

Ministry of **Economic
Development**



M a n a t ū Ō h a n g a

Non-Confidential

**Reassessment of Anti-dumping
Duties on Oil Filters from
Indonesia**

Final Report

Dumping and Countervailing Duties Act 1988


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Abbreviations

The following abbreviations are used in this Report:

Act (the)	Dumping and Countervailing Duties Act 1988
Agreement (the)	World Trade Organisation Agreement on Implementation of Article VI of the GAT/T 1994
ADR	ADR Group of Companies
Chief Executive (the)	Chief Executive of the Ministry of Economic Development
Customs	New Zealand Customs Service
FOB	Free on Board
FSA	Filter Sales Australia
Holden Australia	General Motors Holden Automotive Ltd
Holden NZ	Holden New Zealand Ltd
IDR	Indonesian Rupiah
LDC	Less Developed Countries
LLDC	Least Developed Countries
Minister (the)	The Minister of Commerce of New Zealand
Ministry (the)	Ministry of Economic Development
NIFOB	Non-Injurious-Free-On-Board
NIP	Non-Injurious Price
NV(VFDE)	Normal Value (Value For Duty Equivalent)
NZD	New Zealand Dollar
OANDA	www.oanda.com
OPS	Other preferential sources
Original Investigation (the)	The Dumping Investigation into Oil filters from China, Indonesia, Korea and Thailand completed in January 2005
Pac	Forum Island Members of the South Pacific Regional Trade and Economic Cooperation Agreement
POI	Period of investigation (relating to the original investigation into Oil filters from China, Indonesia, Korea and Thailand completed in January 2005)
PTC	PT Prapat Tunggal Cipta
PT Selamat	PT Selamat Sempurna Tbk
Transdiesel	Transdiesel Ltd (formerly known as Transmissions & Diesels Holdings Ltd)
USD	United States of America Dollar

VFD	Value for Duty
WTO	World Trade Organisation
	Denotes confidential information

Executive Summary

INTRODUCTION

1. On 15 August 2005, at the request of Transdiesel Ltd (Transdiesel), Filter Sales Australia, trading as Solcrest Pty. (FSA) and PT Selamat Sempurna Tbk (PT Selamat), the Ministry initiated a reassessment of the rate or amount of anti-dumping duty on oil filters manufactured by PT Selamat and imported into New Zealand.

2. This reassessment relates to the anti-dumping duty imposed as a result of the investigation into oil filters from China, Indonesia, Korea and Thailand completed in January 2005 (the original investigation). The purpose of this reassessment is to determine whether additional reference prices to those established at the conclusion of the investigation should be added for oil filter models manufactured by PT Selamat and exported to New Zealand in high volumes and if so at what rate.

3. Under the reference price method the actual duty payable is the amount by which the export price of a shipment is less than the reference price. If the export price of a shipment is equal to or greater than the reference price, no duty is payable.

4. Requests seeking a reassessment were first received on 18 January 2005. The Ministry requested further information and after receipt of that information considered that the request contained sufficient evidence to justify the need for a reassessment.

5. After the reassessment was initiated Holden New Zealand Ltd requested that where reference prices are established for part numbers that are equivalent to Holden's "AC Delco" part numbers, the AC Delco part number also be subject to that reference price.

6. The Ministry distributed an interim report to interested parties on 18 January 2006. Those parties were invited to comment on the report. The Ministry has taken into account submissions on the interim report in preparing this report and its recommendations to the Minister of Commerce of New Zealand (the Minister).

GOODS SUBJECT TO THE REASSESSMENT

7. The goods subject to the request are described as follows:

Lubricating oil filters (including cartridge/element type) for use on internal combustion engines, including off-road, commercial and industrial applications but

EXCLUDING:

- *Hydraulic oil filters.*
- *Cartridge/element type filters having dimensions greater than 467mm in length or 400mm in outside diameter.*
- *Spin-on type filters having dimensions greater than 300mm*

in length or 123mm in outside diameter.

- *Lubricating oil filters (including cartridge/element type) solely manufactured for use on:*
 - (a) Motorcycles; and*
 - (b) Aircraft.*

PROPOSED METHOD OF IMPOSING ANTI-DUMPING DUTY

8. It is recommended that further reference prices be established for those oil filter part numbers manufactured by PT Selamat which are imported into New Zealand in high volumes and do not already have reference prices. The Ministry proposes that the new reference prices be in the form of Normal Value (Value for Duty Equivalent) (NV(VFDE)) amounts. A NV(VFDE) represents the undumped value of the goods at the free-on-board level.

9. The Ministry has recommended that the residual *ad valorem* rate for both PT Selamat and “all other” exporters for which separate rates of duty have been set, be amended from 43 to 42 percent in order to correct an error contained in the calculation of these residual rates during the original investigation.

PROPOSED LEVELS OF ANTI-DUMPING DUTY

10. The Ministry reconsidered normal values in Indonesia by comparing prices lists, and invoices to the same customer at points during and subsequent to the original investigation. The Ministry also obtained industry data from the Indonesian Statistics Authority. After considering this information the Ministry concluded that normal values have increased by [REDACTED] percent since the original investigation and that any reference prices based on normal values should be increased accordingly.

11. A table showing the recommended reference prices can be found following paragraph 106.

Effective Date of Application of New Duties

12. The reassessed duties are due and payable from the day after the Minister determines the new rates or amounts except for the amendment to the *ad valorem* percentage rate for PT Selamat and other exporters from Indonesia for which individual rates have not been established. These rates are effective from the day after the date of the Minister’s final determination on the original investigation i.e. 15 January 2005.

REFUNDS OF ANTI-DUMPING DUTY

13. Where the Minister determines lower duties as a result of a reassessment the Minister may require the New Zealand Customs Service to refund, with effect from

the date of initiation of the reassessment, the difference between any duty paid and the lower duty. However, if the reverse situation applies the shortfall is not required to be paid.

