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APPLICATION BY WINSTONE WALLBOARDS LTD FOR A REVIEW OF ANTI-DUMPING DUTIES APPLYING TO PLASTERBOARD FROM THAILAND

1. This report assesses an application made by Winstone Wallboards Ltd (Winstone) on 26 August 2005 for a review of anti-dumping duties that currently apply to imports of plasterboard from the Kingdom of Thailand (Thailand).
2. The report recommends that you should initiate a review of the anti-dumping duties that currently apply to plasterboard from Thailand.

Background

3. Anti-dumping duties relating to the importation of plasterboard from Thailand were first imposed in December 1989 and have been subject of thirteen separate anti-dumping investigative actions since, including reviews and reassessments of the applicable duties.

4. The anti-dumping duties that currently apply to plasterboard imports are the result of two separate final determinations. The first covers plasterboard from Thailand ranging from 8.75 millimetres (mm) to 10.25mm in thickness and these duties were imposed on 19 November 2000. The second is plasterboard from Thailand (Other Sizes) that expanded the range of thickness of plasterboard subject to duties to 6mm to 12mm, which was imposed on 27 September 2000. Both of these duties were reassessed together and new rates were imposed on 4 December 2002. The duties that currently apply will expire on 27 September 2005 and 19 November 2005, unless a review is initiated prior to these dates. Reviews that are initiated prior to an anti-dumping duty's expiry are referred to as sunset reviews.

5. The application made by Winstone for a review covered both anti-dumping duties that currently apply to imports of plasterboard from Thailand and goods that would be subject to any review that is initiated are described below:

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

Plasterboard imported from Thailand enters New Zealand under tariff item and statistical key 6809.11.00.10D and is eligible to enter at the preferential tariff rate of 5 percent (the standard rate for imports from non-preferential sources is 6.5 percent). Under the New Zealand Thailand Closer Economic Partnership Agreement the 5 percent preferential rate will remain in place at that level until 2 January 2010, when it will reduce to zero.

Legislation and Associated Jurisprudence

6. Section 14 of the Dumping and Countervailing Duties Act 1988 (the Act) deals with the imposition, application and duration of anti-dumping duties and states (in part):

- ...
- (8) The [Chief Executive] may, on his...own initiative, and shall, where requested to do so by an interested party that submits positive evidence justifying the need for a review, initiate a review of the imposition of anti-dumping duty...in relation to goods and shall complete that review within 180 days of its initiation.
 - (9) Anti-dumping duty...applying to any goods shall cease to be payable on those goods from the date that is [[the specified period]] after—
 - (a) The date of the final determination made under section 13 of this Act in relation to those goods; or
 - (b) The date of notice of any reassessment of duty given under subsection (6) of this section, following a review carried out under subsection (8) of this section,—whichever is the later, unless, at that date, the goods are subject to review under subsection (8) of this section.
- [[9A) In subsection (9), “specified period” means,—
- (a) In the case of goods of Singaporean origin, 3 years; and
 - (b) In the case of goods of any other origin, 5 years.]]
- ...

7. The Act requires that any request for a review submits positive evidence justifying the need for a review and that when this is provided the Chief Executive shall initiate a review. The Act is determinative in governing how anti-dumping duties should apply in New Zealand and accordingly how reviews are carried out. However when the Act is silent the Ministry turns to its international obligations, as set out in the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Agreement) and the associated jurisprudence, for guidance.

8. Article 11 of the Agreement deals with the duration and review of anti-dumping duties in Paragraph 3 stating (in part):

...any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review...if that review has covered both dumping and injury...), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to the continuation or recurrence of dumping and injury [footnote omitted.]

9. The test outlined in the Agreement is primarily whether the application for review constitutes a duly substantiated request that, without anti-dumping duties on imports of plasterboard from Thailand, there would be a continuation or recurrence of dumping and material injury. The Ministry considers that the test outlined in the Agreement is equivalent to the test set out in the Act, with an additional factor that the Agreement states should be considered, that is, whether the application was submitted a reasonable period of time prior to the expiry of the current duties.

