

Report No. 479

INVESTIGATION INTO THE ALLEGED DUMPING OF FROZEN BONE-IN
PORTIONS OF FOWLS OF THE SPECIES GALLUS DOMESTICUS,
ORIGINATING IN OR IMPORTED FROM GERMANY, THE
NETHERLANDS AND THE UNITED KINGDOM: PRELIMINARY
DETERMINATION

The International Trade Administration Commission of South Africa herewith presents its **Report No. 479: INVESTIGATION INTO THE ALLEGED DUMPING OF FROZEN BONE-IN PORTIONS OF FOWLS OF THE SPECIES GALLUS DOMESTICUS, ORIGINATING IN OR IMPORTED FROM GERMANY, THE NETHERLANDS AND THE UNITED KINGDOM: PRELIMINARY DETERMINATION**



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CHIEF COMMISSIONER

PRETORIA
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INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA

INVESTIGATION INTO THE ALLEGED DUMPING OF FROZEN BONE-IN PORTIONS OF FOWLS OF THE SPECIES *GALLUS DOMESTICUS*, ORIGINATING IN OR IMPORTED FROM GERMANY, THE NETHERLANDS AND THE UNITED KINGDOM: PRELIMINARY DETERMINATION

SYNOPSIS

On 25 October 2013, the Commission initiated an investigation into the alleged dumping of frozen bone-in portions of fowls of the species *gallus domesticus*, originating in or imported from Germany, the Netherlands and United Kingdom through Notice No. 1047 of 2013 of *Government Gazette* No. 36951 dated 25 October 2013.

The South African Poultry Association (SAPA), the association representing the domestic industry in this investigation, lodged the application.

The investigation was initiated after the Commission considered that there was *prima facie* evidence to show that the subject product was being imported into the SACU at dumped prices, causing material injury to the SACU industry.

Upon initiation of the investigation, the diplomatic representatives and industry associations of the subject product in Germany, the Netherlands and the United Kingdom were sent a non-confidential copy of the application, initiation notice and the foreign manufacturers/exporters questionnaires to complete. The Commission determined that it was not practical to send the initiation notice to all identified parties, due to the high number of identified producers/exporters of the subject product in the respective countries. Importers of the subject product in the SACU were also sent a non-confidential copy of the application, initiation notice and the importer's questionnaires to complete.

After considering responses and comments received from interested parties, the Commission made a preliminary determination that frozen bone-in portions of

fowls of the species *gallus domesticus*, originating in or imported from Germany, the Netherlands and the United Kingdom were being dumped and causing material injury to the domestic industry. The Commission further decided to request the Commissioner for South African Revenue Service (SARS) to impose provisional payments for a period of six months in order to protect the domestic industry while the investigation continues.

1 APPLICATION AND PROCEDURE

1.1 LEGAL FRAMEWORK

This investigation was conducted in accordance with the International Trade Administration Act, 2002, and the International Trade Administration Commission of South Africa Anti-Dumping Regulations (ADR), having due regard to the World Trade Organisation Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, 1994 (the Anti-Dumping Agreement).

1.2 APPLICANT

SAPA, an industry association representing approximately 72 percent of the SACU industry by production volume, lodged the application on behalf of the SACU industry. AFGRI, County Fair, Early Bird - Olifantsfontein, Early Bird - Standerton, Rainbow, Sovereign and Supreme (representing approximately 44 percent of the SACU industry by production volume), provided injury information relevant to this investigation.

1.3 DATE OF ACCEPTANCE OF APPLICATION

The application was accepted by the Commission as being properly documented in accordance with Section 21 of the ADR on 24 September 2013.

1.4 ALLEGATIONS BY THE APPLICANT

The applicant alleged that imports of the subject product, originating in or imported from Germany, the Netherlands and the United Kingdom were being dumped into the SACU market, thereby causing material injury to the SACU industry. The basis of the alleged dumping was that the goods were being exported to SACU at prices less than the normal value in the country of origin.

The investigation periods are as follows:

- Period of investigation for dumping: 01 January 2012 to 31 December 2012;
- Period of investigation for injury: 01 January 2010 to 31 December 2012; and additional period for threat of material injury: 01 January 2013 to 31 December 2013.

The applicant further alleged that the dumping of the subject product from Germany, the Netherlands and the United Kingdom was causing the SACU industry material injury in the form of:

- Price suppression;
- Price undercutting;
- Decline in market share;
- Increased inventories;
- Decline in return on investments;
- Underutilisation of capacity;
- Negative impact on growth; and
- Employment (Retrenchments).

1.5 INVESTIGATION PROCESS

The applicant submitted the application on 25 April 2013. The information submitted by the applicant was verified on 24 June to 19 July 2013.

The diplomatic representatives of the countries concerned (Germany, the Netherlands and the United Kingdom) were notified of the Commission's receipt of a properly documented application on 11 October 2013, in terms of Section 27.1 of the ADR.

The Commission at its meeting of 08 October 2013 initiated an investigation into the alleged dumping of frozen bone-in portions of fowls of the species *gallus domesticus*, originating in or imported from Germany, the Netherlands and the United Kingdom.

The initiation of the investigation into the alleged dumping of frozen bone-in portions of fowls of the species *gallus domesticus*, originating in or imported from Germany, the Netherlands and the United Kingdom was published in Notice No.1047, of Government Gazette No. 36951 on 25 October 2013.

Copies of the non-confidential application, initiation notice and the foreign producer/exporter questionnaire were sent to the Embassies of Germany, the Netherlands and the United Kingdom, and the European Union, as well as to the Association of Poultry Processors and Poultry Trade in the EU ("AVEC"); British Poultry Council; German Poultry Industry Federation (Zentralverband der Deutschen Geflügelwirtschaft e. V.) and Vereniging van de Nederlandse Pluimveeverwerkende Industrie (NEPLUVI).

The associations were requested to inform/distribute the questionnaire to their members who exported the subject product to the SACU during the period of investigation for dumping.

A non-confidential copy of the application, initiation notice and the importer's questionnaire were sent to the identified importers of the subject product in SACU.

1.6 INVESTIGATION PERIOD

The investigation period for dumping was 01 January 2012 to 31 December 2012. The investigation period for injury involved evaluation of data for the period 01 January 2010 to 31 December 2012. Additional information of twelve months, 01 January 2013 to 31 December 2013 was considered for threat of material injury.

1.7 PARTIES CONCERNED

1.7.1 SACU industry

The SACU industry consists of growers, processors and producers of the subject product. SAPA, being the organization representing the applicants in this investigation, lodged the application. AFGRI, County Fair, Early Bird -

Olifantsfontein, Early Bird - Standerton, Rainbow, Sovereign and Supreme (representing about 44 percent of the SACU industry by production volume), provided injury information relevant to this investigation. Letters of support for this anti-dumping investigation were received from:

- Grain S.A;
- Animal Feed Manufacturers Association (AFMA);
- Namib Poultry Industries (Pty) Ltd;
- Swazi Poultry Processors;
- Botswana Poultry Association; and
- Basotho Poultry Farmers Association.

1.7.2 Foreign Manufacturers/Exporters

Responses to the Commission's exporter's questionnaire were received from the following foreign producers/traders/exporters of the subject product in Germany, the Netherlands and United Kingdom:

- Anhaltinische Geflügelspezialitäten GmbH (Möckern), Donautal Geflügelspezialitäten Zweiniederlassung der Lohman & Co (Bogen), Nienburger Geflügelspezialitäten Zweiniederlassung der Oldenburger Geflügelspezialitäten GmbH (Holte), Oldenburger Geflügelspezialitäten GmbH (Lohne) and Wiesenhof International GmbH Co. KG;
- Plukon Group of Companies - Plukon Goor, Plukon Blokker, Plukon Dedemsvaart BV in Netherlands Friki Storkow GmbH, Franziska Stolle GMBH, Plukon Gudensberg GMBH and Gebr. Stolle GMBH;
- Van Miert Procure Breukelen BV group of companies (Pluimveeslachterij C van Miert BV and Pluimveeslachterij Mieki Hunsel BV);
- Moy Park Ltd;
- 2 Sisters Food and Amber Foods;
- Frisia Foods BV; and
- Traders: Source Foods, Kappers Foods, Partners Network in Netherlands and Vesty Foods International and Reids of Norwich.
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1.7.3 All the companies mentioned above requested extension to the Commissions due date for responses and were granted extension on good cause shown, with the exception of Vestey Foods International, Moy Park, Humeat, ESS Foods, Sprehe Feinkost, Nepluvi, and the British Poultry Council, whose reasons were not considered as good cause.

- Vestey cited insufficient time to respond to the investigation
- Moy Park gave inconsistency and contradictory reasons as motivation
- Humeat indicated insufficient time as reason for requesting extension.
- ESS Foods- Uncertainty with filling out the questionnaire.
- Sprehe Feinkost indicated insufficient time as reason for requesting extension.
- Nepluvi cited Christmas time, illegible copies and lack of clarity regarding product scope.
- British Poultry Council requested extension on behalf of its members and to make a joint submission with NEPLUVI and BVG.

1.7.4 At the request of AVEC, a meeting was held with Association of Poultry Processors and Poultry Trade in the EU countries (A.V.E.C) and EU delegation on 22 November 2013, to discuss several issues regarding the investigation, amongst other things, sampling.

1.7.5 Initial responses from the foreign producers/exporters were found to be deficient, and the exporters were advised and given a further seven days to correct the identified deficiencies. Updated responses from the respective foreign producers/exporters, excluding Vestey Foods International were received within the 7-day period. Vestey Foods International's response was submitted after the specified due date for submission. Reids of Norwich, indicated that it wished not to continue its participation in this investigation.

Frisia Food BV and Wiesenhof (Holte plant, Bogen plant, Lohne plant, Möckern plant and Wiesenhof International) rectified the deficiencies in time for purposes of the preliminary determination. On-the-spot verification of their information took place from 25 March 2014 to 10 April 2014.

All the other producers/exporters were informed of the deficiencies in their responses and that their information would not be taken into account for the purposes of the Commission's preliminary determination. They were also advised that should their information be rectified within the deadline date for comments on the preliminary determination, the information would be considered for the final determination.

The Commission made a preliminary determination at its meeting of 10 June 2014.

The Commission made a preliminary determination to take into account the information submitted by Plukon Group companies, Pluimveeslachterij Mieki Hunsel and Pluimveeslachterij C Van Miert for calculation of the residual dumping margin.

Partners Network West Europe BV and Source Food BV, who are traders of the subject product from the Netherlands, responded to the Commission's foreign questionnaire and rectified their deficiencies prior to the Commission's preliminary determination. Due to the fact that the information from their respective producers from the Netherlands were still deficient, the Commission deemed their information incomplete for dumping margin determination, and therefore not taken into account for purposes of the preliminary determination.

1.7.6 Importers

Responses to the Commission's importers' questionnaire were received from Merlog Foods (Pty) Ltd and Federated Meats (Pty) Ltd.

Initial responses from both importers were found to be deficient. The importers were advised of the identified deficiencies and given a further seven days to correct deficiencies. Updated responses were received within the seven day time frame period and were verified. Their information was verified from 13 to 14 March 2014.

1.7.7 Other interested parties

Comments were received from the Association of Poultry Processors and Poultry Trade in the EU ("AVEC"); British Poultry Council; German Poultry Industry Federation (Zentralverband der Deutschen Geflügelwirtschaft e. V.); Vereniging van de Nederlandse Pluimveeverwerkende Industrie (NEPLUVI), the European Union (EU), and the Association for Meat Importers and Exporters (AMIE).

1.8 PRELIMINARY DETERMINATION

After considering all the responses and comments by interested parties, the Commission made a preliminary determination that frozen bone-in portions of fowls of the species *gallus domesticus* originating in or imported from Germany, the Netherlands and United Kingdom were being imported into the SACU industry at dumped prices, thereby causing material injury to the SACU industry.

The Commission considered that the SACU industry would continue to suffer material injury during the course of the investigation if provisional payments were not imposed. The Commission therefore decided to request the Commissioner of South African Revenue Service to impose provisional measures on imports of the subject product from Germany, the Netherlands and United Kingdom, for a period of six months.

