Ministry of Business, Innovation & Employment

Non-Confidential
Final
Reassessment Report

Plasterboard from Thailand

Dumping and Countervailing Duties Act 1988

July 2012

978-0-478-38263-1

Trade Rules, Remedies and Tariffs Group
Ministry of Business, Innovation and Employment

Table of Contents

Abbreviations

The following abbreviations are used in this Report:

Act (the)	Dumping and Countervailing Duties Act 1988
Anti-Dumping Agreement	WTO Agreement on Implementation of Article VI of the GATT 1994
Chief Executive	Chief Executive of the Ministry of Business, Innovation and Employment
FOB	Free on Board
kg	kilograms
Minister (the)	Minister of Commerce
Ministry (the)	Ministry of Business, Innovation and Employment
NIFOB	Non-injurious Free-on-Board
NIP	Non-injurious price
NV(VFDE)	Normal value (value for duty equivalent)
POR(D)	Period of review (dumping)
SCG	SCG Trading Co. Ltd (previously, SCT Co. Ltd)
SQM	Square metre
TGP	Thai Gypsum Products Pcl. (previously, BPB)
THB	Thai Baht
NZD	New Zealand dolla
VFD	Value for Duty
WTO	World Trade Organisation

1. Executive Summary

Introduction

1. The Ministry of Business, Innovation and Employment (the Ministry) completed a review of the anti-dumping duties that currently apply to imports of plasterboard from the Kingdom of Thailand (Thailand) on 26 March 2012 and concluded the duties should remain in place.

2. Immediately following the completion of the review, the Ministry initiated a reassessment of the anti-dumping duties to consider the appropriate form and level of duties that should apply.

3. The goods that are subject to reassessment are described as:

> *Standard plasterboard of a nominal thickness from, but not including, 6mm and up to, but not including, 12mm of any width or length.*

4. Anti-dumping duties have been in place on plasterboard from Thailand since 1989. The last review and reassessment of duties was completed in 2006.

2006 Review and Reassessment

5. The 2006 review found that one exporter, BPB Thai Gypsum Products (BPB), was not dumping into the New Zealand market but there was likely to be a recurrence of dumping causing injury should the duties be removed. The review found for the other exporter, SCT Co. Ltd (SCT), that it was dumping by a minimal amount, making their dumping margin *de minimis,* but there was not likely to be a recurrence of dumping causing injury should the duties be removed.

6. There was evidence of BPB bundling its prices of standard and performance plasterboard (which is not subject to anti-dumping duty) through lowering the price of performance board and raising the price of standard board. This allowed the importer from BPB to avoid paying duty on standard plasterboard. There was also evidence that plasterboard exported by BPB was causing injury to the New Zealand industry, which consists solely of Winstone Wallboards Ltd (Winstone). There was no evidence of injury to Winstone caused by standard plasterboard exported by SCT.

7. To stop BPB evading the anti-dumping duty through bundling, and to remedy the injury being caused by BPB's exports, the Minister reassessed the duty for BPB to a specific duty of THB[redacted] per square metre. Because SCT was not dumping nor injuring the domestic industry, the Minister reassessed its duty to a zero percent *ad valorem* rate when plasterboard was imported by a specified importer and set a reference price amount of THB[redacted] for any other importers from SCT. Further, the residual rate for any other exporters of standard plasterboard from Thailand was reassessed to a specific duty of THB[redacted] per square metre.

2012 Review

8. Since the 2006 review and reassessment, both of the Thai exporters had changed their names although the companies are essentially the same entities. BPB became Thai Gypsum Products Pcl. (TGP) and SCT became SCG Trading Company Ltd (SCG). Further, the company that had the sole right to import from TGP sold the business to Element NZ Ltd (Element), a subsidiary of McConnell Group, a large privately owned construction, property and infrastructure group of companies.

9. The review completed in 2012 found that the export prices of both TGP and SCG had decreased by a significant amount which had resulted in dumping by both companies. The review concluded that if the duties were to be removed, there would likely be a continuation of the dumping and this would likely cause a recurrence of injury to Winstone, primarily through price competition from Element which the importer from SCG, Elephant NZ Ltd (Elephant) would need to follow.

10. There was evidence that even with the duties in place, imports by Element were undercutting Winstone's prices, although this had not caused significant injury to Winstone. There was no evidence of any injury to Winstone caused by imports by Elephant with the duties in place.

11. The review found that TGP was no longer bundling the prices of its performance and standard plasterboard, although a specific duty does not provide any incentive to bundle prices in order to evade the duty.

2012 Reassessment

12. A key issue in this reassessment is whether TGP should still be subject to a specific duty, and if not, what the form and rate of duty for this company should be.

13. The Ministry considers that a specific duty should no longer apply to TGP, largely because of the change in importers from TGP. When this is considered in conjunction with the more normal pricing structure now in place for TGP's performance and standard plasterboard, the Ministry considers it unlikely that TGP will revert to bundling if an alternative form of duty is put in place.

14. The Ministry is proposing for TGP that a reference price duty be put in place. A reference price mechanism is considered more suitable as it only collects duty when a shipment is priced below the reference price. It provides a clear indication of what the non-dumped or non-injurious price is in the New Zealand market and only collects duties that are necessary to remove the injury caused by dumping. The Ministry is therefore recommending that a reference price of THB[redacted] per sqm, which represents the non-dumped price of the product, be put in place for TGP.

15. While SCG is continuing to dump into the New Zealand market, relevant information indicates that Elephant is selling plasterboard imported from SCG at a level that is not injuring Winstone. The Ministry is therefore recommending that the

zero percent *ad valorem* rate remain in place for SCG when imports are made by Elephant. The Ministry is also recommending that a reference price amount of THB[redacted] per square metre be put in place for exports made by SCG to any other importer. This rate should also apply as the residual rate for any other exporters of Thai plasterboard.

16. The effective date of the new duties will be the day after the date the Minister determines new reassessed rates of duty.

2. Background to the Reassessment

2.1 Introduction

15. Anti-dumping duties on plasterboard from Thailand were first imposed under the Dumping and Countervailing Duties Act 1988 (the Act) by the Minister of Commerce in 1989. The duties were last reviewed and reassessed in 2006.

16. These duties were scheduled to expire on 11 September 2011. However, the New Zealand industry, solely comprised of Winstone Wallboards Ltd (Winstone), made an application for the continuation of the duties beyond the expiry date (as it is able to do under the Act).

17. Dumping is defined in section 3(1) of the Act and occurs when an exporter sells goods to New Zealand at a price lower than it sells the same or similar goods for in its own country. In essence dumping is price discrimination between an export and a domestic market. It is not illegal but injurious dumping can be remedied by the imposition of anti-dumping duties at the border to level the playing field.

18. It is important to note that dumping does not always cause material injury to the domestic industry. Material injury occurs when dumped goods are imported in sufficient quantity to cause a decline in factors such as output or profits as a result of exports undercutting, depressing or supressing the domestic industry's prices. Injury may also be caused in a number of other ways. Dumped imports can also threaten to cause material injury.

