

Oil Filters
from
China, Indonesia, Korea and
Thailand

Non-Confidential Final Report

Dumping and Countervailing Duties Act 1988
Dumping Investigation

Trade Remedies Group
Ministry of Economic Development

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Abbreviations

The following abbreviations are used in this Report:

| | |
|----------------------|--|
| Act (the) | Dumping and Countervailing Duties Act 1988 |
| the Agreement | WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 |
| ADR | ADR Group of Companies |
| ANZCERTA | Australia New Zealand Closer Economic Relations Trade Agreement |
| | |
| AUD | Australian Dollars |
| Automotive Supplies | Automotive Supplies NZ Ltd |
| Bengbu | Bengbu Filter Co Ltd |
| Bowha | Bowha Trading Corporation |
| CFR | Cost and Freight |
| Chief Executive | Chief Executive of the Ministry of Economic Development of New Zealand |
| China | People's Republic of China |
| Chung Ku | Chung Ku Industrial Co. Ltd |
| CIF | Cost, Insurance and Freight |
| Cummins | Cummins Engine Co. Ltd |
| Customs | New Zealand Customs Service |
| CNY | Chinese yuan renminbi |
| CT Industry | CT Industry Ltd |
| DCS | DCS Holding Co. Ltd |
| Denso | Denso International Thailand |
| Donaldson | Donaldson Australasia Pty Ltd |
| EBIT | Earnings Before Interest and Taxation |
| EFC | Essential Facts and Conclusions Report, issued under section 10A of the Act |
| EP | Export Price |
| FIS | Free-into-Store |
| Fleetguard Australia | Fleetguard Australia Ltd |
| FOB | Free on Board |
| Ford NZ | Ford Motor Company of NZ Ltd |
| | |
| FSA | Filter Sales Australia |
| Golden Haiye | Golden Haiye Auto Parts |
| | |
| GUD | G.U.D. (NZ) Limited |
| Holden Australia | General Motors Holden Automotive Ltd |

| | |
|----------------|--|
| INFOS | Information Network for Official Statistics, Operated by Statistics New Zealand <i>Te Tari Tatau</i> |
| Indonesia | The Republic of Indonesia |
| IDR | Indonesian rupiah |
| Iveco | Iveco Trucks Australia Ltd |
| June Heung | June Heung Filter Co. Ltd |
| Korea | The Republic of Korea (South) |
| KRW | Korean won |
| | |
| LDC | Less Developed Countries |
| LLDC | Least Developed Countries |
| Ltd | Limited (limited liability company) |
| MBK | MBK Group Ltd |
| Minister (the) | The Minister of Commerce of New Zealand |
| Ministry (the) | Ministry of Economic Development of New Zealand |
| NIFOB | Non-Injurious-Free-On-Board |
| NIP | Non-Injurious Price |
| NV | Normal Value |
| NV(VFDE) | Normal Value (Value For Duty Equivalent) |
| NZ | New Zealand |
| NZD | New Zealand Dollar |
| OANDA | www.oanda.com (the currency site™) |
| OE | Original Equipment |
| OEM | Original Equipment Manufacturer |
| OES | Original Equipment Spares |
| OGUD | Other Preferential Sources |
| POI | Period of investigation |
| PT Andhi | PT Andhi Chandra Auto |
| | |
| PT Panata | PT Panata Jaya Mandiri |
| PTC | PT Prapat Tunggal Cipta |
| PT Selamat | PT Selamat Sempurna Tbk |
| Pac | Forum Island Members of the South Pacific Regional Trade and Economic Cooperation Agreement |
| Repco | Repco Ltd |
| Siam Filter | Siam Filter Products Ltd |
| Siam Tennex | Siam Tennex Manufacturing Ltd (now known as Mahle Siam Filter Systems Co., Ltd) |
| Shin Sung | Shin Sung Industrial Company |
| THB | Thai Baht |

| | |
|---|---|
| Transdiesel | Transdiesel Ltd (formerly known as Transmissions & Diesels Holdings Ltd) |
| USD | United States of America Dollar |
| Valvoline NZ | Ashland New Zealand Ltd trading as Valvoline New Zealand |
| Valvoline Australasia | Valvoline (Australasia) Pty Ltd |
| VFD | Value for Duty |
| WTO | World Trade Organisation |
| Yuil | Yuil Air Filter Co. Ltd |
| Zhejiang | Zhejiang Universe Filter Co. Ltd |
|  | Information deemed confidential under the Dumping and Countervailing Duties Act 1988. |

1. Executive Summary

Introduction

1. On 13 May 2004, the Ministry of Economic Development ("the Ministry") accepted a properly documented application for a dumping investigation from G.U.D. (NZ) Limited (GUD). GUD claims that imports of oil filters from China, Indonesia, Korea and Thailand are being dumped and are causing material injury to the New Zealand industry. An investigation was initiated on 20 July 2004. Provisional anti-dumping duties were imposed by the Minister of Commerce on 28 October 2004.

Goods Subject to the Investigation

2. The goods subject to the investigation 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.*

Dumping

3. 76 percent of the goods imported from China during the POI were dumped. The weighted-average dumping margin for China is 185 percent.

4. 94 percent of the goods imported from Indonesia during the POI were dumped. The weighted-average dumping margin for Indonesia is 68 percent.

5. 63 percent of the goods imported from Korea during the POI were dumped. The weighted-average dumping margin for Korea is 25 percent.

6. 30 percent of the goods imported from Thailand during the POI were dumped. The weighted-average dumping margin for Thailand is -15 percent (not dumped).

Injury

7. Import volumes of the subject goods have increased significantly. The New Zealand industry's prices have been significantly undercut by the imports from China, Indonesia, Korea and Thailand and prices have been slightly depressed and suppressed. Most of the price suppression would have occurred even if GUD had been able to sell at its non-injurious prices, indicating that most of the price suppression may not be attributable to dumped imports.

8. There is evidence that dumped imports have caused a significant economic impact on the New Zealand industry reflected in significant declines in sales volume, sales revenue, market share, profits, return on investments, and utilisation of production capacity; declines in cash flow and employment and a negative impact on growth.

Injury Factors Other Than the Dumped Goods

9. The Ministry has concluded that there are factors other than the dumped goods that are also causing injury to the domestic industry, particularly non-dumped imports.

Price Undertaking

10. The Ministry has received offers of price undertakings from three exporters. It is recommended that the Minister not accept these offers.

Causal Link

11. The Ministry is satisfied that there is a causal link between the injury that has been incurred by the domestic industry and the existence of the dumped imports from China, Indonesia, Korea and Thailand.

12. The Ministry notes that there are factors other than the dumped imports from China, Indonesia, Korea and Thailand that have caused material injury to the domestic industry, but it is still satisfied that the dumped imports from these sources are a cause of material injury.

Conclusion

13. The Ministry has concluded that:

- The subject goods are being dumped;
- Dumped goods from China, Indonesia, Korea and Thailand have caused injury to the New Zealand industry; and

- Factors other than the dumped goods have caused injury to the New Zealand industry.

2. Proceedings

2.1 Proceedings

14. On 13 May 2004, the Ministry of Economic Development of New Zealand (the Ministry) accepted a properly documented application from G.U.D (NZ) Limited (Ltd) (GUD). The application alleged that imports of oil filters from China, Indonesia, Korea and Thailand were being dumped and by reason thereof causing material injury to the New Zealand industry.

15. On 20 July 2004, the Chief Executive of the Ministry of Economic Development of New Zealand (the Chief Executive), acting pursuant to section 10 of the Dumping and Countervailing Duties Act 1988 (the Act) formally initiated an investigation into the dumping of oil filters from China, Indonesia, Korea and Thailand, on being satisfied that sufficient evidence had been provided that:

- The goods imported or intended to be imported into New Zealand were being dumped; and
- By reason thereof material injury to an industry was being caused.

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

17. On 28 October 2004 the Minister of Commerce of New Zealand (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.

18. On 9 December 2004 the Essential Facts and Conclusions (EFC) report for this investigation was provided to all interested parties, in accordance with section 10A of the Act, being written advice to the parties to the investigation of the essential facts and conclusions that will likely form the basis for any final determination to be made under section 13 of the Act. All interested parties were given until 23 December 2004 to make submissions based on the content of the EFC. A number of interested parties, including the domestic industry, provided responses to the EFC report.

19. It should be noted that this Report provides a summary only of the information, analysis and conclusions relevant to this investigation, and should not be accorded any status beyond that.

Grounds for the Application

20. GUD (NZ) Ltd claimed that as a result of the alleged dumping, material injury is resulting from:

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

and is resulting in declines in:

- sales volume and revenue;
- market share; and
- profits.

21. GUD (NZ) Ltd stated in its application that material injury became evident in the year ended June 2003.

2.2 Interested Parties

New Zealand Industry

22. The application was submitted by GUD (NZ) Ltd, which is the only New Zealand manufacturer of oil filters. The Chief Executive was satisfied that the application was made by or on behalf of the New Zealand industry producing like goods and had the amount of support required by section 10(3) of the Act.

Selection of Exporters

23. Due to the number of companies identified from New Zealand Customs Service (Customs) data as exporting the subject goods over the period of investigation (POI), the year ending 30 June 2004, the investigation of exporters has been limited to the largest percentage of the volume of the exports from each country which can reasonably be investigated, in accordance with Article 6.10 of the World Trade Organisation (WTO) Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Agreement.)

24. Those exporters within the selection represent the top 95 percent of imports, by volume, from China, 98 percent from Indonesia, 88 percent from Korea and 95 percent from Thailand over the POI. The original selections identified the following exporters, listed in alphabetical order, that were exporting and/or manufacturing goods subject to this investigation:

China:

[REDACTED]

Bengbu Filter Co. Ltd

Golden Haiye Auto Parts

[REDACTED]

[REDACTED]

Zhejiang Universe Filter Co Ltd

Indonesia:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

PT Andhi Chandra Auto

Pt Panata Jaya Mandiri

Pt Selamat Sempurna Tbk

Korea:

[REDACTED]

June Heung Filter Co. Ltd

[REDACTED]

Yuil Air Filter Co Ltd

Chung Ku Industrial Co. Ltd

Kang Nam Filter Co. Ltd

Shin Sung Industrial Company

Thailand:

[REDACTED]

CT Industry Co Ltd

Siam Filter Products Ltd., Partnership

Denso International Thailand

[REDACTED]

Siam Tennex Manufacturing Ltd (now known as MAHLE Siam Filter Systems Co. Ltd)

25. All other exporters and importers were able to provide submissions to the investigation but these have not been directly solicited from them. Discussions of the responses provided by these exporters and manufacturers appear in section 4.2 of this report.

Importers

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

ADL Group Ltd

27. ADL Group Ltd imported oil filters from [REDACTED] a [REDACTED] manufacturer. ADL Group Ltd stated that it had returned the stock to its supplier due to some [REDACTED] and was now sourcing its oil filters from [REDACTED]. ADL Group Ltd did not complete an importers' questionnaire due to the above.

Ashland New Zealand Ltd trading as Valvoline New Zealand

28. Ashland New Zealand Ltd trading as Valvoline New Zealand (Valvoline NZ) imported oil filters from Valvoline (Australia) Pty Ltd (Valvoline Australasia). Valvoline NZ provided a response to the importers' questionnaire and to some extra queries presented to them.

Autolines NP Ltd

29. Autolines NP Ltd imported directly from a [REDACTED] manufacturer, [REDACTED] and provided a response to the Ministry's importers' questionnaire.

Automotive Supplies NZ Ltd

30. Automotive Supplies NZ Ltd (Automotive Supplies) imported oil filters over the POI from a [REDACTED] manufacturer, [REDACTED] (shown in Customs data as [REDACTED]) via a New Zealand agent, [REDACTED]. Automotive Supplies provided a comprehensive response to the importers' questionnaire.

Brake and Transmission NZ Ltd

31. Brake and Transmission NZ Ltd imported oil filters manufactured by [REDACTED] in [REDACTED] through [REDACTED], a New Zealand agent. This company also imported oil filters manufactured by [REDACTED] in [REDACTED] through [REDACTED]. Brake and Transmission NZ Ltd provided invoices and some other information to the Ministry.

Cable Price (NZ) Ltd

32. Cable Price (NZ) Ltd imported oil filters from [REDACTED] and like [REDACTED] (see below) advised that from this point forward it would be purchasing from [REDACTED] rather than from [REDACTED] and therefore would not be completing an importers questionnaire for the investigation. It did provide the Ministry with quantities and prices relating to imports from [REDACTED] during the period of investigation and some information regarding its selling prices.

Cummins Engine Company Ltd

33. Cummins Engine Company Ltd imported oil filters manufactured by [REDACTED] in [REDACTED] via [REDACTED], an [REDACTED] exporter. It provided some information relating to imports over the period of investigation.

DCE Filters Ltd

34. DCE Filters Ltd is also known as Donaldson NZ and imported oil filters manufactured by [REDACTED] in [REDACTED] via [REDACTED]. DCE Filters Ltd did not provide any information other than the contact details of its supplier.

DR Britton Ltd

35. DR Britton Ltd imported oil filters manufactured by [REDACTED] in [REDACTED] via [REDACTED]. DR Britton did not provide any information other than the contact details of its supplier.

Eastsea Enterprise (NZ) Ltd

36. Eastsea Enterprise (NZ) Ltd imported oil filters manufactured by [REDACTED] in [REDACTED] via [REDACTED]. This company also imported oil filters from [REDACTED] (it is not known if [REDACTED] manufactured these filters). Eastsea Enterprise (NZ) Ltd provided a response to the importers' questionnaire and to some subsequent queries.

Extreme Distributors Ltd

37. Extreme Distributors Ltd imported oil filters directly from a [REDACTED] manufacturer, [REDACTED]. A full response to the importers' questionnaire was provided by Extreme Distributors Ltd.

Ford Motor Company of New Zealand Ltd

38. Ford Motor Company of New Zealand Ltd imported oil filters manufactured by [REDACTED] in [REDACTED] via a [REDACTED] exporter, [REDACTED]. This company also imported oil filters from exporters outside of the selection, [REDACTED] and [REDACTED]. Ford Motor Company of New Zealand Ltd provided a comprehensive response to the importers questionnaire.

Global Auto Distributors (NZ) Ltd

39. Global Auto Distributors (NZ) Ltd imported oil filters directly from a [REDACTED] manufacturer, [REDACTED]. This company did not provide a response to the importers questionnaire but did supply copies of invoices.

Gough Gough & Hamer Ltd

40. Gough Gough & Hamer Ltd imported subject goods manufactured by [REDACTED] in [REDACTED] through [REDACTED], and advised that from this point forward it would be purchasing from [REDACTED] rather than from [REDACTED] and therefore would not be completing an importers questionnaire.

GUD (NZ) Ltd

41. The applicant GUD also imported oil filters from some of the countries under investigation. This is discussed in more detail in paragraph 615.

Hana Trading Ltd

42. Hana Trading Ltd imported oil filters manufactured by [REDACTED] in [REDACTED] through a [REDACTED] exporter, [REDACTED]. Hana Trading Ltd did not provide any information.

Holden New Zealand Ltd

43. Holden New Zealand Ltd imported oil filters manufactured by [REDACTED] in [REDACTED] via [REDACTED]. Holden New Zealand Ltd provided a response to the importers' questionnaire.

Honda New Zealand Limited

44. Honda New Zealand Ltd imported oil filters manufactured by [REDACTED] in [REDACTED] via a [REDACTED] exporter, [REDACTED]. A comprehensive response to the importers' questionnaire was provided by Honda New Zealand Ltd.

Iveco Trucks Australia Ltd

45. Iveco Trucks Australia Ltd imported oil filters manufactured by [REDACTED] in [REDACTED] via [REDACTED]. This company did not provide a response to the questionnaire but did supply copies of invoices relating to some of its imports over the POI.

MBK Group Pty Ltd

46. MBK Group Pty Ltd acts as an agent for [REDACTED] in Australia and sold oil filters to [REDACTED] who in turn re-exported oil filters to New Zealand. Customs data shows MBK as the importer of [REDACTED] exported by [REDACTED]. MBK explained that it arranged [REDACTED] on behalf of [REDACTED] to be shipped to [REDACTED] and that an invoice for [REDACTED] was issued by [REDACTED] to [REDACTED] and [REDACTED].

NZ Auto Wholesalers Ltd

47. NZ Auto Wholesalers Ltd trades as Collins Motors and imported oil filters directly from a [REDACTED] manufacturer, [REDACTED]. This company provided a response to the importers questionnaire.

Partmaster Ltd

48. Partmaster Ltd imported oil filters manufactured by [REDACTED] in [REDACTED] via a [REDACTED] exporter, [REDACTED]. Partmaster Ltd provided a comprehensive response to the importers questionnaire.

RepcO Ltd

49. Repco Ltd imported oil filters directly from [REDACTED] a manufacturer in [REDACTED]. Repco Ltd also imported oil filters of [REDACTED] origin from exporters outside of the sample. Repco Ltd provided a full response to the importers questionnaire.

Transmissions & Diesels Holdings Ltd (Transdiesel Ltd)

50. Transmissions & Diesel Holdings Ltd has changed its name to Transdiesel Ltd and imported oil filters manufactured by [REDACTED] in [REDACTED]. This company provided a comprehensive response to the importers questionnaire.

2.3 Imported Goods

51. The goods which are the subject of the investigation, hereinafter referred to as oil filters or “subject goods”, 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.*

52. The Ministry has taken all applicable tariff items and statistical keys into account in preparing this report. A list of tariff items and statistical keys under which Customs advised the subject goods could enter is set out below:

| | |
|--------------|---|
| 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 |

53. Applicable duty rates are:

| | |
|-----------|------|
| Normal | 10% |
| Australia | Free |
| Canada | 6% |
| LDC | 8% |
| LLDC | Free |
| OGUD | Free |
| Pac | Free |

2.4 Investigation Details

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

55. The period for considering claims of dumping is the year ended 30 June 2004, while the consideration of injury involves the evaluation of data from 1 July 2000 to 30 June 2004.

56. All amounts of the subject goods are expressed either per oil filter or in numbers of oil filters.

2.5 Exchange Rates

57. Article 2.4.1 of 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.

58. In this report when converting export prices into local currencies the Ministry has used OANDA interbank exchange rates at the date of sale.

59. In the case of exports by Donaldson Australasia to [REDACTED] there was insufficient information available to determine the date of sale. For these exports the Ministry has converted export prices from Australian dollars to Indonesian rupiah at the average exchange rate over the year ended 30 June 2004, this average rate being obtained from the OANDA internet currency conversion site.

60. In this report normal values are expressed in CNY, IDR, KRW and THB, export transactions take place in USD and AUD and any injurious effect is reflected in NZD.

2.6 Disclosure of Information

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

62. Article 6.7 of the Agreement provides as follows:

In order to verify information provided or to obtain further details, the authorities may carry out investigations in the territory of other Members as required, provided they obtain the agreement of the firms concerned and notify the representatives of the government of the Member in question, and unless that Member objects to the investigation. The procedures described in Annex I shall apply to investigations carried out in the territory of other Members. Subject to the requirement to protect confidential information, the authorities shall make the results of any such investigations available, or shall provide disclosure thereof pursuant to paragraph 9, to the firms to which they pertain and may make such results available to the applicants.

63. Verification visits were carried out at CT Industry Co. Ltd in Thailand, Chung Ku Industrial Co. Ltd and June Heung Filter Co. Ltd in Korea, and PT Selamat Sempurna Tbk in Indonesia. (No verification visits were made to exporters or manufacturers in China because no Chinese companies provided questionnaire responses). Copies of Verification Reports were provided to the exporters visited, and non-confidential copies placed on the Public File.

64. Article 6.8 of the Agreement provides as follows:

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

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

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

(2) For the purposes of subsection (1) of this section, the [Chief Executive] may disregard any information that the [Chief Executive] considers to be unreliable.

66. Information was requested, but not received, or not received to the extent required, from ADL Group Ltd, Brake and Transmission NZ Ltd, Cable Price (NZ) Ltd, Cummins Engine Company Ltd, DCE Filters Ltd, DR Britton Ltd, Global Auto Distributors (NZ) Ltd, Gough Gough & Hamer Ltd, Hana Trading Ltd, Iveco Trucks Australia Ltd, Bengbu Filter Co. Ltd, [REDACTED], Filter Sales Australia Ltd, Fleetguard Australia Ltd, [REDACTED], General Motors Holden Automotive Ltd, Golden Haiye Auto Parts, [REDACTED], [REDACTED], June Heung Filter Co. Ltd, Kang Nam Filter Co. Ltd, [REDACTED], PT Andhi Chandra Auto, PT Panata Jaya Mandiri, PT Selamat Sempurna Tbk, Shin Sung Industrial Company, Yuil Air Filter Co. Ltd, and Zhejiang Universe Filter Co. Ltd. In view of the failure to provide all of the necessary information, decisions regarding these businesses have been made having regard to all available information, that is, on the basis of the best information available, in accordance with section 6 of the Act. Details of the information used and the conclusions drawn are shown in section 4 of this report.

3. New Zealand Industry

67. 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.

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

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

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

3.1 Like Goods

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

The Subject Goods

70. The subject goods have been identified (in paragraph 51 of this Report) as:

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.*

Imported Goods

71. Information available from importers and exporters (and from Customs data where no other information was available) shows that a wide range of oil filters were imported over the POI.

72. A proportion of the imported oil filters are subject to a concession from normal tariff duty. The Ministry considered, for the purposes of initiation of an investigation that oil filters that fit within the description of goods are like goods irrespective of whether a concession applied or not.

73. The Minister of Commerce imposed provisional measures on the 28 October 2004 and the Minister's decision did not contain any exemption for oil filters subject to a concession and therefore such oil filters were subject to a duty. Interested parties contested the decision to impose a duty on goods subject to a concession and claim that the industry does not produce a like good to the good where a concession applies. The Ministry invited interested parties to make submissions that specifically addressed the differences in the goods produced by GUD from those imported and the responses are summarised under their respective headings below.

New Zealand Production

74. GUD produces a wide range of oil filters that fall within the description of the subject goods. GUD has advised that it does not manufacture oil filters that fall outside of the description of the subject goods.

75. GUD has noted that in previous investigations the Ministry has accepted that the oil filters manufactured in New Zealand are like goods to the imported filters. GUD has stated that although the oil filters it produces "... are not identical to the imported oil filters the differences have not been significant enough to impact on the assessment of like goods."

76. GUD noted in its application that there are a significant number of concessions for oil filters and said that it did not object to a number of these concessions because at the time GUD did not manufacture those oil filters. However, GUD has advised that it now manufactures filters covered by a number of current concessions (such filters were not identified in the application).

Tariff Concessions

77. New Zealand, like many countries, has a concession system within its tariff structure. Such concessions are provided for in Part II of the Tariff. A concession

can be applied for, in order to be exempt from the prescribed rate of duty in Part I of the Tariff if there are no “suitable alternative goods” manufactured in New Zealand.

78. The tariff concessions system requires notification of the application for a concession and provides any potential manufacturers with the opportunity to object to the application. Following a policy decision in February 1998, once a concession has been approved it is not withdrawn if a firm subsequently commences manufacturing the same or substitutable goods.

Ministry’s Position

79. Following the imposition of provisional anti-dumping duties (which also covered oil filters subject to concession) a number of importers argued that oil filters subject to concession should be exempt from anti-dumping duty because GUD does not make a “suitable alternative” and cannot therefore produce a “like good” to the filters subject to concession. Because different tests apply in determining goods that are “like” and goods that may qualify for concessionary entry, the Ministry considers that it cannot, by virtue of the existence of a concession alone, conclude that GUD does not produce a “like good” to oil filters subject to concession. The Ministry’s analysis is explained below and concludes that the industry produces like goods to oil filters falling within the description of goods under investigation that are subject to a tariff concession.

80. The Ministry is mindful that some interested parties require more time to collate evidence but due to the time frame of this investigation an extension cannot be accommodated. The Ministry notes that interested parties have the opportunity after the completion of this investigation, to request the initiation of a review to examine whether GUD produces “like goods” in relation to specific imported oil filters, whether subject to concession or not. (The Act provides in section 14(8) that the Chief Executive of the Ministry shall initiate a review where requested to do so by an interested party that submits positive evidence justifying the need for a review).

Submissions from Interested Parties

Autolines NP Limited

81. Autolines NP Limited (Autolines) claims that while there is specific information/evidence available that differentiates the imported oil filters from the oil filters produced by GUD, the collection of the information/evidence would be an ongoing and complex task but also because of its complexity it would take many months to complete.

82. Autolines considers that Transdiesel’s submission (seen later at paragraph 87) “illustrates the nature of the information required relevant to the fitment of oil filters to every new car, used vehicle import and used engine import” into New Zealand and this issue justifies further specialist investigation. Autolines suggests that neither the manufacturer, importer nor wholesaler can be qualified to make that judgement on the differences as only the end user of the goods and the reseller have that practical knowledge and neither have been consulted. In addition Autolines considers the Ministry has gone to great lengths to provide economic and statistical information but

it does not appear to have made provision for specialist information on the product itself.

83. In conclusion Autolines states that fair judgement cannot be made without considering all the relevant information and in the main it appears that the Ministry has relied on information supplied by GUD. The fact that evidence has not been presented due to the enormity of the task should not be a factor to inhibit further investigation.

Partmaster Limited

84. Partmaster Limited (Partmaster) claims that the Ministry has accepted GUD's view on "like goods" which is not correct. Partmaster states "... while one could argue "like" with respect to size and structure there is limited ability to use a similar part. Oil filters are in the main discreet (sic) to a particular application."

85. To provide the basis of an argument for excluding the goods on the duty free concession list from anti-dumping duty Partmaster requested a list of oil filters that GUD produces in New Zealand. GUD showed good cause for the Chief Executive to believe that disclosure of the information would have a significant adverse effect on its business in terms of section 10(7) of the Act therefore the information was treated by the Ministry as confidential and could not be disclosed to Partmaster. Partmaster consequently expressed concern regarding confidentiality of the information and believes the list should be published as it is "... the very essence of their claim." and by not releasing the information it is protecting "...the "like goods" argument from any real scrutiny."

86. In the absence of complete knowledge of the part numbers produced by GUD Partmaster supplied the Ministry with a list of oil filters, excluding part numbers believed to be produced by GUD, that it considers are not "like goods" to the goods produced by GUD and added that approximately ninety five percent of the oil filters on the list are presently subject to concession.

Transdiesel

87. Transdiesel visited the Ministry and made a number of submissions which the Ministry has amalgamated and summarised in the following paragraphs.

88. Transdiesel highlighted that the Ministry excluded in previous investigations imported oil filters subject to concession, which importers have placed reliance on and since a concession has been granted on some oil filters, by implication, the industry does not make a suitable alternative and therefore the industry does not produce a like good.

89. To support its position that the industry does not produce a like good to those goods where a concession applies Transdiesel has addressed the factors that the Ministry considers in determining whether a New Zealand industry produces "like goods" to the imported goods. To illustrate the differences Transdiesel has compared an oil filter produced by GUD (Z9) to an oil filter that is imported (Z411). Transdiesel chose these two oil filters because of their popularity in sales.

90. Transdiesel said the difference between the Z9 and Z411 can be found in the:

- physical size (diameter and length);
- thread dimensions and pitch;
- engagement height (which vary depending upon the OEM specification); and
- sealing gasket (different outside and inside diameters to match the OEM specifications);

91. When comparing the oil filters produced by GUD and the subject goods Transdiesel asserts there are, in addition to the above, differences in the:

- valving pressure (designed and specified by the OEM);
- anti-drain requirements (prevents the draining of the filter when the engine is shut down); and
- media types (which must contain the contaminant and continue to filter the oil and allow flow up to the recommended change).

92. Overall Transdiesel claims there are differences in:

- marketing (there has been a major change in marketing practices because of the sourcing direct from developing countries at competitive world prices);
- function and usage (“if the goods gave the same function and were for the same application then they would have not passed the suitable alternative test in the first instant”);
- distribution channels (the distributor has become the importer); and
- pricing structures (off shore companies produce greater quantities and have favourable purchasing power for raw materials and they benefit from economies of scale).

93. The only similarity is the tariff classification. Transdiesel adds there are no other oil filters that are interchangeable with the Z411 because of the differences in the engagement height, thread and relief valve. The application of another oil filter would cause the oil to leak and an incorrect fitting would void any warranty.

94. In relation to previous investigations Transdiesel states that when anti-dumping duty was imposed on oil filters originating from the USA (1992 to 2000), the oil filters subject to concession were exempt and said “After similar and lengthy discussions with the Ministry the investigation was narrowed to exclude goods, which were not manufactured in NZ by GUD or Sphinx [Manufacturing Ltd].” Transdiesel also acknowledges that in the last oil filter dumping investigation in 2000 the goods on the duty free concession list were included in the dumping investigation but at the same time the Ministry sought advice from its legal division regarding the treatment of

goods under normal tariff concessions, however, with the termination of the investigation the matter was not resolved.

95. Transdiesel maintains that in the present investigation the Ministry did not consult with other `major players` in the marketplace and the minority player i.e. GUD is setting the rules for the majority. To change the rules is inconsistent and Transdiesel argues that it is unreasonable for the New Zealand industry to expect protection for goods, which are not manufactured in New Zealand, which is contrary to the overall intention of the Act, and suggests that the Ministry should narrow the description of the goods to exclude the goods subject to concession.

GUD

96. GUD said that it agrees with the Ministry's conclusion in its letter to interested parties that an exemption from anti-dumping duty should not be applied simply because an oil filter is subject to concession. GUD submitted that not only are there different tests for a "suitable alternative" and "like goods" but the application of those tests is quite different. GUD stated that "like goods" has a wider more general application than a "suitable alternative". The intention of the Act, GUD said, is to remove injury caused by dumped imports to the industry producing goods that are "like goods" to the subject goods. GUD noted that the description of the subject goods excludes goods that are not "like goods" produced by the New Zealand industry.

97. GUD stated that once the Ministry has determined what are the "like goods" it would be against the intention of the Act to exclude certain like goods because they were not a "suitable alternative" as defined in concession policy. GUD claimed there could still be injury caused by a dumping margin in the "like good" which an importer had previously argued was not a "suitable alternative" for the goods produced by the New Zealand industry.

98. GUD further stated that within the "like goods" are oil filters which, although not currently manufactured in New Zealand, could be manufactured in New Zealand. GUD said that in the absence of dumping it could be argued that more filters within the "like goods" would be manufactured in New Zealand. These circumstances, GUD argued, reflect the intention of the Act to take into account the potential injury incurred by the industry or impeding the growth of an industry.

99. GUD noted that concessions policy previously took into account the capability of an industry to produce a "suitable alternative" but the policy now appears to have changed such that if a concession is in place then concessions will not be withdrawn where local industry commences manufacture or extends its range of existing production to include product for which a concession already exists. GUD advised that it has extended the range of filters it produces (which it said comes under the umbrella of "like goods"), some of which are covered by a Part II concession because it was deemed at the time that there was not a "suitable alternative" produced by GUD. Therefore to use concessions policy, GUD argued, to in effect tinker with the definition of industry in the Act would contradict the purpose of the Act and the Agreement.

100. GUD added that concessions policy relies on a concise description which does not compromise the duty status of other goods. GUD said the use of specific descriptions to enforce the correct application of a concession is aimed at “helping firms reduce production and investment costs” (this quote being taken from a Ministry publication on Part II concessions). A dumping remedy, however, GUD submitted, is aimed at reducing the material injury caused by a dumping margin which is present in all “like goods”. GUD said excluding certain types of goods from the “like goods” through the use of a concession would undermine the remedy available to industry through the Act both in terms of removing any anti-dumping duty and through the difficulties of enforcement.

101. In response to the EFC report GUD referred to the Ministry’s consideration of submissions in particular where the Ministry noted that “the definition of “industry” [in the Act] does not contain any reference to potential New Zealand producers of “like goods”” and submitted that the definition of industry in the context of the Act does suggest that a manufacturer producing “like goods” could include goods that are not being currently manufactured because when material injury or threat of material injury is being considered a manufacturer may incur injury through not being able to manufacture a particular model of oil filter because of dumping.

102. On Transdiesel’s submission that the Z9 is not a like good to the Z411 GUD agrees in principle that the Z9 is not interchangeable with a Z411 which is primarily due to the differences in the sizes but GUD states that it produces oil filters that are interchangeable with some of the applications to which a Z411 applies and this situation applies over a number of oil filters.

Australian Approach

103. The Ministry consulted with its counterpart in Australia, the Trade Measures Branch of the Australian Customs Service (Trade Measures). It was noted from the anti-dumping and countervailing guides on the Trade Measures website that the Australian Minister may exempt goods from an anti-dumping measure and one of the reasons for such an exemption is a Tariff Concession Order. The Ministry inquired on what basis Trade Measures determines whether goods that are subject to a Tariff Concession Order should be exempt from anti-dumping duty and whether Trade Measures had dealt with this matter in an investigation.

