

Report No. 678

**INVESTIGATION INTO THE ALLEGED DUMPING OF FROZEN BONE-IN
PORTIONS OF FOWLS OF THE SPECIES GALLUS DOMESTICUS ORIGINATING
IN OR IMPORTED FROM BRAZIL, DENMARK, IRELAND, POLAND AND SPAIN:
PRELIMINARY DETERMINATION**

The International Trade Administration Commission of South Africa herewith presents its **Report No. 678: INVESTIGATION INTO THE ALLEGED DUMPING OF FROZEN BONE-IN PORTIONS OF FOWLS OF THE SPECIES GALLUS DOMESTICUS ORIGINATING IN OR IMPORTED FROM BRAZIL, DENMARK, IRELAND, POLAND AND SPAIN: PRELIMINARY DETERMINATION**



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PRETORIA

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INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA

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INVESTIGATION INTO THE ALLEGED DUMPING OF FROZEN BONE-IN PORTIONS OF FOWLS OF THE SPECIES GALLUS DOMESTICUS ORIGINATING IN OR IMPORTED FROM BRAZIL, DENMARK, IRELAND, POLAND AND SPAIN: PRELIMINARY DETERMINATION

SYNOPSIS

The South African Poultry Association (“SAPA”) submitted an application on behalf of the Southern African Customs Union (“SACU”) industry (“the Applicant”) to the International Trade Administration Commission of South Africa (“the Commission”) to investigate the alleged dumping of frozen bone-in portions of fowls of the species *Gallus Domesticus* originating in or imported from Brazil, Denmark, Ireland, Poland and Spain. The initiation notice for the investigation was published in the *Government Gazette* on 5 February 2021.

The investigation was initiated after the Commission considered that the Applicant submitted *prima facie* information to indicate that the subject product was being imported at dumped prices, causing material injury and a threat of material injury to the SACU industry.

Upon initiation of the investigation, the known producers/exporters of the subject product in Brazil, Denmark, Ireland, Poland and Spain were sent foreign manufacturers/exporters questionnaires to complete. Importers of the subject product were also sent questionnaires to complete.

The Commission took all properly documented submissions and comments received from interested parties into account in making its preliminary determination. All non-confidential submissions and comments made by interested parties are contained in

the Commission’s public file for this investigation and are available for perusal. It should be noted that this report does not purport to deal with each and every comment received and considered by the Commission. However, some of the more salient comments received from interested parties and the Commission’s consideration of these comments are included in this report.

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

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

Country	Company	Tariff subheading	Rate of duty
Brazil	Agroaraçá Indústria De Alimentos	0207.14.9	30.5%
	Agrosul Agroavícola Industrial S/A	0207.14.9	30.5%
	Avivar Alimentos Ltda	0207.14.9	13.0%
	Aurora Cooperativa Central Aurora Alimentos	0207.14.9	30.5%
	C.Vale – Cooperativa Agroindustrial	0207.14.9	22.0%
	Cooperativa Agroindustrial Consolata	0207.14.9	30.5%
	Jaguafrangos Indústria E Comércio De Alimentos Ltda	0207.14.9	48.0%
	Rio Branco Alimentos S/A	0207.14.9	10.0%
	Seara Alimentos Ltda	0207.14.9	6.0%
	Zanchetta Alimentos Ltda	0207.14.9	30.5%
	All other	0207.14.9	265.1%
Denmark	HK Scan	0207.14.9	39.0%

Country	Company	Tariff subheading	Rate of duty
	All other exporters	0207.14.9	67.4%
Ireland	All exporters	0207.14.9	158.4%
Poland	Animex Foods Sp. Z O.O.	0207.14.9	5.0%
	Drobimex Sp. Z.O.O	0207.14.9	9.0%
	Poland: All other exporters (excluding Plukon Sieradz Sp. Z.O.O)	0207.14.9	96.9%
Spain	Distribuciones Avícolas Vázquez S.A.U.	0207.14.9	16.0%
	An Avicola Melida S.L.	0207.14.9	3.0%
	UVE S.A	0207.14.9	4.0%
	Grupo Vall Companys	0207.14.9	26.0%
	All other exporters	0207.14.9	85.8%

Because of the tariff structure of the portions, the Commission made a decision to conduct the negligibility test separately for each of the tariff subheadings at the 8-digit level and found that imports of the subject product imported under some tariff subheadings were below the 3% threshold.

As such the Commission made a preliminary decision not to initiate an investigation or impose provisional measures on imports of the subject product under the following tariff subheadings:

Country	Tariff subheading	Description
Brazil	0207.14.91	Whole bird cut in half
Denmark	0207.14.91	Whole bird cut in half
	0207.14.96	Breasts
Ireland	0207.14.91	Whole bird cut in half
	0207.14.96	Breasts
Poland	0207.14.91	Whole bird cut in half
	0207.14.96	Breasts
	0207.14.97	Thighs
Spain	0207.14.91	Whole bird cut in half
	0207.14.96	Breasts
	0207.14.99	Other

1. APPLICATION AND PROCEDURE

1.1 LEGAL FRAMEWORK

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

1.2 APPLICANT

The application was lodged by the SAPA and the data contained in the application was provided by County Fair, a division of Astral Operations Limited (“County Fair”); Festive, a division of Astral Operations Limited (“Festive”); Goldi, a division of Astral Operations Limited (“Goldi”); Afgri Poultry (Proprietary) Limited, t/a Daybreak Farms (“Daybreak”); Grain Field Chickens (Proprietary) Limited (“Grain Field”); RCL Foods Consumer (Proprietary) Limited (“RCL Foods”); Crown Chickens (Proprietary Limited) t/a Sovereign Foods, which is a subsidiary of Sovereign Food Investments (Proprietary) Limited (“Sovereign”) and Supreme Poultry (Proprietary) Limited (“Supreme”) on behalf of the SACU industry.

1.3 ACCEPTANCE OF APPLICATION

The application was accepted by the Commission as being properly documented in accordance with ADR 21 on 13 January 2021.

1.4 ALLEGATIONS BY THE APPLICANT

The Applicant alleged that imports of the subject product, originating in or imported from Brazil, Denmark, Ireland, Poland and Spain were being dumped on the SACU market, thereby causing material injury and a threat of material injury to the SACU industry. The basis of the alleged dumping was that the subject product is being exported to SACU at prices less than the normal value in the countries of origin.

The Applicant further alleged that as a result of the dumping of the subject product from Brazil, Denmark, Ireland, Poland and Spain, the SACU industry was experiencing material injury in the form of:

- (i) Price undercutting;
- (ii) Price depression in the period 2017/2018 – 2018/2019;
- (iii) Price suppression;
- (iv) Decline in profit;
- (v) Decline in return on investment;
- (vi) Decline in capacity and capacity utilisation in the period 2017/2018 – 2018/2019; and
- (vii) Increase in inventory.

1.5 INVESTIGATION PROCESS

The information submitted by the 8 Participating Producers was verified from 1 December 2020 to 15 December 2020. The Commission accepted the application as properly documented on 13 January 2021.

The Commission initiated an investigation into the alleged dumping of frozen bone-in portions of fowls of the species *Gallus Domesticus* originating in or imported from Brazil, Denmark, Ireland, Poland and Spain, pursuant to Notice No. 54 of 2021, which was published in *Government Gazette* No. 44173 on 5 February 2021.

Prior to the initiation of the investigation, the trade representatives of the countries concerned were notified of the Commission's intention to investigate, in terms of ADR 27.1. All known interested parties were informed and requested to respond to the questionnaires and the non-confidential version of the application.

1.6 INVESTIGATION PERIODS

The investigation period for dumping is from 1 July 2019 to 30 June 2020. The

injury investigation involves evaluation of data for the period 1 July 2017 to 30 June 2020.

1.7 PARTIES CONCERNED

1.7.1 SACU industry

The SACU industry is represented by the following manufacturers of the subject product: County Fair, Festive, Goldi, Daybreak, Grain Field, RCL Foods, Sovereign and Supreme.

1.7.2 Responses by interested parties

Comments by Representatives

Representatives
The European Commission Directorate-General for Trade ("European Commission")
The Commercial Office of the Embassy of the Kingdom of Spain in South Africa ("Government of Spain")
The Association of poultry Processors and poultry trade in EU countries ("AVEC")
The Embassy of the Federative Republic of Brazil ("Brazil Government")
The Animal Feed Manufacturers Association ("AFMA")
The Danish Agriculture & Food Council ("DAFC")
The Association of Meat Importers and Exporters ("AMIE")
The Brazilian Association of Animal Protein ("ABPA")

Interested Party Responses: Importers

Importers
Merlog Foods (Proprietary) Limited ("Merlog")
Excellent Meats International Trading (Proprietary) Limited ("Excellent Meats")
Chester wholesale Meat (Proprietary) Limited ("Chester")
Etlin International (Proprietary) Limited ("Etlin")
Federated Meats (Proprietary) Limited ("Federated Meats")
Barbeque Rib Manufacturers (Proprietary) Limited ("BRM")
Merger Meats (Proprietary) Limited ("Merger Meats")
South Atlantic Meat Import and Export (Proprietary) Limited t/a Transtrade International ("Transtrade")
DC Meat Wholesalers (Proprietary) Limited ("DC Meat")
Humeat International (Proprietary) Limited ("Humeat")
Britos Foods International (Proprietary) Limited ("Britos")

On 14 April 2021, Britos submitted its response to the importers questionnaire and a deficiency letter was sent on 30 July 2021. No response to the deficiency letter was received from Britos.

On 19 April 2021, Humeat submitted its response to the importers questionnaire and a deficiency letter was sent on 25 May 2021. No response to the deficiency letter was received from Humeat.

On 19 April 2021, DC Meat submitted its response to the importers questionnaire and a deficiency letter was sent on 22 July 2021. No response to the deficiency letter was received from DC Meat.

The Commission made a preliminary determination not to take the information submitted by Britos, Humeat and DC Meat's into account for purposes of its preliminary determination.

Interested Party Responses: Exporters

Exporters	Country
Avivar Alimentos Ltda ("Avivar")	Brazil
Agroaraçá Indústria De Alimentos Ltda ("Agroaraca")	Brazil
Agrosul Agroavícula Industrial S.A. ("Agrosul")	Brazil
C. Vale – Cooperativa Agroindustrial ("C Vale")	Brazil
Aurora Cooperativa Central Aurora Alimentos ("Aurora")	Brazil
Cooperativa Agroindustrial Consolata ("Copacol")	Brazil
São Salvador Alimentos S.A. ("SSA")	Brazil
Rio Branco T/a Pif Paf	Brazil
GTB Empreendimentos S.A. ("GTB")	Brazil
Jaguafrangos Indústria E Comércio De Alimentos Ltda ("Jaguafrangos")	Brazil
Seara Alimentos Ltda ("Searra")	Brazil
Gonçalves E Tortola S/A ("GT Foods")	Brazil
Zanchetta Alimentos Ltda ("Zanchetta")	Brazil
Danpo A/S ("Danpo")	Denmark
HK Scan ("HK")	Denmark
Carton Bros Unlimited Company, T/A Manor Farm ("Manor Farm")	Ireland
Plukon Sieradz Sp. Z.O.O ("Plukon")	Poland
Cedrob S.A. ("Cedrob")	Poland
Drobimex SP. Z.O.O ("Drobimex")	Poland
Roldrob S.A T/a Drosed S.A. ("Drosed")	Poland
Animex SP. Z.O.O ("Animex")	Poland
Disavasa	Spain
Grupo Vall:	
Avicola Sanchez SL ("Avicosan")	Spain
Avicola De Lleida SAU ("Avidel")	Spain
Avicola De Galicia, S.A.U. ("Avigal")	Spain
Escorxador D'Aus Torrent I Fills SL ("Torrent")	Spain
Dolz España, S.L. ("Dolz")	Spain
UVESA ("Uvesa")	Spain
An Avicola Melida S.L. ("Grupo An")	Spain

SSA, GTB and GT Foods did not export the subject product to the SACU during the period of investigation.

These three exporters were advised that Regulation 48.1 of the ADR provides that exporters that did not export to the SACU during the original investigation period for dumping may request a new shipper review should they decide to export to the SACU in future.

The response submitted by Danpo, an exporter from Denmark, was found to be deficient and a deficiency letter was sent on 28 July 2021 with a deadline to submit an updated response by 4 August 2021. On 30 July 2021, Danpo requested extension to submit an updated response. The request was denied as the ADR does not make provision to grant an extension to address deficiencies. Danpo did not submit an updated response.

The response submitted by Drosed, an exporter from Poland, was found to be deficient and a deficiency letter was sent on 16 July 2021 with a deadline to submit an updated response by 23 July 2021. An updated response was submitted, but the information was still found to be deficient.

Manor Farm was the only exporter in Ireland that submitted a response. Manor Farm's response was found to be deficient and a deficiency letter was sent on 16 July 2021 with a deadline to submit an updated response by 23 July 2021. On 23 July 2021, Manor Farm submitted an updated response. However, the response was still found to be deficient. A letter was sent to Manor Farm on 11 August 2021 to inform it that its updated response was still deficient and that the Commission may decide not to take their information into consideration for purposes of its preliminary determination.

The Commission made a preliminary determination not to consider the information submitted by Manor farms, Danpo, Drosed, SSA, GTB and GT Foods for purposes of its preliminary determination.

1.8 PRELIMINARY DETERMINATION

The Commission made a preliminary determination that there is sufficient information to indicate that:

- dumping of the subject product originating in or imported from Brazil, Denmark, Ireland, Poland and Spain is taking place;
- the SACU industry is experiencing material injury and a threat of material injury, caused by the alleged dumped imports of the subject product originating in or imported from Brazil, Denmark, Ireland, Poland and Spain.

The Commission therefore decided to request the Commissioner for SARS to impose the following provisional measures for a period of 6 months on the imports of frozen bone-in portions of fowls of the species *Gallus Domesticus* originating in or imported from Brazil, Denmark, Ireland, Poland and Spain, classifiable under tariff subheading 0207.14.9:

Country	Company	Tariff subheading	Rate of duty
Brazil	Agroaraçá Indústria De Alimentos	0207.14.9	30.5%
	Agrosul Agroavícula Industrial S.A.	0207.14.9	30.5%
	Avivar Alimentos Ltda	0207.14.9	13.0%
	Aurora Cooperativa Central Aurora Alimentos	0207.14.9	30.5%
	C.Vale – Cooperativa Agroindustrial	0207.14.9	22.0%
	Cooperativa Agroindustrial Consolata	0207.14.9	30.5%
	Jaguafrangos Indústria E Comércio De Alimentos Ltda	0207.14.9	48.0%
	Rio Branco Alimentos S/A	0207.14.9	10.0%
	Seara Alimentos Ltda	0207.14.9	6.0%
	Zanchetta Alimentos Ltda	0207.14.9	30.5%
	All other	0207.14.9	265.1%
Denmark	HK Scan	0207.14.9	39.0%
	All other exporters	0207.14.9	67.4%
Ireland	All exporters	0207.14.9	158.4%
Poland	Animex Foods Sp. Z O.O.	0207.14.9	5.0%
	Drobimex Sp. Z.O.O	0207.14.9	9.0%

Country	Company	Tariff subheading	Rate of duty
	Poland: All other exporters (excluding Plukon Sieradz Sp. Z.O.O)	0207.14.9	96.9%
Spain	Distribuciones Avícolas Vázquez S.A.U.	0207.14.9	16.0%
	An Avicola Melida S.L.	0207.14.9	3.0%
	UVE S.A	0207.14.9	4.0%
	Grupo Vall Companys	0207.14.9	26.0%
	All other exporters	0207.14.9	85.8%

Because of the tariff structure of the portions, the Commission made a decision to conduct the negligibility test separately for each of the tariff subheadings at the 8-digit level and found that imports of the subject product imported under some tariff subheadings were below the 3% threshold.

As such the Commission made a preliminary decision not to initiate an investigation or impose provisional measures on imports of the subject product under the following tariff subheadings:

Country	Tariff subheading	Description
Brazil	0207.14.91	Whole bird cut in half
Denmark	0207.14.91	Whole bird cut in half
	0207.14.96	Breasts
Ireland	0207.14.91	Whole bird cut in half
	0207.14.96	Breasts
Poland	0207.14.91	Whole bird cut in half
	0207.14.96	Breasts
	0207.14.97	Thighs
Spain	0207.14.91	Whole bird cut in half
	0207.14.96	Breasts
	0207.14.99	Other

2. COMMENTS BY INTERSTED PARTIES

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

2.1 Comments by The Association of Poultry Processors and Poultry Trade in EU countries (“AVEC”)

AVEC stated that the Applicant has demonstrated clearly that imports from the four EU countries have decreased significantly during the injury period from a cumulative point of view. AVEC also stated that the Applicant further argues that it is necessary to cumulate the impact of imports from the four countries even though the import pattern is not similar for the four countries. AVEC stated that taking this approach, it can only be concluded that the cumulative imports from the four EU countries have declined significantly during the injury period. AVEC stated that therefore, any material of injury to the SACU poultry industry cannot be linked to imports from the four EU countries.

AVEC further stated that the Applicant has, in addition not provided sufficient evidence of material injury to the SACU poultry industry, as all business indicators are positive except for the net profit indicator, which is indexed and therefore not transparent or publicly available in the sense of identifying the actual level of profit. AVEC stated that it is aware of a very generous remuneration policy to the shareowners, which could have the effect of lowering the profit and/or limiting the availability of investments in innovation and technology aiming at increasing production and efficiency.

The assessment of AVEC is therefore that the Applicant is trying to eliminate a potential threat of injury in the future, based on an assumption that import will increase significantly at very low prices that will undercut the SACU availability, to provide poultry meat at competitive prices locally.

AVEC concluded that it disagrees with the initiation of the anti-dumping

investigation based on the application, which in its view lacks convincing arguments, as well as documentation of material injury and causal link between material injury and imports from the four EU countries.

Commission's consideration:

AVEC, in making its comments on behalf of the four EU countries subject to this investigation (Denmark, Ireland, Poland and Spain), stated that imports from these countries decreased over the injury period being 1 July 2017 to 30 June 2020. However, AVEC, in its analysis failed to consider that imports during the injury period from 1 July 2019 to 30 June 2020 cannot be considered to have occurred in the ordinary course of trade due to extended worldwide lock down periods as a result of COVID which first emerged in mid-November 2019 forcing most countries to close off borders for international trade. Furthermore, Poland did not export the subject product in the second half of the 2020 injury period due to a bird flu outbreak in 2019.

The Commission considered the fact that there was an increase in the ordinary customs duties, implementation of EU safeguard duties and an import ban on imports from the EU and that these factors clearly contributed to the decrease in imports.

When looking at the data in the injury period 1 July 2018 to 2019 there is an increase in imports and in addition, Spain and Poland began exporting the products subject to this investigation. The decrease in imports from the four EU countries in 2019/2020, despite the factors stated above, was not significant enough to conclude that the SACU industry did not suffer material injury as a result of dumped imports originating in the EU.

2.2 Comments by The Danish Agriculture & Food Council (“DAFC”)

DAFC stated that the Applicant argues that injury has taken place but fails to demonstrate clearly what facts the claimed injury should be based on. All economic and financial variables are positive in the injury period in an indexed form. Sales volume and value have increased, and market share has gone up

even more than increase in sales, which indicates an increase in total consumption and/or drop in imports. According to DAFC it is evident that the application for imposition of anti-dumping measures against imports from Denmark is primarily based on an alleged threat of material injury rather than on factual injury caused by the imports from Denmark.

DAFC stated that increased production has led to increased employment and increase in remuneration, which has significantly exceeded the increase in employment but also increased productivity. This lead to an increase in capacity utilization and higher capital investments. DAFC notes that the net annual return on investment has increased significantly over the period and the net cash flow of the industry has increased seven-fold. It concedes that the total net profit has declined in the injury period.

DAFC stated that production cost has increased which could indicate that there are cost elements like remuneration and feed cost as the main cost drivers that explains any alleged injury to the industry. According to DAFC, it is well known that feed cost and feed conversion ratio counting for 70% of the cost of production significantly exceed the level in exporting countries and therefore constitutes a significant causation for alleged injury.

DAFC also stated that it is evident that the application for imposition of anti-dumping measures against imports from Denmark is primarily based on an alleged threat of material injury rather than on factual injury caused by the imports from Denmark.

Commission's consideration

The Commission noted Section 1 of the ADR which defines material injury as follows:

“Material Injury unless the opposite is clear from the context, refers to actual material injury, a threat of material injury or the material retardation of the establishment of an industry.”

The Commission is of the view that material injury is not determined on the basis of the Applicant having experienced injury across all injury factors and that material injury experienced in one or more indicators can be sufficient to prove material injury.

The Commission found that the Applicant experienced injury in the form of a decline in profit; decline in return on investment; decline in capacity and increases in inventory. The Commission noted that the initiation notice states that the Applicant submitted sufficient evidence and established a prima facie case to enable the Commission to arrive at a reasonable conclusion that an investigation should be initiated on the basis of dumping, material injury, and a threat of material injury and causality.

With regard to imports, it should be noted that the Commission decided on initiation of this investigation, to do a cumulative assessment of injury caused by imports from all countries under investigation. Therefore, the Commission considered the trend of imports from all subject countries, when cumulated.

2.3 Comments by The Brazilian Association of Animal Protein (“ABPA”)

ABPA stated that although the scope of this investigation is clearly defined, ABPA notes that the Commission has, for initiation purposes, calculated specific margins of dumping for each cut, instead of calculating a single margin for the product as a whole. According to ABPA, there is no legal basis in the WTO Anti-Dumping Agreement for the Commission to do so. ABPA argues that "dumping" and "margins of dumping" are defined in terms of a "product(s)", and "product" must be understood as "product as a whole", and therefore "dumping" and "margins of dumping" could not be applied to models, types, categories, sub-groups or transactions.

ABPA stated that the Commission should have calculated a unique margin of dumping for the product. It made reference to the Appellate Body report of the *European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India* and stated that the Appellate Body found it clear from the texts

of Article VI:1 of the GATT 1994 and Article 2.1 of the ADA that dumping is defined in relation to a product as a whole (as defined by the investigating authority). According to ABPA, the WTO Appellate Body also found that “[d]umping, within the meaning of the ADA, can therefore be found to exist only for the product under investigation as a whole, and cannot be found to exist only for a type, model, or category of that product.”

