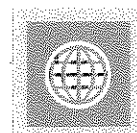


REPORT NO. 327

**INTERIM REVIEW OF THE ANTI-DUMPING DUTY ON
FRESH OR CHILLED GARLIC ORIGINATING IN OR
IMPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA
(PRC): FINAL DETERMINATION**

v

enabling



FAIR TRADE

The International Trade Administration Commission of South Africa herewith presents its **Report No. 327. INTERIM REVIEW OF THE ANTI-DUMPING DUTY ON FRESH OR CHILLED GARLIC ORIGINATING IN OR IMPORTED FROM THE PRC: FINAL DETERMINATION**



Siyabulela Tsengiwe
CHIEF COMMISSIONER

PRETORIA
26/01/2010

1. APPLICATION AND PROCEDURE

- 1.1. This investigation is conducted in accordance with the International Trade Administration Act, 2002 (ITA Act), the World Trade Organization Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, 1994 (the Anti-Dumping Agreement) and the International Trade Administration Commission Anti-Dumping Regulations (ADR).
- 1.2. The application was lodged by Dumping Remedy Services CC on behalf of South African Garlic Grower's Association, (SAGGA), being the farmer's representative organization for the subject product (Garlic) in the SACU. SAGGA members are producers of 100% of the SACU production.
- 1.3 The current anti-dumping duty was imposed on 19 October 2000, and was re-instated on February 2006 after a sunset review investigation was conducted, which was published in ITAC Report No. 155.
- 1.4 The Applicant requested an interim review based on alleged significantly changed circumstances as contemplated in Article 45.1 of the Anti-Dumping Regulations (ADR 45.1) as the Applicant alleged that imports of the subject product, originating in or imported from the PRC are still being dumped at decreasing prices and increasing volumes to the SACU market despite the current anti-dumping duty in place, thereby causing material injury to the SACU industry.

The Applicant further alleged that as a result of the dumping of the subject product from the PRC, it was suffering material injury in the form of:

- Price undercutting
- Price depression
- Price suppression
- Actual and potential decline in sales
- Actual and potential decline in profit
- Actual and potential decline in output

- Actual and potential decline in market share
- Actual and potential decline in productivity
- Actual and potential decline in return on investment
- Actual and potential decline in utilization of production capacity
- Actual and potential decline in cash flow
- Actual and potential decline in employment

- 1.5 The initial application was submitted by the Applicant on 25 May 2009. A deficiency letter was sent to the Applicant on 10 June 2009. A revised application was brought by the Applicant on 17 July 2009.
- 1.6 This submission contains information with regard to dumping for the period 1 March 2008 to 28 February 2009 and information with regard to material injury for the period 1 March 2006 to 28 February 2009. The crop is typically harvested and marketed from September to January. However, the financial years of the cooperating farmers end in February. The 1 January 2009 to 31 March 2009 period indicates the period of significant changed circumstances according to the Applicant.
- 1.7 The SACU industry is represented by SAGGA, being an organization for the farmers of garlic. Two major farmers submitted the injury information contained in this submission. Information from Mr. Bezuidenhout, a farmer who is part of SAGGA, was verified on 6 October 2009.
- 1.8 The Applicant stated that the exporters of the subject product are not known, but the following SACU importers were identified as interested parties:
- Norris Fresh produce (Pty) Ltd
 - Contraship (Pty) Ltd
 - Freshmark (Pty) Ltd
 - Zelpy 2324 (Pty) Ltd
 - A & I Investors
 - Everglory International Trading SA cc

- Field Crest International (Pty) Ltd
- BD Trading cc
- Ansana Commodity Traders (Pty) Ltd
- Garlic Importers cc
- K & M International Trading (Pty) Ltd
- Wanf Xu
- Adele Leigh Franchises (Pty) Ltd

1.9. No exporters responded.

1.10. Two importers responded and they were Shoprite Checkers (Pty) Ltd and Fruit and Veg City international (Pty) Ltd. Shoprite Checkers in their response only questioned the legality of the investigation and objected to the initiation of the review by ITAC. The response from Fruit and Veg City was deficient and the deficiencies were not addressed within the time frame allowed.

1.11 Essential facts letters were sent out on 19 November 2009 to allow interested parties to comment on the decision that the Commission considered making. The Applicant was the only party that responded to the essential facts letters. The deadline for comments was 26 November 2009.

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 SUBJECT PRODUCTS

Description

The subject product is described as all strains of garlic. Soft neck-garlic *Allium sativum* and hard neck *Allium ophioscorondon*. Garlic can be in the form of whole bulbs or individual cloves, unpeeled or peeled, and it can also be cured, trimmed, cleaned and graded. Garlic delivered in cold storage (chilled garlic) is also considered to be "fresh garlic". Dehydrated garlic and processed garlic are not included in the definition.

2.1.2 Country of origin/export

The subject product originates and is exported from the People's Republic of China (PRC).

