



**Ministry of Business,  
Innovation & Employment**

## **2013 Reopened Sunset Review**

# **Certain Bound Stationery from Malaysia**

## **Non-Confidential Final Report**

**Dumping and Countervailing Duties Act 1988**

**Reopened Review Report**

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Ministry of Business, Innovation and Employment

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## Abbreviations

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The following abbreviations are used in this Report:

Act	Dumping and Countervailing Duties Act 1988 (and its subsequent amendments)
Agreement	World Trade Organisation Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994
BTS	Back-To-School
CBS	Certain Bound Stationery
Chee Wah	Chee Wah Corporation Bhd
CIF	Cost, Insurance, Freight
Croxley	Croxley Stationery Ltd
EBIT	Earnings Before Interest and Tax
FOB	Free on Board
kg	kilograms
Ministry	Ministry of Business, Innovation and Employment
mm	millimetres
Muda	Muda Paper Converting Sdn Bhd
MYR	Malaysian Ringgit
NZCS	New Zealand Customs Service
NZD	New Zealand Dollars
Oanda	<a href="http://www.oanda.com/converter/classic">www.oanda.com/converter/classic</a>
OBM	Original brand manufacturing
OECD	Organisation for Economic Co-operation and Development
OEM	Original equipment manufacturing
POR(D)	Period of Review for Dumping
POR(I)	Period of Review for Injury
TWG	The Warehouse Group
TWL	The Warehouse Limited
USD	United States Dollar
VAT	Value Added Tax
VFD	Value for Duty
WSL	Warehouse Stationery Limited
WTO	World Trade Organisation



## Executive Summary

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### Introduction

1. A review of the anti-dumping duties that currently apply against imports of certain bound stationery (CBS) from Malaysia was initiated by the Ministry of Business, Innovation and Employment (the Ministry) on 11 September 2012 and completed on 28 March 2013. A reassessment of the type and level of duty was initiated on 28 March. The reassessment that was underway was terminated and the review was reopened on 30 May 2013. An interim report on the reopened review was released on 22 August 2013. The duties under review have been in place since 2007.

2. The goods under review are described as:

*Exercise books, note books, project books, sketch pads and pads of a type intended for the purpose of writing/drawing, suited primarily for primary, post-primary schools and commercial sectors, having the following specifications:*

*HEIGHT: Not less than 75 millimetres (mm) and not more than 450mm*

*WIDTH: Not less than 75mm and not more than 450mm*

*LEAF: Not less than 20 and not more than 300*

*PAGES: Not less than 40 and not more than 600*

- *Includes perforated or hole punched pages*
- *Can be printed/unprinted*
- *All colours*

*PAPER WEIGHT: Not less than 45 grams per square metre (gsm) and not more than 150gsm*

*LINES: Ruled or un-ruled; print any colour*

*COVER: Can be hard or soft covers,*

*Pads, sketch and other types, may/may not be covered.*

*Can be printed/unprinted.*

*BINDING: Stapled, sewn, glued or wire bound*

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

4. The review was originally initiated following an application by Croxley Stationery Limited (Croxley). Croxley is the major New Zealand producer of goods “like” those imported from Malaysia and therefore constitutes the New Zealand industry for the purpose of this review.

5. The review was reopened to allow consideration of issues raised in a submission made by The Warehouse Group (TWG) in April 2013, in which it alleged that the Ministry did not follow due process in the review, and that there were substantive errors in the Ministry’s analysis.

## Dumping

6. Imported goods are dumped if the "export price" is less than the price they are sold for in the domestic market of the exporting country (the "normal value"). The difference is the margin of dumping and is expressed as a percentage of the export price.

7. Sixteen companies exported CBS from Malaysia to New Zealand over the period of review for dumping. The Ministry limited its analysis to a selection of the largest exporters; the selected exporters being Chee Wah Corporation Bhd (Chee Wah) and Muda Paper Converting Sdn Bhd (Muda). These two companies represented [REDACTED] percent of Malaysian CBS exports by value (excluding those by Ruho Corporation which was found not to be dumping in the original investigation) for the year ended 30 June 2012.

8. The Ministry has found that:

- Exports of CBS by Muda were dumped into New Zealand, but exports of CBS by Chee Wah were not dumped.
- Over the period of review for dumping, the dumping margin for Muda was 2.4 percent, while the dumping margin for Chee Wah was -17 percent. There is likely to be a continuation of dumping by Muda at a similar level if the duty is removed. Chee Wah is not likely to resume dumping if the duty is removed.

## Injury

9. The Ministry has found that:

- There has been a sustained increase in the value of imports of CBS from Malaysia over the period of review for injury. Furthermore, the entire Malaysian CBS industry appears to have capacity to increase exports to New Zealand. There are no direct barriers to entry into the New Zealand CBS market, although a new entrant may find it challenging to gain a strong hold in the market with any new stationery brand.
- Croxley's prices are currently being undercut by Malaysian imports of CBS. It is not currently suffering price depression or suppression. Croxley has suffered material declines in sales volume and revenue, market share, and profits. It has suffered declines in productivity, utilisation of production capacity, cash flow and direct labour. There has also likely been an adverse impact on its ability to raise capital and investments.
- If duties are terminated, it is likely that the value of dumped imports from Malaysia will continue increasing. It is likely that dumped imports will undercut Croxley's prices but only a negligible proportion of that undercutting is likely to be attributable to dumping. Croxley's prices are likely to be suppressed. Croxley is not likely to face price depression. Croxley is likely to continue to experience material declines in sales volume and revenue, market share, and profits. Return on investments, growth, productivity, utilisation of production capacity and cash flow are likely to continue to be adversely affected following the removal of the duties.
- Imports from other sources represent a significant percentage of the CBS import market. It is likely that imports from other sources are also injuring the domestic industry and that this will continue.
- While the evidence indicates that the removal of the duty is likely to result in a continuation of material injury to Croxley the extent to which this can be attributed to dumping is likely to be negligible. The Ministry therefore concludes that the removal of



the duty is unlikely to lead to a continuation of material injury to the New Zealand industry that could be attributed to dumping.

**Conclusion**

10. The Ministry has concluded that if the current anti-dumping duties are removed there is not a likelihood of a continuation or recurrence of dumping causing material injury to the New Zealand industry in the foreseeable future.

# 1. Proceedings

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## 1.1 Proceedings

11. On 25 May 2012, the Chief Executive of the Ministry of Business, Innovation and Employment (the Ministry) received an application from Croxley Stationery Limited (Croxley) for a review of anti-dumping duties that currently apply to imports of certain bound stationery (hereinafter referred to as CBS) from Malaysia.

12. The anti-dumping duties that currently apply to CBS imports have been in place since 12 September 2007, when an anti-dumping investigation into the product was concluded and duties were imposed.

13. On 11 September 2012, the Chief Executive of the Ministry initiated a review of the continued need for the imposition of the anti-dumping duties, pursuant to s.14(8) of the Dumping and Countervailing Duties Act 1988 (the Act), on being satisfied that sufficient evidence had been provided by the applicant, Croxley, justifying the need for the review.

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

15. On 28 March 2013 the Ministry notified interested parties that it had completed the review and concluded that the duty should remain in place, except for Chee Wah Corporation Bhd which the review found was not dumping and was not likely to resume dumping should the duty be removed. Interested parties were provided with a non-confidential copy of the Ministry's final report on the review.

16. Immediately following the completion of the review the Ministry initiated a reassessment of the rates of duty with the purpose of establishing new rates of duty based on information gathered in the review. Interested parties were notified of the initiation of the reassessment at the same time as they were notified of the completion of the review.

17. A submission was made by The Warehouse Group (TWG) in April 2013 in which TWG argued that the Ministry did not take sufficient steps to notify TWG of the review. TWG also argued that there were substantive errors in the Ministry's analysis relating to the determination of dumping and injury. As a result of this submission, the Ministry decided to reopen the review to examine the claims by TWG about substantive errors and to consider any other submissions by interested parties that these parties consider relevant to the review.

18. In order to reopen the review the Ministry terminated the reassessment. Interested parties were notified of the termination of the reassessment and of the reopening of the review on 30 May 2013. The Ministry released an interim report on 22 August 2013.

## 1.2 Reviews

19. This report incorporates the matters covered in the first phase of the review, which was completed on 28 March 2013, and also covers the substantive issues raised by interested parties that were not considered in the first phase of the review. As noted in paragraph 14 above, the

purpose of the review is to examine whether dumping and injury would be likely to continue or recur if the duties were removed. In conducting this examination in this reopened review, the same period of investigation for dumping and injury are being used as those in the first phase of the review.

20. The period of review for dumping (POR(D)) is from 1 July 2011 to 30 June 2012, while the period of review for injury (POR(I)) involves an evaluation of the data submitted by Croxley for the period 2009 to 2012 (Croxley's financial year is the year to 31 December). Forecast information provided by Croxley for 2013 and 2014 relating to the impact on its domestic operation of the removal of the duties has also been considered.

21. In this report, unless otherwise stated, years for evaluating dumping are years ending 30 June, and years for evaluating injury are years ending 31 December. Dollar values are in New Zealand dollars (NZD). In tables, column totals may differ from individual figures due to rounding. The term VFD refers to value for duty for New Zealand Customs Service (NZCS) purposes.

22. If the outcome of this review indicates that anti-dumping duties should continue to be applied, then the rate or amount of duty can be reassessed in accordance with section 14(6) of the Act.

### 1.3 Dumping and Injury for the Purposes of a Review

#### 1.3.1 Ministry's Approach to Sunset Reviews

23. The Ministry carries out sunset reviews on the basis of Article 11 of the Anti-Dumping Agreement. In interpreting Article 11, the Ministry takes guidance from New Zealand legal reports, WTO Panel reports and approaches taken by other WTO member countries.

24. Article 11.3 infers a necessity to clearly demonstrate that, "...the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury". Some guidance regarding the interpretation of the phrase "would be likely" has been provided by the New Zealand Court of Appeal which interpreted the phrase to mean "a real and substantial risk..., a risk that might well eventuate" (Commissioner of Police vs Ombudsman [1988] 1 NZLR 385). Guidance can also be found in WTO jurisprudence e.g. "United States - Sunset Reviews of Anti-dumping Measures on Oil Country Tubular Goods from Argentina"<sup>1</sup> and US – Corrosion Resistant Steel Sunset Review<sup>2</sup>.

25. For further guidance on the level of evidence that is required to meet the "would be likely" criteria of Article 11.3 of the Anti-Dumping Agreement, the Ministry also referred to the findings of the WTO panel report, United States Anti-Dumping Duty on Dynamic Random Access Memory Semi-Conductors (DRAMs) from Korea<sup>3</sup>, and to the approaches taken by the European Union, United States, Canada and Australia to sunset reviews.

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

<sup>2</sup> Report of the Appellate Body – United States – Corrosion Resistant Steel – WT/DS244/AB/R – Adopted 9 January 2004

<sup>3</sup> Report of the Panel – United States – Anti-Dumping Duty on Dynamic Random Access Memory Semi-Conductors (DRAMs) of One Megabit or Above from Korea – WT/DS99/R – Adopted 19 March 1999.

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

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

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

28. To gauge the extent to which the removal of the anti-dumping duties will likely cause material injury to the domestic industry in the foreseeable future, the Ministry generally requires the domestic industry to provide projections or forecasts of the injury it considers it will suffer as a result of the removal of the duties. The Ministry will examine these projections in light of the company’s past performance (with the duties in place to prevent injurious dumping) and projected future performance (both in presence and absence of the duties) in order to assist it in making either a negative or positive likelihood of recurrence of injury determination. However, such an assessment is only undertaken where the information is available and is likely to be useful. In other words, there may be instances where the necessary information is not available or useful and its use may result in a degree of speculation in the decision-making process.

## 1.4 Grounds for the Review

29. In its application for a review, Croxley provided evidence that it will suffer a recurrence of material injury if the current anti-dumping duties are removed due to the likely significant increase in lower-priced imports of CBS from Malaysia. Croxley claimed that imports of Malaysian CBS will be dumped if the anti-dumping duties are removed and that material injury to the company will recur through:

- Price undercutting, and price suppression;  
    resulting in:
  - a decline in output and sales;
  - a decline in market share; and
  - a decline in profits.

## 1.5 Interested Parties


### 1.5.1 New Zealand Industry

30. The application was submitted by Croxley, a manufacturer, wholesaler and distributor of stationery products.

31. Croxley advised that it is the sole New Zealand producer of CBS of the type subject to anti-dumping duty as Candida Stationery Limited (Candida), another producer, ceased local manufacture of CBS in 2010. The Ministry confirmed that Candida is no longer manufacturing these products. There were several other small producers in 2007, being K Kurtovich Products Limited, Office Line NZ Ltd and Tasman Stationery Limited. None of these parties have participated in any part of the investigation and the Ministry has not found any evidence to indicate that, if they are still producing CBS, they represent a more significant proportion of production than they did in 2007.

32. The Ministry is satisfied in terms of section 3A of the Act that Croxley's output constitutes a major proportion of the New Zealand production of like goods and, therefore, that the company constitutes the New Zealand industry for the purpose of this review.

### 1.5.2 Exporters

33. There were 16 companies in total which exported CBS to New Zealand over the POR(D). Due to the number of exporters, the Ministry limited its analysis to a selection of the largest exporters, as permitted by paragraph 10 of Article 6 of the Agreement. The selected exporters were Chee Wah Corporation Bhd and Muda Paper Converting Sdn Bhd, which represented  percent of Malaysian CBS exports by value for the year ended 30 June 2012.

34. Chee Wah Corporation Bhd (Chee Wah) cooperated with the Ministry by providing a detailed manufacturer's questionnaire response. It has not made any further submissions. Over the POR(D), Chee Wah exported CBS to New Zealand in all four categories into which CBS has been classified for the purposes of this review (hard covered, limp covered, wire bound and pads).

35. Muda Paper Converting Sdn Bhd (Muda) provided the Ministry with a manufacturer's questionnaire response, made a submission on the interim report for the first phase of the review,

and provided further information on the reopened review as requested by the Ministry. Muda exported CBS to New Zealand in all four categories over the POR(D).

### 1.5.3 Importers

36. Bright Ideas Enterprises Ltd, Jasco Pty Ltd, and K Kurtovich Products Ltd imported CBS products from Chee Wah or Muda, but have not participated in the review.

37. CNZ Office Supply Ltd provided a partial importer's questionnaire response, with just an indication of costs.

38. Croxley also imported CBS from Malaysia over the POR(D). Croxley imports CBS where it is more efficient for it to do so, and has been doing this for several years. It provided an importer's questionnaire response, made a submission on the previous interim report, and made a submission on the reopened review.

39. The Warehouse Group (TWG) includes both The Warehouse Ltd (TWL) and Warehouse Stationery Ltd (WSL). Both subsidiaries imported CBS over the POR(D). WSL provided an importer's questionnaire response subsequent to the release of the previous interim report, which was supported by TWL. TWG made a submission after the Ministry released the final report, arguing that there had been substantive errors in the Ministry's analysis of dumping and injury. It made further submissions on the reopening of the review and the interim report on the reopened review.

## 1.6 Imported Goods

40. The goods which are subject to anti-dumping duty in this review are described as:

*Exercise books, note books, project books, sketch pads and pads of a type intended for the purpose of writing/drawing, suited primarily for primary, post-primary schools and commercial sectors, having the following specifications:*

*HEIGHT: Not less than 75 millimetres (mm) and not more than 450mm*

*WIDTH: Not less than 75mm and not more than 450mm*

*LEAF: Not less than 20 and not more than 300*

*PAGES: Not less than 40 and not more than 600*

*Includes perforated or hole punched pages*

*Can be printed/unprinted*

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*PAPER WEIGHT: Not less than 45 grams per square metre (gsm) and not more than 150gsm*

*LINES: Ruled or un-ruled; print any colour*

*COVER: Can be hard or soft covers,*

*Pads, sketch and other types, may/may not be covered.*

*Can be printed/unprinted.*

*BINDING: Stapled, sewn, glued or wire bound*

41. The Working Tariff of New Zealand classifies the subject goods under the following tariff items and statistical keys: 4820.10.00.11H; 4820.10.00.21E; 4820.10.00.29L; 4820.20.00.00F; 4820.90.01.00H; 4820.90.09.01G; and 4820.90.09.29G.

42. The number of units is only recorded by NZCS import data for four of the seven tariff items. The Ministry has therefore used the VFD values of the subject goods as a proxy for volume.

## 1.7 Exchange Rates

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

When the comparison under paragraph 4 requires a conversion of currencies such conversion should be made using the rate of exchange on the date of sale<sup>8</sup>, 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.

<sup>8</sup> Normally, the date of sale would be the date of contract, purchase order, order confirmation, or invoice, whichever establishes the material terms of sale.

44. Both Malaysian producers involved in the review invoiced exports in United States Dollars (USD) and transactions on the Malaysian domestic market were in Malaysian Ringgit (MYR). Both companies provided invoices for their exports to New Zealand. The Ministry has used the invoice date as the date of sale and applied an exchange rate applicable at that date.

## 1.8 Provision of Information

45. In order to meet its obligations under section 10(6)(B) of the Act, the Ministry makes available all non-confidential information to any interested party through its public file system.

46. During the first phase of the review, a verification visit was carried out at Croxley's premises to verify the information supplied by the company in its application for review and its response to the Ministry's request for further information. A copy of the verification report relating to the company visit was provided to the company and a non-confidential version was placed on the public file.

47. The Ministry also carried out visits at the premises of Muda and Chee Wah in order to verify and obtain further information. Verification reports were provided to the companies and placed on the public file.

48. Information was requested from all companies importing CBS over the period from Muda and Chee Wah during the first phase of the review. Responses are detailed above, as well as in the Ministry's previous Final Report. In cases where there was a lack of response, some of the Ministry's findings in this report have been made having regard to all available information, that is, on the basis of the best information available in accordance with of the Act and Article 6.8 and Annex II of the Anti-Dumping Agreement. The information relied on by the Ministry is detailed in the relevant sections in this report.

## 2. New Zealand Industry

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49. 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.

50. “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:

### 2.1 Like Goods

51. In order to establish the existence and extent of the New Zealand industry for the purposes of an investigation into whether the injury would be likely to continue or recur if the anti-dumping duties were removed, 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 are defined in section 1.6 above.

52. Croxley produces CBS in all four of the categories under review (hard covered, limp covered, wire bound and pads). It considers that the goods it produces closely resemble the CBS imported from Malaysia. Both selected Malaysian manufacturers produce CBS for export to New Zealand in all four categories.

53. The 2007 investigation concluded that the CBS produced by Croxley was a like good to the subject goods. The Ministry has reviewed whether there has been a change since the original investigation which would lead to a change in the conclusions reached in the like goods analysis.

54. The Ministry considers that Croxley’s CBS production methods, pricing structure and distribution channels (to supermarket chains, stationery retailers and contract supplies to larger corporations and specialist school supply companies) are similar to those of the Malaysian manufacturers.

55. WSL provided research done by [REDACTED], which indicates that the CBS market is [REDACTED].

56. [REDACTED] commented that it thought the product it imported, book blocks, should not be considered like to the CBS Croxley manufactures. [REDACTED] stated that its book blocks are



further manufactured in New Zealand, with a cover added, and these products do not compete directly with Croxley's products at retail, as they are in the designer end of the market. Chee Wah, the supplier, made a similar statement. However, the Ministry considers that these goods currently fall within the subject goods description and so remain subject to review.

57. TWG has pointed out that Croxley is a US-owned company. While this is correct, the Ministry does not consider that foreign ownership precludes a company from being considered 'the New Zealand industry' as they are still producing the goods under consideration in New Zealand.

58. On the basis of the information available, the Ministry considers that CBS produced by Croxley are goods that closely resemble the subject goods and concludes that the company is still producing like goods to the goods subject to the anti-dumping duty.

## 2.2 Imports of Certain Bound Stationery

59. Table 2.1 below shows import values of CBS into New Zealand by VFD, in calendar years since 2009. The figures have been sourced from NZCS data that covers the goods imported into New Zealand under the tariff items and statistical keys shown in paragraph 41 above. However, the tariff items and statistical keys cover a wider range of goods than those under investigation. The Ministry has excluded from the data goods that are not subject to investigation where possible; however, the data may still include some items that are not subject goods.

**Table 2.1: Imports of Certain Bound Stationery (NZD)**  
(Years ended 31 December)

	2009	2010	2011	2012
Imports from Malaysia	724,217	1,426,896	1,750,877	1,808,911
Croxley's imports from Malaysia				
Imports from Other Countries	9,308,988	9,943,329	10,905,725	11,508,711
Total Imports				

60. This data is discussed under section 4.3.



## 3. Dumping Investigation

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61. Dumping is defined in section 3(1) of the Act and occurs when an exporter sells goods to New Zealand at a price lower than they sell the same or similar goods in their country. In essence dumping is price discrimination between an export and domestic market.

### 3.1 Purpose of Review of Dumping

62. In this reopened review, the Ministry has continued to follow its usual approach of establishing if CBS from Malaysia is currently being dumped into New Zealand, the extent of any dumping and then assessing whether there is a likelihood of a continuation or recurrence of dumping, if the anti-dumping duties were to be removed.

### 3.2 Ministry's Approach to Likelihood of Continuation or Recurrence of Dumping

#### 3.2.1 Introduction

63. Article 2.4.2 requires that the existence of margins of dumping shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction-to-transaction basis. The Ministry determines which comparison method it will use based on the circumstances of each case.

#### 3.2.2 Methodology

64. The two largest exporters, Chee Wah and Muda, were selected for investigation. Both exporters are also manufacturers of the CBS subject to review. In the first phase of the review, the Ministry invited both exporters to participate in the investigation and provide a response to its foreign manufacturer's questionnaire. The Ministry received information from both Malaysian producers and on-the-spot (or verification) visits were undertaken at the premises of both companies in Malaysia. The Ministry also requested further information from Muda upon reopening the review, to which Muda responded.

65. In this case in respect of each of the two exporters selected for investigation there are significant variations in the prices of the CBS within each of the four categories in which it has been grouped (hard covered, limp covered, wire bound and pads). There are also some significant differences between the types of CBS in each category that were exported to New Zealand and those that are sold on the Malaysian domestic market and in the mix of product sold in each market within each category.

66. Because of these differences the Ministry considers that the fairest comparison would be achieved through the use of transaction-to-transaction methodology. This basis of comparison involves selecting an appropriate domestic transaction value (or when no suitable domestic transactions exist, constructing a domestic transaction value) for comparison with each export transaction value.

67. The export price and normal value have been compared at the ex-factory level, which is the preferred point of comparison under Article 2.4 of the Anti-Dumping Agreement, as a comparison at this point removes any differences in downstream costs from the dumping calculation.

68. To arrive at ex-factory values for each of the two Malaysian manufacturers, the Ministry has made a number of deductions from the base normal values and export prices. Adjustments have been made to ensure a fair comparison between sales of CBS for domestic consumption in Malaysia and that exported to New Zealand.

69. To calculate an overall dumping margin for each Malaysian producer, the Ministry has multiplied the export price and the normal value of each transaction by the export volume of that transaction. The resulting export price and normal value amounts were summed and the total export price was subtracted from the total normal value and the difference, when calculated as a percentage of the total export price, was the overall dumping margin for each exporter. If the export price was lower than the normal value for a manufacturer, the goods were considered to be dumped.

### 3.2.3 Submissions on Dumping

#### *Croxley's Submissions on Methodology*

70. In its submission on the interim report in the first phase of the review, Croxley stated that it does not agree with the methodology the Ministry has used, as Croxley considers it does not account for specific product types subject to dumping, and distorts the actual dumping behaviour at a product type level. It cited import statistics showing that FOB prices of imports in November and December 2011 were significantly lower than in other months and therefore indicate dumping in those months.

