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## **INITIATION OF REASSESSMENT: OIL FILTERS FROM INDONESIA**

### **Introduction**

1 Transdiesel Ltd (Transdiesel) lodged, on 18 January 2005, a request for a reassessment of anti-dumping duty on oil filters sourced from an Indonesian manufacturer, PT Selamat Sempurna Tbk (PT Selamat). The associated exporter, Filter Sales Australia (FSA) lodged an identical request, also on 18 January 2005. PT Selamat subsequently also lodged a request for a reassessment on 29 April 2005. This report relates to all three requests.

2 This memorandum provides background information on the current anti-dumping duties and on the information provided in support of the reassessment requests, assesses the evidence in support of a reassessment and recommends that you initiate a reassessment solely for the purpose of establishing additional reference prices for oil filters exported from Indonesia by PT Selamat, based on updated information.

### **Background**

3 Current anti-dumping duties on oil filters were imposed on 14 January 2005 following an investigation which was initiated on 20 July 2004. The duties took effect from 28 October 2004, being the day after the date of the decision of the Minister to give notice of the imposition of provisional anti-dumping duties on oil filters.

4 The anti-dumping duties in place are in the form of:

- A combination of Normal Value (Value For Duty Equivalent) (NV(VFDE)) and Non-Injurious-Free-On-Board (NIFOB) reference prices for high volume part numbers, where sufficient information was available from the investigated manufacturers;
- An *ad valorem* rate for other part numbers manufactured by those manufacturers; and
- A residual *ad valorem* rate for imports from other manufacturers from each country.

5 In The Ministry's final report on the investigation reference prices were established, in relation to PT Selamat, for 25 part numbers, being 23 percent of total imports from PT Selamat during the period of investigation (the POI). During the investigation, the Ministry calculated approximately 70 reference prices for PT Selamat but, with the intention of limiting administrative complexity for Customs and Customs

Agents limited the number in the final report to 25<sup>1</sup>. This number covered part numbers where 500 or more pieces were imported during the POI, for which sufficient information to calculate reference prices was available. During the POI 206 part numbers were imported from PT Selamat according to information provided by importers. Some of these part numbers were imported by importers other than Transdiesel.

6 In the Final Report on the investigation it was noted that there were inherent problems with *ad valorem* duties although the report recognised that administrative complexity, time limitations and lack of information from interested parties made reference prices across the board inappropriate also.

## The Requests

7 Transdiesel's and FSA's requests for a reassessment initially proposed that reference prices be established for the remainder of the part numbers manufactured by PT Selamat that were imported during the POI. The requests referred to information already held by the Ministry as evidence justifying the need for reassessment.

8 In response to these requests Transdiesel and FSA were advised that information gathered during the investigation would enable reference prices to be established for only a limited number of additional part numbers. The Ministry sought further evidence in relation to whether the reassessment request included part numbers from another Indonesian manufacturer and the justification for establishing additional reference prices.

9 In a letter dated 3 February 2005, Transdiesel advised that:

- It sought to have reference prices calculated for [REDACTED] of the oil filters it imports despite the fact that there was insufficient information currently with the Ministry. Transdiesel acknowledged it would be necessary to acquire further and updated information from its supplier to complete such a task.
- Its request did not extend to oil filters it had imported from another Indonesian manufacturer.
- Its request for additional reference prices is based on the negative impact that the investigation and subsequent imposition of duties has had on Transdiesel's relationship with its supplier. Transdiesel proposed that a greater range of reference prices will result in greater revenue to its supplier and therefore would make a significant contribution to improving their relationship.

10 Representatives from the Trade Remedies Group met with a representative of Transdiesel on 8 February 2005. Transdiesel advised during this meeting that a number of its fast moving oil filters were absent from the list of reference prices established by the Ministry, either due to lack of information or because during the investigation Transdiesel was in the process of moving from the "FSA" brand to the "Sakura" brand. The reference prices established during the investigation relate to both

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<sup>1</sup> If reference prices were established for all part numbers for which it was possible to calculate reference prices using information obtained during the investigation, those part numbers would have amounted to 27 percent of imports from PT Selamat during the POI.

the FSA and Sakura brands and can only be used to assess liability for anti-dumping duty for the part numbers to which they relate and not to part numbers with which they may be interchangeable.

11 At the conclusion of the meeting referred to above Transdiesel advised that it would endeavour to gather fresh evidence of normal values and export prices of at least its top selling part numbers. As a result, the Ministry wrote to Transdiesel and FSA on 2 March 2005 and advised that consideration of their reassessment requests had been suspended pending the receipt of further and updated information.

12 Further information was subsequently provided by PT Selamat under cover of a letter dated 14 March 2005 (but not received until 12 April 2005.) This information related to the POI over which transactions were examined in the original investigation to establish whether the goods were dumped. The POI in the original investigation was the year ended 30 June 2004. The information provided by PT Selamat on this occasion related to sales to a particular customer at prices that were significantly lower than those used in the investigation to establish normal values, which were based on a price list. This information also did not allow a significant number of oil filter models exported to New Zealand to be cross-referenced to the equivalent domestic models (identified by different part numbers) on the price list used in the investigation. The Ministry therefore sought an explanation for the difference in the normal values established in the original investigation and those that PT Selamat was proposing be used in the reassessment, and also asked for the relevant part number cross-reference information.

