



International Trade Administration Commission of South Africa

REPORT NO. 44

INVESTIGATION INTO THE ALLEGED DUMPING OF ARTICLES
OF PLASTER OR OF COMPOSITIONS BASED ON PLASTER,
FACED OR REINFORCED WITH PAPER OR PAPERBOARD
ONLY, COMMONLY REFERRED TO AS "GYPSUM
PLASTERBOARD", ORIGINATING IN OR IMPORTED FROM
THAILAND: FINAL DETERMINATION

The International Trade Administration Commission of South Africa herewith presents
its **Report No. 44: INVESTIGATION INTO THE ALLEGED DUMPING OF ARTICLES
OF PLASTER OR OF COMPOSITIONS BASED ON PLASTER, FACED OR
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THAILAND: FINAL DETERMINATION**



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COMMISSION OF SOUTH AFRICA

PRETORIA

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INTERNATIONAL TRADE ADMINISTRATION COMMISSION

INVESTIGATION INTO THE ALLEGED DUMPING OF ARTICLES OF PLASTER OR OF COMPOSITIONS BASED ON PLASTER, FACED OR REINFORCED WITH PAPER OR PAPERBOARD ONLY, COMMONLY REFERRED TO AS "GYPSUM PLASTERBOARD", ORIGINATING IN OR IMPORTED FROM THAILAND: FINAL DETERMINATION

SYNOPSIS

General

The International Trade Administration Commission of South Africa (the Commission) was established on 1 June 2003 in terms of the International Trade Administration Act 2002 (Act 71 of 2002) (the ITA Act), which replaced the Board on Tariffs and Trade Act 1986 (Act 107 of 1986) (the BTT Act). As regards anti-dumping matters the Commission superseded the Board on Tariffs and Trade (the Board) in all respects. For sake of simplicity all references in this report are to the Commission. All references in this submission referring to the Commission, and which relate to the period prior to 1 June 2003, should be understood to be a reference to the Board, and all references to the ITA Act, which relates to the period prior to 1 June 2003, should be understood to be a reference to the BTT Act.

On 23 October 2002, the Board on Tariffs and Trade (the Board), which was replaced by the International Trade Administration Commission of South Africa, formally initiated an investigation into the alleged dumping of gypsum plasterboard, originating in or imported from Thailand. Notice of the initiation of the investigation was published in Notice No. 2290 of *Government Gazette* No. 23975 dated 01 November 2002. The petition was lodged on behalf of the Southern African Customs Union (SACU) industry by BPB Gypsum, which claimed that the dumped imports were causing it material injury

The investigation was initiated after the Board considered that there was sufficient evidence to show that the subject product was being imported at dumped prices, causing material injury to the SACU industry.

On initiation of the investigation, known producers and exporters of the subject product in Thailand were sent foreign manufacturers/exporters questionnaires to complete. Importers of the subject product were also sent questionnaires to complete.

The Commission made a preliminary determination that the subject products originating in or imported from Thailand were being dumped on the SACU market causing material injury to the SACU industry. The Commission, therefore, requested the Commissioner for South African Revenue Service (SARS) to impose provisional measures on imports of the subject product originating in or imported from Thailand, to prevent further injury to the SACU industry during the finalisation of the investigation. The provisional payments were imposed pursuant to Notice No. R. 1207 which was published in *Government Gazette* No.25363 on 22 August 2003. The Commission's detailed reasons for its decision were set out in Commission Report No.16 (preliminary report).

After considering all parties' comments and representations in respect of the preliminary report, the Commission made a final determination, that the subject product was being dumped on the SACU market, causing material injury to the SACU industry as a result.

The Commission therefore decided to recommend to the Minister of Trade and Industry that the following definitive anti-dumping duties be imposed:

Subheading	Description of goods	Anti-dumping duties	Imported from or originating in
6809.11	Boards, sheets, panels, tiles and similar articles of plaster or of compositions based on plaster, not ornamented, faced or reinforced with paper or paperboard only, manufactured by The Siam Gypsum Industry Co Ltd (SGI)	73.9%	Thailand
6809.11	Boards, sheets, panels, tiles and similar articles of plaster or of compositions based on plaster, not ornamented, faced or reinforced with paper or paperboard only, excluding that manufactured by The Siam Gypsum Industry Co Ltd(SGI)	125.0%	Thailand

1. PETITION AND PROCEDURE

1.1 LEGAL FRAMEWORK

The International Trade Administration Commission of South Africa (the Commission) was established on 1 June 2003 in terms of the International Trade Administration Act 2002 (Act 71 of 2002) (the ITA Act), which replaced the Board on Tariffs and Trade Act 1986 (Act 107 of 1986) (the BTT Act). As regards anti-dumping matters the Commission superseded the Board on Tariffs and Trade (the Board) in all respects. For sake of simplicity all references in this report are to the Commission. All references in this submission referring to the Commission, and which relate to the period prior to 1 June 2003, should be understood to be a reference to the Board, and all references to the ITA Act, which relates to the period prior to 1 June 2003, should be understood to be a reference to the BTT Act.

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

1.2 PETITIONER

The petition was lodged by BPB Gypsum (the Petitioner), being the producer of the subject product in the SACU.

1.3 DATE OF ACCEPTANCE OF PETITION

The petition was accepted by the Board as being properly documented in accordance with Article 5.2 of the Anti-Dumping Agreement on 25 September 2002. The trade representative of the country concerned was advised accordingly.

1.4 ALLEGATIONS BY THE PETITIONER

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

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

- price undercutting
- decline in sales
- decline in output
- decline in market share
- decline in productivity
- decrease in profits
- decline in utilisation of production capacity
- decline in return on investments
- inability to show growth

1.5 INVESTIGATION PROCESS

The Board formally initiated an investigation into the alleged dumping pursuant to Notice No. 2290 which was published in *Government Gazette* No. 23975 on 01 November 2002.

Prior to the initiation of the investigation, the trade representative of the country concerned was notified of the Board'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 summary of the petition.

On 25 November 2002 the exporter requested clarity on the thickness of the product under investigation. On 28 November 2002 the exporter was

informed that the product under investigation includes all thicknesses as published in the Government Gazette. Extension to respond to the exporter's questionnaire was allowed to 24 December 2002.

In reaction to an enquiry regarding the scope of the investigation received on 13 December 2002 from Webber Wentzel Bowens (WWB) acting for the importers and exporter, a letter was sent informing them that the product under investigation is as published and that they should submit their response by 10 January 2003. They were further informed that the petitioner will be required to furnish injury information in respect of all its products classifiable under tariff subheading 6809.11 and that a copy thereof will be made available to them after which a reasonable time will be allowed for comments. Opportunity for oral representations was granted to WWB on 10 January 2003 and 21 May 2003.

The information submitted by the importer of the subject product was verified on 06 February 2003 and the information received from the exporter of the subject product was verified on 8, 9 and 10 April 2003.

The Commission made a preliminary determination that the subject product originating in Thailand was being imported at dumped prices, causing material injury to the SACU industry as a result. The Commission, therefore, decided to request the Commissioner for SARS to impose provisional measures, which were published in Notice No. R.1207 of *Government Gazette* No. 25363 on 22 August 2003.

Interested parties were given an opportunity to respond to the Commission's preliminary report and were given opportunity to comment on each others' non-confidential responses.

Comments by WWB

In response to the preliminary determination, WWB confirmed that it intended making an application to the High Court with regard to the initiation of the investigation and the determination of the scope thereof.

In Notice No.2290 of 2002 published in Government Gazette No. 23875 dated 1 November 2002, the notice of initiation describes the product allegedly being dumped as "gypsum plasterboard, classifiable under tariff subheading 6809.11 originating in or imported from Thailand".

The Board, in accordance with WTO Panel and Appellate Body findings, determined the like product to be all thicknesses of gypsum plasterboard. Prior to publishing its notice of initiation dated 01 November 2002, the Board considered the issue of "like product" at its meeting of 23 October 2002. As a result of the response to the notice of initiation from the importers/ exporter, the Board, on 18 December 2002, reconsidered the issue of "like product". The Board confirmed its decision that the like product is gypsum plasterboard classifiable under tariff subheading 6809.11.

At its meeting of 02 July 2003, the Commission confirmed the scope of the investigation and that the like product is gypsum plasterboard of all thicknesses.

At its meeting of 03 December 2003, the Commission made a final determination that the subject product originating in Thailand was being imported at dumped prices, causing material injury to the SACU industry as a result. The Commission, therefore, decided to recommend to the Minister of Trade and Industry to impose definitive anti-dumping duties.

1.6 INVESTIGATION PERIOD

The investigation period for dumping was from 01 September 2001 to 31 August 2002. The injury investigation involved evaluation of data for the period 01 April 2000 to 31 August 2002.

1.7 PARTIES CONCERNED

1.7.1 SACU industry

The SACU industry consists of only one producer of the subject product, namely BPB Gypsum (Pty) Ltd. (the Petitioner).

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

1.7.2 Exporters/Foreign Manufacturers

The following exporters/foreign manufacturers were identified as interested parties:

- (a) The Siam Gypsum Industry Co.,Ltd (SGI) (Manufacturer)
- (b) SCT Company, Ltd (SCT) (Exporter of the above manufacturer)
- (c) Thai Gypsum Co.