19. In its application for the continuation of anti-dumping duties, Winstone claimed that their removal would allow Thai plasterboard to be imported into New Zealand at dumped prices, causing a recurrence of material injury to the domestic industry.

20. A review was initiated by the Ministry of Business, Innovation and Employment (the Ministry) on 5 September 2011 (prior to the expiry of the duties) as it was satisfied that positive evidence had been provided by Winstone justifying the need for a review (as required by the Act).

21. The Ministry completed the review on 26 March 2012 and concluded that the standard plasterboard exported to New Zealand was dumped and there was likely to be a continuation of dumping should the duties be removed. The Ministry further concluded that the continued imposition of anti-dumping duties was necessary to prevent a recurrence of material injury to the New Zealand industry.

22. The Act allows the Minister of Commerce to determine a new rate or amount of anti-dumping duty, following the completion of a review, including any changes in the formula used to establish an anti-dumping duty. However, section 14(6) of the Act requires firstly that a reassessment of the current form and level of the anti-dumping duties is undertaken.

23. This reassessment of the anti-dumping duty was initiated on 26 March 2012 (on the day the review was completed). The reassessment addresses whether it is

appropriate for the form and rate of the anti-dumping duties to be changed, based on the findings of the review.

2.2 Imported Goods

24. The imported (or subject) goods covered by this reassessment are described as:

> *Standard plasterboard of a nominal thickness from, but not including, 6mm and up to, but not including, 12mm of any width or length.*

25. Under the Working Tariff of New Zealand, standard plasterboard enters New Zealand under tariff item and statistical key 6809.11.00.10D. Plasterboard originating from Thailand is eligible to enter New Zealand free of import duty under the New Zealand Thailand Closer Economic Partnership (CEP) Agreement.

2.3 Interested Parties

New Zealand Industry

26. Winstone is the sole manufacturer of plasterboard in New Zealand and constitutes the New Zealand industry.

Exporters and Manufacturers

27. In the 2012 review, three companies were identified as exporting plasterboard to New Zealand from Thailand during the period over which dumping was analysed (known as the period of review for dumping). This period was from 1 August 2010 to 31 July 2011. One of the manufacturers, Siam Gypsum Industries, exports via SCG Trading Co. Ltd. Thai Gypsum Products Pcl (TGP) is both a manufacturer and exporter. The other exporter, Chumsangthai Goldrice Ltd, made [redacted] shipment to New Zealand. This company chose not to co-operate with the Ministry, and was not included in the review.

28. Both SCG and TGP had name changes between the 2006 review and the 2012 review. SCG was previously known as SCT, while TGP was previously known as BPB. The exporters will hereinafter be referred to as SCG and TGP.

29. SCG and TGP have traditionally been the two major exporters of Thai plasterboard to New Zealand and each has a separate anti-dumping duty rate for standard plasterboard. In the 2012 review both companies co-operated with the Ministry and separate dumping margins were calculated for them. In this reassessment, SCG and TGP are considered interested parties and the Ministry has reassessed the form and rate of their anti-dumping duties.

Importers

30. In the 2012 review, the Ministry identified three New Zealand companies who were importing from the three Thai exporters; Elephant New Zealand Limited (Elephant), Element New Zealand Limited (Element) and Marquet Trading Ltd. In the review, Element cooperated with the Ministry while Elephant provided limited cooperation. Marquet Trading (who imported [redacted] shipment from

Chumsangthai Goldrice Ltd) chose not to cooperate with the Ministry and was not considered an interested party. In this reassessment, Element and Elephant are considered interested parties and the Ministry has used their information in the reassessment of the anti-dumping duty rates for SCG and TGP.

2.4 Export Price, Normal Value and Dumping Margin

31. In the 2012 review of plasterboard, the Ministry established dumping margins for both TGP and SCG using information provided by the companies themselves.

32. The dumping margins were determined for TGP and SCG by calculating the difference between their weighted average export prices and their weighted average Thai domestic prices (i.e. average prices that are weighted by volume). This exercise was done at the ex-factory level, that is, only costs to manufacture and sell the goods and the profit margin are considered (this is the preferred point of comparison under Article 2.4 of the Anti-Dumping Agreement). In calculating ex-factory values for each exporter, the Ministry made a number of deductions (or adjustments) from the base normal values and export prices to take the prices back to the ex-factory level and to ensure a fair comparison between sales of plasterboard for domestic consumption in Thailand and sales to New Zealand.

33. Because the weighted average export price was lower than the weighted average normal value for both companies, their exports to New Zealand were considered dumped.

34. Table 3.1 below provides a summary of the Ministry’s 2012 review findings on dumping. (More information, including an explanation of the adjustments made, can be found in Section 4 of the Final Review Report).

Table 3.1: 2012 Review: Dumping Summary

	Exporters	
	Thai Gypsum Products Pcl (TGP)	**SGI/SCG Trading Co. Ltd (SCG)**
Export Volume to NZ (sqm)	[redacted]	[redacted]
Base Export Price (THB/sqm)	[redacted]	[redacted]
Adjustments	Inland freight Customs clearance and service charge Terminal Handling Charge and Bill of Lading fee Export Packing Cost of credit	Inland freight Customs clearance Bill of Lading Terminal Handling Charge Export Handling Charge Lashing Charge Export Packing Container Freight Station Charge Bank Fee Cost of credit

Ex-factory Export Price (THB/sqm)		
Base Domestic Thai Price (THB/sqm)		
Adjustments	Rebates Internal Freight Cost of credit Physical differences	Rebates Inland freight Cost of credit Physical differences
Ex-factory Normal Value (THB/sqm)		
Dumping Margin (as % of Export Price)	%	%

2.5 Disclosure of Information

35. Interested parties were invited to make submissions on the proposed reassessed anti-dumping duty rates through the release of two interim reassessment reports. A number of parties made comments on the interim reports as well as on documents and submissions provided by parties which were placed on the public file for this review/reassessment. The Ministry maintains a public file system, in accordance with the requirements of section 10 of the Act and Article 6 of the Anti-dumping Agreement. This final reassessment report takes into account all submissions and comments provided by interested parties, and the proposed reassessed anti-dumping duty rates reflect those comments.

3. Reassessment of Anti-Dumping Duties

3.1 2006 Review and Reassessment

SCG/ Elephant

36. In the 2006 review, there was no evidence that Elephant's imports of plasterboard from SCG were injuring the domestic industry, nor was there evidence of any other non-price considerations. Winstone acknowledged that there was no price undercutting or other injury occurring by imports from SCG. Additionally, Elephant stated at the time of the review that any gains it may make in lowering its prices would be short lived, as Winstone would rapidly take anti-dumping action. The Ministry noted that Elephant was unlikely to change its pricing behaviour.

37. After examining the information gathered, the Ministry did not impose a duty on SCG, because this company was not dumping and there was no injury being caused by their exports. As a result, a zero percent *ad valorem* duty was imposed. A reference price amount of THB[redacted] per sqm for exports from SCG to importers other than Elephant was also put in place.