ABPA also stated that the sources of *retail prices* are questionable when compared to the reality of the consumption profile of Brazilians and to the variety of the supermarket sector in Brazil. It indicated that SAPA selected data from several supermarket chains in Brazil, by selecting online prices of the products under investigation. It argues that it is known that Brazil is a country with continental dimensions and great inequality among the regions of the federation in terms of economic indicators.

ABPA further stated that it is of the view that there were no reasonable indications of dumping, injury and causal link that could justify the initiation of this anti-dumping investigation. ABPA contends that SAPA’s application lacked sufficient evidence to justify the initiation of an anti-dumping investigation.

ABPA also stated that in terms of sales volume, production, utilization of installed capacity, employment, wages, and productivity, it is clear the SACU producers, do not face an injury scenario, but a growing one.

ABPA stated that there is a reduction of imports of frozen bone-in parts from the investigated sources in general and especially from Brazil and that there is a huge drop in terms of both volume and value as regards to imports from the investigated sources.

2.4 The Applicant’s response to ABPA

The Applicant stated that the retail prices provided by it to calculate the dumping margin were the best information available to it and were based on 221 different retail prices, sourced from 9 different stores on 8 different dates.

The Applicant is of the view that this information therefore covers a wide range of prices, stores, and dates and the Applicant submits that this makes it sufficiently representative to use as the basis for normal value.

The Applicant stated that the adjustment it provided was the best information available to it and the Applicant submits that this is still the best information available to the Commission. The Applicant also notes that the Commission has correctly accepted that the normal values provided by the Applicant were sufficient to establish a *prima facie* case for dumping. The Applicant also stated that if producers in Brazil or any other interested party wish to provide an alternate basis for determining normal value, they have the opportunity to do so as part of this investigation.

The Applicant stated that the period July 2019 to June 2020 has been characterised by unprecedented upheaval in the global economy as a result of the COVID-19 pandemic and government interventions in response thereto. The Applicant stated that this has resulted in production and logistics difficulties in both export and import markets, including reduced production shifts and global freight capacity and logistic difficulties causing significant backlogs in and around ports in importing countries, all of which has contributed to reduced global trade flows. The Applicant stated that imports of the subject product from Poland were also banned from February 2020, following an outbreak of highly pathogenic avian influenza. The Applicant stated that this led to a reduction in import volumes of the subject product during FY2020 (July 2019 to June 2020), This, however, is expected to reverse as the pandemic abates, the global economy improves, trade normalizes, the outbreak of highly pathogenic avian influenza ends and the import ban is lifted. The Applicant stated that in addition, the termination of the safeguard duties on imports of the subject product from the European Union in March 2022 will lead to an increase in the dumped imports from the subject countries. The Applicant stated that accordingly, no or very little weight can be attached to the FY2020 (July 2019 to June 2020) period in regard to some of the injury indicators, including sales volume and market share. The Applicant stated that

the most important periods for these indicators and the determination of injury are the periods when there were no extraordinary or unusual circumstances, namely, the periods FY2018 (July 2017 to June 2018) and FY2019 (July 2018 to June 2020) as well as a consideration of threat. The Applicant stated that there is nothing in this regard that prevents an authority from doing this. The Applicant stated that in fact, the panel in *China - Anti-Dumping Countervailing Duty Measures on Broiler Products from the United States, Recourse to Article 21.5 of the DSU by the United States ("China – Broiler Products (Article 21.5)")* held that: "...nothing in Articles 3.1, 3.4, 15.1, or 15.4 prevents an investigating authority from "focusing" on a part of the POI, as long as it does not ignore relevant data and arguments, and its resulting determination is one that an objective and unbiased investigating authority could reach based on the evidence and arguments before it and the explanations given." Further, the Panel in *Argentina – Definitive Anti-Dumping Duties on Poultry from Brazil ("Argentina – Poultry Anti-Dumping Duties")* held that: "In our view, there is a prima facie case that an investigating authority fails to conduct an "objective" examination if it examines different injury factors using different periods. Such a prima facie case may be rebutted if the investigating authority demonstrates that the use of different periods is justifiable on the basis of objective grounds (because, for example, data for more recent periods was not available for certain injury factors)." The Applicant submits that there are objective grounds (namely the COVID-19 and highly pathogenic avian influenza outbreaks) that justify the Commission focusing on FY2018 (July 2017 to June 2018) and FY2019 (July 2018 to June 2019) in its evaluation of material injury and causation in the present investigation. The Applicant stated that furthermore, despite this upheaval, most of the injury factors were still present during the period of investigation for injury.

The Applicant stated that it has shown that during the period of investigation for injury 9 of the 15 injury indicators were present. The Applicant stated that this is a clear indication that the SACU industry was suffering material injury during the period of investigation for injury and the Commission correctly found after an objective evaluation of all listed factors that there was prima facie proof

that the domestic industry was suffering material injury caused by the dumping of the subject product. The Applicant stated that an investigating authority is not required to find that all the factors are present. The Applicant stated that it is sufficient in terms of the ADR "in determining material injury to the SACU industry the Commission shall consider whether there has been a significant depression and/or suppression of the SACU industry's prices ... [and] shall further consider whether there have been significant changes in the domestic performance of the SACU industry in respect of ... potential injury factors". The Applicant stated that these include the list of 15 factors. The Applicant stated that the WTO Anti-Dumping Agreement specifically provides that, the "list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance". The Applicant stated that in determining whether the SACU domestic industry has suffered material injury, the Applicant notes that the Panel in *Korea – Anti Dumping Duties on Imports of Certain Paper from Indonesia ("Korea – Certain Paper")* held that: "Finally, we note that the last sentence of Article 3.2 mentions that no one or several of these three injury factors can necessarily give decisive guidance. That is, even if the investigating authority finds certain positive trends with respect to some of these factors, it can nevertheless reach the conclusion that there is injury, provided that that decision is premised on positive evidence and reflects an objective examination of the evidence as required by Article 3.1 of the Agreement." The Applicant stated that additionally, the investigation was not initiated solely on the basis of material injury, but also on the basis of threatened material injury to the SACU industry.

Commission's consideration

The Commission emphasized that the subject product of this investigation is "Frozen Bone-In portions", classifiable within 7 separate tariff subheadings, each providing for a different cut of the subject product" as stated in the initiation notice.

The Commission is of the view that although the different cuts are derived from a broiler chicken/bird and the production process is the same, the costs

allocated for each portion of the bird and the sales price thereof, differ for each portion. Furthermore, these portions have different weights and are exported at different prices. Where more than one product model (in this investigation “cut”) forms part of an investigation, it is the Commission’s practice to calculate a separate margin for each model for a particular exporter and then to calculate a weighted average dumping margin for the exporter concerned, for purposes of calculating a dumping duty.

The Commission is also of the view that although the Applicant submitted retail prices for online sales that ABPA claims is not representative of the sales in Brazil, it should be noted that the Applicant submitted the best information available to it at the time of initiation. Furthermore, it is the practice of the Commission to accept and use the best information available for initiation purposes.

The Commission is therefore of the view that the onus thus lies with exporters of the subject product in Brazil to submit information that provides an accurate picture of its domestic selling price, which, if properly substantiated, will then be used to determine the normal value.

With regard to material injury, the Commission is of the view that injury is not determined on the basis of the Applicant having experienced injury with regard to all injury factors.

With regard to the comments regarding the decline in imports from Brazil, the Commission decided on initiation of this investigation, to do a cumulative assessment of the injury caused by imports from all countries under investigation. Therefore, the Commission will not consider the trend of imports by individual countries, but rather what the trend of imports from all subject countries, when cumulated, will reflect.

2.5 Comments by the Embassy of the Federative Republic of Brazil (“the Government of Brazil”)

The Government of Brazil stated that based on the data reported in the application, retail selling prices were adjusted only in terms of markup. It further stated that both freight and indirect taxes were not considered in the determination of the normal value, which is an unfair comparison between the export price and the normal value, since in Brazil indirect taxes are not collected on exports. The Government of Brazil refers to the explanation by the Applicant, that: i) the data concerning the normal value was based on information gathered from supermarket websites; and ii) the Applicant used the information available on the website Avisite, which allegedly lists prices at the ex-factory level, for both products, in order to determine the markup. According to the Government of Brazil, Avisite lists prices of live chickens sold by farmers and retailed prices of chilled slaughtered chicken. The Government of Brazil concluded that the normal value was not adjusted for taxation, freight and profits related to the industrialization process of frozen bone-in portions of fowls.

With regard to the cost of freight, the Government of Brazil requested that the Commission must take into consideration that the prices published on Avisite refer to the prices in the state of São Paulo, while poultry producers/exporters are located in the Southern Region of Brazil. The distance between the poultry producers (located in the Southern region) and the largest consumer market in the country (Sao Paulo, in Southeastern Brazil) is greater than the distance between the same companies and the port of shipment (located in Itajai, also in the South). With respect to taxation, which was not considered for determining the normal value in a comparable basis to the export price, the Government of Brazil noted that PIS and COFINS are indirect taxes levied on consumption. Legal entities that determine the income tax of legal entities (IRPJ) based on real profit and agricultural/livestock/poultry production cooperatives are subject to the assessment of PIS and COFINS under the non-cumulative regime. As a general rule, that system operates and produces the same economic effects of a value added tax (VAT), because it taxes the

value added along the production chain.

The Government of Brazil indicated that the financial data related to the investigated product indicate that no material injury or threat of material injury occurred during the period of investigation. Without material injury or threat thereof, the claim lacks one of the essential requirements for the application of antidumping measures. According to the Government of Brazil, the Applicant admits that prices have actually gone up in the period assessed. The upward trajectory of the price curve is, in the view of the Government of Brazil, evidence that imports have not pressured prices significantly, in spite of other factors affecting price-formation, such as the decrease in demand from restauration and hospitality sectors due to the impacts of the pandemic, in the second quarter of 2020.

The Government of Brazil stated that it does not appear that there is a causal link between the imports of the like product from Brazil and the alleged injury suffered by the domestic industry. It argues that the domestic industry shows significant positive performance indicators throughout the POI. It submits that if the Commission considers that there are relevant negative indicators, they are mostly associated with other independent conjectural factors, not related to the imports from Brazil. The Government of Brazil stated that the investigated imports from Brazil have recently suffered a significant increase in the tariff level, which was raised from 37% to 62% as of March 2020. It indicated that it is not yet possible to fully assess the effects of the new level of protection, but it is certainly affecting the volume and the prices of Brazilian exports into the country to the benefit of the domestic industry of the like product.

The Government of Brazil stated that if any injury is being suffered by the domestic industry, there is no causal link between that and the Brazilian exports in terms of Articles 3.2 and 3.5 of the ADA. The Government of Brazil concluded that it respectfully requests the immediate termination of the investigation for lack of evidence of the basic elements for a dumping

investigation. The Government of Brazil further requests that a careful non-attribution analysis is conducted, and that the calculation of any occasional anti-dumping duty takes into consideration the current market condition under the new increased tariff.”

Commission’s consideration

The Commission noted that the initiation notice states that the Applicant submitted sufficient evidence and established a prima facie case to enable the Commission to arrive at a reasonable conclusion that an investigation should be initiated on the basis of dumping, material injury, a threat of material injury and causality. The information provided by the Applicant was deemed sufficient by the Commission to initiate the investigation. However, since exporters responded to the initiation of the investigation, the information submitted by the exporters was considered by the Commission for purposes of making a preliminary determination.

2.6 Comments by The Commercial Office of the Embassy of the Kingdom of Spain in South Africa (“Government of Spain”)

The Government of Spain stated that in 2015 South Africa imposed anti-dumping duties, which prevented a large majority of German, UK and Dutch Companies from exporting their products to South Africa. In 2018 South Africa imposed a safeguard duty affecting all EU member states, which currently represents a 25% ad valorem duty. Although European companies have been able to withstand the tariff increases and maintain their long standing relationship with SACU countries, an additional duty could drive some Spanish SMEs out of the market. Imposition of additional measures could impede market competition.

The Government of Spain stated that there is no significant increase in imports as dumped imports fell by 33.79% during the POI, total import volumes decreased by 22% during the same period and the market share of dumped imports grew slightly in in 2019 but dropped by almost 11 percentage points in 2020. It is evident that there is no significant increase in imports and for that

reason and the above-mentioned reasons the Government of Spain requests that the investigation be terminated.

The Government of Spain also stated that the main and economic financial indicators do not show an extremely harmful period of investigation situation. The SACU industry maintain their sales, which rose slightly, as well as production, market share in the 2020 POI and production capacity. Only profitability and stocks showed signs of a decrease. It should be noted that these indicators showing a worse performance decreased while prices increased. This shows that there is no correlation between the situation of the domestic industry and imports. For this reason, we ask the Commission for termination of the investigation without the application of any additional measures. The Government of Spain recalls the need to analyze the impact of all other factors which could be causing any harm to the industry and being attributed to imports. It was stated that it cannot be ruled out that the industry's problems are due to other factors such as inefficiency, lack of competitiveness and competition with other Non-Participating Producers or with imports from other regions.

The Government of Spain concluded that there are several trade defense measures in place against some European imports indicates that there is a certain lack of competitiveness in the domestic industry.

2.7 The Applicant's response to the Government of Spain

The Applicant stated that the ADA does not include a minimum requirement that the volume of dumped imports increase during the period of investigation. The Applicant referred to Article 3.2 of the ADA and stated that the investigating authority is not required to make a definitive determination regarding the volume of the dumped imports as Article 3.2 itself notes that "No one or several of these factors can necessarily give decisive guidance", meaning that even if there has not been a significant increase in imports, this does not exclude a finding of injury. The Applicant stated that it is also important to note that the investigation was not initiated solely on the basis of

material injury, but also on the basis of a threat of material injury to the SACU industry. The Applicant stated that the absence of a historic increase in imports does not preclude a finding that these imports pose a threat of material injury to the SACU industry. The Applicant also noted that the reduction in dumped imports during FY2020 was a result of an unprecedented upheaval in the global economy as a result of the COVID-19 pandemic and that this upheaval resulted in production and logistics difficulties in export markets, including reduced production shifts and global freight capacity and logistic difficulties causing significant backlogs in and around ports in importing countries, all of which has contributed to reduced global trade flows. The Applicant stated that this is expected to reverse as the pandemic abates and the global economy returns to pre-pandemic levels and practices. The Applicant also noted that there is no indication in the text of Article 3.2 that the analyses of volume and prices must be performed on a country-by-country basis where an investigation involves imports from several countries; and this may be done on a cumulative basis, as opposed to an individual country basis, when dumped imports originate from more than one country and that Article 3.3 of the ADA specifically provides for cumulation. The Applicant stated that given that the SACU industry faces the impact of the dumped imports as a whole, the Applicant submits that the effects of imports will not be adequately taken into account in a country specific analysis and that the Commission consider the injurious effects of dumped imports from all countries and not from one country in particular.

The Applicant stated that import volumes are only one of the considerations in determining causation and that the effect of dumped imports on prices is also an important determinant. The Applicant stated that a key consideration is price undercutting and dumped imports (from all countries) undercut the Applicant in all periods under consideration and caused injury in the period of investigation for injury, continues to cause and/or threatens to cause material injury. The Applicant also experienced price depression, price depression, price disadvantage and significantly decreased profitability (both gross and net) and this is expected to continue and worsen if anti-dumping duties are not

imposed. The significant dumping margins calculated by the Applicant also demonstrates causation. The Applicant stated that most of injury factors were present during the period of investigation for injury.

The Applicant stated that the allegation that the material injury suffered by the Applicant is due to other factors, including inefficiency and lack of competitiveness and more specifically that the existence of anti-dumping and safeguard measures implies that there is a lack of competitiveness in the SACU industry, is incorrect. The Applicant stated that these measures, especially the anti-dumping measures, are necessitated by the unfair trade practices of European and other exporters and are not a reflection of the performance of the SACU industry. The Applicant stated that the Bureau for Food and Agricultural Policy confirmed in a March 2019 report that SACU Broiler producers are globally competitive and that the total cost of producing a broiler in South Africa was lower than all European countries included in the study, including Denmark, Poland and Spain.

With regard to the statement of the Government of Spain that there are currently no indications of increased production capacity in Spain and that increased domestic consumption of chicken products in Spain and the EU will lead to reduced exports of the subject product to SACU, the Applicant stated the following:

“Even if production capacity in Spain is not expected to increase further, chicken meat production in the EU consistently exceeds consumption. This has continued in 2020 and 2021, with EU production now 13% higher than consumption. This shows that there is a clear oversupply of chicken meat in the EU and the excess production, particularly of undesired surplus dark meat portions which is exported to markets such as South Africa, is causing and threatens to cause material injury to the SACU industry. EU producers are also able to discount their exported Bone-in Portions as they get a better price in domestic markets for more expensive breast cuts and white meat. Given that there is little to no market in the EU for the subject product, increased domestic

consumption of breast cuts and white meat will therefore lead to further exports of even lower priced dumped imports of the subject product. This is particularly true for Spain, where exports of the Subject Product are expected to increase further, with a reported focus by the Spanish poultry industry on expansion of exports outside the EU. The termination of the safeguard duty currently applicable to imports of the subject product from the European Union 12 March 2022, will also lead to increased price undercutting, which will lead to further demand for the dumped imports.”

The Applicant submits that there is a clearly foreseen and imminent change in circumstances from that which existed in FY2019 (July 2018 to June 2019) and FY2020 (July 2019 to June 2020), which will create a situation in which the dumping will cause more material injury to the SACU domestic industry than that which existed during the period of investigation for injury.

Commission’s consideration

The Commission is of the view that although it could be argued that other factors (increase in feed, restaurant closures during the lockdown etc.) contributed to the injury the Applicant experienced, in the two periods prior to the Covid-19 pandemic, imports from the EU countries showed an increase with Spain and Poland entering the market. The period of injury ending June 2020 does not paint an accurate picture of the level of imports in the ordinary course of trade.

2.8 Comments by the European Commission Directorate-General for Trade (“European Commission”)

The European Commission stated that it appears that there is a substantial difference between white and dark meat and thus the various cuts, following consumer preferences. The application itself confirms that there is preference for fresh and/or boneless products (in particular fresh breast meat) in the EU. SACU domestic demand equally seems to prefer imported breast meat, the cut whose domestic consumption actually decreased, which would confirm different qualitative characteristics of white as opposed to dark meat.

The European Commission stated that it is recalled that the product concerned in an investigation is defined according its basic physical, chemical characteristics and end-uses. The product concerned thus defined may cover one or several HS codes, or one HS code may contain the product concerned and other products. Thus, a product concerned may cover several different types of products, as long as they share the same basic physical, chemical characteristics and end uses. In order to ensure a fair comparison between normal value and export price, any differences between the product types that have an impact on price need to be taken into account in the calculation. This means that appropriate adjustments need to be made to the normal value and/or export price in order to reflect these differences.

The European Commission also stated in the present case, dumped imports decreased significantly, both, in absolute and relative terms. The volume of dumped imports decreased by 34% over the POI, the import share decreased by close to 10% from 62% to 53%. However, since dumped imports decreased by 34%, other imports by 2% and total imports by 22%, in a situation of increasing demand, the market share of dumped imports must also have decreased to the benefit of the Applicant, who actually increased its market share by 4%, while other, Non-Participating Producers increased their market share by 14%.

With regards to dumping, the European Commission stated that the dumping margin calculation disregards any qualitative differences between white and dark meat. The domestic markets in Denmark, Ireland, Spain and Poland show a clear preference for fresh products. The Applicant confirms that practically no demand for frozen bone in portions exists in the domestic market of the four EU countries whereas there is high demand for fresh, boneless portions (breast meat mostly), and high margins are achieved with that product. The cost allocation methodology proposed by the Applicant for the constructed normal value (CNV) is inadequate. The normal value is constructed according to the weighted cost methodology, which allocates the cost of producing a

broiler to the cuts of the broiler in accordance with the weight of each cut. However, due to the differences in consumer preferences, white meat, in particular breasts, achieve a much higher selling price than dark meat. Thus, in order to reflect the economic reality of the EU domestic market, for constructing the normal value, the cost allocation should be based on the relative sales value.

The European Commission stated that the certain elements that may have had an impact on the situation of the domestic industry need to be analysed, such as the increase in wages that led to an increase in costs and would explain any decline in profitability.

The European Commission stated that an important factor might be a demand for the imported product because of higher quality; especially falling demand for domestic chicken breast has shown that imported chicken breast might be particularly more interesting for the domestic population. In any event, as explained above, the domestic industry does not seem to be able to satisfy the growing domestic demand.

The European Commission concluded that the allegedly dumped imports decreased significantly by 34% over the period analysed, which represents a major flaw in this investigation;

- the domestic industry cannot be suffering material injury caused by allegedly dumped imports, as they decreased;
- any difficulties the domestic industry is experiencing, must be caused by other factors such as increased costs, inability to satisfy domestic demand, domestic competition, and other imports with much lower prices;
- Finally, the dumping calculations in the application are inadequate as they do not allow for a fair comparison between normal value and export price and do not adequately reflect any differences between white and dark meat, different cuts, different quality or level of trade, etc.

Commission's consideration

Although it could be argued that other factors (increase in feed, restaurant closures during the lockdown etc.) contributed to the injury the Applicant experienced, the Commission took into account that in the two periods prior to the Covid-19 pandemic, imports from the EU countries showed an increase with Spain and Poland entering the market.

The Commission made a decision that prima facie information was submitted to indicate that dumping of the subject product originating in or imported from Brazil, Denmark, Ireland, Poland and Spain, is taking place.

For purposes of the preliminary determination, the dumping margins were determined by comparing sales in the domestic market with sales to SACU for each product separately; and where the sales were not in the ordinary course of trade, a constructed cost method was used with a reasonable profit allocated for purposes of calculating the normal value.

The Commission is of the view that the comments by the European Commission regarding the preference of white meat and the higher selling prices of white meat in the EU is a clear indication that the EU must find a market for the brown meat that is not sold in the EU and that dumping of the brown meat in the SACU market is highly possible.