104. Trade Measures stated that the conditions where an exemption would apply are possibly the lack of availability of a good and the quality of the good, although the quality of a good can be problematic as it is considered to be subjective. Trade Measures is of the view that the definition of “like goods” would include goods subject to a Tariff Concession Order but in Australia this opinion has not been tested because Trade Measures has not had an investigation that would question the exemption of goods because of a Tariff Concession Order.

Ministry’s Consideration of Submissions

105. Transdiesel has referred to the Ministry’s dealings with goods subject to concession in previous oil filter dumping investigations and claimed the Ministry has developed a precedent that should be followed in this investigation. The following

paragraphs briefly outline the previous investigations and the manner in which goods subject to concession were dealt with.

106. In the dumping investigation of automotive oil filters from the United States, completed in 1992, where oil filters were subject to a concession they were excluded from consideration i.e. they were excluded from the import volume data and were not investigated to establish if they were dumped. All other types of oil filters produced by the New Zealand industry that fitted within the description of goods were determined to be “like goods” as they had characteristics that closely resembled the imported goods i.e. they had similar physical characteristics, same end use and sold in the same market at similar prices². The New Zealand industry consisted then of GUD and Sphinx Manufacturing Co Ltd (Sphinx) and the investigation determined the goods were dumped and causing material injury to the New Zealand industry and consequently the Minister of Commerce imposed anti-dumping duty. The Ministry applied a reference price system using Normal Value (Value for Duty Equivalent) (NV(VFDE)) for individual oil filter models for the suppliers under investigation and in some instances a “no duty” rate was set because they were subject to concession.

107. In the dumping investigation of oil filters from Canada, Indonesia, Korea and Thailand completed in 1995 goods subject to concession were excluded from consideration³. The New Zealand industry consisted then of GUD and Sphinx and it was concluded that there was insufficient evidence that the goods from Canada, Korea and Thailand were dumped and there was sufficient evidence that the goods from Indonesia were dumped but material injury to the New Zealand industry was not caused or threatened by the dumped goods from Indonesia.

108. In a review of the anti-dumping duty on automotive oil filters from the United States completed in 1996, oil filter models to which the “no duty” rate applied were excluded from consideration. At that time the industry comprised GUD and Sphinx but due to the nature of its operations at that time Sphinx did not join GUD in lodging the application for the review and was not treated as part of the industry for the purposes of the review. The review determined that the anti-dumping duties should not be removed and the duties were reassessed. Those filters subject to concession continued to be exempted from the anti-dumping duty.

109. A dumping investigation into oil filters from Indonesia, Korea, Malaysia and Thailand was carried out in 2000 at the same time as a sunset review of the anti-dumping duty on oil filters from the United States. In both the investigation and review, imports of oil filters subject to concession were included to determine whether or not they had been dumped and were included in import volume data. Oil filters subject to concession were included on the basis that the New Zealand industry in this instance (consisting of GUD and Sphinx) while not producing identical models/types did produce goods with characteristics closely resembling imported goods subject to a concession and were therefore “like goods” as defined in section 3 of the Act. At the same time, however, the Ministry acknowledged that this was a complex issue and intended to clarify with its legal division the relationship between the existence of a normal tariff concession and liability for anti-dumping duty.

² Final Report – paragraph 2.1.4

³ Final Report – paragraph 2.3.2

Because the investigation was terminated as the industry withdrew its application, and the review resulted in the termination of duties, this matter was not resolved.

110. It is clear that prior to the 2000 dumping investigation and review the Ministry had excluded in its dumping investigations oil filters which were subject to concession. The cases undertaken in 2000, however, did not exclude goods subject to concession. Each investigation is handled on a case by case basis and even when a situation may arise where the goods subject to investigation may be the same or similar to a previous investigation there could be issues or changes that distinguish it from previous investigations. In addition decisions by World Trade Organisation Dispute Settlement Panels and Appellate Body may require changes to the manner in which matters are dealt with in an investigation. Therefore, while the Ministry endeavours to be consistent in its practices, changes in circumstances and the evolution of jurisprudence may require the Ministry to reconsider its approach to certain aspects of an investigation.

111. In the present investigation the Ministry considered for the purposes of initiation there was sufficient evidence that the New Zealand industry produced “like goods” to all of the goods to which the application related.

112. Transdiesel claimed that if a good is subject to a concession it is not a “like good” and it should not be subject to consideration in a dumping investigation. Partmaster also agrees with this view and has provided the Ministry with a list of oil filters, mostly subject to concession, which it believes are not produced by GUD and which are therefore not “like goods”.

113. A concession is granted under the Tariff Act 1988 (Tariff Act). The purpose of the Tariff Act 1988 is to provide for the imposition of tariff duty and it is the Minister of Commerce who can approve from time to time an appropriate rate of duty or exemption from tariff duty (section 8), although the Ministry carries out this role under delegated authority. The Minister can decline an application for a concession if the industry makes a “suitable alternative” (Part II of the First Schedule). A “suitable alternative” is not defined in the Tariff Act but before a concession is granted public notice is required which facilitates the right of the industry to object to the granting of the concession. If it is established that the industry produces a “suitable alternative” the Minister can decline approval. A guideline used to establish whether or not goods can obtain a concessionary entry is that where goods having over twenty five percent New Zealand content are produced in New Zealand, there is considered to be a New Zealand industry and in such cases concessionary entry would not be approved unless the industry agrees. For administrative purposes the Ministry has developed a range of factors to establish whether the industry produces a “suitable alternative” and it involves consideration of performance, function, competition and the marketplace.

114. The granting of a concession does not automatically grant an exemption from the imposition of an anti-dumping duty, because it is solely an exemption from normal tariff duty. The granting of a concession from normal tariff duty implies that the industry does not produce a “suitable alternative”. However, if the industry does not produce a “suitable alternative” it does not imply that it does not produce a “like good” as defined by the Act as the test of a “like good” is broader than the test for a

“suitable alternative” and an “industry” for the purposes of the Act can exist even if the goods have less than twenty five percent New Zealand content.

115. Section 3 of the Act defines like goods as other goods that are like those goods in all respects and in the absence of goods that are like in all respects, goods that have characteristics closely resembling those goods. What attributes constitute a “like good” is not expressly stated in the Act but by implication its scope for consideration is broad as it goes beyond the mere matching of a good by requiring in the absence of goods that are not like in all respects, consideration of the characteristics of the good/s to look for features that closely resemble those goods. When considering characteristics that closely resemble those goods the Ministry has developed a range of factors and these include the physical characteristics, function/usage, pricing structures, marketing and other factors such as tariff classification and it is the totality of these factors that are taken into consideration.

116. Transdiesel argued, by way of an example, that a particular oil filter i.e. Z9 (produced by GUD) is not a like good to the Z411 (an imported oil filter). Transdiesel has addressed the factors the Ministry normally considers when analysing whether the New Zealand industry produces “like goods”. In summary Transdiesel claims the physical characteristics, function/usage, pricing structures, marketing and distribution channels differ and the only similarity is the tariff classification. The Ministry notes that Transdiesel has confined its comparison of the Z411 to only one part number produced by GUD. While the Ministry appreciates that Transdiesel has made the comparison between the Z9 and the Z411 by of an example only, in order for an argument to succeed that GUD does not produce a like good to any specified filter, it would need to show that GUD does not produce a like good across the whole of its range of filters. In this regard GUD has commented that it does produce filters other than the Z9 that it considers are interchangeable with the Z411 for some applications.

117. Autolines submitted that there is information/evidence available that differentiates the imported oil filters from the oil filters produced by GUD but the collection of the information/evidence would take some time to collate. Transdiesel has said that interested parties were not consulted on the decision that goods subject to concession should be included in the dumping investigation and claims GUD has made this determination on behalf of the marketplace when it is not in a position to make such a decision.

118. A dumping investigation has a statutory timeframe from the date of initiation to the date of the final determination and the Ministry’s findings on all matters including those relating to “like goods”, must be made within the constraints of this time frame. The investigation was initiated on 20 July 2004 and the Ministry provided all interested parties with a copy of its Initiation Report in which the Ministry noted that oil filters subject to concession were considered a “like good” and were under consideration in the investigation. Within the limits of the investigation time frame interested parties have therefore had ample opportunity to make submissions on this issue. At the same time the Ministry observes that an argument that a “suitable alternative” good is not a “like good” cannot be based on an objection only but requires sufficient evidence which may take some time to collate and present in a meaningful manner. The Ministry, however, is not in a position to extend the time

frame to consider this issue and must rely on the information provided to date by all parties.

119. The Ministry notes that a significant quantity of oil filters are imported under concession from China, Indonesia, Korea and Thailand (imports of oil filters under concession represented approximately 18 percent of all oil filter imports from these countries in the year ended 30 June 2004), and is mindful that interested parties would like to submit further information on the like goods issue. The Ministry observes that section 14(8) of the Act provides that the Chief Executive under his or her own initiative or when requested to do so by an interested party that submits positive evidence can initiate a review of the imposition of anti-dumping duties. The Ministry considers such a review can be limited to examining whether GUD produces like goods to specific imported oil filters, whether subject to concession or not. Such a review therefore need not examine the broader issue usually examined in a review of whether the continuation of anti-dumping duties is necessary.

120. The Ministry noted in the EFC report that the definition of industry does not contain any reference to potential New Zealand producers of “like goods”. The Ministry said in the EFC report that it therefore does not believe that, if an imported oil filter(s) which otherwise met the evidential requirements to be considered not a “like good”, an oil filter could nevertheless be deemed to be a “like good” because at some point in the future a New Zealand producer might manufacture an oil filter that would be a “like good”. In response to the EFC report GUD claimed that a manufacturer producing like goods could include goods that are not currently being manufactured because when material injury or threat of material injury to the industry is being considered a manufacturer may incur injury through not being able to manufacture a particular model of oil filter because of dumping. The Ministry does not find this argument convincing but in any event has determined (as set out below) that the oil filters produced by GUD are “like goods” to the goods under investigation (including those imported under concession) and therefore GUD’s potential or otherwise to produce other types of oil filters at some point in the future is not an issue in this investigation.

Conclusion on Goods Subject to a Tariff Concession

121. The Ministry concludes that the New Zealand industry produces like goods to oil filters falling within the description of goods under investigation that are subject to a tariff concession.

122. In the absence of sufficient evidence to show that particular oil filters imported under concession are not like goods to those oil filters produced by GUD, the consideration by the Ministry relating to like goods below addresses the issue in general terms only.

Like Goods Considerations

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

- a. Physical characteristics. This covers appearance, size and

dimensions, composition, production methods and technology.

- b. Function/usage. This covers consumer perceptions/expectations, end uses, and will lead to any conclusions on the issue of substitutability where relevant.
- c. Pricing structures.
- d. Marketing. This covers distribution channels, customers and advertising.
- e. Other. This can include tariff classification if applicable, and any other matters which could be applicable in the circumstances.

Physical Characteristics

124. GUD has advised that it manufactures oil filters for the New Zealand market and considers such oil filters are either identical or similar to imported oil filters which are the subject of the application.

125. The imported oil filters are of the same general appearance to those produced by GUD. The oil filters manufactured by GUD all have smaller dimensions than the cartridge/element and spin-on type filters excluded from the definition of the subject goods, and in this general sense are of a similar size and dimension to the subject goods. Because of the very large number of oil filters manufactured by GUD and those imported, it is not feasible to compare every imported oil filter with those produced by GUD to establish if there is a close match in every case.

126. The Ministry has seen no evidence that the composition of imported oil filters are materially different to that of imported oil filters. An oil filter is a relatively simple product with the same components and mode of operation regardless of where it is manufactured. GUD has advised that its method of manufacture is similar to oil filters manufactured in China, Indonesia, Korea and Thailand, as recently confirmed by its managing director visiting some of these countries. The Ministry has seen no evidence that the production methods or technology used to manufacture the subject goods are significantly different to those used by GUD.

Function and Usage

127. GUD has stated that the oil filters it manufactures must meet the demands of the New Zealand market as must imported oil filters. GUD said the oil filters it manufactures consequently have the same function and application as the imported oil filters.

128. No information is available concerning consumer perceptions or expectations, but given the nature of the product and its clear end-use, it is unlikely that this factor would serve to clearly differentiate the subject goods from those manufactured by GUD. Imported oil filters have the same intended function and usage as the product manufactured by GUD. The imported product and that produced by GUD are generally substitutable for one another, although as outlined above Transdiesel has submitted that some oil filters imported under concession have no GUD substitute.

Pricing

129. The price undercutting analysis shows there are differences in prices between the imported product and GUD's product. However, the same analysis shows the goods are competing in the same market and are clearly not differentiated on the basis of price to the extent that they could be considered not like goods, and this would not be expected with a relatively simple product such as oil filters. GUD has advised that the oil filters it manufactures compete at the same price points as the imported oil filters.

Marketing Issues

130. GUD has commented that the oil filters it manufactures are distributed in the same way as imported oil filters.

131. In response to the EFC report Honda NZ has commented that it does not distribute or market oil filters in the same way as those manufactured by GUD. Honda NZ said it does [REDACTED] who then service the end-user, rather its filters remain in the [REDACTED].

132. The Ministry agrees that the oil filters imported by Honda NZ are not distributed in the same way that GUD distributes its filters but notes that if Honda NZ purchased oil filters from GUD rather than importing those filters then the GUD filters would enter the [REDACTED] in the same way as the imported filters. The Ministry therefore does not consider that the Honda NZ method of distribution serves to distinguish the imported filters from those manufactured by GUD.

133. The Ministry has seen no other evidence that imported oil filters are marketed and distributed in a different way to those manufactured by GUD, and notes that a number of importers also purchase oil filters from GUD.

Other

134. GUD advised that the oil filters it manufactures, if imported into New Zealand, would be classified under the same tariff item and statistical key provided by Customs as applicable to the imported subject goods from China, Indonesia, Korea and Thailand. The Ministry agrees this would be the case and tariff classification therefore does not differentiate the GUD product from the subject goods.

Conclusions Relating to Like Goods

135. When the oil filters produced by GUD are considered in relation to the subject goods they are identical or similar in the following respects:

- They have the same general appearance, fall within the outer dimension limits and have similar production methods and technology.
- Have the same function and end use and are generally substitutable.
- Are priced at a level that is in the same general area as that in which the imported goods are priced.

- Are marketed and distributed in the same way.
- Would have the same tariff classification, if imported.

136. The Ministry concludes that oil filters produced by GUD have characteristics closely resembling the subject goods and are therefore like goods.

3.2 New Zealand Industry

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

- a. Twenty-five percent or more of the total New Zealand production of like goods produced for domestic consumption (assessed during the most recent representative period, being not less than 6 months); and
- b. More than 50 percent of the total production of like goods produced for domestic consumption (as so assessed) by those New Zealand producers who have, in writing, expressed support for or opposition to the application.

138. GUD is the only New Zealand manufacturer of oil filters and the Ministry is therefore satisfied the application met the domestic industry standing requirements of section 10(3)(a) of the Act.

3.3 New Zealand Market

139. Table 3.1 below shows import volume figures for all tariff items and statistical keys under investigation taken from INFOS data adjusted to exclude non-subject good imports. Non-subject goods were excluded on the basis of information provided by importers on the volume of non-subject goods they imported over the POI.

140. In its investigation of dumping the Ministry has analysed imports from suppliers invoices and has endeavoured to match import volumes taken from these invoices with the import volumes recorded in Customs import data. In a significant number of cases import volumes taken from suppliers invoices did not match Customs data, clearly because import volumes had not been correctly entered in import entries, and in some cases misclassified (i.e., complete importations were not recorded under the tariff item and statistical key covering oil filters). The following table shows the differences found, over the year ended 30 June 2004, between volumes taken from suppliers invoices and that recorded in Customs data for each of the four countries under investigation (a plus sign indicating that volumes taken from suppliers invoices were higher than that recorded in Customs data and a negative sign the opposite).

| | |
|-----------|---------|
| China | +43,638 |
| Indonesia | -1,634 |

| | |
|----------|---------|
| Korea | +17,620 |
| Thailand | +24,866 |

141. The Ministry has therefore further adjusted the INFOS data for the year ended 30 June 2004 by adding (in the case of China, Korea and Thailand) and deducting (in the case of Indonesia) the amounts shown in the table above.

142. The New Zealand sales volume figures in Table 3.1 were supplied by GUD.

**Table 3.1: New Zealand Market
(Numbers of Oil Filters)**

| | 2001 | 2002 | 2003 | 2004 |
|------------------------|-------------|-------------|-------------|-------------|
| Imports from China | 595 | 17,492 | 71,600 | 194,220 |
| Imports from Indonesia | 154,772 | 90,905 | 253,849 | 241,666 |
| Imports from Korea | 106,387 | 159,362 | 186,499 | 208,484 |
| Imports from Thailand | 89,933 | 116,611 | 155,200 | 256,845 |
| Other imports | 1,410,632 | 1,493,007 | 1,549,862 | 1,495,267 |
| Total imports | 1,762,319 | 1,877,377 | 2,217,010 | 2,396,482 |
| NZ industry sales | | | | |
| NZ market | | | | |

4. Evidence of Dumping

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

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

4.1 Introduction

144. This section of the report explains how the Ministry established whether oil filters from China, Indonesia, Korea and Thailand were being dumped, and the extent of any dumping, in the year ended 30 June 2004.

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

146. The Ministry uses a transaction-to-transaction basis for comparing export prices and normal values, rather than a weighted average-to-weighted average method, because this method identifies the individual transactions that are dumped. Under this method, in calculating the volume of dumped imports only those transactions found to be dumped are included. The Ministry considers this provides a more accurate representation of the extent of any dumping and is particularly suited to a small economy such as New Zealand where the number of transactions is relatively small.

147. Because of a lack of information provided by many of the interested parties, in many cases it was not possible to establish either export prices or normal values. The proportion of exports where a comparison of export prices and normal values was possible is shown below for each manufacturer. It has been assumed that the proportion of dumped imports to non-dumped imports found where a comparison of export prices and normal values was possible, also applied to those transactions where such a comparison was not possible.

148. Except for Siam Tennex Manufacturing Ltd, and Denso International Thailand, where the comparison was made at the ex-exporter level, export prices and normal values were compared at the ex-factory level, which is the normal point of comparison referred to in Article 2.4 of the Agreement. To arrive at the ex-exporter and ex-factory values, the Ministry made a number of deductions from the base prices. (Base prices are normally the price paid by the New Zealand importer in the case of export prices, and in the case of normal values are normally the prices at which goods are sold on the domestic market of the country of origin by the manufacturer or exporter). The Ministry has also made adjustments to ensure that a fair comparison was made between export prices and normal values.

149. As outlined in paragraph 65, in the absence of required information, section 6 of the Act provides for a decision to be made having regard to all available information, that is, on the basis of the best available information. In view of the failure of interested parties referred to in paragraph 66 to provide all of the necessary information the Ministry has used relevant information provided by GUD, and the co-operating exporters, manufacturers and importers.

ADR Group of Companies

150. In response to the Provisional Measures Report which recommended a nil duty rate for PT Andhi, GUD made a submission regarding the nature of the relationship between the companies in the ADR Group. GUD said it is questionable whether PT Andhi is a separate manufacturing facility and submitted it would appear to be appropriate to use normal values for PT Selamat in ascertaining whether PT Andhi was exporting dumped product. GUD said it was concerned that if the ADR Group was not assessed as one entity then supply of oil filters could be switched between the companies bearing in mind they are related parties. GUD also observed that the president of PT Selamat (Mr Eddy Hartono) is also president of PT Andhi.

151. The information available on the ADR Group website (www.adr-group.com) shows that PT Selamat and PT Andhi have been listed on the Jakarta stock exchange since September 1996 and December 2000 respectively. The site also shows that PT Panata is a joint venture company with Donaldson Co. Inc. of the USA.

152. The website records that PT Selamat “. . . manufactures filters, radiators (both copper brass and aluminium), and air conditioner condensers. The company also produces brake pipe, fuel tanks, exhaust system and press parts.” The website also states that “PT. Andhi Chandra Automotive Tbk. (ACAP) focuses its manufacturing towards the OEM and OES sectors. PT. ACAP Tbk. has established a Technical Assistance Agreement (TAA) with Tokyo Roki Co. Ltd. of Japan, a major supplier to the Japanese OEM and OES automotive industries.” The site further records that PT Panata “. . . manufactures filtration products for heavy duty equipment, gas turbine, industrial, construction and automotive.”

153. The ADR Group website indicates that each of the three companies has a distinct identity and each appears to manufacture a reasonably distinct range of products, although they do all make goods subject to the investigation. During the verification visit to PT Selamat (verification visits were not carried out to the other two companies because neither company provided a questionnaire response or any other information) the Ministry was advised that each of the three companies has its own production plant, albeit on the same site.

154. At the same time the web site also clearly identifies each company as being part of the ADR Group. Although both PT Selamat and PT Andhi are listed on the Jakarta stock exchange it would appear that a controlling interest in both companies is held by an entity within the Group. A search of the web revealed an earlier site for PT Selamat that refers to its annual report for 2000 (<http://ss.adr-group.com/2000/dataperseroan.html>) that records PT Selamat owns 64.93 percent of PT Andhi and 70 percent of PT Panata. The web site of the Jakarta stock exchange (<http://www.jsx.co.id>) records that PT Selamat holds 65 percent of the

share in PT Andhi and that “PT Adrindo Intiperkasa” owns 68 percent of the shares in PT Selamat. The Ministry assumes PT Adrindo Intiperkasa is an entity controlled by the ADR Group. At the time this report was written the Ministry had not been able to establish if this is still the current ownership position.

155. MED also notes that all three of the manufacturers distribute their products domestically in Indonesia through sister companies PTC and PT Mangagtur, which act as the domestic distribution arms of the ADR group.

156. The Ministry has referred to the following relevant sources in order to seek guidance on this issue.

157. Section 4(1) of the Act states in part “. . . the export price of any goods imported or intended to be imported into New Zealand which have been purchased by the importer from the exporter shall be . . .” (emphasis added). Section 3(1) of the Act defines “exporter” as follows: “Exporter has the meaning given to it in section 2(1) of the Customs and Excise Act 1996”.

158. Section 2(1) of the Customs and Excise Act defines “exporter” as follows:

“Exporter” means a person by or for whom goods are exported, and includes a person who is or becomes the owner of or entitled to the possession of or is beneficially interested in goods on or at any time after entry for export and before they are exported.

159. Section 29 of the Interpretation Act 1999 further defines person insofar as it “includes a corporation sole, a body corporate, and an unincorporated body”.

160. Article 6.10 of the Agreement states in part “The authorities shall, as a rule, determine an individual margin of dumping for each known exporter or producer concerned of the product under investigation” (emphasis added). Article 9.2 of the Agreement, in relation to the imposition of anti-dumping duty, states in part “The authorities shall name the supplier or suppliers of the product concerned” (emphasis added). The Agreement does not contain any definition of “exporter”, “producer” or “supplier” and does not otherwise appear to contain any useful guidance on the nature of the entity for which dumping margins must be determined or against which anti-dumping duty can be imposed.

161. Section 14 of the Act does not provide any guidance in terms of the entities against which anti-dumping duty can be imposed.

162. The Ministry notes that the panel decision in *Argentina - Poultry* (WD/DS241/R) is relevant to this issue. In addressing the issue of the calculation of individual dumping margins the panel followed the view expressed by the Panel in *Argentina - Ceramic Tiles* (WT/DS189/R), that Article 6.10 imposes a “general obligation” on authorities to calculate individual dumping margins. The Panel went on to note that Article 6.10 “imposes a procedural obligation” on the investigating agency to determine individual margins for each known exporter or producer concerned (emphasis added).

163. With reference to the above sources of guidance, the issue turns on whether the definition of “exporter”, “supplier” or “producer” should apply to the corporate

entity- i.e. the company, or whether it can be construed more widely to encompass a group of entities which act, or at least are capable of acting, essentially as one. The Ministry is of the opinion that the appropriate interpretation of the Panel decisions and legislation above would suggest that individual dumping margins should be established for each separate company or corporate entity and not for a group of related companies. Therefore the Ministry concludes that it cannot treat the ADR group as one entity within the confines of the relevant legislation.

Submission by GUD in Response to EFC Report

164. In response to the EFC report which contained the matters traversed in the paragraphs above, GUD made a further submission on this issue, which is summarised below.

165. GUD said its submission was not, necessarily, about imposing a single dumping duty on the ADR group, but was rather to point out that the Ministry could use PT Selamat's dumping margins for PT Andhi as PT Andhi did not respond to the Ministry's request for information.

166. GUD also submitted that the facts in the panel decisions in *Argentina – Poultry* and *Argentina – Ceramic Tiles* (referred to in paragraph 162 above) were quite different from this investigation because in both of these cases the exporters did supply information. GUD noted that one interpretation of the Ministry's findings in the EFC report is that a residual dumping duty could never be possible because the "procedural obligation" meant that the investigating authorities had to determine individual margins for each known exporter or producer concerned. GUD argued, however, that the "procedural obligation" does not apply when a sample of exporters is used, as provided in the second sentence of paragraph 6.10 of the Agreement. In support of this submission, GUD quoted from the *Argentina – Ceramic Tiles* panel where it stated (at paragraph 6.89) that:

Article 9.4 provides that, where the authorities have limited their examination in accordance with the second sentence of Article 6.10, the anti-dumping duty applied to imports from exporters or producers not included in the examination shall not exceed an amount calculated on the basis of the margins of dumping for exporters or producers that were included in the examination.

167. The emphasis in the extract quoted above was added by the panel. GUD said the panel went on to say that where the authorities have used a sample, an individual margin of dumping must be calculated if the producers/exporters provide the necessary information. GUD noted that PT Andhi did not supply this information.

168. GUD observed that in the absence of information from PT Andhi, in the EFC report the Ministry calculated an export price based on a limited number of invoices from an Australian company that re-exported filters to New Zealand and compared these with normal values obtained from PT Selamat. GUD said what was not determined is that exports by PT Andhi are likely to be more expensive because of the type of customer it supplies, and referred to the extract from the web site quoted above in paragraph 152 which records that PT Andhi focuses its manufacturing towards the OEM and OES sectors.

169. GUD argued there is a strong suggestion from this that the Ministry has not made an allowance for all of the physical characteristics of the exported filter which would affect price comparability. GUD said that because PT Andhi did not supply information, the Ministry did not have access to information which would allow an informed judgement on any adjustments for physical differences that might be necessary. GUD said, however, that as it has submitted above, the Ministry is not obliged to estimate an export price for every known exporter or producer.

170. GUD pointed out that the EFC report shows that the matching of export prices and normal values represented only four percent of the oil filters manufactured by PT Andhi that were exported to New Zealand and contrasted this with the same percentages for PT Selamat (27 percent) and PT Panata (65 percent). GUD said that “The small number of matching normal values and export prices for PT Andhi suggests that this “sample” is not “statistically valid” (Article 6.10).”

171. GUD opined that it seems inconsistent and illogical that one of these companies out of the three in the ADR group has been found not to be dumping. GUD noted that where there is a lack of co-operation by an exporter the Ministry’s normal practice is to apply the residual rate and said the Ministry should be careful to avoid setting an expectation where a non co-operating exporter is rewarded for its non co-operation by a nil dumping margin. GUD submitted that the different result for PT Andhi [from those for PT Selamat and PT Panata] would suggest that the facts available for PT Andhi (being a limited number of export transactions) are not reliable.

172. In summary GUD said that:

- The Ministry does not have to calculate an individual margin of dumping for PT Andhi.
- The Ministry’s interpretation of the panel suggests that a residual duty could not be applied.
- The approach taken in the EFC report does not satisfy the comparability test for normal values and export prices.
- The “sample” of matching normal values and export prices is too small.
- PT Andhi’s lack of co-operation should not allow a nil result.

Ministry’s Consideration of the Issues

173. The Ministry has re-examined the findings of the panel in *Argentina - Ceramic Tiles* and can discern no support for the submission from GUD that the “procedural obligation” to determine an individual margin of dumping for each known exporter or producer does not exist when a sample (or a selection of the largest exporters by volume) is used in accordance with Article 6.10 of the Agreement. Indeed, the panel makes it clear that the use of a sample/selection does not remove the obligation to calculate individual margins of dumping when it states (at paragraph 6.90):

In our view, the general rule in the first sentence of Article 6.10, that individual margins of dumping be determined for each known exporter or producer of the product under investigation, is fully applicable to exporters who are selected for examination under the second sentence of Article 6.10. While the second sentence of Article 6.10 allows an investigating authority to limit its examination to certain exporters or producers, it does not provide for a deviation from the general rule that individual margins be determined for those exporters or producers that are examined.

174. The extract from paragraph 6.89 of the panel report quoted by GUD (see paragraph 166 above) was clearly intended to reinforce the panel's view that individual margins of dumping must be calculated where a sample/selection is used. The reference by GUD to the panel then going on to say that individual margins must be calculated if producers/exporters provide information, is a reference by the panel (also in paragraph 6.89) to the requirement under Article 6.10.2 that authorities shall determine an individual margin for exporters/producers not initially selected who provide necessary information. This part of the panel report therefore does not appear to be of any relevance to the issue at hand, given that PT Andhi was in the initial selection.

175. The Ministry concludes that it must determine an individual margin of dumping for PT Andhi (as for all other producers included in its selection). The manner in which export prices and normal values have been determined for PT Andhi, including consideration of GUD's arguments concerning the comparability test for normal values and export prices, the "sample" size of matching normal values and export prices and PT Andhi's lack of co-operation, are addressed later in this section of the report, under the relevant headings.

Evaluation of Evidence of Dumping

176. Partmaster, made a submission in response to the EFC report concerning the evaluation of the evidence of dumping by the Ministry. Partmaster said "This is the third or fourth claim by GUD on the same grounds as previous claims, all of which have failed." Partmaster noted that in its questionnaire response it advised that the terms and conditions of trade between itself and its supplier had not changed since the previous dumping investigation and said "In the light of this and in the absence of any advice to the contrary, the imposition of even the interim duties, implies that the Ministry has put all of the weight on the argument/submissions of GUD and very little if any on the background or our evidence."

177. Partmaster said it was concerned about evidence of normal values in relation to its supplier and the need to compare purchases of like volume, credit rating etc, and noted that most of its filter imports are for Japanese vehicles whereas almost all of the Korean domestic market is made up of Korean vehicles which use filters that are not comparable to those used in Japanese vehicles.

178. Partmaster said its supplier has also advised that its position has not changed from previous years (and noted that recent price increases have occurred) and its supplier is also at a loss to explain the apparent different outcome from previous dumping investigations. Partmaster argued that should GUD's claim be upheld ". . . is it incumbent on the Ministry to advise what changes have occurred between

previous investigations and this one, that have led to a conclusion that dumping is now occurring?"

Ministry's Consideration of the Issues

179. There have been three previous dumping investigations involving oil filters:

- Oil filters from the USA, completed in November 1992.
- Oil filters from Canada, Indonesia, Korea and Thailand, completed in December 1995.
- Oil filters from Indonesia, Korea, Malaysia and Thailand, terminated in November 2000.

180. The investigation into oil filters from the USA resulted in the imposition of anti-dumping duties. These duties were reviewed twice, with the last review (completed in December 2000) resulting in the termination of the duties. The December 1995 investigation did not result in anti-dumping duties being imposed. The November 2000 investigation was terminated following the withdrawal of the application by the New Zealand industry. Dumping applications by the New Zealand industry have therefore resulted in anti-dumping duties being imposed in one of the three previous investigations.

181. In this investigation the Ministry has only used information provided by GUD to establish normal values (information from GUD has not been used to establish export prices) when interested parties have failed to supply information requested from them, as provided in section 6 of the Act and in Article 6.8 of the Agreement. All interested parties have been given a full opportunity to provide information to the Ministry. In relation to Partmaster's supplier (██████████), the Ministry has used all of the information provided by that company on normal values, and only in a limited number of cases, where information was not provided by ██████████, has the Ministry used information provided by GUD. Details concerning the establishing of normal values for ██████████ are shown below.

182. The Ministry notes that it can only carry out an investigation on the basis of the evidence available to it during the course of an investigation and has done so in accordance with the Act and the Agreement. It is not possible (or required by the Act or the Agreement) to undertake an investigation into how export prices and normal values may have changed since the last dumping investigation was completed four years ago.

