

**REPORT NO. 314**

**INVESTIGATION INTO ALLEGED DUMPING OF STAINLESS STEEL KITCHEN  
SINKS ORIGINATING IN OR IMPORTED FROM THE PEOPLE'S REPUBLIC OF  
CHINA; DUMPING AND SUBSIDISATION OF STAINLESS STEEL KITCHEN  
SINKS ORIGINATING IN OR IMPORTED FROM MALAYSIA: FINAL  
DETERMINATION**

The International Trade Administration Commission of South Africa herewith presents its  
**Report No. 314 INVESTIGATION INTO ALLEGED DUMPING OF STAINLESS STEEL  
KITCHEN SINKS ORIGINATING IN OR IMPORTED FROM THE PEOPLE'S REPUBLIC  
OF CHINA ; DUMPING AND SUBSIDISATION OF STAINLESS STEEL KITCHEN SINKS  
ORIGINATING IN OR IMPORTED FROM MALAYSIA: FINAL DETERMINATION**

  
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CHIEF COMMISSIONER

PRETORIA  
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## **1. APPLICATION AND PROCEDURE**

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### **1.1 APPLICANT**

The application was lodged by Jan Heukelman, an International Trade Consultant, on behalf of Franke Kitchen Systems South Africa (Pty) Ltd (the Applicant), being the major producer of the SACU like product.

### **1.2 DATE OF ACCEPTANCE**

The application was accepted by the Commission as being properly documented in accordance with Section 22 of the Anti Dumping and Countervailing Regulations on 24 June 2008. The trade representatives of the People's Republic of China (PRC) and Malaysia were advised accordingly.

### **1.3 ALLEGATIONS BY THE APPLICANT**

The Applicant alleged that stainless steel kitchen sinks, originating in or imported from the PRC and Malaysia are being dumped on the SACU market and that this is causing material injury to the SACU industry. The basis of the alleged dumping is that the goods are being exported to SACU at prices lower than the normal value in the country of origin. The Applicant also alleged that of the subject product, originating in or imported from Malaysia is being exported to the SACU at subsidised prices. The basis of the alleged subsidisation is that the manufacturers of the subject product in Malaysia are benefiting from countervailable subsidies. The Applicant further alleged that as a result of the dumping and subsidisation of the subject product from the PRC and Malaysia, the SACU industry is suffering material injury in the form of:

- Price undercutting;
- Price suppression;
- Decrease in sales volume;
- Decline in profits;
- Decrease in output;
- Decrease in market share;
- Decrease in productivity;
- Decrease in return on investment;
- Decrease in utilisation of capacity;
- Negative cash flow;

- Increase in inventories;
- Negative growth and
- Inability to raise capital

#### 1.4 INVESTIGATION PROCESS

The Commission initiated an investigation into the alleged dumping and subsidisation of stainless steel kitchen sinks originating in or imported from the PRC and Malaysia. A notice of initiation of the investigation was published in Notice No.907 of 2008 of *Government Gazette* No.31272 dated 25 July 2008.

Prior to the initiation of the investigation, the trade representatives of the countries concerned were notified of the Commission's intention to investigate, in terms of Article 5.5 of the Anti-Dumping Agreement. All known interested parties were informed and requested to respond to the questionnaires and the non-confidential version of the application. The information submitted by the importers and the exporter was verified.

The Commission subsequently terminated the investigation into alleged subsidisation against the PRC on 30 January 2009 through Notice no 89 of 2009 of *Government Gazette* no 31813, after receiving a request from the applicant on 17 October 2008 to withdraw the subsidy application against the PRC. The Commission therefore did not make a preliminary determination into the alleged subsidised imports from the PRC.

The importers information was verified on 29-31 October 2008 and the exporter's information was verified on 24 November-05 December 2008. All the verified information was considered by the Commission for its preliminary determination.

The Commission made a preliminary determination that stainless steel kitchen sinks originating in or imported from the PRC and Malaysia were being dumped on the SACU market and that this was causing material injury to the SACU industry. The Commission also determined that subsidised stainless steel kitchen sinks were exported from Malaysia and causing material injury to SACU producers. Therefore, the Commission made a preliminary determination that provisional payments be imposed.

The Commission sent out letters to all interested parties, informing them of the “essential facts” which were being considered by the Commission, and invited comments.

After considering all the comments received from interested parties, the Commission made a final determination that dumping of stainless steel sinks originating in or imported from the People’s Republic of China and dumping and subsidisation of stainless steel kitchen sinks originating in or imported from Malaysia occurs and is causing material injury to the SACU industry.

The Commission, therefore, decided to recommend that definitive anti-dumping duties be imposed on imports of stainless steel sinks originating in or imported from the People’s Republic of China and dumping and countervailing duties be imposed on stainless steel kitchen sinks originating in or imported from Malaysia on the products classifiable under tariff subheading 7324.10.

Interested parties submitted comments of which summaries are presented where applicable. It should be noted that although a summary of comments is presented the full detailed comments were considered by the Commission during its deliberations.

## **1.5 INVESTIGATION PERIOD**

The investigation period for dumping and subsidisation is from 1 January 2007 to 31 December 2007. The injury investigation involved the evaluation of data from 1 January 2005 to 31 December 2007.

## **1.6 PARTIES CONCERNED**

**1.6.1** The SACU industry consists of two producers of the like product, namely Franke Kitchen Systems (Pty) Ltd and PABAR (Pty) Ltd. The Applicant and PABAR account for 88 per cent and 12 per cent of production respectively.

### **1.6.2 IMPORTERS**

- Neumann Sanitary (Pty) Ltd.
- Kwikot (Pty) Ltd.
- CAM Africa cc.

### 1.6.3 CO- OPERATING EXPORTERS

- Zhuhai Dali Metal Product Company Ltd.( Zhuhai Dali) ( PRC)
- Taijing Chuanger Metal Products Company Ltd. (Taijing)( PRC)
- Rhine Sinkwares Manufacturing Ltd. (PRC)
- Central Aluminium Manufactory SDN BHD (CAM)( Malaysia)

### 1.6.4 Government of MALAYSIA

## 2. PRODUCTS, TARIFF CLASSIFICATION, AND DUTIES

### 2.1 IMPORTED PRODUCTS

#### 2.1.1 Description

The subject product is described as stainless steel kitchen sinks, either single bowl or double bowl, manufactured in a wide variety of ranges.

#### 2.1.2 Country of origin/export

The subject product is manufactured in the PRC and Malaysia and imported from the PRC and Malaysia.

#### 2.1.3 Possible tariff loopholes

The Applicant stated that it is not aware of any tariff loopholes that may exist.

#### **Neumann commented regarding tariff classification that:**

*The tariff heading utilised for the stainless steel sinks does not differentiate between domestic and industrial, and sinks used in commercial applications, for example, hospitals, restaurants. It covers a wide range of sinks which might not be the subject product. The industrial and commercial sinks are more expensive and heavier in comparison to the domestic sinks.*

#### **Commission's consideration**

*The tariff classification is administered by the South African Revenue Service and there is no differentiation between the different types of sinks depending on the usage. The different types cannot be distinguished for duty administration purposes.*

**CAM Malaysia commented on the like product as follows:**

*The like product to the one manufactured domestically was not investigated as industrial products which are outside the scope of this investigation are included in the import statistics which were used to analyse the extent of injury. The Commission should have investigated this, based on import documentation.*

**Commission's consideration**

*All stainless steel kitchen sinks are imported under the same tariff heading, the classification is not based on end-usage. Different types of kitchen sinks are not distinguished for customs tariff purposes.*

**2.1.4 Other applicable duties and rebates**

The following rates of ordinary duty regarding the subject product exist:

**Table 2.1.4: Other applicable duties**

Tariff subheading	Description	RATES OF DUTY			
		General	EU	EFTA	SADC
<b>7324.10</b>	Sanitary ware and parts thereof, of iron or steel: <b>Sinks and wash basins, of stainless steel</b>	<b>20%</b>	<b>7.6%</b>	<b>20%</b>	<b>Free</b>

**2.1.5 Negligibility test**

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

**Table 2.1.5: Import volumes**

Alleged dumped imports	Imports 2007	Volume as % of total imports
<b>PRC</b>	<b>673 571</b>	<b>63%</b>
<b>Malaysia</b>	<b>154 843</b>	<b>14%</b>
<b>Other imports</b>	<b>245 245</b>	<b>23%</b>
<b>Total Imports</b>	<b>1 073 659</b>	<b>100%</b>

The Commission made a final determination that imports from the subject countries are above the negligibility level.

## 2.2 SACU PRODUCT

### 2.2.1 Description

The SACU product is described as stainless steel kitchen sinks, either single or double bowl, manufactured in a wide variety of ranges.

## 2.3 LIKE PRODUCTS ANALYSIS

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

**Table 2.3: Like product determination**

	Imported product	SACU product
<b>Raw materials</b>	Various grades of stainless steel, with a bright-annealed finish. Material thickness on lower end products is 0.5mm and 0.9mm on larger medium range. Product bowl size is approximately 460mm (L) x 350mm (W) x 140mm (D). Consumables used during the processing are welding electrodes, welding gas, grinding belts, polishing mops, polish, cleaning solvent and rags.	Grade 304 and 202 stainless steel, with a bright-annealed finish. Material thickness on lower end products is 0.5mm and 0.9 on larger medium range. Product grade bowl size is approximately 400 to 460mm (L) x 350mm to 420mm (W) x 120 to 180mm (D). Consumables used during the processing are welding electrodes, welding gas, grinding belts, polishing mops, polish, cleaning solvent and rags
<b>Physical appearance</b>	Stainless steel sink with a bright-annealed and /or polished finish	Stainless steel sink with a bright-annealed and /or polished finish
<b>Tariff classification</b>	7324.10	7324.10
<b>Production process</b>	The production process employed for the single and	The production process employed for the single and double sinks is a one-piece



	<p>double sinks is a one-piece process i.e.:</p> <ul style="list-style-type: none"> <li>- The blanks are cut and a protective coating applied.</li> <li>- The blank is then drawn into the sink form during two pressing operations.</li> <li>- The sink pressing is trimmed and corners notched.</li> <li>- The sides and return are bent on the long and short sides.</li> <li>- The outlet is punched.</li> <li>- The sink corners are automatically welded.</li> <li>- The final product is cleaned/inspected and packed.</li> </ul>	<p>process i.e.:</p> <ul style="list-style-type: none"> <li>- The blanks are cut and a protective coating applied.</li> <li>- The blank is then drawn into the sink form during two pressing operations.</li> <li>- The sink pressing is trimmed and corners notched.</li> <li>- The sides and return are bent on the long and short sides.</li> <li>- The outlet is punched.</li> <li>- The sink corners are automatically welded.</li> <li>- The final product is cleaned/inspected and packed.</li> </ul>
<b>Application or end use</b>	The product is fitted in kitchens and used for washing up.	The product is fitted in kitchens and used for washing up.
<b>Substitutability</b>	The imported product and the SACU product are direct substitutes.	The imported product and the SACU product are direct substitutes.

