



International Trade Administration Commission of South Africa

Report No. 18

Sunset Review of the anti-dumping duties on circuit breakers originating in France and imported from Hager or Groupe Schneider and originating in Italy and imported from Bticino or their agent B Trading of Switzerland: Final determination

The International Trade Administration Commission of South Africa herewith presents its
**Report No. 18: SUNSET REVIEW OF THE ANTI-DUMPING DUTIES ON CIRCUIT
BREAKERS ORIGINATING IN FRANCE AND IMPORTED FROM HAGER OR
GROUPE SCHNEIDER AND ORIGINATING IN ITALY AND IMPORTED FROM
BTICINO OR THEIR AGENT B TRADING OF SWITZERLAND: FINAL
DETERMINATION**



**MS NOMONDE MAIMELA
CHIEF COMMISSIONER**

PRETORIA

...12/08/2003

INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA

SUNSET REVIEW OF THE ANTI-DUMPING DUTIES ON CIRCUIT BREAKERS ORIGINATING IN FRANCE AND IMPORTED FROM HAGER OR GROUPE SCHNEIDER AND ORIGINATING IN ITALY AND IMPORTED FROM BTICINO OR THEIR AGENT B TRADING OF SWITZERLAND: FINAL DETERMINATION

SYNOPSIS

In accordance with the provisions in Article 11.3 of the World Trade Organisation Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition, unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury.

On 6 July 2001, the Board on Tariffs and Trade (the Board) notified interested parties through Notice No.1611 in *Government Gazette* No. 22423, that unless a substantiated request is made indicating that the expiry of the duties on circuit breakers originating in France and imported from Hager or Groupe Schneider and originating in Italy and imported from Bticino, or their agent B Trading of Switzerland would be likely to lead to the continuation or recurrence of dumping and injury, the anti-dumping duties on circuit breakers originating in France and imported from Hager or Groupe Schneider and originating in Italy and imported from Bticino, or their agent B Trading of Switzerland, would expire on 8 August 2002. Circuit Breaker Industries Ltd (CBI) was forwarded a copy of the notice for the information.

The trade representatives of the countries involved were notified and provided with a copy of the notice which was published in the *Government Gazette*.

On 26 July 2002, the Board formally initiated a review of the anti-dumping duties on circuit breakers imported from Hager or Groupe Schneider in France and imported from Bticino in Italy, or their agent B Trading of Switzerland. Notice of the initiation of the investigation was published in Notice No. 1307 of *Government Gazette* No. 23660 dated 26 July 2002.

The investigation was initiated after the Board considered that there was *prima facie* proof that expiry of the duty would be likely to lead to the continuation or recurrence of dumping of the subject product originating in France and imported from Hager or Groupe Schneider and originating in Italy and imported from Bticino, or their agent B Trading of Switzerland and that there was *prima facie* proof of the likely continuation and/or recurrence of material injury.

Exporters sunset review questionnaires and importers review questionnaires were sent to the various known interested parties. Two importers, Electromechanica and Schneider Electric SA (Pty) Ltd, submitted completed importers questionnaires. Hager in France submitted a completed exporters sunset review questionnaire.

The Board made a preliminary decision that the expiry of the duties on the subject product originating in France and imported from Hager or Groupe Schneider and originating in Italy and imported from Bticino, or their agent B Trading of Switzerland would be likely to lead to the continuation or recurrence of dumping, and that the expiry of the duty is likely to lead to the continuation or recurrence of material injury on the Automatic Moulded Case Circuit Breakers (MCCB) range of products.

The information considered by the Board to establish whether the Petitioner submitted *prima facie* evidence that the expiry of the duty would be likely to lead to the continuation or recurrence of material injury, was unverified information. Subsequent to the initiation of the investigation, the Board verified the information submitted by the Petitioner and became aware that information was only submitted on the MCCB range of products and no information was submitted on the Miniature Case Circuit Breakers (MCB) range of products.

For purposes of its preliminary decision, the Board decided that the Petitioner did not

provide *prima facie* evidence that the expiry of the duty would be likely to lead to the continuation or recurrence of material injury on the MCB range of products.

After considering all parties' comments and representations in respect of the "essential facts" letters, the International Trade Administration Commission of South Africa (ITAC) made a final determination, that the expiry of the duties on the subject product originating in France and imported from Hager or Groupe Schneider and originating in Italy and imported from Bticino, or their agent B Trading of Switzerland would be likely to lead to the continuation or recurrence of dumping, and that the expiry of the duty is likely to lead to the continuation or recurrence of material injury on the MCCB range of products.

ITAC, therefore, decided to recommend to the Minister of Trade and Industry that the existing anti-dumping duties on circuit breakers originating in France and imported from Groupe Schneider and originating in Italy and imported from Bticino, or their agent B Trading of Switzerland, be maintained, but to exclude circuit breakers with a capacity of more than 600A from these anti-dumping duties, as the Petitioner does not manufacture these products. ITAC further decided to recommend to the Minister of Trade and Industry that the anti-dumping duty on circuit breakers originating in France and imported from Hager and the anti-dumping duty on the MCB range of products originating in Italy and imported from Bticino, be terminated.

1. PETITION AND PROCEDURE

1.1 LEGAL FRAMEWORK

This investigation is conducted in accordance with the International Trade Administration Act, 2002 (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).

In accordance with the provisions in Article 11.3 of the World Trade Organisation Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition, unless the authorities determine in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to the continuation or recurrence of dumping and injury.

In response to the non-confidential petition, Hager submitted that in 1997, the decision was rendered in the original investigation that the anti-dumping duties will be in place for 5 years and that the Petitioner should have requested the Board six months before the lapse of 5-year period to initiate a review of the anti-dumping duties. The Petitioner did so six months after the date of termination of the anti-dumping duties which, according to Hager, was February 2002.

In response to the non-confidential petition, Groupe Schneider argued that on a proper interpretation of the WTO Dumping Agreement, the relevant date for the purpose of determining the date of commencement of the 5 year period is no later than 7 February 1997, the date to which the anti-dumping duties were retrospectively imposed. The period of 5 years ended on 7 February 2002. Accordingly in the absence of a review initiated prior to 7 February 2002 the anti-dumping duties should have terminated no later than 7 February 2002. Groupe

Schneider indicated that no such review was initiated prior to 7 February 2002 and accordingly the duties should have terminated on 7 February 2002.

For purposes of its preliminary decision, the Board confirmed that the expiry date of the anti-dumping duties should be calculated from the date of imposition of the final anti-dumping duties, in accordance with WTO guidelines.

In response to the Board's "essential facts" letter, WWB stated that the decision by the Board that the expiry date of the anti-dumping duties be calculated from the date of the imposition of the anti-dumping duties and not the date from which the duties came into effect, is incorrect. WWB maintains that on a proper construction of the WTO Anti-Dumping Agreement, the relevant date for the purposes of determining the 5 year period is no later than 7 February 1997, the date to which the anti-dumping duties were retrospectively imposed. It argued that as previously indicated, discussions with the Rules Division of the WTO have revealed that the position is far from clear, there being no determination on this issue and that its clients continue to contend that the anti-dumping duties should in the absence of a review initiated prior to 7 February 2002, have terminated no later than 7 February 2002.

For purposes of its final determination, ITAC noted that final anti-dumping duties were imposed on 8 August 1997. ITAC referred to the opinion given by the Rules Division of the WTO which advised that the date of imposition will be the date on which the duties were imposed and not the date from which it retroactively came into effect. ITAC, therefore, decided that the expiry date of the anti-dumping duties be calculated from the date of imposition of the final anti-dumping duties, that is 8 August 1997, in accordance with the opinion received from the WTO Rules Division.

1.2 PETITIONER

The petition was lodged by Circuit Breaker Industries Ltd (the Petitioner), being

the sole manufacturer of the subject product in the SACU.

1.3 INVESTIGATION PROCESS

On 6 July 2001, the Board notified Circuit Breaker Industries Ltd (CBI) through Notice No.1611 in *Government Gazette* No. 22423, that unless a substantiated request is made by it indicating that the expiry of the duties on circuit breakers originating in France and imported from Hager or Groupe Schneider and originating in Italy and imported from Bticino, or their agent B Trading of Switzerland would be likely to lead to the continuation or recurrence of dumping and injury, the anti-dumping duties on circuit breakers originating in France and imported from Hager or Groupe Schneider and originating in Italy and imported from Bticino, or their agent B Trading of Switzerland will expire on 8 August 2002.

The trade representatives of the countries involved were notified and provided with a copy of the notice which was published in the *Government Gazette*.

On 26 July 2002, the Board formally initiated a review of the anti-dumping duties on circuit breakers imported from Hager or Groupe Schneider in France and imported from Bticino in Italy, or their agent B Trading of Switzerland. Notice of the initiation of the investigation was published in Notice No. 1307 of *Government Gazette* No. 23660 dated 26 July 2002.

The investigation was initiated after the Board considered that there was *prima facie* proof that expiry of the duties would be likely to lead to the continuation or recurrence of dumping of the subject products originating in France and imported from Hager or Groupe Schneider and originating in Italy and imported from Bticino, or their agent B Trading of Switzerland and that there was *prima facie* proof of the likely continuation and/or recurrence of material injury.

Exporters sunset review questionnaires and importers review questionnaires were sent to the various known interested parties. Two importers,

Electromechanica and Schneider Electric SA (Pty) Ltd, submitted completed importers questionnaires. Hager in France submitted a completed exporters sunset review questionnaire.

The information considered by the Board to establish whether the Petitioner submitted *prima facie* evidence that the expiry of the duty would be likely to lead to the continuation or recurrence of material injury, was unverified information. Subsequent to the initiation of the investigation, the Board verified the information submitted by the Petitioner and became aware that information was only submitted on the MCCB range of products and no information with regard to dumping and material injury was submitted on the MCB range of products.

For purposes of its preliminary decision, the Board decided that the Petitioner did not provide *prima facie* evidence that the expiry of the duties would be likely to lead to the continuation or recurrence of material injury on the MCB range of products.

The Board, therefore, made a preliminary decision that the expiry of the duties on the subject products originating in France and imported from Hager or Groupe Schneider and originating in Italy and imported from Bticino, or their agent B Trading of Switzerland would be likely to lead to the continuation or recurrence of dumping, and that the expiry of the duties is likely to lead to the continuation or recurrence of material injury on the MCCB range of products.

Interested parties were invited to comment on the Board's "essential facts" letters containing the Board's preliminary decision.

1.4 INVESTIGATION PERIOD

The investigation period for dumping was from 1 July 2001 to 30 June 2002. The injury investigation involved evaluation of data for the period 1 January 1994 to 31 December 2001. An estimate of what the situation would be if the duties

expire, was also considered.

1.5 PARTIES CONCERNED

1.5.1 SACU Industry

Circuit Breaker Industries Ltd is the sole manufacturer of the subject products in the SACU.

1.5.2 Exporters/Foreign Manufacturers

The following exporters/manufacturers were identified as interested parties:

- (a) Hager in France
- (b) Groupe Schneider in France
- (c) Bticino in Italy

A completed questionnaire was submitted by Hager in France, which information was subsequently verified.

A deficient response to the Board's exporters questionnaire was received from Bticino in Italy.

1.5.3 Importers

The following SACU importers were identified as interested parties:

- (a) Schneider Electric SA (Pty) Ltd
- (b) Electromechanica (Pty) Ltd
- (c) ABB Components

Full and complete information, which has been verified, was submitted by

Schneider Electric SA (Pty) Ltd and Electromechanica (Pty) Ltd.

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

SUBJECT PRODUCT

Description

The subject product is described as Automatic Moulded Case Circuit Breakers, commonly identified or referred to as MCCBs and Miniature Circuit Breakers, commonly identified or referred to as MCBs.

Application/end use

The subject product is mainly used for electrical and earth leakage protection or isolation of electricity.

Tariff classification

The subject product is classifiable as follows:

Tariff subheading	Description	Unit	Rate of duty		
			General	EU	SADC
8536.20	- Automatic circuit-breakers:				
	= With casings of plastics or other insulating material, with a current rating not exceeding 800 A	kg	15%	15%	free
	= Other	kg	15%	15%	free

The subject product is subject to the following anti-dumping duties:

Tariff subheading	Description	Originating in or imported from	Anti-dumping duty
8536.20	Automatic circuit breakers, with casings of plastics or other insulating material, for a voltage not exceeding 1000 V, with a current rating not exceeding 800 A and a rupture capacity exceeding 4,5 kA, imported from Hager of France	France	18.9%
	Automatic circuit breakers, with casings of plastics or other insulating material, for a voltage not exceeding 1000 V, with a current rating not exceeding 800 A imported from Bticino of Italy or their agent B Trading of Switzerland	Italy	23.6%
	Automatic circuit breakers, with casings of plastics or other insulating material, for a voltage not exceeding 1000 V, with a current rating of 130 A or more but not exceeding 800 A imported from Groupe Schneider of France	France	7.6%

The following rebate provisions exist:

Rebate item	Description	Extent of rebate
316.13	Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (excluding starter motor solenoid switches), for a voltage not exceeding 1000V for the manufacture of internal combustion piston engines	Full duty
317.09	Switches, relays, fuses, plugs, lampholders, terminals and the like for the manufacture of mine shuttle cars	Full duty
317.3	Other automatic circuit breakers, for the manufacture of aircraft	Full duty
460.16	Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits, for a voltage not exceeding 1kV, of flameproof, waterproof or watertight types: Provided that a certificate of the South African Bureau of Standards is presented at the time of entry that the apparatus is flameproof, waterproof or watertight.	Full duty less 5%

The following drawback provisions exist:

Drawback item	Description	Extent of drawback
516.06	Flasher switches and relays, used in the manufacture of motor vehicle lighting equipment	Full duty
516.10	Electrical apparatus for making and breaking electrical circuits, for the protection of electrical circuits, or for making connections to or in electrical circuits, used in the manufacture of television and radio receiving sets	Full duty

Production process

Parts are moulded, stamped and wound and then assembled and tested. The following compulsory national South African Bureau of Standards (SABS) specifications exist:

- VC 8035 - MCCB with earth leakage up to 100 A rating.
- VC 8036 - MCCB up to 12 A rating.

Comments from interested parties

In response to the non-confidential petition, Webber Wentzel Bowens (WWB), consultants for Groupe Schneider (both the importer and the exporter) indicated that the products under investigation exported by Groupe Schneider were "automatic circuit breakers with casings of plastics or other insulating material for a voltage not exceeding 1 000V, with a current rating of 130A or more but not exceeding 800A classifiable under tariff sub-heading 8536.20 and originating in or imported from Groupe Schneider in France."

WWB submitted that the major and essential components for the automatic circuit breakers were basic frames and trip units. It argued that Schneider imported components for automatic circuit breakers and imported fully assembled automatic circuit breakers. It further argued that the components imported by Schneider were either assembled by Schneider to make completed automatic circuit breakers or were sold individually and that Schneider imported automatic circuit breakers only when it is unable to assemble them.

WWB indicated that the products under investigation are fully assembled products and not components, *inter alia*, for the following reasons:

- the Petitioner only sold completed automatic circuit breakers and did not sell components;
- the components on their own were not capable of acting as automatic circuit breakers;
- the basic frames NS160 and NS250 which may be used for the assembly of automatic circuit breakers, were capable and in fact were used in the assembly of automatic circuit breakers which did not fall within the scope of this investigation. In particular, the components, NS160 and NS250 constituted a major portion of the basic frames used by Schneider SA in the assembly of automatic circuit breakers;
- similarly, some trip units might be and were used for the assembly of automatic circuit breakers which did not form part of the products under investigation.

WWB indicated that in selecting the representative group of products for the purposes of calculating the margin of dumping, the Board accepted the argument that the only relevant products were fully assembled units and that the representative group was selected on the basis that they comprised 80 per cent of the "total volume of the subject product exported to SACU during the period of investigation".

In response to the comments from WWB, the Petitioner argued that these comments were of great concern to it and that Schneider went to great lengths to indicate that the product under investigation was only fully build-up circuit breakers. The Petitioner submitted that Schneider maintained that it mainly imported parts and only imported automatic circuit breakers as units when it was unable to assemble them locally. The Petitioner argued that it was almost as if Schneider pretended to be part of the domestic industry, i.e. a fully-fledged manufacturer of circuit breakers and that the assembly WWB was talking about was no more than a screwdriver operation which took a worker only a few seconds to screw together a fully built-up unit.

The Petitioner argued that what was more disconcerting was that these imported parts might not be subject to the current anti-dumping duties. It submitted that one of the reasons indicated by Schneider why it considered that parts did not form part of the product under investigation is because the Petitioner "only sells completed automatic circuit breakers and does not sell components"; that this is patently not true. It referred the Board to a document where the Petitioner and Schneider both quoted on a big contract concerning circuit breaker parts, that it had to decrease its prices by up to 50 per cent in order to meet the prices offered by Schneider. The Petitioner further submitted that it was patently clear that Schneider was competing directly with it, not only in the market for fully built-up units, but also for the same customers who might assemble their own units. The Petitioner, therefore, requested the Board to investigate whether the basic frames as well as the trip units imported were subject to the current anti-dumping duties and if so, whether these duties were in fact paid. It argued that if not, this would have serious consequences for the Petitioner and was a clear case of the circumvention of the current duties.

For purposes of its preliminary decision, the Board confirmed that as this is a sunset review investigation, the subject products could only be products subject to the anti-dumping duties. Therefore, "parts" would not form part of the subject product in this investigation.

In response to the Board's "essential facts" letter, the Petitioner submitted that although it recognises that this investigation is a sunset review and, therefore, cannot be extended to include products not subject to the existing anti-dumping duties, the significant importation of "parts" by importers in order to evade paying the anti-dumping duties on fully build-up units present serious problems to it. It argued that it will have no option but to address this matter in a future application.

In response to the Board's "essential facts" letter, WWB submitted that by

reference to the word "parts" it understands it to mean "basic frames" and "trip units" which are two components of the completed unit. It indicated that the representative group finally selected which comprised of only completed units is supportive of the interpretation that "basic frames" and "trip units" are what is meant to be excluded from the purview of the anti-dumping duty. It further indicated that it nevertheless requires confirmation that the only products subject to anti-dumping duties will be completed automatic circuit breakers and that the "basic frames" and "trip units" will not be subject to anti-dumping duties.

In response to the comments submitted by WWB, the Petitioner submitted that the clarification again sought by WWB regarding the scope of the investigation is a clear indication that the impact of the anti-dumping duties is being eroded by the importation of so-called "parts" as a means to circumvent the anti-dumping duties. The Petitioner argued that the setting up of a screwdriver operation in South Africa to assemble complete circuit breakers makes no economic sense and that as the purpose of such operations can be little more than to evade payment of duties, ITAC should investigate the growing circumvention as a matter of urgency.

The Petitioner indicated that although the current Anti-Dumping Agreement makes no provision for the specific treatment of anti-circumvention applications, ITAC is no doubt aware that circumvention is a serious problem worldwide hence both the EC and US anti-dumping regulations clearly describe "classic circumvention" as assembly in the importing country. The Petitioner argued that this happens where parts and components are shipped from the country covered by the anti-dumping duty to the importing country for assembly or completion into a product covered by the dumping finding.

The Petitioner indicated that in order to combat the evasion of the dumping duty both the EU and US authorities include within the scope of an application of an existing definitive anti-dumping duty on an imported product

those parts or components destined for assembly or completion in the importing country. The Petitioner stated that if ITAC is at this stage unable to deal effectively with the circumvention of an anti-dumping duty, it should at least express an opinion in the current case and indicate on how it plans to deal with these matters in future.

For purposes of its final determination, ITAC confirmed that as this is a sunset review investigation, the subject products could only be products subject to the current anti-dumping duties under review in this investigation.

ITAC further indicated that the Petitioner is at liberty to submit a new petition for the alleged dumping of "parts" if it believes that dumping of these products which is causing material injury to the SACU industry, is taking place.

3. SACU INDUSTRY

3.1 INDUSTRY STANDING

Article 11.3 of the Anti-Dumping Agreement provides as follows:

"Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly **substantiated request made by or on behalf of the domestic industry** within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. The duty may remain in force pending the outcome of such a review" (emphasis added).

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

"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."

As CBI is the only manufacturer of the subject products in the SACU, the Board decided for purposes of initiation that the petition was brought "by or on behalf of the domestic industry" under the provisions of the Anti-Dumping Agreement.

In response to the non-confidential petition, WWB submitted that Mitsubishi's product range had historically been focussed on the industrial and mining markets being MCCBs and Air Circuit Breakers (ACBs) and that ACBs had a larger frame with current rating capabilities exceeding those of MCCBs. The

ACBs were used in applications where higher current ratings were required.

WWB indicated that the Petitioner had always been active in these markets but was previously importing these air circuit breakers from Asea Brown Boveri (ABB), and that the Petitioner had always been dependent upon other manufacturers to brand their ACBs.

WWB further indicated that pursuant to the final determination of the Board in the original investigation, an anti-dumping duty of 4.6 per cent on all automatic circuit breakers with casings of plastics or other insulating material for a voltage not exceeding 1 000V and with current rating not exceeding 800 amps was imposed on imports from Mitsubishi.

WWB alleges that during the course of 2001, the Petitioner acquired the business of MSA Manufacturing (Pty) Limited, a wholly owned subsidiary of Mitsubishi Japan (Mitsubishi business), Mitsubishi's local distributor, and had benefitted from such acquisition in that it had been able to expand its product range to distribute all the products that Mitsubishi manufactured and offered. It further alleges that after such acquisition, the anti-dumping duty imposed upon Mitsubishi products was terminated.

WWB indicated that the Petitioner's product range competed with that of Mitsubishi's, contrary to what was alleged by the Petitioner, because they both had products which were equivalent products. Through one of the Petitioner's price lists, WWB further indicated that there were products which fell under the tariff heading in respect of which this investigation was being conducted, 8536.20.15, and which competed with Mitsubishi products which were currently imported by the Petitioner.

WWB submitted two product lists from the Mitsubishi business, one as at June 2000, and the other as at February 2002 to indicate that the products listed in both were the same. WWB alleged that this indicated that the

products which were being imported by the Petitioner from Mitsubishi, which would have attracted duties had the duties not been terminated, compete with the Petitioner's products.