71. In relation to Chee Wah's dumping margin, Croxley considered there would need to be substantial increases in export prices or substantial decreases in normal values to effect such a significant change from the dumping margins established in 2007. Croxley does not consider that it has seen this change in the export prices of samples it has obtained from the Malaysian market.

72. Croxley considers the method that was used in 2007 to be fairer to all parties involved, as this methodology allowed for an analysis of each individual export transaction to determine dumping duty for a majority of Malaysian manufacturers. Croxley requested that the Ministry apply the methodology used in 2007.

73. Croxley further submitted on the reopened review that it would be concerned if further changes were made to the methodology used in the current assessment. It would prefer the Ministry to continue using the methodology used in the first phase of the review, rather than making changes based on submissions by other parties.

#### *Ministry's Response*

74. The Ministry's practice in 2007 was to determine a margin of dumping for each transaction and to establish the volume of dumped imports on the basis of whether each transaction was dumped. For the 2007 CBS investigation, the Ministry also calculated a dumping margin for each category of goods, that is, a dumping margin was calculated for each of limp covered, hard covered, wire bound and pads.

75. The Ministry's current methodology is based on developments in the rulings by the WTO Appellate Body. For example, in *Softwood Lumber, Article 21.5*<sup>4</sup>, the Appellate Body stated "Article 2.4.2 [of the Agreement] does not permit an investigating authority, when aggregating the results of transaction-specific comparisons, to disregard transactions in which export price exceeds normal

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<sup>4</sup> US – Final Dumping Determination on Softwood Lumber from Canada. Recourse to Article 21.5 of the DSU by Canada (WT/DS264/AB/RW, August 2006).

value.” That is, calculating a dumping margin on the basis of dumped transactions only is inconsistent with the rulings of the Appellate Body.

76. In addition, the Appellate Body has stated that dumping and margins of dumping can be found to exist “only in relation to that product as defined by the investigating authority” and that “they cannot be found to exist for only a type, model, or category of that product,<sup>5</sup>” nor, under any comparison methodology, can dumping and margins of dumping be found to exist at the level of an individual transaction. That is, margins of dumping cannot be found to exist for only a category of the product being investigated (a margin must be found for the product as a whole), nor can a dumping margin be found for a single transaction.

77. In *US – Final Anti-Dumping Measures on Stainless Steel from Mexico*<sup>6</sup>, the Appellate Body also commented that “‘dumping’ and ‘margin of dumping’ are exporter specific concepts” and that “an individual margin of dumping is to be established for each investigated exporter”.

78. On the basis of the above, when aggregating the results of individual transactions to calculate a margin of dumping for each exporter, all transactions are to be included in the aggregation calculation; that is, transactions where the export price is higher than the normal value are offset against transactions where the export price is lower than the normal value. If the dumping margin calculated on this basis is greater than *de minimis*, then all imports from the exporter are counted as dumped. Conversely, if the dumping margin is *de minimis* then all imports are counted as non-dumped.

79. The Ministry considers that the methodology used in this review is consistent with WTO jurisprudence. Furthermore, the Ministry is not intending to change its overall methodology in the reopened review, but has considered below whether further adjustments are required as detailed by interested parties in their submissions.

#### **Submissions on Goods Comparison**

80. Croxley expressed concern that the Ministry did not see samples of Malaysian CBS for like goods comparison purposes, nor did the Ministry have samples of Malaysian CBS from which Croxley could make specific comment on paper weights to challenge Muda’s opinions on paper differences.

81. In its submission on the previous interim report, Muda considered it impossible to make a fair and reliable comparison, due to dissimilarities of the products. It submitted that there was not a single CBS product sold to New Zealand that was the same as CBS sold in Malaysia. It said that OEM products (sold to New Zealand) and its own branded products (sold in Malaysia) have different competitive pressures. It also noted that some products were sold for a higher price in Malaysia than the price for which equivalent products were sold to New Zealand, due to the special features of the Malaysian products.

82. TWG also submitted that the CBS sold in Malaysia is substantially different from that sold in New Zealand, and considers that the review has not been based on a comparison of like goods. TWG said that binding is especially different; Malaysian and New Zealand products have different sizes and measurements; and paper thickness and page numbers are different. It stated that Malaysian product does not conform to the NZ stationery standard for school stationery. TWG provided details

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<sup>5</sup> US – Measures Related to Zeroing and Sunset Reviews (WT/DS322/SB/R, January 2007)

<sup>6</sup> US – Final Anti-Dumping Measure on Stainless Steel from Mexico (WT/DS344/AB/R, April 2008)

of the alpha numeric coding system used in New Zealand as per the New Zealand Standard (NZS:8132). TWG also stated that Malaysian brands are not recognised in the New Zealand market.

83. To illustrate the differences between the product imported by TWG and that sold in Malaysia, TWG provided, for a selection of product types, a comparison of the product size, paper substance (grams per square metre) and weight per piece between the product exported to New Zealand and the nearest equivalent sold on the Malaysian domestic market.

#### *Ministry's Response*

84. The Ministry sighted samples of CBS product, both that sold in Malaysia and that sold to New Zealand, at Chee Wah's premises in Malaysia. While the Ministry did not sight any samples at Muda's premises, it does not consider this was necessary as differences were evident from the product specifications. The Ministry notes that while the products sold in Malaysia and those sold to New Zealand are different, the Ministry considers that it has compared products that are most similar. The Ministry further notes that the selection of domestic customers and transactions was guided by advice from the relevant manufacturer that these transactions were comparable with relevant export sales to New Zealand.

85. The Ministry also notes that it has made an adjustment for physical differences in order to account for the dissimilarities. The Ministry would normally make an adjustment for physical differences based on the difference in the cost of production of the products being compared. In this case, Muda was unable to provide the cost of production for each product type. Muda did, however, provide some information on the specifications of the products exported to NZ and the equivalent product sold on the Malaysian domestic market, including the weight of each product type.

86. In the absence of cost of production information the Ministry considered that the most reasonable way to adjust for the physical differences in the product types was to base the adjustment on the proportionate difference in product weight, as detailed below. Details of the method for making this physical difference adjustment were set out in a draft verification report provided to Muda for comment and Muda did not object to an adjustment being made on this basis.

87. The Ministry also notes that the information provided by TWG on physical differences for some of the products is the same as that previously provided by its supplier relating to all comparable products and therefore while it does serve to illustrate the differences between the exported and domestic product, it does not provide any additional information on these differences.

88. Section 5(1) of the Act requires that normal values be established on the basis of sales on the domestic market, subject to certain conditions. Where domestic sales were identified by Muda that were comparable to export sales to New Zealand, and those sales otherwise meet the criteria in section 5(1), the Ministry is required to establish normal values on the basis of those sales. The Ministry is satisfied that the domestic sales that were used to establish normal values met the section 5(1) criteria and therefore were correctly used.

89. The Ministry further observes that, for Muda, sales on the domestic market were used to establish normal values only for comparison with some export sales in the limp covered and wire bound categories. Normal values established in this way represented 42 percent of the transactions in the "limp covered" and "wire bound" categories and 32 percent of all transactions. The normal values for the remaining transactions, which included all transactions in the pads and hard covered categories, representing 68 percent of transactions, were constructed and therefore did not require a physical difference adjustment.

### **Submission by TWG on the Obligation on Investigating Authorities to make Due Allowances**

90. As noted previously this review was reopened as a result of a submission made by TWG subsequent to the completion of the first phase of the review. That submission included argumentation on the issue of the obligation on investigating authorities to make due allowances for all factors that affect price comparability.

91. TWG submitted that section 5(3) of the Act requires the Ministry to affect a fair comparison of the normal value and the export price of the goods under investigation. TWG noted that section 5(3)(a) and (c) of the Act require the Ministry to compare figures at the same level of trade and to make due allowances for any differences in terms and conditions of sale, level of trade, taxation, quantities and physical characteristics, and any other differences that affect price comparability.

92. TWG also noted that section 5(3) of the Act is based on Article 2.4 of the Agreement. It submitted that WTO jurisprudence confirms that investigating authorities are obliged to make due allowances for all factors that affect price comparability, and not just the most important factors.

93. TWG further submitted that this requirement is the case even if making such adjustments is a complex task. It stated that authorities must act in an unbiased, even-handed manner and must not exercise their discretion in an arbitrary way. It submitted that this obligation also applies where an investigating authority confronts practical difficulties and time constraints. Ultimately, TWG argued, it is investigating authorities and not interested parties that are obliged to ensure that a fair comparison is made between the normal value and the export price.

94. In support of the above propositions TWG cited the WTO Dispute Settlement Panel report in *Argentina – Ceramic Tiles (DS 189)*, paragraphs 6.113 and 6.116, the WTO Dispute Settlement Panel Report in *EC – Tube or Pipe Fittings (DS219)*, paragraph 7.178 and the WTO Appellate Body report in *US – Hot Rolled Steel (DS 184)*, paragraph 177.

95. Muda also stated in its submission on the reopened review that MBIE is legally obliged to make due allowances 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.

### **Ministry's Response**

96. In *US – Corrosion Resistant Steel Sunset Review (DS 244)*, the Appellate Body stated (at paragraph 127):

Article 2 sets out the agreed disciplines in the *Anti-Dumping Agreement* for calculating dumping margins. As observed earlier, we see no obligation under Article 11.3 for investigating authorities to calculate or rely on dumping margins in determining the likelihood of continuation or recurrence of dumping. However, should investigating authorities choose to rely upon dumping margins in making their likelihood determination, the calculation of these margins must conform to the disciplines of Article 2.4. [Footnote omitted.]

97. In sunset reviews the Ministry's normal practice is to calculate dumping margins for the exporters investigated (and then to consider whether there is likely to be a continuation or recurrence of dumping should the duty be allowed to expire). In calculating the dumping margins the Ministry follows the provisions of sections 4 and 5 of the Act, which reflect the provisions of Article 2 of the Agreement.

98. The Ministry has considered the WTO jurisprudence referred to by TWG in its submission and agrees the jurisprudence provides support for the submission made by TWG about the obligations on an investigating authority when making due allowances for differences that affect price comparability. The Ministry also notes, however, that in terms of section 6 of the Act, it may make decisions based on the best available information where sufficient information has not been furnished, and disregard information it considers to be unreliable. As noted above, this review was reopened to examine the claims made by TWG about alleged substantive errors made by the Ministry, including those relating to whether due allowances were made in the first phase of the review for all differences that affect price comparability. Allowances are discussed in the relevant sections of the report below.

99. The following paragraphs provide a detailed explanation of how export prices and normal values have been established for each of the two Malaysian CBS producers.

### 3.3 Export Prices

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

101. The adjustments to allow for fair comparison of prices relate to the costs, charges and expenses incurred in preparing the goods for shipment to New Zealand which are additional to those costs, charges and expenses generally incurred on sales for home consumption in the country of export, and costs, charges and expenses resulting from the exporting of goods arising after shipment from the country of export.

102. The following paragraphs provide an analysis of export prices for each of the two Malaysian CBS producers.

#### 3.3.1 Muda

##### **Introduction**

103. Muda sells CBS to [REDACTED] and to [REDACTED]. Muda advised that it has a normal commercial relationship with all its New Zealand customers, with no corporate affiliations. All sales are made at arm's length.

104. Muda's sales to [REDACTED] are made via a tender process for which it has been invited to tender by [REDACTED], and was consequently awarded the contract. [REDACTED] requires that Muda meet the quality and specifications directed by [REDACTED], which are in line with NZ Standards.

105. All of Muda's exports to New Zealand are made on a FOB basis shipped from Penang.

106. The invoice date of each export shipment to New Zealand is considered by the Ministry to establish the material terms of sale and the date from which Muda's credit terms commence.

107. Over the POR(D), all of Muda's New Zealand customers were invoiced in USD. The currency conversion (from USD to MYR) has been made for each shipment using the interbank exchange rate obtained from [www.oanda.com](http://www.oanda.com) at the date each transaction was invoiced.



### **Base Prices**

108. Exports to New Zealand are made on a FOB basis, therefore the FOB value of each export transaction in USD has been taken to be the base price. Muda provided commercial invoices relating to each shipment to New Zealand over the POR(D).

### **Adjustments**

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

109. These expenses cover all costs between ex-factory and loading the goods onto the ship for export to New Zealand, i.e. to FOB, and include transportation, port handling charges and documentation fees. An adjustment for these costs has been made on the basis of verified information.

#### **Cost of Credit**

110. An adjustment has been made for cost of credit on the basis of verified information for exports to [REDACTED] for a credit term of [REDACTED] days and for exports to [REDACTED] for a credit term of [REDACTED] days using an interest rate of [REDACTED] percent.

#### **Export Price Calculation**

111. Muda's export prices for CBS have been calculated by deducting from the FOB invoiced base prices the adjustments outlined above. Ex-factory export prices range from MYR [REDACTED] to [REDACTED] per piece.

### **3.3.2 Chee Wah Corporation Bhd (Chee Wah)**

#### **Introduction**

112. Chee Wah did not make any submissions on the reopened review. No further adjustments have been made to this company's export prices, and the following information is the same as that detailed in the first phase of the review.

113. Chee Wah sells CBS to [REDACTED] and [REDACTED]. Chee Wah does not have any corporate affiliation with any of its customers in New Zealand and all sales are made at arm's length.

114. Goods for [REDACTED] and [REDACTED] are delivered on a CIF basis directly from Penang Port to Port of Auckland, whilst goods for [REDACTED] and [REDACTED] are sold on a FOB basis.

115. The invoice date of each export shipment to New Zealand is considered by the Ministry to establish the material terms of sale and the date from which Chee Wah's credit terms commence. Over the POR(D), all of Chee Wah's New Zealand customers were invoiced in USD.

116. Exchange rates on the date of sale, obtained from Bank Negara Malaysia, were used for the conversion of USD amounts to MYR.

#### **Base Prices**

117. Base prices have been taken as the gross invoice prices from Chee Wah to its New Zealand customers. Chee Wah provided the Ministry with commercial invoices relating to each shipment to New Zealand over the POR(D) and documents showing all of the costs allocated to each line of each shipment.

## **Adjustments**

### *Quantity Discount*

118. Chee Wah offers New Zealand customers a quantity discount, which is only offered upon negotiation with the customer. [REDACTED] received a discount over the POR(D), which is shown along with a gross price on the invoices provided.

119. The discounts given to [REDACTED] were deducted from [REDACTED] gross prices to arrive at a net invoice price.

### *Inland Transport*

120. The Ministry has made an adjustment to each transaction based on verified information for inland freight from Chee Wah's factory in Penang to Penang Port.

### *Insurance*

121. An adjustment has been made for the cost of insurance for the CIF transactions based on the verified insurance calculations Chee Wah made for each transaction.

### *Overseas Freight and Port Charges*

122. The Ministry made adjustments for overseas freight (for the CIF transactions) and for port charges based on verified information provided by Chee Wah for each transaction.

### *Cost of Credit*

123. An adjustment has been made for the cost of credit for each shipment using verified information provided by Chee Wah, based on the credit term extended to each importer using Chee Wah's average commercial bank overdraft rate of [REDACTED] percent.

### **Export Price Calculation**

124. Chee Wah's export prices for CBS have been calculated by deducting from the invoiced base prices the adjustments outlined above. The USD amount was then converted to MYR. Ex-factory export prices range from MYR [REDACTED] to [REDACTED] per piece.

## **3.4 Normal Values**

### **3.4.1 Introduction**

125. Normal values are determined in accordance with section 5 of the Act. The normal value is usually the price at which the Malaysian manufacturers sell CBS in the domestic market in Malaysia. The types of sales that can be used to determine normal values are set out in section 5 of the Act, which can generally be described as arm's length sales of like goods in the ordinary course of trade for home consumption in the country of export, in this case Malaysia.

126. In the absence of relevant and suitable sales in the ordinary course of trade, normal values can be constructed on the basis of the sum of cost of production and, on the assumption that the goods had been sold for home consumption in the ordinary course of trade in Malaysia, reasonable amounts for administrative and selling costs and other costs incurred in the sale, and a rate of profit normally realised on sales of goods of the same general category in the Malaysian domestic market.

127. Section 5(3) of the Act requires that in order to effect a fair comparison, the normal value and export price shall be compared at the same level of trade, in respect of sales made at nearly as possible to the same time and with due allowance for differences that affect price comparability.

128. Both Malaysian producers provided information on their domestic sales, and to the extent to which such sales were comparable to the export sales to New Zealand, the Ministry has used it to calculate normal values, also having regard to other available information where necessary.

### 3.4.2 Muda

#### *Introduction*

129. Muda sells to wholesalers and retailers in the Malaysian domestic market but the level of trade at which sales are made is not relevant to the selling price, which Muda said is the same to all customers regardless of the level of trade or the volume purchased. Muda is not related to any of its customers and all sales were made at arm's length.

130. All stock is held at the factory and transported directly from the factory to Muda's customers throughout Malaysia. All sales are made on a delivered (free into store) basis. Deliveries are contracted out to independent freight companies.

131. Muda sells a range of CBS on the Malaysian domestic market in each of the four categories into which CBS has been divided. Muda provided the Ministry with details of the cost to make and sell CBS in each category on the Malaysian domestic market over the POR(D). The information showed that CBS in the hard covered and pads categories was sold at a loss over the POR(D) while CBS in the limp covered and wire bound categories was sold at a profit. The information also showed that when all four categories were taken together, Muda's sales of CBS on the Malaysian domestic market were made at a small loss over the POR(D). Muda was not able to provide information on the cost to make and sell each individual product type sold on the domestic market.

132. Article 2.2.1 of the Agreement allows investigating authorities to treat sales of the like product in the domestic market of the exporting country as not being in the ordinary course of trade by reason of price and to disregard those sales only if the authorities determine that such sales:

- are made within an extended period of time;
- are made in substantial quantities; and
- are at prices which do not provide for the recovery of all costs within a reasonable period of time.

133. Footnote 4 of the Agreement provides that the extended period of time should normally be one year but shall in no case be less than six months. Footnote 5 of the Agreement specifies that sales below per unit costs are made in substantial quantities under either one of two situations, namely:

- the weighted average selling price of the transactions under consideration for the determination of the normal value is below the weighted average per unit costs; or
- the volume of sales below per unit costs represents not less than 20 percent of the volume sold in transactions under consideration for the determination of normal value.

134. Article 2.2.1 does not define the term "recovery of all costs within a reasonable period of time", but it does outline a situation where such a recovery of costs does occur. This situation is where

prices which are below per unit costs at the time of sale are above the weighted average per unit costs for the period of investigation.

135. Article 2.2.1.1 provides guidance on the calculation of costs used in the analysis referred to above. In particular it provides that costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration.

136. Section 5(6) of the Act reflects the provisions of Article 2.2.1 but requires, if the criteria are met, that such sales shall be treated as not being in the ordinary course of trade. This is in contrast to Article 2.2.1 which does not make it mandatory to treat such sales as not being in the ordinary course of trade.

137. As noted above, Muda was not able to provide information on the cost to make and sell each individual product type sold on the domestic market and it was therefore not possible to establish whether each domestic sale was made at a price above the cost to make and sell. As also noted above, Muda has provided information on the cost to make and sell for each of the four categories of CBS into which the subject goods have been divided. Having regard to the limited information available to it the Ministry considers the most reasonable approach is to determine whether sales in any of the four categories must be disregarded on the basis of the criteria in the Act and the Agreement.

138. Information verified by the Ministry shows that over the period of investigation sales of CBS in the hard covered and pads categories were sold at a weighted average price that was below the weighted average per unit cost. These sales were therefore made within an extended period of time and in substantial quantities. As the weighted average selling price was below the weighted average per unit costs over a one year period, the Ministry, in the absence of any information which indicates that there is likely to be a future reduction in costs, considers it unlikely that those selling prices would provide for the recovery of all costs within a reasonable period of time. The Ministry has therefore treated sales in the hard covered and pads categories as not being in the ordinary course of trade and disregarded those sales for the purpose of establishing normal values.

139. Information verified by the Ministry shows that over the period of investigation sales of CBS in the limp covered and wire bound categories were sold at a weighted average price that was greater than the weighted average per unit cost. As such, the Ministry considers CBS in these categories was not sold in substantial quantities at prices below the cost to make and sell and were sold at prices which provide for the recovery of all costs within a reasonable period of time. The Ministry does not therefore consider it would be reasonable to disregard sales of CBS on the Malaysian domestic market in the limp covered and wire bound categories for the purpose of establishing normal values where there are sales in those categories that are comparable to the export sales to New Zealand.

140. The Ministry has therefore established normal values on the basis of Muda's sales on the Malaysian domestic market for CBS in the limp covered and wire bound categories where there were domestic sales of product types that were equivalent to the product types exported to New Zealand. Where there were no sales of CBS on the Malaysian domestic market in these categories equivalent to the product type exported to New Zealand, normal values were constructed on the basis explained below. Normal values were also constructed on the same basis in relation to all exports to New Zealand in the hard covered and pads categories.

### **Selection of Domestic Customers**

141. Muda exported a large number of different product types to New Zealand over the POR(D). Because of this it was necessary to select a range of domestic customers in order to obtain sales on the Malaysian domestic market in the limp covered and wire bound categories of product types that were equivalent to those exported to New Zealand where comparable domestic sales existed.

142. As noted above Muda sells at a standard price in the domestic market, regardless of volume and level of trade, although there is some variation in the net price resulting from discounts and rebates. There was no significant change in Muda's standard price over the POR(D). In order to obtain relevant sales, 10 different domestic customers were selected. In the limp covered and wire bound categories it was possible to establish normal values on the basis of sales on the Malaysian domestic market for ████████ transactions which represented 42 percent of all transactions in those categories.

143. Footnote 2 of the Anti-dumping Agreement states that sales used for establishing normal value shall normally represent 5 percent or more of sales to the importing country. The volume of Muda's sales from which the transactions were selected to establish normal values meet this threshold.

### **Constructed Normal Values**

144. As noted above, for those exports by Muda to New Zealand of stationery in the hard covered and pads categories and for those exports to New Zealand of stationery in the limp covered and wire bound categories where there was no equivalent domestic market sale, normal values have been constructed. Normal values have been constructed based on the cost of production of each product type, plus the following:

- (a) an amount for selling and administration expenses that would have been incurred if the product had been sold on the Malaysian domestic market; and
- (b) an amount for profit, having regard to the rate of profit normally realised on sales on the Malaysian domestic market of the same type of goods.

145. Muda was not able to supply information on cost of production and selling and administration expenses on an individual product type basis. Muda was, however, able to provide this information and the profit or loss over the period of review for its sales on the Malaysian domestic market for each of the four categories (hard covered, limp covered, wire bound and pads) on a per tonne basis. These costs and an amount for profit for each relevant product type were therefore estimated by the Ministry. In summary that involved:

- Calculating the cost of production for each product type based on the average cost of production per tonne for the relevant category and converting that to a cost per piece based on the weight of the product type and the number of pieces per tonne.
- For limp covered and wire bound products the average ex-factory cost of production per tonne for each category before selling and administration expenses was calculated. The percentage that selling and administration expenses and profit represented of this amount was calculated. These percentages were then applied to the cost of production (before selling and administration expenses) for each product type to calculate these expenses and profit margin by product type.
- For hard covered and pads products the average ex-factory cost of production per tonne for each category before selling and administration expenses was calculated. The percentage that selling and administration expenses represented of this amount was calculated. These percentages were then applied to the cost of production (before selling

and administration expenses) for each product type to calculate these expenses by product type. For the profit margin, the percentage that the profit for both limp covered and wire bound sales represented of the cost of production was calculated and applied to the cost of production for each product type to calculate a profit margin by product type.

