Report No. 495

Investigation into the alleged dumping of Portland cement originating in or imported from Pakistan: Preliminary determination

The International Trade Administration Commission of South Africa herewith presents its **Report No. 495: INVESTIGATION INTO THE ALLEGED DUMPING OF PORTLAND CEMENT ORIGINATING IN OR IMPORTED FROM PAKISTAN: PRELIMINARY DETERMINATION**

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CHIEF COMMISSIONER

PRETORIA
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INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA

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INVESTIGATION INTO THE ALLEGED DUMPING OF PORTLAND CEMENT ORIGINATING IN OR IMPORTED FROM PAKISTAN: PRELIMINARY DETERMINATION

SYNOPSIS

On 22 August 2014, the Commission initiated an investigation into the alleged dumping of Portland cement originating in or imported from Pakistan through Notice No. 675 in *Government Gazette* No. 37915.

The application was lodged by Afrisam (South Africa) (Proprietary) Limited, Lafarge Industries South Africa (Proprietary) Limited, NPC Cimpor (RF) (Proprietary) Limited and PPC Limited on behalf of the SACU industry.

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

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

The Commission took all comments received from interested parties into account in making its preliminary determination. All submissions made by interested parties are contained in the Commission's public file for this investigation and are available for perusal. It should be noted that this report does not purport to present all comments received and considered by the Commission. However, some of the salient comments received from interested parties and the Commission's consideration of these comments are specifically included in this report.

After considering all interested parties' comments, the Commission made a preliminary determination that the subject product originating in or imported from Pakistan is being dumped onto the SACU market causing material injury and a threat of material injury to the SACU industry.

The Commission therefore decided to request the Commissioner for South African Revenue Service (SARS) to impose the following provisional measures on imports of the subject product for a period of 6 months:

Tariff subheading	Product	Manufacturer	Amount of provisional payment
2523.29	Portland Cement	Lucky Cement Limited	14.29%
		Bestway Cement Limited	77.15%
		D.G Khan Cement Limited	68.87%
		Attock Pakistan Cement Limited	63.53%
		All other exporters (excluding Lucky Cement Limited, Bestway Cement Limited, D.G Khan Cement Limited and Attock Pakistan Cement Limited)	62.69%

1. APPLICATION AND PROCEDURE

1.1 LEGAL FRAMEWORK

This investigation is conducted in accordance with the International Trade Administration Act, 2002 (Act 71 of 2002) (The "ITA Act"), and the International Trade Administration Commission Anti-Dumping Regulations (ADR) read with the World Trade Organisation Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, 1994 (the Anti-Dumping Agreement).

1.2 APPLICANT

The application was lodged by Afrisam (South Africa) (Proprietary) Limited, Lafarge Industries South Africa (Proprietary) Limited, NPC Cimpor (RF) (Proprietary) Limited and PPC Limited on behalf of the SACU industry.

1.3 DATE OF ACCEPTANCE OF APPLICATION

The application was accepted by the Commission as being properly documented in accordance with ADR 21 on 19 August 2014.

1.4 ALLEGATIONS BY THE APPLICANT

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

The Applicants further alleged that as a result of the dumping of the subject product from Pakistan they are suffering material injury in the form of:

(a) Price undercutting;
(b) Price suppression;
(c) Decline in gross and net profit;
(d) Decline in market share;
(e) Decline in output;
(f) Decline in productivity;

(g) Decline in return on investment;

(h) Decline in capacity utilisation;

(i) Decline in cash flow;

(j) Loss of employment; and

(k) Decline in growth.

1.5 INVESTIGATION PROCESS

The application was submitted on 15 May 2014. The information submitted by PPC Limited was verified on 02 June 2014, Lafarge Industries South Africa (Proprietary) Limited on 03 June 2014, Afrisam (South Africa) (Proprietary) Limited on 04 June 2014 and NPC Cimpor (RF) (Proprietary) Limited on 10 June 2014.

The Commission initiated an investigation into the alleged dumping of Portland cement originating in or imported from Pakistan pursuant to Notice No. 675 which was published in Government Gazette No. 37915 on 22 August 2014.

Prior to the initiation of the investigation, the trade representative of the Government of Pakistan was notified of the Commission's intention to investigate, in terms of ADR 27.1. All known interested parties were informed and provided with the relevant questionnaires and the non-confidential version of the application.

1.6 INVESTIGATION PERIOD

The investigation period for dumping is from 1 January 2013 to 31 December 2013. The injury investigation involves evaluation of data for the period 1 January 2010 to 31 December 2013.

1.7 COMMENTS

The Commission considered all comments received from interested parties with regard to the application and procedure. Non-confidential versions of these comments are available on the public file.

Exporter's comments

The exporters indicated that they have noticed that the investigation period is 4 years, as opposed to the normal 3 years. They requested that the Commission provide reasons for deviating from the normal 3 year period.

Applicant's response

The Applicant indicated that the injury investigation period as presented in the application complied with the Anti-Dumping Regulations. The assertion that they are deviating from the normal 3-year period, is incorrect.

Commission's consideration

With regard to the investigation period, the Anti-dumping Regulations (ADR) provides that: "Investigation period for injury is the period for which it is assessed whether the SACU industry experienced material injury. This period shall ***normally*** *cover a period of three years plus information available on the current financial year at the date the application was submitted, but may be determined by the Commission as a different period provided that the period is sufficient to allow for fair investigation…"*

This is therefore clearly an issue where the Commission has discretion and has chosen to use this discretion.

1.7 PARTIES CONCERNED

1.7.1 SACU industry

The SACU industry consists of four manufacturers of the subject product, Afrisam (South Africa) (Proprietary) Limited, Lafarge Industries South Africa (Proprietary) Limited, NPC Cimpor (RF) (Proprietary) Limited and PPC Limited who provided the material injury information in this report.

Letters of support were received from the following interested parties:

- Safika Cement Holdings (Pty) Ltd;
- AfriPack (Pty) Ltd;
- Nampak Sacks;

- Sephaku Cement; and
- Taurus Packaging (Pty) Ltd.

1.7.2 Foreign Manufacturers/Exporters

Four exporters responded to the exporter's questionnaire, namely Lucky Cement Limited (Lucky Cement), D.G Khan Cement Limited (D.G Khan Cement), Attock Pakistan Cement Limited (Attock Cement) and Bestway Cement Limited (Bestway Cement).

On 17 October 2014, Lucky Cement submitted its response to the Commission's exporter's questionnaire. A deficiency letter was sent on 06 November 2014. A response was received on 13 November 2014, which was accepted as properly documented. Verification of Lucky Cement's information was done on 12 – 14 January 2015.Verification report was sent to Lucky cement on 30 January 2015. Comments on the verification report were received on 06 February 2015. Lucky Cement made a request for an oral hearing on 05 February 2015. On 10 March 2015 Lucky Cement made a presentation to the Commission.

On 17 October 2014, Attock Cement submitted its response to the Commission's exporter's questionnaire. A deficiency letter was sent on 06 November 2014. A response was received on 13 November 2014, which was accepted as properly documented. Verification of Attock Cement's information was done on 15 – 16 January 2015. Verification report was sent to Attock Cement on 30 January 2015. Comments on the verification report were received on 06 February 2015. Attock Cement made a request for an oral hearing on 12 February 2015. On 10 March 2015 Attock Cement made a presentation to the Commission.

On 17 October 2014, D.G Khan Cement submitted its response to the Commission's exporter's questionnaire. A deficiency letter was sent on 06 November 2014. A response was received on 13 November 2014, which was accepted as properly documented. Verification of D.G Khan Cement's information was done on 19 - 20 January 2015.Verification report was sent to D.G Khan Cement on 30 January 2015. Comments on the verification report were received on 06 February 2015. D.G Khan

made a request for an oral hearing on 23 February 2015. On 10 March 2015 D.G Khan made a presentation to the Commission.

On 17 October 2014, Bestway Cement submitted its response to the Commission's exporter's questionnaire. A deficiency letter was sent on 06 November 2014. A response was received on 13 November 2014, which was accepted as properly documented. Verification of Bestway Cement's information was done on 22 - 23 January 2015.Verification report was sent to Bestway Cement on 30 January 2015. Comments on the verification report were received on 06 February 2015. Bestway Cement made a request for an oral hearing on 19 February 2015. On 10 March 2015 Bestway Cement made a presentation to the Commission.

1.7.3 Importers

Five importers responded to the importers' questionnaire, namely Elephant Cement (Pty) Ltd (Elephant Cement), Ezamvelo Trading CC (Ezamvelo), Newcastle Steel Works (Pty) Ltd (Newcastle), Picronamix Investment CC (Picronamix) and Anchor Africa Holdings (Pty) Ltd (Anchor).

On 14 October 2014, Elephant Cement submitted its response to the Commission's importers questionnaire. A deficiency letter was sent on 22 October 2014. A response to the deficiency letter was received on 29 October 2014, which was accepted as properly documented. Verification of Elephant Cement's information was done on 27 November 2014.

On 14 October 2014 Ezamvelo submitted its information and a deficiency letter was sent on 22 October 2014. A response was received on 29 October 2014, which was accepted as properly documented. Verification of Ezamvlelo's information was done on 27 November 2014.

On 14 October 2014, Newcastle submitted its information and a deficiency letter was sent on 22 October 2014. A response was received on 29 October 2014, which was accepted as properly documented. Verification of Newcastle's information was done on 25 November 2014.

On 21 October 2014, Picronamix submitted its information and a deficiency letter was sent on 22 October 2014. A response was received on 29 October 2014, which was accepted as properly documented. Verification of Picronamix information was done on 26 November 2014.

On 17 October 2014, Anchor submitted its response to the Commission's importer questionnaire. A deficiency letter was sent on 22 October 2014. On 29 October 2014 Anchor responded to the Commission's deficiency letter. On 12 November 2014 a pre-verification letter was sent to Anchor informing them that on 24 November 2014 the Commission would be conducting a verification. Anchor was not available for verification on that day. It was decided that desk verification be conducted. On 02 December 2014 supporting documents were requested from Anchor in order for the Commission to conduct desk verification. Anchor failed to submit the requested source documents by the closing date of 05 December 2014.

The Commission made a preliminary determination not to take the information submitted by Anchor into account for purposes of the preliminary determination.

1.8 PRELIMINARY DETERMINATION

The Commission made a preliminary determination that:

- dumping of the subject product originating in or imported from Pakistan was taking place;
- the SACU industry is experiencing material injury and a threat of material injury; and
- the injury suffered by the SACU industry could be causally linked to the dumping of the subject product.

The Commission made a preliminary determination to request the Commissioner for SARS to impose the following provisional measures on imports of the subject product for a period of 6 months:

Tariff subheading	Manufacturer	Provisional payment
2523.29	Lucky Cement Limited	14.29%
	Bestway Cement Limited	77.15%
	D.G Khan Cement Limited	68.87%
	Attock Pakistan Cement Limited	63.53%
	All other exporters (excluding Lucky Cement Limited, Bestway Cement Limited, D.G Khan Cement Limited and Attock Pakistan Cement Limited)	62.69%

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 IMPORTED PRODUCT

2.1.1 Description

The imported product is described as "Portland cement" classifiable under tariff heading 2523.29 with strength of 42.5MPa that is imported from Pakistan. This strength is substitutable with the strengths of 32.5MPa and 52.5MPa.It is distributed in 50kg polypropylene bags.

2.1.2 Country of origin/export

The subject product is exported from Pakistan.

2.1.3 Possible tariff loopholes

The Applicant stated that it is not aware of any other tariff code under which the product could be lawfully imported

2.1.4 Tariff classification

The subject product is currently classifiable as follows:

Table 2.1.4: Tariff classification

Heading	Tariff subheading	Description	Statistical Unit	Rate of customs duty			
				General	EU	EFTA	SADC
25.23		**PORTLAND CEMENT,ALUMINOUS CEMENT, SLAG CEMENT,SUPERSULPHATE CEMENTS AND SIMILAR HYDRAULIC CEMENTS,WHETHER OR NOT COLOURED OR IN THE FORM OF CLINKERS:**					
	2523.2	**-Portland cement:**					
	2523.29	–Other	kg	free	free	free	free

2.1.5 Negligibility test

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

Table 2.1.5: Import volumes

Tons	2013	%
Dumped imports: Pakistan	1 091 235	98 %
Other Imports	17 798	2 %
Total imports	1 109 033	100%

The Commission made a preliminary determination that the imports from Pakistan are above the negligibility level.

2.2 SACU PRODUCT

The SACU product is described as Portland cement complying with the SANS 50197 requirements of various CEM classifications in 52.5MPa, 42.5MPa and 32.5MPa strength classes, these strengths are substitutable. These are the strengths manufactured by the Applicant.

Comments by Exporters

Exporters stated that the government gazette defined the subject product as "Portland cement", but paragraph A7 of the application indicates the product being dumped as "Ordinary Portland cement classifiable under 2523.29 distributed in bags". The exporters also indicated that in paragraph B1.1 of the application, it specifically indicated 'there are no bulk cement imports from Pakistan". The exporters requested that the Commission confirms that the investigation is limited to bagged cement and thus excludes bulk product.

Commission's consideration

In response to the exporters comment, the Commission considered that it indicated in the Government Gazette Notice, that the product allegedly being dumped is Portland cement - whether in "bulk" or "bagged cement" classifiable

under tariff subheading 2523.29, and although the Applicant provided injury information for the subject product, being "Portland cement" it requested the Commission to focus the analysis of injury on "bagged cement" due to the following reasons:

- *The product, Portland cement classifiable under tariff heading 2523.29 originating from Pakistan, is imported in bag form only. There are no bulk cement imports from Pakistan. This is because it would be prohibitively expensive to import the product in any form other than in bagged form.*

- *There are two separate and distinct markets for ordinary Portland cement, namely, the market for bagged cement and the market for bulk cement. The bagged cement market comprises the major portion of the combined bag and bulk cement market (comprising the SACU industry). The purpose for which bagged cement and bulk cement are used differs. Bulk cement is used in large construction projects and sold to concrete product manufacturers, ready mix producers and blenders while bagged cement is mainly used in small construction projects. Bagged customers are mainly retailers which on-sell to customers for small projects. It is therefore in the bagged cement market where Pakistani imports compete with the domestic industry and where the domestic industry is suffering material injury as clearly demonstrated in the injury information furnished. The injury information also demonstrates that injury in the bagged cement market is even higher in the areas close to the Ports of entry for Pakistan imports, particularly in KwaZulu-Natal, the Eastern and the Western Cape because of transportation costs.*

- *Because the dumped imports of bagged Pakistani cement do not compete in the bulk cement market, the bulk cement market is not as severely affected by those imports. Whilst the material injury reflected in the combined bulk and bag market is accordingly diluted, the material injury caused to the SACU Industry is nevertheless significant. The loss of market share of bagged cement both volume and value, has impacted negatively on the profitability of the SACU Industry, plant utilization and economies of scale.*

Comment by exporters

The exporters stated that their understanding is that a substantial portion of the bulk cement is sold to blenders, who take the bulk cement, blend it with products such as fly ash and then bag the resulting blended cement. Given that importers only import bagged cement, it becomes important to understand how much of the bulk actually enters the market as bagged products. The exporters requested that they be provided with volume of bulk cement that is sold to cement blenders.