WWB alleged that the Petitioner through its acquisition of the Mitsubishi business was gaining an unfair advantage in the sense that it was benefitting from the importation of products without these products being subject to an anti-dumping duty. It indicated that it was unfair that the anti-dumping duty was benefitting an exporter of the products, Mitsubishi, at the expense of the other exporters because of its association with the Petitioner. It further indicated that its clients had not been aware of any price reductions in the Petitioner's Mitsubishi range since the removal of the anti-dumping duty.

WWB referred to Article 4.1 of the Anti-Dumping Agreement. It indicated that since the Petitioner acquired the circuit breaker business of Mitsubishi South Africa during the course of 2001, the Petitioner had been importing products which were the subject matter of this investigation from Mitsubishi. It indicated that the Board in its final determination concluded that Mitsubishi was importing products that were being dumped into South Africa and accordingly recommended to the Minister of Finance that a duty of 4.6 per cent be imposed. It submitted that such a duty was in fact imposed and that it was probable that such products imported by the Petitioner were still being dumped in South Africa. WWB, therefore, indicated that the Petitioner was itself an importer of the dumped product within the meaning of the Anti-Dumping Agreement and requested the Board to investigate this.

WWB indicated that accordingly, it submitted that it was probable the Petitioner did not form part of the "domestic industry", that the review petition was not competently launched on behalf of the "domestic industry" and the review should not have been initiated.

In response to the comments from WWB, the Petitioner argued that it

obtained the distribution rights of the Mitsubishi circuit breakers in order to strengthen its position particularly in the mining and heavy industries segment of the market and that as Mitsubishi products were renowned for their robustness, they were an exception to the rule, i.e. they were not sold on price. It indicated that for the record, it was selling the Mitsubishi products at a significant premium compared to the locally manufactured product.

For purposes of its preliminary decision, the Board noted the comments on the products imported from Japan, but confirmed that this sunset review only deals with products originating in France and imported from Hager and Schneider and originating in Italy and imported from Bticino and not products imported from Mitsubishi in Japan.

The Board, therefore, decided that as the Petitioner is the only manufacturer of the subject product in SACU the petition can be regarded as being made by or on behalf of the domestic industry under the provisions of the Anti-Dumping Agreement.

In response to the Board's "essential facts" letter, WWB indicated that the decision by the Board in this respect fails to address the very question raised by its client. It submitted that the Petitioner, whilst it is now factually "the only manufacturer of the subject product in SACU" by virtue of its acquisition of the business of MSA Manufacturing (Pty) Ltd, (Mitsubishi business) does not and of itself mean that it is representative of the "domestic industry" for purposes of the WTO Anti-Dumping Agreement. It further submitted that through the acquisition of the Mitsubishi business, the Petitioner has itself become an importer of the allegedly dumped product, products which were subject to a 4.6 per cent anti-dumping duty pursuant to the Final Determination made by the Board.

WWB indicated that as such, in terms of Article 4.1 of the Anti-Dumping Agreement which provides:

"4.1 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 or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that:

- (i) when producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the term "domestic industry" may be interpreted as referring to the rest of the producers;
- (ii) in exceptional circumstances the territory of a Member may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if (a) the producers within such market sell all or almost all of their production of the product in question in that market, and (b) the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory. In such circumstances, injury may be found to exist even where a major portion of the total domestic industry is not injured, provided there is a concentration of dumped imports into such an isolated market and provided further that the dumped imports are causing injury to the producers of all or almost all of the production within such market."

the review petition has not been launched on behalf of the "domestic industry".

In response to the comments from WWB, the Petitioner argued that this statement defies reason. The Petitioner indicated that it was and still is the only manufacturer of the products concerned in South Africa and that its investment in plant and labour is substantial and its commitment to manufacture quality world-class products is beyond reproach. The Petitioner submitted that the fact is that it is not importing the alleged dumped products under consideration and that even if it were importing from Schneider, Hager or Bticino, its industry standing could still not be questioned as it is the only manufacturer of the products concerned in South Africa. The Petitioner further submitted that this argument, under the same circumstances, was used by WWB in the fibre optic cable investigation and it was dismissed by the Board at that stage and should on the same grounds, be dismissed by ITAC in this case.

ITAC considered the comments from WWB and its reference to Article 4.1 of the Anti-Dumping Agreement and found that Article 4.1 provides that producers *may* be excluded from the “domestic industry” when they are related to the exporters or importers or are themselves importers of the *alleged dumped* product. ITAC found that the Petitioner is an importer of circuit breakers, but not of the allegedly dumped products, as the allegedly dumped products in this investigation are products manufactured by Hager and Schneider in France and Bticino in Italy. ITAC found that the products imported from Japan are not allegedly dumped products in this investigation.

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

4. DUMPING

Article 11.3 of the Anti-Dumping Agreement provides as follows:

"Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, **that the expiry of the duty would be likely to lead to continuation or recurrence of dumping** and injury. The duty may remain in force pending the outcome of such a review" (emphasis added).

4.1 DUMPING

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

"'dumping' means the introduction of goods into the commerce of the Republic or the Common Customs Area at an export price contemplated in section 32(2)(a) that is less than the normal value, as defined in section 32(2), of the 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 for profit; or
- (bb) the highest comparable price of the like product when exported to an appropriate third country;"

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(2)(a) 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 that sale;"

Sections 32(5) and 32(6) of the ITA Act further provide as follows:

- " (5) The Commission must, despite the definition of "export price" set out in subsection (2), when evaluating an application concerning dumping that meets the criteria set out in subsection (6), determine the export price for the goods in question on the basis of the price at which the imported goods are first resold to an independent buyer, if applicable, or on any reasonable basis.
- (6) Subsection (5) applies to any investigation of dumping if, in respect of the goods concerned -
 - (a) there is no export price as contemplated in the definition of dumping;
 - (b) there appears to be an association or compensatory arrangement in respect of the export price between the exporter or foreign manufacturer concerned and the importer or the third party concerned; or
 - © the export price actually paid or payable is unreliable for any other reason."

4.4 ADJUSTMENTS

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

"A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability. In the cases referred to in paragraph 3, allowances for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made. If in these cases price comparability has been affected, the authorities shall establish the normal value at a level of trade equivalent to the level of trade of the constructed export price, or shall make due allowance as warranted under this paragraph. The authorities shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties."

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

4.5 COMPARISON OF EXPORT PRICE WITH NORMAL VALUE

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

4.6 METHODOLOGY IN THIS INVESTIGATION FOR GROUPE SCHNEIDER IN FRANCE

ITAC decided to use the “best information available” to calculate the dumping margin for Schneider, as it did not respond to the Board’s Exporters Sunset Review Questionnaire. ITAC further decided that the best information available was the information submitted by the Petitioner in the petition.

In response to the Board’s “essential facts” letter, WWB indicated that its clients submitted that they were unable to furnish the information in respect of dumping in the time available and that the requests made for extension both in correspondence and in its clients’ injury memorandum, were not permitted.

4.6.1 Normal Value

Type of economy

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

The Petitioner indicated that like products to those exported to the SACU were sold in the domestic market in France in the ordinary course of trade.

The Petitioner obtained a Compact Disc, ex France, with the prices of all the products sold by Schneider in France, dated October 2001. It then extracted the prices of the MCCBs for use in its calculations. The Petitioner selected a sample of products, consisting of the most popular products, which represents more than 75 per cent of all the sales in the MCCB product range.

An adjustment of 65 per cent was made for discounts given on the French domestic market by Schneider.

The normal values of the different products are indicated in table 4.6.3 under paragraph 4.6.3.

4.6.2 Export prices

The Petitioner argued that it was obvious that Schneider Electric as well as the other EC importers of MCCBs into South Africa, were subsidised by their parent companies to stay competitive in the South African market. It indicated that this was clear from the fact that Schneider Electric's list prices only increased by 10 per cent since 2001 whereas the Rand devalued by 45 per cent over the corresponding period against the Euro. The Petitioner submitted that this indicated that they were determined to continue dumping into South Africa. The Petitioner argued that discounts of up to 45 per cent were given on the list prices. The export prices were obtained from price lists of Schneider on the South African market. The price list for Schneider was dated January 2002.

An adjustment was made to the export price for discounts given to importers in SACU of 45 per cent.

The export prices are indicated in table 4.6.3 in paragraph 4.6.3.

4.6.3 Margin of dumping

The following margins of dumping for Schneider in France were calculated:

Table 4.6.3: Margin of dumping for Groupe Schneider

Schneider product code	Schneider normal value (Rand)	Schneider export price (Rand)	Dumping margin - Schneider
NS100N-60A-3P	894.52	543.77	64.50%
NS100N-80A-3P	983.61	572.26	71.88%
NS100N-100A-3P	983.61	708.2	38.89%
NS160N-63A-3P	1396.47	648.64	115.29%
NS160N-80A-3P	1442.84	695.9	107.33%
NS160N-100A-3P	1442.84	695.9	107.33%
NS160N-125A-3P	1486.06	708.2	109.84%
NS160N-160A-3P	1803.96	708.2	154.72%
NS100H-63A-3P	1321.23	848.03	55.80%
NS100H-80A-3P	1411.37	884.93	59.49%
NS100H-100A-3P	1411.37	884.93	59.49%
NS100NA-100A-3P	652.91	465.44	40.28%
NS160NA-160A-3P	1154.28	629.87	83.26%
NS400N (Electronic)	5757.74	2449.57	135.05%
NS250NA-250A-3P	1334.13	938.66	42.13%
NS400NA-400A-3P	2411.37	1630.67	47.88%
NS630N-630A-3P	9234.24	4214.25	119.12%
NS630NA-630A-3P	3732.95	2593.28	43.95%

The rate of exchange used is FF1.00=R1.50 as at the end of December 2001, to determine the French normal value in Rand.

4.7 METHODOLOGY IN THIS INVESTIGATION FOR BTICINO IN ITALY

ITAC decided to use the “best information available” to calculate the dumping margin for Bticino, as Bticino did not respond to the Board’s deficiency letter and, therefore, did not cooperate. ITAC decided that the best information available was the information submitted by the Petitioner in the petition.

4.7.1 Normal Value

Type of economy

Italy is considered to be a country with a free market economy and therefore the definition of section 32(2) of the ITA Act applies. The Petitioner indicated that like products to those exported to the SACU were sold in the domestic market in Italy in the ordinary course of trade.

The Petitioner submitted information with regard to the normal values of the subject products in Italy for Bticino. These prices were quoted as list prices of some MCCBs, by an Italian distributor.

The normal values are indicated in the table in paragraph 4.7.3.

4.7.2 Export price

The export prices as indicated in the table in paragraph 4.7.3 were obtained from the Electromechanica price list, agents for Bticino in South Africa, for 2001. To this price, 30 per cent was added to obtain the 2002 price.

4.7.3 Margin of dumping

The following margins of dumping were calculated for Bticino in Italy:

Table 4.7.3: Margin of dumping for Bticino

Bticino product code	Normal value		Export price					Margin of dumping	
	Bticino Italian price list	Bticino Italian prices in Rand	Bticino local price list	Transport 10% and Import duty 19%	Present anti-dumping duty 23.6%	Export price after adjustments (1)	Export price with no adjustment for anti-dumping duty (2)	1	2
T7113A/125	124.03	1228	1274	242	197	835	1032	47%	19%
T7133A/160	211.37	2093	1924	366	298	1261	1558	66%	34%
T7413A/630E	821.56	8133	7930	1507	1226	5197	6423	57%	27%
T7133MA/160	181.4	1796	1378	262	213	903	1116	99%	61%
T7413MA/400	421.25	4170	3640	692	563	2385	2948	75%	41%

The rate of exchange used was EURO1.00 = R9.90 as on 21 June 2002.

4.8 METHODOLOGY IN THIS INVESTIGATION FOR HAGER IN FRANCE

ITAC decided that Hager did not cooperate in this investigation, as it did not submit complete information as originally requested by the Board. ITAC, therefore, decided to use the "best information available" to calculate the dumping margin for Hager. ITAC decided that the best information available was the incomplete information submitted by Hager.

4.8.1 Normal Value

Comments from Hager on Petitioner's claim of dumping

Hager submitted that in the Petitioner's statement it was clearly stated that the Petitioner did not manage to collect any price list of Hager in either Germany or France. It argued that considering the fact that Hager was a

leader in its market segment in most European countries, price lists are freely available from any authorised Hager distributor, and it was surprising that the Petitioner could not obtain one.

Hager argued that to go the easy route, the Petitioner decided on its own that Schneider had to be the reference for the normal value which to its point of view was completely misleading for a fair judgement within the framework of this investigation. It indicated that to its own benefit, the Petitioner amalgamated different products together to give a wrong picture of the product under investigation and that purely by looking at the products it could be seen that the Petitioner did not compare "apples with apples". Hager argued that its product was a miniature circuit breaker whereas the products from Schneider and Bticino are moulded case circuit breakers.

Hager submitted that prior to selling in SACU, an in-depth market survey was carried out with Electromechanica, its local partner, to find the right positioning for either products or prices. It indicated that as it was offering a complete system and not individual functions, the price of its products were always positioned in the upper segment of the market. It argued that after the survey it clearly appeared that the lower end of the market, i.e. the housing market was of no interest to it and it did not give it the opportunity to realise reasonable profits, due to the very low price of the Petitioner. Hager argued that it, therefore, decided to target the medium/high market segment where, first, the price levels were acceptable and, secondly, where it had the possibility to sell a complete system and also introduce the latest state of the art technology the SACU industry was looking for. Hager indicated that the market price in SACU was always given by the market leader which is the Petitioner.

Hager argued that its aim in entering the SACU market has always been to get a reasonable share and that it is dumping neither in SACU nor in any other country in the world.

Type of economy

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

Hager indicated that the products mainly exported to the SACU market were 1 pole and 3 poles MCBs.

It submitted that in France, according to the NFC 15-100 which is the norm ruling the electrical installations and applications, it is compulsory for the protection devices to switch the conduct of neutral which is used to supply the loads. It submitted that in the commercial and industrial field, this rule has been applied from November 1962 and in the housing field from April 1988.

Hager indicated that this means that the use of 1 pole MCBs is totally forbidden on the French market except for the replacement of faulty items in old installations or in some very particular applications. It further indicated that the standard type of MCB sold in the French market is the Phase+Neutral MCB, which is a 2 pole protection.

Hager included a graph indicating the figures of sales in volume of the poles per each kind of Hager MCB sold on the French market. Hager argued that the French market is 2 and 4 poles and the SACU market is 1 and 3 poles.

Hager submitted that after the original investigation in 1996, the Board issued a Report No. 3781 admitting that: "Hager does not sell single pole circuit breakers in France". Hager argued that today, the situation has not changed in the French market.

Hager indicated that for these reasons, there are too many differences between the SACU market and the French market to allow for a proper comparison. Hager argued that the Board should use exports to third

countries to determine the normal value.

In response to the Board's "essential facts" letter, Hager submitted that the investigators did verify the volumes sold on the French market. It argued that the volumes sold on the French market were insignificant.

ITAC found that only sales volumes of the products sold on the French domestic market, included in the representative group, could be verified.

ITAC found that Hager did not submit any information with regard to the volumes sold of each of the different product groups on the French market to substantiate the figures in its graph as it was of the opinion that this is justified by the fact that anyone with a reasonable knowledge of the French market and standards would easily be able to validate this information.

ITAC found that some of the products in the representative group were sold on the French market during the period of investigation. The volume of each of these products, sold on the French domestic market represented more than 5 per cent of the volume of each product exported to SACU.

In terms of Footnote 2 to Article 2.2 of the Anti-Dumping Agreement:

"Sales of the like product destined for consumption in the domestic market of the exporting country shall normally be considered a sufficient quantity for the determination of the normal value if such sales constitute 5 per cent or more of the sales of the product under consideration to the importing Member, provided that a lower ratio should be acceptable where the evidence demonstrates that domestic sales at such lower ratio are nonetheless of sufficient magnitude to provide for a proper comparison."

ITAC confirmed the Board's preliminary decision and decided that the normal value, for the products sold on the French domestic market, should be based on the actual sales values of the products on the French domestic market.

ITAC further decided that the normal value for all the other products should be based on a constructed cost build-up, as complete information was not submitted on the exports to third countries.

4.8.1.1 Normal value determined based on sales on the domestic market in France

As stated above, some of the products in the representative group were sold on the French domestic market.

Hager Electro SAS sells its products to be sold on the French domestic market to its subsidiary. The subsidiary then sells the products to the various customers.

Exports are made to either agents in the foreign countries or if the market is of such a nature that it allows for a subsidiary to be established, the exports are done through the subsidiary.

It was submitted that the sales of Hager Electro SAS to its subsidiary on the French market were on the same level of trade as the exports to an independent agent in SACU.

Hager, however, has an export team responsible for a group of countries of which South Africa is one, that does the selling and administration for sales to this group of countries. For the cost build-up of the exported product, Hager could allocate the selling costs of this export team to the products exported to SACU.

ITAC decided that the sales value to the first independent buyer should be used as the basis for determining the normal value for the products sold on the French domestic market.

Adjustments to the normal value:

The following adjustment was claimed by the Exporter and was allowed by ITAC as it was shown that there was a difference in costs, which was demonstrated to have affected price comparability at the time of the setting of the prices:

(i) Freight cost

For purposes of its final determination, ITAC decided to confirm the Board's preliminary decision to make an adjustment to the delivered sales value for the freight cost on the French domestic market.

The following adjustment was claimed by the Exporter, but was not allowed by ITAC:

(ii) Rebates

ITAC confirmed the Board's preliminary decision that the rebates to the two big groups could not have affected price comparability at the time of setting prices, as these rebates are negotiated at the end of the year between management and the groups.

ITAC noted that Hager could not differentiate between the rebates granted on the formal contracts and the rebates negotiated with the two groups. ITAC, therefore, for purposes of final determination, decided not to allow the rebate adjustment to the normal value.

Ex-factory Domestic Prices

The ex-factory prices were calculated, taking the above adjustment for freight cost into account.

4.8.1.2 Normal value determined based on a constructed cost build-up

In response to the verification report, Hager submitted that it agrees with the calculation of the constructed cost build-up, except for the "profit margin of Hager Tehalit Systems SAS". It indicated that the actual nett profit for Hager Tehalit Systems SAS for 2001 should be added to the cost.

Hager indicated that through the cost build-up, selling prices are calculated for products which were not sold on the French domestic market because it is

forbidden to install them due to the non-compliance with standards. It argued that as the Board is looking for tangible information in order to determine its position on this case, it does not understand why the Board persists in focussing on determining a price for a product which is not even sold on the French domestic market. It indicated that this point was already clearly agreed upon in the first petition in 1996/1997.

For purposes of its preliminary decision, the Board decided that the actual costs of Hager Electro SAS and its subsidiary be included in the cost build-up and that the actual profit margin of Hager Electro SAS and a weighted average profit margin for the MCB+N and the multipoles MCBs be added to the cost, as this was the only profit information available to the Board.

In response to the Board's "essential facts" letter, Hager argued that the profit margin used as the profit margin of Hager Tehalit Systems SAS was incorrect, as this was the profit margin extracted from documentation relating to Hager Electro SAS. It indicated that it would be appropriate to consider the profit margin of Hager Tehalit Systems SAS before tax in the year 2001. Hager submitted the income statement of Hager Tehalit Systems SAS for the year 2001 which indicated the profit percentage.

ITAC decided, for purposes of its final determination, that the actual costs of Hager Electro SAS and its subsidiary be included in the cost build-up and that the actual profit margins of Hager Electro SAS and Hager Tehalit Systems SAS be added to the cost.

Ex-factory selling price

The ex-factory selling prices were calculated for all products not sold on the French domestic market based on a cost build-up.

4.8.2 Export price

Actual invoiced sales values from Hager Electro SAS to Electromechnica in SACU were used to determine the export price.

Adjustments to export prices

ITAC made the following adjustment to the export prices for purposes of calculating the ex-factory export prices:

(i) Payment terms

An adjustment was made to the export price for the payment terms. The payment terms granted to Electromechanic were deducted from the export price.

Ex-factory export price

The ex-factory export price was calculated taking the above adjustment into consideration.

4.8.3 Margin of dumping

The weighted average margin of dumping for all the products in the representative group was calculated to be 37.28 per cent.

4.9 CONCLUSION - DUMPING

For purposes of its final determination, ITAC considered all the comments received from the interested parties and found that the expiry of the duties on the subject products originating in France and imported from Hager or Groupe Schneider and originating in Italy and imported from Bticino, or their agent B Trading of Switzerland would be likely to lead to the continuation or recurrence of dumping. The following margins of dumping were calculated:

Table 4.9: Margins of dumping

Manufacturer	Dumping margin
Groupe Schneider	38.89%-154.72%
Bticino	47%-99%
Hager	37.28%

5. MATERIAL INJURY

Article 11.3 of the Anti-Dumping Agreement provides as follows:

"Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. The duty may remain in force pending the outcome of such a review."

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 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:

1,
"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 CBI which constitutes 100% of the total domestic production of the subject product. ITAC found that this constitutes "a major proportion" of the total domestic production, in accordance with Article 4.1 of the Anti-Dumping Agreement.

Information with regard to the injury indicators reflects the Petitioner's position for the three financial years prior to the imposition of the anti-dumping duties and for the ensuing years after the imposition of the current anti-dumping duties, as well as a substantiated estimate of what the effect of the expiry of the duties will have¹ on the Petitioner.

In response to the original non-confidential petition, WWB submitted that in terms of Government Gazette Notice 1307 of 2002, the sunset review was initiated because "the Petitioner submitted sufficient evidence and established a *prima facie* case to enable the Board to arrive at a reasonable conclusion that a review should be initiated".

It argued that for the reasons set out in its submissions to the Board, its clients deny that the Petitioner submitted any evidence, let alone sufficient evidence, to establish a *prima facie* case to enable the Board to arrive at a conclusion that a review should be initiated.