10. The World Trade Organisation Dispute Settlement Panel (Panel) *United States – Sunset Review Of Anti-Dumping Duties On Corrosion-Resistant Carbon Steel Flat Products From Japan*¹ discussed the practice of the United States administration in relation to what is considered a reasonable period of time prior to the expiry of duties. It stated at paragraph 7.20 in regard to the initiation of reviews:

Section 751(c)(1) of the US Statute requires that five years after the date of publication of an antidumping duty order, the administering authority and the Commission shall conduct a review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping and of material injury. Section 751(c)(2) provides: "Not later than 30 days before the fifth anniversary of the date described in paragraph (1), the administering authority shall publish in the Federal Register a notice of initiation of a review under this subsection...". Similarly, Section 351.218(a) of the Regulations provides that "...no later than once every five years, the Secretary must determine whether dumping ... would be likely to continue or recur...", while section 351.218(c)(1) states that "...No later than 30 days before the fifth anniversary date of an order or suspension of an investigation...the Secretary will publish a notice of initiation of a sunset review...".

11. While the United States uses a self-initiation process for instigating sunset reviews, the Ministry considers that the timeframes it has established as being a reasonable period of time prior to the expiry of the duty would also apply to an application for a review submitted to the investigating authority. The practice of the United States in this regard does not bind the Ministry, but is illustrative of other authorities interpretation of what constitutes a reasonable period of time prior to the expiry of duties, namely 30 days.

12. In the present case the application for a review was submitted by Winstone on 26 August 2005, which was thirty-two days prior to the expiry of the first of the two anti-dumping duties that it seeks to have considered in the review and eighty-five days prior to the expiry of the second duty. I am satisfied that Winstone's submission of a request for a sunset review was done within a reasonable period of time prior to the expiry of the duties.

Consideration of Evidence Presented

13. The Ministry interprets the requirement of subsection 14(8) of the Act for a review to be initiated when an interested party "...submits positive evidence justifying the need for a review..." as being a requirement for positive evidence of a lesser standard than that required under subsection 10(2) of the Act in respect of new investigations. This interpretation is supported by the international jurisprudence relating to the Agreement.

¹ World Trade Organisation Dispute Settlement Panel *United States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan* WT/DS244/R 14 August 2003.

14. In *United States – Countervailing Duties On Certain Corrosion-Resistant Carbon Steel Flat Products From Germany*², which dealt with a sunset review of countervailing duties, the Panel stated at paragraph 8.42:

...it is clear that, in the absence of an affirmative determination by an investigating authority, [duties] may not be maintained beyond a five-year period. It is also clear that any such determination must be correctly reasoned and based on positive evidence...The initiation of a review is merely the beginning of a process leading to a determination as to whether or not subsidisation and injury are likely to continue or recur. The standards for the initiation of a review – whether on the initiative of an investigating authority or upon request by the domestic industry – in no way prejudice the standards applied by an investigating authority in reaching the substantive determination to be made in that review. In sum, it seems to us that the European Communities' argument is based upon an incorrect equation of the standards for the initiation of a review with those for the substantive determination to be made in a review.

The above excerpt illustrates that the standards an investigating authority, such as the Ministry, must apply in assessing whether a sunset review should be initiated are lesser than those which must be applied in making a substantive determination in any review undertaken.

