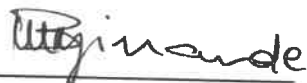


**REPORT NO.657**

**SUNSET REVIEW INVESTIGATION OF THE ANTI-DUMPING DUTIES ON  
FROZEN POTATO CHIPS ORIGINATING IN OR IMPORTED FROM BELGIUM  
AND THE NETHERLANDS: FINAL DETERMINATION**

The International Trade Administration Commission of South Africa (the Commission) hereby presents its **Report No.657: SUNSET REVIEW INVESTIGATION OF THE ANTI-DUMPING DUTIES ON FROZEN POTATO CHIPS ORIGINATING IN OR IMPORTED FROM BELGIUM AND THE NETHERLANDS: FINAL DETERMINATION**



**Mr Meluleki Nzimande**  
**CHIEF COMMISSIONER**

**PRETORIA**

**13/05/2021**

## LIST OF TABLES

Tariff Classification .....	07
Import Volumes .....	41
Price Depression. ....	46
Price Suppression .....	46
Sales Volumes .....	47
Profit.....	48
Output.....	50
Market Share .....	51
Productivity .....	52
Return on Investment .....	53
Capacity Utilisation .....	53
Cash Flow .....	54
Inventory .....	55
Employment .....	56
Wages and Salaries .....	57
Ability to Raise Capital.....	57
Growth .....	58
Summary of findings .....	59
Final determination.....	60

## LIST OF ACRONYMS

ADR	Anti-Dumping Regulations
EC	European Commission
EU	European Union
FOB	Free on Board
ITAC	International Trade Administration Commission of South Africa (the Commission)
Kg	Kilogram
POI	Period of Investigation
ROI	Return on Investment
SA	South Africa
SACU	Southern African Customs Union
SARS	South African Revenue Service
WTO	World Trade Organisation

## 1. APPLICATION AND PROCEDURE

---

- 1.1 The investigation was conducted in accordance with the International Trade Administration Act 2002 (ITA ACT) the International Trade Administration Commission of South Africa Anti-Dumping Regulations (ADR), with due regard to the World Trade Organisation Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, 1994.
- 1.2 On 08 June 2018, the International Trade Administration Commission (the Commission, ITAC) notified the Southern African Custom Union (SACU) Industry through Notice No. 326 in Government Gazette No. 41685 that the anti-dumping duties on the subject product originating in or imported from Belgium and the Netherlands will expire on 07 August 2019, unless a substantiated application is made by the SACU industry, indicating that the expiry of the anti-dumping duties on the said subject product would likely lead to the continuation or recurrence of dumping and material injury.
- 1.3 On 07 February 2019 a sunset review application was received from McCain Foods (the Applicant), the major manufacturer/producer of the subject product in the SACU. The application was supported by Lamberts Bay Foods and Natures Garden (Pty) Ltd. In the application, the Applicant alleged that the expiry of the duties would likely result in the continuation of dumping and recurrence of material injury to the SACU industry.
- 1.4 The sunset review investigation was initiated through notice No. 393 of 2019 published in Government Gazette No. 42593 on 26 July 2019 (the Initiation Notice) after the Commission considered that there was *prima facie* evidence to show that the expiry of the anti-dumping duties would likely lead to the recurrence of dumping and material injury to the SACU industry.

- 1.5 The Initiation Notice, non-confidential version of the application and the exporters' and importers' questionnaires were sent to all known interested parties.
- 1.6 The investigation period for dumping was from 01 July 2015 to 30 June 2018. Information with regard to material injury was for the period 01 July 2015 to 30 June 2018 together with estimates of what the magnitude of injury would be for each indicator of injury should the anti-dumping duties expire.

### **Comments by European Commission**

The European Commission (EC) made the following comments:

- a) ITAC decided to set the period of investigation for dumping from 01 July 2017 to 30 June 2018, which is different to the period proposed by the applicant, i.e. 01 January 2017 to 31 December 2018, and ITAC did not provide justification for this change.
- b) The new period of investigation for dumping is not in line with the recommendation by the WTO Anti-Dumping Committee on Anti-Dumping Practices, which recommends, as a general rule, that the period of data collection for dumping investigations should end "as close to the date of initiation as is practicable".
- c) The new period of investigation does not seem to be chosen by chance as it coincides with a very good crop in Europe (season from July 2017 to July 2018), low prices for fresh potatoes and therefore more competitive export prices to South Africa.
- d) An investigation period covering a full year as originally proposed by the complainant, would include an overlap of two harvests and thus even out the "seasonal effect" (potato prices as from July 2018 were very high due to severe drought in Europe). Because of the difference in the market structures in the EU and SACU, this unjustified change of investigation period will clearly lead to biased results.

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

- a) *The Applicant does not determine the period of investigation but provide the Commission with all the necessary information as per the Commission's questionnaire. It is the Commission's prerogative to determine the period of investigation (POI) from the information provided by the Applicant.*
  - b) *In this regard, the Applicant provided two sets of material injury information. The one set covered a three-year period (01 July to 30 June) and 6-months period (01 July to 31 December) for each year. The Commission determined the POI for material injury to be three years 01 July 2015 to 30 June 2018. Therefore, the POI for dumping became the last year of the material injury POI, i.e. 01 July 2017 to 30 June 2018.*
  - c) *The concern about the dumping information ending in June 2018 is covered by the Applicant's estimated information ending in June 2019. The investigation was initiated in July 2019.*
  - d) *The basis for the determination of the POI was the practicality of the use of injury information and the desire to meet the recommendation of the WTO Committee on Anti-Dumping Practices.*
  - e) *The POI is determined by the Commission, not the Applicant. Besides the Applicant presented two sets of information and the chosen set just happens not to be preferable to the European Union (EU). It is significant that the cooperating exporters from the EU did not allege bias on the part of ITAC due to the change in the POI. The response submissions by all the exporters showed that these exporters were not dumping or were dumping at de minimis level.*
- 1.7 Responses from SACU importers were received from the following importers:
- Merlog Foods (Merlog);
  - Etlin International (Etlin);
  - Merlus Fishing (Pty) Ltd (Merlus);
  - DC Meat Wholesalers CC (DC Meat);

- N1 Restaurants Suppliers (Pty) Ltd (N1);
- Transtrade International (Transtrade); and
- Shoprite checkers (Pty) Ltd (Shoprite).

**1.8** Shoprite's response was received after the due date.

**1.9** Responses received from the SACU importers were found to be deficient and deficiency letters were sent. Importers were allowed seven days to address deficiencies identified.

**1.10** After deficiency letters were sent, the following importers indicated that they will no longer participate in the investigation and no reasons were provided:

- DC Meat;
- N1; and
- Transtrade.

**1.11** Responses addressing deficiencies were received as follows:

- Etlin;
- Merlus; and
- Merlog.

**1.12** Foreign manufacturers/exporters known to the Applicant are:

- Mydibel Foods S.A (Belgium);
- Lutosa Foods SA (Belgium);
- Ecofrost (Belgium);
- Clarebout (Belgium);
- Bart's Potatoes Company (Belgium);
- Farm Frites International B.V (the Netherlands); and
- Aviko (the Netherlands).



**1.13** Responses received from the foreign manufacturers/exporters were found to be deficient and deficiency letters were sent. Foreign manufacturers/exporters were allowed 7 days to address deficiencies identified.

**1.14** Responses addressing deficiencies were received as follows:

- Mydibel Foods S.A (Belgium);
- Lutosa Foods SA (Belgium);
- Ecofrost (Belgium);
- Clarebout (Belgium);
- Bart's Potatoes Company (Belgium);
- Farm Frites International B.V (the Netherlands); and
- Aviko (the Netherlands).

#### **Comments by interested parties**

Comments by interested parties were as follows:

- a) The Applicant did not list all the exporters/producer of the subject product, particularly those that the Applicant is aware of from the original investigation. Thus, Applicant has deliberately withheld information that it was aware of and was reasonable available to it. To the extent that questionnaires were not sent to the interested parties deliberately omitted by the applicant, the Commission must grant these parties an automatic extension of 30 days after receiving the questionnaires.

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

*The Commission accepted that the Applicant provided the best available information it has. For the sake of those exporters/producers not identified by the Applicant, the Commission also sent the antidumping initiation package to the Embassies of the affected countries for distribution to the industry concerned in their countries. The Commission also published the Initiation Notice in the Government Gazette.*

- 1.15** The Commission's essential facts letters were sent to interested parties and comments were received from the Applicant, EU, Merlog and all the verified exporters.
- 1.16** The Commission took into account all relevant comments received in making its final determination.
- 1.17** This report does not purport to present all comments received and considered by the Commission. However, salient comments received from interested parties and the Commission's consideration of these comments are included in this report.
- 1.18** All non-confidential versions of the submissions made by interested parties are contained in the Commission's non-confidential file for this investigation.

After considering all the relevant information supplied by the Applicant and the comments thereon, including comments on the essential facts letter, the Commission made a final determination that the expiry of the anti-dumping duties on the subject product originating in or imported from Belgium and the Netherlands would likely lead to the continuation of dumping and recurrence of material injury to the SACU industry.

The investigation was, however, not finalised within the prescribed time limit as set out in Regulation 20 of the Anti-Dumping Regulations, which states that, "all investigation and reviews shall be finalised within 18 months after initiation". The Commission therefore made a final determination to recommend to the Minister of Trade, Industry and Competition that the anti-dumping duties on the subject product from Belgium and the Netherlands be terminated.

## 2 PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

### 2.1 IMPORTED PRODUCT

#### 2.1.1 Description

The imported products are frozen potato chips.