It argued that the petition in particular was based on conjecture and that no evidence of the allegation of continuation or recurrence of dumping or material injury was supplied. It further argued that in particular, in relation to material injury, the Petitioner failed to distinguish between the various

products which were under investigation and attempts to cumulatively assess the effect of the removal of the duty of all the products under the investigation on it and its prices when it was inappropriate to do so. It indicated that the Petitioner did not and could not show that it would suffer any injury as a result of removal of the small duty (7.6 per cent) applicable to Groupe Schneider's product. It argued that for example, the import figures, effect on SACU prices, economic factors and indices having a bearing on the state of the industry, including actual and potential decline on market share fail to distinguish between the different products and producers (exporters).

It submitted that as such, no *prima facie* case was established by the Petitioner and the Board could not arrive at any reasonable conclusion that a review investigation should be initiated.

In response to the revised petition, Hager indicated that it was much to their surprise to find that the Petitioner was granted a second opportunity to present a revised petition to the Board. It argued that in the first petition as well as the revised petition, it noticed that the Petitioner was not in a position to prove or substantiate any injury caused by imports from Hager. It indicated that it would like to remind the Board that the Petitioner in the original petition failed to submit any kind of information about the Hager group.

In response to the original material injury submission of the Petitioner, WWB argued that the Petitioner had not shown that the expiry of the duty would be likely to lead to a continuation or recurrence of dumping and injury.

WWB referred the Board to Articles 3.1, 3.2, 3.4 and 3.7 of the Anti-Dumping Agreement.

WWB submitted that central to the Petitioner's submission that the removal of anti-dumping duty would be likely to lead to a continuation or a recurrence of injury was the argument that the removal of the 7.6 per cent anti-dumping duty imposed upon the circuit breakers would lead Groupe Schneider to reduce its prices by the same amount. It argued that this, the Petitioner

claimed, would force it to similarly reduce its prices by the same amount.

WWB indicated that the Petitioner raised this argument (the argument) in relation to imports, effects on SACU prices, price depression, price suppression, potential decline in sales volume, price undercutting, potential decline in sales value, decline in profit, decline in output, decline in market share, potential decline in utilisation of capacity, negative effects on employment and negative effects on growth.

WWB argued that the argument amounted to remote possibility and conjecture, was simplistic and neither took into account the market segments in which the Petitioner and Schneider operated nor economic and commercial factors affecting the industry as well as the general expression of the economy. It indicated that the Petitioner was regarded as a market leader in South Africa. It further indicated that Schneider charged similar prices to those charged by the Petitioner for similar products. It argued that this was noted by the Petitioner where it stated as follows:

"We seriously believe that small duties such as the 7.6% imposed on Schneider Electric has no effect on their strategy. They continue to pitch their annual prices at values just below our prices."

WWB submitted that it was important to note that on the Petitioner's own version it conceded that the 7.6 per cent duty imposed on the circuit breakers imported by Schneider had no impact on Schneider's strategy which appears to contradict its argument. It argued that the removal of the small 7.6 per cent duty imposed upon circuit breakers would not have an impact on the prices charged by Schneider either on the fully assembled circuit breakers imported by it or the circuit breakers assembled by it. It argued that it might simply enable Schneider to increase its profits marginally. It further argued that the duty was small in comparison to the anti-dumping duty imposed on Hager (18.9 per cent) and Bticino (23.6 per cent).

WWB submitted that in truth, and in fact, Schneider's prices for the imported circuit breakers and for its products assembled in South Africa were generally

higher than the equivalent prices in the Petitioner's range.

WWB indicated that the demand for products imported and assembled by Schneider was not only price related. It argued that Schneider markets itself as a supplier of excellent service and superior products for which customers paid a premium and that Schneider was able to offer its customers a system of related products which the Petitioner could not offer.

WWB submitted that Schneider operated and was dominant in the tertiary-building market and that this market was essentially the non-residential, commercial and office-space market. Customers in this market were larger and the systems required were more expensive and extensive than in the residential market in which the Petitioner was dominant. This market was therefore not as price sensitive as the residential market.

WWB stated that the Petitioner, on the other hand, mainly operated in and was dominant in the urban and rural residential market and that this market was far more price sensitive than the market in which Schneider operated.

WWB submitted that economic and commercial factors currently affecting the industry including but not limited to the government's policy of electrification and low cost housing, and the growth in the mining industry (where Mitsubishi was dominant), made the Petitioner's prospects of growth and profit much greater than the period before the duty was imposed. Thus, the CEO of Reunert, Gerrit Pretorius, was quoted in Financial Mail of 19 July 2002 as stating that Reunert's business in consumer electronics and electrical equipment "are doing extremely well" and that low-cost housing construction is "flying". WWB indicated that it was significant to note that Mitsubishi has not dropped the prices of its products previously subject to anti-dumping duties since the removal of the anti-dumping duty on such products.

WWB argued that because of the dominance enjoyed by the Petitioner in the

urban and rural residential market and the likely growth of that market and of the mining industry, the removal of the small 7.6 per cent anti-dumping duty imposed on circuit breakers of Groupe Schneider would have no impact on the Petitioner or its products.

In response to the comments from WWB, the Petitioner submitted that WWB raised several issues concerning the merits of its petition, with its central argument being that the Petitioner failed to substantiate its request for a review. The Petitioner indicated that the central question in any sunset review investigation is whether the expiry of the duty would be likely to lead to the continuation or recurrence of dumping. It argued that if the answer to this question was positive then the next question was whether the domestic industry manufacturing the products concerned was likely to again suffer material injury as a result of the dumping in the absence of anti-dumping duties.

The Petitioner argued that owing to the fact that Schneider missed the opportunity to present the Board with information regarding its normal values and export prices of the products concerned (also taking cognisance of the information supplied by the Petitioner in this regard), it was clear that the expiry of the duty would result in the recurrence of dumping of the subject products on the SACU market.

The Petitioner submitted that as to the impact of the expiry of the duties on the domestic industry, it should be taken into consideration that the Petitioner is presently operating in a market where anti-dumping duties are in place against Groupe Schneider owing to its previous actions in the market. It argued that if the anti-dumping duties were set at the correct level, it would have removed all injury previously suffered by it on account of dumping. It further argued that even if the anti-dumping duties were at a too low level, it would have brought some relief from the dumping and that it was, therefore, clear that within the context of a sunset review investigation the impact of the

removal of the anti-dumping duties on the domestic industry was not and could never be based on recent historical facts. It argued that, in short, it was an analysis of the future impact of the dumped imports on the domestic market if the anti-dumping duties were to be removed.

The Petitioner indicated that in its submission, WWB quoted Articles 3.1, 3.2, 3.4 and 3.7 of the Anti-Dumping Agreement as basis for the assessment of the recurrence of material injury.

The Petitioner indicated that as these articles deal with the historical impact of the dumped imports on the domestic industry, the Board considered them in its original investigation. It indicated that at the same time, the Board found that dumped imports by Groupe Schneider were causing the domestic industry to suffer material injury. It argued that in light of these findings, particularly the conclusions concerning the effect of the dumped imports on price and volume of sales, there was every probability that if imports carry no punitive duties, they would in future again be imported at dumped prices, causing renewed material injury to the domestic industry. It submitted that consequently, the existing measures needed to be confirmed.

The Petitioner argued that in its submission WWB was also of the opinion that the removal of the anti-dumping duties would not lead to a corresponding reduction in the price of its circuit breakers. It indicated that WWB tried to defend this statement by indicating that the market was not price sensitive and that factors other than price were influencing the buying pattern of customers.

The Petitioner stated that if this was the case there should be no reason for Schneider to continually undercut the prices offered by the Petitioner in the market. It submitted that in this regard, Schneider was prepared to undercut the prices offered by the Petitioner by as much as 50 per cent on a big contract in order to secure the business. The Petitioner argued that it had no

option but to meet these prices in order to retain the client. It argued that this was not an isolated incident and was something that happened on an ongoing basis. It submitted that it was, therefore, clear that customer choices in this market were primarily driven by price and that in the circumstances, it was obvious that Schneider would use any reduction in the anti-dumping duties to gain an additional price advantage.

The Petitioner further submitted that WWB's arguments regarding the segmentation of the market and its impact on the price elasticity of demand had no factual basis. It argued that it was clear that price was playing an important, if not overriding role in the decision whether or not to buy a particular circuit breaker. It stated that any other factor that ostensibly played a role in buying behaviour, but which could not be satisfactorily explained or quantified, should be rejected. The Petitioner argued that the fact remains that Schneider and the Petitioner competed in the same market segments and this competition was based on price only.

The information considered by the Board to establish whether the Petitioner submitted *prima facie* evidence that the expiry of the duties would be likely to lead to the continuation or recurrence of material injury, was unverified information. Subsequent to the initiation of the investigation, the Board verified the information submitted by the Petitioner and became aware that information was only submitted on the MCCB range of products and no information was submitted on the MCB range of products.

For purposes of its preliminary decision, the Board decided that the Petitioner did not provide *prima facie* evidence that the expiry of the duties would be likely to lead to the continuation or recurrence of material injury on the MCB range of products.

The Board, therefore, decided to recommend to the Minister of Trade and Industry that the anti-dumping duties on the MCB range of products be

withdrawn with effect from 8 August 2002.

No response to this decision by the Board was received from any interested party.

For purposes of its final determination, ITAC decided to confirm the Board's preliminary decision that the Petitioner did not provide *prima facie* evidence that the expiry of the duties would be likely to lead to the continuation or recurrence of material injury on the MCB range of products.

ITAC, therefore, decided to recommend to the Minister of Trade and Industry that the anti-dumping duties on the MCB range of products (all products with a capacity of less than 63A) be withdrawn with effect from 8 August 2002.

5.3 IMPORT VOLUMES AND EFFECT ON PRICES

5.3.1 Import volumes

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

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

In any dumping investigation, the Board normally uses audited import statistics from South African Revenue Services (SARS) to determine the volume of the subject product entering the SACU from the countries under investigation and other countries. It considers these statistics to be the most reliable.

The following table shows the volume of all the imports under tariff subheading 8536.20.15 from 1996 to 2001 in kg as obtained from SARS by the Directorate: Trade Remedies I:

Table 5.3.1 (a): Import volumes in kilograms

KG	1996	1997	1998	1999	2000	2001
Alleged dumped imports						
France	18 977	97 565	204 236	133 858	142 460	161 460
Italy	3 447	9 539	10 801	19 458	16 692	26 053
Total alleged dumped imports	22 424	107 104	215 037	153 316	159 152	187 513
Imports from other countries	103 073	136 456	133 691	114 034	184 104	110 380
Total imports	125 497	243 560	348 728	267 350	343 256	297 893
Alleged dumped imports as % of total imports:						
France	15.1%	40.1%	58.6%	50.1%	41.5%	54.2%
Italy	2.7%	3.9%	3.1%	7.3%	4.9%	8.8%
Total alleged dumped imports as a % of total imports	17.9%	44.0%	61.7%	57.3%	46.4%	63.0%

It should be noted that the above figures are given in kilograms. However, the sales information provided by the Petitioner was in units. Therefore, the Petitioner indicated that in order to make a comparison between the sales and the imports the above figures need to be converted into units. The Petitioner submitted that a F-frame MCCB weighs 2.7kg. The Petitioner argued that if this formula is used, it would not be 100 per cent correct, as the F-frame circuit breakers constitute about 75 per cent of total sales and that the mix of product can influence this figure. The Petitioner submitted that it would, however, establish a trend which can be compared with the sales of the Petitioner in order to determine market share and that a much more accurate method to determine market share would be to do it on a value basis.

The following table shows the volume of all the imports under tariff subheading 8536.20.15 from 1996 to 2001 in units (using the formula of 1 unit = 2.7kg):

Table 5.3.1 (b): Import volumes in units

Units	1996	1997	1998	1999	2000	2001
Alleged dumped imports						
France	7 029	36 135	75 643	49 577	52 763	59 936
Italy	1 277	3 533	4 000	7 207	6 182	9 649
Total alleged dumped imports	8 306	39 668	79 643	56 784	58 945	69 585
Imports from other countries	38 175	50 539	49 515	42 235	68 187	40 881
Total imports	46 480	90 207	129 159	99 019	127 132	110 467
Alleged dumped imports as % of total imports:						
France	15.1%	40.1%	58.6%	50.1%	41.5%	54.1%
Italy	2.7%	3.9%	3.1%	7.3%	4.9%	8.7%
Total alleged dumped imports as a % of total imports	17.9%	44.0%	61.7%	57.3%	46.4%	62.9%

The information in the table indicates that the alleged dumped imports, in total, increased, as a percentage of total imports, from 1997, the year in which the anti-dumping duties were imposed, by 18.9 percentage points. The imports from both the countries under review, as a percentage of total imports, increased.

The imports from France increased by 66 per cent since the imposition of the anti-dumping duty and the imports from Italy increased by 173 per cent from

In response to the original non-confidential petition, WWB referred the Board to Article 3.1(a) of the Anti-Dumping Agreement. It submitted confidential information to indicate the percentage of Schneider imports as a percentage of the total imports and as a percentage of the French imports for the period.

WWB submitted that for the purposes of this analysis, as its clients sales figures were in units, its clients had used the Petitioner's assumption that one unit weighs 2,7 kg. It argued that in making such assumption its clients do not admit that such assumption is correct and in fact the assumption is incorrect as the units may weigh between 100g and 13 kg.

WWB indicated that the volume and value of alleged dumped imports from Groupe Schneider is negligible and cannot have any impact on prices in the domestic market for the like product and on the Petitioner. It indicated that it also appears from its analysis that there has been no significant increase in the alleged dumped product exported by Groupe Schneider and none can be reasonably anticipated as Schneider normally only imports those products which it cannot assemble.

WWB argued that the import statistics given by the Petitioner are unreliable and of no value for the following reasons:

- the figures include imports of products which are not the subject of the investigation and do not differentiate between the various products which are the subject of the investigation;
- the 1996 figures are misleading. They only include imports from July 1996 when the new tariff heading, 8536.20.15 came into effect. It is for this reason that for the purposes of the analysis, import statistics from 1997 are used;
- it is not possible to consider the effects of the allegedly dumped imports on prices in the domestic market for the like product as the unit for measurement used in the import statistics is in kilograms, whereas the sales information is provided by the Petitioner in units.

1997 to 2001.

In response to the original non-confidential petition, WWB referred the Board to Article 3.1(a) of the Anti-Dumping Agreement. It submitted confidential information to indicate the percentage of Schneider imports as a percentage of the total imports and as a percentage of the French imports for the period.

WWB submitted that for the purposes of this analysis, as its clients sales figures were in units, its clients had used the Petitioner's assumption that one unit weighs 2,7 kg. It argued that in making such assumption its clients do not admit that such assumption is correct and in fact the assumption is incorrect as the units may weigh between 100g and 13 kg.

WWB indicated that the volume and value of alleged dumped imports from Groupe Schneider is negligible and cannot have any impact on prices in the domestic market for the like product and on the Petitioner. It indicated that it also appears from its analysis that there has been no significant increase in the alleged dumped product exported by Groupe Schneider and none can be reasonably anticipated as Schneider normally only imports those products which it cannot assemble.

WWB argued that the import statistics given by the Petitioner are unreliable and of no value for the following reasons:

- the figures include imports of products which are not the subject of the investigation and do not differentiate between the various products which are the subject of the investigation;
- the 1996 figures are misleading. They only include imports from July 1996 when the new tariff heading, 8536.20.15 came into effect. It is for this reason that for the purposes of the analysis, import statistics from 1997 are used;
- it is not possible to consider the effects of the allegedly dumped imports on prices in the domestic market for the like product as the

unit for measurement used in the import statistics is in kilograms, whereas the sales information is provided by the Petitioner in units. The Petitioner attempts to deal with the problem by assuming that a unit (F-frame MCCB) weighs 2.7kg. It nevertheless concedes that this figure would not be correct as F-frame circuit breakers only constituted about 75 per cent of total sales and "the mix of the product can influence this figure". In fact, the variance between units can differ by as much as 12kg. The circuit breakers with the lower amp rating weigh considerably less than those with a rating of 800A;

- the tariff heading 8536.20.15, in respect of which import statistics are given, encompasses far more products than the products which are the subject of the investigation. The tariff heading incorporates automatic circuit breakers with a rating from 0 to 800 amps whereas the automatic circuit breaker exported by Groupe Schneider which is the subject of the investigation begins with a rating of 130A;
- the values of the product vary substantially indicating that the value difference of the import statistics may be attributable to the different product mix.

WWB submitted that the import volumes from France increased five fold between 1996 and 1997. It indicated that this trend is continued from 1997 to 1998 when the volumes double. It argued that it is evident, therefore, that notwithstanding the imposition of the anti-dumping duties, the import volumes were increasing. It indicated that there is, however, a decrease in importation from 1998 to 1999 with depressed volumes remaining approximately the same until 2000 suggesting that the import duties were not the only factor affecting the import volume fluctuations per annum. It argued that whilst one would expect to see a gradual increase due to growth in the economy, these fluctuations suggest other forces operating. It indicated that again there is a decrease in volume from 1998 to 2001 of 4.4 per cent illustrating the same

point.

It stated that the conclusions drawn by the Petitioner are respectfully insupportable by the statistics provided.

In response to the comments submitted by WWB, the Petitioner submitted that the remarks concerning the impact of the volume of imports, there are a few things the Board needs to consider. It argued that the information submitted by it is figures obtained from the Commissioner for Customs and Excise and that these are the actual import volumes of the dumped product originating in France. It submitted that an analysis of this data indicates an increasing trend in imports notwithstanding the existence of anti-dumping duties. It further argued that the Board should make sure that the information submitted by Schneider is for the MCCB product category in general and not only for the products selected for purposes of determining a dumping margin.

It submitted that the Board should analyse imports of both the fully built-up circuit breakers as well as the so-called parts, i.e. the basic frames and trip units, as all these products should form part of the product under investigation. It argued that it believes that if the "parts" are not subject to the anti-dumping duties the Board should seriously consider whether it does not present a case of circumvention of the duties. It further argued that even if imports from Schneider decreased, which it does not believe, it is only doing so because of the effectiveness of the anti-dumping duties already in place.

In response to the revised non-confidential petition, WWB argued that the import volumes from France do not reflect a steady increase over the injury period. It argued that the fact that there are fluctuations in the import volumes suggests forces operating other than simply the impact of the imposition of the import duties. It indicated that the submission that *"they were able to do so by continually undercutting the prices offered by CBI in the market"* contradicts the submission made by the Petitioner which states *"in some instances its prices are lower than CBI's and in some instances CBI's prices are lower"*. It indicated that in this paragraph reference is being made by the

Petitioner to Schneider and Btichino's prices as compared with that of the Petitioner and that it is clear from this statement that the Petitioner concedes that Schneider's strategy is not one of undercutting CBI's prices.

WWB submitted that the Petitioner states that should the 7.6 per cent duty fall away it will have to decrease prices by the amount of the duty in order to combat any market share gains and that as submitted in its original response, Schneider SA has no intention of modifying its prices in accordance with the removal of the duty. It indicated that it bears mention however that a reduction of a duty of 7.6 per cent would theoretically not result in the final selling price being reduced by that amount because the 7.6 per cent duty is calculated as a percentage of the FOB value.

In response to the revised petition, Hager submitted that upon receipt of the Petitioner's revised figures, it requested the French customs authority to provide it with the official figures concerning the exports of circuit breakers from France to South Africa.

Hager indicated that in the harmonised system (HS) of customs tariffs, circuit breakers are, more or less worldwide, classified in Chapter 85 under HS Code 8536.

Hager submitted that for automatic circuit breakers, South Africa classifies them in section 8536.20.15 which are for "circuit breakers with casings of plastics or other insulating material with a current rating not exceeding 800 Amps and for a voltage not exceeding 1000 Volts."

Hager submitted that for automatic circuit breakers, France also classifies them in Chapter 8536 but in two different sections:

- 8536.20.10 which are for circuit breakers with casings of plastics or other insulating material with a current rating ≤ 63 Amps and for a voltage not exceeding 1000 Volts
- 8536.20.90 which are for circuit breakers with casings of plastics

or other insulating material with a current rating >63 Amps and for a voltage not exceeding 1000 Volts

Hager submitted that when comparing the figures provided by the Petitioner, it noticed that for a tariff subheading going up to 800 Amps they only achieved to reach higher figures (weight) than the figures given by the French customs for two tariff subheadings which include a much wider scope of products which can go up to 2000 Amps or even higher.

Hager submitted that when looking at its figures it really does not understand why there is such a big difference. Hager submitted information with the exports from France to South Africa in volume (weight) and the exports from France to South Africa in value (Euros).

Hager argued that concerning the Petitioner's approach to define quantities from an average weight, it is Hager's opinion that this makes no sense at all. It indicated that as a matter of fact, the weight of a circuit breaker ranges from 0.125kg for a miniature circuit breaker to 12kg for a moulded case circuit breaker of 800A and that in this case, it is their opinion that this information is not relevant and should not be used by the Board as proper information.

The import statistics considered by the Board for purposes of the preliminary determination, were the import statistics obtained by it from the South African Revenue Services as the Board was of the opinion that this is the best information available to it.

For purposes of its preliminary decision, the Board noted that the import statistics are in kilograms and not in units as the other material injury indicators. The Board further noted that the import statistics are not only for the subject products, but could be imports from other manufacturers. The Board noted that it would be difficult to calculate the import statistics in units as the weight of a circuit breaker differs significantly from one type of circuit

breaker to another type of circuit breaker.

In response to the Board's "essential facts" letter, the Petitioner submitted that it recognises that it is difficult to calculate the impact of the imports owing to the fact that import figures are given in kilograms and market information is given in units. It indicated that, however, the information obtained from the South African Revenue Service clearly indicates an increasing trend in the importation of the product concerned from the countries. It argued that the demand for imported alleged dumped product is obviously on the increase because of its lower price (dumped), compared to the product price.

ITAC noted the comments from the Petitioner and that it is again referring to the countries, but that the anti-dumping duties were imposed only on specific manufacturers and the import statistics can, therefore, include products and products from manufacturers not subject to the anti-dumping duties.

In response to the Board's "essential facts" letter, WWB submitted that the Board in its letter acknowledges that:

- the import statistics are in kilograms and not in units;
- the import statistics could be for products other than the subject products and for imports from other manufacturers; and
- it would accordingly be difficult to calculate the import statistics in units as the weight of the circuit breakers differ significantly from one type to another.