TGP/BML

38. In the 2006 review, the Ministry found that TGP was not dumping. The Ministry however found evidence that TGP was bundling its prices of standard and performance plasterboard over the review period. TGP was doing so by lowering the price of performance board (which is not subject to the duty) and raising the price of standard plasterboard, which allowed the then importer, Building Materials Ltd (BML) to avoid paying duty on its imports of standard plasterboard from TGP. Furthermore, Winstone provided evidence that BML's imports from TGP were undercutting its prices, and thus injuring the domestic industry.

39. In order to address this issue and stop TGP evading the anti-dumping duty through bundling, a specific duty of THB [redacted] per sqm was imposed. The specific duty cannot be avoided, as it is an amount paid on all exports from TGP of standard plasterboard regardless of the price at which it is exported to New Zealand. The amount was set at the full dumping margin and was intended to increase the export price of standard plasterboard to a non-dumped level. It applied to all TGP's exports of standard plasterboard.

Residual Rate

40. A specific duty of THB[redacted] per sqm was also imposed as the residual rate. It is the Ministry's normal practice to set the residual rate at the highest of all the other rates, to prevent the establishment or use of alternate legal entities by existing exporters and importers in order to take advantage of a lower duty rate.

3.2 2012 Review

SCG/Elephant

41. During the 2012 review it was determined that SCG was dumping plasterboard into the New Zealand market and the dumping would likely continue should the duties be removed. However, the Ministry sourced information which indicated that Elephant is making a concerted attempt to sell standard board in the New Zealand market at prices above the New Zealand industry's prices. According to SCG (and Elephant), its policy is to conclude sales on the basis of quality and service, rather than price.

TGP/Element

42. The 2012 review found that exports by TGP were dumped, that the dumping would likely continue should the duties be removed and that the domestic industry would likely experience a recurrence of material injury if the duties are removed.

Cross-subsidisation (or "Bundling") of plasterboard from Thailand

43. The Ministry received a submission from Winstone during the 2012 review which raised the issue of bundling (Winstone termed this cross-subsidisation) of plasterboard imported from Thailand. Winstone stated that the Ministry needed to address this issue again by considering the form of duty that should be imposed in the present case. The Ministry has examined and addressed Winstone's submission below.

44. Given the previous pricing behaviour of TGP and its then importer, BML, in New Zealand and the fact that the major reason for imposing a specific duty in 2006 was because of cross-subsidisation, Winstone believes that the Ministry should obtain and analyse the current relative pricing for standard board versus performance board to ensure that this practice is not still occurring. Winstone stated that it is unlikely there is no cross-subsidisation occurring because, if there was not, Element would have applied to the Minister to have the specific duty removed.

45. The Ministry has analysed the extent to which the price of standard plasterboard differs from performance board for both Thai producers. Using the invoices provided by these companies for the purpose of the review, the Ministry calculated that standard plasterboard prices were on average [redacted] percent of performance board prices for TGP, and [redacted] percent of performance board prices for SCG. As a result of this exercise, the Ministry is satisfied the invoiced prices reflect non-bundled prices for standard plasterboard and that neither Thai exporter is cross-subsidising/bundling.

46. In terms of whether or not Element is likely to collude with TGP, and resort again to bundling if a reference price duty is reinstated, the Ministry considers this unlikely. BML is no longer the importer and distributor of TGP plasterboard in New Zealand. However, if the Ministry receives evidence indicating that the importer and exporter were colluding to circumvent the anti-dumping duties (through bundling or any other means), the Ministry could initiate a reassessment of the anti-dumping duties to ensure that the anti-dumping duty remained effective.

3.3 Methods of Imposing Duties

47. Anti-dumping duties are intended to alleviate injury attributable to dumping, not to punish an exporter or provide a domestic industry with protection beyond the impact of the dumping. For this reason, the duty should only remedy the amount of injury attributable to dumping.

48. Considerations taken into account in deciding an appropriate form of the anti-dumping duty include ease of administration at the border, the ability to ensure a dumping margin is not exceeded, the ability to maintain fairness between parties, and predictability of the duties payable.

49. There are three forms of anti-dumping duties:

- the specific duty approach;
- the *ad valorem* rate approach; and
- the reference price approach.

50. A specific duty is a set amount of duty payable per unit imported. It is based on the monetary value of a margin of dumping.

51. An *ad valorem* duty is based on the margin of dumping or the margin of injury as a percentage of the value for duty.

52. The reference price approach relates to the difference between the transaction price and a benchmark price. The amount of the difference is the duty payable. A reference price can be based on either a domestic price (in the exporting country) or the domestic industry's non-injurious price.

Box 3.1: The Pros and Cons of the Three Method of Imposing Anti-dumping Measures

A Specific Duty Approach

A specific duty is convenient to apply, impossible to evade by incorrectly stating the value for duty, and the amount of duty payable is clear. However, problems may arise when dealing with a wide range of goods or where exchange rates fluctuate to the extent that margins of dumping will be exceeded without the constant reassessments of the specific amount. Additionally, there is also potential for an exporter to manipulate prices so that duty is either greater or lesser than the margin of dumping previously established. A specific duty expressed as a monetary amount will operate effectively when prices and exchange rates are consistent and stable enabling the dumping remedy to remain relevant to the margin of dumping.

Ad Valorem Rate Duty

Ad valorem duty rates can be provided to all parties, and therefore are transparent. They are also convenient to apply and are unlikely to be substantially affected by exchange rate movements. They are appropriate where a large range of goods exist or where new models appear.

As with other approaches, the possibility exists for collusion between exporter and importer to manipulate invoice values of goods subject to duty, particularly if imported in conjunction with similar goods. Under this approach, a particularly low, and potentially more injurious, export price would result in a lower duty, which may be insufficient to remove injurious dumping. Conversely, a particularly high, and less injurious export price, would attract a higher duty, perhaps higher than is necessary to remove injurious dumping.

Reference Price Duty

Reference prices are most suitable when dealing with movements in export price and exchange rates (if expressed in the currency of the normal value). They are particularly useful for dealing with situations where a lesser duty is applicable, that is, a duty set at less than the margin of dumping but at a level that would still not be injurious to the industry.

Reference price duties have the advantage of clearly signalling to exporters and importers what un-dumped or non-injurious prices are. Additionally they are collected only when goods are priced below the reference price. Therefore, duty is only collected to the extent necessary to remove injurious dumping.

Reference price duties are claimed to be more easily evaded than other forms of duty by overstating the VFD of the goods. Another drawback is that they are set at a fixed level based on a snapshot of price and cost, which obviously change over time and so may become less accurate. Significant changes which may occur over time in prices and exchange rates can be addressed by a reassessment of reference prices.

3.4 Proposed Methods of Imposing Anti-dumping Duty in the Present Case

53. The Ministry's practice is to consider the suitability of all methods of imposing anti-dumping duties in the circumstances of each dumping investigation and in respect of each exporter and importer who are or will be subject to the duties.

SCG/ Elephant

54. Information sourced in the 2012 review indicated to the Ministry that, while SCG was found to be dumping into the New Zealand market, Elephant was continuing to sell SCG plasterboard in the market at prices above those of Winstone. As such, the Ministry determined that Elephant is unlikely to be causing injury to the domestic industry. In its *interim* reassessment report, the Ministry proposed that imports by Elephant from SCG continue to be subject to an anti-dumping duty of zero percent *ad valorem.* The Ministry considered that this will likely be the most effective and fairest means of setting an anti-dumping duty for plasterboard imported into New Zealand from SCG.