15. The issue of the requisite standard of evidence required to initiate a sunset review was also discussed in the Panel *United States – Sunset Review Of Anti-Dumping Duties On Corrosion-Resistant Carbon Steel Flat Products From Japan*³ at paragraph 7.27:

We also note that the text of Article 11.3 does not contain any cross-reference to the evidentiary rules relating to initiation of investigations contained in Article 5.6 of the *Anti-dumping Agreement*. Therefore, Article 11.3 itself does not explicitly provide that the evidentiary standard of Article 5.6 (or any other evidentiary standard) is applicable to sunset reviews. Although paragraphs 4 and 5 of Article 11 contain several cross-references to other articles in the *Anti-dumping Agreement*, no such cross-reference has been made in the text of Article 11 to Article 5.6. These cross-references (as well as other cross-references in the *Anti-dumping Agreement*, such as, for example, in Article 12.3) indicate that, when the drafters intended to make a particular provision also applicable in a different context, they did so explicitly. Therefore, their failure to include a cross-reference in the text of Article 11.3, or, for that matter, in any other paragraph of Article 11, to Article 5.6 (or *vice versa*) demonstrates that they did not intend to make the evidentiary standards of Article 5.6 applicable to sunset reviews. The Appellate Body, in *US – Carbon Steel*, drew the same conclusion from the non-existence of a cross-reference in Article 21.3 of the *Agreement on Subsidies and Countervailing Measures* (the "*SCM Agreement*") to Article 11.6 of that Agreement, which contains the evidentiary standard for the self-initiation of countervailing duty investigations. [footnote omitted]

² World Trade Organisation Dispute Settlement Panel *United States – Countervailing Duties On Certain Corrosion-Resistant Carbon Steel Flat Products From Germany* WT/DS213/R 3 July 2002.

³ World Trade Organisation Dispute Settlement Panel *United States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan* WT/DS244/R 14 August 2003.

This clearly indicates that the Panel considered the evidentiary standards required for the initiation of a new investigation (as outlined in Paragraph 6 of Article 5 of the Agreement) do not apply for the initiation of sunset reviews and the applicable standard is in fact a lesser one.

16. The Ministry considers, therefore, that while an application for the initiation of a sunset review may cover the information on the factors outlined in Paragraph 2 of Article 5 of the Agreement it is not necessary that all of these matters are addressed or addressed in full for an application to constitute “positive evidence justifying the need for a review”.

Industry Standing

17. The Agreement states that an application for a sunset review must be made by or on behalf of a domestic industry.

18. Winstone submitted in its application that it is the sole New Zealand producer of plasterboard, which was the situation at the time the current anti-dumping duties were imposed.

19. No further information has been discovered that contradicts Winstone’s statement that it is the sole New Zealand producer of plasterboard and it is therefore considered that the request for the initiation of a review constitutes an application made by the New Zealand domestic industry.

Continuation or Recurrence of Dumping

20. Winstone presented information in relation to the likelihood of continuation or recurrence of dumping that it considered its “best estimate of what is currently occurring.”

21. The application theorised that despite the existence of the anti-dumping duties that are currently in place that some of the exports of plasterboard from Thailand to New Zealand are still at dumped prices.

22. This assertion is somewhat supported by Customs data, which is available to the Ministry, that indicates anti-dumping duties have been paid on [REDACTED] of plasterboard from Thailand since the current duty rate was put in place in 2002.

23. The duties that currently apply to imports of plasterboard from Thailand are imposed via a reference price mechanism where goods that are imported at, or above, the specified normal value equivalents (equivalent to the price in Thailand) or a price which is non-injurious to the New Zealand industry, are not liable for any anti-dumping duty. A consequence of imposing anti-dumping duties via a reference price mechanism is that exporters often price above this level and no anti-dumping duties are collected. Therefore, given that it is often usual for no anti-dumping duties to be collected when reference price mechanisms are in place and that [REDACTED] of plasterboard from Thailand was subject to anti-dumping duties Winstone’s statement that “...the removal of the remedy is at the very least likely to

give rise to a likelihood that such dumping will continue...” is somewhat consistent with the import data. However, the Ministry does not view the non-collection of anti-dumping duties as an indication that dumping will not necessarily recur or continue when reference price mechanisms are used to impose duties.

24. The application provided evidence of Thai plasterboard exports to Thailand’s top ten export markets, by volume, for the 2004 calendar year. Winstone stated that data was sourced from official Thai statistics and that an average ex-factory price was calculated from it. The figures provided captured a range of plasterboard wider than that covered by the anti-dumping duties currently in place and included higher value performance plasterboard. The application stated that as the majority of exports would be comprised of standard plasterboard, the type covered by the anti-dumping duties, it was appropriate to consider the figures representative, which seems reasonable in the circumstances.