1.7.3 Importers

The following SACU importers were identified as interested parties:

- (a) MacSteel Interior Systems (Pty) Ltd. (MIS)
- (b) Pelican MIS(Pty) Ltd. (Pelican)

As Pelican is a related company to MIS, information concerning Pelican was also provided and verified at MIS.

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 IMPORTED PRODUCTS

2.1.1 Description

The subject product is described as:

Articles of plaster or of compositions based on plaster, faced or reinforced with paper or paperboard only, commonly referred to as "gypsum plasterboard".

2.1.2 Tariff classification

The subject product is currently classifiable as follows:

Heading	Sub Heading	Article Description	Statistical Unit	Rates of duty		
				General	EU	SADC
68.09		Articles of plaster or compositions based on plaster:				
	6809.1	--Boards, sheets, panels, tiles and similar articles, not ornamented:				
	6809.11	= Faced or reinforced with paper or paperboard only	kg	15%	15%	Free
	6809.19	= Other	kg	15%	15%	Free
	6809.90	= Other articles	kg	15%	15%	Free

2.1.3 Other applicable duties and rebates

No rebate provisions exist in terms whereof the subject product can be imported with rebate of the duty.

2.1.4 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 obtained from the South African Revenue Services (SARS) indicated that the volume of dumped imports from Thailand account for 98 per cent of the total imports of the like product during the period of investigation for dumping.

2.1.5 Country of origin/export

The subject product is exported from Thailand.

2.1.6 Application/end use

The product is used for internal walling and ceiling applications, viz. drywall and partitioning, used in office, shopping malls and housing walls and ceilings.

2.1.7 Production process

The production process being used is a continuous process whereby gypsum and paper are formed into plasterboard.

2.2 SACU PRODUCT

2.2.1 Description

The SACU product is described as:

Articles of plaster or of compositions based on plaster, faced or reinforced with paper or paperboard only, commonly referred to as "gypsum plasterboard".

2.2.2 Application/end use

The SACU product is also used for internal walling and ceiling applications, viz. drywall and partitioning, used in office, shopping malls and housing walls and ceilings.

2.2.3 Tariff classification

The SACU product is currently classifiable under tariff subheading 6809.11.

2.2.4 Production process

The production process being used is a continuous process whereby gypsum and paper are formed into plasterboard.

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 Thailand.

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 provide 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. physical appearance and characteristics;
3. tariff classification;
4. method of manufacturing; and
5. customer demand and end use

1. Raw material

Both the SACU and the imported product are manufactured from gypsum and paper.

The Commission found that the raw materials for the imported and the SACU products are comparable.

2. Physical appearance and characteristics

Both the SACU and the imported product can be described as gypsum board and is fire resistant.

The Commission found that the imported and the SACU products have similar physical appearance and characteristics.

3. Tariff classification

The Commission found that both the imported and the SACU product are currently classifiable under tariff subheading 6809.11.

4. Method of manufacturing

The method of manufacturing of both the imported and the SACU product is a continuous process whereby gypsum and paper is formed into plasterboard.

The Commission found that the imported and the SACU products are manufactured using the same method.

5. Customer demand and end use

Both the imported and the SACU product are used for internal walling and ceiling applications, viz. drywall and partitioning, used in offices, shopping malls and housing walls and ceilings.

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

Comments by Webber Wentzel Bowens (WWB)

WWB, acting on behalf of the importers and exporter, stated that the Petitioner limited the product under investigation to 12 mm/12.5 mm thickness in its petition. It quoted paragraph C2.2 from the petition which states that "Local SABS product is 12.5 mm thick, imported product is 12 mm thick. As is evidenced from the above information the imported product is similar to that of the local producer and can be considered as "like".

WWB stated that the following products were imported during the POI:

- standard board of 12 mm thickness (ceiling and partitioning)*
- standard board of 9 mm thickness (ceiling and partitioning)*
- standard board of 6.4 mm thickness*
- standard board of 12 mm thickness (for manufacturing of ceiling tiles)*
- standard board of 9 mm thickness (for manufacture of ceiling tiles)*

WWB stated further that as the imported product is limited to products of 12mm thickness, the following products should be excluded from the investigation:

- standard ceiling and partitioning board of 9 mm and a width of 1200 mm.*
- standard ceiling board of 6.4 mm thickness and a width of 1200 mm.*
- standard board used for the manufacture of ceiling tiles, with a thickness of 9 mm and a width of 1195 mm.*

It further stated that plasterboard products of different thicknesses cannot be regarded as "like" products since they have the following material differences:

- thermal insulation*
- resistance*
- sound/ insulation properties*
- extent to which they sag*
- fire ratings.*

WWB stated that it is clear from paragraph C2.2 and elsewhere in the petition that the product under consideration is described and identified as "gypsum plasterboard of 12 mm thickness", and that the Board is only entitled to initiate an investigation in respect of that product. It was further stated that there is no basis for distinguishing the product for the purposes of dumping and for the purposes of injury, and that the alleged dumped product for the purposes of dumping and injury is the same, viz: gypsum plasterboard of 12 mm thickness.

WWB stated that the injury information provided by the Petitioner for purposes of initiation was only for gypsum plasterboard of 12.5 mm thickness. Therefore, the Board could only investigate this thickness, as this was the *prima facie* case presented by the Petitioner. WWB argued further that the request by the Board to the Petitioner to supplement the "defective" original petition, constitutes an admission of it that the information with which it was provided, is insufficient to justify the initiation by it of the investigation of all products classifiable under tariff subheading 6809.11.

Comments by the Petitioner

In response to the comments by WWB, the Petitioner stated that in its petition and as published by the Board, the product under investigation is gypsum plasterboard originating in or imported from Thailand, and that it manufactures board of 6.4 mm, 9.5 mm, 12.5 mm and 15 mm thicknesses.

The Petitioner stated further that the investigation would therefore have to focus on all products which satisfies the definition of the product under investigation and also within the ranges manufactured by the Petitioner. The Petitioner argued that to limit the scope of investigation to the 12 mm product alone would allow the importer to still import the other product ranges at alleged dumped prices thereby causing the Petitioner to still suffer material injury on products which should fall within the ambit of the investigation.

The Petitioner stated that any reference made by the Petitioner to the 12.5 mm product was purely for the purpose of comparing its product with the alleged dumped product, and that the intent was always for the scope of the investigation to be plasterboard in general and not to limit the investigation to

a single thickness.

The Petitioner stated that in terms of the Board on Tariffs and Trade Act, as well as the International Trade Administration Act, 2002 (Act No 71 of 2002), the then Board and the newly established Commission may take the initiative when considering matters. Therefore it was to be expected that when the Board's initial probe showed that most thicknesses of plasterboard were being imported from Thailand, it would expand the description of like product to include all plasterboard products.

The Petitioner stated further that it is also for this reason that investigations are normally initiated on a more generic description of the product concerned, thus allowing the authorities the latitude to expand the scope of the investigation if and when desired.

The Petitioner also stated that it would not have been possible to deal with the other dumped products such as 6.4 mm if the investigation was only initiated in respect of the 12 mm product.

The Petitioner stated further that this was not the first time that the South African authorities have expanded the scope of the investigation of their own accord.

The Board considered all relevant issues in deciding to initiate the investigation on "Gypsum plasterboard". It noted the reference by WWB to the description under paragraph C2.2 of the petition and the fact that the investigation was published on "Plasterboard". The Commission also noted the description of the product as "gypsum plasterboard" under other sections of the same petition.

During the course of the investigation, the Board reconsidered the issue of scope of the investigation as a result of the above communication and concluded that the information at its disposal warranted the initiation of the investigation as published.

The Commission, therefore, decided to confirm its decision that gypsum plasterboard of all thicknesses be included in the scope of the investigation.

After considering all the above factors, the Commission was satisfied that the SACU product and the imported product are "like products", for purposes of comparison in this investigation, in terms of Article 2.6 of the Anti-Dumping Agreement.

3. SACU INDUSTRY

3.1 INDUSTRY STANDING

Article 5.4 of the Anti-Dumping Agreement provide 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."

The Petitioner, BPB Gypsum, is the sole manufacturer of gypsum plasterboard in the SACU. Based on this, it is evident that the Petitioner's production represents 100% of the total production of the subject product in the SACU.

The Commission, therefore, decided that the petition was made "by or on behalf of the domestic industry" under the above provisions of the Anti-Dumping Agreement.

4. DUMPING

4.1 DUMPING

Section 1(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;"

Sales invoices from the exporter to the importer were verified.

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 verified 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 THAILAND

4.6.1 Normal Value

Type of economy

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

4.6.1.1 The Siam Gypsum Industry Co.,Ltd (SGI)

SGI is part of the Siam Cement Group of companies, and manufactures plasterboard for both the Thai domestic market and for export. Lafarge Boral

Gypsum in Asia owns 71 per cent of the issued share capital in SGI, while The Siam Cement Public Company Limited owns the remaining 29 per cent of the issued share capital.

Normal value definition

Like products to those exported to the SACU were sold in the domestic market in Thailand in the ordinary course of trade during the period of investigation (POI). In accordance with section 32(2) of the ITA Act, invoiced sales values to distributors were used as the basis for determining the normal values.