**CAM Africa cc commented on production process as follows:**

*CAM Africa stated that the production processes used in the production of the imported and the subject product are different and it is misleading for the applicant to state that they are the same. Franke opted for a mono-block production process, where manufacturers abroad mainly use the dual block process.*

The difference is that the best grade (304) of stainless steel is used for drawing purposes in a mono-block sink. This is incidentally also the most expensive stainless steel commonly used for kitchen sinks. Manufacturers abroad have now perfected the technique where the top and bottom of sinks can be manufactured from different grades of stainless steel and still be welded together successfully. This technique allows manufacturers in the East to use much cheaper grades of raw material, but still retaining an acceptable quality and finish. These techniques are only viable in dual block manufacturing. The applicant again failed to mention that the Chinese sinks are made of grade 202 stainless steel which is 30% - 40% cheaper than the grade 304 to which they are comparing the prices.

The actual difference in the two types of steel is mainly as follows: In grade 202 the high Nickel content is reduced and replaced with a high Manganese content. The overall features such as resistance to rust are not really affected by the above. The rockwell hardness of the grade 202 is increased making it a harder steel and slightly more difficult to work with. The cost of Manganese is lower than Nickel and therefore the difference in price. This factor alone skews the existence or absence of dumping totally out of proportion.

#### **COMMENTS BY CAM MALAYSIA**

CAMSB has manufactures a wide range of stainless steel products which include kitchen sinks and aluminium products. As mentioned in the petition, Franke uses stainless steel with grade 304 and 202 with a bright-annealed finish to produce their products by using their advance mono-block technology. However, CAMSB products are using a 2 or 3-piece production welded bowl process and stainless steel with grade 430 and 202. The application of different production processes and combination of stainless steel material has definitely reduced the cost of production.

Franke's kitchen sinks are internationally well-known products and they are also a major player in the SACU market. Franke's product is guaranteed for manufacturing defects for one year and has an anti corrosion guarantee for 25 years. In terms of pricing, Franke's product value should have been added with some premium for being branded products and guaranteed. Franke's product should not be classified in the same category as CAMSB's product. Furthermore, with such a large and established globally known company with over 67 companies situated on every continent of the globe, the cost of production for Franke definitely would not be the same as CAMSB.

*Franke has expanded its production to high value added kitchen sinks to capture the high end market in SACU. However, CAMSB products are targeted at the middle to low end market. In term of user category, Franke's higher quality kitchen sinks are mainly for high income groups and CAMSB's products are mainly comprised of middle to low income groups. From this, CAM can clearly differentiate between the category of users being targeted by Franke and CAMSB. The bowl size and dimension of Franke's kitchen sinks are totally different from CAMSB's products. Franke's statement for saying that Malaysian products are exactly alike is not true. Furthermore, the calculation of the ex-factory price per kg of the petition is just one method for calculation of the ex-factory price. The use of 1 unit weighing on average 5.2kg is unjustifiable. The weights being used will seriously affect the ex-factory price/kg. So, the comparison made by using this weight is not convincing.*

#### **Commission's consideration**

*The unit weight was used for the purposes of initiation only. Subsequently different weights were utilised per each model and design during costing exercises for each specific model.*

#### **Comments by Kwikot**

*Kwikot stated that the imported product and the South African product are not the same because the bowl sizes are different, design of sinks are different, sizes are different i.e. lengths and widths, grades of stainless steel are sometimes different and the water outlet is different in size. Other differences include, the quality of stainless steel used, the type of sinks (sit-on or inset) and the cost of production (single pressing versus welded for example). These factors all impact on the cost of the particular unit and pricing.*

#### **Commissions consideration**

*In determining the like product, the Commission takes into consideration a range of different factors such as raw materials used, usage of the product. With this product the Commission considered all the factors which showed that the SACU and the imported product can be considered as like products.*

*The Commission made a final determination that the SACU product and the imported products are "like products", for purposes of comparison in this investigation, in terms of Article 2.6 of the Anti-Dumping Agreement and Footnote 46 to Article 15.1 of the SCM Agreement.*

### 3. INDUSTRY STANDING

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The table below details the SACU manufacturers of the like product as well as those supporting the application:

Industry Standing	(Total domestic production of like goods for the 12 months preceding the lodging of the petition)			
Manufacturer	Production volume-Support application	Percentage supporting application	Production volume opposing application	Production volume-neutral
Franke Kitchen Systems	-	88%	-	-
PABAR	-	12%	-	-
Total SACU	-	100%	-	-

#### **Comments by Neumann on Industry Standing**

*Pabar which is listed as supporting this application is a company that exclusively manufactures for Franke. The price list utilised to substantiate the allegation of dumping against the PRC is from the sister company in the PRC. Neumann was able to determine this based on the part codes that are utilised by Franke in their price list. Neumann believes that the use of the price list from Franke China distorted the price because the Franke brand is known to target the higher end of the market hence it is very expensive.*

#### **Comments by Kwikot**

*The Applicant has failed to disclose that it is part of a group, Franke Holdings AG that also owns 100 % of Franke (China) Kitchen Equipment Co. Ltd. This company, which is located in China (Heshan City), manufactures kitchen equipment including kitchen sinks. It is not known whether the Applicant imports product from this company or not. Franke has also failed to disclose that they have a sourcing company in Heshan City – China.*

### **Commission's consideration**

The applicant did not submit that the price list used in the initiation of this investigation is from the sister company. The applicant requested that the surrogate country be utilised for the normal value determination for the PRC.

### **Comments by Zhuhai Dali**

Dali stated that the applicant Frank Kitchen Systems (Pty) Ltd. has no standing in representing the SACU domestic industry as defined by the WTO Antidumping Agreement. Article 4.1 (i) provides as follows:

*"4.1 For the purposes of this Agreement(Anti Dumping Agreement), the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that:*

- (i) when producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the term "domestic industry" may be interpreted as referring to the rest of the producers;*

Since 1996, Franke has invested in and incorporated factories and subsidiaries in China. Its major factory located in Guangdong producing and selling the product concerned is less than hundred km away from Dali. Under the WTO Agreement, Franke is not eligible for representing SACU domestic industry and the investigation should be terminated.

### **Commission's consideration**

Franke's imports of the subject product from China during the period of investigation are less than one percent of the total imports from the PRC. The applicant indicated that the importation was done for demonstration purposes.

**Comments by European Brassware and Sanitaryware Manufacturers and Importers Association**

*EBSMIA stated that they have a reason to believe that the operations of Franke's Chinese factory has never been investigated and would urge ITAC to investigate the possibility that products from that factory may make its way into South Africa via their head office in Switzerland at a local customs duty rate of only 7,5%.*

**Comments by CAM Malaysia**

*The Commission failed to consider that the applicant is also importing from the PRC, whereas it had access to official data which reveals this.*

**Commission's consideration**

*The investigators determined during the investigation that Franke imported from the PRC. However the imports were determined to be less than one percent of total imports from the PRC during the period of investigation. The process of determining whether after the imposition of duties, Franke imports through its Head office is outside the scope of this investigation.*

The Commission decided that the application can be regarded as being made "by or on behalf of the domestic industry" and, therefore, eligible for initiation under Anti-Dumping Regulation 7.3 and Countervailing Regulation 7.3.

## **4. DUMPING**

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### **METHODOLOGY IN THIS INVESTIGATION FOR THE PRC**

#### **Normal Value for the Chinese Companies**

In terms of the Record of Understanding between ITAC and the Bureau of Fair Trade for Import and Export (BOFT) of the Ministry of Commerce of the PRC, after initiation of an anti-dumping investigation, Chinese exporters would be given the opportunity to provide information on domestic selling prices and cost of production of the subject product. The three companies provided information in respect of competition, process of marketing and advertising, input cost of the main raw materials, whether the materials are supplied at arms length, ownership of companies, and human resource policies. This information was verified.

##### **1. Ownership**

The three co-operating companies verified are privately owned.

##### **2. Input cost of the main raw material**

During the verification it was found that the sourcing of the main raw material in the three companies is based on cost, quality and lead times. The raw material is sourced from different suppliers. The invoices from the suppliers of the main raw materials were provided by the companies.

##### **3. Competition, advertising and marketing**

The companies advertise the product offering on the internet. One company verified is located in Shunde District where there are more than 100 producers of stainless steel kitchen sinks.

##### **4. Human Resources**

The minimum wage is set by the government. However, the actual wages can be negotiated with each prospective employee. The workers are allowed to be members of a labour union. Vacancies are advertised in the labour market, or through word of mouth, depending on the company. The dismissal of employees is in accordance with the PRC labour laws and regulations.

The Commission made a final determination that the sales of the three companies were made in the ordinary course of trade.

#### **4.1 Taijing Chuanger Metal Products Company Ltd. ( Taijing)**

##### **4.1.1 Normal value**

Taijing exported seven comparable models of stainless steel kitchen sinks to SACU during the period of investigation. The normal value for one comparable model was determined based on the sales in the domestic market during the period of investigation. The model was sold ex-factory. Taijing also provided a third country sale to Qatar of this comparable model. However the volumes were found not comparable to export volumes to SACU. The normal value for the other six comparable models was determined based on a constructed cost of production plus a reasonable addition for selling, general and administrative costs and for profit, as these six models were not sold on the Chinese domestic market.

##### **4.1.2 Export price**

The export price was determined based on the comparable sales made to SACU during the period of investigation. Taijing exported seven models of stainless steel kitchen sinks to SACU.

##### **Adjustments to export price**

Taijing claimed for the following adjustment for each model which was verified:

##### **Inland Transport and Insurance**

This adjustment includes the cost of transport and insurance from the factory to the harbour.

##### **4.1.3 Margin of dumping**

A separate dumping margin was calculated for each of the respective models by deducting the adjusted export price from the constructed/ ex-factory normal value for each model. The respective margins were then weighted to the export volumes applicable to each model to establish a weighted average margin of dumping. The margin of dumping for Taijing was found to be negative.

##### **Comments by the applicant**

##### **Taijing**

*The applicant stated that an adjustment should be made to the export price for model CE103 for drainer boards since there are no drainer boards in the Chinese domestic market.*



*Drainer boards make up a substantial part of the cost of stainless steel kitchen sinks. The applicant submitted that all the six models should have been compared to third country sales.*

#### **Commission's consideration**

*Model CE103 sold on the SACU market was compared to a similar model sold in the Chinese market. Adjustments to the export price were allowed for comparison at ex-factory level. Model AP1250 was constructed because volumes to the third country were found not to be comparable to SACU volumes. The other five models were constructed because they were not sold anywhere else except to SACU.*

## **4.2 Zhuhai Dali Metal Product Co. Ltd. ( Zhuhai Dali)**

### **4.2.1 Normal value**

Zhuhai Dali Metals exported 17 models of stainless steel kitchen sinks to SACU during the period of investigation. There were no sales of the comparable models in the domestic market during the period of investigation. In order to determine the normal value, the company provided third country sales of the comparable ten models. The normal value of the other seven models was determined based on a constructed selling price.

#### **Third country Sales**

Zhuhai Dali provided third country sales for each of the comparable models to SACU. The selling price for each model before considering the adjustments was determined.