25. Winstone submitted that the prices to other export markets it calculated were between 46 and 61 percent lower than the export price to New Zealand and that the average export price to the top ten Thai export markets was 53 percent lower than the export price to New Zealand.

26. New Zealand was the 9th largest export market in the top ten export markets listed in the application. The two closest other export markets, in terms of volume, were Hong Kong and India. The volume of plasterboard sold to Hong Kong represented 103 percent of the volume sold to New Zealand, with an average price that was 39 percent of the average export price to New Zealand. Volumes sold to India represented 88 percent of the volume exported to New Zealand, with an average price equalling 45 percent of the price of exports to New Zealand. Australia, which is probably the most comparable market to New Zealand, was not included in the analysis.

27. The application also addressed the increased capacity of the Thai plasterboard producers and the corresponding ability of the New Zealand importers to accept increased volumes into the New Zealand market. Winstone commissioned a report from New Zealand Trade and Enterprise (NZTE) into the current state of the Thai domestic market for plasterboard. The NZTE report outlined a 25 percent increase in capacity by the largest Thai manufacturer, BPB Thai Gypsum, which exports to New Zealand. BPB Thai Gypsum now has a total capacity of approximately 2.7 times the size of the Thai domestic market for plasterboard. Siam Gypsum, another Thai manufacturer that exports plasterboard to New Zealand, has also increased its capacity. Winstone also stated that given the size and resources available to these two manufacturers, both being part of multi-national groups, that they have the ability to rapidly increase the volume of exports at any given time.

28. Articles from *The Nation*, a Thai news source, were also presented in the application, which described the Thai market as being in a situation of excess capacity. The marketing manager for Siam Gypsum was quoted in one of *The Nation* articles provided as not being concerned about excess output because of its ability to export surplus product. Winstone submitted that the current and medium term demand for plasterboard in Thailand is not strong.

29. Winstone submits that any excess capacity destined for export will in the first instance be directed towards New Zealand given the higher export prices that are achieved relative to other Thai export markets.

30. The application stated that the ability of the New Zealand importers of Thai plasterboard to deal with increased volumes is evidenced by the volumes of plasterboard that they have previously imported, combined with (unsubstantiated) comments made by one importer of his desire to obtain a certain market share and an apparent willingness to sell at lower prices.

31. The application also provided detailed information on the export prices and normal values of plasterboard in Thailand.

32. The normal values were obtained and reported on by NZTE as at January 2005. The calculated normal values start with a base price that has been static since September 2001, from which dynamic discounts and rebates are deducted. Information provided indicates that these discounts and rebates range from 10 to 20 percent of the base price and that prices are fluctuating several times a week. The NZTE report also submitted that there is some collusion between Thai manufacturers to limit these deductions from the base price and keep plasterboard prices as high as possible.

33. The application stated that the prices of plasterboard in Thailand are “..highly volatile, characterised by price instability due to plasterboard from Indonesia, China and Malaysia being sold into Thailand at very low prices.”

34. The export prices were calculated via a deductive method using Statistics New Zealand import data. Like the information on Thai exports, this data covers a range of plasterboard wider than that which is currently subject to anti-dumping duties. As was done for the Thai statistics, the application considered that the data is however representative of that relating to the goods covered by the anti-dumping duties currently in place. The deductions made to the free on board prices from the import data were based on the adjustments that were made by the Ministry in the last reassessment of the duty rate that was carried out in 2002. These include amounts for export packing, inland freight, insurance, term holding charge, document costs, customs clearance, cargo handling, bill of lading fee, sea freight, emergency bunker adjustment fee charge and cost of credit, as required, for each exporter.