### **Base Prices**

146. For those normal values established on the basis of sales on the Malaysian domestic market, base prices are the free into store invoiced prices. For those normal values that were constructed, base prices are the constructed amounts.

### **Adjustments**

147. Because of the basis on which constructed normal values were calculated, the Ministry does not consider that any adjustments are required to constructed normal values in order to allow a fair comparison with the export price to New Zealand. The adjustments below therefore relate only to normal values established on the basis of sales on the Malaysian domestic market.

#### *Early Payment Discount*

148. Muda offers a discount for early payment ranging from █% if payment is made within █ days to █% if payment is within █ days. Most customers pay within █ days and receive the █% discount. Over the POR(D) early payment discounts represented █% of sales. An adjustment has therefore been made at █% of the base price.

#### *Physical Characteristics*

149. While it was possible in many cases to identify sales on the Malaysian domestic market of product types equivalent to those exported to New Zealand, the specifications of the products exported to New Zealand differ from the nearest equivalent Malaysian domestic product.

150. For the sales on the Malaysian domestic market identified as equivalent to the sales of product types exported to New Zealand, Muda provided some information on the physical make-up of both the exported and domestic product, including the weight per piece of each product. It was not able to provide cost of production information by product type.

151. In the absence of information on the cost of production of each product type exported to New Zealand and the nearest equivalent sold on the Malaysian domestic market, the Ministry has made an adjustment for differences in physical characteristics based on the difference in weight per piece. The adjustment has been based on the proportionate difference in the weight of the exported and domestic product adjusted for the proportion that materials represent of the total cost of production.

152. For example, the █ product exported to New Zealand is █ kg and the domestic sale equivalent, the █, is █ kg. In this case the adjustment was as follows:

- Difference in weight as percentage of domestic product = 54%
- Percentage that materials represent of total cost of production = █%
- Upward percentage adjustment to the normal value =  $54 \times \text{█} = \text{█}\%$

153. Using this method results in both upwards and downwards adjustments to normal values.

### *Freight to Customers*

154. An adjustment has been made for the cost of freight to customers on the basis of verified information using the weight per piece and the average freight cost per kilogram.

### *Cost of Credit*

155. An adjustment has been made on the basis of verified information for cost of credit based on an average credit term of [REDACTED] days using an interest rate of [REDACTED] percent.

### ***Additional Adjustments Considered in the Reopened Review***

#### *Volume*

156. In its submission on the reopened review, [REDACTED] stated that differences in average sales volume between sales on the Malaysian domestic market and export sales to New Zealand affect price comparability.

157. Muda also submitted on the reopened review that an allowance should be made to reflect the larger volume (and corresponding value) that has been sold to New Zealand than that sold in Malaysia. It said prices for New Zealand take volume considerations into account (that is, a larger volume will have better pricing) and discounts are offered for bulk purchases.

158. Muda has not been able to provide any evidence that illustrates that such an adjustment would be warranted, such as quantity discounts that have been offered or evidence of any other negotiations with its customers which shows that price varies according to the volume purchased. Muda said the price quoted is based on the volume. In the interim report, the Ministry concluded that, in the absence of any evidence showing that prices vary according to the volume purchased, it could not make an adjustment for volume.

#### Submissions on Interim Report on Reopened Review

159. [REDACTED] said in its submission on the interim report that the Ministry should make an adjustment for differences in volume, pointing out that other investigating authorities and the Ministry itself routinely make adjustments to reflect differences in average sales volumes. It also provided quotes from Muda to WSL indicating per unit prices for CBS which decrease as an order exceeds particular volume thresholds.

160. The WTO Handbook<sup>7</sup> outlines some situations in which an adjustment could be made where the quantity affects the price, for example, where a manufacturer offers quantity discounts, or is able to gain efficiencies from manufacturing larger runs of product.

161. The Australian investigating authority also considers making an adjustment where quantity has an effect on price comparability. This could be where there is a quantity discount, or 'any other method', such as cost differences arising from different volumes.

162. Muda has said that domestic selling prices are the same regardless of the volume purchased and all sales are at a standard price, rather than negotiated as they are for the exported custom-made CBS. That is, volume is not a consideration when negotiating prices on the domestic market. However, export prices apparently take volume into consideration.

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<sup>7</sup> Czako, J., Human, J., and Miranda, J. *A Handbook on Anti-Dumping Investigations*. 2003. Cambridge. World Trade Organisation.

163. The evidence from [REDACTED] in the form of quotes from Muda is that it receives discounts where it purchased higher volumes of particular lines. The actual volumes purchased, inclusive of any discount, are the net prices the Ministry has used as base prices in calculating export prices for Muda.

164. It is not clear why volume related discounts are offered for the export market but not on the domestic market, and neither party making submissions has provided explanation for this. However, it would seem likely that it is more efficient for Muda to manufacture a larger volume of product for the export market, as these products are made to order. The products sold on the domestic market are Muda's own brand, and Muda simply manufactures a large volume which is then sold out of its warehouse when ordered – Muda does not gain any benefit if a domestic customer makes a large order, as the product is already manufactured, and Muda has already achieved economies of scale. It appears unlikely that a domestic customer would receive a quantity discount if it were to order a large volume, and in fact, Muda has explicitly stated that it does not consider quantity in its sales on the Malaysian domestic market. In this situation the evidence is that if a domestic customer purchased volumes similar to those sold to [REDACTED], the price would not change to reflect the larger volumes purchased. While there is evidence from [REDACTED] that export prices to New Zealand vary according to the volume purchased, where domestic prices do not vary in the same way, the Ministry does not consider that an adjustment for differences in volume is required to ensure a fair comparison of the export price with the normal value.

#### *Marketing and Related Costs*

165. [REDACTED] submitted that Muda's selling prices on the Malaysian domestic market include allowances for marketing and other related costs, whereas Muda's export prices do not allow for such costs as the New Zealand importers pay for these expenses directly. The Ministry sought additional information from Muda on such costs, as detailed below.

166. Muda has stated that allowances should be made to reflect the differences in marketing and promotional activities associated with private label products and branded products. Muda only exports private label products to New Zealand, while it sells its own brand on the Malaysian market. Muda has stated that its prices to New Zealand do not include an allowance for marketing costs, as it is not responsible for this activity in New Zealand. It said prices for its domestic customers, however, do include a mark-up to cover marketing and promotional activities.

167. Muda has detailed a number of rebates which it offers one of its domestic customers, [REDACTED], [REDACTED]. Muda offers this company promotional rebates on both a quarterly and yearly basis. Rebates include a new outlet opening, yearly target turnover, an advertisement and promotional fund, and distribution centre allowance. No other domestic customers receive these rebates. Muda provided evidence of promotional expenses paid to [REDACTED] over the POR(D), of a total MYR [REDACTED].

168. Muda has a local sales team (consisting of [REDACTED]) which handle sales on the Malaysian market. Export sales to New Zealand are handled by the marketing manager or general manager. Muda provided figures covering salaries and bonuses and the expenses claimed by its domestic sales team, totalling MYR [REDACTED]. 'Expenses' covers hotel, petrol, parking, toll, and entertainment (food and beverage). This figure was substantiated by an annual income statement for each member of the sales team over the 2012 calendar year (which is Muda's accounting period) and by monthly expense claims over the POR(D).



169. Muda stated that the only marketing related expense they incur on sales to New Zealand is an annual customer visit, which Muda estimated as costing MYR [REDACTED]. The Ministry considers this expense to be quite low, although it would likely cover the cost of a short visit.

170. Muda has calculated net marketing expenses (that is, the amount spent for domestic sales less the amount spent for export sales to New Zealand) as representing [REDACTED]% of domestic sales.

### Ministry Response

171. In the interim report, the Ministry considered that it could not make an adjustment for the rebates [REDACTED] receives. Many of the individual parts of this rebate are aimed towards getting customers to shop at a [REDACTED] store, rather than being aimed at advertising Muda's stationery products. The Ministry considered that it was inappropriate to make an adjustment for a cost that was not directly related to the product at hand. Furthermore, the Ministry noted that it discussed with Muda the rebates [REDACTED] receives at the verification visit earlier in the review process, at which stage the Ministry declined to make such an adjustment, as [REDACTED] was not one of the domestic customers the Ministry had used in its transaction-to-transaction calculations.

172. The Ministry considered in the interim report that it could make an adjustment for Muda's local sales team costs (both salaries and expenses) net of the marketing costs for its New Zealand customers, as the Ministry understands that these costs are directly related to the selling of Muda's stationery. The Ministry has calculated the net costs as a percentage of total domestic sales of CBS and applied that percentage amount to each transaction to calculate the amount of the adjustment. Net salaries and expenses represent [REDACTED] percent of total domestic sales.

### Submissions on Interim Report on Reopened Review

173. [REDACTED] made a submission on the interim report for the reopened review regarding this issue, stating that an allowance should be made for significant price differentials between private label and branded products. [REDACTED] considers that the Ministry has not adequately considered this adjustment, quoting in support of this statement an Australian Federal Court case. In this case, Customs was aware that differences in quality and labelling could have an effect on prices, and the court held it was therefore bound to examine whether an adjustment was required, and could not put it aside on the basis that the exporter was obliged to provide compelling evidence<sup>8</sup>.

174. [REDACTED] quoted *China – Ceramic Tableware and Kitchenware*<sup>9</sup> where the European Commission (EC) stated that branded products are normally perceived by customers to be products "signifying a certain prestige, assured quality and design", while generic products do not have the same perceived value and therefore command a lower price. In this case, [REDACTED] states, the EC made an adjustment to the normal value of 40% to account for the difference. In *China – Aluminium Foils*<sup>10</sup>, which [REDACTED] also referred to, the EC only made comparisons on the basis of private label sales. [REDACTED] also provided references to research, including research done by the Private Label Manufacturers' Association, the Private Label Buyer, SymphonyIR and Time Magazine, which show retail price points vary, sometimes significantly, between branded products and their private label equivalents.

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<sup>8</sup> *Thai Pineapple Canning Industry Corp Ltd v Minister for Justice and Customs* [2008] FCA 443.

<sup>9</sup> *Council Regulation (EC) No 412/2013 – Anti-dumping Duties – People's Republic of China – Ceramic Tableware and Kitchenware*

<sup>10</sup> *Council Regulation (EC) No 925/2009 – Anti-dumping Duties – People's Republic of China – Aluminium Foil (certain)*

175. In one of the pieces of research referenced by [REDACTED] in its submission, the Private Label Manufacturers' Association stated that the largest difference between branded and private label products is "the so-called marketing tax". That is, a manufacturer incurs costs for marketing its branded product but does not incur this cost when it sells private label products, as its customer incurs those costs itself. The Ministry has considered marketing and related expenses above.

176. On the Malaysian domestic market, Muda incurred marketing related expenses in running a local sales team. The Ministry has made an adjustment to the normal value for the cost of salaries and expenses of the sales team in the interim report. Muda also incurred marketing related expenses through providing rebates to one domestic customer, [REDACTED]. No other domestic customers received these rebates, or any other type of advertising or promotional rebate; that is, the prices for all other domestic customers were standard prices and were not affected by the level of trade. The Ministry does not consider any adjustment to the normal value for the rebates [REDACTED] received are necessary for the reasons discussed in paragraph 171.

177. The Ministry's approach to this issue is consistent with the Australian investigating authority's approach. That is, an adjustment for differences in level of trade should be considered where these differences affect price comparability and are based on the difference in the costs incurred on export and domestic sales. However, the cost items must relate to actual sales of the goods in question.

178. [REDACTED] appears to be suggesting that the Ministry should make an adjustment based on general differences between branded and private label products, particularly the different price points they retail at. Retail is significantly downstream from the point at which the Ministry considers dumping (i.e. at ex-factory). The Ministry does not consider it appropriate to make adjustments for general differences, and considers the adjustment it made in the interim report fairly reflects the difference in costs incurred on export sales to NZ of private label product and domestic sales of branded product.

### *Distribution*

179. [REDACTED] also submitted that an adjustment should be made for differences in distribution costs between the two markets, as it is more expensive to distribute product in Malaysia than it is to export it to New Zealand.

180. Muda stated in its submission on the reopened review that allowances should be made to reflect the fact that its domestic and international distribution channels are very different. Muda said there is a higher distribution cost and higher labour cost on the domestic market, as it delivers directly to individual stores and packs different items together, which it does not do for its exports. Export prices reflect the fact that Muda incurs significantly less distribution and trading costs when exporting products to New Zealand. Muda provided details of a number of these costs, including mode of distribution, packing cost, packing method, transport costs, extra manpower, holding/storage and collection of account.

181. The Ministry asked for more detail on the holding and storage cost identified by Muda, as the Ministry considered that it had already made adjustments where appropriate for the other costs identified by Muda. Muda incurs this cost for domestic sales but not for export sales. It detailed a holding cost based on the cost of production for limp covered books and an average bank interest rate of [REDACTED] percent per annum. The storage cost component is a rental charge allocated per tonne.

### Ministry Response

182. The Ministry would normally consider making an adjustment for holding and storage costs if it could be demonstrated that the cost is directly related to the goods under consideration and that different costs are incurred for domestic and export sales. In the interim report, the Ministry noted it was not clear from the information provided by Muda that this was the case, as Muda only asserted that these costs exist and had not provided evidence of such costs. The Ministry further noted that Muda's own calculations appeared to be flawed in a number of respects. The cost of production that was used was only for limp covered books (although the Ministry noted that this category is a significant proportion of the market), and both the figures for cost of production and the average bank interest rate were different from figures that were previously verified. It was also not clear what the average holding period for domestic CBS products was, although Muda had calculated its figure per month. For these reasons, in the interim report, the Ministry considered that it was not appropriate to make an adjustment for holding and storage.

183. In the interim report, the Ministry considered that it had already made appropriate adjustments for other costs that were indicated as part of the costs of distribution in order to take prices back to ex-factory, and that no additional adjustments were required.

### Submissions on Interim Report on Reopened Review

184. [REDACTED] submitted in its response on the interim report that the Ministry should make an adjustment for holding and storage based on the costs Muda indicated in the information it provided on the reopened review, and the fact that Muda's exports are made to order, while its domestic production is made on a revolving basis and stored in Muda's warehouse. [REDACTED] also said if the Ministry considered that Muda's response was insufficient to discharge the burden of proof, it was obliged to seek further input.

185. Paragraph 3 of Annex 2 of the Agreement requires authorities to take into account all information which is verifiable, appropriately submitted and supplied in a timely fashion when a determination is made. Paragraph 5 then goes on to state that although information provided may not be ideal in all respects, this should not justify the authorities from disregarding it, provided the interested party has acted to the best of its ability. The Ministry could not properly verify the information provided by Muda on holding and storage. However, Muda has provided some information on these costs, and while the information provided is not ideal, it appears likely that there is a difference in holding and storage costs between the export and the domestic market.

186. As stated above, the figures Muda provided were not consistent with information that had previously been supplied by it and verified by the Ministry, and Muda did not provide any information to validate its claim of these costs for CBS. Muda was provided with a number of opportunities to support its assertion that these costs were accurate. [REDACTED] has stated that the Ministry has placed an unreasonable burden of proof on both itself and on Muda; however, the Ministry is required to be satisfied as to the accuracy of the information provided. The Ministry does not consider it unreasonable to request that costs be substantiated and notes that Muda has provided information showing the authenticity of other costs for which adjustments have been considered.

187. In consideration of paragraph 5 of Annex 2 of the Agreement, however, the Ministry considers it may make an adjustment for this cost based on the information that has been provided by Muda, even though the information is not ideal. The cost of production for limp covered books is lower than that verified by the Ministry, as is the bank interest rate. This means that the figure for holding and storage calculated by Muda is likely understated. Taking a conservative approach, and given that some of the information used has not been verified, the Ministry considers it appropriate to use the

lower figure calculated by Muda. Muda calculated holding and storage as costing MYR [REDACTED] per metric tonne, per month. The Ministry is not aware what the average holding period for Muda's domestic CBS is, but since Muda has calculated the cost on a monthly basis, the Ministry has taken this at face value and used the monthly figure. The Ministry has converted the MYR [REDACTED] amount to an amount per piece based on the weight of each piece in each transaction and made an adjustment to normal value on this basis.

### **Normal Value Calculation**

188. For normal values established on the basis of sales on the Malaysian domestic market, normal values have been calculated by deducting from or adding to the invoiced base prices as appropriate the adjustments outlined above. For those normal values established on a constructed basis, normal values have been set at the constructed amount without any further adjustment. Ex-factory normal values range from MYR [REDACTED] to [REDACTED] per piece.

### **3.4.3 Chee Wah**

#### **Introduction**

189. Chee Wah did not make any submissions on the reopened review. No further adjustments have been made to this company's normal values, and the following information is the same as that detailed in the first phase of the review.

190. Chee Wah sells a large range of CBS on the Malaysian domestic market, in all four categories. The company sells only to wholesalers. Its main distribution channel in the domestic market is through these wholesalers, including its wholly owned subsidiary, [REDACTED]. [REDACTED] on-sells to retailers, including [REDACTED], another wholly owned subsidiary.

191. Chee Wah's sales team visits wholesalers to take their orders. Customers either place their orders with Chee Wah's sales team, or they send their orders directly to the office. Chee Wah delivers goods directly to the customer from its premises. Deliveries are contracted to independent freight companies.

192. Chee Wah has a price list which it issues annually in July.

#### **Selection of Domestic Customers**

193. It was not possible to select a single domestic customer to compare to all sales to New Zealand, as there are no individual Malaysian customers to whom Chee Wah sold an entire range of CBS that is comparable to all CBS sold to New Zealand. In order to obtain relevant sales, it was necessary to select 16 domestic customers. Chee Wah does not have any ownership in the selected customers, and all sales were at arm's length. The Ministry was satisfied that sales to the selected customers were representative of Chee Wah's overall sales on the Malaysian market. Footnote 2 of the Anti-dumping Agreement states that sales used for establishing normal value shall normally represent 5 percent or more of sales to the importing country. The volume of Chee Wah's sales from which the transactions were selected to establish normal values meet this threshold.

#### **Base Prices**

194. Base prices are the gross free-into-store invoiced prices to the selected domestic customers.

#### **Adjustments**

### *Discounts and Rebates*

195. Chee Wah offers a range of discounts on the Malaysian domestic market.

196. All wholesalers receive a series of trade discounts. For customers in West Malaysia, these are [REDACTED] of the list price, with each part of the discount calculated on the reducing balance of the transaction. Customers in East Malaysia receive [REDACTED] rather than [REDACTED] (as well as the [REDACTED]) to account for the increased cost of shipping. The discounts are noted on each invoice for each product type.

197. Chee Wah also offers a payment discount on domestic sales, which is dependent on how long the customer takes to pay. This discount ranges between [REDACTED]% of the invoice price if paid within [REDACTED] days of the month end of the date of the invoice and [REDACTED]% if paid within [REDACTED] days. This discount varies between West and East Malaysian customers due to the differences in delivery times. East Malaysian customers have an extended time range in which to claim each level of discount.

198. Chee Wah also offers a range of quantity discounts on certain products. Invoices show which product types have had a quantity discount applied to them.

199. Chee Wah provided the Ministry with information on where payment discounts were applied in the domestic transactions that had been chosen. The Ministry has made adjustments as appropriate based on verified information, for all three types of discount, to arrive at a net invoice price.

### *Physical Characteristics*

200. There are physical differences between the products Chee Wah sells in Malaysia and those it exported to New Zealand. The differences include characteristics such as the size of the product, the number of leaves, the quality of the paper and the printing of the products.

201. Chee Wah provided the Ministry with the cost of production of each product type, including costs of materials, labour and overheads.

202. The Ministry made an adjustment to the normal values using the total difference between the cost of producing the exported product and the cost of producing the equivalent domestic product based on verified information.

### *Import Duty*

203. Some of Chee Wah's imported raw materials incur import duty. The following duties apply:

- 7% import duty on certain white printing paper used as contents.
- 10% import duty on certain paperboard used as base.
- 10% sales tax on certain paperboard used as a base.

204. These products are exempted from duty when they will subsequently be exported.

205. Chee Wah had indicated in its cost of production information where import duties applied. As this tax increases the price of only domestically sold products, it has an effect on the price comparability. The Ministry has made adjustments based on verified information to products where the duty applies.

### *Internal Transport*

206. An adjustment has been made for the cost of freight to customers based on verified information.

### *Insurance*

207. Domestic customers incur insurance charges. An adjustment has been made for these charges based on verified information.

### *Cost of Credit*

208. Chee Wah's customers in West Malaysia have credit terms of [REDACTED] days, whilst customers in East Malaysia have [REDACTED] days.

209. An adjustment has been made for cost of credit on the basis of verified information at the relevant credit terms and using Chee Wah's average bank interest rate of [REDACTED] percent.

### *Constructed Normal Values*

210. Chee Wah sold book blocks to one of its New Zealand customers, [REDACTED]. It did not sell any similar product to any Malaysian domestic customer which could be compared to the New Zealand sales, nor did Muda sell a similar product. Chee Wah provided the Ministry with the costs of producing each type of book block to allow the Ministry to construct a normal value for those products.

211. An amount for financing (holding) was adjusted to reflect the longer holding time for domestic products. Costs for warehousing and selling and administration costs were average amounts of the warehousing and selling and administration costs incurred in selling limp covered books in the domestic market.

212. An average rate of profit on limp covered books sold in the domestic market was determined and applied to the constructed normal value.

213. An adjustment has been made for the cost of credit, using an average figure of the credit terms provided to Malaysian domestic customers and the average bank interest rate of [REDACTED] percent. No other adjustments were necessary.

214. The resulting ex-factory normal values for book blocks ranged between MYR [REDACTED] and [REDACTED] per piece.

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

215. Normal values established on the basis of sales on the Malaysian domestic market have been calculated by deducting from or adding to the invoiced base prices the adjustments outlined above as appropriate. The Ministry has constructed normal values for book blocks on the basis outlined above. Ex-factory normal values range from MYR [REDACTED] to [REDACTED] per piece.

## **3.5 Comparison of Export Price and Normal Value**

216. The Ministry has compared the export prices and normal values on a transaction-to-transaction basis. This involves matching the comparable export sale to New Zealand with a sale on the Malaysian domestic market, or when no suitable domestic transactions exist, constructing a domestic transaction value.

217. The Ministry has calculated an overall dumping margin for Chee Wah and Muda on the basis set out in paragraph 69 above.

218. Muda's overall dumping margin is 2.4%, indicating that exports by this company are dumped.

219. Chee Wah's overall dumping margin is -17%, indicating there is no dumping by this company.

220. TWG stated in its submission on the interim report that if a revised dumping margin is less than or equal to 2.4 percent, then the investigation must be terminated under the Agreement's *de minimis* rule. Article 5.8 of the Agreement states that the margin of dumping shall be considered to be *de minimis* if the margin is less than 2 percent. The dumping margin could be equal to 2 percent and would not be considered to be *de minimis*. 2.4 percent is not a *de minimis* margin.

## 3.6 Likelihood of Continuation or Recurrence of Dumping

### 3.6.1 Introduction

221. In its application for a review, Croxley stated that the Malaysian exporters are continuing to dump into New Zealand (even with anti-dumping duties in place). The company considered that, if anti-dumping duties were removed, dumping would continue with greater dumping margins and significantly increased import volumes.

222. In assessing the likelihood of continuation or recurrence of dumped exports to New Zealand the Ministry has considered (i) the Malaysian domestic market situation (including prices and market growth) and (ii) current and likely future pricing of exports to New Zealand.