The third country selection for normal value determination per each model was done based on the following criteria:

- Volumes exported to the third country were compared to the volumes exported to SACU.
- The customers in the third country were compared to the customers in SACU.
- Each third country selected should have a domestic manufacturer of stainless steel kitchen sinks.

Only two models met the third country selection criteria model out of the 10 models. The appropriate third countries were considered to be Australia and Greece respectively. For the remaining 8 models which did not meet the third country selection criteria, the normal value was constructed.

Zhuhai Dali claimed the following adjustments for the two models which met the third country selection criteria and were verified:

#### **Inland delivery**

These are costs incurred in transporting the goods from the factory to the harbour.

#### **Packaging costs**

The packaging costs included costs for packing box, packing labour costs, foam for protection and plastic bag.

#### **Accessories**

The cost for accessories includes extras such as rubber mat, waste, cutting boards and drain services.

#### **Port charges**

The port charges include the cost of loading the goods onto the ship.

The adjustment on accessories affects only the third country sales and not the exports to SACU because the customers in these countries require that the sink should have the in-built accessories. This is therefore an adjustment for physical differences between the goods exported to SACU and those exported to the third countries.

### **4.2.2 Export price**

The export price was determined based on comparable sales made to SACU during the period of investigation. Zhuhai Dali exported 17 comparable models to SACU. The models were exported during the period of investigation and the price for each model before considering the adjustments was determined.

#### **Adjustments to export price**

Zhuhai Dali claimed the following adjustments for each model which were verified:

#### **Inland delivery**

These are costs incurred in transporting the goods from the factory to the harbour.

### **Packaging costs**

The packaging costs included costs for packing box, packing labour costs, foam for protection and plastic bag

### **Port charges**

The port charges include the cost of loading the goods onto the ship.

#### **4.2.3 Margin of dumping**

A separate dumping margin was calculated for each of the respective models by deducting the adjusted export price from the constructed ex-factory normal value for each model. The respective margins were then weighted to the export volumes applicable to each model to establish a weighted average margin of dumping. The margin of dumping for Zhuhai was found to be 20.72 percent.

#### **Comments by Zhuhai Dali Metals on:**

##### **(i) Provision of numerical sheets**

- *The Commission expressed the method of arriving at the dumping margin with merely narratives, without providing sheets of numerical calculations.*
- *It believed that Zhuhai Dali and Primy have a right to request the Commission to provide the sheets and electronic versions, as these are "ESSENTIAL FACTS" that both clearly have to know about.*

#### **Commission's consideration**

*A verification report was made available to the exporter with all numerical information to be utilised by the Commission in determining the dumping margin. A letter of "essential facts" was made available to the exporters, detailing the facts that the Commission was considering and how such are arrived at.*

##### **(ii) Company succession**

- *The Commission imposed a duty on Zhuhai Dali without considering its successor, Primy Corporation Limited (Primy).*

### **Commission's consideration**

Subsequent to the Commission's preliminary determination the related importer (Prima Bella) held a meeting with the investigators to provide clarity on the name change of the company. Based on the information submitted by the exporter, the company changed its name, without a change in ownership. The importer confirmed that there has not been any change in terms of placing an order. There is still communication with the same individuals. The Commission decided that the final duty be imposed on Primy Corporation Ltd because the new company cannot apply for a new shipper status. For an exporter, amongst other factors, to qualify for a new shipper it has to prove that it was not related to a party included in the current investigation.

### **(iii) Constructed Normal Value**

- In the calculation of the normal value for models sold to SACU only, and to third countries, the selling expense was not deducted. Therefore comparison of the normal value and ex-factory export price was not done at the same level. If the selling expense is deducted from the normal value, the dumping margin amounts to xxxx percent.

### **Commission's consideration**

For purposes of determining the margin of dumping, both the normal values and export prices were compared at ex-factory level. The Commission's practice is not to allow deductions on constructed values.

### **(iv) Dumping margin weighted by value**

- Zhuhai Dali is of the opinion that weighting the dumping margin based on volume is inaccurate because different products have different designs, shaping, processing and wastes. The approach utilised by ITAC is contrary to the practice by EU, USA, Korea and India. The common practice is to calculate the dumping margin of each model and the total dumping margin is then divided by total export CIF value. If the weighting is based on value and on CIF the dumping margin is xxxx percent.

### **Commission's consideration**

The methodology utilised by the Commission in determining the weighted average dumping margin of different models is to correctly weight the dumping margin against the volume of each model to arrive at the dumping factor.

#### **(v) Third country Selection**

- *Zhuhai Dali stated that third country selection criteria utilised by the Commission is inconsistent with the WTO antidumping agreement. The agreement stipulates the sales of like product destined for consumption in the domestic market of the exporting country shall normally be considered as sufficient quantity for the determination of normal value if such sales constitute 5 percent or more of sales of the product under consideration. Zhuhai Dali stated that the 5 percent threshold should be applied to all third country sales in determining volume comparability.*

#### **Commission's consideration**

*The 5 percent in volume comparability applies when there are domestic sales of a similar product exported to SACU. In this instance the product was not sold in the domestic market.*

### **4.3 Rhine Sinkwares Manufacturing Ltd**

#### **4.3.1 Normal value**

The exporter manufactured and sold different models to different countries, including SACU. The exporter did not sell the subject product in its domestic market during the period of investigation. It was found that only 11 of the models manufactured by the exporter were sold to SACU during the period of investigation. For purposes of the dumping margin calculation, the normal value was constructed based on the exporter's cost and price build-up.

#### **Comments by Rhine**

*Rhine stated that:*

- *The current total cost (finished products and work in progress) was used in calculating normal value, which increased the normal value of all products.*
- *The cost of manufacture of finished products should be used in calculating the normal value while excluding the part of work in progress.*

#### **Commission's consideration**

*The constructed normal value used was as submitted by the exporter and verified by the investigators. To determine the total cost of manufacture, production cost and cost of manufacture of finished goods was used.*

#### **4.3.2 Export price**

The export price was based on the actual sales of the 11 models exported to SACU during the period of investigation.

##### ***Rhine submitted comments on export price determination:***

##### ***i. Conversion from Pieces to kilograms***

- *Units cannot be converted to kilograms as they were exported to SACU in pieces the transaction process (i.e. contracts) was based on the pieces.*
- *It provided relevant information converted to kilograms as attachments to its response to the Commission's preliminary determination.*
- *The figures used by the Commission were not consistent with the data in the sheet of production cost provided.*

##### ***Commission's consideration***

*During verification of the exporter's information, the exporter was requested to convert information into kilograms. The exporter refused, indicating that it cannot be converted to kilograms as it was sold to SACU in pieces. For proper comparison purposes with the normal value, which was in kilograms, the investigators converted the export information to kilograms, using the same conversion factors used in the production cost, as it was established on verification that these models were only manufactured for SACU and not any other market. After the preliminary report, the exporter submitted converted kilograms information.*

*ADR 35.4 states that the Commission does not accept new information following its preliminary determination. Based on that, the Commission could not consider the new information in its final determination.*

##### ***ii. Normal Value and export price Comparison***

- *For purposes of comparing the domestic sales and the export sales at the same level, export prices should be adjusted to the ex-factory price, which could not be applied to this case as there was no domestic sale of Rhine.*
- *The constructed normal value was calculated based on the cost, SG&A and profit, i.e: the selling expenses were already included in the normal value.*
- *For a fair comparison, the export price should be the invoice price containing the selling expenses (delivery, cost of payments and freight), otherwise the domestic sales and the export sales would not be compared at the same level.*

### **Commission's consideration**

Export price was based on the actual sales made to SACU, less adjustments for inland transport, international freight and cost of payment terms, which were submitted by the exporter and verified by the investigators to bring export price to ex-factory. Therefore, a fair comparison to the constructed normal value was made.

### **iii. Further comments by Rhine**

- Rhine is of the opinion that the formula of dumping margin = (normal value – export price)/ FOB export price, is not correct. It stated that the correct formula should be dumping margin = (normal value – export price)/ CIF price.

### **Commission's consideration**

In the report the determined margin of dumping was firstly expressed as a percentage of the ex-factory export price. It was then also expressed as a percentage of the FOB export price for purposes of correctly determining the amount of duty to be imposed.

### **Adjustments to the export price**

The following adjustments were made to the export prices which were verified:

#### **Domestic/ inland delivery**

The exporter incurred an expense for transporting the export goods from its factory to the harbour.

#### **International freight**

The exporter incurred an expense for international freight in goods intended for export.

#### **Cost of payment terms**

The exporter incurred an expense for terms of payment.

### **4.3.3 Margin of dumping**

A separate dumping margin was calculated for each of the respective models by deducting the adjusted export price from the constructed normal value for each model. The respective margins were then weighted to the export volumes applicable to each model to establish a weighted average margin of dumping. The margin of dumping for Rhine was found to be 10.94 percent.

**Comments by Kwikot on:**

**Calculated normal values and adjusted export prices**

*The process of calculating normal value and adjusted export prices involves many estimations and assumptions*

- *The units are sold per piece but calculations were done on kilogram basis.*
- *Normal value determination was not possible as no domestic selling price was available.*
- *The determination of constructed normal value is subject to estimations and interpretation.*

**Commission's consideration**

- *The calculation of the normal and export price was based on the actual verified information from the exporter. The units were converted to kilograms because it is the unit of measurement used by SARS for duty administration.*
- *The normal value was constructed because Rhine did not sell a similar product in the domestic market.*
- *The constructed value was based on the financial information submitted by the exporter.*

**Comments by Rhine Sinkwares**

*Rhine stated that its comments have not been considered and the legal basis for non consideration was not provided. Furthermore Rhine raised concerns about the information used in determining the normal value; the cost of manufacture did not exclude work in progress. The formula for calculating the dumping margin should be based on the CIF value, not on FOB value.*

**Commission's consideration**

*The comments that are raised by the exporter were presented to the Commission in the preliminary determination. In determining the normal value for the cost of manufacture the work in progress was deducted in the constructed values.*

*The weighted average margin is based on FOB because the authority (SARS) responsible for administering duty in South Africa determines the value of duty based on the FOB value.*



#### 4.4 Residual margin of dumping- PRC

In terms of the Record of Understanding between ITAC and Bureau of Fair Trade for Import and Export (BOFT) of the Ministry of Commerce of the PRC, after initiation of an anti-dumping investigation, Chinese exporters will be given the opportunity to provide information on domestic selling prices and cost of production of the subject product. The three companies verified provided information in respect of competition, process of marketing and advertising, input cost of the main raw materials, whether it is supplied at arms length, ownership of companies, source of long term finance and human resource policies. In this instance there were exporters in the PRC who did not co-operate with the investigation, therefore the investigators could not determine whether the setting of prices in the domestic market is done according to free market principles. The normal value for these non-co operating exporters was determined based on a third country, in this instance Malaysia, which is also the same country selected by the applicant in determining the normal value for initiation purposes. The normal value was calculated using the verified average domestic selling price ex-factory of the co-operating exporter in Malaysia. This was compared to the average export price from the PRC, as sourced from the import statistics provided by SARS. The residual margin of dumping was calculated to be 62.41 percent.

