
> (a) In respect of those goods that are dumped, a duty to be known as anti-dumping duty:
>
> (2) Anti-dumping duty . . . imposed under subsection (1) of this section, shall be collected and paid on the demand of the Customs on and from the day after the date on which the notice under subsection (1) of this section is published in the *Gazette*.
>
> (4) The anti-dumping duty . . . in the case of goods to which this section applies shall be a rate or amount determined by the Minister,–
> (a) In the case of dumped goods, not exceeding the difference between the export price of the goods and their normal value; and
>
> (5) In exercising the discretion under subsection (4) of this section, the Minister shall have regard to the desirability of ensuring that the amount of anti-dumping . . . duty in respect of those goods is not greater than is necessary to prevent the material injury or a recurrence of the material injury or to remove the threat of material injury to an industry or the material retardation to the establishment of an industry, as the case may require.

8.2 Method of Imposing Duty

800. Anti-dumping duties can be applied in a number of ways and can be imposed as a rate or amount, including any rate or amount established by a formula. The basic approaches are:

   a. a specific amount per unit of product;

   b. an *ad valorem* rate; and

c. a reference price approach.

801. The main objective of an anti-dumping duty is to remove the injurious impact of dumping. In deciding on the form of duty, considerations relating to ease of administration, ability to ensure the dumping margin is not exceeded, fairness between parties, and predictability all need to be taken into account. The objective of the anti-dumping duty is to remove injury attributable to dumping, and is not to punish the exporter or to provide protection to an industry beyond the impact of the dumping.

802. Section 14(4) of the Act provides that the Minister must not impose a duty that exceeds the margin of dumping for the dumped goods. The Solicitor-General has advised that the references to "export price" and "normal value" in this section are to be read as references to the export prices and normal values established in the investigation or to the values at the time the goods subjected to the duty are imported.[2] Given this, the Ministry's approach is to adopt a form of duty that minimizes the possibility of exceeding the margin of dumping on shipments subsequent to the imposition of the duty by the Minister.

Specific Duty

803. A specific duty is a set amount per unit of product based on the monetary value of a margin of dumping. It has the advantages of being convenient to apply and impossible to evade by incorrectly stating the value for duty and clearly indicates to the importer the amount of duty payable. However, difficulties can arise where there is a wide range of goods involved, where exchange rates fluctuate to the extent that the margin of dumping will be exceeded without constant reassessments of the specific amount, or where the exporter otherwise changes prices so that the duty is either greater than the margin of dumping or less than the margin of dumping previously established.

804. A specific duty, expressed as a monetary amount, can really operate effectively only when prices and exchange rates are consistent and stable and where the transaction-to-transaction comparison does not result in a range of different dumping margins. An alternative approach to deal with this problem is to express a specific duty as a formula, being the difference between equivalent prices to the normal value and the export price of a particular shipment, with the values for the normal value and export price being fixed. When those elements of the formula are expressed in terms of the currency of each transaction, the problem of exchange rate movements can be dealt with. However, a formula approach does not deal with the problem of changes in export prices for reasons other than exchange rate movements or movements in normal values such as a price change.

[2] Plasterboard from Thailand, Reassessment, September 1999.

Ad Valorem Duty

805. An *ad valorem* duty is a duty based on the dumping margin expressed as a percentage of the export price, and is expressed as a percentage of the dutiable value. An *ad valorem* duty is convenient to apply and is not substantially affected by exchange rate movements. However, collusion between exporters and importers can lead to the manipulation of the invoice value of the goods concerned. *Ad valorem* rates are often appropriate where there is a large range of goods or where new models appear, provided that the transaction-to-transaction comparison does not result in a range of different dumping margins.

806. Because an *ad valorem* duty is imposed proportionate to the export price of the goods, a particularly low export price (and therefore a potentially more injurious export price) will result in a proportionately lower amount of duty, which may not be sufficient to remove injurious dumping. Conversely, a particularly high export price (and therefore likely to be less injurious), will attract a proportionately higher amount of duty, which may be higher than is necessary to remove injurious dumping.

807. An *ad valorem* rate gives an indication of the impact of the duty, but is not as clear an indication as the other forms of duty.