2.1.3 Possible tariff loopholes

The Applicant indicated that it is not aware of circumstances under which garlic can be imported under any other subheading.

2.1.4 Tariff classification

The subject product is classifiable as follows:

Table 3.1.4: Tariff classification

Tariff subheading	Description	Statistical Unit	Rate of customs duty
			General
07.03	Onions, Shallots, Garlic, Leeks and other Alliaceous vegetables, Fresh or Chilled	kg	
0703.20	-garlic		325c/kg with a maximum of 39%

2.1.5 Other applicable duties and rebates

The following anti-dumping duty imposed on September 2000 was reconfirmed on 8 February 2006.

Table 3.1.5: Other applicable duty

Rate of customs Duty	Description	Statistical Unit	Rate of anti-dumping duty
			China (PRC)
07.03. 20	Garlic, fresh or Chilled	kg	R6.07/kg
07.12.90	Dried garlic in the form of bulbs or cloves	kg	R6.07/kg

There are currently no applicable rebate provisions for garlic.

2.1.6 Negligibility test

The following table shows the alleged dumped imports as a percentage of the total imports:

Table 3.1.6: Negligibility test

Alleged dumped imports	Import volumes in tons for year ended February 2009	Volume as a percentage of total import volume
PRC	1558	90.6%
Other imports	162	9.4%
Total imports	1720	100.0%

The Commission decided that the imports from the PRC are above the negligibility level of 3% as contemplated in the Anti-dumping Regulations.

2.2 SACU PRODUCT

2.2.1 Description

The subject product is described as all strains of garlic. Soft neck-garlic *Allium sativum* and hard neck *Allium ophioscorondon*. Garlic can be in the form of whole bulbs or individual cloves, unpeeled or peeled and it can also be cured, trimmed, cleaned and graded. Garlic delivered in cold storage (chilled garlic) is also considered to be “fresh garlic”. Dehydrated garlic and processed garlic are not included in the definition.

2.2.2 LIKE PRODUCT

The Commission already made a finding that the SACU products and the imported products were “like products” for purposes of comparison, in terms of Section 1 of the Anti-Dumping Regulations. (See par 2.2.4 of ITAC Report No. 155 dated 8 February 2006).

Taking the above into consideration, the Commission determined that the SACU product and the imported products are “like products” for the purposes of comparison, in terms of Section 1 of the Anti-Dumping Regulations.

3. INDUSTRY STANDING

3.1 INDUSTRY STANDING

The application was lodged by Dumping Remedy Services CC on behalf of South African Garlic Grower's Association, (the Applicant), being the farmer's representative organization for the subject product (Garlic) in the SACU. SAGGA members are producers of 100% of the SACU production.

Table 4.1: Industry standing

Producer	Production volume- Support Application	Production volume- Oppose application	Production volume- Neutral
<i>SAGGA production according to National Fresh Produce Market (NFPM) Statistics</i>	<i>1798 tons</i>	Nil	Nil
<i>Other producers</i>			
Total SACU	<i>1798 tons</i>	Nil	Nil

The Commission decided that the application can be regarded as being made "by or on behalf of the domestic industry" under the provisions of the Anti-Dumping Regulations.

4. CHANGED CIRCUMSTANCES

The Applicant urgently requested the International Trade Administration Commission (the Commission) to conduct an interim review of the anti-dumping duty in place in respect of imports of fresh or chilled garlic originating in or imported from the PRC as a result of significantly changed circumstances prevailing in the World economy, and more specifically in the PRC, as well as in the SACU area.

4.1 REQUIREMENTS

Article 45.1 of the Anti-Dumping Regulations (ADR 45.1) reads as follows:

"The Commission will only initiate an interim review if the party requesting such interim review can prove significantly changed circumstances".

Article 11.2 of the Anti-Dumping Agreement reads as follows:

"The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty, upon request by any interested party which submits positive information substantiating the need for a review. Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both.

Own underlining

The applicant therefore has to prove:

- Changed circumstances with reference to dumping and that dumping is likely to continue if the duty remains at the present level; and/or
- changed circumstances with reference to injury and that injury is likely to continue if the duty remains at the present level.

The Applicant requested the Commission to consider increasing the current anti-dumping duty to a level that is adequate to enable the SACU industry to compete with imports from PRC.

Article 47.1 of the Anti- Dumping Regulations (ADR 47.1) reads as follows

"The Commission's final finding, in the form of a recommendation to the Minister, may result in an increase, decrease, the withdrawal or the reconfirmation of the existing anti-dumping duty".

In this instance the Applicant alleged that the level of the current anti-dumping duty is not sufficient to protect the SACU industry from dumped imports.

The Applicant therefore submitted the following details of the changed circumstances, in support of the request for an urgent interim review of the anti-dumping duty on fresh or chilled garlic:

4.2 General

- The present world economic meltdown resulted in a slowdown of the Chinese economy to the extent that economic growth declined from 11.4% during 2007 to 9% during 2008. In the period January to March 2009, growth further declined to 6.1%.