#### 2.1.2 Tariff classification, applicable duties and rebates

Table 2.1.2: Tariff classification

Tariff heading	Tariff subheading	Description	Unit	Customs duty (ad valorem)				
				General	EU	EFTA	MERCUSOR	SADC
200410		Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen (excluding products of heading 20.06): Potatoes	Kg					
	2004102	Chips or French fries	Kg					
	20041021	Prepared by blanching in water and prevented from discolouration by blanching in oil, frozen but not further prepared or processed (whether or not containing added dextrose)	Kg	20%	free	20%	Free	20%
	20041029	Other	Kg	20%	free	20%	Free	20%

**Current Applicable duties**

<b>ITEM</b>	<b>Tariff subheading</b>	<b>Description</b>	<b>Statistical unit</b>	<b>Rebate item</b>	<b>Imported from or originating in</b>	<b>Rate of anti-dumping duty</b>
204.05	2004.10.2	Chips or French fries produced by Clarebout Potatoes N.V	Kg	301.00-399.00; 401.00-499.00	Belgium	6.19%
	2004.10.2	Chips or French fries produced by Mydibel Foods S.A	Kg	301.00-399.00; 401.00-499.00	Belgium	9.71%
	2004.10.2	Chips or French fries produced by PinguinLitosa Foods B.V	Kg	301.00-399.00; 401.00-499.00	Belgium	5.81%
	2004.10.2	Chips or French fries (excluding those produced by Agristo N.V Harelbeke, Clarebout Potatoes N.V, Mydibel Foods S.A and PinguinLutosa Foods B.V)	Kg	301.00-399.00; 401.00-499.00	Belgium	30,77%
	2004.10.2	Chips or French fries produced by Agristo N.V Tilburg	Kg	301.00-399.00; 401.00-499.00	the Netherlands	12,52%
	2004.10.2	Chips or French fries (excluding those produced by Agristo N.V Tilburg and Lamb Weston/Meijer V.O.F)	Kg	301.00-399.00; 401.00-499.00	the Netherlands	16,42%

### **2.1.3 Country of origin or export**

The subject product originates in or are imported from the Belgium and the Netherlands.

### **2.1.4 Application/end-use**

For human consumption.

### **2.1.5 Production process**

Raw potatoes are washed - steam - peeled - cut - blanched in cold water - dried - partly cooked in vegetable oil – cooled - frozen - weighed - Poli-bag packaging - cased corrugated board packaging - palletised - cold storage at 18 degrees Celsius.

## **2.2 SACU PRODUCT**

### **2.2.1 Description**

The products produced in SACU are frozen potato chips.

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

For human consumption.

### **2.2.3 Tariff classification**

The subject product is classifiable under tariff sub-headings 2004.10.2.

### **2.2.4 Production process**

Raw potatoes are washed - steam peeled - cut - blanched in cold water - dried - partly cooked in vegetable oil - cooled - frozen - weighed - Poli-bag packaging - cased corrugated board packaging - palletised - cold storage at 18 degrees Celsius.

## **2.3 LIKE PRODUCT ANALYSIS**

In the original investigation, the Commission decided that the SACU products and the imported products are “like products”, for purposes of comparison in terms of Regulation 1 of the Anti-Dumping Regulations (ADR).

### 3 SACU INDUSTRY

---

#### 3.1.1 INDUSTRY STANDING

The SACU industry consists of three known manufacturers of the subject product:

- The Applicant, which provided the material injury information in this report, represents more than 70 percent of the SACU industry by production volumes; and
- Lambert Bay Foods and Natures Garden (Pty) Ltd, which supported the application, represent less than 50 percent of the SACU industry by production volumes.

#### Comments by Interested parties

Interested parties commented as follows:

- a) Famous brands is not included in the application to consider industry standing.
- b) The use of the designation "large" in the non-confidential version does not give a reasonable understanding of the information submitted in confidence, as there is a significant difference in the validity of the information if the designation refers to only 51 percent, as opposed to 70 or 90 percent of the industry.

#### Commission's consideration

*The Commission considered the interested parties' comments and responded as follows:*

- a) *Lamberts Bay Foods is a Famous brands group company, and Lamberts Bay Foods is in support of the application.*
- b) *Regulation 7.3(b) of the ADR states that "an application shall be regarded as brought by or on behalf of the SACU industry if –*  
*(b) Of those producers that express an opinion on an application, at least 50 percent by domestic production volume support such application".*

*The Applicant indicated that its production volume represents a large company and the production volume of both Lambert Bay foods and Natures Garden represent a medium company. The applicant further provided the clarification as followings:*

- *Extra-large company is over 85 percent in market share.*

- *Large company is greater than 65 percent and less than or equal 85 percent in market share.*
  - *Medium company is greater than 10 percent and less than or equal 65 percent market share, and*
  - *Small company is 0 to 10 percent market share.*
- c) *This information enables a reasonable understanding of Applicant's information submitted in confidence.*

The Commission made a final determination that the application can be regarded as being made "by or on behalf of the domestic industry" in terms of Regulation 7 of the ADR.

## **4 CONTINUATION OR RECCURANCE OF DUMPING**

---

There are seven exporters that cooperated in the investigation: Five from Belgium and two from the Netherlands. The following dumping information is based on the information of five verified and not fully verified exporters from Belgium and of two exporters from the Netherlands that were not verified.

### **BELGIUM**

The five exporters from Belgium are Bart Potatoes (Bart); Clarebout; Ecofrost; Mydibel and Lutosa, and their dumping information is herein presented below. The exporters determine product models on different criteria based on their practices and or policies. It was proposed that the product models be based on cut; size; grade/quality; and cooking method.

#### **4.1 METHODOLOGY FOR BART POTATOES**

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

It was found that the exporter produced and sold the subject product in various models in Belgium. It was found that the exporter determines the models of the subject product based on cut sizes. It was found that domestic sales consist of three models differentiated by cut size 7/7mm; 10/10mm; and 12/12mm.

Verification of the cost and price build-up (CBU) elements was not completed due to the exporter taking long to provide requested substantiations. Only direct costs and fixed labour costs were verified. As a result, it could not be determined if sales were made in the ordinary course of trade.

Regulation 18.4(a) and (b) of the ADR states that “where a party fails to supply relevant substantiating evidence required by the investigating officers during verification and fails to explain any calculations contained in its submission, the Commission may terminate the verification proceedings and the Commission may disregard any or all information submitted by the party in question.



The Commission may nevertheless consider information that was properly submitted and verified”.

Therefore, normal value per model is constructed using those elements of Bart’s information that were verified and making up for unverified information with Lutosa’s information, which was verified. Lutosa was chosen based on the following:

- The cost and price build-up verification were completed; and
- It sold all three similar models by cut size sold in the domestic market by Bart potatoes.

#### **4.1.2 Export price**

There were no exports to SACU during the period of investigation. Therefore, the export price is based on Bart’s exports to a third country.

When determining the export price based on exports to third countries, the Commission uses the export price of the subject product to an appropriate third country. The country selected is evaluated based on the following criteria:

- (a) The similarity of the like product used to establish the normal value and the product exported from the country of origin to the third country in terms of the criteria used by the Commission in its like product analysis.
- (b) The similarity in the level of development of:
  - (i) The domestic industry in SACU and the third country in respect of the like product including but not limited to, the existence and number of domestic producers of the like product; and
  - (ii) The domestic market in SACU and the third country in respect of the like product, including but not limited to, the volume of production, consumption, exports, and imports of the like products.
- (c) The similarity in the volume of domestic sales of the like product in the country of origin and exports from the country of origin to the third country; and

- (d) Sales in the domestic market of the country of origin and in the third country are at the same level of trade.

The countries that met the criteria are Switzerland, the United Kingdom (UK), and the People's Republic of China (PRC) for the models 10/10mm; 12/12mm; 7/7mm, respectively.

#### **Adjustment to export price**

The Commission allowed the following adjustments that were found to have affected price comparability at time of sale.

- Payment terms;
- Transport cost; and
- Packaging.

#### **4.1.3 Dumping margin**

The dumping margin was calculated to be 32.53%.

#### **4.1.4 Comments from Bart and EU**

- a) The fact that the verification was not completed is due to the delays as a result of the approach the team chose which made completion of the verification impossible. The investigation team did not come to the verification prepared, with additional samples ready to be handed over.
- b) There was a trip to visit the offsite cold storage, and due to this, 1.5 hours was lost in travel time.
- c) The normal values for all the models should be 0.485 Euro. Their information should be used, as they were not informed that it would not be taken into account.
- d) Bart cooperated fully with investigation team, all supporting information was available, to which Bart's potatoes offered to courier the supporting document, and investigation team declined the offer.

### **Commission's consideration**

- a) *The exporters' claimed that ITAC investigators were responsible for delays during the verification is incorrect. The exporters do not mention that the verification process started with the presentation of the company background before the verification. The exporters would have side meetings with their consultant and leave the investigators waiting unreasonable long during verification.*
- b) *There is nothing wrong in visiting a storage facility, as this is part of verification. The investigators requested to see the storage facility in Belgium. However, Bart decided to take the investigators to the storage facility in France. In any event, the verification for the day was conducted as per the pre-verification letter.*
- c) *The Commission used facts available for the elements that were not verified.*
- d) *The investigators had no issue with documents being couriered to ITAC, however, investigators requested to view those documents on the spot before they are couriered. The allegation that "Investigators were not prepared to take documents with them" is not correct. There are files of documents which the investigators took from the exporter. The consultant suggested that the documents should be couriered to their offices instead of ITAC offices.*

## **4.2 METHODOLOGY FOR CLAREBOUT**

### **4.2.1 Normal Value**

It was found that the exporter produced and sold the subject product in various models in Belgium and determines the models based on cut size. Of the models sold in its domestic market only models 10/10mm; 3/8mm; 7/16mm; 7/7mm; and pommes frites' steak were exported to the SACU market during the POI.