Comments submitted by interested parties on the preliminary determination (within a specified time period) will be considered by the Commission prior to making its final determination and recommendation to the Minister of Trade and Industry.

- 1.9** All submissions made by interested parties are contained in the Commission's public file for this investigation and are available for perusal. It should be noted that this report does not purport to present all comments received and considered by the Commission. The comments received from interested parties that the Commission considered salient are specifically included in this report.

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 IMPORTED PRODUCTS

2.1.1 Description

The subject products are described as frozen bone-in portions of the species *gallus domesticus*.

2.1.2 Country of origin/export

The subject product originates in or is imported from Germany, the Netherlands and the United Kingdom.

2.1.3 Tariff Classification

The following table shows the ordinary customs duty table for the subject product:

Table 2.1.3: Applicable duties and rebates

| Tariff sub-heading | Description | Customs Duty | | | |
|--------------------|--|--------------|------|------|------|
| | | General | EU | EFTA | SADC |
| 0207 | Meat and edible offal, of the poultry of heading 01.05, fresh, chilled or frozen | | | | |
| 0207.1 | - Of fowls of the species GALLUS DOMESTICUS Cuts and offal, frozen | | | | |
| 0207.14 | | | | | |
| 0207.14.90 | - Other | 37% | Free | 37% | Free |

Source: SARS

2.1.4 Negligibility test

The volume of dumped imports into SACU shall be considered negligible if it accounts for less than 3 percent of total imports of the subject product during the period of investigation for dumping. The following table shows the alleged dumped imports as a percentage of the total imports:

Table 2.1.4: Import volumes

| | Import volumes (kg) (2012) | Volume as a % of total imports |
|--------------------|-------------------------------|-----------------------------------|
| Germany | 23 027 601 | 12.2% |
| The Netherlands | 53 445 236 | 28.3% |
| The United Kingdom | 25 108 849 | 13.3% |
| Other imports | 87 427 395 | 46.3% |
| Total imports | 189 009 081 | 100% |

The information above indicates that 12.2 percent, 28.3 percent and 13.3 percent of the subject product was imported from Germany, the Netherlands and the United Kingdom respectively during the period of investigation for dumping. The Commission made a preliminary determination that the imports from Germany, the Netherlands and the United Kingdom were above the negligibility level.

2.2 SACU PRODUCT

2.2.1 Description

The SACU product is described as frozen bone-in portions of fowls of the species *gallus domesticus* sold under various names such as Farmer Brown, Rainbow, Festive, Goldi, County Fair, and Supreme.

2.2.2 Production process

BREEDING: Genetic material, at the grandparent level, in the form of day-old-chicks is imported and maintained locally. The import of genetic material is done on a rolling basis. Depleted stock is sold as live chicken or slaughtered.

REARING AND LAYING: The purpose of these operations is to generate eggs for own hatcheries, from where day-old-chicks are obtained. Except for the local supplier contracts for services and materials there are no supply side agreements vastly different from any local operation e.g. cleaning services, delivery of eggs to hatcheries, feed supply etc. The cost to the business is determined by the cost of day-old-chicks placed on the broiler farm. Depleted hens are sold live or slaughtered.

PRODUCTION: Day-old-chicks are placed on broiler farms and grown to a point of readiness for the abattoir. The companies own most of the farms and some belong to or are leased to contract growers. The contract growers operate on a modified franchise basis; the focus being the healthy and timely growth of the birds.

SLAUGHTER & PROCESSING: These broilers are delivered live at the abattoirs where the broilers are slaughtered. The slaughtered broiler birds are either processed as whole birds or cut up in portions and sold either chilled or frozen. Therefore, a frozen bone-in portion is one of the products of the producers.

2.2.3 Raw Material used

The main raw material used is broiler chicken.

2.2.4 Application or end use

The end use and or application of the subject product is for human consumption.

2.2.5 Tariff Classification

The subject product is classifiable under tariff subheading 0207.14.90.

2.2.6 LIKE PRODUCTS ANALYSIS

In determining the likeness of products, the Commission uses the following criteria:

Table 2.2.6: Like product determination

| | Imported product | SACU product |
|-------------------------------|--|--|
| Raw materials | Broiler chicken. | Broiler chicken. |
| Physical appearance | Consists of whole bird cut up in portions that contain bones, either white or brown meat. | Consists of whole bird cut up in portions that contain bones, either white or brown meat. |
| Tariff classification | 0207.14.90 – other | 0207.14.90 – other |
| Production process | The production of chicken meat comprises the breeding, rearing, laying, production, slaughtering and processing of broilers. | The production of chicken meat comprises the breeding, rearing, laying, production, slaughtering and processing of broilers. |
| Application or end use | Products for human consumption. | Products for human consumption. |
| Substitutability | The imported and SACU products are fully substitutable. | The SACU and imported products are fully substitutable. |

Comments from interested parties

(i) Like product

- The initiation notice indicates that the imported and local products are like products, but no cognisance has been taken of the severe brining of the local product and the size of the portions.
- The imported product is packed in bulk boxes of varying quantities and after importation these products are split into smaller packs involving a significant amount of labour, packing material and other costs. Therefore the imports do not compete with the SAPA product in the exported form. A comparison cannot be made based on landed costs of the imported product.

Comment from the applicant

- The issue of brine meat is based on unsubstantiated allegations. The brining is also done with regard to imports from the subject countries.
- The correct comparison for the imported product is made at the landed cost level. This is the methodology which is used by the Commission.

Commission's consideration

- The Commission considered that the subject product whether brined or not, it is still imported and classified under tariff heading 0207.14.90, and also that some of the European producers brine the subject product.
- The exported products to SACU are packed in different forms of packaging, and it is premature to indicate that all the imported products from the respective countries subject to this investigation are packed in the same manner as not all producers from these countries were verified. It should further be noted that the packaging of the imported product is not different from the locally produced product, and therefore the assertion that the differently packed imported product is not competing with the locally produced product was found to be without merit.

(ii) Lack of complete description of the product concerned (Product scope)

A complete and proper description of the allegedly dumped product has not been provided by SAPA. The product description has swayed from one section to another, which is inconsistent with Article 5.2(ii) of the ADA. Unclear definition of the product concerned: The application lacks sufficient evidence of the volume and value of the domestic production. Tariff code 0207.14.90 includes non-subject products; therefore allegations of injury caused by allegedly dumped imports are incorrect.

Commission's consideration

The product allegedly being dumped is frozen bone-in portions of fowls of the species *gallus domesticus*, classifiable under tariff subheading 0207.14.90, originating in or imported from Germany, the Netherlands and the United Kingdom. This was clearly indicated in the notice of initiation, and the notice contains information in line with ADR 28.2 and Article 5.2(ii) of the ADA.

The product scope and the description of the products covered in this investigation have been defined several times to the interested parties, i.e. in the initiation notice, meeting with A.V.E.C and through numerous communications with individual foreign producers/exporters.

After considering all the above, the Commission made a preliminary determination that the SACU products and the imported products were “like products”, for purposes of comparison.

3. INDUSTRY STANDING

The applicant (SAPA) is an industry association with an output of approximately 72 percent of the total SACU industry by production volume. Letters of support were also submitted by Namib Poultry Industries (Pty) Ltd, Swazi Poultry Processors, Botswana Poultry Association and Basotho Poultry Farmers Association, that are all industrial organizations in the other SACU member states.

The Commission made a preliminary determination that the application can be regarded as being made “by or on behalf of the domestic industry”.

Comments from interested parties

SAPA indicates that it represents approximately 72% of the “SACU commercial producers”, however there is no indication as to what percentage of the total industry SAPA represents and also not all SAPA members have submitted information. SAPA is estimating the size of the rest of the SACU industry, and that no party other than those specifically supplying information in support of the application have submitted any information. Therefore there is no basis for SAPA’s figures pertaining to the “rest of the SACU industry”.

Commission’s consideration

The production volumes of the five SAPA members were based on the verified information of these companies. The total SACU was based on the 2012 total broiler production volumes of all SAPA members. These production volumes were provided by SAPA in the application. In the initiation notice it was indicated that SAPA represents approximately 72% of SACU production volume of the subject product. It has been noted that no producer up to this stage came forward in opposition to the application.

The Commission made a preliminary determination that the application can be regarded as being made “by or on behalf of the domestic industry”.

4. DUMPING

The margin of dumping is calculated by subtracting the export price from the normal value of the product (after all the adjustments have been made). The margin is then expressed as a percentage of the f.o.b export price. If the margin is less than two per cent, it is regarded as *de minimis* in terms of the Anti-Dumping Regulations (ADR) and no anti-dumping duty will be imposed.

4.1 METHODOLOGY IN THIS INVESTIGATION FOR WIESENHOF UNDER THE PHW GROUP IN GERMANY

The following Wiesenhof companies which are all part of the Paul-Heinz Wesjohann (PHW) group in Germany, Anhaltinische Geflügelspezialitäten GmbH (Möckern), Donautal Geflügelspezialitäten Zweinierderlassung der Lohman & Co (Bogen), Nienburger Geflügelspezialitäten Zweinierderlassung der Oldenburger Geflügelspezialitäten GmbH (Holte), Oldenburger Geflügelspezialitäten GmbH (Lohne) and Wiesenhof International GmbH (dealing with export sales of the four producing companies) are all characterised by the following:

- Common ownership by PHW Group;
- Common shareholdings and management;
- Domestic sales made through the same agents
- Sales shift amongst PHW companies and PHW companies invoice each other for transactions;
- Central procurement department; and
- PHW Group makes decision on cost and price determination for all their producers.

On the basis of the above, the Commission made a preliminary determination that the relationship of the PHW Group of companies is such that the producers/exporters can be considered as a single entity for purposes of determining a single dumping margin.

A single dumping margin for the PHW companies was determined by weighting the individual company normal values and export prices with respective volumes. The weighted overall dumping margin for the PHW group was found to be 32.72 percent.

It was found that Anhaltinische Geflügelspezialitäten GmbH (Möckern), Donautal Geflügelspezialitäten Zweiniederlassung der Lohman & Co (Bogen), Nienburger Geflügelspezialitäten Zweiniederlassung der Oldenburger Geflügelspezialitäten GmbH (Holte), Oldenburger Geflügelspezialitäten GmbH (Lohne) determine the models of the subject product based on cut, grade, article number and packaging. It was also found that some products are not indicated whether A-grade or B-grade, and whether calibrated or uncalibrated. The Commission considered that although the product is packed differently, or is identified by different article numbers, it is still the same product and therefore made a preliminary determination to determine the models of the subject product based on cut and grade. The Commission also made a preliminary determination that those products which are not indicated whether A-grade or B-grade, will be considered as A-grade, it also made a preliminary determination that products not specified as calibrated or uncalibrated will be determined as uncalibrated and this was also confirmed during verification.

It was explained during verification that chicken leg with backbone and chicken leg quarter are both a thigh and drumstick together. The Commission made a preliminary determination to consider these two models to be one model for dumping margin calculation.

The Wiesenhof group of companies that were verified had the following issues relating to their adjustments, for both their normal values and export prices:

- It was found that they make their domestic sales through two agents which are part of the PHW group, and they also make their export sales through another agent, Wiesenhof International. They pay their two agents responsible for domestic sales, a commission of either 1% or 1.5% of the

sales value, and Wiesenhof International, which is responsible for export sales, is paid commission of 3%. They did not claim an adjustment for the commissions. The Commission made a preliminary determination to make adjustments for commissions paid on the normal values and export prices.

- The producers also claimed adjustment for packaging for both domestic and export sales, but were unable to explain and substantiate the amount apportioned to each sales transaction during the verification. It was also found that the packaging for the subject product was similar for both domestic and export markets. The Commission made a preliminary determination not to allow this adjustment.

The respective normal values and export values for each of the PHW group of companies was determined as follows:

4.1.1 HOLTE

(a) Normal Value

Holte plant produced and sold various models of the subject product in Germany. For normal value determination, comparable models produced and exported to the SACU market during the period of investigation for dumping were used. Of the various models produced and sold by Holte in Germany, only one model (chicken leg quarters A-grade) was produced and exported to SACU during the period of investigation for dumping.