2.9 Comments by Merlog

Merlog stated that it had been reported that there has been a massive materia fraud (138 Million) committed at Daybreak in which the CEO and CFO are implicated. It stated that it believes that it is incumbent upon the Commission to get full disclosure of this reported fraud, to determine the nature and extent of the fraud and the impact which it may have on the application submitted by SAPA. The financial effects and impact on the financial statements and information submitted in the application must be determined. If any of the implicated parties to the reported fraud had any participation in the preparation of the application and submissions the veracity thereof has to be

proven, regardless of any verification performed.

Merlog stated that in their opinion, if these allegations have any foundation, the entire submission by Daybreak must be removed and adjustments made to the “consolidated application” position excluding such information. It is reported that these irregularities took place from September 2019. This does not necessarily preclude any other irregularities, which may have taken place prior or in addition to those reported.

2.10 Comments by XA International Trade Advisors (“XA”) on behalf of AMIE and other parties

XA stated that the Applicant indicated that the ‘alleged’ R138 million fraud only affected distribution costs and therefore does not affect the injury information. XA stated that it strongly disagrees with this statement. It indicated that distribution costs form part of a company’s overall costs to produce and sell the product. It therefore has a direct impact on the only 3 injury indicators actually showing injury:

- price suppression
- net profit
- return on investment

XA stated that if Daybreak’s information will remain as part of the consolidated application, the ‘alleged’ R138 million fraud should be added back to Daybreak's profit and that of the industry as a whole, as this is loss of profit caused by factors other than the alleged dumping. The new Daybreak and industry consolidated figures for these three injury factors should be made available and XA should be provided with a reasonable opportunity to comment. In addition, the ‘alleged’ R138 million fraud should be specifically considered in the causal link analysis as another factor causing injury to the industry. XA stated that it is not sufficient to state that Daybreak only accounts for 5% of total SACU production. Daybreak is part of the application and the impact of the ‘alleged fraud’ can only be determined once the information has been updated. XA concluded that even if Daybreak only accounts for 5% of

the production volume, fraud is a theft of net profit, which means the full value of the fraud must be deducted from the net profit of the industry and it is not clear at all that this will only be 5%.

2.11 The Applicant's response to Merlog and XA with regard to the alleged fraud at Daybreak

The Applicant stated that the alleged R138 million fraud relates to distribution costs of Daybreak which are not part of its cost and price build-up and therefore has an immaterial impact on the information provided by it. In addition, any change to this amount will also have no material impact on the information provided by Daybreak. The Applicant stated that these allegations are disputed and have not been verified by the auditors. The Applicant further stated that the credentials of Schaeffer-Schmidt which produced the forensic report have also been questioned and pointed out that Fin24 on 19 May reported that "parts of Schaeffer-Schmidt's website, which is now offline, were copied from US-based FTI Consulting which says it has never heard of it."

The Applicant stated that the removal of Daybreak's information from the consolidated information will have no impact on industry standing as Daybreak will still support the application. The Applicant further stated that even if Daybreak did not support the application, there would still not be any change in industry standing as the application will still be supported by more than 25% of the SACU producers by domestic production volume and of those, SACU producers that have had expressed an opinion on the application, more than 50% of domestic production volume will support the application. The Applicant stated that it should be noted that Daybreak only accounts for less than 5% of total SACU production.

The Applicant stated that alleged fraud at Daybreak relates to distribution costs of Daybreak, which do not form part of its cost and price build-up. As all costs, prices and profits are presented at the ex-factory level, distribution costs (which are incurred after the ex-factory level) do not have any impact on the financial data submitted, including price suppression, net profit or return on

investment. The Applicant stated that as such, the alleged fraud would have no impact on the information provided by SAPA. The Applicant further stated that it also appears that the alleged fraud relates to the period 21 January 2020 to 10 February 2021. The Applicant stated that as the investigation period for injury for this investigation is July 2017 to June 2021, a significant portion of the alleged fraud falls outside of the investigation period for injury and the vast majority of the investigation period for injury would be unaffected if it were taken into account (which it is submitted would be incorrect).

2.12 Comments by AMIE

AMIE stated that eight producers submitted information in support of the application. Although the Applicant indicates that these eight producers are representative of the industry and can be regarded as a major proportion of the industry as a whole, there is nothing on record to confirm this. In the present investigation it appears that the cooperating producers represent only around 50% of the total industry, which carries with it a serious risk of distortion if a proper qualitative assessment is not undertaken. This is even more so where the available information contained in the application shows that other producers performed better than those who did submit information.

AMIE further stated that it appears as though all seven tariff subheadings under 0207.14.9 are under investigation. This also appears to be in line with the Applicant's application. However, on the next page the notice indicates specific tariff subheadings for each country. AMIE stated that the Commission has indicated, in response to a letter from XA requesting clarification of the scope of the investigation, that these are the tariff subheadings under investigation and that "the Commission made a determination that the products should be assessed separately by tariff subheading for purposes of the determination of dumping."

AMIE also stated that for products to be "assessed separately by tariff subheading" presupposes that the information is separately available for each injury factor in respect of each tariff subheading. AMIE stated that it has only

received separate injury information by tariff subheading in respect of the volumes of the alleged dumping, sales volumes and market share and that no information is available by tariff subheading for: price depression, price suppression and price undercutting, output, profit, capacity utilisation, productivity, employment, wages, return on investment, cash flow, growth, etc. AMIE therefore stated that the Commission should terminate the investigation and require the industry to submit specific injury information on each of the injury factors in respect of each tariff subheading.

AMIE stated that there has been no total increase in the alleged dumped imports. On the contrary, total bone-in imports (i.e. under all seven-tariff subheadings combined) decreased.

AMIE further stated that there are other factors that affected prices in South Africa. Both Astral and RCL indicate in their financial statements that COVID-19 had a significant and direct negative impact on their operations as they were faced with massive excess stock when the restaurants were closed under COVID-19 lockdown, and that they were forced to sell at significantly reduced prices to get rid of this excess stock. For instance, Astral indicated that “Non-feed expenses in the division increased year-on-year, negatively impacted by the direct cost of Covid-19 (R39 million), as well as water and electricity supply interruptions during the year under review.

AMIE stated that the Applicant addresses the alleged threat of material injury in its application. However, some of the information contained in these sections is clearly incorrect or misleading, while other information has been overtaken by more recent events which completely negate any threat of material injury.

AMIE stated that this submission shows that the only injury the domestic industry is conceivably experiencing relates to price suppression, decreased profit, decreased return on investment, and increased inventories. However, the cooperating producers themselves have blamed this on the effects of COVID-19, increased feed costs, increased costs to ensure reliable access to

water and electricity, and the decreased value of discretionary purchase power in South Africa, along with increased wages in the industry. All of the other 15 injury factors point to no injury at all, starting with a very significant decrease in alleged dumped import volumes, both in absolute and relative terms.

AMIE stated that the Applicant has also not set out positive evidence to show any imminent threat of material injury, and what information it has submitted in this regard, has been superseded by the outbreak of avian influenza in various European countries, including three of those currently under investigation, which means that no Bone-In Portions can be imported from these countries in the foreseeable future. This confirms that there is no "imminent" threat of material injury.

2.13 The Applicant's response to comments by AMIE

SAPA contends that it has complied with the confidentiality requirements of the ITA Act, the ADR and the Anti-Dumping Agreement.

The Applicant has supplied information for producers accounting for almost 50% of domestic production. The Applicant stated that given that the Non-Participating Producers are made up of numerous smaller scale producers, it is submitted that obtaining the detailed information required from each of these producers would place an undue administrative burden on the producers, the industry and the Commission. The Applicant submits that the information provided is for a major portion of the SACU industry and that there is no obligation on the Commission to obtain further information.

The Applicant stated that in terms of the notice of initiation: "[t]he product allegedly being dumped is frozen bone-in portions of the species *Gallus Domesticus* classifiable within 7 separate tariff subheadings under 0207.14.9 each providing for a different cut of the subject product originating in or imported from Brazil, Denmark, Ireland, Poland and Spain". The Applicant stated that the subject product is frozen bone-in portions classifiable under

0207.14.9 and that the cuts of the products do not constitute separate products but a single product, where the cuts are models or types of product. The Applicant stated that the reasons for this include: the raw material and other inputs used in producing the cuts are the same; the production process is the same; the physical characteristics and appearance of the cuts are materially the same; and the end use of the cuts (human consumption) is the same and the cuts are substitutable.

The Applicant stated that the imported product (frozen bone-in portions) is a like product to the product produced by the SACU industry, competes directly with the product produced by the SACU industry and the prices of the imported product and the product produced by the SACU industry are comparable. The Applicant stated that the injury information was provided for the subject product and SAPA proved that the imported product namely frozen Bone-In portions classifiable under 0207.14.9 was dumped and causing material injury and a threat of material injury to the SACU industry.

Commission's consideration

The Commission is of the view that the Applicant provided information for a major portion of the SACU industry and that there is no obligation on the Commission to obtain further information. Further, the Applicant submitted a list of parties that support its Application and at least 40 letters of support were attached to the Application. The Commission took note that the domestic industry consists of producers that are located in the rural areas that do not have access to the internet and the infrastructure to readily submit a letter of support. The Commission agreed with the Applicant that obtaining the detailed information required from each of these producers would be an undue administrative burden on the Applicant.

The Commission found that the application was brought on frozen bone-in chicken, classifiable under seven tariff subheadings under 0207.14.9, and as such, contains information for frozen bone-in portions. However, because of the tariff structure of the portions, the Commission made a decision to conduct

the negligibility test separately for each of the tariff subheadings at the 8-digit level and found that imports of the subject product imported under some tariff subheadings were below the 3% threshold:

Tariff subheading	Product	Countries below 3% level
0207.14.93	Leg quarters	Spain
0207.14.96	Breast	No imports from Denmark, Ireland, Poland and Spain
0207.14.97	Thighs	Brazil
0207.14.98	Drumsticks	Brazil
0207.14.99	Other	Ireland and Poland

The Commission found that the volume of imports of the different cuts of the subject product imported under the other tariff subheadings, from all countries subject to this investigation, are above the negligible level, as provided for in the ADR.

The Commission’s analysis of material injury is conducted on the subject product of this investigation as per the initiation notice, being frozen bone-in chicken and not separately for each cut of the subject product.

2.14 Comments by The Animal Feed Manufacturers Association (“AFMA”)

AFMA stated that it fully supports the investigation into the alleged dumping of frozen bone-in chicken originating from Brazil, Denmark, Ireland, Poland and Spain. This support is based on the principal of injury caused as a result of dumping. Dumping of the subject product if proven will cause material injury to the SAPA and the local upstream supporting industries, in this case the South African Feed Industry and the South African Grain and Oilseed producers.

AFMA further stated that if chicken imports are quantified in terms of the equivalent of the South African broiler feed being replaced per year, it amounts to, on average, 1.3 million tons of broiler feed. This feed being replaced equates to 13 medium-sized feed mills that could have provided permanent employment to 2000 employees, affecting 14000 individuals in rural communities directly. Furthermore, imports replace 1.3million tons of South African produced Grains and oilseeds used in feed production, 700000 tons of

Maize and 500000 tons of soybeans.

AFMA concluded that it strongly supports the announced investigation specifically against the backdrop of the rollout of the SA Poultry Sector Masterplan.

2.15 Comments by the South African Cereals and Trade Association (“SACOTA”)

SACOTA stated that it represents the suppliers of raw materials to the animal feed manufacturing industry and supplies feed to the South African Poultry Industry. It stated that it fully supports the investigation into the alleged dumping of frozen chicken portions originating from Brazil, Denmark, Ireland, Poland and Spain. This support is based on the fact that alleged dumped imports from Brazil, Denmark, Ireland, Poland, and Spain are causing consequential material injury to the SACU poultry producers. This has a direct impact and bearing on the South African Feed Manufacturers’ feed production due to it being the largest supplier of Poultry Feed to the South African and Southern African Poultry industries.

SACOTA further stated that unfair trade practices would not only have an impact on feed production but will also have a severe impact on the total food value chain, both upstream and down-stream, as well as a domino effect on employment in the rural areas, where most of the production and operational activities take place. It considers that these unfair trade practices, not only replace locally produced poultry and poultry products, but also replace locally produced grains and oilseeds grown by South African producers, causing a knock-on effect of loss of income suffered throughout the South African grains and oilseeds value chain. Furthermore, broiler feed does not only consist of maize alone. Other raw materials at much higher prices include soya oilcake, full-fat soya, medicaments, premixes, and vitamins, with their own unique linkages, of which the majority is manufactured or procured locally.

2.16 Comments by Copacol

Copacol stated that there was no basis for the investigation and that the information in the application clearly indicates that there is neither material injury, nor a threat of material injury. Additionally, even if it could be found that the industry was experiencing injury, there would be no causal link between the alleged dumping and such injury. Copacol stated that is of the opinion that the current investigation is conducted neither on positive evidence of injury, nor in an objective manner, in violation of Article 3.1 of the Anti-Dumping Agreement, and also in violation of South Africa's Anti-Dumping Regulations.

Domestic industry

Copacol stated that only a limited number of producers form part of the "applicant" for purposes of this investigation and that SAPA alleged that these companies represented more than 50 per cent of the total production of the product in SACU and therefore had industry standing. Copacol however indicated that there is no record evidence to indicate the actual size of the total domestic industry. Copacol stated that the unsubstantiated information regarding the volume of production and sales of other producers was never verified. Copacol stated that this is in direct contradiction to the Appellate Body's findings in EC – Fasteners (China). Copacol argued that the Commission failed to undertake both a quantitative and qualitative analysis to determine whether the applicants not only represented a major proportion of the domestic industry, but also whether its information reflected the performance of the industry as a whole. In this regard, it directly went against the panel's findings in Russia – Commercial Vehicles. Accordingly, the Commission has not established, on the basis of positive evidence and through an objective examination, that the applicant represents a major proportion of the domestic industry. The Appellate Body in EC – Fasteners (China) and the panel in China – Autos have found that a failure to properly define the domestic industry as indicated below would automatically mean that the injury analysis is flawed. Accordingly, before proceeding any further, the Commission must specifically provide all other SACU producers with the opportunity to submit

injury information and at least require them to submit information as regards their production and sales volumes over the course of the investigation period.

Injury

With regard to injury, Copacol stated that the Appellate Body of the WTO has held that Article 3.1 of the Anti-Dumping Agreement “is an overarching provision that sets forth a Member’s fundamental, substantive obligation” with respect to an injury determination, and “informs the more detailed obligations in succeeding paragraphs”. The Appellate Body has also held that the term “positive evidence” relates to the quality of the evidence that an investigating authority may rely upon in making a determination, and requires the evidence to be affirmative, objective, verifiable, and credible, and that relates to “evidence that is relevant and pertinent with respect to the issue being decided, and that has the characteristics of being inherently reliable and trustworthy”. Likewise, the Appellate Body has found that an injury analysis must be “based on data which provides an accurate and unbiased picture of what it is that one is examining” and be conducted “without favouring the interests of any interested party, or group of interested parties, in the investigation” and that “investigating authorities are not entitled to conduct their investigation in such a way that it becomes more likely that, as a result of the fact-finding or evaluation process, they will determine that the domestic industry is injured.” The Appellate Body further held that these requirements in Article 3.1 of the Agreement are “overarching” obligations that inform the evaluations under Articles 3.2, 3.4 and 3.5.

Copacol stated that in any anti-dumping investigation, an authority must consider 19 injury factors in three distinct categories. The categories are as follows:

- Whether there has been a significant increase in dumped imports, whether in absolute terms, or relative to domestic production or consumption;
- Whether there is price injury in the form of price undercutting, price suppression or price depression; and

- The consequent impact of the dumped imports on domestic producers of such products.

Copacol stated as regards the first category, the evidence on record is clear: imports from the countries under investigation decreased by 38% in absolute terms (and imports from Brazil decreased significantly more, by 67%), while the domestic industry's production and sales increased. There is thus no increase in imports, absolute or relative, let alone a significant increase. Copacol stated that as regards the second category, the Appellate Body stated that an investigating authority is required to consider whether dumped imports have "explanatory force" for the occurrence of significant depression or suppression of domestic prices and that where there is evidence on the investigating authority's record concerning elements other than dumped imports that may explain the significant suppression of domestic prices, the investigating authority must consider relevant evidence pertaining to such elements for purposes of understanding whether dumped imports indeed have a suppressive effect on domestic prices.

Copacol stated that the evidence clearly shows that there has been no price depression. Although the industry alleges that there is price undercutting, it has not provided a non-confidential summary of this in sufficient detail to allow it a reasonable understanding of the information submitted in confidence. This therefore violates both Article 6.5.1 of the ADA and the provisions of the ITA Act and the ADR. Accordingly, the Commission should disregard the information submitted in confidence. Copacol disputed that there is undercutting, as the landed cost of most imports are higher than the price of the bulk of the domestic industry's sales.

As regards price suppression, Copacol is of the view that there is no "explanatory force" by the alleged dumped imports for any price suppression and that this is evident since different producers experienced different conditions – some of them show price suppression and others not.

Copacol stated that the industry itself indicated that its raw material costs increased significantly over the investigation period and that it is common knowledge that feed costs represent upwards of 65 per cent of total production costs in the South African poultry industry. Copacol argued that if the impact of increasing feed costs is removed, there would be no more price suppression, showing a clear lack of “explanatory force” between the alleged dumped imports and the price suppression. Copacol stated that the industry has faced significant increased electricity, water and wage costs, which adds further impetus to the lack of a relationship between the imports and the industry’s prices.

Copacol further stated that the industry has failed to submit price information separately for each product group and that the Commission is therefore not in a position to determine price suppression, price depression or price undercutting, as it is comparing different baskets of products, the contents of which varied over time, as is clear from the sales volume information the applicant provided.

Copacol further stated that the two companies that publish their financial statements both indicated the significant additional costs incurred as a result of COVID and for both companies (Astral and RCL), if the additional COVID costs and the expenses incurred to ensure reliable access to water/electricity are added back to their profits, it is clear that their profits would have increased despite the higher feed and other costs.

Copacol stated that as regards the third category, it is evident from the record evidence that there is no injury whatsoever. Of the 15 injury factors, only four show any injury, these being profit, return on investment, margin of dumping and inventories. Copacol further also referred to the public allegation of massive fraud at Daybreak.

Threat of injury

Copacol is of the view that there is no record evidence to support a finding of threat of material injury.

Causal link

Copacol stated that Astral, one of the major South African producers, specifically stated that the cause of the cost to price ratio pressure by the SACU producers towards the end of FY2020 was the reduction of demand combined with higher raw material costs driven by a weaker local currency, stating that “The lockdown severely disrupted the lives of all South Africans and together with it, the complete closing of the hospitality, restaurant and Quick Service Restaurant (QSR) sectors for an extended period of time. Poultry producers that supply these markets were found overnight with surplus chicken, and, as a result, had to channel this excess into various frozen categories. The resulting oversupply led to a stock build in the industry and later culminated in aggressive price cutting in the market to clear these stock levels. At the same time, substantially higher raw materials costs driven by a weaker local currency, weather concerns on the international grain markets, higher global coarse grain prices and increased demand from China led to higher feed prices in the second half of Astral’s financial year. Higher feed costs, which have a 65% contribution to the total live cost of producing a broiler, together with lower poultry selling prices resulted in a steep decline in poultry margins during the second half of the year under review.”

Copacol states that Astral then attributes the significant impact on the South African poultry market to a lockdown implemented from 26 March 2020, the month prior to the two worst months in terms of the cost-to-price ratio for the SACU producers according to the Application, the shutdown of Quick Service Restaurant Sectors and slower fresh sales, leading to an oversupply of chicken in the frozen categories, broiler feed price increases, non-feed expenses negatively impacted by the direct cost of COVID-19, and water and electricity supply interruptions during the year under review.

Copacol stated that the Commission has failed to consider the impact of increased feedstock on the industry, despite this information being in the public domain. Further, it stated that the application, and the initiation, completely fails to take into consideration the massive and increasing import volumes from the United States at prices that are significantly lower than from any other source. The United States became the highest exporter to SACU in FY2020. According to Customs import statistics, the US alone exported 38.4% of the total volume to SACU in FY2020, at the lowest average export price among significant exporters.

Copacol stated that the average export price from the US in FY 2020 was 18% lower than prices from Brazil, 27% lower than from Poland and Spain, 31.5% lower than from Ireland, and 33.8% lower than from Denmark. The low pricing behaviour from the US is consistently low for the majority of the different tariff classification codes at issue. Thus, any possible injury experienced by the industry could be directly linked to these imports, and not to the declining, higher-priced imports from the countries under investigation.

Copacol stated that this should be added to the significant import volumes from Argentina, which is also excluded from the investigation. Argentina's export volumes were higher than those of Denmark and Spain, and its prices were 7% lower than Brazil's, 24.8% lower than Denmark's, 22.2% lower than Ireland's, 17.1% lower than Poland's and Spain's.

Investigation procedures to date

Copacol stated that there have been several procedural inconsistencies to date.

Differential treatment of exporters and domestic producers.

Copacol stated that domestic producers only submitted costs and prices on the basis of overall frozen bone-in portions, but exporters are required to submit information separately for each product category, such as drumsticks, thighs and leg quarters. There is no justification for this differential treatment, and the

industry should have been required, right from the start, but certainly before a preliminary determination can be made, to submit information on the same basis as exporters.

Failure to conduct Articles 5.2 and 5.3/Regulation 25 analysis

Copacol stated that both Article 5.3 of the ADA and section 25 of the ADR require the Commission to satisfy itself of the “adequacy and accuracy of the information” contained in the application. The Appellate Body has ruled that there is a significant difference between Articles 5.2 and 5.3 of the Agreement and that mere sufficiency of information does not indicate merit. In this instance, however, not all questions were truthfully answered (for instance, the questions on whether there were other factors affecting domestic prices), and information in the applicant’s possession was simply not included in the application (the identity of all known exporters, including Copacol – it is reiterated that SAPA used some of Copacol’s information to establish the normal values for Brazil, which confirms that SAPA had information on Copacol, yet deliberately elected not to include this in the application).

