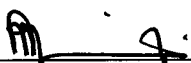


## **Report No. 107**

# **Investigation into the alleged dumping of wheat flour originating in or imported from India: Final determination**

The International Trade Administration Commission of South Africa herewith presents  
its **Report No. 107: INVESTIGATION INTO THE ALLEGED DUMPING OF WHEAT  
FLOUR ORIGINATING IN OR IMPORTED FROM INDIA: FINAL DETERMINATION**



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**Ms N.P. MAIMELA**  
**CHIEF COMMISSIONER**

**PRETORIA**

20 May 2005

# **INTERNATIONAL TRADE ADMINISTRATION COMMISSION**

## **INVESTIGATION INTO THE ALLEGED DUMPING OF WHEAT FLOUR ORIGINATING IN OR IMPORTED FROM INDIA: FINAL DETERMINATION**

### **SYNOPSIS**

On 03 November 2004, the International Trade Administration Commission of South Africa (the Commission) formally initiated an investigation into the alleged dumping of wheat flour originating in or imported from India. Notice of the initiation of the investigation was published in Notice No.2486 of *Government Gazette* No.26962 dated 12 November 2004.

The Application was lodged on behalf of the South African Customs Union (SACU) industry by the National Chamber of Milling (NCM), (the Applicant), on behalf of its members, which include Tiger Milling, Pioneer Sasko and Premier Foods, being the major domestic manufacturers of the subject product in SACU, which claimed that dumped imports were threatening to cause material injury to the SACU industry.

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

On initiation of the investigation, the known producers and exporters of the subject product in India were sent foreign manufacturers/ exporters questionnaires to complete. An importer of the subject product was also sent an importers questionnaire to complete. No full and complete response was received from any interested party within the time frame allowed.

After considering all the information supplied by the Applicant, the Commission made a preliminary determination that the subject product originating in or imported from India was being dumped on the SACU market, but that a threat of material injury to the SACU industry does not exist.

The Commission made a preliminary determination to recommend to the Minister of

Trade and Industry to terminate the investigation. Notice of its intention to recommend to the Minister of Trade and Industry that the investigation be terminated was made pursuant to Notice No. 311 of 2005 which was published in *Government Gazette* No.27321 on 25 February 2005. The Commission's detailed reasons for its decision were published in Commission Report No. 101 (preliminary report).

After considering the comments received from the Applicant in respect of the preliminary report, the Commission made a final determination to recommend to the Minister of Trade and Industry to terminate the investigation.

## **1. PETITION AND PROCEDURE**

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### **1.1 LEGAL FRAMEWORK**

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

### **1.2 APPLICANT**

The application was lodged by the National Chamber of Milling (NCM) on behalf of its members which include Tiger Milling, Pioneer Sasko and Premier Foods, which are the major manufacturers of the subject product in the SACU industry.

### **1.3 DATE OF ACCEPTANCE OF APPLICATION**

The Application was accepted by the Commission as being properly documented in accordance with Article 5.2 of the Anti-Dumping agreement on 3 November 2004. The trade representative of the country concerned was advised accordingly.

### **1.4 ALLEGATIONS BY THE APPLICANT**

The Applicant alleged that imports of the subject product, originating in or imported from India were being dumped on the SACU market, thereby threatening to cause material injury to the SACU industry. The basis of the alleged dumping was that the goods were being exported to the SACU at prices less than the normal value in the country of origin.

The Applicant alleged that as a result of the dumping of the product from India, the SACU industry was suffering material injury in the form of:

- price undercutting;
- price suppression;
- actual and potential decline in sales;
- actual and potential decline in profits;
- decline in market share from 2003 to 2004;
- decrease in return on investment.

## **1.5 INVESTIGATION PROCESS**

The Commission formally initiated an investigation into the alleged dumping of wheat flour originating in or imported from India pursuant to Notice No. 2486 which was published in *Government Gazette* No. 26962 on 12 November 2004.

Prior to the initiation of the investigation, the trade representative of the country concerned was 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.

One exporter, Empire Flour Mills Pvt Ltd, responded to the Commission's exporters questionnaire, indicating that it never exported the subject product to the SACU industry or anywhere else during the period of investigation. All other exporters that were sent exporters questionnaires did not respond. One importer was granted an extension of 14 days to submit its response to the Commission's importers questionnaire but did not submit a response within the extended time frame.