WWB argued that whilst the Board states that this is the best information available to it, its clients submit that the evidence submitted was insufficient to establish a *prima facie* case which would authorise the Board to arrive at the conclusion that a review investigation should be initiated. It indicated that Article 11.2 of the WTO Anti-Dumping Agreement provides that a review if initiated "upon request by an interested party" should "submit positive evidence substantiating the need for a review". It argued that based on the

information furnished, the Petitioner does not and cannot show that it will suffer any injury as a result of the removal of the anti-dumping duties applicable to its client's product and as such has not furnished "positive evidence" as required in terms of Article 11.2.

WWB indicated that of great significance is the fact that the volume and value of alleged dumped imports from its client is negligible and cannot have any impact on the prices in the domestic market.

WWB submitted that on the assumption that the import statistics furnished by the Petitioner in the petition is correct, which is denied, the completed units of Groupe Schneider which are subject to the anti-dumping duty comprised 0.7 per cent of the total imports of the products reflected for the period and 1.45 per cent of the total French imports of that product for that period.

ITAC noted that the import statistics were obtained from SARS by the Petitioner.

In response to the comments from WWB, the Petitioner responded by questioning WWB's interpretation of the Board's statement. The Petitioner argued that its interpretation of the Board's statement, is that it is not possible for the Board to use the SARS data available to it in its market analyses, as this information is supplied in kilograms. The Petitioner argued that owing to the diverse nature of the products concerned, and the fact that the products concerned are not separately provided for under the relative tariff subheading, it is not possible to convert the kilograms into units. The Petitioner submitted that this, however, does not detract from the increasing trend in imports already established.

The Petitioner submitted that the negligibility mentioned by WWB in its response is, with respect, of little consequence. The Petitioner argued that the central question is whether the product is still being dumped and whether the domestic industry is likely to again suffer material injury as a result of the

removal of the anti-dumping¹ duties. The Petitioner submitted that if Schneider's imports are as low as alleged, it reiterates its earlier request that ITAC should analyse imports of not only the fully built-up circuit breakers, but also of its parts.

For purposes of its final determination, ITAC decided that the import statistics, as obtained from SARS by the interested parties, could not be considered as an indicator of the continuation or recurrence of material injury, as the import statistics are in kilograms and not in units and it is not possible to convert it to units. Furthermore, the import statistics are only per country and not per manufacturer and could, therefore, include products from other manufacturers not subject to the anti-dumping duties. The import statistics could also include products not subject to the anti-dumping duties.

ITAC, however, indicated that the import statistics were not the only material injury indicator to be considered to determine whether sufficient evidence was submitted to indicate that there will be continuation or recurrence of material injury.

5.3.2 Effect on Domestic Prices

With reference to Article 3.1(a), 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 price¹ 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 landed cost of the imported product is lower than the ex-factory selling price per unit price of the SACU product.

The Petitioner's list prices, taking any discounts into consideration, was compared to the landed cost of the imported products. The landed cost of the products was calculated based on verified information submitted by Electromechanica and Schneider SA, and for the products selected in the representative group.

In response to the original non-confidential petition, WWB argued that the Petitioner points out that the prices of the imported product closely resembles its selling price and that the Petitioner accordingly admits there is no price undercutting.

As both WWB and CLS indicated that they are uncertain what method was used to calculate the price undercutting and that there cannot be any price undercutting on the side of their clients. Letters additional to the "essential facts" letters were sent to WWB and CLS to indicate the method used by the Board in calculating the price undercutting.

In response to this letter, WWB indicated that whilst the Board's stated policy as worded in the *Calcium Propionate (Netherlands) II Review* is to compare the ex-factory price of the domestic product with the landed cost of the imported product, this is not the only manner which the Board had adopted as a method of calculating price undercutting.

WWB argued that in the *Suspension PVC (Final: Brazil)* investigation, the Board calculated price undercutting with reference to the difference between the ex-factory price of the domestic product and the in-store cost of the imported product. WWB argued that in other cases the Board compared the

in-store cost of the domestic product with the in-store cost of the imported product, e.g. *Paperboard (Austria, Germany, Netherlands, Spain)*.

WWB argued that the Board's actual policy with regards to the assessment of price undercutting is accordingly not clear and that it submits that the most equitable manner of calculating price undercutting would be to compare the difference between the ex-factory price of the domestic product and the in-store cost of the imported product. It indicated that the in-store cost of the imported product would be a better comparative price to the ex-factory price of the domestic product because the point at which the product is sold (and therefore should be compared) in both the domestic and imported scenarios is once the product has reached the first point of sale/warehouse. WWB submitted that in the case of the domestic product this would be the ex-factory price and in the case of the imported product, this would be the in-store cost.

WWB referred ITAC to the Report of the WTO Panel in the *Egypt-Steel Rebar AS Measures Case* where the Panel endorses the aforesaid approach. It argued that the WTO Panel quotes the following from the Investigating Authorities' Essential Facts and Conclusions Report:

"In considering price undercutting, the investigating Authority will normally seek to compare prices at the same level of trade (the ex-factory and ex-importers' store levels), to ensure that differences in distribution costs and margins do not confuse the impact of dumping. ..."

and states its approval at 7.75 in the WTO Panel Report as follows:

"... the above quoted passage from the Essential Facts and Conclusions report makes clear that the IA's reports are not ... devoid of any explanation for the choice of level of trade at which prices are compared¹".

In its response to the letter, CLS argued that it is not clear why ITAC has in this instance deviated from the stated policy, namely to compare the ex-

factory price of the domestic product to the landed cost of the imported product. It referred ITAC to *G Brink Anti-Dumping and Countervailing Investigations in South Africa* page 138.

CLS indicated that Electromechanica wishes to draw ITAC's attention to the fact that use of list prices to calculate the degree of price undercutting often gives rise to a distorted and inaccurate result.

CLS submitted that commercial reality demands cognisance of the fact that list prices and published discounts, in most instances, are only guidelines in so far as the terms and conditions pertaining to specific transactions are concerned. It argued that ad hoc discounts based on several factors may be overseen in the process, which in turn will not reflect the exact sales price, as is the case with an ex-factory price.

CLS submitted that Electromechanica, once again, wishes to iterate that the degree of price undercutting is relative to several factors, such as the level of price suppression and price depression, which as is the case with all the factors indicative of material injury, is conspicuously absent in this matter. CLS indicated that the general healthy standard of the circuit breaker industry reflects this, which indicates that reliance on price undercutting does not automatically imply injury on the side of the Petitioner.

ITAC noted that as indicated, it normally compares the Petitioner's ex-factory selling price with the imported product's landed cost. However, it assesses each investigation on its merits. It was the Board's normal practice to compare the Petitioner's ex-factory selling price to the imported products' landed cost, except in circumstances where these prices were not at the same level of trade.

ITAC noted that Schneider Electric, clients of VVB, indicated in its importers questionnaire, that there is no difference between its landed cost and its in-store cost. ITAC further noted that it did not deviate from its policy as

indicated by CLS as the Petitioner's ex-factory price was compared to the landed cost of the imported product.

ITAC decided to confirm its decision to calculate the price undercutting by comparing the Petitioner's ex-factory selling price to the landed cost of the imported product in this investigation.

ITAC further decided that, for purposes of this investigation, the Petitioner's ex-factory selling price should be based on the price lists with deductions for the discounts given to customers, as this was verified to be standard practice by the Petitioner.

ITAC found that on comparing these prices, the price of the imported product was undercutting the Petitioner's selling price.

Price depression

Price depression occurs when the domestic industry experiences a decrease in its selling prices over time.

The table below shows the domestic industry's domestic selling price for the last three years, and an estimate in the event of the duty expiring:

Table 5.3.2 (d): Petitioner's selling prices

Product	2000	2001	2002	Estimate if duties expire
F25D-60A-25kA	100	110	131	101
F25D-80A-25kA	100	110	131	101
F25D-100A-25kA	100	110	131	101
F35D-60A-35kA	100	110	131	101
F35D-80A-35kA	100	110	131	101
F35D-100A-35kA	100	110	131	101
F35D-125A-35kA	100	110	131	101
F35D-160A-35kA	100	110	131	101
F65D-60A-65kA	100	110	131	101
F65D-80A-65kA	100	110	131	101
F65D-100A-65kA	100	110	131	101
F35DN Isolator	100	110	131	101
F35DN Isolator	100	110	131	101
K35D-	100	110	131	101
K35DN Isolator	100	110	131	101
L40D	100	121	151	116
L40DN	100	121	151	116

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

The information in the table indicates that the Petitioner did not suffer any price depression, but if the duties expire and the imported products' prices are decreased, the Petitioner would have to decrease its prices and will then suffer price depression.

The Petitioner stated that it did not decrease its prices since the imposition of

the anti-dumping duties. However, if the duties are removed, the importers will be in a position to decrease their prices by at least the 23 per cent margin of dumping applicable to Bticino. The Petitioner indicated that in order to protect itself from further injury, it will have no option but to decrease its prices by a similar margin in order to stay competitive.

In response to the original non-confidential petition, WWB argued that it appears that for the period 2000-2002 there has been no price depression, but rather a price increase and that the Petitioner admits there is no price depression.

WWB indicated that the Petitioner states that:

"If the duty is however removed, the importers will be in a position to decrease their prices by at least the 23% margin of dumping applicable to Bticino. In order to protect itself from further injury, CBI will have no option but to decrease its prices by a similar margin in order to stay competitive"

WWB argued that the above quoted statement illustrates the dangers of cumulatively assessing the effect of the removal of the anti-dumping duties of all the products under investigation on the Petitioner and its prices and its failure to distinguish in its petition in relation to material injury between the various products which are under investigation. It indicated that the margin of dumping duty applicable to Bticino (23 per cent) is not relevant to the products of Groupe Schneider which attract a much smaller duty (7.6 per cent). It indicated that it does not follow that if Bticino was able to reduce its prices by the 23 per cent margin applicable to it, that Groupe Schneider would also be able to reduce its prices by 23 per cent.

WWB submitted that only 4 out of the 17 products are relevant to its client. It argued that circuit breakers imported or sold by Schneider Electric which are subject to anti-dumping duties may only compete with 4 of the 17 products listed.

It submitted that it is also not clear on what basis the Petitioner estimates that in some cases there will be a decrease in prices of up to 38 per cent if the duty expires and argued that the Petitioner admits that there was no price depression or suppression. It indicated that the Petitioner submitted that:

"It is therefore evident that CBI did not suffer price depression or suppression as injury indicators. However, if the duty expires and the importers manage to decrease their prices by the level of duty, it is evident that CBI will suffer price depression as a result of this."

WWB submitted that there is, therefore, no allegation by the Petitioner that it will suffer price depression in the event of the duties expiring.

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 Petitioner argued that it managed to maintain a certain gross profit. It submitted that it is evident that it did not suffer price depression or suppression as injury indicators. It argued that, however, if the duties expire and the importers manage to decrease their prices by the level of the duties, it stated that it is evident that it will suffer price depression as a result of this. It indicated that the net effect of this was that since the imposition of the dumping duties, imports continued to increase and erode the market share held by the Petitioner. It submitted that in order to protect market share it will have no option but to decrease prices if the duties expire, as the importers will be able to decrease their prices.

5.3.3 Consequent Impact of The Dumped Imports on The Industry

With reference to Article 3.1(b), 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 for the three years prior to and for all years subsequent to the imposition of the anti-dumping duties, and an estimate for the next year in the event of the expiry of the duties:

Table 5.3.3.1: Petitioner's sales volume in units

Sales in SACU (Volume)	1994	1995	1996	1997	1998	1999	2000	2001	Estimate if duties expire
MCCB	100	107	116	150	193	142	167	155	115

This table was indexed due to confidentiality using 1994 as the base year.

The information in the table indicates that the Petitioner's sales volume increased from 1994 to 2001.

The Petitioner submitted that the estimate is based on the sales achieved by

it prior to the imposition of the anti-dumping duties The Petitioner argued that the withdrawal of the anti-dumping duties will lead to the imported product undercutting its prices by a significant margin and that this will obviously lead to it losing sales. The Petitioner indicated that it is difficult to predict to what extent it will lose sales and therefore it used the sales achieved in 1996 as the basis for the calculation of the estimate if the duties expire.

The Petitioner further submitted that although it managed to increase its sales since the imposition of the anti-dumping duties, it also lost market share in the process. It argued that this is a clear indication that imports are increasing and that this is happening owing to price undercutting by the importers in respect of certain products. The Petitioner argued that its sales volume began to decline steadily since 1998 and that imports continued to increase since the imposition of the anti-dumping duties. The Petitioner submitted that although the imposition of the anti-dumping duties had some impact, it is clear that the removal of the duties will lead to a further significant decrease in sales if the imports continue to increase.

The Petitioner argued that if the duty expires and importers decrease prices to the same extent, price undercutting will increase to the same levels that existed during the period immediately prior to the imposition of the anti-dumping duties.

In response to the original non-confidential petition, WWB indicated that the Petitioner's sales in SACU increased each year during the investigation period. It argued that the basis for adopting the 1996 year is neither sound nor is it motivated on any logical basis and indicated that the Petitioner itself makes the following admission in respect of the selection of that year:

"To what extent it will lose sales is difficult to predict."

WWB argued that the selection of that year, like the Petitioner's argument that the removal of duties will lead to a corresponding reduction in the price of circuit breakers, amounts to a remote possibility and conjecture, is simplistic and neither takes into account the market segment in which the Petitioner and Schneider operate, nor economic and commercial factors affecting the industry as well as the general expansion of the economy. It referred the Board to its original argument regarding the decrease in sales. It indicated that the Petitioner operates and is dominant in the urban and rural residential market and through its acquisition of the Mitsubishi business is also dominant in the mining industry. It argued that these sectors have shown a large increase in demand over the injury investigation period and as appears in the public statements quoted below and elsewhere in its submissions, it is expected that sales in its sectors will increase. WWB submitted that the increase in the gold price is an additional factor which will lead to an increase in the demand for the products in the mining sector. It indicated that the average increase in the gross domestic product over the injury investigation period is estimated between 2.5 per cent and 3 per cent per annum. It stated that it is expected that growth in volumes of between 5 per cent and 8 per cent and growth in value of at least 8 per cent (and probably more) in the following year can reasonably be expected in the MCCB market. It argued that it is, therefore, wholly inappropriate for the Petitioner to estimate that if the duties expire, sales will reduce to what they were in the 1996 year.

WWB indicated that the Petitioner now alleges price undercutting which contradicts its earlier statements and argued that there is also no basis for its contention that it has lost market share. It indicated that in the Chief Executive's Report of Reunert Limited's Annual Report 2000, (Reunert) shareholders are told in relation to CBI that:

"Sales are increasing on a monthly basis and the scope for real growth is better than ever."

It submitted that an increase in sales volume is regarded as exceptional in the market for industrial goods, and indicates that the Petitioner is taking market share away from one of its competitors. It argued that if this is the case, notwithstanding that Schneider is accused of "*pitch[ing] their annual prices at values just below our prices*" then the Petitioner must be attracting customers for reasons other than price competitiveness. It indicated that the Petitioner submitted that through its acquisition of the Mitsubishi business its product range has increased. It argued that the Petitioner's ability to grow its market share must on its own version be more than probable and that on these facts it would seem unlikely that the removal of the relatively small duty would significantly affect the Petitioner and constitute a material threat.

WWB indicated that the CEO also states in the Reunert Annual Report 2001:

"CBI is well positioned for ongoing growth and remains a core asset."

It indicated that finally it is important to point out the positive report in the November 2002 Reunert business release which states that:

"CBI grew sales by 39%, clearly showing the benefits of its wider product offering locally and its growing penetration of the export market. Approximately 17% comes from exports and the company expects to grow this steadily as the quality of the local product gains recognition."

WWB argued that from this report, it appears that some 22 per cent of the Petitioner's sales growth was attributable to local sales. It indicated that this growth in one year is phenomenal and is at least partly attributable to the increase in the product range presumably acquired pursuant to the Petitioner's acquisition of the Mitsubishi business.

WWB argued that it appears therefore that Reunert expects the Petitioner's volume of sales to increase in the coming year rather than decrease to any extent as suggested in the Petition.

In response to the revised non-confidential petition, WWB indicated that notwithstanding the separation of the information in respect of miniature circuit breakers (MCBs) and covered moulded case circuit breakers (MCCBs) in this paragraph (and in the paragraphs dealing with sales value, output, market share, productivity and utilisation of capacity) the Petitioner has not dealt with the criticism of the reliability of the Petitioner's import statistics raised by it in its previous submission, in which it is contended that *"the figures include imports of products which are not the subject of the investigation and do not differentiate between the various products which are the subject of the investigation."* WWB argued that the differentiations made by the Petitioner in these paragraphs of the revised petition pertain to the Petitioner's own internal statistical information and not import statistics and that its criticism remains.

WWB argued that the information furnished bears no relationship to those statistics provided in the *"initial petition"* and that for example, the sales by the Petitioner in 1995 in the *"initial petition"* are represented as being 126.3 statistical points. It indicated that the MCB and MCCBs are presented as being 304 and 150 for 1997 respectively in the revised petition and that the average between the MCB and MCCB units equates to 227 units and not 126.3 units. It argued that even if one takes into consideration that the MCBs and MCCBs are not equally weighted (which they are not) the relative value must be greater than 150 and not 126.3 as previously stated in the initial petition. It argued that mathematically the statistics in the initial petition and in the revised petition bear no relationship to one another which accordingly casts doubt on their reliability.

WWB submitted that the Petitioner states in the initial petition that it bases its estimate of the decline in sales volume of the product in the event of the expiry of the duty as equivalent to the sales achieved by the Petitioner prior to the imposition of the anti-dumping duty. It indicated that the Petitioner bases its estimates in the paragraphs dealing with sales value, output,

market share, productivity and utilisation of capacity on the same principle. It indicated that the Petitioner in making this assumption does not appear to take into consideration selling price increases since 1996 and any growth in the domestic market as a whole since 1996 and that accordingly, the adoption of the 1996 figures as an estimate is not meaningful.

WWB indicated that the Petitioner states that the steady decline since 1998 is *"mainly because importers still manage to undercut the prices offered by CBI in the market."* It submitted that it reiterates the points raised in its original submission to the effect that the prices charged by the Petitioner for the imported circuit breakers and for its product assembled in South Africa are generally higher than the equivalent prices in the Petitioner's range and furthermore that the demand for products imported and assembled by Schneider Electric are not only price related.

WWB indicated that Schneider offers the market an integrated system of related products which the Petitioner is not able to offer. It argued that as such it is not appropriate to identify or attempt to identify the price of an MCCB in such integrated system.

WWB submitted that end-users and OEM's (Original Equipment Manufacturer) often approach Schneider in respect of a project and that the end user or OEM in such an instance is often an overseas principal which specifies the use of Schneider products for use on the project. It indicated that many international companies have a global arrangement with SEISAS whereby any project undertaken by that company will be required to use Schneider products in which case the price has little or no bearing on the product selection. It indicated that in addition, however, Schneider's products are regarded as superior for which customers are prepared to pay a premium and that Schneider is considered in the market to have the ability to supply excellent service to customers.

WWB indicated that the Petitioner states that "*CBI managed to increase its sales immediately prior to the imposition on the anti-dumping duty. Since then it experienced a steady decline in sales volume in line with the corresponding increase in the imports of dumped products, especially from France.*"

WWB argued that from the information furnished by the Petitioner it would appear to be unsubstantiated. It indicated that if one has regard to the sales volume of MCCBs for the period 1994 to 1998, the increase is a steady one. It argued that the decrease of sales in 1999 is a decrease that was experienced by the entire market but it is evident that in the following year a substantial increment is felt by the Petitioner reaching 167 only to fall back slightly to 155 in the year 2001. It argued that these figures do not reflect a "steady decline in sales volume".

WWB argued that in the absence of any steady decline, the Petitioner's submission that such purported decline was due mainly to the undercutting of the Petitioner's prices is illogical and unable to be substantiated on the Petitioner's own statistics.

WWB submitted that once again the reference in the revised petition to importers continually undercutting the prices of the Petitioner is not borne out in the Petitioner's own submission that "*prices of the imported product closely resembles that of CBI. In some instances its prices are lower than CBI and in some instances CBI's prices are lower.*"

In response to the revised petition, Hager indicated that it was surprised to find out that the sales volume and value are decreasing from 1998 to 1999 whereas in the original petition they increased for the same period.

Hager indicated that both the Petitioner's sales volume and value for MCCBs increased for the period 1994 to 2001. It indicated that the volume increased

by 148 per cent and the sales value increased by 423 per cent.

Hager indicated that for the period 1996 to 2001, the Petitioner increased its sales in volumes of MCBs from 106 index points to 248 index points which gives an increase of around 133 per cent.

5.3.3.2 Profit

The following table shows the Petitioner's profit, for the whole company and not only for the products under investigation, for the last three years and an estimate for the next year in the event of the expiry of the duties:

Table 5.3.3.2: Petitioner's profit

Description	1999	2000	2001	Estimate duties expire
Profit (R'000)	100	117	184	164

This table was indexed due to confidentiality using 1999 as the base year.

The information in the table indicates that the Petitioner's profit, for the company as a whole, will decrease if the duties expire.

The Petitioner submitted that although it is extremely difficult to assess from the management accounts what impact the expiry of the duties will have on its profitability, it nevertheless tried to make a prediction assuming that the profit on sales stay constant.

In response to the original non-confidential petition, WWB indicated that on the Petitioner's own admission, it is unable to provide figures for its actual profits and to substantiate its estimates for the decline in profits if the duties expire. It argued that the Petitioner's estimates, as all its estimates in this petition, amount to pure conjecture.

It argued that in any event it is clear that the Petitioner is the dominant player in the local market and according to Reunert's Notes in its Annual Financial Results 2002:

"CBI's sales and profits grew strongly and further enhanced its position as a dominant force in the local market with a wider product offering. Exports have continued to grow in a weak international market."