Procedural failure – Article 6.1 and Regulation 28.5

Copacol stated that the Commission failed to notify all known interested parties of the initiation of the investigation.

Failure to provide parties with proper opportunity to respond – Article 6.1.1 and Regulation 29.4

Copacol stated that the initiation notice indicated a date which significantly preceded the date on which said notice was actually published in the Government Gazette. The Commission at the start insisted that parties not directly informed of the initiation, which included Copacol, had to submit within 40 days of the date indicated on the initiation notice, although this provided them with significantly less than the 40 days required under the ADR or the 37 days provided for in the Agreement, including footnote 15 thereof.

Lack of objective investigation – Article 3.1

Copacol stated that the Commission has required exporters to submit a detailed sales and contribution analysis by product, when the same was not required of the domestic industry, which only provided an analysis by total bone-in product and total company (for sales, gross profit and net profit). Exporters also had to submit information on costs and prices on a product-by-product basis, while this was not required of the domestic industry.

Undue burden on exporters

Copacol stated that the Commission required exporters to submit details of their worldwide sales of all like products, even those not exported to SACU, on a transaction-by-transaction basis, including adjustments, when it did not require the same information from the domestic industry. There is no basis for requesting export sales to third countries on a transaction-by-transaction basis (other than to unduly burden the exporter). To enable the Commission to reconcile total sales, all that is required would be an annual, or even monthly, summary of sales by product by country. In the event that the normal value has to be determined on the basis of exports to a third country, the information for the specific products and countries can then be easily required from the exporter in question, with a reasonable period of time to submit that information.

Confidential treatment of information

Copacol stated that the Commission has failed to provide, or require the applicant and domestic producers to provide, adequate non-confidential summaries of allegedly confidential information that provided sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence, and, inter alia, in some instances the Commission failed to provide or require the applicant and domestic producers to provide any non-confidential summary of allegedly confidential information without any indication that there were exceptional circumstances and without providing a statement of reasons as to why summarization was not possible. This applies especially to injury information, for instance on market share and growth. Copacol stated that it has previously indicated, that the industry has claimed

excessive confidentiality. The Regulations only provide for the confidentiality of “actual costs and selling prices”, “actual sales volumes”, “individual selling prices”, etc. It does not provide for confidentiality of the aggregated information of several parties, and the Dispute Settlement Body has specifically ruled that such information cannot be held to be confidential. It also places Copacol at a significant disadvantage, as the industry knows its own figures and the volume of imports, yet importers and exporters do not have access to the same information. Accordingly, this is a violation of both Article 6.5 (and its subparagraphs) of the Agreement, and of Article 6.2, first sentence. As a result, Copacol is still not in a position that allows it to comment meaningfully on many of the alleged injury factors and on causality – including on price effects as discussed above. In this regard, the finding of the panel in Ukraine – Passenger Cars is instructive: “it is not apparent to us how the disclosure of the import market share in the present dispute could reveal the market share of the domestic industry, since the domestic market in the present dispute comprises

- (i) the domestic industry as defined in the Notice of Imposition (composed of three producers, namely ZAZ CJSC, Eurocar CJSC, and a subsidiary of Bogdan Motors³¹⁰),
- (ii) domestic producers or production not forming part of the domestic industry as defined in the Notice of Imposition, and
- (iii) imports.

In such a situation, to derive the market share of the domestic industry that requested confidential treatment of its data, one would need to know both the import market share and the market share of the domestic producers (or domestic production) not forming part of the domestic industry as defined in the Notice of Imposition.”

Despite several producers not participating in the investigation, the Commission has treated the information of those non-cooperating parties as confidential. Those parties have not requested confidential treatment. Logically, if the information of one party was submitted by another party, such information is in the public domain (otherwise the party submitting the information would

not have been privy to that information), and no confidentiality can be claimed in respect of information in the public domain.

2.17 The Applicant's response to comments by Copacol

The Applicant notes that Copacol makes numerous references to decisions of WTO Panels or the WTO Appellate Body, but either fails to set out what the alleged finding of the Panel and/or Appellate Body was or to provide a reference for the quotes it claims come from panel and/or Appellate Body reports and no weight can be attached to them.

Ad Domestic Industry

The Applicant stated that it provided a full explanation in the Application for each instance where sales or production volumes are provided for the Non-Participating SACU Producers and supporting documents were provided in the Application. Copacol also notes that many poultry producers are not SAPA members. This does not have any impact on the information for the Non-Participating SACU Producers, since this information does not relate solely to SACU producers that are SAPA members. As set out in the Application, production and sales volumes for the Non-Participating SACU producers are based on the number of broilers slaughtered in South Africa, a conservative allowance of 10% for unknown producers and the slaughter weight and relative product volumes of the Applicant. The number of broilers slaughtered in South Africa is calculated and provided by Leading Edge Poultry Software CC, based on the number of day-old chicks placed, which is information provided to or estimated by Silverpath Consulting on a monthly basis for all known abattoirs and/or hatcheries in South Africa.

The Applicant notes that Copacol does not set out what the alleged finding of the Appellate Body was in *EC – Fasteners (China)*, nor does it explain why it believes that the conduct of the Commission violates this alleged finding. On this basis alone, no weight can be attached to Copacol's allegation. Furthermore, the Applicant submits that nothing in the Appellate Body's report obliges the Commission to specifically invite other SACU producers to submit

injury information. Any SACU producer that wished to provide injury information could have done so when the investigation was initiated, and no producer has chosen to do so.

The Applicant stated that this is specifically supported by the report of the Panel in *China – Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States* ("**China – Broiler Products**"), where the panel stated that:

"The texts of Articles 4.1 and 16.1 do not contain explicit instructions on how investigating authorities are to determine whether the domestic industry will be comprised of the domestic producers as a whole or those whose output represents a major proportion of total domestic production." and

"For the foregoing reasons, Articles 4.1 and 16.1 do not require the investigating authority at the outset to attempt to define the domestic industry as the domestic producers as a whole or to have to make efforts to identify all domestic producers before then defining the domestic industry as producers whose output represents a major proportion of total production." (own emphasis) and

"We recall our view above that in defining the domestic industry investigating authorities are not required to attempt to identify all domestic producers so long as they can establish the amount of total domestic production and assure themselves that they have information on producers whose collective output constitutes a major proportion of that production. It is the industry defined pursuant to Articles 4.1 and 16.1 that the investigating authority must assess in making its injury determination under Articles 3 and 15." (own emphasis)

The Applicant stated that similarly, in *European Communities – Anti Dumping Measure on Farmed Salmon from Norway* ("**EC - Salmon**"), the Panel found that "[t]here is certainly nothing in the AD Agreement that would necessitate obtaining information from each domestic producer in the industry on each element of an injury analysis."

Based on the above the Applicant submits that the Commission has properly defined the domestic industry, that there is no obligation on the Commission to solicit additional information from other SACU producers and that the information for the Participating Producers should be used by the Commission in determining material injury.

Ad Injury

The Applicant stated that it has shown that during the period of investigation for injury 9 of the 15 injury indicators were present and that this is a clear indication that the domestic industry was suffering material injury during the period of investigation for injury.

In summary the Applicant stated the following:

“Price depression (factors affecting domestic prices) - The Applicant experienced annual price depression in FY2019 (July 2018 to June 2019), and experienced monthly price depression in FY2020 (July 2019 to June 2020) in August 2019, November 2019, January 2020, March 2020, April 2020 and May 2020.

Price suppression (factors affecting domestic prices) - The Applicant experienced price suppression in FY2019 (July 2018 to June 2019) and FY2020 (July 2019 to June 2020) in the form of an increase in the ratio between production cost and price and total cost and price.

Decline in profits (profits) - The Applicant experienced injury in the form of significantly decreased profitability (both gross and net) in FY2019 (July 2018 to June 2019) and FY2020 (July 2019 to June 2020).

Decline in market share (market share) - The Applicant experienced injury in the form of declining market share by volume in FY2019 (July 2018 to June 2019) and FY2020 (July 2019 to June 2020).

Production per employee (productivity) - The Applicant experienced material injury in the form a decrease in Production per Production Employee in FY2019 (July 2018 to June 2019).

Return on net assets (return on investment) - The Applicant have experienced material injury in the form of a significant reduction in return on net assets related to the subject product in FY2019 (July 2018 to June 2019) and FY2020 (July 2019 to June 2020) as a result of a significant decrease in total net profits.

Unutilised production capacity (utilisation of capacity) - The Applicant has had significant unutilised production capacity for the subject product throughout the period under consideration and this declined further in FY2019 (July 2018 to June 2019).

Increase in inventory volume and value (inventories) - The Applicant experienced injury in the form of an increase in inventory in FY2019 (July 2018 to June 2019) and FY2020 (July 2019 to June 2020).

Market growth (growth) - Poultry products, including the subject product, are the most popular form of protein in the SACU countries and demand for the subject product has continued to grow throughout the period of investigation for injury. However, sales of the subject product have increased at a lower rate than the growth of the market in FY2019 (July 2018 to June 2019) and FY2020 (July 2019 to June 2020), resulting in a loss of market share.

Significant dumping margins (magnitude of the margin of dumping) – The Applicant has calculated significant margins of dumping for all of the Dumping Countries.

In determining whether the SACU domestic industry has suffered material injury, the Applicant notes that the panel in Korea – Anti Dumping Duties on Imports of Certain Paper from Indonesia ("**Korea – Certain Paper**") that:

"Finally, we note that the last sentence of Article 3.2 mentions that no one or several of these three injury factors can necessarily give decisive guidance. That is, even if the IA finds certain positive trends with respect to some of these factors, it can nevertheless reach the conclusion that there is injury, provided that that decision is premised on positive evidence and reflects an objective examination of the evidence as required by Article 3.1 of the Agreement." (own emphasis)

whilst the panel in *China - Anti-Dumping Measures on Imports of Cellulose Pulp from Canada* ("**China - Cellulose Pulp**") held that:

"The "evaluation" required under Article 3.4 suggests that an investigating authority must undertake an analysis and assessment of all relevant economic factors and indices. At the same time, there is no requirement that all relevant factors, or even most or a majority of them, reflect negative developments in order to point to an overall assessment of negative impact on the relevant domestic industry. The last sentence of Article 3.4 specifies that no one or several of the relevant factors can necessarily "give decisive guidance". Article 3.4 requires an overall evaluation of the information, in context, as well as an explanation of how the facts considered by an investigating authority support its assessment." (own emphasis)

and the panel in *European Union – Anti-Dumping Measures on Certain Footwear from China* ("**EU - Footwear (China)**") held that:

"Moreover, while all listed factors must be considered in every investigation, this does not mean that each of those factors will be relevant to the investigating authority's determination in a given case, as the relevance, and significance, of each factor will vary depending on the nature of the product and industry in question. In addition, we consider it clear that it is not necessary that all relevant factors, or even most or a majority of them, show negative developments in order for an investigating authority to make a determination of injury. Finally, as the text of the Article 3.4 explicitly states,

no one or several factors can necessarily give decisive guidance. In our view, this means that an overall evaluation of the information, in context, is necessary, as well as an explanation of how the facts considered by the investigating authority support its determination." (own emphasis).

The Applicant stated that it has also shown:

Increased Imports – imports of the subject product from the subject countries increased in absolute terms and relative to SACU consumption and production in FY2019 (July 2018 to June 2019);

Price Undercutting – the landed cost of imports of the subject product from each of the subject countries undercut the ex-factory selling price of the SACU like product throughout the period of investigation for injury;

Dumped Imports Market Share – the share of the market held by dumped imports increased in FY2019 (July 2018 to June 2019);

Significant Dumping Margins - the Applicant has calculated significant margins of dumping for all of the subject countries;

Prices of Other Imports – although imports of the subject product from other countries during the period of investigation for injury may have been a contributory cause to the material injury suffered by the SACU domestic industry, the main cause was imports of the subject product from the subject countries as (i) imports of the subject product from the other countries were lower in volume than imports of the subject product from the subject countries and (ii) even though imports from some other countries (for example the United States of America) were cheaper than imports from the subject countries, imports of the subject product from the subject countries significantly undercut the SACU producers throughout the period of investigation for injury.

The Applicant stated that it is important to note that, as explained in the Application, FY2020 (July 2019 to June 2020) has been characterised by

unprecedented upheaval in the global economy as a result of the COVID-19 pandemic and government interventions in response thereto. This has resulted in production and logistics difficulties in both export and import markets, including reduced production shifts and global freight capacity and logistic difficulties causing significant backlogs in and around ports in importing countries, all of which has contributed to reduced global trade flows. Imports of the subject product from Poland were also banned from February 2020, following an outbreak of highly pathogenic avian influenza.

The Applicant stated that this led to a reduction in import volumes of the subject product during FY2020 (July 2019 to June 2020), but this is expected to reverse as the pandemic abates and the global economy improves and trade normalises and the outbreak of highly pathogenic avian influenza end and the import ban is lifted. In addition, the termination of the safeguard duties on imports of the subject product from the European Union in March 2022 will lead to an increase in the dumped imports from the subject countries.

The Applicant stated that accordingly, no or very little weight can be attached to the FY2020 (July 2019 to June 2020) period in regard to some of the injury indicators, including sales volume and market share. The Applicant argued that the most important periods for these indicators and the determination of injury are the periods when there were no extraordinary or unusual circumstances, namely, the periods FY2018 (July 2017 to June 2018) and FY2019 (July 2018 to June 2020) as well as a consideration of threat.

The Applicant stated that there is nothing in this regard that prevents an authority from doing this and quoted the panel in *China - Anti-Dumping Countervailing Duty Measures on Broiler Products from the United States, Recourse to Article 21.5 of the DSU by the United States* ("**China – Broiler Products (Article 21.5)**") held that:

"...nothing in Articles 3.1, 3.4, 15.1, or 15.4 prevents an investigating authority from "focusing" on a part of the POI, as long as it does not ignore relevant data and arguments, and its resulting determination is one that an objective and unbiased

investigating authority could reach based on the evidence and arguments before it and the explanations given."

whilst the panel in Argentina – Definitive Anti-Dumping Duties on Poultry from Brazil ("**Argentina – Poultry Anti-Dumping Duties**") held that:

"In our view, there is a prima facie case that an investigating authority fails to conduct an "objective" examination if it examines different injury factors using different periods. Such a prima facie case may be rebutted if the investigating authority demonstrates that the use of different periods is justifiable on the basis of objective grounds (because, for example, data for more recent periods was not available for certain injury factors)."

The Applicant submits that there are objective grounds (namely the COVID-19 and highly pathogenic avian influenza outbreaks) that justify the Commission focusing on FY2018 (July 2017 to June 2018) and FY2019 (July 2018 to June 2019) in its evaluation of material injury and causation in the present investigation.

The Applicant stated that it is also important to note that in *China - Countervailing and Anti-Dumping Duties on Grain Oriented Flat-Rolled Electrical Steel from the United States* ("**China - GOES**"), the Appellate Body held that the effect of dumped imports on domestic prices may be examined from the point of view of the volume or prices of dumped imports, or both:

"We see no disagreement between the participants that MOFCOM's finding of significant price depression and suppression rested on an examination of the effect of both the prices and volume of subject imports on domestic prices. This approach is consistent with the requirements of Articles 3.2 and 15.2 whereby the effect of subject imports on domestic prices may be examined through the vector of subject import prices, subject import volumes, or both. However, in circumstances where an investigating authority relies on both subject import prices and volume, a panel must still allow for the possibility that either prices or volume was sufficient by itself to sustain a finding."

The Applicant submits that it has shown that the SACU domestic industry is suffering material injury and that the main cause of such material injury is dumping of the subject product from the subject countries. It has also shown that there is a clearly foreseen and imminent change in circumstances from that which existed in FY2019 (July 2018 to June 2019) and FY2020 (July 2019 to June 2020) which will create a situation in which the dumping will cause more material injury to the SACU domestic industry than that which existed during the period of investigation for injury.

Increased Imports

The Applicant notes that total dumped imports increased in volume and market share in FY2019 (July 2018 to June 2019) and account for more than half of all imports of the subject product into the SACU market throughout the period of investigation. Dumped imports from Ireland and Spain have also increased in volume and market share over the period of investigation for injury.

Furthermore, the Applicant notes that WTO ADA and the ADR only require that the authority investigate whether there has been an increase in imports (which, the Applicant submits, there has been) and do not require there to have been an increase before anti-dumping duties are imposed. The Applicant noted, for example, the report of the Appellate Body in *European Communities – Anti Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil* ("**EC – Tube or Pipe Fittings**"), which states:

"significant increases in imports have to be "consider[ed]" by investigating authorities under Article 3.2, but the text does not indicate that in the absence of such a significant increase, these imports could not be found to be causing injury"

and the report of the panel in *Korea - Anti-Dumping Duties on Pneumatic Valves from Japan* ("**Korea – Pneumatic Valves**"), which states:

"There is no basis in either the text of the Anti-Dumping Agreement or in logic for the view that an investigating authority can only make a determination of causation if it finds a significant increase in dumped imports for the period of trend analysis as a whole, or for each year of the period of trend analysis."

Price Depression

The Applicant stated that it experienced annual price depression in FY2019, and experienced monthly price depression in FY2020 in August 2019, November 2019, January 2020, March 2020, April 2020 and May 2020.

Non-confidential version

The Applicant referred to Section 33(2) of the ITA Act, Article 6.5 of the ADA and ADR 2 which allow an applicant to submit confidential information without providing a non-confidential summary where the information does not permit summarization, provided that the applicant supplies reasons why the information cannot be summarized.

The Applicant stated that in all instances in the Application where confidential information has been omitted and summaries by indexed figures or otherwise have not been provided, including in relation to price undercutting, the Applicant has provided reasons why it is not possible to summarize the information without revealing the confidential information.

The Applicant stated that as set out in the sworn statements, providing indexed information for price undercutting would allow other interested parties to calculate the confidential information (specifically ex-factory selling price) of the producers. This could in turn be used to calculate other confidential information. The Applicant indicated that this clearly demonstrates that the confidential information could not be indexed without revealing confidential information and this explanation was provided in the Application as required.

The Applicant stated that it should be noted that in all instances where it was not possible to index the information, the information in question has not simply been omitted from the Application. Interested parties have in fact been provided with a summary of this information in the form of indications as to (i) whether the figure is positive or negative; (ii) whether the figure has increased or decreased from the previous year; and (iii) whether the figure has increased or decreased from the base year. We submit that this summarised information is in fact sufficient

to give interested parties a reasonable understanding of the confidential information submitted. The Applicant has also provided sworn statements setting out the reasons why it would not be possible to provide further non-confidential summaries without revealing confidential information.

The Applicant notes that the Commission has been provided with and has verified the actual ex-factory price of the SACU like product and that this information shows that the landed cost of imports of the subject product from each of the subject countries undercut the ex-factory selling price of the SACU like product throughout the period of investigation for injury.

Price Suppression

The Applicant stated that a determination of injury is not made with respect to individual producers, but to the domestic industry. It is, therefore, not necessary for all producers to experience price suppression in order for the Commission to find that the industry as a whole experienced price suppression. The Applicant further stated that the overwhelming majority of the producers have experienced price suppression.

The Applicant stated that the subject product is frozen bone-in portions classifiable under tariff subheading 0207.4.9. The cuts of the products do not constitute separate products but a single product. The reasons include:

- the raw material and other inputs used in producing the cuts are the same;
- the production process is the same;
- the physical characteristics and appearance of the cuts are materially the same; and
- the end use of the cuts (human consumption) is the same and the cuts are substitutable.

The Applicant stated that the imported product (frozen bone-in portions) is a like product to the product produced by the SACU industry, competes directly with the product produced by the SACU industry and the prices of the imported product and the product produced by the SACU industry are comparable.

The Applicant stated that the test for price suppression caused by dumped imports, as set out in Article 3.2 of the ADA, is "*whether the effect of such imports is otherwise to ... prevent price increases, which otherwise would have occurred, to a significant degree.*" This is not answered by alleging that there would have been no need to increase prices if costs had not increased - costs have increased and but for the dumped imports (and in particular the significant levels of price undercutting and price disadvantage), the price of the SACU like product would also have increased.

The Applicant submits, therefore, that it has shown that it experienced material injury in the form of price suppression during the period of investigation for injury and dumped imports of the subject product from the subject countries were the major cause of such material injury.

Third Category

The Applicant stated that it has shown that during the period of investigation for injury 9 of the 15 injury indicators were present and that this is a clear indication that the domestic industry was experiencing material injury during the period of investigation for injury.

Profit and Return on Investment

The Applicant stated that although there were increases in the cost of production, in the absence of dumped imports, the local producers would have been able to increase prices and thereby avoid the decline in profitability.

With regard to the alleged fraud at Daybreak, the Applicant stated that this relates to distribution costs of Daybreak, which do not form part of its cost and price build-up. As all costs, prices and profits are presented at the ex-factory level, distribution costs (which are incurred after the ex-factory level) do not have any impact on the financial data submitted, including price suppression, net profit or return on investment. As such, the alleged fraud would have no impact on the information provided by the Applicant.

The Applicant stated that it also appears that the alleged fraud relates to the period 21 January 2020 to 10 February 2021. As the investigation period for injury for this investigation is July 2017 to June 2021, a significant portion of the alleged fraud falls outside of the investigation period for injury and the vast majority of the investigation period for injury would be unaffected if they were taken into account (which it is submitted would be incorrect). Furthermore, it appears that the alleged fraud has been disputed.

Inventories

The Applicant stated that increased inventory level, led to increased expenses as they have to pay for expensive outside cold storage for the subject product. This can also force the Applicant to sell the subject product at lower prices, either when the product has been in storage for too long (the subject product can only be kept in cold store for 12 months) or in order to clear space for new products.

The Applicant further stated that increased inventory levels also result in cash flow difficulties as they are forced to wait longer between spending the money on producing the subject product and receiving the money when the subject product is sold.

Ad Threat of Material Injury

The Applicant stated that imports from the subject countries increased in absolute terms and relative to SACU consumption and production in FY2019 (July 2018 to June 2019). The Applicant stated that dumped imports from Ireland and Spain have also increased in volume and market share over the period of investigation for injury.