Reference Price Duty

808. Under the reference price approach, the duty payable is the difference between the transaction price and a reference price. The reference price would normally be based on the normal value, by means of Normal Value (Value for Duty Equivalent) (NV(VFDE)) amounts, or the NIP by means of Non-Injurious Free on Board (NIFOB) amounts. A NV(VFDE) amount represents the undumped value of the goods at the FOB level. A NIFOB amount represents the FOB price at which imports would not cause injury to the New Zealand industry.

809. A reference price duty has advantages in that it is best able to deal with movements in the export price and exchange rates (if expressed in the currency of the normal value), and is particularly appropriate for dealing with situations where a lesser duty is applicable. However, it has been argued that it is more easily evaded than the other forms of duty, by overstating the VFD of the goods. Nevertheless, a reference price does has the advantage of clearly signalling to exporters and importers what price is undumped or non-injurious, and provided it is carefully described, the problem of evasion can be dealt with. In addition, a reference price duty only collects duty when the goods are priced below the non-injurious or undumped reference price. It therefore collects duty only to the extent necessary to remove injurious dumping and avoids over-collecting duty.

Conclusion

810. It has been the normal practice of the Ministry to impose duties through the use of reference prices, when appropriate, for the reasons outlined above. In the absence of any reasons why a reference price method cannot or should not be used (as applies in this case) the Ministry concludes that a reference price should be used.

Developing Country Considerations

811. For the purposes of dumping investigations and the imposition of anti-dumping duties, Thailand is considered to be a developing country. Article 15 of the Agreement provides as follows:

> It is recognized that special regard must be given by developed country Members to the special situation of developing country Members when considering the application of anti-dumping measures under this Agreement. Possibilities of constructive remedies provided for by this Agreement shall be explored before applying anti-dumping duties where they would affect the essential interests of developing country Members.

812. No submissions have been received from Thai exporters or the Government of Thailand about possible constructive remedies or about the effect of anti-dumping duties on Thailand's essential interests as a developing country.

813. The WTO Dispute Settlement Panel in *Cotton-Type Bed Linen from India* was of the view that "the imposition of a "lesser duty" or a price undertaking would constitute "constructive remedies" within the meaning of Article 15…"[3]. The Ministry agrees with the comments of the Panel in this regard.

814. None of the exporters of Thai rebar offered to enter into a price undertaking, although such price undertakings were not directly solicited by the Ministry. The Ministry considers, however, that by imposing duties in the form of reference prices for specified exporters it has provided a form of *de facto* price undertaking, as reference prices can be taken advantage of by all of the current Thai exporters, whilst avoiding any additional administrative burden for the exporters that often accompanies a price undertaking. The Ministry therefore considers that the use of reference prices provides, for the reasons outlined above, a constructive remedy for Thai exporters.

815. In section 8.3 below the Ministry has considered whether duties at less than the margin of dumping (lesser duties) should apply and has concluded that lesser duties should apply in the case of exports by Sanwa. The Ministry considers that by examining whether lesser duties should apply, and by concluding lesser duties should apply in some cases, it has provided a constructive remedy.

8.3 Amount of Anti-dumping Duty

Introduction

816. Section 14(5) of the Act requires that the Minister have regard to the desirability of ensuring the amount of duty is not greater than is necessary to prevent material injury to the New Zealand industry. To establish whether a lesser duty should apply, the Ministry firstly calculates a NIFOB and secondly calculates a NV(VFDE) to check that the NIFOB has not exceeded the margin of dumping. If the NIFOB is

[3] Report by the Panel on European Communities-Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India, WT/DS141/R, 30 October 2000, at paragraph 6.229.

less than the NV(VFDE), then the NIFOB amount, which is a form of lesser duty, will apply. If the NIFOB is greater than the NV(VFDE) then the NV(VFDE) will apply, i.e., duty will be imposed at the full margin of dumping.

817. In order to calculate a NIFOB it is first necessary to establish the New Zealand industry's NIP, and considerations relating to this for the purposes of determining whether a lesser duty should apply, are set out below.

New Zealand Industry's NIP

818. The Ministry's considerations relating to establishing a NIP for PS, for price undercutting purposes, is set out under price undercutting from paragraph 511. It is noted that the NIP is based on import prices and normal values calculated on a weighted-average basis over the POI in order to ensure a fair comparison with import prices which are weighted-averages over the POI. It notes at paragrpah 542 that the calculation of a NIP on this basis does not preclude the calculation of a NIP for duty purposes to be based on the most recent normal values and import prices. This part of the report considers whether for the purposes of duty imposition the NIP should be based on weighted-average data over the POI or on the most recent data available.