The normal value before adjustments was based on domestic sales of the chicken leg quarters model that were made in Euro (€). In order to bring the normal value to ex-factory level, the Commission made a preliminary determination to allow the following adjustment to the normal value for which it was shown that there were differences in costs and it was demonstrated to have affected price comparability at the time of setting of prices:

- Commission

(b) Export price

To calculate the export price, Holte's verified export sales to the SACU market that were made in Euro (€) were used. Holte exported one model to the SACU market, namely chicken leg quarters A-grade during the period of investigation for dumping. In order to bring the export price to ex-factory level, the Commission made a preliminary determination to allow the following adjustments to the export price for which it was shown that there were differences in costs and it was demonstrated to have affected price comparability at the time of setting of prices:

- Commission paid; and
- Cost of payment

4.1.2 MÖCKERN

(a) Normal value

Möckern produced and sold various models of the subject product in Germany. For normal value determination, comparable models produced and exported to the SACU market during the period of investigation for dumping were used. Of the various models produced and sold by Möckern in Germany, only one model (three-joint wings A-grade) was produced and exported to SACU during the period of investigation for dumping.

The normal value before adjustments was based on domestic sales of the three-joint wings A-grade model that were made in Euro (€). In order to bring the normal value to ex-factory level, the Commission made a preliminary determination to allow the following adjustments to the normal value for which it was shown that there were differences in costs and it was demonstrated to have affected price comparability at the time of setting of prices:

- Commission paid;
- Transport costs; and
- Cost of payments

(b) Export price

To calculate the export price, Möckern's actual verified export sales to the SACU market that were made in Euro (€) were used. Möckern exported one model to the SACU market, namely three joint wings A-grade during the period of investigation for dumping.

In order to bring the export price to ex-factory level, the Commission made a preliminary determination to allow the following adjustments to the export price for which it was shown that there were differences in costs and it was demonstrated to have affected price comparability at the time of setting of prices:

- Commission paid;
- Transport costs; and
- Cost of payment

4.1.3 BOGEN

(a) Normal Value

Bogen produced and sold various models of the subject product in Germany. For normal value determination, comparable models produced and exported to the SACU market during the period of investigation for dumping were used. Of the various models produced and sold by Möckern in Germany, only one model (leg-quarters A-grade) was produced and exported to SACU during the period of investigation for dumping.

In its sales schedule, Bogen had sales transactions of the subject product that had no values but just volumes. The Commission made a preliminary determination not to consider these sales/transactions for normal value determination as they were not in the ordinary course of trade.

The normal value before adjustments was based on domestic sales of chicken leg with backbone A-grade which were made in Euro (€). In order to bring the normal value to ex-factory level, the Commission made a preliminary

determination to allow the following adjustments to the normal value for which it was shown that there were differences in costs and it was demonstrated to have affected price comparability at the time of setting of prices:

- Commission paid;
- Transport costs; and
- Cost of payments

(b) Export price

To calculate the export price, Bogen's actual verified export sales to the SACU market that were made in Euro (€) were used. Bogen exported one model to the SACU market, namely chicken leg-quarters A-grade during the period of investigation for dumping.

In order to bring the export price to ex-factory level, the Commission made a preliminary determination to allow the following adjustments to the export price for which it was shown that there were differences in costs and it was demonstrated to have affected price comparability at the time of setting of prices:

- Commission paid; and
- Cost of payment

4.1.4 LOHNE

(a) Normal Value

Lohne produced and sold various models of the subject product in Germany. For normal value determination, the comparable models produced and exported to the SACU market were considered. Of the four comparable models to those produced and exported to SACU, three comparable models (chicken drumsticks A-grade, chicken leg quarter A-grade and thigh with back bone A-grade) were sold in Germany during the period of investigation for dumping. Lohne did not sell model chicken leg quarters B-Grade in Germany during the same period.

For chicken leg quarter A-grade model, it was found that there were transactions with volumes with no values. The Commission decided not to consider these sales for purposes of normal value determination as they were not in the ordinary course of trade. Of the three comparable models sold in Germany, some of the sales of chicken leg quarter A-grade and thigh with back bone A-grade were sold below cost. Such sales were found to be less than 20 percent by volume of domestic sales and therefore all domestic sales for this model as well as all sales of chicken drumsticks A-grade model were used for normal value determination.

Sales of chicken thighs with backbone A-grade model in Germany during the period of investigation for dumping were found to be less than 5 percent of export sales to SACU, thus not sufficient for the Commission to make a proper comparison, as these sales did not meet the requirements of section 8.3 of the ADR, which states that domestic sales of the like product shall normally be considered a sufficient volume to determine a normal value if such sales constitute 5 percent or more of the sales volume of the product to the SACU

Chicken leg quarters B-Grade not sold in the producer's domestic market and chicken thighs with backbone that had insufficient volumes, were however sold to various export markets. In selecting the appropriate third country, the Commission considered the following criteria:

- Volumes exported to that country must be comparable to volumes exported to SACU;
- Customers exported to in that country must be comparable to customers exported to in SACU; and
- The country exported to must have a domestic manufacturing industry.

On the basis of the above criteria, the Commission determined that Great Britain met the criteria for third country selection for both these models, and therefore exports to Great Britain were used for normal value determination.

The normal values before adjustments were based on domestic sales of chicken drumstick A-grade and chicken leg quarters A-grade models and exports to Great Britain for chicken thighs with backbone A-grade and chicken leg quarters B-grade. In order to bring the normal value to ex-factory level, the Commission made a preliminary determination to allow the following adjustments to the normal value for which it was shown that there were differences in costs and it was demonstrated to have affected price comparability at the time of setting of prices:

- Commission paid;
- Transport costs; and
- Cost of payments

(b) Export price

To calculate the export price, Lohne's actual verified export sales to the SACU market that were made in Euro (€) were used. Lohne exported four models to the SACU market, namely chicken leg quarters A-grade, chicken leg quarters B-grade, chicken drumsticks A-grade and thighs with backbone during the period of investigation for dumping.

In order to bring the export price to ex-factory level, the Commission made a preliminary determination to allow the following adjustments to the export price for which it was shown that there were differences in costs and it was demonstrated to have affected price comparability at the time of setting of prices:

- Commission paid; and
- Cost of payment

4.2 METHODOLOGY FOR THE RESIDUAL DUMPING MARGIN – GERMANY

4.2.1 Normal value

For purposes of normal value determination, the Commission considered that Wiesenhof companies (PHW Group) sold many models in different cuts and grades in Germany that were considered to be more representative of a

variety of models sold in Germany. The Commission decided to use domestic sales information of all Wiesenhof companies (PHW Group) excluding sales made to charities, factory shops and sales made below the cost of production. The Commission made a preliminary determination that sales by charities are donations, and thus not made in the ordinary course of trade and sales to factory shops are as a result of special agreements between the Wiesenhof companies which would not exist for independent buyers. In order to bring the normal value to ex-factory level, the Commission made a preliminary determination to allow the following adjustment to the normal value for which it was shown that there were differences in costs and it was demonstrated to have affected price comparability at the time of setting of prices:

- Transport costs

4.2.2 Export price

For purposes of export price determination, the Commission considered that PHW Group companies exported only a maximum of four frozen bone-in portion models to SACU during the period of investigation for dumping. The Commission therefore decided to use information of all participating producers from Germany.

The Commission decided not to make any adjustments as sales made by Wiesenhof companies were all at free carrier terms (FCA) and adjustment for cost of payment are company specific.

4.2.3 Margin of dumping

Based on the above, the residual margin of dumping was calculated to be 76.52 percent.

4.3 METHODOLOGY IN THIS INVESTIGATION FOR FRISIA FOODS B.V IN THE NETHERLANDS

Frisia Foods is the only producer which was verified in the Netherlands for the preliminary determination.

4.3.1 Normal Value

Frisia Foods produced and sold various models in the Netherlands. It was found that Frisia models are specified by cuts only (i.e. Leg quarter, drumstick, etc.).

For normal value determination, comparable models produced and exported to the SACU market during the period of investigation for dumping were used.

Of the various models produced and sold by Frisia Foods in the Netherlands, only one model (chicken leg-quarters) was produced and exported to SACU during the period of investigation for dumping. The normal value before adjustments was based on domestic sales made in Euro (€), of the chicken leg-quarters model.

It was found that some of the sales of this model were sold below cost, in quantities exceeding 20 percent by volume of total domestic sales. The Commission made a preliminary determination to disregard the sales made at a loss, exceeding 20 percent by volume of total domestic sales during the period of investigation for dumping in accordance with section 8.2 of the ADR.

The remaining sales of this model were found to be above 5 percent of export sales to SACU, and thus used for normal value determination.

4.3.1.1 Adjustments to the normal value

In order to bring the normal value to ex-factory level, the Commission made a preliminary determination to allow the following adjustment to the normal value for which it was shown that there were differences in costs and it was demonstrated to have affected price comparability at the time of setting of prices:

- Cost of payment

4.3.2 Export price

To calculate the export price, Frisia Foods's actual verified export sales to the SACU market were used. Frisia Foods exported one model to the SACU market, chicken leg-quarters, during the period of investigation for dumping.

4.3.2.1 Export sales adjustments

In order to bring the export price to ex-factory level, the Commission made a preliminary determination to allow the following adjustment to the export price for which it was shown that there were differences in costs and it was demonstrated to have affected price comparability at the time of setting of prices:

- Cost of payment

4.3.3 Margin of dumping

The dumping margin for Frisia Foods BV was found to be 0.88 percent as a percentage of the ex-factory export price.

4.4 METHODOLOGY FOR THE RESIDUAL DUMPING MARGIN – THE NETHERLANDS

4.4.1 Normal value

For purposes of normal value determination, the Commission considered that Frisia Foods sold many models in the Netherlands and these could be considered to be more representative of a variety of models sold in the Netherlands. The Commission decided to use domestic sales information of Frisia Foods, excluding sales made below the cost of production.

4.4.2 Export price

For purposes of export price determination, the Commission considered that Frisia Foods exported only one frozen bone-in portion model to SACU during the period of investigation for dumping. The Commission therefore decided to use information of all participating producers from the Netherlands.

The Commission decided not to make any adjustments to the export price, as export sales made by Frisia Foods were at ex-factory level, and the adjustment for cost of payment is company specific.

4.4.3 Margin of dumping

Based on the above, the residual margin of dumping was calculated to be 22.83 percent.

4.5 METHODOLOGY FOR THE RESIDUAL DUMPING MARGIN – UNITED KINGDOM

Since all three producers/exporters of the subject product from United Kingdom were deficient, for purposes of the residual margin, the Commission decided to use facts available information, being the information supplied by the applicant and considered by the Commission for merit determination.

4.5.1 Normal value

The normal value was determined based on the weighted average normal value for the subject product in the UK, determined using exports to Benin. This normal value was on an FOB basis since it was based on exports to a third country.

4.5.2 Export price

The export price was determined based on import statistics of the subject product from the United Kingdom, obtained from SARS for the period of investigation for dumping. The SARS export price was at FOB level.

4.5.3 Margin of dumping

Based on the above, the residual margin of dumping was calculated to be 23.01 percent.

Comments from the applicant

The applicant alleged that the sales of the like product were not in the ordinary course of trade because of the particular market situation in the EU. The EU market is characterised by a strong preference for white meat over dark meat which is different from the South African market. This allegation was substantiated by a statement from the website of the British Poultry Council and that from Feed Info News Services. Therefore the applicant submitted that the actual input cost should be verified and used to calculate the actual cost of production and not “sales value methodology” in the costing.

Commission’s consideration

- During verification it was found that the exporter produces and sells both dark and white meat in the domestic markets. However, dark meat portions were sold as fresh products in the exporters’ domestic markets, Germany and Netherlands. It was found that the main business of the verified producers in Germany and the Netherlands were fresh chicken products, as almost all the producers verified produced approximately 75 percent fresh products.

The preference that was identified by the investigators was that Germany and the Netherlands both have a preference for fresh chicken products over frozen chicken products. In Germany and the Netherlands, fresh chicken products are sold at higher value than the frozen products. However, this status is the same for the SACU producers verified.