14. The Ministry has recommended a small increase in the existing reference prices. Where imports of other part numbers have occurred during the reassessment, for which reference prices are proposed, a refund may be required where the duty paid at the residual rate is greater than any duty payable under the reference price method.

15. It is also proposed that the Minister authorise the refund of anti-dumping duty overpaid on oil filters, as a result of the error in the original investigation, from the date the duty was originally imposed. This error resulted in the residual *ad valorem* percentage rate for both PT Selamat, and other exporters from Indonesia, for which individual rates have not been established, being overstated. The amount to be refunded will be the difference between the current and the proposed new residual *ad valorem* percentage rate.

CONCLUSION

16. The Ministry has concluded that:

- Updated and additional NV(VFDE) reference price amounts be determined on the basis of the information obtained during the reassessment and detailed in this report.
- The updated and additional NV(VFDE) reference price amounts should be terminated in part, with effect from 15 January 2005 until the date of the Minister's decision to reassess the duties, so that they apply with effect from the day after the date of the Minister's decision.
- The NV(VFDE) reference price amounts should also apply to equivalent AC Delco and Sakura part numbers where these have been identified in this reassessment and should be effective from the day after the date of the Minister's decision to reassess the duties.
- A new residual *ad valorem* rate of duty of 42 percent should be established on the basis of the information obtained during the reassessment and detailed in this report, to take effect from 15 January 2005, being the day after the date the then Minister made a final determination regarding oil filters from China, Indonesia, Korea and Thailand.
- The Minister should authorise the refund of anti-dumping duties paid since 15 January 2005 on part numbers subject to both the PT Selamat and "all others" residual *ad valorem* percentage rates that are in excess of the duties that would have been applicable if the recommended duties were in place, to the extent of such excess.
- The Minister should authorise the refund of any anti-dumping duties paid since the initiation of this reassessment on part numbers subject to the residual *ad*

valorem percentage rate, for which additional reference price amounts are recommended, that are in excess of the duties which would have been applicable if the recommended duties were in place, to the extent of such excess.

1. Proceedings

Introduction

17. On 15 August 2005, the Chief Executive of the Ministry of Economic Development of New Zealand (the Chief Executive), acting pursuant to section 14(6)(b) of the Dumping and Countervailing Duties Act 1988 (the Act), and at the request of importer Transdiesel Ltd (Transdiesel), manufacturer PT Selamat Sempurna Tbk (PT Selamat) and the associated exporter, Filter Sales Australia, trading as Solcrest Pty (FSA), formally initiated a reassessment of the rate or amount of anti-dumping duty on oil filters originating in Indonesia and manufactured by PT Selamat.

18. This reassessment relates to the anti-dumping duty imposed as a result of an investigation into oil filters from China, Indonesia, Korea and Thailand completed in January 2005 (the original investigation).

19. The purpose of this report is to provide written advice to interested parties of the findings of the reassessment. This report provides a summary only of the information, analysis and conclusions relevant to this reassessment, and should not be accorded any status beyond that.

20. Section 14(6) of the Act governs initiation and scope of reassessments. It provides:

(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.

Background

History of Anti-Dumping Duties on Imports of Oil Filters

21. On 20 July 2004, the Chief Executive of the Ministry, acting pursuant to section 10 of the Act formally initiated an investigation into the dumping of oil filters from China, Indonesia, Korea and Thailand¹.

22. On 28 October 2004 the Minister imposed provisional measures. The Minister provisionally found that the subject goods were being dumped and as a result had caused material injury to the New Zealand industry, and that provisional measures were necessary to prevent material injury during the remainder of the investigation. A final determination to impose duties was made by the Minister on 14 January 2005.

23. The current method of imposing anti-dumping duty on imports of oil filters manufactured by PT Selamat is a combination of NV(VFDE) and NIFOB amount² reference prices for twenty five part numbers. Different reference prices have been established for oil filters manufactured by PT Selamat covering direct exports by PT Selamat and FSA as well as indirect exports (via Australia). The different reference prices reflect the different costs incurred by importers for each of these sales routes. A residual *ad valorem* rate applies to all other part numbers manufactured by PT Selamat.

The Requests

24. 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. FSA lodged an identical request on the same date. PT Selamat subsequently lodged a request for a reassessment on 29 April 2005. Each request sought that reference prices be established for all part numbers manufactured by PT Selamat exported to New Zealand during the investigation.

25. During the original investigation the Ministry proposed establishing reference prices for those oil filter part numbers³ imported into New Zealand in the highest volumes (fast movers). Due to the administrative burden a large number of reference prices would cause, the Ministry concluded that reference prices would only be established for fast movers. A lack of information from PT Selamat during the investigation meant reference prices could be calculated for a limited number of PT Selamat's fast movers.

¹ http://www.med.govt.nz/buslt/trade_rem/oil-filters-asia/final/index.html

² A Normal Value (Value for Duty Equivalent) (NV(VFDE)) amount. represents the undumped value of the goods at the free-on-board level. A Non-Injurious Free On Board or NIFOB is a price that represents a duty that is less than the full margin of dumping and removes the injury to the New Zealand industry.

³ A "part number" or "part" is an identifying code given to a specific model of oil filter which is designed to be compatible with a given engine or combination of engines. References to part number in this report relate to the physical oil filter and its identifying code.

26. Subsequent to the investigation being concluded Transdiesel advised that during the investigation it was moving from the [REDACTED] brand to the [REDACTED] brand of oil filters. Because Transdiesel imported both brands during the period of investigation, the apparent volume of fast movers would be reduced by being split among both brands.

27. After discussion with the Ministry Transdiesel modified the request for reassessment by narrowing it to include only those fast movers for which reference prices were not calculated during the investigation. The revised request was made on the basis that the reference prices established by the Ministry during the investigation did not include a number of PT Selamat's fast movers to New Zealand, for the reasons noted above.