819. As outlined in paragraph 523 above, PS submitted that because the NIP will be used to set remedies that will apply in the future, only imports from the most recent representative periods should be used.

820. The Ministry agrees that setting duties is a forward looking exercise, but is one which must be based on information gathered during the investigation and on which findings of dumping causing injury are based. The NIP accordingly should, to the extent possible, reflect those normal values that are most likely to be representative of values that will likely obtain in the future. As the NIP is based on import prices from Australia, Indonesia and Singapore and on normal values in Malaysia and Thailand, the Ministry has examined the extent to which these prices have fluctuated over the POI and considered the extent to which these fluctuations indicate that more recent values are likely to be representative of future values, than weighted-average data from the POI would be.

821. The average CIF values per tonne for imports from Australia, Indonesia and Singapore show significant variation over the POI, particularly in the case of Australia and Singapore. The Ministry is unable to discern any significant trend in these per tonne values over the POI, and the use of the most recent value or values would consequently distort the NIP through the operation of large random fluctuations. The Ministry consequently considers that the use of an weighted-average value over all of the POI, as was used for the purposes of price undercutting, is more likely to represent prices that will obtain in future and should therefore be used to establish a NIP for the purposes of setting a duty.

822. In the case of the normal values in Malaysia there are also significant fluctuations over the POI, with the lowest value being [redacted] percent lower than the highest value. However, within these fluctuations there is a trend of an increase in the normal value over the POI. The fluctuations are such, however, that the use of the most recent single value would not be representative. The data shows,

however, that there was a sustained increase in normal values from 19 May 2003. Evidence from a variety of sources shows that there has been a significant increase in the price of scrap since the end of the POI, so values are unlikely to reduce. The Ministry considers therefore that the weighted-average normal values from 19 May 2003 to the end of the POI should be used as the basis for establishing an undumped ex-wharf cost for Malaysia, which is RM[redacted]

823. In the case of normal values for Thailand, there is an increase in these values over the POI, without any significant fluctuations. This is due to information provided by PS in its application being used to establish normal values in the absence of any information from the Thai manufacturer. The most recent normal values are those that applied from January 2003 onwards, as outlined in paragraph 315. For the reasons in paragraph 823 the Ministry considers that the weighted-average of the normal values from January 2003 should be used as the basis for establishing an undumped ex-wharf cost for Thailand, which is THB[redacted]

824. The build up to an undumped cost to ex-wharf for imports from Australia, Indonesia and Singapore is shown in section 5.4 above (at Tables 5.9, 5.10 and 5.11 respectively) and those values will be used. The build up to an undumped ex-wharf cost for imports from Malaysia and Thailand was carried out on the same basis as the calculations shown in Tables 5.7 and 5.8, but commencing with the normal values shown in paragraphs 822 and 823 above. The exchange rate used is the average OANDA interbank rate over the period from which the normal values were taken, i.e., for Malaysia from 19 May 2003 to 31 July 2003 and for Thailand from 1 January 2003 to 31 July 2003.

825. The calculation of the undumped ex-wharf costs for imports from Malaysia and Thailand, on the basis outlined above, is shown in the following tables (all amounts are per tonne).

Table 8.1: Undumped Price of Rebar from Malaysia

Weighted-average Normal Value	[redacted]
Plus Costs from Ex-Factory to Wharf in NZ: (RM)	
- Export packaging and labelling	[redacted]
- Inland freight	[redacted]
- Wharfage and handling	[redacted]
- Communications charge	[redacted]
- Cost of credit	[redacted]
- Bar marking	[redacted]
- Customs costs	[redacted]

- Forwarding fee	[redacted]
- Documentation fee	[redacted]
- Taxes	[redacted]
Sub Total (RM)	[redacted]
RM/NZD Exchange Rate	2.21899
Sub Total (NZD)	[redacted]
Plus Costs from Port in Malaysia to Ex-store in NZ: (NZD)	
- Insurance	[redacted]
- Sea Freight	[redacted]
- Duty @ 5%	[redacted]
- Port Clearance fees	[redacted]
Undumped cost to ex-wharf (NZD)	[redacted]