The Applicant repeated its argument that FY2020 (July 2019 to June 2020) has been characterised by unprecedented upheaval in the global economy as a result of the COVID-19 pandemic and government interventions in response thereto and the outbreak of highly pathogenic avian influenza in Poland. The Applicant argued that this has resulted in production and logistics difficulties in

both export and import markets, including reduced production shifts and global freight capacity and logistic difficulties causing significant backlogs in and around ports in importing countries, all of which has contributed to reduced global trade flows. The Applicant stated that this has led to a decrease in dumped imports during FY2020 (July 2019 to June 2020), but this is expected to reverse as the pandemic abates and the global economy returns to pre-pandemic levels and practices and the import bans resulting from avian influenza are removed.

The Applicant stated that additionally, the termination of the safeguard duty currently applicable to imports of the subject product from the European Union, which will take place on 12 March 2022, will lead to a decrease in the landed cost of imports and an increase in the volume of the dumped subject product imported from Denmark, Ireland, Poland and Spain. The Applicant stated that this will lead to increased price undercutting and will have a greater impact on domestic prices. The Applicant submits that these imports will be in addition to the existing and increasing imports of the subject product from Brazil. The Applicant stated that this shows that there is an imminent threat that material injury caused by increased volumes of dumped imports of the subject product from the subject countries.

The Applicant stated that chicken production in the subject countries is expected to increase further in coming years, driven primarily by exports and the reopening of the global economy following the COVID-19 pandemic.

The Applicant stated that, as has been explained in the Application, imports of the subject product from all of the subject countries have undercut the SACU like product throughout the period of investigation for injury and it is necessary for the SACU producers to lower their prices or restrain prices increases to match or undercut the price of the dumped imports in order to make sales in the SACU market. If SACU producers do not lower their prices, then their customers will simply import dumped subject product from the subject countries. The Applicant stated that this has already had a depressing and suppressing effect on SACU prices, which is one of the factors to be considered by the Commission in

considering a threat of material injury and this is expected to continue and increase. The Applicant stated that if the SACU producers do not continue suppressing and/or depressing their prices, the significant price undercutting by the dumped imports will lead to increased demand for dumped imports.

The Applicant stated that the termination of the safeguard duty currently applicable to imports of the subject product from the European Union on 12 March 2022, will also lead to increased price undercutting, which will lead to further demand for the dumped imports.

The Applicant stated that producers from Brazil and Spain have been entirely unaffected by avian influenza and that imports of the subject product from Brazil and Spain have continued after the end of the period of investigation for injury and imports for FY2021 (July 2020 to June 2021) were higher than in FY2020 (July 2019 to June 2021).

The Applicant stated that although it is not currently possible to import the subject product from Denmark, Ireland and Poland, the Applicant notes that both Ireland and Denmark have declared that their territories are free from high pathogenicity avian influenza as of 16 March 2021 and 9 August 2021 respectively and that it appears that the outbreak in Poland is reaching an end. The Applicant stated that the resumption of imports of the subject product from these countries is imminent and imports can be expected to return at least to FY2019 (July 2018 to June 2019) levels.

Ad Causal Link

With regard to Astral, the Applicant stated that it is important to note that Astral's 2020 financial year ended on 30 September 2020. The second half of Astral's 2020 financial year covers the period April 2020 to September 2020, only three months of which fall into the period of investigation for injury. Similarly, the effects of COVID-19 on price and supply and demand conditions in South Africa and the SACU region only applied from the beginning of the first lockdown period,

26 March 2020, only three months of which fall into the period of investigation for injury.

The Applicant stated that the effects of the closure of the hospitality, restaurant and quick restaurant sectors and increase in non-feed expenses as a result of the COVID-19 outbreak and the feed price increases in the second half of Astral's financial year therefore could not have had any impact in the preceding 33 months of the period of investigation for injury.

The Applicant also notes that whilst there were price decreases following the outbreak of COVID-19 and before the end of the period of investigation for injury in April 2020 and May 2020 these were more than offset by the increase between May 2020 and June 2020. The Applicant submits that there was no clear decrease in prices during this period that can be attributed solely to the COVID-19 restrictions, and notes that these decreases were lower than the monthly decreases in several preceding months, which can in no way be attributed to the COVID restrictions.

The Applicant also notes that the Astral Press Release also states that:

"Despite the higher import tariffs on frozen bone-in portions announced in March 2020, poultry imports have continued unabated. This proves what the industry has been advocating for some time – that poultry imports into South Africa typify classic dumping, where prices are merely reduced to maintain export volumes from the producing countries."

The Applicant stated that Astral clearly believed that dumped imports were a cause of the material injury they are suffering, but this quote is notably absent from Copacol's summary of the reasons provided by Astral.

The Applicant stated that this is reiterated in the Astral Annual Financial Report for the year ended September 2020, which:

- states that "*[p]eriods of over-supply of poultry products in the industry can have a serious negative impact on sales realisations and profitability*" and includes "*[h]igh poultry imports*" as one of the material risks that cause this;
- states that "*[h]igh levels of poultry imports, particularly from Brazil, continued unabated. In the absence of adequate tariff measures these imports will persist in negatively impacting the local poultry industry.*";
- includes " *... the high levels of imports and dumping (even with the Poultry Sector Master Plan and increased import tariffs against the USA and Brazil)...*" in the list of main challenges for Astral;
- refers to "*continued high levels of poultry imports*" as contributing to the decline in group profitability;
- includes "*[p]oultry imports remained at relatively high levels, with average monthly volumes for the period under review being approximately 27% (approximately 40 875 tons per month) of local consumption.*" as a salient point for the report;
- states that "*Following the signing of the Poultry Sector Master Plan, as well as the implementation of higher import tariffs on frozen bone-in portions and frozen boneless cuts in March 2020 (increased from 37% to 62% and 12% to 42%, respectively), poultry imports have continued unabated. This proves what the industry has been advocating for some time – that poultry imports into South Africa typify classic dumping, where prices are merely reduced to maintain export volumes from the producing countries.*"
includes "*[h]igh levels of imports*" and "*[c]lassic dumping of poultry meat in South Africa*" as causes of the business risk of "*[p]rolonged unbalance in supply and demand of poultry*";
- states that "*[i]mports remained high, but relatively constant over [2020], despite import tariffs.*";
- includes "*the uncontrolled import and dumping of chicken products on to the South African market*" as a cause of price risks.

Similarly, in its Annual Report for the year ended June 2020, RCL Foods:

- notes that *"the dumping of surplus poultry and sugar in the largely unprotected local market has impacted severely on the viability of the local poultry and sugar sectors, leading to job losses which add to the existing burden of unemployment and food insecurity"*;
- notes under the material issue of pricing pressure that: *"[w]e continue to face the ongoing challenge of high levels of sugar and poultry imports in the local market, along with weak tariff protection on imports, amplifying the impact of this risk on the Group's performance."*; and
- notes *"[b]oth [sugar and poultry] industries have been weakened by prolonged dumping of excess supply from foreign markets, often resulting in local producers being forced to sell at below cost of production – despite being recognised globally as efficient producers."*

The Applicant stated that it is clear from the above that both Astral and RCL Foods believed that dumped imports were a cause of the material injury they are suffering.

Regarding the impact of COVID-19, as essential services, the Applicant stated that producers continued their operations following the outbreak of COVID-19, with RCL Foods noting that:

- it delivered *"500 ton[nes] of chicken...DAILY during level 5 lockdown"*
- *"[b]y doing our utmost to keep our employees safe, and ensuring contingency plans were in place in the event of supply chain issues, we were able to continue running our operations at (or near) normal levels."*
- *"[t]he resilience of our value chain ensured that we were able to continue operating uninterrupted throughout the COVID-19 lockdown."*

and Astral noting:

- *"Astral, classified as an essential service and product provider, increased their already stringent health and safety measurements, seamlessly continuing with its daily operations"*

The Applicant stated that the impact of imports from other countries, including imports from the United States of America is dealt with in the Application. The Applicant stated that these imports accounted for 27.30% of total imports in FY2018 (July 2017 to June 2018), 30.03% of total imports in FY2019 (July 2018 to June 2019) and 38.44% of total imports in FY2020 (July 2019 to June 2020). The Applicant stated that over the same period, imports of the subject product from the subject countries accounted for 62.39%, 63.10% and 52.78% of total imports respectively.

The Applicant stated that even though imports from the United States of America were cheaper than imports from the subject countries, imports of the subject product from the subject countries significantly undercut the SACU producers throughout the period of investigation for injury. The Applicant stated that whilst imports from the United States of America may have been a contributory cause to the material injury suffered by the SACU domestic industry, the main cause was imports of the subject product from the subject countries.

The Applicant stated that whilst the price imports of the subject product from Argentina were lower than imports from some of the subject countries, the Applicant notes that the differences were considerably smaller than alleged by Copacol, and imports of the subject product from the subject countries significantly undercut the SACU producers throughout the period of investigation for injury. This shows that whilst imports from the Argentina may have been a contributory cause to the material injury suffered by the SACU domestic industry, the main cause was imports of the subject product from the subject countries.

The Applicant further stated that imports of the subject product from Argentina accounted for 8.91% of total imports in FY2018 (July 2017 to June 2018), 6.03% of total imports in FY2019 (July 2018 to June 2019) and 7.68% of total imports in FY2020 (July 2019 to June 2020). The Applicant stated that over the same period, imports of the subject product from the subject countries accounted for 62.39%, 63.10% and 52.78% of total imports respectively.

Ad Investigation Procedures to Date

The Applicant submits that Copacol has failed to show any procedural inconsistencies and denies that the Commission has not acted objectively.

Ad Differential Treatment of Exporters and Domestic Producers

The Applicant stated that the initiation notice clearly defines the product as "frozen bone-in portions of the species Gallus Domesticus, classifiable within 7 separate tariff subheadings under 0207.14.9 each providing for a different cut of the subject product originating in or imported from Brazil, Denmark, Ireland, Poland and Spain." (own emphasis)

The Applicant stated that this clearly states that there is only one subject product – Frozen Bone-In Portions (0207.14.9) – and that the different tariff subheadings only provide for different cuts or models, types categories or subgroups of the subject product.

Regarding the request to exporters to provide information separately for the cuts of the subject product, the Applicant notes that investigative authorities and the Commission often as an intermediate step to determine a dumping margin for the subject product determine individual dumping margins for the different models or cuts and thereafter determine a single margin for the subject product. For example, in the anti-dumping investigation against the UK, the Netherlands and Germany, the Commission determined individual margins for different cuts and then determined a single dumping margin for the subject model, namely, Bone-in Portions. Information for the different cuts of the subject product is necessary in order to carry out this intermediate step.

The Applicant submits there is a single subject product, the determination of material injury and causation must be done with reference to this subject product and accordingly there is no need to provide information separately for the cuts of the subject product.

Ad Failure to conduct Articles 5.2 and 5.3 / Regulation 25 Analysis

The Applicant denies being aware that Copacol was an exporter of the subject product to SACU and categorically denies deliberately withholding such information from the Commission. It is unclear what information belonging to Copacol (if any) was used in the calculation of normal value, but even if such information exists and was used, this would not mean that the Applicant was aware that Copacol was an exporter of the subject product to SACU.

Ad Failure to provide parties with proper opportunity to respond - Article 6.1.1 and Regulation 29.4

The Applicant submits that all interested parties, including Copacol, have been given a proper opportunity to respond to the investigation and notes that no interested party has complained that it had insufficient time to respond as a result of the delay in the publication of the *Government Gazette*. Representatives of all subject countries and all known interested parties were notified of the initiation of the investigation. Interested parties who were notified of the investigation were given until 31 March 2021 to respond and could apply for a further extension on good cause. Interested parties that were not directly informed by the Commission were given until 3 April 2021 to respond and could apply for a further extension on good cause. Copacol applied for and was granted an extension until 19 April 2021 to respond, 56 days after publication of the publication of the initiation notice in the *Government Gazette*.

Ad Undue Burden on Exporters

The Applicant stated that transaction-by-transaction information, with adjustments, is required in order to calculate normal value and export price for exporters. Similar information is not required in order to determine material injury or causation and as such is not required from the domestic industry.

Ad Confidential Treatment of Information

The Applicant stated that in all instances in the Application where confidential information has been omitted and summaries by indexed figures or otherwise have not been provided, including in relation to market share and growth, the

Applicant has provided reasons why it is not possible to summarize the information without revealing the confidential information.

The Applicant stated that as set out in the sworn statements, providing indexed information for market share or growth would allow other interested parties to calculate the confidential information (specifically sales volume, sales value and ex-factory selling price) of the Participating Producers. This could in turn be used to calculate other confidential information. This clearly demonstrates that the confidential information could not be indexed without revealing confidential information and this explanation was provided in the Application as required.

The Applicant further stated that it should be noted that in all instances where it was not possible to index the information the information in question has not simply been omitted from the Application. Interested parties have in fact been provided with a summary of this information in the form of indications as to (i) whether the figure is positive or negative; (ii) whether the figure has increased or decreased from the previous year; and (iii) whether the figure has increased or decreased from the base year. The Applicant submits that this summarised information is in fact sufficient to give interested parties a reasonable understanding of the confidential information submitted. The Applicant has also provided sworn statements setting out the reasons why it would not be possible to provide further non-confidential summaries without revealing confidential information.

Commission's consideration

Ad domestic industry

The Commission noted that the Panel in Argentina – Poultry Anti-Dumping Duties considered whether or not the phrase "a major proportion" implies that the "domestic industry" refers to domestic producers whose collective output constitutes the majority, that is, more than 50 per cent, of domestic total production. The Panel considered different dictionary definitions and noted that the word "major" is also defined as "important, serious, or significant". The Panel therefore found that "an interpretation that defines the domestic industry in terms

of domestic producers of an important, serious or significant proportion of total domestic production is permissible."

The Commission noted that the Applicant producers that submitted information represent 46% of the SACU industry. The Commission further noted that production and sales volumes for the non-participating SACU producers are based on the number of broilers slaughtered in South Africa and a conservative allowance of 10% for unknown producers and the slaughter weight and relative product volumes of the participating producers. The Commission further noted that the number of broilers slaughtered in South Africa is calculated and provided by Leading Edge Poultry Software CC, based on the number of day-old chicks placed, which is information provided to or estimated by Silverpath Consulting on a monthly basis for all known abattoirs and/or hatcheries in South Africa.

The Commission noted that the Applicant submitted a list of parties that supports this Application and that at least 40 letters of support were attached to the Application, with non-confidential versions of the letters provided to interested parties.

The Commission took into account that the SACU industry consists of people that are located in the rural areas that do not have access to internet and the infrastructure to readily submit a letter of support. The Commission noted that the Applicant contacted these parties telephonically and that the parties who indicated their support for the application are listed in the Application.

*The Commission noted the report of the Panel in China – Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States ("**China – Broiler Products**"), where the panel stated that:*

"The texts of Articles 4.1 and 16.1 do not contain explicit instructions on how investigating authorities are to determine whether the domestic industry will be comprised of the domestic producers as a whole or those whose output represents a major proportion of total domestic production." and

"For the foregoing reasons, Articles 4.1 and 16.1 do not require the investigating authority at the outset to attempt to define the domestic industry as the domestic producers as a whole or to have to make efforts to identify all domestic producers before then defining the domestic industry as producers whose output represents a major proportion of total production." and

"We recall our view above that in defining the domestic industry investigating authorities are not required to attempt to identify all domestic producers so long as they can establish the amount of total domestic production and assure themselves that they have information on producers whose collective output constitutes a major proportion of that production. It is the industry defined pursuant to Articles 4.1 and 16.1 that the investigating authority must assess in making its injury determination under Articles 3 and 15."

The Commission made a determination that the application can be regarded as being made "by or on behalf of the domestic industry" and, therefore was eligible for initiation under the provisions of the ADR.

Ad Material Injury

In determining whether the SACU domestic industry has experienced material injury, the Commission considered that although various injury factors showed a negative trend, several factors showed a positive trend. In evaluating these diverging trends and assessing whether the SACU industry had suffered material injury, the Commission considered the totality of the evidence before it, mindful of the contextual framework – in particular, the extraordinary factors influencing the period July 2019 to June 2020 – in which its decision was being made.

The Commission noted that the period July 2019 to June 2020 has been characterised by unprecedented upheaval in the global economy as a result of the COVID-19 pandemic and government interventions in response thereto. This has resulted in production and logistics difficulties in both export and import markets, including reduced production shifts and global freight capacity and logistic difficulties causing significant backlogs in and around ports in importing

countries, all of which have contributed to reduced global trade flows.

The Commission further noted that imports of the subject product from Poland were banned from February 2020, following an outbreak of highly pathogenic avian influenza, which led to a reduction in import volumes of the subject product during the period July 2019 to June 2020.

The Commission is of the view that these extraordinary factors influenced the period July 2019 to June 2020 with regard to some of the injury indicators and that the most important periods for the determination of injury are the periods when there were no extraordinary or unusual circumstances, namely, the periods July 2017 to June 2018 and July 2018 to June 2019.

The Commission took note of the decision by the panel in China - Anti-Dumping Countervailing Duty Measures on Broiler Products from the United States, Recourse to Article 21.5 of the DSU by the United States ("China – Broiler Products (Article 21.5)") held that:

"...nothing in Articles 3.1, 3.4, 15.1, or 15.4 prevents an investigating authority from "focusing" on a part of the POI, as long as it does not ignore relevant data and arguments, and its resulting determination is one that an objective and unbiased investigating authority could reach based on the evidence and arguments before it and the explanations given."

whilst the panel in Argentina – Definitive Anti-Dumping Duties on Poultry from Brazil ("Argentina – Poultry Anti-Dumping Duties") held that:

"In our view, there is a prima facie case that an investigating authority fails to conduct an "objective" examination if it examines different injury factors using different periods. Such a prima facie case may be rebutted if the investigating authority demonstrates that the use of different periods is justifiable on the basis of objective grounds (because, for example, data for more recent periods was not available for certain injury factors)."

The Commission made a preliminary determination that the SACU industry experienced material injury during the period July 2017 and June 2019 in terms of price undercutting; price depression; price suppression; a decline in profit; a

decline in market share; a decline in return on investment; a decline in capacity utilisation; and an increase in inventories.

Ad Increase in imports

The Commission noted that the total dumped imports increased in volume and market share in FY2019 (July 2018 to June 2019) and account for more than half of all imports of the subject product into the SACU market throughout the period of investigation.

The Commission noted that the period July 2019 to June 2020 has been characterised by unprecedented upheaval in the global economy as a result of the COVID-19 pandemic and government interventions in response thereto and that this has led to a reduction in import volumes of the subject product during the period July 2019 to June 2020.

The Commission decided that the most important periods for the determination of an increase in imports are the periods when there were no extraordinary or unusual circumstances, namely, the periods July 2017 to June 2018 and July 2018 to June 2019.

The Commission took note of the report of the Appellate Body in European Communities – Anti Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil ("EC – Tube or Pipe Fittings"), which states:

"significant increases in imports have to be "consider[ed]" by investigating authorities under Article 3.2, but the text does not indicate that in the absence of such a significant increase, these imports could not be found to be causing injury"

and the report of the panel in Korea - Anti-Dumping Duties on Pneumatic Valves from Japan ("Korea – Pneumatic Valves"), which states:

"There is no basis in either the text of the Anti-Dumping Agreement or in logic for the view that an investigating authority can only make a determination of causation if it finds

a significant increase in dumped imports for the period of trend analysis as a whole, or for each year of the period of trend analysis."

Ad Threat of material injury

The Commission noted that imports from the subject countries increased in absolute terms and relative to SACU consumption and production in FY2019 (July 2018 to June 2019) and that imports from Ireland and Spain have also increased in volume and market share over the period of investigation for injury. The Commission noted that the period July 2019 to June 2020 has been characterised by unprecedented upheaval in the global economy as a result of the COVID-19 pandemic and government interventions in response thereto and that this has resulted in production and logistics difficulties in both export and import markets, including reduced production shifts and global freight capacity and logistic difficulties causing significant backlogs in and around ports in importing countries, all of which have contributed to reduced global trade flows and that this has led to a decrease in dumped imports during FY2020 (July 2019 to June 2020). The Commission is of the view that this is expected to reverse as the pandemic abates and the global economy returns to pre-pandemic levels and practices and the import bans resulting from avian influenza are removed, all of which indicate that there is a threat that material injury caused by such increased volumes of dumped imports of the subject product from the subject countries.

The Commission noted that both Ireland and Denmark have declared that their territories are free from high pathogenicity avian influenza as of 16 March 2021 and 9 August 2021 respectively and that it appears that the outbreak in Poland is reaching an end. The Commission is of the view that the resumption of imports of the subject product from these countries is therefore expected in the near future.

The Commission found that there is a clearly foreseen and imminent change in circumstances from that which existed in FY2019 (July 2018 to June 2019) and FY2020 (July 2019 to June 2020), which will create a situation in which the

dumping will cause more material injury to the SACU domestic industry than that which existed during the period of investigation for injury.

Ad Differential Treatment of Exporters and Domestic Producers

The Commission is of the view that transaction-by-transaction information, with adjustments, is required in order to calculate normal value and export price for exporters and that similar information is not required in order to determine material injury or causation and as such is not required from the domestic industry.

Failure to conduct Articles 5.2 and 5.3

The Commission noted that the Panel in US – Lumber V considered that an application need only include such reasonably available information on the relevant matters as the applicant deems necessary to substantiate its allegations of dumping, injury and causality, and not all information available to the applicant:

"We note that the words 'such information as is reasonably available to the applicant', indicate that, if information on certain of the matters listed in subparagraphs (i) to (iv) is not reasonably available to the applicant in any given case, then the applicant is not obligated to include it in the application. It seems to us that the 'reasonably available' language was intended to avoid putting an undue burden on the applicant to submit information which is not reasonably available to it. It is not, in our view, intended to require an applicant to submit all information that is reasonably available to it. Looking at the purpose of the application, we are of the view that an application need only include such reasonably available information on the relevant matters as the applicant deems necessary to substantiate its allegations of dumping, injury and causality. As the purpose of the application is to provide an evidentiary basis for the initiation of the investigative process, it would seem to us unnecessary to require an applicant to submit all information reasonably available to it to substantiate its allegations. This is particularly true where such information might be redundant or less reliable than, information contained in the application."