- The China People's Daily advises that "Statistics released by the (Chinese) Ministry of Agriculture on March 4, 2009 show that export growth for the PRC's agricultural products slowed down, imports witnessed high-speed growth, and the trade deficit increased rapidly in 2008.
- The Chinese trade deficit increased to \$18.16 billion, an increase of 3.4 times compared to 2007 (\$5.34 billion).

From the above it can be concluded that the producers from the PRC are likely to aggressively seek export markets.

4.3 Dumping

The Applicant alleged that the subject product is still being dumped and in larger quantities, despite the dumping duty being in place. The Applicant stated that the anti-dumping duty in place is totally inadequate and does not prevent injurious dumping from taking place. This was reflected by the fact that dumped imports from the PRC represent 90.6% of total imports, for the year 2008/2009, this despite the anti-dumping duty being in place.

The Applicant provided information from January 2009 to March 2009, which shows that the fob export price has decreased to a level which the landed cost including the duty and anti-dumping duty is well below the production cost of the SACU producers.

This may be illustrated by the following table.

	UNIT	January – March 2009
Export price : fob	R/Kg	2.60
Sea freight (based on 2009 year levels)	R/Kg	0.24
Customs Duty	R/Kg	1.13
Dumping Duty	R/Kg	6.07
Total Landed Cost	R/Kg	10.04
SACU Cost of production (break-even-point)	R/Kg	CONFIDENTIAL

4.4 Material Injury

The Applicant indicated with regard to the changed circumstances in the SACU garlic industry:

- Imports of fresh or chilled garlic imported from the PRC have dramatically increased from 877 tons in 2007 to 1558 tons in 2008, an almost 78% increase;
- The average fob prices per kilogram of imported Chinese garlic declined from R4.17 per kg in 2007 to R3.02 per kg in 2008, an average decrease of almost 27%.
- The market share of the SACU produced garlic decreased from 61% in respect of the year ended February 2008 to 52% in the year ended February 2009, a decrease of 9%.
- Although the dumping margin decreased from 501% as found in the sunset review in February 2006 to 339% in the present application, it should be noted that this is taken from a different base namely Mexican exports compared to Argentinean exports during the sunset review. The reason Argentina could no longer be used as a third country is that their domestic sales statistics are not expressed in kilograms but in bundles.
- Lastly, a comparative dumping margin was calculated for the three months (January to March 2009) and this amounted to 416%, an increase of 23% compared to the March 2008 to February 2009 margin of 339%.

The Applicant considers that these factors show that significant changes have taken place which negatively impact on the SACU garlic producers' ability to cultivate and market its products in the SACU region, and consequently, that the present anti-dumping duty structure is totally inadequate to address the injurious dumping that is taking place.

The Commission made a final determination that the Applicant submitted sufficient evidence to prove that significantly changed circumstances occurred since the sunset review investigation was concluded in February 2006.

5. DUMPING

No exporters responded and therefore the Commission made a final determination based on facts available as contemplated in Section 1a(ii) of the ADR, being that provided by the Applicant.

5.1 METHODOLOGY USED IN THIS INVESTIGATION

The PRC

5.1.1 Normal Value

The facts available to the Commission, was the information contained in the application.

The Applicant stated that information with regard to the domestic prices in the PRC could not be obtained. Therefore the Applicant nominated Mexico as a surrogate country for the purpose of normal value determination of the alleged dumped garlic from the PRC. The Applicant stated that it must be noted that they could not obtain the cooperation of any Mexican producers of garlic and consequently, the Mexican selling price obtained from the national market known as "Boletín del Mercado Nacional Agropecuario" in respect of sales of Ajo Morado in the domestic market of Mexico on 28 June 2008 would be used.

The Applicant regards the garlic industry in Mexico to be at a similar level of development as that of the PRC, and accordingly presents the information obtained in respect of Mexico as a surrogate domestic selling price for domestic sales in the PRC. The PRC is considered to be the largest exporter of garlic in the world.

The Applicant stated that the domestic selling price of garlic amounts to Mexican Peso 17.47 per kilogram. Using the Oanda interbank rate, this was converted from Mexican Peso to South African Rands at 1.3012MXP = 1 ZAR

The dumping period for the investigation is from 1 March 2008 to 28 February and to show further deterioration the period from 1 January 2009 to 31 March 2009 has also been included by the Applicant.

The Normal value was calculated as follows:

Normal value			
	Unit	2009	January – March 2009
Normal Value: Garlic	ZAR/kg	R13.43	R13.43

5.1.2 Export Price

The export price information was obtained from the official imports statistics as received from Customs.