4.2 Export Prices

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

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

- (a) Where the purchase of the goods by the importer was an [arm's] length transaction, the price paid or payable for the goods by the importer other than any part of that price that represents-

- (i) Costs, charges, and expenses incurred in preparing the goods for shipment to New Zealand that are additional to those costs, charges, and expenses generally incurred on sales for home consumption; and
- (ii) Any other costs, charges, and expenses resulting from the exportation of the goods, or arising after their shipment from the country of export; . . .

184. Section 6 of the Act states as follows:

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

(2) For the purposes of subsection (1) of this section, the [Chief Executive] may disregard any information that the [Chief Executive] considers to be unreliable.

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

186. It was not possible to establish individual export transaction prices where information was not provided by either the exporter or importer. (Customs data could not be used in these cases to establish meaningful estimates because of the variation in prices between oil filter models).

China

187. Bengbu Filter Co Ltd, Golden Haiye Auto Parts , Zhejiang Universe Filter Co. Ltd, [REDACTED] and [REDACTED] did not complete questionnaires. Bengbu Filter Co Ltd and [REDACTED] did, however, provide some very limited information. Export prices for these manufacturers and exporters have been calculated on the basis of the best information available.

Bengbu Filter Co Ltd

Export Sales Distribution

188. Oil filters manufactured by Bengbu Filter Co. Ltd (Bengbu Filter) were exported to New Zealand both directly and via Australia. [REDACTED] ([REDACTED]) in Australia acts as an agent for Bengbu Filter and sold oil filters to [REDACTED] ([REDACTED]) who in turn re-exported oil filters to New Zealand.

189. One shipment was sent directly from China to New Zealand through an export company in China, [REDACTED] ([REDACTED]). For this

shipment, Customs data shows [REDACTED] as the importer. [REDACTED] explained that it arranged this shipment on behalf of [REDACTED] to be shipped directly to [REDACTED] and that an invoice for this shipment was issued by [REDACTED] to [REDACTED] and it was [REDACTED]

Base Prices

190. [REDACTED] provided copies of invoices issued to its export customers, [REDACTED] and [REDACTED]. The price paid by the importers is FOB in Australian dollars. The Ministry has used the FOB invoiced price as the base price. The dates of the [REDACTED] invoices to the New Zealand importers were used to establish the date of sale.

Adjustments

Exporter's Margin

191. An adjustment was made for an exporter's margin. Most of the shipments to New Zealand were made by [REDACTED] and therefore the price paid by the importer would include a proportion representing an exporter's margin which is not incurred on the domestic market. [REDACTED] stated that its margin is [REDACTED] percent of the FOB price and an adjustment has been made at this rate.

Other Margins

192. [REDACTED] which is located in Australia acts as an agent for Bengbu Filter and an adjustment was made for its margin. In the absence of information from [REDACTED], its margin has been based on the margin taken by [REDACTED], a selling agent that operates [REDACTED] in what appears to be the same way that [REDACTED] operates in Australia. The margin taken by [REDACTED] is based on information provided by [REDACTED].

193. Bengbu Filter advised that its FOB export prices to all countries range from USD [REDACTED] to USD [REDACTED], depending on the size of the filter body. The estimated FOB prices ex-China after deducting adjustments listed above, when converted to US dollars, were significantly higher than this price range, indicating that the margin deduction for [REDACTED] was not high enough. The Ministry therefore made a further deduction for an additional [REDACTED] margin. This deduction was applied to the export prices estimated above such that the lowest and highest export prices respectively equalled USD [REDACTED] and USD [REDACTED], with other prices spread proportionally between these two prices.

Costs from Ex-Factory to FOB

194. In the absence of information from Bengbu Filter the adjustment was made using information provided by a [REDACTED] exporter, [REDACTED] ([REDACTED]) on its costs between ex-factory and FOB as a percentage of its FOB selling prices and applying this percentage to the estimated Bengbu Filter FOB prices.

Export Prices

195. Export prices were established by deducting the adjustments outlined above from base prices.

196. The range of export prices for Bengbu Filter is shown in Table 4.1 following paragraph 446.

Golden Haiye Auto Parts

Export Sales Distribution

197. Golden Haiye Auto Parts (Golden Haiye) exported [REDACTED] of oil filters directly to New Zealand through an export company in China, [REDACTED] ([REDACTED]).

Base Prices

198. The New Zealand importer provided a copy of the invoice for this shipment but this did not show any details of the type/s of filters. The importer stated that the oil filters are interchangeable with the "[REDACTED]" range and this is explained further in the paragraph on normal values.

199. Base prices were established from [REDACTED] FOB (USD) invoiced price. [REDACTED]

Adjustments

Exporter's Margin

200. An adjustment was made for [REDACTED] margin. In the absence of information from [REDACTED] the margin was based on the margin earned by a [REDACTED] exporter, [REDACTED].

Costs from Ex-Factory to FOB

201. In the absence of information from Golden Haiye an adjustment was made using information provided by a [REDACTED] exporter, [REDACTED] relating to its costs from FOB to ex-factory, as explained in paragraph 194.

Export prices

202. Export prices were established by deducting the adjustments outlined above from base prices.

203. The range of export prices for Golden Haiye is shown in Table 4.2 following paragraph 447.

Zhejiang Universe Filter Co.Ltd

Export Sales Distribution

204. Zhejiang Universe Filter Co. Ltd (Zhejiang) exported [REDACTED] of oil filters directly to New Zealand.

Base Prices

205. The New Zealand importer provided [REDACTED] which showed one price for all units exported to New Zealand. According to information from the New Zealand importer this shipment was for [REDACTED] different types of oil filters. The importer was asked to provide the quantity of each type of oil filter but this information has not been received. It has consequently been assumed that equal volumes of each type of filter were imported.

206. Base prices were established from Zhejiang's FOB (USD) invoiced price. [REDACTED]

Adjustments

Costs from Ex-Factory to FOB

207. In the absence of information from Zhejiang Universe Filter Co. Ltd an adjustment was made using information provided by a [REDACTED] exporter, [REDACTED] relating to its costs from FOB to ex-factory, as explained in paragraph 194.

Export Prices

208. Export prices were established by deducting the adjustments outlined above from base prices.

209. The range of export prices for Zhejiang is shown in Table 4.3 following paragraph 448.

Indonesia

210. [REDACTED], PT Andhi Chandra Auto and PT Panata Jaya Mandiri did not complete questionnaires and export prices and normal values for those exporters and manufacturers have been calculated on the basis of the best information available.

211. The three manufacturers discussed below are all part of the ADR Group of companies.

PT Selamat Sempurna Tbk

Export Sales Distribution

212. PT Selamat Sempurna Tbk (PT Selamat) exported oil filters directly to New Zealand (to [REDACTED]) and to Filter Sales Australia Pty Ltd (FSA) in Australia, some of which were re-exported to New Zealand by FSA and by one of its Australian

customers, [REDACTED]. FSA exported to [REDACTED]. The Ministry received questionnaire submissions from both these companies. [REDACTED] exported to [REDACTED]. Neither [REDACTED] nor [REDACTED] provided sufficient information to establish export prices. Due to this lack of information it has only been possible to establish export prices for 55 percent of PT Selamat's exports to New Zealand.

Base Prices

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

214. For exports to FSA in Australia that were subsequently exported to New Zealand during the POI base prices were established at the invoiced price from FSA to the New Zealand importers. FSA sells to the New Zealand importers on an [REDACTED] basis in [REDACTED].

215. For sales shipped directly from Indonesia to New Zealand, where FSA was the exporter, the base price is the invoiced price from FSA to the New Zealand importers. For sales of this type, FSA sells to the New Zealand importers on an [REDACTED] basis in [REDACTED].

216. For sales direct to [REDACTED], the date of sale has been established at the date of PT Selamat's invoice to [REDACTED]. For sales by FSA where the goods are shipped directly from Indonesia to New Zealand, the date of sale has been established at the date of FSA's invoice to the New Zealand importers (the date of FSA's invoices to the New Zealand importers are between two and 11 days of the date of the invoice from PT Selamat to FSA). Because the sales via Australia are made from inventory of larger orders that are shipped from Indonesia to Australia, the Ministry has estimated the date of the sale by PT Selamat by subtracting [REDACTED] days from the date of FSA's invoice to the New Zealand importers. The [REDACTED] days is an estimate based on the time it takes to ship the goods from Indonesia to Australia and the number of days the goods stay in inventory in Australia before being shipped to New Zealand.

Adjustments

Exporter's Margin

217. For exports via FSA an adjustment has been made for FSA's margin. Just prior to the completion of this report, FSA provided copies of the invoices from PT Selamat to FSA for all of those sales over the POI where the goods were shipped direct from Indonesia to New Zealand. At the same time FSA also provided a selection of invoices over the POI relating to its purchases from PT Selamat where the goods were shipped from Indonesia to Australia.

218. For those shipments direct from Indonesia to New Zealand, a deduction has been made using the actual margin taken by FSA, calculated from the difference in the invoiced prices from PT Selamat to FSA and from FSA to the New Zealand importers.

219. For those sales made via Australia the Ministry has calculated the weighted average margin taken by FSA based on the difference between FSA's prices to the New Zealand importers and PT Selamat's prices to FSA (taken from the selection of invoices provided by FSA) where the goods were shipped to Australia. The weighted average margin calculated on this basis is [REDACTED] percent, calculated as a percentage of FSA's FOB price to the New Zealand importers.

Inland Freight

220. An adjustment was made for the cost of inland freight from the factory to the port of export, on the basis of verified information, of IDR [REDACTED] per filter for sales to [REDACTED] and IDR [REDACTED] for sales to FSA.

Wharfage and Handling Costs

221. An adjustment was made for the cost of wharfage and handling, on the basis of verified information, of USD [REDACTED] per filter for sales to [REDACTED] and USD [REDACTED] for sales to FSA.

Cost of Credit

222. An adjustment has been made to export prices to reflect PT Selamat's cost of credit. The adjustment incorporates the number of days until PT Selamat is reimbursed by customers. This equals [REDACTED] days for FSA and [REDACTED] days for [REDACTED]. In the absence of information from PT Selamat, the Ministry has used a publicly available interest rate on current accounts of 0.2 percent per annum for USD accounts.

Physical Difference

223. An adjustment was made for the difference between exported and domestically sold filters. A deduction of US \$[REDACTED] was made to reflect the extra cost involved in producing filters with square seals, prevalent on exported filters.

Export Prices

224. Export prices were established by deducting the adjustments outlined above from base prices.

225. The range of export prices for PT Selamat is shown in Table 4.4 following paragraph 452.

PT Andhi Chandra Auto

Export Sales Distribution

226. PT Andhi Chandra Auto (PT Andhi) exported oil filters to Australia, some of which were re-exported to New Zealand by [REDACTED]. PT Andhi belongs to the same group of companies (the ADR Group) as PT Selamat.

227. There were two New Zealand importers of the goods under investigation from [REDACTED], namely [REDACTED] ([REDACTED]) and [REDACTED].

██████████ (██████████). No Information has been provided by ██████████. ██████████ has only provided invoices relating to its imports from April 2004 to June 2004.

Base Prices

228. For exports to Australia that were subsequently exported to New Zealand during the POI, base prices were established, in the absence of invoices from PT Andhi to ██████████, using invoices (for the limited number of transactions for which they were available) from ██████████ to ██████████. ██████████ sells to the New Zealand importers on an ██████████ basis in ██████████.

229. As noted above in the beginning of section 4.1 under the heading “ADR Group of Companies”, the invoices provided by ██████████ cover only a very small proportion of the exports over the POI that were manufactured by PT Andhi, and could be matched with normal values that represent only four percent of such exports. As outlined in this part of the report GUD has submitted that it is not possible to draw conclusions about whether exports by PT Andhi are dumped on the basis of such a small proportion of exports. GUD also submitted that PT Andhi was in effect being rewarded by not co-operating if the Ministry was to conclude exports by PT Andhi were not dumped by relying on evidence covering such a small proportion of its exports.

230. The Ministry has concluded above that it must establish an individual margin of dumping for PT Andhi. The Ministry notes that the small volume of exports for which information is available relates to imports by ██████████ of ██████████ of ██████████ oil filters and are only for the latter part of the POI (April to June) and may not reflect prices over all of the POI. The Ministry therefore agrees with GUD that it is not reasonable to draw conclusions about PT Andhi’s exports on the basis of such a small proportion of its exports.

231. Under section 6 of the Act (quoted above at the beginning of this section of the report) where the Chief Executive is satisfied that lack of information does not allow export prices to be established under section 4, the Chief Executive may determine export prices having regard to all available information. The only information available on export prices for those transactions not covered by the invoices provided by ██████████ is information from Customs import data. For these transactions base export prices have been established at the average value for duty per oil filter in ██████████ dollars calculated from Customs import data. The date of sale of these transactions was estimated at one week prior to the date of import, based on those transactions for which invoices were available.

Adjustments

Exporter’s Margin

232. An adjustment was made to base prices to deduct ██████████ margin using the weighted average margin taken by ██████████.

Inland Freight

233. An adjustment was made for the cost of inland freight from the factory to the port of export, on the basis of verified information provided by PT Selamat, of IDR [REDACTED].

Wharfage and Handling Costs

234. An adjustment was made for the cost of wharfage and handling, on the basis of verified information provided by PT Selamat, of USD [REDACTED].

Cost of Credit

235. An adjustment has been made to export prices to reflect PT Andhi's cost of credit. The adjustment has been made, using information relating to PT Selamat, on the basis discussed in paragraph 222, using [REDACTED] days as the terms of credit.

Physical Difference

236. An adjustment was made for the difference between export and domestically sold filters on the same basis discussed in paragraph 223.

Export Prices

237. Export prices were established by deducting the adjustments outlined above from base prices.

238. The range of export prices for PT Andhi is shown in Table 4.5 following paragraph 453.

PT Panata Jaya Mandiri

Export Sales Distribution

239. PT Panata Jaya Mandiri (PT Panata) exported oil filters to Australia, some of which were re-exported to New Zealand by Donaldson Australasia Pty Ltd (Donaldson). PT Panata belongs to the same group of companies (the ADR Group) as PT Selamat.

Base Prices

240. For exports to Australia that were subsequently exported to New Zealand during the POI, base prices were established, in the absence of invoices from PT Panata to Donaldson, using invoices from Donaldson to the New Zealand importers. Donaldson sells to the New Zealand importers on an [REDACTED] basis in [REDACTED].

Adjustments

Exporter's Margin

241. An adjustment was made to base prices to deduct Donaldson's margin using the weighted average margin taken by [REDACTED].

Inland Freight

242. An adjustment was made for the cost of inland freight from the factory to the port of export, on the same basis of verified information provided by PT Selamat, of IDR [REDACTED].

Wharfage and Handling Costs

243. An adjustment was made for the cost of wharfage and handling, on the same basis of verified information provided by PT Selamat, of USD [REDACTED].

Cost of Credit

244. An adjustment has been made to export prices to reflect PT Panata's cost of credit. The adjustment has been made, using information relating to PT Selamat, on the basis discussed in paragraph 222, using [REDACTED] days as the terms of credit.

Physical Difference

245. An adjustment was made for the difference between export and domestically sold filters on the same basis discussed in paragraph 223.

Export Prices

246. Export prices were established by deducting the adjustments outlined above from base prices.

247. The range of export prices for PT Panata is shown in Table 4.6 following paragraph 454.

Korea

248. [REDACTED], Yuil Air Filter Co. Ltd, Kang Nam Filter Co. Ltd, Shin Sung Industrial Co. Ltd and June Heung Filter Co. Ltd did not complete questionnaires. Yuil Air Filter Co. Ltd and [REDACTED] did, however, provide a very limited amount of information. Export prices and normal values for these exporters and manufacturers have been calculated on the basis of the best information available.

249. June Heung did provide limited normal value information during a verification visit and through subsequent submissions regarding June Heung's cost to make and sell part numbers that are exported but not sold on the Korean domestic market.

June Heung Filter Co. Ltd

Export Sales Distribution

250. June Heung Filter Co. Ltd (June Heung) exported oil filters to New Zealand through a Korean exporter, Chung Ku.

Base Prices


251. The various costs borne by Chung Ku subsequent to its purchase of the goods from June Heung are covered by its margin. If base prices were to be set at Chung Ku's FOB price to its New Zealand customer, these prices would require adjustment to remove Chung Ku's margin to take the prices back to June Heung's prices to Chung Ku.

252. To avoid superfluous adjustments, base prices have been set at June Heung's USD selling price to Chung Ku. The relevant date of sale is the date of June Heung's offer invoice to Chung Ku for each export sale.

253. In response to the EFC report, Chung Ku advised that prices to its New Zealand importer had been increased from 1 June 2004 and provided a price list showing the new prices. This information, however, is not relevant, as invoices had already been provided (both by Chung Ku and June Heung) covering imports into New Zealand over the year ended 30 June 2004 and base prices have been set at June Heung's price to Chung Ku.

Adjustments

Duty Drawback

254. An adjustment has been made on the basis of verified information for duty drawback at  percent of June Heung's selling price to Chung Ku.

Inland Freight

255. June Heung and Chung Ku each pay approximately half the cost of inland freight. The Ministry has used the verified inland freight costs provided by Chung Ku to make an adjustment for the share of inland freight paid by June Heung

Export Prices

256. Export prices were established by deducting the inland freight adjustment from base prices and adding the duty drawback adjustment to base prices.

257. The range of export prices for June Heung is shown in Table 4.7 following paragraph 458.

Kang Nam Filter Co. Ltd

Export Sales Distribution

258. Kang Nam Filter Co. Ltd (Kang Nam) exported to New Zealand via a Korean exporter, [REDACTED].

Base Prices

259. Base prices were established using Kang Nam's FOB prices to [REDACTED]. The date of sale being the date on the invoice.

Adjustments

Costs from Ex-Factory to FOB

260. Ex-factory export prices were established by deducting from Kang Nam's FOB price to [REDACTED] an amount for costs from ex-factory to FOB. These costs were estimated from information provided by [REDACTED] as outlined in paragraph 194.

Export Prices

261. Export prices were established by deducting the adjustments outlined above from base prices.

262. The range of export prices for Kang Nam is shown in Table 4.8 following paragraph 459.

Shin Sung Industrial Ltd

Export Sales Distribution

263. Shin Sung Industrial Company (Shin Sung) exported oil filters to New Zealand through a Korean exporter, [REDACTED] ([REDACTED]).

Base Prices

264. Base prices were established using [REDACTED] FOB prices to New Zealand importers. The date of the invoice was taken as the date of sale.

Adjustments

Costs from Ex-Factory to FOB

265. Costs from ex-factory in Korea to FOB were estimated on the basis of information provided by [REDACTED], as outlined in paragraph 194.

Exporter's Margin

266. The margin for [REDACTED] was based on the margin earned by [REDACTED].

Export Prices

267. Export prices were established by deducting the adjustments outlined above from base prices.

268. The range of export prices for Shin Sung is shown in Table 4.9 following paragraph 460.

Yuil Air Filter Co Ltd

Export Sales Distribution

269. Yuil Air Filter Co. Ltd (Yuil) exported oil filters to New Zealand directly.

Base Prices

270. Base prices were established using Yuil's FOB prices to the New Zealand importers. The date of sale being the date on the invoice.

Adjustments

Costs from Ex-Factory to FOB

271. Costs from ex-factory to FOB were estimated from information provided by [REDACTED] as outlined in paragraph 194.

Export Prices

272. Export prices were established by deducting the adjustments outlined above from base prices.

273. The range of export prices for Yuil is shown in Table 4.10 following paragraph 461.

Thailand

274. CT Industry Co. Ltd, Siam Tennex Manufacturing Ltd and [REDACTED] completed questionnaires and [REDACTED] provided only a partial questionnaire response. Denso International Thailand did not complete a questionnaire. In the absence of information from these sources export prices have been calculated on the basis of the best information available.

CT Industry Co. Ltd

Export Sales Distribution

275. CT Industry Co. Ltd (CT Industry) exported oil filters to New Zealand both indirectly through a sales agent located in New Zealand and directly to importers. The customers on whose behalf the sales agent arranged the imports appear in Customs data as the importers. Customs data shows the supplier of oil filters as CT Industry and Siam Filter Co. Ltd (Siam Filter). CT Industry explained that historically Siam Filter exported goods to New Zealand but due to the complexities of drawback

duty claims CT Industry was created to manufacture and manage all exports which left Siam Filter to manufacture and manage domestic sales in Thailand. CT Industry stated that Siam Filter is still recorded in the Customs data because of the long standing relationship it has [REDACTED] New Zealand customers but the supplier is CT Industry.

Base Prices

276. Base prices were established from the FOB invoiced prices in USD. CT Industry provided copies of all export sale invoices. The date of sale was taken as the date of the invoices.

Adjustments

Sales Agent's Commission

277. As noted above some sales by CT Industry are through a sales agent located in New Zealand. The sales agent is paid a commission of [REDACTED] of CT Industry's FOB price to the New Zealand importers. An adjustment, where applicable, has been made at this rate.

Export Printing and Packaging

278. An adjustment has been made based on verified information for the extra costs charged to provide a specific printing and packaging requirement [REDACTED].

Duty Drawback

279. CT Industry imports some raw materials to produce oil filters and at regular intervals claims back from the Thai government the import duty paid on those materials. An adjustment has been made on the basis of verified information for this duty drawback.

Inland Freight

280. An adjustment has been made for inland freight from factory to port, based on verified information.

Terminal Handling Charge, CFS Charge, Customs Clearance

281. Adjustments were made for the items above based on verified information.

Bill of Lading

282. An adjustment was made for the cost of bills of lading based on verified information.

Export Prices

283. Export prices were established by adding the adjustment for duty drawback to base prices and by deducting the other adjustments outlined above from base prices.

284. The range of export prices for CT Industry is shown in Table 4.11 following paragraph 465.

Siam Tennex Manufacturing Ltd (now known as MAHLE Siam Filter Systems Co. Ltd)

Export Distribution

285. Siam Tennex Manufacturing Ltd (Siam Tennex) advised in response to the EFC report that its name has changed to MAHLE Siam Filter Systems Co. Ltd from October 2004. Siam Tennex manufactures the oil filters exported to New Zealand by [REDACTED] ([REDACTED]). Only one model of oil filter was exported by [REDACTED] to New Zealand. Siam Tennex manufactures oil filters to [REDACTED] and supplies oil filters to [REDACTED] as [REDACTED] for use on various [REDACTED]. Both [REDACTED] and [REDACTED] claim that the sales between the companies are at arm's length [REDACTED].

Base Prices

286. Siam Tennex sells oil filters to [REDACTED] at the [REDACTED] [REDACTED] the oil filters are sold on the Thai domestic market or are exported, and does not know the destination of the oil filters it sells to [REDACTED]. [REDACTED] sells oil filters to [REDACTED] in Thailand as well as exporting oil filters to [REDACTED] (and to other [REDACTED] in various countries in Asia and Oceania). [REDACTED] sells oil filters to [REDACTED] in New Zealand.

287. Because the oil filters manufactured by Siam Tennex do not effectively enter the Thai domestic market until [REDACTED] sells them to [REDACTED] in Thailand, the Ministry considered in the EFC report that the level of trade at which export prices and normal values should be compared is at the [REDACTED] ex-store level.

288. In response to the EFC report Siam Tennex submitted that export prices and normal values should be compared at the Siam Tennex ex-factory level. Siam Tennex said that on the Thai domestic market in addition to selling to [REDACTED] it also sells similar oil filters to [REDACTED] and it also exports oil filters to other countries. Siam Tennex said some oil filters [presumably those sold to [REDACTED] and [REDACTED]] are not exactly the same [presumably as those sold to [REDACTED]] but argued that allowances can be made for such differences which ". . . are not very big."

289. Siam Tennex noted that Denso and CT Industry are not accused of dumping but said these companies are very much like Siam Tennex and their prices in the Thai domestic market are very similar to its own prices.

290. The Ministry notes that Siam Tennex did not provide any information relating to the models of filter it sells to [REDACTED] and [REDACTED], any details of the prices at which sales are made to these companies or any information on the nature of the business undertaken by these companies. The Ministry notes, however, that [REDACTED] [REDACTED] and [REDACTED] appear to be [REDACTED].

and it is therefore likely that sales by Siam Tennex of oil filters to these companies would not effectively enter the Thai domestic market until these companies on-sold them. The Ministry also observes that whether a particular exporter is dumping can only be determined by examining the export prices and normal values in relation to that exporter and cannot be inferred from the results of other exporters.

291. The Ministry does not consider that sufficient information has been provided by Siam Tennex to change its view that export prices and normal values should be compared at the ex-store level.

292. Base prices are FOB price to the New Zealand importer, in New Zealand dollars, and the date of sale is the date of invoice.

Adjustments

Export Packing

293. An adjustment has been made for the extra cost of export packing which is not incurred on the domestic market. The adjustment was based on information provided by . The adjustment over the POI is NZ\$ per filter.

Freight and Handling Cost

294. An adjustment has been made for the freight and handling costs associated with transporting the goods from ex-store to FOB. The adjustment over the POI is NZ\$ per filter.

Export prices

295. Export prices have been established by deducting the adjustments outlined above from base prices.

296. The range of export prices for Siam Tennex is shown in Table 4.12 following paragraph 466.

Denso International Thailand

Export Sales Distribution

297. Denso International Thailand (Denso) supplies oil filters to () who exports them to New Zealand. advised that the oil filters it exports to New Zealand are OE filters for .

298. The importer, (), has advised that is a . For the purposes of this report the transactions have been treated as being at arm's length.

Base Prices

299. In Thailand, [REDACTED] sells only to [REDACTED] and therefore appears to operate in the same manner as [REDACTED] whereby the oil filters do not effectively enter the Thai domestic market until [REDACTED] sells them to [REDACTED]. The Ministry considers the level of trade at which export prices and normal values should be compared is therefore at the [REDACTED] ex-store level. Base prices are the importers' FOB purchase prices which are invoiced in Thai Baht.

Adjustments

300. In the absence of information from [REDACTED] and Denso, adjustments were made based on verified information from [REDACTED]. These adjustments are duty drawback, inland freight, terminal handling, CFS charge and bill of lading and were made at the same rates or amounts as those made for [REDACTED].

Export Prices

301. Export prices were established by adding the adjustment for duty drawback to base prices and by deducting the other adjustments outlined above from base prices

302. The range of export prices for Denso is shown in Table 4.13 following paragraph 467.

4.3 Normal Values

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

(1) Subject to this section, for the purposes of this Act, the normal value of any goods imported or intended to be imported into New Zealand shall be the price paid for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arm's length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.

(2) Where the [Chief Executive] is satisfied that the normal value of goods imported or intended to be imported into New Zealand cannot be determined under subsection (1) of this section because—

(a) There is an absence of sales that would be relevant for the purpose of determining a price under that subsection; or

(b) The situation in the relevant market is such that sales in that market that would otherwise be relevant for the purpose of determining a price under subsection (1) of this section are not suitable for use in determining such a price; or

(c) Like goods are not sold in the ordinary course of trade for home consumption in the country of export in sales that are arm's length transactions by the exporter and it is not practicable to obtain within a reasonable time information in relation to sales by other sellers of like goods

that would be relevant for the purpose of determining a price under subsection (1) of this section,—

the [Chief Executive] may determine that the normal value, for the purposes of this Act, shall be either—

(d) The sum of—

(i) Such amount as is determined by the [Chief Executive] to be the cost of production or manufacture of the goods in the country of export; and

(ii) On the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export,—

(A) Such amounts as the [Chief Executive] determines would be reasonable amounts for administrative and selling costs, delivery charges, and other charges incurred in the sale; and

(B) An amount calculated in accordance with such rate as the [Chief Executive] determines would be the rate of profit on that sale having regard to the rate of profit normally realised on sales of goods (where such sales exist) of the same general category in the domestic market of the country of export of the goods; or

(e) The price that is representative of the price paid for similar quantities of like goods sold at arm's length in the ordinary course of trade in the country of export for export to a third country.

(3) Where the normal value of goods imported or intended to be imported into New Zealand is the price paid for like goods, in order to effect a fair comparison for the purposes of this Act, the normal value and the export price shall be compared by the [Chief Executive]—

(a) At the same level of trade; and

(b) In respect of sales made at as nearly as possible the same time; and

(c) With due allowances made as appropriate for any differences in terms and conditions of sales, levels of trade, taxation, quantities, and physical characteristics, and any other differences that affect price comparability.

(4) Where the normal value of goods exported to New Zealand is to be ascertained in accordance with subsection (2) of this section, the [Chief Executive] shall make such adjustments as are necessary to ensure that the normal value so ascertained is properly comparable with the export price of those goods.

(5) Where—

(a) The actual country of export of goods imported or intended to be imported into New Zealand is not the country of origin of the goods; and

(b) The [Chief Executive] is of the opinion that the normal value of the goods should be ascertained for the purposes of this Act as if the country of origin were the country of export,—

the [Chief Executive] may direct that the normal value of the goods shall be so ascertained.

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

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

306. Where the goods under investigation, which have originated in one of the four countries under investigation, have been exported to New Zealand from Australia, in terms of section 5(5) of the Act the normal value of the goods has been ascertained as if the country of origin were the country of export.

China

Adjustment for Physical Differences

307. As noted above the Ministry did not receive sufficient information from interested parties on normal values and consequently it has used all available information which includes that in the application by GUD.

308. In its application GUD argued that normal values in China should be adjusted upwards to account for the difference in the quality of the inner components of the oil filters sold on the Chinese domestic market compared to the inner components in the oil filters that are exported to New Zealand. However, GUD did not provide sufficient information to establish an adjustment. As a consequence, at the time of the provisional direction no adjustment was made.

309. GUD commissioned, prior to the initiation of the investigation, a research company to purchase a sample of oil filters on the domestic market in China. Five oil filters were purchased from [REDACTED] firms. Of the five types, two types (designated C3 and C4) were priced significantly lower than the other three. The low prices for these two filters were identified as applying to the popular [REDACTED] and [REDACTED] [REDACTED] which GUD said are both low quality, low cost Chinese designed and built vehicles. GUD further added that the filter prices and quality match the vehicles to which they apply.

310. GUD opened the filters and found that the quality of the oil filters of four of the five oil filters purchased was not the same as the oil filters exported to New Zealand. Even though the exterior casing appeared to be of an acceptable quality GUD believes that the filter element for four types of oil filters is unacceptable in terms of being able to properly filter the oil. GUD provided copies of photos to show in each instance the element of the domestic oil filter and the comparable exported oil filter.

311. As an alternative to making an adjustment for the difference in the quality of the oil filters, GUD supplied export prices to a third country and suggested that these prices could be used to establish normal values. These prices are based on quotes from [REDACTED] that manufactures and exports oil filters to other countries of a quality equivalent to those goods exported to New Zealand.

312. GUD also provided details of its costs of production for oil filters equivalent to those for which it supplied normal values in its application but stated that it does not have information available to it to estimate what adjustment could be justified to account for the difference in quality. As an alternative GUD suggested that the Ministry could adjust four normal values based on the one normal value where the quality of the oil filter equalled the quality of the oil filter exported to New Zealand.

313. In order to allow a fair comparison of the normal value and the export price, due allowance must be given to any differences in, among other factors, physical characteristics and any other differences which affect price comparability. It is clear from the photos that the quality of the filter paper is different and other components may also differ in quality. GUD's costs to make and sell equivalent oil filters show that materials are a significant proportion of the finished good. However, GUD has not quantified the cost of these quality differences.

314. In response to the EFC, GUD referred to its earlier submission in which it had provided its costs of production for the filters equivalent to those for which it had provided normal values in its application. GUD noted that its cost of materials alone are about the same as the normal value it provided for the C3 filter and exceed the normal value it provided for the C4 filter. GUD said this underlies its belief that the normal values for the C3 and C4 filters are unreliable and it was for this reason that it suggested that the relevant export price to a third country be used for these two filters. GUD submitted that the Ministry could use the provisions of section 5(1) of the Act to establish normal values for those filters other than C3 and C4 but this does not bind the Ministry to using the same provisions of the Act for the C3 and C4 filters which can be established using the third country provisions under section 5(2)(e) of the Act.

315. The evidence available indicates, for the C3 and C4 filters, that the quality of the components is significantly lower than those used in the filters exported to New Zealand and that if they were to be used to establish normal values, an adjustment to account for the physical difference in the components would likely be justified. However, as indicated above, GUD has not provided sufficient information on which to base such an adjustment, and the Ministry has no other information on which to base a physical difference adjustment.

316. Sections 5(2)(d) and (e) of the Act allow the Chief Executive to determine normal values by either constructing them or basing them on sales to a third country, if the Chief Executive is satisfied normal values cannot be determined under section 5(1) because of the reasons set out in sections 5(2)(a), (b) or (c). Sections 5(2)(a) and (b) refer to the situation in the relevant market being such that sales cannot be used and to sales not being in the ordinary course of trade. There is no evidence that either situation applies to the normal values provided by GUD in its application and therefore the sales cannot be disregarded under these parts of the Act.