Response by the Applicant

The Applicant stated that there is no merit to this argument and the Commission should reject it. The Applicant further stated that the exporters' approach to determine the volume of blended bagged cement using bulk cement is fatally flawed. The cement producers sell cement to the blenders. They do not have control over what the blenders do with such cement.

2.3 LIKE PRODUCTS ANALYSIS

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

Table 2.3: Like product determination

	Imported product	**SACU product**
Raw materials	Calcium carbonate or limestone, iron ore, granulated blast furnace slag, shale (clay), alumina, magnetite, pozzsand, fly ash and gypsum. Other inputs used in the production of cement are coal and electricity.	Calcium carbonate or limestone, iron ore, granulated blast furnace slag, shale (clay), alumina, magnetite, pozzsand, fly ash and gypsum. Other inputs used in the production of cement are coal and electricity.
Physical appearance	Grey, fine, dry powdered substance.	Grey, fine, dry powdered substance.
Tariff classification	2523.29	2523.29
Production process	The cement production process is fundamentally the same across the world. The description that follows therefore is that of a typical cement production process. The production process followed in producing ordinary Portland Cement begins with the mining of the raw materials. The mining of the raw materials starts with the removal of the overburden from the calcium carbonate or limestone deposit.	The cement production process is fundamentally the same across the world. The description that follows therefore is that of a typical cement production process. The production process followed in producing ordinary Portland Cement begins with the mining of the raw materials. The mining of the raw materials starts with the removal of the overburden from the calcium carbonate or limestone deposit.

	Once removed, the rock is blasted, loaded into trucks and transported to the crusher. A multistage crushing process reduces the rock to stone less than 25 mm in diameter. The crushed rock is stored in stockpiles where, by a carefully controlled process of stacking and reclaiming across the stockpile, blending takes place and a uniform quality of raw material is achieved. Systematic sampling and laboratory testing monitor this process. The other raw materials, normally shale, iron ore and sand, are also stored in stockpiles. Thereafter carefully measured quantities of the various raw materials are fed, via raw mill feed silos, to mills where steel balls grind the material to a fine powder called raw meal. Homogenising silos are used to store the raw meal where it is mixed thoroughly to ensure that the kiln feed is uniform. The most critical step in the manufacturing process takes place in the rotary kilns. Raw meal is fed into one end of the kiln, either directly or via a preheater system, and pulverised coal, gas or oil is burnt at the other end. The raw meal slowly cascades down the inclined kiln towards the heat and reaches a temperature of about 1 450°C in the burning zone where a process called clinkering occurs. The clinkering process takes place in the burning/kiln section. · The cylindrical steel rotary kiln is mounted with the axis inclined slightly from the horizontal and can be 3.5 - 4 metres wide, 110-120 metres long and rotates at 3 revolutions per minute. Short kilns are favoured over long kilns due to improved energy efficiencies and heat distribution - long kilns (over 130 metres in length) are normally on standby during shut downs and maintenance. Finely ground coal is burnt at one end of the kiln - the hot gases pass through the kiln and then upwards through a number of cyclones into an 'induced draught fan'. The cold kiln-feed/raw mix is dropped into the top of the preheater. Centrifugal forces throw the meal against the walls of the cyclones and the meal slides down by gravity into ducts below. The hot gases pick up the feed and sweep it	Once removed, the rock is blasted, loaded into trucks and transported to the crusher. A multistage crushing process reduces the rock to stone less than 25 mm in diameter. The crushed rock is stored in stockpiles where, by a carefully controlled process of stacking and reclaiming across the stockpile, blending takes place and a uniform quality of raw material is achieved. Systematic sampling and laboratory testing monitor this process. The other raw materials, normally shale, iron ore and sand, are also stored in stockpiles. Thereafter carefully measured quantities of the various raw materials are fed, via raw mill feed silos, to mills where steel balls grind the material to a fine powder called raw meal. Homogenising silos are used to store the raw meal where it is mixed thoroughly to ensure that the kiln feed is uniform. The most critical step in the manufacturing process takes place in the rotary kilns. Raw meal is fed into one end of the kiln, either directly or via a preheater system, and pulverised coal, gas or oil is burnt at the other end. The raw meal slowly cascades down the inclined kiln towards the heat and reaches a temperature of about 1 450°C in the burning zone where a process called clinkering occurs. The clinkering process takes place in the burning/kiln section. The cylindrical steel rotary kiln is mounted with the axis inclined slightly from the horizontal and can be 3.5 - 4 metres wide, 110-120 metres long and rotates at 3 revolutions per minute. Short kilns are favoured over long kilns due to improved energy efficiencies and heat distribution - long kilns (over 130 metres in length) are normally on standby during shut downs and maintenance. Finely ground coal is burnt at one end of the kiln - the hot gases pass through the kiln and then upwards through a number of cyclones into an 'induced draught fan'. The cold kiln-feed/raw mix is dropped into the top of the preheater. Centrifugal forces throw the

	into the next cyclone, once again exchanging heat. This semi-counter-current heat exchanger significantly reduces the total heat consumption in the burning process. The temperature of the feed is between 900 - 1 000°C as it enters the kiln. At this point, the compounds have split into their individual constituents (CaO, MgO, SiO_2, Al_2O_3) and chemical reactions take place. New compounds (calcium aluminosilicate and alumina ferrite) form as the material approaches the lower end of the kiln. Aluminosilicate clinker is formed at temperatures of 1 450 - 1 500°C. The material leaving the burning zone is now called clinker. The nodules of clinker drop into coolers and are conveyed to clinker storage silos. The clinker, along with a small quantity of gypsum and optionally, and if suitable, supplementary cementitious materials (fly ash, slag, limestone or other), are milled in a vertical roller mill or a horizontal ball mill to a fine powder which is then called cement.	meal against the walls of the cyclones and the meal slides down by gravity into ducts below. The hot gases pick up the feed and sweep it into the next cyclone, once again exchanging heat. This semi-counter-current heat exchanger significantly reduces the total heat consumption in the burning process. The temperature of the feed is between 900 - 1 000°C as it enters the kiln. At this point, the compounds have split into their individual constituents (CaO, MgO, SiO_2, Al_2O_3) and chemical reactions take place. New compounds (calcium aluminosilicate and alumina ferrite) form as the material approaches the lower end of the kiln. Aluminosilicate clinker is formed at temperatures of 1 450 -1 500°C. The material leaving the burning zone is now called clinker. The nodules of clinker drop into coolers and are conveyed to clinker storage silos. The clinker, along with a small quantity of gypsum and optionally, and if suitable, supplementary cementitious materials (fly ash, slag, limestone or other), are milled in a vertical roller mill or a horizontal ball mill to a fine powder which is then called cement.
Application or end use	The application and end-use of the product is the production of mortar and concrete for the bonding of natural or artificial aggregates to form a strong building material which is durable in the face of normal environmental effects in the construction of infrastructure, buildings and housing.	The application and end-use of the product is the production of mortar and concrete for the bonding of natural or artificial aggregates to form a strong building material which is durable in the face of normal environmental effects in the construction of infrastructure, buildings and housing.
Substitutability	The SACU product is fully substitutable with the imported product.	The SACU product is fully substitutable with the imported product.

A request was received from Maple Leaf Cement Factory Limited (Maple), an exporter of Portland cement from Pakistan for the exclusion of 42.5R and white cement from the investigation. As reasons for its request Maple stated the following:

- They are the only manufacture in Pakistan that manufactures the entire range of cement products namely Portland cement of 42.5R and 42.5N strength, White Cement, Sulphite Resistant Cement (SRC), and Low Alkali Cement;
- The scope of the investigation covers 42.5N not 42.5R and white cement;
- There is a difference between 42.5R, 42.5N and white cement. The production, characteristics, usage, markets and pricing of these products are distinctly different; and
- They produce 42.5R only for export to SACU. They do not sell the same product in Pakistan, they sell 42.5N cement.

Applicant's comments

The Applicant indicated that firstly, Maple Leaf is not an interested party as it did not respond to the Commission's exporter's questionnaire within the stipulated period after initiation. Secondly, there is no distinction between 42.5N and 42.5R Portland cement – these strengths are like products within the meaning of Regulation 1 of the ADR due to the following:

- *Raw materials and other inputs used in producing the products are substantially the same;*
- *Production process is the same;*
- *Physical characteristics and appearances of the products are the same;*
- *Products are directly substitutable; and*
- *Products fall under the same tariff classification.*

The Applicant further indicated that 42.5R Portland cement doesn't fall outside the ambit of the current anti-dumping investigation. It indicated that the product is clearly covered in the anti-dumping investigation.

The Commission noted the comments but is of the view that the subject product is defined as "Portland cement", therefore including the product referred to by Maple.

Taking into account all the comments received, the Commission made a preliminary determination that the SACU product and the imported product are "like products", for purposes of comparison in this investigation, in terms of the ADR.

3. INDUSTRY STANDING

3.1 SACU INDUSTRY

The application was lodged by Afrisam (South Africa) (Proprietary) Limited, Lafarge Industries South Africa (Proprietary) Limited, NPC Cimpor (RF) (Proprietary) Limited and PPC Limited on behalf of SACU manufacturers and represents more than 90 per cent of the total SACU production.

Comments by exporters

The exporters indicated that new SACU producers entered the market during the investigation period, but were not part of the consortium that brought the application. The exporters requested the Commission to explain how the impact of these new producers was assessed with regards to injury as well as causal link.

Response by the Applicant

The Applicant stated that the allegation that there were new producers which entered the market during the investigation period is unsubstantiated and factually incorrect. The Applicant further indicated that to the best of its knowledge, the new entrants entered the market in 2014, which falls outside the injury investigation period. According to the Applicant, Sephaku Cement (Pty) Ltd, is supporting this investigation.

Commission's consideration

The Commission considered that there is a new SACU producer of the subject product Sephaku (Pty) Ltd who is supporting the investigation. The producer stated in its letter of support that it only started production in January 2014. This is outside the period of investigation.

Taking all the comments received, the Commission made a preliminary determination that the application can be regarded as being made "by or on behalf of the domestic industry".

4. DUMPING

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 f.o.b. export price. If the margin is less than two percent, it is regarded as *de minimis* in terms of the ADR and no anti-dumping duty will be imposed.

4.1 METHODOLOGY IN THIS INVESTIGATION FOR LUCKY CEMENT

4.1.1 Sales in the ordinary course of trade

Sales were verified against cost and it was found that no sales were made below cost.

4.1.2 Normal Value

Lucky Cement produces Portland cement and sold it on the domestic market in Pakistan during the period of investigation. The actual invoiced sales were used to calculate the normal value.

Lucky Cement sells the subject product to dealers and institutions. Institutions in this case refer to schools, universities, government and other large projects. During verification it was found that there was no significant price difference in the price charged to dealers and institutions for the same volume of products. The normal value before adjustment was calculated.

Adjustments to the normal value

The following adjustments to the normal value were claimed by Lucky Cement and allowed by the Commission as it was demonstrated that they affected price comparability at the time of setting the price:

(i) Transport costs

Lucky Cement owns a few trucks that are used to deliver cement to customers. However, most of the deliveries are made using external transporters. Lucky cement has contracts with these transporters to deliver cement to its customers. Lucky Cement pays the delivery charges on a monthly basis.

As Lucky Cement does not have the delivery charges for each transaction, it calculated the average unit delivery charge by dividing the total delivery cost for the investigation period by the total domestic sales quantity for the investigation period. Lucky Cement requested that such amount be deducted from the total invoice price for the period of investigation.

Taking all comments received into account, the Commission made a preliminary determination to allow the transport costs adjustment.

(ii) Packaging cost

The packaging for the domestic and export market was confirmed to be different. Domestic sales are made in Kraft paper bags which are purchased from several vendors.

Taking all comments received into account, the Commission made a preliminary determination to allow the packaging costs adjustment as it affected price comparability at the time of setting the price.

The following adjustments to the normal value were claimed by Lucky Cement and were not allowed by the Commission as it was not demonstrated that they affected the price comparability at the time of the setting of the prices:

(i) Cost of Payment terms

The interest rate applied in the calculation of the cost of payment terms was determined with reference to the month end bank discount rate from January 2013 to December 2013 plus a margin added to arrive at the rate at which the bank advanced loans. The margin added by the bank varies from xx% to xx%. The company added xx% to the bank discount rate for the calculation of the cost of payment terms

adjustment. Cost of payment terms on domestic sales was established at the number of days of the average credit period allowed to the customers.

The payment terms used by Lucky Cement to calculate this adjustment were not displayed on the invoices. If the number of days is not reflected on the invoice at least there has to be a contract between the exporter and the customer indicating the number of days it would take before the customer makes a payment. No such information was provided by the exporter.

Taking all comments received into account, the Commission made a preliminary determination not to allow the cost of payment terms adjustment as no information was provided to indicate that the exporter, at the time of setting the price, took into account how long it would take to receive payment.

(ii) Discount and rebates

Lucky Cement gives discounts and rebates to certain customers based on volume purchased during the month. The customer only gets to know the amount of discount given at the end of the month. Lucky Cement allocated the discount allowed on the basis of domestic sales volume.

The discount allowed to Lucky cement's customers based on the purchase of certain volume gets calculated at the end of the month after the customer met the requirements to qualify for such discount. The discount therefore did not affect price comparability at the time of setting the price it was not known if the customer would meet the requirements to qualify for such discount.

Taking all comments received into account, the Commission made a preliminary determination not to allow the discount and rebates adjustment as it was not demonstrated to have affected the price comparability at the time of setting the price.

(iii) Selling, general and administration costs

Lucky Cement has a large work force to support its domestic sales operations, which are spread over the entire country. It has different offices at geographically dispersed

locations where human resources relating to sales, administration and support services are deployed.

Due to the number of employees involved in the domestic sales as compared to export sales, Lucky Cement claimed an adjustment for the selling, general and administration expenses based on employee headcount. The selling, general and administrative cost has been allocated to export sales and domestic sales on the basis of head count of sales force. Lucky Cement submitted a cost build-up of the average cost of production of the subject product during the period of investigation, based on total production during that period. The cost build-up was verified and it was found that costs were not allocated according to whether the goods would be sold domestically or on the export market.

In any business environment, selling, general and administration expenses are incurred regardless of whether goods are to be sold in the domestic or export market. The exporter is claiming this particular adjustment in order to reduce the domestic price.

Taking all comments received into account, the Commission made a preliminary determination not to allow the selling, general and administration costs adjustment as it was not demonstrated to have affected the price comparability at the time of the setting of the prices.