On 9 February 2005, after it considered that the threat of material injury to the SACU industry did not materialise, the Commission made a preliminary determination to recommend to the Minister of Trade and Industry to

terminate the investigation. All known interested parties were informed and requested to respond to the Commission's preliminary determination. Only the Applicant responded to the Commission's request.

On 20 April 2005, after considering all the comments by the Applicant, the Commission made a final determination to recommend to the Minister of Trade and Industry to terminate the investigation.

## **1.6 INVESTIGATION PERIOD**

The investigation period for dumping was from 01 May 2003 to 30 April 2004. The injury investigation involved evaluation of data for the period 01 May 2001 to 30 April 2004.

## **1.7 PARTIES CONCERNED**

### **1.7.1 SACU industry**

The SACU industry consists of Tiger Milling, Pioneer Sasko and Premier Foods, being the major manufacturers of the subject product in the SACU industry.

Information was submitted by the Applicant, which was verified by the investigating officers prior to the initiation of the investigation.

### **1.7.2 Exporters/Foreign Manufacturers**

One exporter, Empire Flour Mills Pvt Ltd, responded to the Commission's exporters questionnaire, indicating that it never exported the subject product to the SACU industry or anywhere else during the period of investigation.

### **1.7.3 Importers**

One SACU importer, Akila Trading South Africa, requested an extension for submission of its response to the Commission's importers questionnaire but

did not respond within the extended time frame.



## **2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES**

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### **2.1 IMPORTED PRODUCTS**

#### **2.1.1 Description**

The subject product is described as “*wheat flour, i.e. the finely ground meal of either the whole wheat kernel or of the endosperm portion*”.

The Applicant indicated that wheat as such is any of the many varieties of the cereal grass species, *Triticum Aestivum*, and their grain, and that it is the principal cereal used in bread production because of the unique properties of its proteins which, when the grain is ground into flour and mixed with water, form the gluten that is needed to produce a light, aerated crumb structure in the baked loaf. It is further indicated that wheat kernel is the individual grain or berry of the wheat plant *Triticum Aestivum*.

#### **2.1.2 Tariff classification**

The subject product is classifiable as follows:

**Table 2.1.2: Tariff classification**

Tariff subheading	Description	Unit	General duty	EU	SADC
1101.00	Wheat or meslin flour	Kg	2.80c/kg	2.80c/kg	free

#### **2.1.3 Import Statistics**

Article 5.8 of the Anti-Dumping Agreement provide as follows:

“There shall be immediate termination in cases where the authorities determine that ..... the volume of dumped imports, actual or potential, is negligible. The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 per cent of imports of the like product in the importing Member, unless countries which individually account for less than 3 per cent of the imports of the like product in the importing Member collectively account for more than 7 per cent of imports of the like

product in the importing Member.”

The import statistics indicated that the volume of dumped imports from India accounted for 75.67 per cent of the total imports of the like product during the period of investigation for dumping.

#### **2.1.4 Country of origin/export**

The subject product originates in and is exported from India.

#### **2.1.5 Application/end use**

Wheat flour is used in baked products such as bread and confectionery.

#### **2.1.6 Production process**

When the grain is received at the mill silos, it is weighed and the quality checked to ensure that it meets the grade specified, and then stored until it is required for milling. At this stage it is given a preliminary cleaning and fumigated.

The next stage involves further cleaning (to remove any impurities such as foreign seeds, straw, stick or stones), blending (the different grades of grain are blended to produce a flour which has the required characteristics) and conditioning (whereby water is added and the grain allowed to “lay over” until it has “mellowed”).

### **2.2 SACU PRODUCT**

#### **2.2.1 Description**

The SACU product is described as wheat flour.

#### **2.2.2 Application/end use**

The SACU product is used in baked products such as bread and

confectionery.

### **2.2.3 Tariff classification**

The SACU product is classifiable under the same six-digit tariff subheading.

### **2.2.4 Production process**

When the grain is received at the mill silos, it is weighed and the quality checked to ensure that it meets the grade specified, and then stored until it is required for milling. At this stage it is given a preliminary cleaning and fumigated.