Table 8.2: Undumped Price of Rebar from Thailand

Weighted-Average Normal Value	[redacted]
Plus Costs from Ex-Factory to Wharf in NZ: (THB)	
- Inland Freight	[redacted]
- Terminal Handling Charge	[redacted]
- Container Freight Station	[redacted]
- Bill of Lading	[redacted]
- Customs Costs	[redacted]
- Cost of Credit	[redacted]
- Bar marking	[redacted]
Sub-Total (THB)	[redacted]
THB/NZD Exchange Rate	23.94486
Sub-Total (NZD)	[redacted]

Plus Costs from Port in Thailand to Wharf in NZ: (NZD)	
- Insurance	[redacted]
- Sea freight	[redacted]
- Clearance & Port Service Charges	[redacted]
- Duty @ 5%	[redacted]
Undumped Cost to Wharf in NZ (NZD)	[redacted]

826. A NIP has been calculated on the same basis on which it was calculated under price undercutting following paragraph 511, i.e., by weighting the ex-wharf costs from Malaysia, Thailand, Australia, Indonesia and Singapore by the volume of imports from each country over the year ended 30 June 2003. This calculation is shown in the table below. The figures used for Malaysia and Thailand differ from those used in Table 5.12 due to the different periods over which the weighted-averages for those sources were calculated as described in paragraphs 823 and 824.

Table 8.3: Non-Injurious Price

	Undumped Price (NZD)	**Imports y/e June 2003**	**Weighted-average (NZD)**
Malaysia	[redacted]	3,869	[redacted]
Thailand	[redacted]	4,941	[redacted]
Australia	[redacted]	[redacted]	[redacted]
Indonesia	[redacted]	[redacted]	[redacted]
Singapore	[redacted]	[redacted]	[redacted]
Total		[redacted]	[redacted]

Calculation of NIFOBs

827. NIFOBs are calculated by deducting from the industry's NIP importer's margin and those costs arising after FOB up to the level of trade at which the imported product first competes with the New Zealand industry's product. The purpose of a NIFOB value is to ensure that the price of imported product, when considered at the FOB level, is such that when it is sold at the relevant level of trade, the sale price equates to the NIP. At paragraph 457 the relevant level of trade at which the goods first compete on the New Zealand market was determined to be ex-wharf

(for imports by Vulcan, SteelPlus and H J Asmuss) and ex-store (for imports by Quail Glen and M R Steel). The exports by SCT therefore compete at two different levels of trade in the New Zealand market.

828. In calculating the NIFOB amounts for exports at the ex-wharf level of trade the Ministry has established the costs between FOB and ex-wharf and FOB and ex-store as follows:

- The insurance and sea freight figures are those used in the calculation of the undumped price of rebar from Thailand in Table 8.2 being weighted-averages calculated from Customs data over the POI for exports by SCT.

- The clearance and port service charge is that used in the calculation of the undumped price of rebar from Thailand in Table 8.2 being the figure provided by Vulcan.

- The duty has been calculated at the rate applying to imports of rebar from Thailand of 5 percent.

- Costs and importer’s profit margin arising after ex-wharf have been taken from information provided by Quail Glen, being the only importer from Thailand at the ex-store level of trade that provided this information.

829. Table 8.4 shows the calculation of a NIFOB at the ex-wharf and ex-store levels of trade on the basis outlined above (all amounts are per tonne).

Table 8.4: Calculation of NIFOBs

NIP	[redacted]
Less costs and margin after FOB to ex-wharf & ex-store:	
- Insurance	[redacted]
- Sea Freight	[redacted]
- Clearance & port service charges	[redacted]
- Duty @ 5%	[redacted]
NIFOB at ex-wharf	[redacted]
- Cartage to store	[redacted]
- Storage	[redacted]
- Selling, administration & financial expenses	[redacted]
- Importer's profit margin @ [redacted]% of selling price	[redacted]
NIFOB at ex-store	[redacted]

Calculation of NV(VFDE) Amounts

830. NV(VFDE) amounts are calculated by adding to normal values the costs incurred by exporters between the ex-factory and FOB levels. The NV(VFDE) therefore represents an undumped price at the FOB level.

831. The calculation of the undumped price of rebar from Thailand for the purpose of establishing a NIP (for duty purposes) was based on the weighted-average normal value calculated from those normal values that applied from 1 January 2003 to 31 July 2003. For the reason that normal values over this period were used in the NIP calculation, the same weighted-average normal value has been used as the basis for calculating NV(VFDE) amounts for SCT and Sanwa (normal values were established for Sanwa on the same basis as those for SCT).