The Commission further noted that the Panel in Mexico – Corn Syrup found that "the quantity and quality of the information provided by the applicant need not be such as would be required in order to make a preliminary or final determination of injury".

The Commission also considered that in Mexico – Corn Syrup, the Panel distinguished, for the purposes of Article 5.2, between information and analysis: "Article 5.2 does not require an application to contain analysis, but rather to contain information, in the sense of evidence, in support of allegations. While we recognize that some analysis linking the information and the allegations would be helpful in assessing the merits of an application, we cannot read the text of Article 5.2 as requiring such an analysis in the application itself."

Adequacy and accuracy of information vs sufficient evidence

The Commission noted that the Panel in Guatemala – Cement II held that the appropriate legal standard under Article 5.3 was not the adequacy and accuracy per se of the evidence in the application, but the sufficiency of the evidence:

"[I]n accordance with our standard of review, we must determine whether an objective and unbiased investigating authority, looking at the facts before it, could properly have determined that there was sufficient evidence to justify the initiation of an anti-dumping investigation. Article 5.3 requires the authority to examine, in making this determination, the accuracy and adequacy of the evidence in the application. Clearly, the accuracy and adequacy of the evidence is relevant to the investigating authorities' determination whether there is sufficient evidence to justify the initiation of an investigation. It is however the sufficiency of the evidence, and not its adequacy and accuracy per se, which represents the legal standard to be applied in the case of a determination whether to initiate an investigation."

In Guatemala – Cement II, on the basis of the distinction between Articles 5.2 and 5.3 described in the excerpt in paragraph 18 below, the Panel stated that

"[o]ne of the consequences of this difference in obligations is that investigating authorities need not content themselves with the information provided in the application but may gather information on their own in order to meet the standard of sufficient evidence for initiation in Article 5.3."14 In support of this proposition, the Panel cited the panel's finding in Guatemala – Cement.

The Panel in Mexico – Steel Pipes and Tubes did caution however that it was "not necessary for an investigating authority to have irrefutable proof of dumping or injury prior to initiating an anti-dumping investigation." The Panel went on to talk about its view of "sufficiency of evidence" in the context of Article 5.3: "While the absolute threshold of sufficiency will depend upon the circumstances of a given case, Article 5.3 makes clear that the determination of sufficiency must be based on an assessment of the 'accuracy' and 'adequacy' of the information. In this context, we are mindful that a piece of evidence that on its own might appear to be of little or no probative value could, when placed beside other evidence of the same nature, form part of a body of evidence that, in totality, was 'sufficient'."

Procedural failure – Article 6.1 and Regulation 28.5

The Commission is of the view that the Governments of the countries under investigation were informed of the initiation of the investigation and provided the link to the non-confidential version of the Application. All known exporters were directly informed of the investigation. On 19 March 2021 Copacol first contacted the investigating officers to request an exporter questionnaire and the link to the non-confidential version of the Application. A response was sent on the same date and extension to submit their response was provided to 19 April 2021. The Government of Brazil was notified of initiation on 22 February 2021 and provided with the questionnaire and the link to the non-confidential version. The Government of Brazil was requested to circulate the documents to those exporters not directly identified. Extension to comment on the investigation was granted until 19 April 2021.

Failure to provide parties with proper opportunity to respond – Article 6.1.1

The Commission noted that the initiation notice was published on 5 February

2021, but copies of this notice was only received from the Government Printers on 20 February 2021. Interested parties were notified of the initiation of the investigation via written correspondence on 22 February 2021. In transmitting the notification of the initiation notice, all interested parties were advised that “ Due to the delay of the publication by the Government Printers, the due date for responses will be 31 March 2021.”

Ad undue burden on exporters

Copacol argued that requiring exporters to provide information on a transaction by transaction basis, whilst not requesting the same information from the domestic industry places an undue burden on the exporters. Transaction-by-transaction information, with adjustments, is required in order to calculate the normal value and export price for exporters. Similar information is not required in order to determine material injury or causation and as such is not required from the domestic industry.

Ad Causal Link

The Commission stated that it is important to note that Astral's 2020 financial year ended on 30 September 2020 and that the second half of Astral's 2020 financial year covers the period April 2020 to September 2020, only three months of which fall into the period of investigation for injury. Similarly, the effects of COVID-19 on price and supply and demand conditions in South Africa and the SACU region only applied from the beginning of the first lockdown period, 26 March 2020, only three months of which fall into the period of investigation for injury.

The Commission is of the view that the effects of the closure of the hospitality, restaurant and quick restaurant sectors and increase in non-feed expenses as a result of the COVID-19 outbreak and the feed price increases in the second half

of Astral's financial year therefore could not have had any impact in the preceding 33 months of the period of investigation for injury.

The Applicant also notes that the Astral Press Release also states that:

"Despite the higher import tariffs on frozen bone-in portions announced in March 2020, poultry imports have continued unabated. This proves what the industry has been advocating for some time – that poultry imports into South Africa typify classic dumping, where prices are merely reduced to maintain export volumes from the producing countries."

It is clear from the above that both Astral and RCL Foods believed that dumped imports were a cause of the material injury they are suffering.

With regard to the impact of imports from other countries, including imports from the United States of America, the Commission noted that these imports accounted for 27.30% of total imports in the period July 2017 to June 2018, 30.03% of total imports in the period July 2018 to June 2019 and 38.44% of total imports in the period July 2019 to June 2020. The Commission noted that imports of the subject product from Argentina accounted for 8.91%, 6.03% and 7.68% of total imports during the same period and that during this same period, imports of the subject product from the subject countries accounted for 62.39%, 63.10% and 52.78% of total imports respectively.

The Commission is of the view that even though imports from the United States of America and Argentina were cheaper than imports from the subject countries, imports of the subject product from the subject countries significantly undercut the SACU producers throughout the period of investigation for injury. This shows that whilst imports from the United States of America and Argentina may have been a contributory cause to the material injury suffered by the SACU domestic industry, the main cause was imports of the subject product from the subject countries.

The Commission found that COVID only had an impact in the final 3 months of the 36-month period of investigation for injury. Whilst there were price decreases

following the outbreak of COVID-19 and before the end of the period of investigation for injury in April 2020 and May 2020, these were more than offset by the increase between May 2020 and June 2020. There was no clear decrease in prices during this period that can be attributed solely to the COVID-19 restrictions, and noted that these decreases were lower than the monthly decreases in several preceding months, which can in no way be attributed to the COVID restrictions.

Confidential treatment of information

The Commission found that in all instances in the Application where confidential information has been omitted and summaries by indexed figures or otherwise have not been provided, including in relation to market share and growth, the Applicant has provided reasons why it is not possible to summarize the information without revealing the confidential information. The Commission accepted the Application as properly documented, which included the acceptance that all information indicated as confidential was confidential and that the Applicant has provided proper non-confidential summaries or a sworn statement setting out the reasons why it was not possible to provide non-confidential summaries.

The Commission accepted the explanation provided in the sworn statements of the Applicant and the Participating Producers, that providing indexed information for market share or growth would allow other interested parties to calculate the confidential information (specifically sales volume, sales value and ex-factory selling price) of the Participating Producers. This could in turn be used to calculate other confidential information. This clearly demonstrates that the confidential information could not be indexed without revealing confidential information and this explanation was provided in the Application as required.

The Commission noted that interested parties have been provided with a summary of this information in the form of indications as to (i) whether the figure is positive or negative; (ii) whether the figure has increased or decreased from the previous year; and (iii) whether the figure has increased or decreased from

the base year. The Commission found that the summarised information is sufficient to give interested parties a reasonable understanding of the confidential information submitted. The Applicant has also provided sworn statements setting out the reasons why it would not be possible to provide further non-confidential summaries without revealing confidential information.

Annexure A (attached), contains a full list of references to all the articles and documents contained in this report.

3. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

3.1 IMPORTED PRODUCTS

3.1.1 Description

The product subject to the investigation is frozen bone-in portions of fowls of the species *Gallus Domesticus*.

3.1.2 Country of origin/export

The subject product originates in and is exported from Brazil, Denmark, Ireland, Poland and Spain.

3.1.3 Possible tariff loopholes

The Applicant stated that it is not aware of any loopholes in the tariff classification.

3.1.4 Tariff classification

The subject product is currently classifiable as follows:

Table 3.1.4: Tariff classification

TARIFF SUBHEADING	DESCRIPTION	CUSTOMS DUTY				
		General	EU	EFTA	SADC	MERCOSUR
0207	Meat and edible offal, of the poultry heading 01.05, fresh, chilled or frozen					
0207.1	Of fowls of the species <i>GALLUS DOMESTICUS</i>					
0207.14	Cuts and offal, frozen:					
0207.14.9	Other					
0207.14.91	Whole bird cut in half	62%	free	62%	free	62%
0207.14.93	Leg quarters	62%	free	62%	free	62%
0207.14.95	Wings	62%	free	62%	free	62%
0207.14.96	Breasts	62%	free	62%	free	62%
0207.14.97	Thighs	62%	free	62%	free	62%
0207.14.98	Drumsticks	62%	free	62%	free	62%
0207.14.99	Other	62%	free	62%	free	62%

3.1.5 Negligibility test

The following tables show the alleged dumped imports as a percentage of the total imports.

Section 16.2 of the ADR states as follows:

The volume of exports from a country shall normally be regarded as negligible if the volume of imports for the like product from that country is found to account for less than 3% of the total imports of the like product into the SACU market, unless countries which individually account for less than 3% of the total imports of the like product into the SACU market for the like product collectively account for more than 7% of the total imports of the like product into the SACU market.

Article 5.8 of the ADA reads as follows:

An application under paragraph 1 shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case. There shall be immediate termination in cases where the authorities determine that the margin of dumping is de minimis, or that the volume of dumped imports, actual or potential, or the injury, is negligible. The margin of dumping shall be considered to be de minimis if this margin is less than 2 per cent, expressed as a percentage of the export price. The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 per cent of imports of the like product in the importing Member, unless countries which individually account for less than 3 per cent of the imports of the like product in the importing Member collectively account for more than 7 per cent of imports of the like product in the importing Member.

For purposes of initiation, the Commission made a determination to do the negligibility test for each tariff subheading separately.

The Commission found that the imports below from Brazil, Denmark,

Ireland, Poland and Spain are above the negligibility level:

Country	Tariff subheading	Description
Brazil	0207.14.93	Leg quarters
	0207.14.95	Wings
	0207.14.96	Breasts
	0207.14.97	Thighs
	0207.14.98	Drumsticks
	0207.14.99	Other
Denmark	0207.14.93	Leg quarters
	0207.14.95	Wings
	0207.14.97	Thighs
	0207.14.98	Drumsticks
	0207.14.99	Other
Ireland	0207.14.93	Leg quarters
	0207.14.95	Wings
	0207.14.97	Thighs
	0207.14.98	Drumsticks
	020.14.99	Other
Poland	0207.14.93	Leg quarters
	0207.14.95	Wings
	0207.14.98	Drumsticks
	0207.14.99	Other
Spain	0207.14.93	Leg quarters
	0207.14.95	Wings
	0207.14.97	Thighs
	0207.14.98	Other

3.2 SACU PRODUCT

The SACU like product is frozen portions of meat that contain bones, of fowls of the species *Gallus Domesticus*, classifiable under tariff subheading 0207.14.9.

3.3 LIKE PRODUCT ANALYSIS

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

Table 3.3 Like product determination

	Imported product	SACU product
Raw materials	Broiler chickens are specifically bred and raised to produce the subject product.	Broiler chickens are specifically bred and raised to produce the subject product.
Production process	The various stages in the production process for chicken meat are the breeding, laying, rearing, slaughtering and processing of the subject product.	In the SACU industry, the various stages in the production process for chicken meat are the breeding, laying, rearing, slaughtering and processing of the subject product.
Physical appearance	Certain portions of the whole bird are cut up containing bones.	Certain portions of the whole bird are cut up containing bones.
Tariff classification	The product is classified under tariff subheading 0207.14.9 (frozen portions of meat that contain bones, of fowls of the species <i>Gallus Domesticus</i>)	The product is classified under tariff subheading 0207.14.9 (frozen portions of meat that contain bones, of fowls of the species <i>Gallus Domesticus</i>)
Application or end use	The application and end-use of the products is generally for human consumption.	The application and end-use of the products is generally for human consumption.
Substitutability	The SACU like product and the imported product are identical and fully substitutable.	The SACU like product and the imported product are identical and fully substitutable.

After considering all the above factors, the Commission made a preliminary determination that the SACU product and the imported products are “like products”, for purposes of comparison in this investigation, in terms of the relevant provisions of the ADR.

4. SACU INDUSTRY

4.1 INDUSTRY STANDING

The application was lodged by SAPA, on behalf of the SACU industry, and the data in the application is provided by: County Fair, Festive, Goldi, Daybreak, Grain Field, RCL Foods, Sovereign and Supreme, manufacturers of the subject product in the SACU market.

The following table details the support of the SACU producers by domestic production volume:

Annual Industry Standing - Frozen Bone-In Portions (0207.14.9): July 2019 – June 2020				
Producers	Production Volume - Support Application	Percentage	Production volume opposing application	Production volume- Neutral
Production Volume (the Participating Producers) (kg)	107			
Astral County Fair	104			
Astral Festive	97			
Astral Goldi	99			
Daybreak	123			
Grain Field Chickens	98			
RCL Foods	109			
Sovereign	121			
Supreme	114			
Total (Support)		Close to 50%		
Other producers neutral		Close to 50%		114
Other producers (Opposing)			0	
Total SACU in kilograms	107	100.00%		

The information in the table was indexed using July 2018 to June 2019 as the base period.

The SACU production is based on frozen Bone-in Portions produced from 01 July 2019 to 30 June 2020.

The Applicant stated that the application is supported by more than 25% of the SACU producers by domestic production volume and of those producers that have expressed an opinion on the application, 100% by domestic production volume support such application.

As SAPA is the Applicant in this investigation, all its members are by definition in support of this investigation. The Commission also took into consideration that the industry also consists of a large number of small farmers who do not have access to the infrastructure to provide information and letters. The Applicant contacted the producers by mail or telephonically trying to obtain the letters. The Applicant provided a list of all the producers who support this investigation, but not all producers that support this investigation provided letters of support. The Commission therefore accepted the list that was provided as it would have placed an undue burden on the Applicant to obtain the outstanding letters.

The Commission made a preliminary determination that the application can be regarded as being made “by or on behalf of the domestic industry”.

5. DUMPING

The subject product of this investigation is “frozen bone-in portions of the species *Gallus Domesticus*”, classifiable under 7 separate tariff subheadings under tariff subheading 0207.14.9, each providing for a different cut of the subject product. Although there are 7 separate tariff subheadings under 0207.14.9, each providing for a different cut of the subject product, these different cuts do not constitute separate products as these cuts are like products and can each be easily substituted by other cuts of the subject product.

The Commission made a preliminary determination that a weighted average dumping margin be applied for each exporter.

Sales in the ordinary course of trade

The Commission made a preliminary determination that where sales made below costs constitute more than 20% in volume of the total volume of sales by the interested party, those sales were regarded as not being made in the ordinary course of trade and thus excluded when calculating the normal value.

Volumes on the domestic market

Section 8.3 of the ADR provides that:

“Domestic sales of the like product shall normally be considered to a sufficient volume to determine a normal value if such sales constitute five per cent or more of the sales volume of the product to the SACU. Sales representing less than 5 per cent of export sales to the SACU may nevertheless be deemed sufficient where such sales are of sufficient magnitude to provide a proper comparison.”

The Commission made a preliminary determination that sales representing less than 5 per cent of export sales to the SACU be considered not a sufficient volume to determine a normal value.

5.1 METHODOLOGY IN THIS INVESTIGATION FOR BRAZIL

The Commission accepted information submitted by Avivar Alimentos Ltda (“Avivar”); Agroaraçá Indústria De Alimentos (“Agroaraçá”); Agrosul Agroavícola Industrial S/A (“Agrosul”), C.Vale – Cooperativa Agroindustrial (“C Vale”); Aurora Cooperativa Central Aurora Alimentos (“Aurora”); Cooperativa Agroindustrial Consolata (“Copacol”); Rio Branco Alimentos S/A (“Pif Paf”); Jaguafrangos Indústria E Comércio De Alimentos Ltda (“Jaguafrangos”); Seara Alimentos Ltda (“Seara”); and Zanchetta Alimentos Ltda (“Zanchetta”) in response to the Commission’s questionnaire for purposes of its preliminary determination.

SSA, GTB and GT Foods did not export the subject product during the period of investigation. These three exporters were advised that section 48.1 of the ADR states that exporters that did not export to the SACU during the original investigation period for dumping may request a new shipper review. The Commission made a preliminary determination to exclude SSA, GTB and GT Foods from this investigation for purposes of its preliminary determination.

5.1.1 Agroaraçá

5.1.1.1 Calculation of the normal value

Agroaraçá only sold leg quarters into the SACU market during the period of investigation. The domestic sales of frozen leg quarters did not constitute more than 5 percent of the volume of exports and as such the normal value was constructed. No adjustments were taken into consideration as the normal value was constructed.

5.1.1.2 Calculation of the export price

The Commission accepted the information submitted by Agroaraçá in its response to the Commission's questionnaire for purposes of its preliminary determination.

Agroaraçá claimed adjustments on the export price for export freight and delivery charges. This adjustment was taken into consideration.

5.1.1.3 Dumping Margin

The dumping margin for Agroaraçá was calculated to be 41%.

5.1.2 Agrosul

5.1.2.1 Calculation of the normal value

Agrosul only sold drumsticks into the SACU market during the period of investigation. The domestic sales of frozen drumsticks were all made below cost and consequently the normal value was constructed. No adjustments were taken into consideration as the normal value was constructed.

5.1.2.2 Calculation of the export price

During the period 1 July 2019 to 30 June 2020 Agrosul only exported frozen drumsticks to the SACU market. Agrosul claimed an adjustment on the export price for delivery charges. The adjustment was taken into consideration for determining the export price, as supporting documentation was provided to substantiate the adjustment.

5.1.2.3 Dumping Margin

The dumping margin for Agrosul was calculated to be 33%.

5.1.3 Avivar

5.1.3.1 Calculation of the normal value

Avivar sold frozen legs and leg quarters into the SACU market during the period of investigation. More than 20 percent of the domestic sales were made below cost. The remaining domestic sales of frozen leg quarters did

not constitute 5 percent of the volume of exports and as such the normal value was constructed. No adjustments were taken into consideration as the normal value was constructed.

5.1.3.2 Calculation of the export price

During the period 1 July 2019 to 30 June 2020 Avivar exported frozen leg quarters to the SACU market. Avivar claimed an adjustment on the export price for delivery costs. The adjustment was taken into consideration for determining the export price, as supporting documentation was provided to substantiate the adjustment.

5.1.3.3 Dumping Margin

The dumping margin for frozen leg quarters for Avivar was calculated to be 13%.

5.1.4 Aurora

5.1.4.1 Calculation of the normal value

Aurora only sold frozen leg quarters into the SACU market during the period of investigation. The sales for frozen leg quarters on the domestic market below cost amounted to more than 20% and these sales were excluded from the calculation of the normal value.

Aurora claimed adjustments on normal value for cost of payment terms, delivery charges, packaging costs, and other adjustments. The cost of payment was not taken into consideration in calculating the normal value as this calculation was incorrectly based on effective credit days rather than the terms that should be indicated on the invoice. The adjustment for packaging was also not taken into account as this cost was not substantiated with documentary proof, calculations or explanations to enable the Commission to have a reasonable understanding on how the adjustments were allocated. The only adjustment that was taken into consideration for the normal value for leg quarters was delivery charges, as supporting documentation was provided to substantiate the adjustment.

5.1.4.2 Calculation of the export price

During the period 1 July 2019 to 30 June 2020 Aurora only had one export transaction of frozen leg quarters to SACU.

Aurora claimed adjustments on the export price for delivery charges, packaging and “other costs” adjustments. Delivery charges were taken into account to calculate an ex-factory price, as supporting documentation was provided to substantiate the adjustment.

The adjustment for packaging and “other costs” was not taken into account as these costs were not substantiated with documentary proof, calculations or explanations to enable the Commission to have a reasonable understanding on how the adjustments were allocated.

5.1.4.3 Dumping Margin

The dumping margin for Aurora was calculated to be 34%.

5.1.5 C Vale

5.1.5.1 Calculation of the normal value

C Vale only sold frozen leg quarters into the SACU market during the period of investigation. More than 20% of the sales for leg quarters on the domestic market were sold at a loss and those sales were not taken into consideration in the calculation for normal value.

C Vale claimed adjustments on the normal value for differences in freight expenses, freight from plant to warehouse, freight from plant to the subsidiary, warehousing expenses and the difference in freight from plant to subsidiary. All adjustments were taken into account for the determination of normal value, as supporting documentation was provided to substantiate the adjustments.

5.1.5.2 Calculation of the export price

During the period 1 July 2019 to 30 June 2020 C Vale exported frozen leg quarters to the SACU market.

C Vale claimed adjustments on the export price for delivery charges, other indirect exporting charges, other direct exporting charges, expenses with customs agency, regular road transport and additional freight charges. All adjustments were taken into account for the determination of the export price, as supporting documentation was provided to substantiate the adjustments.

5.1.5.3 Dumping Margin

The dumping margin for C Vale was calculated to be 22%.

5.1.6 Copacol

5.1.6.1 Calculation of the normal value

Copacol sold frozen leg quarters, whole wings, drummettes, mis-cut wings, frozen breasts and other frozen portions into the SACU market during the period of investigation. None of the sales were made at a loss and as such all domestic sales were used in determining the normal values.

Copacol claimed adjustments on normal value for cost of payment terms, packaging costs, delivery costs, other adjustments and discounts and rebates. The cost of payment terms adjustment was not taken into consideration in calculating the normal value as this calculation was incorrectly based on effective credit days rather than the terms that should be indicated on the invoice. Effective credit days were found not to have affected price comparability at the time of setting the price. Other adjustments were also not taken into account as the claimed adjustments were not substantiated with calculations and documentary proof to indicate that this affected price comparability at the time of setting the price. The only adjustments that were taken into consideration for determining normal value were packaging costs and delivery costs, discounts and rebates as these

were found to have affected price comparability at the time of setting the price.