Submissions on the Ministry's Initial Interim Findings

55. In response to the Ministry's initial interim reassessment report, Winstone submitted that the current anti-dumping duty in place has not been effective in removing injury, which Winstone claimed is confirmed by the Ministry's finding that dumping is still occurring. Winstone claimed that some of the price suppression it has suffered recently is directly attributable to having to [redacted] standard board [redacted] in order to maintain market share. To substantiate its claim, Winstone provided the Ministry with a schedule of price [redacted] which it claims it had to instigate (during the nine months to March 2012) specifically to [redacted] quotes and offers from Elephant. On this basis, Winstone claims that the Ministry's proposal to maintain a zero percent *ad valorem* duty for Elephant is not appropriate as it clearly has not stopped the dumping (and injury to Winstone) of Thai standard plasterboard.

56. In response to Winstone's submission on the initial interim reassessment report, Elephant stated that the building/construction industry is currently in a recession which is affecting sales and profitability of plasterboard both for the domestic producer and importers. Therefore, any injury (including price suppression) suffered by Winstone is due to the downturn in the local market rather than imports from Elephant. Elephant also disputed the schedule of contract specific quotes (CSQ) which Winstone provided to substantiate its claim of having to [redacted] standard board in the face of competition from Elephant. In particular, Elephant considered it likely that Winstone had exaggerated the number of CSQs in question by including instances where it has simply quoted a lower price than Elephant's list price in order to win the contract. Elephant also noted there is a certain amount of deceit occurring in the industry where a merchant's representative will approach Winstone or Elephant stating (falsely) that it has received a quote from the other party and that it will need to lower its prices if it wants to win the contract. Elephant claimed it was this type of practice which was injuring both Elephant and Winstone, rather than Elephant plasterboard being dumped and injuring Winstone.

57. When there have been instances of Winstone having to price lower than Elephant in order to win a contract, Elephant doubted that this could be a cause of injury to Winstone. Winstone, according to Elephant, continues to hold a [redacted] share of the New Zealand market and instances of Winstone having to [redacted] price in order to win a contract have resulted in lost sales (and injury) to Elephant, rather than to Winstone. Furthermore, Elephant has recently [redacted] standard board, [redacted], which it plans to soon [redacted] domestic customers.

Ministry Conclusions

58. There is no doubt the global economic recession and consequent downturn in the local building/construction industry has intensified competition in the plasterboard market. It is envisaged, however, that activity in the building industry will increase in the foreseeable future, in the wake of the Christchurch earthquake rebuild. The issue in the present case is the extent to which Winstone has had to [redacted] its prices in order to compete with Elephant's prices, to what extent the price [redacted] can be attributable to dumping (as opposed to normal competition) and to what extent the particular instances of price [redacted] identified by

Winstone have injured the company in terms of its overall sales of standard and 10mm Wideline board. The answer to these questions will be relevant in deciding the form and rate of any reassessed anti-dumping duty set for Elephant.

59. An indication of the extent to which Winstone has had to [redacted] its prices in competition with Elephant's prices (and whether the price [redacted] can be attributable to dumping) is to compare the price [redacted] Winstone claims it has needed to instigate in order to compete with Elephant's prices with the price [redacted] it claims it has needed to instigate in order to compete with Element's prices. Element is currently subject to a specific anti-dumping duty which acts to increase its prices to fairly traded levels thereby ensuring that Winstone and Element compete on a level playing field in the New Zealand market. On this basis (and also noting that it was recently determined that both Thai suppliers were continuing to dump their plasterboard into New Zealand [redacted]), it is reasonable to conclude that if Winstone is offering [redacted] when competing head-to-head with both Elephant and Element, this provides a good indication that Elephant has not on-sold dumped plasterboard at injurious prices. In other words, such an exercise will provide an indication about whether or not Elephant is passing on the benefit of not having to pay anti-dumping duties by setting injurious prices.

60. The information supplied by Winstone shows that, over the 9-month period to March 2012, the [redacted] provided by Winstone (in monetary terms per sqm) when competing against Elephant board was [redacted] to the [redacted] provided when competing against plasterboard imported by Element. As a percentage of selling price, the [redacted] Winstone has offered in competition with Elephant has [redacted] incrementally over the last three years and remains [redacted] when competing with Element.

61. In terms of how these particular instances of price [redacted] have injured Winstone in terms of its overall sales of standard and 10mm Wideline board, the information shows that the number of CSQs in question (for Elephant) amounts to approximately [redacted] of Winstone's total sales of standard and 10mm Wideline board. When taken together with Winstone holding an estimated [redacted] of the New Zealand market, this suggests it is unlikely that, where there have been instances of Winstone having to price [redacted] Elephant in order to win a contract, it could be a significant cause of injury to Winstone. Elephant also made it known to the Ministry that it has recently incurred [redacted] which it intends to soon [redacted] its New Zealand customers.

Submissions on the Ministry's Second Interim Findings

62. In response to the Ministry's *second* interim reassessment report, Winstone claimed that when the zero percent *ad valorem* rate was imposed in 2006, Elephant was not importing dumped plasterboard and the company maintained that it would not sell below Winstone's prices. However, in the 2012 sunset review it was determined that 100 percent of Elephant's imports of standard board were dumped which leads to the conclusion that the zero percent remedy has not prevented dumping nor has it been fully effective in preventing injury to Winstone.

63. In respect of Winstone's claim that the zero percent remedy has not prevented dumping (from Elephant's supplier) nor has it been fully effective in preventing injury to Winstone, the Ministry considers that the zero percent duty was put in place at the time, not to prevent dumping but rather because there was no evidence that Elephant's prices were undercutting Winstone's prices and causing it injury. The Ministry considered a zero duty rate was the best method of ensuring that Elephant continued to price its plasterboard in the New Zealand market at non-injurious levels. While the 2012 review concluded that Elephant board is now being dumped, this is likely due largely to the fact that export prices prior to 2006 were artificially inflated due to a reference price duty being in place at the time, and that since the removal of the reference price duty rate they have returned to more realistic levels.

64. In terms of whether or not the zero duty been fully effective in preventing injury to Winstone, the Ministry considers that one test could be the extent to which Elephant's share of Thai plasterboard imports has increased since 2006. Import statistics show that Elephant's share of Thai imports (both standard and performance board) has [redacted] since 2007. This fact, combined with Elephant having recently incurred [redacted] when purchasing standard board from SCG, suggests it unlikely that Elephant's plasterboard has been a significant factor in any injury Winstone claims to have suffered recently.

Ministry's Final Finding

65. On the basis of the above, the Ministry proposes that imports by Elephant from SCG continue to be subject to an anti-dumping duty of zero percent *ad valorem*.