In response to the revised petition, WWB argued that the Petitioner presents information which is identical to that presented in the initial petition. It indicated that the only difference appears to be in the estimate if the duties expire and that the initial petition indicates an estimate of 170.8 whereas the revised petition presents an estimate 164. It argued that the Petitioner furnishes no substantiation for the different estimate in the revised petition which leads one to the inescapable conclusion that such estimate is an arbitrary one.

5.3.3.3 Output

The following table outlines the Petitioner's domestic production volume of the subject product for the three years prior to and for all years subsequent to the imposition of the anti-dumping duties, and an estimate for the next year in the event of the expiry of the duties:

Table 5.3.3.3: Petitioner's production volume

Production volume	1994	1995	1996	1997	1998	1999	2000	2001	Estimate if the duties expire
MCCB	100	107	116	150	193	142	167	155	115

This table was indexed due to confidentiality using 1994 as the base year.

The Petitioner submitted that it manufactures to the just in time principle and

keeps a floating stock, therefore, output figures are similar to the sales figures. The Petitioner indicated that the estimate is based on sales achieved by it prior to the imposition of the anti-dumping duties and that the same reasons for injury as under sales apply to the output.

In response to the original non-confidential petition, WWB indicated that the Petitioner's sales in SACU for the investigation period show a steady increase in output.

WWB indicated that again the estimate of the effects of the removal of duty is arbitrarily based on the 1996 figures and its comments made earlier in relation thereto equally apply. It argued that the Petitioner again concedes that loss of sales would be difficult to predict and accordingly its estimates are pure conjecture:

"To what extent it (CBI) will loose sales is difficult to predict. Therefore we took sales achieved by CBI in 1996 as a basis for our calculation."

It indicated that again, the predicted decline in output as a consequence of the removal of the duties is some 28 per cent less than the figure in 2001. It argued that the extent of this reduction has no connection to the extent of the anti-dumping duty borne by Schneider which is 7.6 per cent.

5.3.3.4 Market share

The following table shows the market share for the subject product from 1996 to current and an estimate for the next year in the event of the expiry of the duties, in volume:

Table 5.3.3.4 (a): Market share¹ in volume (units)

Market share by volume	1996	1997	1998	1999	2000	2001	Estimate if the duties expire
Petitioner's market share in per cent (for both MCB and MCCB)	100	102	99	99	98	99	45
Alleged dumped imports							
* France - per cent	100	300	600	500	500	500	5100
* Italy -per cent	100	100	100	333	333	333	1667
Other imports - per cent	100	50	50	50	75	50	50

This table was indexed due to confidentiality using 1996 as the base year.

The information in the table indicates that the Petitioner's market share in volume remained constant from 1996, before the duties were imposed, until 2001. The market share of the dumped imports from France increased after the imposition of the anti-dumping duties and remained constant until 2001. The market share of the dumped imports from Italy increased in 1999 and remained constant until 2001.

The following table shows the market share for the subject product from 1996 to current and an estimate for the next year in the event of the expiry of the duties, in value:

Table 5.3.3.4 (b): Market share in value (Rand)

Market share by value ('000)	1996	1997	1998	1999	2000	2001	Estimate if the duties expire
Petitioner's market share (both MCB and MCCB) - per cent	100	97	87	85	82	85	46
Alleged dumped imports							
France - per cent	100	225	475	450	375	400	925
Italy -per cent	100	100	100	200	200	300	900
Other imports – per cent	100	83	79	83	104	88	88

This table was indexed due to confidentiality using 1996 as the base year.

If the market share is analysed using the values, the information in the table indicates that the Petitioner will lose market share to a level lower than that in 1997. The Petitioner's market share decreased after the imposition of the anti-dumping duties and remained constant from 1998 to 2001. The market share of the dumped imports from France doubled from 1997 to 1998 and then decreased slightly from 1998 to 2001.

The Petitioner submitted that the estimate was calculated by adding the loss in sales volume to the volume of the imported product. The Petitioner indicated that it should be taken into consideration that owing to the great variety of products under consideration, the sales volume figure might not be very accurate. It submitted that a better indication of the market share is an analysis of the sales value.

It further submitted that if one looks at the market share analysis as it pertained to the period prior to the imposition of the dumping duties, it is evident that it lost significant market share since the imposition of the duties. It argued that if the duties expire and the importers are able to further decrease their prices, its market share will be further eroded.

In response to the original non-confidential petition, WWB argued that the Petitioner is unable to substantiate its submissions regarding actual and potential decline in market share. It indicated that these submissions are based on imports which it has indicated are unreliable and argued that the Petitioner's submissions, therefore, amount to pure conjecture. It submitted that if the imports are ignored, the Petitioner's submissions reflect an increase in market share over the period. It indicated that the Petitioner estimates that it will lose approximately 28 per cent market share if the duties expire. It indicated that the Petitioner bases its estimate on its estimated decline in volume and value of sales as a consequence of the removal of the duties. It argued that again, the predicted decline of profitability of 28 per cent bears no relation to the anti-dumping duty borne by Schneider which is 7.6 per cent.

WWB indicated that the statements by the Chief Executive of Reunert in its annual report of 2000 support its submissions that the Petitioner has increased its market share.

WWB submitted that the Petitioner's figures show a steady increase in sales value for the period under investigation. It indicated that the predicted reduction by the Petitioner in the sales value as a result of the removal of the duties is some 28 per cent from 2001 to 2003. It argued that this number of 28 per cent is not substantiated. WWB indicated that based, however, on the Petitioner's own reasoning throughout the Petition, the injury which it should suffer at the hands of Schneider (which Schneider denies) should the anti-dumping duties be removed, should be no more than the relatively small percentage of 7.6 per cent. It indicated that this again shows the error that the Petitioner makes in attempting to cumulatively assess the effect of the removal of the duties of all products on it and its prices. It argued that the extent of this injury (if suffered at all) would not be material.

In response to the revised petition, WWB indicated that the Petitioner

presents separate figures in respect of MCBs and MCCBs for the period 1994 to 2001 which information is indexed. It indicated that the basis for the estimates in respect of MCBs and MCCBs is once again based on the sales achieved by the Petitioner prior to the imposition of the anti-dumping duties. It argued that this assumption ignores any price increase due to inflation and therefore reflects the estimates as being inaccurate. It argued that its original submission made to the effect that the basis for adopting the 1996 figure as being without substantiation is of equal application.

WWB indicated that the Petitioner is stated in its original submission as enjoying approximately a 91 per cent market share in the urban and rural residential market whereas Schneider only enjoys approximately less than a 1 per cent share of this market. It argued that it would statistically be highly improbable for the Petitioner to drop from 523 to 221 in the MCB market, a market in which they are market leaders and are clearly dominant.

WWB submitted that the figures presented by the Petitioner in substantiation of the estimate of the sales value if the duty expires are not substantially different from those presented in the initial petition. It indicated that it is noteworthy however that there is no correlation between the sales volumes and sales values which are presented in that relative values increase and decrease with no relation to changes in volume sales. It argued that from this it appears that the figures reflect a mix of products.

WWB indicated that the Petitioner states that "*owing to the fact that no import detail is available for the period prior to 1996 CBI is able to answer this question only for the period 1997 to current.*" It stated that notwithstanding this statement, the Petitioner purports to furnish information for the years 1994, 1995 and 1996. WWB argued that in addition, since the tariff was changed on 5 July 1996, the use of these statistics for 1996 are misleading for various reasons which are acknowledged by the Board in its preliminary determination dated 11 February 1997 (the Preliminary Determination).

WWB submitted that when the investigation was initiated the products under investigation were classified under the old tariff subheadings 8536.20.30, 8536.20.35 and 8536.20.90. It indicated that tariff subheadings 8536.20.30 and 8536.20.35 were normally used to clear MCBs while subheading 8536.20.90 was for MCCBs. It indicated that with the revision of the tariff dispensation all circuit breakers forming part of the investigation and accordingly the sunset review are now imported under tariff subheading 8536.20.15. It submitted that the Board stated in the Preliminary Determination in paragraph 5.3 that, *"As with the MCBs, import statistics for MCCBs are not very useful in the investigation for several reasons. First, air circuit-breakers (ACBs), which do not form part of the investigation and which are very expensive, are included under this tariff subheading. Secondly, MCCBs with a rating in excess of 800A, which also do not form part of the investigation, are also included under this tariff subheading. Furthermore, products that do form part of the investigation have a wide variety of prices, meaning that an increase in value is not necessarily accompanied by a similar trend in volume. Unfortunately the unit of measurement as regards the volume of imports changed from poles to kilograms during the investigation period, thus rendering the volume figures virtually meaningless. The Board also considered the fact that there are usually several importers from some of the countries under consideration."*

WWB argued that the statistical information provided in the original petition compared to that of the revised petition is substantially different and conflicting. It argued that for example, the relative total CBI sales in value in 1997 in the petition are reflected as R220 000 and these numbers increase to R238 000 in 1998 – a differential of 8.1 per cent, and that that the initial petition reflects a differential of 21 per cent for the same period. It argued that these differences and the extent thereof cast doubt on the accuracy of the figures furnished by the Petitioner particularly when taking into account that these are the Petitioner's internal statistics.

As previously indicated, ITAC noted that the Petitioner only provided figures for the MCCB range of products in the original petition. In the revised petition, figures for both MCBs and MCCBs were submitted.

WWB argued that a further example of what appears to be unreliability in the information furnished by the Petitioner is that in the revised petition for the period 1997 to 1999 there is a zero growth rate in respect of the sales value (R220 000 in 1997 and R220 000 in 1999). It indicated that the initial petition reflects a 46 per cent growth differential for the same period.

WWB submitted that Schneider contends that owing to the range of MCBs and MCCBs under consideration that neither the sales volume nor the sales value figures are very accurate. It argued that the submission that the sales volume figure is less accurate than the sales value figure is not motivated by the Petitioner and would appear to have no basis for its submission.

5.3.3.5 Productivity

Using the production and employment figures sourced from the Petitioner, its productivity in respect of the subject product is shown in the following table for the last two years and an estimate in the event of the expiry of the duties:

Table 5.3.3.5 Productivity (units)

Employee productivity	2000	2001	Estimate if the duties expire
Units per employee	100	95	43

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

The Petitioner indicated that the employee productivity will decrease if the duties expire.

In response to the original non-confidential petition, WWB indicated that the Petitioner has provided figures in relation to a limited period, 2000 and 2001 and argued that drawing conclusions from this limited time period reduces its reliability. It indicated that again, the Petitioner estimates that if the duties expire productivity will decrease by 30 per cent. It argued that no reasons are given for this submission and the Petitioner again purports to assess the impact of the effects of the removal of duties of all the products on its productivity and not to separately identify the effects of the removal of the duty on Groupe Schneider's product on its productivity.

In response to the revised non-confidential petition, WWB indicated that it draws to the Board's attention that Schneider obtained import statistics for the injury period from the Department of Customs and Excise on 22 November 2002. It attached a copy of the information obtained from SARS.

WWB indicated that it is evident that the information differs from the information provided by the Petitioner.

WWB submitted that due to the importance of the conclusions which are being drawn from these statistics, it is necessary to draw this inconsistency to the Board's attention so that it can be investigated. It indicated that it is also relevant to note that the market is not so price sensitive that a 7.6 per cent drop in the duty would result in a decline of 55 per cent from 2001 in respect of employee productivity. It argued that the suggestion is unrealistic.

ITAC noted that as the employment figures could not be substantiated by the Petitioner, the units per employee used in the productivity calculation could, therefore, not be substantiated. ITAC, therefore, did not consider this material injury factor to be relevant in the current review.

5.3.3.6 Return on investment

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

The Petitioner submitted that as the product concerned is not separately provided for in the management accounts, it is not possible to present this information in the format prescribed by the Board. However, it indicated that it does not use the return on investment methodology but EVA and that its aim is always to produce an EVA of 20 percent. It argued that if the duty falls away it will be highly unlikely for it to achieve this. The Petitioner indicated that to make a prediction as to the extent of EVA loss is impossible.

In response to the original non-confidential petition, WWB indicated that the Petitioner is unable to show any actual or potential decline in return on investment.

5.3.3.7 Utilisation of production capacity

The following table provides the Petitioner's capacity and production for the subject product for the three years prior to and for all years subsequent to the imposition of the anti-dumping duties, and an estimate for the next year in the event of the expiry of the duties:

Table 5.3.3.7 (a): Utilisation of production capacity on the MCCB range of products

	1994	1995	1996	1997	1998	1999	2000	2001	Estimate
Capacity	100	100	100	100	100	100	100	100	100
Actual production	100	107	116	150	193	142	167	155	115
Utilisation of capacity	100	107	116	150	193	142	167	155	115

This table was indexed due to confidentiality using 1994 as the base year.

The estimate is based on the sales volume decreasing in line with what was stated above. The Petitioner indicated that its production capacity has not altered since its original application in 1996, but this is purely a matter of market demand. It indicated that they already have the capacity in most manufacturing departments to increase production overnight should it be necessary. The Petitioner argued that it foresees a further decrease in its utilisation of its installed capacity should the duties expire and with this reducing rapidly as the importers increase their local market share.

The Petitioner submitted that it never reached the production for which the production line was equipped and established since the importers started dumping in SACU and continue to do so even though the Rand devalued by around 250-300 per cent against the US dollar over the same period. It argued that it seriously believes that small duties such as the 7.6 per cent imposed on Schneider Electric, has no effect on their strategy. It stated that the importers continue to pitch their annual prices at values just below its prices. The Petitioner, therefore, indicated that it requests that the anti-dumping duty on the European manufacturers and/or their local agents be increased with at least 15-20 per cent. The Petitioner argued that this not only indicate that the current duty should remain, but is grounds for an administrative review contemplated by the Petitioner on the products

concerned.

In response to the original non-confidential petition, WWB indicated that as its clients have not been provided with information regarding utilisation of capacity or the Petitioner's estimates, Groupe Schneider is unable to comment thereon. WWB indicated that it notes that failure to furnish such information or provide a summary thereof to our clients is contrary to the provisions of the Anti-Dumping Agreement.

For purposes of its preliminary decision, the Board noted the comment that the utilisation of production capacity was not given, but decided that as the figures for capacity, which remained constant over the period of investigation, and the actual production were given, it is possible to determine the trend in the utilisation of production capacity.

WWB submitted that the request to increase the anti-dumping duty imposed on Schneider by a further 15 per cent to 20 per cent minimum is inappropriate for various reasons. It argued that what is before the Board is a sunset review as specified in Article 11.3 of the Anti-Dumping Agreement which provides for the continuation of an existing duty if it can be shown that the expiry of the duty would be likely to lead to a continuation or recurrence of dumping and injury. It stated that it does not provide for the increase of existing duties. It argued that there is no basis for the Petitioner's submission.

In response to the revised non-confidential petition, WWB submitted that in respect of MCBs the Petitioner asserts that the removal of the duty of 7.6 per cent on MCBs will result in the drop in actual production from a relative volume of 304 000 units in the year 1997 to a relative volume of 105 000 units. It indicated that the Petitioner further contends with respect to MCCBs that the removal of the 7.6 per cent duty on the MCCBs will translate into a decline in actual production from a relative volume of 193 000 units in 1998

to 115 000 units. It argued that with respect these contentions are insupportable. It indicated that in respect of both MCBs and MCCBs the Petitioner enjoys a substantial market share of approximately 66 per cent of the total market (i.e. residential and industrial). It indicated that the Petitioner is suggesting that the removal of a mere 7.6 per cent duty and a presumed consequent drop in the price of MCCBs will translate into a decline of utilisation of capacity from 155 in 2001 to 115 as estimated once the duty is removed which is a drop in excess of 55 per cent (assuming there was 100 per cent utilisation in 1998). It argued that this is clearly unrealistic.

WWB indicated that once again the error made by the Petitioner with the presumption that the removal of the duty would precipitate a concomitant drop in the price of MCCBs of 7.6 per cent referred to above, is referred to herein.

For purposes of final determination, ITAC confirmed the Board's preliminary decision that as the figures for capacity, which remained constant over the period of investigation, and the actual production were given, it was possible to determine the trend in the utilisation of production capacity.

5.3.3.8 Factors affecting domestic prices

There were no other known factors which could affect the domestic prices negatively.

5.3.3.9 The magnitude of the margin of dumping

ITAC found that the subject products were imported at dumped prices into the SACU. The dumping margins calculated varied between 38.89 per cent and 154.72 per cent for Schneider in France and between 47 per cent and 99 per cent for Bticino in Italy. The weighted average dumping margin for Hager was calculated to be 37.28 per cent. ITAC considered these to be significant.

5.3.3.10 Actual and potential negative effects on cash flow

The Petitioner submitted that its overall reduction in turnover and therefore margins will obviously have a negative effect on its cash flow forecasts.

In response to the original non-confidential petition, WWB indicated that the Petitioner states that the overall reduction in turnover and therefore margin, presumably as a result of the removal of the duties, will obviously have a negative effect on its cash flow forecasts. It indicated that it has already commented that the Petitioner's estimates for its potential decline in sales volumes and value as a consequence of the removal of the duties are unsubstantiated and pure conjecture. It argued that accordingly, statements regarding negative effect of the removal of the duties on its cash flow forecasts are also pure conjecture.

5.3.3.11 Inventories

The Petitioner indicated that it will have to reassess the stockholding in line with sales value reduction, if the duties expire.

In response to the original non-confidential petition, WWB submitted that the Petitioner alleges that the stockholding would decrease and inventories would be reduced in line with the reduction of the sales value of the product. It indicated that the Petitioner would have to reduce inventories of finished goods totally and to alter its approach to a "make by order" as a consequence of the removal of the duty – a reduction in 7.6 per cent duty will hardly lead to such a result.

It indicated that the Petitioner failed to comply with the provisions of the Anti-Dumping Agreement and supply a confidential summary of the information provided to the Board.

5.3.3.12 Employment

The Petitioner indicated that it will be forced to reduce its labour force if the duties expire, as well as its direct and indirect overheads. The Petitioner argued that eventually, if the dumping continues at the present rate, it might be forced to close the line and retrench the total workforce. It argued that this will not only have a negative effect on the Petitioner but also on the local engineering manufacturing industry, with South Africa losing their experience, knowledge and capabilities to other countries and communities such as the EC that aggressively protect their local manufacturers through duties, anti-dumping duties and approval standards and specifications.

In response to the original non-confidential petition, WWB indicated that the Petitioner could only provide figures for the 2-year period 2000 to 2001. It argued that the conclusions based on this limited information are accordingly not accurate.

It indicated that the Petitioner alleges that it will be

"forced to reduce its 'labour force', as well as its direct and indirect overheads, as the importers gain more local market share at the present dumping (subsidised) price levels".

WWB further indicated that the Petitioner also states that eventually, if the dumping continues at the present rate, it may be:

"forced to close the line and retrench the total workforce."

It indicated that it has already commented that the Petitioner's allegations that it will lose market share are unsubstantiated and pure conjecture and that accordingly, the above-mentioned statements are also pure conjecture. It indicated that it is again absurd to suggest that the removal of a 7.6 per cent duty would force the Petitioner to close its entire line and retrench its total workforce and that the Petitioner estimates that its workforce will be reduced

by 34-35 per cent (on its indexed figures). It argued that it is absurd to suggest that a removal of 7.6 per cent duty of Groupe Schneider's products will result in a reduction of the labour force of approximately 35 per cent.

WWB submitted that it notes that the Petitioner increased its labour force by 25 per cent between 2000 and 2001. It submitted that it notes that between 2000 and 2001 the sales volume increase by only 3.5 units. It indicated that there seems to be no correlation between the two as alleged by the Petitioner. It argued that the statistics presented do not appear to be consistent.

WWB argued that the remarks made in the Annual Reports from 1999 to 2002 and elsewhere by the Reunert Group all appear to bear testimony to the fact that the company is growing and that employment should not need to be cut back. It indicated that the Chief Executive's Report in Reunert's Annual Report of 2001 makes the claim that:

"CBI achieved excellent progress in broadening its product offering ...CBI is well positioned for ongoing growth and remains a core asset. Its strong base in the local market provides it with a solid foundation from which to launch its international expansionist programme."

It submitted that finally, it is worth noting that from 2000 to 2001 the number of employees increased from 1 193 to 1 314, being an increase of some 121 employees. It alleged that with the evident expansionist programme which the Petitioner seems to have already embarked upon and with their export market growing successfully, it would appear that the company is not relying solely on its domestic activities to remain profitable. It argued that it seems extremely unlikely that with these international strategies having been implemented that the company will need to retrench "the total workforce".

It indicated that it is interesting to note the claim in the Chief Executive's Report of Reunert's Annual Report 1999 that:

"... a new range of products with estimated life cycles of more than fifteen years, augurs well for future expansion."

ITAC noted that the employment figures could not be substantiated by the Petitioner and, therefore, these figures could not be verified. ITAC, therefore, did not consider this material injury factor to be relevant for purposes of its final determination.

5.3.3.13 Wages

The Petitioner indicated that wages are clearly set out for the industry and will not alter should the anti-dumping duties expire. It indicated that it has no choice in this regard and can only reduce the direct overheads by reducing personnel.

5.3.3.14 Growth

The Petitioner submitted that it has experienced a reduction in market share since the anti-dumping duties were implemented in 1996. It indicated that at the same time the importers have managed to increase their volumes by 1667 per cent. It argued that it has also hardly seen any growth of the past 3 years and this is owing to importers growing market share through continued price undercutting as part of their strategy.

In response to the original non-confidential petition, WWB submitted that the Petitioner claims to have suffered a decrease in its market share since the anti-dumping duties were implemented in 1996. It indicated that, however, the Petitioner's statistics seem to contradict this information. It argued that the statistics show a different trend, that of an increase in market share from the period prior to the anti-dumping duties to 2001. It indicated that it is interesting to note in the letter to Reunert's shareholders dated November 2001 the following statement was made:

"Growth in Circuit Breaker Industries (CBI) ...was particularly strong...In the field of low-voltage electrical engineering, this company is now the undisputed leader in South Africa."

It argued that this is not indicative of a company losing market share to foreign competitors and one which has "hardly seen any growth over the last 3 years". It indicated that it has commented on the Petitioner's allegations on market share and do not intend to repeat its comments here.

5.3.3.15 Ability to raise capital or investments

The Petitioner indicated that capital is 100 per cent raised via Reunert and it will become more difficult as sales decrease.