832. The additions made to the weighted-average normal value to adjust it to the FOB level are the same as those used in Table 8.2. In addition an amount has been added for an exporter's margin to calculate a NV(VFDE) amount for Sanwa, using the same percentage margin that was applied in paragraph 221. The NV(VFDE) amounts have been converted to NZD using the average interbank rate taken from OANDA over the period from 1 January to 31 July 2003.

833. Table 8.5 shows the calculation of the NV(VFDE) amounts on the basis set out above (all amounts are THB per tonne).

Table 8.5: Calculation of NV(VFDE) Amounts

Weighted-average normal value	
Plus costs from ex-factory to FOB:	
- Inland Freight	
- Terminal Handling Charge	
- Container Freight Station	
- Bill of Lading	
- Customs Costs	
- Cost of Credit	
- Bar marking	
NV(VFDE) for SCT	
- Exporter's margin	
NV(VFDE) for Sanwa	

THB/NZD Exchange Rate	23.94486
NV(VFDE) for SCT (NZD)	[redacted]
NV(VFDE) for Sanwa (NZD)	[redacted]

Comparison of NIFOB and NV(VFDE) Amounts

834. Table 8.6 shows a comparison of the NIFOB and NV(VFDE) amounts calculated as above.

Table 8.6: Comparison of NIFOB and NV(VFDE) Amounts (NZD)

	NIFOB Ex-Wharf	**NIFOB Ex-Store**	**NV(VFDE)**
SCT	[redacted]	[redacted]	[redacted]
Sanwa	[redacted]	N/A	[redacted]

835. The comparison shows that the NIFOB amount at ex-wharf is higher than the NV(VFDE) amount calculated for SCT. This indicates that a reference price duty in the form of an NV(VFDE) amount should apply to exports by SCT when imported by those importers at the ex-wharf level of trade (Vulcan and H J Asmuss).

836. The comparison also shows that the NIFOB at ex-store is lower than the NV(VFDE) amount calculated for SCT. This indicates that a reference price lesser duty in the form of a NIFOB should apply to exports by SCT when imported by the importer at the ex-store level of trade, Quail Glen. The Ministry considers it likely, however, that if the significantly lower level of duty for Quail Glen indicated by the level of trade analysis and the NIFOB/NV(VFDE) comparison was to be implemented, there would be a diversion of importing away from importers such as Vulcan and H J Asmuss towards Quail Glen, in order to take advantage of the difference in the duty rates.

837. This diversion could arise through Quail Glen simply importing on behalf of other importers or through Quail Glen on-selling to other importers such that the price would be lower than they could achieve by importing directly and paying the higher duty. In either case importers at the ex-wharf level of trade would evade paying duty at the full margin of dumping through a NV(VFDE) amount and the duty would not therefore be achieving its object of removing injury attributable to dumped imports.

838. At the same time imposing the same NV(VFDE) duty on all importers from SCT would impose a duty higher than is necessary to remove injury on imports made by Quail Glen. The Ministry considered what options might be available that would allow a lesser duty to be set for Quail Glen and also ensure that such a lesser duty

would not result in the under-payment of duty by other importers. One option considered was the use of a quantitative restriction on the volume of imports by Quail Glen. However, section 14(2) of the Act only allows the Minister to impose an "anti-dumping duty" and therefore does not permit the imposition of quantitative restrictions. Another option considered was the imposition of a two step duty for Quail Glen, with a NIFOB lesser duty applying to a specified volume of imports per annum and thereafter a NV(VFDE) duty applying. This may, however, amount to a *de facto* quantitative restriction and be outside the scope of the Act. There would also be obvious difficulties in administering this type of two-step duty at the border, particularly if the goods enter through a number of different ports. The Ministry concludes that there are no viable options that would allow a lesser duty to be set for Quail Glen that would at the same time avoid potential under-payment of duty by other importers through diversion of trade.

839. The Ministry notes that section 14(5) of the Act states in part that ". . . the Minister shall have regard to the **desirability** of ensuring that the amount of anti-dumping . . . duty in respect of those goods is not greater than is necessary to prevent material injury. . ." (emphasis added). Quail Glen is small importer whose imports represented [redacted] percent of all imports from Thailand over the POI. After considering whether a lesser duty should apply to imports by Quail Glen, the Ministry concludes that the risk of the effectiveness of the duties being undermined means that in this case it is not desirable to set a separate lesser duty rate for Quail Glen. The Ministry therefore proposes that a single NV(VFDE) amount be set for all exports by SCT.