317. Section 5(2)(a) of the Act refers to the situation where there is an absence of sales that would be relevant for the purpose of determining a price under section 5(1). In its own application GUD has represented the filters designated C3 and C4 as being a sufficient basis on which to establish normal values (albeit with a caveat that an adjustment may be required for physical differences) and identified the GUD oil filters to which these filters were an equivalent. The Ministry therefore considers the sale prices of the C3 and C4 filters represent sales that are relevant for the purpose of establishing normal values under section 5(1) of the Act.

318. The Ministry agrees, however, that the use of the selling prices of the C3 and C4 filters to establish normal values does not preclude the use of sales to a third country for other models of filter for which normal values are not available from GUD's application. As noted above, the information provided by GUD on sales to a third country consist of a quote. The quote covers [REDACTED] models of oil filter identified by its Ryco part number (none of the [REDACTED] Ryco part numbers correspond to the Ryco part numbers to which the C3 and C4 filters are equivalent). The quotes are stated to be "... [REDACTED] ...".

319. Section 5(2)(e) of the Act refers in part to "The price that is representative of the price paid for similar quantities of like goods ..." (emphasis added). The Act clearly envisages that sales to a third country would only be used where an actual transaction has occurred (and where the other conditions are met). The Ministry consequently does not consider that the [REDACTED] quotes provided by GUD meet the requirements of the Act in relation to sales to a third country and therefore cannot be used to establish normal values.

Bengbu Filter Co. Ltd

Domestic Sales Distribution

320. Bengbu Filter did not provide any information on its domestic sales distribution.

Base Prices

321. Base prices were established on the basis of information provided by GUD in its application on retail selling prices.

322. Information provided by the exporter, [REDACTED] shows for each [REDACTED] oil filter exported to New Zealand the part number of the equivalent Ryco oil filter (Ryco is GUD's brand). In its application GUD gave the Ryco part numbers of oil filters it considered were equivalent to the oil filters for which it provided export prices and normal values. Using this information the Ministry has matched, where possible, the normal values provided by GUD in its application to the export prices established on the basis set out above. GUD also provided a list of OE numbers for a wide range of oil filters and cross-referenced this to the equivalent Ryco part number. Where possible the Ministry has also used this cross-referenced list to identify oil filters for which normal values are available that are equivalent to the oil filters exported to New Zealand.

323. Bengbu Filter originally advised that the Chinese domestic market requires approximately 25 – 30 part numbers and that it sells at wholesale on the Chinese

domestic market at prices ranging from US\$ [REDACTED] to US\$ [REDACTED]. The ex-factory normal values established on the basis set out above, when converted to US dollars, are above and below this range of prices. The Ministry considered applying a proportionate adjustment to normal values, on the same basis as that applied to export prices, to make normal values fall within the range of US\$ [REDACTED] to US\$ [REDACTED]. The Ministry notes that the number of normal values to which such an adjustment would be applied is much less than the number of export prices, and would result in greater changes to the normal values than those to the export prices. The Ministry further notes that doing so would result in greater dumping margins than not applying such an adjustment. The Ministry therefore considered it reasonable not to apply such an adjustment in this instance to normal values.

324. It was noted in the EFC report that the day before that report was released, correspondence was received from [REDACTED] and Bengbu Filter in which information (being the same from both parties) was provided on the range of prices at which several oil filters are sold on the Chinese domestic market. The correspondence also provided the equivalent Ryco part number for these filters.

325. The EFC report also noted there had not been sufficient time to consider and analyse this information before the release of the EFC report and therefore the information had not been taken into account in the calculation of normal values in the EFC report, but would to the extent possible be taken into account in the Ministry's Final Report.

326. The information provided by Bengbu Filter consists of an email in which it states that for Z56B, Z386 and Z9 filters it sells on the Chinese domestic market to car manufacturers between US\$ [REDACTED] and US\$ [REDACTED], to wholesalers between US\$ [REDACTED] and US\$ [REDACTED] and to spare parts retailers between US\$ [REDACTED] to US\$ [REDACTED]. The individual selling price of each of the three filters was not provided and it is unclear whether the price ranges provided cover the range of prices at which each filter is sold or whether each filter usually sells at the same price but those prices can vary from time to time within the ranges given. In spite of being requested to do so, no evidence such as price lists or domestic sale invoices was provided to substantiate these prices. The point of sale, e.g., ex-factory, ex-warehouse, delivered to customer, that these prices represent was not advised. No explanation was provided as to why these price ranges differed from the price range originally given, as recorded in paragraph 323 above.

327. The Ministry does not consider that the information provided by Bengbu Filter on normal values constitutes sufficient evidence on which to determine normal values.

Adjustments

328. Based on the information provided by GUD adjustments were made to the normal values for a retail margin of [REDACTED] percent and a wholesale margin of [REDACTED] percent.

Normal Values

329. Normal values were established by deducting the adjustments outlined above from base prices.

330. Normal values established on the basis set out above were able to be matched with export prices of oil filters that represented 25 percent of the oil filters manufactured by Bengbu that were exported to New Zealand during the POI.

331. The range of normal values for Bengbu Filter is shown in Table 4.1 following paragraph 446.

Golden Haiye Auto Parts

Domestic Sales Distribution

332. Golden Haiye did not provide any information on its domestic sales distribution.

Base Prices

333. The importer advised that the oil filters it imported are equivalent to GUD's "██████" range. As there are several filters in GUD's "██████" range, the importer was asked to clarify which filters in this range its imports were equivalent to, but has not done so. In the absence of this information from the importer, and given that importers generally focus on high volume filters, it has been assumed that the filters imported are equivalent to GUD's highest volume "██████" seller, ████████. In its application GUD gave the Ryco part numbers of oil filters it considered were equivalent to the oil filters for which it provided normal values, and this included the ████████ model. Base prices were established on the basis of information provided by GUD in its application as outlined in paragraph 322, using the normal value of the oil filter equivalent to the ████████ model.

Adjustments

334. Based on the information provided by GUD in its application the Ministry has made adjustments for a retail margin of ██████ percent and a wholesale margin of ██████ percent.

Normal Values

335. Normal values were established by deducting the adjustments outlined above from base prices.

336. Normal values established on the basis set out above were able to be matched with export prices of oil filters that represented 100 percent of the oil filters manufactured by Golden Haiye that were exported to New Zealand during the POI.

337. The range of normal values for Golden Haiye is shown in Table 4.2 following paragraph 447.

Zhejiang Universe Filter Co.Ltd

Domestic Sale Distribution

338. Zhejiang Universe did not provide any information on its domestic sales distribution.

Base Prices

339. Base prices were established on the basis of information provided by GUD in its application as outlined in paragraph 322.

Adjustments

340. Based on the information provided by GUD in its application adjustments were made for a retail margin of [REDACTED] percent and a wholesale margin of [REDACTED] percent.

Normal Values

341. Normal values were established by deducting the adjustments outlined above from base prices.

342. Normal values established on the basis set out above were able to be matched with export prices of oil filters that represented 67 percent of the oil filters exported by Zhejiang to New Zealand during the POI.

343. The range of normal values for Zhejiang Universe is shown in Table 4.3 following paragraph 448.

Indonesia

PT Selamat Sempurna Tbk

Domestic Sales Distribution

344. PT Selamat advised that subject goods are distributed on the Indonesian domestic market by its sister company PT Prapat Tunggal Cipta (PTC). PT Selamat advised that PTC has [REDACTED] domestic customers, describing these customers as [REDACTED]. PTC operates two warehouses and sells from inventory held in these warehouses selling on an ex-warehouse basis.

Base Prices

345. PT Selamat advised that there is a sale between PT Selamat and PTC, at a price reflecting the market value less a margin for PTC's costs. PT Selamat advised that PTC earned a margin of approximately [REDACTED] percent of its selling prices, which is designed to cover PTC's costs and provide a small profit. PT Selamat advised that this meant the majority of the profit, for the ADR group, was mostly made in the sale from PT Selamat to PTC.

346. PT Selamat provided the Ministry with a number of invoices for sales to PTC. PT Selamat also provided a domestic price list that contained prices indicative of

PTC's prices to its customers and one invoice, of sales to a customer of PTC, [REDACTED] ([REDACTED]). The Ministry compared PT Selamat's prices to PTC with PTC's selling price of the corresponding filter to [REDACTED] and noted PTC's margins were between [REDACTED] and [REDACTED] percent. Just prior to the completion of the EFC report, PT Selamat, through FSA, provided a further selection of invoices for PT Selamat's sales to PTC. The Ministry analysed the invoices and found two further comparable margins, both of [REDACTED] percent.

347. PTC is part of the ADR Group and in the EFC the Ministry considered that the first arm's length sale by the ADR Group in the domestic market is the sale by PTC to its customers. The Ministry has received further submissions from PT Selamat seeking to have the level at which base prices for normal values are set changed to the sale from PT Selamat to PTC. The substantive parts of these submissions are summarised below.

348. PT Selamat has referred to the provisions of section 3(2) of the Act concerning arm's length transactions, which states as follows:

For the purposes of this Act, a purchase or sale of goods shall not be treated as an arm's length transaction if—

- (a) There is any consideration payable for or in respect of the goods other than their price; or
- (b) The price is influenced by a relationship between the buyer, or a related person, and the seller, or a related person; or
- (c) In the opinion of the [Chief Executive], the buyer, or a person related to the buyer, will, directly or indirectly, be reimbursed, be compensated, or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

349. PT Selamat has submitted that there is no evidence to show that the relationship between itself and PTC has "influenced" the price at which it sells to PTC and has argued that in the absence of any such evidence, the Ministry should treat the sale as being at arm's length. Although its submission is somewhat unclear, PT Selamat also appears to be arguing that because PTC is selling into a highly competitive market, its prices are clearly market driven prices and therefore the price at which PT Selamat sells to PTC is also a market driven, and therefore arm's length, price.

350. In a separate submission PT Selamat has also advised that:

- PTC does not only sell filters.
- PTC does not buy solely from PT Selamat
- PTC is run independently with a separate management.
- PTC is purely a distribution company and carries its own operating costs and pays its own VAT and corporate tax.

- The common shareholder [presumably of PT Selamat and PTC] does not make operating decisions and pricing is set by market conditions.

351. The Ministry notes that where information was available to allow the margin taken by PTC to be calculated, this margin was significantly higher than the [REDACTED] percent stated by PT Selamat to be the amount required to cover PTC's costs and to provide a small profit margin for PTC. This indicates that a significantly larger proportion of the profit earned by the ADR group is allocated to PTC than was originally advised by PT Selamat. While this does not necessarily indicate that the sale from PT Selamat to PTC is not at arm's length, it does illustrate the point that what is relevant is the profit earned by the ADR group in total on its sales to customers outside of the group, regardless of how it is allocated between PT Selamat and PTC.

352. During the verification visit, PT Selamat advised that PTC also buys filters from some other manufacturers that are not part of the ADR group but said this was for a small number of products only and tended to be of products not manufactured by ADR group manufacturers. The Ministry also notes that all of PT Selamat's sales on the Indonesian domestic market, other than those to government organisations and OE manufacturers, are made through PTC. PTC therefore incurs all of the administration and selling costs in relation to PT Selamat's normal domestic sales. PTC therefore acts in the same manner as would the domestic sales branch of PT Selamat, should PT Selamat have structured its domestic sales operation in this way rather than making its sales through a separate corporate entity in the form of PTC.

353. PT Selamat sells directly to its export customers in New Zealand and therefore incurs the selling, administrative and distribution costs of these sales. In order to obtain a fair comparison of the export price with the normal value the Ministry considers that the normal value should reflect the selling and administration costs associated with those sales in the same manner that these costs are reflected in the export price. The Ministry therefore considers base prices should be established using PTC's selling prices.

354. The Ministry observed that prices to [REDACTED] were similar to the indicative prices but that [REDACTED] received a [REDACTED] which averaged [REDACTED] percent [REDACTED] the indicative prices. Base prices were established using PTC's indicative selling prices on the price list provided by PT Selamat.

355. The price list provided by PT Selamat provides both a Sakura brand part numbers as well as the OE numbers. The Ministry has matched normal values with export prices either from the Sakura part number or in the absence of that, the OE number.

356. Base prices have therefore been established at the level of PTC's sale to its customers.

Adjustments

Cost of Credit

357. An adjustment has been made to normal values to reflect PT Selamat's cost of credit. The adjustment incorporates the number of days until the ADR Group is reimbursed by customers (days). In the absence of information from PT Selamat the Ministry has used publicly available interest rates on current accounts in IDR of 1.5 percent.

Warehousing

358. Because PTC sells on an ex-warehouse basis, its prices also reflect the cost of warehousing. To obtain a fair comparison with PT Selamat's ex-factory export price the Ministry was prepared to make a deduction for PTC's warehousing costs should documented evidence be provided of those costs. The Ministry advised PT Selamat that an adjustment could be made for PTC's cost of operating its warehouses, and at a late stage in the investigation PT Selamat did provide information on PTC's total warehouse costs. However, the nature of some of the costs involved was unclear and the information did not allow the calculation of a per unit cost. PT Selamat was asked to clarify the nature of some costs and to provide information to allow a per unit cost to be calculated, but did not do so. The Ministry had no information from other sources that could form the basis for an adjustment for warehousing costs. No adjustment for warehousing costs has therefore been made.

Quantities

359. An adjustment was made, on the basis of verified information, for the discount from the base price the export customers would receive if they purchased similar volumes as domestic customers. In the absence of any greater verified discounts an adjustment has been made on the basis of the further discount rate granted to of . As sales to are significantly smaller than sales to no deduction from the base price has been made for normal values matched to export sales to .

Normal Values

360. Normal values were established by deducting the adjustments outlined above from base prices.

361. Normal values established on the basis set out above were able to be matched with export prices of oil filters that represented 27 percent of the oil filters manufactured by PT Selamat that were exported to New Zealand during the POI.

362. The range of normal values for PT Selamat is shown in Table 4.4 following paragraph 452.

PT Andhi Chandra Auto

Domestic Sales Distribution

363. No information was provided by PT Andhi on its domestic sales distribution. In the absence of information from PT Andhi the Ministry has assumed that PT Andhi distributes its products for domestic sale in the same manner as does PT Selamat. PT Selamat's domestic sales distribution is discussed in paragraph 344.

Base Prices

364. For the small number of transactions for which export invoices were available, base prices for normal values were established on the basis of information provided by PT Selamat using list prices and standard discounts as outlined in paragraphs 347 to 355.

365. As outlined above under export price, the Ministry does not consider it is reasonable to draw conclusions about whether exports by PT Andhi are dumped using only the small number of transactions for which export invoices are available and which can be matched to normal values using information from PT Selamat.

366. Because of a lack of information from PT Andhi, the Australian exporter and the New Zealand importers, it has not been possible to identify the model of oil filters involved in most of the exports manufactured by PT Andhi. PT Andhi has not provided any information on normal values. It has therefore not been possible to establish normal values under section 5 of the Act. For those transactions for which export invoices were not available, normal values have been established under section 6 of the Act having regard to all available information.

367. Because of the nature of the business undertaken by the New Zealand importers () the Ministry considers it likely that the oil filters imported by these companies will be . For the reasons outlined above at the beginning of section 4.1, GUD has submitted that the oil filters exported by PT Andhi may not be comparable with those exported by PT Selamat from whom normal values have been derived. The Ministry has also calculated from Customs import data over the POI the average value for duty in NZ dollars per oil filter for the exports by PT Andhi and PT Selamat, which is respectively and . The large difference in the unit value for duty strongly suggests that the oil filters exported by PT Andhi are not directly comparable (without adjustment) to those exported by PT Selamat.

368. The Ministry nevertheless considers that the best information available on normal values is that from PT Selamat. Because it was not possible to identify the model types for those exports for which export invoices were not available, the Ministry has established base normal values in relation to these exports, by calculating the weighted average ex-factory normal value of all such normal values established for PT Selamat (the normal values being weighted by the volume exported). The normal value established on this basis is IDR .

Adjustments

Cost of Credit

369. For those transactions for which export invoices were available an adjustment has been made to normal values to reflect PT Andhi's cost of credit. In the absence of information from PT Andhi the adjustment has been applied on the same basis as discussed in paragraph 357.

Warehousing

370. For those transactions for which export invoices were available an adjustment for warehousing could also be possible for PT Andhi, but in the absence of information from PT Selamat (and PT Andhi), no adjustment has been made.

Quantities

371. For those transactions for which export invoices were available an adjustment has been made to normal values on the basis discussed in paragraph 359. This adjustment has been made because sales to the Australian company to whom PT Andhi exports, [REDACTED], are of the same general level as those to [REDACTED].

Physical Differences

372. For the reasons outlined in paragraph 367 above, the Ministry considers that an adjustment for physical differences should be made. The only information available on which to make such an adjustment is the difference in the average value for duty of the oil filters exported by PT Andhi and those exported by PT Selamat, which is likely to reflect physical differences to the extent that they affect the price of the filters.

373. As recorded in paragraph 367 the average value for duty per filter exported by PT Andhi and PT Selamat is respectively [REDACTED] and [REDACTED]. The average value for duty of oil filters exported by PT Andhi is [REDACTED] times that of the oil filters exported by PT Selamat. For those transactions for which no export invoice is available, an adjustment for physical differences has therefore been made by multiplying the base price by [REDACTED] (which when added to the base price gives a final normal value equal to [REDACTED] times the base price).

Normal Values

374. For those transactions for which export invoices were available, normal values were established by deducting the adjustments outlined above for cost of credit, warehousing and quantities from base prices. For those transactions for which no export invoices were available, normal values were established by deducting the adjustment outlined above for physical differences from base prices.

375. Normal values established on the basis set out above were able to be matched with export prices of oil filters that represented 96 percent of the oil filters manufactured by PT Andhi that were exported to New Zealand during the POI.

376. The range of normal values for PT Andhi is shown in Table 4.5 following paragraph 453.

PT Panata Jaya Mandiri.

Domestic Sales Distribution

377. No information was provided by PT Panata on its domestic sales distribution. In the absence of information from PT Panata the Ministry has assumed that PT Panata distributes its products for domestic sale in the same manner as does PT Selamat. PT Selamat's domestic sales distribution is discussed in paragraph 344.

Base Prices

378. Base prices for normal values were established on the basis of information provided by PT Selamat using list prices and standard discounts as outlined in paragraphs 347 to 355.

Adjustments

Cost of Credit

379. An adjustment has been made to normal values to reflect PT Panata's cost of credit. In the absence of information from PT Panata the adjustment has been applied on the same basis as discussed in paragraph 357.

Warehousing

380. An adjustment for warehousing could also be possible for PT Panata, but in the absence of information from PT Selamat (and PT Panata), no adjustment has been made.

Quantities

381. An adjustment was made to normal values on the basis discussed in paragraph 359. This adjustment has been made because sales to the Australian company to whom PT Panata exports; [REDACTED], are of the same general level as those to [REDACTED].

Normal Values

382. Normal values were established by deducting the adjustments outlined above from base prices.

383. Normal values established on the basis set out above were able to be matched with export prices of oil filters that represented 65 percent of the oil filters manufactured by PT Panata that were exported to New Zealand during the POI.

384. The range of normal values for PT Panata is shown in Table 4.6 following paragraph 454.

Korea

June Heung Filter Co. Ltd.

Domestic Sales Distribution

385. June Heung provided only very limited information about its domestic sales distribution. June Heung did advise that it has about [REDACTED] domestic customers, one of whom is [REDACTED] and that sales to its other smaller customers are of a similar value to its sales to Chung Ku.

386. June Heung said most of its customers, including its largest customer [REDACTED], operate outlets at the retail level.

Base Prices

387. Where part numbers equivalent to those exported were sold on the domestic market, base prices were established using invoiced prices provided by June Heung during a verification visit to that company. These domestic selling prices related to sales of oil filters equivalent to the exported part numbers [REDACTED] and [REDACTED].

388. Following the verification visit the Ministry received further submissions from June Heung. These submissions advised that another exported part number, [REDACTED], was very similar to a domestically produced part number, for which it provided an invoice displaying the price of that domestic equivalent. Base prices were also established using the invoiced price for the domestic sale of oil filters equivalent to [REDACTED].

389. The subsequent submissions also contained cost to make and sell information for eight part numbers. These part numbers are the three discussed above ([REDACTED]) as well as five other exported part numbers ([REDACTED]). The information consisted of an amount for production, selling and administration costs and a net profit for each part number. June Heung advised that there were no domestic sales of oil filters equivalent to these five other part numbers.

390. Where there is an absence of sales on the domestic market that would be relevant for the purpose of determining normal values, under section 5(2)(d) of the Act the Chief Executive may determine normal values by taking the cost of production of the goods in that country and, under the assumption that the goods had been sold domestically, add reasonable amounts for selling and distribution costs as well as a reasonable profit margin.

391. The Ministry considers that the information contained in the subsequent submission reflects reasonable amounts for the costs to make and sell the listed part numbers as well as a reasonable profit. The Ministry has based this conclusion on its comparison of the cost and profit information relating to the three part numbers where verifiable invoices are available with the cost and profit of the other five part numbers advised by June Heung. The Ministry considers that the make-up of the costs and profit for the five unverified part numbers fits the cost structure of the three

verified part numbers. This analysis took into account the size and dimensions of the filter as well as production quantities.

392. For the other five part numbers ([REDACTED]), the Ministry has established base prices using the cost to make and sell information provided by June Heung referred to above.

393. The Ministry notes that the information provided by June Heung may not be ideal in all respects but that, in itself, should not justify the Ministry disregarding information, providing the interested party has acted to the best of its ability. (paragraph 5, Annex II of the Agreement).

394. For part numbers other than those discussed above, to the extent that it was possible to match oil filters of the type exported to New Zealand with those sold on the Korean domestic market, normal values have been established on the basis of information provided by GUD in its application for this investigation, as outlined in paragraph 322.

Adjustments

395. No adjustments to the base price have been made. June Heung did advise that it incurred an inland freight cost but no information was provided to quantify this cost and therefore no adjustment has been made.

Normal Values

396. Normal values established on the basis set out above were able to be matched with export prices of oil filters that represented 58 percent of the oil filters manufactured by June Heung that were exported to New Zealand during the POI.

397. The range of normal values for June Heung is shown in Table 4.7 following paragraph 458

Kang Nam Filter Co. Ltd

Domestic Sales Distribution

398. No information was provided by Kang Nam on its domestic sales distribution.

Base Prices

399. Kang Nam did not provide any information on normal values. Base normal values were therefore established, to the extent possible, on the basis of information provided by GUD in its application, as outlined in paragraph 322.

Adjustments

400. Adjustments were made for retail and wholesale margins on the basis of information provided by GUD in its application.

Normal Values

401. Normal values were established by deducting the adjustments outlined above from base prices.

402. Normal values established on the basis set out above were able to be matched with export prices of oil filters that represented 91 percent of the oil filters manufactured by Kang Nam that were exported to New Zealand during the POI.

403. The range of normal values for Kang Nam is shown in Table 4.8 following paragraph 459.

Shin Sung Industrial Ltd***Domestic Sales Distribution***

404. No information was provided by Shin Sung on its domestic sales distribution.

Base Prices

405. Shin Sung did not provide any information on normal values. Base normal values were therefore established, to the extent possible, on the basis of information provided by GUD in its application, as outlined in paragraph 322.

Adjustments

406. Adjustments were made for retail and wholesale margins on the basis of information provided by GUD in its application.

Normal Values

407. Normal values were established by deducting the adjustments outlined above from base prices.

408. Normal values established on the basis set out above were able to be matched with export prices of oil filters that represented 4 percent of the oil filters manufactured by Shin Sung that were exported to New Zealand during the POI.

409. The range of normal values for Shin Sung is shown in Table 4.9 following paragraph 460.

Yuil Air Filter Co Ltd***Domestic Sales Distribution***

410. No information was provided by Yuil on its domestic sales distribution.

Base Prices

411. Yuil did not provide any information on normal values. Base normal values were therefore established, to the extent possible, on the basis of information provided by GUD in its application, as outlined in paragraph 322.

Adjustments

412. Adjustments were made for retail and wholesale margins on the basis of information provided by GUD in its application. Note that there was an error in the calculation of some of these margins in the EFC report. The correction of these errors has resulted in an increase in some normal values and an increase in the weighted average dumping margin for Yuil.

Normal Values

413. Normal values were established by deducting the adjustments outlined above from base prices.

414. Normal values established on the basis set out above were able to be matched with export prices of oil filters that represented 15 percent of the oil filters manufactured by Yuil that were exported to New Zealand during the POI.

415. The range of normal values for Yuil is shown in Table 4.10 following paragraph 461.

Thailand

CT Industry Co. Ltd

Domestic Sale Distribution

416. CT Industry does not sell like goods on the Thai domestic market. However, like goods are sold on the Thai domestic market by its sister company, Siam Filter. Siam Filter sells direct to retail stores in Thailand. It has a large base of domestic customers who purchase small volumes on a frequent basis. Siam Filter advised its Thai customers do not keep a large inventory but prefer to keep enough inventory to serve customers on a daily basis.

Base Prices

417. Siam Filter provided copies of invoices relating to its sales over the POI on the Thai domestic market for equivalent types of oil filters to those exported to New Zealand. The base price is the 'list price' recorded on the invoices.

418. For some of the oil filters exported to New Zealand Siam Filter claimed that it does not sell an equivalent oil filter on the domestic market. For these transactions only, which were relatively small in number, to the extent possible the Ministry has identified which oil filters Siam Filters sells on the Thai domestic market that are equivalent to those exported by CT Industry using the cross reference information provided by GUD. Having identified the oil filters on this basis, base prices were established using the invoiced selling prices for these filters provided by Siam Filter.

Adjustments

Discounts

419. Siam Filter offers various discount rates from [REDACTED] to [REDACTED] percent [REDACTED]. Because none of Siam Filter's customers purchase volumes as large as the New Zealand importers who purchase from CT Industry, an adjustment has been made to increase the discounts to the maximum discount that is offered to a domestic customer.

Cost of Delivery

420. An adjustment has been made for delivery costs, on the basis of verified information.

Normal Values

421. Normal values were established by deducting the adjustments outlined above from base prices.

422. Normal values established on the basis set out above were able to be matched with export prices of oil filters that represented 81 percent of the oil filters manufactured by CT Industry that were exported to New Zealand during the POI.

423. The range of normal values for CT Industry is shown in Table 4.11 following paragraph 465.

[REDACTED] Siam Tennex Manufacturing Ltd

Domestic Sales Distribution

424. [REDACTED] sells oil filters to [REDACTED] in Thailand. [REDACTED] advised that these [REDACTED] are [REDACTED] who are independent companies and that all transactions are at arm's length.

Base Prices

425. [REDACTED] supplied the Ministry with two copies of domestic sale invoices to two Thai [REDACTED] that show, among other data, the part number code, description of good, unit price, unit price after discount and total amount payable. The Ministry has used as its base price the listed unit price of THB [REDACTED] which refers to the sale of the same type of oil filter that is exported to New Zealand.

Adjustments

Discounts

426. [REDACTED] has advised that it offers to its [REDACTED] a discount of [REDACTED] percent [REDACTED] which is offered at different times throughout the year. This is confirmed by the data illustrated on the invoices.

427. [REDACTED] has submitted that [REDACTED] is at a different level of trade to its Thai customers because [REDACTED]. [REDACTED] has claimed that if it [REDACTED] maximum discount received by Thai [REDACTED]. When asked to explain the basis on which this [REDACTED] was quantified, [REDACTED] advised it was its best estimate of what would happen in the Thai market. In the absence of any evidence to support the level of the [REDACTED] claimed by [REDACTED], no adjustment for this [REDACTED] has been made.

428. An adjustment has been made for a discount of [REDACTED] percent [REDACTED]. The [REDACTED] discount adjustment over the POI was THB [REDACTED].

Packing

429. [REDACTED] advised that the packing of oil filters on the domestic market differs to that exported to New Zealand. The Ministry has made an adjustment of THB [REDACTED] per filter for packing.

Inland Freight

430. [REDACTED] advised that it is not charged for inland freight from its supplier Siam Tennex and it invoices its customers on a free into store basis. [REDACTED] advised that the freight charge is THB [REDACTED] per filter and an adjustment has been made at this amount.

Cost of Credit

431. [REDACTED] advised that [REDACTED] days credit is offered on domestic sales and [REDACTED] days of credit is offered from the date of the bill of lading for exports to [REDACTED]. The short term borrowing rate advised by [REDACTED] over the POI was [REDACTED] to [REDACTED] percent, so the Ministry has applied the mid-range figure of [REDACTED] percent. The adjustment over the period of investigation is THB [REDACTED].

Normal Value

432. Normal values were established by deducting the adjustments outlined above from base prices.

433. Normal values established on the basis set out above were able to be matched with export prices of oil filters that represented 100 percent of the oil filters manufactured by Siam Tennex that were exported to New Zealand during the POI.

434. The range of normal values for Siam Tennex is shown in Table 4.12 following paragraph 466.

Denso International Thailand

Domestic Sales Distribution

435. [REDACTED] sells only to Ford dealers in Thailand and therefore appears to operate in the same manner as [REDACTED]. The Ministry considers the level of trade at which prices should be compared is at the [REDACTED] ex-store level.

Base Prices

436. In the absence of information from [REDACTED] and Denso, base prices were established on the basis of information provided by [REDACTED]. The New Zealand importer imported two different part numbers. The Ministry was able to identify domestic sales by [REDACTED] of oil filters equivalent to the two part numbers exported to New Zealand. Base prices are therefore the relevant [REDACTED] on [REDACTED] domestic sales invoices.

Adjustments

Discount

437. An adjustment has been made at the maximum discount allowed by [REDACTED], on the same basis as the adjustment made under [REDACTED] above.

Delivery Cost

438. An adjustment for delivery costs has been made using costs from [REDACTED], on the same basis as the adjustment made under [REDACTED] above. The adjustment is either THB [REDACTED] or THB [REDACTED] per filter.

Margin

439. As a consequence of comparing the normal value at the ex-store level of trade the Ministry has added to the base price an adjustment for [REDACTED] margin based, in the absence of information from [REDACTED], on information supplied by [REDACTED].

Normal Values

440. Normal values were established by adding the adjustment for [REDACTED] margin to base prices and by deducting the other adjustments outlined above from base prices.

441. Normal values established on the basis set out above were able to be matched with export prices of oil filters that represented 100 percent of the oil filters manufactured by Denso that were exported to New Zealand during the POI.

442. The range of normal values for Denso is shown in Table 4.13 following paragraph 467.

4.4 Comparison of Export Price and Normal Value

Dumping Margins

443. The Ministry compared export prices and normal values on a transaction-to-transaction basis. This basis of comparison involves selecting (or, when no information was provided by the exporter, estimating) an appropriate domestic transaction value for comparison with each export transaction value. The Ministry was then able to compare the two values to establish whether or not each transaction was dumped and the extent of any dumping. It should be noted it was not possible in many cases to establish a normal value that could be compared to the export price for particular oil filters. The tables in this section of the report show the full range of export prices established which therefore includes those export prices for which it was not possible to establish a normal value.

444. In most instances export prices and normal values were compared at the ex-factory level, which is the normal point of comparison referred to in Article 2.4 of the Agreement. However, in two instances the point of comparison was at the ex-exporter level as the goods did not effectively enter the domestic market of the country of origin until sold by the exporter. To arrive at the ex-factory and ex-store values, the Ministry made a number of deductions from the base prices. The Ministry has also made adjustments to ensure that a fair comparison was made between export prices and normal values.


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

China

Bengbu Filter Co. Ltd

446. The following table shows the ranges of normal values, export prices and dumping margins, and the weighted average dumping margin and percentage of imports found to be dumped (by volume) where export price and normal value information was available, for Bengbu Filter.

**Table 4.1: Data for Bengbu Filter Co. Ltd
(Chinese Yuan Renminbi)**

| | |
|---------------|--|
| Normal Values |  |
| Export Prices |  |

| | |
|---|--|
| Dumping Margins |  |
| Margins as % of Export Price | -40 to 147 |
| Weighted Average Dumping Margin | 38 |
| % of Imports Dumped Where EP and NV Available | 37 |

Golden Haiye Auto Parts

447. The following table shows the ranges of normal values, export prices and dumping margins, and the weighted average dumping margin and percentage of imports found to be dumped (by volume) where export price and normal value information was available, for Golden Haiye.