SCG/Other Importers

66. While there is a sole supply agreement between Elephant and SCG, the Ministry has established a separate anti-dumping duty rate for exports from SCG to importers other than Elephant. This is consistent with the approach taken when the duties were last reassessed in 2006 and will ensure that should another company import from SCG, they will be subject to an appropriate remedy. This amount has been calculated using data collected during the 2012 review and constitutes a reference price duty rate set at the full margin of dumping. It begins with the normal value established for SCG during the review and adds costs for export packing, handling and lashing, inland freight, customs clearance, terminal handling charges, container freight station charges, a bank fee, a bill of lading charge and cost of credit. The Ministry recommends a rate of THB[redacted] for exports from SCG to any other importer.

TGP/ Element

67. The issue to be considered in the present case is whether or not a specific duty should remain for TGP and if not, what form the anti-dumping duty should take.

68. On the basis that TGP is no longer bundling its plasterboard, and is not likely to do so in the future, the Ministry considers that there are no grounds for maintaining a specific duty for imports by Element from TGP.

69. The Ministry considers that the use of a reference price mechanism is likely to be the most effective and fairest means of setting anti-dumping duty for plasterboard imported into New Zealand from TGP to Element. A reference price clearly indicates the non-dumped or non-injurious price to exporters, and it only charges duties that are necessary to remove the injurious effect of dumping on the domestic industry.

70. The Ministry has explained below how the reference price has been set for exports from TGP to Element.

3.5 Calculation of Duty Amount

71. There are two ways reference prices can be calculated. A reference price can be set at either the full margin of dumping or at a level below the full margin of dumping if this is sufficient to remove the injury caused by dumping (known as a “lesser duty”). A reference price at the full margin of dumping is referred to as a normal value (value for duty equivalent) or NV(VFDE) and is compared to a reference price set at a level which would remove the injury caused by dumping (referred to as a non-injurious free-on-board price or NIFOB). If the NIFOB is less than the NV(VFDE) amount, this indicates a lesser duty should apply.

Calculation of a Non-dumped [or NV(VFDE)] Reference Price Anti-dumping Rate

72. A *normal value (value for duty equivalent)* or NV(VFDE) amount represents the non-dumped price of the imports at the value for duty (VFD) level which is equivalent to the free-on-board (FOB) level, that is, the level at which goods are ready to be exported from the exporting country. A NV(VFDE) starts with the price charged at the ex-factory level in the exporting country’s domestic market. The Ministry then adds to this price any costs required to export the goods, to the point of getting the goods onto the ship in the exporting country, such as inland freight and customs clearance costs. The resulting value is the NV(VFDE) amount (or un-dumped price) at the FOB level.

Ministry’s Initial Interim Findings

73. In its *initial* interim reassessment report, the Ministry calculated the NV(VFDE) for TGP to be THB[redacted] which was based on the normal value (THB[redacted] established for the company during the 2012 review.

Submissions on the Ministry’s Initial Interim Findings

74. In response to the Ministry’s *initial* interim reassessment report, TGP (in combination with Element) stated that the calculation of its NV(VFDE) should account for the different services provided by TGP to Thai customers and New Zealand plasterboard users (via Element). The company claimed that the calculation of TGP’s normal value should reflect the additional costs to TGP of selling plasterboard in Thailand, where customers receive [redacted] from TGP. [redacted] is not provided by TGP to New Zealand customers, where Element bears these costs.

75. To support its claim, TGP noted that the New Zealand Act and the Anti-dumping Agreement make it clear that the overriding objective in dumping calculations is a fair comparison between domestic and export prices. Adjustments to these prices shall be made where an effect on price comparability is clearly demonstrated.

76. In providing details in support of its claim for an adjustment to be made to domestic prices, TGP noted the following:

- Thai customers know they [redacted] (including [redacted]) when they buy plasterboard from TGP because they deal with the TGP staff directly. A major selling point for TGP's product range in Thailand is [redacted] that is available—including [redacted] with plasterboard.

- Export orders [redacted] of support from TGP staff 'on the ground'. Instead, [redacted] in each country (including [redacted]) must provide the end-users with [redacted], such as [redacted]. Element has an [redacted] with TGP to [redacted] TGP's plasterboard in New Zealand. Effectively, therefore, TGP's export prices need to recover less selling, administration, and management costs than are recovered through domestic prices on the Thai market.

- Cost and sales information recorded separately for domestic and export accounts, and provided to the Ministry by TGP, show clearly the split in selling and marketing overhead costs between the two markets (including [redacted] the plasterboard).

- The above factors combined demonstrate that TGP considers both net and gross margins for each customer and market and that the costs of providing products and services in each market affect price. If costs did not affect price and the company's overall profitability, then there would be little reason to [redacted] from domestic transactions.

77. In response to TGP's claim, Winstone submitted that there should not be any extra allowance for overhead expenses when calculating TGP's normal value and its resulting NV(VFDE). The company stated that, while overhead costs (including cost differences between domestic and export sales) may fluctuate with overall sales volumes and market conditions, they do not arise from specific sales and should not be attributable to such sales. Overhead costs which are not caused by or which cannot be attributable to specific sales should not be considered in the Ministry's calculation of adjustments to either export prices or normal values. According to Winstone, the fact that TGP for commercial reasons divides its results between domestic and export profits does not justify making an allowance to the company's normal value, for the overhead cost differences.

78. The Ministry has decided to consider TGP's claim for an adjustment to its normal value under a level of trade adjustment.

Level of Trade

79. Article 2.4 of the Anti-dumping Agreement requires that due allowance be made for differences which affect "price comparability" including differences in levels of trade. An adjustment for trade level will only be made when these differences in levels of trade are shown to have affected price.

80. An example of a difference in the level of trade is where an exporter sells at more than one level of trade on its domestic market (e.g. to both distributors and to retailers) and the export sales to New Zealand are only at the distributor level. In this circumstance the Ministry examines whether it is possible to determine a normal value using only comparable domestic sales (i.e. sales to the distributor level). If this is possible, a normal value using comparable domestic sales would not require an adjustment to take account of level of trade.

81. However, where a normal value using only comparable domestic sales cannot be established, as the exporter has no domestic sales at the same level of trade as the export sales, the Ministry will examine the role of the parties and their place in the distribution chain (who's buying from whom or who's selling to whom). If evidence shows that the domestic sales and the export sales differ in level of trade and this affects prices, the Ministry will normally consider whether an adjustment is required.

82. On the basis of the above and information provided by TGP, the Ministry considers any claim for an adjustment to TGP's normal value should be considered under level of trade. In making its determination of whether or not a level of trade adjustment is appropriate in the present case, the following considerations have been addressed below by the Ministry:

(i) Is there a difference in the level of trade (between export and domestic sales) in the present case?

(ii) If there is a difference in the level of trade, is an adjustment required to ensure a fair comparison between the normal value and the export price?

Is there a difference in the level of trade in the present case?

83. When exporting to New Zealand, TGP sells to Element, who has the [redacted] to sell TGP plasterboard in New Zealand. Element sells TGP plasterboard mostly to Bunnings (a wholesale and retail building material distributor), and a small number of regional stockists (in Auckland, Hamilton and Christchurch). These intermediaries on-sell the plasterboard to construction firms and the wider building industry or to retail customers. Other distribution channels Element sells through are sales to construction companies, building contractors and developers.