35. Using the normal values and export prices provided positive dumping margins were found in six of the previous twelve months for one exporter and nine of the previous twelve months for the other exporter. The dumping margins calculated in the application ranged from 10 to 20 percent, expressed as a percent of the export price. These were calculated, however, using the higher normal values and if the lower normal values had been used there would be no dumping margins found with all the calculations resulting in negative figures, representing a higher export price than the corresponding normal values.

36. While the appropriateness and comparability of the alternate Thai export markets for which data was provided and the method used to establish normal values for plasterboard sales in Thailand will need to be assessed for the purpose of any

review that is initiated I consider that this information is sufficient to illustrate that there is a likelihood of both the continuation and recurrence of dumped imports of plasterboard from Thailand.

Continuation or Recurrence of Injury

37. The application addressed the likelihood of material injury if the current anti-dumping duties were removed, therefore addressing the likelihood of a recurrence of material injury. Winstone provided information relating to the likelihood of continuation recurrence of material injury for some, but not all, of the factors that would need to be provided in an application for a new investigation.

38. Winstone stated that if current anti-dumping duties cease it will lead to: increased import volumes, price undercutting and depression, declines in output, sales, market share, profits, returns on investment, utilisation of production capacity and adverse effects upon cashflow, inventory, employment and growth.

39. Information was provided on the level of imports of plasterboard from Thailand stating that, for the year ended June 2005, 95 percent of the imports of plasterboard into New Zealand were from Thailand. The application also submitted that as the volume of imports of plasterboard have increased despite the presence of anti-dumping duties for the past seventeen years, is evidence that in the absence of any anti-dumping duty, import levels would increase further.

40. Winstone provided evidence on the price effects it believes would occur in the absence of anti-dumping duties and in some cases related this to the data provided on exports of plasterboard from Thailand to countries other than New Zealand and in other cases to data on its own financial performance.

41. The application submitted that the extent to which Thai exports of plasterboard to countries other than New Zealand, are lower than the export prices to New Zealand, as outlined from paragraph 24, indicated that there was significant scope for imports to undercut the prices of New Zealand manufactured plasterboard. Similar statements were made in regard to the likelihood of price depression. The pricing level of exports to other countries does indicate that the Thai exporters may, in the absence of any anti-dumping duty, lower their export prices.

42. However, in the absence of information on any New Zealand domestic prices I am unable to conclude what effect this may have on Winstone's prices and if its prices would be undercut by those of imports from Thailand.

43. Winstone submitted that in order to compete with dumped imports it would [REDACTED] and [REDACTED]. Figures provided indicated that a [REDACTED] of its plasterboard would result in [REDACTED] per year, as a [REDACTED]. The application also provided that in a scenario where, [REDACTED] plasterboard, Winstone's [REDACTED] that this would result in the [REDACTED].

44. More detailed information will need to be collected for any review that is initiated but I consider that the evidence submitted, when taken in association with the evidence submitted supporting the likelihood of the recurrence of dumping, constitutes positive evidence that there is a likelihood of the recurrence of material injury if a review of the anti-dumping duty that currently applies is not initiated prior to its expiry.

Conclusion

45. The level of evidence provided in the application would not be sufficient for the initiation of a new investigation. However, for the initiation of a review the Act requires only that positive evidence justifying the need for a review is submitted. The Agreement states that a duly substantiated request must be submitted, within a reasonable period of time prior to the expiry of the anti-dumping duties, and must illustrate that the expiry of the duty would be likely to lead to the continuation or recurrence of dumping and injury.

46. Upon assessment of the present application I am satisfied that the application from Winston constitutes "...positive evidence justifying the need for a review..." of the anti-dumping duties that currently apply to imports of plasterboard from Thailand.

Recommendation

47. It is recommended on the basis of the conclusion reached above and in accordance with subsection 14(8) of the Act, and acting under delegated authority that you:

- (a) formally initiate a review of the imposition of anti-dumping duty on plasterboard from Thailand; and
- (b) sign the attached notice of the initiation of the review for publication in the *Gazette*.

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Agreed/Not Agreed

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