(iv) Production cost (Coal)

Lucky Cement has two plants, one in the Southern region (Karachi plant) and the other one is situated in the Northern region (Pezu plant). Coal is imported into Pakistan via Karachi (southern part of Pakistan) and there is approximately 1 100 km distance between the Karachi and Pezu plant. The company claims an adjustment on the transportation of coal from Karachi to Pezu. This is informed by the fact that coal is a primary input in cement production and as such it costs more to transport coal to Pezu which caters mostly for the production of cement sold in the domestic market. This is based on the fact that the vast majority of cement produced for the domestic market needs to recover a higher production cost than the vast majority of cement produced for the export market.

The Karachi plant manufactures a portion of the subject product for domestic sales as well. It is not known what amount of the subject product is to be sold to the domestic market at the time of setting the price.

It is the Commission's practice to allow adjustments if there's a difference in the raw material used in the production of the subject product to account for differences in the two products, which could affect comparability, but not with regard to the price paid for such raw material. The fact that it costs more to transport coal does not make it an allowable adjustment as the coal for the manufacturing of the domestically sold product is of the same type as the coal for SACU sales.

In the Penicillin (India) investigation, the Board on Tariffs and Trade was faced with the situation that the exporter used domestically sourced raw material to manufacture for and supply the domestic market, while it used imported raw material to manufacture for and supply the South African and other export markets. The imported raw material was significantly cheaper than domestically sourced raw material owing to high tariff barriers in India. The Board refused to make an adjustment to the normal value to account for the difference in raw material prices, arguing that there was no difference between the raw materials used for domestic and export production. The Board's finding in this regard was referred to Court in Ranbaxy v Chairman of the Board. The Supreme Court confirmed that the Board was correct in its assessment.

Taking all comments received into account, the Commission made a preliminary determination not to allow the production cost adjustment as there are no differences between the raw materials used for domestic and export production which affected the price comparability at the time of the setting of the prices. The Commission further took into account that the Karachi plant manufactures a portion of the subject product for domestic sales as well and that it is not known what amount of the subject product is to be sold to the domestic market at the time of setting the price.

(v) Tax adjustment

In Pakistan, domestic operations fall within the ambit of the National Tax /Bottom-line tax regime whereby profit before tax under the domestic operations is considered as

income and the corporate tax rate applicable for the year is applied. Domestic sales were taxed at a rate of 35% (applicable January 2013 to June 2013) and 34% (July 2013 to December 2013). An average of 34.5% was used to calculate corporate tax for the period 1 January 2013 to 31 December 2013.

ADR 11.2 (c) states that "Adjustments should be requested in interested parties' original response to the relevant questionnaire and must be –

(a) Substantiated;

(b) Verifiable;

(c) Directly related to the sale under consideration; and

(d) Clearly demonstrated to have affected price comparability at the time of setting prices"

An indirect tax is a tax collected by an intermediary (such as a retail store) from a person who bears the ultimate economic burden of the tax (such as the consumer) e.g. sales tax, value added tax and excise duty. Direct tax is a tax that is paid directly by an individual or organisation on which it is imposed, e.g. income tax or taxes on assets.

Treatment of direct and indirect taxes by investigating authorities:
The EU and Australian AD regulations provide for adjustments to normal value for import charges and indirect taxes. Under section 773(a)(6)(B) of the Tariff Act of 1930, the US Commerce Department adjusts normal value for the amount of any indirect tax imposed on the foreign like product, but only to the extent such taxes are included in the price.

And with reference to the publication by Clive Stanbrook and Philip Bentley: "[d]irect taxes are not a matter for adjustment in anti-dumping proceedings ..." (see para. 3.3.2).

The corporate tax claimed by Lucky cement is a direct tax levied on the overall performance of the company. ADR 11.2 (c) directs us to allow an adjustment only if it relates to the sale at issue. Therefore this tax does not warrant an adjustment as it is

not directly related to any specific transaction and at the time of setting the price the manufacturer does not take this taxation into account.

Taking all comments received into account, the Commission made a preliminary determination not to allow the taxation adjustment as it was not demonstrated to be directly related to the sales under consideration.

(vi) Level of trade adjustment

Lucky Cement indicated that it sells the subject product to wholesalers as well as end users (also referred to as institutions) in its domestic market. Exports are mostly done to wholesalers.

Lucky Cement also indicated that a further level of trade has been identified relevant to the cement market, and that would be bulk cargo orders, or very large sales orders, where a single order may be for as much as xxx tons.

According to Lucky Cement, commercial and product risk accepted by clients placing orders of such a size justifies a pricing level different to that of regular wholesale orders that are typically for shipments ranging between xxx and xxx tons.

For comparison, the average invoice price for domestic sales, inclusive of GST and excise duty per ton is approximately PKR xxx. Large orders in the region of xxx tons currently attract prices of PKR xxx. Comparing regular volume price levels with large order prices results in a PKR xxx difference, or if expressed as a % of regular prices, xxx%.

The exporter pointed out that it sells the subject product to wholesalers as well as end users. However, from there, it goes on to give a description of the level of trade that does not support the claim for the adjustment. The description given by the exporter refers to a large extent to a bulk rebate adjustment.

An example of a difference in the level of trade is where an exporter sells on its domestic market to levels A (a distributor) and B (a retailer). The export sales to SACU are at level A. In this circumstance, the Commission will examine whether it is

possible to assess a selective normal value using domestic sales to level A, in other words, a normal value that is not based upon the total population of sales but on those sales that are at the same level as the export sales. If this were possible then no level adjustment would be required.

In considering whether the sales are at different levels, the Commission needs to examine the sales activities carried out at the different marketing stages (i.e. who is buying from whom and who are they selling to). The titles attached to these functions (e.g. distributor or retailer) are considered in this regard. It will also consider the pricing structure at these levels. For example, the producer may state that it sells to three levels of trade (A, B and C). There should be consistent and distinct differences in sale prices in order to establish a real difference in level of sales, again emphasising that it is price comparability that we are concerned with.

Taking all comments received into account, the Commission made a preliminary determination not to allow the level of trade adjustment as no substantiation for this adjustment has been provided.

4.1.3 Export price

It was found that Lucky cement sold more than five per cent (5%) of the subject product in the domestic market.

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

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

The Commission used the actual export sales to SACU during the POI to calculate the export price. Lucky Cement is responsible for its own exports to the SACU.

Adjustments to the export price

The Commission made a preliminary determination to allow the following adjustments to the export prices for purposes of calculating the ex-factory export prices as it was demonstrated that they affected price comparability at the time of setting the price:

(i) Transport costs

Lucky Cement incurs transportation costs from factory to port, handling and other costs related to transport of goods. These costs were verified.

(ii) Packaging

The packaging for the domestic and export market was confirmed to be different. Export sales are made in polypropylene bags which are purchased from several vendors. However, the exporter also claimed an adjustment for a duty drawback for bagged sales. This was verified and found to be correct. The net amount after deducting the duty draw back was calculated.

Adjustment for Sling bags on exports

In addition to the above packaging for exports, some customers require further bulk packaging in the shape of sling bags. Sling bags are purchased from several vendors at varying prices based on the load they handle. Average cost of xxx ton sling bags is PKR xxx whereas average cost of xxx ton sling bags is PKR xxx. These have been charged against consignments, where there were specific requirements for this bulk packaging.

Taking all comments received into account, the Commission made a preliminary determination to allow the packaging costs adjustments as it was demonstrated to have affected the price comparability at the time of setting the price.

(iii) Taxation

Taxation on export sales is levied at 1% of the invoice value. This amount is withheld by the bank and paid to the Pakistani Receiver of Revenue for every transaction.

This adjustment was verified and it was found that 1% of the invoice value is indeed withheld by the bank. The exporter therefore knows beforehand that 1% of the invoice price will be deducted as export tax.

Taking all comments received into account, the Commission made a preliminary determination to allow the taxation adjustment as it was demonstrated to have affected price comparability at the time of setting of the price.

The following adjustments to the export price were claimed by Lucky Cement and were not allowed by the Commission as it was not demonstrated that they have affected the price comparability at the time of the setting of the prices:

(i) Cost of payment terms

The interest rate applied in the calculation of the cost of payment terms was determined with reference to the month end bank discount rate from January 2013 to December 2013 plus a margin added to arrive at the rate at which the bank advanced loans. The margin added by the bank varies from xxx% to xxx%. The company added xxx% to the bank discount rate for the calculation of the cost of payment terms adjustment.

The above rates apply also to export sales where the payment term was cash against documents (CAD), based on the voyage time period including clearance days.

Where export consignments were based on Letters of Credit ("LCs") (issuance LCs) the same rates were applied to arrive at the cost of payment terms based on the issuance period / number of days of the LC.

It is the Commission's practice to consider adjustments to the export price only if the adjustments affected price comparability at the time of setting prices. The payment days used by Lucky Cement to calculate the cost of payment terms were not displayed on the invoices and as such it is not known what the cost would be to Lucky Cement at the time of setting its prices. If the number of days is not reflected on the invoice at least there has to be a contract between the exporter and the

customer indicating the number of days it would take before the customer makes a payment. No such information was provided by the exporter.

Taking all comments received into account, the Commission made a preliminary determination not to allow the cost of payment terms adjustment as no information was provided to indicate that the exporter, at the time of setting the price, took into account how long it would take took to receive payment.

(ii) Discounts and rebates

Lucky Cement gives discounts and rebates to certain customers based on volume purchased during the month. The customer only gets to know the amount of discount given at the end of the month. Lucky Cement allocated the discount allowed on the basis of domestic sales volume.

The discount allowed to Lucky Cement's customers is based on the purchase of a certain volume which gets calculated at the end of the month after the customer met the requirements to qualify for such discount. The discount therefore does not affect the setting of the price as at the time of setting the price it is not known if the costumer will meet the requirements to qualify for such discount.

Taking all comments received into account, the Commission made a preliminary determination not to allow the discount and rebates adjustment as it was not demonstrated to have affected the price comparability at the time of the setting of the prices.

(iii) Selling, general and administration costs

Lucky Cement has a large work force to support its domestic sales operations, which are spread over the entire country. It has different offices at geographically dispersed locations where human resources relating to sales, administration and support services are deployed.

Due to the number of employees involved in the domestic sales as compared to export sales, Lucky Cement claimed an adjustment for the selling, general and administration expenses based on employee headcount. The selling, general and

administrative cost has been allocated to export sales and domestic sales on the basis of head count of sales force. Lucky Cement submitted a cost build-up of the average cost of production of the subject product during the period of investigation, based on total production during that period. The cost build-up was verified and it was found that costs were not allocated according to whether the goods would be sold domestically or on the export market.

In any business environment, selling, general and administration expenses are incurred regardless of whether goods are to be sold on the domestic or export market. The exporter is claiming this particular adjustment in order to reduce the domestic price.

Taking all comments received into account, the Commission made a preliminary determination not to allow the selling, general and administration costs adjustment as it was not demonstrated to have affected the price comparability at the time of the setting of the prices.

(iv) Production cost (Coal)

Lucky Cement has got two plants, one in the Southern region (Karachi plant) and the other one is situated in the Northern region (Pezu plant). Coal is imported into Pakistan via Karachi (southern part of Pakistan) and there is approximately 1 100 km distance between the Karachi and Pezu plant. The company claims an adjustment on the transportation of coal from Karachi to Pezu. This is informed by the fact that coal is a primary input in cement production and as such it costs more to transport coal to Pezu which caters mostly for the production of cement sold in the domestic market. This is based on the fact that the vast majority of cement produced for the domestic market needs to recover a higher production cost than the vast majority of cement produced for the export market.

The Karachi plant manufactures a portion of the subject product for domestic sales as well. It is not known what amount of the subject product is to be sold to the domestic market at the time of setting the price.

It is the Commission's practice to allow adjustments if there's a difference in the raw material used in the production of the subject product to account for differences in the two products, which could affect comparability, but not with regard to the price paid for such raw material product. The fact that it costs more to transport coal does not make it an allowable adjustment as the coal for the manufacturing of the domestically sold product is of the same type as the coal for SACU sales.

In the Penicillin (India) investigation the Board on Tariffs and Trade was faced with the situation that the exporter used domestically sourced raw material to manufacture for and supply the domestic market, while it used imported raw material to manufacture for and supply the South African and other export markets. The imported raw material was significantly cheaper than domestically sourced raw material owing to high tariff barriers in India. The Board refused to make an adjustment to the normal value to account for the difference in raw material prices, arguing that there was no difference between the raw materials used for domestic and export production. The Board's finding in this regard was referred to Court in Ranbaxy v Chairman of the Board. The Supreme Court confirmed that the Board was correct in its assessment.

The Karachi plant manufactures a portion of the subject product for domestic sales as well. It is not known what amount of the subject product is to be sold to the domestic market at the time of setting the price. It is evident that the cost of transporting coal did not affect the price comparability at the time of setting the price.

Taking all comments received into account, the Commission made a preliminary determination not to allow the production cost adjustment as there are no differences between the raw materials used for domestic and export production which it was not demonstrated to have affected the price comparability at the time of the setting of the prices. The Commission further took into account that the Karachi plant manufactures a portion of the subject product for domestic sales as well and that it is not known what amount of the subject product is to be sold to the domestic market at the time of setting the price.

4.1.4 Margin of dumping

The following margin of dumping was calculated:

Producer	Dumping margin %
Lucky Cement	14.29 %

The Commission made a preliminary determination that the subject product originating in or imported from Pakistan and manufactured by Lucky Cement was being dumped onto the SACU market during the period of investigation.

4.2 METHODOLOGY IN THIS INVESTIGATION FOR BESTWAY CEMENT

4.2.1 Sales in the ordinary course of trade

The Commission, for purposes of its preliminary determination, considered sales of Bestway Cement to be in the ordinary course of trade.

4.2.2 Normal Value

Bestway Cement produces Portland cement and sold it on the domestic market in Pakistan during the period of investigation. The actual invoiced sales were used to calculate the normal value.

Bestway Cement sells the subject product to dealers and institutions. Institutions in this case refer to schools, universities, government and other large projects. During verification it was found that there is no significant price difference in the price charged to dealers and institutions for the same volume of products. The normal value before adjustment was calculated

Adjustments to the normal value

The following adjustment to the normal value was claimed by Bestway Cement and allowed by the Commission as it was demonstrated that it affected price comparability at the time of setting the price:

(i) Cost of payment terms

All payments are on revolving credit terms. Bestway Cement uses the interest charged by commercial banks to calculate the interest charged to its customers.

The payment terms used by Bestway to calculate this adjustment were not displayed on the invoices. If the number of days is not reflected on the invoice at least there has to be a contract between the exporter and the customer indicating the number of days it would take before the customer makes a payment. Bestway knew at the time of setting the price the turnaround time for its customers to pay. It was verified that Bestway's customers pay within a certain period of days. There is a cost incurred by Bestway and it affected the comparability of the price at the time of setting the price.