The next stage involves further cleaning (to remove any impurities such as foreign seeds, straw, stick or stones), blending (the different grades of grain are blended to produce a flour which has the required characteristics) and conditioning (whereby water is added and the grain allowed to “lay over” until it has “mellowed”).

## **2.3 LIKE PRODUCTS**

### **2.3.1 General**

In order to establish the existence and extent of injury to the SACU industry, it is necessary to determine at the outset whether the products produced by the SACU industry are like products to those originating in or imported from India.

Footnote 9 to Article 3 of the Anti-Dumping Agreement provides as follows:

“Under this Agreement the term “injury” shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article.”[own underlining].

Article 4.1 of the Anti-Dumping Agreement provides as follows:

"For the purposes of this Agreement, the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products..."[own underlining].

Article 2.6 of the Anti-Dumping Agreement provides as follows:

"Throughout this Agreement the term 'like product' ('produit similaire') shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration."[own underlining].

### **2.3.2 Analysis**

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

- (1) raw material used;
- (2) production process;
- (3) physical appearance and characteristics;
- (4) customer demand and end use;
- (5) substitutability of the product with the product under investigation;
- (6) tariff classification;
- (7) any other factor proved to the satisfaction of the Commission to be relevant

#### **(1) Raw materials**

Wheat is used as the main raw material in both the imported and the SACU domestic products.

#### **(2) Production process**

Both the SACU and the imported products are manufactured using the same method.

**(3) Physical appearance and characteristics**

Both the imported and the SACU products have the same physical appearance and characteristics.

**(4) Customer demand and end use**

The demand and the end use of the products sold domestically and those imported are the same for purposes of comparison.

**(5) Substitutability of the product with the product under investigation**

The Commission found that the imported and the SACU products are substitutable.

**(6) Tariff classification**

Both the imported and the SACU products are classifiable under tariff subheading 1101.00.

**(7) Any other factor proved to the satisfaction of the Commission to be relevant**

No information was provided in this regard.

The Commission found that the SACU product and those imported were the same for purposes of comparison.

### **3. SACU INDUSTRY**

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#### **3.1 INDUSTRY STANDING**

Article 5.4 of the Anti-Dumping Agreement provides as follows:

"An investigation shall not be initiated pursuant to paragraph 1 unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry. The application shall be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry".

ADR 7.3 provides as follows:

"An application shall be regarded as brought by or on behalf of the SACU industry if-

- (a) at least 25 per cent of the SACU producers by domestic production volume support the application; and
- (b) of those producers that express an opinion on the application, at least 50 per cent by domestic production volume support such application."

The three companies that submitted information represent 84% of the SACU wheat flour milling industry. The total support for the investigation constitutes 95 per cent of the SACU production volume.

The Commission, therefore, decided that the Application can be regarded as being made by or on behalf of the domestic industry under the above provisions of the Anti-Dumping Agreement.

## **4. DUMPING**

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### **4.1 DUMPING**

Section 1 of the ITA Act provides a definition of the term "dumping". The Act provides as follows:

"dumping" means the introduction of goods into the commerce of the Republic or the Common Customs Area at an export price contemplated in section 32(2)(a) that is less than the normal value, as defined in section 32 (2), of those goods;"

### **4.2 NORMAL VALUE**

Normal values are determined in accordance with section 32(2)(b) of the ITA Act. This section provides as follows:

"normal value", in respect of any goods, means-

- (i) the comparable price paid or payable in the ordinary course of trade for like goods intended for consumption in the exporting country or country of origin; or
- (ii) in the absence of information on a price contemplated in subparagraph (i), either
  - (aa) the constructed cost of production of the goods in the country of origin when destined for domestic consumption, plus a reasonable addition for selling, general and administrative costs and profit; or
  - (bb) the highest comparable price of the like product when exported to an appropriate third or surrogate country as long as that price is representative;"

Section 32(4) of the ITA Act further provides as follows:

"If the Commission, when evaluating an application concerning dumping, concludes that the normal value of the goods in question is, as a result of government intervention in the exporting country or country of origin, not determined according to free market principles, the Commission may apply to those goods a normal value of the goods, established in respect of a third or surrogate country."