### 3.6.2 Muda – Likelihood of Continuation of Dumping

223. It was concluded above that Muda is dumping CBS into New Zealand at a dumping margin of 2.4 percent. On this basis the focus of dumping becomes one of whether dumping is likely to continue if the duties are removed.

#### (i) *Malaysian Domestic Market Situation*

224. The Malaysian domestic market is relevant in assessing the likelihood of future dumping for two reasons. First is that prices in Malaysia set the base normal values, against which export prices are compared to establish any dumping margins. Second is that the state of the Malaysian market has an effect on the extent to which any excess capacity will be exported or consumed by domestic demand growth.

225. Muda did not specifically comment on domestic prices other than saying that its standard price had not changed. It did not comment on growth in the Malaysian CBS market.

226. Muda is currently selling at a loss in two categories, but it did not indicate any intention to raise its prices to combat the loss.

#### *Conclusion - Malaysian Domestic Market*

227. There is no evidence to suggest that the Muda will raise its prices significantly or cause any other changes to the Malaysian domestic market for CBS based on the information provided.

#### (ii) *Likely Future Pricing of Exports to New Zealand*

228. [REDACTED] has said that the cost price from overseas tenders will not change due to removal of any duty. Tenders need to be competitive in the global market and will only move due to fluctuations in the commodities price.

229. [REDACTED] considers that the actual volume of imports would not increase, and as technology demand increases and paper based product demand falls, volume is expected to drop over time.

230. When asked to comment on its export pricing intentions to New Zealand, Muda stated that it does not expect to change its selling prices if duties are removed. A change in duties does not have any effect on Muda's costs.

231. Muda bases its prices on the market price for BTS orders. It does not have any contractual arrangements with its customers.

232. Muda also stated that factors such as quality, reliability and punctuality have more influence on demand than price.

233. Currently, *ad valorem* duties are in place on CBS from Malaysia. An *ad valorem* duty is a percentage rate duty on the value of the goods and is payable regardless of the price charged for the product. This type of duty does not provide any incentive for exporters to increase their prices while it is in place and therefore there is no reason to suppose that prices would reduce solely because the duty is removed.

234. Muda considers its prices are fair market prices and therefore any dumping is the result of free market competition rather than intentional dumping. It also stated that other factors influence its pricing policy, as below:

- Customer goodwill: Muda's New Zealand customers have been customers for many years, and so Muda offers them the best possible price.
- As New Zealand is a free and open market, any company will try to maximise its profit through a combination of pricing and efficiency. New Zealand customers, competitors from other countries, demand and supply all interact to drive the price down to an equilibrium level.

#### *Conclusion - Likely Future Pricing of Exports to New Zealand*

235. Based on Muda's current pricing behaviour and the information above, the Ministry does not consider it likely that Muda would further decrease its export prices. Its current pricing behaviour would likely continue, pointing to a continuation of dumping.

#### **Conclusion - Likelihood of Continuation of Dumping (Muda)**

236. In assessing the likelihood of a continuation of dumping for Muda, the Ministry has considered the company's prices in the Malaysian market and its intentions regarding future pricing to New Zealand. Based on Muda's current export prices and export pricing strategy to New Zealand, the Ministry considers that Muda's export prices to New Zealand are likely to remain at their present levels, should the duties be removed.

237. In terms of Muda's domestic prices, based on available evidence on the current and future market conditions existing in the Malaysian market, the Ministry considers that Muda's domestic prices of CBS will likely remain stable, or potentially rise in the two categories in which they are



making a loss in order for them to instead be making a profit (but this is unlikely to affect dumping margins, as normal values in the loss making categories are constructed).

238. On the basis of the above findings, and especially having cognisance of the fact that the company is currently dumping, the Ministry concludes that there is a likelihood of a continuation of dumping by Muda in the foreseeable future.

### **3.6.3 Chee Wah - Likelihood of Recurrence of Dumping**

239. It was concluded above that Chee Wah is not dumping CBS into New Zealand. On this basis the focus of dumping becomes one of whether dumping is likely to recur if the duties are removed.

#### **(i) Malaysian Domestic Market Situation**

240. Chee Wah did not specifically comment on pricing of CBS in Malaysia other than to state there are no regulations affecting the pricing of CBS. Chee Wah determines its pricing based on its cost and profit margin.

241. Chee Wah did not comment on growth of the Malaysian CBS market.

#### *Conclusion - Malaysian Domestic Market*

242. The Ministry considers that there is little likelihood of Chee Wah's domestic prices increasing significantly in the foreseeable future from the prices established in this review.

#### **(ii) Likely Future Pricing of Exports to New Zealand**

243. In terms of Chee Wah's export pricing strategy to New Zealand if the anti-dumping duties were removed, the company did not consider that the current anti-dumping duty had any effect on its prices to New Zealand customers, as it based its prices on its own costs and targeted profit margins. Chee Wah stated that its selling prices would remain the same if anti-dumping duties were removed.

244. Chee Wah has said that it will continue producing CBS under OEM arrangements for its existing New Zealand customers. Its production for export to New Zealand is based on confirmed orders. It stated that its current prices would become more competitive compared to other sources if duties were removed. If duties remain, it stated that it does not expect any growth, and possibly a decline, in its sales to New Zealand.

245. A large percentage of CBS exports from Malaysia are limp covered books, which currently have no duty. Chee Wah is not dumping in this category and it is therefore unlikely that it will lower prices in other categories of CBS that are currently subject to duty.

#### *Conclusion - Likely Future Pricing of Exports to New Zealand*

246. Based on Chee Wah's current prices and its export pricing strategy to New Zealand, the Ministry considers it unlikely that the company would envisage decreasing its export prices to New Zealand, if the current anti-dumping duty mechanism applying to its exports were removed. It is more likely that the company will continue to price into the New Zealand market at levels similar to its current pricing levels.

#### **Conclusion - Likelihood of Recurrence of Dumping (Chee Wah)**

247. In assessing the likelihood of a recurrence of dumping for Chee Wah, the Ministry has considered the company's prices in the Malaysian market and its intentions regarding future pricing to New Zealand. Based on the company's current export prices to New Zealand and available

evidence of its export pricing strategy, the Ministry considers that Chee Wah's export prices to New Zealand are likely to remain at their present levels, should the duties be removed.

248. In terms of Chee Wah's domestic prices, based on current price levels and available evidence, the Ministry considers that Chee Wah's domestic prices of CBS will likely remain stable, at least for the foreseeable future.

249. On the basis of the above findings, and especially having cognisance of the fact that the company is currently *not* dumping, the Ministry concludes that it is not likely that Chee Wah would reduce its export prices, in the absence of the anti-dumping duty rate applying to its exports, to levels that would constitute dumping.

### 3.7 Conclusions Relating to Dumping

250. Article 11.3 of the Agreement provides that an anti-dumping duty is to be terminated unless the authorities determine that the expiry of the duty would be likely to lead to the continuation or recurrence of dumping and injury.

251. Only Muda Paper Converting has been dumping into the New Zealand market over the POR(D); Chee Wah was not found to be dumping. Taking into account the matters considered above relating to the Malaysian domestic market and likely export prices to New Zealand in the absence of duty, the Ministry concludes there would likely be a continuation of dumping by Muda if the duty was terminated. However, the Ministry considers it unlikely that there would be a recurrence of dumping by Chee Wah should the duties be removed.

252. As Chee Wah is not dumping and is not likely to resume dumping in future, it would be exempt from any duty on CBS if the duties were to remain in place.

## 4. Injury Investigation

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### 4.1 Injury in a Review

#### 4.1.1 Introduction

253. In determining whether there is likely to be a continuation or recurrence of injury in terms of Article 11.3 of the Anti-Dumping Agreement, the Ministry takes guidance from section 8 of the Act. The Ministry interprets section 8 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.

254. Section 8 of the Act also 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. These factors and indices are considered under the relevant headings below. Furthermore, the demonstration of a causal relationship between the dumped imports and the injury, or the likely continuation or recurrence of injury in the absence of the duty, must be based on an examination of all relevant evidence and any known factors other than the dumped imports which are causing injury, or are likely to cause a continuation or recurrence of injury, to the domestic industry. Any injury, or likely continuation or recurrence of injury, caused by factors other than dumping must not be attributed to the dumped imports.

#### 4.1.2 Likelihood of Continuation or Recurrence of Injury

255. The Ministry's approach to sunset reviews is recorded in section 1.3 above. In considering the likelihood of a continuation or recurrence of injury, the Ministry has applied the general principles set out in that section.

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

257. The Ministry considers whether there is evidence of injury caused by dumped imports and then determines whether the removal of the duties would be likely to lead to the continuation or recurrence of injury. If it is concluded that dumping and injury would likely continue or recur, the Ministry will undertake a reassessment of the rate or amount of duty under section 14(6) of the Act in order to establish whether the existing duty remains sufficient to remove or prevent injury, or whether a different rate of duty is necessary.

### 4.2 Injury Information Submitted by Croxley

#### 4.2.1 Financial Information

258. The Ministry has evaluated the financial data submitted by Croxley for the period 1 January 2009 to 31 December 2012, which is also referred to as the period of review for injury (POR(I)). This information is in line with Croxley's financial years and was considerably easier for Croxley to produce than for years ending 30 June, which would be needed in order to match the POR(D).

259. Croxley provided profit and loss (P&L) summaries of its actual domestic sales of CBS for the financial years referred to in the paragraph above. Croxley split its financial information into the four categories of CBS. For each year, Croxley's P&L summaries contained domestic production volumes,

sales revenue, cost of sales, gross margin, selling and administration expenses, and Earnings Before Interest and Tax (EBIT).

#### 4.2.2 Injury Scenario Submitted by Croxley

260. Croxley submits that imports from Malaysia have continued to be dumped into New Zealand. Croxley claims that if the duty were to be removed, it would give rise to a likelihood that dumping would continue with greater dumping margins and significantly increased import volumes.

261. Croxley contends that a continuation of the increase in imports of CBS from Malaysia will lead to further price undercutting and price depression, which will result in a reduction in output and sales, market share, profits, return on investments, utilisation of production capacity and adverse effects on cash flow, inventories, employment and growth, thereby causing a continuation of material injury which will be exacerbated if the duties are removed. Croxley stated that [REDACTED] would be the most dramatically affected as it is the most price sensitive category.

262. Croxley provided financial projections/forecasts for 2013 and 2014 of how it considers the company would perform should (i) the current anti-dumping duties remain in place; and (ii) the current anti-dumping duties expire. Croxley has also provided explanations (including any underlying assumptions) of the figures provided and supporting documentation, to substantiate the financial projections/forecasts.

263. For the purpose of its forecasts for 2013 and 2014 in the presence and absence of anti-dumping duties, Croxley made adjustments to its 2012 sales revenue for (a) sales to [REDACTED] that were not allocated correctly previously; and (b) an estimated loss of business from [REDACTED] which Croxley considered at the time would eventuate in 2013. All forecasts have therefore been based on a [REDACTED] 2012 sales revenue figure than the actual sales revenue Croxley achieved. Forecasts for the situation in which anti-dumping duties remain are based on an average annual decline in revenue over the period 2009 to 2011 of [REDACTED]%. Should the duties be removed, forecasts are based on an average annual decline in revenue of [REDACTED]%, as this is the weighted percentage volume change for limp covered books. Since this category does not currently have duties in place, Croxley has made the assumption that this same decline would occur in the other three categories. The forecasts for both with and without duties assume that Croxley will [REDACTED].

#### 4.2.3 Ministry's Assessment of Croxley's Injury Forecasts if Anti-dumping Duties Expire

264. The Ministry has considered a number of factors to assess the reasonableness of the injury forecasts Croxley has provided for 2013 and 2014, should the duties expire.

265. The Ministry considers that whether and the extent to which Croxley is likely to suffer lost sales in the absence of duties, will depend on, amongst other things:

- (i) the extent to which the exporters are willing to decrease their prices to New Zealand, in the absence of anti-dumping duties;
- (ii) the amount of cost-savings New Zealand importers will incur as a result of not having to pay anti-dumping duties;
- (iii) the amount by which the importers are willing to pass on any cost-savings to their customers in New Zealand in the form of decreased prices; and

- (iv) the amount by which Croxley feels it will be necessary to discount its prices to compete with the lower-priced Malaysian goods.

266. The first of the above contingencies is likely to be affected by the type of anti-dumping duty currently imposed on imports from Malaysia because this will affect the extent to which the Malaysian exporters have both the incentive and desire to decrease their prices to their New Zealand customers.

267. *Ad valorem* duty rates are currently imposed on imports of CBS from Malaysia. The imposition of an *ad valorem* duty presupposes no material change in price by the foreign exporter to the New Zealand importer as a result of the duty being imposed and if the duty is later rescinded. In other words, under an *ad valorem* duty there is no real incentive for the pricing behaviour of the exporter to change significantly post-imposition of the measures because there will always be a duty paid on the goods whether or not their value increases or decreases. In fact, the higher the transaction value of the product, the higher will be the anti-dumping duty paid by the importer, which provides the exporter with an incentive not to increase its prices post-imposition of the duties. It is likely that importers are currently aiming to pay as little duty as possible, and thus it is not likely that export prices will decrease significantly if the duties were removed.

268. Both Malaysian manufacturers stated that they would not change their prices if the duties on CBS were removed. Their prices are based on costs of production and as such, the presence or absence of anti-dumping duties does not affect the prices either company offers their New Zealand customers.

269. Based on the price undercutting analysis, importers appear to prefer to keep both costs and prices low, and it therefore appears likely that importers will pass on any cost savings to their customers in New Zealand. TWG has said, however, that its retail prices would [REDACTED], as they have remained at the same level for the last 5 – 10 years.

270. Croxley's position is to [REDACTED], evident in its historical average prices, which show it has not suffered price depression despite rising import volumes of CBS. The impact of this strategy is seen in Croxley's declining volumes and revenue. This strategy becomes even more evident in Croxley's price depression forecasts, which forecast Croxley's prices to remain stable, even though sales volume and revenue are forecast to continue to decline.

271. Croxley has a focus on becoming more efficient. It schedules CBS production alongside diary production to enable it to run machines continuously, producing whichever products are needed on the same shift of staff. For example, Croxley's utilisation of production capacity figures show a low amount of utilisation of the Kolbus machine for CBS (Graph 4.5), as a large amount of this production is allocated to diaries. Croxley's strategy to [REDACTED] for CBS is indicative of the company trying to leverage efficiencies between both CBS and diary production.

272. The Ministry considers all the above information provides a convincing argument for concluding the following:

- New Zealand importers of Malaysian CBS would look to take advantage of not having to pay anti-dumping duty by passing on these cost savings to their New Zealand customers in the form of lower prices, in order to make greater sales;
- CBS prices offered by the Malaysian manufacturers are not likely to drop significantly;

- Lower prices for CBS in the New Zealand market are likely to be such that Croxley, [REDACTED] increased production costs, will incur lost volume to the lower-priced Malaysian imports.

273. In view of the above and, in particular, in considering the likely impact of the removal of the duties, the Ministry has consequently used the forecasts provided by Croxley in its assessment of the extent to which the company is likely to suffer a continuation of material injury should the duties expire, and over what time period.

## 4.3 Import Volume Effects

### 4.3.1 Import Volumes

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

275. The import data below has been adjusted to exclude non-subject goods. The tariff items and statistical keys under which CBS is classified cover more stationery items than those that are covered by the scope of this review. Where the data has been descriptive enough to indicate that a good would not come under the description of “certain bound stationery”, it has been removed. However, the import data may still include some non-subject goods.

276. Table 4.1 below shows import values of CBS from all sources compared with the New Zealand industry’s sales revenue. The figures are for the years 2009 to 2012, ending 31 December, and are in New Zealand dollars.

**Table 4.1: Import Values of CBS (NZD)**  
(Years ended 31 December)

	2009	2010	2011	2012
Dumped imports from Malaysia	381,577	936,633	1,425,506	1,637,015
Croxley’s imports from Malaysia	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Non-dumped imports <sup>11</sup>	9,651,628	10,433,592	11,231,096	11,680,607
Total Imports <sup>12</sup>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
NZ Industry Sales (revenue) <sup>13</sup>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
NZ Market	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<i>As % of Consumption</i>				
Dumped imports from Malaysia	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Croxley's imports from Malaysia	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Non-dumped imports	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
NZ Industry Sales	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

<sup>11</sup> Imports from all other sources and from Chee Wah Corporation Bhd and Ruho Corporation.

<sup>12</sup> Includes Croxley’s imports.

<sup>13</sup> Excludes Croxley’s imports.

<i>As % of NZ Industry Sales</i>				
Dumped imports from Malaysia				
Croxley's imports from Malaysia				
Non-dumped imports				
<i>Change on Previous Year</i>				
Dumped imports from Malaysia	-	555,056	488,873	211,509
Croxley's imports from Malaysia	-			
Non-dumped imports	-	781,964	797,504	449,511
Total Imports	-			
NZ Industry Sales	-			
NZ Market	-			
<i>% Change</i>				
Dumped imports from Malaysia	-	145%	52%	15%
Croxley's imports from Malaysia	-			
Non-dumped imports	-	8%	8%	4%
Total Imports	-			
NZ Industry Sales	-			
NZ Market	-			

277. Table 4.1 shows that there was a sudden, significant, increase in the value of dumped Malaysian CBS imports in 2010, and further, but not as significant, increases in 2011 and 2012. The value of dumped imports from Malaysia has increased in absolute terms by 212 percent since 2009. Dumped Malaysian imports have increased significantly over the period relative to New Zealand consumption, representing 15 percent of the total market in 2009 and 15 percent in 2012. Relative to the New Zealand industry's sales, dumped Malaysian imports have also increased significantly, representing 15 percent of the domestic industry's revenue in 2009, increasing to 15 percent in 2012. Dumped imports in 2012, however, still represented only a relatively small proportion of the total New Zealand market.

278. The value of non-dumped imports increased over the period by 20 percent in absolute terms. Relative to consumption, non-dumped imports have also increased, representing 8 percent of consumption in 2012 compared to 8 percent in 2009. Relative to New Zealand sales, non-dumped imports have increased from 8 percent of the domestic industry's revenue in 2009 to 8 percent in 2012.

### 4.3.2 The Effect of Anti-dumping Duties

279. Table 4.1 above shows an increase in the import value of dumped CBS from Malaysia from 2009 to 2012 of over NZ\$1,000,000. This represents a significant increase in import values over the period. Non-dumped imports have also increased, albeit by a smaller percentage. The total market has increased in value.

280. An analysis of the amount of anti-dumping duty collected on imports of Malaysian CBS since 2009 (from NZCS data) shows that there was a large increase in anti-dumping duty collected in 2010 from that collected in 2009. There was another significant increase in 2012. This indicates that the increase in Malaysian CBS imports is in hard covered, wire bound or pads categories of CBS, rather than the limp covered category, as no duty currently applies to the limp covered category.

### 4.3.3 Likely Import Volumes Should Duties be Removed

281. The likelihood of a recurrence of significant volumes of dumped imports sufficient to cause material injury to the industry is related to factors such as:

- the volume of imports before and after the imposition of anti-dumping duties;
- the price advantage (in the absence of duties) which such imports may hold;
- the capacity of the Malaysian industry to substantially increase its exports to New Zealand;
- the ease of entry into the New Zealand market;
- the ability of importers to handle a significant increase in imports from Malaysia;
- the ease of distribution of goods into New Zealand; and
- any other factors which may be relevant.

#### *Import Volumes Before and After the Imposition of Duties*

282. The analysis done in the original investigation showed import volumes and CIF values increasing between 2000 and 2007. New Zealand VFD values have continued to increase subsequent to duties being imposed in 2007.

283. A continued increase in Malaysian imports, with dumping duties in place, suggests that while the duties are acting to level the playing field, conditions exist in the New Zealand market to enable importers to fairly compete with the domestically-produced goods.

284. TWG has submitted that the actual volume of imports would not increase dramatically. Its own future imports are likely to be very similar to the 2013 BTS season, with units of around [REDACTED].

285. [REDACTED] the dumped imports are made by TWG ([REDACTED]). Imports of CBS by TWG from all sources have increased significantly since 2007, by a total of [REDACTED] percent, although the increase was lower between 2011 and 2012, at [REDACTED] percent. The proportion of TWG's imports sourced from Malaysia has also increased significantly. In 2007, TWG sourced just [REDACTED] percent of its imports from Malaysia, compared to [REDACTED] percent in 2012. The other main source of CBS for TWG is [REDACTED] – TWG's imports from this source have remained relatively steady between 2009 and 2012.

#### *Conclusion*

286. On the basis of the historical behaviour above, it can be expected that, if the duties were removed, there would be further scope for importers of CBS to compete with domestically produced CBS, suggesting a clear incentive would exist for those importers to significantly increase their volume of imports into New Zealand in the foreseeable future. The Ministry notes that TWG have said its volume would not increase, although its imports from Malaysia have increased significantly in recent years.

#### *Price Advantage of Imports (in the Absence of Duties)*

287. In its application for review, Croxley claimed that the removal of the current anti-dumping duties on Malaysian CBS would allow importers to lower their prices, resulting in price pressure on domestic prices. This would place pressure on Croxley to lower its own prices.



288. The price undercutting analysis in section 4.4 below shows that, based on the information gathered during the review, some of the Malaysian imports are currently undercutting the prices of Croxley's CBS. A majority of the imports from Malaysia are both dumped and undercutting the New Zealand industry. There is likely to be further undercutting if the anti-dumping duties are removed, resulting from importers passing on cost-savings from not having to pay the duties in lower prices to their customers. It is also concluded in section 4.4 that, if the duties were removed, the lower-priced Malaysian imports would cause price suppression.

289. TWG stated that the cost price from overseas tenders will not change due to tariff removals. TWG said retail prices in the New Zealand market have not changed significantly over the last seven years, encompassing times when it has sold both local and imported product. The market is highly competitive in the BTS season and retailers remain around the same retail price in order to remain competitive. It considers this trend likely to continue. The only reason to offer greater discounts than already in place would be purely due to competition in the market.

290. TWG has also stated that a removal of the anti-dumping duties might help it to breakeven or turn a small profit [REDACTED]. TWG said it has consistent retail price points which [REDACTED] upon any removal of duty.

### *Conclusion*

291. On the basis of the above, the Ministry considers that, if anti-dumping duties are removed, it is likely that Malaysian imports will initially hold a price advantage over the domestically-produced goods which will provide a clear incentive for those importers to increase their volume of imports into New Zealand in the foreseeable future. [REDACTED] is importing all of the dumped CBS from Muda, and is also undercutting Croxley, which indicates that at best, the status quo is likely to remain. The Ministry does note TWG's comments, which indicate that prices are likely to stay the same at the retail level, at least during the key BTS season.

### ***Capacity of the Malaysian Industry to Substantially Increase its Exports to New Zealand***

292. In their Foreign Manufacturer Questionnaire responses, both Chee Wah and Muda stated that they will continue producing and exporting CBS only upon receipt of confirmed orders. This is because New Zealand customers have specific requirements, and the CBS produced for the New Zealand market would not be able to be sold elsewhere. Similarly, the CBS product sold in Malaysia would not be able to be sold in New Zealand.

293. Muda stated that it is currently almost fully utilising its production capabilities. It produced [REDACTED] metric tonnes of CBS (excluding wire bound books, which are made manually) over the POR(D). It is not planning to increase its production capacity.

294. Muda stated in its submission on the interim report for the first phase of the review that it waits until orders are confirmed because the New Zealand BTS season (which its New Zealand customers order for) coincides with the Malaysian BTS season and thus production is run at the busiest time of year. It does not have any spare capacity during this time.