28. In furtherance of the request, PT Selamat made a submission containing:

- a spreadsheet with information about those fast movers to which the revised request relates, including the Original Equipment Manufacturer (OEM) number, cross-reference information (which indicated the equivalent part number under different brands) and prices during the Period Of Investigation (POI) from PT Selamat to FSA and from the domestic distributor of the ADR companies in Indonesia, PT Prapat Tunggal Cipta (PTC) to an Indonesian customer called [REDACTED];
- invoices of sales to [REDACTED] dated during the POI;
- two recent invoices from PTC to an Indonesia customer called [REDACTED]. Prices to that company were used as a basis for normal values during the investigation; and
- a recent copy of the PTC price list to domestic customers (the new price list).

29. The spreadsheet contained 31 different part numbers. The spreadsheet had 32 rows but one part number ([REDACTED]) was repeated. Eleven of the part numbers in the spreadsheet already have reference prices, imposed following the original investigation. The interim report stated that nine of the part numbers already have reference prices. In response to the interim report Transdiesel noted that two part numbers for which reference prices were recommended had been repeated in that report. The repeated reference prices have been removed from this final report

30. PT Selamat also commented that it believed that the largest normal value established during the investigation, stated in table 4.4 of the final report, was too high to represent a filter within the goods subject to the investigation, and suggested that an error had occurred. This matter is discussed further starting at paragraph 104.

31. After the reassessment was initiated Holden New Zealand Ltd (Holden NZ), which imports oil filters manufactured by PT Selamat requested that where reference prices are established for part numbers that are equivalent to Holden's "AC Delco" part numbers, the relevant AC Delco part number also be subject to that reference price.

39. [REDACTED] imported oil filters directly from PT Selamat during the investigation and also during the reassessment period.

Goods Subject to Anti-Dumping Duty

40. The goods which are the subject of the request are:

Lubricating oil filters (including cartridge/element type) for use on internal combustion engines, including off-road, commercial and industrial applications but

EXCLUDING:

- *Hydraulic oil filters.*
- *Cartridge/element type filters having dimensions greater than 467mm in length or 400mm in outside diameter.*
- *Spin-on type filters having dimensions greater than 300mm in length or 123mm in outside diameter.*
- *Lubricating oil filters (including cartridge/element type) solely manufactured for use on:*
 - (a) Motorcycles; and*
 - (b) Aircraft.*

41. The subject goods enter New Zealand under the following tariff classifications:

84.21	Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases:
	- Filtering or purifying machinery or apparatus for liquids:
8421.23.00	- - Oil or petrol filters for internal combustion engines
01B	. . . Oil

42. Applicable duty rates are:

Normal	10%
Australia	Free
Canada	6%

LDC	8%
LLDC	Free
OPS	Free
Pac	Free

Reassessment Details

43. In tables, column totals may differ from individual figures because of rounding. The term VFD refers to value for duty for Customs purposes. In this report normal values are expressed in Indonesian Ringgit (IDR) and non-injurious prices are expressed in New Zealand Dollars (NZD).

Exchange Rates

44. Article 2.4.1 of the Agreement on implementation of Article VI of the General Agreement on Tariffs and trade 1994 (the Agreement) provides as follows:

When the comparison under paragraph 4 [of Article 2] requires a conversion of currencies, such conversion should be made using the rate of exchange on the date of sale⁸, provided that when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used. Fluctuations in exchange rates shall be ignored and in an investigation the authorities shall allow exporters at least 60 days to have adjusted their export prices to reflect sustained movements in exchange rates during the period of investigation.

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

45. For the reasons stated at paragraph 64 no comparison of export prices and normal values has been made by the Ministry during this reassessment. Because no export prices have been established, no corresponding dates of sale have been established. The provisions, of Article 2.4.1 pertaining to currency conversion do not apply in this instance because no date of sale has been established for export sales

46. Conversion of currencies has been required only to compare NV(VFDE) and NIFOB amounts. The exchange rate for this purpose been sourced using the interbank rates listed on the OANDA currency conversion website⁴ and is the average over the six month period 15 January 2005 to 15 July 2005. The Ministry considers this period is representative of exchange rates during the period over which NV(VFDE) and NIFOB amounts were established.

Disclosure of Information

47. The Ministry makes available all non-confidential information through its Public File system.

⁴ <http://www.oanda.com/>

48. A copy of the Act and the Anti-Dumping Agreement is available at:

- www.legislation.govt.nz/browse_vw.asp?content-set=pal_statutes
- www.wto.org/english/docs_e/legal_e/19-adp.pdf or
www.wto.org/english/docs_e/legal_e/19-adp.doc

2. Reassessment of Duties

Normal Values

Price Comparisons

49. During the original investigation base prices for PT Selamat's normal values were established by using PTC's price list when selling to domestic customers, which was provided to the Ministry during the investigation (the old price list). The "discount (██████%)" column (the discount column) of the price list was the base price, from which a further discount of ██████ percent was taken. The further discount represented the average discount from the discount column given to a domestic customer, ██████.

50. In order to consider the submission made by PT Selamat supporting the reassessment the Ministry has made a number of comparisons between normal value data verified during the original investigation and the new normal value data, supplied during this reassessment.

51. The Ministry compared all discount column prices in the new price list with the same prices in old price list. A simple average shows that the prices in the new price list are ██████ percent higher than those in the old price list. The increases range from ██████ percent, with most being between ██████ percent. When isolating the comparison to only those fast movers to which the revised request relates the increase in prices is an average of ██████ percent.