***Comments by CAM Africa cc on adequacy of the information submitted by the Applicant and claims that the raw material used in the PRC is not acquired according to free market principles.***

*CAM Africa cc stated that the economies of China and Malaysia cannot be considered to be on the same level of development because China has a steel mill and Malaysia not. This huge industry does hot rolling and cold rolling of stainless steel as well as the manufacturing of strips. Malaysia is dependent on other Eastern countries for the supply of their own raw material. The fact that manufacturers in Malaysia purchase their raw material on the open market in China again proves that the applicant does not understand the principles of an open and free economy.*

*Malaysia only has three sink manufacturers of which only one is a serious exporter. China has a population of around 1.3 billion people compared to Malaysia's 25 million – a fraction of that of China. The obvious comparison would be India who has a population of 1.1 billion people and also has a stainless steel mill. In addition, India also does hot and cold rolling of stainless steel as well as producing strips.*

The applicant failed to declare that Franke has a factory in China. In the name of confidentiality the applicant failed to declare that the pricelist attached was that of their own company in the PRC. If the price of stainless steel in China was such a problem, Franke has the perfect opportunity to import the so called cheap raw materials through its factory in China. If they don't go for this option, it will serve to confirm that the allegations of cheap materials are indeed unfounded and simply another fiction. Franke's frantic attempt to include Malaysia by using them as a surrogate country is therefore totally unfounded and uncalled for. Any further reference to prices in a surrogate country in this application should therefore be ignored and scrapped. The domestic prices in the exporting country are the cornerstone of the entire application. With this absolute critical information in question, the entire foundation for the application must be in question and totally worthless.

#### **Comments by Kwikot on the information used for initiation**

The Applicant makes the statement that "since the price of raw material in China is cheaper than in Europe and USA, the normal value for China cannot be used and a surrogate country such as Malaysia must be used". This statement is illogical. China, in 2006, was the largest producer of stainless steel in the world: 15.1 million metric tonnes out of 28.4 metric tonnes and it is quite likely that as a result, the stainless steel is cheaper than elsewhere in the world and it is made available to fabricators at favourable prices.

#### **Commission's consideration**

The surrogate country was only used for the purpose of initiation. However during the preliminary determination, the actual verified information was used in determining the normal value.

#### **Comments by Central Aluminium Manufactory SDN BHD (Malaysia)**

The applicant's consultant, Mr. Heukelman investigated Central in 2000 as a DTI official and was therefore privy to Central Aluminum's (Malaysia) confidential information. Central Malaysia has informed ITAC that they are currently investigating the circumstances under which certain confidential information for this application was obtained. Central has indicated that they may yet decide to refer the matter to the WTO. In addition to this, they have indicated that they may institute criminal or civil legal action, should the application continue any further.

### **Commission's consideration**

*This investigation covers the period 2005-2007, which is unrelated to the year 2000. ITAC is regulated by the ITA Act, which has strict regulations pertaining to Confidential Information. Specific provisions are made for the protection of confidential information and all employees are bound to keep this information confidential. Furthermore, if these provisions are contravened, there is a specific process that ITAC can follow to deal with such transgressions and the Act also creates a criminal offence in this regard.*

*Even after leaving the employment of ITAC, the employee is still bound by the provisions mentioned above. Should there be sufficient proof that confidential information has been used in a wrongful manner; ITAC can initiate an investigation based on this factual proof. ITAC regards the misuse and abuse of confidential information in a very serious light and will follow the set procedures should there be factual evidence to that effect.*

### **Comments by Neumann on residual dumping margin**

*Neumann stated that the residual dumping margin calculated against the PRC is higher because the normal value calculations were based on a lower grade of stainless steel. The usage of the higher grade of the steel would have yielded a lower dumping percentage. The use of the figures from the exporting company and import statistics could be misleading as all grades of steel fall under the same tariff subheading. ITAC did not reveal which grade of stainless steel was used to determine prices.*

### **Commission's consideration**

*The residual dumping margin for the PRC was calculated based on the surrogate country Malaysia because of the memorandum of understanding that ITAC has with the PRC. In calculating the normal value, the weighted average normal values of all comparable models exported to SACU during the period of investigation was used. Therefore all the models exported to SACU with different grades of steel were considered in the calculation.*

## 4.5 METHODOLOGY USED IN THIS INVESTIGATION FOR MALAYSIA

### 4.5.1 Normal Value

Central Aluminium Manufactory SDN BHD (CAM) sold 10 comparable models stainless steel sinks in its domestic market during the period of investigation. The sale of nine models was made through a related company. Only one model was sold to an independent buyer. The normal value for the nine models was determined based on a constructed cost of production plus a reasonable addition for selling, general and administrative costs and for profit. The normal value for a single model sold to an independent buyer was determined based on the actual sale taking into consideration the adjustments.

#### **Comments by CAM Malaysia on:**

##### ***Methodology used to determine the normal value***

*The Commission decided that CAM sells “to” not “through” a related party and the ambiguous provisions in the regulations apparently using Section 8.2(b) of the anti-dumping Regulations. This section appears to imply total disqualification if sales were made to a related party. Section 8.2(b) provides for related party sales as not being in the ordinary course of trade with a consequent constructed cost alternative. On the contrary Section 9.1 provides for similar and totally different circumstances and gives guidance to its application. This section provides for a further three alternatives and how to treat these circumstances. Section 9.1(a) provides the normal value as the resale price to the independent buyer with deductible adjustments. With these conflict provisions CAM Malaysia suggested that because of the given benefit of doubt subsection 9.1 be applied. Section 8.1 does not provide any guidance where it should be applied.*

*The Commission should consider the historical decisions that have been made regarding the issue of “to” and “through” relating to CAM Malaysia. The previous decision under the BTT considered that sales were made through a related buyer. The Commission appears to have used the methodology it used ten years ago in a previous stainless steel investigation where the sales made through a related buyer were also rejected. However, the BTT confirmed the levels of trade and the existence of a marketing company that sells to wholesalers and end-users.*

*Based on the decision adopted by the Commission, in determining the normal value. CAM argues that the cost applicable to this scenario should be rejected, because of the utilisation of Section 8.2 of the anti-dumping regulations. The Commission used the*

wrong regulatory provisions, even after CAM had provided the correct information. CAM is also disputing the financial information used by the Commission in constructing the normal values and the adjustments were not allowed. There is no statutory justification to exclude adjustments on constructed value. CAM Malaysia is of the view that this is contrary to Anti dumping Regulation Section 34 which states that all information considered by the Commission in making its decision will be advised in reports.

#### **Commission's consideration**

It was established that domestic sales were made to a related party, and were therefore, deemed not to be in the ordinary course of trade in terms of ADR 8.2(b). It is the Commission's practice to construct normal value if sales were found not to be made in the ordinary course of trade. The investigators erroneously reported that domestic sales were made "through" a related party whereas such sales were actually made "to" a related party. Subsequently, correspondence was sent to all interested parties informing and allowing them to comment.

Verified adjustments for a single model sold to an independent buyer are as follows:

#### **Packaging**

The exporter incurred an expense for packaging of goods intended for its domestic market sales.

#### **Payment terms**

The exporter allowed a payment term to its domestic customers,

#### **Delivery charges**

The exporter claimed an adjustment for delivery.

#### **Sound proof**

The exporter claimed an adjustment for a sound proof rubber mat pasted underneath a sink to prevent noise when water pours into an empty sink for certain of its domestically sold sink models.

#### **Advertisement**

The exporter claimed an adjustment for advertisement. It claimed that it used magazines and other local publications to promote its products. This amount was averaged to be xxx per cent of its selling price.

### **Commission's consideration**

*The exporter indicated that this adjustment relates to Malaysia only, and not to any other countries. The Commission made a decision not to allow this adjustment, as there is no conclusive substantiation why it is made on the domestic market only and not on the export market as well.*

### **Cost of holding stock**

The exporter claimed an amount for holding stock.

### **Comments submitted by the applicant on CAM Malaysia**

*The applicant stated that none of the comments to the preliminary determination were taken into account except for advertisement costs against CAM Malaysia. The Commission did not consider the difference in levels of trade in determining the dumping margin.*

*The applicant further stated that the Commission cannot allow stock holding as an adjustment only on the domestic price because the exporter cannot distinguish if the same models are destined for the domestic or export market.*

### **Commission's consideration**

*The Commission considered all the information from interested parties in the preliminary determination hence the exclusion of advertising. In order to determine the dumping margin the comparison was done at ex-factory for all comparable models exported to SACU. In allowing stock holding as an adjustment, the following was considered: some of the models exported are specific to the SACU market and the exporter has to maintain minimum reserves of these models to meet its orders.*

## **4.5.2 Export price**

The export price was determined based on the comparable sales made to SACU during the period of investigation.

The following adjustments were made to the export price:

### **Ocean freight**

The exporter incurred an expense for ocean freight on products intended for export to SACU.

## **Insurance**

The exporter incurred an expense for insurance.

## **Inland transport**

The exporter incurred an expense for transporting the products intended for export from its factory to the harbour.

### **4.5.3 Margin of dumping**

A separate dumping margin was calculated for each of the respective models by deducting the adjusted export price from the constructed normal ex- factory (one model sold to an independent buyer) value for each model. The respective margins were then weighted to the export volumes applicable to each model to establish a weighted average margin of dumping. The margin of dumping for CAM was found to be 11.11 percent.

### **4.6 Residual margin of dumping**

As there were manufacturers in Malaysia who did not respond to the Commission's exporter questionnaire, a residual dumping margin was calculated. The normal value was calculated using the verified weighted average domestic selling price ex-factory of the co-operating exporter in Malaysia. This was compared to the average export price as sourced from the import statistics provided by SARS. The residual dumping margin was calculated to be 95.86 percent.

### **Comments by CAM Malaysia**

*CAM Malaysia stated that:*

- *Not all relevant issues of fact and law which are important to the interest of CAM Malaysia are stated in the report and have possibly not been considered. Examples are:*
- *Using a constructed cost methodology for most of the models sold in the domestic market, without providing reasons or a legal basis of argumentation therefore, and b) omitting a crucial material injury measurement factor such as the determination of whether the Commission found any price disadvantage between the Malaysian imports and that of the SACU producer.*
- *Referring to Section 9.1 of the ITA Act where it states that "where the foreign producer sells the product under investigation on its domestic market through a related party – a) the normal value shall be determined as the resale price to the first independent buyer, provided that adjustments as envisaged in section 32(3)*

of the Main Act should still be made.”, and stated that the selection of the correct provision of the regulation is dependent on whether sales are made, either to, or either through a related party in Malaysia.

#### **Commission's consideration**

In its response to the Commission's exporter's questionnaire, CAM Malaysia stated that: "CAMSB also sells some of its sinks to an associated company in the CAM Resources Berhad Group in the normal course of trade and on the basis of normal commercial terms." Investigators were also informed, upon inquiry during the verification visit that 90 per cent of domestic sales are made to a related company. In its response to the Commission's exporter's questionnaire, CAM Malaysia also submitted its domestic sales made to a related party.