In response to the original non-confidential petition, WWB argued that no substantiation is given for the difficulty to raise capital. It indicated that in Reunert's Annual Report of 2000, shareholders are advised that:

"CBI expanded its global presence opening wholly-owned subsidiaries in Europe and North America. Sales are increasing on a monthly basis and the scope for real growth is better than ever."

It indicated that in the letter to Reunert's shareholders of November 2001, shareholders are advised that:

"Exports remain a high priority, and although good progress was achieved during the year, further improvements will be planned in the years ahead."

WWB indicated that in the Chief Executive's Report of the Reunert 2001 Annual Report, shareholders were informed that:

"CBI's exports grew by more than 48% and account for about 17% of the total company's sales. Penetration of the North American market remains a priority, despite the recent downturn in demand."

WWB indicated that it appears, therefore, that the Petitioner is a highly successful division of Reunert and the raising of capital should present no problem for it.

5.4 COMMENTS SUBMITTED ON THE NON-CONFIDENTIAL PETITION BY ELECTROMECHANICA

In response to the original non-confidential petition, CLS, consultants for Electromechanica, indicated that the purpose of its submission is to rebut the allegations of likely injury and dumping as well as recurring dumping and injury contained in the petition. It argued that its submission will demonstrate that imports by Electromechanica did not cause any injury to the Petitioner and does not represent any future threat of recurring dumping or injury to the Petitioner.

It argued that Electromechanica is strongly opposed to the proceedings and submits that these proceedings should result in immediate termination of the imposition of anti-dumping duties against it.

CLS indicated that the submission will demonstrate the following:

1. The Board is to examine whether the products under investigation are sold at dumped prices and whether the effects of dumping are the cause of injury to the domestic market. The Board is compelled to *meru motu* terminate the imposition of any anti-dumping duties in the absence of any proof of injury being suffered by the Petitioner and where the Petitioner fails to substantiate that the expiry of the duties would lead to continuation or recurrence of dumping and injury;
2. It is, pursuant to the above-noted, apparent from the Petitioner's petition and supporting documents such as its Annual Financial Statements that the Petitioner does not suffer any injury and there can hence be no

continuation of injury in any manner or form by the Petitioner. The Petitioner in fact enjoyed substantive growth in the industry as reflected in its profit statements;

3. Other than a vague and unsubstantiated contention based on mere speculative conjecture that termination of the anti-dumping duties in this review would automatically cause a decline in the selling price of products, anticipated to be equivalent to the margin of dumping currently in place, no other substantive proof of recurring dumping is offered by the Petitioner;
4. The Petitioner's failure to submit any proof to indicate a future recurrence of injury, excludes the Petitioner from any assistance by the Board;
5. The mere possibility of sales below normal value does not necessarily warrant a conclusion of future dumping by the Respondent;
6. The Board is further compelled in terms of relevant statutory provisions to consider individual imports from respondents on a per company basis, and not to treat imports collectively in consideration of the matter;
7. Statutory requirements pertaining to Administrative Tribunals require the Board to exercise its discretion in a fair and reasonable way. The lack of substantive allegations by the Petitioner, should compel the Board to reject the Petitioner's application on the basis of the "some fair" and "reasonable" evidence doctrine;
8. The Petitioner failed to show any future threat of injury as required in Article 3.7 of the Anti-Dumping Agreement and fails to establish any causal link between the expected imports of products at dumped prices and the future injury to be suffered by the Petitioner. Electromechanica submits that parallel logic requires that the conditions of Article 3.7 be complied with where the application is based on a future threat, as is the case in the present matter under consideration;

CLS argued that in view of the above, Electromechanica respectfully submits that the current anti-dumping duties imposed against the import of circuit breakers which form subject of the review investigation initiated on 6 July

2001 in terms of Notice No. 1611 of Government Gazette No. 2242, be terminated forthwith by the Board.

Legal requirements to be taken into account before ordering the maintained imposition of anti-dumping duties after termination of a five year period

CLS submitted that in accordance with the provisions of Article 11.3 of the Anti-Dumping Agreement, any definitive anti-dumping duty **shall be terminated** on a date not later than five years from its imposition, unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury.

CLS quoted the following:

“The language of the Anti-Dumping Agreement purely implies that the **presumptive outcome should be that the Anti-Dumping order will be repealed** after five years. Only if administering authorities could show that the dumping and material injury was likely to reappear or continue will the order not be revoked. **The authorities cannot simply assume that unfair pricing and injury would occur upon termination of the order – a serious investigation must be undertaken**”. (emphasis added by CLS)

(See: Michael O'Moore, Associate Professor of Economics and International Affairs, Elliott School/Department of Economics, George Washington University and Senior Economist, Executive Office of the President of the United States “Commerce Department Anti-Dumping Sunset Reviews: A Major Disappointment”)

CLS submitted that the Anti-Dumping Agreement in Article 11.3 envisaged nothing other than a five-year term for imposed anti-dumping duties. It

argued that inhibiting permanent protection became important for at least two reasons, firstly, to take account of the fact that industry conditions such as foreign business strategies, trade patterns, technology and market concentration levels may have changed since the imposition of the duties, causing trade protection to become unwarranted and secondly, the sunset provisions were one of several measures proposed to generally reign in the worldwide proliferation of antidumping orders.

(see Benjamin H Liebman University of Oregon "ITC Voting Behaviour on Sunset Reviews" August 2001 p.2)

CLS argued that it is apparent from the above-noted that extension of any anti-dumping duties is an extraordinary measure that should not be done routinely. It argued that extension of any order should be based on persuasive, positive evidence of economic vulnerability by the Petitioner. It indicated that no valid factual or substantiated evidence was however adduced by the Petitioner that indicates vulnerability on the side of the Petitioner in this application. CLS indicated that this is especially evident, if account is taken of the fact that the Board must decide whether dumping and injury is likely to recur and not whether it has already taken place.

CLS submitted that the Board as an administrative tribunal is in the exercise of its statutory discretion, subject to the terms and conditions of the Promotion of Administrative Justice Act, Act No 3 of 2000 (the "PAJA").

CLS submitted that in terms of the said PAJA and Section 3.3 of the Constitution of the Republic of South Africa, Act no 108 of 1996, the Board is to exercise their discretion in a rational, coherent and sustainable way.

(See Theron v Ring van Wellington van die NG Sendingkerk in Suid Afrika 1976 (2) SA 1 (A); Carephone (Pty) Ltd v Marcus NO and Others 1999(3) SA 304 (LAC) at 315.)

CLS indicated that in order to give effect to the requirement for an

Administrative Tribunal to exercise its discretion in a reasonable way, "some evidence" should exist upon which the decision is to be based. It further indicated that it is also the requirement that the evidence should be such that a decision could reasonably have been reached on this basis.

(See Baxter Administrative Law p499; SA Medical and Dental Council v Lipron 1949 (3) SA 277(A))

CLS argued that the above-noted test falls within the requirements of administrative justice, as informed by common law principles developed over decades. It indicated that it is a quaint essential requirement that at least "some evidence" be adduced to the Board to make a right and justifiable decision and argued that the mere speculative allegation on which the Petitioner has based its application, does not comply with this requirement. CLS indicated that the requirements of administrative justice prevents the Board from making a finding in favour of the Petitioner, based on mere speculation and lacking any factual detail.

(See President of the Republic of South Africa and Others v SARFU and Others 2000 (1) SA 1 (CC))

CLS indicated that although the "some" or "reasonable evidence" doctrine previous only applied to cases having a "purely judicial" basis, it is respectively submitted that promulgation of PAJA have changed this and that the requirements of lawfulness, reasonableness and procedural fairness, apply regardless of the nature of the administrative action.

The Petitioner fails to submit any evidence of injury being suffered by it and no allegation of any continued injury is being made

CLS indicated that Article 3.1 of the Anti-Dumping Agreement provides that any injury determination shall be based on positive evidence and involve an objective examination of the following elements: volume of the dumped imports, its impact on prices on the domestic market, consequent impact of

these dumped imports on the domestic producers of the like products.

CLS submitted that positive evidence is within the meaning of Article 3.1, evidence which is of an affirmative, objective and verifiable character, which is not to be based on speculation and assumption of likely future events. It argued that it must be credible. It argued that positive evidence must be examined by the investigating authorities in an objective manner. It further argued that an objective examination requires an unbiased investigation of the situation of the domestic industry and of the dumped imports. It indicated that the obligation imposed on the investigating authorities under Article 3.4 of the Anti-Dumping Agreement is to evaluate all relevant economic factors. It submitted that it should be noted that Articles 3.1 to 3.4 do not, however, prevent the investigating authorities from examining relevant factors which are not listed in Article 3.4.

(See World Trade Organization; Report of Appellate Body; United States Anti-Dumping measures on certain Hot-Rolled Steel Products from Japan WT/DS 184/ AB/R 24 July 2001; par 194 et seq.)

CLS argued that in view of the listed requirements with regard to injury assessment, it is obvious that the petition contains insufficient positive evidence of any injury. It indicated that the injury analysis referred to in the petition is sketchy and contains mostly general statements favouring the conclusion that the Petitioner is not suffering any injury at present;

CLS quoted:

“...it is therefore evident that CBI did not suffer price depression or suppression as injury indicators. However, if a duty expires and the importers manage to decrease their prices by the level of the duty, it is evident that CBI will suffer price depression as a result of this. The net effect of this was that since the imposition of the dumping duty imports continued to increase and erode the market share held by CBI. In order to protect market share CBI will have no option but to decrease prices if the duty expires once importers decrease their prices as a result of lowering of their duties.” (CLS emphasis)

(See; Non-Confidential version of Petition; Response to question F 4.7.

Report No 3781 dated 18 July 1997 identified price depression and suppression as specific indicators prevalent of injury in this investigation.)

CLS indicated that the effect of dumped imports on prices is sometimes regarded as conclusive proof of the presence of injury. It indicated that the Petitioner has to this end acknowledged that no price undercutting or price depression took place as is supported by the above quote. It submitted that the Petitioner also fails to refer to any likelihood of any recurring injury in the future, should the duties not be maintained.

CLS submitted that insofar as sale volumes are concerned, the sales volumes of the Petitioner increased substantially throughout the period as highlighted hereunder. It argued that the Petitioner failed to give any explanatory reasons why their sales increased substantially, as imports of the product under investigation by Electromechanica stagnated at more or less the same levels throughout the duration of the dumping case. It indicated that reduced sales were specifically identified as a factor indicative of injury on the original report in this matter (See Report No. 3781, p.2)

CLS indicated that with reference to the Annual Financial Report of Reunert Limited for 2001, of which the Petitioner is a business division, the following opposite observation is made in the Chairman's report to shareholders:

"Growth in circuit breaker industries, CBI and Nashua was particularly strong. Acquisitions enabled CBI to considerably broaden its product range. In the field of low voltage-electrical engineering, this company is now the undisputed leader in South Africa. Exports remain high priority and, although good progress was achieved during the year, further improvements will be planned in the years ahead."

CLS argued that according to the 2001 Annual Report, CBI increased their income revenue from R360 million to R399,2 million from 2000 to 2001 in so far as the circuit breaker industry is concerned. This represents a 26 per cent increase. It indicated that this in turn resulted in a profit increase of 34 per

cent from 2000 to 2001.

CLS submitted that it is also apparent that the Petitioner, expanded on capex from R8,3 million in 2000 to R16,6 million in 2001. It indicated that it is further apparent that more employees were employed from the year 2000 where the Petitioner employed 1193 employees to a total of 1314 employees in 2001. CLS indicated that Report No. 3781 dated 18 July 1997 indicated retrenchments as a specific indulgence factor relevant to the injury suffered by the Petitioner at the time.

CLS indicated that the Petitioner further fails to submit any detail pertaining to actual decline of profits. It argued that the Petitioner in fact enjoyed buoyant growth in their industry and the increased economic growth in South Africa inevitably would give further impetus to the industry. It submitted that Report No. 3781 dated 18 July 1997 indicates decreased profits as indicative of the injury suffered by the Petitioner at the time.

CLS indicated that in the United States, the International Trade Commission considers the following range of economic indicators to determine whether an industry will be entitled to protection:

- likely declines in output , sales , market share, profits , productivity, return on investments, and utilisation of capacity;
- likely negative effects on cash flow , inventories , employment , wages , growth, ability to raise capital and investment; and
- likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.

CLS submitted that it is apparent that none of the above noted factors were alleged or even raised by the Petitioner in this matter. It indicated that it is also apparent from analyses of all the dumping factors, that no substantiated

evidence of any adverse factors tantamount to injury could be adduced by the Petitioner, and that the Petition fails to advise or even allege a recurrence of injury, should the duties be terminated. It argued that the industry is obviously in a healthy state.

CLS argued that in view of the above-noted it is apparent that there can be no continuation of any injury, as the Petitioner is at present not exposed to any form of material injury as such. It argued that it is hence, with respect, not clear on what grounds the Board has decided to proceed with this investigation and on what basis it has found that prima facie proof exists that a recurrence of dumping will occur as all factors to be taken into account, clearly indicate the contrary.

The Petitioner fails to submit substantiating evidence of the likelihood of any recurring dumping

CLS indicated that in accordance with the provisions of Article 11.3 of the Anti-Dumping Agreement, the Board cannot employ a mere mechanistic approach in consideration of the re-imposition of a dumping duty. It argued that a decision based on a mere presumption that dumping and injury was likely to recur or continue, is inappropriate and contrary to the intentions of the Anti-Dumping Agreement.

CLS submitted that consideration of the likelihood of recurrence or continuation of dumping requires that a full investigation be conducted where the Board is to decide whether material injury and dumping are likely to take place, not whether they have already taken place. It states that the mere fact that pricing behaviour may show that selling below normal value has occurred, is not a cause to believe or to reasonably conclude that pricing behaviour will necessarily continue in the future. (See Moore *ibid*)

CLS indicated that several indicative factors are taken into consideration in other jurisdictions, which subscribe to GATT to determine the possibility of

recurring dumping and or injury, duties in the domestic market. It indicated that these, amongst others, include factors such as, exchange rates, inventory, capacity, history of sales below cost, and changes in technology could all influence the likelihood of renewed or continued dumping. It argued that simply assuming, according to Moore, that foreign firms will make pricing decisions in exactly the same way, years after the order has been placed is with respect, naïve. It indicated that changed market conditions and/or market requirements, may change pricing behaviour considerably over a five year-period.

(See; Liebman *ibid*; Moore *ibid*; Canadian International Trade Tribunal Expire Review No RR –200-001 “Certain Oil and Gas Well Casing Made of Carbon Steel Originating In Or Exported From The Republic of Korea And The United States p 5 et seq)

CLS submitted that the Petitioner's premise on which the whole application is based is that importers would on termination of the dumping duties proceed to sell products at prices lower than domestic prices, with the difference in prices the equivalent of the current prevailing dumping margins. It argued that from an economic viewpoint this contention is highly questionable, since it assumes that all economic conditions of the industry are exactly the same as when the order was initially imposed. It argued that simply assuming without substantiating facts that foreign firms will make pricing decisions in exactly the same way, years after the dumping order has been placed, is naïve, to say the least. It argued that one might certainly expect that foreign firms' pricing behaviour might have changed over this period. It indicated that it is also unlikely that foreign firms would just abandon a lucrative market insofar as prices are concerned, as is suggested by the Petitioner and that the Petitioner however fails to submit any substantive evidence in this regard, as it is obliged to do. CLS referred the Board to GF Brink: Anti-Dumping and Countervailing Investigations in South Africa p333. It indicated that Brink argues that a burden is placed on the Petitioner to initiate a sunset review. It indicated that Electromechanica

submits that this burden in fact also extends to the investigation in terms of the requirements of administrative fairness and reasonableness and that the Petitioner fails to acquaint itself of the burden.

CLS submitted that according to Liebman (*ibid* p 9-10), sunset reviews differ from original anti-dumping cases in that original cases deal with dumping that may already have occurred, while sunset reviews concern dumping that may occur in the future. It indicated that in a broader sense, original cases result from difficulties to be associated with free markets, while sunset reviews arise in the midst of markets affected by anti-dumping duties. It indicated that he further observed that the interpretation of certain key variables alters significantly when the perspective switches from an original to a sunset case.

CLS indicated that Liebman (*ibid*) explains;

"For example, a high degree of subject import penetration of the subject good is usually evidence of injurious dumping in an original case while it can be evidence in a sunset case that injurious dumping is less likely. The rationale behind this latter interpretation is that if the foreign industry is able to compete even in the presence of AD duties, then dumping is probably not its prime strategy. Evidence of this logic is seen in the published ITC opinion regarding elemental sulfur imports from Canada

'Consequently [the] imposition of the antidumping finding [hasn't] caused any substantial variation in elemental sulfur from Canada in the U.S. market. This pattern suggests that the revocation of the antidumping finding ... is not likely to lead to any significant increase in subject imports in the U.S. market' "

CLS argued that it is hence clear that the degree of subject import penetration may decrease the possibility of an affirmative ruling in a sunset case even though it increases the probability of an affirmative ruling in an original case.

CLS indicated that in some other matters Liebman (*ibid*) wrote, the ITC viewed a higher degree of subject importation as evidence that injurious

dumping will increase if duties are removed. It argued that it is, however, apparent that in the matter under consideration, the exports have stagnated at the levels that prevailed at the time of implementation of the anti-dumping duties and no reason exists to make any conclusion of increased exports by the Board.

CLS argued that the Petitioner in fact fails to refer to any of these factors as an indication of future dumping by Electromechanica and merely bases its contention on future speculation.

CLS indicated that the World Trade Organisation Panel Report *United States – Anti-Dumping Duty on Dynamic Random Access Memory Semi-conductor (DRAMS) of one Megabit or Above from Korea* (WT/DS99R of 29 January 1999) deals with the term “likely” and “not likely” in context of Article 11.2 of GATT. It argued that the analogy with “likely” in context of Article 11.3, presently under consideration, is clear and, it is respectfully submitted, should be followed by the Board. CLS indicated that in par. 6.46 the Panel remarked:

“ ... A finding that an event is “likely” implies a greater degree of certainty that the event will occur than a finding that the event is not “not likely”. For example, in common parlance, a statement that it is “likely” to rain implies a greater likelihood of rain than a statement that rain is not unlikely, or not “not likely”. Similarly, a statement that a horse is “likely” to win a race implies a greater likelihood of victory than a statement that the same horse is not unlikely to win, or not “not likely” to win. The difference between the concepts of “likely” and “not likely” is perhaps made clearer by interpreting the word “likely” in accordance with its normal meaning of “probable”. The question then becomes whether not “not probable” is equivalent to “probable”. In our view, the fact that an event is not “not probable” does not by itself render that event “probable”.

CLS indicated that it further remarked in par 6.47:

“Given this reality, it is *a priori* possible that situations could arise where the “not likely” criterion is satisfied but where the likelihood criterion is not satisfied. Reliance on the not

likely criterion clearly fails to provide any reliable means to avoid or preclude this flaw. Given such a fundamental flaw, it cannot constitute a demonstrable basis for consistently and reliably determining that the likelihood criterion is satisfied." (CLS emphasis)

CLS submitted that it is a precondition of the Anti-Dumping Agreement that the consideration whether to maintain dumping duties or not shall be applied to individual companies.

(See Article 5.2 of the World Trade Organisation Anti-Dumping Agreement: Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, 1994 and World Trade Organisation Panel Report- *Definitive Anti-Dumping Measures on Grey Portland Cement from Mexico* (WT/DS156/R).)

CLS indicated that subsequent to the above-noted, the Anti-Dumping Agreement states in Article 11.1:

"An anti-dumping duty shall remain in force only as long as and to the extent necessary to counter-act dumping which is causing injury."

CLS argued that it should be noted that this requirement is written in terms of *a duty*, which is applied to an individual company, rather than to an order, which consists of a set of duties applied to individual companies. It indicated that Article 11.3 then provides "a definitive anti-dumping duty shall be determined on a date not later than five years from its imposition". It argued that the use of the singular makes clear the intent that, while reviews are conducted in an order-wide basis, sunset determinations must take account of the differences in actions of individual companies. It argued that this practice applies in the United States and should, it is respectfully submitted, also be applied in this investigation. CLS indicated that sunset reviews are conducted in the United States of America on an "order" basis and that, while the DOC may examine individual foreign firms' selling behaviour, the DOC or ITC revokes or continues anti-dumping duties for firms individually.

CLS indicated that to this end it is clear as set out above that Electromechanica at all times conducted itself in a responsible manner in so far as imports are concerned. It submitted that this clearly indicates that imports by Electromechanica were maintained at the same level. It argued that it is apparent that Electromechanica's imports from producers Hager in France and Bticino of Italy did not disrupt the market in any way and could not have been the cause of any injury to the Petitioner. It indicated that this fact is readily acknowledged in the petition by the Petitioner.

CLS submitted that it is also notable that no allegation of dumping or pricing data in any form were presented by the Petitioner, in so far as Hager, supplier of Miniature Steel Circuit Breakers to Electromechanica is concerned. It indicated that the Petitioner in fact fails to refer in any way to Hager's products and any alleged injury that it may have suffered from imports from Hager as such.

CLS argued that Electromechanica has further maintained its sales volume at a lower or same level throughout the period, despite the growth in the market.

CLS submitted that Electromechanica has throughout the period indicated an ability to remain in the market notwithstanding the anti-dumping finding against them. It argued that this indicates their ability to compete at undumped prices as well. CLS argued that anti-dumping findings have a deterrent effect. It indicated that Electromechanica and suppliers know that resumed dumping will be addressed speedily and impose costs and administrative burdens, which no rational businessman will welcome.

CLS indicated that the Petitioner further wrongly submit that Electromechanica acted as "Agent for Schneider, Bticino and Hager". It argued that this contention is factually incorrect insofar as Schneider is concerned and that that Electromechanica never acted for and on behalf of Schneider in any capacity since the 1980's. It indicated that the submission

that Electromechanica decided to source its MCCB requirements from Schneider as its dumping duties are only 7.6 per cent versus the 18.9 per cent in respect of Hager and the 23 per cent in respect of Bticino, is once again wrong and misleading and Electromechanica is concerned that these factually wrong and misleading contentions could have been verified easily before initiation of this review process.