### **4.3 EXPORT PRICE**

Export prices are determined in accordance with section 32(1) of the ITA Act which provides as follows:

“export price” subject to subsections (3) and (5) means the price actually paid or payable for goods sold for export, net of all taxes, discounts and rebates actually granted and directly related to the sale;”

Section 32(5) of the ITA Act further provides as follows:

“(5) The Commission must, despite the definition of “export price” set out in subsection (2), when evaluating an application concerning dumping that meets the criteria set out in subsection (6), determine the export price for the goods in question on the basis of the price at which the imported goods are first resold to an independent buyer, if applicable, or on any reasonable basis.

(6) Subsection (5) applies to any investigation of dumping if, in respect of the goods concerned -

- (a) there is no export price as contemplated in the definition of dumping;
- (b) there appears to be an association or compensatory arrangement in respect of the export price between the exporter of foreign manufacturer concerned and the importer or the third party concerned; or
- (c) the export price actually paid or payable is unreliable for any other reason.”

### **4.4 ADJUSTMENTS**

Article 2.4 of the Anti-Dumping Agreement provides as follows:

“A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability. In the cases referred to in paragraph 3, allowances for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made. If in these cases price comparability has been affected, the authorities shall establish the normal value at a level of trade equivalent to the level of trade of the constructed



export price, or shall make due allowance as warranted under this paragraph.

The authorities shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties.”.

Both the Anti-Dumping Agreement and the ITA Act provide that due allowance shall be made in each case for differences in conditions and terms of sale, in taxation and for differences affecting price comparability. The Commission considers that for an adjustment to be allowed, quantifiable and verifiable evidence has to be submitted, and it must further be demonstrated that these differences actually affected price comparability at the time of setting the prices.

#### **4.5 COMPARISON OF EXPORT PRICE WITH NORMAL VALUE**

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

The margin of dumping is calculated in the currency of the country of export.

#### **4.6 METHODOLOGY IN THIS INVESTIGATION FOR INDIA**

##### **4.6.1 Normal Value**

###### **Type of economy**

India is considered by the Commission to be a country with a free market economy and therefore the definition of section 32(2)(b) of the ITA Act applies.

###### **Calculation of normal value**

Since no responses to the Commission’s importers and exporters

questionnaires were received, the Commission used the best information available to it for purposes of calculating the normal value.

The normal value in India provided by the Applicant was obtained by buying the actual product at retail level in the market. Five different brands of wheat flour were purchased in India on 16 February 2003. The following table indicates the brand and its price per kilogram (kg):

Brand	Rs	Kg	Rs/kg
Hindustan Lever	79.50	5.00	15.90
Pillsbury	43.00	2.00	21.50
Cargill	43.00	2.00	21.50
ITC Ltd	100.00	5.00	20.00
Blue Bird	22.00	1.00	22.00
	287.5	15.00	19.17

Of the above brands, Hindustan Lever's brand sold at Rs 15.90/kg, which was the lowest price of the brands purchased at a retail level. Based on the retail price for Hindustan Lever, the following normal value after the adjustments for India was calculated:

Retail price in India	Rs 15.90/kg
Less adjustments:	
Central Sales Tax (10%)	Rs 1.45/kg
Gross margin (15%)	Rs 1.89/kg
Excise duties (9%)	Rs 1.04/kg
Freight (5%)	Rs 0.55/kg
Packing material (8%)	Rs 0.81/kg
<b>Ex-factory price in India</b>	<b>Rs 10.17/kg</b>

Since no response to the Commission's importers and exporters questionnaire were received by the Commission, the Commission used this normal value for purposes of its dumping margin calculation, in accordance with ADR 1.

#### 4.6.2 Export prices

Export price is defined in section 32(2)(a) of the ITA Act as the price actually paid or payable for goods sold for export, net of all taxes, discounts and rebates actually granted and directly related to the sale under consideration.

To enable a proper comparison with the normal value, the export price should be at the ex-store level and at the same level of trade.

The export price was determined based on Deloitte's import/export ("IMEX") monitor system which is based on the SARS data, as provided for by the Applicant. The average f.o.b. export price of wheat flour originating in or imported from India was Rs 8.94/kg. This equates to South African Rands R1.33/kg, using the conversion rate R1 = Rs 6.7228, which was the applicable rate for the period January to March 2004 obtained from the internet website [www.oanda.com](http://www.oanda.com).