Most of SGI's domestic sales (84 per cent) were made through the subsidiary company Cementhai Sales and Marketing Co Ltd (CSM), while 16 per cent of domestic sales were made directly by SGI. ITAC regarded sales by CSM as sales by SGI.

In determination of the normal values of the subject products the following methods were considered by ITAC:

- 1 Normal value based on the weighted average selling prices of SGI to all its customers during the POI.
- 2 Normal value based on the weighted average selling prices of SGI to its biggest customer only.

Comments by the exporter

WWB stated that, in respect of the 12 month period from 01 September 2001 to 31 August 2002 the total domestic invoices represent a large number. As a result detailed domestic sales information provided to the Board was with regard to its biggest customer only. The volume sold to it is substantially higher than the volume sold to the second highest customer. SGI, therefore, argued that its largest customer is the most comparable customer to the importer in SACU.

In its response to the preliminary determination, WWB stated that the failure of the Commission contrary to the WTO Anti-Dumping Agreement to determine the normal value of the 9mm and 12mm boards on the basis of the exporter's sales to its largest customer alone, being the largest domestic customer of the exporter and the most comparable customer of the exporter to the importer in terms of volume of product purchased. The Commission instead determined normal value on the basis of the weighted average selling price of the 9mm and 12mm boards to all customers of the exporter (including those who buy significantly less volume than the importer) which distorted the normal value calculation.

WWB argued that the norm should be "price comparability" and not "representivity".

It is argued that the exporter's largest customer is the customer which is more closely comparable to the importer as regards volume of product purchased and price charged so as to enable a fair comparison to be made between the export price and normal value. The volume of product sold to the second biggest customer of the exporter was significantly less (approximately half the quantity). Sales to the largest customer represents 6% of total domestic sales.

The Commission did not consider the selling price to one domestic customer representing 6% of total domestic sales as representative of the normal value for the purpose of comparability with the export price.

The Commission, therefore, decided for purposes of its final determination to determine the normal values for the 9 mm and 12 mm plasterboard thicknesses based on the weighted average selling prices of SGI to all its customers during the POI.

Adjustments to normal values

The following adjustments were claimed by the exporter and allowed by the Commission as it was found that these affected price comparability at the time of setting the prices:

Volume incentive

The exporter provided a volume rebate to its domestic customers as an incentive for customers to purchase its products in high volume.

Comments by WWB

In its response to the preliminary report, WWB stated that even if the Commission does not accept the argument that its largest customer is the most comparable means of establishing normal value, it is contended that the Commission erred in the methodology used in arriving at the volume of

the adjustment.

WWB stated further that the Commission arrived at this number by dividing the total amount of the rebates granted to the top ten customers only, by the total domestic sales of 9mm and 12mm to all customers, (and not the top ten only). WWB stated that the Commission furnishes no rationale for this calculation. WWB stated further to its response to the preliminary report that the Commission, in calculating the volume rebate, only applied the rebate calculated for the 9mm thickness, but fails to take into account the rebate granted in respect of 12mm thickness. It stated that the rebate granted should be applied to the top ten customers only.

As the Commission based its calculation of normal value on the weighted average selling price of sales to all customers and not just on sales to the top ten customers, it also applied the rebate claimed by the exporter to all customers.

In the preliminary determination the same rate of rebate was applied for both 9mm and 12mm product thicknesses. For purpose of the final determination the rebate in respect of each thickness was calculated and applied to its respective thickness.

Duty drawback

A duty drawback is claimable on duties paid on materials used in the production of products which are exported. As this reduces the export price an adjustment is made to reduce the normal value accordingly.

Cash discount

It was found that most of SGI's domestic customers qualified for a cash discount on purchases.

The following adjustments were claimed by the exporter but not allowed by the Commission:

Sales promotion expenses

The Commission did not allow this adjustment as it was not convinced that promotion expenses actually affected the price comparability at the time of setting the prices.

Comments by WWB

WWB stated that sales promotion expense should be allowed as an adjustment and applied to the relevant customers and not to all sales.

Volume rebate

As the Commission based its normal value calculations on all domestic sales and not just on sales to the largest domestic customer, adjustments for differences in volume of sales between the largest domestic customer and exports to South Africa could therefore not be allowed. The “further adjustments based on volume” was not allowed as it was considered that it did not affect the price comparability at the time of setting the prices.

Comments by WWB

WWB stated that the “further volume rebate” referred to in the preliminary determination should read “further adjustments based on volume”. It stated further that the fact that it could not be verified is not a good reason since investigators should have asked. WWB stated further that the adjustment requested is based thereon that there is a difference between the volume of sales to the exporter’s largest customer and that exported to South Africa.

In its response to the preliminary determination, WWB stated that by refusing to allow the adjustment for differences in volume (as in its letter dated 20 May 2003), the Commission acted contrary to the Anti-Dumping Agreement.

The Commission considered these comments but decided to confirm its preliminary determination not to allow the adjustment requested.

Ex-factory Domestic Prices

The ex-factory domestic prices were calculated taking the above adjustments allowed by the Commission, into account.

4.6.2 Export prices

4.6.2.1 The Siam Gypsum Industry Co. (Pty) Ltd. (SGI)

Definition of Export price

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-factory level and at the same level of trade.

General

Export sales to the SACU were made through the exporter's subsidiary company, SCT Co Limited (SCT).

The exports to the SACU area were made to Pelican and MIS. Neither of these parties were related companies to the exporter during the POI. Export sales invoices were used as basis to calculate weighted average export prices.

Adjustments to export prices

The Commission made the following adjustments to the export prices for purposes of the calculation of the ex-factory export prices:

Inland transport

The exporter paid the transportation charges for delivery of products from the factory to the port. The actual amount paid was deducted from the export price.

Wharf Freight handling

The exporter paid for wharf freight handling. The actual amount paid was deducted from the export price.

Cargo wharf freight

The exporter paid for cargo wharf freight. The actual amount paid was deducted from the export price.

Gate charge

The exporter paid for gate charge. The actual amount paid was deducted from the export price.

Custom's formality

The exporter paid the Custom Authority of Thailand for handling the export documentation (Custom's Formality). The actual amount paid was deducted from the export price.

Bill of lading

The exporter paid the forwarder charges for the bill of lading. The actual amount paid was deducted from the export price.

Terms of trade

The exporter provided credit terms to the importer from the date of shipment. The cost of providing credit terms was calculated and deducted from the export price.

Packaging

The exporter incurred packaging costs on the exported products, which were not incurred on the product sold on its domestic market. The actual amount incurred was deducted from the export price.

Ex-factory Export Price

Taking the above adjustments into account, the ex-factory export prices and a weighted average export price were calculated for the subject product.

Comments by WWB

WWB stated that the adjustment in respect of terms of trade should be less than that applied by the Commission in the preliminary determination.

In the calculation of terms of trade for purposes of the preliminary determination, an interest rate was applied based on the overdraft rate of the exporter. Proof was supplied that the cost of short term borrowings financed through an independent bank was at a lower rate. The adjustment for financing on this basis reduced. The Commission accepted this change for the purpose of its final determination.

4.6.3 Margin of dumping

4.6.3.1 The Siam Gypsum Industry Co.,(Pty) Ltd. (SGI)

The dumping margin is the difference between the normal value and the export price after allowance has been made for any differences affecting price comparability.

The dumping margin was calculated by subtracting the ex-factory export price from the ex-factory normal value for each of the respective products, and the difference was expressed as a percentage of the ex-factory export price. The margin of dumping in respect of 9 mm thickness was found to be 127.4 percent and in respect of 12 mm thickness 98.2 percent. The dumping margin percentages were then weighted with the export volume of each thickness to calculate the weighted average dumping margin of 110.5 percent.

4.6.3.2 Residual dumping margin

The Commission decided, since there are other manufacturers of the subject product in Thailand, to calculate a residual dumping margin by subtracting the weighted average ex-factory export price after adjustments from the weighted average normal value before adjustments. The difference was expressed as a percentage of the ex-factory export price. The weighted average residual dumping margin for 9mm and 12mm products were calculated to be 149.6 per cent and 121.0 per cent respectively, with a weighted average dumping margin of 133.0 per cent

Comments by WWB

On initiation of the investigation, WWB stated that the Petitioner has not provided any evidence of dumping, except for one invoice of which it (WWB) did not have sight. It stated further that a single invoice dated April 2002 cannot reflect the evolution of prices over the 29 months of the period of investigation in respect of injury or the 12 months of the period in respect of the alleged dumping. WWB also stated that the use by BPB of one single invoice is more surprising since BPB (plc) which is the holding company of BPB, also owns a majority shareholding in Thai Gypsum (the company of which the invoice was used by the petitioner as evidence of domestic prices for purposes of initiation of the investigation) and as such, BPB would have had access to more invoices evidencing dumping, had there been any.

WWB further stated that the dumping margin and the information relating to dumping furnished by the exporter have been verified by the Board, and that notwithstanding certain minor adjustments referred to in the verification

report from the Board, the margin of dumping should not be significantly affected and will remain de minimis if not zero.