13 PT Selamat advised that the reason for the difference in normal values was due to the price list being for reference only and that actual pricing is very flexible. (During the investigation, however, PT Selamat provided some information on actual sale prices, to a customer different to the customer for which information was provided in April 2005, for a small number of oil filter models and these prices were only slightly less than the price list prices. This suggests that the information provided in April 2005 in relation to this other customer may not be reliable.) The required part number cross-reference information was not provided.

14 At the same time PT Selamat also requested a reassessment of the duty on oil filters it supplies to "various New Zealand customers". PT Selamat said its aim was to have reference prices established for high volume part numbers and noted the main reason for the request was due to major increases in commodity prices that had caused it to raise its export prices substantially. PT Selamat did not advise whether it had also raised its domestic prices and did not provide any updated information on either export or domestic prices. It appears PT Selamat is seeking a reassessment in respect of its sales to all of its New Zealand customers, not just in respect of sales to Transdiesel.

15 In mid-July 2005 PT Selamat provided information cross-referencing the part numbers of oil filter models exported to New Zealand with the part number of the equivalent model on the domestic price list used in the investigation. This information would allow normal values to be established for an additional 16 fast mover models exported by PT Selamat to Transdiesel and, should reference prices be established for these models, would mean only four fast mover models imported by Transdiesel would not have reference prices. It is understood this would largely satisfy Transdiesel's desire to have reference prices established for its fast mover models.

## Legal Provisions

16 Reassessments are provided for in section 14(6) of the Dumping and Countervailing Duties Act 1988 (the Act) as follows:

(6) The [Chief Executive] may initiate a reassessment of any rate or amount of anti-dumping or countervailing duty determined under subsection (4) of this section, including any elements of any formula used to establish such a rate or amount,—

- (a) On the initiative of the [Chief Executive]; or
- (b) Where a request for a reassessment is submitted to the [Chief Executive] by an interested party who submits evidence justifying the need for a reassessment; or
- (c) Following the completion of a review carried out under subsection (8) of this section—

and the Minister may determine a new rate or amount in accordance with subsection (4) of this section, and, in that event, shall give notice of the new rate or amount.

17 Section 9 of the Act is relevant in determining whether other parties would need to be advised of the initiation of a reassessment, be given the opportunity to make submissions and be notified of the outcome of the reassessment. Section 9 states as follows:

For the purposes of this Act, reference to a notice means a notice—

- (a) Containing a brief summary of the reasons for the giving of the notice; and
- (b) Given to—
  - (i) The Government or Governments of the country or countries of the export of goods to which the notice relates; and
  - (ii) Exporters and importers known by the [Chief Executive] to have an interest in those goods; and
  - (iii) The applicant in relation to those goods; and
  - (iv) Where the Minister or the [Chief Executive] is taking action under section 18 of this Act, the Government of the third country on behalf of whom the Minister or the [Chief Executive] is taking action; and
- (c) Published in the *Gazette*.

18 In a situation where a reassessment was confined to establishing reference prices for a limited number of oil filter models manufactured by one company, it is considered only that manufacturer, the exporter and importer of the filter models would be exporters and importers known to have an interest in the goods in terms of section 9(b)(iii) of the Act. Because a reassessment would be confined to filters exported from Indonesia, only the Government of Indonesia would need to be notified in terms of section 9 (b)(i) of the Act. In addition, natural justice would likely require that the New Zealand industry should be notified, as it has an obvious interest in the level of the remedy.

19 If the reassessment results in a duty lower than the current duty, the Minister of Commerce may direct a refund, from the date of initiation of the reassessment of the difference between the duty paid and the lower duty. The Act does not provide for retrospective collection of additional duties if a reassessment results in higher duties.

## Evidence Provided

20 PT Selamat has not provided any information updated from that used in the investigation in support of its request for a reassessment and it is considered that there is not sufficient evidence in terms of section 14(6) of the Act to warrant the initiation of a reassessment on the basis requested by this company.

21 The Ministry holds evidence of normal values from the investigation, in the form of a price list which could be used to establish reference prices, using the additional part number cross-reference information now available, for an additional 16 fast mover oil filter models manufactured by PT Selamat.

22 It is considered that sufficient evidence is available, in terms of section 14(6)(b) of the Act to warrant the initiation of a reassessment on the basis requested by Transdiesel and FSA using information provided during the investigation and the additional cross-reference information provided by PT Selamat. There is an issue, however, of whether a reassessment should proceed on the basis of information obtained during the investigation. As noted in paragraph 12 above, the POI over which the existence of dumping was determined was the year ended 30 June 2004. Since the end of the POI there have been significant increases in the prices paid by Transdiesel for oil filters manufactured by PT Selamat and exported to New Zealand. Transdiesel has advised that there was a [redacted] percent increase as of 1 October 2004 for all oil filters, a further [redacted] percent increase for spin-on oil filters and a [redacted] percent increase for cartridge type oil filters as of 1 January 2005. Transdiesel also provided details of a price list containing increased prices effective 29 March 2005, although it is unclear how much prices increased on this occasion.