It was found that the producers apportion production costs based on sales value. It was explained that the companies use joint costing amongst the different chicken portions. Joint costing occurs when the costs of conversion of each product cannot be separately determined, resulting in the allocation of costs between the products on a “rational and consistent” basis. The allocation may be based for example, on the relative sales value of each product either at the stage in the production process when the

products become separately identifiable, or at the completion of production. In this case the producers apportioned the costs of production for each model based on the sales value of each product at the completion of production. The joint costing method can be found in industries like extractive (mining), agriculture, food and chemicals.

It was found that the producers recover all the costs of production and SG&A with the joint costing in use, and that the sales volume in the domestic markets were in sufficient quantities.

The Commission concluded on the basis of the verified information that there was no particular market situation in Germany and Netherlands.

Comments from interested parties

- SAPA failed to provide information properly establishing normal value. Some of the information submitted relates to fresh products. The applicant used normal value for fresh products and then converted to frozen products without any evidence supporting this information.
- It provided export prices for spent hen product.
- The applicant did not provide the volume of domestic sales in the three countries but derived average sales. The domestic prices pertain to September 2012.
- Export price used for initiation based on SARS statistics cannot be used in the application as the price variation is simply too large on the range of products imported. The products under investigation are imported into SACU under 0207.14.90 which includes non-subject product, falling within EU code 0207.14.40 which should have been excluded for the purposes of calculating the export price.
- The adjustment used by SAPA on export price is either unsupported or should not have been used because sales to third countries used took place at the same level of trade as sales to SACU (thus at FOB level). SAPA therefore failed to meet neither the requirements of Article 2.4 of the AD to establish a fair comparison between the normal value and export

price, nor the requirements of the ADR 11.1 and 11.2. There is no basis or substantiating documents for the very significant adjustment of 5% made to the export price.

- The sworn statement has to provide reasons why information cannot be summarized. In this regard the same reasons cannot apply to all different types of information and separate reasons should have been indicated in each instance. This has not been done, rendering the sworn statement null and void.
- It is noted that a single sworn statement is submitted by SAPA. SAPA does not have the authority to claim confidentiality on behalf of its members. SAPA has claimed blanket confidentiality on a number of issues without providing proper reasons for claiming confidentiality and without providing proper non- confidential versions of the information submitted in confidence.
- The Commission initiated the investigation using information which is older than 6 months. ITAC also indicated that there are 7 companies which would have to update their information, while the application is with regard to five companies.
- The Commission failed to send producers'/exporters' questionnaire to the companies identified in the application. Therefore producers were not given ample opportunity to present in writing all evidence which they considered relevant.
- ITAC failed to inform AMIE and known exporters of the investigation as interested parties, despite knowing AMIE's role as the official representative.
- ITAC did not give due consideration to the duly substantiated, repeated and detailed deadline extension requests justifying the reasons necessitating the extension as submitted. Requests for extension were rejected without any justification.
- Notice of initiation did not include adequate information regarding the basis of alleged dumping nor did it indicate factors on which the allegations of dumping were based.

Comment from the applicant

- Information was submitted on the domestic selling price of the subject product in the countries subject to this investigation, as well as the highest comparable price of the like product when exported to Benin in accordance with the ITA Act, Anti-Dumping agreement and regulations.
- With regard to the adjustment of 5 percent it was clearly pointed out in the application that even without the adjustment the products are being dumped.

Commission's consideration

- The normal value and export price information used for initiation purposes relates only to frozen products of the subject product, and no fresh products were used.
- The EU tariff classification clearly states that 0207 is for "fowls of the species *gallus domesticus*", and it goes further to indicate that 0207.14, is for frozen cuts, and the eight digit tariff specifies the specific cuts of the subject product.
- The September 2012 normal value from the application was not used, and the applicant also provided exports to third countries to the Commission. The Commission determined the normal value on the basis of exports to Benin for Germany, the Netherlands and the United Kingdom which were for the entire period of investigation for dumping.
- The comment that the export price from SARS data contain non-subject product is not substantiated with any positive evidence. The product range covered in the SARS statistics is of all frozen bone-in portions, which are the subject product, and the fact that the export statistics are not similar to those of the EU where models are clearly specified should not make the export statistics flawed. The normal value considered by the Commission did not contain goods under EU tariff heading 0207.14.40. It was found through a verified importer that products which fall under EU tariff code 0207.14.40 are imported to SACU under tariff code 0207.12.20.
- There was no adjustment made as the comparison of normal value and export price were both at FOB level.

- The reasons for confidentiality claimed are provided in the application for the relevant paragraphs in each cooperating company's information. If the same reasons apply to different information in the application, there is no reason for the Commission to not consider the sworn statement.
- SAPA submitted individual sworn statements for all cooperating companies, and for the information claimed to be confidential which was not summarised, and where appropriate proper non-confidential summaries were provided.
- Although information older than six months was used to initiate the investigation, the reasons for relying on this information were stated in the initiation notice. The injury information submitted by the applicant was for seven plants, and if they were required to update their information prior to initiation, this would have taken them long, as their information would also need to be consolidated.

The Commission considered that the industry with about five companies comprising seven plants in total would have had to update its information which would have unduly delayed the process and resolved to base its decision on the information up to December 2012.

- The Commission determined that it was not practical to send the initiation notice to all identified parties. Initiation packs were sent to representatives of the relevant countries. Furthermore those parties that were not directly informed were given extra time to respond to the exporter's questionnaire in line with section 29.4 of the Anti-dumping Regulations.
- AMIE and all other exporters/foreign producers who identified themselves had ample opportunities to defend their interests. Others requested extension to submit their responses/comments, which was given.
- Extensions were granted to interested parties who showed good cause.
- The notice of initiation clearly indicated the information and methodology utilized by the Commission to determine dumping.

4.6 Summary – Dumping

For the purpose of its preliminary determination, the Commission considered all information from the interested parties and found that the subject product originating in or imported from Germany, the Netherlands and the United Kingdom was being dumped in the SACU market.

Table 4.6: Dumping Margins

| Country/Producer | Dumping margins expressed as a Percentage of the ex-factory selling price |
|---|--|
| Germany: (PHW Group) Anhaltinische Geflügelspezialitäten GmbH Donautal Geflügelspezialitäten Zweinierderlassung der Lohman & Co; Nienburger Geflügelspezialitäten Zweinierderlassung der Oldenburger Geflügelspezialitäten GmbH; and Oldenburger Geflügelspezialitäten GmbH; | 32.72% |
| Germany: All other producers/exporters | 76.52% |
| The Netherlands: Frisia Foods B.V | 0.88% |
| The Netherlands: All other producers/exporters | 22.83% |
| The United Kingdom: All producers/exporters | 23.01% |

The Commission made a preliminary determination that dumping of the subject product originating in or imported from Germany, the Netherlands and the United Kingdom was taking place.

5. MATERIAL INJURY

5.1 DOMESTIC INDUSTRY – MAJOR PROPORTION OF PRODUCTION

The following injury analysis relates to AFGRI, Astral Foods Ltd (County Fair, Early Bird – Olifantsfontein, Early Bird – Standerton), Rainbow, Sovereign and Supreme, some of the members of SAPA, whom together constitute approximately 44 percent of the SACU production volumes.

The Commission made a preliminary determination that this constitutes “a major proportion” of the total domestic production, in accordance with section 7 of the ADR.

5.2 CUMULATIVE ASSESSMENT

There are three countries involved in this investigation, Germany, the Netherlands and the United Kingdom. In terms of the ADR 16.3, the Commission may cumulatively assess the effect of the dumped imports only if it finds that cumulation is appropriate in light of–

- competition between imports from the different countries; and
- competition between the imported products and the SACU like products; and if
- the imports from the countries are not negligible as contemplated in subsection 3; and
- the dumping margin is one percent or more when expressed as a percentage of the export price.

In considering whether cumulation is appropriate with regard to the imports from Germany, the Netherlands and United Kingdom, the Commission considered the following:

Table 5.2: Consideration for cumulation

| | |
|---|--|
| The imports from the countries are not negligible | <ul style="list-style-type: none">• The imports from all countries are above negligibility, as contained in table 2.1.4 of this report. |
| The residual margin of dumping is above <i>de minimis</i> level | <ul style="list-style-type: none">• The dumping margins calculated are above two percent, as expressed as a percentage of the export price. This is evident in section 4 of this report. |
| Competition between imports from the different countries | <ul style="list-style-type: none">• They are both like products for purposes of comparison, their end use and substitutability is similar.• They are both traded in the SACU market, and therefore part of the SACU market share analysis and the fluctuating market share throughout the POI for both parties as contained in table 5.5.4 is evident of competition.• The price undercutting of the imports from the three countries is evident of competition as they are undercutting the applicant's prices at different levels. |
| Competition between imported product and SACU like product | <ul style="list-style-type: none">• The imported product and the SACU product are like products for purposes of comparisons, they are fully substitutable and have similar end use.• They are both traded in the SACU market and the market share analysis shows that there is competition as table 5.6.4 shows the fluctuating levels of market share throughout the POI for both parties.• The imported products from the three countries are undercutting the SACU prices. |

On the basis of the above, the Commission made a preliminary determination to cumulatively assess the impact of the imports from Germany, the Netherlands and the United Kingdom for purposes of injury determination.

5.3 MATERIAL INJURY ANALYSIS

The injury information presented below relates to the verified information of AFGRI, Astral Foods Ltd (County Fair, Early Bird – Olifantsfontein, Early Bird – Standerton), Rainbow, Sovereign and Supreme for the period 01 January 2010 to 31 December 2012. Additional twelve months information (January

2013 - December 2013) was considered for threat of material injury. Injury analysis is done on the consolidated information for the seven plants (AFGRI, County Fair, Early Bird – Olifantsfontein, Early Bird – Standerton, Rainbow, Sovereign and Supreme). The consolidated information, based on weighted average calculation, will from hereon be referred to as the applicant's information.

5.4 IMPORT VOLUMES AND EFFECT ON PRICES

5.4.1 Import volumes

The following table shows the volume of the allegedly dumped imports of the subject product as sourced from the South African Revenue Service from 01 January 2010 to 31 December 2012 plus additional twelve months information (January 2013 – December 2013) for threat of material injury.

Table 5.4.1: Import volumes

| kg | 2010 | 2011 | 2012 | 2013 |
|---|-------------|-------------|-------------|-------------|
| * Alleged dumped imports: Cumulated imports | 3 787 291 | 53 004 925 | 95 445 676 | 105 822 822 |
| ^Other net imports (Un-dumped) | 104 196 612 | 115 627 802 | 93 563 405 | 38 949 951 |
| Total imports | 107 983 903 | 168 632 727 | 189 009 081 | 144 772 413 |
| Alleged dumped imports as a % of total imports | 3.5% | 31.4% | 50.5% | 73.1% |
| Other imports as a % of total imports | 96.5% | 68.6% | 49.5% | 26.9% |

*The volumes in 2012 are after deducting Frisia's export volumes

^Other imports in 2012 are after adding Frisia's export volumes

The information in the table above indicates that the alleged dumped import volumes increased from 3 787 291 kilograms to 95 445 676 kilograms during the period of investigation when cumulatively assessed, an increase of 2 420 percent. The total Imports increased from 107 983 903 kilograms to 189 009 081 kilograms. Un-dumped imports decreased from 104 196 612 kilograms to 93 563 405 kilograms, representing a decline of 10.20 percent.

Comments by interested parties

- To assess the effect of allegedly dumped imports on sales volume, prices and other economic indicators, the applicant has chosen an incorrect base year for imports from Germany and the Netherlands because there were no imports from Germany to South Africa in 2010.

Commission's consideration

In 2010 there were no imports from Germany but between 2011 and 2012 imports increased by 1 689 percent. During the period 2010 to 2012 imports from Netherlands increased by 15 162 percent.

Comments by interested parties

- The South African poultry meat market is already highly protected in view of the recent imposition of duties on the imports from other destinations than the EU. The South African self-sufficiency rate in poultry meat dropped from 93% to 79% from 2002 to 2012. Further closure of the poultry meat market would lead to price increases of poultry meat that would harm in particular the poorest in the South African society as poultry meat is an affordable and valuable protein source.