Taking all comments received into account, the Commission made a preliminary determination to allow the cost of payments terms adjustment as information was provided to indicate that the exporter, at the time of setting the price, took into account how long it would take to receive payment.

The following adjustments to the normal value were claimed by Bestway Cement and were not allowed by the Commission as it was not demonstrated that they affected the price comparability at the time of setting of the prices:

(i) Discounts

Discounts are calculated on a monthly basis and get allocated at the end of the month according to specific invoices. There are two categories of discounts: Price match and Trade discounts.

- **Price Match**

Price matches occur when the company needs to revise its prices in view of the competitors and the marketing situation. Price matches are recommended by the respective head at each location and further recommended by the Deputy General Manager and then by the General Manager: Marketing for final approval by the Director: Marketing. For the purpose of preparing the price match sheet, appropriate information will be gathered by the Marketing Managers at the Lahore, Peshawar and Marketing Head Office. All the information gathered is properly documented and

recorded into the system on daily basis and all price matches are processed in the system with reference to invoices of that day based on an approved price match.

Price match discounts are only given after Bestway's prices are compared with those of other competitors and if it is found that Bestway's prices are higher than those of competitors. This does not affect prices at the time of setting the price.

- **Trade Discounts**

The discounts in case of institutions whether in the shape of price reductions or payments to middlemen are allowed and authorized by the marketing department. The authorization level discounts in case of institutions are approved by the Director Marketing with notification to the Chief Executive Officer. The institutions/contractors are offered a price net of discount while if there is any commission involved, it is paid through crossed cheque.

The maximum discount is allowed on achieving a certain performance level and is available to all the dealers. The finance department is responsible for checking all dealer's discounts, rebates, price match and incentives, maintaining proper records and perform reconciliations on a monthly basis.

Discounts are shown on invoice while PKR xxx is paid based on performance quantity at each month end for the respective dealer.

The discounts allowed are performance-based and therefore, at the time of setting the price, it is not known if the dealer will perform in such a way that it will qualify for the said discount.

Taking all comments received into account, the Commission made a preliminary determination not to allow the discount adjustments as these did not affect the price comparability at the time of setting the price.

(ii) Bulk order rebate

Bestway Cement Limited has a bulk order discount policy to review the pricing for exports and local bulk sales to its clients. The rebate for bulk orders is at a certain percentage for single orders exceeding 10, 000 tons.

Bestway confirmed during verification that there were no single orders that exceeded 10 000 tons on the domestic market as the domestic customers do not have capacity. This rebate only benefited importers. This adjustment is therefore applicable to the export price not domestic prices.

Taking all comments received into account, the Commission made a preliminary determination not to allow the adjustment as it was not demonstrated to have affected the price comparability at the time of setting the prices.

(iii) Tax adjustment

In Pakistan, domestic operations fall within the ambit of the National Tax /Bottom-line tax regime whereby profit before tax under the domestic operations is considered as income and the corporate tax rate applicable for the year is applied. Domestic sales were taxed at a rate of 35% (applicable January 2013 to June 2013) and 34% (July 2013 to December 2013). An average of 34.5% was used to calculate corporate tax for the period 1 January 2013 to 31 December 2013.

ADR 11.2 (c) states that "Adjustments should be requested in interested parties' original response to the relevant questionnaire and must be –

(a) Substantiated;

(b) Verifiable;

(c) Directly related to the sale under consideration; and

(d) Clearly demonstrated to have affected price comparability at the time of setting prices"

An indirect tax is a tax collected by an intermediary (such as a retail store) from a person who bears the ultimate economic burden of the tax (such as the consumer) e.g. sales tax, value added tax and excise duty. Direct tax is a tax that is paid directly

by an individual or organisation on which it is imposed e.g. income tax or taxes on assets.

Treatment of direct and indirect taxes by investigating authorities:
The EU and Australian AD regulations provide for adjustments to normal value for import charges and indirect taxes. Under section 773(a)(6)(B) of the Tariff Act of 1930, the US Commerce Department adjusts normal value for the amount of any indirect tax imposed on the foreign like product, but only to the extent such taxes are included in the price.

And with reference to the publication by Clive Stanbrook and Philip Bentley: "[d]irect taxes are not a matter for adjustment in anti-dumping proceedings ..." (see para. 3.3.2).

The corporate tax claimed by Bestway cement is a direct tax levied on the overall performance of the company. ADR 11.2 (c) directs us to allow an adjustment only if it relates to the sale at issue. Therefore this tax does not warrant an adjustment as it is not directly related to any specific transaction and at the time of setting the price the manufacturer does not take this taxation into account.

Taking all comments received into account, the Commission made a preliminary determination not to allow the taxation adjustment as it was not demonstrated to be directly related to the sale under consideration.

(iv) Freight value adjustment
Bestway Cement did not provide any substantiation for the freight value adjustment.

The Commission made a preliminary determination not to allow the freight value adjustment as no substantiation was provided for this adjustment.

4.2.3 Export price
It was found that Bestway sold more than five percent (5%) of the subject product in the domestic market.

The Commission used the actual export sales to SACU during the POI to calculate the export price. Bestway Cement is responsible for its own exports to the SACU.

Adjustments to the export price

The Commission made a preliminary determination to allow the following adjustments to the export prices for purposes of calculating the ex-factory export prices as it was demonstrated that they affected price comparability at the time of setting the price:

(i) Local freight and delivery charges

Bestway incurs delivery costs for the transportation of goods from factory to port as well as the handling and clearing costs at the harbour.

Taking all comments received into account, the Commission made a preliminary determination to allow this adjustment to the export price in order to arrive at the ex-factory export price.

(ii) Additional packaging

An additional packaging cost is claimed for export sales to SACU with regard to the sling bags used to assist handling by stacking up to 40 x 50kg cement bags into a sling bag.

Taking all comments received into account, the Commission made a preliminary determination to allow the additional packaging adjustment.

(iii) Tax adjustment

Taxation on export sales is levied at 1% of the invoice value. This amount is withheld by the bank and paid to the Pakistani Receiver of Revenue for every transaction.

This adjustment was verified and it was found that 1% of the invoice value is indeed withheld by the bank. The exporter therefore knows beforehand that 1% of the invoice price will be deducted as export tax.

Taking all comments received into account, the Commission made a preliminary determination to allow the taxation adjustment as it was demonstrated to have affected the selling price at the time of setting of the price.

4.2.4 Margin of dumping

The following margin of dumping was calculated:

Producer	Dumping margin %
Bestway Cement	77.15 %

The Commission made a preliminary determination that the subject product originating in or imported from Pakistan and manufactured by Bestway Cement was being dumped onto the SACU market during the period of investigation.

4.3 METHODOLOGY IN THIS INVESTIGATION FOR ATTOCK CEMENT

4.3.1 Sales in the ordinary course of trade

The Commission, for purposes of its preliminary determination considered sales of Attock Cement to be in the ordinary course of trade.

4.3.2 Normal Value

Actual invoiced sales transactions were used to calculate the normal value in the domestic market. Attock Cement used sales information from January 2013 to December 2013.

Adjustments to the normal value

The following adjustments to the normal value were claimed by Attock Cement and allowed by the Commission as it was demonstrated that they affected price comparability at the time of setting the price:

Packaging costs

The cost of packaging is different for the domestic and export markets. The product exported to SACU is packed in polypropylene bags while the domestic product is packaged in paper bags. The packaging has been calculated and allocated based on the number of bags. A ton consists of 20 bags. The average packaging cost was calculated for the period of investigation.

Taking all comments received into account, the Commission made a preliminary determination to allow the adjustment as it was demonstrated to have affected the price comparability at the time of setting of the prices.

(i) Commission

Commission is paid to agents in the domestic market and importers in the export markets. It is paid on a monthly basis based on quantities despatched for the month. Attock indicated that due to limitation of its system, it cannot identify the commission against each sales invoice, therefore commission paid for the full year January to December is allocated to individual transactions. This was verified against ledger and bank payments to the agents.

Taking all comments received into account, the Commission made a preliminary determination to allow the adjustment as it was demonstrated to have affected the price comparability at the time of setting of the prices

The following adjustments to the normal value were claimed by Attock Cement and were not allowed by the Commission as it was not demonstrated that they affected the price comparability at the time of the setting of the prices:

(i) Cost of payment terms

The cost of payment terms for domestic sales was established at a certain period of days. The company uses the prevailing bank rates for the credit month.

It is the Commission's practice to consider adjustments to the normal value only if the adjustments affected price comparability at the time of setting prices. The payment days used by Attock to calculate the cost of payment terms were not displayed on the

invoices. If the number of days is not reflected on the invoice at least there has to be a contract between the exporter and the customer indicating the number of days it will take before the customer makes a payment. No such information was provided.

Taking all comments received into account, the Commission made a preliminary determination not to allow the cost of payments terms adjustment as no substantiation was provided that this affected price comparability at the time of setting the price.

(ii) Tax adjustment

In Pakistan, domestic operations fall within the ambit of the National Tax/Bottom-line tax regime whereby profit before tax under the domestic operations is considered as income and the corporate tax rate applicable for the year is applied. Domestic sales were taxed at a rate of 35% (applicable January 2013 to June 2013) and 34% (July 2013 to December 2013). An average of 34.5% was used to calculate corporate tax for the period 1 January 2013 to 31 December 2013.

ADR 11.2 (c) states that "Adjustments should be requested in interested parties' original response to the relevant questionnaire and must be –

(a) Substantiated;

(b) Verifiable;

(c) Directly related to the sale under consideration; and

(d) Clearly demonstrated to have affected price comparability at the time of setting prices"

An indirect tax is a tax collected by an intermediary (such as a retail store) from a person who bears the ultimate economic burden of the tax (such as the consumer) e.g. sales tax, value added tax and excise duty. Direct tax is a tax that is paid directly by an individual or organisation on which it is imposed, e.g. income tax or taxes on assets.

Treatment of direct and indirect taxes by investigating authorities:

The EU and Australian AD regulations provide for adjustments to normal value for import charges and indirect taxes. Under section 773(a)(6)(B) of the Tariff Act of 1930, the US Commerce Department adjusts normal value for the amount of any indirect tax imposed on the foreign like product, but only to the extent such taxes are included in the price.

And with reference to a publication by Clive Stanbrook and Philip Bentley: "[d]irect taxes are not a matter for adjustment in anti-dumping proceedings ..." (see para. 3.3.2).

The corporate tax claimed by Attock Cement is a direct tax levied on the overall performance of the company. ADR 11.2 (c) directs us to allow an adjustment only if it relates to the sale at issue. Therefore this tax does not warrant an adjustment as it is not directly related to any specific transaction and at the time of setting the price the manufacturer does not take this taxation into account.

Taking all comments received into account, the Commission made a preliminary determination not to allow the taxation adjustment as it was not demonstrated to be directly related to the sale under consideration.

Worker's welfare fund tax (WWF)

The worker's welfare fund tax is levied at 2% of taxable total income. This is levied on companies with a revenue that exceeds PKR 500 000 per annum.

The worker's welfare fund tax is levied on the overall company performance. For an adjustment to be allowed it must be directly levied on a transaction not on the overall performance of the company. This adjustment did not affect the comparability of the price at the time of setting the price.

Taking all comments received into account, the Commission made a preliminary determination not to allow the WWF tax adjustment as it did not affect the comparability of the price at the time of setting the price and it is not specific to a transaction.

4.3.3 Export price

It was found that Attock Cement sold more than five percent (5%) of the subject product in the domestic market.

The Commission used the actual export sales to SACU during the POI to calculate the export price. Attock is responsible for its own exports to the SACU.

Adjustments to the export price

The Commission made a preliminary determination to allow the following adjustments to the export prices for purposes of calculating the ex-factory export prices as it was demonstrated that they affected price comparability at the time of setting the price:

(i) Commission

The Commission paid on export sales is the actual commission expenditure incurred in respect of each shipment and was verified by agent invoices.

Taking all comments received into account, the Commission made a preliminary determination to allow the adjustment as it was demonstrated to have affected the price comparability at the time of setting of the prices.

(ii) Transport costs

This adjustment represents the actual transportation cost on export sales from factory to port and was verified from invoices.

Taking all comments received into account, the Commission made a preliminary determination to allow the transport costs adjustment.

(iii) Packaging costs

The adjustment claimed is the average packing material cost per ton apportioned to quantities. The average packaging cost was calculated to be PKR XXXX/ton for the period of investigation.

Taking all comments received into account, the Commission made a preliminary determination to allow the adjustment as it was demonstrated to have affected the price comparability at the time of setting of the prices.

(iv) Port and handling charges

This adjustment represents the port handling cost on the export sales.

Taking all comments received into account, the Commission made a preliminary determination to allow the adjustment as it was demonstrated to have affected the price comparability at the time of setting the prices.

(v) Tax adjustment

It was established during verification that all export sales proceeds are taxed at 1% of the gross value of sales as per section 154 Division IV of the Income Tax Ordinance 2001 of the Islamic Republic of Pakistan.

This adjustment was verified and it was found that 1% of the invoice value is indeed withheld by the bank. The exporter therefore knows beforehand that 1% of the invoice price will be deducted as export tax.

Taking all comments received into account, the Commission made a preliminary determination to allow the adjustment as it was demonstrated to have affected the price comparability at the time of setting the prices.

The following adjustments to the export price were claimed by Attock Cement and were not allowed by the Commission as it was not demonstrated that they affected the price comparability at the time of setting the prices:

(i) Volume deficiency price correction

An agreement exists between Attock and Picronamix (a SACU importer) that stipulates that Picronamix had to commit to buying a certain volume of tons of cement during the period January to December 2013. It further stipulates that, in case Picronamix failed to buy the minimum contract quantity during the said period, the selling price would be increased and Picronamix would have to pay an additional

price on the entire quantity bought during the afore-said period.

Attock Cement stated that Picronamix was penalised as it failed to buy the required volume of tons of cement during the period January – December 2013.

Attock Cement therefore claimed an adjustment to the export price by adding back the price of the entire quantity bought by Picronamix during the said period.

The adjustment claimed by Attock Cement is conditional on the volume that would have to be bought by the importer. In this case the importer could not reach the volume agreed upon and as such the second leg of the agreement comes into force i.e. the importer's price would be increased. This adjustment does not affect the comparability of the price at the time of setting the price. It affects the price at a later stage when the importer is unable to perform.

Taking all comments received into account, the Commission made a preliminary determination not to allow the adjustment for purpose of preliminary determination as it was not proven to have affected the price comparability at the time of setting the prices.

(ii) Bulk cargo price adjustment

Attock Cement has a bulk cargo policy with the main objective to achieve economies of scale through maximum production without interruptions. Since cement production is a continuous process where operational efficiency is only achieved if a cement plant continues operations at all times with limited interruption for necessary maintenance. It recognises the importance of producing 100% of its production capacity and sells 100% of its capacity in order to achieve maximum operational efficiency.