295. Chee Wah is currently producing at [REDACTED] percent capacity. It is capable of producing [REDACTED] metric tonnes annually. Over the POR(D), it produced [REDACTED] metric tonnes. Chee Wah is not currently planning to increase its production capacity. However, it did state that if duties are removed, it will become more competitive compared to other exporters (both those in Malaysia and in other countries) and thus may be able to increase its sales to New Zealand. It also said that if it were to use its freely disposable capacity, it may sell products to countries in Asia, the Middle East,

Europe or the USA. The Ministry notes that in the dumping section of this report it has found that Chee Wah is not dumping and is not likely to resume dumping if the duty is removed. Any increased exports by Chee Wah would therefore not be a cause of injury that could be attributed to dumping.

296. In its application for a review, Croxley claimed that in the absence of anti-dumping measures, Malaysian manufacturers have the capacity to substantially increase exports to New Zealand at any given time. Croxley provided a report titled “The 2011 Import and Export Market for Paper Exercise Books in Malaysia”, which indicated that the total value of paper exercise books exported from Malaysia was US\$8,051,000. According to this paper, New Zealand is Malaysia’s sixth largest export destination for paper exercise books, representing exports of US\$535,000 or 6.65 percent of total Malaysian exports of paper exercise books.

297. In its submission on the reopened review, Croxley provided the 2013 version of the above report which states that the Malaysian share of the New Zealand market has increased to 81.18% (from 73.29% in the 2011 report). While this is not accurate in terms of make-up of the New Zealand market for CBS (refer to the section on market share below), this does indicate that CBS from Malaysia has a significant impact on the New Zealand market, and that there is likely capacity for Malaysian manufacturers to increase their exports of CBS to New Zealand.

298. The sales value of relevant manufacturing sectors in both Malaysia and New Zealand are shown in the graph below. Neither country has data for stationery only, so the Ministry has used data for the manufacture of paper and related products, and printing. The New Zealand paper manufacturing sector includes wood products.

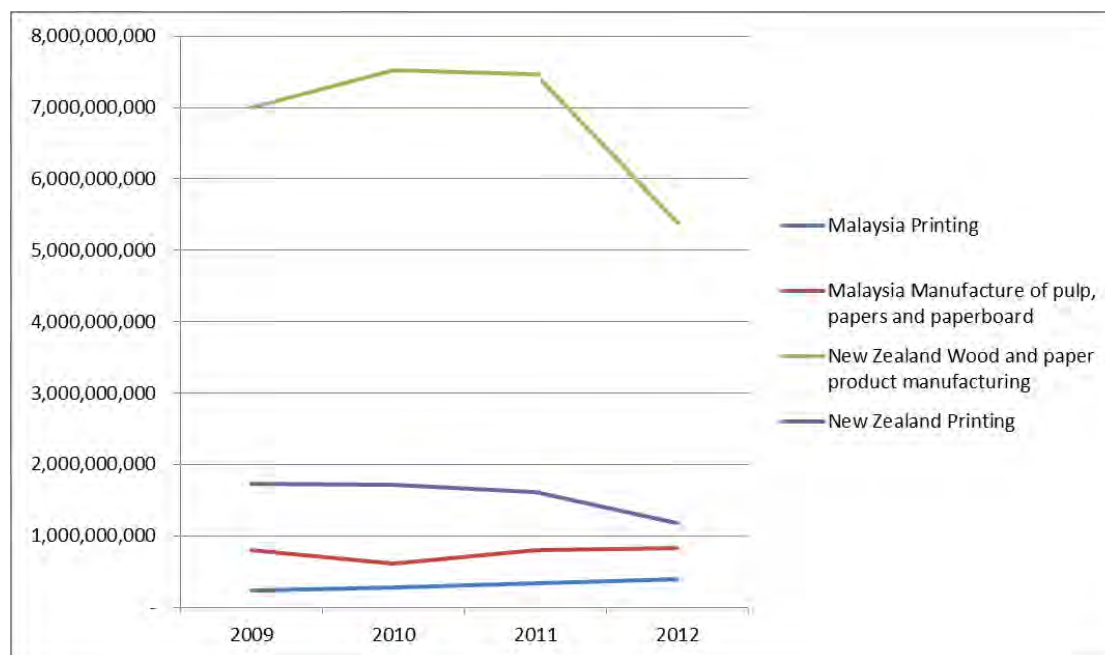
**Graph 4.1: Sales Value of the Paper and Related Products and Printing Industries in Malaysia and New Zealand (NZD)<sup>14,15</sup>**  
(Years ended 31 December)

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<sup>14</sup> MYR figures were converted to NZD figures using an average MYR/NZD exchange rate for each year, sourced from oanda.com.

<sup>15</sup> Malaysian source:

[http://www.statistics.gov.my/portal/download\\_Manufacturing/files/MANUFACTURING/2012/MMS\\_DE C12.pdf](http://www.statistics.gov.my/portal/download_Manufacturing/files/MANUFACTURING/2012/MMS_DE C12.pdf); New Zealand source: <http://www.statistics.govt.nz> (InfoShare)



299. As all of the industries shown include products other than stationery, the graph only provides an indication of the trends for each sector in each country. Both the printing and manufacture of pulp, papers and paperboard sectors in Malaysia are growing, while the equivalent New Zealand sectors, wood and paper product manufacturing and printing, are declining. The 2012 sales value of the Malaysian pulp, papers and paperboard sector is 193 percent of the value it was worth in 2009. The 2012 sales value of the Malaysian printing sector is 118 percent of its value in 2009.

### Conclusion

300. Based on the statements made by both manufacturers involved in the review, there is little information to suggest that either Muda or Chee Wah will increase its production capacity. However, both companies could still continue supplying CBS to New Zealand at their current rate. Chee Wah does have some freely available capacity which it could use to produce more CBS stock if it wished to do so; however, as Chee Wah is not dumping and not likely to resume dumping, any increase in its exports to New Zealand could not cause injury attributable to dumping. However, Chee Wah represented only 1 percent of CBS imports from Malaysia during the POR(D), so would need to increase its capacity significantly to have any large impact on the New Zealand CBS market. The Ministry notes that the total value of CBS imported from Malaysia increased by 150 percent from 2009 to 2012, indicating that Malaysia has the capacity to significantly increase its exports, and suggesting that there is likely to be the capacity for further increases in exports in the foreseeable future. Based on the evidence presented regarding the production capacity of the entire Malaysian CBS industry to export, and the significant increase in its exports to New Zealand up to 2012, it appears that Malaysian producers could increase exports to New Zealand. The Malaysian stationery market is much larger than just the two companies which have been involved in the review. In addition, the industry sectors in which CBS could be placed are growing in Malaysia whilst they are declining in New Zealand. Both selected manufacturers have stated that CBS exported to New Zealand is produced on a customer-by-customer basis and therefore is dependent on the demand from New Zealand customers; however, the Ministry considers that if there were increased demand, Malaysian manufacturers could likely increase their supply.

### **The Ease of Entry into the New Zealand Market**

301. In its importer's questionnaire response, Croxley stated that there are no barriers that would prevent a new importer from entering the New Zealand market. It went on to say that a new importer would most likely find a distribution partner who has or is capable of creating suitable infrastructure to service the market.

302. There was no evidence in 2007 to suggest any difficulty or obstacle to entering or establishing a distribution system for the New Zealand CBS market.

303. TWG has submitted that it does not consider that it would be easy to enter the New Zealand CBS market, as to become a significant player would require the entrant to create significant brand awareness of a pivotal product in the school range. This would be difficult with major retailers Whitcoull's and Paper Plus having always stocked Croxley's Warwick brand and TWG having built up its Impact brand. It would also be difficult for a new importer to gain economies of scale.

#### *Conclusion*

304. The Ministry considers that a new importer may face some obstacles in establishing brand awareness in the New Zealand market, and therefore in its ability to establish an effective distribution system. However, there does not appear to be any direct obstacle to importing and supplying Malaysian CBS to the New Zealand market.

#### ***The ability of importers to handle a significant increase in imports from Malaysia and the ease with which goods can be distributed***

305. As stated above, TWG considers that it would be difficult for a new importer to enter the New Zealand CBS market and either enter into current distribution systems or establish new ones. This implies that any volume increase would be CBS imported by the current importers.

306. The 2007 investigation established that there were well-developed distribution channels in place in New Zealand, giving widespread access to the entire New Zealand market. There do not appear to be any significant obstacles to entering the New Zealand distribution system, although the evidence from TWG suggests that increased imports are more likely to be through existing importers than through new entrants to the market.

#### *Conclusion*

307. The Ministry concludes that current New Zealand importers and distributors have existing distribution systems in place to be able to cater for any significant increase in imports from Malaysia entering the New Zealand market.

#### ***Imports from Ruho Corporation***

308. Ruho Corporation is a Malaysian producer which was exempted from the anti-dumping duties in 2007. Imports from this company are illustrated in the table below (based on NZCS data):

**Table 4.2: Imports from Ruho Corporation**

	2009	2010	2011	2012
NZ VFD				
% change from previous year				

309. Overall, Ruho's exports have been declining over the period 2009 to 2012, although this company also had a peak in the value of the CBS it exported to New Zealand in 2010. Only one company has been importing from Ruho since 2007, [REDACTED]. It therefore

appears that there are factors other than anti-dumping duties which affect the volume of CBS a New Zealand company chooses to import.

### **Conclusion on Likely Import Volumes**

310. In respect of the likely import volumes from Malaysia if the anti-dumping duties were removed, the Ministry concludes that:

- The current increase in import volumes, with duties in place, suggests there would be further scope for importers to compete on price with the domestically produced goods if the duties were removed. TWG has increased its volume of imports from Malaysia significantly over the last several years, and is undercutting Croxley by a significant amount. An incentive exists for TWG to increase its volume of importations into New Zealand in the absence of duties.
- Malaysian CBS will hold a price advantage over the domestic industry's price, evidenced by the amount of price undercutting likely if duties were removed. The extent of the likely price undercutting if duties were removed provides an incentive for importers of Malaysian CBS, particularly TWG, to increase their volume of importations into New Zealand in the absence of measures, although TWG has said it does not intend to significantly increase its imports.
- The entire Malaysian CBS manufacturing sector appears to have some capacity to increase exports of CBS to New Zealand, although any increase from Chee Wah is unlikely to cause injury attributable to dumping.
- There are existing import and distribution systems currently in place which could cope with an increase in import volumes by current importers of CBS.
- There are no direct barriers to entry into the New Zealand market for the existing importers of Malaysian CBS, although any new importer is likely to face difficulty in establishing brand awareness.

311. On the basis of its analysis of the above factors and in light of the totality of the factors considered, the Ministry concludes that there is a likelihood of increased volumes of dumped imports into New Zealand in the foreseeable future, if the current anti-dumping duties are removed.

## **4.4 Price Effects**

### **4.4.1 Price Undercutting**

#### **Introduction**

312. Section 8(2)(b) of the Act provides that the Chief Executive shall have regard to the extent to which the prices of the dumped or subsidised goods represent significant price undercutting in relation to prices in New Zealand (at the relevant level of trade) for like goods of New Zealand producers. Where possible (and if sufficient information is available), the level of trade is determined for each importer and therefore the prices may be considered at different points in the supply chain.

#### **Level of Trade**

313. The Ministry will normally seek to compare prices at the first point of competition in New Zealand, i.e. the first point of sale in the New Zealand market. This will normally be at the ex-factory and ex-wharf or ex-importer's store levels, to ensure that differences in distribution costs

and margins do not confuse the impact of dumping. Accordingly, the Ministry's position is generally to compare importers' prices, including relevant selling and administration costs, which involves similar cost elements to those in the New Zealand producer's ex-factory price, but not the cost elements relating to the distribution of goods.

314. The purpose of the price undercutting comparison is to establish whether or not there is price undercutting attributable to dumping. It should be noted that the determination that price undercutting exists is not by itself a determination of the extent of injury, i.e., the margin of price undercutting is not a measure of the extent of economic impact on the industry. This impact is to be measured in terms of the factors and indices set out in section 8(2)(d) of the Act.

315. Croxley sells CBS on a free into store (FIS) basis. The decision for a customer is to buy directly from Croxley, with a sell price which includes freight, or to import CBS product at the relevant level of trade. The Ministry has established average FIS prices of Croxley's CBS for each category for the year ended 31 December 2012. Customer specific rebates have been deducted from gross sales revenue figures. The cost of freighting CBS to customers has not been deducted from gross revenue because FIS is the normal basis on which Croxley sells into the New Zealand market and is in line with the FIS prices established for Croxley in 2007.

316. For imported CBS product, values of imports at the relevant level of trade over the POR(D) (1 July 2011 to 30 June 2012) have been used to establish prices to compare to Croxley's average FIS prices.

317. It should be noted that the limp covered category of CBS does not currently have a duty in place. Any amount of historical undercutting shown for this category is therefore without the effect of duties. Prices established in other categories, however, do include anti-dumping duty.

### **Bright Ideas Enterprises Ltd**

318. Bright Ideas' Malaysian supplier, [REDACTED], sells to it on a FOB basis. Based on the information available, the first point of competition appears to be at the ex-wharf level, which includes overseas freight and insurance, port clearance and anti-dumping duty.

319. The FOB price is that established from information supplied by [REDACTED]. Freight and insurance values have been taken from NZCS data. Anti-dumping duty has been calculated on the *ad valorem* percentage rate attributed to [REDACTED] for [REDACTED], and port clearance is an average percentage amount using information provided by Croxley.

**Table 4.3: Price Undercutting Comparison: Bright Ideas**

	Croxley's FIS Price	Bright Idea's Ex-wharf Price	Undercutting	Undercutting %
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

320. Bright Ideas' imports are not currently undercutting Croxley.

### **CNZ Office**

321. The Ministry understands that CNZ Office is a distributor and considers that the most appropriate level of trade for comparison to Croxley's FIS price is into CNZ Office's distribution centre.

322. CNZ Office buys at CIF from [REDACTED], and the Ministry has used these values as a base. Anti-dumping duty has been calculated on the *ad valorem* percentage rate attributed to [REDACTED] for

each category, and port clearance and cartage were calculated using average percentage amounts based on information provided by Croxley.

**Table 4.4: Price Undercutting Comparison: CNZ Office**

	Croxley's FIS Price	CNZ Office's Into DC Price	Undercutting	Undercutting %
Limp	██████████	██████████	██████████	██████████
Pads	██████████	██████████	██████████	██████████
Wire	██████████	██████████	██████████	██████████
Hard	██████████	██████████	██████████	██████████

323. CNZ Office is currently undercutting Croxley in all four categories by between ██████ and ██████%.

### **Jasco Pty New Zealand Ltd**

324. Jasco is a distributor. The Ministry has used an into-store price point to compare with Croxley's FIS price.

325. Jasco bought from ██████████ on a CIF basis, and the Ministry has used the values from ██████████ as a base. Anti-dumping duty has been calculated on the *ad valorem* percentage rate attributed to ██████████ for ██████████, and port clearance and cartage were calculated using average percentage amounts based on information provided by Croxley.

**Table 4.5: Price Undercutting Comparison: Jasco**

	Croxley's FIS Price	Jasco's Into Store Price	Undercutting	Undercutting %
██████████	██████████	██████████	██████████	██████████

326. Jasco's imports are not currently undercutting Croxley.

### **K Kurtovich Products**

327. Kurtovich imported ██████████ from ██████████ over the POR(D). ██████████ exports these to Kurtovich ██████████ and Kurtovich ██████████ before selling to their customers.

328. The Ministry understands that the ██████████ are physically different to the ██████████ Croxley sells. Kurtovich's ██████████ are either ██████ or ██████ pages, larger than any of the ██████████ Croxley sells. In addition, Croxley's FIS price is an average across their entire range of New Zealand made ██████████. The Ministry considers that it cannot accurately compare Kurtovich's ██████████ with Croxley's ██████████, and as such, has not completed an undercutting comparison for this company.

### **The Warehouse Group**

329. The Ministry received an importer's questionnaire submission from TWG following the release of the Ministry's interim report on the first phase of the review. TWG offers a tender annually, which allows it to order CBS at the best deal to coincide with its BTS campaign. Its criteria includes quality, branding, marketing support, delivery, cost, packaging, sustainability and any other relevant components that may be included in the tender.

330. In its submission on the final report, TWG stated that the level of trade used by the Ministry was incorrect, and considers that the Ministry's calculations have resulted in an inflated

undercutting margin. It argued that Croxley’s products do not compete with the Malaysian product until the Malaysian product has reached TWG’s nationwide stores.

331. TWG stated that the majority of its CBS volume goes through its distribution centre. [REDACTED] in order to get this product to each of its stores – it has full control over these costs. Furthermore, TWG funds its own marketing costs for Impact branded product.

332. The Ministry considers that the first point at which Croxley’s products compete with the Malaysian product is the point at which the customer makes the decision on which source to purchase from, that is, the point at which TWG (as the customer) would compare prices in deciding which source to buy CBS from.

333. The Ministry notes that TWG have said in their importer’s questionnaire that when it compares costs, it makes a like for like comparison such as free into store vs free into distribution centre, quality, colour production, paper thickness, etc. Furthermore, in one of the appendices to TWG’s questionnaire response, the Ministry notes that TWG compared the cost of getting the Malaysian imported CBS into its distribution centre with the cost of getting Croxley’s CBS into its distribution centre. TWG is entirely responsible for all costs once CBS reaches its distribution centre, and the Ministry understands that these costs would be the same regardless of which source CBS is bought from.

334. The Ministry considered in the interim report that the level of trade at which prices have been compared was accurate, that is Croxley’s FIS prices versus into TWG’s distribution centre.

335. TWG buys at FOB level from [REDACTED]. TWG’s import unit cost includes all duties (including anti-dumping duties), freight, shipping and handling charges in order to get the goods to TWG’s distribution centre. The average prices below include imports by both TWL and WSL.

**Table 4.6: Price Undercutting Comparison: The Warehouse Group**

	Croxley's Price	FIS	The Warehouse Group's Into DC Price	Undercutting	Undercutting %
Limp	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Pads	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Wire	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Hard	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

336. TWG is currently undercutting Croxley in all four categories by between [REDACTED] and [REDACTED] %.

337. TWG also provided the Ministry with FIS costs quoted to it by Croxley and the resulting difference in the cost of importing from Malaysia. When these costs are compared on a per category basis, TWG’s imports are still seen to be undercutting Croxley’s prices, albeit by a lesser amount. Undercutting calculated on this basis ranges between [REDACTED] and [REDACTED] %.

Submissions on Interim Report on the Reopened Review

338. In its submission on the interim report, TWG stated that adjustments should be made to reflect that Croxley’s FIS prices vs TWG’s FDC (free into distribution centre) prices are not directly comparable. TWG stated that its FDC prices do not include a mark up to cover the cost of transporting products from its DC into its nationwide stores, whereas Croxley’s FIS prices do. TWG also stated that its prices do not include a mark-up to cover marketing and promotional expenses,



while Croxley's FIS prices do. It provided a spread sheet of prices paid for product imported from Malaysia and for Croxley's product to support of its claims.

339. The Ministry understands that, if TWG orders CBS from Croxley, it is also delivered into TWG's distribution centre, not into individual retail stores. That is, the included cost of freight in Croxley's FIS prices for this particular comparison would be freight to TWG's distribution centre, so it is effectively an 'into distribution centre' price. TWG has said the majority of its CBS volume goes through its distribution centre. It did not say this was only specific to imported products, thus one could reasonably infer that CBS volume brought from Croxley is part of the stock that goes through TWG's distribution centre. None of the prices used include freight between TWG's distribution centre and its retail stores.

340. To account for marketing costs, TWG deducted an amount of [REDACTED]% for rebates from Croxley's prices. Croxley's FIS prices used by the Ministry are net of rebates, as stated in paragraph 315. The Ministry deducted an average [REDACTED]% for rebates from Croxley's FIS prices which included discounts, general rebates, advertising, catalogue, and royalties/commission, and exclude an amount for [REDACTED]. An extra amount for [REDACTED] was also deducted. The Ministry has already accounted for the marketing costs for which TWG are evidently requesting an adjustment.

341. Furthermore, the Ministry notes that even simply using the figures TWG has provided with this recent submission without any further analysis or adjustment still results in a significant amount of undercutting, of an average [REDACTED]%.

342. TWG has also submitted that the Ministry should take account of the difference between branded and private label products in the price undercutting comparison, using its arguments on dumping regarding the same difference to support this argument. TWG considers that the price undercutting analysis should be made on the basis of private label sales only (as that is what has been exported to New Zealand by [REDACTED]).

#### *Ministry Response*

343. The provisions of section 8(2)(b) of the Act reflect the provisions of Article 3.2 of the Anti-Dumping Agreement. Neither the Act nor the Anti-Dumping Agreement provide any detailed guidance about how the extent of any price undercutting is to be established or any principles that should be applied in determining whether any significant price undercutting exists. The Act simply requires that it is to be established in relation to prices of dumped goods and prices in New Zealand (at the relevant level of trade) for like goods of New Zealand producers.

344. The Ministry has concluded above in the like goods section of this report that the CBS produced by Croxley are like the goods which are subject to the duty. Private label CBS clearly falls within the description of the goods subject to the anti-dumping duty as that description covers all CBS that falls within the specified parameters regardless of whether they are private label or branded CBS. A comparison of the prices of private label imported product with the prices of Croxley's branded product therefore fulfils the criteria in the Act that the Chief Executive must have regard to the extent of the price undercutting by dumped imports of the prices in New Zealand for "like goods" of New Zealand producers.

345. The Ministry is aware that there is likely some additional difference in the price of branded product and private label product. In addition to the rebates Croxley offers to specific customers described in paragraph 340, it markets directly to trade and to product end-users through a variety of media. However, the Ministry does not consider it has sufficient information on which to make

any adjustment for price undercutting purposes, nor does it consider this is necessary to meet the requirements of the Act.

### **Likely Price Undercutting if the Anti-Dumping Duties were Removed**

346. The Ministry has assessed the likelihood of price undercutting if the anti-dumping duties were removed. For this analysis, the Ministry has compared Croxley's average 2012 FIS price with importers' prices in the absence of anti-dumping duty. This comparison has been done for CNZ Office and TWG, the two importers that have been found to be presently undercutting. Bright Ideas and Jasco's prices are sufficiently above those of Croxley that the removal of anti-dumping duty would not cause them to start undercutting. The Ministry has not made any comparison for Kurtovich.

347. Croxley claimed that if duties were removed, an increase in Malaysian sourced product would exacerbate price effects and put pressure on Croxley to lower their prices. As the current duties are *ad valorem* rates, the Ministry considers it unlikely that prices would change significantly if duties were removed. Both manufacturers have stated that they would not change their prices with the removal of duty.

348. The tables below show the level of undercutting when Croxley's average 2012 FIS price is compared with CNZ Office's and TWG's average into distribution centre selling prices in the absence of anti-dumping duty.

**Table 4.7: Price Undercutting in the Absence of Anti-dumping Duty  
Croxley v CNZ Office**

	Croxley's FIS Price	CNZ Office's Into DC Price	Undercutting	Undercutting %
Limp	██████████	██████████	██████████	██████████
Pads	██████████	██████████	██████████	██████████
Wire	██████████	██████████	██████████	██████████
Hard	██████████	██████████	██████████	██████████

**Table 4.8: Price Undercutting in the Absence of Anti-dumping Duty  
Croxley v TWG**

	Croxley's FIS Price	The Warehouse Group's Into DC Price	Undercutting	Undercutting %
Limp	██████████	██████████	██████████	██████████
Pads	██████████	██████████	██████████	██████████
Wire	██████████	██████████	██████████	██████████
Hard	██████████	██████████	██████████	██████████

349. Tables 4.7 and 4.8 illustrate that at current prices, and in the absence of anti-dumping duty, the average price of each category of CBS sold by CNZ Office and TWG would be undercutting Croxley by a significant margin.