Export price			
	Unit	2009	January – March 2009
Export price: Garlic	ZAR/kg	R3.06	R2.60

5.1.3 Margin of dumping

Margin of dumping		
R/kg	2009	January – March 2009
Normal Value	13.43	13.43
Export price	3.06	2.60
Margin of dumping	10.37	10.83
Margin of dumping as a % of export price	339%	416%

5.2 SUMMARY - DUMPING

Based on the facts available, the Commission made a final determination that dumping of the subject product originating in or imported from the PRC is taking place, regardless of the current anti-dumping duty being in place.

6. MATERIAL INJURY

6.1 DOMESTIC INDUSTRY – MAJOR PROPORTION OF PRODUCTION

SAGGA members produce 100% of the domestic production. The following injury analysis relates to two SAGGA members that are garlic farmers, Mr. Bezuidenhout and Mr. Venter. Some of the prices used for the injury analysis are from the average National Fresh Produce Market (NFPM). Garlic crops are planted by approximately 420 farmers across South Africa. The two farmers selected are from Limpopo and Northern Cape respectively and are typically representative of the industry for purposes of cost and injury analysis.

6.2 IMPORT VOLUMES AND EFFECT ON PRICES

6.2.1 Import volumes

The following table shows the volume of the dumped imports of garlic:

Table 6.2.1: Import volumes

Kg's	2006	2007	2008	2009
China	510 000	311 000	877 000	1 558 000
Dumped imports %	63.2%	26.8%	69.0%	90.6%
Other imports	297 000	848 000	394 000	162 000
Other imports %	26.8%	63.2%	31.0%	9.4%
Total Imports	807 000	1 159 000	1 271 000	1 720 000

*Financial period ends in February each year.

The information in the table above indicates that the volumes of alleged dumped imports, when comparing 2006 to 2009, from the PRC

increased by approximately 27 per cent and that from other countries decreased by more than 15 per cent.

6.2.2 Effect on Domestic Prices

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 following table compares the NFPM farm level prices with the landed cost of garlic originating in or imported from the PRC:

Table 6.2.2.1: Price undercutting

	2006	2007	2008	2009
NFPM net farm level	R10.67	R11.49	R11.74	R10.93
The PRC fob	R3.41	R5.15	R4.17	R3.06
Sea freight ins & port	R0.27	R0.41	R0.33	R0.24
Landed Cost before duties	R3.68	R5.56	R4.50	R3.30
Plus Customs duty	R1.26	R1.91	R1.54	R1.13
Plus dumping duty	R6.07	R6.07	R6.07	R6.07
Total landed cost	R11.01	R13.54	R12.11	R10.50
Price undercutting	(R0.34)	(R2.05)	(R0.37)	R0.43
Price undercutting %	(3.2%)	(17.8%)	(3.2%)	3.9%

*Average National Food and Produce Market (NFPM) prices are used for each full calendar year (the February 2009 statistics therefore refer to sales at the National Fresh Produce Markets up to the previous December, net of transport and market commission – and have been aligned to coincide with the financial details of the cooperating farmer's financial periods up to the end of February of each year).

The table above indicates that there was price undercutting in 2009.

Price depression

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

The table below shows the domestic industry's domestic selling price:

Table 6.2.2.2: Price depression

Average selling price per unit ex-factory(ZAR)	2006	2007	2008	2009
NFPM Selling prices	10.67	11.49	11.74	10.93
Farm gate prices: Bezuidenhout	100	83.2	91.0	66.6
Farm gate prices: Venter	100	111.5	88.3	77.1
Farm gate prices: Average for both farmers	100	87.4	93.2	69.0

*Average National Food and Produce Market prices are used for each full calendar year (the February 2009 statistics therefore refer to sales at the National Fresh Produce Markets up to the previous December, net of transport and market commission – and have been aligned to coincide with the financial details of the cooperating farmer's financial periods up to the end of February of each year). The information in this table was indexed due to confidentiality using 2006 as the base year

The table reflects no price depression for the NFPM from 2006 to 2008. There was price depression for the individual farmers.

According to the Applicant, the average selling prices for two cooperating farmers decreased. This would show that price depression was evident. The NFPM prices actually showed a marginal increase over the period from 2005 to 2008 and a decrease in 2009.

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.

To determine price suppression, a comparison is made of the percentage increase in cost with the percentage increase in selling price (if any), and whether or not the selling prices have increased by at least the same margin at which the cost of production increased.

The following table shows the Applicant's cost of production and its actual selling prices for garlic:

Table 6.2.2.3: Price suppression

(Rand/kg)	2006	2007	2008	2009
Cost of production:				
Bezuidenhout	100	96.5	122.8	139.9
Venter	100	179.0	116.3	177.7
Average for both farmers	100	104.4	120.7	144.3
% Variance from base year:				
Bezuidenhout		(3.5%)	22.8%	39.9%
Venter		79.0%	16.3%	77.7%
Average for both farmers		4.4%	20.7%	44.3%
Selling Price:				
Bezuidenhout	100	83.2	91.0	66.6
Venter	100	126.3	113.3	87.4
Average for both farmers	100	87.4	93.2	69.0
Cost as % of selling price:				
Bezuidenhout	100	116.0	135.0	210.0
Venter	100	141.8	102.8	203.6
Average for both farmers	100	119.4	129.6	209.3
% Variance from base year:				
Bezuidenhout		16.0%	35.0%	110.0%
Venter		41.8%	2.8%	103.6%
Average for both farmers		19.4%	29.6%	109.3%

*Financial period ends in February each year. The information in this table was indexed due to confidentiality using 2006 as the base year

The table reflects that selling prices are being suppressed to the point of making losses.