5.1.6.2 Calculation of the export price

During the period 1 July 2019 to 30 June 2020 Copacol exported frozen leg quarters, wings, breasts and other frozen Bone-In portions to the SACU market.

Copacol claimed adjustments on the export prices for cost of payment terms, packaging costs, delivery costs, other adjustments and discounts and rebates. The cost of payment terms adjustment was not taken into consideration in calculating the export price as this calculation was incorrectly based on effective credit days rather than the terms that should be indicated on the invoice. Other adjustments were also not taken into account as these adjustments were not substantiated with calculations and documentary proof to indicate that this affected price comparability at the time of setting the price. The only adjustments that were taken into consideration for determining export price were packaging costs, delivery costs and discounts and rebates as these were found to have affected price comparability at the time of setting the price.

5.1.6.3 Dumping Margin

The weighted average dumping margin for Copacol was calculated to be 50%.

5.1.7 Jaguafrangos

5.1.7.1 Calculation of the normal value

Jaguafrangos only sold frozen leg quarters into the SACU market during the period of investigation. Of the total sales on the domestic market, 89% of the sales of frozen leg quarters were made below cost and the normal value was constructed. No adjustments were taken into consideration as the normal value was constructed.

5.1.7.2 Calculation of the export price

During the period 1 July 2019 to 30 June 2020 Jaguafrangos exported only frozen leg quarters to the SACU market.

Jaguafrangos claimed an adjustment for delivery costs on the export price. This adjustment has been allowed in determining the export price.

5.1.7.3 Dumping Margin

The weighted average dumping margin for Jaguafrangos was calculated to be 48%.

5.1.8 Pif-Paf

5.1.8.1 Calculation of the normal value

Pif-Paf only sold frozen leg quarters into the SACU market during the period of investigation. None of the sales for frozen leg quarters were made at a loss and as such all transactions in the domestic market were taken into consideration in the calculation of the normal value.

Pif-Paf claimed adjustments on the normal value for discounts and rebates, delivery costs, packaging costs, complementary freight, transfer freight and warehousing. The adjustments for discounts and rebates, complementary freight, transfer freight and warehousing were not taken into account as these costs were not substantiated with documentary proof, calculations or explanations to enable the Commission to have a reasonable understanding on how the adjustments were allocated. The only adjustments that were taken into consideration for the normal value for leg quarters were packaging and delivery costs as these were found to have affected price comparability at the time of setting the price.

5.1.8.2 Calculation of the export price

During the period 1 July 2019 to 30 June 2020 Pif-Paf exported frozen leg quarters to the SACU market.

Pif-Paf claimed adjustments on the export price for inland freight, international freight, monitoring, commission and costs for the customs clearing agent. The adjustments for monitoring, commission and costs for the customs clearing agent were not taken into account as these costs were not substantiated with documentary proof, calculations or explanations to enable the Commission to have a reasonable understanding on how the adjustments were allocated. The only adjustments that were taken into consideration for the export price was inland and international freight, as supporting documentation was provided to substantiate the adjustments.

5.1.8.3 Dumping margin

The weighted average dumping margin for Pif-Paf was calculated to be 10%.

5.1.9 Seara

5.1.9.1 Calculation of the normal value

During the period of investigation, Seara exported frozen leg quarters, wings and drumsticks into the SACU market. Of the total sales of frozen drumsticks on the domestic market, 75 percent of the sales were at a loss and the remaining sales did not represent 5 percent export volumes. For this reason, the normal value for frozen drumsticks was constructed.

As 85 percent of frozen wings were sold at a loss on the domestic market, the normal value on frozen wings was constructed. On the domestic market, 90 percent of frozen leg quarters were sold at a loss, and therefore the normal value for frozen leg quarters was constructed. No adjustments were taken into consideration as the normal values were constructed.

5.1.9.2 Calculation of the export price

During the period 1 July 2019 to 30 June 2020 Seara exported frozen leg quarters, wings and drumsticks to the SACU market.

Seara claimed adjustments on the export price for internal freight, international freight and port expenses. All adjustments were taken into

consideration in determining the export price, as supporting documentation was provided to substantiate the adjustments.

5.1.9.3 Dumping Margin

The weighted average dumping margin for Seara was calculated to be 6%.

5.1.10 Zanchetta

5.1.10.1 Calculation of the normal value

Zanchetta sold frozen leg quarters and drumsticks into the SACU market during the period of investigation. None of the sales on the domestic market, for drumsticks and frozen leg quarters, were made at a loss and as such all transactions were taken into consideration in the calculation of the normal values.

Zanchetta claimed adjustments on normal value for cost of payment terms, commission and internal freight. The cost of payment was not taken into consideration in calculating the normal value as this calculation was incorrectly based on effective credit days rather than the terms that should be indicated on the invoice. The adjustment for commission was also not taken into account as this cost was not substantiated with documentary proof, calculations or explanations to enable the Commission to have a reasonable understanding on how the adjustments were allocated. The only adjustments that were taken into consideration for the normal value for both leg quarters and drumsticks was internal freight.

5.1.10.2 Calculation of the export price

During the period 1 July 2019 to 30 June 2020 Zanchetta exported frozen leg quarters and drumsticks to the SACU market.

Zanchetta claimed adjustments on the export prices for cost of payment terms, expenses (revenues) due exchange fluctuations, internal freight, port expenses and international freight. The cost of payment terms was not taken into consideration in calculating the export price as this calculation was

incorrectly based on effective credit days rather than the terms that should be indicated on the invoice. All other adjustments were taken into consideration in calculating the export price.

5.1.10.3 Dumping Margin

The weighted average dumping margin for Zanchetta was calculated to be 31%.

5.1.11 Methodology in this investigation for all other manufacturers/exporters from Brazil (residual dumping margin)

It is the general policy of the Commission to impose separate anti-dumping duties on specific exporters that responded to the questionnaire, and in addition, a residual duty against the country in question, to cater for other possible manufactures of the subject product who might also have exported the subject product to the SACU, but did not participate in the investigation.

On the basis of the above, a residual dumping margin was calculated using the highest normal values for each applicable tariff subheading and the lowest export price for each applicable tariff subheading. Using this information, a weighted average dumping margin for all other exporters was calculated and amounted to 265.1%.

5.2. METHODOLOGY IN THIS INVESTIGATION FOR DENMARK

Responses were received from two exporters in Denmark, namely HK Scan and Danpo. Danpo's response was found to be deficient and a deficiency letter was sent on 28 July 2021 with a deadline to submit an updated response by 4 August 2021. On 30 July 2021, Danpo requested extension to submit an updated response. The request was denied as the ADR do not make provision to grant an extension to address deficiencies. Danpo did not submit an updated response. The Commission decided not to take the information submitted by Danpro into consideration for purposes of the preliminary determination.

5.2.1 HK Scan

5.2.1.1 Calculation of the normal value

HK Scan sold frozen leg quarters, wings, thighs, drumsticks and a mix of frozen drumsticks and thighs into the SACU market during the period of investigation. For drumsticks and drumstick and thigh mix less than 20% of all sales on the domestic market were sold below cost and as such all transactions were taken into consideration in the calculation of the normal value. For leg quarters, wings and thighs more than 20% of all sales on the domestic market were sold below cost respectively and as such sales that were made at a loss were excluded in calculating the normal value. The normal value is based on the weighted average price of all remaining sales.

HK Scan claimed adjustments on the normal values for cost of payment terms, standard packaging cost, standard salary cost for the packaging process, freight and bonus rebates to the customer. The cost of payment terms was not taken into consideration in calculating the normal value as this calculation was incorrectly based on effective credit days. The adjustment on bonus rebates to the customer was also not taken into account in calculating the normal value as it was not found to have affected price comparability at the time of setting of the price. The standard cost for the packaging process adjustment has been claimed for the salaries of the employees involved in the packaging process to allow for comparability between products. This adjustment was allowed. The adjustments for standard packaging cost, standard salary cost for the packaging process and freight were taken into consideration in calculating the normal value.

5.2.1.2 Calculation of the export price

During the period 1 July 2019 to 30 June 2020 HK Scan exported frozen leg quarters, wings, thighs, drumsticks and a mix of frozen drumsticks and thighs to the SACU market.

HK Scan claimed adjustments on export prices for cost of payment terms, standard packaging cost, standard salary cost for the packaging process,

freight and bonus rebates to the customer. The cost of payment terms was not taken into consideration in calculating the export prices as this calculation was incorrectly based on effective credit days. The adjustment on bonus rebates to the customer was also not taken into account in calculating the normal value as this adjustment was not found to have affected price comparability at the time of setting of the price. The adjustments for standard packaging cost, standard salary cost for the packaging process and freight were taken into consideration in calculating the export price.

5.2.1.3 Dumping Margin

The weighted average dumping margin for HK Scan was calculated to be 39%.

5.2.2 Methodology in this investigation for all other manufacturers/exporters from Denmark (residual dumping margin)

It is the general policy of the Commission to impose separate anti-dumping duties on specific exporters that responded to the questionnaire, and in addition, a residual duty against the country in question, to cater for other possible manufactures of the subject product who might also have exported the subject product to the SACU, but did not participate in the investigation. On the basis the above, the Commission made a preliminary determination to use the information from HK Scan, without adjustments to the normal value, to calculate the residual duty for Denmark. Using this information, a residual dumping margin of 67.4% was calculated for Denmark.

5.3 METHODOLOGY IN THIS INVESTIGATION FOR IRELAND

As no properly documented responses were received from any exporter from Ireland, the Commission made a preliminary determination to use the best information available, being the information submitted by the Applicant for purposes of determining a residual dumping duty for Ireland.

5.3.1 Normal Value

As no properly documented responses were received from manufacturers in Ireland, the Commission decided to use the best information available for calculating normal value, being the constructed normal value supplied by the Applicant. The Applicant based the constructed normal value on the production costs of a broiler carcass in Ireland based on the average ex-factory/ wholesale price for whole Class A chickens ('65 % chickens') from the report titled 'EU Market Prices for Representative Products'. The Applicant adjusted the production cost for selling, general and administrative costs and a reasonable allowance for profit of 6.51 percent of the broiler production cost.

5.3.2 Export price

As no properly documented responses were received from manufacturers in Ireland, the Commission decided to use the best information available for calculating the export price, being the FOB export prices that are based on trade statistics received from the South African Revenue Service and converted into local currencies using exchange rates received from Oanda Corporation.

Adjustments

The Applicant adjusted the FOB export prices for inland freight, based on a quotation from Mason Transport and used monthly exchange rates obtained from Oanda.

5.3.3 Dumping Margin

The margin of dumping calculated for Ireland is 158.4%.

5.4 METHODOLOGY IN THIS INVESTIGATION FOR POLAND

5.4.1 ANIMEX

5.4.1.1 Calculation of the normal value

Animex sold frozen leg quarters, wings and drumsticks into the SACU market during the period of investigation. None of the sales on the domestic market for wings were sold at a loss and as such all transactions were taken into

consideration in the calculation for normal value. For frozen leg quarters and drumsticks 90 percent and 93 percent, respectively, of all domestic sales were sold below cost. The remaining sales for frozen leg quarters and drumsticks did not represent more than 5 percent of the volume of exports and as such the normal value was constructed. No adjustments were taken into consideration as the normal value for frozen drumsticks and leg quarters was constructed.

Animex claimed adjustments on normal value for cost of payment terms, packaging costs, inland freight and insurance. The cost of payment was not taken into consideration in calculating the normal value as this calculation was incorrectly based on effective credit days rather than the terms that should be indicated on the invoice. The adjustment for packaging was also not taken into account as this cost was not substantiated with documentary proof, calculations or explanations to enable the Commission to have a reasonable understanding on how the adjustments were allocated. The only adjustments that were taken into consideration for the calculation of a normal value for wings were freight and insurance.

5.4.1.2 Calculation of the export price

During the period 1 July 2019 to 30 June 2020 Animex exported frozen leg quarters, wings and drumsticks to the SACU market.

Animex claimed adjustments on the export price for cost of payment terms, packaging costs, export freight and delivery charges and insurance. The cost of payment terms was not taken into consideration in calculating the export price as this calculation was incorrectly based on effective credit days rather than the terms that should be indicated on the invoice. The adjustment for packaging has also not been taken into account as this cost was not substantiated with documentary proof, calculations or explanations to enable the Commission to have a reasonable understanding on how the adjustments were allocated. The only adjustments that were taken into consideration for the export price were freight and insurance.

5.4.1.3 Dumping Margin

The weighted average dumping margin for Animex was calculated to be 5%.

5.4.2 DROBIMEX

5.4.2.1 Calculation of the normal value

Drobimex sold frozen leg quarters, wings and drumsticks into the SACU market during the period of investigation. On the domestic market, all sales of wings were sold at a loss and consequently the normal value for wings was constructed. Sales for leg quarters in the domestic market only constituted 4 percent of exports to the SACU, and accordingly the normal value for leg quarters was constructed. On the domestic market 1.08 percent of sales of drumsticks were made at a loss. The remaining sales represented more than 5 percent of the volume of exports and as such the normal value is based on domestic sales. No adjustments were taken into consideration as the normal value for frozen wings and leg quarters was constructed.

Drobimex claimed adjustments on the normal values for cost of payment terms, delivery costs, packaging costs, sales commission and discounts and rebates. The cost of payment terms was not taken into consideration in calculating the normal value as this calculation was incorrectly based on effective credit days rather than the terms that should be indicated on the invoice. Furthermore, the discounts and rebates were also not taken into consideration as no documentary proof was provided that the discounts were determined at the time of setting the price. The remaining adjustments were taken into account for purposes of determining the normal value.

5.4.2.2 Calculation of the export price

During the period 1 July 2019 to 30 June 2020 Drobimex exported frozen leg quarters, 3 joint wings, prime wings and drumsticks to the SACU market.

Drobimex claimed adjustments on the export prices for cost of payment terms, packaging costs, export freight and delivery charges and insurance. The cost of payment terms adjustment was not taken into consideration in

calculating the normal value as this calculation was incorrectly based on effective credit days rather than the terms that should be indicated on the invoice. The remaining adjustments were also not taken into consideration for the export price calculation as none of the costs were substantiated with documentary proof or calculations and explanations to enable the Commission to have a reasonable understanding on how the adjustments were calculated.

5.4.2.3 Dumping Margin

The weighted average dumping margin for Drobimex was calculated to be 9%.

5.4.3 Plukon

5.4.3.1 Calculation of the normal value

Plukon sold frozen leg quarters, wings and drumsticks into the SACU market during the period of investigation. Of the total domestic sales of wings, 56.02 percent were sold at a loss and as such only the remaining sales were taken into consideration in the calculation for normal value. No domestic sales were made at a loss for drumsticks and leg quarters, as such all normal values were based on domestic sales.

Plukon claimed adjustments on the normal values for cost of payment terms, packaging costs and transport costs. The cost of payment terms adjustment was not taken into consideration in calculating the normal value as this calculation was incorrectly based on effective credit days rather than the terms that should be indicated on the invoice. Furthermore, the adjustments for packaging and transport costs were also not taken into consideration as none of the costs were substantiated with documentary proof or calculations and explanations to enable the Commission to have a reasonable understanding on how the adjustments were calculated. No adjustments were taken into account for purposes of determining the normal value.

5.4.3.2 Calculation of the export price

During the period 1 July 2019 to 30 June 2020 Plukon exported frozen leg quarters, frozen wings and frozen drumsticks to the SACU market.

Plukon claimed adjustments on the export prices for cost of payment terms, and packaging costs. The cost of payment terms adjustment was not taken into consideration in calculating the normal value as this calculation was incorrectly based on effective credit days rather than the terms that should be indicated on the invoice. The adjustment for packaging costs was also not taken into consideration for the export price calculation as it was not substantiated with documentary proof or calculations and explanations to enable the Commission to have a reasonable understanding on how the adjustments were calculated. Therefore, no adjustments were taken into account for purposes of determining the export price.

5.4.3.3 Dumping Margin

The weighted average dumping margin for Plukon was calculated to be 34%.

5.4.4 Methodology in this investigation for all other manufacturers/exporters from Poland (Residual dumping margin)

It is the general policy of the Commission to impose separate anti-dumping duties on specific exporters that responded to the questionnaire, and in addition, a residual duty against the country in question, to cater for other possible manufactures of the subject product who might also have exported the subject product to the SACU, but did not participate in the investigation.

On the basis of the above, a residual dumping margin was calculated using the highest normal values, without adjustments, for each applicable tariff subheading and the lowest export price for each applicable tariff subheading. Using this information, a weighted average dumping margin for all other exporters was calculated and amounted to 96.9%.

5.5 METHODOLOGY IN THIS INVESTIGATION FOR SPAIN

5.5.1 Disavasa

5.5.1.1 Calculation of the normal value

Disavasa sold frozen chicken leg quarters, wings and drumsticks into the SACU market during the period of investigation. On the domestic market, only ten percent of Grade A drumsticks were sold at a loss, while none of the sales of Grade B drumsticks were sold at a loss. As such all domestic transactions were taken into consideration in the calculation for normal value. Of the total domestic sales of 3 joint wings, 25 percent were sold at a loss while none of the prime wings were sold at a loss. Those sales sold at a loss were excluded in determining the normal value for 3 joint wings. The remaining sales for 3 joint wings constituted more than 5 percent of the volume of exports and as such the normal value was determined using domestic sales.

Disavasa claimed adjustments on the normal values for cost of payment terms, delivery costs and packaging costs. The adjustment for cost of payment terms was not taken into consideration in calculating the normal value as this calculation was incorrectly based on effective credit days rather than the terms that should be indicated on the invoice. Furthermore, the adjustment for packaging costs was also not taken into consideration as no documentary proof or calculations and no explanations were provided to enable the Commission to have a reasonable understanding on how the adjustments were calculated. Delivery costs were the only adjustment taken into account for purposes of determining the normal value, as it was found to have affected price comparability at the time of setting the price.

5.5.1.2 Calculation of the export price

During the period 1 July 2019 to 30 June 2020 Disavasa exported frozen leg quarters, wings and drumsticks to the SACU market.

Disavasa claimed adjustments on export price for cost of payment terms, delivery costs and sales workforce adjustment. The cost of payment terms

adjustment was not taken into consideration in calculating the normal value as this calculation was incorrectly based on effective credit days rather than the terms that should be indicated on the invoice. Furthermore, delivery costs and the sales workforce adjustment were also not taken into consideration as no documentary proof or calculations and no explanations were provided to enable the Commission to have a reasonable understanding on how the adjustments were calculated. No adjustments were taken into account for purposes of determining the export price.

5.5.1.3 Dumping Margin

The weighted average dumping margin for Disavasa was calculated to be 16%.

5.5.2 Grupo An

5.5.2.1 Calculation of the normal value

Grupo An sold frozen chicken thighs, wings and drumsticks into the SACU market during the period of investigation. On the domestic market, all sales for frozen wings, drumsticks and thighs were made below cost. As such the normal values for all frozen Bone-In Portions was constructed. No adjustments were taken into consideration as the normal values were constructed.

5.5.2.2 Calculation of the export price

During the period 1 July 2019 to 30 June 2020 Grupo An exported frozen thighs, wings and drumsticks to the SACU market.

Grupo An claimed adjustments on the export price for cost of payment terms and packaging costs. The cost of payment terms adjustment was not taken into consideration in calculating the normal value as this calculation was incorrectly based on effective credit days rather than the terms that should be indicated on the invoice. Furthermore, the adjustment for packaging costs were also not taken into consideration as no documentary proof or calculations and no explanations were provided to enable the Commission

to have a reasonable understanding on how the adjustments were calculated. Therefore, no adjustments claimed by the exporter were taken into account for purposes of determining the export price.

5.5.2.3 Dumping Margin

The weighted average dumping margin for Grupo An was calculated to be 3%.

5.5.3 UVESA

5.5.3.1 Calculation of the normal value

During the period 1 July 2019 to 30 June 2020 UVESA sold frozen thighs, wings and frozen drumsticks on the domestic market. On the domestic market, no wings were sold at a loss and as such all transactions were taken into consideration in the calculation for normal value. Of the total domestic sales for frozen leg quarters, 99 percent were sold below cost. The remaining sales for frozen leg quarters did not represent more than 5 percent of the volume of exports and as such the normal value was constructed. No adjustments were taken into consideration as the normal values were constructed.

Uvesa claimed adjustments on normal value for cost of payment terms, delivery costs and packaging costs. The cost of payment terms adjustment was not taken into consideration in calculating the normal value as this calculation was incorrectly based on effective credit days rather than the terms that should be indicated on the invoice. Furthermore, the adjustments for delivery and packaging costs were also not taken into consideration as no documentary proof was provided that the discounts were determined at the time of setting the price. Therefore, no adjustments were taken into account for purposes of determining the normal value.

5.5.3.2 Calculation of the export price

During the period 1 July 2019 to 30 June 2020 Uvesa exported frozen thighs, drumsticks and wings to the SACU market.

Uvesa claimed adjustments on the export price for cost of payment terms and packaging costs. The cost of payment terms adjustment was not taken into consideration in calculating the normal value as this calculation was incorrectly based on effective credit days rather than the terms that should be indicated on the invoice. The adjustment for packaging costs was also not taken into consideration for the export price calculation as they were not substantiated with documentary proof or calculations and no explanations were provided to enable the Commission to have a reasonable understanding on how these adjustments were calculated.

5.5.3.3 Dumping Margin

The weighted average dumping margin for Uvesa was calculated to be 4%.

5.5.4 Methodology in this investigation for the Grupo Vall companies in Spain

The Grupo Vall companies is composed of five independent slaughterhouses in Spain, namely:

- Avicola Sanchez S.L. (“Avicosan”);
- Avicola de Lleida S.A. (“Avidel”);
- Escorxador D’aus Torrent I Fills SI (“Torrent”);
- Dolz Espana, S.L. (“Dolz”); and
- Avicola de Galicia (“Avigal”), SAU.