52. The Ministry compared recent invoiced prices from PTC to ██████ with invoiced prices to that company during the POI. PT Selamat provided the Ministry with an invoice to that company during the investigation, dated 1 May 2004, and provided a further two, dated 11 August and 7 September 2005, as part of its submission supporting the reassessment. The Ministry was able to compare three part numbers between the old and new invoices. The average increase in prices between the invoice from the POI and the new invoices is ██████ percent.

53. In order to consider the wider domestic picture in Indonesia the Ministry also accessed information relating to the Indonesian manufacturing sector from BPS (Statistics Indonesia)⁵. The Wholesale Price Index (WPI) for the manufacturing 'commodity group' showed an increase of eleven percent from the 2004 average to September 2005, the most up to date period available on the website.

Conclusion relating to Price Comparisons

54. The results of the above comparisons show that domestic prices of PT Selamat's oil filters have increased since the investigation. The various comparisons the Ministry has made, however, do not show a consistent picture. Prices in the PTC price list have increased by ██████ percent while prices to ██████ and the manufacturing WPI have increased by ██████ and eleven percent respectively.

⁵ <http://www.bps.go.id/sector/wpi/table1.shtml>

55. The Ministry considers it is unlikely that Indonesian normal values have increased by [REDACTED] percent since the POI as the comparison between the old and new price list indicates. The much smaller increase in prices to [REDACTED] supports this.

56. The prices to [REDACTED] are actual invoiced prices and can be compared with documented prices to that customer during the POI. In the absence of more complete information about PT Selamat's domestic affairs, the Ministry considers changes in prices to [REDACTED] are more indicative of domestic price movements since the POI than the new price list. The manufacturing WPI statistics also support this approach. If the Ministry were to accept that normal values had increased by [REDACTED] percent, any resulting reference price would incorporate this increase.

57. The Ministry considers that NV(VFDE) amounts should be amended to reflect the increase in normal values shown by the increases in prices to [REDACTED]. This increase is significant and the Ministry therefore considers that existing reference prices should also be adjusted despite the narrow nature of the request.

58. For those part numbers which are subject to existing reference prices, the normal values have been increased by [REDACTED] percent, based on the increase in prices to [REDACTED]. NV(VFDE) amounts for those fast movers, which are the subject of the revised request have been established on the same basis as those part numbers that reference prices were established for during the original investigation i.e. on the basis of the discount column price on the old price list, less a [REDACTED] percent discount. Normal values for those part numbers were then increased by [REDACTED] percent, based on the increase in prices to [REDACTED].

Part Numbers not in Price Lists

59. Twelve of the part numbers supplied in the spreadsheet referred to in paragraph 28 were not contained in the domestic price list. PT Selamat provided a table advising the domestic equivalents in the price list for nine of those.

60. Three of the part numbers which Transdiesel and PT Selamat seek reference prices for were not listed in the old or new price lists or were nominated a domestic equivalent by PT Selamat. The part numbers are [REDACTED], [REDACTED] and [REDACTED]. The Ministry has used prices to [REDACTED], a customer that PT Selamat advised brought a number of similar part numbers to Transdiesel, as a base to establish normal values for these parts.

61. The spreadsheet provided by PT Selamat supporting the reassessment contained domestic prices for all those part numbers listed within. These were prices from PTC to [REDACTED]. PT Selamat advised that the prices related to the POI. PT Selamat also provided invoices which showed some actual sales prices to [REDACTED] during the POI. The Invoice prices are generally similar to the prices quoted in the spreadsheet. Because the invoice prices are IDR and the quoted prices are USD, there is some variation, presumably due to currency fluctuation.

62. Prices to [REDACTED] were lower than the prices to [REDACTED] and the prices in the discount column on the old price list. On the basis that prices to [REDACTED] were on average [REDACTED] percent less than [REDACTED] prices, the Ministry considers

that a normal value for the three part numbers above, consistent with normal values for other part numbers can be established by adding [REDACTED] percent to the price to [REDACTED]. This will equate to the prices to [REDACTED] for these part numbers and provides a consistent methodology for establishing normal values. Where there is an invoice price relating to that part number, as in the case of [REDACTED], the Ministry has used that as the base normal value. The normal values for the other two part numbers are based on the quoted prices adjusted on the basis outlined above. As with normal values for all other part numbers a further [REDACTED] percent has been added to reflect the increase in domestic prices discussed in paragraph 58

Export Prices

63. The requests for the reassessment sought the establishment of reference prices for a wider range of fast moving part numbers. Reference prices are based on either the normal value, through a NV(VFDE) amount or the New Zealand industry's non-injurious price, through a NIFOB amount, whichever is the lesser of the two.

64. Adjustments to the export price, which are added to the NIP to establish the NIFOB, have been established using information obtained during the original investigation. Due to the narrow scope of the requests for reassessment and because margins of dumping were established during the original investigation, the Ministry has not recalculated export prices and dumping margins. The Ministry considers these calculations to be unnecessary, given that the Ministry did not receive evidence that justified recalculation of the export prices established in the original investigation, except to the extent that it is necessary to correct the error discussed at paragraph 104.

65. In response to the interim report, GUD submitted that "it would seem incorrect for the Ministry to conclude [that export prices and a new margin of dumping need not be established in this reassessment]". GUD based its assertion on the fact that reassessments initiated under section 14(6) may result in the Minister determining a new rate "under subsection 4 [of section 14]" and that section 14(4) suggests that "before an anti-dumping duty can be calculated, it is mandatory that an export price is calculated...".

66. GUD also noted the following statement from the Ministry's final report relating to the reassessment of anti-dumping duties on galvanised wire from Malaysia.

Section 14(4)(a) of the Act provides that the Minister must not impose a duty that exceeds the margin of dumping for the dumped goods. The Solicitor-General has advised that the references to "export price" and "normal value" in this section are to be read as a reference to the export price and normal value established in the reassessment or to the values at the time the goods subject to the duty are imported. Given this, the Ministry's approach is to adopt a form of duty that minimises the possibility of the duty exceeding the margin of dumping on shipments subsequent to the imposition or reassessment of the duty by the Minister.