The Applicant stated that SAGGA members could not increase selling prices in line with input cost increases, such as fuel and fertilizers, largely as a result of price competition from imported dumped products.

6.2.3 Consequent Impact of the dumped imports on the Industry

6.2.3.1 Actual and potential decline in sales

The following table shows the cooperating members sales volume of garlic:

Table 6.2.3.1.1: sales volumes

Sales volume (Kg's)	2006	2007	2008	2009
Bezuidenhout	100	95.2	97.7	67.9
Venter	100	75.7	133.1	112.3
Combined	100	92.6	102.5	73.9

*Financial period ends in February each year. The information in this table was indexed due to confidentiality using 2006 as the base year

The following table shows the cooperating members sales value of garlic:

Table 6.2.3.1.2: sales value ZAR

RANDS	2006	2007	2008	2009
Bezuidenhout	100	79.2	88.8	45.2
Venter	100	95.7	150.8	98.1
Combined	100	81.0	95.6	51.0

The information in this table was indexed due to confidentiality using 2006 as the base year

The Applicant stated that the volume of the SACU produced garlic sold on the domestic market was determined on the basis of the NFPM statistics to which was added a certain percentage direct sales (sold directly from producer to retailers). The Applicant further stated that for 2006 and 2007 this was estimated at 33%, for 2008 at 25% and for 2009 at 20%. In addition, 15% of the NFPM sales were considered to be imported from the PRC and Argentina, and were consequently subtracted from the SACU produced volumes.

The information in the table shows that the total sales values of the cooperating farmers decreased from 2006 to 2009. This trend is also noticeable in the NFPM information.

6.2.3.2 Profit

The following table shows the cooperating members' profit situation for garlic:

Table 6.2.3.2: Profit

Rands	2006	2007	2008	2009
Gross profit/loss:				
Bezuidenhout	100	43.4	44.6	(95.6)
Venter	100	(31.0)	137.7	(223.8)
Combined	100	35.9	54.2	(108.5)
Net profit/loss				
Bezuidenhout	100	5.2	19.2	(160.5)
Venter	100	(158.0)	117.2	(443.2)
Combined	100	(8.9)	27.7	(184.9)

The information in this table was indexed due to confidentiality using 2006 as the base year

The Applicant stated that the net profits of the cooperating farmers declined from profits in 2006 to consolidated losses in 2009.

The Applicant stated that the cooperating farmers could not recoup the increased costs in the selling prices due to the disruptive effects of the dumped imports.

6.2.3.3 Actual and potential decline in output

The following table shows the harvested volumes of the cooperating members over the last four years:

Table 6.2.3.3: Output

Output volume (Kg's)	2006	2007	2008	2009
Bezuidenhout	100	95.2	97.7	67.9
Venter	100	75.7	133.1	112.3
Combined	100	92.6	102.5	73.9

The information in this table was indexed due to confidentiality using 2006 as the base year

The Applicant indicated that garlic has a limited shelf life and consequently that output in most instances will equate to the sales volumes of the producers concerned.

6.2.3.4 Actual and potential decline in market share

The following table shows the market share for garlic:

Table 6.2.3.4: Market share				
Market share (in kg's)	2006	2007	2008	2009
Applicant NFPM stats:	1 577 000	1 550 000	1 560 000	1 528 000
Applicant: direct sales	525 000	607 000	459 000	360 000
Total SACU	2 102 000	2 158 000	2 019 000	1 888 000
Total alleged dumped import	510 000	311 000	877 000	1 558 000
Other imports	297 000	848 000	394 000	162 000
Total alleged dumped imports	807 000	1 159 000	1 271 000	1 720 000
Total SACU market	2 909 000	3 317 000	3 290 000	3 608 000
Percentage share held by:				
Applicant: NFPM Stats	54%	47%	47%	42%
Applicant: direct sales	18%	18%	14%	10%
Total SACU	72%	65%	61%	52%
Dumped imports:	18%	9%	27%	43%
Other imports	10%	26%	12%	5%

The Applicant stated that the volume of the SACU produced garlic sold on the domestic market was determined on the basis of the NFPM statistics to which was added a certain percentage direct sales (sold directly from producer to retailers). The Applicant further stated that for 2006 and 2007 this was estimated at 33%, for 2008 at 25% and for 2009 at 20%. In addition, 15% of the NFPM sales were considered to be imported from the PRC and Argentina, and were consequently subtracted from the SACU produced volumes.