#### **Comments by Central Buying Supplies (CBS)**

CBS stated that the antidumping investigation does allow for offshore manufacturing. It stated that it has its own production lines in China for 3 products so far and for this reason, it must be classified as a manufacturer of its own goods and not be affected by the rules and regulations set up for normal importers. It stated that it indeed manufactures and should be classified as such and exempted from the anti-dumping duty.

CBS stated that it is now unjustly penalized by competitors who do both manufacturing and imports and now get protected by SARS to conduct their business operations to the detriment of a company like itself.

#### **Commission's consideration**

CBS did not respond to the Commission's questionnaires and should therefore be treated as a non-cooperating party. The duties are imposed on goods originating or imported from the PRC and for this reason the importer will be liable to pay duties prevailing currently.



#### 4.7 SUMMARY - DUMPING

COUNTRY	NAME OF EXPORTER	DUMPING MARGIN EXPRESSED AS % EX-FACTORY EXPORT PRICE
PRC	Taijing Chuanger Metal Products Company Ltd.	negative
	Zhuhai Dali Metal Product Co Ltd. (Primy Corporation Ltd.)	20.72%
	Rhine Sinkware Manufacturing Ltd.	10.94%
	Non-cooperating exporters	62.41%
Malaysia	Central Aluminium Manufactory SDN BHD	11.11%
	Non-cooperating exporters	95.86%

## 5. SUBSIDIES: MALAYSIA

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The Applicant submitted that the manufacturers of the stainless steel kitchen sinks in Malaysia benefited from the following subsidy programmes during the period of investigation:

- Pioneer status
- Import duty exemption and sales tax exemptions
- Export credit refinancing program
- Industrial building allowance
- Double deduction for the promotion of exports and Investment Tax Allowance

The investigation was confined to establishing the existence of the subsidy programmes (i.e. the financial contribution by the government); whether the subsidy programmes are specific to the stainless steel kitchen sink industry; the determination of the value of the subsidy; and whether the subsidy can be regarded as countervailable. The exporter that co-operated with the investigation is Central Aluminium Manufactory SDN BHD which exported the subject product to SACU during the period of investigation. During the verification Central Aluminium Manufactory SDN BHD provided information on the following programmes:

### 5.1 Import duty Exemption

This programme is legislated under the Customs Act of 1967 Section 14(2) which incorporates all the amendments up to 01 January 2006. The programme is administered by Royal Malaysian Customs. This programme allows any person to be exempted from paying the custom duties on the raw material and components that are utilised in the production process whether the finished goods are meant for domestic or export consumption. A company is required to make an application and the licence is issued upon approval.

In terms of Section 14(2) of the Customs Act of 1967 this programme is not limited to a particular company or industry.

Central Aluminium Manufactory SDN BHD imported under this programme during the period of investigation and was exempted from the import duties to a value which equates to 0.03% of the sales value during the period of investigation.

## **5.2 Sales Tax Exemption**

The programme is legislated under Section 10 of the Sales Tax Act of 1972 which incorporates all the amendments up to 01 January 2006. The programme is administered by Royal Malaysian Customs. This programme allows any person to be exempted from paying sales tax on raw materials that are utilised in the production process regardless of whether the finished goods are meant for domestic or export consumption. A company is required to make an application and the licence is issued upon approval.

In terms of Section 10 of the Sales Tax Act of 1972, this programme is not limited to certain industries or companies.

Central Aluminium Manufactory SDN BHD bought different components under this programme during the period of investigation and was exempted from sales tax which equates to 0.14% of the sales value during the period of investigation.

## **5.3 Double deduction for the promotion of exports**

This programme is legislated under Section 41 of the Promotion of Investment Act of 1986 which incorporates all the amendments up to 1 January 2006. The eligibility to the program is prescribed under Rule (4)2 of the Income Tax (Promotion of exports) Rules 1986. The programme is administered by the Inland Revenue Board of Malaysia. The programme is applicable to all residents who seek opportunities or to create demand for Malaysian manufactured exports.

Section 41 (a) of the Promotion of Investment Act of 1986 stipulates that the Minister of Finance may make rules prescribing deductions in respect of outgoings and expenses incurred for the promotion of exports from Malaysia.

Central Aluminium Manufactory SDN BHD was allowed to claim during the period of investigation. The benefit was determined to be 0.36 percent based on exports by CAM during the period of investigation.

The total value of the combined benefit was determined to be 0.53 percent which is de minimis and therefore not countervailable. The Government of Malaysia provided the information on the following subsidy programmes during the verification:

#### **5.4 Pioneer status**

The programme is legislated under Sections 5 to 25 of the Promotion of Investment Act 1986. The programme is administered by the Inland Revenue Board of Malaysia. The programme is offered to new companies that intend to participate in promoted activity or produce a promoted product that is of national or strategic importance to Malaysia. The list of promoted activities or products is published by the government. Under this programme the company benefits from a partial tax relief for a period of five years. The tax relief may be extended at the discretion of the Minister.

The programme is not limited or specific to the stainless steel kitchen industry. It can be availed by any company that is participating in a promoted activity or product. Central Aluminium Manufactory SDN BHD did not benefit from this programme. The company commenced its operation in 1975.

#### **5.5 Export credit refinancing program**

The granting authority in this programme is the Ministry of Finance and it is administered by the Export and Import Bank of Malaysia (Exim Bank). The program was introduced in 1977 by Bank Negara Malaysia and was taken over by Exim Bank on 01 January 1998. The aim of the programme is to promote exports and international trade from Malaysia by providing pre-shipment and post shipment financing. The operational procedure of the program is governed by the ECR Guideline.

This programme is available to manufacturing and export trading companies which were incorporated in Malaysia and are involved in export activities. Central Aluminium Manufactory SDN BHD did not benefit from this programme.

## **5.6 Industrial building allowance**

This programme is legislated under paragraphs 12,16,63,64,65,66,67 and paragraph 37C of Schedule 3 of the Income Tax of 1967 incorporating all amendments up to 1 January 2006. The authority responsible for the administration of this programme is the Inland Revenue Board of Malaysia. Under this programme companies get an allowance for normal wear and tear. The eligibility to this program depends on whether the company has incurred qualifying building expenditure in the construction or purchase of the building. The building has to be utilised to operate a business. At the end of the basis period for a year of assessment the individual or person benefiting from the allowance must be the owner of the building. The programme is not limited to a certain industry. All the companies can apply as long as they meet the criteria stipulated in Schedule 3 of the Income Tax Act of 1967. Central Aluminium Manufactory SDN BHD did not benefit from this programme.

## **5.7 Investment Tax Allowance**

The programme is legislated under Section 26-29 of the Promotion of Investments Act 1986 incorporating all the amendments up to 1 January 2006. The Inland Revenue Board of Malaysia is responsible for administering this programme. Under this programme any company with an intention of participating in a promoted activity or in the production of a product which is of national or strategic importance to Malaysia can make an application. The list of promoted activities and products are determined by the Minister of Trade and Industry and are published in a government gazette. The allowance is considered based on the qualifying capital expenditure incurred on industrial buildings, plant and machinery directly used for the purpose of the promoted activities or the production of a promoted product. Central Aluminium Manufactory SDN BHD did not benefit from this programme.

## **5.8 Residual Subsidy Margin**

As there were manufacturers in Malaysia who did not respond to the Commission's exporter questionnaire on subsidies, a residual subsidy margin was determined based on facts available, in this case the information provided by the applicant for initiation purposes. The applicant alleged that if a company had access to all the subsidy programmes, the benefit could be 35 percent. The residual margin of subsidy therefore is determined to be 35 per cent.

**Comments by Ministry of International Trade and Industry Malaysia (MITI) on :**

**i. Residual Margin**

- MITI submitted that the WTO Agreement on Subsidies and Countervailing (SCM) states that there shall be immediate termination of cases where the amount of subsidy is *de minimis*. From the investigation the only Malaysian company exported to SACU was found to be *de minimis*. Furthermore no other Malaysian companies exported during the period of investigation.

**Commission's consideration**

During the investigation it was not conclusively determined that the non cooperating exporters did not benefit from a subsidy during the POI. The import statistics from SARS indicate that the cooperating exporter exported 62.42 percent of the total volumes from Malaysia.

**ii. Specificity**

MITI stated that the Commission did not make any conclusive determination on specificity principles on any of the alleged programmes.

**Commission's consideration**

The Government of Malaysia provided all the relevant legislation indicating which industries can access the subsidy programs. No verifiable information was provided as the government cited confidentiality as a reason for not providing information.

**5.9 SUMMARY – SUBSIDIES**

The Commission made a final determination that the following subsidy programmes are not applicable to Central Aluminium Manufactory SDN BHD:

- Investment Tax Allowance
- Industrial building allowance
- Export credit refinancing
- Pioneer status

The information verified at the co-operating exporter indicates the following:

- The benefit received by the co-operating exporter on Double Deduction for the promotion of exports, Sales Tax and Import Duty Exemption is below the de minimis level.
- The residual margin of subsidy applicable to the non-cooperating exporters was determined to be 35 per cent.

Based on the information supplied, the Commission made a final determination that stainless steel kitchen sinks originating in or imported from the co-operating exporter in Malaysia are subsidised at a de minimis level, and that those subject products imported from the non-cooperating exporters in Malaysia are subsidised at 35 per cent.

## 6. MATERIAL INJURY

### 6.1 DOMESTIC INDUSTRY – MAJOR PROPORTION OF PRODUCTION

The following injury analysis was provided by the Applicant, Franke Kitchen Systems SA (Pty) Ltd. constituting 88 percent of the total domestic production of stainless steel kitchen sinks in SACU.

### 6.2 IMPORT VOLUMES AND EFFECT ON PRICES

#### 6.2.1 Import volumes

The following table shows the volume of the allegedly dumped and subsidised imports of the subject product (from South African Revenue Services) since 2005:

**Table 6.2.1: Import volumes**

Country	2005	Country imports as a % of total imports	2006	Country imports as a % of total imports	2007	Country imports as a % of total imports
PRC	199129	32.21%	481354	50.60%	673571	62.73%
Malaysia	138552	22.41%	192492	20.23%	154843	14.42%
Total Alleged dumped & subsidised imports	337 681	54.63%	673 846	70.85%	828 414	77%
Other Countries	280485	45.37%	277304	29.15%	245245	23%
Total imports	618166	100%	951150	100%	1073659	100%

The information in the table above indicates that the alleged dumped imports from the PRC have been on an upward trend since 2005. The imports from Malaysia have decreased since 2006. The volume of imports from the PRC and Malaysia accounted for 77 per cent of the total imports in 2007.