Commission's consideration

The applicant submitted *prima facie* evidence to indicate dumping, injury and causal link.

5.4.2 Growth of the subject imports

The effects of dumped imports on domestic consumption and production were considered and the following table 5.4.2 shows details:

Table 5.4.2: Growth of subject imports

| | 2010 | 2011 | 2012 | 2013 |
|--------------------------------------|------|-------|-------|-------|
| Subject imports/domestic production | 100 | 1 440 | 2 700 | 2 840 |
| Subject imports/domestic consumption | 100 | 1 650 | 3 100 | 7 000 |

The table was indexed due to confidentiality using 2010 as a base year.

Subject imports relative to production increased over the period of investigation. There was a dramatic increase in 2011 and 2012 as a result of imports from Germany, which did not exist in 2010.

Subject imports relative to consumption increased during the period of investigation for injury. There was a dramatic increase in 2011 and 2012.

5.4.3 Effect on Domestic Prices

5.4.3.1: Price undercutting

Price undercutting is the extent to which the price of the imported product is lower than the price of the like product produced by the SACU industry. The price undercutting was cumulated based on applicant's ex-factory selling price and landed cost. The landed cost for the period of investigation was based on the verified importers' information (FOB value of imports plus the landing and clearing costs; internal transport costs (from plant to harbour); sea freight and insurance; documentation fees and other port charges). The landed cost is based on the weighted average of all the imports of the two importers that responded to the questionnaire.

It was found that the imported product from Germany, the Netherlands and United Kingdom undercut the applicant's selling price by 4.41 percent during the period of investigation for dumping.

5.4.3.2 Price depression

Price depression takes place where the SACU industry's ex-factory selling price decreases during the investigation period.

Table 5.4.3.2: Price depression

| R/kg | 2010 | 2011 | 2012 | 2013 |
|------------------------------|-------------|-------------|-------------|-------------|
| Applicant's ex-factory price | 100 | 107 | 111 | 117 |

The table was indexed due to confidentiality using 2010 as a base year.

Table 5.4.3.2 above indicates that the applicant's selling prices increased by 7 index points during that period 2010 to 2011 and continued to increase

by 4 index points during the period 2011 to 2012. The table 5.4.3.2 indicates that the applicant did not experience price depression during the period of investigation as the prices increased by 11 indexed points.

5.4.3.3 Price suppression

Price suppression is the extent to which increases in the cost of production of the product concerned, cannot be recovered in selling prices.

Table 5.5.3.3: Price suppression

| R/kg | 2010 | 2011 | 2012 | 2013 |
|--------------------------------------|------|------|------|------|
| Applicant's ex-factory selling price | 100 | 107 | 111 | 117 |
| Applicant's production cost | 100 | 108 | 120 | 130 |
| Applicant's gross profit per unit | 100 | 103 | 78 | 62 |
| App's cost as a % of selling price | 100 | 101 | 107 | 112 |

The table was indexed due to confidentiality using 2010 as a base year.

Table 5.4.3.3 above indicates that the applicant's cost as percentage of selling price increased by 1 index point during period 2010 to 2011 and continued to increase by 6 index points during the period 2011 to 2012. The above table also indicates that the applicant experienced price suppression during the period of investigation, as the applicant's cost as percentage of selling price increased by 7 index points during the POI.

The Commission also noted that although the applicant increased its selling prices during the POI, the costs of production increased more than the selling prices in the same period, in particular as a result of high feed and energy costs. Under normal circumstances, these costs should have been passed on to consumers, however the applicants' prices could not fully accommodate for the increase in costs, as it had to compete with dumped imports.

Comments from interested parties

- The prices of imported products significantly increased between 2010 and 2012. The sales prices of the domestic industry have consistently increased year-on year. Import prices increased at the highest rate.

Domestic industry was able to increase sales prices by 7 percent, which shows there is no correlation between imports and the situation of the domestic industry. The domestic industry seems to be affected by the increasing costs of production which increased by 8 percent between 2010 and 2011 and 11 percent between 2011 and 2012. The domestic industry's claim that imports were the cause of price suppression is false.

- Interested parties indicated that the price undercutting determination is incorrect as it was not done at the same level of trade and on a product-by-product basis. It also indicated that the imported product is further processed before it competes in the domestic market.

Comments from the applicant

- Price comparison is made between the landed price of the subject imports and the SACU ex-factory selling price. Although prices have increased, they have not increased in line with costs.

Commission's consideration

- Price undercutting is the extent to which the price of the imported product (at landed cost) is lower than the price of the like product produced by the SACU industry (at ex-factory). The landed cost was obtained from the verified importer's information of the subject product from the respective countries subject to this investigation. All models of frozen bone-in portions produced by the applicant were considered for price undercutting, suppression and depression this is compared to all models of frozen bone-in portions which landed into SACU during the period of investigation.
- Price comparison is made between the landed price of the subject imports and the SACU ex-factory selling price. The level of trade for calculating price undercutting was considered, and it is known that the SACU producers sell to various customers, including wholesalers and traders in bulk, thus the alleged bulk imported product is comparable

to that sold by the SACU industry to wholesalers and quick service restaurants (QSR). It has also been verified from importers that imports from the subject countries include IQF products which are similar to those packaged and sold by the SACU industry. The exported products to SACU are packed in different forms of packaging, and it is premature to indicate that all the imported products from the respective countries subject to this investigation are packed in the same manner as not all producers from these countries were verified.

5.5 CONSEQUENT IMPACT OF THE DUMPED IMPORTS ON THE INDUSTRY

5.5.1 Actual and potential decline in sales

The following table shows the SACU sales volumes and values of the subject product for the period of investigation:

Table 5.5.1: Sales

| | 2010 | 2011 | 2012 | 2013 |
|-------------------------------|-------------|-------------|-------------|-------------|
| Applicant's sales volume (kg) | 100 | 102 | 105 | 106 |
| Applicant's sale value (R) | 100 | 109 | 117 | 124 |

The table was indexed due to confidentiality using 2010 as a base year.

Table 5.5.1 above indicates that the applicant's sales volume and sales values both increased by 2 and 9 index points respectively during the period 2010 to 2011, and continued to increase by 3 and 8 index points respectively between 2011 and 2012. The table indicates that the applicant's sales volume and sales values both increased by 5 and 17 index points respectively during the POI.

Comments from interested parties

The sales volume of the domestic industry have increased consistently between 2010 and 2012, which implies that neither was the domestic industry injured in terms of prices nor in terms of sales volumes. Based on the increase in sale prices and volumes, sales values increased by 9 percent from 2010-2011 and 17 percent from 2010 -2012.

Commission's consideration

Although the sales volume has increased by 5 percent from 2010 to 2012, the volumes of imports of the subject product from the subject countries increased by 96 percent during the same period. This indicates that the sales volumes of the domestic industry increased at a slower rate than imports. Production of the subject product cannot be easily stopped, as the birds have to be slaughtered when they reach a certain age.

Sales have increased but were at prices not sufficient to cover the increased costs, and were undercut by the imports from the subject countries.

5.5.2 Profit

The following table shows the applicant's profit situation of the subject product:

Table 5.5.2: Profit

| | 2010 | 2011 | 2012 | 2013 |
|-----------------------------------|-------------|-------------|-------------|-------------|
| Applicant's units sold (kg) | 100 | 102 | 105 | 106 |
| Applicant's sales value (R) | 100 | 109 | 117 | 124 |
| Applicant's gross profit (R) | 100 | 105 | 82 | 66 |
| Applicant's net profit (R) | 100 | 103 | 67 | 29 |
| Applicant's gross profit per unit | 100 | 103 | 78 | 62 |

The table was indexed due to confidentiality using 2010 as a base year.

Table 5.5.2 above indicates that the applicant's gross profit and net profit both increased by 5 and 3 index points respectively during the period 2010 to 2011. The applicant's gross profit and net profit both decreased by 23 and 36 indexed points respectively during the period 2011 to 2012. The applicant's gross profit and net profit both decreased by 18 and 33 index points during the POI.

Comments from interested parties

In 2010 to 2011 when imports increased at the highest rate, the domestic industry made profits higher than the profits made in 2010 when imports from Germany did not exist and imports from Netherlands were limited.

Commission's consideration

Although profits increased year on year (2010 to 2011), during the period of investigation, net and gross profit levels decreased by 35% and 17.9%. Furthermore the increase in profits from 2010 to 2011 could be attributed to lower import volumes from other countries, compared to the accelerated growth of imports from the three subject countries in 2011 to 2012.

5.5.3 Output

The following table outlines the SACU industry's domestic production volume of the subject product:

Table 5.5.3: Output

| kg | 2010 | 2011 | 2012 | 2013 |
|--------------------------------|------|------|------|------|
| Applicant's production volumes | 100 | 104 | 107 | 106 |

The table was indexed due to confidentiality using 2010 as a base year.

Table 5.5.3 above shows that the applicant's production volumes increased by 4 index points between 2010 and 2011. Production continued to increase by 3 index points between 2011 and 2012. The applicant's output increased by 7 index points during the POI.

It is important to note that the increased output did not enable the applicant to produce at full capacity. Capacity utilisation continuously decreased on year by year basis and over the POI. The Commission also noted the fact that the applicant could not reduce or stop producing the subject product. Chickens must be slaughtered when they reach a certain age. If chickens are not slaughtered, producers will be faced with high feed costs without further gain, making the producers uncompetitive, and the birds will also not meet the standards of the customers if they are older than a certain age.

5.5.4 Market share

The following table shows the market share for the subject product based on volumes:

Table 5.5.4: Market share

| | 2010 | 2011 | 2012 | 2013 |
|---|------|-------|-------|-------|
| Applicant's sales volumes (kg) | 100 | 102 | 105 | 106 |
| Applicant share as a % of total market | 100 | 99 | 100 | 105 |
| ^Other SACU sales (kg) | 100 | 96 | 93 | 94 |
| Other SACU sales as a % of total market | 100 | 93 | 90 | 91 |
| *Cumulative dumped imports (kg) | 100 | 1 400 | 2 682 | 3 823 |
| Cumulated imports as % total imports | 100 | 1 650 | 3 100 | 3 305 |
| `Other imports (kg) | 100 | 111 | 84 | 37 |
| Other imports as % of total market | 100 | 107 | 81 | 36 |
| Total SACU market (kg) | 100 | 103 | 104 | 102 |

The table was indexed due to confidentiality using 2010 as a base year.

^This includes other SAPA members who did not provided injury information but supported the application.

*Excluding Frisia's export sales in 2012, which were included in "other imports".

These figures of the "other SACU sales" are estimated based on the broiler production volumes reported to SAPA.

Table 5.5.4 above indicates that the applicant's market share slightly decreased by 1 index points between 2010 and 2011. The impact of dumped imports started showing on the applicant with the reduced market share. The market share of the applicant showed some improvement between 2011 and 2012. Over the period of investigation, the applicant's market remained constant, while the market share of the alleged dumped imports increased drastically by more than 3 000 index points during the same period.

Comments from interested parties

The applicant experienced an increase in production volumes and there is no decline in market share.

Commission's consideration

The alleged dumped imports' market share increased at a pace that far outweighs the trend shown by the Applicant's market share i.e. the Applicant's market share was mainly constant during the period of investigation.

5.5.5 Productivity

Using the production and employment figures sourced from the applicant, its productivity in respect of all products is as follows:

Table 5.5.5: Productivity

| | 2010 | 2011 | 2012 | 2013 |
|------------------------------------|------|------|------|------|
| *Applicant's total production (kg) | 100 | 106 | 109 | 108 |
| *Applicant's no. of employees | 100 | 112 | 109 | 108 |
| *Applicant's productivity | 100 | 94 | 100 | 100 |

The table was indexed due to confidentiality using 2010 as a base year.

*Production for all products

Table 5.5.5 above shows that productivity decreased by 6 index points from 2010 to 2011, and increased by the same number between 2011 and 2012. However during the POI it remained constant.

Comments from interested parties

The applicant alleges a decrease in productivity but indexed figures seem to contradict this allegation. Productivity is a function of actual production and employment. When the domestic industry increased employment more than production it is bound to lead to lower productivity. Therefore decline in productivity cannot be attributed to allegedly dumped imports.