Since no responses to the Commission's importers and exporters questionnaires were received by the Commission, the Commission used this information to determine the export price in accordance with ADR 1

#### 4.6.3 Margin of dumping

The following table shows the margin of dumping calculated using the best information available to the Commission:

**Table 4.6.3**

India	Rs/kg
Normal value	10.17
Export price	8.94
Margin of dumping	1.22
Margin of dumping as a % of the export price	13.76%

#### 4.7 CONCLUSION - DUMPING

The Commission found that the subject product originating in India was being dumped into the SACU market with the following margin:

India	Dumping margin expressed as a percentage of the f.o.b. export price
All exporters from India	13.76%

## 5. THREAT OF MATERIAL INJURY

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Article 3.7 of the Anti-Dumping Agreement provides the following:

“A determination of threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of threat of material injury, the authorities should consider, inter alia, such factors as:

- (i) a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;
- (ii) sufficient freely disposable, or imminent substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to the importing Member's market, taking into account the availability of other export markets to absorb any additional exports;
- (iii) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and
- (iv) inventories of the product being investigated.”

### 5.1 Significant increase of alleged dumped imports

The Applicant stated that India has made a public statement on 23 June 2003 at the International Grains Council that they will become an exporting country with regard to wheat flour and will aggressively pursue the global market. It stated that India indeed increased its exports of wheat flour to the SACU from 0,666 tons to 2 274 tons from 2002 to 2004, and that there is a clear indication that the volume of imports will continue at an exponential rate if the dumping issue is not addressed. The Applicant stated that this is certain to cause material injury for the local industry.

#### ***Comments by the Applicant***

*The Applicant stated that it has shown that the dumped imports from India*

*reached its peak in 2003/2004. It stated that the statistics still show a significant increase in dumped imports since the base year, from 666 kg in 2001/2002 to 1 078 000 kg for the latest extrapolated figures for 2004/2005.*

The Commission found that for the period May to October 2004, subsequent to the period of investigation, there was no evidence of an increase in imports from India and the market share held by the Indian imports was found to be declining.

## **5.2 Freely disposable capacity of the exporters**

The Applicant stated that since 1997, the Indian government has liberalised the country's flour and rice milling sectors by repealing licensing requirements relating to the establishment of new milling operations. It stated that together with this, the Indian government has also relaxed restrictions on foreign investment for modernisation, and that both these factors will enable the milling Industry in India to expand and increase their capacities by establishing new mills and increasing the production capacity through the use of more modern milling technology.

The Applicant stated that another factor that has encouraged increased capacity is the fact that the exports of wheat flour are subsidised by the Indian government in order to encourage increased exportation and to allow the product to be sold on the Indian market at fixed prices.

### ***Comments by the Applicant***

*The Applicant stated that no information to the contrary has been received and that the Commission has not concluded that such capacity does not exist.*

*The Applicant stated that freely available capacity still exists in India and that it believes that this is still indicative of threat of material injury.*

The Commission found that the fact that capacity exists is not enough evidence to indicate that the threat of material injury exists.

### **5.3 Prices of imports which will have a significant depressing or suppressing effect on domestic prices**

The Applicant stated that the cost of wheat flour production is ever-increasing. It stated that due to the fact that wheat flour is a low margin product, producers have to increase the price of wheat flour as production prices increase, to maintain the profit margins. The Applicant stated further that the wheat flour imported from India is imported at far lower prices compared to selling prices on the local market, and that in order to be competitive, the local producers have to sell their products at prices which are lower than the desired prices and this is eroding their profit margins. It stated further that the SACU industry's prices are thus suppressed as a result of the low prices of the Indian products.

The Applicant stated that there exists a further threat in that if this trend continues, the production of wheat flour will no longer be profitable and the local wheat flour industry, which is already suffering injury, will be permanently harmed.

#### ***Comments by the Applicant***

*The Applicant stated that the import price from India is still far below the average price from other countries. It stated that it still believe that the dumped imports from India are still entering the SACU market at prices that would significantly depress and suppress the SACU prices and that this remains indicative of a threat of material injury.*

The Applicant alleges that the cost of wheat flour production is ever increasing. However, the Commission found that subsequent to the period of investigation, the price of wheat has decreased by more than 27 per cent, which does not support the allegation of ever increasing cost of production.