840. Table 8.6 further shows that the NIFOB at the ex-wharf level of trade is lower than the NV(VFDE) amount calculated for Sanwa. This indicates that a reference price lesser duty in the form of a NIFOB amount should apply to exports by Sanwa. The Ministry proposes that this NIFOB apply to all exports by Sanwa, not only in respect of imports by SteelPlus. This is because SteelPlus, the only importer purchasing from Sanwa, is at the ex-wharf level of trade which produces the highest possible NIFOB.

841. The Ministry notes that the level of duty proposed for Sanwa is significantly higher than the NV(VFDE) amount proposed for SCT, even though it is a "lesser" duty. This arises through the addition of an exporter's margin in the calculation of the NV(VFDE) for Sanwa, with which the NIFOB is compared, allowing for a significantly higher NIFOB to be the applicable duty. There is, therefore, no incentive to divert exports from SCT to Sanwa.

Anti-Dumping Duties

842. The Ministry considers that the NV(VFDE) amounts should be expressed in the currency of the country of origin (THB), since normal values and costs to FOB have been established in THB and representation of NV(VFDE) in THB ensures that exchange rate movements do not result in collection of anti-dumping duty above the margin of dumping. NV(VFDE) amounts have therefore been expressed in THB.

843. If a NIFOB was to be established in THB the level of the NIFOB when converted to NZD would vary every time there was a movement in the NZD to THB exchange

rate. The effect of a variable NIFOB, when converted into NZD, would be to change the consequent ex-wharf or ex-store price (assuming the same profit margin is taken where this is relevant). For example, if the NZD depreciated against the THB then the NIFOB in NZD would increase and result in an ex-store price higher than the NIP. The reverse would result if the NZD appreciated against the THB.

844. If a NIFOB is set in NZD and the transaction price is below the NIFOB amount, then the anti-dumping duty collected will be such that the ex-wharf or ex-store price (assuming the allowable profit margin is taken where this is relevant) will always equate to the NIP, provided there are no significant changes in the costs between FOB and ex-store from those used to establish the NIFOB amount. With the exception of sea freight, all significant costs between FOB and ex-store are incurred in NZD and are not directly affected by exchange rate movements. However, if these costs do change significantly, this can be addressed by way of reassessment. NIFOB amounts have therefore been expressed in NZD.

Effect of Exchange Rate Movements on Anti-Dumping Duties

845. As outlined above, the Ministry considers that NIFOB amount should be set in NZD. Whilst the comparison of NIFOB and NV(VFDE) amounts showed that in two cases the NIFOB amount was less than NV(VFDE) amount, a NIFOB amount will not be a lesser duty if the THB depreciates sufficiently against the NZ dollar.

846. The Ministry therefore considers that the NIFOB amount should be capped at the relevant NV(VFDE) amount in NZD (calculated at the exchange rate at the date of importation) when this amount is lower than the NIFOB.

847. The NV(VFDE) amount used to cap the NIFOB amount is shown in Table 8.7 as an alternative rate.

Other Thai Exporters

848. It is necessary to establish a residual rate of duty that will apply to exporters not investigated in this investigation, as the rates set for SCT and Sanwa are specific to these companies, and based on data specifically pertaining to them.

849. The Ministry notes that the sample of exporters used in the investigation, as per paragraph 22, excluded only one exporter from Thailand. The investigation has shown that the rebar, exported by the company excluded from the sample, was in fact exported by SCT and these exports were consequently included in the analysis of dumping for SCT. Therefore in respect of Thailand all exports of the subject goods were included in the investigation. Therefore the requirements of Article 9.4 of the Agreement, concerning the calculation of duty rates for exporters excluded through the use of a sample do not apply.

850. As outlined in paragraph 810 the Ministry considers a reference price is the best means of imposing duty in this case. However, the two reference prices established above are confidential to the exporters involved, who will be able to make the rates available to their New Zealand importers. Any reference price residual rate would need to be based on the 2 confidential rates (or on one of

those rates) and would therefore also be confidential. It is clearly not feasible to have a confidential residual rate because other exporters will not know the rate at which their exports would be subject to duty and could not make it available to importers.