The information in the table shows that the SACU produced market share declined in volume terms from 72 per cent in 2006 to 52 per cent in 2009. The dumped imports on the other hand increased from 4 per cent in 2006 to 43 per cent in 2009.

6.2.3.5 Productivity

The productivity in respect of garlic production for the cooperating members was as follows:

Table 6.2.3.5: Productivity

Subject product	2006	2007	2008	2009
Units per employee (kg's):				
Bezuidenhout	100	112.5	103.0	73.5
Venter	100	76.7	133.1	112.3
Combined Average	100	105.8	107.0	78.8
Number of employees (Combined)	100	87.5	95.8	93.8
Total capital employed	100	101.0	102.5	127.6
Production volume: Capital ratio	100	116	100	183

The information in this table was indexed due to confidentiality using 2006 as the base year

The information shows that the consolidated units per employee decreased over the period as a result of the declining sales and production. The Applicant stated that this could again be attributed to the disruptive effects of the dumped imports.

6.2.3.6 Return on investment

Return on investment is normally regarded by the Commission as being the profit before interest and tax as a percentage of the net asset value.

The following table provides the Applicant's return on investment:

Table 6.2.3.6: Return on investment

RANDS	2006	2007	2008	2009
Net profit: (subject product)				
Bezuidenhout	100	5.2	19.2	(160.5)
Venter	100	(158.0)	117.2	(443.2)
Combined	100	(8.9)	27.7	(184.9)
Net assets:(subject product)				
Bezuidenhout	100	107.9	116.7	173.0
Venter	100	93.6	87.2	78.6
Combined	100	101.0	102.5	127.6
Return on net assets (total):				
Bezuidenhout	100%	4.8%	16.5%	(92.9%)
Venter	100%	(168.3%)	134.9%	(563.5%)
Combined	100%	(9.1%)	27.0%	(144.6%)

The information in this table was indexed due to confidentiality using 2006 as the base year

According to the Applicant, return on investment for the period decreased as reflected in the above table. The Applicant stated that the consolidated net profit per kilogram of the cooperating farmers decreased to a loss per kilogram in 2009. The Applicant further stated that the average sales value per kilogram decreased during the period, resulting in a situation where the producers could not recoup expenses incurred.

The Applicant attributes the cause of this situation to the disruptive effect of the dumped products on the market.

The Applicant stated that the low return on investments is directly attributable to injurious dumping from the PRC.

6.2.3.7 Utilisation of production capacity

The following table provides the capacity and production of the two farmers:

Table 6.2.3.7: Capacity utilisation

	2006	2007	2008	2009
Actual (Kg's):				
Bezuidenhout	100	95.2	97.7	67.9
Venter	100	75.7	133.1	112.3
Combined	100	92.6	102.5	73.9
Capacity utilization %				
Bezuidenhout	100	95	98	68
Venter	100	75	130	111
Combined capacity utilization %	100	96	102	73

The information in this table was indexed due to confidentiality using 2006 as the base year

According to the Applicant capacity utilization in vegetable production, such as garlic, is dependent on the cultivation of available agricultural land. For purposes of this exercise the Applicant decided that a reasonable SACU capacity would be 4000 tons. On this basis the Applicant found that the SACU utilization declined from 100 in 2006 to 73 (indexed) in 2009 as a result of the disruptive effect of the dumped imports.

The Applicant stated that garlic can only be cultivated every third year on any given piece of agricultural land. The Applicant stated that during the off period it is therefore necessary to cultivate other cash crops to make up losses that may be incurred as a result of the non-application of garlic production.

The Applicant states that the extent of garlic cultivation is dependent on available agricultural land and fair market prices that would justify the cultivation of garlic. The Applicant stated that in the present circumstances any production utilisation increases would be highly unlikely.

The Applicant stated that the garlic farming community has been able to contain the disruptive pricing activities of the dumped garlic but have now come to a stage where it is no longer possible.

The Applicant is not aware of any plans to increase production capacity or output under circumstances where the industry is seriously threatened by the dumped imports from the PRC.

6.2.3.8 Actual and potential negative effects on cash flow

The table below shows the cooperating farmer's cash flow position over the comparative period:

Table 6.2.3.8: Cash Flow

RANDS	2006	2007	2008	2009
Net cash flow:				
Bezuidenhout	100	5.2	19.2	(160.5)
Venter	100	(158.0)	117.2	(443.2)
Combined	100	(8.9)	27.7	(184.9)

The information in this table was indexed due to confidentiality using 2006 as the base year

The Applicant stated that the cash flow for the cooperating farmers reflect a serious negative cash flow that moved from a positive cash flow during 2006 to a negative cash flow in 2009. The Applicant stated that the effect of this situation is that the respective farmers are now required to rely on capital reserves to maintain farming activities. The Applicant further stated that these farmers have indicated that the situation has reached critical proportions and serious consideration is now given to possibly aborting garlic production, if suitable remedial assistance is not provided.