67. The quoted paragraph is contained in many recent trade remedies reports of the Ministry but relates to the obligation both during and after an investigation to not to impose a duty that exceeds the dumping margin, rather than any obligation to calculate an export price.

68. Section 14(6) provides that “the Minister may determine a new rate or amount, *in accordance*, with subsection (4)...”. Subsection (4)(a) directs that an anti-dumping duty determined by the Minister can be a rate or amount but shall not exceed the difference between the export price and the normal value. The difference between the export price and the normal value is otherwise known as the dumping margin.

69. The Ministry considers section 14(4)(a) imposes an obligation on the Minister to impose anti-dumping duties in a manner that means those duties do not exceed the dumping margin. Duties imposed by way of NV(VFDE) reference prices represent a duty *equal to* the dumping margin for that particular transaction, thereby complying with section 14(4)(a). An export price is required, to be compared with the reference price, in order to establish whether anti-dumping duty is payable for each importation of a part number subject to a reference price. In this instance the VFD for customs purposes will represent the export price.

70. The Ministry does not consider that section 14(4)(a) imposes an obligation on it to recalculate export prices or a dumping margin in all cases. The Act does oblige the Ministry to establish export prices during investigations, at section 10, relating to initiation and subsequent investigation and section 13(1)(a) relating to final determinations of investigations.

71. Most forms of review (or reassessment) will require the calculation of export prices and dumping margins, although not all. The requirement will be determined by the scope of the review and the scope will be determined by the nature of the evidence justifying the need for a review and the surrounding circumstances. An example of a review not requiring recalculation of export prices, other than in the present case, is a review examining whether the domestic industry is still producing like goods to the goods subject to the anti-dumping action. The requests for this reassessment provided evidence justifying the need to consider establishing further reference prices. The requests for the reassessment did not seek reconsideration, nor provided evidence justifying reconsideration, of export prices and dumping margins, both of which were established during the original investigation. For the above reasons the Ministry has not reconsidered export prices and consequently has not established updated dumping margins.

	NV(VFDE)	NV(VFDE)	NV(VFDE)
	NV(VFDE)	NV(VFDE)	NV(VFDE)
Alternative Duty*			
	NV(VFDE)	NV(VFDE)	NV(VFDE)
	NV(VFDE)	NV(VFDE)	NV(VFDE)
All other imports of oil filters manufactured by PT Selamat are subject to an ad valorem duty of 43 percent.			
*Note: An alternative duty rate has been set at the NV(VFDE) amount to be applied instead of the NIFOB when the NIFOB exceeds the NV(VFDE) amount due to exchange rate fluctuations.			

Methods of Imposing Duty

Ad Valorem Duty

73. An *ad valorem* duty is a duty based on the dumping margin expressed as a percentage of the export price, and is expressed as a percentage of the dutiable value. An *ad valorem* duty is convenient to apply and is not substantially affected by exchange rate movements. However, collusion between exporters and importers can lead to the manipulation of the invoice value of the goods concerned. *Ad valorem* rates are often appropriate where there is a large range of goods or where new models appear, provided that the transaction-to-transaction comparison does not result in a range of different dumping margins.

74. Because an *ad valorem* duty is imposed proportionate to the export price of the goods, a particularly low export price (and therefore a potentially more injurious export price) will result in a proportionately lower amount of duty, which may not be sufficient to remove injurious dumping. Conversely, a particularly high export price (and therefore likely to be less injurious), will attract a proportionately higher amount of duty, which may be higher than is necessary to remove injurious dumping.

75. An *ad valorem* rate gives an indication of the impact of the duty, but is not as clear an indication as the other forms of duty.

Reference Price Duty

76. Using the reference price method of collecting duty, the duty payable is the difference between the actual transaction price and a reference price. The reference price would normally be based on the normal value by means of NV(VFDE) amounts, or the Non-Injurious Price (NIP) by means of Non-Injurious Free on Board (NIFOB) amounts. A NV(VFDE) amount represents the undumped value of the goods at the FOB level. A NIFOB amount represents the FOB price at which imports would not cause injury to the New Zealand industry.

77. A reference price duty has advantages in that it is best able to deal with movements in the export price and exchange rates (if expressed in the currency of

the normal value), and is particularly appropriate for dealing with situations where a lesser duty is applicable. However, it has been argued that it is more easily evaded than the other forms of duty, by overstating the VFD of the goods. Nevertheless, a reference price does have the advantage of clearly signalling to exporters and importers what price is undumped or non-injurious, and provided it is carefully described; the problem of evasion can be dealt with. In addition, a reference price only collects duty when the goods are priced below the non-injurious or undumped reference price. It therefore collects duty only to the extent necessary to remove injurious dumping and avoids over-collecting duty.

Conclusion on Method of Imposing Duty

78. The basis of the request for reassessment was to put in place further reference prices for fast movers. This will allow importers to price to a level that remedies the effects of dumping on the domestic industry, but minimises the payment of anti-dumping duty. This reassessment allows the Ministry to access information not provided during the original investigation which means further NV(VFDE) amounts can be established for high volume part numbers for which reference prices were not established during the original investigation. Where possible the new NV(VFDE) amounts can be compared with NIFOB amounts, in order to consider whether a lesser duty can be imposed.

79. The Ministry considers establishing more reference prices is appropriate given the provision of information making that possible. The Ministry has established further reference prices for those fast moving part numbers included in PT Selamat's submission, for which reference prices are not already in place.

80. In the investigation the Ministry concluded that calculation of reference prices for all imported part numbers was not possible due to lack of information, and undesirable due to the onerous requirements this would place on Customs officials and agents. Because of the large variety of part numbers imported by Transdiesel, the Ministry still considers calculation of reference prices for all part numbers undesirable and an *ad valorem* rate will still apply to imports of other part numbers.