Commission's consideration

The productivity above is for all products, as the applicant cannot separate employees as most of them work on all production lines, with most of the lines responsible not only for processing the subject product, but almost all products. Furthermore, some processes which the subject product goes through are not only for the subject product but for all products. However, considering that the subject product accounts for approximately 67 percent of the applicants total products, it can be reasonably concluded that the productivity on the subject product remained constant during the POI.

5.5.6 Return on investment

The following table shows the applicant's return on investment of the subject product:

Table 5.5.6: Return on investment

| | 2010 | 2011 | 2012 | 2013 |
|-----------------------------------|------|------|------|------|
| *Applicant's net profit/loss (R) | 100 | 100 | 56 | 26 |
| *Applicant's total net assets (R) | 100 | 102 | 113 | 108 |
| *Applicant's return on net asset | 100 | 99 | 49 | 24 |

The table was indexed due to confidentiality using 2010 as a base year.

*Production for all products

Table 5.5.6 above indicates that the applicant's return on net assets decreased from by 1 index point between 2010 to 2011, and further decreased by 50 index points between 2011 and 2012. The table indicates that the applicant's return on assets decreased by 51 index points during the POI.

Comments from the applicant

The applicant stated that the decline in return on net assets above indicates the pressure the industry is facing from the increased level of dumped imports, thus it is clear that the industry is suffering material injury.

Comments from interested parties

- Incorrect allegation of injury concerning return on investment as the information is a consolidation of all products produced by the applicant, it is not known which other products are produced by the applicant.

Commission's consideration

The applicant provided information for all products as most of its net assets cannot be solely attributed to the subject product, however noting that the subject product accounts for more than 67 percent of all products produced, a decline in return in net assets can also be attributed to the subject product, it being the major component of the applicant's business.

5.5.7 Utilisation of production capacity

The following table provides the SACU industry's capacity and production for the subject product:

Table 5.5.7: Utilisation of production capacity

| kg | 2010 | 2011 | 2012 | 2013 |
|----------------------------------|------|------|------|------|
| Applicant's capacity | 100 | 108 | 115 | 124 |
| Applicant's actual production | 100 | 104 | 107 | 106 |
| Applicant's capacity utilisation | 100 | 97 | 93 | 86 |

The table was indexed due to confidentiality using 2010 as a base year.

Table 5.5.7 above indicates that the applicant's capacity utilisation decreased by 3 index points during the period 2010 to 2011, and further decreased by 4 index points between 2011 and 2012. The applicant's capacity utilisation decreased by 7 index points during the POI.

Comments from interested parties

The applicant failed to mention that the capacity utilization declined even though the actual production volume increased by 7% because the domestic industry continuously increased the production capacity which is evident from the indexed information.

Commission's consideration

Capacity is determined by the amount of stock producers can keep in their freezers at a particular point in time. Although actual production increased, it did not increase enough to enable producers to meet capacity. Actual production is still lower than the plant's capacities, and it decreased during the POI despite an increase in production.

5.5.8 Factors affecting domestic prices

As indicated in sections 5.4.3.1 and 5.4.3.3 of this report, the applicant is experiencing price undercutting and price suppression.

5.5.9 The magnitude of the margin of dumping

The following margins of dumping were calculated:

Table 5.5.9: Margins of dumping

| Country of origin | Dumping margin as a % of ex-factory export price |
|--|--|
| PHW group of companies | 32.72% |
| All other producers in Germany | 76.52% |
| Frisia Foods B.V | 0.88% |
| All other producers in the Netherlands | 22.83% |
| All producers in United Kingdom | 23.01% |

The table above indicates that all the producers are dumping, although Frisia Foods margin of dumping is *de minimis*. However those from Germany are significantly dumping their products into the SACU market at very low prices, and this is evident from their margins of dumping.

5.5.10 Actual and potential negative effects on cash flow

The following table reflects the SACU industry's cash flow situation:

Table 5.5.10: Cash flow situation

| | 2010 | 2011 | 2012 | 2013 |
|------------------------------------|------|------|------|------|
| *Applicant's cash flow: incoming | 100 | 90 | 103 | 129 |
| Supreme | 100 | 114 | 127 | 167 |
| *Applicant's cash flow: outgoing | 100 | -283 | -318 | -358 |
| *Applicant's net cash flow | 100 | -343 | -254 | 609 |
| *SACU Debtors value | 100 | 129 | 174 | 131 |
| *Debtors: average days outstanding | 100 | 103 | 103 | 100 |

The table was indexed due to confidentiality using 2010 as a base year.

*Company total

Table 5.5.10 above indicates that the applicant experienced a negative net cash flow during the full year period up to 2012.

The applicant stated that the negative cash flow is a clear demonstration of the impact of the suppressed selling price, the deteriorating capacity utilization and increased holding and storage costs of the SACU industry.

Comments from interested parties

Cash flow information relates to the company's total turnover and has not been distinguished for the subject product. Considering that there has been an anti-dumping investigation into other poultry products imported from Brazil that overlapped the current investigation, it is clear that the industry has already complained of suffering injury therefore the current injury cannot be attributed to the three respective countries.

Comments from the applicant

In the Brazil case the representatives of the importers argued that the EU and Argentina were causing injury. The investigation period for the Brazil investigation did not overlap that much with this investigation.

Commission's consideration

The applicant submitted information which relates to the period of investigation, and it was noted that the investigation period of the Brazil investigation did not overlap much with this investigation. There is nothing preventing the domestic industry from alleging injury from any named country in the investigation, as long as it is substantiated, as is the case in this investigation. However, considering that the subject product accounts for approximately 67 percent of the applicant's total products, it can be reasonably concluded that the net cash flow on the subject product declined during the POI.

5.5.11 Inventories

The following table provides the SACU industry's inventories for the subject product:

Table 5.5.11: Inventories

| | 2010 | 2011 | 2012 | 2013 |
|----------------------------|------|------|------|------|
| Applicant's inventory (kg) | 100 | 193 | 308 | 194 |
| Applicant's inventory (R) | 100 | 209 | 374 | 267 |

The table was indexed due to confidentiality using 2010 as a base year.

Table 5.5.11 above indicates that the applicant's inventory volumes and inventory values both increased by 93 and 109 index points respectively during the period 2010 to 2011, and both continued to increase by 115 and 165 respectively during the period 2011 to 2012. The table above indicates a drastic increase of 208 and 274 index points for the applicant's inventory volumes and inventory values respectively, during the POI as the applicant is unable to sell its product as a result of the low priced dumped imports.

Comments from interested parties

The applicant claimed that inventories increased significantly in volume and value, however what is relevant is the absolute figure as regards the inventory volume and value considering the fact that the product in question is not of a nature that can be stocked.

Commission's consideration

The increased inventory levels were as a result of the domestic industry increasing its production, however, it was unable to sell its products as a result of the pressure exerted by the low priced, increased dumped imports.

5.5.12 Employment

The following table provides the SACU industry's production employment figures:

Table 5.5.12: Employment

| | 2010 | 2011 | 2012 | 2013 |
|---------------------------|------|------|------|------|
| *Applicant's labour units | 100 | 112 | 110 | 108 |

The table was indexed due to confidentiality using 2010 as a base year.

*production for all products

Table 5.5.12 above indicates that the applicant's labour units increased by 12 index points from 2010 to 2011, and decreased by 2 index points from 2011 to 2012. However, the table indicates that labour units increased by 10 index points during the POI.

The employment figures above are for all products, as the applicant could not separate employees as most of them work on all production lines, with most of the lines responsible not only for processing the subject product, but almost all products. Furthermore, some processes which the subject product goes through are not only for the subject product but for all products.

5.5.13 Wages and Salaries

The following table provides the SACU industry's wages:

Table 5.5.13: Wages and Salaries

| | 2010 | 2011 | 2012 | 2013 |
|---------------------------------------|------|------|------|------|
| *Applicant's wages and salaries | 100 | 115 | 120 | 94 |
| App's wages and salaries per employee | 100 | 102 | 110 | 87 |

The table was indexed due to confidentiality using 2010 as a base year.

*Production for all products

Table 5.5.13 above shows that production wages and salaries for employees directly involved in the production of the subject product increased by 15 index points during the period 2010 to 2011, and wages and salaries per employee also increased slightly by 2 index points during the same period. Production wages and salaries for employees directly involved in the production of the subject product increased by 5 index points during the period 2011 to 2012, and wages and salaries per employee also increased by 8 index points during the same period.

The table above indicates that both wages & salaries and wages and salaries cost per employee increased by 20 and 10 index points respectively during the POI. The wages above are for all employees involved in production, not just those of the subject product.

Comments from interested parties

The applicant provided wages and salaries with respect to all products produced with no bearing on imports of the subject product.

Commission's consideration

Labour cannot be separated or be exclusive for the subject product because of the processes involved in the chicken processing industry, and it is also clear that employment increased during the POI, and wages are negotiated by the relevant trade unions in SACU in line with various considered conditions by the respective unions and employers.

5.5.14 Growth

The applicant provided the following information with regard to the growth of the market:

Table 5.5.14: Growth

| | 2010 | 2011 | 2012 | 2013 |
|---|--------|-------|-------|-------|
| Size of SACU market (kg) | 100 | 103 | 104 | 102 |
| SACU market growth during POI (%) | 4% | | | |
| Applicant's sales volume (kg) | 100 | 102 | 105 | 106 |
| Applicant's growth during POI (%) | 5% | | | |
| Other SACU Producers (kg) | 100 | 96 | 93 | 94 |
| Other SACU producer's growth during POI (%) | -7% | | | |
| *Cumulative dumped imports(kg) | 100 | 1 400 | 2 682 | 3 822 |
| Growth of the alleged dumped imports (%) | 2 582% | | | |
| *Other imports (kg) | 100 | 111 | 84 | 37 |
| Growth of other imports during POI (%) | -16% | | | |

The table was indexed due to confidentiality using 2010 as a base year.

*The volumes in 2012 are after taking into account Frisia's export volumes.

The SACU market and the applicant's market grew by 4 and 5 index points respectively during the POI, while dumped imports grew significantly by 2 582 percent during the same period. From table 5.5.14 above, it is evident that the other SACU producers and other imports did not grow during the period POI.

Comments from interested parties

Imports from cooperating countries increased. However the SACU producers also experienced significant growth. The estimates used for non-

cooperating producers not known to the applicant, cannot be used as a basis to claim that the SACU industry's situation deteriorated.

Commission's consideration

The growth percentage of the SACU producers and that of the alleged dumped imports both surpassed that of the SACU market. Although the size of the SACU market and that of the SACU producers grew it is evident that in absolute terms, the alleged dumped imports grew more than the SACU producers and the SACU market.

5.5.15 Ability to raise capital or investments

The applicant provided the following information with regard to the SACU industry's ability to raise capital or investments:

Table 5.5.15: Ability to raise capital or investments

| | 2010 | 2011 | 2012 | 2013 |
|--|------|------|------|------|
| Applicant's capital investment in subject product | 100 | 107 | 118 | 102 |
| Applicant's capital expenditure in subject product | 100 | 177 | 196 | 96 |

The table was indexed due to confidentiality using 2010 as a base year.

Table 5.5.15 above indicates that both the applicant's capital investment and expenditure increased by 7 and 77 index points respectively during the period 2010 to 2011, and both continued to decrease by 11 and 19 index points respectively during the period 2011 to 2012. The applicant's capital investment and expenditure increased by 18 and 96 index points during the period the POI.

The applicant continued to invest despite the pressures from dumped imports. However, should these imports persist in the same manner, resulting in losses and poor returns, the applicant would have to reduce its investments or completely disinvest.

5.6 COMMENTS FROM INTERESTED PARTIES

Injury can only be found with respect to 4 of the 19 injury indicators. This is not indicative of injury, especially not injury caused by the alleged dumping, as there are other factors that have contributed to the industry's alleged injury.

Comment from the applicant

The analysis done by interested parties is incorrect and should be disregarded as it just evaluated the movement in indicators without investigating the mechanics behind the numbers.

Commission's consideration

The Commission noted that when all the injury indicators contained in the submission are analysed collectively, the SACU industry is suffering material injury.