#### **Comments by MITI**

*MITI stated that the import volume table indicated that the import volume from Malaysia is 14.42 per cent of SACU's total imports. It stated that the import volume is on the decreasing trend and only represents insignificant percentage compared to SACU's total market. MITI stated that such import could not have caused injury claimed by the domestic industry.*



### **Commission's consideration**

*Total import volume of 14.4 per cent is above the negligibility level, as per ADR 16.2, and is deemed to contribute to injury suffered by the Applicant as a result of the alleged dumped imports.*

## **6.2.2 Effect on Domestic Prices**

### **6.2.2.1 Price undercutting**

Price undercutting is the extent to which the price of the imported product is lower than the price of the SACU product. The following table compares the SACU industry's ex-factory prices with the landed cost of the imported product. The landed cost of the imported product from the PRC in 2007 is based on the average landed cost of the three importers who co-operated in the investigation. The Commission determined that the Applicant experienced price undercutting as result of the imports from the PRC during the period of investigation.

**Table 6.2.2.1(a): Price undercutting (PRC)**

<b>R/Kg (PRC)</b>	<b>2007</b>
Applicant's ex-factory selling price	100
Landed cost of imported product	78
Price undercutting	22

The information in this table was indexed due to confidentiality using the applicant's price as base and 2007 as base year.

The landed cost of the imported product from Malaysia in 2007 is based on the average landed cost of the importer who co-operated in the investigation. The Commission determined that the Applicant experienced price undercutting as a result of imports from Malaysia during the period of investigation.

**Table 6.2.2.1(b): Price undercutting (Malaysia)**

<b>R/Kg (MALAYSIA)</b>	<b>2007</b>
Applicant's ex-factory selling price	100
Landed cost of imported product	61
Price undercutting	39

The information in this table was indexed due to confidentiality using the applicant's price as base and 2007 as base year.

### **Comments by MITI**

MITI stated that the Commission only analysed one year in terms of price undercutting, and that a one year analysis is not sufficient to determine injury suffered by the Applicant.

### **Commission's consideration**

The analysis on price undercutting was done over a three year period, 2005 to 2007. Furthermore determination of material injury is not based on one factor but on a range of factors.

### **Comments by Neumann on dumped imports**

Neumann commented that the landed cost verified by ITAC was R88/ kg and the fob price for Neumann imports is R64/kg. Neumann is of the opinion the average import price exceeds that of R54/kg calculated by Franke for undumped products imported into SACU. This is an indication that injury experienced by Franke is not as a result of dumped imports.

### **Injury Analysis**

Neumann stated that the commission should have indicated the extent of injury that was caused by subsidies because the investigation was initiated based on allegation of dumping and subsidisation. Franke in withdrawing the countervailing application did not provide reasonable grounds for the termination of the countervailing application. It is unjust to include the same injury analysis. The failures to provide reasons tend to support inference that evidence was ignored.

### **Commission's consideration**

The determination of material injury is not based on one factor but a range of factors. In terminating the countervailing application against the PRC, Franke made a request that the application be terminated as it was no longer interested in pursuing the matter.

#### **6.2.2.2 Price depression**

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

**Table 6.2.2.2: Price depression**

R/kg	2005	2006	2007
Ex-factory price/kilogram	100	100	108

The information in this table was indexed due to confidentiality using 2005 as the base year.

The above table indicates that the Applicant did not experience any price depression. The Applicant stated that the price increase was a result of an increase in stainless steel prices.

**Comments by Kwikot**

*Kwikot indicated that the applicant did not experience price depression. The applicant did not reduce the ex-factory selling price to compete with the imported product.*

**Commission's consideration**

*The applicant indicated that there was no reduction in the ex-factory selling price because of an increase in the stainless steel price.*

**6.2.2.3 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 6.2.2.3: Price suppression**

R/kg	2005	2006	2007
App's ex-factory selling price	100	100	108
Cost of production	100	115	161
Cost as a percentage of selling price	100	114	151

The information in this table was indexed due to confidentiality using 2005 as the base year.

The Applicant stated that in the above regard it should be taken into consideration that its manufacturing cost increased significantly over the investigation period whilst at the same time selling prices increased at a much lower rate. It stated that price suppression is clearly evident from the decrease in its gross margins over the period of investigation.

### 6.3 CONSEQUENT IMPACT OF THE DUMPED IMPORTS ON THE INDUSTRY

#### 6.3.1 Actual and potential decline in sales

The following table shows the Applicant's SACU sales volume of the subject product:

**Table 6.3.1: Actual and potential decline in sales**

Kg	2005	2006	2007
Total SACU sales volume	100	105	91

The information in this table was indexed due to confidentiality using 2005 as the base year.

The information in the table above indicates that the Applicant experienced a decrease in sales volume during the period of investigation. The Applicant stated that maintaining current price levels will not be feasible in the future and it will lose significant sales volume to the imported product as a consequence.

The Applicant stated that the general trend indicated above (in absolute and real terms) fully supports its view that imports of subject goods would have a serious impact on sales especially in light of the fact that it has already lost significant sales to the alleged dumped products.

#### **Comments by CAM Malaysia**

*Franke should have been aware of the slow-down in building activity in the year 2007 that led to a decline in demand for sinks. So, the economic condition should be taken into consideration for the decline in the production output. Total production output and sales volume in year 2006 had increased by 15% as compared to year 2005. Only in year 2007, during the slowdown in building activity, Franke had registered a decline in both production output and sales volume by 12% compared to year 2005.*

### 6.3.2 Profit

The following table shows the Applicant's profit situation:

**Table 6.3.2: Profit**

Rands	2005	2006	2007
Sales Value	100	105	101
Production cost	100	133	144
Gross profit	100	78	58
Net profit (Total)	100	112	44

The information in this table was indexed due to confidentiality using 2005 as the base year.

The information in the above table indicates that the Applicant's net profit decreased over 2005 to 2007.

#### **Comments by Neumann**

*Neumann pointed out that Franke sells the dominox range at a very low price that other importers cannot compete against. Hence they have a huge market share in the lower end of the market. Neumann is of the opinion that this has had an effect on the overall profit margin of Franke. The brochure supplied by Franke does not have the Dominox range whereas it has the same specifications as the other sinks.*

#### **Comments by Cam Africa**

*CAM Africa cc stated that the decline of the profits at Franke is a result of the change in the distribution channels. There was a shift away from retailers to wholesalers which resulted in the price difference of 20 to 25 percent. Franke has moved a lot of its sales away from merchants in favour of wholesalers. Selling prices to wholesalers should naturally be around 25% lower compared to merchants. The shift to wholesalers will negatively affect gross margins, but should be made up for by reduced expenses. The net margin may therefore remain the same unless the applicant "went overboard" with other trade expenses.*

*The introduction of the "highly secretive" Franke Dominox sinks which are sold at unrealistically low prices. Most importers complained that they cannot compete against Franke at these prices and are forced to rely on good service and small quantity deliveries to get any business in this segment at all. The wholesalers*

are currently selling this specific Franke sink in small quantities to clients. Off-take figures (omitted by the applicant) should prove a major shift away from retailers in favour of wholesalers. It is common knowledge that Franke shifted a huge portion of its business to wholesalers and only clients who were in the position to take pallet loads were retained as direct. Most competitors and ex-Franke clients are in agreement that the shift above is the main reason for Franke losing market share. The clients thought it was extremely arrogant of Franke to force clients to buy the Franke sinks from wholesalers against their will. In addition to this, the sales of Franke sinks were now entrusted to the representatives of a client who already had hundreds of different lines to sell. Representatives are interested in meeting targets and not in whose product they are selling.

#### **Comments by Kwikot**

Franke also introduced the Dominox range at a very low price (nobody can compete at this level) and the volumes on these sinks are very high up to 50 % of the market thus bringing down the average prices of their sales causing injury to themselves. The Dominox products have no brochures and do not appear on brochures in the market.

The Applicant's distribution system is inefficient, expensive and not in accordance with the market requirements. In 2003, Franke changed its distribution system by closing sales outlets which were geographically close to customers and engaged the services of outside service providers and moved closer to wholesalers to perform the delivery and sales function to customers. In addition, customers had to order economic quantities and could no longer order a single or odd lots of each product. This policy opened up an opportunity for sellers which were prepared to sell odd lots, deliver promptly, provide good service and develop close relationships with customers. The move to wholesalers cost Franke as they had to allow additional discounts up to 38 % off list to make the distribution of their products feasible for the wholesaler.

The Franke policy added cost to the distribution channel and distanced it from the market with adverse effects on sales volumes and profit margins. In addition, because the product was subject to handling damage by the outside delivery agent, the product had to have additional protective packaging to minimize damage and this added to the cost of the product.

### **Commission's consideration**

*The applicant indicated that the subject product is sold to merchants and wholesalers who only buy in bulk. These merchants sell these products to retail individual customers. The sales figures submitted by the applicant are inclusive of the dominox range.*

### **Comments by EBSMIA**

*EBSMIA stated Franke has not been under any profit margin squeeze as their latest price list (May 2009) announces price cuts of up to 30% on most of their products as result of ITAC's penalization of importers. The imposition of duties has re-established the monopolistic market in stainless steel kitchen sinks, which limits consumer choice. EBSMIA indicated that Franke cannot deliver on orders, i.e. has very long delivery times. This is indicative of the company's already dominant position in the South African kitchen sink market, and is certainly not testimony to a free and competitive market. The "threats" about imminent job losses because of their "unprofitability" is/was farcical in view of these (suddenly affordable) price cuts.*

### **Comments by Neumann**

*Neumann stated that Franke has reduced its prices by 30 percent, which is peculiar for a company that is alleging material injury. Neumann is of the opinion that the information revealed to ITAC relating to profits was inaccurate.*

### **Commission's consideration**

*The extent of dumping and injury suffered by the applicant was determined within the identified investigation periods. In a dumping investigation ITAC does not consider the conduct of the applicant immediately after the imposition of duties. ITAC does not intervene in the market to create inefficiencies but to protect the domestic industry that is suffering injury as a result of dumped imports.*

#### **6.3.3 Output**

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

**Table 6.3.3: Output**

	2005	2006	2007
Total production(in kilograms)	100	116	89

The information in this table was indexed due to confidentiality using 2005 as the base year.

The above table indicates that the Applicant's output decreased from 2005 to 2007.

#### 6.3.4 Market growth and relative market share

The following table shows the market share for the subject product:

**Table 6.3.4: Market growth and relative market share**

(Kg)	2005	Market share %	2006	Market share %	2007	Market Share %
Applicant	100	100	105	87	91	78
Other: Local	100	100	105	100	99	86
<b>Total SACU</b>	<b>100</b>	<b>100</b>	<b>105</b>	<b>89</b>	<b>81</b>	<b>79</b>
PRC	100	100	242	190	338	280
Malaysia	100	100	140	114	112	86
<b>Alleged dumped &amp; subsidised</b>	<b>100</b>	<b>100</b>	<b>200</b>	<b>159</b>	<b>245</b>	<b>200</b>
Other imports	100	100	99	85	87	85
<b>Total imports</b>	<b>100</b>	<b>100</b>	<b>154</b>	<b>127</b>	<b>174</b>	<b>150</b>
<b>Total SACU</b>	<b>100</b>	<b>100</b>	<b>120</b>	<b>100</b>	<b>116</b>	<b>100</b>

The information in this table was indexed due to confidentiality using 2005 as the base year.