The exporter requested that transactions for models 7/7mm and steak be not considered for dumping calculations, as they were samples to SACU. This was allowed because their low volumes rendered the final effect on the dumping margins is very negligible.

Verification of the cost and price build-up elements was not completed due to the exporter taking long to provide requested substantiations. Only the cost of potatoes was verified. As a result, it could not be determined if sales were made in the ordinary course of trade.

Regulation 18.4(a) and (b) of the ADR stated that “where a party fails to supply relevant substantiating evidence required by the investigating officers during verification and fails to explain any calculations contained in its submission, the Commission may terminate the verification proceedings and the Commission may disregard any or all information submitted by the party in question. The Commission may nevertheless consider information that was properly submitted and verified”.

In this case, normal value is constructed based on Lutosa’s cost and price build-up to make up for the cost and price build-up elements that could not be verified. Lutosa was chosen because the cost and price build-up verification were complete.

Lutosa produced 10/10mm similar to the models produced by Clarebout. It did not produce models 3/8mm; 7/16. Therefore, the CBU of the three Lutosa models were averaged to arrive at an average total cost. For model 10/10mm other unverified cost for Clarebout were made up by Lutosa’s model 10/10mm costs. For models 3/8mm and 7/16 the unverified costs were replaced by Lutosa’s verified average costs.

#### **4.2.2 Export price**

The Commission determined the export price for Clarebout based on five models of the subject product exported to SACU.

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

The Commission allowed the following adjustments that were found to have affected price comparability at time of sale:

- Transport cost; and
- Payment terms.

### **4.2.3 Dumping margin**

The dumping margin was calculated to be 22.94%.

### **4.2.4 Comments from Clarebout and EU**

- a) The fact that the verification was not completed is due the delays as a result of the approach the team chose which made completion of the verification impossible. The investigation team did not come to the verification prepared, with additional samples ready to be handed over.
- b) Belgian exporters have different cost structures: another company may have high expenses, for example transport cost. It should also be noted that there is a large difference between a Clarebout 7/16mm; 3/8mm; and 10/10mm product, and Mydibel or Lutosa product of the same size. The cost and price build-up of another company is not representative of the cost and price build-up another company.
- c) Sales to SACU were made with potatoes procured on the spot market. All of the information was available for verification but ITAC investigators did not verify everything before leaving.
- d) Clarebout acted to the best of its ability and provided as much information as it could reasonably do within the short period. ITAC should not reject the information. Clarebout further indicated that "If evidence or information is not accepted, the supplying party should be informed forthwith of the reasons thereof and should have an opportunity to provide further explanations within a reasonable period, due account being taken of the time-limits of the investigation. It also stated that the Commission did not inform it that the cost build-up will not be accepted nor was it provided with an opportunity to provide further explanation.

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

- a) *The exporters' claim that the investigators were responsible for the delay during verification is incorrect. The exporters do not mention that verification process started with the presentation of the company background before the verification. The exporters held side meetings with their consultant and left the investigators waiting unreasonably long during verification.*

- b) *The difference between cost structures for the two companies was evaluated and it was found that the difference is immaterial and negligible. The main difference, which has a bearing on the cost and price build-up, was on potato cost and in this case, the investigators used Clarebout potato cost since it was verified. The cause of this issue is that not all information was verified as a result of delays by the exporter. The use of other exporters' information is appropriate and permissible. Reconsideration yielded the same results.*
- c) *The exporter is not clear as to which information was not verified. The exporter's comments on the verification report and essential facts letter are not specific as to which information was not verified.*
- d) *The Commission provided the reasons of not using the exporter's information in the essential facts letter. It indicated that the cost and price build-up verification was not completed and accordingly, the Commission could not determine whether domestic sales were made in the ordinary course of trade. It should be noted that, the cost and price build-up verification was not completed due to delays in providing the information requested by the investigating team and the side meetings, which the exporter had with their consultant. The exporters and other interested parties were given opportunity to comment on the Commission's considerations through the essential facts letter.*

### **4.3 METHODOLOGY FOR ECOFROST**

#### **4.3.1 Normal Value**

It was found that the exporter produced and sold the subject product in various models in Belgium and determines the models of the subject product based on cut sizes. Of the various models produced and sold, one model (9/18mm) was exported to the SACU market during the POI.

Verification of the cost and price build-up elements was not completed due to the exporter taking long to provide requested substantiations. As a result, it could not be determined if sales were made in the ordinary course of trade.

It was found that the closest model to 9/18mm is from Lutosa, which produced the 10/18mm model. Therefore, normal value is constructed based on Lutosa's cost and price build-up for model 10/18mm, the closest to model 9/18mm that could be found to make up for those elements that could not be verified from Ecofrost. In Clarebout's verification it was explained that the difference between the mm cuts is so small and does not make any difference to the human eye. In this case, normal value was constructed based on Lutosa's cost and price build-up to make up for the cost and price build-up elements that could not be verified. The Ecofrost potato cost used for construction was at spot price. Lutosa was chosen based on the following:

- The cost and price build-up verification were completed; and
- It had the closest model by cut size sold in the domestic market by Ecofrost.

In Lutosa's cost and price build-up, the potato cost, oil and packaging were replaced by similar cost elements verified from Ecofrost.

#### **4.3.2 Export price**

The Commission determined the export price for Ecofrost based on subject product exported to SACU.

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

The Commission allowed the following adjustments that were found to have affected price comparability at time of sale.

- Payment terms; and
- Packaging cost.

#### **4.3.3 Dumping margin**

The dumping margin was calculated to be 21.62%.

#### **4.3.4 Comments from Ecofrost**

- a) The fact that the verification was not completed is due the delays as a result of the approach the team chose which made completion of the verification impossible. The investigation team did not come to the verification prepared, with additional samples ready to be handed over.

- b) Ecofrost cooperated fully and even offered to work with the investigators at their hotel after hours. They offered to courier the supporting documents pertaining to verification of cost and price build-up to ITAC, which could not be extracted in time during verification. The investigators were not prepared to take any documents with them or have it couriered to them.
- c) Ecofrost dumping margin should be -29%.

**Commission's consideration**

- a) *The failure to conclude the verification of cost and price build-up was due to exporter's delays to provide requested information and time wasted by the exporter having long side meetings with their consultant and leaving the investigators waiting. The exporter seemed not prepared for the verification. The requested and additional sample invoices is a normal practice in verification.*
- b) *The investigators had no issue with documents being couriered to ITAC. However, investigators requested to view those documents on the spot before they are couriered. The cost and price build-up was scheduled for day 3 and it was started on the scheduled day. Failure to extract supporting documents having been sent a pre-verification plan suggests that the exporter was not prepared for verification. The allegation that "Investigators were not prepared to take documents with them" is incorrect. There are files of documents, which the investigators took from the exporter.*

*The consultant suggested that the documents should be couriered to their offices instead of ITAC office.*

- c) *A reconsideration of the dumping margin did not yield a different answer. The exporter is disputing the outcome on the basis of its costs not being used.*



#### **4.4 METHODOLOGY USED FOR MYDIBEL**

It was found that the exporter produced and sold the subject product in various models in Belgium and determined the models of the subject product based on quality grades, i.e. quality A and quality B. It produced and sold the following two models to the SACU market during the POI:

- Frozen french fries 12/12mm A (A-grade); and
- Frozen french fries EUROPE 12/12mm B (B-grade).

##### **4.4.1 Normal value**

It was found that domestic sales volumes of A-grade constituted more than 5% of the sales volume of the product sold to the SACU, and therefore are sufficient volumes to determine a normal value, as per Regulation 8.3 of the ADR.

It was also found that there were sales that were made below cost, which constituted more than 20% of the total domestic sales of A-grade, and therefore were not in the ordinary course of trade for purposes of this investigation. They were excluded from the calculation of normal value, as per Regulation 8.2 of the ADR. The remaining sales volumes constituted more than 5 percent of A-grade's export sales to SACU, and therefore are sufficient volumes to determine a normal value. Normal value was therefore determined based on sales in the domestic market of the exporter.

It was found that domestic sales volumes of B-grade constituted less than 5 percent of the sales volume of the product sold to the SACU, and therefore not sufficient to determine a normal value, as per Regulation 8.3 of the ADR.

B-grade was also sold in other third countries, however none of the third countries met the Commission's criteria of selecting an appropriate third country. The normal value for this model is constructed using Mydibel's information.

### **Adjustments to normal value**

The Commission allowed the following adjustments that were found to have affected price comparability at time of sale:

- Cost of payment terms;
- Transport costs/Delivery charges;
- Cost of packaging; and
- Warehousing costs.

The adjustment for inventory carrying cost was disallowed since the exporter could not demonstrate how this cost is different to cost of payment terms that is already claimed, and how it affected price comparability at the time of setting the selling price.

### **4.4.2 Export price**

The Commission determined the export price for Mydibel based on subject product exported to SACU.

### **Adjustments to export sales**

The Commission allowed the following adjustments that were found to have affected price comparability at time of sale:

- Cost of payment terms;
- Transport costs/Delivery charges;
- Cost of packaging; and
- Warehousing costs.

The adjustment for inventory carrying cost was disallowed since it could not be demonstrated by the exporter how this cost is different to cost of payment terms that is already claimed, and how the cost on its own (if it is not part of payment terms) have affected price comparability at the time of setting the selling price.

### **4.4.3 Weighted average dumping margin**

The dumping margin was calculated to be 15.63%.

#### **4.4.4 Comments from importer (Merlog)**

Merlog stated that the carrying cost of inventory adjustment is justified, therefore must be considered, and included.