84. In terms of the Thai domestic market, TGP sells its plasterboard mainly to wholesalers (or dealers) and installers with direct accounts, the vast majority of which [redacted]. While the company has [redacted] customers, approximately [redacted] percent of the company's business comes from the largest

[redacted] of its [redacted] customers. While the Thai market is approximately double the size of the New Zealand market, it is relatively under-developed and much less organised in terms of distribution. Large hardware chains equivalent to Bunnings and PlaceMakers (in New Zealand) are not very developed in Thailand and the dealers to whom TGP sells on-sell the plasterboard to smaller retailers.

Ministry's Second Interim Finding on Level of Trade

85. There are clear differences in the selling and distribution arrangements between New Zealand and Thailand. Sales by TGP to New Zealand are made to [redacted], Element, which on-sells TGP plasterboard to large merchants (Bunnings) and smaller regional stockists (who on-sell to the wider building industry or to retail customers) as well as direct to construction companies, building contractors and developers. On the Thai market, there is no similar customer to Element. In other words, TGP undertakes the functions performed by Element in New Zealand, in that it sells to dealers (who on-sell to smaller retailers) and to installers operating in the construction industry. The Ministry consequently concludes that in this case, there is a difference in the level of trade at which TGP sells on the domestic market and at which it sells to its New Zealand customer.

<u>Is an adjustment required for differences in level of trade?</u>

86. TGP has noted that a major selling point for its range in Thailand is [redacted] that is available - including [redacted] with plasterboard. This translates to a team of TGP employees dealing with over [redacted] customers - most of whom are [redacted] than Element. Export sales, including to New Zealand, [redacted] support from TGP staff 'on the ground'. Instead, [redacted] must deal with end-users. TGP effectively [redacted], meaning that TGP's export prices need to recover less selling, administration, and management costs than are recovered through domestic prices. The company stated that it has consciously accounted for export and domestic costs [redacted] to monitor which markets or customers are driving higher costs [redacted]. TGP said this is consistent with the [redacted] on export versus domestic sales applied by TGP. TGP considers that this warrants an adjustment to the normal value.

87. The information and evidence provided by TGP to substantiate the amount it incurs on both domestic and export overheads (and method used to allocate these overheads) has been described in the interim and final reports for the 2012 review. In summary, overhead costs of THB[redacted] per sqm were calculated for 9mm domestic sales and THB[redacted] per sqm for 10mm New Zealand standard board sales, which TGP considered was a fair representation of actual costs expended by it over the POR(D). Because these per unit values accounted for the difference in costs of selling 9mm standard board in Thailand and 10mm standard board to New Zealand, TGP stated that normal values should be adjusted by the difference in the two costs (i.e. THB[redacted] per sqm).

Ministry's Second Interim Finding on need for an Adjustment

88. A detailed examination of TGP’s cost calculations by the Ministry revealed that TGP assigned warehousing costs (which were reasonably [redacted]) solely to domestic-related sales. This is not surprising as warehousing costs normally relate to domestic sales. However, TGP’s three-tier pricing agreement with Element requires TGP to store plasterboard manufactured for New Zealand, sometimes up to [redacted] from the date of manufacture. On this basis, the Ministry considered warehousing costs to be shared costs and that they should be deducted from TGP’s cost calculations.

89. After deducting warehousing costs from TGP’s overhead cost calculations, the difference in costs of selling 9mm standard board in Thailand and 10mm standard board to New Zealand, equates to THB[redacted] per sqm. The Ministry considered that this figure provides an accurate and reliable quantification of the selling, marketing and after-sales activities TGP performs in the Thai market but does not perform in the New Zealand market and that it reflects the difference in the trade levels that TGP is selling to in Thailand and New Zealand. The Ministry was satisfied that the difference in the costs arising from the difference in the level of trade results in pricing differences for which an adjustment is required.

Submissions on the Ministry’s Second Interim Findings

90. In response to the Ministry’s *second* interim report, Winstone stated that it did not agree that there are differences in the level of trade when comparing TGP sales to its customers in Thailand and its sales to Element. In addition Winstone disputed that the domestic-specific overhead costs claimed as an adjustment by TGP have the necessary direct relationship with the domestic sales concerned. In other words, these costs would remain regardless of whether the domestic sales were made. Winstone claimed that by TGP splitting export-related marketing and sales costs from local marketing, the company was simply “managing its margins” which merely reflects the general commercial practice of allocating general overhead costs across the business, including export and domestic branches.

91. Winstone claimed that lower prices for exports were a result of not having to spend so much on customer service. Winstone provided a number of reasons for a company splitting marketing and sales overhead costs between domestic and export functions and noted specifically that pricing decisions are made on what the market will bear, rather than on costs (that would not be incurred if specific sales were not made).

Ministry’s Final Findings

92. In respect of Winstone’s argument against the level of trade adjustment to TGP’s normal value, the Ministry considers that any exporter, including TGP, is entitled to such an adjustment (under both the Act and the Anti-dumping Agreement) where it has shown there is a material difference in the levels of trade at which its goods are sold between the export and domestic markets. TGP has clearly demonstrated that its export and domestic sales differ in levels of trade. TGP’s export sales to New Zealand are to an importer who undertakes the type of activities TGP undertakes in Thailand.

93. Under these circumstances the price to the Thai dealers and installers is not directly comparable to the price to the New Zealand importer because in the former situation, the producer has to recover all of the additional costs of selling at the different level of trade. On this basis, the Ministry considers that an adjustment needs to be made to the company's normal value to avoid the potential for inequality in comparing a price to a dealer or installer (in Thailand) with the price to a New Zealand importer who effectively sells to these types of companies in New Zealand. A downward adjustment to the normal value should be made to the domestic sales price of standard plasterboard used in determining normal values.

94. In a dumping investigation, one method of quantifying the difference in levels of trade under the circumstances described above, is to quantify the additional costs arising from the different selling and distribution functions performed. An adjustment using this method is based on the sum of the costs associated with each activity the exporter performs in the domestic market but which it does not perform in its export market (in this case, New Zealand). In the present case, TGP, in making domestic sales to dealers, carries out additional sales activities and incurs additional sales force expenses and salaries, additional [redacted], and [redacted] expenses. The company was able to quantify and substantiate such expenses and costs and the Ministry considers a downward adjustment to the normal value calculated for TGP in the 2012 review is necessary when calculating a NV(VFDE) amount for the company.

95. The Ministry's approach is supported by other investigating authorities when deciding if and the extent to which an adjustment should be made for differences in levels of trade. Under the Australian practice,[1] where the exporter has no domestic sales at the same level of trade as the export sales to Australia, Australian Customs will examine the role of the parties and their place in the distribution chain (who's buying from whom or who's selling to whom). If evidence shows that the domestic sales and the export sales differ in level of trade, Australian Customs will consider an adjustment so as to avoid the potential for inequity in comparing, for example, a price to a retailer or end user to a price to a distributor. In quantifying a claim for differences in level of trade, Australian Customs will consider two methods that seek to quantify the amount of the adjustment. The first is the costs arising from different functions; the second is the discounts that apply at certain levels of trade. Priority is given to the first method, more specifically, the adjustment using this method is based upon the sum of the costs associated with each activity the exporter has performed in its domestic market but did not perform in when exporting to Australia.