**Table 4.2: Data for Golden Haiye Auto Parts
(Chinese Yuan Renminbi)**

| | |
|---|---|
| Normal Values |  |
| Export Prices |  |
| Dumping Margins |  |
| Margins as % of Export Price | 414 |
| Weighted Average Dumping Margin | 414 |
| % of Imports Dumped Where EP and NV Available | 100 |

Zhejiang Universe Filter Co. Ltd

448. The following table shows the ranges of normal values, export prices and dumping margins, and the weighted average dumping margin and percentage of imports found to be dumped (by volume) where export price and normal value information was available, for Zhejiang.

**Table 4.3: Data for Zhejiang Universe Filter Co. Ltd
(Chinese Yuan Renminbi)**

| | |
|---|---|
| Normal Values |  |
| Export Prices |  |
| Dumping Margins |  |
| Margins as % of Export Price | 12 to 151 |
| Weighted Average Dumping Margin | 85 |
| % of Imports Dumped Where EP and NV Available | 100 |

Summary for China

449. Normal values were able to be matched with export prices of oil filters that represented 45 percent of the oil filters imported of Chinese origin from exporters and manufacturers in the sample, over the year ended 30 June 2004.

450. For those imports where sufficient information was available to calculate dumping margins, as a percentage of export prices, dumping margins for subject goods imported of Chinese origin ranged from -40 to 414 percent, with an overall weighted average dumping margin of 185 percent.




451. For those imports where sufficient information was available to calculate dumping margins, 76 percent of the volume of subject goods imported of Chinese origin were found to be dumped.

Indonesia

PT Selamat Sempurna Tbk

452. The following table shows the ranges of normal values, export prices and dumping margins, and the weighted average dumping margin and percentage of imports found to be dumped (by volume) where export price and normal value information was available, for PT Selamat.



**Table 4.4: Data for PT Selamat Sempurna Tbk
(IDR per filter)**

| | |
|---|--|
| Normal Values |  |
| Export Prices |  |
| Dumping Margins |  |
| Margin as % of Export Price | -68 to 497 |
| Weighted Average Dumping Margin | 43 |
| % of Imports Dumped Where EP and NV Available | 96 |

PT Andhi Chandra Auto

453. The following table shows the ranges of normal values, export prices and dumping margins, and the weighted average dumping margin and percentage of imports found to be dumped (by volume) where export price and normal value information was available, for PT Andhi.




**Table 4.5: Data for PT Andhi Chandra Auto
(IDR per filter)**

| | |
|---|--|
| Normal Values |  |
| Export Prices |  |
| Dumping Margins |  |
| Margin as % of Export Price | -66 to 1,218 |
| Weighted Average Dumping Margin | 119 |
| % of Imports Dumped Where EP and NV Available | 96 |

PT Panata Jaya Mandiri

454. The following table shows the ranges of normal values, export prices and dumping margins, and the weighted average dumping margin and percentage of imports found to be dumped (by volume) where export price and normal value information was available, for PT Panata.

**Table 4.6: Data for PT Panata Jaya Mandiri
(IDR per filter)**

| | |
|---|--|
| Normal Values |  |
| Export Prices |  |
| Dumping Margins |  |
| Margin as % of Export Price | -61 to 324 |
| Weighted Average Dumping Margin | 60 |
| % of Imports Dumped Where EP and NV Available | 86 |

Summary for Indonesia

455. Normal values were able to be matched with export prices of oil filters that represented 36 percent of the oil filters imported of Indonesian origin from exporters and manufacturers in the sample, over the year ended 30 June 2004.

456. For those imports where sufficient information was available to calculate dumping margins, as a percentage of export prices, dumping margins for subject goods imported of Indonesian origin ranged from -68 to 1,218 percent, with an overall weighted average dumping margin of 68 percent.


457. For those imports where sufficient information was available to calculate dumping margins, 94 percent of the volume of subject goods imported of Indonesian origin were found to be dumped.

Korea

June Heung Filter Co. Ltd

458. The following table shows the ranges of normal values, export prices and dumping margins, and the weighted average dumping margin and percentage of imports found to be dumped (by volume) where export price and normal value information was available, for June Heung.

**Table 4.7: Data for June Heung Filter Co. Ltd
(Korean Won per filter)**

| | |
|---|--|
| Normal Values |  |
| Export Prices |  |
| Dumping Margins |  |
| Margin as % of Export Price | -16 to 276 |
| Weighted Average Dumping Margin | 12 |
| % of Imports Dumped Where EP and NV Available | 55 |

Kang Nam Filter Co. Ltd

459. The following table shows the ranges of normal values, export prices and dumping margins, and the weighted average dumping margin and percentage of imports found to be dumped (by volume) where export price and normal value information was available, for Kang Nam.




**Table 4.8: Data for Kang Nam Filter Co. Ltd
(Korean Won per filter)**

| | |
|---|--|
| Normal Values |  |
| Export Prices |  |
| Dumping Margins |  |
| Margin as % of Export Price | 50 to 56 |
| Weighted Average Dumping Margin | 54 |
| % of Imports Dumped Where EP and NV Available | 100 |

Shin Sung Industrial Ltd

460. The following table shows the ranges of normal values, export prices and dumping margins, and the weighted average dumping margin and percentage of imports found to be dumped (by volume) where export price and normal value information was available, for Shin Sung.



**Table 4.9: Data for Shin Sung Industrial Ltd
(Korean Won per filter)**

| | |
|---|--|
| Normal Values |  |
| Export Prices |  |
| Dumping Margins |  |
| Margin as % of Export Price | All 15 |
| Weighted Average Dumping Margin | 15 |
| % of Imports Dumped Where EP and NV Available | 100 |

Yuil Air Filter Co Ltd

461. The following table shows the ranges of normal values, export prices and dumping margins, and the weighted average dumping margin and percentage of imports found to be dumped (by volume) where export price and normal value information was available, for Yuil.

**Table 4.10: Data for Yuil Air Filter Co. Ltd
(Korean Won per filter)**

| | |
|---|--|
| Normal Values |  |
| Export Prices |  |
| Dumping Margins |  |
| Margin as % of Export Price | 82 to 240 |
| Weighted Average Dumping Margin | 155 |
| % of Imports Dumped Where EP and NV Available | 100 |

Summary for Korea

462. Normal values were able to be matched with export prices of oil filters that represented 48 percent of the oil filters imported of Korean origin from exporters and manufacturers in the sample, over the year ended 30 June 2004.

463. For those imports where sufficient information was available to calculate dumping margins, as a percentage of export prices, dumping margins for subject goods imported of Korean origin ranged from -16 to 276 percent, with an overall weighted average dumping margin of 25 percent.

464. For those imports where sufficient information was available to calculate dumping margins, 63 percent of the volume of subject goods imported of Korean origin were found to be dumped.

Thailand

CT Industry Co., Ltd

465. The following table shows the ranges of normal values, export prices and dumping margins, and the weighted average dumping margin and percentage of imports found to be dumped (by volume) where export price and normal value information was available, for CT Industry.



**Table 4.11: Data for CT Industry Co. Ltd
(Thai Baht per filter)**

| | |
|---|-----------|
| Normal Values | |
| Export Prices | |
| Dumping Margins | |
| Margins as % of Export Price | -67 to 26 |
| Weighted Average Dumping Margin | -21 |
| % of Imports Dumped Where EP and NV Available | 6 |

Siam Tennex Manufacturing Ltd

466. The following table shows the ranges of normal values, export prices and dumping margins, and the weighted average dumping margin and percentage of imports found to be dumped (by volume) where export price and normal value information was available, for Siam Tennex.

**Table 4.12: Data for Siam Tennex Manufacturing Ltd
(Thai Baht per filter)**

| | |
|---|--|
| Normal Values |  |
| Export Prices |  |
| Dumping Margins |  |
| Margins as % of Export Price | 10 to 27 |
| Weighted Average Dumping Margin | 19 |
| % of Imports Dumped Where EP and NV Available | 100 |

Denso International Thailand

467. The following table shows the ranges of normal values, export prices and dumping margins, and the weighted average dumping margin and percentage of imports found to be dumped (by volume) where export price and normal value information was available, for Denso.

**Table 4.13: Data for Denso International Thailand Ltd
(Thai Baht per filter)**

| | |
|---|--|
| Normal Values |  |
| Export Prices |  |
| Dumping Margins |  |
| Margins as % of Export Price | -59 to -34 |
| Weighted Average Dumping Margin | -48 |
| % of Imports Dumped Where EP and NV Available | Nil |

Summary for Thailand

468. Normal values were able to be matched with export prices of oil filters that represented 86 percent of the oil filters imported of Thai origin from exporters and manufacturers in the sample, over the year ended 30 June 2004.

469. For those imports where sufficient information was available to calculate dumping margins, as a percentage of export prices, dumping margins for subject goods imported of Thai origin ranged from -67 to 40 percent, with an overall weighted average dumping margin of -15 percent (not dumped).

470. For those imports where sufficient information was available to calculate dumping margins, 30 percent of the volumes of subject goods imported of Thai origin were found to be dumped.

4.5 Volume of Dumped Imports

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

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

472. The volume of dumped and non-dumped goods from the four countries under investigation as well as imports from other countries, for the POI from 1 July 2003 to 30 June 2004, and the percentage that dumped and non dumped imports of the subject goods represent of total imports, is shown in Table 4.14.

Table 4.14: Volume of Dumped Imports

| | Volume | Dumped & Non-Dumped Imports as % Total Imports of Like Goods |
|----------------------------------|-----------|--|
| Dumped imports from China | 146,895 | 6% |
| Dumped imports from Indonesia | 226,548 | 10% |
| Dumped imports from Korea | 131,869 | 6% |
| Dumped imports from Thailand | 75,964 | 3% |
| Non-dumped imports from China | 47,325 | 2% |
| Non-dumped imports Indonesia | 15,119 | 1% |
| Non-dumped imports from Korea | 76,616 | 3% |
| Non-dumped imports from Thailand | 180,880 | 8% |
| Other imports | 1,460,749 | 62% |
| Total imports | 2,361,965 | |

473. On the basis of this information, dumped imports of the subject goods from China, Indonesia, Korea and Thailand are not negligible.

4.5 Conclusions Relating to Dumping

474. The Ministry concludes that oil filters imported from China, Indonesia, Korea and Thailand over the POI have been dumped.

5. Evidence of Injury

5.1 Material Injury

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

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

- (a) The volume of imports of the dumped or subsidised goods; and
- (b) The effect of the dumped or subsidised goods on prices in New Zealand for like goods; and
- (c) The consequent impact of the dumped or subsidised goods on the relevant New Zealand industry.

476. The Ministry interprets this to mean that injury is to be considered in the context of the impact on the industry arising from the volume of the dumped goods and their effect on prices. In the case of threat of material injury the Ministry considers the likely effect on the industry, of future volumes of dumped goods and their effect on prices. This is consistent with Article 3 of the Agreement.

477. The Act, in section 8, sets out a number of factors and indices which the Chief Executive shall have regard to, although noting that this is without limitation as to the matters the Chief Executive may consider, including:

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

changes in the patterns of consumption, trade restrictive practices, developments in technology and the export performance and productivity of the domestic industry.

478. The demonstration of a causal relationship between the dumped imports and the injury, or threat thereof, must be based on an examination of all relevant evidence and any known factors other than the dumped imports, which are injuring, or threatening to injure, the domestic industry. Any injury caused or threatened by factors other than dumping must not be attributed to the dumped imports.

479. GUD claimed in its application that as a result of allegedly dumped imports material injury is resulting from price undercutting, price suppression and price depression which has caused declines in sales volume and revenue, market share and profits. GUD has stated that material injury became evident in the year ended June 2003.

480. The historical financial information and import information in the injury analysis section of this report is presented in years ended 30 June, which aligns with GUD's financial year, and covers the period from 1 July 2000 to 30 June 2004.

481. GUD provided the Ministry with financial information as requested for the purposes of injury analysis. GUD utilises a standard cost system and the financial information provided relating specifically to oil filters is based on standard costs. Variances from the standard are not significant and standards are updated constantly to reflect changes in productivity and costs.

5.2 Cumulation

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

483. Article 3.3 of the Agreement states as follows:

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

484. The circumstances in Article 3.3 exist in this case, namely that the dumped imports from each country are not negligible, the dumping margins are more than *de minimis*, and imports from China, Indonesia, Korea and Thailand compete with each other and with like product produced by the NZ industry and share the same distribution channels. (As noted in section 3.1 above under "Like Goods" Honda NZ

has commented in response to the EFC report that it does not distribute the oil filters it imports in the same way as GUD distributes its oil filters. The Ministry considers, however, that should Honda NZ purchase oil filters from GUD they would be distributed in the same way as the imported filters. As also noted under "Price Undercutting" in section 5.4 above, the Ministry considers that the oil filters imported by Honda NZ do compete with those manufactured by GUD at the ex-wharf level). The Ministry is therefore satisfied that the injurious effects of the imports from China, Indonesia, Korea and Thailand may be cumulated, and has accordingly assessed the effects of dumped imports from the four countries on a cumulative basis.















































5.3 Import Volumes

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

486. Table 5.1 shows the volume of subject goods imports into New Zealand that are dumped and compares them with GUD's sales and the total New Zealand market. Import data has been adjusted to remove figures for non-subject goods. Dumping has been established for imports of the subject goods from China, Indonesia, Korea and Thailand for the POI, with 75.63, 93.74, 63.25 and 29.58 percent of imports respectively from China, Indonesia, Korea and Thailand found to be dumped. For the purpose of Table 5.1 it has been assumed that the same proportion of imports of the subject goods from each country was dumped for the other periods shown. Total import volumes in 2004 for China, Indonesia, Korea and Thailand have been adjusted for differences found between Customs data and suppliers invoices, as outlined in paragraphs 140 and 141 above.





Table 5.1: Import Volumes (Tonnes)

| | 2001 | 2002 | 2003 | 2004 |
|---------------------------------|-----------|-----------|-----------|-----------|
| Dumped Imports from China | 450 | 13,230 | 54,153 | 146,895 |
| Dumped Imports from Indonesia | 145,089 | 85,218 | 237,968 | 226,548 |
| Dumped Imports from Korea | 67,291 | 100,798 | 117,963 | 131,869 |
| Dumped Imports from Thailand | 26,599 | 34,489 | 45,902 | 75,964 |
| Total Dumped Imports | 239,429 | 233,735 | 455,986 | 581,275 |
| Other Imports | 1,522,890 | 1,643,642 | 1,761,024 | 1,780,689 |
| Total Imports | 1,762,319 | 1,877,377 | 2,217,010 | 2,361,965 |
| NZ Industry Sales | | | | |
| NZ Market | | | | |
| <u>Change on previous year:</u> | | | | |
| Dumped Imports from China | | 12,780 | 40,924 | 92,742 |
| Dumped Imports from Indonesia | | -59,871 | 152,750 | -11,420 |
| Dumped Imports from Korea | | 33,507 | 17,164 | 13,906 |
| Dumped Imports from Thailand | | 7,890 | 11,413 | 30,063 |
| Total Dumped Imports | | -5,694 | 222,251 | 125,289 |
| Other Imports | | 120,752 | 117,382 | 19,665 |
| Total Imports | | 115,058 | 339,633 | 144,955 |
| NZ Industry Sales | | | | |
| NZ Market | | | | |

| <u>Percentage Change:</u> | | | | |
|---|---|---|---|---|
| Dumped Imports from China | | 2840% | 309% | 171% |
| Dumped Imports from Indonesia | | -41% | 179% | -5% |
| Dumped Imports from Korea | | 50% | 17% | 12% |
| Dumped Imports from Thailand | | 30% | 33% | 65% |
| Total Dumped Imports | | -2% | 95% | 27% |
| Other Imports | | 8% | 7% | 1% |
| Total Imports | | 7% | 18% | 7% |
| NZ Industry Sales | |  |  |  |
| NZ Market | |  |  |  |
| <u>China Dumped Imports as a Percentage of:</u> | | | | |
| NZ Industry Sales |  |  |  |  |
| NZ Market |  |  |  |  |
| <u>Indonesia Dumped Imports as a Percentage of:</u> | | | | |
| NZ Industry Sales |  |  |  |  |
| NZ Market |  |  |  |  |
| <u>Korean Dumped Imports as a Percentage of:</u> | | | | |
| NZ Industry Sales |  |  |  |  |
| NZ Market |  |  |  |  |
| <u>Thai Dumped Imports as a Percentage of:</u> | | | | |
| NZ Industry Sales |  |  |  |  |
| NZ Market |  |  |  |  |
| <u>Total Dumped Imports as a Percentage of:</u> | | | | |
| NZ Industry Sales |  |  |  |  |
| NZ Market |  |  |  |  |

487. There have been significant increases in the volumes of dumped imports both in absolute terms and relative to New Zealand production and consumption since the pre-injury period of 2002.

488. Between 2002 and 2004 the volumes of dumped imports from each country increased significantly in absolute terms. Between 2002 and 2004, volumes of dumped imports from China increased by 1,010 percent, from Indonesia increased by 166 percent, from Korea increased by 31 percent, from Thailand increased by 120 percent, and in total from all four sources increased by 149 percent.

489. Between 2002 and 2004, total volumes of dumped imports increased relative to New Zealand production from  percent to  percent, and increased relative to consumption for each country of export and in total. Relative to consumption, volumes of dumped imports increased from  percent in 2002 to  percent in 2004.

5.4 Price Effects

Price Undercutting

490. *Section 8(2)(b) of the Act provides that the Chief Executive shall have regard to the extent to which the prices of the dumped goods represent significant price undercutting, in relation to prices in New Zealand (at the relevant level of trade) for like goods of New Zealand producers.*

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

492. In order to assess price undercutting, prices of the imported and domestically manufactured product must be compared at the same level of trade to ensure that the existence and extent of any price undercutting is correctly assessed. In determining the correct level of trade the Ministry looks at the first point at which the imported and domestically manufactured products compete in the New Zealand market.

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

494. As competition does not mean that a sale has to occur “prices of the dumped goods”, as expressed in s8(2)(b) of the Act, does not mean that “prices” have to be demand based sell prices that have been achieved in a sale, but can also be a reference to the prices of the dumped goods in New Zealand at which they have been purchased and transported to New Zealand, that is, the buy price of the importer once it has been adjusted in order for fair comparison with the prices of the local manufacturer. Any other interpretation of the price in New Zealand would shift the price effects analysis away from the dumped goods and further towards the actions of the importers.

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

496. An indication of whether the prices of dumped imports are undercutting the prices of the New Zealand industry is provided by comparing the average cost, insurance and freight (CIF) values for each country from import data with GUD's

average ex-factory price. The comparison will necessarily be relatively crude because it does not take account of the possible different mixes of filters from each source and it includes some non-dumped imports from the four subject countries. However, given the complexity and administrative difficulty of comparing numerous different prices from many exporters, the comparison can be undertaken, is broadly indicative, and can be tested for validity against selected actual price comparisons (shown in the following paragraphs). The broad comparison indicates that imports from all four countries are undercutting GUD's prices by the following margins: China [REDACTED]%, Indonesia [REDACTED]%, Korea [REDACTED]%, and Thailand [REDACTED]%.

497. The analysis of actual prices is limited by the lack of response of a number of exporters and importers. Price comparisons have only been calculated where importers have provided sufficient information to allow dumped goods to be identified. Where information on importers' cost-build-ups to ex-wharf have not been provided the Ministry has used information provided by other importers. Because of the large numbers of filters involved and the complexity and time involved in making comparisons of all filter models, the Ministry has limited its analysis to comparison of prices with GUD's 20 top selling oil filters, which account for a significant proportion, [REDACTED] percent, of GUD's domestic sales.

498. The analysis has compared the prices of oil filters from 14 of the 28 importers, with comparative import volumes representing between 1 and 84 percent of volumes of equivalent models sold by GUD, and 8 percent of dumped imports from China, 22 percent of dumped imports from Indonesia, 7 percent of dumped imports from Korea, and 81 percent of dumped imports from Thailand.

499. GUD sells like goods predominantly to distributors who on-sell. GUD advised initially that importers sell to the same customers (distributors) as GUD and compared ex-factory prices with importers' ex-store prices. GUD advised later that importers could purchase from GUD because it has no criteria restricting sales to certain volume levels and that the correct comparison was GUD's ex-factory prices with importers' ex-wharf prices. Three importers, [REDACTED], Repco and [REDACTED] sell mainly to wholesalers and also purchase from GUD. Ashland New Zealand Ltd (Ashland) sells mainly to retailers, but also makes significant sales to wholesalers. Ashland has made a choice to import rather than purchase from GUD or Repco. Cable Price also appears to sell to wholesalers. Honda NZ makes nearly all of its sales to Honda dealers. In the EFC report the Ministry considered that the choices that Ashland, [REDACTED], Repco, [REDACTED], Cable Price and Honda NZ face are whether to import or purchase from GUD, and therefore concluded in the EFC that the appropriate comparison for these companies is between GUD's ex-factory price and the ex-wharf price for imports.

500. In response to the EFC report Honda NZ made a submission disagreeing with the Ministry's conclusion that ex-wharf was the appropriate level of trade at which to compare its prices with those of GUD and submitted that ex-store is the relevant level of trade. In its submission Honda NZ said:

- It does not offer prices or present the goods to the local market at the ex-wharf level.
- GUD has not offered it ex-factory prices.

- There is no competition between GUD and Honda NZ at the ex-factory/ex-wharf level.
- It does not import and sell on an indent basis ex-wharf, demonstrating that it is at another level of trade.
- It does [REDACTED] trade as do other importers because [REDACTED] dealers in the [REDACTED] of Honda vehicles.
- It does not actively pursue GUD customers.
- It does not have any sales representatives in the local market supply chain.

501. As noted in paragraphs 493 to 495 above, a sale does not necessarily have to occur at the first point of competition within a market and price undercutting looks at the injurious effects of the dumped imports (not the importer's actions or selling prices). The Ministry notes that [REDACTED]. There is therefore no competition at the Honda NZ ex-store level between GUD and Honda NZ as the [REDACTED] from Honda NZ. The evidence put forward by Honda NZ strongly suggests that the first point of competition is the decision by Honda NZ whether to import or to source from GUD, which effectively places the first point of competition at the ex-wharf level for Honda NZ. The Ministry therefore concludes that ex-wharf is the relevant level of trade at which Honda NZ's imports should be compared to GUD's ex-factory prices.

502. Eastsea Enterprise and Partmaster sell predominantly to retailers and could presumably choose to purchase from GUD ex-factory, from distributors ex-store in New Zealand or from overseas suppliers. Automotive Supplies also sells predominantly to retailers and purchases from GUD in addition to importing. While Partmaster refers to GUD refusing to supply Ryco brand filters, there is no indication that GUD will not supply filters to Eastsea Enterprise, or filters other than Ryco to Partmaster. The appropriate comparison for these companies has been made between GUD's ex-factory price and the ex-wharf price for imports.

503. Honda NZ has submitted that it is not undercutting the price of oil filters sold by GUD that are equivalent to the oil filter it imports, either at the ex-wharf or ex-store level of trade. This submission is based on Honda NZ's estimate of GUD's ex-factory selling price. The Ministry's comparison of prices based on GUD's actual selling prices shows that there is price undercutting by Honda NZ at the ex-wharf level, and the summary in Appendix 1 of the price undercutting analysis includes Honda NZ.

504. Honda NZ has further submitted that it is unfair to compare the oil filter it imports with GUD's top 20 selling oil filters. Honda NZ has submitted that a fairer comparison would be with GUD's model numbers Z148X, Z426, Z436 and Z42. The Ministry's observes that in making a price comparison with GUD's top 20 selling oil filters, it has not made the comparison with all of GUD's top 20 selling oil filters, but rather has made the comparison with only those oil filters in the top 20 that are equivalent to the imported oil filter. In the case of the oil filter imported by Honda NZ,

the comparison has been made with a filter that is listed by Honda NZ and which is the lowest priced of the filters listed and therefore represents the lowest level of price undercutting that could be obtained from using the equivalent GUD oil filters listed by Honda NZ.

505. Honda NZ has made a submission in response to the paragraph above which was contained in the EFC report. Honda NZ said the Ministry has been unfair in the price undercutting methodology it used in relation to Honda NZ because the Ministry has made the comparison with one GUD filter whereas for other importers the Ministry has used average prices. Honda NZ said “. . . the Ministry should have applied a fair comparison in assessing price undercutting by taking into account the averages of the four GUD filters, namely Z148X, Z426, Z436 and Z42 and not just the lowest priced oil filter.”

506. The Ministry notes that in the EFC report (and in this report) it has compared one model of imported oil filter with the equivalent one model of oil filter produced by GUD. The references in the EFC report (and in this report) to weighted averages are to the weighted average import prices of the one model of filter, the weighting being necessary where either import prices by one importer have varied during the POI or where import prices for the same filter by more than one importer have varied, or because of a combination of the two. The same methodology has therefore been used for imports by Honda NZ as were used for all other importers.

507. Price undercutting analysis is summarised in **Appendix 1**. For the year ended June 2004, weighted-average prices of imports at the ex-wharf level have been compared with the New Zealand industry's average ex-factory prices for the same period. On this basis, 100% of the imports from China, Korea and Thailand and 98% of the imports from Indonesia are undercutting the New Zealand industry's actual 2004 prices. Dumped imports from China are undercutting GUD's prices by between 10% and 15% percent (as a percentage of the NZ industry's selling price), dumped imports from Indonesia by between 10% and 15% percent, dumped imports from Korea by between 10% and 15% percent, and dumped imports from Thailand by between 10% and 15% percent. Notwithstanding the weighted-average calculations, some isolated goods are not undercutting GUD's ex-factory prices.

508. In a situation where dumping has caused price depression and/or price suppression (as is the case described in the following paragraphs), the Ministry may consider the extent to which imports are undercutting the NZ industry's unsuppressed selling prices or non-injurious price (NIP), that is prices which would have existed in the absence of dumping. GUD considers that its average prices for 2002 should be considered to be unsuppressed selling prices on the basis that those prices reasonably represent what would be achieved, all other things being equal, in the absence of dumped goods.

509. On this basis, there is price undercutting of GUD's NIP. Dumped imports from China are undercutting GUD's NIPs by between 10% and 15% percent (as a percentage of the NZ industry's unsuppressed selling price), dumped imports from Indonesia by between 10% and 15% percent, dumped imports from Korea by between 10% and 15% percent, and dumped imports from Thailand by between 10% and 15% percent.

Conclusion on Price Undercutting

510. Dumped oil filters from China, Indonesia, Korea and Thailand have significantly undercut GUD’s actual and non-injurious prices.

Price Depression

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

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

513. The following table shows GUD’s average net selling price per oil filter.

Table 5.2: Average Selling Prices Per Oil Filter

| | 2001 | 2002 | 2003 | 2004 |
|-------------------------------|------|------|------|------|
| Sales revenue (\$/oil filter) | █ | █ | █ | █ |
| Change on previous year | | █ | █ | █ |
| % Change on previous year | | █ | █ | █ |
| % of 2002 | █ | | █ | █ |

514. At an aggregate level of analysis, GUD’s sales revenue per unit figures (net of █ but including freight which is considered to be relatively negligible) increased until 2003 and in 2004 have decreased to a level slightly lower than in 2002.

515. █

516. If █, there would be no indication of price depression. The investigating team considers that the █

517. Comparison of the average prices of GUD’s 75 top-selling filters (█ percent of sales volume) in 2004 with their prices in 2002 shows that █ of the 75 prices were lower in 2004 by between █ and █ percent. The average prices of all of the 23 top-selling oil filters (representing █ percent of sales volume) were lower in 2004. Most prices have been depressed.

Conclusion on Price Depression

518. There is evidence that prices have been slightly depressed since 2002.

Price Suppression

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

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

521. The following table shows GUD's gross profit, EBIT, cost of production and selling and administration expenses relative to sales revenue, on a per oil filter basis.

Table 5.3: Price Suppression: Revenue and Gross and Net Margins

| | 2001 | 2002 | 2003 | 2004 |
|-----------------------------|------------|------------|------------|------------|
| Sales revenue | ██████████ | ██████████ | ██████████ | ██████████ |
| Gross profit | ██████████ | ██████████ | ██████████ | ██████████ |
| EBIT | ██████████ | ██████████ | ██████████ | ██████████ |
| Cost of production | ██████████ | ██████████ | ██████████ | ██████████ |
| Selling & admin. expenses | ██████████ | ██████████ | ██████████ | ██████████ |
| As % of sales revenue: | | | | |
| - Gross profit | ██████████ | ██████████ | ██████████ | ██████████ |
| - EBIT | ██████████ | ██████████ | ██████████ | ██████████ |
| - Cost of production | ██████████ | ██████████ | ██████████ | ██████████ |
| - Selling & admin. expenses | ██████████ | ██████████ | ██████████ | ██████████ |

522. At the same time as prices have been depressed, GUD's cost of production and selling and administration expenses per filter have been increasing and gross profit and EBIT have been decreasing, indicating that prices are being suppressed. The gross margin and EBIT as a percentage of sales revenue respectively declined from ██████ and ██████ percent in 2002 to ██████ and ██████ percent in 2004.

523. For price undercutting purposes, GUD's NIP has been taken as its average net selling price for each oil filter. GUD's average selling price across all oil filters for 2002, as shown in Table 5.3 above can therefore be taken as GUD's average NIP. When comparing GUD's costs to its NIP there would still be evidence of significant price suppression. Using the NIP, gross profit and EBIT would represent respectively ██████ and ██████ percent of revenue in 2004, only slightly higher than

the [REDACTED] and [REDACTED] percent they respectively occupy when using actual prices. Assuming that in the absence of dumped imports, prices in 2004 would not have risen beyond the levels achieved in 2002, the analysis in the previous sentence indicates that most of the price suppression cannot be attributed to dumped imports.

Conclusion on Price Suppression

524. There is evidence indicating that prices have been suppressed since 2002, but nearly all of the price suppression would have occurred even if GUD had been able to maintain its prices at the non-injurious 2002 level, indicating that most of the price suppression may not be attributable to dumped imports.

Conclusion on Price Effects

525. There is evidence of significant price undercutting by dumped imports from the four countries under investigation. At the same time there is evidence of only a small amount of price depression, and while there is evidence of significant price suppression, most of this may not be attributable to dumped imports.

526. The evidence therefore indicates that GUD has chosen not to reduce its prices, on average, to any significant extent in the face of price undercutting by imports. The Ministry notes that it is not necessary for significant price depression and suppression attributable to dumped imports to be present in order for a finding to be made that dumped imports have been a cause of material injury to a New Zealand industry. A New Zealand industry's approach to competing on price with dumped imports will vary from case to case and will be reflected in the way in which any economic impact from dumped imports is manifested in the various injury factors that the Ministry must consider, the results of which are shown in section 5.5 below.

5.5 Economic Impact

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

- (i) Actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilisation of production capacity; and*
- (ii) Factors affecting domestic prices; and*
- (iii) The magnitude of the margin of dumping; and*
- (iv) Actual and potential effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments.*

Output and Sales

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

Sales Volume and Revenue

529. GUD has advised that its production volume "closely follows sales and therefore there is no need to do a separate analysis of output". Table 5.4 below shows GUD's sales volume and revenue from oil filters manufactured in New Zealand and sold on the New Zealand domestic market.

Table 5.4: Sales Volume and Revenue

| | 2001 | 2002 | 2003 | 2004 |
|---------------------------|------------|------------|------------|------------|
| Sales volume | ██████████ | ██████████ | ██████████ | ██████████ |
| - Change on previous year | | ██████████ | ██████████ | ██████████ |
| - % change | | ██████████ | ██████████ | ██████████ |
| - % of 2002 | ██████████ | | | |
| Sales revenue | ██████████ | ██████████ | ██████████ | ██████████ |
| - Change on previous year | | ██████████ | ██████████ | ██████████ |
| - % change | | ██████████ | ██████████ | ██████████ |
| - % of 2002 | ██████████ | | | |
| Revenue per oil filter | ██████████ | ██████████ | ██████████ | ██████████ |
| - Change on previous year | | ██████████ | ██████████ | ██████████ |
| - % change | | ██████████ | ██████████ | ██████████ |
| - % of 2002 | ██████████ | | | |
| % Change in NZ market | | ██████████ | ██████████ | ██████████ |

530. From 2001 to 2002 GUD's sales volume and revenue increased in line with the increase in the total New Zealand market. From 2002 to 2004 the New Zealand market increased by ██████ percent, but over the same period GUD's sales volumes and sales revenues have decreased significantly (by ██████ and ██████ percent respectively). This sales pattern, combined with an overall decline in revenue per filter, indicates that, despite small price decreases, GUD has not been able to retain sales and market share.

531. The loss of sales revenue between 2002 and 2004 is largely due to the drop in sales volume with only approximately ██████ percent being attributable to depression of prices. The significant loss of sales volume (and consequent loss of sales revenue) is consistent with the findings on price effects that show significant price undercutting but only slight price depression and little price suppression attributable to dumped imports.