Amount of Anti-Dumping Duty

81. Section 14(5) of the Act requires that the Minister have regard to the desirability of ensuring the amount of duty is not greater than is necessary to prevent material injury to the New Zealand industry. To establish the appropriate level of duty and whether a lesser duty should apply, the Ministry firstly calculates a NIFOB and secondly calculates a NV(VFDE) to check that the NIFOB has not exceeded the margin of dumping. If the NIFOB is less than the NV(VFDE), then the NIFOB amount, which is a form of lesser duty, will apply. If the NIFOB is greater than the NV(VFDE) then the NV(VFDE) will apply, i.e. duty will be reassessed at the full margin of dumping.

82. In order to calculate a NIFOB it is first necessary to establish the New Zealand industry's non-injurious price (NIP), achievable in the absence of dumped product in

the New Zealand market. Considerations relating to this for the purposes of determining whether a lesser duty should apply, are set out below.

Calculation of a Non-Injurious Price

83. Due to the limited nature of the request for reassessment and the short length of time since the original investigation, the Ministry does not consider it necessary to either reconsider the method used to establish the New Zealand industry's NIP or to recalculate the amount of the NIP. As with the original investigation the NIP, for the purpose of calculating NIFOB amounts is based on the average selling prices of the equivalent GUD part number for the year ended June 2002. Where no equivalent GUD part number is available no NIP has been established. Of the 47 part numbers to which reference prices have been sought only twelve have not been allocated a NIP.

Calculation of NIFOB

84. NIFOBs are calculated by deducting from the industry's NIP the costs arising after FOB up to the level of trade at which the imported product first competes with the New Zealand industry's product. The purpose of a NIFOB amount is to ensure that the price of the imported product, when considered at the FOB level, is such that when it is sold at the relevant level of trade, the sale price equates to the NIP. The relevant level of trade at which the goods first compete in the New Zealand market was determined to be ex-wharf in the original investigation. The Ministry has seen no information to suggest that this be changed.

Costs between FOB and Ex-wharf

85. In calculating a NIFOB for those fast movers subject to the request the Ministry must establish the costs between FOB and ex-wharf. The Ministry has done so using information provided by importers during the original investigation. While these costs may have changed since the POI the Ministry considers that any change will not have a significant affect on a NIFOB. Consequently the Ministry has not sought updated information of costs between FOB and ex-wharf.

86. In response to the interim report, GUD submitted that there is "a question as to whether information obtained during the original investigation is recent enough to be used as an adjustment to the NIP".

87. The Ministry has obtained no evidence suggesting there had been a significant change in these costs such that that it would necessitate reconsidering this cost as part of the NIFOB and considers the costs obtained during the investigation sufficient for the purposes of this reassessment. In all cases the costs between FOB and ex-wharf would have needed to increase dramatically to have resulted in a NIFOB capable of forming a lesser duty.

88. To calculate costs between FOB and ex-wharf, it was necessary to establish an FOB price. This was established by dividing the normal value for that part number from the original investigation by 1.42 (a function incorporating the corrected weighted average dumping margin of 42 percent) to arrive at an estimated ex-factory

export price. This was converted to NZD at the average exchange rate over the six month period 15 January 2005 to 15 July 2005. Costs between ex-factory and FOB were then added to the ex-factory price to arrive at a FOB price.

89. An ex-wharf price was established by multiplying the FOB price by the average percentage difference between the FOB price and ex-wharf price established during the original investigation and then adding this amount to the FOB price. The average differences depended on whether imports were direct from Indonesia or via Australia. Direct imports incurred a higher sea freight component and consequently costs between FOB and ex-wharf for direct imports are greater. By deducting the FOB price and the appropriate Normal tariff from the ex-wharf price gives the costs incurred between FOB and ex-wharf, other than the tariff.

Normal Duty Rates

90. For direct imports from either PT Selamat or FSA the Normal tariff of eight percent for Less Developed Countries (LDC) has been used while for indirect exports, via Australia, the rate is the Most Favoured Nation rate of ten percent because the LDC status of the good is lost when they enter the commerce of another (non LDC) Nation.⁶


Final Calculation of NIFOB

91. To calculate the NIFOB, at the ex-wharf level of trade, those costs incurred between FOB and ex-wharf (as calculated above) were deducted from the NIP. The appropriate tariff rate, depending on whether the sale is direct from Indonesia or via Australia was deducted from this to arrive at a NIFOB in NZD. If a filter was imported free of Normal duty under a Part II tariff concession, no deduction was made for Normal duty.

92. Because NIFOBs were established using data from the original investigation, NIFOBs for those part numbers which currently are subject to reference prices remain the same as they were during the investigation.

Calculation of NV(VFDE) Amounts

93. NV(VFDE) amounts are calculated by adding to ex-factory normal values the costs incurred between the ex-factory and FOB levels. The NV(VFDE) therefore represents an undumped price at the FOB level.

94. For all part numbers (those that currently have reference prices and those fast movers subject to the request) the normal value has been increased by  percent as discussed in paragraph 57. To the normal value are added those costs between ex-factory and FOB and, where sales are via FSA, an exporter's margin. Different exporter's margins apply depending on whether the sale is direct from Indonesia or via Australia. The resulting NV(VFDE) is in IDR. To be compared to the NIFOB in

⁶ Section 43 (3) of the Customs and Excise Regulations (1996)

NZD the NV(VFDE) is converted to NZD at the average exchange rate over the period 15 January 2005 to 15 July 2005.

Comparison of NIFOB and NV(VFDE) Amounts

95. The tables on the three following pages compare NIFOB and NV(VFDE) amounts calculated on the basis set out above and show whether the reference price should be a NIFOB or a NV(VFDE) amount.