### **5.4 Inventories of subject product**

The Applicant stated that the Indian government has been stock-piling

surpluses (up to 9 months of stock) of wheat production in order to ensure that there are sufficient stocks in the case of a famine. It stated that the costs of maintaining these ever-increasing wheat stocks are now becoming burdensome. It stated further that the wheat production has increasingly improved and the likelihood of a drastic famine is decreasing due to the modernising of farming methods in India during the past few decades. The Applicant stated further that it has been established that the Indian government has large stocks of wheat and this poses a threat to the SACU market as the Indian government could decide at any time to make available this surplus of wheat stock for the export market to reduce the expenditure incurred in storing this inventory.

## **5.5 State of the economy of India**

With regard to the state of economy in India, the Applicant stated that a large majority of the population live in rural areas and are dependent on agriculture for their livelihood. It stated that the agricultural sector is therefore an integral part of the Indian economy, and that small-scale farming constitutes the large majority of this sector. The Applicant stated that in the 1970s and 1980s the Indian government made significant investment in order to boost agricultural yields with the result that in the 1990s India enjoyed net exporter status for grains in most years.

The Applicant stated that India's wheat production volumes have increased substantially in the last few years, and that these substantial increases in production have also been used as buffer stocks for possible periods of famine and bad harvest. However the government has now reached a situation where the cost of maintaining these surpluses has become burdensome.

The Applicant stated that this situation has also been a result of the fact that the government has subsidised farmers producing wheat, which is an incentive to produce more wheat. It stated that as the demand for local consumption decreases, wheat surpluses increase and the logical action by government would be to export surpluses so as to reduce the costs of



maintaining the surpluses.

The Commission found that it was not substantiated why the demand for local consumption would decrease.

## **5.6 SUMMARY ON THREAT OF MATERIAL INJURY**

### ***Comments by the Applicant***

*In response to the Commission's preliminary determination, the Applicant listed all the threat of material injury indicators and stated that they are indicative of a threat of material injury.*

*The Applicant referred to the wording of Article 3.1(b) as quoted in paragraph 5.3.3 of the Commission's preliminary Report No. 101 with regard to the injury indicators which states that "... , nor can one or several of these factors necessarily give guidance."*

*The Applicant stated that in the light of this comment, it believed that if the majority of the injury indicators are indicative of injury, it should be a good indication to the Commission that the industry concerned has been suffering material injury.*

The Commission initiated the investigation on the basis of a threat of material injury and the Applicant had the opportunity to comment thereon prior to the Commission's preliminary determination. As the Commission initiated the investigation on the basis of a threat of material injury, it could not consider material injury for purposes of its preliminary or its final determination.

The Commission found that the alleged threat of material injury to the SACU industry did not materialise as there was no increase in imports from India subsequent to the period of investigation and the market share taken by the dumped imports was negligible.

## **6. CAUSAL LINK**

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### **6.1 GENERAL**

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

Article 3.5 of the Anti-Dumping Agreement provides the following:

"It must be demonstrated that the dumped imports are, through the effects of dumping, causing injury within the meaning of this Agreement. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities."

As the Commission did not find evidence of a threat of material injury, it did not consider causal link.

## **7. SUMMARY OF FINDINGS**

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### **7.1 Dumping**

The Commission found that the subject product originating in or imported from India was dumped into the SACU market at the following margin:

	<b>Margin of dumping expressed as a percentage of the f.o.b export price</b>
All exporters from India	13.76%

### **7.2 Threat of Material injury**

The Commission found that the alleged threat of material injury to the SACU industry did not materialise as there was no increase in imports from India subsequent to the period of investigation and the market share taken by the dumped imports was negligibly small.

### **7.3 Causal link**

As the Commission did not find evidence of a threat of material injury, it did not consider causal link.

## **8. RECOMMENDATION**

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The Commission made a final determination that:

1. The subject product originating in or imported from India was dumped into the SACU market;
2. The alleged threat of material injury to the SACU industry did not materialise.

The Commission, therefore, decided to recommend to the Minister of Trade and Industry that the investigation into the alleged dumping of wheat flour originating in or imported from India be terminated.