Information in the above table shows a decrease in the market share of SACU producers. The market share of the alleged dumped and subsidised imports increased from 2005 to 2007.

The Applicant stated that it is clear from the information that the alleged dumped imports managed to increase their market share in volume significantly from 2005 to 2007. It stated that at the same time its market share in volume decreased substantially.



### 6.3.5 Productivity

Using the production and employment figures sourced from the Applicant, its productivity in respect of the subject product is as follows:

**Table 6.3.5: Productivity**

	2005	2006	2007
Total production (kg's)	100	116	89
No. of employees(manufacturing)	100	116	108
Units per employee	100	100	83

The information in this table was indexed due to confidentiality using 2005 as the base year.

The table above indicates that productivity decreased during 2005 to 2007. The Applicant stated that at the beginning of 2006 it started to phase-out its two-piece production line and concentrated solely on its mono bloc and one-piece lines.

### 6.3.6 Return on investment

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

**Table 6.3.6: Return on investment**

	2005	2006	2007
Net profit (Total company)	100	106	-25
Shareholder's funds	100	130	123
Return on investment	100	81	-20

The information in this table was indexed due to confidentiality using 2005 as the base year.

The information in the table above indicates that the return on investment has been decreasing and in 2007 there was a negative return on investment. The Applicant stated that the information indicates that the shareholders invested substantial amounts of money in it as a business unit. It stated that at the same time imports from the countries concerned increased significantly eroding any potential benefits shareholders expected on their investment.

### 6.3.7 Utilisation of production capacity

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

**Table 6.3.7: Utilisation of production capacity**

kg	2005	2006	2007
Capacity	100	100	100
Actual production	100	116	89
Capacity utilisation %	100	115	88

The information in this table was indexed due to confidentiality using 2005 as the base year.

The table above indicates that the Applicant's capacity utilisation decreased by 12 percent from 2005 to 2007. This gives an indication that the applicant was not operating at full capacity in 2007.

The Applicant stated that only sinks are manufactured on the available machines. It stated that it is not operating at full capacity and therefore spare capacity is available to cater for any increase in demand for the product concerned.

#### 6.3.8 Factors affecting domestic prices

Factors affecting domestic prices are price undercutting and price suppression.

#### 6.3.9 The magnitude of the margin of dumping

The following margin of dumping was calculated:

**Table 6.3.9: Margin of dumping**

Country of origin	Dumping margin as % ex-factory export price
PRC: Taijing Chuanger Metal Products Co. Ltd.	negative
Zhuhai Dali Metal Product Co. Ltd. (Primy Corporation Ltd.)	20.72%
Rhine Sinkwares Manufacturing Ltd.	10.94%
Malaysia: Central Aluminium Manufactory SDN BHD	11.11%
Residual Dumping Margin PRC	62.41%
Residual Dumping Margin Malaysia	95.86%

### 6.3.10 Actual and potential negative effects on cash flow

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

**Table 6.3.10: Cash flow situation**

R'000	2005	2006	2007
Net negative cash flow (Company)	100	286	198

The information in this table was indexed due to confidentiality using 2005 as the base year.

The information in the table above indicates that the Applicant has been experiencing a negative cash flow since 2005. The Applicant stated that if the increase in the market share of the alleged dumped products is taken into consideration, it is evident that not only did it lose direct cash flow as a result of the alleged dumped product, but the potential loss of funds is significant. It stated that if this trend continues, future loss in revenue is inevitable.

### 6.3.11 Inventories

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

**Table 6.3.11: Inventories**

Inventories	2005	2006	2007
Volume-Units	100	250	157
Volume -Kilograms	100	255	151
Value R'000	100	335	238

The information in this table was indexed due to confidentiality using 2005 as the base year.

The information in the table indicates that the Applicant's inventory volumes in kilograms increased from 2005 to 2007.

### 6.3.12 Employment

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

**Table 6.3.12: Employment**

	2005	2006	2007
Labour units (production)	100	116	108
Indirect Labour units (SGA)	100	102	106

The information in this table was indexed due to confidentiality using 2005 as the base year.

The table above indicates that the Applicant's labour units for production increased during the period. The Applicant stated that if it had managed to retain market share, it could have employed additional workers.

### 6.3.13 Wages

The following table provides the SACU industry's wages:

**Table 6.3.13: Wages**

Rands	2005	2006	2007
Total wages (Production)	100	114	128
Total wages (SGA)	100	99	97

The information in this table was indexed due to confidentiality using 2005 as the base year.

The table above shows an increase in wages for production but a decrease for SGA.

### 6.3.14 Growth

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

**Table 6.3.14: Growth**

	2005	2006	2007
Size of SACU market	100	120	116
Applicant's sales volume	100	105	91

The information in this table was indexed due to confidentiality using 2005 as the base year.

The table above shows that the Applicant experienced a decrease in sales volume in 2007.

### 6.3.15 Ability to raise capital or investments

The Applicant stated that the shareholders already invested significantly in the business unit over the investigation period. It stated that it would not be able to raise additional capital if the current trend in imports continues and shareholders failed to realise expected returns on their investment.

#### **Comments by MITI**

*MITI stated that the data presented in the report show that the Applicant has been suffering negative cash flow before 2005, and that in order to overcome the problem, the Applicant has taken a few measures such as reducing*

production lines and increasing shareholders' funds since the beginning of 2006. It stated that these activities had further worsened the situation, resulting in lower sales and profits. It stated that other injury indicators, such as ROI, market share, output, growth and ability to raise capital were also badly affected.

MITI stated that based on its arguments, it is of the opinion that the Commission should be more objective in its evaluation and arriving at the decision on the investigation. It stated that as such, it urges the Commission to terminate the countervailing investigation.

#### **Comments by EBSMIA**

EBSMIA stated that it has reason to believe that the calculations presented to ITAC by Franke were absurd and incomplete and an attempt to deny fair competition as it does not recognise that imported products have a higher FOB and landed cost price structure..Franke's allegations were taken on face value, and that the ins and outs of Franke's own business operations and cost structures were never fully investigated.

#### **Commission's consideration**

The information submitted by Franke to substantiate the allegations of dumping and material injury was verified by investigators to determine the reliability and accuracy.

### **6.4 SUMMARY - MATERIAL INJURY**

From the information above the Commission made a final determination that the Applicant and therefore the SACU industry is suffering material injury.

## 7. CAUSAL LINK

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### 7.1 GENERAL

In order for the Commission to impose definitive duties 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 and subsidisation 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 with a corresponding increase in the market share of the alleged dumped product. The following table compares the market share of the SACU industry with that of the alleged dumped and subsidised imports:

**Table 7.2.1: Market growth and relative market share**

(Kg)	2005	Market share %	2006	Market share %	2007	Market Share %
Applicant	100	100	105	87	91	78
Other: Local	100	100	105	100	99	86
<b>Total SACU</b>	<b>100</b>	<b>100</b>	<b>105</b>	<b>89</b>	<b>81</b>	<b>79</b>
PRC	100	100	242	190	338	280
Malaysia	100	100	140	114	112	86
<b>Alleged dumped &amp; subsidised</b>	<b>100</b>	<b>100</b>	<b>200</b>	<b>159</b>	<b>245</b>	<b>200</b>
Other imports	100	100	99	85	87	85
<b>Total imports</b>	<b>100</b>	<b>100</b>	<b>154</b>	<b>127</b>	<b>174</b>	<b>150</b>
<b>Total SACU</b>	<b>100</b>	<b>100</b>	<b>120</b>	<b>100</b>	<b>116</b>	<b>100</b>

The information in this table was indexed due to confidentiality using 2005 as the base year.

The following table shows the volume of imports:

**Table 7.2.2: Import volumes**

Country	2005	Country imports as a % of total imports	2006	Country imports as a % of total imports	2007	Country imports as a % of total imports
PRC	199129	32.21%	481354	50.60%	673571	62.73%
Malaysia	138552	22.41%	192492	20.23%	154843	14.42%
Total Alleged dumped & subsidised imports	337 681	54.63%	673 846	70.85%	828 414	77%
Other Countries	280485	45.37%	277304	29.15%	245245	23%
Total imports	618166	100%	951150	100%	1073659	100%

The table above shows that the alleged dumped and subsidised imports as a percentage of total imports increased. Imports from the other countries decreased from 2005 to 2007.

#### **Commission's consideration**

*It is evident from the table above that imports from the PRC increased from 62.73 per cent during the period of investigation to 68.07 per cent subsequent to the initiation of the investigation. Imports from Malaysia increased slightly from 14.42 per cent to 15.47 while imports from other countries decreased from 23 per cent to 16.45 per cent during the same period. The exporters who cooperated in the investigation exported only 34.63 per cent of the total exports from the PRC and one of these exporters was found not to be dumping. Excluding undumped imports they amount to 30.72 percent. Based on the above, the Commission is of the opinion that the balance of the imports from non cooperating exporters in the PRC are continuing to cause injury to the SACU industry.*

*The imports from the co-operating exporter accounted for 62.47 per cent of the total imports from Malaysia during the period of investigation. These imports were found not to be dumped. It can therefore be concluded that the balance of the imports from the non- co-operating exporters in Malaysia is likely to cause injury to the SACU industry.*

### 7.3 EFFECT OF DUMPED AND SUBSIDISED IMPORTS ON PRICES

The Applicant experienced price undercutting as a result of imports from the PRC and Malaysia as indicated in table 6.2.2.1(a) and table 6.2.2.1(b) of this report. The Applicant did not experience any price depression as indicated in table 6.2.2.2 of this report. The Applicant stated that the price increase was a result of an increase in stainless steel prices.

### 7.4 CONSEQUENT IMPACT OF DUMPED AND SUBSIDISED IMPORTS

Material injury indicator	Analysis (2005 – 2007)
Sales volume	decreased
Profit	decreased
Output	decreased
Market share (Alleged dumped)	increased
Market share (Applicant)	decreased
Productivity	decreased
Return on investment	decreased
Utilisation of capacity	decreased
Cash flow	decreased
Inventories	increased
Employment	increased
Wages	increased
Growth	decreased
Ability to raise capital	decreased

#### **Comments by Neumann on Causal Link**

##### **Dominox range**

*Franke did not disclose that the dominox range is sold at lower prices. Franke captured a large percentage of the local market which was not disclosed to ITAC. Neumann stated that Franke is relating all their problems to the small percentage of their whole programme and blaming importers of a very small percentage of similar products for their material injury.*



### **Commission's consideration**

*The information submitted by Franke was inclusive of the dominox range, the price was not determined based on one model of sink and the dumping figures prevailing at the moment are based on verified information of exporters who co-operated with the investigation.*

## **7.5 FACTORS OTHER THAN THE DUMPING AND SUBSIDISATION CAUSING INJURY**

### **7.5.1 Examination of causality under Article 3.5**

	2005	2006	2007	2005/2007 (% increase/ decrease)
Prices of imports not sold at alleged dumping and subsidised prices (fob price) (R/Kg)	100	116	134	34%
Volume of imports not sold at alleged dumping and subsidised(Kg)	100	99	87	(13%)

The information in this table was indexed due to confidentiality using 2005 as the base year.