5.7 Summary - Material Injury

The examination of the impact of the dumped imports on the domestic industry shall include import volumes, price effects, the relevant economic factors and any other relevant information brought before the Commission that would have a bearing on the state of the industry.

The Commission found that the applicant was suffering material injury in the form of:

- Price suppression;
- Price undercutting
- Decrease in profit;
- Decline in return on investments;
- Negative effects on capacity utilization; and
- Negative effects on net cash flow.

The additional twelve months information above indicates the following:

- Price suppression;

- Decrease in output;
- Decrease in profit;
- Decrease in employment;
- Negative effects on ability to raise capital;
- Negative effects on return on investments; and
- Negative effects on capacity utilization.

In absolute and relative terms, the import volumes significantly increased during the POI. The increase in imports during the POI significantly outweighs the percentage growth of the SACU market, percentage increase on sales volumes of the applicant, decline in other SACU producer's sales volumes and a decline in import volumes from other countries.

The alleged dumped imports are affecting the applicant's prices as they undercut the SACU industry by 4.4 percent, and should this trend persist, it has the potential of further affecting the entire SACU industry negatively, as it will have to lower its prices to compete with the dumped imports. Although the SACU industry is not suffering any price depression as its prices increased, the increase in prices still does not allow the SACU industry to recover its costs.

The applicant's net profit and gross profits decreased as the SACU industry could not increase its prices to a level at which it could recover its costs, as seen in 2010, prior to the alleged dumped imports increasing from less than 3.5 percent in 2010 to 53 percent in 2012. This inability to recover costs adequately affected the applicant's gross profits and net profits, as they decreased significantly, resulting in net losses in the 2012 period. Their net cash flow situation shows that the situation is serious as it continues to decline.

The productivity of the applicant also decreased although it increased production. However the applicant could not increase its employment in line with the increase in production. Although employment increased over the POI, it would be more favourable should the applicant achieve the levels of employment it did in 2011, which are being prevented by the high volumes

of dumped imports, which if not attended to will result in the applicant having to decrease its workforce in order to be competitive in the face of low-value dumped imports.

Considering the negative effects of dumped imports on domestic prices through price suppression and undercutting, decline in profit, decline in productivity, decline in return on investments, negative impact on net flow and capacity utilization. The Commission concluded that these were serious and causing material injury to the domestic industry.

The Commission considered that while each injury indicator is analysed, the determination of material injury is based on an overall assessment of all the injury indicators and it made a preliminary determination that the applicant and therefore the SACU industry is suffering material injury.

6. THREAT OF MATERIAL INJURY

6.1 The applicant provided the following reasons to substantiate threat to the SACU industry:

(a) Details on the freely disposable capacity or imminent substantial increase in capacity of the exporter

The applicant stated that according to the United States Department of Agriculture publication "Livestock and Poultry: World Markets and Trade", published in October 2012, it forecast that under "Broiler Meat Selected Countries Summary" the production in the EU would be approximately 9,580,000 metric tons while consumption would be only 9,210,000 metric tons indicating an oversupply on the EU market.

Comments from interested parties

With regard to freely disposable or imminent or substantial increase in capacity of the exporter, the applicant relied on the USDA report which refers to the whole of EU poultry production without being specific to the three respective countries.

Commission's consideration

It was found that the EU is one of the world's top producers of poultry meat and a net exporter of poultry products. The UK and Germany are among four of the leading countries in poultry meat production in EU. In 2012 the 12.4 million tons of poultry meat production along with imports (0.82 million tons) and exports (1.3 million tons) kept the self-sufficiency level in the EU at 104%. (Sourced from: www.ec.europa.eu). This indicates that there is an oversupply in the EU market which might come from the respective countries.

(b) Significant increase of allegedly dumped imports into the SACU market indicating the likelihood of substantially increased importation

The applicant made reference to import volumes from Germany, Netherlands and United Kingdom that started to penetrate the SACU market in 2010 and continued to increase in volume as the customs duties were reduced in accordance with the SA/EU TDCA Agreement.

Table 6.1: Import volumes

| kg | 2010 | 2011 | 2012 | 2013 |
|--|-------------|-------------|-------------|-------------|
| Alleged dumped net imports | | | | |
| *Cumulated imports | 3 787 291 | 53 004 925 | 95 445 676 | 105 822 822 |
| ^Other net imports (Un-dumped) | 104 196 612 | 115 627 802 | 93 563 405 | 38 949 951 |
| Total imports | 107 983 903 | 168 632 727 | 189 009 081 | 144 772 413 |
| Alleged dumped imports as a % of total imports | 3.5% | 31.4% | 50.5% | 73.1% |

*The volumes in 2012 are after deducting Frisia's export volumes

^Other imports in 2012 are after adding Frisia's export volumes

Between 2010 and 2012 the cumulated dumped imports grew by 2 420 percent, while between 2012 and 2013 they further increased by 11 percent as indicated in table 6.1 (b) above. The alleged dumped imports increased by 47 percentage points during the POI, when expressed as a percentage of total imports.

The additional information (2013) in the table above indicates that the volumes of the alleged dumped imports when cumulatively assessed increased during the additional twelve months period. As a percentage of total imports, the alleged dumped imports when cumulatively assessed for all three countries increased to 73.1 percent.

(c) Whether products are entering or will be entering the SACU market at prices that will have a significant depressing or suppressing effect on SACU prices

The applicant made reference to the consolidated ex-factory selling price, that the dumped products from Germany, Netherlands and United Kingdom were already causing the SACU industry to suppress its selling prices in 2011 and 2012. The current oversupply of the subject products in the EU market will result in increased levels of dumped imports in the future at decreasing prices. The lack of demand in the EU for this product will have the effect of further suppressing SACU industry selling prices causing further material injury.

Commission's consideration

The Commission considered that although the applicant was not suffering any price depression throughout the investigation period and the additional 12 months period, it suffered price suppression throughout the period of investigation as its costs relative to its selling prices continued to rise. The additional 12 months period also shows that the applicant's price suppression is still on the rise, although its prices are not depressed, its cost recovery relative to its sales is demonstrative of material injury.

(d) Exporters' inventories of the product being investigated

The applicant stated that the SACU industry does not have any information with regard to the inventory levels of the exporters. However, as pointed out above, there is a surplus in supply of poultry and it is likely that inventories will increase especially of brown meat if not sold or exported.

Comments from interested parties

The allegation of oversupply on the subject product and inventories in the EU market is not substantiated.

Commission's consideration

Between 2010 and 2012 the inventory levels of the verified exporters which are the PHW group of companies in Germany and Frisia Foods BV in the Netherlands have increased by 33.19 percent and 110.25 percent respectively.

(e) Availability of other markets that can absorb the free capacity of the exporter.

The applicant made reference to a publication of the United States Department of Agriculture; "Livestock and Poultry World Markets and Trade", of October 2012 that states the following:

"Global exports are forecast 2 percent higher to a record 10.1 million tons, primarily on East Asian and Sub-Saharan African demand. Traditional suppliers (Brazil, the United States and EU) will continue to dominate the world market, while smaller suppliers (Thailand, Turkey and Argentina) expand their market share in new and developing markets. The EU is up 4 percent to 1.1 million tons as more exports to Western and Southern African markets are expected to offset less to Saudi Arabia, Hong Kong and China"

The EU, one of the dominant exporters, is forecast to increase exports to Southern Africa, as trade barriers with regard to frozen poultry products are non-existent in most of SACU. The other countries that are major consumers of poultry are self-sufficient or in an oversupply situation.

(f) The state of the economy of the country of origin/export and its influence on the operations of the manufacturers/exporters

The applicant made reference to the European Commission Short Term Outlook that states as follows:

"European Union economic outlook: EU population is projected to continue its increase at a rate of 0.3% per year to reach 507 million inhabitants in 2014. After its slight decline in 2012, EU economic growth is projected to

stagnate throughout 2013 (+0.1%) before a weak recovery in 2014 (1.6%). Some of the EU largest economies are expected to remain stable or grow modestly in 2013, and move to higher growth rates in 2014. This is the case of Germany (0.5% and 2%) and UK (0.9% and 1.9%) while France's GDP would stay stable in 2013 and increase the following year (1.2%).

EU unemployment, fuelled by the economic crisis, would grow to 11% of the labour force in both years. Greece and Spain are expected to reach the historical record of 27% in 2013 and then to slowly retreat in the following year (to 25.7% and 26.6% respectively). In January 2013, the Euro exchange rate against the US dollar appreciated to 1.33 \$/€ and is projected to stay on average at around this level in 2013. In 2014 the exchange rate is expected to decline to 1.25 \$/€."

"Stagnant economic growth and high unemployment depressing disposable income, combined with higher feed and meat prices, will continue influencing the EU meat market throughout 2013.

As in the previous year, only poultry would still have its production increased by 1.5%. This lower overall meat production, driven mainly by reduced availability in pig meat, would lead into exports reduced by 8%, with imports slightly increasing by 0.9%. Total EU consumption would stay roughly stable in 2013 with per capita consumption around the level of 81.9 kg.

Nevertheless, the declining trend in production is very likely to reverse in 2014, with an estimated +0.4% based on the expected rebound in economic growth. This would allow beef and pig meat production to recover, and poultry meat to record, for the first time in recent years, a slight decline (-0.7%).

Trade flows into and out of EU are expected to show positive developments, with import up by 2.3% and exports up by 2.6%. Total consumption, stimulated by a higher availability of different types of meat, is assumed to increase by 0.3% and per capita consumption to situate at 82 kg".

The applicant stated that with regard to the projected slight decline in 2014 as a result of the change in EU consumption, it can be expected that excess poultry meat, including brown meat will continue to be exported. Therefore a threat of material injury exists.

(g) Other information relevant to allegation that the infliction of material injury is imminent

The applicant stated that it has submitted and substantiated that the SACU industry is already suffering material injury, based on the material information and information above, a real threat of future dumping and threat of material injury at increased levels exists from the subject countries. As a result of the overproduction in the EU, the products are exported to SACU at dumped prices and this would result in further material injury if the issue is not addressed.

Therefore the applicant concluded that there is prima facie evidence of threat of material injury and if not based on proper examination of information in the application would be in violation of Article 5.3 of Anti-dumping agreement.

The additional 12 months information shows the imminence of material injury, as the imports continue its increasing trend, thus affecting the prices of the SACU industry.

6.2 SUMMARY – THREAT OF MATERIAL INJURY

The Commission considered that the EU increased its freely disposable capacity and imports of the subject product, cumulatively assessed, have increased significantly over the period of investigation, entering SACU market at dumped prices, suppressing and undercutting the applicant's selling prices by 8 percent during the period of investigation for dumping. With the TDCA being fully implemented, it is expected that the landed cost of imported product will be reduced even further as the import duties will be

zero, and this threatens to significantly undercut the prices of the SACU producers, in the foreseeable future. Euro Stats indicates that a huge portion of EU exports of the subject product are destined for African countries and imports statistics obtained from the South African Revenue Service indicates that imports of the subject product from EU countries (Germany, Netherlands and United Kingdom) constituted more than 50 percent as a percentage of total imports during the period of investigation for dumping and have increased by more than 1000 percent over the period from 2010 to 2012.

The additional twelve months period shows that the applicant experienced no price depression, an increase in sales values and volumes, an increase in output, an increase in market share, productivity remained constant, an improvement in cash flow and an increase in capital investment. The Commission also noted that the growth of the applicant improved, in line with the growth of the imports and that of the SACU market. Notwithstanding these positives, which were experienced by the SACU industry, an increase in imports in 2013 resulted in a threat of material injury being imminent in the form of continued price suppression, a decrease in profits, a decline in returns on investment, a decrease in capacity utilisation, an increase in inventory and a decline in capital expenditure. Employment decreased when comparing 2013 to 2012, although it still shows an improvement from that in 2010. The impact on the subject imports relative to domestic production and the impact of subject imports relative to consumption for 2013 shows a worsening situation for the SACU market.

The Commission considered that the threat is imminent. The trend in dumped imports is increasing and in the near future, if the dumping of the subject product from Germany, the Netherlands and United Kingdom is not addressed, the SACU industry will suffer significant injury resulting in adverse consequences for the industry as a whole.