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

*The Commission considered the carrying cost adjustment and it was found that this cost did not affect price comparability at the time of setting the selling price. The exporter responsible for this adjustment did not object to the Commission's consideration not to allow this adjustment. The Commission made a final determination not to allow this adjustment.*

#### **4.5 METHODOLOGY USED FOR LUTOSA**

Lutosa produced and sold the subject product in various models in Belgium. It determines the models of the subject product based on a product code. According to this method, models are separated by cut sizes, coat, and quality grade, e.g. 7/7mm coated and 10/10mm Golden River. Based on that, it was found that Lutosa produced and sold the following eight models to the SACU market during the POI:

- 7-7 Allumettes coat food xcrispy (herein referred to as 7/7mm coated);
- 7-7 Allumettes Etlin (herein referred to as 7/7mm not coated);
- 10-10 Coat Etlin Xcrispy (herein referred to as 10/10mm coated);
- 10-10 Etlin (herein referred to as 10/10mm not coated);
- 10-10 Golden River (herein referred to as 10/10mm GR);
- 10-18 FoodServ (herein referred to as 10/18mm);
- 12-12 Etlin (herein referred to as 12/12mm); and
- Surf Potatoes x+ FoodServ (herein referred to as surf potato).

Some of these models were sold in Belgium in sufficient quantities to determine normal value based on those sales while other models were sold in Belgium in quantities not sufficient to determine normal value based on those sales. In the latter case, and where there may not have been sales of a particular model in Belgium, normal value is based on sales to a third country or is constructed.

#### **4.5.1 Normal value**

It was found that domestic sales volumes of 10/10mm coated; 7/7mm coated; 10/18mm; and Surf potato constituted more than 5 percent of the sales volume of the product sold to the SACU, and therefore are sufficient volumes to determine a normal value, as per Regulation 8.3 of the ADR. It was also found that less than 20 percent of the total domestic sales of these models were sold below cost and therefore are in the ordinary course of trade for purposes of this investigation and included in the calculation of normal value, as per Regulation 8.2 of the ADR. The normal values for models 10/10mm coated; 7/7mm coated; 10/18mm; and Surf potato are therefore based on sales in the domestic market of Lutosa.

It was found that domestic sales volumes of 10/10mm not-coated; 7/7mm not-coated; and 10/10mm GR, constituted less than 5 percent of the sales volume of the product sold to the SACU, and therefore are not sufficient to determine a normal value, as per Regulation 8.3 of the ADR. All the three models were also sold in third countries. Based on the Commission's criteria to select an appropriate third country, the following countries were found to have met the criteria and have been selected as appropriate third countries for each model:

- The Netherlands for 7/7mm not coated;
- Germany for 10/10mm GR; and
- Brazil for 10/10mm not coated.

It was also found that sales to third countries of all the three models were sold above cost, and therefore are in the ordinary course of trade for purposes of this investigation, as per Regulation 8.2 of the ADR.

The normal values for models 10/10mm not-coated; 7/7mm not-coated; and 10/10mm GR are therefore based on third country sales.

It was found that domestic sales volumes of model 12/12mm constituted less than 5 percent of sales to SACU, and therefore are insufficient volumes determine a normal value, as per Regulation 8.3 of the ADR. Model 12/12mm was also sold in third countries, however none of the third countries met the Commission's criteria of selecting an appropriate third country. The normal value of model 12/12mm was therefore constructed, using Lutosa's verified information.

#### **Adjustments to normal values**

The Commission allowed the following adjustments that were found to have affected price comparability at time of sale:

- Cost of payment terms;
- Transport costs/Delivery charges;
- Cost of packaging; and
- Rebate costs.

#### **4.5.2 Export price**

The Commission determined the export prices based on export sales to the SACU market.

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

The Commission allowed the following adjustments that were found to have affected price comparability at time of sale.

- Cost of payment terms;
- Transport costs/Delivery charges; and
- Cost of packaging.

#### **4.5.3 Weighted average dumping margin**

The dumping margin was calculated to be 11.03%.

#### **4.5.4 Comments from Lutosa**

Lutosa commented as follows:

- a) The European Union should be treated as its domestic market.
- b) The constructed normal value for model 12/12mm is inclusive of packaging, yet the export price of this model has been adjusted down by packaging cost. The Commission should adjust the cost and price build-up total cost by the packaging cost.
- c) Brazil is not an appropriate third country for model 10/10mm non-coated. The prices to Brazil are not in the ordinary course of trade, due to the price undertaking agreement between Lutosa (along with other Belgian producers) and Brazilian authorities. The agreement applied during the period of investigation that the Commission is looking at. As a result, the prices for this model were administered at a high rate than the prices at which this product would normally be.
- d) The essential letter does not indicate the level of duty to be imposed. Lutosa requests that the Commission provide essential facts relating to the calculation of the dumping margin when expressed as percentage of the Free-on-Board price, and the determination of the lesser duty rule, since both Lutosa and its SACU importer have fully cooperated in the investigation.
- e) Lutosa requests the Commission to confirm that any anti-dumping duty will be effective from the date the 5-year period would have lapsed. The Commission is further requested to confirm that although the duty will be imposed retrospectively (to the date the original 5-year period would have lapsed) and despite the new duty being slightly higher than the pre-existing duty, no additional duties will be collected between that date and the date the new duties are published.

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

*The Commission considered Lutosa's comments as set out below:*

- a) *For the purposes of the investigation, the Commission treats the European Union countries as individual member states. The current duties that are being reviewed are for individual countries, and not for the European Union.*

b) *Packaging would have been adjusted on normal value if normal value was based on domestic sales. Regulation 8.10 of the Regulations states that “when the Commission construct a normal value the cost build-up shall include –*

- o Production costs;*
- o Overheads;*
- o Selling, general and administrative costs*
- o Any other cost deemed necessary by the Commission.*

*In this case, the packaging cost which is being referred to in this case is part of the production cost, hence the Commission considered not to make packaging adjustment.*

c) *Price undertaking by Brazil was not declared to the Commission prior and during verification of the exporter. Furthermore, it was done whilst the investigation was already in progress and therefore the Commission considers Brazil as an appropriate third country. It is the investigators understanding that this price undertaking is because of goods found to be dumped in Brazil and the situation triggered the need to enter in such an agreement since the Belgian exporter sought to export the product to Brazil.*

d) *The Commission’s essential facts letters indicated the calculated dumping margin for Lutosa and the final duty to be imposed would be provided after taking into consideration all comments on the essential facts letter.*

e) *The duties will be effected retrospectively to the date the 5-year period the duties would have lapsed and at a rate of the final duty, the Commission would have determined.*

#### **4.6 METHODOLOGY FOR THE RESIDUAL DUMPING MARGIN - BELGIUM**

Bart, Clarebout, Ecofrost, Mydibel and Lutosa are the only producers that cooperated in the investigation. In the case of Bart, Clarebout, and Ecofrost even though cooperating, verification of their information was not completed or not done. The residual dumping margin is therefore calculated based on information of the other

exporters whose information is verified.

#### **4.6.1 Normal value**

Of the two fully verified exporters, Lutosa is the biggest producer in terms of domestic sales volumes and the variety of models produced and therefore considered to be representative of sales of the subject product in Belgium. Therefore, normal value is calculation based on Lutosa's information.

The normal value was adjusted for packaging and delivery, which are necessary in the sale of the product and not company specific.

#### **4.6.2 Export price**

Export price is based on Clarebout information as the exporter that exported the highest volumes to SACU and can be considered to be representative of all export sales to SACU. The export price was adjusted for delivery charges and payment terms which are necessary in the sale of the product and not company specific.

#### **4.6.3 Margin of dumping**

Dumping margin for all other exporters exporting to SACU but did not respond to the investigation is the calculated residual dumping margin of 54.81%.

### **THE NETHERLANDS**

The two responding exporters from the Netherlands are Aviko and Farm Frites.

#### **4.7 METHODOLOGY USED FOR AVIKO**

Aviko's on-the-spot verification in March 2020 was cancelled due to Covid-19. Attempts were later made to do desk-top verification in July 2020 which was not finalised. During the verification there were network challenges and office closure due to Covid-19 and verification enquiries could not be sent on the agreed dates. Aviko later indicated that they are no longer available to continue with the verification and asked to have the verification completed in September 2020.



The Commission decided not to provide a further opportunity for verification. Aviko's information used to calculate its dumping margin was the information required which was submitted in a usable form.

It was found that the Aviko produced and sold the subject product in various models in the Netherlands and determines the models of the subject product based on item number/code and packaging. Of the various models produced and sold, six models were exported to the SACU market during the POI, namely:

- Aviko H Pommes Frites 11mm (herein referred to as Pommes fries);
- Aviko H Pommes frites Steakhouse (herein referred to as Steakhouse fries);
- Aviko H Straight cut Fries 10mm (herein referred to as Straight cut fries);
- Aviko H Steak fries (herein referred to as Steak fries);
- Aviko Skinny Fries (herein referred to as Skinny fries); and
- Aviko H Freeze Chill 11mm (herein referred to as Freeze chill).

Some of these models were sold in the Netherlands in sufficient quantities to determine normal value based on those sales, while other models were sold in the Netherlands in quantities not sufficient to determine normal value based on those sales.

In the latter case and where there may not have been sales of a particular model in the Netherlands, or to a third country or where there were challenges in using sales to a third country, the normal value was constructed.

#### **4.7.1 Normal values**

It was found that domestic sales volumes of Pommes frites; Steakhouse fries and Skinny fries, constituted more than 5 percent of the comparable models that were sold to SACU. There were therefore, sufficient sales volumes to determine a normal value, as per Regulation 8.3 of the ADR. It was also found that the sales made below cost for each of the three models, were less than 20 percent by volume of the total domestic sales for each model. The sales were therefore, in the ordinary course of

trade for purposes of this investigation, and the normal value was calculated as per Regulation 8.2 of the ADR. The normal values for models Pommes frites; Steakhouse fries and Skinny fries were therefore based on sales in the domestic market of Aviko.