CLS submitted that there is to this end further notable differences in the kind of product under investigation, imported from Electromechanica's suppliers and Schneider. It indicated that not only does the short circuit capacity of products differ substantially, but Schneider also only imports moulded case circuit breakers, whilst Electromechanica imports Miniature Circuit Breakers from Hager and Moulded Case Circuit Breakers from Bticino.

CLS indicated that the objective of the Anti-Dumping Law is to remedy injurious dumping. It argued that when a foreign exporter has stopped dumping or causing injury, the law has met its objective and that sunset reviews should take account of such circumstances, and not ignore them totally. It argued that the Board has a discretion to make partial revocations and that not exercising this discretion would improperly punish those companies that reduce or eliminate the dumping margins or that did not cause any injury to the domestic market. It indicated that partial revocations would strengthen, not weaken, the effectiveness of orders in effect.

CLS indicated that the Board should respect the clear intent of the Anti-Dumping Agreement, which forms part of and is incorporated in Anti-Dumping Legislation in South Africa. It argued that in any sunset review, the Department should be able to revoke an order in whole or in part and that the current situation of Electromechanica is such that it lends itself ideally to partial revocation of the dumping duties.

Comments submitted on threat of material injury by CLS

CLS indicated that Article 3.7 of the Anti-Dumping Agreement specifies four factors to be investigated in determining a threat of material injury. It argued that the nature of the application by the Petitioner boils down to nothing other than allegations of a future threat. It is submitted that the Board should apply parallel logic in consideration of the question whether dumping or injury is to recur should the dumping margin be terminated.

CLS indicated that these conditions are:

- Whether there has been a significant increase of dumped imports, which would indicate the likelihood of further imports;
- Whether the exporter has sufficiently freely disposable capacity to injure the market;
- Whether the imported products prices are such as to significantly effect domestic prices and to increase demand for further imports;
- Inventories of the presumably imported product.

CLS argued that it is respectfully submitted that none of the above-noted factors can be proven or have been proven or substantiated by the Petitioner. It argued that the application is, however, in nature one that is clearly based on a future threat and it would be inappropriate for the Board to consider the application, without taking account of the above noted factors.

State of the circuit breaker industry in South Africa

CLS submitted that in order to evaluate the state of the electrical and specifically the circuit breaker industry in context, account should first be taken of the state of the macro economy in South Africa. It stated that to this end an average GDP growth of at least 3 per cent is predicted for the next decade.

(See Dr Cees Bruggemas; Economist First National Bank "South Africa's Long Term Prospects")

CLS indicated that specifically for 2003, the growth figure is to be boosted to 3,2 per cent according to some experts.

(See Nedcor Economic Comment 10 September 2002)

CLS submitted that account should also be taken of the fact that the Petitioner enjoyed some additional protection in the fact that the South African Rand devaluated substantially against the US Dollar and the Euro during the application period of the dumping order. It indicated that the weak Rand against the US Dollar and the Euro, served as an obvious deterrent for imports and weakened further competition, which the Petitioner may have had on the domestic market, should the Petitioner indeed prove to be an indigenous domestic producer for the products under investigation.

CLS submitted that specifically insofar as the circuit breaker industry is concerned, there is no better indication than several statements made by the Petitioner over a period of time. It stated that note can to this end be taken of the following:

Reunert Press Release April 20, 2000 "Plenty Spark from Revamped Reunert":

"Circuit Breaker Industries, which commands most of local market share in circuit breakers, continued to perform well and showing organic growth, said Pretorius."

Reunert Press Release November 16, 2000 "Restructuring Pays Dividends for Reunert":

"Circuit Breaker Industries performed well. Emphasis on exports continued and the results of the marketing drive into the US have been rewarding."

Reunert Press Release March 22, 2001 "CBI makes local acquisition":

"Circuit Breaker Industries (CBI), part of the Reunert stable, today announced that it had acquired Lightning and Transient Surge Suppression (Pty) Ltd (L&T) with effect from 1 March 2001."

Press Release November 19, 2001 "Another Vintage Year for Reunert":

"Commenting on Electrical Engineering and Cabling businesses, Pretorius said that Circuit Breaker Industries had performed well and, following several acquisitions, had a product offering which provided strong base for future growth.

While overall turnover had increased by 26%, export sales were up by 48%. This is an area where we expect substantial long-term future growth."

Sake Beeld Woensdag 20 November 2002 "Reunert se winsgroei klop inflasie baie vër":

"Verdienste uit die elektriese ingenieursafdeling en die kabel-afdeling het onderskeidelik met 39% en 4% gegroei."

Further:

"CBI se verkope en wins het sterk gegroei en sy posisie as 'n dominante krag in plaaslike mark verder verstewig met 'n breër produksieaanbieding. Uitvoere het steeds gegroei in 'n swak internasionale mark."

CLS indicated that it is apparent from the above-noted that the general state of the economy is good and specifically the circuit breaker industry is booming. It is further apparent that the Petitioner has not suffered any eroded market share as alleged.

Conclusion

CLS submitted that the Petitioner has displayed an inability to use volume

and margin data in any way or means to indicate injury. It indicated that it has already been noted that proof that the expiry of the duties would be likely to lead to continuation or recurrence of dumping and injury are specific requirements for maintaining imposed dumping duties. It indicated that the test applied whether injury indeed exists to determine whether the decline and the negative effects of injury are substantial to the point where the affected industry cannot combat the impact of the dumped and subsidised imports from its own resources. It argued that it is apparent that the domestic industry is very capable and able to not only combat the impact of the alleged dumped imports but to grow their industry substantially. In such event, the Board is compelled to terminate the definitive and the dumping duties. It indicated that the Petitioner has failed to prove that revocation of the orders would likely result in any renewed material injury.

CLS indicated that according to **Brink** (*ibid*) p163 the equal treatment or non-discrimination of all parties is one of the key elements and reasons for the establishment of both GATT and the World Trade Organisation. It argued that equal and fair treatment demands in this instance that anti-dumping duties be terminated.

In response to the comments from CLS, the Petitioner argued that with due respect it is clear from the response that it does not understand the process of sunset review. It indicated that it will, therefore, not waste the Board's time with a long-winded rebuttal to what at best can be described as a misunderstanding on its part.

The Petitioner submitted that for the record, if the anti-dumping duties were set at the correct level, all dumped imports would have stopped and consequently all injury caused by such dumping would have been eliminated. It stated that CLS labours the point that the Petitioner has not made a substantive case for the retention of the duties based on fact.

The Petitioner indicated that it is also interesting to note from CLS's response that the American Government handles sunset reviews strictly in accordance with WTO regulations and with total disregard for the oft-quoted views of a certain professor Moore.

The Petitioner submitted that in closing, it has read with dismay that Electromechanica states that its imports have not decreased since the imposition of the anti-dumping duties. It argued that in the circumstances, the anti-dumping duties were more than likely set at a too low level and that consequently, it may have to consider lodging an administrative review in future.

In response to the revised non-confidential petition, CLS indicated that the Petitioner in the matter was granted a second opportunity to present to the Board of Trade and Tariffs with a revised material injury submission.

It indicated that it is however clear that the Petitioner in the revised submission, as was the case with the original submission, is still not in a position to prove or substantiate any injury caused by imports. To this end it can be noted that:

- The Petitioner fails to establish material injury;
- The Petitioner fails to establish a causal link between the alleged dumped imports and the alleged injury suffered by the Petitioner
- The Petitioner fails to prove that the expiry of the duties would be likely to lead to a continuation or recurrence of the dumping or injury as required in terms of Article 11.3 of the Anti-Dumping Agreement, especially in view of the unprecedented growth that the industry enjoyed since the imposition of the anti-dumping duties and the exceptional profits achieved by the industry, as indicated in its Annual Financial Reports.

It indicated that it is necessary to evaluate and consider Electromechanica's

response in conjunction with the original submission, which also covered the above noted arguments comprehensively.

Injury

CLS argued that the Petitioner once again fails dismally to adduce proof of "material injury" or injury suffered for that matter. It indicated that other than an artificial argument to indicate an alleged increase of imports of the product under investigation, which once again forms the central theme of the revised injury submission, no other argument of any substance was presented to the Board. It argued that once again, the Petitioner fails to explain:

- that the apparent increase in imports occurred against the background of substantial growth in the industry as expounded in the Annual Financial Report of the Petitioner;
- that the proportionate market share of the imported products from Messrs Hager and Bticino have in fact decreased as clearly indicated in Electromechanica's original injury submission;
- that the Petitioner enjoyed unprecedented profits during the past financial years;
- that the Petitioner was unable in its original petition to prove any elements indicative of material injury such as lower sales volumes, lower production levels, price suppression, depression, etc. It is for instance quite peculiar that the Revised Injury Submission in fact contradicts the original submission made in so far as sales volumes and sales trends are concerned.

CLS indicated that Electromechanica submits that on the basis of the above and what was stated in the original injury submission, no material injury can reasonably be established and the Board should terminate the review proceedings on this basis.

It submitted that the Board's attention is once again drawn to the acknowledgement of the Petitioner in the original petition that it has not suffered any price suppression or price depression. It indicated that the Petitioner's subsequent endeavours to prove price undercutting in view of this, is futile against the above-noted background. Other than mere allegations, the Petitioner once again failed to prove or substantiate any price undercutting on their side.

CLS submitted that Electromechanica further wishes to draw the Board's attention to the fact that its suppliers namely Messrs Bticino and Hager exported the product for the duration of the order, at an approximate dumping duty of ± 20 per cent. It argued that the ± 7 per cent duty referred to in the revised injury petition, should in fact not apply to Bticino and Hager, whose exports have decreased considerably and which companies, in view of the allegations by the Petitioner, could not have been the cause of injury to the Petitioner, if any.

CLS indicated that attention needs to be given to the arbitrary and capricious way in which the Petitioner tries to qualify or present certain data, in order to find support for its arguments in the revised submission. It argued that for instance:

- the degree of accuracy with which the information regarding the sales volume was collected and the distinction made between MCBs and MCCBs are in doubt. It stated that unless data was verified through the Bills of Lading, no weight can be attached to this data;
- the alleged decline of sales in 1998 and 1999 were never verified and it coincides with the time when the Petitioner adopted a new financial reporting and accounting system, which renders the conclusion that the application and supporting documents are based on speculation or conjecture as reasonable;
- the profit reflects different data from that provided in the original injury

- submission, without explaining any reason for the changes;
- the productivity of the revised injury submission indicated a decrease in productivity from 73.0 per cent to a mere arbitrary 43 per cent, without any substantiation or explanation being provided for this;
 - the utilisation of production capacity contradicts the Petitioner's Annual Financial Reports as highlighted in Electromechanica's original injury submission.

CLS indicated that the general absence of any explanation on the side of the Petitioner to explain the good state of the industry as enunciated in Electromechanica's original injury submission, is conspicuous and the only reasonable contention is that the Petitioner is unable to prove any of the material injury, allegedly being experienced, due to imports of the product under investigation.

CLS submitted that the Board's attention is once again respectfully drawn to the provisions of Article 11.3 of the Anti-Dumping Agreement, which amongst others infers a necessity to clearly demonstrate that at the time of the application, injury is being suffered. It stated that the Petitioner fails in this regard.

CLS indicated that to this end it is necessary to take note of the European Commission Decision of 6 June 1994 where anti-dumping proceedings regarding imports of refined trioxide originating from the People's Republic of China No. L176/41 was summarily terminated on the sole basis that high profits were achieved by Community producers at the time of the application.

It argued that it is respectfully submitted that this application of the conditions of the Anti-Dumping Agreement by the European Commission is correct and is to be followed by the Board.

The Failure by the Petitioner to establish a Causal link

CLS indicated that the obvious failure by the Petitioner to establish a causal link between the alleged injury suffered by the domestic industry and the imports from specifically Hager and Bticino represents a material defect in the submission of the Petitioner. It submitted that the Petitioner, totally unsubstantiated, does not allege any present injury or fail to prove any such injury, but rather opted to argue that termination of the duties will lead to future injury. It argued that the fact that the Petitioner in so far as this argument is concerned conspicuously fails to prove a threat of material injury, obviously due to the heavy burden of proof required where a claim is to be based on threat of material injury as referred to in Electromechanica's original injury submission, which is to be read in conjunction with this submission.

CLS argued that the Petitioner's argument pertaining to future injury however contradicts Article 11.1 of World Trade Organisation 1994, Anti-Dumping Agreement and would result in the Board's contradicting the relevant WTO provisions, should the Board accede to the request from the Petitioner.

CLS indicated that in an internet article "*Will the Sun Ever Set on Protectionism*," Aaron Lucas from the Cato Institute discusses the approach of the US Department of Commerce to disregard the norm of automatic revocation as provided for in the WTO Agreement, which approach

"... often contradicts GATT intent, is not binding and at least threatens to undermine market openness"

CLS submitted that should the Board indeed decide to accede to the request of Petitioner on the basis of some vague and speculative allegation of future injury, the Board would act inconsistent to the clear intent of the WTO provisions.

The failure of the Petitioner to demonstrate that the expiry of the duties is likely to lead to the continuation or recurrence of the dumping and injury

CLS indicated that the requirements in this regard were already comprehensively addressed in the Petitioner's original injury submission. It submitted that it is however necessary to once again iterate the failure by the Petitioner to comply with the requirements of Article 11.3 of the Agreement, insofar as the required demonstration of continuation or recurrence of dumping and injury may be concerned. It indicated that to this end it is necessary to once again take notice of the interpretation of the phrase "would be likely" as it appears in Article 11.3.

CLS indicated that the findings of the WTO panel report *United States Anti-dumping Duty on Dynamic Random Access Memory Semi Conductors (DRAMs) from Korea*, was referred to in the original injury submission by Electromechanica. It argued that it suffices to briefly state again that:

- the Panel was of the view that the references in Article 11.2 to "the need for the continued imposition¹ of the duty" and "whether the continued imposition of the duty is necessary to offset dumping" can only be understood in a meaningful manner when read in conjunction with the obligation of Article 11.1, whereby:

"An anti-dumping duty shall only remain in force as long as and to the extent necessary to counteract dumping which is causing injury"

- the Panel noted that Article 11.2 of the AD Agreement implements Article 11.1 contains which contains a general necessity requirement, whereby anti-dumping duties "shall only remain in force as long as and to the extent necessary to counteract injurious dumping" and is therefore an

unambiguous requirement of Article 11.1

- the Panel then went on to note that:

"... the necessity of the measure is function of certain objective conditions being in place, i.e. whether circumstances require continued imposition of the anti-dumping duty".

- the Panel further indicated that:

"... such continued imposition must, in our view, be essentially dependent on, and therefore assignable to, a foundation of positive evidence that circumstances demand it. In other words, the need for the continued imposition of the duty must be demonstrable on the basis of the evidence adduced".

CLS indicated that elucidation of the submission by the Petitioner clearly demonstrates a failure to lay the necessary foundation based on positive evidence and is based on pure speculation and conjecture, which clearly does not comply with the requirements of the Panel decision under discussion.

CLS stated that the Panel further discussed and stated that as a prerequisite, it is necessary for the Petitioner to adduce positive evidence and any failure to adduce such positive evidence falls short of establishing that dumping is likely to recur if the anti-dumping duty order is revoked.

It indicated that jurisdictions, other than the United States as referred to above, followed these requirements strictly in accordance with the requirements of the Anti-Dumping Agreement.

It submitted that Terence P Stewart and Amy S Dwyer indicated in their work that the position taken by the European Union is that:

"in the absence of current injury, the Commission's pre-Uruguay Round analysis

would consider whether a recurrence of injury to the Community industry caused by dumping would be foreseeable and imminent in the absence of measures. Under the post-Uruguay analysis, the Commission considers whether expiry would be likely to lead to a continuation or recurrence of dumping (and subsidization) and injury".

CLS indicated that the Australian Anti-Dumping Administration (ADA) is of the view that:

"The ADA must not recommend continuation of a measure" unless it is satisfied that the expiration of the notice would lead, or would be likely to lead to a continuation of, or recurrence of material injury that the anti-dumping measure is intended to prevent".

To this end the ACS (Australian Customs Service) stated in the Continuation Inquiry; A 4 Copy Paper from Brazil, Germany and South Africa the following:

"...while it is always possible for an exporter to sell at some time in the future, the issue to be addressed by Customs is whether dumping circumstances would probably arise in the imminent and foreseeable future" (emphasis added by CLS).

CLS indicated that no real and positive evidence to that effect was in fact adduced by the Petitioner who relied mostly on speculation and conjecture. It indicated that Electromechanica on the other hand submitted substantiated evidence why it is improbable that dumping would arise after termination of any duties.

Conclusion

CLS indicated that on the basis of the above, and in the absence of any new element being alleged by the Petitioner to re-impose the anti-dumping duties, it is respectfully submitted that the anti-dumping duties in place should immediately be terminated.

For purposes of its preliminary decision, the Board responded as follows on the comments received from Electromechanica:

- Although there might not be evidence of continuation of material injury as the Petitioner's annual financial statements might not show any material injury and the comments made by the Petitioner's management did not indicate any material injury, the question still remains whether there will be a recurrence of material injury, if the duties expire.
- The Board does not routinely extend the anti-dumping duties and, therefore, a sunset review is undertaken before the Board makes a recommendation to the Minister of Trade and Industry.
- The Anti-Dumping Agreement states that the authority should determine whether the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury and not only whether it has already taken place.
- Although the Petitioner indicated that it suffered no price depression or price suppression, it indicated that it will have to decrease its prices if the duties expire and will, therefore, suffer price depression and price suppression.
- The Petitioner, through its estimates and explanations of the estimates, provided information on the likely decline in output, sales volumes, market share, etc. should the duties expire.
- Although the Petitioner did not submit any specific information in its petition with regard to Hager in France, the Board decided, for purposes of the initiation of the investigation, that the prices of Schneider in France could be used as the prices of Hager in France. Price lists of Electromechanica were used to determine the export price from Hager in France.
- All three the exporters subject to the anti-dumping duties were given the

opportunity to respond to the Board's questionnaires and based on this, every exporter is individually evaluated.

- The Board may recommend that an anti-dumping duty applicable to a specific exporter be withdrawn, if it finds that the specific exporter is not dumping or will not dump its product on the SACU market, and still maintain the anti-dumping duties applicable to the other exporters, if it finds that these other exporters will be dumping its products in the event of the anti-dumping duty expiring.
- It is not a requirement that Article 3.7 of Anti-Dumping Agreement, concerning the threat of material injury, be addressed and motivated by the Board and the Petitioner in a sunset review.
- Article 11.3 of the Anti-Dumping Agreement only indicates that the likelihood of the continuation or recurrence of dumping and material injury should be addressed in a sunset review.
- There is no requirement in Article 11.3 of the Anti-Dumping Agreement to address the issue of causal link separately in a sunset review.
- For purposes of its preliminary decision, the Board calculated the price undercutting on the actual verified information collected from interested parties, based on the representative group of products. The Board found that there was price undercutting from all three exporters' products.

In response to the Board's preliminary decision, CLS indicated that Electromechanica respectfully submits that the Board erred materially in so far as the provisional finding of ¹14 May 2003 is concerned, in so far as the following aspects are concerned:

- The finding of the Board that a **likelihood** of future injury exists, despite **insufficient evidence** of the presence of any future material injury being presented to the Board at the time when the application was made or thereafter, which finding in return resulted in a total disregard of the WTO Panel Report on Dynamic Random Access Conductors (DRAMS) from Korea;
- The failure to consider in a due and proper way all the necessary indicators considered to be tantamount to material injury;
- The failure of the Board to exercise its discretion in an unbiased, objective and reasonable way.

Failure of the Board to adhere to the WTO panel report "United States Anti-dumping Duty on Dynamic Random Access Memory Semi Conductors (DRAMS) from Korea

CLS submitted that Article 11.3 of the Anti-Dumping Agreement clearly states that any definitive anti-dumping duty shall be terminated on a date no later than five years from its imposition unless the authorities determine that the expiry of the duty "... would be likely to lead to a continuation or recurrence of dumping and injury".

CLS indicated that the Board correctly emphasized that the authority should determine whether the expiry ¹of the duty would be likely to lead to a continuation or recurrence of dumping and injury, and not only after it has taken place.

CLS submitted that the Board, however, fails to take cognisance of the provisions of the above-noted WTO decision in considering the question of the likelihood of recurring injury insofar as the following aspects are concerned:

1. The WTO Panel submits that:

"The necessity of the measure is a function of certain objective conditions being in place, i.e. whether circumstances require continued imposition of the anti-dumping duty".

2. The Panel further submits that:

"... such continued imposition must, in our view be essentially dependent on, and therefore **assignable to a foundation of positive evidence that circumstances demand it**. In other words, the need for the continued imposition of the duty must be demonstrable on the basis of the evidence adduced" (emphasis added by CLS).

CLS submitted that pursuant to the provisions of Article 17.5 of the Anti-Dumping Agreement, the establishment of facts and the administration thereof should be unbiased and objective. It indicated that it is respectfully submitted that the provisional decision of the Board in this matter is, however, based on incorrect and incomplete data, as indicated in Electromechanica's previous injury submissions. CLS argued that the data submitted alleging future material injury for the Petitioner is clearly based on mere inference, which in turn is based on broad-brushed allegations and unfounded theories.

CLS submitted that the assumption apparently followed by the Board is based on the premise that although the Petitioner does not suffer any material injury at present, the possible future presence of a degree of price undercutting and some other factors, may at some undeterminable time in the future, give rise to material injury to the Petitioner.

CLS indicated that the necessary consequence and fallacy of this approach is that the specific anti-dumping order can be maintained indefinitely, despite

the absence of any material injury on the side of the Petitioner. This approach defies the whole purpose of Article 11.1 of the Anti-Dumping Agreement.

CLS argued that the Board, in exercising its discretion in so far as the matter of the likelihood of recurring injury is concerned, should respectfully take account of the following:

- the Board failed to make any adverse inferences insofar as the fact that some allegations in the original submission differ substantially from those in the subsequent Revised Petition, without any explanation from the Petitioner for such changes;
- the Board further failed to make an adverse inference insofar as the Petitioner's material failure to include the correct product description in its petition is concerned, which should have alerted the Board as to the general accuracy and bona fides of the Petitioner's total submission.