350. TWG has stated that retail prices would not change with the removal of anti-dumping duty. It has also said that any removal of duty would allow it to breakeven or turn a small profit ██████████

### Conclusion on Price Undercutting

351. The Ministry notes that [REDACTED] represents only [REDACTED] percent of total imports from Malaysia, and the manufacturer it imports from, Chee Wah, is not dumping, so [REDACTED] undercutting cannot be attributed to dumping. [REDACTED] represents [REDACTED] percent of total imports from Malaysia, and is importing from Muda, which is dumping. [REDACTED] represents [REDACTED] percent of imports from [REDACTED].

352. While TWG has said that retail prices would not change, this is not the level at which it purchases CBS from a supplier. Croxley would be forced to match prices at the same point at which TWG could import CBS from Malaysia, that is, at the into store (i.e. into distribution centre) level.

353. The Ministry considers that, on the basis of the price undercutting analysis above and the information in paragraph 351, Croxley's prices are currently being undercut by a majority of imports from Malaysia, most of which are considered to be dumped. The Ministry further concludes that if the company is forced to compete with CBS from Malaysia in the absence of duties, it would likely continue to suffer significant price undercutting as a direct result of having to match the lower-priced dumped imports on price.

#### 4.4.2 Price Depression

354. 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 or subsidised goods is or is likely significantly to depress prices for like goods of New Zealand producers.

355. Price depression occurs when prices are lower than those in a market unaffected by dumping, usually in a previous period, and refers to reductions in prices made by domestic producers in order to deal with competition from prices of dumped goods.


356. In the case of a review, the assumption is made that the existence of a remedy has had the effect of removing injury due to dumping. On this basis, the period covered by the anti-dumping duties meets the general requirement of the conditions of a market unaffected by dumping.

357. To establish whether Croxley has experienced price depression over the POR(I), the Ministry has analysed the company's average selling price for each category of CBS for each of its financial years from 2009.

**Table 4.9: Price Depression (NZD)**

	2009	2010	2011	2012
Hard Cover	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
% of 2009		[REDACTED]	[REDACTED]	[REDACTED]
Limp Cover	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
% of 2009		[REDACTED]	[REDACTED]	[REDACTED]
Pads	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
% of 2009		[REDACTED]	[REDACTED]	[REDACTED]
Wire	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
% of 2009		[REDACTED]	[REDACTED]	[REDACTED]
Total CBS	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]









































% of 2009				
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358. Table 4.9 illustrates that Croxley's average selling prices for hard covered, limp covered and pads categories of CBS have increased between 2009 and 2012. Its average selling price for the wire bound category has declined, with the 2012 price representing  percent of the 2009 price. However, Croxley's total average price has also increased over the period. The Ministry concludes, therefore, that there is very little evidence that the company has experienced price depression.

### Price Depression Forecast

359. Croxley provided the following forecasts of its average selling prices for 2013 and 2014 in the presence and absence of anti-dumping duties.

**Table 4.10: Forecast Price Depression (NZD)**

	With duties		Without duties	
	2013F	2014F	2013F	2014F
Hard Cover				
% of 2012				
Limp Cover				
% of 2012				
Pads				
% of 2012				
Wiro				
% of 2012				
Total CBS				
% of 2012				

360. Unit prices are forecast to remain steady at 2012 levels both with the duty remaining in place and with the duty being removed. This is true for individual categories and for CBS as a whole. Croxley is not likely to suffer any price depression whether duties remain or whether they are removed, reflecting its position that it will .

### Conclusion on Price Depression

361. On the basis of the information collected during the investigation, Croxley is currently not suffering price depression from the dumped goods. The Ministry also concludes that it is not likely that Croxley's prices will be depressed if the duties were to be removed.

### 4.4.3 Price Suppression

362. 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 or subsidised goods is or is likely to significantly prevent price increases for those goods that otherwise would have been likely to have occurred.

363. The Ministry has generally based 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 increases in costs expressed as a percentage of sales revenue. Where cost savings have been made, the lack of any price increase will not normally be regarded as price suppression.

364. In analysing price suppression, the Ministry has considered Croxley's historical and forecast financial information. The following tables show the company's total cost per unit and average selling price from 2009 to 2012 for each category.

**Table 4.11: Price Suppression for Hard Covered (NZD)**

	2009	2010	2011	2012
Average Price				
Total Costs				
Total Costs as a % of Average Price				

**Table 4.12: Price Suppression for Limp Covered (NZD)**

	2009	2010	2011	2012
Average Price				
Total Costs				
Total Costs as a % of Average Price				

**Table 4.13: Price Suppression for Pads (NZD)**

	2009	2010	2011	2012
Average Price				
Total Costs				
Total Costs as a % of Average Price				

**Table 4.14: Price Suppression for Wire Bound (NZD)**

	2009	2010	2011	2012
Average Price				
Total Costs				
Total Costs as a % of Average Price				

**Table 4.15: Price Suppression for Total CBS (NZD)**

	2009	2010	2011	2012
Average Price				
Total Costs				
Total Costs as a % of Average Price				

365. Tables 4.11 to 4.15 show that there has been very little price suppression since 2009. In the limp covered and wire bound categories, the company's average costs as a percentage of its average selling price have increased by only a negligible amount. For the hard covered and pads categories, total costs as a percentage of average price have decreased slightly. Across all four categories taken together, total costs have remained at virtually the same level relative to prices since 2009.

### **Price Suppression Forecast**

366. In the tables below, Croxley's projected total cost per unit for its 2013 and 2014 financial years have been compared with its projected average prices for the same years (with the anti-dumping duties in place and, alternatively, if the duties are removed):

**Table 4.16: Projected Price Suppression Hard Covered (NZD)**

	<i>With duties</i>		<i>Without Duties</i>	
	<b>2013F</b>	<b>2014F</b>	<b>2013F</b>	<b>2014F</b>
Average Price	████████	████████	████████	████████
Total Costs	████████	████████	████████	████████
Total Costs as a % of Average Price	████████	████████	████████	████████

**Table 4.17: Projected Price Suppression Limp Cover (NZD)**

	<i>With duties</i>		<i>Without Duties</i>	
	<b>2013F</b>	<b>2014F</b>	<b>2013F</b>	<b>2014F</b>
Average Price	████████	████████	████████	████████
Total Costs	████████	████████	████████	████████
Total Costs as a % of Average Price	████████	████████	████████	████████

**Table 4.18: Projected Price Suppression Pads (NZD)**

	<i>With duties</i>		<i>Without Duties</i>	
	<b>2013F</b>	<b>2014F</b>	<b>2013F</b>	<b>2014F</b>
Average Price	████████	████████	████████	████████
Total Costs	████████	████████	████████	████████
Total Costs as a % of Average Price	████████	████████	████████	████████

**Table 4.19: Projected Price Suppression Wire Bound (NZD)**

	<i>With duties</i>		<i>Without Duties</i>	
	<b>2013F</b>	<b>2014F</b>	<b>2013F</b>	<b>2014F</b>
Average Price	████████	████████	████████	████████
Total Costs	████████	████████	████████	████████
Total Costs as a % of Average Price	████████	████████	████████	████████

**Table 4.20: Projected Price Suppression Total CBS (NZD)**

	<i>With duties</i>		<i>Without Duties</i>	
	<b>2013F</b>	<b>2014F</b>	<b>2013F</b>	<b>2014F</b>
Average Price	████████	████████	████████	████████
Total Costs	████████	████████	████████	████████
Total Costs as a % of Average Price	████████	████████	████████	████████

367. The forecasts indicate that, if the current anti-dumping duties were removed and Croxley had to compete with the dumped imports, the company's total cost per unit (as a percentage of its average selling price) is projected to increase in its 2013 and 2014 financial years to above the percentage it has projected in the same financial years if the duties were to remain for all four categories individually and as a total. The increase is most significant for the wire bound category, although costs still generally represent over ██████ percent of the average selling price for all four

categories if duties were removed. The forecast increase results from an increase in costs rather than a decrease in average selling prices.

#### 4.4.4 Conclusion on Price Effects

368. Croxley has submitted that if anti-dumping duties were removed and dumped imports from Malaysia recommenced, it would suffer material injury from the resulting price undercutting and price suppression.

369. In its assessment of any future price effects, the Ministry has considered historical financial information on Croxley's prices and costs for the years 2009 to 2012 as well as forecast financial performance for 2013 and 2014 both if anti-dumping duties were to remain in place, and if the duties were removed.

370. Over the last four financial years, a period over which anti-dumping duties have been in place, the Ministry has found no evidence that Croxley has experienced price depression or price suppression. However, the Ministry has found current price undercutting from some importers over all four categories.

371. On the basis of the information provided by Croxley as well as that collected from TWG and exporters of the subject goods, the Ministry considers that Croxley will face price pressure from dumped imports of Malaysian CBS if the duties are removed. The Ministry concluded above that if anti-dumping duties are removed, Croxley's prices would be undercut by the prices of imports from Malaysia in all four categories. A comparison of Croxley's 2013 and 2014 projected prices (in the absence of duties) with its historical and projected 2013 and 2014 prices (if the duties were to remain) indicates that the company will suffer price suppression as a result of being unable to increase its prices in the face of increased costs. Croxley is not likely to face price depression, given its position that it will [REDACTED].

372. The two companies undercutting Croxley represented [REDACTED] percent of total imports of CBS from Malaysia in 2012. It is unlikely that undercutting by [REDACTED] will result in price suppression, as their imports [REDACTED] represent [REDACTED] percent of the imports. [REDACTED] percent of the imports are by [REDACTED], making these imports much more significant. Furthermore, [REDACTED] is importing from Muda, which is dumping. It is likely that undercutting by [REDACTED] will cause Croxley to suffer price suppression.

373. The Ministry is satisfied on the basis of the evidence gathered in the review that the expiry of the anti-dumping duty is likely to result in a continuation of dumped imports from Malaysia at prices which are likely to undercut the New Zealand industry's prices and that price suppression is likely to recur as a direct result of Croxley having to compete with the lower-priced dumped imports from Malaysia. The extent to which Muda's margin of dumping contributes to the likely amount of price undercutting in the absence of the duty is considered below under 'magnitude of the margin of dumping'.

## 4.5 The Consequential Economic Impact of the Dumped Goods

### 4.5.1 Introduction

374. In terms of analysing the likely consequential economic impact of dumped goods, 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;
- (ii) factors affecting domestic prices;
- (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.

375. The Ministry has analysed below the injury information provided by the industry (including its projections) in order to assess the likely extent to which material injury would recur in terms of the above factors, if the anti-dumping duties were removed.

#### 4.5.2 Output and Sales

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

377. Croxley has stated that even though its prices have not declined, the impact of lower import prices is clearly reflected in a loss of sales and market share to the imports.

#### Historical Sales Volume and Revenue

378. The following tables show Croxley's historical volume and revenue figures for its sales of CBS, from 2009 to 2012:

**Table 4.21: Croxley's Sales Volume and Revenue for Hard Covered (000's, NZD)**

	2009	2010	2011	2012
Revenue	████████	████████	████████	████████
% of 2009		████████	████████	████████
Sales Volume (pieces)	████████	████████	████████	████████
% of 2009		████████	████████	████████

**Table 4.22: Croxley's Sales Volume and Revenue for Limp Covered (000's, NZD)**

	2009	2010	2011	2012
Revenue	████████	████████	████████	████████
% of 2009		████████	████████	████████
Sales Volume (pieces)	████████	████████	████████	████████
% of 2009		████████	████████	████████

**Table 4.23: Croxley's Sales Volume and Revenue for Pads (000's, NZD)**

	2009	2010	2011	2012
Revenue	████████	████████	████████	████████
% of 2009		████████	████████	████████
Sales Volume (pieces)	████████	████████	████████	████████
% of 2009		████████	████████	████████



**Table 4.24: Croxley's Sales Volume and Revenue for Wire Bound (000's, NZD)**

	2009	2010	2011	2012
Revenue	██████████	██████████	██████████	██████████
% of 2009		██████████	██████████	██████████
Sales Volume (pieces)	██████████	██████████	██████████	██████████
% of 2009		██████████	██████████	██████████

**Table 4.25: Croxley's Total Sales Volume and Revenue (000's, NZD)**

	2009	2010	2011	2012
Revenue	██████████	██████████	██████████	██████████
% of 2009		██████████	██████████	██████████
Sales Volume (pieces)	██████████	██████████	██████████	██████████
% of 2009		██████████	██████████	██████████

379. Tables 4.21 to 4.25 show that both sales revenue and sales volume have decreased significantly since 2009. All figures are well below those recorded in 2009. Revenue figures in 2012 are between ██████████ and ██████████ percent of those recorded in 2009, while volume figures are between ██████████ and ██████████ percent of the volume in 2009. For CBS in total, revenue in 2012 is ██████████ percent of that achieved in 2009, whilst volume in 2012 is ██████████ percent of 2009. On this basis, there is evidence the company has suffered material injury in terms of both sales volume and revenue over the POR(I). The decline in revenue can be explained by the similar decline in volume, although the decline in revenue has been offset to some extent by an increase in prices.

### ***Sales Volume and Revenue in the Absence of Anti-dumping Duty***

380. Croxley has stated that it has lost sales to Malaysian imports, especially in negotiations for the BTS period. Croxley aims to maintain market share.

381. The basis of Croxley's forecasts for 2013 and 2014, in both the absence and presence of anti-dumping duties, is outlined in section 4.2 above under "Injury Information Submitted by Croxley". Its volume and revenue forecasts are outlined below:

**Table 4.26: Projected Sales Volume and Revenue for Hard Covered (000's, NZD)**

	<i>With Duties</i>		<i>Without Duties</i>	
	2013F	2014F	2013F	2014F
Revenue	██████████	██████████	██████████	██████████
% of 2012	██████████	██████████	██████████	██████████
Sales Volume	██████████	██████████	██████████	██████████
% of 2012	██████████	██████████	██████████	██████████

**Table 4.27: Projected Sales Volume and Revenue for Limp Covered (000's, NZD)**

	<i>With Duties</i>		<i>Without Duties</i>	
	2013F	2014F	2013F	2014F
Revenue	██████████	██████████	██████████	██████████

% of 2012				
Sales Volume				
% of 2012				

Table 4.28: Projected Sales Volume and Revenue for Pads (000's, NZD)

	With Duties		Without Duties	
	2013F	2014F	2013F	2014F
Revenue				
% of 2012				
Sales Volume				
% of 2012				

Table 4.29: Projected Sales Volume and Revenue for Wire Bound (000's, NZD)

	With Duties		Without Duties	
	2013F	2014F	2013F	2014F
Revenue				
% of 2012				
Sales Volume				
% of 2012				

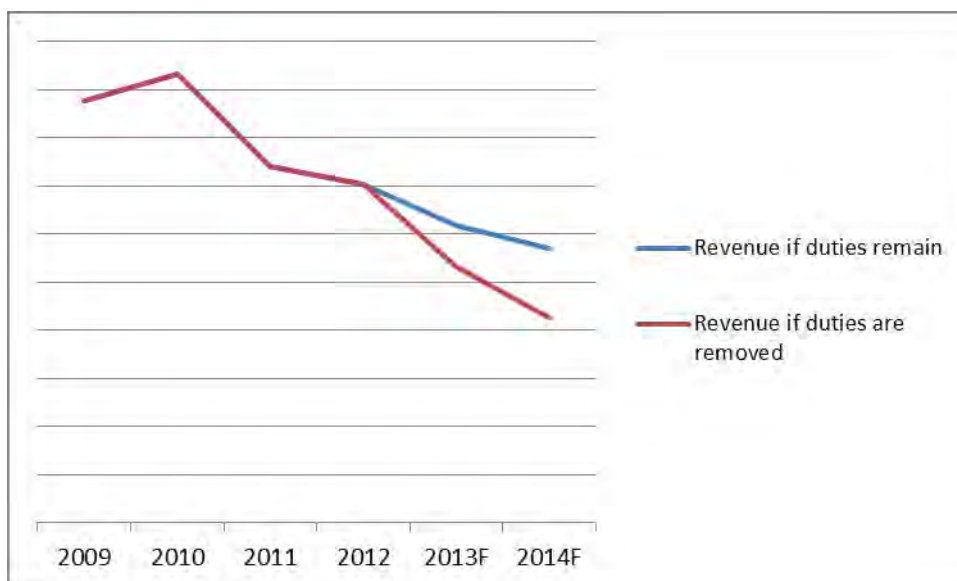
Table 4.30: Total Projected Sales Volume and Revenue (000's, NZD)

	With Duties		Without Duties	
	2013F	2014F	2013F	2014F
Revenue				
% of 2012				
Sales Volume				
% of 2012				

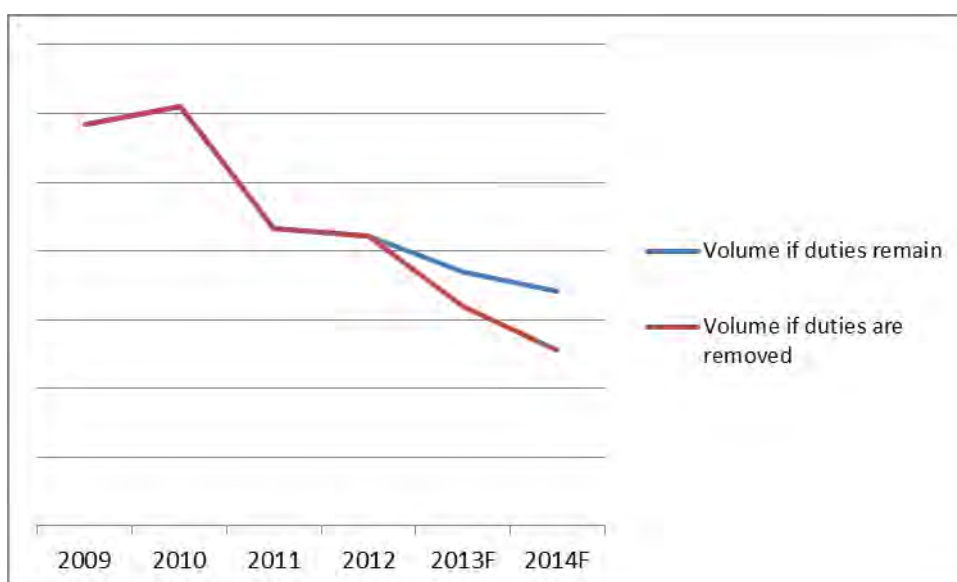
382. Croxley has forecast declines in sales revenue and sales volume over the 2013 and 2014 financial years, both in the presence and the absence of duties. The projected decline in the absence of duties is more pronounced. The forecasts reflect the assumptions on which they are based as outlined in section 4.2 above and indicate that [REDACTED] will impact on Croxley's ability to effectively compete in the marketplace. Given that Croxley has experienced declines in the limp covered category, which does not currently have duties in place, it seems likely that this trend will continue.

383. The trends in sales volume and revenue, and the projected trends, are shown in the following graphs.

**Graph 4.2: Total Sales Revenue (000, NZD)**



**Graph 4.3: Total Sales Volume (000, NZD)**



384. Graphs 4.2 and 4.3 reflect the tables above and show that sales revenue and volume have both been declining over the period 2009 to 2012 and are forecast to continue declining. If duties are removed, Croxley is projecting a higher rate of decline than if duties remain in place.

*Conclusions on Sales Volume and Sales Revenue*

385. Croxley considers that a removal of anti-dumping duties would result in a loss of sales and market share to imports, rather than a decline in price. This is reflected in the significant losses in both volume and revenue that Croxley has sustained between 2009 and 2012, while its prices have increased slightly over the same period.

386. The Ministry concluded in section 4.4 above that if anti-dumping duties were removed, Croxley’s prices would continue to be undercut by the prices of imports from Malaysia and the company would face price suppression. ■■■■ represents a significant proportion both of total

imports from Malaysia and of imports from [REDACTED]. [REDACTED] also imports products from all four categories, so it is likely that its imports will have an impact on Croxley's sales.

387. Imports from other sources represent a much larger proportion of the New Zealand market than imports from Malaysia. It is likely that these imports are also having an impact on Croxley's sales volume and revenue. Imports from other sources are discussed further under the sections 'market share' and 'non-dumped imports'.

388. The Ministry is satisfied on the basis of the evidence gathered in the review, that should the duties be removed, Croxley will experience a significant decline in sales volume, which will have a direct impact on sales revenue due to the company being unable to increase its prices to combat increased costs, as a result of competition from dumped imports.

#### 4.5.3 Market Share

389. 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.

390. Croxley has stated that it will try to maintain its market share whether duties remain or if they are removed.

391. TWG has said that the market consists of OfficeMax, Warehouse Stationery, The Warehouse, Paper Plus, Whitcoulls, and Kmart, with a number of other smaller bookstore and stationery chains and independent stores, as well as supermarkets. TWG considers Croxley to be the monopoly producer of CBS in New Zealand.

#### Historical Market Share

392. The following table shows market share information (by NZ VFD) from 2009 to 2012:

**Table 4.31: Market Share (NZD)**  
(Years ended 31 December)

	2009	2010	2011	2012
Dumped imports from Malaysia	381,577	936,633	1,425,506	1,637,015
Croxley's imports from Malaysia	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Non-dumped imports <sup>16</sup>	9,651,628	10,433,592	11,231,096	11,680,607
Total imports <sup>17</sup>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Sales by Croxley <sup>18</sup>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
NZ Market	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<i>As % of NZ Market</i>				
Dumped imports from Malaysia	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Croxley's imports from Malaysia	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Non-dumped imports	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

<sup>16</sup> Imports from all other sources and from Chee Wah Corporation Bhd and Ruho Corporation.

<sup>17</sup> Includes Croxley's imports.

<sup>18</sup> Excludes Croxley's imports.

## Sales by Croxley

393. Table 4.31 shows that there has been a small increase in the size of the New Zealand market for CBS since 2009. Croxley's share of the market in terms of its sales of its domestic production has declined, while imports, both dumped imports from Malaysia and non-dumped imports, have increased. Croxley's own import volumes have remained steady.

394. More specifically, the market share of dumped Malaysian CBS has increased from 1.5 percent in 2009 to 2.5 percent in 2012. Over the same period, the market share of non-dumped imports has also increased, from 1.5 percent to 2.5 percent, while the domestic industry's market share declined from 1.5 percent in 2009 to 1.5 percent in 2012.

395. This indicates that the gain in market share of dumped Malaysian CBS has been in part at the expense of the domestic industry's market share. However, dumped Malaysian CBS only represents a relatively small share of the total New Zealand market. Of Croxley's 1.5 percentage point loss in market share, 0.75 percentage points are attributable to dumped imports from Malaysia, while 0.75 percentage points are attributable to non-dumped imports, i.e. Croxley's loss of market share can be attributed in equal parts to dumped imports from Malaysia and to non-dumped imports.

#### **Market Share in the Absence of Anti-dumping Duty**

396. The impact of the dumped goods on Croxley's future market share (in the absence of anti-dumping measures) will depend on how the company responds to increasing volumes of Malaysian imports.

397. Croxley has stated that the absence of duties would accelerate the decline in its market share; however, it would endeavour to maintain its market share. Croxley has said it is restricted in the prices it can charge. It noted that the market does not accept high prices for CBS, and Croxley still aims to meet its costs.