23 An analysis of imports of oil filters exported by FSA and PT Selamat since the imposition of final duties on 14 January 2005 up to 30 June 2005 shows that anti-dumping duty averaged [redacted] percent of the value for duty. The residual rate of anti-dumping duty for filters manufactured by PT Selamat is 43 percent. Exports by these two companies from April 2005 show that the rate of anti-dumping duty was either 43 percent or nil, suggesting that from April 2005 no anti-dumping duty was paid where a reference price form of duty applied. (It is possible, however, that where no anti-dumping duty was paid the filters imported were of a type not subject to anti-dumping duty. The Customs import data does not contain sufficient detail to ascertain the type of filter imported.)

24 At the same time there is information available from Transdiesel that indicates the reference price duty has not been rendered completely ineffective by price rises. Transdiesel provided a model-by-model breakdown of the anti-dumping duty paid on two importations in July 2005. This breakdown shows that a reference price duty applied on [redacted] models of filter, [redacted] of which paid no anti-dumping duty, and the weighted average anti-dumping duty paid on the [redacted] models was [redacted] percent. This breakdown also shows that there were a total of [redacted] model types assessed for anti-dumping duty, meaning that [redacted] models ([redacted] percent) were subject to the residual rate of duty, showing that a large proportion of Transdiesel's imports are not covered by a reference price duty.

25 The evidence available indicates that the effective level of anti-dumping duty payable where a reference price duty applies is approximately [redacted] percent below the

residual rate of duty. If a reassessment was to establish additional reference prices using information from the investigation for the fast mover oil filters imported by Transdiesel, it would therefore likely result in a significant drop in the effective level of the remedy available to the New Zealand industry. The only New Zealand manufacturer of oil filters, GUD (NZ) Ltd, advised it would be opposed to a reassessment being carried out to establish new reference prices using information from the investigation because of the likely drop in the effective level of the remedy available to it.

26 If a reassessment was to be carried out to establish reference prices for the fast mover filters imported by Transdiesel on the basis of updated information (as opposed to using information from the investigation) those reference prices would be on a different (updated) basis than all other reference prices. However, in this situation Transdiesel is the only significant importer of the part numbers for which reference prices would be established, [REDACTED] and updated information should restore the effective level of the duty provided by reference prices to that provided by the *ad valorem* percentage duty rate which the reference prices will replace. In these circumstances it is considered that a reassessment could be initiated on the basis that reference prices be established using updated information.

27 As noted in paragraph 13 above the information provided by PT Selamat in April 2005 in relation to another customer may not be reliable. To keep a reassessment focused on establishing additional reference prices and to expedite a reassessment, it is considered that PT Selamat should be asked to provide an updated price list so that the additional reference prices could be established on the same basis as those reference prices established during the investigation. If an updated price list is not supplied, or if a price list is provided but it does not appear reliable, then to expedite the reassessment the price list obtained during the investigation could be updated using, for example, the increase in a relevant Indonesian price index or using some other adjustment that would reasonably approximate the increase in prices in oil filters on the Indonesian domestic market.

28 A reassessment would also need to correct a small error in the investigation pointed out by PT Selamat. This error came about from an input mistake in the dumping spreadsheet and resulted in the residual *ad valorem* percentage rate of duty for PT Selamat being overstated by one percent.

29 By restricting a reassessment to the establishment of additional reference prices only, it is likely that it could be completed within a relatively short time. Factors that will impact on the time taken to complete the reassessment include the need to consider whether a lesser duty in the form of NIFOBs would be appropriate and the need to send to interested parties for comment an Interim Report. In the investigation the New Zealand industry's non-injurious prices (NIPs) on which the NIFOBs were based, were taken as its actual prices during the year ended 30 June 2002. Unless information is received during the reassessment that shows this is no longer appropriate, it is likely that NIPs would be established on the same basis in this reassessment.

## **Recommendation**

30 Transdiesel has submitted evidence showing that only a small proportion of the oil filters it imports are assessed for whether anti-dumping duty is payable using a

reference price mechanism and has explained why its relationship with its supplier would be improved if additional reference prices were to be established. In addition, further cross-reference information has been provided by PT Selamat that allows the identification of oil filters sold on the Indonesian domestic market that are equivalent to 16 of the fast mover oil filters supplied to Transdiesel.

31 It is therefore considered that the evidence provided by Transdiesel and FSA is sufficient to justify the initiation of a reassessment of anti-dumping duties on oil filters exported from Indonesia by PT Selamat in terms of section 14(6)(b) of the Act, in order that additional reference prices be established. It is recommended that:

- (a) in accordance with section 14(6)(b) of the Act, and acting under your delegated authority, you formally initiate a reassessment of the anti-dumping duty on oil filters exported from Indonesia by PT Selamat and imported into New Zealand; and
- (b) you sign the attached *Gazette* notice of the initiation of a reassessment.

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Agreed/Not Agreed

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Acting under delegated authority from the Chief Executive of the Ministry of Economic Development