It was found that models Steak fries; Freeze chill; and Straight cut fries were not sold in the domestic market. These models were sold in third countries, however none of the third countries met the Commission's criteria of selecting an appropriate third country. The normal value of models Steak fries; Freeze chill; and Straight cut fries were therefore, constructed using Aviko's verified information.

#### **Adjustments to normal value**

The Commission allowed the following adjustments that were found to have affected price comparability at time of sale:

- Cost of payment terms;
- Transport costs/Delivery charges;
- Cost of packaging;
- Discounts and rebate costs; and
- Sales and marketing.

#### **4.7.2 Export price**

The Commission determined the export price based on the export sales to SACU.

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

The Commission allowed the following adjustments that were found to have affected price comparability at time of sale.

- Cost of payment terms;
- Transport costs/Delivery charges; and
- Cost of packaging.

#### **4.7.3 Weighted dumping margin**

The dumping margin was calculated to be 21.60%.

#### **4.7.4 Comments from Aviko**

In the calculation of total cost per kg, the selling, general and administration (SGA) costs have been incorrectly divided by using total volumes produced, instead of total volumes sold.

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

*The total cost (production plus SGA costs) per kg were calculated using production volumes and this approach was followed for all the companies where construction was used. Aviko did not provide CBU per unit to demonstrate that SGA costs per kg are calculated based on volumes sold. All other companies that provided CBU per kg based their SGA per kg calculation on production volumes. Furthermore, Aviko indicated in the cost and price build-up that the production cost is based on production volumes hence the total volume produced to calculate SG&A per kilogram was used. It is curious that the consultant is only raising this point only for Aviko and not for other producers that the consultant represents. The use of volumes sold will result to a negative margin for Aviko, while it will make no difference in the calculated margins for other producers.*

#### **4.8 METHODOLOGY USED FOR FARM FRITES**

Farm Frites did not accept on-the-spot verification that was planned for March 2020, citing company commitments, and suggested that verification be carried out in June 2020. Attempts were later made to do desk-top verification in July 2020 which did not materialise.

Farm Frites indicated that they could only accommodate ITAC's verification in January 2021. The Commission decided not to provide a further opportunity for verification to be conducted. Farm Frites information used to calculate its dumping margin was the information which Farm Frites submitted in usable form.

##### **4.8.1 Normal value**

It was found that there were sales made at loss for the subject product, which are less than 20 percent of the total domestic sales of the subject product.

Therefore, these domestic sales were in the ordinary course of trade for purposes of this investigation and included in the calculation of normal value, as per Regulation 8.2 of the ADR. Normal value is based on sales in the domestic market of the exporter.

#### **Adjustment to normal value**

The Commission allowed the following adjustments that were found to have affected price comparability at time of sale:

- Payment terms;
- Discount and rebates;
- Delivery charges;
- Packaging cost; and
- Marketing cost.

#### **4.8.2 Export price**

Farm Frites did not export the subject product to SACU during the period of investigation. The export price was constructed as per Regulation 10 of the ADR. The simple average was used to calculate total cost per unit in the CBU, plus the reasonable profit per unit, which was also derived from the Farm Frites' CBU.

#### **4.8.3 Dumping Margin**

The dumping margin was calculated to be 32.92%.

#### **4.8.4 Comments from Farm Frites**

The Commission was requested to use a weighted average and not simple average to calculate export price (as it was the case on normal value calculation). There were months where certain products were not produced and therefore attracted no cost, and not all the products were produced in equal quantities.

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

*Farm Frites provided monthly CBU, instead of a weighted average cost and price build-up for the POI of dumping. The Commission simple averaged these monthly cost and price build-up to arrive at a single average cost.*

*Farm Frites was requested to provide a weighted average CBU, however this was never provided. Furthermore, Farm Frites could not be verified due to reasons stated in paragraph 4.8 of this report.*

## **4.9 METHODOLOGY FOR THE RESIDUAL DUMPING MARGIN – THE NETHERLANDS**

### **4.9.1 Normal value**

Normal value was based on Aviko's sales of the subject product in the Netherlands. Aviko was the biggest producer in terms of domestic sales volumes and the variety of models produced. The normal value was adjusted for packaging and delivery costs, which are necessary in the sale of the product and are not company specific.

### **4.9.2 Export price**

Farm Frites did not export the subject product to SACU during the POI. Aviko exported to SACU however, in view of the proportion it accounts for relative to the total imports from the Netherlands, it is considered not to be representative of the Netherlands exports to SACU. SARS import statistics were used to determine the export price.

The FOB export price for the POI for dumping was found to be R12.24 per kg. The export price was converted from ZAR to Euro using the average exchange rate of R1= 0.064171Euros (average exchange rate obtained from Oanda.com for the period of investigation for dumping). Therefore, the export price is determined to be 0.79 Euros per kg.

Since there were no importers that responded, Aviko inland transport cost information was considered best information for adjusting FOB export price to an ex-factory level.

### **4.9.3 Margin of dumping**

The dumping margin for all other exporters from the Netherlands who did not respond to this investigation was calculated to be 66.71 percent.

#### **4.10 Comments from interested parties**

The comments from interested parties were as follows:

- a) The evidence of dumping provided by the Applicant was overly simplistic and resulted in an inflated dumping margin calculation. The normal value was based exclusively on the prices of two products taken from the online shop of one major retailer in each investigated country, and it appears that branded products on the domestic market have been compared with non-branded imported products. Therefore, the applicant ignored the prices of the other products also sold in these stores and under the scope of this investigation, which were much cheaper than the chosen products. The price difference between branded and non-branded/private label products is very substantial in this sector.
- b) The normal value was based on 2019 retail prices, and this price was compared with 2018 export prices. The essential facts letter disclosed facts such as the dumping margin calculations during the investigation period (from 01 July 2017 to 30 June 2018). These facts are however old (2 years). There was no evidence demonstrating that this situation will continue in the future. The Applicant has not provided a normal value for Belgium (it submitted information in respect of France), and therefore it has not established the likelihood that there would be a continuation or recurrence of dumping from Belgium; For the Dutch market, it used a product which is unusual and expensive and possibly out of scope. The applicant has submitted inappropriate information in respect of normal value for the Netherlands, including that it has failed to submit information that was reasonably available to it. The Applicant has relied on retail prices that were inappropriately adjusted – and several adjustments, such as VAT, that should have been made– despite having access to actual ex-factory price information from a related party. The VAT for food products (6 percent on the sales price without tax) was not deducted from the retail price.
- c) One of the two products chosen for the Netherlands was a chilled product, which was not the subject product and was more expensive.
- d) The dumping margin calculation should reflect the differences between product models and should only consider the models exported to SACU. The calculation

should also be made in the currency of the exporter (Euro) in order to avoid any distortions caused by exchange rates.

- e) A large number of domestic invoices were requested from the three companies late in the verification process, half the day was spent on selecting additional sample invoices using up time that could have been used effectively verifying information.
- f) The construction of the normal value for the three companies, whose verification was not completed, resulted to inflated dumping margins.
- g) The information used to determine a constructed normal value for a party that was not verified, and/or where its information on a particular model was not accepted is not provided.
- h) The Applicant used an inappropriate (annual) exchange rate. There has been a major, long-term movement in the ZAR-Euro exchange rate between 2014 (when duties were imposed), 2018 (POI) and the present (2020). In October 2014, 2018, and 2020 the exchange rate was Euro = 14.40; Euro = 16.30; and euro = 19.40, respectively. This means that the SACU industry was gaining additional natural protection.
- i) The Commission is silent in its essential facts letter on the issue of contract and spot prices of potatoes, despite this being specifically detailed during the verifications. During the investigation, it was explained that potato purchases are either on the spot market or on contract basis.
- j) The Commission is silent in its essential facts letter on the issue of the lesser duty rule, where the importer and exporter cooperated and were verified.

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

- a) *The investigating officers visited the website submitted by the Applicant used as sources of the price information, different prices, and more products were selected for each country. The outcome of this exercises still indicated the existence of dumping. Therefore, at the time of merit determination, whether the prices are for the two products or more, there was no difference in terms of proving the likelihood of dumping. The Commission at the time of making its merit determination could not have known the issue relating to branded vs unbranded*

products. The official import statistics do not have details of whether certain subject product is branded or not. As a result, no adjustment was made in this regard. The Commission as prima facie evidence for purposes of initiating an investigation accepted the dumping information provided by the Applicant. The exporters have been given an opportunity to make their case as to whether or not dumping is likely to continue should the duties expire. The Applicant provided information regarding the normal value for both Belgium and the Netherlands. The Applicant provided the Commission with an explanation regarding the online advertisement provided. It was explained that the French fries originate from Belgium however; the head office of Carrefour is in France. The statement "For the Dutch market, it used a product which is unusual and expensive and possibly out of scope" is incorrect. The online advertisement has limited product. In both Belgium and the Netherlands normal value determination instances, the Commission visited the cited online advertisement page in order to verify if whether the Applicant was bias in choosing the product models. The Commission checked various product models on the online advertisement and could not reach a different conclusion to the Applicant at the end of that exercise. Regardless of whether the investigators used 1 model or 5 models listed on the advertisement, the normal value determined still remained the same.

- b) The 2019 prices were adjusted by the inflation rate to reflect 2018 prices. The inflation adjustment was done to ensure that 2018 export price is compared to 2018 normal value. The Commission is convinced that this adjustment was necessary and as a result, a fair comparison between normal value and export price was made. For completeness, a further six months information from July 2018 to December 2018 was provided. The Applicant provided the best and information reasonably available to it. The Applicant adjusted the online advertisement normal value submitted to the Commission down for inflation to reflect the selling price in 2018. The Applicant also adjusted the online advertisement normal value submitted to the Commission down for profit margin to reflect the ex-factory price. After looking at the dumping margin calculated by the Applicant without VAT adjustment, the Commission considered the fact that the Applicant proved that there is dumping whether the prices are adjusted for



VAT or not. After receiving comments from interested parties regarding VAT, the exercise was done to test the impact of VAT adjustment to the normal value, and it was found that even with the VAT adjustment, the Applicant's information demonstrated prima facie, the likelihood of continuation of dumping.