In order to sell the maximum quantities, Attock offers bulk discounts to attract bulk orders. Domestic and international buyers having sufficient liquidity and exposure in cement business are encouraged to commit annual bulk quantities.

For the purpose of determining the special price for large volumes, the base price would be the Karachi general market price, net of sales tax and excise duty. The special price may be reduced by between 10% to 20% as compared to the base price subject to approval of the Management Committee. It was established that Attock applied a 20% discount rate.

Taking all comments received into account, the Commission made a preliminary determination not to allow the adjustment as it was not demonstrated to have affected the price comparability at the time of setting the prices.

4.3.4 Margin of dumping

The following margin of dumping was calculated:

Producer	Dumping margin %
Attock Cement	63.53%

The Commission made a preliminary determination that the subject product originating in or imported from Pakistan and manufactured by Attock Cement was being dumped onto the SACU market during the period of investigation.

4.4 METHODOLOGY IN THIS INVESTIGATION FOR D.G KHAN CEMENT

4.4.1 Sales in the ordinary course of trade

The Commission, for purposes of its preliminary determination, considered sales of D.G Khan Cement to be in the ordinary course of trade.

4.4.2 Normal Value

During the period of investigation cement was sold in the domestic market. The actual invoiced sales transactions were used to calculate the normal value in the domestic market. D.G Khan Cement used sales information from January 2013 to December 2013.

Adjustments to the normal value

The following adjustments to the normal value were claimed by DG Khan Cement and allowed by the Commission as it was demonstrated that they affected the price comparability at the time of setting the price:

(i) Packaging Costs

The cost of packing is different for domestic and export markets. The product exported to SACU is packed in polypropylene bags while domestic product is packaged in paper sacks. There is a cost difference between these types of packaging. This was verified against ledger account and found to be correct.

Taking all comments received into account, the Commission made a preliminary determination to allow the adjustment as it was demonstrated to have affected the price comparability at the time of setting of the prices.

(ii) Commission

Commission is paid to middlemen in both domestic and export markets. In the export market commission is normally paid at a rate of xxx % – xxx % while in the domestic market it is paid at a rate of xxx Rupees/ton. This was verified and found to be correct.

There are contracts between D.G Khan and the agents, which were verified and found to support the claim for the adjustment.

Taking all comments received into account, the Commission made a preliminary determination to allow the adjustment as it was demonstrated to have affected the price comparability at the time of setting of the prices

The following adjustments to the normal value were claimed by DG Khan Cement and were not allowed by the Commission as it was not demonstrated that they have affected the price comparability at the time of setting of the prices:

(i) Tax adjustment

In Pakistan, domestic operations fall within the ambit of the National Tax/Bottom-line tax regime whereby profit before tax under the domestic operations is considered as income and the corporate tax rate applicable for the year is applied. Domestic sales were taxed at a rate of 35% (applicable January 2013 to June 2013) and 34% (July 2013 to December 2013). An average of 34.5% was used to calculate corporate tax for the period 1 January 2013 to 31 December 2013.

ADR 11.2 (c) states that "Adjustments should be requested in interested parties' original response to the relevant questionnaire and must be –

(a) Substantiated;

(b) Verifiable;

(c) Directly related to the sale under consideration; and

(d) Clearly demonstrated to have affected price comparability at the time of setting prices"

An indirect tax is a tax collected by an intermediary (such as a retail store) from a person who bears the ultimate economic burden of the tax (such as the consumer) e.g. sales tax, value added tax and excise duty. Direct tax is a tax that is paid directly by an individual or organisation on which it is imposed e.g. income tax or taxes on assets.

Treatment of direct and indirect taxes by investigating authorities:

The EU and Australian AD regulations provide for adjustments to normal value for import charges and indirect taxes. Under section 773(a)(6)(B) of the Tariff Act of 1930, the US Commerce Department adjusts normal value for the amount of any indirect tax imposed on the foreign like product, but only to the extent such taxes are included in the price.

And with reference to a publication by Clive Stanbrook and Philip Bentley: "[d]irect taxes are not a matter for adjustment in anti-dumping proceedings ..." (see para. 3.3.2).

The corporate tax claimed by D.G Khan is a direct tax levied on the overall performance of the company. ADR 11.2 (c) directs us to allow an adjustment only if it relates to the sale at issue. Therefore this tax does not warrant an adjustment as it is not directly related to any specific transaction and at the time of setting the price the manufacturer does not take this taxation into account.

Taking all comments received into account, the Commission made a preliminary determination not to allow the taxation adjustment as it was not demonstrated to be directly related to the sale under consideration.

(ii) Worker's welfare fund tax (WWF)

The worker's welfare fund tax is levied at 2% of taxable total income. This is levied on companies with a revenue that exceeds PKR 500 000 per annum.

The WWF tax is levied on the overall company performance. For an adjustment to be allowed it must be directly levied on a transaction not on the overall performance of the company. This adjustment did not affect the comparability of the price at the time of setting the price.

Taking all comments received into account, the Commission made a preliminary determination not to allow the WWF tax adjustment as it did not affect the comparability of the price at the time of setting the price and is not specific to a transaction.

4.4.3 Export price

It was found that D.G Khan Cement has sold more than five percent (5%) of the subject product in the domestic market.

The Commission used the actual export sales to SACU during the POI to calculate the export price. D.G. Khan is responsible for its own exports to the SACU. The f.o.b. export price was calculated.

Adjustments to the export price

The Commission made a preliminary determination to allow the following adjustments to the export prices for purposes of calculating the ex-factory export prices as it was demonstrated that they affected price comparability at the time of setting the price:

(i) Transport charges

D.G Khan Cement incurred freight costs during the period of investigation. These are inland freight costs and ocean freight costs depending on incoterm. All export shipments are made on different delivery terms depending on the customer. Shipping costs are charged on a transaction-by-transaction basis. Ocean freight also includes handling charges. The costs allocated to inland and ocean freight and handling costs are based on actual invoiced amount incurred on every shipment.

Taking all comments received into account, the Commission made a preliminary determination to allow the adjustment as it was proven to have affected the price comparability at the time of setting the prices.

(ii) Port and handling charges

This adjustment represents the port handling cost on the export sales.

Taking all comments received into account, the Commission made a preliminary determination to allow the adjustment as it was demonstrated to have affected the price comparability at the time of setting of the prices.

(iii) Packaging Costs

The cost of packing is different for domestic and export markets. The product exported to SACU is packed in polypropylene bags while domestic product is packaged in paper sacks. There is cost difference between these types of packaging. This was verified against ledger account and found to be correct.

Taking all comments received into account, the Commission made a preliminary determination to allow the adjustment as it was demonstrated to have affected the price comparability at the time of setting of the prices.

(iii) Commission

Commission is paid to middlemen in both domestic and export markets. In the export market commission is normally paid at a rate of xxx % – xxx % while in the domestic market is paid at a rate of xxx Rupees/ton. This was verified and found to be correct. There are contracts between D.G Khan and the agents, which were verified and found to support the claim for the adjustment.

Taking all comments received into account, the Commission made a preliminary determination to allow the adjustment as it was demonstrated to have affected the price comparability at the time of setting the prices.

(iv) Tax adjustment

Taxation on export sales is levied at 1% of the invoice value. This amount is withheld by the bank and paid to the Pakistani Receiver of Revenue for every transaction.

This adjustment was verified and it was found that 1% of the invoice value is indeed withheld by the bank. The exporter therefore knows beforehand that 1% of the invoice price will be deducted as export tax.

Taking all comments received into account, the Commission made a preliminary determination to allow the adjustment as it was demonstrated to have affected the price comparability at the time of setting of the prices.

The following adjustments to the export price were claimed by D.G Khan Cement and were not allowed by the Commission as it was not demonstrated that they affected the price comparability at the time of the setting of the prices:

(i) Cost of payment terms

The term of sales for D.G Khan's SACU customers is a letter of credit/ cash against documents (LC/CAD). The turnaround time for the letter of credit to be cashed is seven days.

It is the Commission's practice to consider adjustments to the export price only if the adjustments affected price comparability at the time of setting prices. The payment days used by D.G Khan to calculate the cost of payment terms were not displayed on the invoices and as such it is not known what the cost would be to D.G Khan at the time of setting its prices. If the number of days is not reflected on the invoice at least there has to be a contract between the exporter and the customer indicating the number of days it would take before the customer makes a payment. No such information was provided by the exporter.

Taking all comments received into account, the Commission made a preliminary determination not to allow the adjustment as it was not proven to have affected the price comparability at the time of setting of the prices.

(ii) Volume discount

D.G Khan indicated that its main goal is to achieve economies of scale through maximum production without interruptions. Since cement production is a continuous process, a plant achieves operational efficiency only if it remains in full production at all times without interruptions.

In order to sell the maximum quantities it offers bulk discounts to attract bulk orders. Domestic and International buyers having good financial record and market share are encouraged to commit to annual bulk quantities. During the period of investigation domestic customers did not benefit from this policy, as they were unable to buy or order large volumes. The foreign customers were the only beneficiaries. This was verified and found to be correct.

The adjustment claimed by D.G Khan is awarded once the importers buy in bulk quantities. This adjustment does not affect the comparability of the price at the time

of setting the price. It affects the price at a later stage when the importer meets the set criterion which is subject to approval by the Management Committee.

Taking all comments received into account, the Commission made a preliminary determination not to allow the adjustment as it was not demonstrated to have affected the price comparability at the time of setting the prices.

4.4.4 Margin of dumping

The following margin of dumping was calculated:

Producer	Dumping margin %
D.G Khan Cement	68.87%

The Commission made a preliminary determination that the subject product originating in or imported from Pakistan and manufactured by D.G Khan Cement was being dumped onto the SACU market during the period of investigation.

4.5 METHODOLOGY IN THIS INVESTIGATION FOR ALL OTHER MANUFACTURERS/EXPORTERS FROM PAKISTAN (RESIDUAL DUMPING MARGIN)

4.5.1 Normal Value

The Commission made a preliminary determination to use the weighted average normal value of all verified exporters to calculate the residual dumping margin.

Adjustment

In order to obtain the ex-factory price, the Commission made a preliminary determination to make an adjustment for delivery costs to the normal value, based on the information submitted by Lucky Cement, as it was regarded as the best information available.

4.5.2 Export price

The Commission made a preliminary determination to use the weighted average export price of all verified exporters to calculate the residual dumping margin.

Adjustment

The Commission made a preliminary determination to make an adjustment for delivery costs to the normal value, based on the information submitted by Bestway Cement, as it was regarded as the best information available

4.5.3 Residual dumping margin

The following residual dumping margin was calculated:

Producer	Dumping margin
Non-cooperating manufactures/exporters	62.69%

4.6 SUMMARY – DUMPING

For purpose of its preliminary determination, the Commission, after considering all the comments from interested parties, found that the subject product originating in or imported from Pakistan was being dumped onto the SACU market at the following margins:

Producer	Dumping margin %
Lucky Cement Limited	14.29%
Bestway Cement Limited	77.15%
D.G Khan Cement Limited	68.87%
Attock Pakistan Cement Limited	63.53 %
All other exporters (excluding Lucky Cement Limited, Bestway Cement Limited, D.G Khan Cement Limited and Attock Pakistan Cement Limited)	62.69%

The Commission made a preliminary determination that dumping of the subject product originating in or imported from Pakistan was taking place.

5. MATERIAL INJURY

5.1 The methodology used to present the material injury is as follows:

There are two separate and distinct markets for ordinary Portland cement classifiable under tariff sub-heading 2523.29, namely:

(i) the market for bagged cement; and
(ii) the market for bulk cement.

It is important to note that bagged cement constitutes 55% of the total cement production. The rest is bulk.

The Applicant stated that the purposes for which bagged cement and bulk cement are used differ. Bulk cement is used in large construction projects and sold to concrete product manufacturers, ready mix producers and blenders while bagged cement is usually used in small construction projects. Bagged customers are usually retailers which on-sell to customers for small projects.

The Applicant also stated that Portland cement classifiable under tariff sub-heading 2523.29 is imported from Pakistan only in bagged form and it is only in the bagged cement market where Pakistan imports compete with the domestic industry and where the domestic industry is suffering material injury. The applicant also indicated that its bagged data is, to the extent possible, presented separately from the industry data as a whole and for the sake of completeness, bulk cement data is also separately provided. The injury data furnished demonstrates material injury, not only in respect of the bagged cement market, but also material injury to the SACU industry as a whole (i.e. the combined bulk and bagged cement markets).

This anti-dumping application covers the entire SACU region. The cement imports from Pakistan enter SACU mainly through the following ports: Durban, Cape Town, Port Elizabeth and East London. More than 70% of the dumped Pakistani cement imports enter the SACU market through the Durban port. As transportation costs for cement are very high, the imported cement is sold closer to the port of entry. Although

the material injury is suffered by the domestic industry in the whole of SACU, it is more pronounced in the regions next to the ports of entry. KZN accounts for the highest import volumes, followed by the Coastal Region outside KZN. As such the injury is more pronounced in KZN and the Coastal Region outside KZN. The Coastal Region outside KZN is made up of the Eastern Cape and the Western Cape. Information is provided separately for the KZN and the Coastal Region.

Commission's consideration

In terms of the WTO Agreement, the "domestic industry" is not defined based on the "imported product". Once the "imported product" is defined, we must find the "domestic industry of the like product" which is being injured by these imports. In this case, there is no doubt that the "like product" is "cement". Therefore, the analysis of the injury which the "cement industry" is experiencing was analysed.

However, the law on the issue is stated in paragraph 203 of the Hot Rolled Steel Products case: "We have already stated that it may be highly pertinent for investigating authorities to examine domestic industry by part, sector or segment. However, as with all other aspects of the evaluation of the domestic industry, Article 3.1 of the Anti-Dumping Agreement requires that such a sectoral examination be conducted in an "objective" manner. In our view, this requirement means that, where investigating authorities undertake an examination of one part of a domestic industry, they should, in principle, examine, in like manner, all of the other parts that make up the industry, as well as examine the industry as a whole. Or, in the alternative, the investigating authorities should provide a satisfactory explanation as to why it is not necessary to examine directly or specifically the other parts of the domestic industry." (our underlining)

It appears from the judgment that the investigating authorities may, in the alternative, provide a satisfactory explanation as to why it is not necessary to examine directly or specifically the other parts of the domestic industry. In other words, it opened the door to allow authorities not to investigate other parts of the industry and only one part of the industry, if there was a satisfactory explanation which is not an easy onus to discharge.