Conclusion on Output and Sales

532. There is evidence of a significant loss of sales volume between 2002 and 2004 which occurred when the New Zealand market grew by ██████ percent over the same period. There is also evidence of a significant loss of sales revenue between 2002 and 2004 which is largely as a result of the loss of sales volume.

Market Share

533. The analysis of market share must take account of changes in the growth of the market as a whole. A decline in the share of the market held by the domestic

industry, in a situation where the market as a whole is growing, will not necessarily indicate that injury is being caused to the domestic industry, particularly if the domestic industry's sales are also growing. There is no "entitlement" to a particular market share.

534. The table below shows market share and changes in market share. Non-dumped imports from the four countries under investigation are included in the "other imports" figures.

**Table 5.5: Market Share
(Numbers of Oil Filters)**

| | 2001 | 2002 | 2003 | 2004 |
|---------------------------------|-----------|-----------|-----------|-----------|
| Dumped imports from China | 450 | 13,230 | 54,153 | 146,895 |
| Dumped imports from Indonesia | 145,089 | 85,218 | 237,968 | 226,548 |
| Dumped imports from Korea | 67,291 | 100,798 | 117,963 | 131,869 |
| Dumped imports from Thailand | 26,599 | 34,489 | 45,902 | 75,964 |
| Total dumped imports | 239,429 | 233,735 | 455,986 | 581,275 |
| Other imports | 1,522,890 | 1,643,642 | 1,761,024 | 1,780,689 |
| NZ industry sales | | | | |
| NZ market | | | | |
| Change in volume: | | | | |
| - Dumped imports from China | | 12,780 | 40,924 | 92,742 |
| - Dumped imports from Indonesia | | -59,871 | 152,750 | -11,420 |
| - Dumped imports from Korea | | 33,507 | 17,164 | 13,906 |
| - Dumped imports from Thailand | | 7,890 | 11,413 | 30,063 |
| - Total dumped imports | | -5,694 | 222,251 | 125,289 |
| - Other imports | | 120,752 | 117,382 | 19,665 |
| - NZ industry sales | | | | |
| - NZ market | | | | |
| % share held by: | | | | |
| - Dumped imports from China | | | | |
| - Dumped imports from Indonesia | | | | |
| - Dumped imports from Korea | | | | |
| - Dumped imports from Thailand | | | | |
| - Total dumped imports | | | | |
| - Other imports | | | | |
| - NZ industry sales | | | | |

535. The size of the New Zealand oil filters market has been increasing gradually, and between 2002 and 2004 grew by █ percent. Between 2002 and 2004, the market share of dumped imports increased significantly by █ percentage points at the expense mainly of GUD, which experienced a decline in market share of █ percentage points, while the market share of other imports declined by █ percent.

536. Between 2002 and 2004, China's market share of dumped imports increased from █ to █ percent, Indonesia's share increased from █ to █ percent, Korea's share increased from █ to █ percent and Thailand's share increased from █ to █ percent.

537. The loss of market share held by GUD is consistent with the findings on price effects, i.e., that reducing prices by only a small amount in the face of significant price undercutting is likely to result in a loss of market share.

Conclusion on Market Share

538. There is evidence that there has been a significant decline between 2002 and 2004 in the market share held by GUD, which is largely attributable to dumped imports.

Profits

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

540. The table below shows an analysis of the earnings before interest and tax (EBIT) achieved by GUD on sales of oil filters manufactured in New Zealand and sold on the New Zealand domestic market.

Table 5.6: Earnings Before Interest and Tax

| | 2001 | 2002 | 2003 | 2004 |
|---------------------------|------------|------------|------------|------------|
| EBIT | ██████████ | ██████████ | ██████████ | ██████████ |
| - Change on previous year | | ██████████ | ██████████ | ██████████ |
| - % of 2002 | ██████████ | | | |
| - % of revenue | ██████████ | | | |
| EBIT per oil filter | | ██████████ | ██████████ | ██████████ |
| - Change on previous year | | | ██████████ | ██████████ |
| - % of 2002 | ██████████ | | | |

541. There has been a significant decline in GUD's profits. Since 2002, EBIT has declined sharply and significantly in absolute terms, relative to sales revenue and on a per unit basis. Between 2002 and 2004, total EBIT declined by ██████ percent from ██████ percent of sales revenue in 2002 to ██████ percent in 2004.

542. The decline in EBIT is due to a combination of a loss of volume and a reduction in the EBIT per oil filter. The reduction in EBIT per oil filter from 2002 to 2004 was \$ ██████. At the sales volume achieved in 2004, this represents a loss of EBIT of \$ ██████ or ██████ percent of the reduction in total EBIT from 2002 to 2004, indicating that the reduction in EBIT per oil filter has been more significant than the loss of sales volume. The reduction in EBIT per oil filter results largely from price suppression (and a small price depression), i.e., costs per oil filter increasing faster than sales revenue per oil filter. It has been concluded above that most of the price suppression may not be attributable to dumped imports, as there would still have been significant price suppression at GUD's NIP.

Conclusion on Profits

543. While there has still been a significant loss of EBIT due to a loss of sales volume (which can be attributed to dumped imports), the greater part of the loss of EBIT has resulted from suppression of prices that may not be attributable to dumped imports. This indicates that factors other than dumped imports have also had a significant impact on GUD's profits.

Productivity

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

545. Table 5.7 below shows the annual sales volume of oil filters per employee engaged in production.

Table 5.7: Sales Volume per Production Employee

| | 2001 | 2002 | 2003 | 2004 |
|--------------------------------------|------|------|------|------|
| Sales volume per production employee | ■ | ■ | ■ | ■ |
| Change on previous year | ■ | ■ | ■ | ■ |
| % of 2002 | ■ | ■ | ■ | ■ |

546. There does not appear to be an adverse effect on productivity when measured on the basis of output per employee because output per employee has not changed significantly since the pre-injury period of 2002, although output per employee did decline in 2002 due to an increase in the number of employees in that year.

Conclusion on Productivity

547. There is no evidence that productivity has been adversely affected by the dumped imports.

Return on Investments

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

549. The following table shows EBIT from oil filters manufactured in New Zealand and sold on the New Zealand domestic market as a percentage of average net trading assets and average shareholders funds. Average net trading assets represent trading assets less liabilities. Average net trading assets and average shareholders funds are that proportion of GUD's total average net trading assets and average shareholders funds that GUD estimates are employed in the production of oil filters manufactured in New Zealand and sold on the New Zealand domestic market.

Table 5.8: Return on Investments

| | 2001 | 2002 | 2003 | 2004 |
|-------------------------------|------------|------------|------------|------------|
| EBIT | ██████████ | ██████████ | ██████████ | ██████████ |
| Average Net Trading Assets | ██████████ | ██████████ | ██████████ | ██████████ |
| Return on Assets | ██████████ | ██████████ | ██████████ | ██████████ |
| Average Shareholder's Funds | ██████████ | ██████████ | ██████████ | ██████████ |
| Return on Shareholder's Funds | ██████████ | ██████████ | ██████████ | ██████████ |

550. Between 2002 and 2004, there has been a significant decline in return on average net trading assets and shareholders funds. Both average net trading assets and average shareholders funds have reduced over this period so the decline in the return on investments is due to the reduction in EBIT.

Conclusion on Return on Investments

551. There is evidence of a significant decline in return on investments. However, as noted above under profits, while there was a significant decline in EBIT due to lost sales volume (which can be attributed to dumped imports), the greater part of the loss of EBIT has resulted from suppression of prices that may not be attributable to dumped imports. This indicates that factors other than dumped imports have also had a significant impact on GUD's decline in return on investments.

Utilisation of Production Capacity

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

553. GUD has given its total production capacity for the plant for one eight-hour shift per day, for both export and domestic sales, as ██████████ oil filters daily. On the basis of 234 production days, production capacity is estimated by the Ministry to be ██████████ filters.

554. The following table shows the annual production capacity as estimated in the previous paragraph, from which export sales volumes have been deducted, to show the capacity available for domestic sales. Domestic sales capacity in the table is compared to sales of oil filters produced in New Zealand and sold on the New Zealand domestic market.

Table 5.9: Utilisation of Production Capacity

| | 2001 | 2002 | 2003 | 2004 |
|-------------------------------|------------|------------|------------|------------|
| Production capacity | ██████████ | ██████████ | ██████████ | ██████████ |
| Export sales | ██████████ | ██████████ | ██████████ | ██████████ |
| Domestic production capacity | ██████████ | ██████████ | ██████████ | ██████████ |
| Domestic sales | ██████████ | ██████████ | ██████████ | ██████████ |
| Domestic capacity utilisation | ██████████ | ██████████ | ██████████ | ██████████ |

555. Utilisation of domestic production capacity has declined significantly from 2002 to 2004. The production capacity available for domestic sales has increased over this period, so the decline in utilisation is due to both declining sales and an increase in capacity. Had domestic production capacity been the same in 2004 as it was in 2002, utilisation would have been 85 percent rather than the actual utilisation of 65 percent. This indicates that the majority of the decline in capacity utilisation can be attributed to the decline in sales volume.

Conclusion on Utilisation of Production Capacity

556. There is evidence of a significant decline in capacity utilisation, the majority of which is due to the decline in sales. The decline in sales can be attributed largely to dumped imports.

Factors Affecting Domestic Prices

557. This element requires consideration of factors other than dumped imports that are likely to affect domestic prices. Such factors may relate to changes in the cost structure of the domestic industry and prices of competing or substitute goods or changes in sales practices. Trends in pricing data must be evaluated in the context of the prevailing conditions of competition in the market, including an analysis of the effects of factors other than dumped imports.

558. GUD has stated it knows of no significant factors affecting domestic prices other than the dumping of oil filters.

559. There is no evidence to show there have been significant changes in GUD's cost structure. The Ministry notes that its analysis of price suppression shows there would have been significant suppression of GUD's prices even if it had been able to sell at its 2002 prices (which it has taken as its NIP) in 2004, indicating that factors other than dumped imports may be suppressing GUD's prices. The only factor that the Ministry is aware of that is likely to have constrained GUD's prices is non-dumped imports, which hold a significant share of the New Zealand market. The impact of non-dumped imports is further considered under other causes of injury below and concludes that non-dumped imports are likely to have been a cause of injury to GUD, largely through their impact on prices.

Conclusion on Factors Affecting Domestic Prices

560. Non-dumped imports may have acted to constrain the extent to which GUD has been able to increase its prices and thereby contributed to the injury suffered by GUD.

Magnitude of the Margin of Dumping

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

562. The weighted-average dumping margin for China is 185 percent, a figure that includes both dumped and non-dumped transactions. Dumped imports from China

are undercutting GUD's prices on a weighted average basis by between 10 and 15 percent indicating that all of the price undercutting can be attributed to the margin of dumping (this indication should be treated with caution, however, because of the limited nature of the data available for price undercutting).

563. The weighted average dumping margin for Indonesia is 68 percent (this figure also includes both dumped and non-dumped transactions). Dumped imports from Indonesia are undercutting GUD's prices on a weighted average basis by between 10 and 15 percent, indicating that all of the price undercutting is due to the margin of dumping. The weighted average margin of dumping, however, includes non-dumped imports. Because the existence of any dumping has been calculated on a transaction-to-transaction basis, the volume of dumped imports used in the evaluation of injury excludes non-dumped transactions. In order to more accurately gauge the margin of dumping in relation to dumped imports, the Ministry has calculated the weighted average margin of dumping for dumped transactions only that originated from Indonesia. The weighted average dumping margin of these transactions is 76 percent, indicating that most of the price undercutting is due to the margin of dumping (the caution noted in the paragraph above also applies to Indonesia).

564. The weighted average dumping margin for Korea is 25 percent. Dumped imports from Korea are undercutting GUD's prices on a weighted average basis by between 10 and 15 percent. For the reasons noted in the paragraph above, the Ministry has calculated the weighted average dumping margin of dumped transactions only that originated from Korea. The weighted average dumping margin of these transactions is 56 percent, indicating that most of the price undercutting is due to the margin of dumping (the caution noted in the paragraphs above also applies to Korea).

565. The weighted average dumping margin for Thailand is -15 percent (not dumped). Dumped imports from Thailand are undercutting GUD's prices on a weighted average basis by between 10 and 15 percent. For the reasons noted in the paragraph above, the Ministry has calculated the weighted average dumping margin of dumped transactions only that originated from Thailand. The weighted average dumping margin of these transactions is 17 percent, indicating that most of the price undercutting cannot be attributed to the margin of dumping (the caution noted in the paragraphs above also applies to Thailand).

566. The extent to which dumped imports are undercutting GUD's NIP is greater than the amount of price undercutting of GUD's actual prices, and indicates that for China and Indonesia all of the price undercutting is due to the margin of dumping, and for Korea a significant proportion of the price undercutting is due to the margin of dumping. For Thailand, the comparison of the undercutting of GUD's NIP with the weighted average margin of dumping indicates that only a small proportion of the undercutting can be attributed to the margin of dumping.

Conclusion on Magnitude of the Margin of Dumping

567. A significant proportion of the price undercutting by dumped imports from China, Indonesia and Korea is due to the margin of dumping, indicating that for these countries the magnitude of the dumping margins has been a significant cause of

material injury. Only a small proportion of the price undercutting by dumped imports from Thailand can be attributed to the margin of dumping, indicating that for Thailand the magnitude of the margin of dumping has not been a significant cause of material injury.

Other Adverse Effects

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

Cash Flow

569. The table below shows the cash flow estimated by GUD (from its total operating cash flows) to result from operating activities related to the production of oil filters in New Zealand and sold on the New Zealand domestic market. The estimate below was made on the basis of the proportion that sales revenue from the domestic production and sale of oil filters represented of total sales revenue in each year.

Table 5.10: Cash Flow from Operating Activities

| | 2001 | 2002 | 2003 | 2004 |
|---------------------------|------------|------------|------------|------------|
| Cash flow from operations | ██████████ | ██████████ | ██████████ | ██████████ |
| Change on previous year | | ██████████ | ██████████ | ██████████ |
| % of 2002 | ██████████ | ██████████ | ██████████ | ██████████ |

570. The decline in 2002 was due to an increase in non-oil filter inventories which has affected the estimate for domestic oil filter operations because of the method used to allocate total cash flows to the domestic oil filter operation. The significant decline in 2004 is due mainly to both a decrease in ██████████ and a decrease in profit. The most significant impact in 2004, however, was the decrease in profit.

571. A significant part of the loss of profit can be attributed to dumped imports, indicating that in 2004 cash flow was impacted negatively by dumping.

Inventories

572. GUD has advised that no build-up of inventory had occurred due to the dumped imports, due to management of production levels. GUD's inventory records of finished goods confirm that there was no significant build-up of inventory from 2002 to 2004.

Employment

573. Table 5.11 below shows the number of full time equivalent employees GUD estimates are engaged in the domestic production and sale of like goods. It was necessary for GUD to estimate these numbers because employees are engaged in the production of both like goods and other products.

Table 5.11: Employee Numbers

| | 2001 | 2002 | 2003 | 2004 |
|-------------------------|------------|------------|------------|------------|
| Number of employees | ██████████ | ██████████ | ██████████ | ██████████ |
| Change on previous year | ██████████ | ██████████ | ██████████ | ██████████ |
| % of 2002 | ██████████ | ██████████ | ██████████ | ██████████ |

574. The total number of employees engaged in the production and sale of like goods has declined significantly from 2002 to 2004, although the number of employees in 2004 was similar to the number in 2001. GUD advised it has allowed employee numbers to decline through natural turnover. GUD advised, however, that it has a buffer of temporary employees which allowed it flexibility in production. The number of employees is related to sales volumes, the decline in which can be largely attributed to the loss of market share to dumped imports.

Wages

575. The following table shows average hourly wage rates for staff engaged directly in the production of oil filters. The rates are inclusive of allowances and overtime but exclude a loading for holiday pay, sick leave and statutory holidays.

Table 5.12: Average Wage Rates

| | 2001 | 2002 | 2003 | 2004 |
|-------------------------|------------|------------|------------|------------|
| Average wage rate | ██████████ | ██████████ | ██████████ | ██████████ |
| Change on previous year | ██████████ | ██████████ | ██████████ | ██████████ |
| % of 2002 | ██████████ | ██████████ | ██████████ | ██████████ |

576. Average wages per hour have increased gradually from 2001 to 2004, having risen by ██████████ percent over this period.

577. GUD considers that dumped imports have had the effect of limiting wage increases. To substantiate this GUD provided a comparison of the percentage increases in the GUD collective agreement with those in the “metals” collective agreement. The comparative percentage increases are shown in the table below.

Table 5.13: Comparison of Wage Rate Percentage Increases

| | 2001 | 2002 | 2003 | 2004 | Total |
|-----------------------------|------------|------------|------------|------------|------------|
| GUD collective agreement | ██████████ | ██████████ | ██████████ | ██████████ | ██████████ |
| Metals collective agreement | ██████████ | ██████████ | ██████████ | ██████████ | ██████████ |
| Difference | ██████████ | ██████████ | ██████████ | ██████████ | ██████████ |

578. The table shows that in 2001 and 2002 the GUD collective increases were ██████████ than those in the metals collective agreement and the reverse was true in 2003 and 2004. Taken over all of the period from 2001 to 2004 the GUD collective increase was ██████████ than that of the metals collective agreement, although only to a small degree. While the GUD collective increases fell behind those of the metals collective from ██████████

the difference in the percentage increases is not large and may reflect the differences in the two years.

579. The Ministry does not consider there is convincing evidence that dumped imports have impacted negatively on wage rates.

Growth

580. GUD has noted that the market for oil filters has grown during the injury period but it has not experienced any growth in its domestic sales of like goods, rather it has suffered significant loss of sales volume.

581. The Ministry notes that GUD has experienced a significant decline in sales volume and market share, and the analysis of market share data indicates that these declines can be largely attributed to dumped imports. This evidence indicates that GUD has experienced a lack of sales growth that is largely due to dumped imports.

Ability to Raise Capital or Investments

582. GUD has advised that it had recognised opportunities for capital expenditure that could create efficiencies, but that such efficiencies would not decrease its cost of production sufficiently to allow GUD to compete at the same price levels as the imported goods. GUD has stated that the GUD group of companies “is not prepared to make any further significant investment in the production of like goods while the domestic market is being supplied with allegedly dumped products”

583. GUD advised that no recent capital expenditure requests have been rejected by the parent company. GUD considered this was due to its sensible approach to capital expenditure requests.

584. The Ministry concludes there is no documented evidence that dumped imports have affected GUD’s ability to raise capital or investments.

5.6 Other Causes of Injury

585. Sections 8(2)(e) and (f) of the Act provide that the Chief Executive shall have regard to factors other than the dumped goods which have injured, or are injuring, the industry, including—

- i. The volume and prices of goods that are not sold at dumped prices; and*
- ii. Contraction in demand or changes in the patterns of consumption; and*
- iii. Restrictive trade practices of, and competition between, overseas and New Zealand producers; and*
- iv. Developments in technology; and*
- v. Export performance and productivity of the New Zealand producers; and*

- vi. *The nature and extent of importations of dumped or subsidised goods by New Zealand producers of like goods, including the value, quantity, frequency and purpose of any such importations.*

Introduction

586. In considering whether factors other than dumping have had an adverse impact on the New Zealand industry, the Ministry does not need to be satisfied that factors other than dumping have not been a cause of injury to GUD, and must only be satisfied that dumping has been a cause of material injury to GUD. Dumping therefore does not need to be the only cause of material injury, or even the major cause of material injury, simply a cause of material injury. However where economic indicators show that an industry has suffered injury, if factors other than dumping have been the real cause of the injury, it is important that such injury not be attributed to dumping.

587. When examining injury, the Ministry normally seeks to review data over a period both before and after the time period when injury due to dumping is alleged to have commenced. Data over a period before the commencement of injury then serves as a baseline against which subsequent performance can be measured. In dumping investigations it is usual that the onset of injury claimed by an industry occurs within a reasonably well-defined time period and this is demonstrated by declines in various economic indicators. If it is claimed that factors other than dumping are the cause of that injury then those other factors could be expected to have had a particular impact within the period when the economic indicators show the onset of injury. If there are factors other than dumping causing injury to an industry, but those other factors have been constant over the period under review, then it is unlikely that the onset of injury could be attributed to those other factors.

588. GUD has stated that there are no known causes of injury other than from the allegedly dumped imports. Importers, however, raised a number of issues as causes or potential causes of injury to GUD, which are dealt with in the following paragraphs.

Non-dumped Imports

589. GUD advised that it believed oil filters from countries outside the investigation were sporadically dumped in New Zealand. GUD advised that much of these imports were business that it had never supplied and so was not causing GUD actual injury unlike the imports from the countries under investigation.

590. Non-dumped imports comprise non-dumped imports from the countries under investigation and imports from all other countries. The main sources of non-dumped imports in 2004 were Japan (20% of total imports), the United States (20%), Australia (15%), Thailand (9%), South Africa and the United Kingdom (both 8%). The market share of non-dumped imports has declined slightly from 100 percent in 2001 and 2002 to 92 percent in 2003 and 2004.

591. A comparison of the average CIF values with GUD's average ex-factory price indicates that 52 percent of non-dumped imports in 2004 were undercutting GUD's average price by between 10 and 20 percent. Apart from non-dumped imports

from the four countries under investigation, the main volumes of price-undercutting imports were from Australia, Canada, South Africa and the United Kingdom, while imports from Japan, Germany, France and Italy did not undercut GUD's average price.

592. The Ministry also carried out a limited comparison of actual ex-wharf prices of the non-dumped imports from China, Indonesia, Korea and Thailand with GUD's largest-selling oil filters representing [REDACTED] percent of its domestic sales in 2004. This analysis shows price undercutting on a weighted-average basis by non-dumped imports as follows: China [REDACTED]%, Indonesia no undercutting, Korea from [REDACTED] to [REDACTED]% and Thailand from no undercutting (32% of goods matched) to undercutting between [REDACTED] and [REDACTED]%. The Ministry was able to make very few price comparisons with non-dumped oil filters from China and Indonesia to the extent that any price undercutting or lack of price undercutting may not be indicative for those countries.

593. The price undercutting analysis tends to indicate that non-dumped imports may have been a cause of injury to the New Zealand industry. On the other hand, the fact that the market share for other imports has decreased indicates that they have not impacted on GUD to the same extent as dumped imports, which have reduced GUD's market share. It is important to note that dumping need not be the only cause of material injury, but must be a cause of material injury before anti-dumping action may be taken or continue.

594. Honda NZ stated that imports of goods from other sources, particularly the United Kingdom, Australia, Canada and South Africa, represented approximately 27% of total oil filter imports over the period of investigation and have values for duty very similar to the levels of those of the goods subject to the investigation. Honda NZ believes that, with the exception of Australia, imports from all of these sources are likely to be dumped. The Ministry is not investigating imports from these sources and cannot, therefore, comment on whether they are being dumped. The Ministry has, however, considered the pricing of imports from these sources in its analysis of non-dumped imports.

595. In response to the EFC report Transdiesel submitted that GUD has suffered material injury from the imports of oil filters from countries outside of the investigation because their distributors have gained market share at GUD's expense and these imports will continue to cause material injury because of economies of scale, availability from world wide suppliers, favourable exchange rate, major changes in the way New Zealand does its business and New Zealand's phasing out of the normal tariff duty.

596. The analysis above shows there is likely to be price undercutting by a significant proportion of non-dumped imports. This supports the analysis under price suppression that shows there would still have been major price suppression even if GUD had been able to maintain its 2004 prices at the non-injurious levels it achieved in 2002, indicating that most of the price suppression may not be attributable to dumped imports. The only factor other than dumped imports likely to have resulted in price suppression is non-dumped imports.

597. The Ministry calculated under profits above that about [REDACTED] percent of the reduction in profit between 2002 and 2004 was due to price suppression and a small

depression of prices. All of the evidence indicates that non-dumped imports have been a significant cause and probably the major cause of the decline in profits suffered by GUD. This does not mean, however, that dumped imports have not also been a cause of material injury to GUD, and this is examined further under causal link below.

Demand or Consumption Changes

598. GUD advised that the total market for oil filters in New Zealand is growing, although it also stated that the production level of oil filters in New Zealand has not been substantially affected by changes in demand arising from the changes in the vehicle fleet other than from normal model changes. Ford NZ stated that manufacturers are now specifying longer periods between recommended servicing of motor vehicles, which correspondingly affects the demand for oil filters. GUD also noted that some manufacturers have extended the service interval. Demand has not contracted, however, and consumption has been increasing gradually, so changes in these factors are not a cause of injury.

599. Ford NZ also observed that trade prices are under increasing pressure from the New Zealand market, which is placing pressure on profitability, especially for wholesalers. Autolines NP noted that distribution costs are also rising and customers want cheaper end products.

600. Changes in the size of the total New Zealand market have been taken into account in the Ministry's analysis in paragraphs 530 and 535.

Restrictive Trade Practices

601. GUD has not identified any restrictive trade practices that are having an adverse impact on the industry, nor has the Ministry found any evidence of any restrictive trade practices during its investigation.

602. While no restrictive trade practices have been identified, an exporter and importers made a number of comments about competition between the New Zealand producer and overseas producers. CT Industry and Repco mentioned that GUD's commitment to being a full range supplier meant that it had to produce a broad range, which when combined with low volumes meant that costs would be higher than those of its foreign competitors who produce narrow ranges in high volumes. Partmaster considered, therefore, that GUD NZ's prices would be uncompetitive in the international market, and estimated that GUD's prices would be at least 150% higher than global prices. (The impact of non-dumped imports has been considered above). GUD has confirmed that its range of manufactured oil filters remains wide.

603. CT Industry noted that [REDACTED]. GUD advised the Ministry that the closure of the Australian plant did not have any real bearing on the current investigation.

604. Honda NZ, in response to the EFC report, commented that GUD would have been better served by allocating the significant costs incurred in this dumping investigation towards seeking the approval of Honda Motor Company in Japan to manufacture the oil filter currently imported by Honda NZ. Honda NZ also said the

same consideration could also have been applied to oil filters imported, for example, by Ford or Holden.

605. In the absence of any evidence to the contrary, the Ministry does not consider that there are any restrictive trade practices in operation that need to be taken into account for the purpose of this investigation.

Developments in Technology and Method of Manufacture

606. GUD advised that the manufacturing processes of certain manufacturers of subject goods had become highly automated, although it noted there had been no significant advances in oil filter manufacturing processes in recent years. No submissions have been made by any other interested party that developments in technology have been a cause of injury to GUD. There is no indication that developments in technology have contributed materially to injury to the New Zealand industry.

Export Performance and Productivity

607. There is no indication that GUD's productivity levels have fallen.

608. GUD exports filters to [REDACTED]. The following table shows export sales relative to sales of oil filters produced in New Zealand and sold on the New Zealand domestic market.

Table 5.14: Export Performance

| | 2001 | 2002 | 2003 | 2004 |
|----------------------------------|------------|------------|------------|------------|
| Domestic sales volume | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| Export sales volume | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| Change in export sales volume | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| Export sales as % total | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| Export sales as % domestic sales | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |

609. There has been a significant decline in oil filter export volumes, both in absolute terms and in relation to total sales and domestic sales. Between 2002 and 2004 export sales declined by [REDACTED], a decline of [REDACTED] percent. This compares to a loss of domestic sales volume over the same period of [REDACTED], a decline of [REDACTED] percent. The loss of export sales volume in absolute terms is [REDACTED] to the decline in domestic sales volume, and in percentage terms the decline in export sales is [REDACTED] than that on the domestic market.

610. The financial information GUD provided excludes data that relates to its export business, so the injury analysis above relates only to GUD's production of oil filters in New Zealand and sold on the New Zealand domestic market.

611. GUD advised that the impact on its overhead recovery of the loss of oil filter export sales had been offset by an increase in exports of [REDACTED] and [REDACTED] filters due to product rationalisation between the GUD plants in New Zealand and Australia. At the same time GUD provided calculations showing that factory overhead as a percentage of direct cost of production (for all products) increased steadily between

2001 and 2004, rising from [redacted] to [redacted] percent over this period. GUD advised there had been no significant change in factory overhead costs and said this trend was intrinsically linked to the reduction in production volumes.

612. In response to the EFC report Honda NZ provided export statistics for the tariff item and statistical code covering oil filters for June years 2002 to 2004 and noted that these show a significant decline in exports to Australia between 2002 and 2003 from 427,308 units to 106,643 units, and in FOB dollar terms from \$1,817,607 to \$495,907. Honda NZ said it assumes these exports were made by GUD, and if so, the loss in revenue “. . . must surely have impacted on GUD’s domestic business.”

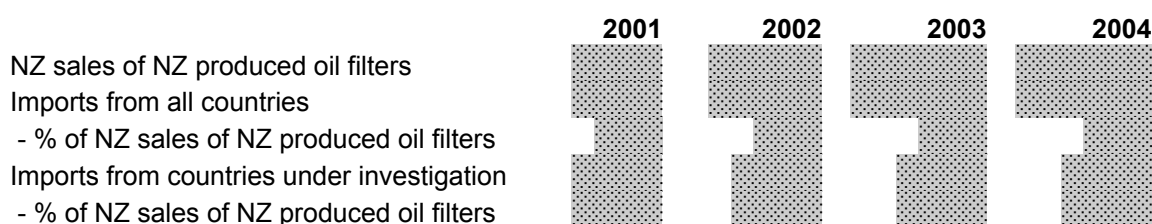
613. The Ministry observes that the export data provided by GUD, while showing a decline from June year 2002 to 2003, is not of the same magnitude as shown in the export statistics. The export statistics, however, also show an increase in exports from 2003 to 2004 to levels close to those achieved in 2002, while the GUD data shows a further decline in exports from 2003 to 2004. It is unclear why there is such a variation in the two sets of data, but as noted above, the financial information being examined for injury excludes GUD’s export operation and any adverse impact on GUD’s domestic operation will result from the loss of volume.

614. The evidence indicates that the decline in export sales volumes has had an adverse impact on GUD’s domestic operation through a loss of production volume which is available to absorb fixed overhead costs. The significance of this impact is unclear, however, because overhead recovery is also affected by the production of other filter products.

Imports by the New Zealand industry

615. The following table shows GUD’s imports by volume from all countries and from the four countries under investigation, relative to GUD’s sales volume of oil filters produced in New Zealand and sold on the New Zealand domestic market.

Table 5.15: Imports by GUD



616. GUD imports subject goods from [redacted] GUD advised that some of its imports of oil filters are not comparable to any of its top fifty sellers and it chooses to import certain types of oil filters because it is not financially viable to manufacture them because of the small volumes. GUD refuted a suggestion that it imports much of its range from Asia. Most of the imports from countries other than those under investigation are from [redacted].

617. While GUD has imported significant volumes of oil filters, the imports from the countries under investigation are negligible relative to GUD’s domestic sales of oil

filters produced in New Zealand and would not have contributed in any material way to the injury suffered by GUD.

Other Matters

618. Automotive Supplies described GUD NZ as having “a monopolistic attitude and go to extreme lengths to put pressure on its distributors not to sell, promote or advertise other brands”, adding to overall questions around GUD NZ's servicing of the New Zealand market. GUD refuted this claim and noted that it has never had a monopoly on which to take such a stance. GUD also commented that it has no idea what “extreme lengths” might mean in terms of pressure on distributors regarding other brands. GUD also observed that while it prefers its distributors to emphasise its brand, it is not true to suggest it would go to “extreme lengths” regarding distributors selling other brands.

619. Automotive Supplies also considered that GUD ignores all the mid and low range filters, except for Repco for whom it manufactures, and that GUD had refused to manufacture cheaper housebrand filters for it on many occasions. Automotive Supplies considers that this approach, in combination with its refusal to supply and “predatory marketing tactics”, has forced distributors to source oil filters offshore. In response, GUD said it presumes Automotive Supplies is referring to lower priced filters when it refers to mid and low range. GUD said it does not ignore lower priced filters in the New Zealand market and noted that its application for this investigation is at least one indication of this. GUD further commented that it had no recollection of being requested to provide a housebrand for Automotive Supplies, but said if it were to be asked then issues such as minimum volumes may be a barrier to providing a lower cost product. GUD also noted that in general principle it has manufactured and provided housebrands to a variety of customers and continues to do so.

620. Responding to the “predatory marketing tactics” comment by Automotive Supplies, GUD said it was incredulous that this statement should be made. GUD said in fact it has combated growing competition from imported product over many years and has never been in a position where it could be described as a “predator”.