- c) *The European Commission did not mention which product between the two, that it considered as chilled products, was not the subject product. Nevertheless, the Commission considered the information provided by the Applicant for the purposes of initiating an investigation.*

*The exporters had the opportunity to provide the relevant information by way of responding through the Commission's exporter's questionnaire.*

- d) *It is the responsibility of the exporter to adjust to cater for differences between the models exported to SACU and other foreign markets, and those sold in the domestic market. In its calculation of dumping, the Commission considered all the adjustments claimed and allowed only adjustments that have been substantiated, verified and, demonstrated to have affected the price comparability at the time of setting the price. The Commission used the models exported to SACU and the comparable models sold in the domestic and/or markets for each exporter. The dumping margins were calculated using the verified information of each exporter, and the information was presented in Euros.*
- e) *The Commission is entitled to request, within reason and consistent with the ADR, documentary evidence during verification. Interested parties are expected to prepare properly for verification as the plan is furnished to them beforehand.*
- f) *The delays in providing the requested information to the investigating team as well as the side meetings, which the exporters had with the consultant in unreasonable delays in the completion of verification cost and price build-up, which prompted the Commission to construct the normal value.*
- g) *The Commission when calculating the margin of dumping showed what was considered in the essential facts letters and ensured that the selling price (spot price) in the domestic market of the exporter was compared with the export price (spot price) to SACU. The Commission further provided the source of information*

*used to determine the constructed normal value. It is a known fact that the cost and price build-up information is confidential by nature.*

- h) The Commission did not use the annual exchange rate provided by the Applicant. The cited exchange rate of 2014 and 2020 is outside the investigation period and therefore had no impact on the current investigation. The sunset review investigation assumes that should the anti-dumping be removed SACU industry will experience a recurrence of material injury and continuation of dumping.*
- i) The Commission made the adjustment between the spot price and contract price. As a result, spot prices in the domestic market are compared with spot export prices to SACU market and/or other foreign market. Where normal value was constructed, the investigators established that the difference in cost is on main raw material (potatoes) and the investigators used raw material purchased at spot price and not contract price in order to compare the spot price in the domestic market of the exporter and the spot price at which the exporter sold in SACU. The Commission when preparing the essential facts letters, ensured that spot price is compared with spot price and contract prices compared with contract price. This was shown on the essential facts letter.*
- j) The lesser duty is indicated in the final report after considering all the relevant comments on the essential facts letter.*

*The Commission considered all the relevant information at its disposal in making its determinations. The questionnaire-responses from European exporters, (the dumping information in particular,) are important in assessing the likelihood of continuation or recurrence of dumping. The dumping margins have been calculated in the dumping section, for each exporter that had fully responded. Residual dumping margins for all other exporters that did not response to the investigation are also calculated using the dumping information of the exporters that fully responded.*

## **5 CONTINUATION OR RECURRENCE OF MATERIAL INJURY**

---

For each indicator of material injury, the Applicant furnished estimates of the injury it is likely to suffer should anti-dumping duties be removed. The basis of such estimates is set out below:

- Between 2017 and 2018, the average landed cost of imports from the subject countries reduced, meaning that even at the existing level of protection, the price undercutting of the local product has been sustained.
- The import price impact contributions from Belgium (with dumping duty of 30.77 percent) and Netherlands (with dumping duty of 16.42 percent), could collectively give rise to approximately 30 percent average price decrease in landed cost of imports from the two countries, should the duties expire.
- The average price decrease described above will likely lead to exporters obtaining approximately an additional 10 percent of the 2018 volumes of the SACU production.

The applicant further stated that the above collective scenario would add to a recurrence of material injury as shown below.

### **5.1 DOMESTIC INDUSTRY – MAJOR PROPORTION**

The information in this section relates to the verified information of the Applicant, which represents more than 50 percent of the SACU industry by production volumes.

#### **5.1.1 Interested parties' comments**

Interested parties made the following comments:

- a) There is nothing in the application that the Applicant represents a major proportion of the industry that conforms to both quantitative and qualitative requirements as

set out by the Dispute Settlement Body of the WTO. The statement that the Applicant represents more than 50 percent of the total industry was based on unsubstantiated estimate since there is no actual information from the other two SACU producers.

- b) The provisional finding under “Major Proportion” in the essential facts letter is understated. The Applicant is the dominant SACU producer, the largest producer of French fries globally, and a substantial importer into SACU. The dumping duty protection will further increase the Applicant’s market dominance and concentration in SACU by limiting the access of their SACU competitors.

### **Commission’s consideration**

- a) *Injury information provided must be for a “major proportion” of the domestic industry. In this case, it was found that the Applicant meets the major proportion requirement as it accounts for more than 50 percent of the SACU production volume.*

*The Applicant indicated that its production volume represents a “large company” and the production volume of both Lambert Bay foods and Natures garden represent a “medium company”. The Applicant provided clarification as follows:*

- *“Extra-large company” is over 85 percent in market share.*
  - *“Large company” is greater than 65 percent and less than or equal 85 percent in market share.*
  - *“Medium company” is greater than 10 percent and less than or equal 65 percent market share, and*
  - *“Small company” is 0 to 10 percent market share.*
- b) *Dumping duties are imposed with the sole purpose of protecting the domestic industry against dumped products irrespective of whether it is a major producer or small producer of the subject product. The Allegation that the Applicant is a dominant producer in SACU (whether correct or not) does not preclude it from suffering material injury from dumped products.*

The Commission made a final determination that the Applicant's production constitutes "a major proportion" of the total domestic production, in accordance with Regulation 7 of the ADR.

## 5.2 IMPORT VOLUMES AND EFFECT ON PRICES

### 5.2.1 Import volumes

The following table shows the volume of the allegedly dumped imports of the subject product as obtained from SARS and estimates should anti-dumping duties expire:

**Table 5.2.1: Import volumes**

<b>Kg</b>	<b>2015/16</b>	<b>2016/17</b>	<b>2017/18</b>	<b>Estimates if duties expire</b>
Alleged dumped imports	10 118	13 483	12 865	14 151
Other imports	799	3 408	3 356	3 356
Total imports	10 917	16 891	16 221	17 507
<b>Alleged dumped imports as a % of total imports</b>	<b>93%</b>	<b>80%</b>	<b>79%</b>	<b>81%</b>
<b>Other net imports as a % of total imports:</b>	<b>7%</b>	<b>20%</b>	<b>21%</b>	<b>19%</b>

Table 5.21 above indicates that the alleged dumped imports decreased over the period when duties were in place. It is estimated the alleged dumped imports will increase to 81 percent if the duties are removed.

### Comments by interested parties

The interested parties made the following comments:

- a) It is not clear in the application from which countries did the Applicant import. The applicant's responses on this matter seem to be inconsistent, for example somewhere in the application the Applicant indicates that it imported from Belgium, the Netherlands, and other countries, while on other section the Applicant indicates that it only imported from Australia and Argentina.

The wordings such as "Belgium (excl. own)", "Netherlands (excl. own)" and "Other (excl. own)" in the application where the Applicant is required to provide imports volumes, are an indication that the Applicant imported from Belgium, the

Netherlands, and other countries. However in the application, the Applicant states that it only imported from Argentina and Australia.

- b) The information regarding “own imports” is numerical in format and therefore susceptible to summary. The Applicant claimed blanket confidentiality on this information. However, there is no basis for failing to provide a non-confidential version in such detail as to allow other parties to gain a reasonable understanding of the information submitted in confidence. The Applicant should be required to submit a proper non-confidential version of this information.
- c) The imports from the two countries are not competing with each other (as required by Article 3.3 of the Anti-dumping Agreement that there must be competition before cumulation may take place) in the SACU market and therefore should not be cumulated. For example, the average import price from Belgium in 2018 was R9.23/kg and from the Netherlands was R12.25, a variance of 33 percent.
- d) In the application, the Applicant provided imports volumes for July – December 2019. The Commission is requested to enquire from the Applicant how it knows exactly how much volume would be imported each month for the remainder of 2019, separately for Belgium, the Netherlands and the rest of the world. The estimates for import prices (estimated to decrease) should the duties lapse, are unsubstantiated and seriously flawed. If the importers are already price competitive with anti-dumping duties in place, the exporters are likely to increase the FOB prices and/or retain/slightly decrease the landed cost. There are major discrepancies between the information in sections E3.1.1 (import volumes); E3.1.2 (import values); and E3.1.3 (import prices per kg), specifically as it relates to estimate if duties expire, is substantially and substantively incorrect.

The Commission was requested to require the Applicant to indicate the basis of its estimate that import prices will decrease to the extent indicated in the application.

- *The average price decrease described above will likely lead to exporters obtaining approximately an additional 10 percent of the 2018 volumes of the SACU production.*

*The Applicant further stated that the above collective scenario would add to a recurrence of material injury as shown below.*

The Commission considered that the proportion of imports from Belgium and the Netherlands will increase should the anti-dumping duties be removed.

### **5.3 Effect on Domestic Prices**

#### **5.3.1 Price Undercutting**

The price undercutting was calculated by comparing the Applicant's ex-factory selling price and landed cost of imported product.

The landed cost for the subject product was more than the Applicant's ex-factory selling prices and the Applicant estimated that should the anti-dumping duties be removed the imports of the subject product will undercut the Applicant's selling prices.