96. The United States anti-dumping legislation allows the Department of Commerce to make an adjustment to either the export price or the normal value, for level of trade differences, using indirect selling expenses in the home country. An offset of this nature is made when it is established that (i) there is a difference in the levels of trade, (ii) the home market level of trade is more remote from the factory than export

[1] See the Australian Customs Dumping and Subsidy Manual (2009) at page 51.

sales to the United States and (iii) the respondent has cooperated to the best of its ability in providing the necessary data.[2]

97. Canadian anti-dumping legislation also provides for an adjustment to home market prices for differences in levels of trade, where warranted and based on additional expenses incurred by the exporter when selling domestically. Canadian legislation provides that if there is not home market sales of like goods made to arm's length purchasers who are at the same or substantially the same trade level as the importer, arm's length sales at the nearest and subsequent trade level to the importer can be used. Furthermore, Canadian anti-dumping regulations allow deductions to the home market price equal to the amount of the costs, charges or expenses incurred by the exporter in selling to a home market purchaser at the subsequent level of trade.[3] Such deductions are allowed because these costs represent sales activities that would not be performed by the exporter in selling to the same trade level as that of the importer in the exporters' home market.

Calculation of NV(VFDE) Amount for TGP

98. When the weighted average normal value established for TGP during the 2012 review is adjusted by THB[redacted] per sqm, the resulting normal value is THB[redacted] per sqm. A normal value of this amount means that, while the dumping margin falls from [redacted] percent to [redacted] percent, the dumping margin by TGP is still reasonably significant. The Ministry has calculated a revised NV(VFDE) amount for TGP by adding to the company's revised weighted average normal value, all costs incurred by TGP up to the FOB level. Any imports of Thai plasterboard by Element above this amount will be non-dumped. If Element was to source plasterboard from TGP at a price below this amount, it will be subject to an anti-dumping duty of the difference between the price at which it is importing and the NV(VFDE) amount.

99. The table below shows the calculation of the revised NV(VFDE) amount for TGP.

Table 3.2: Calculation of TGP's NV(VFDE) Amount

	THB per square metre
Normal Value (Thai domestic price)	[redacted]
<u>Plus</u> Costs from Ex-factory to FOB:	
Inland Freight	[redacted]
Customs Clearance & Service charge	[redacted]
Terminal Handling & Bill of Lading	[redacted]

[2] One example is where the respondent's U.S. subsidiary performed many of the same selling functions that the respondent performed in its home market. As there was a difference in the levels of trade between both markets, an offset for level of trade differences was made based on the amount of home market indirect selling expenses [*Stainless Steel Butt Weld Pipe Fittings from Korea* (Mar. 7, 2005)].

[3] See Section 16(1)(b) of the Special Import Measures Act (SIMA) and Section 9 of the Special Import Measures Regulation (SOR/84-927).

Export Packing	[redacted]
Cost of Credit	[redacted]
NV(VFD)E (THB)	[redacted]
ThaiBht: NZD Exchange Rate[4]	23.40
NV(VFDE) (NZD)	[redacted]

Calculation of a Non-Injurious Price (NIP)

100. A *non-injurious price* (NIP) is an unsuppressed selling price; that is, the price at which a domestic producer can sell its goods in the New Zealand market in the absence of dumped imports. There are a number of methods used to calculate a NIP, including:

- using current prices adjusted by any price depression incurred during the period of injury, which is attributable to continued dumping;
- the current cost of production plus industry profits taken at a time when the industry was unaffected by dumped imports;
- using pre-injury prices scaled up by a relevant index; or
- determining the lowest priced non-dumped product in the market.

101. When anti-dumping duties are already in place, the Ministry normally considers the domestic industry's current ex-factory selling price (exclusive of all discounts and rebates) to be its non-injurious price. The Ministry normally assumes that the anti-dumping duties have acted to prevent any injurious dumping occurring and that the industry's prices have returned to levels achieved in the absence of dumped goods. The information provided by Winstone shows that the company's average ex-factory selling price net of discounts and rebates for its latest financial year (2010/11) was NZ$[redacted]/sqm.

102. Prior to the release of the interim report, Winstone provided the Ministry with a submission claiming that, while the current anti-dumping duties are acting to combat the dumped goods, it was still suffering injury because of its inability to maintain its prices against Thai imports. Winstone claimed that the Ministry needs to set a NIP at a level which would remove all the injury suffered by Winstone as a result of the dumping. In this respect, Winstone submitted the Ministry should:

- take into account the losses Winstone is incurring by competing with dumped imports, which amounts to approximately [redacted] cents/sqm;
- take into account the recent [redacted] percent price increase for 10mm Standard and Wideline board which was instigated to partially recover some of the cost

[4] The Ministry has converted the NV(VFDE) amount (in THB) to NZD using the average exchange rate over the 12-month POR(D) (Aug 2010 – July 2011). This exercise has been done so that the NV(VFDE) in NZD can be compared with the NIFOB (expressed in NZD) to determine if the anti-dumping duty rate should be set at the lesser of the dumping margin or the injury margin (the lesser duty rule).

increases experienced over the previous four years but which the company has been unable to recover;

- account for the fact that Winstone has still not fully recovered the cost increases it has incurred in the four years from 2007 to 2011, in part because of the competition from dumped imports. Winstone claims that it would need to increase its price by a further [redacted] cents/sqm;

103. The Ministry agrees that Winstone's NIP should reflect the company's recent [redacted] percent price increase for standard and 10mm Wideline board. However, the Ministry does not consider any further increase to the NIP is warranted. While Winstone claims that dumping has not been fully remedied by the anti-dumping duty and that it has been unable to completely recover its cost increases due to competition from the dumped goods, the Ministry is not convinced. A comparison of the dumping margins established in the review, with the anti-dumping duty currently in place, indicates that the duty is acting to remedy the full extent of the dumping. On this basis, any inability by Winstone to further recover costs cannot be attributable to dumping.

104. On the basis of the above, the Ministry has adjusted Winstone's NIP by the [redacted] percent price increase for 10mm Standard and Wideline board only. The resulting NIP is NZ$[redacted]/sqm.

Calculation of a NIFOB Amount

105. A *non-injurious price at the free-on-board level* (NIFOB) is the price at which the dumped imported product could be sold without causing injury to the New Zealand industry. A NIFOB is calculated by deducting from the domestic industry's NIP an importer's costs that arise between the free-on-board level of trade and the level of trade at which the imported product first competes with the domestic industry's product.

106. It was established in the 2012 review that the first point of competition in the New Zealand market is at the ex-factory/warehouse level for the domestic industry vs the ex-store level for the Thai importers. It is at this level where the majority of customers in New Zealand are faced with the choice of buying from Winstone or from importers of the Thai product. As such, all costs between free on board and ex-store levels of trade are deducted from the NIP.

107. A calculation of a NIFOB amount normally requires importers to provide information on their cost build-up for the imported goods so that the Ministry can compare the importer's average net selling price with the domestic industry's average net selling price. Element has provided this information and the Ministry has used the company's into-store costs and profit margin to calculate a NIFOB amount.