6.2.3.9 Inventories

The Applicant stated that garlic is a vegetable with a limited shelf life, in the order of approximately six weeks depending on prevailing circumstances and refrigerated storage facilities. Therefore, as a result of the nature of garlic as a vegetable, no inventories are kept and stocks that are not sold within the relative short period after harvest must be destroyed.

6.2.3.10 Employment

The following table provides the cooperating farmer's employment figures for garlic:

Table 6.2.3.10: Employment

	2006	2007	2008	2009
Labour units: production:				
Bezuidenhout	100	84.6	94.9	92.3
Venter	100	100	100	100
Combined	100	87.5	95.8	93.8

The information in this table was indexed due to confidentiality using 2006 as the base year

The Applicant stated that employment at the cooperating farmer's have remained fairly consistent with only marginal changes. However, the Applicant considered that if the disruptive dumped imports continue, the employment could be negatively affected. The Applicant also stated that the expectation is that this situation may arise throughout the whole SACU area with "catastrophic" effects. The industry employs in the order of 1600 people, mostly unskilled workers.

6.2.3.11 Wages

The information in table 5.2.3.11 shows the cooperating farmer's total and combined wages for the comparative period:

Table 6.2.3.11: Wages

R'000s	2006	2007	2008	2009
Total wages & salaries:				
Production:				
Bezuidenhout	100	94.2	116.6	82.4
Venter	100	153.7	189.6	208.2
Combined	100	98.7	122.2	91.9

The information in this table was indexed due to confidentiality using 2006 as the base year

The Applicant stated that according to table 6.2.3.11, the total wages for the cooperating farmers increased from 2006 to 2008, but then decreased in 2009 due to a decrease in the number of temporary workers that are hired during the harvest period. The Applicant stated that this could in future decrease should the dumped imports continue at the present rate.

6.2.3.12 Growth

The Applicant submitted the following information regarding the growth of the SACU market:

Table 6.2.3.12: Growth (volume)

Kg's	2006	2007	2008	2009
Cooperating farmers market growth	100	92.6	102.4	73.9
Total SACU production growth	2 102 000	2 158 000	2 019 000	1 888 000
Size of the SACU market	2 909 000	3 317 000	3 290 000	3 608 000
% growth from base year		14.0%	13.1%	24.0%

The information in this table was indexed due to confidentiality using 2006 as the base year

The table above indicates that the size of the SACU market grew.

The table reflects that the sales volumes of the cooperating farmers declined during the period, a decline in percentage terms of 26 per cent. Although the SACU market grew during the period, the SACU production declined with a corresponding increase in the dumped imports.

6.2.3.13 Ability to raise capital or investment

According to the Applicant, the capital and investment situation shows that necessary investments were made, such as tractors, irrigation equipment and trucks that were purchased. The Applicant stated that the returns on these new acquisitions, however, reflect negative returns.

The Applicant stated that it is evident that the farmers will not consider further investments if the dumped imports are not curbed to a level where the local produce can reasonably compete with the dumped imported garlic.

6.2.3.14 Previous Injury

The Applicant stated that the initial anti-dumping duties of R6.07 per kilogram were imposed during 2000 and ITAC again reinstated them at the same level in a sunset review during 2005. The Applicant further stated that the fact that the dumped imports appear to be entering the SACU area in greater volumes and at declining unit values shows that the existing dumping duties are not effective or most probably that the existing anti-dumping duties are being circumvented by unknown exporters. It is for this reason that the SACU industry requested that an interim review is undertaken.

6.3 SUMMARY – MATERIAL INJURY

The Commission made a final determination that the Applicant has submitted sufficient information to indicate that material injury to the SACU industry is being caused by the subject products originating in or imported from the PRC, regardless of the current level of the anti-dumping duty.

6. CAUSAL LINK

7.1 GENERAL

In order for the Commission to make a final determination 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 products.

7.2 VOLUME OF IMPORTS AND MARKET SHARE

The Applicant stated that they do not export the subject product.

The following table compares the market share of the SACU industry with that of the alleged dumped imports.

Table 7.2: Market share

Market share (in kg's)	2006	2007	2008	2009
Applicant NFPM stats:	1 577 000	1 550 000	1 560 000	1 528 000
Applicant: direct sales	525 000	607 000	459 000	360 000
Total SACU	2 102 000	2 158 000	2 019 000	1 888 000
Total dumped import	510 000	311 000	877 000	1 558 000
Other imports	297 000	848 000	394 000	162 000
Total imports	807 000	1 159 000	1 271 000	1 720 000
Total SACU market	2 909 000	3 317 000	3 290 000	3 608 000
Percentage share held by:				
Applicant: NFPM Stats	54%	47%	47%	42%
Applicant: direct sales	18%	18%	14%	10%
Total SACU	72%	65%	61%	52%
Dumped imports:	18%	9%	27%	43%
Other imports	10%	26%	12%	5%

7.3 EFFECT OF DUMPED IMPORTS ON PRICES

Price undercutting

There was no price undercutting except for 2009, which was minimal. This was demonstrated in table 6.2.2.1.