#### **Comments by interested parties**

Interested parties made the following comments:

- a) Prices in Belgium and the Netherlands were R9.10/kg and R12.22/kg respectively, and customs clearance costs are at already at least 4 percent of FOB price. This means that the minimum landed cost, even without freight and insurance will be R10.14/kg and R12.71/kg for Belgium and the Netherlands, respectively.

It will be impossible for the imported product to land at less than R10/kg as claimed by the Applicant. The Applicant's calculation is flawed in this regard.

- b) The amount for freight insurance and handling used in the calculation of price undercutting is unsubstantiated.

- c) The Applicant used individual dumping margins, instead of residual margins that it widely used in its arguments, in the calculation of price undercutting. The Applicant should make all of its calculations based on the same arguments and should not be allowed to change its argument in every question in order to show the worst possible result for that injury fact.

### **Commission's consideration**

*The commission's consideration of the comments is explained below:*

- a) *The Applicant calculated the landed cost of R12.67/kg for the period investigation for dumping, after considering freight, insurance and handling costs, and current anti-dumping duties. The R10/kg that exporters are referring to is an estimation by the Applicant of R9.18/kg, after considering freight, insurance and handling costs, and current anti-dumping duties, which are now estimated to be zero. The exporters have not indicated how exactly the Applicant's calculation is flawed.*
- b) *The applicant stated that freight insurance and handling cost are estimates based on shipping agent indications, and for purposes of initiation this information was accepted by the Commission.*
- c) *The Applicant used individual dumping margins because the Applicant believes that there are no imports coming into the SACU at the current residual dumping margins applicable to each country. The individual exporters such as Lutosa in Belgium are mainly exporting the subject product into the SACU. The use of residual dumping margins would have resulted in a large calculated price undercutting that does not reflect the true state of landed cost levels when the subject product arrives in SACU.*



### 5.3.2 Price depression

The table below shows the SACU industry's domestic ex-factory selling prices indexed:

**Table 5.3.2: Price depression**

R/Kg	2015/16	2016/17	2017/18	Estimate if duties expire
Ex-factory selling price	100	111	108	103

The figures in the table are indexed due to confidentiality using 2015/16 as base year.

Table 5.3.2 above indicates that selling prices increased over the period when duties were in place; however, selling prices are estimated to drop should the duties be removed.

The Applicant's selling prices show a mixed trajectory during the period when duties were in place, with a decrease towards the end of the period. Nevertheless, the Applicant did not experience any price depression during the period in which duties were in place.

### 5.3.3 Price suppression

The following table compares the Applicant's production costs and its actual selling prices for the subject product, and estimates should duties expire:

**Table 5.3.3: Price suppression**

R/unit	2015/16	2016/17	2017/18	Estimates if duties expire
Applicant's ex-factory selling price per Kg	100	111	108	103
Production cost per Kg	100	102	106	114
Cost as a percentage of selling price	100	92	98	111

The figures in the table are indexed due to confidentiality using 2015/16 as base year

Table 5.3.3 shows that production costs as percentage of selling prices was relatively constant over the period when duties were in place, however this is expected to increase should the duties be removed.

### Comments by interested parties

Interested parties indicate that the Applicant's statement that the convergence of cost and prices clearly shows price suppression is in contrary to what the figures shows. The figures show that there was no price suppression during the period when duties were in place and there will be no price suppression should duties lapse.

### Commission's consideration

*The Applicant stated that the convergence of the two factors, cost, and price, clearly shows price suppression, and highlighted the restraint in the ability to increase pricing.*

## 5.4 CONSEQUENT IMPACT OF THE DUMPED IMPORTS ON SACU INDUSTRY

### 5.4.1 Actual and potential decline in sales

The following table shows the SACU's sales situation:

**Table 5.4.1: The Applicant's sales**

	2015/16	2016/17	2017/18	Estimates if duties expire
Sales volumes (units)	100	104	114	103

The figures in the table are indexed due to confidentiality using 2015/16 as a base year

Table 5.4.1 above shows that the applicant's sales volumes increased throughout the period when duties were in place, with an overall increase over the same period. The table also shows that should the duties be removed, it is expected that sales volumes will decline to level lower than 2016/2017.

### Comments by interested parties

Interested parties commented as follows:

- a) The statement by the applicant that imports compete directly with C grade and indirectly with A and B grade is an admission that the quality of the imported product is better than that of the Applicant.

- b) The Applicant's information indicates that the Applicant's annual sales will decrease by 11.5 percent should the duties expire, however the Applicant's statement states that it would lose 10 percent of its sales volumes. The Applicant is contradicting itself, rendering the information unreliable.

### **Commission's consideration**

*The Commission considered the interested parties' comments as follows:*

- a) *The Applicant stated that dumped imports compete directly with C-grade product and indirectly with A & B grades. Therefore, it seem reasonable that the grade C products of the Applicant are of comparable quality as the dumped imports.*
- b) *The Applicant stated that it estimates a 10 percent volume loss to the C-grade based on the estimated lower average import pricing accompanied by a margin loss. The Applicant further stated that most imports would directly affect the C-grade pricing, due to the greater pricing differential between the chip grades. The Applicant anticipates that customers will opt to down trade, thus having a drag down effect on the price of our A and B-grade chips as the Applicant attempts to maintain its existing levels of A and B-grade volume in the market.*

The Commission considered that if the anti-dumping duties are removed, the Applicant's sales are likely to decline.

### **5.4.2 Profit**

The following table shows the SACU industry's profit situation:

**Table 5.4.2: The Applicant's profits**

(R)	2015/16	2016/17	2017/18	Estimates if duties expire
Total Gross profit	100	119	179	106
Net Profit/loss	-100	41	296	-350

The figures in the table are indexed due to confidentiality using 2015/16 as base year

Table 5.4.2 above shows that the Applicant's profits increased throughout the period when duties were in place, with gross profits and net profits recording overall increases over the same period. The table also shows that should the duties be removed. It is estimated that gross profit will drop, and net losses will be experienced.

The Applicant indicated that the drop in profits is indicative of recurrence of material injury and/or the damage, which will be faced as a result of the anticipated loss on sales volumes and decline on selling prices.

The Applicant indicated that the knock-on effect will be that the company will be reporting the net losses and lowest levels of gross profits since before the anti-dumping and the safeguard duties came into effect.

#### **Comments by interested parties**

Interested parties stated that the Applicant estimates that its gross profit will decrease should duties lapse; however, the gross profit will still remain higher than it was in 2016 when duties were in place. The Applicant's "expected drop in profits for SACU" is unrealistic and unsupported by evidence, rendering the whole application unreliable.

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

*The Applicant's gross profit will still remain higher than in 2016 however it will drop as compared to 2017 and 2018. The Applicant stated that the expected drop in profit is based on estimates.*

The Commission considered the Applicant's submission that it will have to sell its subject product at suppressed selling prices in an attempt to compete with the dumped imports should the duties be removed.

### 5.4.3 Production volume

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

**Table 5.4.3: The Applicant's output**

Units	2015/16	2016/17	2017/18	Estimates if duties expire
Applicant's production volumes	100	113	126	112

The figures in the table are indexed due to confidentiality using 2015/16 as base year

Table 5.4.3 indicates that production volumes for the subject product increased during the period when duties were in place and the Applicant estimated that should the duties be removed, production volumes will decrease to level below 2016/2017.

#### **Comments by interested parties**

Interested parties stated that the indication that the other SACU producers' production volumes will decrease by 11 percent if the duties expire is a pure speculation, since these producers did not submit any verifiable information. In the section for sales information in the application, the Applicant indicated that its sales volumes will decrease by 10 percent should the duties lapse. The Applicant then indicates that its production volume and those of the other SACU producers would decrease by 10-11 percent. These figures are irreconcilable.

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

*The information submitted by the Applicant was verified by the Commission. The Applicant indicated that the production volume of those of other SACU producers would decrease by 10 percent as per the information at the Commission's disposal.*

*The Commission considered that should the anti-dumping duties be removed; the dumped imports would replace Applicant's sales volumes will likely force the Applicant to cut back on production to reduce inventory levels.*

#### 5.4.4 Market share

The following table shows the market share based on sales of the subject product:

**Table 5.4.4: Market share**

Units	2015/16	2016/17	2017/18	Estimates if duties expire
Applicant's share	100	104	114	103
Dumped imports	100	133	127	140
Other imports	100	427	420	420
Other SACU	100	104	114	103
<b>Total market</b>	<b>100</b>	<b>108</b>	<b>117</b>	<b>107</b>

The figures in the table are indexed due to confidentiality using 2015/16 as base year.

Table 5.4.4 above shows that the Applicant's market share increased during the period when duties were in place.

#### Comments by interested parties

Interested parties made the following comments:

- a) The Applicant has simply redacted information pertaining to market share and this does not provide other interested parties with a reasonable understanding of the information submitted in confidence, and therefore fails to comply with the requirements of both the WTO Anti-Dumping Agreement and the ADR. The Commission is requested to require the Applicant to provide a proper non-confidential version.
- b) The Applicant only supplied information on imports volume and own sales volumes and did not supply information on the evolution and future evolution of market share as required by the questionnaire.
- c) The Applicant indicated that should duties lapse, prices will decrease significantly by up to 30 percent, which would normally lead to increased demand, yet the Applicant indicates here that the size of the SACU market would decrease should duties lapse.

- d) The Applicant did not provide market share by value. Where the Applicant is required by the questionnaire to provide market share by value, it is indicated that the information relates to "volumes", rather than value.