108. In its submission on the reassessment, Winstone stated that the Ministry must ensure that in the calculation of the importers' costs and prices, *all* sales should be used, regardless of whether certain product was provided free as a form of discount or rebate. The Ministry is satisfied that, in its calculation of a NIFOB, *all* Element's sales of standard plasterboard have been used.

109. Winstone also claimed that the profit margin assigned to Element should be limited to [redacted] percent, as per the Ministry's deliberation in the 2002 reassessment of anti-dumping duties on Thai plasterboard. In the 2002 review and reassessment of anti-dumping duties, the Ministry provisionally assigned a [redacted] percent profit margin to the importer at the time on the basis of statistics obtained from a Waikato University business benchmarking survey. However, in making its 2002 final determination, the Ministry used the importer's own costs and selling prices to calculate an actual profit margin for the importer. The [redacted] percent profit margin calculated was used in establishing a NIFOB amount. In the present case, in calculating a profit margin for Element, the Ministry has again used the importer's actual profit margin, which it achieved on sales of standard plasterboard during the POR(D).

110. The table below shows the NIFOB amount established on the basis of Element's import costs and profit when sourcing Thai standard plasterboard from TGP.

Table 3.3: Calculation of NIFOB Amount

	NZD per square metre
NZ Industry's NIP	[redacted]
<u>Less</u> Costs after FOB to Ex-store:	
Overseas Freight & Insurance	[redacted]
Customs Duty	nil
NZ port clearance fees	[redacted]
[redacted]	[redacted]
Devanning	[redacted]
Cartage to store	[redacted]
Storage & Admin. costs	[redacted]
Importer's profit margin	[redacted]
Internal freight	[redacted]
NIFOB (NZD)	[redacted]

Consideration of a Lesser Duty for TGP

111. Sub-section 14(5) of the Act requires that the Minister has regard to the desirability of ensuring the amount of duty is not greater than is necessary in order to prevent material injury or recurrence of material injury to the New Zealand industry caused by dumping.

112. The Ministry establishes whether a *lesser duty* is applicable by calculating both a NIFOB and a NV(VFDE), and assessing which value is lower. The lesser duty rule applies if the NIFOB is lower than the NV(VFDE), as the NIFOB value will be less

than the full dumping margin while still being sufficient to remedy the injury. The lowest resulting price will be the reference price anti-dumping duty rate.

113. A comparison of the NIFOB and NV(VFDE) amounts calculated above shows that the NIFOB is greater than the NV(VFDE), which indicates that a lesser duty is not appropriate in the present case. In other words, the reference price anti-dumping duty should be imposed at the full margin of dumping.

TGP's Rate of Duty

114. On the basis of the information outlined above, the Ministry proposes that exports by TGP to Element be subject to a reference price anti-dumping duty rate of THB[redacted] per sqm as this is likely to be the most effective and fairest means of setting an anti-dumping duty for plasterboard imported into New Zealand from TGP.

115. Given that there is an exclusive supply agreement between TGP and Element, the Ministry does not consider that a separate anti-dumping duty rate for exports from TGP to any other importer needs to be calculated. The reference price duty rate established for Element will apply to all exports by TGP. This is consistent with the approach the Ministry took when the duties were last reassessed in 2006.

Residual Rate of Duty

116. The Ministry recommends a "residual" rate of THB[redacted] per sqm be set for all other exporters. This rate has been based on the highest of the rates established above in order to prevent existing exporters and importers establishing or using alternate legal entities to take advantage of a lower duty rate. It is slightly lower than the current residual anti-dumping duty.

Conclusion

117. The Ministry concludes that:

- A zero percent *ad valorem* duty rate be applied to imports of plasterboard from SCG by Elephant;
- A reference price duty rate of THB[redacted] per sqm be applied to imports of plasterboard from SCG by any other importer;
- A reference price duty rate of THB[redacted] per sqm be imposed on imports of plasterboard from TGP; and
- A "residual" rate of THB[redacted] per sqm be set for all other exporters.

3.5 Refunds of Anti-Dumping Duty

118. Section 14(10) of the Act provides that if a reassessment results in a lower duty being imposed the Ministry may require the New Zealand Customs Service to refund, with effect from the date of initiation of the review, the difference between the duty paid and the lower duty. However, if the reverse situation applies the shortfall is not required to be paid.

119. The Ministry recommends that the Minister grants prior approval for any refund of duty if the application for refund meets the conditions outlined in the paragraph above.

3.6 Impact of Anti-Dumping Duty

120. It is difficult to predict the impact that the proposed change from a specific duty to a reference price duty (for TGP) will have on the likely import volumes and prices of standard plasterboard in New Zealand. However, a comparison of the current specific duty (THB[redacted] per sqm) with a hypothetical specific duty (based on TGP's current dumping margin of THB[redacted] per sqm) provides an indication of the extent of the change in proposed anti-dumping duty. The hypothetical specific duty is less than half the current specific duty. On this basis, Element will likely be able to bring its Thai plasterboard into New Zealand at a lower into-store cost than it previously could when having to pay the specific anti-dumping duty of THB[redacted] per sqm. However, the Ministry considers it unlikely that the proposed change in the form and rate of duty for TGP will have a significant impact on the volume of imports from Thailand.

3.7 Future Reassessments

121. Under section 14(6) of the Act, the Ministry may initiate a reassessment of any rate or amount of anti-dumping duty where a request for a reassessment is submitted by an interested party who submits evidence justifying the need for a reassessment. Sufficient evidence would be required that an importer's or exporter's behaviour in the market had changed such that it was likely to cause a recurrence of material injury to the New Zealand industry, for a reassessment to be initiated.

4. Conclusions

122. The Ministry concludes that the current rates of anti-dumping duty should be replaced by the proposed rates of duty, which are in the form of reference prices established using information provided by the Thai exporters. The proposed reference prices have been set in the form of NV(VDFE) amounts (and reflect un-dumped prices) to ensure that any anti-dumping duty collected does not exceed the margins of dumping established in the 2012 review, for each Thai exporter.

5. Recommendations

123. It is recommended that the Minister:

   a. Determine new rates of anti-dumping duty as set out in paragraph 117 above.

   b. Agree that the new rates of anti-dumping duty should apply from the day after the date the Minister determines the new rates of anti-dumping duty in accordance with section 17(c) of the Act.

   c. Sign the attached *Gazette* notice publicly notifying the above decisions.

……………………………………..

……………………………………..

……………………………………..

Reassessment Team
Trade Rules, Remedies and Tariffs Group
Ministry of Business, Innovation and Employment

Appendix 1

124. A full copy of the Anti-Dumping Agreement on the Implementation of Article VI of the GATT 1994 (Anti-Dumping Agreement) can be found at:

www.wto.org/english/res_e/booksp_e/analytic_index_e/anti_dumping_05_e.htm

125. A full coy of the Dumping and Countervailing duties Act can be found at:

www.legislation.govt.nz/act/public/1988/0158/latest/DLM137948.html?search=ts_act_dumping+and+countervailing_resel&p=1