621. Partmaster noted that it began importing filters over 14 years ago because GUD refused to supply all but a select few distributors under the Ryco brand. Partmaster considers GUD does not stock a sufficient range of oil filters for European model cars, which are increasing in popularity in the New Zealand market. Valvoline (Australia) Pty Ltd (Valvoline Australia) also commented that GUD has lost market share because it produces such a wide range of oil filters that it cannot be competitive with specialist suppliers and that GUD has failed to provide specialised oil filters for the growing market for European cars. GUD commented that Partmaster seems to be inferring that it has only a narrow band of distributors but said this is not the case and sells the Ryco brand through over 60 distributors in New Zealand. GUD also observed that European vehicles are growing in popularity but considers that its range is well configured to service this market. GUD added that the quantities of oil filters which suit late model European applications that may not be in GUD's range would be small.

622. Ford NZ noted that after market filters being described as original equipment quality was another possible cause of injury to the domestic industry with the corresponding effects on quality branding.

623. In response to the EFC report Transdiesel claimed GUD's marketing and pricing policy with respect to its major distributor, Repco, has caused loss of market share. Transdiesel also claimed that the decline in sales volume and revenue is fuelled by market preference for other brands, foreign exchange rate, GUD's marketing behaviour and the importers reaction to availability of quality filters at competitive world prices.

624. It is reasonable to assume that with the wide range of product variation in the oil filter market it would not be expected that one manufacturer could supply all of the market's needs from its own manufacture, nor is it required to do so. GUD has stated that there are no criteria for purchasing from it, and has denied refusing to supply a housebrand to Automotive Supplies. The large share of the New Zealand market held by imported oil filters indicates that it is unlikely that GUD would be in a position to exercise monopolistic or predatory marketing tactics such as to force customers to purchase from overseas.

625.



626. While Repco is a significant customer of GUD the Ministry has not seen any evidence that sales to Repco are to the exclusion of sales to other distributors. It is difficult to gauge the extent to which the other matters referred to by Transdiesel may have impacted on GUD, but it is nevertheless clear that the loss of sales volume (and the associated loss of sales revenue) has coincided with an increase in dumped import volumes from the countries under investigation.

627. The Ministry does not consider there is convincing evidence that the other matters referred to in this part of the report have been a significant cause of injury to GUD.

Conclusion on Other Factors

628. There is evidence that non-dumped imports have contributed significantly to the injury suffered by GUD through suppression of its prices and the subsequent impact of this on GUD's profitability. It is also likely that the loss of export sales volume has contributed to the injury suffered by GUD although the extent to which this has happened is unclear.

629. There is no evidence that factors other than those referred to in the paragraph above have been a significant cause of injury to GUD.

5.7 Causal Link

630. Article 3.5 of the WTO Agreement states as follows:

It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs 2 and 4, causing injury within the meaning of this Agreement. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports...

631. Article 3.5 of the Agreement is reflected in section 13(1) of the Act which requires that the Minister make a final determination as to whether or not the goods are being dumped and “By reason thereof material injury to an industry has been or is being caused or is threatened or the establishment of an industry has been or is being materially retarded.”

632. The Ministry considers that the dumping of goods must be a cause of material injury in its own right, for a positive finding of material injury to be made. However dumping does not need to be the singular cause of material injury, or even the major cause of material injury, only that it is a cause of material injury to the domestic industry and any injury arising from other factors should not be attributed to the dumped imports.

633. The Ministry adopts a two-limb approach to determining causality. The first test focuses on the dumped imports and asks whether there has been material injury from the dumped goods and involves essentially the application of the criteria in section 8(1) and 2(a)-(d) of the Act. This test accepts that there is an inference that where material injury occurs it is caused by dumping. The second test examines whether there are any known factors apart from the dumped imports that are also injuring the industry. If there are such other factors, it must be established whether the injury caused by the other factors breaks the inferred “causal link” established under the first test. If there is no manifest cause of material injury apart from the dumped goods, then the causal link under the first test is confirmed.

First Causal Link Limb

634. The injury analysis shows that from 2002 to 2004 dumped imports from China, Indonesia, Korea and Thailand increased by 347,540 or 149 percent, as shown in Table 5.1. Over the same period dumped imports as a percentage of the total New Zealand market have increased from 1.1 to 1.6 percent while the market share held by GUD has declined from 1.1 to 0.8 percent. Dumped imports as a percentage of GUD’s sales have increased from 1.1 percent in 2002 to 1.6 percent in 2004. In both nominal and relative terms the volume of dumped imports in the New Zealand market has increased significantly.

635. The increase in the volume of the dumped imports in absolute terms and in relation to New Zealand production and consumption from 2002 is consistent with a finding of primary causality between the dumped imports and the material injury suffered by the domestic industry, as 2003 is the year that GUD claims the injury commenced.

636. The evidence available shows there is significant price undercutting by dumped imports. There is evidence of only a small amount of price depression between 2002 and 2004 and while there is evidence of significant price suppression over this period, most of the price suppression would have occurred even if GUD could have sold in 2004 at its average NIP. However, the economic impact is consistent with GUD largely holding its prices in the face of price undercutting, as reflected between 2002 and 2004 in a loss of sales volume and consequent loss of sales revenue, profit and return on investments, and reduction in capacity utilisation and employee numbers. These effects became evident from 2003 and coincide with the increase in dumped imports from that year.

637. The Ministry consequently considers there is an inference that material volume and price undercutting effects and the consequent economic impact outlined in the paragraph above can be attributed to dumped imports from China, Indonesia, Korea and Thailand.

Second Causal Link Limb

638. The Ministry has found that factors other than dumped subject goods are causing material injury to the New Zealand industry. The extent to which other factors have caused such injury can be approximated through the application of GUD's NIP in the analysis of price suppression, which shows that most of the price suppression between 2002 and 2004 would have occurred even if GUD had been selling at its NIP. (This analysis assumes that GUD's assertion that its NIP is equal to its 2002 prices is valid, i.e., that even in the absence of dumped imports it would not have been able to increase its prices in 2004 beyond those it achieved in 2002).

639. The Ministry's analysis of GUD's decline in profits indicates that the majority of the decline is due to price suppression (and a small amount of price depression), which in turn is largely attributable to factors other than dumped imports. That same analysis, however, shows that a significant part of the loss of profits is also due to the loss of sales volume (which can be directly linked to dumped imports which have taken nearly all of the market share lost by GUD). The decline in sales volume between 2002 and 2004 was [REDACTED] units. At the EBIT per oil filter achieved in 2002 of NZ\$ [REDACTED], this represents a loss of EBIT due to lost sales volume of NZ\$ [REDACTED] and is equal to a decline in EBIT from 2002 to 2004 of [REDACTED] percent. The loss of profit due to a loss of sales volume is on its own a cause of material injury. Dumping does not need to be the only cause of material injury, or even the major cause of material injury, just a cause of material injury.

640. In response to the same comment in the Provisional Measures Report, Valvoline (Australia) Pty Ltd (Valvoline Australia) has submitted that references in the Act to *de minimis* dumping margins and negligible import volumes of dumped goods means there is a standard in relation to the effect of dumping which must be more than simply "a cause" – it must be a significant cause of injury otherwise the

references to *de minimis* and negligibility could not apply. Valvoline Australia also referred to the figures in the Provisional Measures Report that show the percentage that dumped imports represent of total imports of like goods. Valvoline Australia submitted that the percentages that dumped imports represented of total imports could only have caused a minimal impact on GUD.

641. The Ministry agrees with Valvoline Australia that dumped imports must be a significant (i.e. material) cause of injury to a New Zealand industry. In the Provisional Measures Report, and in this report, the Ministry is commenting that dumped imports must be a cause of material injury. As this sentence implies, the Ministry does not consider that dumped imports must be the sole cause of material injury and does not believe any reading of the Act or the Agreement could lead to that interpretation. The Ministry further notes that in this case dumping margins are more than *de minimis* and dumped import volumes are more than the negligible thresholds set out in Article 5.8 of the Agreement and the injurious impact of dumped imports have been assessed on a cumulative basis, as set out in section 5.2 above.

642. The Ministry is consequently satisfied that the other causes of injury are not sufficient to break the inferred causal link that dumped imports from China, Indonesia, Korea and Thailand have caused material injury to the New Zealand industry.

5.8 Conclusions Relating to Injury

Import Volumes

643. There is evidence that dumped import volumes of the subject goods have increased significantly in absolute terms and relative to New Zealand production and consumption from 2002 to 2004.

Price Effects

644. There is evidence of significant price undercutting of GUD's actual 2004 prices and GUD's NIP by dumped imports from China, Indonesia, Korea and Thailand.

645. There is evidence that prices have been slightly depressed since 2002.

646. There is evidence indicating that prices have been suppressed since 2002, but nearly all of the price suppression would have occurred even if GUD had been able to maintain its prices at the non-injurious 2002 level, indicating that most of the price suppression may not be attributable to dumped imports.

Economic Impact

647. There is sufficient evidence that the New Zealand industry has suffered the following adverse effects:

- a significant decrease in sales volume and revenue;
- a significant decline in market share;

- a significant decline in profit;
- a significant decline in return on investments;
- a significant decline in utilisation of production capacity;
- a decline in cash flow;
- a decline in employment; and
- a negative impact on growth.

648. There is insufficient or no evidence of:

- a decline in productivity;
- an increase in inventories;
- a negative impact on wages; and
- an adverse impact on the ability to raise capital or investments.

Other Causes of Injury

649. There is evidence that material injury has been caused by other factors specifically as a result of price undercutting by non-dumped imports and the consequent impact of this on price suppression and on sales revenue, profits, return on investments and cash flow. It is also likely that the loss of export sales volume has contributed to the injury suffered by GUD although the extent to which this has happened is unclear.

Finding of Material Injury

650. The Ministry is satisfied, having considered all the mandatory requirements, in addition to considering other relevant factors, both as presented by interested parties to this investigation and those discovered in the course of the investigation, that the domestic industry has suffered material injury during the POI. The Ministry is further satisfied that the material injury suffered was in significant part caused by the dumped imports from China, Indonesia, Korea and Thailand, such that the New Zealand industry has suffered material injury attributable to dumped imports from those countries.

6. Price Undertakings

651. Section 15 of the Act provides that the Minister may accept a price undertaking offered by an exporter such that the exporter will conduct future export trade to New Zealand of like goods to avoid causing or threatening material injury to an industry. Section 15(1A) of the Act requires, that before entering into an undertaking, the Minister must have reasonable cause to believe that the goods are being dumped and that the dumping is causing material injury to the domestic industry.

652. Section 15 of the Act reflects the provisions of Article 8 of the Agreement. Article 8.3 of the Agreement states that:

Undertakings offered need not be accepted if the authorities consider their acceptance impractical, for example, if the number of actual or potential exporters is too great, or for other reasons, including reasons of general policy. Should the case arise and where practicable, the authorities shall provide to the exporter the reasons which have led them to consider acceptance of an undertaking as inappropriate, and shall, to the extent possible, give the exporter an opportunity to make comments thereon.

653. The Ministry has received offers to enter into price undertakings from DCS Holding Co. Ltd (DCS), Zhejiang Universe Filter Co. Ltd (Zhejiang), and Donaldson Australasia Pty Ltd (Donaldson Australasia). DCS is an exporter (but not a manufacturer) of oil filters based in Thailand, which was formerly known as ACSG (Thailand) Co. Ltd, an exporter that was outside of the sample of exporters for Thailand. Zhejiang is a Chinese company that exported oil filters to New Zealand over the period of investigation and was included in the sample of exporters for China. Zhejiang did not complete a questionnaire or provide any other information in relation to its exports to New Zealand. It is not known if Zhejiang manufactured the oil filters it exported to New Zealand. Donaldson Australasia is an Australian company which exported oil filters of [REDACTED] origin from Australia to New Zealand.

654. The Ministry notes there is no obligation in either the Act or the Agreement that price undertakings be accepted. The Ministry observes that the entering into of price undertakings would require the establishment of non-injurious or non-dumped prices for the whole range of oil filters exported by each company, and would include the up-dating of undertakings to take account of new oil filter models.

655. Because DCS is not in the sample of exporters, no dumping margins have been established for the oil filters exported by this company. Donaldson Australasia is an exporter located in Australia for whom no dumping margins have been established, the relevant dumping margins being established for the manufacturer in [REDACTED]. Zhejiang has not co-operated with the investigation and the Ministry has used best information available to establish normal values for this company. In the case of DCS and Donaldson Australasia it is therefore not practically possible to establish relevant prices to which a price undertaking could apply. In the case of Zhejiang the Ministry does not have values from that exporter on which to base any price undertaking.

656. In addition to the difficulties outlined above, the Ministry does not consider it would be practical to monitor the prices of the exporter in relation to the price undertaking when there are likely to be a large number of oil filter part numbers involved. The Ministry also has concerns about the availability of evidence upon which it could satisfactorily rely, including that relating to non-circumvention, such as the inability to make compensatory adjustments to other products' prices or issue rebates to importers.

657. The Ministry, as a matter of general policy, recommends that price undertakings should not be entered into when a de-facto undertaking is available to the exporter by means of a reference price set duty. The Ministry considers a reference price duty constitutes a de facto price undertaking that can be taken advantage of by an exporter in the same way as a price undertaking, while retaining flexibility in the pricing of its exports to New Zealand, and in addition avoiding any administrative burden that may occur if export prices were queried. The Ministry has in section 8 of this report proposed that, where possible, duties be set by means of reference prices for those oil filter models exported in the largest volumes.

658. In terms of Article 8.3 of the Agreement the companies that had offered to enter into price undertakings were notified on 15 December 2004 that the Ministry intended to recommend to the Minister that their offers not be accepted, for the reasons outlined in paragraphs 654 to 657 above and were given until 23 December 2004 to comment on the reasons for this decision. No comments were received.

659. The Ministry consequently considers that the price undertaking offers should not be accepted, and has made a recommendation to the Minister at the end of this report to this effect.

7. Conclusions

660. On the basis of the information available, it is concluded that sufficient evidence has been provided that:

- a. oil filters from China, Indonesia, Korea and Thailand are being dumped; and
- b. by reason thereof, material injury to the New Zealand industry has been, or is being caused.

8. Anti-Dumping Duties

8.1 Introduction

661. The provision of the Act relating to the imposition of anti-dumping duties is section 14, the relevant parts of which are set out below.

(1) At any time after the Minister makes a final determination under section 13 (1) of this Act in relation to goods, the Minister may give notice of the rate or amount of duty determined under subsection (4) of this section (which notice may be given simultaneously with, or at any time after, the notice given under section 13 (2) of this Act) and there shall, with effect on and from the applicable date referred to in section 17 of this Act, be imposed,—

(a) In respect of those goods that are dumped, a duty to be known as anti-dumping duty:

(2) Anti-dumping duty . . . imposed under subsection (1) of this section, shall be collected and paid on the demand of the Customs on and from the day after the date on which the notice under subsection (1) of this section is published in the *Gazette*.

(4) The anti-dumping duty . . . in the case of goods to which this section applies shall be a rate or amount determined by the Minister,—

(a) In the case of dumped goods, not exceeding the difference between the export price of the goods and their normal value; and

(5) In exercising the discretion under subsection (4) of this section, the Minister shall have regard to the desirability of ensuring that the amount of anti-dumping . . . duty in respect of those goods is not greater than is necessary to prevent the material injury or a recurrence of the material injury or to remove the threat of material injury to an industry or the material retardation to the establishment of an industry, as the case may require.

8.2 Method of Imposing Duty

662. Anti-dumping duties can be applied in a number of ways and can be imposed as a rate or amount, including any rate or amount established by a formula. The basic approaches are:

- a. a specific amount per unit of product;
- b. an *ad valorem* rate; and
- c. a reference price approach.

663. The main objective of an anti-dumping duty is to remove the injurious impact of dumping. In deciding on the form of duty, considerations relating to ease of administration, ability to ensure the dumping margin is not exceeded, fairness between parties, and predictability all need to be taken into account. The objective of the anti-dumping duty is to remove injury attributable to dumping, and is not to punish the exporter or to provide protection to an industry beyond the impact of the dumping.

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

Specific Duty

665. A specific duty is a set amount per unit of product based on the monetary value of a margin of dumping. It has the advantages of being convenient to apply and impossible to evade by incorrectly stating the value for duty and clearly indicates to the importer the amount of duty payable. However, difficulties can arise where there is a wide range of goods involved, where exchange rates fluctuate to the extent that the margin of dumping will be exceeded without constant reassessments of the specific amount, or where the exporter otherwise changes prices so that the duty is either greater than the margin of dumping or less than the margin of dumping previously established.

666. A specific duty, expressed as a monetary amount, can really operate effectively only when prices and exchange rates are consistent and stable and where the transaction-to-transaction comparison does not result in a range of different dumping margins. An alternative approach to deal with this problem is to express a specific duty as a formula, being the difference between equivalent prices to the normal value and the export price of a particular shipment, with the values for the normal value and export price being fixed. When those elements of the formula are expressed in terms of the currency of each transaction, the problem of exchange rate movements can be dealt with. However, a formula approach does not deal with the problem of changes in export prices for reasons other than exchange rate movements or movements in normal values such as a price change.

Ad Valorem Duty

667. 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.

668. 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

⁴ Plasterboard from Thailand, Reassessment, September 1999.

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.

669. 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

670. Under the reference price approach, the duty payable is the difference between the transaction price and a reference price. The reference price would normally be based on the normal value, by means of Normal Value (Value for Duty Equivalent) (NV(VFDE)) amounts, or the NIP by means of Non-Injurious Free on Board (NIFOB) amounts. A NV(VFDE) amount represents the undumped value of the goods at the FOB level. A NIFOB amount represents the FOB price at which imports would not cause injury to the New Zealand industry.

671. 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 duty only collects duty when the goods are priced below the non-injurious or undumped reference price. It therefore collects duty only to the extent necessary to remove injurious dumping and avoids over-collecting duty.

672. In considering whether a reference price duty should apply in this case, the Ministry notes there are a large number of oil filter models exported to New Zealand from the countries under investigation, and there is a constant introduction of new oil filter models. The Ministry also notes there is insufficient information (because of a lack of co-operation from some parties) on which to establish reference prices for a significant proportion of the oil filter models exported to New Zealand.

673. In response to the EFC report Transdiesel argued it is imperative that anti-dumping duty is based on the reference price system of a normal value (VFDE) and suggests it could be calculated on the basis of an 80-20 rule i.e. 80 percent of the volume imported could be covered by 20 percent of the part numbers.

Conclusion

674. It has been the normal practice of the Ministry to impose anti-dumping duties through the use of reference prices, when appropriate, for the reasons outlined above. At the same time the Ministry is mindful of the need to ensure that it is feasible to firstly calculate the reference price (including consideration for each reference price of whether a lesser duty should apply), and secondly to administer and calculate the duty at the border.

675. Taking into account the desirability of using reference prices, but at the same time ensuring that it is feasible to do so, the Ministry concludes that duties should be imposed using a combination of reference prices for those oil filter models that are imported in the largest quantities, and *ad valorem* percentage rates for the remainder. The basis on which the oil filter models were selected for which reference prices were established, is set out below.

8.3 Developing Country Considerations

676. For the purposes of dumping investigations and the imposition of anti-dumping duties, China, Indonesia, Korea and Thailand are considered to be developing countries. 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.

677. No submissions were received from the governments of China, Indonesia, Korea or Thailand about possible constructive remedies or about the effect of anti-dumping duties on their essential interests as developing countries.

678. The WTO Dispute Settlement Panel in *Cotton-Type Bed Linen from India* was of the view that “the imposition of a “lesser duty” or a price undertaking would constitute “constructive remedies” within the meaning of Article 15...”⁵. The Ministry agrees with the comments of the Panel in this regard.

679. Offers of price undertakings were received from three exporters, as outlined above in section 6 above. For the reasons set out in section 6, the Ministry does not consider any of these price undertakings should be accepted. The Ministry considers, however, that by imposing duties in the form of reference prices for specified exporters for those oil filter models imported in the largest volumes (where sufficient information was available) it has provided a form of *de facto* price undertaking, as reference prices can be taken advantage of by all of the current exporters, whilst avoiding any additional administrative burden for the exporters that often accompanies a price undertaking. The Ministry therefore considers that the use of reference prices provides, for the reasons outlined above, a constructive remedy for exporters.

680. In section 8.3 below the Ministry has considered whether duties at less than the margin of dumping (lesser duties) should apply and has concluded that lesser duties should apply in the case of some of the oil filters exported by Bengbu, PT Selamat and Yuil. The Ministry considers that by examining whether lesser duties should apply, and by concluding lesser duties should apply in some cases, it has provided a constructive remedy.

⁵ Report by the Panel on European Communities-Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India, WT/DS141/R, 30 October 2000, at paragraph 6.229.

8.4 Amount of Anti-dumping Duty

Exemption from Anti-Dumping Duty

681. In section 4.4 above the comparison of export prices and normal values shows that on a weighted average basis, exports of the subject goods by CT Industry and Denso were not dumped.

682. However, the data for CT Industry shows that, while on a weighted average basis its exports were not dumped, some filter models were dumped and that dumped transactions amounted to six percent of the exports by CT Industry where export price and normal value information was available. The Ministry therefore considers for those oil filter models that were dumped, that reference prices should be established. The calculation of the reference prices for the dumped filter models is shown below.

683. Export prices and normal values were available for 82 percent of the exports by CT Industry over the POI and the Ministry considers this constitutes a sufficiently large proportion of total exports on which to conclude that exports by CT Industry are not in the main dumped. The Ministry consequently considers that all oil filter models other than those found to be dumped over the POI, should be exempt from anti-dumping duty.

684. The data for Denso shows that none of the individual transactions were dumped. Export prices and normal values were available for all of the exports that were manufactured by Denso. The Ministry has therefore concluded that the exports manufactured by Denso are not dumped.

685. It is therefore proposed that Denso be exempt from all anti-dumping duty and CT Industry be exempt from anti-dumping duty except for those filter models found to be dumped over the POI.

Selection of Oil Filters to which Reference Prices will Apply

686. As a general rule, the Ministry has where possible established reference prices for those oil filter models that were exported in the largest volumes and which represent 50 percent by volume of the oil filters exported over the POI by each manufacturer or exporter for which rates of duty have been established.

687. In some cases because of a lack of information, the oil filters for which normal value information was available represented less than 50 percent of total exports, and in those cases reference prices were established for all of the oil filters for which normal values were available.

688. In the case of PT Selamat, because of the large number of oil filter models involved, reference prices were established for all those models whose export volume was greater than 500 units during the POI. The models for which reference prices were established on this basis represented 42 percent of the oil filters that were manufactured by PT Selamat that were exported to New Zealand over the POI.

689. In a number of cases models of oil filter were exported in quantities significant enough for reference prices to be established, but a lack of information on normal values has meant that it was not possible to do so. For this reason, the oil filter models for which prices have been established do not cover all of those models exported in the largest quantities.

Consideration of Lesser Duty for Filters with Reference Prices

690. Section 14(5) of the Act requires that the Minister have regard to the desirability of ensuring the amount of duty is not greater than is necessary to prevent material injury to the New Zealand industry. To establish whether a lesser duty should apply to oil filters subject to a reference price, the Ministry has where possible firstly calculated a NIFOB and secondly calculated 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 imposed at the full margin of dumping.

691. As set out in the price undercutting section above, GUD's NIP has been taken as the net prices it achieved in the year ended 30 June 2002 and these NIPs have been used in the calculation of NIFOBs. In some cases a NIP was not available for the GUD oil filter equivalent to that for which a reference price was set. In these cases it was therefore not possible to calculate a NIFOB and the reference price has been set at the NV(VFDE) amount.

Calculation of NIFOBs

692. NIFOBs are calculated by deducting from the industry's NIP importer's margin (where relevant) and those costs arising after FOB up to the level of trade at which the imported product first competes with the New Zealand industry's product. The purpose of a NIFOB value is to ensure that the price of imported product, when considered at the FOB level, is such that when it is sold at the relevant level of trade, the sale price equates to the NIP. At paragraphs 499 to 502 the relevant level of trade at which the goods first compete on the New Zealand market was determined to be ex-wharf for all importers.

693. In calculating the NIFOB amounts for exports at the ex-wharf level of trade the Ministry has established the costs between FOB and ex-wharf and FOB from information provided by importers. Where more than one importer imported a filter, costs were calculated on a weighted average basis, weighted according to the volume of imports by each importer. In some cases insurance and sea freight figures were not available from importers and were calculated from Customs import data. The duty has been calculated at the rate applying to imports of oil filters from China, Indonesia, Korea and Thailand of either eight or ten percent. If a filter was imported free of import duty under a concession, no deduction was made for duty.

694. The tables below show the calculation of a NIFOB at the ex-wharf level of trade on the basis outlined above.

Calculation of NV(VFDE) Amounts

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

696. In all cases, except for PT Selamat, the normal values did not change over the POI. In the case of PT Selamat some normal values varied over the POI and a weighted average of these normal values was used for the purpose of calculating NV(VFDE) amounts.

697. The costs applied to increase the normal value to the FOB level were those used in the calculation of export prices for the manufacturer or exporter concerned. In the case of PT Selamat, differing methods were used to export its oil filters to New Zealand over the POI, which incurred different costs to the FOB price paid by New Zealand importers. Oil filters manufactured by PT Selamat were exported to New Zealand by the following means:

- Directly from Indonesia to New Zealand where PT Selamat was the exporter.
- Directly from Indonesia to New Zealand, but where the exporter was Filter Sales Australia, an Australian company, and an exporter's margin was therefore incurred.
- From Indonesia to Australia from where the filters were subsequently re-exported by Filter Sales Australia. Different shipping costs and related costs and a different rate of exporter's margin were incurred on these shipments.

698. A separate NIFOB and NV(VFDE) was therefore calculated for PT Selamat for each of these three different methods of shipment to reflect the differing costs and margins incurred.

Comparison of NIFOB and NV(VFDE) Amounts

699. The following tables show the calculation and comparison of the NIFOB and NV(VFDE) amounts for each manufacturer or exporter. For the purpose of comparing the NIFOB with the NV(VFDE), the NV(VFDE) amounts were converted to NZ dollars at the relevant average interbank exchange rate over the year ended 30 June 2004 taken from the OANDA currency conversion web site.

700. Where the comparison shows that a NV(VFDE) amount should apply, it is proposed that the reference price be set as a NV(VFDE) amount in the currency of the country concerned since normal values and costs to FOB would normally be established in the country of origin and representation of NV(VFDE) in the currency of the country of origin ensures that exchange rate movements do not result in collection of anti-dumping duty above the margin of dumping.

701. Where the comparison shows that a NIFOB amount should apply (i.e., where the NIFOB is lower than the NV(VFDE)), it is proposed that the reference price be set as a NIFOB amount in NZ dollars. If a NIFOB is set in NZ dollars and the transaction price is below the NIFOB amount, then the anti-dumping duty collected

will be such that the ex-wharf price will always equate to the NIP, provided there are no significant changes in the costs between FOB and ex-wharf from those used to establish the NIFOB amount. However, if these costs do change significantly, this can be addressed by way of reassessment.

702. A NIFOB amount will not be a lesser duty if the Chinese, Indonesian, Korean or Thai currencies depreciate sufficiently against the NZ dollar. The Ministry therefore considers that the NIFOB amounts should be applied except where the NV(VFDE) amount in NZ dollars (calculated at the exchange rate at the date of importation) is lower than the NIFOB.

China

Table 8.1: Bengbu Filter Co. Ltd

| Part No. | NIP | Costs from FOB to Ex-Wharf | NIFOB (NZ\$) | Normal Value (CNY) | Costs from NV to FOB | NV(VFDE) (CNY) | NV(VFDE) (NZ\$) | NIFOB or NV(VFDE) |
|----------|-----|----------------------------|--------------|--------------------|----------------------|----------------|-----------------|-------------------|
| | | | | | | | | NIFOB |
| | | | | | | | | NV(VFDE) |
| | | | | | | | | NV(VFDE) |
| | | | | | | | | NV(VFDE) |
| | | | | | | | | NV(VFDE) |

703. The oil filters for which reference prices have been established as above are all of those for which normal values were available and represent 25 percent of the oil filters manufactured by Bengbu that were exported to New Zealand over the POI.

704. Because of a lack of information provided by interested parties, the Ministry was not able to identify the part numbers of the oil filters manufactured by Golden Haiye and Zhejiang that were exported to New Zealand over the POI. It has therefore not been possible to establish reference prices for these two companies and consequently *ad valorem* percentage rates will apply to them.

Indonesia

Table 8.2: Direct Exports by PT Selamat

| Part No. | NIP | Costs from FOB to Ex-Wharf | NIFOB (NZ\$) | Normal Value (IDR) | Costs from NV to FOB | NV(VFDE) (IDR) | NV(VFDE) (NZ\$) | NIFOB or NV(VFDE) |
|----------|-----|----------------------------|--------------|--------------------|----------------------|----------------|-----------------|-------------------|
| | | | | | | | | |
| | | | | | | | | NV(VFDE) |
| | | | | | | | | NV(VFDE) |
| | | | | | | | | NV(VFDE) |
| | | | | | | | | NV(VFDE) |
| | | | | | | | | NV(VFDE) |
| | | | | | | | | NV(VFDE) |
| | | | | | | | | NV(VFDE) |

| | | | | | | | | |
|--|--|--|--|--|--|--|--|----------|
| | | | | | | | | NV(VFDE) |
| | | | | | | | | NV(VFDE) |
| | | | | | | | | NV(VFDE) |
| | | | | | | | | NV(VFDE) |
| | | | | | | | | NV(VFDE) |
| | | | | | | | | NV(VFDE) |
| | | | | | | | | NV(VFDE) |
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| | | | | | | | | NV(VFDE) |
| | | | | | | | | NV(VFDE) |
| | | | | | | | | NV(VFDE) |
| | | | | | | | | NV(VFDE) |
| | | | | | | | | NV(VFDE) |
| | | | | | | | | NV(VFDE) |

706. The oil filters for which reference prices have been established as above represent 4 percent of the oil filters manufactured by PT Andhi that were exported to New Zealand over the POI.

707. All of the exports of oil filters manufactured by PT Andhi over the POI were exported from Australia by [REDACTED]. The calculation of the NIFOB amounts therefore reflect the costs from FOB in Australia to ex-wharf in New Zealand, and the calculation of the NV(VFDE) amounts reflect the costs from the normal value (being ex-factory in Indonesia) to FOB in Australia. The reference prices established for PT Andhi therefore only apply to exports from Australia by [REDACTED].

708. Because the reference prices are based on [REDACTED] margin and the costs incurred to FOB in Australia, any exports by PT Andhi directly from Indonesia to New Zealand consequently will incur an *ad valorem* rate of duty, whether or not PT Andhi or another company is the exporter. For the same reason, an *ad valorem* rate of duty will also apply should the filters be exported from a country other than Australia or be exported from Australia by an exporter other than [REDACTED].

Table 8.6: PT Panata: Exports via Australia by Donaldson

| Part No. | NIP | Costs from FOB to Ex-Wharf | NIFOB (NZ\$) | Normal Value (IDR) | Costs from NV to FOB | NV(VFDE) (IDR) | NV(VFDE) (NZ\$) | NIFOB or NV(VFDE) |
|------------|------------|----------------------------|--------------|--------------------|----------------------|----------------|-----------------|-------------------|
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | NV(VFDE) |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | NV(VFDE) |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | NV(VFDE) |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | NV(VFDE) |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | NV(VFDE) |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | NV(VFDE) |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | NV(VFDE) |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | NV(VFDE) |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | NV(VFDE) |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | NV(VFDE) |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | NV(VFDE) |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | NV(VFDE) |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | NV(VFDE) |

709. The oil filters for which reference prices have been established as above represent 50 percent of the oil filters manufactured by PT Panata that were exported to New Zealand over the POI.

710. All of the exports of oil filters manufactured by PT Panata over the POI were made from Australia by Donaldson. The calculation of the NIFOB amounts therefore reflect the costs from FOB in Australia to ex-wharf in New Zealand, and the calculation of the NV(VFDE) amounts reflect the costs from the normal value (being ex-factory in Indonesia) to FOB in Australia. The reference prices established for PT Panata therefore only apply to exports from Australia by Donaldson.

711. For the same reasons stated in paragraph 708 above, any exports by PT Panata directly from Indonesia to New Zealand, whether by PT Panata or another exporter, and exports from a country other than Australia, or exports from Australia by an exporter other than Donaldson, will incur an *ad valorem* rate of duty.