Comments by the Petitioner

In response to the comments by WWB, the Petitioner stated that its sister company competes directly with the exporting manufacturer in Thailand, and that it (the Petitioner) had provided ample proof of discounts, including quantity discounts in that country. The Petitioner stated further that any claim for discounts exceeding 2.5 percent should not only be treated with circumspection, but should probably be disregarded completely. The Petitioner stated further that if the more than 50 percent dumping margin found in New Zealand is used as a yardstick, it would be most surprised if a similar dumping margin i.e. 50 percent, does not apply to exports to South Africa.

The Commission noted the comments made by WWB on the initiation of the investigation but was satisfied that sufficient information was obtained through the verification process at the exporter in Thailand, which was used to calculate the residual dumping margin.

4.7 CONCLUSION - DUMPING

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

	Dumping margin as percentage of the ex-factory export price
Manufactured by The Siam Gypsum Industry Co. Ltd (SGI)	110.50%
All other exporters	123.4%

5. MATERIAL INJURY

5.1 DOMESTIC INDUSTRY FOR THE PURPOSE OF DETERMINATION OF INJURY

Article 3 of the Anti-Dumping Agreement is entitled "Determination of injury". Footnote 9 of Article 3 of the Anti-Dumping Agreement to the word "injury" 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."

5.2 GENERAL

Article 3.1 of the Anti-Dumping Agreement provides as follows:

"A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both.

- (a) the volume of the dumped imports and the effects of the dumped imports on the prices in the domestic market for the like products, and
- (b) the consequent impact of these imports on domestic producers of such products".

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

"For purposes of this Agreement, the term "domestic industry" shall be interpreted as referring to the domestic industry 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,...".

The following injury analysis relates to BPB Gypsum, the Petitioner which constitutes 100% of the total domestic production of the subject product. This constitutes "a major proportion" of the total domestic production, in accordance with Article 4.1 of the Anti-Dumping Agreement. All information relates to BPB's fiscal years which end in March.

5.3 IMPORT VOLUMES AND EFFECT ON PRICES

5.3.1 Import volumes

With reference to Article 3.1(a) of the Anti-Dumping Agreement, Article 3.2 of the Anti-Dumping Agreement provides as follows:

"With regard to the volume of the dumped import, the investigating authorities shall consider whether there has been a significant increase in dumped [and/or subsidised] imports, either in absolute terms or relative to production or consumption in the importing Member."

In any dumping investigation, the Commission normally uses audited import statistic from SARS to determine the volume of the subject product entering the SACU from the countries under investigation and other countries.

The following table shows the volume of imports of the subject product from the country of export under investigation for the period April 2000 to August 2002 (based on audited stats from SARS):

Table 5.3.1

Year ending	2000	2001	2002	April to Aug 2002 (5 months)
Imports	Tonnes	Tonnes	Tonnes	Tonnes
Thailand (dumped)	0	1592	8173	13148
Imports from other countries	89	212	134	25
Total imports	89	1804	8307	13173
Dumped imports as % of total Imports	0	88	98	100

The information in the above table shows that the volume of dumped imports increased from zero in 2000 to 8173 tonnes in 2002 and increased further from April 2002 to August 2002 by 61 per cent. The information further indicates that the volume of imports from other countries have declined from 2001 to 2002 and even further in the period April to August 2002.

5.3.2 Effect on Domestic Prices

With reference to Article 3.1(a) of the Anti-Dumping Agreement, Article 3.2 of the Anti-Dumping Agreement further provides as follows:

"With regard to the effect of the dumped imports on the prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing Member, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance."

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 Commission decided that the most appropriate level at which to compare prices is the ex-factory of the SACU product and the landed cost of the imported product.

For purposes of the final determination, the Petitioner's selling prices as reflected in the financial records as at 31 August 2002, being the end of the period of investigation, was applied.

On comparing these prices, it was found that the price of the imported product was undercutting the Petitioner's selling price by 30.2 per cent. The Commission found this to be indicative of material injury.

Comments by WWB

In its response to the preliminary report, WWB stated that the Commission, by using the landed cost in determining price undercutting and price disadvantage by comparing the landed cost of the imported product instead of its in-store cost with the ex-factory price of the SACU, acted contrary to the Anti-Dumping Agreement. WWB stated further that landing charges should be based on weighted average of each actual transaction and not on a calculated average. WWB stated further that the exchange rate used should be based on the weighted average of each actual transaction and not on the rate in a particular month.

The Commission considered the comments on the point of comparison. It is the policy of the Commission to compare the landed cost of the imported product with the ex-factory price of the SACU product and the Commission is of the opinion that this policy is not contrary to the WTO Agreement. The Commission does the comparison at this level, as it considers that this is the price at which an importer exercises its choice whether to import or to buy the SACU product.

Regarding the notion that the in-store cost of the imported product should be compared with the ex-factory price of the SACU product, the Commission concluded that such comparison is inherently unfair as the first mentioned is inflated by the difference between the landed cost and the in-store cost, while the ex-factory price is not inflated by this cost.

For purposes of the preliminary determination the landed cost was calculated using an f.o.b. price in Thai Baht based on an exchange rate of R1=THB4.65.

Weighted average landing charges and exchange rates calculations based on actual transactions were provided by WWB on 13 October 2003 based on information of the importer. The f.o.b. price was in US dollars and was converted at the exchange rate for each transaction.

As a result of verifiable information supplied by WWB in response to the preliminary determination, the f.o.b. price, the duty, sea freight and clearing charges were adjusted for purposes of the final determination.

For purposes of the final determination the landing charges and exchange rate were adjusted accordingly.

Price depression

Price depression occurs when the domestic industry experiences a decrease in its selling prices over time. The table below shows the SACU industry's domestic selling prices:

Table 5.3.2(a)

Selling prices	2000	2001	2002
9 mm	100	109	127
12 mm	100	107	124

This table was indexed due to confidentiality using 2000 as the base year.

The table above indicates that no price depression occurred.

The Commission concluded that there was no price depression.

Price suppression

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

The following table shows the Petitioner's average costs of production and its average selling prices for the subject product:

Table 5.3.2(b)

Rand/m²	2000	2001	2002
Cost of production	100	108	116
Selling price (Ave 9 mm & 12 mm)	100	108	125
Cost as % of selling price		100	93

This table was indexed due to confidentiality using 2000 as the base year.

The table above indicates that the selling prices increased at least by the same margin as the cost and therefore, no price suppression occurred.

The information in the table above shows that the Petitioner was able to recover its increase in production cost in its selling prices. As a result, it did not experience price suppression since its 2000 financial year.

5.3.3 Consequent Impact of The Imports on The Industry

With reference to Article 3.1(b) of the Anti-Dumping Agreement, Article 3.4 of the Anti-Dumping Agreement provides the following:

"The examination of the impact of the dumped imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance."

5.3.3.1 Actual and potential decline in sales

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

Table 5.3.3.1(a)

Description Volume/ million m ²	2000	2001	2002	5 months Apr-Aug 2002
Petitioner's sales in SACU	100	103	102	41

This table was indexed due to confidentiality using 2000 as the base year.

The table above shows that the Petitioner's sales for plasterboard increased from 2000 to 2002 by 3 index points and decreased slightly from 2001 to 2002 by 1 index point.

The importer, was the single biggest customer to the Petitioner. The following table shows sales of 9.5 mm and 12.5 mm plasterboard products to the importer and to all customers.

Table 5.3.3.1(b)

<u>9.5mm</u>				
<u>Gypsum plasterboard</u>				
	To importer only		To all customers	
	Value	Volume	Value	Volume
April 01 - Aug 01	100	100	100	100
April 02 - Aug 02	18	16	123	103
<u>12.5mm Gypsum</u>				
<u>plasterboard</u>				
	To importer only		To all customers	
	Value	Volume	Value	Volume
April 01 - Aug 01	100	100	100	100
April 02 - Aug 02	28	24	91	75

This table was indexed due to confidentiality using 2001 as the base year.

The information in the table above indicates that large volumes of the Petitioner's sales were lost to the importer from 2001 to 2002.

Comments by WWB

WWB stated that plasterboard of 6.4 mm thickness was only sold by the importer subsequent to the period of investigation and consequently the Petitioner could not have suffered material injury as a result thereof. WWB stated further that the Petitioner has not suffered injury with respect of 15 mm Rhinoboard over the injury investigation period, but instead, it has enjoyed increases in sales (in respect of volume and value) to all customers of this product. WWB also stated that the indexed figures reflect increases of 353 percent and 461 percent respectively. It is further stated by WWB that MIS has not imported 15 mm plasterboard during the investigation period. WWB stated further that MIS's purchases of 12.5 mm plasterboard indicate a drop of 2.3 percent over the two financial years, while the Petitioner's sales dropped by 14.2 percent. WWB claimed that this indicates a shift in the market, which is not caused by dumping.

As the Commission regarded the product under investigation as gypsum plasterboard, it considered injury as it pertained to all thicknesses and did not consider injury pertaining to specific thicknesses. It also noted that the comparative figures quoted in respect of 15mm thickness was from a very low base, and as such registered an insignificant proportion of total sales during the P.O.I.

Comments by the Petitioner

The Petitioner stated that WWB's submissions regarding injury hold no water as the Commission is by now well aware of the importer's substitution practices. It further stated that this confirms the correctness of the then Board's decision to define the like product as plasterboard in line with practices by other jurisdictions.