CLS indicated that a WTO Panel further states insofar as the interpretation of Article 11.2 is concerned that:

"... the continued imposition must still satisfy the '**necessity**' standard, even where the need for the continued imposition of an anti-dumping duty is tied to the 'recurrence' of dumping" (emphasis added by CLS).

CLS also indicated that in the Panel's view:

"... this reflects the fact that the necessity involved in Article 11.2 is not to be construed in some absolute and abstract sense, but as that **appropriate to the circumstances of practical reasoning** intrinsic to a review process. It indicated that mathematical certainty is not required, but conclusions should **be demonstrable on the basis of the evidence adduced**, that this is as much applicable to a case relating to the prospect of recurrence of dumping as to one of present dumping" (emphasis added by CLS).

CLS submitted that application of the necessity standard in this matter clearly indicates that no reason exists to impose duties to protect the SACU market for the foreseeable future. CLS indicated that attention is once again drawn to the extraordinary good financial position that the Petitioner finds itself in, a situation which is not likely to change soon. CLS submitted that to this end, note should be taken of the recent interview with the CEO of the Petitioner (*Finansies & Tegniek*, 21 Mei 2003 p26), where the following was stated insofar as the circuit breaker industry is concerned:

"Die vervaardiging van elektriese kables en skakeltoerusting het sy sterk groeitendens gehandhaaf, met die bedryfswins wat byna verdubbel het tot R93 miljoen. Goedkoop huisvesting en uitbreidings in die mynbedryf het die groei veroorsaak. Ons werk inderdaad teen byna volle vermoë".

CLS indicated that the above noted clearly illustrates that:

- The Petitioner still enjoys strong growth in the industry;
- The Petitioner doubled its profits in so far as the industry is concerned for the interim period until March 2003;
- The housing projects and growth in the mining industry are responsible for the increases;
- The Petitioner works at near full capacity.

CLS submitted that the Board by and large finds substantiation for its finding of the likelihood of future injury in the degree of price undercutting that the Petitioner will suffer, should the anti-dumping duties be terminated.

CLS stated, however, that the Board itself expresses concern with:

"... information submitted by the Petitioner that it will suffer material injury through both a significant decline in prices and a significant decline in sales volumes, as this seems to be an unlikely scenario" (emphasis added by CLS).

CLS also stated that no foundation in fact exists to warrant the adverse conclusions pertaining to price undercutting, which forms the basis for the provisional finding by the Board.

CLS stated that it is evident from the above-noted that the anticipated level of price undercutting is uncertain and that the Board is not justified to find justification for the maintained imposition of duties based on doubtful information, which is clearly speculative of nature.

CLS stated that evidence of the factors considered by other jurisdictions before any positive finding of the likelihood of injury is made, was already adduced by it in the original injury submission. Thus, factors taken into account in *sulfur imports from Canada*, for example include:

- the recent and likely performance of the producers of the products;
- developments insofar as demand and supply of the products are concerned;
- capacities of the domestic and foreign mills;
- recent and likely volumes and prices of imports of the product;
- the subject countries' exports to other countries.

CLS argued that no indication exists that any of these factors were indeed considered by the Board or if the application of the Petitioner is to be measured against these guidelines. Accordingly, there is no justification for maintaining anti-dumping duties.

CLS indicated that the Board, in its recommendation that the duties be maintained, does not follow the Panel's guidelines insofar as the interpretation of the concepts "likely" and "not likely" are concerned. CLS indicated that the Panel, in its decision, discusses in depth the meaning of the words "likely" and "not likely" in relation to events that

would cause material injury to the industry to continue or recur, if the duties were removed.

CLS indicated that the Panel stated that:

“... a failure to find that an event is ‘not likely’ is not equivalent to a finding that the event is ‘likely’”.

1,

The Panel also indicated that there is:

“... a clear conceptual difference between establishing something as a positive finding, and failing to establish something as a negative finding”.

The Panel cites the following as an example:

“... a statement that a horse is ‘likely’ to win a race implies a greater likelihood of victory than a statement that the horse is unlikely to win, or ‘not likely’ to win”.

CLS indicated that the Panel further clarifies the concept of ‘likely’ and ‘not likely’ by interpreting the word ‘likely’ in accordance with its normal meaning of ‘probable’. CLS stated that the Panel said:

“The question becomes whether ‘not probable’ is equivalent to ‘probable’. In our view the fact that an event is not ‘not probable’, does not by itself render that event ‘probable’ “.

CLS submitted that the Panel concluded by saying that the:

“not likely” standard is not in fact equivalent to, and falls decisively short of, establishing that “dumping is likely to recur if the [anti-dumping duty] order is revoked”

CLS argued that it is clear from the finding that the Board indeed equates an unlikely or improbable result based on speculative conjecture to a probable or

likely result, which needs to be based on much more substantive and positive evidence to reach a positive conclusion of future material injury, none of which was presented in this investigation.

CLS submitted that **the Board accepts that whilst no injury exists at present**, the remote chance exists that future dumping of product will in turn result in some injury to the Petitioner, which conclusion, according to the Board, warrants the continued imposition of the duties. CLS indicated that this approach totally negates the requirements of the Panel that some substantiated and positive findings are required before a recommendation for retained duties can be made.

Failure by the Board to take account of all the necessary factors indicative of injury or future injury.

CLS indicated that the Board stated amongst others, insofar as comments by Electromechanica are concerned, the following:

"Although the Petitioner indicated that it suffered no price depression or price suppression, it did indicate that it will have to decrease its process if the duties expire **and will therefore suffer price suppression and depression**" (emphasis added by CLS).

CLS indicated that it is not clear to Electromechanica where the Petitioner alluded this, but it is necessary for the record to note that the unqualified acceptance by the Board of the allegation that "decreased processes" will necessarily lead to the presence of price depression and price suppression, has no substance or foundation in any fact and negates the provisions of the Anti-dumping Agreement in totality.

CLS indicated that the Board further states:

"The Petitioner through its estimates and explanations of the estimates did provide information on the likely decline in output, sales, sales volumes, market share, etc. should the duties expire" (emphasis added by CLS).

CLS argued that it is not clear how these factors were accounted for and to what degree the Board has complied with the WTO Panel decision on Bed Linen from India and what weight was attached to the respective factors (see also *United States Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan WTO Appellate Body WT/DS184/AB/R*). CLS indicated that the generality of the observation renders it impossible to comment in detail, other than to state that the failure of the Board to expand on or state which factors were taken into account, prevents Electromechanica from contesting these allegations in a proper way. CLS argued that it should be noted that other than mere allegations based on speculation and conjecture, no sound basis was established to substantiate any of the above-noted allegations in the Petition or Revised Petition by the Petitioner. CLS indicated that the level of price undercutting or decline in sales was in fact correctly doubted by the Board as indicated above.

The failure by the Board to exercise its statutory discretion in a fair and equitable manner

CLS indicated that Electromechanica respectfully submits that the Board in the exercise of its discretion has failed to:

- Acknowledge the fact that the Petitioner's inclusion of MCB products manufactured by Hager, as part of MCCB products manufactured by Bticino in the Petition, rendered the Petition fatally defective, which should have resulted in rejection of the original Petition by the Board. The Board nevertheless accommodated the Petitioner by granting it the opportunity to submit a revised Petition, which resulted in nothing other than the acceptance of a de novo application by the Board after the deadline for the petition and is therefore void in terms of the Anti-Dumping Agreement;

- Take as an alternative to the above-noted, into account the fact that the time for application for a review of the anti-dumping duties had already expired on 7 February 2002, and that the application for the sunset review should have been lodged before this date. The application was therefore lodged after the expiry date, which should have rendered it void;
- Acknowledge the fact that both Messrs. Hager and Bticino have to the best of their abilities and through a significant degree of effort endeavoured to provide the Board with the required information within the strict time limits. To this end the Board in the decision to apply best information available should have taken account of the provisions of the WTO Appellate Body Decision of 24 July 2001 in the matter of *United States Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan* WT/DS/184/AB/R. It is further significant that none of the Respondents including Schneider Electric in this investigation were able to comply with the strict time lines which, it is respectfully submitted, is indicative of the complexity of the investigation and the problems experienced by the Respondents to comply with the strict requirements. This should have been taken into account by the Board in its consideration of the matter;
- Take note that the continued anti-dumping levy pertaining to MCCBs up to 800A is not justified, as the Petitioner does not manufacture MCCB circuit breakers with a capacity in excess of 600A. All requirements of MCCBs in excess of 600A in South Africa need to be imported and it serves no purpose to maintain anti-dumping duties on these products;
- Exercise its statutory discretion as an administrative tribunal in a reasonable way by acceptance of the Petition and Revised Petition which contained no reasonable evidence to justify the provisional finding and to further suggest that the imposition of anti-dumping duties be maintained, despite the fact that no substantial evidence was at any time adduced by the Petitioners to substantiate such action.

Conclusion

CLS indicated in conclusion that it is respectfully submitted that the Board is statutorily bound to terminate the anti-dumping duties unless a sunset review determines that their removal would be likely to lead to further **dumping and injury**. CLS argued that this has not been the case and hence, it is requested that the Board reverses its provisional finding and terminates the imposition of anti-dumping duties in this investigation.

In response to the comments from CLS, the Petitioner indicated that the Board initiated a review of the anti-dumping duties pursuant to a notice in the Government Gazette.

The Petitioner indicated that the Board's material injury analysis was based on verified information of the Petitioner. The Petitioner indicated that CLS should note that the Board does not routinely recommend the extension of anti-dumping duties and, therefore, a sunset review investigation is undertaken before the Board makes a recommendation to the Minister of Trade and Industry.

The Petitioner indicated that CLS should also be aware that the Anti-Dumping Agreement states that the authority should determine whether the expiry of the duty would be likely to lead to the continuation or recurrence of dumping and injury and not only whether it has already occurred. The Petitioner further indicated that Article 11.3 of the Anti-Dumping Agreement only requires that the likelihood of the continuation or recurrence of dumping and material injury should be addressed in a sunset review.

The Petitioner argued that in its submission it had clearly indicated (which information was verified by the Board) that the expiry of the anti-dumping duties would be likely to lead to a continuation of injury on all injury indicators.

ITAC noted that CLS refers to “decreased processes”, but that the Board’s “essential facts” letter refers to “decreased prices”.

ITAC decided that as it was indicated in the Board’s “essential facts” letter that:

“The Board, therefore, considered the verified information with regard to the various material injury indicators, as contained in the revised petition for purposes of its preliminary decision. This revised material injury section of the petition was previously distributed to interested parties for comment.”

that this was sufficient to indicate to interested parties that the Board considered all the material injury factors as submitted in the revised petition and that this information was available to all interested parties.

ITAC requested the Petitioner to indicate up to what capacity circuit breaker it manufactures. The Petitioner indicated that it only manufactures circuit breakers up to a capacity of 600A and that it assembles circuit breakers with a higher capacity from parts imported from Mitsubishi in Japan. ITAC further requested the Petitioner to indicate what process of assembly is used to assemble the circuit breakers with a capacity higher than 600A. The Petitioner indicated that it does not believe that the assembly should in any format constitute “local manufacturing” or even “local assembly”.

As the activities of the Petitioner in respect of the imported circuit breakers of a capacity higher than 600A do not constitute manufacturing, ITAC decided to exclude these products from the anti-dumping duties.

5.5 COMMENTS FROM HAGER ELECTRO SAS IN RESPONSE TO THE REVISED PETITION

Hager submitted the following to summarize its activities in South Africa with Electromechanica:

Hager launched its products with Electromechanica in South Africa in 1994, after the preliminary discussions held in 1993, and the turnover of both companies grew steadily until 1996. It argued that since the anti-dumping duties were imposed on Hager circuit breakers its total sales to South Africa dropped dramatically and it has not so far been able to achieve the same level of turnover.

Hager estimates its market share in South Africa to be between two and 2.5 per cent. It indicated that the Petitioner has around 70 per cent market share and still complains about the increase of Hager sales in South Africa. It argued that it is very difficult to understand on which information the Petitioner had based its claims.

Hager indicated that when the Hager miniature circuit breakers were introduced in South Africa in 1994 there were only a few brands offering the technology of thermal-magnetic tripping. It argued that besides itself the other manufacturers were Merlin Gerin, Klockner Moeller (with a breaker made by Hager) and ABB.

Hager submitted that in the meantime many other players offering thermal-magnetic tripping technology have made their entry on the South African market, e.g. Clipsal and ACDC, and it can be said that there are now about at least ten suppliers instead of three or four. This, according to Hager, stated that it means that the global trend of the market, which is not specific to South Africa, is to move more and more towards this technology and that, as time passes, there will be additional manufacturers entering the South African market.

Hager indicated that the only significant market for the Petitioner with its hydraulic-magnetic technology circuit breaker nowadays is South Africa. It argued that there are only very few "niche export markets" requesting these

products and that nowadays in the electrical industry it is very difficult to remain only a local player. Hager indicated that a very good example is Clipsal in Australia who, when the import and technology barriers fell away some time back, within a few years moved from a purely local manufacturer to a worldwide player. Clipsal did not initiate any claim for anti-dumping against any of the competitors entering the Australian market with their circuit breakers or other electrical equipment competing with Clipsal's.

Hager argued that there are two attitudes:

- believe in its own ability to face the challenge of competition; or
- rely on others.

Hager indicated that the Petitioner has chosen the second route, relying on customs duties and anti-dumping duties. It further indicated if it wants to be very simplistic, then the Petitioner will, over the next years, have to initiate anti-dumping claims against more than ten different circuit-breaker manufacturers to ensure that they are not harmed.

As a final point Hager submitted that it would also like to point out that it has not experienced any negative effect as a result of the anti-dumping duties which have been enforced against its products. It indicated that while its turnover to South Africa had decreased in comparison to the total turnover of the Hager Group it did not affect them detrimentally.

Hager indicated that the company really affected by the anti-dumping duties is Electromechanica and argued that Electromechanica is not related to Hager as Electromechanica is a South African company. Electromechanica pays for the anti-dumping duties, which means that this has a direct impact on its profits, its investment capabilities and ultimately on its growth prospects. Despite losing cash flow, Electromechanica continues to support Hager. Hager indicated that because of Electromechanica's commitment to

Hager and its products, it has¹ for the second time chosen the route of cooperating with the Board.

Hager argues that the petition does not contain any tangible facts which proves injury and there are too many contradictions in both the material injury submissions.

On the basis of the above, in the absence of any new element being alleged by the Petitioner to re-impose the anti-dumping duties, Hager submitted that the anti-dumping duties in place should be terminated immediately.

5.6 COMMENTS SUBMITTED LATE BY THE PETITIONER

The Petitioner was requested to comment on the non-confidential responses received from the importers and exporters. The Petitioner requested an extension of the deadline for its comments until 10 February 2003. The Petitioner incorrectly assumed that the deadline for its comments was 11 February 2003, seven days from the original deadline for its comments.

For purposes of its preliminary decision, the Board decided to take the Petitioner's comments, submitted after the deadline, into consideration as it did not materially delay the investigation.

In response to the Board's "essential facts" letter, WWB argued that the fact that the Board took the Petitioner's comments into consideration notwithstanding its late submission, constitute treatment which favours the Petitioner unfairly. The reason for the Board's permission is that the comments did not materially delay the investigation". WWB indicated that its client was not afforded an opportunity to furnish any information after its deadline for submission and indeed at any stage of the proceedings thereafter notwithstanding that at least at the time that the Petitioner was

afforded additional time, its client could have been notified accordingly so as to arrange for this information to be obtained.

ITAC noted the comments from WWB on the comments submitted late by the Petitioner. ITAC also noted that the Board did not extend the deadline for Groupe Schneider any further as Groupe Schneider's arguments regarding the method of calculation in this investigation were not grounds for any further extension to be granted.

For purposes of its final determination, ITAC decided to confirm the Board's preliminary decision to take the comments submitted by the Petitioner into consideration.

5.7 ORAL REPRESENTATIONS

WWB requested to make oral representations to ITAC, which ITAC decided to allow. In response to WWB's request, the Petitioner stated that if ITAC decides to afford WWB the opportunity to make oral representations at this late stage of the investigation, it would like a similar opportunity to address ITAC.

In considering this request by the Petitioner, ITAC referred to the Notice of Initiation No. 1307 of 2002 published in *Government Gazette* No. 23660 on 26 July 2002 which stated that:

"Oral representations to the Board by any interested party may also be made on written request to the Board at least seven days prior to the expiry date of the original 30 days period to respond and by prior arrangement with the Directorate."

ITAC, therefore, decided not to allow the Petitioner to make oral representations, as it did not request the oral representations in its original comments to the Board's "essential facts" letter. ITAC further noted that the Petitioner had ample opportunity to respond to WWB's comments.

5.8 GENERAL COMMENTS BY THE BOARD, ITAC AND INTERESTED PARTIES

For purposes of its preliminary decision, the Board decided that the expiry of the duties is likely to lead to the continuation or recurrence of material injury on the MCCB range of products. However, it expressed its concern with regard to the information submitted by the Petitioner that it will suffer material injury through both a significant decline in prices and a significant decline in sales volumes, as this seems to be an unlikely scenario.

In response to the Board's "essential facts" letter, the Petitioner indicated that the scenario mentioned above is only unlikely if the Petitioner decides to decrease its selling prices immediately after the anti-dumping duties expire. It argued that, however, this will not happen owing to the constant upward pressure on selling prices through increases in the price of raw materials and labour costs. It indicated that, it is of the opinion that it will first suffer a decline in sales volume owing to lower import prices caused by the reduction in import duties. In order to combat the decrease in sales volume, the Petitioner will then have no option but to lower its selling prices in line with the prices of the imported product.

In response to the Board's "essential facts" letter, WWB requested ITAC to take particular cognisance of the following factors raised in its clients' injury submissions in making its final decision with respect to products imported from Groupe Schneider:

- the insufficiency of the evidence furnished by the Petitioner;
- the minimal quantity and value of imports by Schneider SA;
- the Petitioner has suffered no price suppression or depression nor have its prices been undercut by its client. There is no evidence (other than mere speculation) that the Petitioner will suffer injury if the duties are removed;

- the Petitioner operates and is dominant in the urban and rural residential markets whereas Schneider Electric is dominant in the tertiary building market, which market is not as price sensitive as the residential market. The removal of a 7.6 per cent duty is unlikely to have a significant effect on the Petitioner or its products.
- the growth in the mining industry (where Mitsubishi is dominant) as well as the government's policy of electrification and low cost housing makes the Petitioner's prospects of growth and profit much greater than the period before the duty was imposed.

5.9 CONCLUSION - MATERIAL INJURY

ITAC considered all the relevant factors and all the comments received from interested parties. ITAC decided that the landed cost of the imported product, including the anti-dumping duties, is undercutting the ex-factory selling price of the Petitioner. It, however, indicated that it is not convinced that the importers will decrease their prices if the anti-dumping duties expire, as the importers are already able to undercut the Petitioner's price and sell their products competitively with the current anti-dumping duties in place.

ITAC decided that:

- (a) there will be a continuation or recurrence of price undercutting if the anti-dumping duties expire.
- (b) there will be no likelihood of the recurrence of price depression and price suppression as it is not convinced that the importers will decrease its prices if the anti-dumping duties expire.
- (c) there will be a likelihood of recurrence of material injury if the anti-dumping duties expire, as the Petitioner will experience a decrease in sales volume, and this will have a negative effect on all the material injury indicators on which the decrease in sales volumes has an effect.

ITAC, however, found that the Petitioner did not provide *prima facie* evidence that the expiry of the duties would be likely to lead to the continuation or recurrence of material injury on the MCB range of products.

After considering all the comments received from interested parties, ITAC, for purposes of its final determination, decided that the expiry of the duties would be likely to lead to the continuation or recurrence of injury on the MCCB range of products.

6. SUMMARY OF FINDINGS

6.1 Dumping

ITAC found that the expiry of the duties on the subject product originating in France and imported from Hager or Groupe Schneider and originating in Italy and imported from Bticino, or their agent B Trading of Switzerland would be likely to lead to the continuation or recurrence of dumping,

6.2 Material injury

ITAC found that the Petitioner did not provide *prima facie* evidence that the expiry of the duties would be likely to lead to the continuation or recurrence of material injury on the MCB range of products.

ITAC found that the expiry of the duties would be likely to lead to the continuation or recurrence of injury on the MCCB range of products. ITAC, however, found that circuit breakers with a capacity in excess of 600A should be excluded from the anti-dumping duties, as the Petitioner does not manufacture these products.

7. RECOMMENDATION

ITAC made a final determination that:

- the expiry of the duties is likely to lead to the continuation or recurrence of dumping; and
- the expiry of the duties is likely to lead to the continuation or recurrence of material injury on the MCCB range of products.

ITAC decided to recommend to the Minister of Trade and Industry that the existing anti-dumping duties on circuit breakers originating in France and imported from Groupe Schneider and originating in Italy and imported from Bticino, or their agent B Trading of Switzerland, be maintained, but that circuit breakers with a capacity in excess of 600A be excluded from the anti-dumping duties, as the Petitioner does not manufacture these products.

ITAC further decided to recommend to the Minister of Trade and Industry that the anti-dumping duties on circuit breakers originating in France and imported from Hager and the anti-dumping duties on the MCB range of products originating in Italy and imported from Bticino, or their agent B Trading of Switzerland, be terminated.

ITAC, therefore, recommended to the Minister of Trade and Industry that the existing anti-dumping duties be amended as follows:

Tariff subheading	Description	Originating in or Imported from	Anti-dumping duty
8536.20	Automatic circuit breakers, with casings of plastics or other insulating material, for a voltage not exceeding 1000 V, with a current rating of 63 A or more but not exceeding 600 A imported from Bticino of Italy or their agent B Trading of Switzerland	Italy	23.6%
	Automatic circuit breakers, ¹ with casings of plastics or other insulating material, for a voltage not exceeding 1000 V, with a current rating of 130 A or more but not exceeding 600 A imported from Groupe Schneider of France	France	7.6%

1.

1.