Paragraph 7.154 of the Mexico - High Fructose Corn Syrup Panel decision was quoted with approval in the Hot Rolled Steel Products case: "It is important to differentiate the consideration of factors relevant to the injury analysis on a sectoral basis, so as to gain a better understanding of the actual functioning of the domestic industry and its specific markets and thus of the impact of imports on the industry, from the determination of injury or threat of injury on the basis of information regarding only production sold in one specific market sector, to the exclusion of the remainder of the domestic industry's production. There is certainly nothing in the AD Agreement which precludes a sectoral analysis of the industry and/or market. Indeed, in many cases, such an analysis can yield a better understanding of the effects of imports, and more thoroughly reasoned analysis and conclusion. However, this does not mean that an analysis limited to that portion of the domestic industry's production sold in one market sector is sufficient for establishing injury or threat of injury to the domestic industry, consistently with the AD Agreement. It is undisputed in this case that SECOFI defined the domestic industry as consisting of all sugar producers. What SECOFI failed to do, however, was assess the question of injury to those producers on the basis of their production of the like product, sugar. Instead, it assessed the question of threat of injury only with reference to that portion of sugar producers' production that was sold in the industrial market, and took no account of the fact that almost half of production was sold in the household market."

The Commission considered that there were no Pakistani bulk cement imports over the injury investigation period as it is prohibitively expensive to import cement in anything other than bags. There are several reasons why this is so:

a) Retrofitting Carriers

In order to handle cement in bulk for transportation across the oceans it is necessary to retrofit or customise bulk ship carriers. It is however expensive to retrofit or customise carriers for such bulk cement transportation and for the loading and off-loading thereof at the harbour. Cement at these volumes will have to be transferred with compressed air (pneumatic systems) from bulk silos, situated at the port, or via road tankers (typically with 35 tons capacity) into the carrier hold. Aerated cement is less bulky and will settle into a more solid mass over time unless it is kept aerated to ensure a fluidised bed for off-loading by pneumatic

equipment (extraction). So whilst it is possible to transport large bulk volumes, ships will have to be equipped for flexible route changes and different loading facilities and unloading terminals. Retrofitting ships for once-off or ad-hoc movement will be prohibitively expensive.

b) Portside Off-loading Infrastructure

i. Offloading bulk cement from a carrier hold will also be impractical, unless the infrastructure exists at the destination harbour to transfer the cement directly from the ship's hold to the quayside silos. However, this requires the ship to be specially converted as well as having a dedicated receiving system on-shore. Bulk silos will have to be available to ensure offloading within a reasonable amount of time. Usually the unloading of the cement in the hold will be carried out with a stationary or trailer-mounted extraction system, which pumps cement from the hold via pipeline to bulk silos onshore. The infrastructure will have to include the necessary pipelines and pumping systems on a semi-permanent or permanent basis.

ii. The bulk depot (silos, materials handling, filters etc.) will have to be fitted with dust-control equipment to ensure compliance with environmental regulations. Cement is a very dusty bulk material and spillage prevention during loading and unloading operations usually poses a major challenge. The facility will then have to be equipped with road-outloading equipment, and/or a packing plant to move the cement out either in 50kg pre-packed bags or road tankers over time. A bulk depot to handle an operation like this can be constructed for an estimated R250 million. The applicants are not aware of any of these facilities currently existing at a South African port that could handle the off-loading of cement carried in bulk carriers.

c) Cement is Hygroscopic

Cement is hygroscopic and is susceptible to transport across water. The carrier will have to be 100% watertight with air-drying equipment to ensure the cement is still usable upon arrival at the destination port.

Based on the above information, the Commission made a preliminary determination that although the injury analysis is for cement as a whole, the Commission's focus with regard to the injury analysis was on the bagged cement.

5.2 DOMESTIC INDUSTRY – MAJOR PROPORTION OF PRODUCTION

The following injury analysis relates to Afrisam (South Africa) (Proprietary) Limited, Lafarge Industries South Africa (Proprietary) Limited, NPC Cimpor (RF) (Proprietary) Limited and PPC Limited that constitute more than 90 per cent of the total domestic production of the subject product.

The Commission made a preliminary determination that the total domestic production constitutes "a major proportion" of the total domestic production, in accordance with the Anti-Dumping Regulations.

5.3 IMPORT VOLUMES AND EFFECT ON PRICES

5.3.1 Import volumes

The following table shows the volumes of imports in tons during the period of investigation:

Table 5.3.1: Import volumes

Tons	2010	2011	2012	2013
Pakistan	142 806	362 345	746 875	1 091 235
Other Imports	40 734	80 916	16 044	17 798
Total imports	**183 540**	**443 261**	**762 919**	**1 109 033**

The information in the table above indicates that the volume of the alleged dumped imports from Pakistan increased significantly over the investigation period, while imports from other countries decreased moderately over the same period.

5.3.2 Effect on Domestic Prices

5.3.2.1 Price depression

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

The below tables show the domestic industry's ex-factory selling price per ton.

Table 5.3.2.1: Price depression

	2010	2011	2012	2013
Ex-factory price per unit R/Ton(**Bagged cement**)	100	101	104	105
Ex-factory price per unit R/Ton(**Bulk cement**)	100	103	106	111
Ex-factory price per unit R/Ton(**Bagged and bulk cement**)	100	102	105	107

This table was indexed due to confidentiality using 2010 as the base year.

5.3.2.2 Price undercutting

Price undercutting is the extent to which the price of the imported product is lower than the price of the like product produced by the SACU industry. The landed cost for the period of investigation was based on the verified importers' information (FOB value of dumped imports plus the landing and clearing costs; internal transport costs (from plant to harbour). The landed cost is based on the average of all the imports from Pakistan of the four importers that responded to the questionnaire.

It was found that the imported bagged cement from Pakistan undercut the applicant's selling price during the period of investigation.

5.3.2.3 Price suppression

Price suppression is the extent to which increases in the cost of production of the product concerned, cannot be recovered in the selling prices.

The tables below shows the Applicant's average costs of production and its actual average selling prices for the subject product:

Table 5.3.2.3 (a): Price suppression-Bagged Cement

	2010	2011	2012	2013
Applicant's ex-factory price	100	101	104	105
Applicant's cost of production	100	107	114	112
Cost as a % of selling price	100	106	109	107

This table was indexed due to confidentiality using 2010 as the base year.

The table above indicates that production cost increased from 2010 to 2013 but that the Applicant's price only slightly increased, indicating that it could not recover the full increase in cost by increasing its prices.

Table 5.3.2.3 (b): Price Suppression SACU-Bulk Cement

	2010	2011	2012	2013
Applicant's ex-factory price	100	103	106	111
Applicant's cost of production	100	110	114	125
Cost as a % of selling price	100	107	108	113

This table was indexed due to confidentiality using 2010 as the base year.

The table above indicates that production cost increased from 2010 to 2013 but that the Applicant's price slightly increased, indicating that it could not recover the full increase in cost by increasing its prices.

Table 5.3.2.3 (c): Price suppression-Bagged and Bulk Cement

	2010	2011	2012	2013
Applicant's ex-factory average price	100	102	105	107
Applicant's cost of production	100	108	113	116
Cost as a % of selling price	100	106	108	108

This table was indexed due to confidentiality using 2010 as the base year.

The table above indicates that total production cost increased from 2010 to 2013 but that the Applicant's price only increased slightly, indicating that it could not recover the full increase in cost by increasing its prices.

5.3.3 Consequent Impact of the dumped imports on the Industry

5.3.3.1 Actual and potential decline in sales

The tables below show the Applicant's sales volumes for the subject product:

Table 5.3.3.1 (a): SACU Industry Sales SACU-Bagged Cement

	2010	2011	2012	2013
Sales volume (Tons)	100	92	90	94

This table was indexed due to confidentiality using 2010 as the base year.

Table 5.3.3.1 (b): SACU Industry Sales SACU-Bulk Cement

	2010	2011	2012	2013
Sales volume Tons	100	105	109	117

This table was indexed due to confidentiality using 2010 as the base year.

Table 5.3.3.1 (c): SACU Industry Sales SACU-Bagged and Bulk Cement

	2010	2011	2012	2013
Sales volume Tons	100	97	97	103

This table was indexed due to confidentiality using 2010 as the base year.

The above table shows that the Applicant's sales for bagged cement declined as the sales volume of bagged cement imports from Pakistan continued to grow in the SACU market.

5.3.3.2 Profit and Loss

Table E5.3.3.2 (a): Profit and Loss SACU-Bagged Cement

	2010	2011	2012	2013
Tons sold	100	92	90	94
Total gross profit	100	87	84	90
Total net profit	100	75	79	75

This table was indexed due to confidentiality using 2010 as the base year.

Table E5.3.3.2 (b): Profit and Loss SACU- Bulk Cement

	2010	2011	2012	2013
Tons sold	100	105	109	117
Total gross profit	100	102	109	116
Total net profit	100	90	106	112

This table was indexed due to confidentiality using 2010 as the base year.

Table E5.3.3.2 (c): Profit and Loss SACU-Bagged and Bulk Cement

	2010	2011	2012	2013
Tons sold	100	97	97	103
Total gross profit	100	93	94	100
Total net profit	100	80	88	88

This table was indexed due to confidentiality using 2010 as the base year.

The above table shows that the SACU Industry's gross profits for bagged cement declined by 10 index points from 2010 to 2013. The Applicant stated that the decline has been as a result of the dumped imports from Pakistan which are undercutting its prices.

Comments by exporters

The exporters stated that very significant Competition Tribunal fines were imposed on the cement producers during the investigation period. The exporters also stated that given that the fines were imposed for cartel behaviour, it implies that the profits being made in the period preceding the imposition of the fines were not normal. Following a correction in the pricing behaviour after the Competition Tribunal intervention, it is expected that profits would drop. The exporters requested that ITAC confirms whether the competition issues were considered as part of the assessment of injury and causal link.

Response by the Applicant

The Applicant stated that the competition issues are irrelevant to the present investigation. The Applicant further said that the only issue that is relevant is injurious dumping by Pakistani producers. The injury suffered by the SACU industry as reflected in the application, including the decline in profit was caused by

dumped Pakistan imports and is not related to the competition issues.

Taking the above into account, the Commission is of the opinion that although the fines imposed by the Competition Tribunal might have had an effect on the SACU industry, it does not argue away the fact that imports of the subject product increased by 664% between 2010 and 2013 and that the market share of imports from Pakistan increased from 2% in 2010 to 14% in 2013.

The Commission further noted that the injury experienced by the SACU industry is more prominent on volume and that sales, output and market share most clearly reflect the material injury experienced.

5.3.3.3 Output

The following tables outline the SACU industry's domestic production volume of the subject product:

Table 5.3.3.3 (a): Output SACU-Bagged Cement

	2010	2011	2012	2013
Applicant's total production of the product concerned (Tons)	100	90	88	90

This table was indexed due to confidentiality using 2010 as the base year.

Table 5.3.3.3 (b): Output SACU-Bulk Cement

	2010	2011	2012	2013
Applicant's total production of the product concerned (Tons)	100	104	114	124

This table was indexed due to confidentiality using 2010 as the base year.

Table 5.3.3 (c) Output SACU-Bagged and Bulk Cement

	2010	2011	2012	2013
Applicant's total production of the product concerned (Tons)	100	95	98	103

This table was indexed due to confidentiality using 2010 as the base year

The Applicant stated that the SACU Industry is losing sales to the dumped Pakistani imports, resulting in declining production.

The Applicant also stated that between 2010 and 2013, the Applicants' total SACU

production of bagged cement declined. In KZN, the decline in production of bagged cement was minimal. In the Coastal Region outside KZN the total production for bagged cement declined by a significant amount. In an effort to mitigate the losses caused by the dumped Pakistani imports, the SACU Industry has had to decrease its bagged production and increase its bulk cement production.

The Applicant further stated that unless anti-dumping duties are imposed, the dumped Pakistani imports would continue to increase and the SACU Industry will be forced to decrease production volumes further, which will regrettably result in job losses.

5.3.3.4 Market share

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

Table 5.3.3.4 (a): Market Share by Volume SACU-Bagged Cement

	2010	2011	2012	2013
Market share				
Applicants	100	92	90	94
Dumped imports (Pakistan)	100	254	523	764
Other imports	100	199	39	44
Total SACU market	**100**	**98**	**100**	**109**
Percentage share held by:				
Applicants	100	94	89	86
Dumped imports (Pakistan)	100	260	520	700
Other imports	100	200	33	33

This table was indexed due to confidentiality using 2010 as the base year.

Table 5.3.3.4 (b): Market Share by Volume SACU-Bulk Cement

	2010	2011	2012	2013
Market share				
Applicants	100	105	109	117
Total SACU market	**100**	**108**	**113**	**122**
Percentage share held by:				
Applicants	100	97	97	96

Table 5.3.3.4 (c): Market Share by Volume SACU-Bagged and Bulk Cement

	2010	2011	2012	2013
Market share				
Applicants	100	105	109	117
Dumped imports (Pakistan)	100	254	523	764
Other imports	100	199	39	44
Total SACU market	**100**	**101**	**104**	**112**
Percentage share held by:				
Applicants	100	97	94	91
Dumped imports (Pakistan)	100	246	492	662
Other imports	100	175	25	25

This table was indexed due to confidentiality using 2010 as the base year.

The information in the above table shows that SACU's share of the market declined considerably over the investigation period, with a corresponding increase in the market share of the dumped imports.

The Applicant stated that it is losing market share to the dumped Pakistani imports. The loss is increasing each year and such losses would continue unless anti-dumping duties are imposed.

The Commission noted that the market grew by 12% over the period of investigation and that the Applicant lost market share during this period, while the importers were able to increase their share in a growing market.

5.3.3.5 Productivity

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

Table 5.3.3.5: Productivity

	2010	2011	2012	2013
Total production volume (tonnes)	100	95	98	103
Number of employees (manufacturing only)	100	93	90	84
Units per employee	100	102	108	122

This table was indexed due to confidentiality using 2010 as the base year.

Productivity increased during the period of investigation. The Applicant indicated that the apparent increase in productivity in 2013 is a consequence of a severe and regrettable reduction in the number of employees employed by the SACU Industry.

5.3.3.6 Return on investment

Return on investment is normally regarded by the Commission as being the profit before interest and tax as a percentage of the net value of assets. The tables below provide the Applicant's profit after interest and tax expressed as a percentage of its net asset value:

Table 5.3.3.6: Return on investment

	2010	2011	2012	2013
Total net profit (all products) Bag and Bulk	100	80	88	88
Total net assets (total)	100	99	97	92
Return on net assets (total)	100	80	90	95

This table was indexed due to confidentiality using 2010 as the base year.

5.3.3.7 Utilisation of production capacity

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

Table 5.3.3.7 (a): Utilization of production capacity (Bagged)

	2010	2011	2012	2013
Capacity (units)	100	100	100	100
Actual production	100	90	88	90
Capacity utilisation	100	90	88	90

This table was indexed due to confidentiality using 2010 as the base year.