### **Commission's consideration**

*The Commission considered these comments as set out below:*

- a) *The Applicant provided an indexed market share, which renders it to be a proper non-confidential version since it also contains the Applicant's confidential information.*
- b) *The evolution and future evolution information is not a requirement.*
- c) *The Commission is in agreement with the Applicant that should the duties lapse, the Applicant will be forced to decrease its prices (sell at a loss and that would attract more demand for the products which may result in SACU manufacturers closing down in a long run).*
- d) *According to the information in the non-confidential version submitted to the Commission, the market share by value is provided and indexed.*

The Commission considered that should the duties be removed; importers would revert to the importation of the alleged dumped imports which will cause the Applicant's sales volumes to decrease.

### **5.4.5 Productivity**

The following table shows the Applicant's productivity per employee for the subject product:

**Table 5.4.5: Productivity**

	2015/16	2016/17	2017/18	Estimates if duties expire
Productivity	100	114	120	116

The figures in the table are indexed due to confidentiality using 2015/16 as base year

Table 5.4.5 indicates that the production volumes per employee steadily increased throughout the period when duties were in place, with an overall increase over the same period. The table also indicates that, should the duties be removed, it is estimated that the productivity levels will decrease.

#### 5.4.6 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.

**Table 5.4.6: Return on investment (subject product)**

(R)	2015/16	2016/17	2017/18	Estimates if duties expire
Applicant's net profit/loss	100	41	296	(350)
Applicant's net assets	100	81	101	93
<b>Return on Investment</b>	<b>(100)</b>	<b>51</b>	<b>293</b>	<b>(377)</b>

The figures in the table are indexed due to confidentiality using 2015/16 as base year

Table 5.4.6 above shows that the Applicant's return on investment improved from a negative return at the beginning of the period when duties were imposed, to positive returns thereafter throughout the period of investigation. The table also shows that, should the duties be removed, this trend is expected to be reversed, as the returns will now go back to being negative.

#### 5.4.7 Utilisation of production capacity

The following table provides the SACU industry's production capacity utilisation for the subject product:

**Table 5.4.7: Production capacity utilisation**

Units	2015/16	2016/17	2017/18	Estimate if duties expire
Applicant's capacity	100	100	100	100
Applicant's actual production	100	113	126	112
<b>Applicant's capacity utilisation %</b>	<b>100</b>	<b>113</b>	<b>126</b>	<b>112</b>

The figures in the table are indexed due to confidentiality using 2015/16 as base year



Table 5.4.7 above indicates that the Applicant's capacity utilisation steadily increased throughout the period when duties were in place, with an overall increase over the same period. The table also shows that should the duties be removed this trend is expected to be reversed as capacity utilisation will decrease to level below 2016/17.

The Commission considered the Applicant's submission that the Applicant's overall capacity utilisation is likely to have negative impact on expected utilisation should the anti-dumping duties be removed.

#### **5.4.8 Actual and potential negative effects on cash flow estimates**

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

**Table 5.4.8: The Applicant's cash flow**

<b>R</b>	<b>2015/16</b>	<b>2016/17</b>	<b>2017/18</b>	<b>Estimates if duties expire</b>
Incoming cash flow	100	744	445	372
Outgoing cash flow	(100)	(72)	(375)	(375)
Net cash flow	(100)	705	(293)	(377)

The figures in the table are indexed due to confidentiality using 2015/16 as base year

Table 5.4.8 indicates a decline in the Applicant's net cash flow during the period when duties were in place and the Applicant estimated that should the duties be removed; net cash flow will decrease.

#### **Comments by interested parties**

Interested parties commented as follows:

- a) The estimated changes in outgoing cash flow do not make sense and should be rejected. The Applicant indicated production cost per unit, output, number of shifts and labour costs will decrease, should duties lapse. With all these costs savings, one would expect the outgoing cash flow to decrease significantly. Accordingly, the cash flow information is unreliable.

- b) The estimated decrease in incoming cash flow does not appear to take into consideration the significant investment the Applicant plans to make if the duties lapse. One would expect that such massive investment would have negated any decrease in incoming cash flow. The fact that it does not raises questions on how future cash flow was estimated.

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

- a) *The Applicant stated that should anti-dumping duties not be retained cash flow would be negatively affected as a result of the reduced sales revenue and the sustained fixed overhead cost of production, putting a strain on the organisations cash flow. The Applicant further stated that this would add to a recurrence of material injury as a results of a recurrence of dumping. Note the 'estimate' for full years is better comparable to 2017, given that a loan repayment affected the cash flow reported in the 2018 financial year.*
- b) *The Applicant stated that there are several capex projects scheduled for the near future. If the duties expire, these projects will be cancelled.*

#### **5.4.9 Inventories**

The following table reflects the SACU industry's inventory situation:

**Table 5.4.9: Inventories**

(Kg)	2015/16	2016/17	2017/18	Estimates if duties expire
Inventory volumes	100	129	160	141

The figures in the table are indexed due to confidentiality using 2015/16 as base year

Table 5.4.9 above indicates that the Applicant's inventory volumes steadily increased throughout the period when duties were in place, with an overall increase over the same period. The table also shows that should the duties be removed the inventory levels are expected to increase further since less will be sold.

### Comments by interested parties

Interested parties commented that the Applicant's textual explanation and figures do not correspond and therefore both have to be rejected. The Applicant states that the levels of stock that need to be held is estimated to decrease in line with estimated decrease in output and sales, however the figures indicate that inventory will increase should duties lapse.

### Commission's consideration.

*The Applicant stated that the figures are based on the budgeted production and sales volumes. The estimate is based upon a decrease in sales of 10 percent, implying a 10 percent decrease in production needed to service those sales, with a concomitant reduction in the required stock levels that need to be held.*

The Commission considered that if the anti-dumping duties are removed, the Applicant would have to cut back on production to prevent the increase in the inventory levels.

#### 5.4.10 Employment

The following table provides the Applicant's employment levels:

**Table 5.4.10: The Applicant's employment**

	2015/16	2016/17	2017/18	Estimates if duties expire
Direct labour units (production):	100	100	105	96

The figures in the table are indexed due to confidentiality using 2015/16 as base year

Table 5.4.10 above shows that direct labour increased during the period when duties were in place. The table also shows that should the duties be removed, the number of direct labours is expected to decline.

The Commission considered that if the duties are removed, employment levels would come under threat and a reduction in the labour force would be unavoidable.

#### 5.4.11 Wages and Salaries

The following table reflects the Applicant's wages and salaries situation:

**Table 5.4.11: The Applicant's wages and salaries**

(R)	2015/16	2016/17	2017/18	Estimates if duties expire
Applicant's wages & salaries	100	110	118	113
Wages and salaries per employee	100	110	112	117

The figures in the table are indexed due to confidentiality using 2015/16 as base year

Table 5.4.11 above indicates that the Applicant's total wages and salaries steadily increased throughout the POI, with an overall increase of 18 percent over the POI. The table also shows that should the duties be removed it is estimated that this trend will be reversed as the wages and salaries will now drop by 5 percent.

#### 5.4.12 Ability to raise capital or investments

The following information shows the situation of the SACU industry with regard to its ability to raise capital or investments:

**Table 5.4.12: The Applicant's ability to raise capital and investment**

(R)	2015/16	2016/17	2017/18	Estimates if duties expire
Capital investment in subject product	100	99	97	121
Capital expenditure in subject product	100	57	55	202

The figures in the table are indexed due to confidentiality using 2015/16 as base

Table 5.4.12 above indicates that the Applicant's ability to raise capital investment and capital expenditure on the subject product both gradually decreased throughout the period when duties were in place, with an overall decrease of 3 percent and 45 percent respectively over the same period.

### 5.4.13 Growth

The following table shows the growth for the subject product based on sales volume:

**Table 5.4.13: Growth**

	2015/16	2016/17	2017/18	Estimates if duties expire
Applicant's sales volume	100	104	114	103
Other SACU producers	100	104	114	103
Alleged dumped imports	100	132	127	140
Other imports	100	427	420	420
Size of SACU market	100	108	117	107

The figures in the table are indexed due to confidentiality using 2015/16 as base year

Table 5.4.13 shows that the total size of the SACU grew throughout the period when duties were in place, recording an overall growth over the same period. The table also shows that the Applicant experienced overall growth over the same period. The Applicant is expected to experience a negative growth should the duties be removed.

The Commission considered the Applicant's submission that if the anti-dumping duties are removed, the Applicant would show considerable negative growth, as sales will be lost to the alleged dumped imports, causing the Applicant to suffer material injury.

## 5.5 SUMMARY - MATERIAL INJURY

After considering all the factors above, the Commission made a final determination that the expiry of the anti-dumping duties on the subject product originating in or imported from Belgium and the Netherlands would likely lead to the recurrence of material injury.

## **6 SUMMARY OF FINDINGS**

---

### **6.1 Continuation of Dumping**

The Commission made a final determination that the expiry of anti-dumping duties on the subject product originating in or imported from Belgium and the Netherlands would likely lead to the continuation of dumping of the subject product into the SACU market.

### **6.2 Recurrence of Material Injury**

The Commission made a final determination that the expiry of the anti-dumping duties on the subject product originating in or imported from Belgium and the Netherlands would likely lead to the recurrence of material injury to the SACU industry.

## **7 FINAL DETERMINATION**

---

The Commission made a final determination that:

- the expiry of the anti-dumping duties would likely lead to the continuation of dumping of the subject product originating in or imported from Belgium and the Netherlands; and
- the expiry of the anti-dumping duties on the subject product originating in or imported from Belgium and the Netherlands would likely lead to the recurrence of material injury to the SACU industry.

The investigation was, however, not finalised within the prescribed time limit as set out in Regulation 20 of the Anti-Dumping Regulations, which states that, “all investigation and reviews shall be finalised within 18 months after initiation”. The Commission therefore made a final determination to recommend to the Minister of Trade, Industry and Competition that the anti-dumping duties on the subject product from Belgium and the Netherlands be terminated.