398. TWG has said that it is planning to continue to open new stores and continue to grow its market share. It considers that its level of imports will be very similar to the 2013 BTS season.

399. The Ministry has concluded that Croxley will lose sales volume. It will also lose revenue due to price suppression. Based on the evidence presented, it is likely that if duties are removed, Croxley will lose more market share.

#### **Conclusion on Market Share**

400. Croxley's market share has declined over the POR(I). The decline is in part attributable to dumped imports from Malaysia, but non-dumped imports have had an equal impact. On the basis that Croxley will continue to lose sales volume and revenue, the Ministry concludes that it is likely that Croxley will also continue to lose market share, a significant proportion of which is likely to be attributable to dumped imports from Malaysia.

#### **4.5.4 Profits**

401. Changes in net profit reflect changes in prices, sales volumes or costs. Dumped imports can impact on any, or all, of these.

#### **Historical Profits**

402. Croxley provided the following historical information on its EBIT:

**Table 4.32: Croxley's Net Profit (EBIT)**

	2009	2010	2011	2012
EBIT (000, NZD)	██████████	██████████	██████████	██████████
Change from previous year		██████████	██████████	██████████
As % of 2009		██████████	██████████	██████████
EBIT per piece	██████████	██████████	██████████	██████████
Change from previous year		██████████	██████████	██████████
As % of 2009		██████████	██████████	██████████
EBIT as a % of sales revenue	██████████	██████████	██████████	██████████

403. The table shows that Croxley's EBIT for CBS decreased significantly between 2009 and 2011. However, in 2012, Croxley's EBIT improved, although it is still only ██████ percent of 2009. For EBIT per piece in 2012, Croxley achieved the same amount as it did in 2009. EBIT as a percentage of sales revenue has also fluctuated but in 2012 was only slightly below that in 2009. The change in the various measures of EBIT reflects Croxley's ████████████████████ of its prices and the consequent decline in sales volume and revenue, as well as its attempts to become more efficient.

#### ***Profits in the Absence of Anti-dumping Duty***

404. Croxley has forecast continued declines in sales revenue and sales volume, for both the status quo and if duties are removed, over 2013 and 2014. These declines have a flow-on effect on Croxley's projected profit levels.

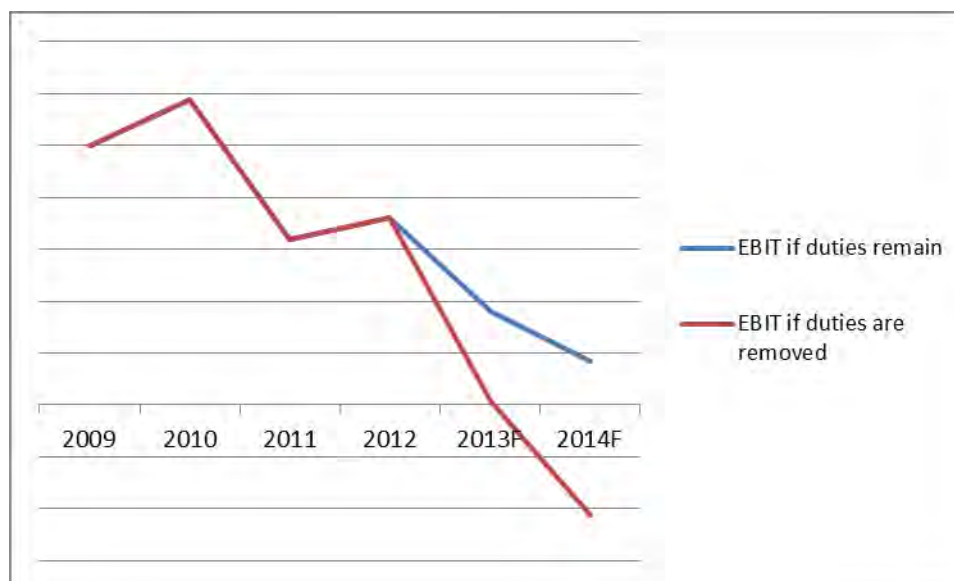
405. Croxley provided forecast EBIT figures for its 2013 and 2014 financial years both with and without the imposition of anti-dumping duties on Malaysian imports.

**Table 4.33: Projected Net Profit (EBIT)**

	<i>With Duties</i>		<i>Without Duties</i>	
	2013	2014	2013	2014
EBIT (000, NZD)	██████████	██████████	██████████	██████████
% of 2012	██████████	██████████	██████████	██████████
EBIT per piece	██████████	██████████	██████████	██████████
% of 2012	██████████	██████████	██████████	██████████
EBIT as % of sales revenue	██████████	██████████	██████████	██████████

406. The forecast EBIT figures for 2013 and 2014 in the tables above derive from Croxley's projected sales volume and revenue figures, but also take into account the company's projected production costs and expenses it would incur if producing those volumes.

407. The figures indicate that Croxley will achieve significantly decreased profit levels in 2013 and 2014 in the absence of anti-dumping duties when compared with what the company would have expected to achieve if the anti-dumping duties remained and compared to what it achieved in 2012. Croxley has forecast that profits will decline even with the duties remaining; however, the forecast profit levels without duties in place are ██████ percent and ██████ percent less than those levels projected if the duties remain for 2013 and 2014 respectively.

**Graph 4.4: EBIT (000, NZD)**

408. Graph 4.4 reflects the tables above. EBIT is projected to decline significantly in the absence of duties. The projected EBIT figures for 2013 and 2014 reflect the forecast that Croxley has made that it will lose volume to Malaysian imports, which will affect its revenue levels, which will in turn affect its profit.

#### *Conclusion on Profit*

409. Figures sourced from Croxley clearly show that the company has suffered a significant drop in EBIT since 2009. EBIT recovered slightly in 2012, but is still well below that achieved in 2009.

410. Croxley considers that if anti-dumping duties are removed, it will lose further volume to dumped imports, which will further impact its sales revenue and profits. This situation is reflected in the figures provided to the Ministry.

411. The Ministry concluded above that, if anti-dumping duties are removed, Croxley's prices would be undercut by the prices of dumped imports from Malaysia. The Ministry further concluded that the company will likely suffer price suppression as a result of having to compete with the lower-priced Malaysian imports. The Ministry also concluded that dumped imports would have an adverse impact on Croxley's sales volume and revenue. The Ministry consequently concludes that the preceding effects will likely result in a significant decline in profits attributable to dumped imports, should the duties be removed.

#### **4.5.5 Productivity**

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

413. Croxley stated that the effect of an increase in dumped imports on their manufacturing operations would be a reduction in output. Croxley said its manufacturing operations have been finely tuned to operate based on known material and operations input costs, matched to current volumes, to enable efficiency of production. Croxley has submitted that a reduction in sales demand would have an immediate effect on its ability to recover costs. Croxley stated that its utilisation of production capacity would decrease in line with increases in imports.

***Likely Impact of the Removal of Anti-dumping Duties***

414. In terms of the likely effect on Croxley's productivity levels should the anti-dumping duties be removed, it is likely that Croxley's productivity will be negatively affected. A removal of duties is likely to cause an increase in import volumes, impacting on Croxley's output levels, and therefore on its productivity.

***Conclusion on Productivity***

415. Croxley has not provided any data on its productivity over the period from 2009 to 2012, so the Ministry concludes there is no evidence of an adverse impact on productivity over this period. The Ministry considers that the company's productivity level is likely to be adversely affected by the removal of the anti-dumping duties on Malaysian imports.

**4.5.6 Return on Investments**

416. Return on investments measures profit against the value of the investment in a business. 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 return on investments affect the ability of the industry to retain and attract new investment.

417. Croxley said that major capital expenditure is approved by its parent company which determines the required return on capital before it is approved. It went on to say that declining volume and profitability on CBS products would make it difficult to justify further capital investment. There has not been any capital investment since 2007.

418. Croxley's assets are used for its full range of products, and it is unable to separate data to enable a calculation of return on investments for CBS only. However, on the basis of other information provided by Croxley, it is likely that its return on investments has also declined.

***Likely Impact of the Removal of Anti-dumping Duties***

419. Croxley considered that removal of duties would accelerate a decline in its return on investments, based on its declining profit levels. The Ministry considers that a decline in profits would indicate a corresponding decline in the rate of return on investments. As the Ministry has concluded above that it is likely that should duties be removed Croxley will experience significant losses in EBIT over 2013 and 2014, it follows that Croxley will also experience a decline in the rate of return on investments.

***Conclusion on Return on Investments***

420. The Ministry concludes that Croxley has likely experienced some decline in its return on investments, although no figures are available. Should the current anti-dumping duties be removed, the Ministry considers it likely that, based on the likelihood of losses in EBIT, there will be a corresponding decline in return on investment.

**4.5.7 Utilisation of Production Capacity**

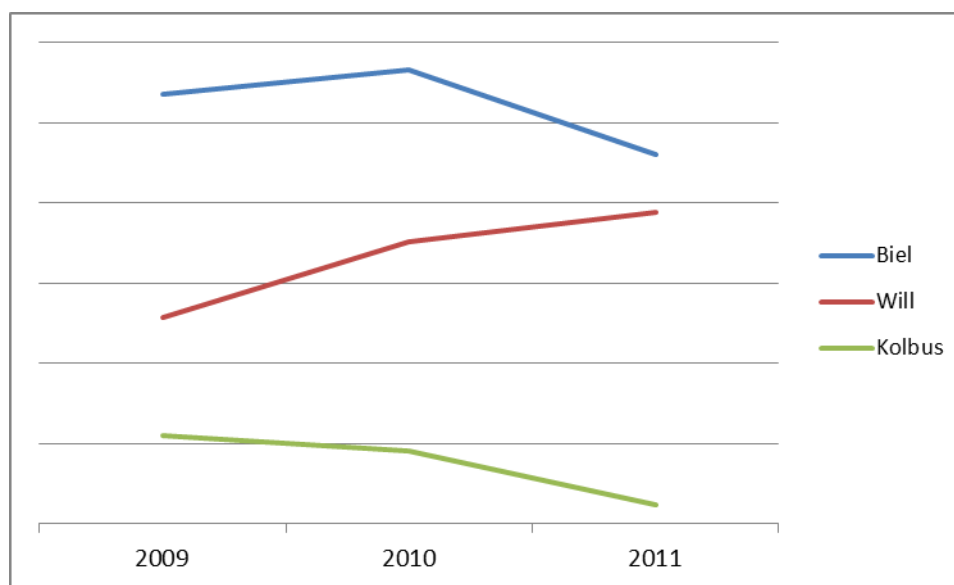
421. The utilisation of production capacity reflects changes in the level of production, although in some cases it will arise from an increase or decrease in production capacity. In either case, a decline in the utilisation of production capacity will lead to an increase in the unit cost of production, and a consequent loss of profit.



422. Croxley encourages its customers to put in forward orders for BTS product. BTS product makes up the major part of total production and has to be scheduled for production throughout the year. Remaining production is based on the volume of historical sales.

423. Croxley provided figures for its utilisation of production capacity. Total utilisation is based on the total hours available for production of all products (including non-CBS product). Croxley also provided target and actual production figures. Croxley was not able to split out CBS from its total figures. The graph below illustrates CBS output as a percentage of total capacity from 2009 to 2011 on each line of machinery.

**Graph 4.5: Utilisation of Production Capacity**



424. Graph 4.5 shows that for its limp covered (Biel) and hard covered (Kolbus) lines, Croxley's utilisation of production capacity has declined. For its pad line (Will), Croxley has been improving since 2009. The trend for the limp covered and hard covered lines appears to be a continued decline, whilst the trend for the pad line appears to be continued growth. The trend for the pad line does not fit with the sales volume data that has been provided, which indicates a downward trend from 2009 to 2012. This suggests that other products produced on the line are improving more significantly than CBS pad products.

#### ***Likely Impact of the Removal of Anti-dumping Duties***

425. Croxley has said that a further increase in imported CBS would continue to affect its output and therefore its utilisation of production capacity. Croxley has said that the [REDACTED] category is the most price sensitive and therefore would be the most dramatically affected, followed by [REDACTED] and finally [REDACTED]. Based on the information outlined above, it seems likely that production of hard and limp covered books would be affected by an increase in imported CBS. The impact on the pad line is less clear but the likely decline in sales volume indicates a decline in capacity utilisation is likely to result.

#### ***Conclusion on Utilisation of Production Capacity***

426. Based on the information above, the Ministry concludes that Croxley's utilisation of production capacity has declined since 2009 and that it will likely decline further as a result of dumped imports should the duties be removed.

#### 4.5.8 Factors Affecting Domestic Prices

427. Croxley has not raised any factors that would affect domestic prices in terms of the current performance of the company (with the anti-dumping measures in place) or if the duties were to be removed.

#### 4.5.9 Magnitude of the Margin of Dumping

428. The magnitude of the margin of dumping can be a useful indicator of the extent to which injury can be attributed to dumping, particularly in assessing to what extent any injury is due to dumped imports. In this respect, it is useful to compare the margin of dumping with the level of price undercutting.

429. The review has found that one Malaysian exporter is dumping at a 2.4 percent margin. As shown in table 4.8 above, dumped imports [REDACTED], in the absence of anti-dumping duty, are undercutting the domestic industry by between [REDACTED] and [REDACTED] percent when taken on a per category basis. When considered across all four categories taken together on a weighted average basis, such dumped imports are undercutting Croxley by [REDACTED] percent. The exporter found to be dumping exports CBS products to New Zealand in all four categories.

430. In order to assess the significance of the revised dumping margin established for Muda, the Ministry has calculated the rate of anti-dumping duty that would apply if the duty was imposed as an ad valorem percentage on the value for duty of the goods. The dumping margin would translate to an ad valorem duty of 2.1 percent when imposed on the value for duty of the goods. The Ministry has then calculated the duty that would apply at this rate on [REDACTED] imports over the POR(D) and calculated the average duty per piece for each of the four categories and a weighted average amount across all four categories. The anti-dumping duty so calculated has been added to [REDACTED] prices (in the absence of the duty) to calculate the price undercutting that would result with a duty at this rate in place. These calculations are shown in the following table:

**Table 4.34: Price Undercutting by [REDACTED] with AD Duty @ 2.1%**

	Croxley's FIS Price	[REDACTED] Price Without AD Duties	AD Duty at 2.1%	[REDACTED] Price With AD Duties at 2.1%	Price U/C	Price U/C %
Limp	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Pads	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Wire	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Hard	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
All Categories	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

431. To assess the extent to which the price undercutting can be attributed to the margin of dumping for Muda, the Ministry has compared the price undercutting from table 4.8 above in the absence of the duty with the price undercutting from table 4.34 above with duty applied at the full margin of dumping of 2.1 percent. The Ministry has also calculated the proportion of the undercutting that is represented by the amount of the dumping margin. This information is shown in the following table:

**Table 4.35: Contribution of the Margin of Dumping to Price Undercutting**

	Without AD Duty		With AD Duty at 2.1%		Change Resulting from AD Duty at Full Margin of Dumping		
	Price U/C	Price U/C %	Price U/C	Price U/C %	Price U/C	Price U/C %	AD Duty as % of Price U/C
Limp	██████████	██████████	██████████	██████████	██████████	██████████	██████████
Pads	██████████	██████████	██████████	██████████	██████████	██████████	██████████
Wire	██████████	██████████	██████████	██████████	██████████	██████████	██████████
Hard	██████████	██████████	██████████	██████████	██████████	██████████	██████████
All Categories	██████████	██████████	██████████	██████████	██████████	██████████	██████████

432. The table shows that anti-dumping duty applied at the full margin of dumping across all four categories contributes only \$ ██████████ to the amount of price undercutting and represents only ██████████ percentage point of the price undercutting percentage. It also shows that across all four categories the margin of dumping represents only ██████████ percent of the amount of price undercutting.

#### **Likely Impact of the Removal of Anti-dumping Duties**

433. The Ministry has concluded above that Muda's export prices are likely to remain at their present levels if the duty was to be removed and that Muda's prices on the Malaysian domestic market are likely to be stable. The dumping margin calculated for Muda is likely to continue to be the dumping margin in the absence of the duty. Over the POR(D) Muda represented ██████████ percent of total exports (excluding those of Ruho Corporation which was found to be not dumping in the original investigation) and ██████████ percent of the two exporters selected for investigation. If it is assumed that the proportion of exports found to be dumped in the selection of exporters applies to all exports and the dumping margin found for Muda is representative, then ██████████ percent of exports are likely to be dumped at a dumping margin of 2.4 percent. The dumping margin would therefore likely constitute only ██████████ percent of the amount of price undercutting if the duty was to be removed.

434. The Ministry has noted above under price undercutting that a determination that price undercutting exists is not by itself a determination of the extent of the injury, i.e. the margin of price undercutting is not a measure of the extent of the economic impact on the New Zealand industry, which is measured in terms of the factors and indices set out in section 8(2)(d) of the Act. The Ministry notes that the price depression and suppression effects and the volume of dumped imports will also have an economic impact on the industry, although dumped imports from Malaysia represented only ██████████ percent of the New Zealand market in 2012. Nevertheless the forecasts provided by Croxley are predicated on the price advantage held by Malaysian imports including that resulting from the removal of the duty. It is clear that price is a significant factor in the decision to import rather than purchase from the New Zealand industry.

435. Therefore, in this case a comparison of the dumping margin with the margin of price undercutting is a significant indicator of the extent to which injury can be attributed to dumping, although it is not by itself a definitive measure of the economic impact resulting from dumping.

436. To gauge the extent of the likely impact of the dumping margin on the forecasts provided by Croxley the Ministry has considered those relating to the significant injury factors of sales volume.

revenue and profits. The sales revenue forecast provided by Croxley shows that for 2013 and 2014 revenue would decline by an additional \$ [REDACTED] and \$ [REDACTED] respectively if the duties were removed (compared to the duties remaining in place). If the contribution to this decline by the margin of dumping is assumed to be in the order of [REDACTED] percent, then the decline attributable to dumping is only \$ [REDACTED] and \$ [REDACTED] respectively. A decline in revenue of these amounts when compared to 2012 shows revenue would be [REDACTED] and [REDACTED] percent respectively of 2012 revenue. The forecast revenue for 2013 and 2014 as a percentage of 2012 with the duties remaining in place is [REDACTED] and [REDACTED] percent respectively, i.e. the forecast decline in revenue that could be attributed to the margin of dumping is negligible. A similar pattern is evident when the likely impact of the margin of dumping is considered in relation to sales volume.

437. Croxley's EBIT forecast for 2013 and 2014 shows that EBIT would decline by an additional \$ [REDACTED] and \$ [REDACTED] respectively if the duties were removed (compared to the duties remaining in place). A contribution to these declines by the margin of dumping of [REDACTED] percent would result in declines of only \$ [REDACTED] and \$ [REDACTED] respectively. A decline in EBIT of these amounts when compared to the EBIT for 2012 shows EBIT would be [REDACTED] and [REDACTED] percent respectively of 2012 EBIT. The forecast EBIT for 2013 and 2014 as a percentage of the 2012 EBIT with the duties remaining in place is [REDACTED] and [REDACTED] percent respectively. This also shows that the decline in EBIT that could be attributed to the margin of dumping is negligible.

438. The margin of dumping for Muda is only slightly above the level that is considered negligible under the Anti-Dumping Agreement. When that margin of dumping is considered relative to the margin of price undercutting it contributes only [REDACTED] percent of the total amount of price undercutting. When the extent to which the margin of dumping is likely to contribute to the economic impact on the New Zealand industry is considered in the absence of the duty, it is likely that the impact will be negligible. The Ministry therefore concludes that the magnitude of the margin of dumping is not likely to result in material injury to the New Zealand industry should the duty be removed.

#### 4.5.10 Other Adverse Effects

439. Croxley has stated that declining profits would have a direct effect on cash flow, wages and employment.

#### Cash Flow

440. Croxley provided the Ministry with figures showing its historical and forecast cash flow, both in the presence and absence of duties.

**Table 4.36: Net Cash Flow**

			With duties		Without duties	
2010	2011	2012	2013F	2014F	2013F	2014F
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

441. The figures show a historical decline in cash flow although it improved in 2012, but was still at a level well below that achieved in 2010. However, cash flow is forecast to decline again in 2013 and improve slightly in 2014, though still negative through both years, both with and without duties. Without duties in place, cash flow is forecast to be worse than it is with duties. The historical decline is a direct effect of Croxley's loss of sales volume and corresponding losses in revenue and profits. Although Croxley has not provided specific comment on its forecast cash flow, the Ministry considers

it likely that Croxley is forecasting an improvement due to improving efficiencies in running its plant, which began in 2012.

### *Conclusion on Cash Flow*

442. The Ministry concludes that there is evidence that Croxley's cash flow has been adversely impacted (with anti-dumping duties in place). Croxley's cash flow is likely to continue to be adversely affected by a removal of anti-dumping duties.

### *Inventories*

443. Croxley's inventory system is linked to its sales and order system. The system records sales and is matched to an inventory demand module which generates demand reports. The demand reports are analysed and translated into works orders for the factory. Production and output are generated by demand; inventory is therefore based on specific customer requirements. Stock is released based on customer requirements.

444. Croxley provided the Ministry with graphs illustrating a decline in sales and a corresponding decline in CBS stock from 2009 to a forecast for 2013 and 2014 for the two scenarios (with duties in place and without duties in place). The illustrated decline if duties were removed is more pronounced than the situation if duties remain in place. Injury is normally indicated by a build-up of inventory, as the industry is unable to make sales of their current stock. In this case, Croxley's decline in inventory does not indicate injury.

### *Conclusion on Inventories*

445. As Croxley's inventory is tied to its sales and output, it follows that Croxley's inventory would decline in line with its sales and output. The historical figures show that this has been the case and Croxley's forecasts show that this decline will continue. However, on the basis of the above, the Ministry concludes that Croxley has not experienced injury in terms of its inventory, nor is it likely to in future.

### *Employment and Wages*

446. Croxley has stated that it would be unable to absorb excess direct labour resulting from a drop in volume if there were no duties in place, and said that indirect labour would be affected as well.

447. Croxley did not provide the Ministry with figures showing the number of staff employed. It did, however, provide historical and forecast direct cost of labour figures over the last four years, which the Ministry has used as a proxy for the number of staff employed. The figures are listed below:

**Table 4.37: Croxley's Employment Level  
(Cost of Labour)**

					<i>With Duties</i>		<i>Without Duties</i>	
	2009	2010	2011	2012	2013F	2014F	2013F	2013F
Billed Sales ('000)	██████	██████	██████	██████	██████	██████	██████	██████
Cost of Sales	██████	██████	██████	██████	██████	██████	██████	██████
Direct Labour Cost	██████	██████	██████	██████	██████	██████	██████	██████
Yearly Labour decline	███	██████	██████	██████	██████	██████	██████	██████

448. The cost of direct labour is allocated at [REDACTED] percent of the cost of sales. Croxley's direct labour cost has been declining, and it has forecast a continued decline, even with duties in place. The rate of decline is forecast to accelerate without duties in place. Croxley stated that indirect [REDACTED] (specifically, [REDACTED]) would also be affected.

449. Croxley stated it would be difficult to justify wage increases when production activity and profitability are declining.

#### *Conclusion on Employment and Wages*

450. As Croxley's direct labour cost has been affected by the reduction in output over the last four years, it is likely that the number of workers employed will continue to be adversely affected with a continuation of dumping.

#### **Growth**

451. Croxley has said that it remains committed to reducing operational costs and working towards growing CBS products. Its biggest opportunity is [REDACTED], which it is [REDACTED]. Croxley went on to say that any negative impact caused by removing duties would only reduce its ability to compete and grow this segment.