Comments by WWB

In order to gain some perspective on the importation by MIS of 12 mm standard plasterboard, it is necessary to appreciate the extent to which BPB is dominant, can and does exert power in the plasterboard industry in South Africa including the power to control prices, exclude competition and behave to an appreciable extent independently of its competitors, customers or suppliers. The following statistics are indicative of the market power exerted by BPB: In 2001 BPB supplied almost all of the plasterboard within the Republic of South Africa and competition via the importation of plasterboard accounted for very small portion of supply in 2001, indicating the extent to which importation in 2001 was not material.

BPB's dominance in the plasterboard industry is partly attributable to its supply of gypsum since BPB owns the mines for all gypsum currently utilised for the production of plasterboard in South Africa. Whilst MIS does import 12 mm plasterboard, during the period of investigation, its imports have played an insignificant role in competing with local production. During the financial year ended 2002 (ie 1 April 2001 to 31 March 2002) the total volume of imported 9 mm and 12 mm plasterboard sold accounted for only a small portion of the total market for plasterboard in South Africa.

BPB not only controls the supply of gypsum but is dominant in the distribution of plasterboard in the Republic of South Africa.

MIS as a distributor of plasterboard and other plasterboard derived products (such as ceiling tiles) used in the construction and assembly of interior systems in South Africa, relied exclusively on the supply of 12.5 mm plasterboard and other plasterboard from BPB. Importation was considered for a number of reasons, the most important of which are detailed below:

BPB sold steel and plasterboard products package deals to its customers at more favourable prices than at which it sold the same products to MIS even though MIS was one of BPB's biggest customers. This conduct constitute

price discrimination by a dominant firm as provided for in section 9 of the Competition Act and, together with other practices exhibited by BPB, is to form the subject matter of a complaint to the Competition Commission in the near future.

BPB publicly informed market players at a meeting in Durban for the industry in September 1998 that they would within a space of three years be the only vinyl gypsum ceiling tile laminating company operating in the market.

The selling price of the 12.5 mm production board to MIS by the petitioner and used by MIS as a raw material to manufacture its own vinyl ceiling tiles was subsequently increased. In contrast, the price of the gypsum ceiling tiles sold by BPB and manufactured by them with the same raw material, did not increase by the same margin. This made BPB's product artificially and substantially more competitive.

As evidenced by BPB's April 2000 price list which has been furnished to the Board in MIS's injury memorandum, BPB subsidised the selling price of certain types of 12.5 mm gypsum vinyl tiles to its Bloemfontein and Welkom regional centres. The selling price in these regions as indicated is lower than ex-factory selling prices.

In 1999 BPB withdrew MIS' additional export discount but continued to propose this discount directly to MIS' previous export customers as part of its standard terms and conditions. In some instances, BPB offered a greater discount even to the standard terms and conditions quoted. Our client has been privy to a circular which BPB issued to its staff members with clear instructions to undercut or meet MIS' prices on previous import attempts.

In September 2001 BPB revised its price list with respect to square edge boards in respect of which an extra 15% premium was imposed. In addition, an increased lead time of 6 to 8 weeks for deliveries was implemented. This directly and adversely affected MIS' manufacturing of ceiling tiles and partitioning systems since 3 out of 4 of its partitioning systems utilise these square edge boards whereas only one out of the 2 partitioning systems

manufactured by BPB-Donn use square edge boards. In this way MIS' partitioning systems became prohibitively expensive and undesirable in the market.

MIS and its customers also suffered from the poor quality of BPB plasterboards; the rebate scheme issued by the only South African producer of plasterboard, being BPB-Donn-LBS on 30 April 2002 and with which the Board has been furnished in MIS' injury memorandum, offers unfair incentives to their customers and unlawfully discriminates against MIS.

The rebate scheme provided rebates applicable to gypsum products while the percentage of the rebates related to purchase levels based on combined purchase from BPB and Donn. In this way, the rebate was therefore based on the total volume of products (in gypsum or non gypsum products) bought from the factories of BPB and Donn. This scheme is discriminatory against MIS' whole range of products sold in South Africa and is designed to include South African customers to purchase the BPB-Donn products in a manner that is un-competitive and unlawful.

As has been evidenced above, BPB has used various anti competitive means to increase the selling price of gypsum plasterboard with a thickness of 12.5 mm being supplied to MIS for various purposes, which effectively meant that MIS was unable to sustain a competitive profit, if it were to sell or use only BPB's 12.5mm boards. MIS was therefore compelled to seek raw material elsewhere in order to remain competitive in business and avoid staff lay-offs.

As has been stated before, MIS has resorted to importation in order to counter price hikes and other anti competitive behaviour being implemented by BPB against MIS.

BPB by effectively raising the price of the local 12.5 mm thick plasterboard used by MIS, and by abusing its monopolistic position as the sole local manufacturer of plasterboard has attempted to unlawfully force MIS out of the market. This investigation is yet a further attempt by the petitioner to thwart competition in the industry in which it operates.

WWB alleges that there was no decline in sales by the Petitioner to indicate material injury and analyses sales of various thicknesses to support its arguments.

As the Commission regarded the product under investigation as gypsum plasterboard, it did not analyse loss of sales of a particular thickness. It did not find a decline in sales. It was, however, found that the substantial sales lost to MIS were indicative of material injury. It was also found that due to the availability of the dumped imports in a growing SACU market, potential sales were lost with the potential of further loss of sales in future.

5.3.3.2 Profit

The following table shows the Petitioner's profit before interest and tax:

Table 5.3.3.2

Year	3/2000	3/2001	3/2002	8/2002(5months)
Profit (R'000)	100	114	103	41
Profit margin on selling price	100	102	89	96

This table was indexed due to confidentiality using 2000 as the base year.

The table above shows that the Petitioner's profit declined from 2000 to 2002 by 3 index points.

The Petitioner stated that had it not lost sales to the dumped imports, its profits would have been substantially higher.

Comments by WWB

WWB quotes from the BPB plc annual report for 2002 stating that there were cost increases in particular to plasterboard liner.

The Commission did not consider the cost increases to detract from the causal link of dumping to injury as it found that the Petitioner was able to

recover cost increases in increased selling prices. It further found that the unchanged sales volume in a growing market was indicative of material injury as increased sales volume possible in the absence of the dumped imports in a growing SACU market would have improved profits.

Comments by WWB

In response to the preliminary determination, WWB stated that it noted that the sales volumes of the Petitioner were unchanged.

The Commission found that, as stated by WWB, the market has grown, and, therefore, unchanged sales volumes would indicate loss of market share, which would impact negatively on profits.

The Commission found that this was indicative of material injury.

5.3.3.3 Output

The following table outlines the Petitioner's domestic production volume of plasterboard in m² million:

Table 5.3.3.3

Description Volume/ million m ²	2000	2001	2002
Petitioner	100	103	102

This table was indexed due to confidentiality

The table above shows that the Petitioner's output remained fairly constant over the period of investigation.

Comments by WWB

In response to the preliminary report, WWB stated that the Commission's conclusion that contends a decline in output, is in conflict with its findings that output remained constant.

The Commission noted this comment and for purposes of its final determination, found that although output remained constant, the fact that output could not be increased in a growing market, can be considered to be indicative of material injury.

5.3.3.4 Market share

The Commission found that the SACU industry's market share decreased from 2000 to August 2002 by 23 per cent with a corresponding increase in the market share of the dumped imports.

Comments by WWB

WWB stated that the Petitioner may have lost market share due to the overall growth in the total market, therefore not impacting on output.

The Commission considered that constant output, in the presence of the dumped goods in a growing market, reflects loss of market share.

The Commission found this to be indicative of material injury.

5.3.3.5 Productivity

Using the production and employment figures sourced from the Petitioner, its productivity in respect of the subject product was determined to be as follows:

Table 5.3.3.5

Description	2000	2001	2002
Productivity In 1000m ² / employee/ annum	100	109	109

This table was indexed due to confidentiality using 2000 as base year.

The productivity improved from 2000 to 2001 and remained constant in 2002.

The Commission found that although productivity remained constant, in the absence of the dumped imports in the SACU market, the Petitioner may have been able to increase its sales and production and, therefore, its productivity.

5.3.3.6 Return on investment

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

The following table provides the Petitioner's profit before interest and tax (PBIT) and its net value of assets:

Table 5.3.3.6

Years	2000	2001	2002
Return on total net assets	100	121	96

This table was indexed due to confidentiality using 2000 as base year.

The table above shows that the Petitioner's return in total net assets increased by 21 index points from 2000 to 2001 and decreased by 25 index points from 2001 to 2002. The Commission found that in the absence of the dumped imports in the SACU market, the sales and profits, and as a result, return on investment, may have improved.

Comments by WWB

WWB states that imports of 4.3 per cent of the total market during the financial year ended March 2002 could not cause a drop of 52 per cent in return on investments.

The report reflects an indexed return on investment of 121 for 2001 and 96 for 2002, therefore a drop of 25 indexed points or 20.7 per cent from 2001 to 2002. The Commission found that although the loss of return on investment can not only be attributable to the dumped imports, the dumped imports contributed to the decline in return on investment, as it took sales away from the Petitioner in a growing market.

The Commission found this to be indicative of material injury.