Table 5.3.3.7 (b): Utilization of production capacity (Bulk)

	2010	2011	2012	2013
Capacity (units)	100	100	100	100
Actual production	100	104	114	124
Capacity utilisation	100	104	114	124

This table was indexed due to confidentiality using 2010 as the base year.

Table 5.3.3.7 (c): Utilization of production capacity (Bagged and Bulk)

	2010	2011	2012	2013
Capacity (units)	100	100	100	100
Actual production	100	95	98	103
Capacity utilisation	100	95	98	103

This table was indexed due to confidentiality using 2010 as the base year.

Capacity utilisation for bagged cement decreased between 2010 and 2012 and increased slightly in 2013 as a result of measures that were put into place to compete with the dumped imports from Pakistan.

5.3.4 Factors affecting domestic prices

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

5.3.5 The magnitude of the margin of dumping

The following margins of dumping were calculated:

Producer	Dumping margin
Lucky Cement Limited	14.29%
Bestway Cement Limited	77.15%
D.G Khan Cement Limited	68.87%
Attock Pakistan Cement Limited	63.53%
All other exporters (excluding Lucky Cement Limited, Bestway Cement Limited, D.G Khan Cement Limited and Attock Pakistan Cement Limited)	62.69%

5.3.6 Actual and potential negative effects on cash flow

The tables below reflect the Applicant's cash flow situation with regard to the product under investigation:

Table 5.3.6: Cash flow

	2010	2011	2012	2013
Company				
Net cash flow	100	107	83	97

This table was indexed due to confidentiality using 2010 as the base year.

The information in the above table shows that the SACU industry's net cash flow decreased from 2010 to 2013.

5.3.7 Inventories

The Applicant provided its inventory level figures listed in the table below:

Table 5.3.7: Inventories

	2010	2011	2012	2013
Volume	100	73	97	99
Value	100	79	101	113

This table was indexed due to confidentiality using 2010 as the base year.

The information in the above table reflects that inventory volumes decreased minimally during the period of investigation.

5.3.8 Employment

The table below provides the Applicant's employment figures for the subject product:

Table 5.3.8: Employment

	2010	2011	2012	2013
Direct labour units: production	100	90	91	87
Indirect labour units: production	100	100	90	76
Total labour units: production	100	93	90	84

This table was indexed due to confidentiality using 2010 as the base year.

There has been a decrease in employment levels of the SACU industry during the period under investigation. The Applicant stated that the main cause of the loss of employment was the loss of sales to dumped imports from Pakistan.

5.3.9 Wages and salaries

The following table provides the Applicant's wages and salaries paid:

Table 5.3.9: Wages and salaries

	2010	2011	2012	2013
Total wages: Production (R'000s)	100	102	104	97
Wages per employee (Rands)	100	110	115	115

This table was indexed due to confidentiality using 2010 as the base year.

The Applicant stated that despite declining sales, wages have continued to increase. The dumped Pakistani cement imports have undermined the profitability of the SACU Industry. Such a situation is unsustainable and will lead to further job losses in the future unless anti-dumping duties are imposed against the dumped Pakistani imports.

5.3.10 Growth

The following tables indicate the growth of the SACU market as provided by the Applicant:

Table 5.3.10 (a): Actual and Potential effect on Growth SACU-Bags Cement

	2010	2011	2012	2013
Size of the SACU market	100	98	101	109
Applicant's sales volume	100	92	90	94
Dumped imports	142,806	362,345	746,875	1,091,235
Dumped imports growth %	-	153.7%	106.1%	46.1%
Other imports	40,734	80,916	16,044	17,798

	2010	2011	2012	2013
Other imports growth %	-	98.6%	-80.2%	10.9%

This table was indexed due to confidentiality using 2010 as the base year.

Table 5.3.10 (b): Actual and Potential Effect on Growth SACU-Bulk Cement

	2010	2011	2012	2013
Size of the SACU market	100	108	113	122
Applicant's sales volume	100	105	109	117

This table was indexed due to confidentiality using 2010 as the base year.

Table 5.3.10 (c): Actual and Potential Effect on Growth SACU-Bag and Bulk Cement

	2010	2011	2012	2013
Size of the SACU market	100	101	104	112
Applicant's sales volume	100	97	97	103
Dumped imports	142,806	362,345	746,875	1,091,235
Dumped imports growth %	-	153.7%	106.1%	46.1%
Other imports	40,734	80,916	16,044	17,798
Other imports growth %	-	98.6%	-80.2%	10.9%

This table was indexed due to confidentiality using 2010 as the base year.

The Applicant stated that its sales volumes for bagged cement have declined over the period 2010 to 2013 despite growth in the size of the SACU market over the same period. This trend is also seen in KZN, and in the Coastal Region outside KZN it is more severe. By contrast, the volume of sales of dumped Pakistani imports has grown at a significant rate between 2010 and 2013. The current trend is that the volume of the dumped imports from Pakistan continues to grow at significant levels, indicating that the SACU Industry would continue to suffer injury unless anti-dumping duties are imposed.

5.3.11 Ability to raise capital or investments

The Applicant provided the following information with regard to the SACU industry's ability to raise capital or investments:

Table 5.3.11: Ability to raise capital or investments

	2010	2011	2012	2013
Total capital/investment in subject product (R'000)	100	102	104	106

This table was indexed due to confidentiality using 2010 as the base year.

The Applicant stated that some of its members source capital internally either from their holding or sister companies. Some of the members face difficulties in raising capital as access to capital is dependent on being able to demonstrate benchmark returns, which returns are negatively impacted by the on-going injurious effect of the dumped Pakistani cement imports.

5.4 SUMMARY - MATERIAL INJURY

From the information above, the Commission found that it is evident that the Applicant is suffering volume injury, given its sales volume and output figures. It is also clear that the Applicant is suffering price injury, considering price undercutting and price suppression, decline in profits, and cash flow.

The Commission made a preliminary determination that the SACU industry is experiencing material injury.

6. THREAT OF MATERIAL INJURY

6.1 Freely disposable capacity of the exporters

The Applicant provided the following information in substantiating the above:

- The Pakistan cement industry has a large freely disposable capacity. There is also an imminent substantial increase in capacity, as a number of large Pakistani cement producers have recently either expanded or announced plans to expand their manufacturing operations as more fully explained below.
- In its latest annual report for the year ended 30 June 2013, Lucky Cement Limited, a large Pakistani cement producer, announced that two vertical grinding mills at its Karachi cement plant are scheduled to become operational in the last quarter of the 2013 – 2014 financial year and in September 2014 respectively. DG Khan Cement, another large Pakistani cement manufacturer, is also expanding its production facilities as it would appear from its recent announcement that it would start its 2.6 million tonnes per annum plant in Hub, Balochistan.
- The Pakistani cement producers production capacity increased by 2.3 million tonnes in the period 2010 to 2013, from 42.5 million tonnes in 2010 to 44.8 million tonnes in 2013. This demonstrates an increase in the production capacity over the same period.
- According to BMA Capital Management, the Pakistani cement industry will likely add an additional 8.9 million tonnes to its current annual capacity of 45 million tonnes by the end of 2017. The Pakistani cement industry therefore has a large and increasing production capacity.
- According to the All Pakistan Cement Manufacturers Association ("APCMA"), capacity utilisation in the Pakistan cement industry fell to 68.3% in the first two months of the 2013 financial year. The figure is apparently the lowest since 2002.
- Pakistan's cement exports to Afghanistan have fallen in recent years according to figures from the APCMA. Such fall is significant as Afghanistan currently purchases 50% of Pakistan's cement exports.

Pakistan's Exports to India are reportedly also decreasing. This decline in exports has been attributed to competition from Iranian exports in Afghanistan and weakening demand in India. The departure of US armed forces from Afghanistan in 2014 will also reduce demand for cement in that country, and consequently, Pakistani exports to Afghanistan.

- This excess volume of cement would have to be exported to other markets which in all probability would be the SACU market.

The Applicant indicated that it is clear from the facts above that Pakistan has a large excess capacity. Significantly, such excess is expected to grow with reported plans to increase production capacity by some of the Pakistani cement producers.

6.2 Significant increase of dumped imports

The Applicant stated that Pakistan has a large production capacity and substantial excess capacity. Pakistan's exports to its traditional markets such as India and Afghanistan are declining and accordingly, Pakistan will have to export these volumes to other markets. Due to the fact that South Africa is Pakistan's second largest exporting market after Afghanistan, this would likely result in a significant increase of dumped imports into SACU. The Applicant further stated that the increasing production capacity of the Pakistani producers means that more cement will be produced, a large portion of which will have to be sold on the export market.

Figure F2a below shows the rapid growth of imports during the period 1 January 2010 to 31 December 2013. Figure F2c shows that this trend continued in 2014.

Figure F2a: Import Volumes (Tonnes) into SACU Per Annum - Dumped Pakistan Imports v Other Imports

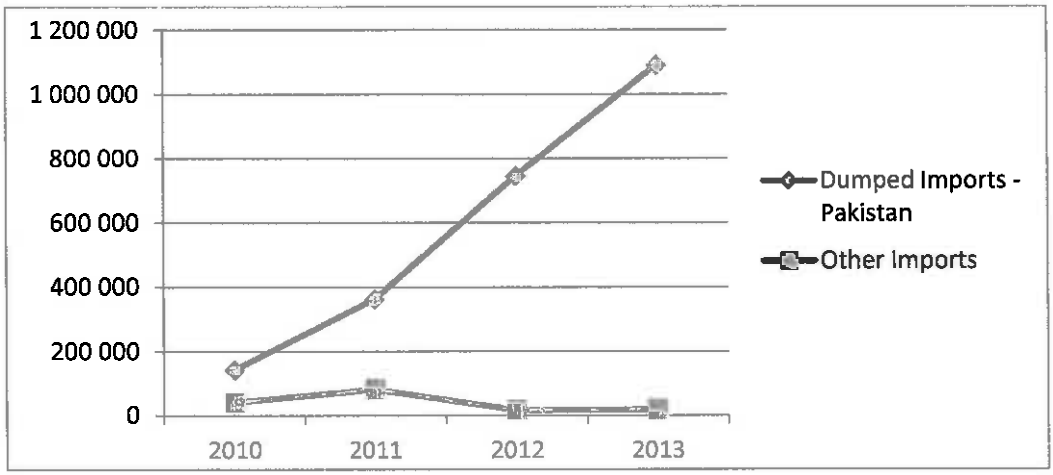


Figure F2b: Import Volumes (Tonnes) into SACU on a Monthly Basis - Dumped Pakistan Imports v Other Imports

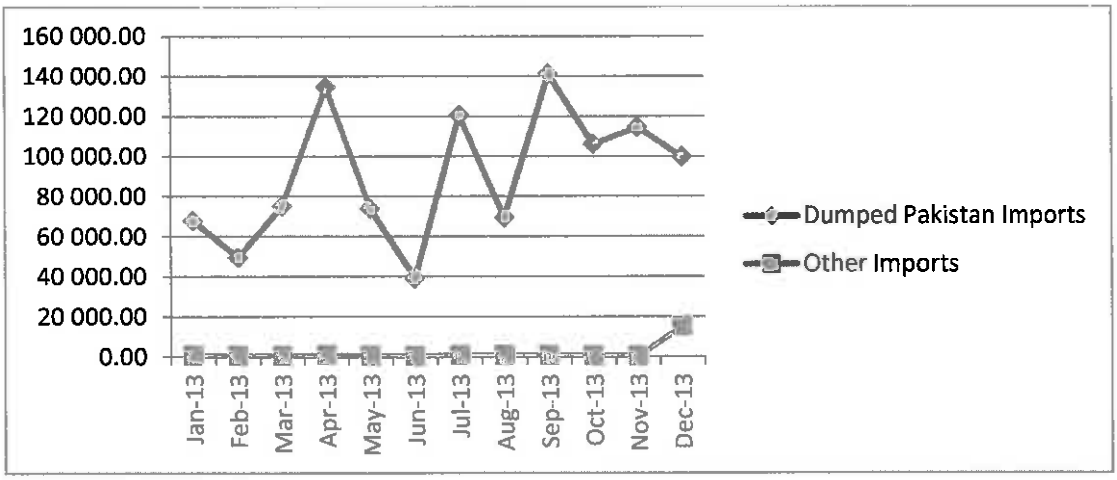
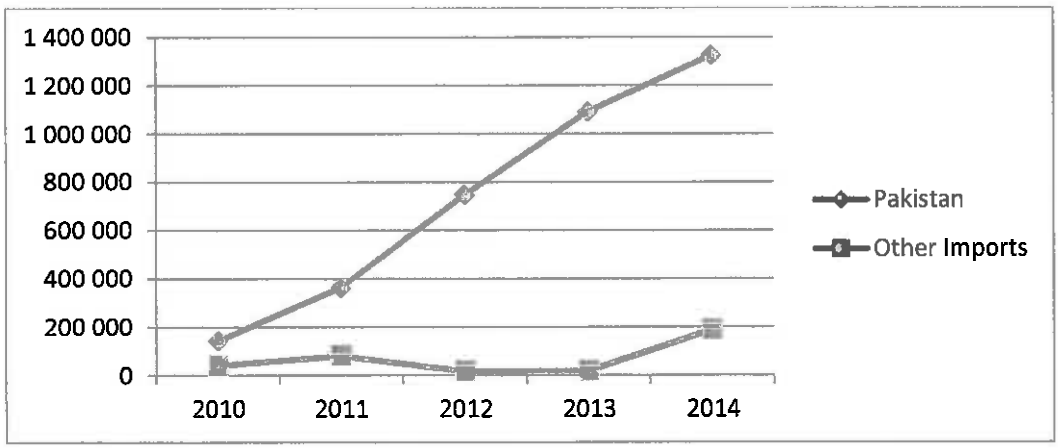


Figure F2c: Import Volumes (Tonnes) into SACU per annum - Dumped Pakistan Imports v Other Imports



Commission's consideration

The Commission considered that there has been a significant increase in the dumped imports as imports from Pakistan increased by 664% over the investigation period, while imports from other countries decreased by 56.31% over the same period.

Furthermore, subsequent information shows that between 2013 and 2014 Pakistan imports increased from 1 1091 235 to 1 324 245 tonnes, increasing by more than 20%. This is an indication that the threat of imports from Pakistan does exist.

6.3 Inventories of subject product

The Applicant indicated that the exporters' inventories are not known, but it is known that the exporters can supply substantial orders on short notice.

6.4 State of the economy of the country of origin

According to the Applicant, growth in gross domestic product (GDP) in Pakistan slowed in the Fiscal Year 2013 (ended 30 June 2013) compared to a year earlier. However, although the Pakistani economy may not be performing at its optimum at present, this has not stopped the cement industry's growth. By the end of 2013, the Pakistan cement industry was reported as one of the best performing sectors on the Karachi Stock Exchange. The cement industry is considered to be one of the key drivers of Pakistan's economy. In order to remain viable in an economy that is slowing down, Pakistani cement producers will have to export more.