#### *Conclusion on Growth*

452. Croxley has been losing sales and profits, and has not been able to make investments in its business. On this basis, the Ministry concludes that Croxley's ability to grow its business has likely been adversely affected. Based on the forecast of continued declines in sales and profit, the Ministry is satisfied that, should the current anti-dumping duties be removed, Croxley will likely experience a corresponding decline in its rate of growth and its competitiveness will likely be adversely affected. This will have further repercussions on Croxley's ability to improve its efficiency.

#### **Ability to Raise Capital and Investments**

453. Croxley stated that it would continue to run its Biel machines even though they would require more maintenance. Croxley has a [REDACTED] capital improvement plan but would not need to replace its machinery in the short to medium term. It has been investigating investment in [REDACTED], which would require investment of [REDACTED]. It would have to make a persuasive business case to its parent company in order for this investment to take place.

#### *Conclusion on Ability to Raise Capital and Investments*

454. The Ministry concludes that Croxley has likely experienced some prohibition in investing in its business, as declining volumes and profitability have meant there is no justification for any capital investment. Should the current anti-dumping duties be removed, the Ministry is satisfied that, based on the likelihood of losses in EBIT there will likely be a corresponding adverse impact on its ability to raise capital and investments.

## **4.6 Other Causes of Injury**

455. 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 —

- the volume and prices of goods that are not sold at dumped prices;
- contraction in demand or changes in the patterns of consumption;
- restrictive trade practices of, and competition between, overseas and New Zealand producers;
- developments in technology;
- export performance and productivity of the New Zealand producers; and
- the nature and extent of importations of dumped or subsidised goods by New Zealand producers of like goods, including the value, quantity, frequency and purpose of any such importations.

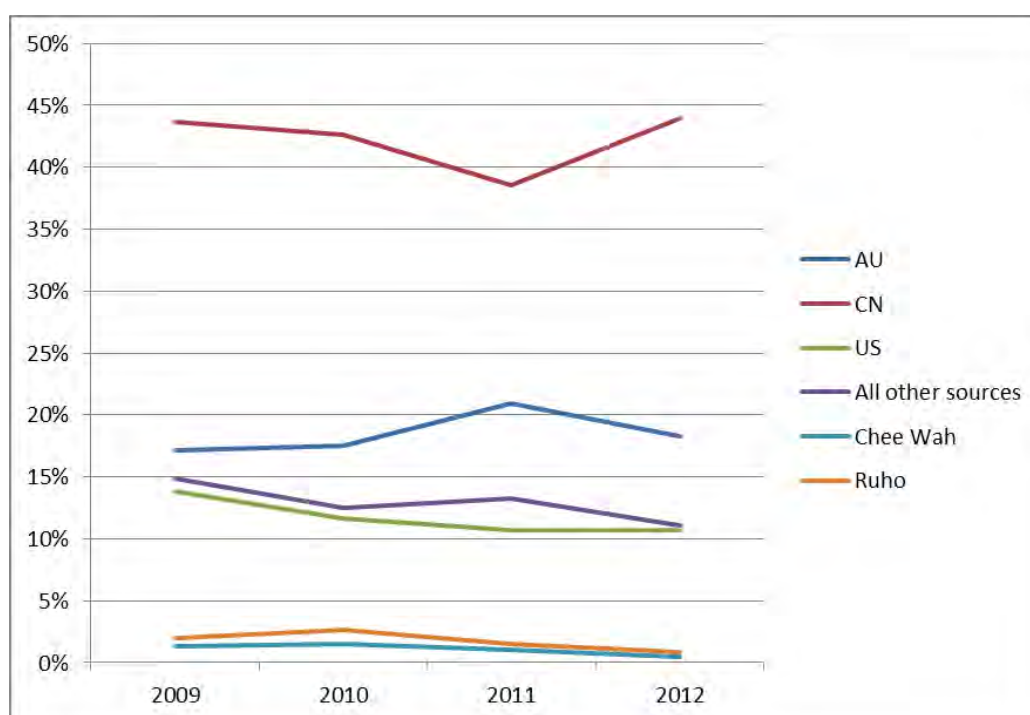
#### 4.6.1 Non-Dumped Imports

456. Both the level and frequency of non-dumped imports can be a source of potential injury to a domestic industry. In the present review, import statistics show that the vast majority of imported CBS entering New Zealand over 2012 was sourced from China followed by Australia and Malaysia. The United States is also a significant source of CBS. Furthermore, the Ministry has found that exports made by Chee Wah from Malaysia to New Zealand were not dumped, and there is one Malaysian company, Ruho Corporation Ltd, that was exempted from the duty in 2007 because it was not dumping.

457. In its application for review, Croxley noted that it was concerned about supply being shifted to non-dutiable countries. It also said that Malaysia is the major source of imported CBS and therefore has the most effect on New Zealand manufactured CBS product (as noted above, however, the import data shows that China and Australia are larger sources of imports).

458. The graph below illustrates the value of non-dumped imports of CBS over the POR(I):

**Graph 4.6: Value of Non-Dumped Imports as a % of Total Imports  
(2009-2012; NZD)**



\*The data in this graph excludes items that did not fit the subject goods description. "All other sources" does not include Malaysia.

459. China is by far the most significant source of CBS imports, representing nearly 50 percent of imports in 2012. Australia is also a significant source, representing almost 20 percent of imports in 2012. Chinese imports increased sharply between 2011 and 2012 after a slight decline. Imports from Australia have increased over all of the 2009 to 2012 period, although they have been declining recently. Imports from the US and all other sources represent a smaller percentage of total imports than they did in 2009. It is also worth noting that imports from Chee Wah and Ruho, the two non-dumping Malaysian companies, have been declining slightly since 2009, although they represent a very small proportion of the total CBS import market for New Zealand. Imports from other sources have increased their share of the New Zealand market at the expense of Croxley's market share.

460. Muda raised concern over only Malaysia being investigated in its submission on the interim report on the first phase of the review, stating that imports from China should be the main focus of an anti-dumping investigation since this is where the majority of New Zealand's CBS imports are from. The Ministry notes that, in a review, only the country to which anti-dumping duties apply may be reviewed.

461. Muda also noted in the submission referred to above that, if duty is to be imposed, [REDACTED] will likely source CBS from a country that can offer a more competitive price.

462. TWG submitted that it may extend its tender to other countries, were the duty extended to cover limp covered books.

463. The Ministry has considered establishing a price undercutting comparison for non-dumped imports based on NZCS data. However, quantities are not recorded for all seven tariff items subject to investigation. Furthermore, it appears likely that there are some flaws in the volume data that is available, which results in inaccurate unit prices. The Ministry has therefore decided not to complete a price undercutting comparison for non-dumped imports from countries other than Malaysia, as it considers the comparison cannot be done with accuracy. The Ministry notes, however, that imports by [REDACTED] from Chee Wah (which was found not to be dumping) were undercutting Croxley's prices. Imports by [REDACTED], however, represent only a very small proportion of total imports from Malaysia.

#### *Conclusion on Non-Dumped Imports*

464. The Ministry notes that non-dumped imports of CBS from countries other than Malaysia currently represent 84 percent of total imports, which indicates these imports are a possible source of injury to the domestic industry. As noted above under market share, non-dumped imports have also increased their share of the New Zealand market since 2009 at the expense of the share held by Croxley. China represents a significant proportion of total imports of CBS, and imports from China have been increasing recently. On this basis, the Ministry concludes that the volume of goods from countries other than Malaysia is likely to be a current cause of material injury to the domestic industry and will likely continue to have an adverse impact on the domestic industry.

#### **4.6.2 Contraction in Demand or Changes in Consumption Patterns**

465. Croxley stated that overall the CBS market in New Zealand has been relatively stable for many years and thus there have not been any market changes which have had an impact on the domestic industry. The market is impacted by the number of students in education, which has not changed significantly. Croxley has stated that improvements in technology (e.g. tablets) have not had a significant impact on consumption.



466. TWG has also said that schools are a key influencer in the CBS market. TWG commented that schools (i) not releasing school lists, (ii) having exclusive relationships with suppliers, or (iii) only providing pre-packaged stationery boxes, limits the consumer on where they can shop for these products and what brands they can buy. Furthermore, the extent to which schools request or supply technology products either replaces or complements traditional stationery products.

467. TWG stated that the growth outlook for the CBS market is flat or low. Increased technology penetration in schools is causing the demand for CBS to gradually decline over the longer term. The rate of decline in demand will depend on how quickly and to what extent New Zealand schools replace stationery with technology as a learning tool.

468. Both Croxley and TWG have said that net selling prices vary dramatically during key selling and promotional periods, such as the BTS period at the beginning of each year. Intense competition between retailers can result in them being forced to sell key volume lines below cost.

469. The information available to the Ministry on the total size of the NZ market, compiled from NZ industry sales figures and import data, shows that there has been a small increase in its total size from 2009 to 2012, rather than a contraction as stated by TWG (refer to the market share section earlier in this report). However, because the market size is measured in dollars rather than in quantity, some of the apparent growth could be due to inflation. The gradual decline of the market as a result of technology penetration indicated by TWG does not currently seem significant, considering the apparent overall growth of the market.

### ***Interim Report Conclusion***

470. It is not apparent that there have been any contractions or significant changes in demand in the New Zealand CBS market. The Ministry considers that the domestic industry has not been adversely affected by any changes in demand; however, the pattern of demand could change over the longer term.

### **Submissions on Interim Report on the Reopened Review**

471. TWG submitted that it disagrees with the Ministry's conclusions regarding contractions in demand. It again argued that there has been a marked decline in demand for CBS, using data compiled by the Bank of New Zealand based on customer transactions, which shows a [REDACTED] in TWG's sales and an estimated decline of the entire CBS market over the period 2010 to 2012.

472. The data the Ministry has used is more comprehensive, covering much more of the market than just customers of BNZ. This data clearly shows a small increase in the total size of the market, indicating that there is no significant contraction in demand for CBS. The Ministry does, however, agree with TWG that the market is likely to decline over the longer term as technology penetration increases. The Ministry does not consider it needs to change its conclusion from that reached in the interim report.

### **4.6.3 Restrictive Trade Practices of, and Competition between, Overseas and New Zealand Producers**

473. Croxley said it was not aware of any restrictive trade practices in the New Zealand market, with the exception of Malaysian suppliers using New Zealand Standard's coding when the product does not meet the requirements of the Standard.

474. TWG considers that Croxley has repeatedly engaged in anti-competitive trade practices in relation to Malaysian exporters and itself. Particularly, TWG considers that Croxley has been

restrictive in [REDACTED]. TWG stated that Croxley requires TWG to [REDACTED]. TWG considers that [REDACTED].

475. TWG has also stated that its responsibility for [REDACTED] justifies a [REDACTED] for Malaysian stationery imports than the price it would receive from Croxley. Croxley promotes its Warwick brand directly to the market, and [REDACTED]. Croxley include the cost of [REDACTED] in their prices to retailers, while TWG directly fund the [REDACTED] of their Impact brand.

476. The Ministry understands that TWG declined to enter into such an arrangement because it considered [REDACTED]. In the Ministry's view, the expiry of the duty would not alter the decision already made by TWG not to [REDACTED] and the issue is therefore not directly relevant to the consideration of whether the expiry of the duty would be likely to lead to a continuation of recurrence of dumping and injury.

### ***Interim Report Conclusion***

477. Regarding the New Zealand Standard coding, both Malaysian suppliers have stated that they only make CBS to customer requirements, which, as far as they are aware, meet the Standard. In addition, the Ministry understands that sellers of stationery in the New Zealand market are not legally bound to meet the requirement of the Standard, that is, it is optional. The Ministry notes TWG's comments regarding Croxley's [REDACTED] but considers that this is not strictly related to the issue of dumping and is an issue between the two companies. The Ministry consequently considers that this factor has not been a cause of injury to Croxley and is not likely to be so if the duty is removed.

### **Submissions on Interim Report for the Reopened Review**

478. TWG stated in its submission that Croxley's alleged anti-competitive behaviour should have prompted a downward adjustment of the Ministry's initial quantification of injury analysis. It went on to say that this behaviour "was one of the proximate causes of TWG taking the decision to establish a direct commercial relationship with [REDACTED] and end Croxley's role as middleman."

479. TWG's decision to stop using Croxley as a "middle-man" is related to Croxley's importing activity, rather than its New Zealand production. The Ministry understands that previously Croxley was importing all of the product it was selling to TWG, which is the same product TWG now imports. Since this is not related to Croxley's domestic production, the Ministry considers it is not strictly relevant to the competitiveness of the domestic industry.

480. The Ministry considers that these are decisions both parties are entitled to make as commercial traders. TWG chose not to accept Croxley's proposal (and instead import from Malaysia), which the Ministry understands, Croxley offered to all of its customers, not only TWG. Croxley do not appear to be trying to restrict legitimate CBS imports through this action. Furthermore, accounting for this factor should not alter any actual figures used in the previous injury analysis – this is a qualitative factor rather than a quantitative one.

#### 4.6.4 Developments in Technology

481. Croxley has stated that very little in the way of technology change has translated through to the equipment used to produce CBS.

482. Schools are using computers and tablets more; however, most of the interested parties do not consider that this has changed the demand for CBS significantly at present. Schools currently appear to be using both products as complementary items, rather than substituting them for one another.

483. As above, WSL considers that technology has contributed to a contraction in demand for CBS and technology is increasingly substituting for CBS, and that this trend is likely to continue over the long term. The trend is dependent on how quickly and to what extent schools replace stationery with technology as a learning tool. TWG have said that technology replacing paper is in its relatively early days, but the proliferation of mobile devices, more schools adding technology to stationery lists, or providing technology themselves, means the demand for CBS will continue to decline.

#### Conclusion

484. The Ministry does not consider that there is any evidence to suggest that changes in technology have currently caused injury to Croxley, although this may occur in the longer term.

#### 4.6.5 Export Performance and Productivity of the New Zealand Producers

485. Croxley has exported to [REDACTED] over many years.

486. The costs of exports are [REDACTED] percent of the standard cost of production of goods sold in New Zealand because export bulk production volume is higher due to large runs of standard items. Exports also have lower administration costs. Croxley stated that costs as a percentage of revenue had increased slightly, but they were still able to recover costs due to a slight increase in prices.

#### Conclusion

487. The Ministry does not consider that there is any evidence to suggest that Croxley's exports are causing injury to its domestic production. Croxley is able to recover costs, and is, as far as the Ministry is aware, producing CBS for export efficiently.

#### 4.6.6 Imports by the Industry

488. [REDACTED] considers that Croxley have a conflict of interest, since it also imported CBS product which it is claiming is injurious. [REDACTED] considers that Croxley contributed to driving the New Zealand import prices down [REDACTED].

489. Croxley has imported CBS from Malaysia over the period. It stated that imports make up about [REDACTED] percent of its domestic sales. All of Croxley's imports have been excluded from its financial data used in this report.

490. Croxley generally imports CBS products which are not viable for it to manufacture. [REDACTED] imports by Croxley in 2012 represented only [REDACTED] percent of Croxley's sales in 2012.

#### Conclusion

491. There is no evidence to suggest that Croxley's dumped imports have had any material impact on its performance.

#### 4.6.7 Exchange Rates

492. TWG considers that Croxley's productivity has been negatively affected by the unprecedented strength of the NZ dollar compared to the other currencies connected with this investigation. Appreciation allows importers to import product relatively cheaply, and makes local product comparatively more expensive.

493. The New Zealand dollar is still relatively high against the Malaysian Ringgit, but as New Zealand CBS is sourced from a range of countries using other currencies against which the New Zealand dollar is also strong, it is unlikely that the exchange rate alone, should the duties be removed, would give Malaysian exports a sufficient price advantage for importers to switch sourcing from Malaysia. The Ministry would further note that if the New Zealand dollar remains strong after any removal of the duty then it would be a constant factor so any injury likely from the removal of the duty is unlikely to be attributable to the exchange rate.

#### Submissions on the Interim Report for the Reopened Review

494. TWG reiterated that it considered injurious effects of the strong dollar need to be calculated, separated and distinguished from the injurious effects of the dumped imports. It said the Act requires the dollar's impact be quantified and injurious effects separated. It quoted an Australian Food and Grocery Council publication from 2011 which states "the unprecedented high of the Australian dollar against the currencies of its major food and grocery trading partners has created a universal pressure across the sector, making many domestically produced products significantly more expensive on shelf than imported substitutes." TWG considers that the strong dollar has led to a decline in the relative competitive position of the New Zealand industry as compared with imports generally.

495. In its submission TWG referred to paragraph 254, in which the Ministry stated that any injury caused by factors other than the dumped imports must not be attributed to the dumped imports, which is taken from Article 3.5 of the Agreement.

#### *Ministry Response*

496. The present case is a sunset review conducted under the provisions of Article 11.3 of the Anti-Dumping Agreement. In section 1.3 above under the Ministry's approach to sunset reviews, there is an outline of the findings of the Appellate Body in *US – Oil Country Tubular Goods Sunset Reviews* where the Appellate Body found that investigating authorities are not mandated to follow the provisions of Article 3 when making likelihood of injury determinations when undertaking sunset reviews under Article 11.3.

497. In particular the Appellate Body commented that injury factors in Article 3 "[m]ay be relevant to varying degrees in a given likelihood-of-injury determination. An investigating authority may also, in its own judgement, consider other factors contained in Article 3 when making a likelihood-of-injury determination. But the necessity of conducting such an analysis in a given case results from the requirement imposed by Article 11.3 — not Article 3 — that a likelihood-of-injury determination rest on a "sufficient factual basis" that allows the agency to draw "reasoned and adequate conclusions"."

498. The provisions of Article 11.3 require that investigating authorities determine whether the expiry of the duty would be likely to lead to a continuation or recurrence of dumping and injury. The Ministry does not, however, consider that in a sunset review it is required to "separate and distinguish" the injurious effects of likely dumping from the likely injurious effects of other factors.

499. The Ministry does use the provisions of section 8 of the Act (which reflects relevant parts of Article 3 of the Anti-Dumping Agreement) as guidance in sunset reviews. This includes examining whether factors other than dumping have caused injury or are likely to cause a continuation or recurrence of injury should the duties be removed. In this way the Ministry considers it meets the requirements of Article 11.3 in determining whether there is likely to be a continuation of dumping and injury should the duty be removed.

500. Furthermore, TWG's assessment that the Act requires 'other factors' to be quantified in order to separate the effects of them is incorrect. Neither the Act nor the Agreement requires any specific method or approach. The Ministry does not consider a quantitative analysis to be necessary for this factor in this particular case.

501. The Ministry agrees that the strong dollar is likely to have had a negative effect on Croxley's competitive position in the New Zealand market as compared to imports of CBS. However, dumped import volumes have grown considerably since 2009, and it seems unlikely that this growth could be solely or even mostly attributable to the strength of the New Zealand dollar. Non-dumped imports from a variety of sources, including other currencies against which the New Zealand dollar is strong, have grown significantly less. While the Ministry agrees that the strong dollar is likely to have had some effect on the New Zealand industry's productivity, the Ministry considers that TWG is overstating this effect.

## 4.7 Conclusions Relating to Injury

502. From information made available throughout the review, the Ministry has reached the following conclusions:

### 4.7.1 Volume and Price Effects

503. The volume of dumped imports of CBS from Malaysia has increased in absolute terms and also relative to both domestic production and total New Zealand consumption.

504. With anti-dumping duties in place, Croxley's average domestic prices of CBS have been undercut by the majority of imports of CBS from Malaysia over the POR(D).

505. Croxley has not experienced price depression or price suppression over the POR(I).

### 4.7.2 Economic Impact

506. Even with anti-dumping duties in place, there is evidence that the domestic industry has suffered actual declines in sales volume and revenue, market share, profits, productivity (to a lesser extent), and likely declines in return on investment, utilisation of production capacity, cash flow, and direct labour. The Ministry considers that the domestic industry has likely experienced an adverse impact on its ability to raise capital and investments and its rate of growth.

507. There is no evidence to suggest that the domestic industry has experienced a build-up of inventory.

508. The extent of price undercutting is significantly greater than the magnitude of the margin of dumping. Only a negligible proportion of the price undercutting can be attributed to dumping.

509. The industry did not raise any factors affecting domestic prices in terms of its current performance (with the anti-dumping duties in place).

510. There is a significant percentage of the import market for CBS represented by imports from other sources. Imports of CBS from China have increased significantly over the last year. It is likely that non-dumped imports are also injuring the domestic industry.

#### **4.7.3 Likelihood of Injury if Anti-dumping Duties are Removed**

511. In order to gauge the extent to which the termination of the anti-dumping duties would cause material injury to the domestic industry, the Ministry examined projections provided by Croxley of the injury it considers it will suffer as a result of the removal of the duties.

512. The Ministry has examined these projections in light of the company's past performance (with the duties in place) and projected future performance (both in the presence and absence of the duties) in order to assist it in determining the likely consequential economic impact of the dumped goods and in making either a negative or positive continuation of material injury determination.

513. The Ministry has found that New Zealand industry would likely suffer the following adverse effects over its 2013 and 2014 financial years, should the duty be removed:

- It is likely that imports of CBS from Malaysia would increase and that the prices of the imports would continue to undercut the New Zealand industry's prices, resulting in Croxley experiencing price suppression. Croxley is not likely to suffer price depression. There are no other factors likely to affect domestic prices.
- Croxley is likely to continue to experience a material decline in its sales volume and a corresponding decline in its sales revenue, as well as a continued decline in its market share.
- It is likely that there will be a material decline in Croxley's profit levels as a consequence of the adverse impacts of import volumes, prices and economic effects set out above.
- The domestic industry's return on investments and growth are likely to be affected as a direct consequence of the company suffering losses of profit. Cash flow is also likely to be adversely affected.
- Due to the decline in volume, the domestic industry's productivity and its utilisation of production capacity for its hard and limp covered production lines are likely to also decline. These effects will have on-going impacts on Croxley's efficiencies in its business as a whole.
- Only a negligible proportion of the amount of the likely price undercutting is likely to be attributable to the margin of dumping.
- Direct labour and Croxley's ability to raise capital and investment are likely to be affected due to decreasing output.
- Croxley is not likely to experience an adverse impact on its inventory of CBS.

514. The evidence therefore indicates that the removal of the duty is likely to result in a continuation of material injury to Croxley. However, an analysis of the extent to which the margin of dumping of the one exporter found to be dumping is likely to contribute to price undercutting shows that this contribution is negligible. While the margin of price undercutting is not a measure of the likely extent of the economic impact if the duty is removed, price is a significant factor in purchasing decisions and it is likely that the consequent economic impact that could be attributed to dumping is also negligible. The most significant economic impact on the New Zealand industry is likely to arise from price undercutting that cannot be attributed to dumping.

515. The Ministry cannot therefore conclude that the likely continuation of dumping by Muda should the duty be removed would be likely to lead to a continuation of material injury to the New Zealand industry that could be attributed to dumping.





## 5. Conclusions

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516. The Ministry concludes that if the current anti-dumping duties are removed there is not a likelihood of a continuation or recurrence of dumping causing material injury to the New Zealand industry, in the foreseeable future.



## 6. Appendix 1

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517. A full copy of the Act and the WTO Agreement on the Implementation of Article VI of the GATT 1994 (the Anti-dumping Agreement) can be found at:

[http://www.legislation.govt.nz/act/results.aspx?search=ts\\_act\\_dumping+and+countervailing\\_resel&p=1](http://www.legislation.govt.nz/act/results.aspx?search=ts_act_dumping+and+countervailing_resel&p=1)

and

[http://www.wto.org/english/docs\\_e/legal\\_e/legal\\_e.htm](http://www.wto.org/english/docs_e/legal_e/legal_e.htm)