96. The comparison of the NIFOB and NV(VFDE) amounts has resulted in NV(VFDE) amounts being the appropriate form of duty for all part numbers because in all instances NIFOB amounts were greater than NV(VFDE) amounts in NZD.

Cross Reference of AC Delco Part Numbers

97. Holden NZ submitted that AC Delco part numbers that are equivalent to the Sakura or FSA part numbers that are allocated reference prices upon completion of the reassessment, also be subject to that reference price.

98. Holden NZ provided a spreadsheet showing AC Delco part numbers and the corresponding FSA or Sakura part number. The Ministry attempted to compare this data with the cross-referencing data provided by GUD during the investigation. Using this method the Ministry was unable to verify the extent to which the AC Delco part numbers advised by Holden NZ are interchangeable with the FSA or Sakura part numbers quoted. The Ministry sought a submission from PT Selamat or FSA on this matter. FSA provided a list of AC Delco part numbers and the corresponding FSA/Sakura part numbers. This matched Holden NZ's submission.

99. The Ministry considers that because NV(VFDE) reference prices are based on the normal value of the same or equivalent domestic part number to that exported, it is appropriate to make AC Delco part numbers, that are equivalent to a Sakura part number, subject to that same reference price. The NV(VFDE) reference price for both being based on the price of the equivalent domestic Sakura part number.

100. The following table shows those AC Delco part numbers with an equivalent FSA or Sakura part number which currently have reference prices or for which new reference prices are proposed in this report.

Table 3.5 AC Delco Cross-referenced Part Numbers

Part Numbers	
AC Delco	Equivalent Sakura or FSA
[REDACTED]	[REDACTED]

101. The Ministry proposes that the AC Delco part numbers in the above table also be subject to the reference price established for the corresponding Sakura or FSA part number in the second column of the above table.

New Transdiesel Part Numbers

102. After circulation of the interim report, Transdiesel notified the Ministry that it shall cease importing five part numbers ([REDACTED]) currently subject to reference prices and will replace them with following part numbers; [REDACTED]. Transdiesel advised that the second group of part numbers had 'square' rubber seals which Transdiesel preferred to import because there was a preference for these in New Zealand. The first group had 'round' rubber seals. Transdiesel proposed that the new 'square' seal part numbers be subject to reference prices.

103. Because the purpose of the reassessment is to establish reference prices for fast movers the Ministry considers Transdiesel's request is reasonable. Of the square seal part numbers only [REDACTED] is listed on the domestic price list and is therefore capable of normal value calculation, using the method described in paragraph 49. The Ministry considers that the reference price for [REDACTED] and [REDACTED] be based on the normal value of [REDACTED] because the normal value in the interim report for [REDACTED] was based on of a domestic equivalent advised by PT Selamat. For the other square seal part numbers (which are not in the domestic price list), the reference price will be the same as the equivalent round seal part number. This is because the equivalent round and square seal part numbers are essentially the same apart from the profile of the rubber seal.⁷ Reference prices for either the square or round seal part number are shown in Table 3.6.

Error in Investigation Final Report

104. In its submission on the reassessment PT Selamat notified the Ministry of an error contained in the Ministry's final report on the original investigation. PT Selamat referred to a normal value, in Table 4.4 of that report of IDR [REDACTED] and submitted that it was incorrect, proposing that any product within 50 percent of that normal value would be outside the scope of the description of subject goods.

105. The amount which PT Selamat referred to reflected an error in the Ministry's dumping spreadsheet, where a normal value for one line was expressed as IDR [REDACTED] rather than IDR [REDACTED]. A reference price was not established for the part number that the error relates to so the error affects the residual rate of duty only. The residual rate of duty was based on the weighted average dumping margin for PT Selamat which was 42.85 per cent (rounded to 43 for the purposes of setting the duty). By correcting this error the weighted average dumping margin reduces to 42.25, which results in a rate of duty, when rounded to the nearest whole number, of

⁷ The costs of production are also essentially the same. During the verification visit in the original investigation PT Selamat advised that the square seal adds approximately US \$ [REDACTED] to the cost of production of the filter.

*		NV(VFD		NV(VFD		NV(VFD
* or	.....	NV(VFD	.....	NV(VFD	.....	NV(VFD
* or	.....	NV(VFD	.....	NV(VFD	.....	NV(VFD
*	NV(VFD	.....	NV(VFD	.....	NV(VFD
*	NV(VFD	NV(VFD	NV(VFD
* or	NV(VFD	NV(VFD	NV(VFD
*	NV(VFD	NV(VFD	NV(VFD
* or	NV(VFD	NV(VFD	NV(VFD
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*	NV(VFD	NV(VFD	NV(VFD
* or	NV(VFD	NV(VFD	NV(VFD
*	NV(VFD	NV(VFD	NV(VFD
* or	NV(VFD	NV(VFD	NV(VFD
*	.....	NV(VFD	.....	NV(VFD	.....	NV(VFD
*	.....	NV(VFD	.....	NV(VFD	.....	NV(VFD
All other imports of oil filters manufactured by PT Selamat are subject to an ad valorem duty of 42 percent.						
*New reference prices established during this reassessment.						

Developing Country Considerations

107. Article 15 of the Agreement provides as follows:

It is recognized that special regard must be given by developed country Members to the special situation of developing country Members when considering the application of anti-dumping measures under this Agreement. Possibilities of constructive remedies provided for by this Agreement shall be explored before applying anti-dumping duties where they would affect the essential interests of developing country Members.

108. New Zealand recognises Indonesia to be a developing country for WTO purposes. The Ministry considers the constructive remedies referred to in Article 15 of the Agreement include price undertakings as provided for in Article 8 and the desirability of imposing duty at less than the margin of dumping (if a lesser duty would be adequate to remove injury to the domestic industry) as provided for in Article 9.1.