The Commission made a preliminary determination that there is threat of material injury.

7. CAUSAL LINK

7.1 GENERAL

In order for the Commission to impose provisional measures, it must be satisfied that there is sufficient evidence to indicate that the material injury experienced by the SACU industry is as a result of the dumping of the subject product.

7.2 VOLUME OF IMPORTS AND MARKET SHARE

An indication of causality is the extent of the increase of volume and the extent to which the market share of the domestic industry has decreased since the commencement of injury, with a corresponding increase in the market share of the alleged dumped product.

7.2.1 Market share

The following table shows the market share for the subject product based on volumes:

Table 7.2.1: Market share

| | 2010 | 2011 | 2012 | 2013 |
|---|------|-------|-------|-------|
| Applicant share as a % of total market | 100 | 99 | 100 | 105 |
| Other SACU sales as a % of total market | 100 | 93 | 90 | 91 |
| Cumulated imports as % total imports | 100 | 1 650 | 3 100 | 3 305 |
| Other imports as % of total market | 100 | 107 | 81 | 36 |

The table was indexed due to confidentiality using 2010 as a base year.

According to table 7.2.1 above, a cumulative assessment of the dumped imports shows that market share of the alleged dumped imports drastically increased from 100 to 1 650 index points between 2010 and 2011, and then further increased to 3 100 index points in 2012, with an overall increase of 3 000 index points during the POI. While in the same period the applicant's market share decreased from 100 to 99 index points between 2010 and 2011,

thereafter it increased back to 100 index points, and therefore remained constant during the POI.

7.3 EFFECT OF DUMPED IMPORTS ON PRICES

It has already been shown in section 5 of this report that the applicant suffered price suppression and price undercutting.

7.4 CONSEQUENT IMPACT OF DUMPED IMPORTS

Table 7.4: Material Injury Indicators

| | Analysis (2010 – 2012) |
|---------------------------------|-------------------------------|
| Sales volume (kg) | Increased |
| Gross profit (R) | Decreased |
| Output (kg) | Increased |
| Market share (alleged dumped) | Increased |
| Market share (applicant) | Constant |
| Productivity (kg) | Decreased |
| Return on investment | Decreased |
| Utilisation of capacity | Decreased |
| Inventories (kg) | Increased |
| Employment(number of employees) | Increased |
| Wages and Salaries (R) | Increased |
| Applicant's Growth | Increased |
| Ability to raise capital (R) | Increased |

7.5 FACTORS OTHER THAN THE DUMPING CAUSING INJURY

Table 7.5: Examination of causality under Article 3.5

| | Year | | | |
|---|---|-------------|------------|------------|
| | 2010 | 2011 | 2012 | 2013 |
| *FOB prices of imports not sold at dumped prices (R/kg) | 8.78 | 9.18 | 11.69 | 13.21 |
| *Volume of imports not sold at dumping prices (kg) | 104 196 612 | 115 627 802 | 87 427 395 | 38 949 951 |
| Contraction in demand or changes in patterns of consumption | The applicant stated that the SACU poultry market is a growing market. | | | |
| Trade-restrictive practices of foreign and domestic producers | The applicant stated that it is not aware of such a practice. | | | |
| Developments in technology | The applicant stated that the equipment, genetics and technology used by SACU poultry producers is substantially equivalent to those used elsewhere in the world. | | | |
| Export performance of the domestic industry | The applicant stated that the SACU industry is not export orientated as non-tariff barriers have prevented the SACU industry from exporting to major markets. | | | |
| Productivity of the domestic industry | The applicant stated that it believes its member's productivity is comparable to the overseas producer's productivity as the SACU producers utilise substantially the same equipment, genetics and technology as the exporting countries. | | | |
| Indicate any other factors affecting the SACU prices | None. | | | |

*The figures in 2012 are after taking into account Frisia's export information

7.6 COMMENTS FROM INTERESTED PARTIES

- SAPA members' are using an incorrect business as they sell between 65% and 75% of its total production as IQF which includes white and dark meat in one packet therefore failing to charge a premium price in some of the portions. (Or nearly 90% of total production of the subject product).
- During the last year of the POI, labour unrest within the SACU industry, resulted in losses in production volumes and cost increases. These need to be isolated and excluded.
- SAPA indicates that its productivity is on par with producers in Germany, the Netherlands and the United Kingdom. However, this is not correct, as productivity in these markets is significantly higher. This is as a result of

much higher investment in new technology, better climatic conditions and increased economies of scale compared to South Africa. No substantiation was provided in this regard.

- The domestic industry is affected by rising cost of production in the form of feed, fuel, electricity and labour costs.
- The domestic industry is also experiencing labour strikes and the lower increase in the consumption due to economic crisis.

Comments from the applicant

- SAPA denies that its members are employing an incorrect business model.
- The applicant indicated that it believes that the SACU industry productivity is comparable with the rest of the world, however different costs apply to different countries.
- The applicant acknowledges that in 2010 and 2012 the imports from third countries undercut domestic industry selling prices but dismisses the relevance of undercutting in 2012 because the volume of third countries imports reduced.

Commission's consideration

- The labour unrests were experienced by two companies out of the entire SACU industry, and injury is determined for the entire SACU industry. Moreover, there were no production volume losses for the SACU industry during the cited period, as interested parties suggest.
- The interested parties have also not substantiated their claims of high productivity in the EU countries under investigation.
- Although the applicant increased its selling prices during the POI, the costs of production increased more than the selling prices in the same period, in particular as a result of high feed and energy costs. The high feed costs did not only affect SACU producers, its worldwide phenomenon. Under normal circumstances, these costs should have been passed on to consumers, however the applicants' prices could not

fully accommodate for the increase in costs, as it had to compete with dumped imports.

- The domestic market has grown, and therefore the allegation of lower consumption in the domestic market is incorrect.

7.7 Summary - Causal Link

A cumulative assessment for all three countries shows that market share of the alleged dumped imports has increased from 0.2 percent in 2010 to 6.2 percent in 2012, whereas the applicant's market share remained at 45 percent during the POI.

The import volumes from all three countries Germany, the Netherlands and United Kingdom cumulatively increased from 3.5 percent in 2010 to 50.5 percent in 2012 as a percentage of total imports.

The price of the un-dumped imports from other countries was found to have increased from R8.78/kg in 2010 to R12.83/kg in 2012. The price of alleged dumped imports from Germany, the Netherlands and the United Kingdom during the POI for dumping was found to be R11.40/kg, R11.25/kg and R11.92/kg respectively. The price of imports of the subject product from Germany, the Netherlands and United Kingdom are all lower than that of the un-dumped imports from other countries in 2012. Although these may be the FOB prices, the landed costs of the prices from other countries will be higher as a result of the import duties on the subject product, while those from EU countries will not be affected due to the TDCA.

The price effects on the SACU industry in the form of undercutting can be attributed to the increased dumped imports from Germany, the Netherlands and United Kingdom which undercut the applicant's selling prices by 4.4 percent. The applicant also suffered price suppression during the period of investigation. The price suppression suffered by the applicant can be directly linked to the reduced gross profit and net losses suffered by the applicant as it is unable to recover the costs to a level which it did in 2010, prior to the

market being flooded with dumped imports from Germany, the Netherlands and United Kingdom.

The applicant's inventory levels increased as the applicant could not sell goods produced. This also resulted in negative effects on the applicant's capacity utilisation and net cash flow. These effects can be attributed to the increased import percentage entering the SACU market at dumped prices, thus injuring the SACU industry.

The Commission noted that all the above causal link factors and comments from interested parties, and concluded that the factors as discussed above do not sufficiently detract from the causal link established between the dumped imports and the material injury suffered by the applicant.

• A causal link can also be drawn from the threat of material injury as the applicant's threat is imminent as a result of the information provided for threat and the additional 12 months information.

• The Commission made a preliminary determination that there is a causal link between the alleged dumping of the subject product and the material injury suffered by the SACU industry and the imminent threat of material injury.

8. SUMMARY OF FINDINGS

8.1 Dumping

The Commission found that the subject product originating in or imported from Germany, the Netherlands and United Kingdom was being dumped in the SACU market with the following dumping margins:

Table: 8.1: Dumping Margins

| Magnitudes of margin of dumping | |
|---|--------|
| PHW group of companies: Anhaltinische Geflügelspezialitäten GmbH; Donautal Geflügelspezialitäten Zweiniederlassung der Lohman & Co; Nienburger Geflügelspezialitäten Zweiniederlassung der Oldenburger Geflügelspezialitäten GmbH; and Oldenburger Geflügelspezialitäten GmbH | 32.72% |
| All other producers in Germany | 76.52% |
| Frisia Foods B.V | 0.88% |
| All other producers in the Netherlands | 22.83% |
| All producers in United Kingdom | 23.01% |

8.2 Material Injury

The Commission found that the applicant was suffering material injury in the form of:

- Price suppression;
- Price undercutting
- Decrease in profit;
- Decline in return on investments;
- Negative effects on capacity utilization; and
- Negative effects on net cash flow.

The additional twelve months information above indicates the following:

- Price suppression;
- Decrease in output;

- Decrease in profit;
- Decrease in employment;
- Negative effects on ability to raise capital;
- Negative effects on return on investments; and
- Negative effects on capacity utilization.

8.3 Threat of material injury

The Commission considered that threat of material injury is imminent. The trend in dumped imports is increasing and in the near future, if the dumping of the subject product from Germany, the Netherlands and the United Kingdom is not addressed, the SACU industry will suffer significant injury resulting in adverse consequences for the industry as a whole.

The Commission made a preliminary determination that there is threat of material injury.

8.4 Causal Link

The Commission found that a causal link between the alleged dumped imports of the subject product originating in or imported from Germany, the Netherlands and United Kingdom and the material injury suffered by the SACU industry exists, and that there were no other factors detracting from the causal link.

9. PROVISIONAL PAYMENTS

9.1 Calculation of duty

The Commission found that all requirements for imposition of a provisional duty have been fulfilled.

9.2 Lesser duty

The lesser duty rule means the provisional payment or anti-dumping duty is imposed at the lesser of the margin of dumping or the margin of injury, which is deemed to be sufficient to remove the injury caused by the dumping.

Section 17 of the ADR provides that the Commission shall consider applying the lesser duty rule if both the cooperating exporter and importer responded fully. In this instance, the importers that imported from the verified exporters found to be dumping did not fully cooperate in the investigation. The Commission made a preliminary determination not to apply the lesser duty for the cooperating exporters.

9.3 Amount of provisional payments

The amounts of provisional payments were concluded to be the following:

Table 9.3: Provisional payments

| Tariff subheading | Product Description | Country/Producer | Amount of provisional payments |
|-------------------|---------------------|---|--------------------------------|
| 0207.14.90 | Other | Germany: Produced by Anhaltinische Geflügelspezialitäten GmbH; Donautal Geflügelspezialitäten Zweinierderlassung der Lohman & Co; Nienburger Geflügelspezialitäten Zweinierderlassung der Oldenburger Geflügelspezialitäten GmbH; and Oldenburger Geflügelspezialitäten GmbH; | 31.30% |
| | | Germany: All other producers | 73.33% |
| | | The Netherlands: All producers excluding Frisia Foods B.V | 22.81% |
| | | United Kingdom: All producers | 22.03% |

10. DETERMINATION

The Commission made a preliminary determination that:

- Dumping of frozen bone-in portions originating in or imported from Germany, the Netherlands and the United Kingdom is taking place;
- There is material injury and threat of injury to SACU industry; and
- There is a causal link between the dumping of the subject product originating in or imported from Germany, the Netherlands and the United Kingdom and the material injury suffered by the SACU industry and that there were no other factors detracting from the causal link.

The Commission therefore made a preliminary determination that provisional payments on imports of frozen bone-in portions of fowls of the species *gallus domesticus* from Germany, the Netherlands and the United Kingdom be imposed as per Table 9.3 of this report.

Interested parties will be invited to submit comments and make representations on the preliminary determinations within the specified time periods, which the Commission will consider prior to making its final determination and recommendation to the Minister of Trade and Industry.