851. In this situation, the Ministry considers that the residual rate should be in the form of an *ad valorem* percentage equal to the weighted-average margin of dumping of all exports from Thailand over the POI, which was 13 percent. The Ministry is of the view, to ensure the application of the *ad valorem* percentage does not provide a greater level of duty than is necessary to prevent injury to PS, that it should be capped through the use of a reference price duty.

852. The relevant reference price duty to cap the rate is the highest NV(VFDE) amount calculated above which is that applying to exports by Sanwa of THB[redacted] If the amount of duty payable through the use of this NV(VFDE) amount is lower than the duty payable through the application of the *ad valorem* percentage, then the duty will be capped at this lower amount. While the NV(VFDE) cap will remain confidential, exporters and importers will at least know that the 13 percent *ad valorem* rate represents the maximum duty payable (although this could be less if the cap comes into operation).

Proposed Rates of Duty

853. Table 8.7 shows the proposed NV(VFDE) amounts in THB, NIFOB amounts in NZD, and the residual ad valorem rate of duty, and the NV(VFDE) THB amount at which it is capped (all monetary amounts are on a per tonne basis).

Table 8.7: Proposed Duty Rates

Exports by SCT	THB[redacted]
Exports by Sanwa	NZD[redacted]
Alternative Duty*: Exports by Sanwa	THB[redacted]
Residual Duty (other exporters) the lower of:	
- *Ad valorem* percentage	13%
- NV(VFDE) cap	THB[redacted]

*Note: The alternative NV(VFDE) duty rate takes effect when exchange rates are such that the NV(VFDE) is lower than the NIFOB.

854. The duty rates do not distinguish between Grade 300 and Grade 500 rebar because it was not possible to establish a separate NIP for the purposes of setting a duty for each grade. The difference, however, in the USD invoiced amount at the FOB level between the two grades is minimal. Over the POI this difference has varied from approximately [redacted] to [redacted] percent (expressed as a percentage of the Grade 300 price), in the majority of cases the difference is approximately [redacted] percent. The Ministry does not consider that such small differences will

significantly affect the efficacy or fairness of the duty when imposed using a single rate for both grades.

Impact of Anti-Dumping Duties

855. Any anti-dumping duties imposed will impact only on the rebar originating from Thailand that is being dumped, as the anti-dumping duties proposed are at a level that is no greater than is necessary to remedy the injury suffered by the New Zealand industry.

856. The imposition of duties will likely result in increased prices of rebar from Thailand and may allow the New Zealand industry to increase its prices. Duties on Thai rebar may also allow importers from other sources, such as Australia, to increase their prices due to the removal of some of the downward pressure on prices caused by dumped imports. It is likely that consumers of rebar will therefore pay higher prices.

857. It is difficult to gauge the extent of any price increases as price competition is also affected by imports from other low cost sources such as Indonesia and Malaysia. In 2003 imports from Thailand held [redacted] percent of the New Zealand market and imports from other countries held [redacted] percent of the New Zealand market, showing that there will still be significant import competition in the market. The prices of imports from other countries may consequently reduce the extent to which prices could increase subsequent to the imposition of a duty.

858. While the imposition of final duties may result in purchasers not having the same access to Thai rebar, at the same time rebar imported from other countries will not be affected by the duties and purchasers will therefore continue to have the same access to rebar from other countries.

9. Recommendations

859. It is recommended on the basis of the information obtained during the course of the investigation into the dumping of rebar from Malaysia and Thailand:

1. That the Minister determine pursuant to section 13 of the Act that in relation to the importation or intended importation of rebar from Thailand:

(a) the goods are being dumped; and

(a) by reason thereof material injury to an industry has been or is being caused.

2. That the Minister, pursuant to section 11 of the Act, terminate the investigation in respect of rebar from Malaysia because there is insufficient evidence that material injury to a New Zealand industry has been or is being caused or is threatened.

3. That the Minister, having made a determination under section 13 of the Act, give notice pursuant to section 14(1) of the rate or amount of duty determined under section 14(4) of the Act to be imposed in respect of the rebar from Thailand that is dumped.

4. That the Minister sign the attached *Gazette* notices, and give notice of the final determination and imposition of duties in respect of Thailand, and of the termination of the investigation in respect of Malaysia, to interested parties in accordance with sections 9, 11, 13 and 14 of the Act.

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Investigating Team
Trade Remedies Group