Korea

Table 8.7: June Heung

| Part No. | NIP | Costs from FOB to Ex-Wharf | NIFOB (NZ\$) | Normal Value (KRW) | Costs from NV to FOB | NV(VFDE) (KRW) | NV(VFDE) (NZ\$) | NIFOB or NV(VFDE) |
|----------|-----|----------------------------|--------------|--------------------|----------------------|----------------|-----------------|-------------------|
| | | | | | | | | NV(VFDE) |
| | | | | | | | | NV(VFDE) |
| | | | | | | | | NV(VFDE) |
| | | | | | | | | NV(VFDE) |
| | | | | | | | | NV(VFDE) |
| | | | | | | | | NV(VFDE) |
| | | | | | | | | NV(VFDE) |
| | | | | | | | | NV(VFDE) |

712. The oil filters for which reference prices have been established as above represent 50 percent of the oil filters manufactured by June Heung that were exported to New Zealand over the POI.

Table 8.8: Kang Nam

| Part No. | Normal Value (KRW) | Costs from NV to FOB | NV(VFDE) (KRW) |
|----------|--------------------|----------------------|----------------|
| | | | |

713. There were [redacted] models of oil filter manufactured by Kang Nam that were exported to New Zealand over the POI. A normal value was available for only one of these filters, but there was no NIP available for this filter so it was not possible to calculate a NIFOB.

714. The oil filters for which reference prices have been established as above represent 91 percent of the oil filters manufactured by Kang Nam that were exported to New Zealand over the POI.

Table 8.9: Shin Sung

| Part No. | NIP | Costs from FOB to Ex-Wharf | NIFOB (NZ\$) | Normal Value (KRW) | Costs from NV to FOB | NV(VFDE) (KRW) | NV(VFDE) (NZ\$) | NIFOB or NV(VFDE) NV(VFDE) |
|----------|-----|----------------------------|--------------|--------------------|----------------------|----------------|-----------------|----------------------------|
| | | | | | | | | |

715. The only oil filter exported by Kang Nam for which a normal value was available is the model shown in Table 8.9 above. The oil filter for which a reference price has been established as above represents 4 percent of the oil filters manufactured by Shin Sung that were exported to New Zealand over the POI.

Table 8.10: Yuil

| Part No. | NIP | Costs from FOB to Ex-Wharf | NIFOB (NZ\$) | Normal Value (KRW) | Costs from NV to FOB | NV (VFDE) (KRW) | NV (VFDE) (NZ\$) | NIFOB or NV(VFDE) NIFOB NV(VFDE) NIFOB |
|----------|-----|----------------------------|--------------|--------------------|----------------------|-----------------|------------------|---|
| | | | | | | | | |

716. The oil filter models in Table 8.10 above were the only models for which normal values were available. The oil filters for which reference prices have been established represent 15 percent of the oil filters exported by Yuil over the POI.

Thailand

Table 8.11: CT Industry Co. Ltd

| Part No. | NIP | Costs from FOB to Ex-Wharf | NIFOB (NZ\$) | Normal Value (THB) | Costs from NV to FOB | NV (VFDE) (THB) | NV (VFDE) (NZ\$) | NIFOB or NV (VFDE) NV(VFDE) NV(VFDE) NV(VFDE) NV(VFDE) NV(VFDE) NV(VFDE) NV(VFDE) NV(VFDE) NV(VFDE) |
|----------|-----|----------------------------|--------------|--------------------|----------------------|-----------------|------------------|--|
| | | | | | | | | |

| | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|----------|
| | | | | | | | | | NV(VFDE) |
| | | | | | | | | | NV(VFDE) |
| | | | | | | | | | NV(VFDE) |

717. As noted in paragraph 682 above, only a small proportion of the filter models exported by CT Industry were found to be dumped, and only those models found to be dumped are in the table above. The oil filters for which reference prices have been established represent 100 percent of the oil filter models exported by CT Industry that were found to be dumped and six percent of all exports by CT Industry over the POI.

Table 8.12: Siam Tennex Manufacturing Ltd

| Part No. | NIP | Costs from FOB to Ex-Wharf | | Normal Value (THB) | Costs from NV to NV(VE) | | NIFOB or NV(VFDE) |
|----------|-----|----------------------------|--------------|--------------------|-------------------------|--------------|-------------------|
| | | NIFOB (NZ\$) | NV(VE) (THB) | | NV(VE) (NZ\$) | NV(VE) (THB) | |
| | | | | | | | |

718. The filter in Table 8.11 above was the only filter manufactured by Siam Tennex that was exported to New Zealand over the POI. A reference price has therefore been established for 100 percent of the oil filters manufactured by Siam Tennex that were exported to New Zealand over the POI.

Consideration of Lesser Duty for Filters Subject to *Ad Valorem* Percentage Rates

719. In considering under section 14(5) of the Act whether a lesser duty should apply when duties are imposed through an *ad valorem* percentage, the Ministry would normally compare for each manufacturer or exporter, the weighted average margin of dumping with the margin of price undercutting. In this case, as noted in section 5.4 above under "Price Undercutting", the analysis of price undercutting was limited by the lack of response from a number of exporters and importers. This meant that a price undercutting comparison was possible for only a relatively small proportion of dumped imports from each country under investigation, except for Thailand.

720. It is therefore generally difficult in most cases to draw any firm conclusions about whether a lesser duty should apply. In addition, because the basis on which the price undercutting percentage is calculated (the amount of undercutting being calculated as a percentage of GUD's NIP) differs from the basis on which the percentage margin of dumping is calculated, it is not possible to establish whether a lesser duty should apply simply by comparing the two percentages. For example, there was only one filter manufactured by Bengbu for which a price undercutting comparison was possible. That filter undercut the NIP of the equivalent filter produced by GUD by [redacted] percent, but would require a duty applied at the FOB level of [redacted] percent to increase the actual FOB price to the NIFOB amount of the equivalent filter produced by GUD. (The Ministry considers that if an *ad valorem* percentage lesser duty is to apply, it should be sufficient, on average, to increase the

FOB price of a filter to the NIFOB amount because a lesser duty should still be sufficient to remove injury caused by dumping. The NIFOB is based on GUD's non-injurious price and therefore represents the relevant price point at the FOB level to which the duty should on average increase the price of an imported filter).

721. Because NIFOB amounts are available only for those filters for which reference prices have been calculated and because of the difficulties of comparing dumping margin percentages with price undercutting percentages and a lack of price undercutting data, the Ministry considers that the best indication of whether a lesser *ad valorem* percentage duty should apply is the result of the comparison of NIFOB and NV(VFDE) amounts carried above for the purpose of establishing reference prices. An evaluation of this data for each manufacturer or exporter is set out below.

China

Bengbu Filter Co. Ltd

722. The comparison of NIFOB and NV(VFDE) amounts has shown that a NIFOB amount should apply to only one filter, the exports of which over the POI amount to █ percent of total exports. The Ministry does not consider that this represents a sufficient proportion of Bengbu's exports for it to conclude that a lesser duty should apply.

723. It is therefore proposed that the *ad valorem* percentage for Bengbu Filter be applied at the full margin of dumping.

Golden Haiye Auto Parts

724. There was insufficient information to establish reference prices for filters manufactured by Golden Haiye.

725. It is therefore proposed that the *ad valorem* percentage for Golden Haiye be applied at the full margin of dumping.

Zhejiang Universe Filter Co. Ltd

726. There was insufficient information to establish reference prices for filters manufactured by Zhejiang.

727. It is therefore proposed that the *ad valorem* percentage for Zhejiang be applied at the full margin of dumping.

Indonesia

PT Selamat Sempurna Tbk

728. The comparison of NIFOB and NV(VFDE) amounts for the direct exports by PT Selamat has shown that a NV(VFDE) amount should apply in all cases. In the case of direct exports by Filter Sales Australia and exports via Australia by the same company, the comparison has shown that NIFOB amounts should apply to two filters (the same two in each case). Exports of these filters amount to █ percent of exports over the POI manufactured by PT Selamat. The Ministry does not consider that this

represents a sufficient proportion of PT Selamat's exports for it to conclude that a lesser duty should apply.

729. It is therefore proposed that the *ad valorem* percentage for PT Selamat be applied at the full margin of dumping.

PT Andhi Chandra Auto

730. The comparison of NIFOB and NV(VFDE) amounts for this company show that a NV(VFDE) amount should apply in all cases.

731. It is therefore proposed that the *ad valorem* percentage for PT Andhi be applied at the full margin of dumping.

PT Panata Jaya Mandiri

732. The comparison of NIFOB and NV(VFDE) amounts for this company show that a NV(VFDE) amount should apply in all cases.

733. It is therefore proposed that the *ad valorem* percentage for PT Panata be applied at the full margin of dumping.

Korea

June Heung Filter Co. Ltd

734. The comparison of NIFOB and NV(VFDE) amounts for this company show that a NV(VFDE) amount should apply in all cases.

735. It is therefore proposed that the *ad valorem* percentage for June Heung be applied at the full margin of dumping.

Kang Nam Filter Co. Ltd

736. There was insufficient information to calculate any NIFOBs for Kang Nam.


737. It is therefore proposed that the *ad valorem* percentage for Kang Nam be applied at the full margin of dumping.

Shin Sung Industrial Ltd

738. A NIFOB and NV(VFDE) comparison was possible for only one model of filter, and this showed that a NV(VFDE) amount should apply.

739. It is therefore proposed that the *ad valorem* percentage for Shin Sung be applied at the full margin of dumping.

Yuil Air Filter Co. Ltd

740. The comparison of NIFOB and NV(VFDE) amounts has shown that NIFOB amounts should apply in two cases. The volume of exports of these two filters represents  percent of the exports by Yuil over the POI. The Ministry does

not consider that this represents a sufficient proportion of Yuil's exports for it to conclude that a lesser duty should apply.

741. It is therefore proposed that the *ad valorem* percentage for Yuil be applied at the full margin of dumping.

Thailand

CT Industry

742. As noted in paragraph 683 above, the Ministry considers that no anti-dumping duty should apply to oil filter models manufactured by CT Industry other than those for which reference prices have been established. There is therefore no need to consider if a lesser *ad valorem* duty for CT Industry should apply.

Siam Tennex (now known as MAHLE Siam Filter Systems Co. Ltd)

743. There was only one oil filter model manufactured by Siam Tennex that was exported to New Zealand over the POI. A comparison of NIFOB and NV(VFDE) amounts for this filter has shown that a NV(VFDE) amount should apply.

744. It is therefore proposed that the *ad valorem* percentage for Siam Tennex be applied at the full margin of dumping.

Calculation of *Ad Valorem* Percentage Rates

745. The evaluation above shows that *ad valorem* percentage rates of duty, on all oil filters other than those for which reference prices have been established, should be at the full margin of dumping. These *ad valorem* percentage rates have been established by calculating the weighted average margin for each manufacturer or exporter. This calculation included all transactions, both dumped and non-dumped, over the POI for which it was possible to determine an export price and a normal value.

746. The *ad valorem* percentages calculated on this basis are shown in the table below.

Table 8.12: Ad Valorem Percentages

| Manufacturer or Exporter | Ad Valorem Percentage |
|----------------------------------|------------------------------|
| China | |
| Bengbu Filter Co. Ltd | 38 |
| Golden Haiye Auto Parts | 414 |
| Zhejiang Universe Filter Co. Ltd | 85 |

Indonesia

| | |
|-------------------------|-----|
| PT Selamat Sempurna Tbk | 43 |
| PT Andhi Chandra Auto | 119 |
| PT Panata Jaya Mandiri | 60 |

Korea

| | |
|---------------------------|-----|
| June Heung Filter Co. Ltd | 12 |
| Kang Nam Filter Co. Ltd | 54 |
| Shin Sung Industrial Ltd | 15 |
| Yuil Air Filter Co. Ltd | 155 |

Thailand

| | |
|--|-----|
| CT Industry Co. Ltd | Nil |
| Denso International Thailand | Nil |
| Siam Tennex Manufacturing Ltd (now known as MAHLE Siam Filter Systems Co. Ltd) | 19 |

Residual Rates of Duty

747. It is necessary to establish a residual rate of duty for each of the countries under investigation that will apply to exporters not investigated in this investigation, as the rates set out above are specific to these companies, and based on data specifically pertaining to them.

748. The Ministry has investigated a selection of exporters and producers under Article 6.10 of the Agreement, representing the largest percentage of the exports from each country under investigation that could reasonably be investigated. As a consequence, the provisions of Article 9.4 of the Agreement apply in setting residual duties. This article states in relevant part as follows:

When the authorities have limited their examination in accordance with the second sentence of paragraph 10 of Article 6, any anti-dumping duty applied to imports from exporters or producers not included in the examination shall not exceed:

- (i) the weighted average margin of dumping established with respect to the selected exporters or producers or,
- (ii) where the liability for payment of anti-dumping duties is calculated on the basis of a prospective normal value, the difference between the weighted average

normal value of the selected exporters or producers and the export prices of exporters or producers not individually examined,

provided that the authorities shall disregard for the purpose of this paragraph any zero and *de minimis* margins and margins established under the circumstances referred to in paragraph 8 of Article 6.

749. In considering how to apply Article 9.4, the Ministry has referred to the findings of the WTO Appellate Body in *United States – Anti-Dumping Measures on Certain Hot Rolled Steel Products from Japan* (WT/DS184/AB/R). The Appellate Body found that the requirement in Article 9.4 that authorities shall disregard “. . . margins established under the circumstances referred to in paragraph 8 of Article 6” means that such margins must be disregarded even if established only in part under Article 6.8. The Appellate Body also noted that the word “margins”, which also appears in Article 2.4.2, has been interpreted in *European Communities – Bed Linen* and then stated (at paragraph 118):

The panel found, in that dispute, and we agreed, that “margins” means the individual margin of dumping determined for each of the investigated exporters and producers of the product under investigation, for that particular product. This margin reflects a comparison that is based upon examination of all of the relevant home market and export market transactions. We see no reason, in Article 9.4, to interpret the word “margins” differently from the meaning it has in Article 2.4.2, and the parties have not suggested one. [Footnote omitted]

750. The United States had argued that margins should only be disregarded under Article 9.4 when they had been established entirely on the basis of the facts available under Article 6.8. In this regard, the United States had pointed out that in some investigations all individual margins are calculated using some element of the facts available and if all such margins must be disregarded, then in those cases there would be no margins at all that can be used to calculate the ceiling of the “all others” (or residual) rate. In responding to this, the Appellate Body stated (at paragraphs 125 and 126):

We observe that the United States’ concern overlooks that, even on the United States’ reading of Article 9.4 of the *Anti-Dumping Agreement*, there may be situations where there are *no* margins to calculate an “all others” rate. Under the United States’ reading, it is possible that the margins for all of the investigated exporters could be based entirely on facts available. In that case, there would also be no margin that could be used to calculate a ceiling for an “all others” rate. Thus, the interpretation proposed by the United States does *not* overcome what we see as a *lacuna* in Article 9.4 of the *Anti-Dumping Agreement*.

This *lacuna* arises because, while Article 9.4 *prohibits* the use of certain margins in the calculation of the ceiling for the “all others” rate, it does not expressly address the issue of *how* that ceiling should be calculated in the event that *all* margins are to be *excluded* from the calculation, under the prohibitions. This appeal does not raise the issue of how that *lacuna* might be overcome on the basis of the present text of the *Anti-Dumping Agreement*. Accordingly, it is not necessary for us to address that question.⁸³

⁸³ We note that each of the parties in this dispute has a different method for overcoming the *lacuna*. The United States statute provides that if there are no margins remaining after the exclusion of *de minimis* and zero margins, and margins

calculated entirely using facts available, USDOC “may use *any reasonable method* to establish the estimated all-others rate”. (section 735(c)(5)(B) of the United States Tariff Act of 1930, as amended; emphasis added). We observe that the United States statute refers to the calculation of the “all others” rate itself, and not the ceiling for this rate. We assume that the United States would use the same method to calculate the ceiling for the “all others” rate. In its appellee’s submission, Japan suggests that “one permissible approach” would be to “use a composite of *those portions of the investigated companies’ margins not based on facts available.*” (Japan’s appellee’s submission, footnote 27 to para. 26; emphasis added).

751. Taking into account the requirements of Article 9.4 of the Agreement and the findings of the Appellate Body as outlined above, the following sets out the Ministry’s considerations relating to, and the calculation of, a residual rate for each of the countries under investigation.

China

752. The Ministry has had to resort to the use of facts available for at least part of the transactions (for which export prices and normal values could be established) of all three of the Chinese producers investigated. For the purpose of calculating a ceiling on the residual rate, the margins calculated for all of the Chinese producers investigated should be disregarded in terms of Article 9.4 of the Agreement. The Ministry notes that the Act does not specify how a residual rate is to be calculated and consequently there is no provision in the Act for calculating a ceiling on a residual rate of duty in the event that all margins have to be disregarded under Article 9.4 of the Agreement. The Ministry is therefore faced with the lacuna in Article 9.4 of the Agreement that is referred to by the WTO Appellate Body as outlined above.

753. In considering how to establish a residual rate of duty, the Ministry notes that under section 14(4) of the Act the Minister cannot impose an anti-dumping duty that exceeds the export price of the goods and their normal value. Therefore, while the Ministry is required under Article 9.4 to disregard the margins of all of the Chinese producers investigated, it must ensure that any residual rate does not exceed the dumping margins of those producers. (Article 9.4 of course also requires that any residual rate not exceed the weighted average margin of dumping for selected exporters or producers, although it then requires, in this case, that all such margins be disregarded in calculating such a weighted average). Disregarding the margins of all of the Chinese producers investigated therefore does not mean that a ceiling on the residual rate no longer exists as the Minister must still meet the requirement of section 14(4) of the Act.

754. The WTO Appellate Body, in the case referred to above, commented (at paragraph 123) that the purpose of the requirement that authorities disregard margins established using the facts available, is “. . . to prevent the exporters, who were *not* asked to cooperate in the investigation, from being prejudiced by gaps or shortcomings in the information supplied by the investigated exporters.” While the use of the facts available may have resulted in dumping margins that are higher than would have been the case had the Chinese producers co-operated, the Ministry can see no objective way in which it can quantify any such possible increase in dumping margins. The Ministry does not consider it would be reasonable to reduce the

dumping margin calculated from the investigated Chinese producers by some arbitrary amount.

755. Consequently, the Ministry considers the most reasonable way for it to calculate a residual duty in this case is to establish an *ad valorem* percentage rate of duty equal to the weighted average dumping margin of the investigated Chinese producers, albeit that the dumping margins for these producers were all calculated on the basis of the facts available. All of the Chinese producers investigated had weighted average dumping margins that were greater than zero and *de minimis* and therefore none of the producers could be disregarded on this basis.

756. The weighted average margin of dumping for the investigated Chinese producers was 185 percent, and it is therefore proposed that an *ad valorem* residual rate of duty for China be set at this rate.

Indonesia

757. Of the three Indonesian producers investigated, the Ministry has had to use the facts available in part for PT Andhi and PT Panata. In establishing a residual rate of duty for Indonesia, the margins for PT Anhdi and PT Panata were disregarded under Article 9.4 of the Agreement. The weighted average margin of dumping for the remaining producer, PT Selamat, was greater than zero and *de minimis*.

758. It is therefore proposed that an *ad valorem* residual rate of duty for Indonesia be established that is equal to the weighted average margin of dumping for PT Selamat of 43 percent.

Korea

759. The Ministry has had to use the facts available for all four Korean producers investigated. Except in the case of June Heung, the facts available were used for at least part of all of the transactions (for which export prices and normal values could be established) of the Korean producers investigated. For June Heung, the dumping margin was established using a combination of information provided by June Heung and the facts available, and for a significant number of transactions was based solely on information provided by June Heung, the exporter and the importer. For the purpose of calculating a ceiling on the residual rate, the margins calculated for all of the Korean producers investigated should be disregarded in terms of Article 9.4 of the Agreement.

760. In this situation the Ministry considers the most reasonable approach is to base the residual rate on the margin for June Heung as a significant part of that margin is based on information provided by June Heung. (The weighted average dumping margin for June Heung is greater than zero or *de minimis*). In proposing this approach, the Ministry notes that the information provided by June Heung, as outlined in paragraph 393 above, was not ideal in all respects, but was nevertheless used by the Ministry, following paragraph 5 of Annex II of the Agreement.

761. It is therefore proposed that an *ad valorem* residual rate of duty for Korea be established that is equal to the weighted average margin of dumping for June Heung of 12 percent.

Thailand

762. Of the three Thai producers investigated, CT Industry and Denso had negative dumping margins and these margins have therefore been disregarded in calculating a residual rate. The dumping margin for the remaining producer, Siam Tennex, was established using information provided by that producer and the exporter and can therefore be used for establishing a residual rate.

763. It is therefore proposed that an *ad valorem* residual rate of duty for Thailand be established that is equal to the weighted average margin of dumping for Siam Tennex of 19 percent.

Reassessments for Exporters not Investigated

764. The Act, at section 14(6), provides for the initiation of a reassessment on the initiative of the Chief Executive or at the request of an interested party who submits evidence justifying the need for a reassessment. The Ministry would not normally carry out a reassessment for at least six months after the completion of an investigation in order to allow sufficient time for the operation of the duties to be properly assessed.

765. However, Article 9.5 of the Agreement provides that authorities shall promptly carry out an accelerated review, for the purpose of establishing individual dumping margins for any exporter or producer of that product in the exporting country who has not exported the product to the importing country during the period of investigation.

766. In addition, parties who have exported the goods under investigation to New Zealand during the period of investigation, but who were not one of those exporters or producers selected for investigation under Article 6.10 of the Agreement, may also seek a reassessment within six months of the completion of this investigation for the purpose of establishing their individual dumping margins and rates of anti-dumping duty.

Summary of Proposed Anti-Dumping Duties

767. The following tables summarise the duties proposed for each producer.

China

Table 8.13: Bengbu Filter Co. Ltd

Reference Prices

| <i>Part No.</i> | <i>Amount</i> | <i>Type</i> |
|---------------------------|---------------|-------------|
| | NZD | NIFOB |
| | CNY | NV(VFDE) |
| | CNY | NV(VFDE) |
| | CNY | NV(VFDE) |
| | CNY | NV(VFDE) |
| <i>Alternative Duty *</i> | CNY | NV(VFDE) |

Ad Valorem Percentage

38% for all other models of oil filter

Table 8.14: Golden Haiye Auto Parts

Ad Valorem Percentage

414% on all models of oil filter

Table 8.15: Zhejiang Universe Filter Co. Ltd

Ad Valorem Percentage

85% on all models of oil filter

Indonesia

Table 8.16: Direct Exports by PT Selamat Sempurna Tbk

Reference Prices

| <i>Part No.</i> | <i>Amount (all IDR)</i> | <i>Type</i> |
|-----------------|-----------------------------|-------------|
| | | NV(VFDE) |
| | | NV(VFDE) |
| | | NV(VFDE) |
| | | NV(VFDE) |
| | | NV(VFDE) |
| | | NV(VFDE) |
| | | NV(VFDE) |
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| | | NV(VFDE) |
| | | NV(VFDE) |
| | | NV(VFDE) |
| | | NV(VFDE) |
| | | NV(VFDE) |
| | | NV(VFDE) |

Table 8.17: PT Selamat: Exports Direct from Indonesia by Filter Sales Australia

Reference Prices

| <i>Part No.</i> | | <i>Amount</i> | <i>Type</i> |
|--------------------|-----|---------------|-------------|
| | IDR | | NV(VFDE) |
| | NZD | | NIFOB |
| | IDR | | NV(VFDE) |
| | IDR | | NV(VFDE) |
| | IDR | | NV(VFDE) |
| | IDR | | NV(VFDE) |
| | IDR | | NV(VFDE) |
| | IDR | | NV(VFDE) |
| | IDR | | NV(VFDE) |
| | IDR | | NV(VFDE) |
| | IDR | | NV(VFDE) |
| | IDR | | NV(VFDE) |
| | IDR | | NV(VFDE) |
| | IDR | | NV(VFDE) |
| | IDR | | NV(VFDE) |
| | IDR | | NV(VFDE) |
| | IDR | | NV(VFDE) |
| | IDR | | NV(VFDE) |
| | NZD | | NIFOB |
| | IDR | | NV(VFDE) |
| | IDR | | NV(VFDE) |
| | IDR | | NV(VFDE) |
| | IDR | | NV(VFDE) |
| | IDR | | NV(VFDE) |
| | IDR | | NV(VFDE) |
| | IDR | | NV(VFDE) |
| | IDR | | NV(VFDE) |
| Alternative Duty * | IDR | | NV(VFDE) |
| | IDR | | NV(VFDE) |

Table 8.18: PT Selamat: Exports via Australia by Filter Sales Australia

Reference Prices

| <i>Part No.</i> | | <i>Amount</i> | <i>Type</i> |
|-----------------|-----|---------------|-------------|
| | IDR | | NV(VFDE) |
| | NZD | | NIFOB |
| | IDR | | NV(VFDE) |
| | IDR | | NV(VFDE) |
| | IDR | | NV(VFDE) |
| | IDR | | NV(VFDE) |
| | IDR | | NV(VFDE) |
| | IDR | | NV(VFDE) |
| | IDR | | NV(VFDE) |
| | IDR | | NV(VFDE) |

Table 8.20: PT Panata: Exports via Australia by Donaldson

Reference Prices

| <i>Part No.</i> | <i>Amount (all IDR)</i> | <i>Type</i> |
|-----------------|-----------------------------|-------------|
| | | NV(VFDE) |
| | | NV(VFDE) |
| | | NV(VFDE) |
| | | NV(VFDE) |
| | | NV(VFDE) |
| | | NV(VFDE) |
| | | NV(VFDE) |
| | | NV(VFDE) |

Ad Valorem Percentage

60% for all other models of filter exported via Australia by Donaldson and for all models of oil filter exported by any company other than Donaldson

Korea

Table 8.21: June Heung Filter Co. Ltd

Reference Prices

| <i>Part No.</i> | <i>Amount (all KRW)</i> | <i>Type</i> |
|-----------------|-----------------------------|-------------|
| | | NV(VFDE) |
| | | NV(VFDE) |
| | | NV(VFDE) |
| | | NV(VFDE) |
| | | NV(VFDE) |
| | | NV(VFDE) |
| | | NV(VFDE) |

Ad Valorem Percentage

12% for all other models of oil filter

Table 8.22: Kang Nam Filter Co. Ltd

Reference Prices

| <i>Part No.</i> | <i>Amount</i> | <i>Type</i> |
|-----------------|---------------|-------------|
| | KRW | NV(VFDE) |

Ad Valorem Percentage

54% for all other models of oil filter

Table 8.23: Shin Sung Industrial Ltd**Reference Prices**

| Part No. | Amount | Type |
|-----------------|---------------|-------------|
| | KRW | NV(VFDE) |

Ad Valorem Percentage

15% for all other models of oil filter

Table 8.24: Yuil Air Filter Co. Ltd**Reference Prices**

| Part No. | Amount | Type |
|-----------------|---------------|-------------|
| | NZD | NIFOB |
| | KRW | NV(VFDE) |
| | NZD | NIFOB |

Alternative Duty *

| | | |
|--|-----|----------|
| | KRW | NV(VFDE) |
| | KRW | NV(VFDE) |

Ad Valorem Percentage

155% for all other models of oil filter

Thailand**Table 8.25: CT Industry Co. Ltd****Reference Prices**

| Part No. | Amount | Type |
|-----------------|---------------|-------------|
| | THB | NV(VFDE) |
| | THB | NV(VFDE) |
| | THB | NV(VFDE) |
| | THB | NV(VFDE) |
| | THB | NV(VFDE) |
| | THB | NV(VFDE) |
| | THB | NV(VFDE) |
| | THB | NV(VFDE) |
| | THB | NV(VFDE) |
| | THB | NV(VFDE) |
| | THB | NV(VFDE) |
| | THB | NV(VFDE) |
| | THB | NV(VFDE) |
| | THB | NV(VFDE) |

Ad Valorem Percentage

Nil

**Table 8.26: Siam Tennex Manufacturing Ltd
(now known as MAHLE Siam Filter Systems Co. Ltd)**

Reference Prices

| Part No. | Amount | Type |
|-----------------|---------------|-------------|
| | THB | NV(VFDE) |

Ad Valorem Percentage

19% for all other models of oil filter

* 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.

768. A nil rate of duty is proposed for Denso International Thailand.

Residual Rates of Duty

769. The following table summarises the proposed residual rates of duty.

Table 8.26: Residual Rates of Duty

| | Ad Valorem % Rate |
|-----------|-------------------|
| China | 185 |
| Indonesia | 43 |
| Korea | 12 |
| Thailand | 19 |

Refunds of Anti-Dumping Duty

770. Provisional anti-dumping duties were imposed by the Minister on 28 October 2004 under section 16(1) of the Act. Section 16(5) of the Act allows the Minister to approve the refund of any provisional anti-dumping duty paid that was in excess of any final anti-dumping duty.

771. It is possible that some provisional anti-dumping duty has been paid that is greater than would have been paid under the final duties proposed above. In those cases the Ministry will recommend that the Minister approve the refund of any excess duty paid.

Impact of Anti-Dumping Duties

772. For those filters for which reference prices have been proposed, any anti-dumping duties imposed will impact only on filters originating from China, Indonesia, Korea and Thailand that are being dumped, as the anti-dumping duties proposed are at a level that is no greater than is necessary to remedy the injury suffered by the New Zealand industry caused by dumping. Other models of oil filter that are subject to an *ad valorem* percentage rate of duty will always incur the duty, but to the extent

possible, this type of duty is proposed for those filters that are imported in lower volumes.

773. The imposition of duties will likely result in increased prices of oil filters from the four countries under investigation and may allow the New Zealand industry to increase its prices. The duties may also allow importers from other countries to increase their prices due to the removal of some of the downward pressure on prices caused by dumped imports. It is likely that consumers of oil filters will therefore pay higher prices.

774. It is difficult to gauge the extent of any price increases as price competition is also affected by imports from other countries. In 2004 dumped imports from China, Indonesia, Korea and Thailand held 10 percent of the New Zealand market and other imports held 10 percent of the New Zealand market, showing that there will still be significant import competition in the market. The prices of imports from other countries may consequently reduce the extent to which prices could increase subsequent to the imposition of a duty.

775. While the imposition of final duties may result in purchasers from China, Indonesia, Korea and Thailand paying higher prices, at the same time oil filters imported from other countries will not be affected by the duties and purchasers will therefore continue to have the same access to oil filters from other countries.

9. Recommendations

776. It is recommended on the basis of the information obtained during the course of the investigation into the dumping of oil filters from China, Indonesia, Korea and Thailand:

1. That the Minister determine pursuant to section 13 of the Act that in relation to the importation or intended importation of oil filters from China, Indonesia, Korea and Thailand:

- (a) the goods are being dumped; and
- (b) by reason thereof material injury to an industry has been or is being caused.

2. That the Minister, having made a determination under section 13 of the Act, give notice pursuant to section 14(1) of the rate or amount of duty determined under section 14(4) of the Act to be imposed in respect of the oil filters from China, Indonesia, Korea and Thailand that are dumped.

3. That where the amount of provisional anti-dumping duty imposed under section 16(1) of the Act exceeds the amount of duty determined under section 14(4) of the Act, the Minister require the New Zealand Customs service to remit the amount of the excess duty paid.

4. That the Minister decline to accept the price undertakings offered by DCS Holding Co. Ltd, Zhejiang Universe Filter Co. Ltd and Donaldson Australasia Pty Ltd.

5. That the Minister sign the attached *Gazette* notice, and give notice of the final determination and imposition of duties in respect of China, Indonesia, Korea and Thailand, to interested parties in accordance with sections 9, 11, 13 and 14 of the Act.

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Investigating Team
Trade Remedies Group

APPENDIX ONE

| NEW ZEALAND GUDEs Top 20 Sellers in 2004 | CHINA | | INDONESIA | | KOREA | | THAILAND | |
|---|------------------|----------------|------------------|------------------------|------------------|------------------------|------------------|------------------------|
| | Ex-Factory Price | Ex-Factory NIP | Wtd Avg Ex-Wharf | Wtd Avg 2004 Price U/C | Wtd Avg Ex-Wharf | Wtd Avg 2004 Price U/C | Wtd Avg Ex-Wharf | Wtd Avg 2004 Price U/C |
| | | | Price U/C | % | Price U/C | % | Price U/C | % |
| RYCO Filters | | | | | | | | |
| Total Undercutting | 9,408 | | | | | | | |
| Total Not Undercutting | 0 | | | | | | | |
| Country Dumped Imports Totals | 115,948 | 8% | 231,135 | 22% | 183,230 | 7% | 74,233 | 81% |
| Total Undercutting | 50,062 | | 1,248 | | 12,450 | | 59,850 | |
| Total Not Undercutting | 0 | | 0 | | 0 | | 0 | |
| Country Dumped Imports Totals | 115,948 | 8% | 231,135 | 22% | 183,230 | 7% | 74,233 | 81% |