6.5 SUMMARY ON THREAT OF MATERIAL INJURY

Pakistan has increased its freely disposable capacity; Pakistan's exports to its traditional markets are declining; and imports from Pakistan increased by over 600 % from 2010 to 2013. This indicates that a threat of material injury exists.

Furthermore, subsequent information shows that between 2013 and 2014 imports from Pakistan increased by 20 %.

The Commission therefore made a preliminary determination that there is sufficient information to indicate that a threat of material injury to the SACU industry exists.

7. CAUSAL LINK

7.1 GENERAL

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

7.2 VOLUME OF IMPORTS AND MARKET SHARE

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

Table 7.2

	2010	2011	2012	2013
Applicant's market share (%)	100	92	90	94
Dumped imports (Pakistan)	100	260	520	700
Other imports	100	200	33	33

This table was indexed due to confidentiality using 2010 as the base year.

The information provided by the Applicant shows that the Applicant's market share decreased between 2011 and 2013, while the dumped imports increased for the same period.

7.3 EFFECT OF DUMPED IMPORTS ON PRICES

Table 7.3 (a)

Rand/ton	2010	2011	2012	2013
Applicant's ex-factory selling price	100	101	104	105
Cost as a % of selling price	100	106	109	107
Price undercutting	positive	positive	positive	Positive

This table was indexed due to confidentiality using 2010 as the base year.

The above tables indicate that the dumped product from Pakistan is undercutting the SACU industry selling prices.

7.4 CONSEQUENT IMPACT OF DUMPED IMPORTS

Table 7.4

Material injury indicator	Bagged cement analysis (Jan 2010 – Dec 2013)	Bulk cement analysis (Jan 2010 – Dec 2013)	Bag and bulk analysis (Jan 2010 – Dec 2013)
Sales volume	Decrease	Increase	Increase
Profit and loss	Decrease	Increase	Decrease
Output	Decrease	Increase	Increase
Market share	Decrease	Increase	Decrease
Productivity	Increase	Increase	Increase
Utilisation of capacity	Decrease	Increase	Increase
Cash flow	Decrease	Decrease	Decrease
Return on investment	Decrease	Increase	Decrease
Employment	Decrease	Increase	Decrease
Wages	Increase	Increase	Increase
Growth	Decrease	Increase	Increase
Total capital investment in subject product	Increase	Increase	Increase

7.5 FACTORS OTHER THAN THE DUMPING CAUSING INJURY

7.5.1 The volume and price of imports not sold at dumping prices

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

7.5.2 Examination of causality under Article 3.5

Variable		Year			Change (%)
	2010	2011	2012	2013	
Value of imports not sold at dumped prices (fob price) (R/tonne)	1,192.48	971.42	1,414.59	1,878.66	57.54
Volume of imports not sold at dumped	40,734	80,916	16,044	17,798	(56.31)

prices ('000ton)					
No. Contraction	7,147,445	6,981,781	7,197,884	7,820,527	9.42
Growth rate for the subject product industry (tonne)					

Changes in the patterns of consumption	The Applicant did not indicate that it is aware of any relevant information in this regard.
Trade-restrictive practices of foreign and domestic producers	The Applicant indicated that there are no restrictive trade practices in the SACU market. The SACU member states do not differentiate between foreign and SACU producers. With the exception of Pakistan producers who are allegedly dumping in the SACU market, there is normal competition between SACU producers and other foreign producers. Note however that Ohorongo Cement in Namibia began production in December 2010 and in 2012 Namibia implemented a protective duty on imports to that country. The Commission considered the effect of the fines imposed by the Competition Tribunal on the profits of the SACU industry as it relates to material injury during the period of investigation.
Competition between foreign and domestic producers	The applicant did not indicate that it is aware of any relevant information in this regard.
Developments in technology	The Applicant indicated that there were no significant developments in technology.
Export performance of the domestic industry	The Applicant stated that it has limited opportunities to export to other African countries as most countries have implemented cement import tariffs.
Productivity of the domestic industry	The Applicant stated that its productivity is on par with other major cement producing countries. The following measures will be similar: (i) energy consumption (KJ per ton produced), (ii) labour efficiency (employees per ton produced), and (iii) overall equipment efficiencies. This is evident when looking at the Pakistan cement industry's capacity utilisation for the last 3 full reporting years (July - June) which was 73.95%, 72.63% and 74.68%. This level of utilisation is inclusive of export volumes.

Comments by exporters

The exporters stated that very significant Competition Tribunal fines were imposed on the cement producers during the investigation period. The exporters also stated that given that the fines were imposed for cartel behaviour it implies that the profits being made in the period preceding the imposition of the fines were not normal. Following a correction in the pricing behavior after the Competition Tribunal intervention, it is expected that profits would drop. The exporters request the Commission to confirm if the competition issues were considered as part of the assessment of injury and causal link.

Response by the Applicant

The Applicant stated that the competition issues are irrelevant to the present investigation. The Applicant further stated that the only issue that is relevant is injurious dumping by Pakistani producers. The injury suffered by the SACU industry as reflected in the application, including the decline in profit was caused by dumped Pakistan imports and is not related to the competition issues.

Comments by the exporters

The exporters responded indicating that the assertion by the Applicant that "The only issue that is relevant is injurious dumping by Pakistani producers" is incorrect. In order for an anti-dumping duty to be imposed, there needs to be not only dumping, but also material injury to the domestic industry (ADR 13) and causal link (ADR 16). The question of the Competition Tribunal findings is thus extremely important. The application simply asserts that the decline in profit was caused by Pakistani imports, but this clearly is not correct.

- *The Competition Commission investigated price collusion and market division in the cement industry from 2008 onwards and made recommendations to the Competition Tribunal, which handed down its verdict in 2012, which is during the anti-dumping investigation period.*
- *The Competition Tribunal clearly indicated that there had been a lawful cartel in the cement industry since the 1940's and until September 1996 which:*
  - *agreed market shares based on the producers' capacity,*
  - *divided South Africa into two main regions, being North and south,*
  - *had a centralised sales and distribution system, with a quota balancing system to distribute the proceeds of cement sales; and*
  - *there was a unitary pricing model (see par 2.2 of Competition Commission v Lafarge Case 23/CR/Mar12).*
- *In 1998, cement producers again reached an agreement on market shares, pricing parameters, the scaling back of marketing and distribution activities and the non-granting of special discounts on certain products.*
- *In March 2012, Lafarge admitted that:*

- *It had "entered into agreements and arrangements with PPC and Afrisam… which had the effect of indirectly fixing cement prices… in contravention of… the [Competition] Act".*
- *It had "entered into agreements and arrangements with PPC and Afrisam… which had the effect of dividing the cement market through the allocation of market share in in contravention of… the [Competition] Act".*

- *Accordingly, Lafarge, in 2012, undertook to refrain from price fixing and market division and to implement a compliance programme.*
- *As a result of its conduct, it was fined, in 2012, the amount of R124 724 400, equivalent of its total cement turnover in 2010, which is also part of the POI.*
- *In October 2011 Afrisam admitted that:*
  - *It had "entered into agreements and arrangements with PPC and Lafarge… which had the effect of indirectly fixing cement prices… in contravention of… the [Competition] Act".*
  - *It had "entered into agreements and arrangements with PPC and Afrisam… which had the effect of dividing the cement market through the allocation of market share in in contravention of… the [Competition] Act".*
- *Accordingly, Afrisam, in October 2011, undertook to refrain from price fixing and market division and to implement a compliance programme.*
- *As a result of its conduct, it was fined, in 2012, the amount of R124 878 870 equivalent to of its total cement turnover in 2010, which is also part of the POI.*
- *Both Afrisam and Lafarge also implicated PPC, while the Competition Tribunal also found that NPC was affected by, and party to, the collusion.*
- *This confirms that all four applicants were involved in price fixing and market division even at the start of the current anti-dumping investigation. With price fixing and market division, this indicates that there was a certain lack of competition in the market and that the parties could charge higher prices than would have been normal in a fully competitive market. Market division also decreased costs, as less marketing costs were required.*
- *With the Competition Commission's investigation and the Competition Tribunal's rulings in November 2011 and March 2012, this cartel behaviour was effectively ended. The direct result would be, as the previous Competition Tribunal also*

found in respect of what happened after the previous such arrangement lapsed in 1996, that price competition became much sharper.

- *The Competition Commission was quoted as indicating that "the problem with competitors dividing markets between themselves is that they successfully shield themselves from competition and can thus price above competitive levels with no opposition or alternative from a competitor".*
- *The fines imposed would have directly led to decreased profit margins. The fact that the industry's profit decreased significantly in 2011, but has increased in 2012 and increased further in 2013, clearly supports this. These decreased margins (price suppression) and decreased total profit in 2011 cannot be attributed to the alleged dumped imports. We specifically request ITAC to determine the impact of moving from a cartel in 2010 to a market with fair competition from 2011 to 2012 onward and not to attribute any of these costs and loss of profit to the alleged dumped imports.*

Response by the Applicant

The Applicant stated that the injury period in the present investigation commences in January 2010. The Applicant indicated that this clearly falls outside the period during which price collusion and market division allegedly took place. The Applicant further stated that according to the Competition Tribunal, the alleged information exchange between the cement industry producers ended in 2009. The Applicant reiterated that the competition issues have no bearing on the anti-dumping application and the submissions by the exporters should be rejected in their entirety.

The Commission considered the comments submitted by the exporters and the Applicant and noted that the Competition Commission of South African recently conducted a study on assessing the economic impact of its intervention in the cement cartel, but that this study focused on consumer saving.

The study found that the total savings to South African consumers due to its intervention between 2010 and 2013 are in the range of R4.5 to R5.8 billion. In addition to these financial benefits, it found that the market has generally become more competitive, as evidenced by firms penetrating into regions (provinces) that they were

previously not active in. Based on the above study, it can therefore be deduced that the cement cartel has ended and the market is gradually becoming more competitive.

The Commission noted that the response by the Applicant to the concerns raised by the exporters seems to be focusing on the time when the price collusion and market division allegedly took place, and disregards the exporters' concerns raised with regard to the fines which were imposed during the period of investigation. The Commission considered the matter and found that "AfriSam agreed to pay a penalty of R124 million representing 3% of its 2010 cement annual turnover in the SACU." Lafarge agreed to a settlement of R149-million, which represents 6% of 2010 cement turnover." It was however noted that the profits of the Applicant did not decrease significantly in 2011 as alleged by the exporters.

The Commission is of the view that although the fines imposed by the Competition Tribunal had an effect on the SACU industry, it does not sufficiently detract from the impact of the dumped imports from Pakistan that increased by 664 per cent over the investigation period.

7.6 SUMMARY ON CAUSAL LINK

The Commission made a preliminary determination that although there are factors other than the dumping that could have contributed to the injury, such as the fines imposed by the Competition Tribunal, this did not sufficiently detract from the causal link between the dumping of the subject products and the material injury experienced by the SACU industry.

8. SUMMARY OF FINDINGS

8.1 Dumping

The Commission found that the subject product originating in or manufactured by Lucky Cement, Bestway Cement, D.G Khan, and Attock Cement in Pakistan, was exported at dumped prices to the SACU. The following dumping margins were calculated:

Tariff subheading	Producer	Provisional payment
2523.29	Lucky Cement Limited	14.29%
	Bestway Cement Limited	77.15%
	D.G Khan Cement Limited	68.87%
	Attock Pakistan Cement Limited	63.53%
	All other exporters (excluding Lucky Cement Limited, Bestway Cement Limited, D.G Khan Cement Limited and Attock Pakistan Cement Limited)	62.69%

8.2 Material Injury

The Commission made a preliminary determination that the SACU industry is experiencing material injury in the form of:

- Price undercutting;
- Price suppression;
- Decrease in sales;
- Decrease in gross profit;
- Decrease in output;
- Decrease in market share;
- Decrease utilization of capacity;
- Decrease in cash flow;
- Decrease in return on investment;
- Decrease in employment; and
- Decrease in growth.

8.3 Threat of material injury

The Commission noted that the Pakistani cement industry has increased its freely disposable capacity while domestic demand in Pakistan decreased and export to other countries decreased. Given this, the fact that imports from Pakistan have continued to increase, indicates that a threat of material injury to the SACU industry exists.

The Commission therefore made a preliminary determination that a threat of material injury to the SACU industry exists.

8.4 Causal link

The Commission made a preliminary determination that although there are factors other than the dumping that could have contributed to the injury, such as the fines imposed by the Competition Tribunal, this did not sufficiently detract from the causal link between the dumping of the subject products and the material injury experienced by the SACU industry.

9. PROVISIONAL PAYMENTS

9.1 Duration of provisional measures

In accordance with section 33.2 of the ADR, provisional measures will normally be imposed for a period of 6 months.

9.2 Calculation of the duty

The Commission found that all requirements for the imposition of a provisional payment have been fulfilled.

The ADR in section 17 provides that the Commission shall consider applying the lesser duty rule if both the corresponding importer and exporter have cooperated fully.

The amounts of the provisional payments to be imposed were concluded to be the following, being the lesser of the price disadvantage or the dumping margin expressed as a percentage of the fob export price:

Table 9.2

Tariff subheading	Producer	Provisional payment
2523.29	Lucky Cement Limited	14.29%
	Bestway Cement Limited	77.15%
	D.G Khan Cement Limited	68.87%
	Attock Pakistan Cement Limited	63.53%
	All other exporters (excluding Lucky Cement Limited, Bestway Cement Limited, D.G Khan Cement Limited and Attock Pakistan Cement Limited)	62.69%

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	Bestway Cement Limited	77.15%
	D.G Khan Cement Limited	68.87%
	Attock Pakistan Cement Limited	63.53%
	All other exporters (excluding Lucky Cement Limited, Bestway Cement Limited, D.G Khan Cement Limited and Attock Pakistan Cement Limited)	62.69%

10. PRELIMINARY DETERMINATION

Based on the information available and taking all comments into account, the Commission made a preliminary determination that:

- dumping of the subject product originating in or imported from Pakistan is taking place;
- the SACU industry is experiencing material injury and a threat of material injury; and
- the injury suffered by the SACU industry is causally linked to the dumping of the subject product.

The Commission therefore made a preliminary determination to request the Commissioner of SARS to impose the following provisional payments for a period of 6 months on Portland cement classifiable under tariff subheading 2523.29 originating in or imported from Pakistan:

Tariff subheading	Product	Producer	Rate of duty
2523.29	Portland Cement	Lucky Cement Limited	14.29%
		Bestway Cement Limited	77.15%
		D.G Khan Cement Limited	68.87%
		Attock Pakistan Cement Limited	63.53%
		All other exporters (excluding Lucky Cement Limited, Bestway Cement Limited, D.G Khan Cement Limited and Attock Pakistan Cement Limited)	62.69%