109. Price undertakings are provided for in section 15 of the Act but only in the context of any investigation initiated pursuant to section 10 of the Act.

Reassessments are carried out pursuant to section 14(6) of the Act. Price undertakings, therefore, cannot be considered during a reassessment.

110. With regard to consideration of imposing duty at less than the margin of dumping the Ministry's normal approach is to calculate the NV(VFDE) and NIFOB and compare the two values. If the NIFOB is less than the NV(VFDE) a lesser duty should apply; conversely if the NIFOB is greater than the NV(VFDE) then duty at the full margin of dumping should apply. If a lesser duty is imposed in the form of a NIFOB it is normal practice to cap the duty using a NV(VFDE) amount.

111. The Ministry has examined the possibility of establishing a lesser duty and considers that reference prices, consisting of NV(VFDE) amounts only should apply.

112. To the extent that it is able to do so by the Act, the Ministry considers that it has explored the possibilities of the constructive remedies provided for by Article 15 of the Agreement.

Effective Date of Application of New Duties

113. [REDACTED] the Ministry's interpretation of the Act was that reassessed rates of duty apply from the day after the date of the Minister's decision to reassess the duties.

114. In this case the day after the date of the then Minister's decision to impose the original duties is 15 January 2005. In order for the updated and additional reference prices to apply from the day after the date of the Minister's decision to reassess the duties, they must be terminated entirely for the period from 15 January 2005 to the date of the Minister's decision to reassess the duties. The effect of terminating the new duties entirely for this period is that the existing duties (i.e. those in place before the reassessment came into effect) remain in place for this period. This can be achieved using the power given to the Minister under section 14 (7) to "terminate, in whole or in part, the imposition of anti-dumping duties".

115. Rather than applying from the day after the date of the Minister's decision to reassess the duties, it is proposed that the new residual *ad valorem* percentage rates apply from the day after the date of the final determination under section 13(1), because the purpose of reassessing these rates is to correct an error in the Ministry's calculation during the original investigation. The reassessed duties apply, [REDACTED], from the day after the date the then Minister decided to impose the original duties. It is therefore not necessary for the residual *ad valorem* percentage duty to be terminated in part as under the Act the proposed new residual rate will apply from 15 January 2005.

Refunds of Anti-Dumping Duty

116. The Act allows for refund of duties under certain conditions. Section 14(10) of the Act states as follows:

Without limiting the ability of the Minister to require refunds in other circumstances, where a reassessment under subsection (6) of this section results in a lower duty being imposed on any goods, the Minister may require the Customs to refund, with effect from the date of initiation of the reassessment (or, in the case of a reassessment carried out under paragraph (c) of that subsection, from the date of initiation of the review referred to in that paragraph), the difference between the duty paid and the lower duty.

117. Any anti-dumping duties paid since the reassessment was initiated, in excess of the amount payable through the application of the proposed reference prices, may be refunded if the Minister agrees.

118. A small increase in the existing reference prices is proposed, so this change will not result in refunds. For those part numbers for which additional reference prices are proposed a refund may be required where the duty paid at the residual *ad valorem* percentage rate is greater than any duty payable under the reference price method, and it is proposed the Minister authorise a refund of the difference in the amount of the duty where this is the case.

119. It is also proposed that the Minister authorise the refund of anti-dumping duty overpaid on oil filters, as a result of the error in the original investigation, from the date the duty was originally imposed. The amount to be refunded will be the difference between the current and the proposed new residual *ad valorem* percentage rate, or one per cent of the imported price.

Impact of Reassessed Anti-Dumping Duties

120. It is proposed that the Minister establish additional reference prices in the form of NV(VFDE) amounts for a further 25 “Sakura” brand part numbers and allow 14 other “AC Delco” brand part numbers that are equivalents to be subject to reference prices. This would mean that in total 50 “Sakura/FSA” part numbers and 14 “AC Delco” part numbers will be subject to reference prices. All other part numbers manufactured by PT Selamat will be subject to the new residual rate of 42 percent.

121. Part numbers which the Ministry proposes are made subject to reference prices, imported into New Zealand for *less* than the reference prices will incur anti-dumping duty. If the part numbers are imported at a price *equal to or above* the relevant reference price no duty will be payable.

122. Imports of oil filters at prices equal to or above NV(VFDE) reference prices ensure that oil filters entering the commerce of New Zealand are at a price at which they are undumped. This allows the New Zealand industry the protection from dumped imports to which it is entitled.

4. Conclusions

123. The Ministry has concluded that:

- Updated and additional NV(VFDE) reference price amounts be determined on the basis of the information obtained during the reassessment and detailed in this report.
- The updated and additional NV(VFDE) reference price amounts should be terminated in part, with effect from 15 January 2005 until the date of the Minister's decision to reassess the duties, so that they apply with effect from the day after the date of the Minister's decision.
- The NV(VFDE) reference price amounts should also apply to equivalent AC Delco and Sakura part numbers where these have been identified in this reassessment and should be effective from the day after the date of the Minister's decision to reassess the duties.
- A new residual *ad valorem* rate of duty of 42 percent should be established on the basis of the information obtained during the reassessment and detailed in this report, to take effect from 15 January 2005, being the day after the date the then Minister made a final determination regarding oil filters from China, Indonesia, Korea and Thailand.
- The Minister should authorise the refund of anti-dumping duties paid since 15 January 2005 on part numbers subject to both the PT Selamat and "all others" residual *ad valorem* percentage rates that are in excess of the duties that would have been applicable if the recommended duties were in place, to the extent of such excess.
- The Minister should authorise the refund of any anti-dumping duties paid since the initiation of this reassessment on part numbers subject to the residual *ad valorem* percentage rate, for which additional reference price amounts are recommended, that are in excess of the duties which would have been applicable if the recommended duties were in place, to the extent of such excess.

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Investigation Team

Tariff Policy and Trade Rules Group