5.3.3.7 Utilisation of production capacity

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

Table 5.3.3.7

	2000	2001	2002
Petitioner's production			
By volume '000m2			
Capacity	100	102	108
Actual production	100	102	102
Capacity utilisation	100	101	95

This table was indexed due to confidentiality using 2000 as base year.

The information in the table above indicates that the Petitioner's capacity increased from 2000 to 2001 by 2 index points and increased further from 2001 to 2002 by 6 index points due to improved efficiencies. Output remained constant, causing capacity utilisation to decline. The Petitioner's utilisation of capacity increased slightly from 2000 to 2001 by 1 index point and decreased from 2001 to 2002 by 6 index points.

Comments by WWB

WWB stated that the Petitioner incorrectly attributes the decrease in its sales to the importation of dumped plasterboard when the real cause was partly attributable to its decisions which concern all the plasterboard products produced by the Petitioner.

The Commission found that with available capacity, any significant increase in the volume of dumped imports, will have an injurious effect on the Petitioner.

The Commission regarded this to be indicative of material injury.

5.3.3.8 Factors affecting domestic prices

There were no other known factors which could affect the domestic prices negatively. The Commission did not find this factor to be relevant for the material injury analysis.

5.3.3.9 The magnitude of the margin of dumping

The Commission found that the subject product was imported at dumped prices into the SACU during the investigation period and calculated a margin of 110.5 per cent. The Commission considered this to be significant. The Commission found this factor to be indicative of material injury.

5.3.3.10 Actual and potential negative effects on cash flow

The Petitioner stated that sales lost to the dumped imports will have a negative impact on its cash flow which will increase as the imported product gains more market share.

Comments by WWB

WWB stated that the statement by the Petitioner that a decrease in sales will have a negative impact on its cash flow is misleading, and carries little weight as the Petitioner is unable to state which portion of its cash low is attributable to plasterboard sales.

The Commission found that any loss of sales by the Petitioner, of any product, including plasterboard, its major product, could have a negative effect on its cash flow as an entity.

5.3.3.11 Inventories

The Petitioner provided its total inventory level since 2000.

These figures are listed in the table below:

Table 5.3.3.11

Stockholding	2000	2001	2002
Value	100	111	96

This table was indexed due to confidentiality using 2000 as the base year.

Inventories of the subject product decreased slightly from 2000 to 2002 in volume.

The Commission found this factor not to be indicative of material injury.

5.3.3.12 Employment

The following table shows the Petitioner's employment level:

Table 5.3.3.12

EMPLOYMENT	2000	2001	2002
Units of employment: production	100	93	91
Units of employment: total	100	94	94

This table was indexed due to confidentiality using 2000 as base year.

The table above indicates that the Petitioner's units of employment decreased from 2000 to 2001 by 7 index points and from 2001 to 2002 by 2 index points.

The Petitioner stated owing to a reduction in plant output and a slight reduction in headcount, the workforce is extremely concerned about the future of the plant. It stated that this has a negative effect on production performance and plant output, which also affects the cost structure in a negative way. The Petitioner stated that it will not be able to carry on at existing levels without drastic reductions in employment in the near future. It stated that it might consider closing its Cape Town production plant and consolidate production in Brakpan.

The Commission found this to be indicative of material injury with the potential of further injury.

5.3.3.13 Wages

The information provided by the Petitioner indicated that total wage bill has decreased due to shorter hours being worked, while wages per employee has also declined.

5.3.3.14 Growth

The Petitioner indicated that it was not able to grow its share of the market, although the market has grown during the period of investigation.

Comments by WWB

WWB states that there has been a drop in demand for the 12.5/12mm thickness plasterboard due to a decline in the commercial sector and the marketing of the 15mm thickness. The Petitioner, therefore, contributed to the decline of sales of 12.5mm thickness plasterboard. It concluded that this will not necessarily result in the overall decline in the potential growth of BPB.

The Commission found that although the market is growing, the petitioner is not experiencing growth. It, therefore, found that in the absence of the dumped imports in the SACU market, the Petitioner would have experienced growth.

5.3.3.15 Ability to raise capital or investments

The Petitioner stated that since this is a volume-based industry, the attractiveness of the business declines as the volume declines, making it difficult to attract investment.

The Commission found this factor not to be relevant to the analysis of material injury as the Petitioner has a large unutilised production capacity and has no need to raise capital or investments.

5.4 THREAT OF MATERIAL INJURY

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:

- (1) a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;
- (2) 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;
- (3) 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
- (4) inventories of the product being investigated."

5.4.1 A significant rate of increase of alleged dumped

Imports for the 12 months ending March 2002 amounted to 8504 tonnes valued at R 8.9 million. And for the 5 months period, April to August 2002 imports amounted to 13173 tonnes. Subsequent to the POI for the period of 4 months from September 2002 to December 2002, a further 6500 tonnes were imported.

The above indicates a significant rate of increase of dumped imports into the SACU market, indicating the likelihood of substantially increased importation.

5.4.2 Freely disposable capacity

The exporter owns three gypsum paperboard manufacturing plants of which the capacity of two are not fully utilised, and the third has been mothballed. It is clear that the exporter possesses freely disposable capacity indicating the likelihood of substantially increased exports.

5.4.3 Prices of imports

It has been indicated that imports are entering the SACU market at prices which undercut that of the Petitioner by between 27 per cent and 30 per cent.

5.4.4 Inventories

Inventories remained fairly constant as production is geared according to sales.

5.4.5 Potential growth in sales and market share

In considering the possible threat of material injury to the SACU industry, the Commission took into account that the presence of dumped imports in the market has the effect of suppressing the industry's ability to improve its market share in a growing market, increase sales, profits, utilization of production capacity, return on investments, and its ability to show growth.

5.5 CONCLUSION ON MATERIAL INJURY AND THREAT OF MATERIAL INJURY

After considering all relevant factors, the Commission found that the Petitioner was suffering material injury in the form of:

- price undercutting
- constant output in a growing market
- decline in potential sales
- decline in market share
- decrease in profits
- decline in utilisation of production capacity

- decline in return on investments
- decline in employment
- decrease in wages
- inability to show growth.

In addition, the Commission found that in the absence of dumping, the petitioner would not have been subjected to price undercutting, and would have been able to increase its sales, improve its market share, increase its profits, utilisation of production capacity, return on investments, a positive effect on cash flow and ability to show growth.

The Commission, therefore, made a final determination that the SACU industry was suffering material injury and threat of material injury.

6. CAUSAL LINK

6.1 GENERAL

In order for the Commission to impose final anti-dumping 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 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."

6.2 VOLUME OF IMPORTS AND MARKET SHARE

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

The market share table in paragraph 5.3.3 of this report, shows the market share for the subject product since 2000. The paragraph reflects that the dumped imports captured 1.4 percent of the market share in 2001; 6.9 percent in 2002 and 22.7 percent of the market share for the five month period April to August 2002, with a corresponding loss of market share by the Petitioner.

The information with regard to market share shows that there is a clear correlation between the decrease in the petitioner's market share and the increase in the market share of the dumped imports.

6.3 EFFECT OF DUMPED IMPORTS ON PRICES

It has already been shown in chapter 5 of this report that there was no price suppression or price depression experienced by the Petitioner. However, price undercutting has been demonstrated.

The Commission found that this indicated that the SACU industry was suffering material injury, which was causally linked to the dumped imports.

6.4 CONSEQUENT IMPACT OF DUMPED IMPORTS

The Commission found the following material injury indicators that were indicative of material injury to be casually linked to the dumping:

- price undercutting
- constant output in a growing market
- potential decline in sales
- decline in market share
- decrease in profits
- decline in utilisation of production capacity
- decline in return on investments
- decline in employment
- decrease in wages
- inability to show growth

Comments by WWB

WWB expressed the opinion that the market has been grown by imports, and that that the petitioner is a monopoly and has no incentive to expand production and also that it is operating at a comfortable and profitable level of production. WWB stated further that it suggests that the cause of injury is as a result of changes in the market, restructuring by the petitioner, better service offered by the importer and inferior quality of the SACU product.

The Commission found that, should it be accepted that the market has grown, it reinforces the Petitioner's claim of injury, as its output and sales did not increase, reflecting loss of market share in a growing market. The fact that the petitioner is the sole manufacturer in the SACU market is true, but which does not necessarily mean that it is a monopoly as it competes with imports for share of the market. It is however, operating at a low utilisation of capacity. It is clear that any improvement in utilization of production capacity will impact positively on profits. As the Petitioner operates in the residential and the commercial markets, it is not affected by changes in the market.

The Commission therefore found that there was a causal link between the dumped imports and the injury suffered by the Petitioner.

6.5 FACTORS OTHER THAN THE DUMPING CAUSING INJURY

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

"The authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, *inter alia*, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry".

6.5.1 The volume and price of imports not sold at dumped prices

The following table shows the volume and price of dumped imports and imports from other countries:

Table 6.5.1

	2000	2001	2002	April to August 2002(5months)
Imports	Tonnes	Tonnes	Tonnes	Tonnes
Thailand (dumped)	0	1592	8173	13148
Other countries	89	212	134	25
Total imports	89	1804	8307	13173

Compared to the volumes of the dumped imports, the volumes of imports from other countries are insignificant.