The Applicant stated that retail supermarkets and retail outlets in the SACU area are selling garlic at prices of between R40 per kilogram and R55 per kilogram.

Price suppression

There was severe price suppression in 2009 as demonstrated by table 6.2.2.3. The Applicant stated that the SAGGA members could not increase selling prices in line with input cost increases, such as fuel and fertilizers, largely as a result of price competition from imported dumped products.

7.4 OTHER FACTORS CAUSING INJURY

The Applicant stated garlic cultivation is dependent on energy inputs and is labour intensive. The Applicant stated that input costs in respect of fuel, electricity and fertilizers have increased at an alarming rate.

7.5 MAGNITUDE OF THE MARGIN OF DUMPING

In section 5.1.3 of this submission, the margin of dumping was calculated at R10.37 per/kg.

7.6 CONSEQUENT IMPACT OF DUMPED IMPORTS

Material injury indicator	Analysis (2006 – 2009)
Sales volume	Decreased
Net Profit	Decreased
Output	Decreased
Market share	Decreased
Productivity	Decreased
Return on investment	Decreased
Utilisation of capacity	Decreased
Cash flow	Decreased
Employment	Decreased
Wages	Decreased
Growth	Decreased

7.7 FACTORS OTHER THAN DUMPING CAUSING INJURY

7.7. Examination of causality under Article 3.5

Variable	Unit of Measurement	Year				Change (%)
		2006	2007	2008	2009	2006/2009
Prices of imports not sold at dumped prices (fob price)	Rand/kg	100	93.3	107.7	236.0	136%
Applicant's exports	Rand/kg	0	0	0	0	0
Volume of imports not sold at dumping	Kg's	100	285.5	132.7	54.5	(54.5%)
Contraction in demand or changes in consumption patterns	The Applicant stated that no such effects have been noticed.					
Trade-restrictive practices of foreign and domestic producers	The Applicant indicated that there are no trade restrictive practices					
Developments in technology	The Applicant indicated that there were no recent developments evident.					
Any other factors affecting the domestic prices	The Applicant stated none					
Comment on the domestic industry's export performance	The Applicant stated that they do not export the subject product.					

Productivity of the domestic industry vs exporting countries	The Applicant stated that garlic cultivation is dependent on energy inputs and is labour intensive. The Applicant stated that it considered that SACU producers are fairly productive, given the restraints from influences of imports from large scale producers in the PRC and Argentina. The PRC is considered to be the largest exporter of garlic in the world.
Any strikes, go-slows or lock-outs during the past 12 months	The Applicant stated that no strikes, go-slows or lock-outs occurred during the period.
Effect of changing exchange rates on Applicant's production cost, selling price and price of imported product	The Applicant stated that due to exchange rate fluctuations, the input costs in respect of fuel have increased at an alarming rate.
Other factors affecting the Applicant's sales price	The Applicant stated that it is not aware of any other factors in this regard.

The information in this table was indexed due to confidentiality using 2006 as the base year

7.8 CONCLUSION ON CAUSAL LINK

In light of the above analysis, the Commission made a final determination that sufficient evidence to indicate that there is a causal link between the dumped products and the material injury suffered by the SACU industry.

8. FINAL ANTI-DUMPING DUTY

8.1 Calculation of anti-dumping duty

In accordance with Section 17 of the ADR, the Commission shall only consider applying the lesser duty rule should both corresponding importer and exporter cooperate fully. In this instance, the importer and exporter did not cooperate fully. Therefore the amount of duty shall be the dumping margin.

Based on best information available, the dumping margin was calculated using a normal value from the nominated surrogate country (Mexico), and an export price obtained from SARS statistics. The dumping margin is as follows:

R/kg	2009
Normal Value	13.43
Export price	3.06
Margin of dumping	10.37
Margin of dumping as a % of export price	339%

8.2 Amount of duty

The amount of duty shall be the dumping margin.

Table 8.2: Amount of duty

GARLIC	Amount of duty
All exporters from the PRC	R10.37/kg

9. RECOMMENDATION

The Commission made a final determination that:

- (i) The Applicant submitted sufficient information to indicate that significant changed circumstances exist with regard to the dumping of garlic from the PRC and material injury experienced by the SACU growers;
- (ii) The dumping of the subject product is likely to continue at increased volumes if the duty remains at the existing level; and
- (iii) The SACU industry is likely to continue suffering material injury should the present anti-dumping duty remain at the current level.

The Commission therefore decided to recommend to the Minister of Trade and Industry that the current anti-dumping duty on fresh or chilled garlic classifiable under tariff headings 0703.20 and 0712.90 originating in or imported from the PRC be increased from an amount of R6.07/kg to R10.37/kg.