Contraction in demand	The Applicant indicated that it is not applicable.
Changes in the patterns of consumption	Not applicable
Trade-restrictive practices of foreign and domestic producers	There were no trade restrictive practices.
Competition between foreign and domestic producers	There is competition between foreign and domestic producers.
Developments in technology	There are no recent developments in technology that might have detracted from causal link
Export performance of the domestic industry	The Applicant provided that the SACU industry's export performance did not detract from causal link.
Productivity of the domestic industry	The Applicant stated that its productivity is on a par with other foreign manufacturers.

### **Comments by Neumann on causal link**

*Neumann stated that Franke did not reveal that they produce the dominox range, which dominates the SACU market at about 40 percent. At such a higher percentage the company cannot claim to be suffering material injury. Neumann stated that information of collective negligible countries was not considered and*

the dumping duties will not solve Franke's alleged injury. Neumann stated that Franke wants to create a total monopoly in the South African sink market.

#### **Commission's consideration**

Information from import statistics indicated that the applicant has been experiencing a reduction in market share as a result of increased dumped imports from PRC and Malaysia. Franke's injury information included all products sold during the period of investigation.

#### **Comments by Kwikot on causal link**

Kwikot stated that the Commission did not conclusively or independently establish the causal link between dumping and material injury suffered by SACU which is contrary to ITAC's regulation which states that no anti-dumping or countervailing duty may be imposed unless the Commission has found that the dumping and subsidised export of goods in question caused or is threatening to cause material injury to the SACU industry or is materially retarding the establishment of an industry in SACU. The Commission relied heavily on the information submitted by the Applicant without conducting its own investigations.

#### **Commission's consideration**

All the information submitted by the applicant was verified and the Commission took into consideration all the information submitted by interested parties in making its final determination.

#### **Comments by CAM Malaysia on Causal Link**

CAM stated that the Commission's finding is unreasonable, unjust and administratively unfair. CAM stated that the Commission failed to prove causal link between imports from Malaysia and the material injury suffered by the SACU Industry.

Imports from countries which were not identified as dumping appear to be equal or below to those imported from both China and Malaysia.

The injury information submitted by the applicant indicates that there might other factors which contribute to injury other than imports.

*The Commission terminated the subsidy investigation against the PRC without providing proper reasons and the probable causal link. The subsidy investigation was considered to have collectively caused injury to the applicant.*

#### **Commission's consideration**

*In terms of the anti-dumping agreement, the authority has a duty of examining all known factors other than dumping which might be causing injury. CAM has not indicated other known factors which might have caused injury around the same period that the Commission ought to have considered.*

#### **Comments by EBSMIA**

*Franke produces and markets the cheapest range of kitchen sinks available in South Africa (dominox range). Franke has never included the Dominox range in their price list, and it was not disclosed to ITAC that this product range is marketed as the cheapest kitchen sink. Dominox range is sold to South Africa at prices no competition could obtain the raw-material from anywhere in the world, including China and Malaysia.*

#### **Commission's consideration**

*The information submitted by Franke was inclusive of the dominox range, the price was not determined based on one model of sink and the dumping figures prevailing at the moment are based on verified information of exporters who co-operated with the investigation.*

#### **Price disadvantage**

The price disadvantage is the extent to which the price of the imported product (landed cost) is lower than the unsuppressed and undepressed ex-factory selling price of the SACU product. It was determined that the price disadvantage as a percentage of the fob price was higher than the dumping margin as percentage of the fob price for the following exporters (Zhuhai Dali Metal Product Co. Ltd (Primy Corporation Ltd.), Rhine Sinkwares Manufacturing Ltd., Central Aluminum Manufactory SDN BHD. The applicant suffered price disadvantages of 74.81 percent, 51.11 percent and 141.74 percent against Zhuhai Dali, Rhine Sinkwares and CAM respectively.

### **Comments by Neumann**

*The anti-dumping duties imposed on Chinese exporters who cooperated in the investigation is below the unsuppressed selling price. This means that the duties imposed will not solve Franke's injury problem.*

### **Comments by CAM Malaysia on Price disadvantage**

*No reference is made of the existence or the consideration of the price disadvantage. Price disadvantage is considered to be the extent of material injury suffered by the applicant and is critical in determining the continued existence of the investigation. If the price disadvantage percentage is in excess of the dumping margin, it leaves injury in the SACU industry unresolved, hence a detraction of causal link and withdrawal of the investigation. In automotive toughened glass from China there was a huge difference between price disadvantage and the dumping margin. The Commission made a determination not to impose duties because it took into consideration that they might be other factors contributing to injury other than dumping. The WTO Anti-Dumping Agreement restricts the penalty duty to be not in excess of the dumping margin. If price disadvantage is calculated to be in excess of the dumping margin, it follows that such injury must be ascribed to factors other than the alleged dumped imports.*

### **Commission's consideration**

*The Agreement does provide for authorities to look at prices(i.e. price disadvantage and dumping margin) in determining the causal link but it does not give a decisive guidance, analysing one factor does not provide conclusive evidence that there is no causal link between dumping and injury. In terms of this agreement the authority also has a duty of examining all known factors other than injury which might be causing injury.*

### **Comments by CAM Malaysia**

*The Commission did not determine the price disadvantage, whether this exceeds the unjust dumping margins for both countries in this investigation.*

### **Commission's consideration**

*The Commission considered the price disadvantage for possible application of lesser duty rule for exporters that were found to be dumping. However, the Commission cannot impose higher duties than the anti-dumping margins.*

*Furthermore, the Agreement does require for authorities to look at prices(i.e. price disadvantage and dumping margin) in determining causal link, and does not give a decisive guidance in that regard. The analysis of one factor does not provide conclusive evidence whether there is causal link or not.*

The Commission found that there were no factors other than dumping that sufficiently detracted from the causal link between dumping and subsidisation and the material injury experienced.

## **7.6 SUMMARY ON CAUSAL LINK**

After considering all the relevant factors and comments by interested parties the Commission made a final determination that there is a causal link between the alleged dumping and subsidisation of the subject product and the material injury suffered by the SACU industry.

## 8. SUMMARY OF FINDINGS

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### 8.1 Dumping

The Commission found that the subject product originating in or imported from the PRC and Malaysia and exported by Taijing Chaunger Metal Products Ltd. is not being dumped into the SACU market. The subject product exported by Zhuhai Dali Metal Product Co Ltd. (PRC) (Primy Corporation Ltd.), Rhine Sinkwares Manufacturing Ltd., Central Aluminium Manufactory SDN BHD (Malaysia) and the non co-operating exporters from both countries is being dumped in the SACU market.

The following dumping margins were calculated:

**Table 8.1**

Country and exporter	Dumping margin as % of ex-factory price
<b>PRC</b>	
Zhuhai Dali Metal Product Co. Ltd. (Primy Corporation Ltd.)	20.72%
Taijing Chuanger Metal Products	negative
Rhine Sinkwares Manufacturing Ltd	10.94%
Other non-cooperating PRC exporters	62.41%
<b>Malaysia</b>	
Central Aluminium Manufactory SDN BHD	11.11%
Other non-cooperating Malaysian exporters	95.86%*

\*including the subsidy margin of non-cooperating Malaysian exporters

### 8.2 Subsidised Exports

The Commission found that the subject product originating in or imported from Malaysia and exported by Central Aluminium Manufactory SDN BHD is subsidised at a *de minimis* level, but the products exported by non-co-operating Malaysian exporters are subsidised at 35 percent as indicated below:

**Table 8.2**

Country and exporter	Subsidy margin
<b>Malaysia</b>	
Central Aluminium Manufacture SDN BHD	0.53%
Other non-cooperating Malaysian exporters	35%

### **8.3 Material injury**

The Commission made a final determination that the SACU industry suffered material injury in the form of price undercutting, price suppression, actual decline in sales volumes, actual decline in profit, actual decline in output, actual decline in market share, actual decline in productivity, actual decline in return on investments, actual decline in capacity utilisation, actual and potential decline in total and net cash flow, increase in inventories, negative growth, and inability to raise capital.

### **8.4 Causal link**

The Commission made a final determination that there is a causal link between material injury suffered by the SACU and the dumped and subsidised imports from the PRC and Malaysia.

## 9. FINAL ANTI-DUMPING AND COUNTERVAILING DUTIES

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### 9.1 Amount of duty

The amounts of the definitive duties were concluded to be as follows:

**Table 9.1: Amount of definitive duties**

Country	Rate of definitive duty as% of fob export price
<b>PRC</b>	
Zhuhai Dali Metal Product Co. Ltd (Primy Corporation Ltd.)	20.62%
Rhine Sinkwares Manufacturing Ltd.	10.84%
Other PRC exporters (excluding Taijing Chuang'er Metal Products)	62.41%
<b>Malaysia</b>	
Central Aluminum Manufactory	10.74%
Other Malaysian exporters *	95.86%

**\*This duty reflects both the payments for dumped and  
subsidised exports**



## 10. RECOMMENDATION

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The Commission made a final determination that:

- The subject product originating in or imported from the PRC is being dumped into the SACU market by all manufacturers in the PRC, excluding those manufactured by Taijing Chuanger Metal Products Co. Ltd;
- The subject product originating in or imported from Malaysia is being dumped into the SACU market;
- The subject product originating in or imported from Malaysia is being subsidized. The subject product manufactured by Central Aluminium Manufactory SDN BHD (Malaysia) is subsidized, but the amount of subsidy was below the de minimus level.
- The SACU industry is suffering material injury;
- There is a causal link between the dumping of the subject product from the PRC, the dumping and the subsidization of the subject product from Malaysia and the material injury experienced by the SACU industry.

The Commission recommended to the Minister of Trade and Industry that the following definitive anti-dumping duties, being the lesser of the dumping margin and the price disadvantage, be imposed:

- (i) 20.62 per cent ad valorem on sinks of stainless steel, classifiable under tariff sub-heading 7324.10, originating in the People's Republic of China and manufactured or produced by Primy Corporation Ltd.; and
- (ii) 10.84 per cent ad valorem on sinks of stainless steel, classifiable under tariff sub-heading 7324.10, originating in the People's Republic of China and manufactured or produced by Rhine Sinkwares Manufacturing Ltd.; and

- (iii) 62.41 per cent ad valorem on sinks of stainless steel, classifiable under tariff sub-heading 7324.10, originating in the People's Republic of China, excluding those manufactured or produced by Taijing Chuanger Metal Products Co. Ltd and Primy Corporation Ltd. and Rhine Sinkwares Manufacturing Ltd.; and
- (iv) 10.74 per cent ad valorem on sinks of stainless steel, classifiable under tariff sub-heading 7324.10, originating in Malaysia and manufactured or produced by Central Aluminium Manufactory SDN BHD (Malaysia); and
- (v) 95.86 per cent ad valorem on sinks of stainless steel, classifiable under tariff sub-heading 7324.10, originating in Malaysia, excluding those manufactured or produced by Central Aluminium Manufactory SDN BHD (Malaysia).

and that these anti-dumping duties be imposed retroactive to the date of the imposition of the provisional payments, which is 9 April 2009.