6.5.2 Competition between domestic producers

The Petitioner is the sole producer within the SACU.

6.5.3 Developments in technology

There has been no significant change in technology for the past five years.

6.5.4 Contraction in demand or changes in the patterns of consumption

Comments by WWB

WWB mentioned that the product (which was the subject of the original petition) was imported gypsum plasterboard with a thickness of 12 mm. WWB also mentioned that the following standard plasterboard products with a thickness of 12 mm were imported by MIS during the period of investigation for injury, i.e. 1 April 2000 to 31 August 2002 ("injury period"):

standard ceiling board and	12 mm (thickness) x 1200 mm
standard partitioning board	(width)
standard board used for the	12 mm (thickness) x 1195 mm
manufacture of 12 mm ceiling tiles	(width)

WWB stated that the petitioner contends that its decline in sales of gypsum plasterboard with a thickness of 12.5 mm was directly attributable to alleged dumped imports by MIS of the like products described in paragraph 3.1. At paragraph G4.1.1 of the revised petition the petitioner contends that it suffered a decline of 14.2% in sales volume of the 12.5 mm over the injury period but enjoyed a 5.1% increase in sales value of such products. During the same period of time MIS dropped its volume purchases of 12.5 mm plasterboard from the petitioner by a mere 2.3% but notwithstanding this insignificant decline in volume, the value of 12.5 mm plasterboard purchased by MIS from BPB increased by 17.4%. What the petitioner does not take into account is that the demand for gypsum standard plasterboard with a thickness of 12.5/12 mm used for ceilings and partitions as well as for the manufacture of 12.5/12 mm ceiling tiles was declining prior to the importation by MIS of gypsum plasterboard.

Factors which contributed to the reduction in sales of gypsum plasterboard of 12.5/12 mm thickness market are discussed below.

Independent research by the Bureau of Economic Research has revealed that from roughly the 2nd quarter of 2001 the residential activity in the building industry was improving whilst the non-residential sector of the building industry was slower in tempo.

In assessing these findings it is important to bear in mind that MIS operates predominantly in the non-residential sector.

Gypsum plasterboard with a thickness of 12.5/12 mm is predominantly used in the commercial (non-residential) sector both for ceilings and partitions. In addition to this decline in demand for gypsum plasterboard of 12.5/12 mm thickness linked to the decline in the commercial sector, BPB has "cashed in" on the strength of the residential sector by aggressively marketing a 15 mm thick

product for use in internal walling and dry walling systems in both the residential and commercial sectors of the market.

It is clear that BPB is investing a considerable amount of expense and effort in marketing a 15 mm gypsum plasterboard product for the residential market which adds new technical features, but which has been promoted to the detriment of the previously marketed 12.5 mm Rhinoboard (manufactured by BPB) in the same market. BPB is going so far as to set up (previously abandoned) training schools to this end.

It is no coincidence that the residential market is strengthening and that this is where the petitioner believes it should be focusing its attention. The 15 mm board was introduced by BPB on the 28 October 1999 for the first time (just before the start of the injury period under investigation). This 15 mm board has also been marketed, in some cases where sound insulation and impact resistance criteria were of no importance, as a cheaper alternative for commercial sector contractors to use a system called "13/60" system does not provide the equivalent technical characteristics to the 12.5 mm plasterboard used in the "12/60" system (sound reduction and impact resistance are reduced in the 13/60 system). We assume that this change has not been generally accepted in the market.

WWB stated that for BPB to attribute all of its decline in the sales of gypsum plasterboard of 12.5/12 mm thickness to the importation by MIS of like products, is therefore not an accurate reflection of the trends in the market and the factors influencing the decline in the demand for this product.

As is evident from BPB plc's results in its financial reports for the years 2000, 2001 and 2002, the situation in respect of BPB in South Africa is described as fairly good despite adverse conditions. One of these adverse conditions is increased price for imported key commodities such as for instance plasterboard liner. Plasterboard liner represents one of the major raw material costs in the making of plasterboard and is imported by BPB South Africa from BPB plc's paper mill in Scotland.

WWB mentioned that it must thus be stressed that the reports do not raise the question of alleged material injury due to the dumping of imported boards in South Africa.

WWB stated that in addition, the quality of the imported product is superior to the local equivalent product. Customers' letters submitted in the injury memorandum indicate this to be the case. We have also submitted a comparative test between the local 12.5 mm and the 9.5 mm standard plasterboard products which indicates that the imported product sags far less than the local product. This quality is a very important criterion in the market for ceiling tiles (which are manufactured from standard plasterboard).

In its response to the preliminary report, WWB refers to a letter to the Commission dated 29 May 2003 where it quotes from the preliminary results of BPB plc, the holding company of the petitioner in the United Kingdom, where it is stated that the South African company reported robust results despite a flat market. BPB alleges that this supports the contention that the Petitioner did not suffer injury (nor threat of injury) and to the extent that it did, which WWB denies, such injury was as a consequence of general market conditions.

WWB stated that it is suggested that the cause of injury is a result of changes in the market, restructuring by the Petitioner, better service offered by the importer and the inferior quality of the SACU product.

As the Commission regarded the product under investigation as gypsum plasterboard and plasterboard of all thicknesses were manufactured by the Petitioner during the period of investigation, it was of the opinion that changes in the market between the demand for board of 12.5mm and 15mm thickness or between residential and non-residential applications, would not have an effect on the petitioners total sales and output.

6.5.5 Export performance

The Petitioner is not active in the export market.

6.5.6 Competition between foreign and domestic producers

No information was provided in this regard, however, it is clear that competition is confined to that between the products of the Petitioner and the alleged dumped imports.

6.5.7 Trade restrictive practices

Comments by WWB.

WWB stated that in order to gain some perspective on the importation by MIS of 12 mm standard plasterboard, it is necessary to appreciate the extent to which BPB is dominant, can and does exert power in the plasterboard industry in South Africa including the power to control prices, exclude competition and behave to an appreciable extent independently of its competitors, customers or suppliers. The following statistics are indicative of the market power exerted by BPB: In 2001 BPB supplied almost all of the plasterboard within the Republic of South Africa and competition via the importation of plasterboard accounted for very small portion of supply in 2001, indicating the extent to which importation in 2001 was not material.

WWB stated further that BPB's dominance in the plasterboard industry is partly attributable to its supply of gypsum since BPB owns the mines for all gypsum currently utilised for the production of plasterboard in South Africa. Whilst MIS did import 12 mm plasterboard, during the period of investigation, its imports have played an insignificant role in competing with local production. During the financial year ended 2002 (ie 1 April 2001 to 31 March 2002) the total volume of imported 9 mm and 12 mm plasterboard sold accounted for only a small portion of the total market for plasterboard in South Africa.

WWB mentioned that BPB not only controls the supply of gypsum but is dominant in the distribution of plasterboard in the Republic of South Africa.

MIS as a distributor of plasterboard and other plasterboard derived products (such as ceiling tiles) used in the construction and assembly of interior systems in South Africa, relied exclusively on the supply of 12.5 mm plasterboard and other plasterboard from BPB. Importation was considered for a number of reasons, the most important of which are detailed below:

BPB sold steel and plasterboard products package deals to its customers at more favourable prices than at which it sold the same products to MIS even though MIS was one of BPB's biggest customers. This conduct constitute price discrimination by a dominant firm as provided for in section 9 of the Competition Act and, together with other practices exhibited by BPB, is to form the subject matter of a complaint to the Competition Commission in the near future.

BPB publicly informed market players at a meeting in Durban for the industry in September 1998 that they would within a space of three years be the only vinyl gypsum ceiling tile laminating company operating in the market.

The selling price of the 12.5 mm production board to MIS by the petitioner and used by MIS as a raw material to manufacture its own vinyl ceiling tiles was subsequently increased. In contrast, the price of the gypsum ceiling tiles sold by BPB and manufactured by them with the same raw material, did not increase by the same margin. This made BPB's product artificially and substantially more competitive.

As evidenced by BPB's April 2000 price list which has been furnished to the Board in MIS's injury memorandum, BPB subsidised the selling price of certain types of 12.5 mm gypsum vinyl tiles to its Bloemfontein and Welkom regional centres. The selling price in these regions as indicated is lower than ex-factory selling prices.

In 1999 BPB withdrew MIS' additional export discount but continued to propose this discount directly to MIS' previous export customers as part of its standard terms and conditions. In some instances, BPB offered a greater discount even to the standard terms and conditions quoted. Our client has been privy to a circular which BPB issued to its staff members with clear instructions to undercut or meet

MIS' prices on previous import attempts.

In September 2001 BPB revised its price list with respect to square edge boards in respect of which an extra 15% premium was imposed. In addition, an increased lead time of 6 to 8 weeks for deliveries was implemented. This directly and adversely affected MIS' manufacturing of ceiling tiles and partitioning systems since 3 out of 4 of its partitioning systems utilise these square edge boards whereas only one out of the 2 partitioning systems manufactured by BPB-Donn use square edge boards. In this way MIS' partitioning systems became prohibitively expensive and undesirable in the market.

MIS and its customers also suffered from the poor quality of BPB plasterboards; the rebate scheme issued by the only South African producer of plasterboard, being BPB-Donn-LBS on 30 April 2002 and with which the Board has been furnished in MIS' injury memorandum, offers unfair incentives to their customers and unlawfully discriminates against MIS.

The Commission does not normally make a judgment regarding quality issues. It found the SACU product and the imported product to be "like" product and that the SACU product is manufactured to South African Bureau of Standards (SABS) specifications..

Comments by WWB

WWB stated that the rebate scheme provided rebates applicable to gypsum products while the percentage of the rebates related to purchase levels based on combined purchase from BPB and Donn. In this way, the rebate was therefore based on the total volume of products (in gypsum or non gypsum products) bought from the factories of BPB and Donn. This scheme is discriminatory against MIS' whole range of products sold in South Africa and is designed to include South African customers to purchase the BPB-Donn products in a manner that is un-competitive and unlawful.

As has been evidenced above, BPB has used various anti competitive means to increase the selling price of gypsum plasterboard with a thickness of 12.5 mm being supplied to MIS for various purposes, which effectively meant that MIS was unable to sustain a competitive profit, if it were to sell or use only BPB's 12.5mm boards. MIS was therefore compelled to seek raw material elsewhere in order to remain competitive in business and avoid staff lay-offs.

As has been stated before, MIS has resorted to importation in order to counter price hikes and other anti competitive behaviour being implemented by BPB against MIS.

BPB by effectively raising the price of the local 12.5 mm thick plasterboard used by MIS, and by abusing its monopolistic position as the sole local manufacturer of plasterboard has attempted to unlawfully force MIS out of the market. This investigation is yet a further attempt by the petitioner to thwart competition in the industry in which it operates.

In its response to the preliminary report, WWB reiterates its allegations that the material injury to the Petitioner in the form of lost sales is caused not by the dumped imports but by other factors such as the restructuring of BPB, marketing of the 15mm product, the decline in the commercial building industry in which the 12.5mm and the 12mm is predominantly utilised, the superior quality of the imported product, the increase in cost of raw materials(plaster liner and energy) in the manufacture of local plasterboard in general, the investment in new plant in Cape Town as well as the decision by BPB to increase their capacity at a time when the Petitioner contends that the 9mm/9.5mm market was reasonably stable and the 12mm/12.5mm was slowing down.

The Commission found that although other factors, as mentioned above, could have had disruptive effects on the Petitioner, it is also true that this increase in sales volume by MIS would not have been possible without the availability of large volume of dumped imports.

6.5.8 Productivity of the domestic industry

The Petitioner is the only producer in the SACU and its productivity has increased. The Commission found that this factor did not detract from causal link.

6.6 CONCLUSION ON CAUSAL LINK

After considering all relevant factors and comments, the Commission found that there was a causal link between the dumped products and the material injury suffered by the Petitioner. In coming to this conclusion the Commission considered relevant factors, other than dumping that could be causing material injury such as the volume and price of imports not sold at dumped prices, developments in technology, contraction in demand or changes in the patterns of consumption, export performance, competition between foreign and domestic producers and trade restrictive practices. The Commission found that these factors did not sufficiently detract from the causal link established between the dumped imports and the material injury as well as threat of material injury experienced by the SACU industry.

7. SUMMARY OF FINDINGS

7.1 Dumping

The Commission found that the subject product originating in or imported from Thailand was dumped into the SACU market with the following margins:

Table 7.1

Manufactured by The Siam Gypsum Industry Co. Ltd (SGI)	110.5%
All other exporters	133.0%

Comments by WWB

WWB mentions that it was stated (by the Commission) that margins were calculated for plasterboard of 9mm and 12mm thicknesses and questions how this could be applied to all products. WWB mentioned further that plasterboard product of 6mm was not sold during the POI and plasterboard product of 15mm was not imported at all, hence these thicknesses could not have caused injury.

In its response to the preliminary report, WWB stated that by the application of a provisional payments in respect of the 6.4mm and 15mm and all products other than 9mm and 12mm products which fall within the tariff sub-heading of 6809.11, the Commission acted contrary to the Anti-Dumping Agreement.

The Commission regarded the product under investigation as gypsum plasterboard. The products imported during the POI was of 6mm, 9mm and 12mm thickness. The products sold during the POI was of 9mm and 12mm thickness in competition with the SACU product which is manufactured in thicknesses of 6.4, 9.5, 12.5 and 15mm. The SABS specification allows for a tolerance in manufacture of + or – 0.5mm.

There also exists a degree of substitutability between boards of different thicknesses in that, as indicated by the importer, 9 (9.5) and 12 (12.5) can be used for ceiling board, partition board and to manufacture ceiling tiles. 6mm (6.4) is also used for ceiling board.

The Commission used information of imports of boards of 9mm and 12mm thickness as representative of the product under investigation as it represented the major proportion of the product imported to calculate the margin of dumping. The analysis of material injury was not confined to boards of 9mm and 12mm thickness. Indicators such as output, sales, profits and capacity utilization were considered for all products of gypsum plasterboard.

The weighted average dumping margin for boards of 9mm and 12mm thickness was then applied as representative of gypsum plasterboard being the product under investigation.

7.2 Material injury or threat of material injury

The Commission found that the Petitioner suffered material injury in the form of price undercutting, decrease in profits, loss of market share, decrease in return on investment, negative effect on cash flow, potential decline in sales, decline in utilisation of production capacity and inability to show growth.

The Commission further found that in the absence of dumping, the petitioner would not have been subjected to price undercutting, and would have been able to increase its sales, improve its market share, increase its profits, utilisation of production capacity, return on investments, a positive effect on cash flow and ability to show growth.

The Commission, therefore, made a final determination that the SACU industry was suffering material injury and threat of material injury.

7.3 Causal link

The Commission found that there was a causal link between the dumping and the material injury experienced by the SACU industry.

8. FINAL ANTI-DUMPING DUTIES

8.1 General

Article 9.1 of the Anti-Dumping Agreement provides as follows:

"The decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled, and the decision whether the amount of anti-dumping duty to be imposed shall be the full margin of dumping or less, are decisions to be made by the authorities of the importing member. It is desirable that the imposition be permissive in the territory of all Members, and that the duty be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry."

8.2 Calculation of duty

The Commission found that all requirements for the imposition of an anti-dumping duty have been fulfilled.

In accordance with Article 9.1 of the Anti-Dumping Agreement, the duty should be less than the dumping margin if such lesser duty would be adequate to remove the injury to the domestic industry.

The final anti-dumping duties should therefore not be more than the amount of the price disadvantage experienced by the SACU industry. If this is lower than the dumping margin it can be considered to be the amount of duty required to remove the injury to the domestic industry as a result of the importation of the subject product at the dumping margins that were found by the Commission.

8.3 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 is the Commission's policy to take the price disadvantage into account only in instances where both the exporter and the importer concerned cooperated with the investigation.

The landed cost of the imported product was calculated by adding duty, sea freight and clearing charges to the f.o.b. export price provided by the importer.

The following table shows the price disadvantage margins and the dumping margins, expressed as a percentage of the f.o.b.

Table 8.3.1

	Dumping Margin	Price disadvantage
Manufactured by The Siam Gypsum Industry Co. Ltd (SGI)	105.3%	73.9 %
All other exporters	125.0%	

Comments by WWB

In its response to the preliminary report, WWB stated that the Commission, by using the landed cost in determining price disadvantage by comparing the landed cost of the imported product instead of its in-store cost with the ex-factory price of the SACU, acted contrary to the Anti-Dumping Agreement. WWB stated further that landing charges should be based on weighted average of each actual transaction and not on a calculated average. WWB stated further that the exchange rate used should be based on the weighted average of each actual transaction and not on the rate in a particular month.

The Commission considered the comments on the point of comparison. It is the policy of the Commission to compare the landed cost of the imported product with the ex-factory price of the SACU product and the Commission is of the opinion that this policy is not contrary to the WTO Agreement. The Commission does the comparison at this level, as it considers that this is the price at which an importer exercises its choice whether to import or to buy the SACU product.

Regarding the notion that the in-store cost of the imported product should be compared with the ex-factory price of the SACU product, the Commission concluded that such comparison is inherently unfair as the first mentioned is inflated by the difference between the landed cost and the in-store cost, while the ex-factory price is not inflated by this cost.

8.4 Amount of duty:

The amount of duty was concluded to be the following, being the lesser of the price disadvantage or the dumping margin:

Table 8.4.1

	Anti-dumping duties
Manufactured by The Siam Gypsum Industry Co. Ltd	
(SGI)	73.9%
All other exporters	125.0%

9. RECOMMENDATION

The Commission made a final determination that:

1. The subject product originating in or imported from Thailand was being dumped into the SACU market;
2. The SACU industry suffered material injury and threat of material injury;
3. There was a causal link between the dumping of the subject products and the material injury;

The Commission, therefore, decided to recommend to the Minister of Trade and Industry that definitive anti-dumping duties be imposed on gypsum plasterboard originating in or imported from Thailand, classifiable under tariff subheading 6809.11, in the following amounts, being the lesser of the dumping margin and the price disadvantage:

Table 9.1

	Anti-dumping duties
Manufactured by The Siam Gypsum Industry Co. Ltd (SGI)	73.9%
All other exporters	125.0%

and that these anti-dumping duties be imposed retroactive to the date of the provisional payments, that is 22 August 2003.