The main activities of the Grupo Vall companies consist of the production of feed for animal consumption, mainly pork and poultry, as well as the production, slaughter and marketing of these animal species, both live and as meat products in carcasses, cuts and their derivatives, as well as cured products.

Torrent and Dolz did not export the subject product to SACU during the POI. Grupo Vall submitted information for all 5 companies/slaughterhouses,

stating that the 5 companies should be used to calculate one dumping margin for Grupo Vall as these 5 companies are intrinsic part of Grupo Vall. It was also stated that although Torrent and Dolz did not export to SACU during the POI, they are fully capable of exporting.

The 5 companies/slaughterhouses which form part of Grupo Vall are all characterized by the following:

- One person is a member of the Board of Directors in all the Group companies;
- The 5 companies/slaughterhouses use the same, related companies for inputs for the processing/manufacturing;
- Expedition Freezing Services are rendered by a related supplier for Avicosan and Torrent;
- The production process is standard for all 5 slaughterhouses of the Grupo Vall;
- The physical and financial processes are standard for all 5 slaughterhouses of the Grupo Vall.

However, all invoices and proof of payments were done in each individual company name.

On the basis of the above, the Commission made a preliminary determination that the relationship of the Grupo Vall companies is such that the producers/exporters can be considered as a single entity for purposes of determining a single dumping margin.

5.5.4.1 AVICOSAN

5.5.4.1.1 Calculation of the normal value

Avicosan sold frozen wings and drumsticks into the SACU market during the period of investigation. In determining the normal value for frozen wings, the total domestic sales of frozen wings did not represent more than 5 percent of the volume of exports and as such the normal value was constructed. The

normal value for drumsticks was determined using domestic sales. No adjustments were taken into consideration as the normal value for wings was constructed.

Avicosan claimed adjustments on normal value for cost of payment terms, delivery costs and sales commission. The adjustment for cost of payment terms was not taken into consideration in calculating the normal value as this calculation was incorrectly based on effective credit days rather than the terms that should be indicated on the invoice. Furthermore, delivery costs and sales commission adjustments were also not taken into consideration as no documentary proof or calculations and no explanations were provided to enable the Commission to have a reasonable understanding on how the adjustments were calculated. Therefore, no adjustments claimed by the exporter were taken into for purposes of determining the normal value.

5.5.4.1.2 Calculation of the export price

During the period 1 July 2019 to 30 June 2020 Avicosan exported wings and drumsticks to the SACU market.

Avicosan claimed adjustments on the export price for cost of payment terms. The cost of payment terms adjustment was not taken into consideration in calculating the export price as this calculation was incorrectly based on effective credit days rather than the terms that should be indicated on the invoice. Therefore, no adjustments were taken into consideration in the determination of the export price.

5.5.4.1.3 Dumping Margin

The weighted average dumping margin for Avicosan was calculated to be 18%.

5.5.4.2 AVIDEL

5.5.4.2.1 Calculation of the normal value

Avidel exported frozen wings and drumsticks to the SACU market during the period of investigation. In determining the normal value for frozen wings, it was found that all domestic sales for frozen wings were made at a loss and as such the normal value was constructed. No adjustments were taken into consideration as the normal value for wings was constructed. The normal value for drumsticks was determined using domestic sales.

Avidel claimed adjustments on normal value for cost of payment terms and delivery costs. The cost of payment terms adjustment was not taken into consideration in calculating the normal value as this calculation was incorrectly based on effective credit days rather than the terms that should be indicated on the invoice. Furthermore, the adjustment on delivery costs was also not taken into consideration as no documentary proof or calculations and no explanations were provided to enable the Commission to have a reasonable understanding on how the adjustments were calculated. Therefore, no adjustments claimed by the exporter were taken into for purposes of determining the normal value.

5.5.5.2 Calculation of the export price

During the period 1 July 2019 to 30 June 2020 Avidel exported frozen wings and drumsticks to the SACU market.

Avidel claimed adjustments on export price for cost of payment terms and delivery costs. The cost of payment terms adjustment was not taken into consideration in calculating the export price as this calculation was incorrectly based on effective credit days rather than the terms that should be indicated on the invoice. Furthermore, the adjustment on delivery costs was also not taken into consideration as no documentary proof or calculations and no explanations were provided to enable the Commission to have a reasonable understanding on how the adjustments were

calculated. Therefore, no adjustments claimed by the exporter were taken into for purposes of determining the export price.

5.5.5.3 Dumping Margin

The weighted average dumping margin for Avidel was calculated to be 48%.

5.5.4.3 AVIGAL

5.5.4.3.1 Calculation of the normal value

Avigal sold frozen wings and drumsticks into the SACU market during the period of investigation. In determining the normal value for frozen white chicken drumsticks, the total domestic sales for frozen white chicken drumsticks did not represent more than 5 percent of the volume of exports and as such the normal value was constructed.

All domestic sales of frozen white grade B wings were sold below cost while 75 percent of the frozen yellow grade B chicken wings were also sold below cost. The remaining 25 percent did not constitute 5 percent of the volumes exported to SACU. Normal values for both classes of wings were thus constructed. No adjustments were taken into consideration as the normal values for wings and white drumsticks were constructed. The normal value for yellow drumsticks was determined using domestic sales.

Avigal claimed adjustments on normal value for delivery costs and sales commission. The delivery costs and sales commission adjustments were not taken into consideration as no documentary proof or calculations and no explanations were provided to enable the Commission to have a reasonable understanding on how the adjustments were calculated. Therefore, no adjustments claimed by the exporter were taken into for purposes of determining the normal value.

5.5.4.3.2 Calculation of the export price

During the period 1 July 2019 to 30 June 2020 Avigal exported wings and drumsticks to the SACU market.

Avigal claimed adjustments on the export price for cost of payment terms. The cost of payment terms has not been taken into consideration in calculating the export price as this calculation was incorrectly based on effective credit days rather than the terms that should be indicated on the invoice. Therefore, no adjustments were taken into consideration in the determination of the export price.

5.5.4.3.3 Dumping Margin

The weighted average dumping margin for Avigal was calculated to be 11%.

5.5.4.4 Vall Group dumping margin

A weighted average dumping margin for the Vall Group was determined to be 26 percent. This was determined by calculating a weighted average for all 3 slaughterhouses that exported to the SACU during the period of investigation.

5.5.5 Methodology in this investigation for all other manufacturers/exporters from Spain (residual dumping margin)

It is the general policy of the Commission to impose separate anti-dumping duties on specific exporters that responded to the questionnaire, and in addition, a residual duty against the country in question, to cater for other possible manufactures of the subject product who might also have exported the subject product to the SACU, but did not participate in the investigation.

On the basis of the above, a residual dumping margin was calculated using the highest normal values for each applicable tariff subheading and the lowest export price for each applicable tariff subheading. Using this information, a weighted average dumping margin for all other exporters was calculated and amounted to 85.8%

5.6 SUMMARY – DUMPING

After considering all the submissions and comments from interested parties, the Commission made a preliminary determination that the subject product originating in or imported from Brazil, Denmark, Ireland, Poland and Spain is being dumped onto the SACU market and the following dumping margins were calculated:

5.6.1 Brazil

Tariff subheading	Company	Margin of dumping as a % of export price
0207.14.9	Agroaraçá	41%
0207.14.9	Agrosul	33%
0207.14.9	Avivar	13%
0207.14.9	Aurora	34%
0207.14.9	C Vale	22%
0207.14.9	Copacol	50%
0207.14.9	Jaguafrangos	48%
0207.14.9	Pif Paf	10%
0207.14.9	Seara	6%
0207.14.9	Zanchetta	31%
0207.14.9	All other	265.1%

5.6.2 Denmark

Tariff heading	Company	Margin of dumping as a % of export price
0207.14.9	HK Scan	39%
0207.14.9	All other exporters	67.4%

5.6.3 Ireland

Tariff heading	Company	Margin of dumping as a % of export price
0207.14.9	All exporters	158.4%

5.6.4 Poland

Tariff heading	Company	Margin of dumping as a % of export price
0207.14.9	Animex	5%
	Drobimex	9%
	Plukon	-34%
	All other exporters	96.9%

5.6.5 Spain

Tariff heading	Company	Margin of dumping as a % of export price
0207.14.9	Disavasa	16%
0207.14.9	Grupo An	3%
0207.14.9	Uvesa	4%
0207.14.9	Grupo Vall	26%
0207.14.9	All other exporters	85.8%

6. MATERIAL INJURY

6.1 DOMESTIC INDUSTRY – MAJOR PROPORTION OF PRODUCTION

The following injury analysis is based on information provided by the following producers: Astral County Fair; Astral Festive”; Astral Goldi; Daybreak; Grain Field; RCL Foods; Sovereign; and Supreme, which constitute close to 50 percent of SACU production by volume. The SACU production is based on frozen Bone-in Portions produced from 01 July 2019 to 30 June 2020.

Commission’s consideration:

The Commission noted that in the Panel in *China – Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States* ("**China – Broiler Products**"), the panel stated that:

"The texts of Articles 4.1 and 16.1 do not contain explicit instructions on how investigating authorities are to determine whether the domestic industry will be comprised of the domestic producers as a whole or those whose output represents a major proportion of total domestic production."; and

"For the foregoing reasons, Articles 4.1 and 16.1 do not require the investigating authority at the outset to attempt to define the domestic industry as the domestic producers as a whole or to have to make efforts to identify all domestic producers before then defining the domestic industry as producers whose output represents a major proportion of total production."; and

"We recall our view above that in defining the domestic industry investigating authorities are not required to attempt to identify all domestic producers so long as they can establish the amount of total domestic production and assure themselves that they have information on producers whose collective output constitutes a major proportion of that production. It is the industry defined pursuant to Articles 4.1 and 16.1 that the investigating authority must assess in making its injury determination under Articles 3 and 15."

Similarly, in *European Communities – Anti Dumping Measure on Farmed Salmon from Norway* ("**EC - Salmon**"), the Panel found that "[t]here is certainly nothing in the AD Agreement that would necessitate obtaining information from each domestic producer in the industry on each element of an injury analysis."

The Commission took into account that there are a lot of small farmers that are segregated and could not provide information.

The Commission made a preliminary determination that this constitutes "a major proportion" of the total domestic production, in accordance with the ADR.

6.2 MATERIAL INJURY ANALYSIS

The injury information presented below relates to the evaluation of data for the period 01 July 2017 to 30 June 2020.

The Commission noted that the period July 2019 to June 2020 has been characterised by unprecedented upheaval in the global economy as a result of the COVID-19 pandemic and government interventions in response thereto. This has resulted in production and logistics difficulties in both export and import markets, including reduced production shifts and global freight capacity and logistic difficulties causing significant backlogs in and around ports in importing countries, all of which have contributed to reduced global trade flows.

The Commission further noted that imports of the subject product from Poland were banned from February 2020, following an outbreak of highly pathogenic avian influenza, which led to a reduction in import volumes of the subject product during the period July 2019 to June 2020.

The Commission is of the view that these extraordinary factors influenced the period July 2019 to June 2020 with regard to some of the injury indicators and that the most important periods for the determination of injury are the periods when there were no extraordinary or unusual circumstances, namely, the periods July 2017 to June 2018 and July 2018 to June 2019.

The Commission noted that the panel in *China - Anti-Dumping Countervailing Duty Measures on Broiler Products from the United States, Recourse to Article 21.5 of the DSU by the United States ("China – Broiler Products (Article 21.5))"* held that: "...nothing in Articles 3.1, 3.4, 15.1, or 15.4 prevents an investigating authority from "focusing" on a part of the POI, as long as it does not ignore relevant data and arguments, and its resulting determination is one that an objective and unbiased investigating authority could reach based on the evidence and arguments before it and the explanations given"; whilst the panel in *Argentina – Definitive Anti-Dumping Duties on Poultry from Brazil ("Argentina – Poultry Anti-Dumping Duties")* held that: "In our view, there is a prima facie case that an investigating authority fails to conduct an "objective" examination if it examines different injury factors using different periods. Such a prima facie case may be rebutted if the investigating authority demonstrates that the use of different periods is justifiable on the basis of objective grounds (because, for example, data for more recent periods was not available for certain injury factors)."

The Commission made a preliminary determination that there are objective grounds (namely the COVID-19 and highly pathogenic avian influenza outbreaks) that justify the Commission focusing on July 2017 to June 2018 and July 2018 to June 2019 in its evaluation of material injury and causation in the present investigation.

6.3 CUMULATIVE ASSESSMENT

There are five countries involved in this investigation, namely Brazil, Denmark, Ireland, Poland and Spain. In terms of the ADR 16.3, the Commission may cumulatively assess the effect of the dumped imports only if it finds that cumulating is appropriate in light of –

- Competition between imports from the different countries;
- Competition between the imported products and SACU like products;

- The imports from the countries are not negligible as contemplated in subsection 3; and
- The dumping margin is two per cent or more when expressed as a percentage of the export price.

In considering whether cumulating is appropriate with regard to the imports from Brazil, Denmark, Ireland, Poland and Spain, the Commission took note of the following:

Imports from the countries are not negligible	Imports from all countries are above negligibility.
The residual margin of dumping is above <i>de minimis</i> level	The dumping margins calculated are above two percent, as expressed as a percentage of the export price.
Competition between imports from different countries	They are like products for purposes of comparison, their end use and substitutability is similar. They are both traded in the SACU market, and therefore part of the SACU market share analysis and the cumulative imports shows a decrease in imports from Brazil and Ireland, but an increase in the imports from Ireland, Poland and Spain throughout the period of investigation.
Competition between imported product and SACU like product	The imported product and the SACU product are like products for the purposes of comparison; they are fully substitutable and have a similar end use. They are both traded in the SACU.

In light of the above the Commission made a preliminary determination to conduct a cumulative assessment of the effect of the alleged dumped imports on the SACU industry.

6.4. IMPORT VOLUMES

The tables below show the volume (in kg) of the allegedly dumped imports of the subject product as sourced from the SARS from 01 July 2017 to 30 June 2020.

Tariff heading: 0207.14.9: Frozen Bone-In Portions

Country	July 2017 – June 2018	July 2018 – June 2019	July 2019 - June 2020
Total dumped imports - kg	157 802 353	163 642 452	104 487 452
Other imports - kg	95 115 108	95 743 474	93 495 387
Total imports - kg	252 917 461	259 385 927	197 982 840

Tariff heading 0207.14.93: Leg Quarters

Country	July 2017 - June 2018	July 2018 - June 2019	July 2019 - June 2020
Total dumped imports - kg	121 393 049	120 519 566	70 146 997
Other imports - kg	61 793 667	74 805 064	70 932 030
Total imports - kg	183 186 717	195 324 630	141 079 028

Tariff heading 0207.14.95: Wings

Country	July 2017 - June 2018	July 2018 - June 2019	July 2019 - June 2020
Total dumped imports - kg	14 009 343	19 390 302	17 258 600
Other imports - kg	7 739 674	2 358 922	946 613
Total imports - kg	21 749 016	21 749 223	18 205 214

Tariff heading 0207.14.96: Breast

Country	July 2017 - June 2018	July 2018 - June 2019	July 2019 - June 2020
Total dumped imports - kg	3 990	0	27 495
Other imports - kg	144 213	134 645	0
Total imports - kg	148 204	134 645	27 495

Tariff heading 0207.14.97: Thighs

Country	July 2017 - June 2018	July 2018 - June 2019	July 2019 - June 2020
Total dumped imports - kg	4 106 306	4 790 432	2 437 462
Other imports - kg	2 850 649	1 721 841	2 120 668
Total imports - kg	6 956 955	6 512 273	4 558 130

Tariff heading 0207.14.98: Drumstick

Country	July 2017 - June 2018	July 2018 - June 2019	July 2019 - June 2020
Total dumped imports - kg	11 117 198	10 837 213	7 743 583
Other imports - kg	20 151 089	15 974 320	19 011 709
Total imports - kg	31 268 287	26 811 533	26 755 292

Tariff heading 05207.14.99: Other

Country	July 2017 - June 2018	July 2018 - June 2019	July 2019 - June 2020
Total dumped imports - kg	7 145 466	8 015 200	6 873 313
Other imports - kg	2 448 126	1 189 763	484 368
Total imports - kg	9 533 592	9 204 963	7 357 681

The Applicant stated that total dumped imports increased in volume and market share in FY2019 (July 2018 to June 2019) and account for more than half of all

imports of the subject product into the SACU market throughout the period of investigation. Similarly, dumped imports from Ireland and Spain have increased in volume and market share over the period of investigation.

The Applicant further stated that FY2020 (July 2019 to June 2020) has been characterized by unprecedented upheaval in the global economy as a result of the COVID-19 pandemic and government interventions in response thereto. This has resulted in production and logistics difficulties in both export and import markets, including reduced production shifts and global freight capacity and logistic difficulties causing significant backlogs in and around ports in importing countries, all of which has contributed to reduced global trade flows.

The Applicant also stated that this has led to a reduction in import volumes of the subject product during FY2020 (July 2019 to June 2020), but this is expected to reverse as the pandemic abates and the global economy returns to pre-pandemic levels and practices.

Commission's consideration:

From the tables above, total dumped imports increased by 3.7 per cent from the 2018 FY to the 2019 FY, but decreased by 36.15 percent from the 2019 FY to the 2020 FY. There was a decrease of 33.79 per cent in dumped imports during the injury period ending June 2020. Although the tables above show a decrease in dumped imports in the 2020 financial year, the Commission took into account that this could be because of an increase in the ordinary customs duties, EU safeguard duties, and the import ban on imports from the EU. Furthermore, the decrease in imports could also be attributed to the worldwide lock down periods as a result of COVID which first emerged in mid-November 2019 which forced most countries to close off borders for international trade. The Commission, in making its decision, placed less reliance on the imports in the 2020 financial period as trade in this period was not in the ordinary course of trade.

6.5 EFFECT ON DOMESTIC PRICES

6.5.1 Price Undercutting and price disadvantage

Price undercutting is the extent to which the price of the imported product is lower than the price of the like product produced by the SACU industry.

Table 6.5.1: Price undercutting

Price Undercutting	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
Ex-factory selling price (All participating producers)	100	99	106
Landed cost of imports:			
Brazil	20.46	20.84	22.98
Denmark	22.26	21.96	25.66
Ireland	20.44	19.99	24.31
Poland	0.00	20.20	22.54
Spain	0.00	18.61	21.93
Price Undercutting Margin - the Participating Producers (Dumped Imports - Brazil) (%) (redacted)	Positive	Positive (Decreased from FY2018)	Positive (Decreased from FY2018, decreased from FY2019)
Price Undercutting Margin - the Participating Producers (Dumped Imports - Denmark) (%) (redacted)	Positive	Positive (Increased from FY2018)	Positive (Decreased from FY2018, decreased from FY2019)
Price Undercutting - the Participating Producers (Dumped Imports - Ireland) (R/kg) (redacted)	Positive	Positive (Increased from FY2018)	Positive (Decreased from FY2018, decreased from FY2019)
Price Undercutting Margin - the Participating Producers (Dumped Imports - Poland) (%) (redacted)	Positive	Positive (Increased from FY2018)	Positive (Increased from FY2018, decreased from FY2019)
Price Undercutting Margin - the Participating Producers (Dumped Imports - Spain) (%) (redacted)	Positive	Positive (Increased from FY2018)	Positive (Increased from FY2018, decreased from FY2019)

The Applicant stated that price undercutting limits its ability to increase prices in line with the increases in costs (price suppression) and also reduces its sales volumes and market share (as there is a preference for the lower priced imports). The SACU industry has limited storage capacity and export opportunities. This means that when opportunistic dumped imports enter the

SACU market, the SACU industry is forced to sell the subject product at reduced prices in order to sell stock and create storage capacity.

Commission’s consideration:

It is evident that there are, with one exception, increases in price undercutting and price disadvantage from the 2018 financial year to the 2019 financial year. However, although the tables above indicate slight decreases in price undercutting and price disadvantage thereafter, the Commission took into account that trade in the period ending 2020 was not in the ordinary course of business.

6.5.2 Price depression

The following table outlines SACU industry’s price depression of frozen Bone-in Portions:

Table 6.5.2: Price depression

	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
Ex-factory price per unit (the Participating Producers) (Rand/kg)	100	99	106

The Applicant stated that it experienced annual price depression in FY2019 (July 2018 to June 2019), and experienced monthly price depression in August 2019, November 2019, December 2019, January 2020, March 2020, April 2020 and May 2020. This reduction in prices reduces its profitability and returns on investment and threatens the long-term sustainability of the industry.

Commission’s consideration:

The Applicant suffered injury between the periods ending June 2018 and June 2019. Even though the Applicant made a slight recovery in its price in the period ended June 2020, it should be borne in mind that this is likely due to the reduced import volumes during the period.

6.5.3 Price suppression

The following table outlines SACU industry's price suppression on frozen Bone-In Portions:

Table 6.5.3: Price suppression

	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
Ex-factory price per unit (the Participating Producers) (KG)	100	99	106
Production cost per unit (the Participating Producers) (KG)	100	105	113
Gross profit per unit (the Participating Producers) (KG)	100	75	77
Gross Profit Margin (the Participating Producers) (%) (indexed)	100	76	73
Production Cost to Price Ratio (the Participating Producers) (%) (indexed)	100	106	107
Per Unit Total Cost (the Participating Producers) (R/kg) (indexed)	100	106	113
Per Unit Net Profit (the Participating Producers) (R/kg) (indexed)	100	45	57
Net Profit Margin (the Participating Producers) (%) (indexed)	100	45	54
Total Cost to Price Ratio (the Participating Producers) (%) (indexed)	100	107	106

The Applicant stated that it experienced price suppression in FY2019 (July 2018 to June 2019) and FY2020 (July 2019 to June 2020) in the form of an increase in the ratio between production cost and price and total cost and price. This shows that the Participating Producers have been forced to limit increases in prices below increases in costs as a result of dumped imports entering SACU at unfair dumped prices, which is expected to worsen unless additional duties are imposed. This reduces the Participating Producers' profitability and returns on investment and threatens the long-term sustainability of the industry.

The Applicant further stated that it is also important to note that it was at no point able to achieve the required whole company net profit of 12% and that this means that the Participating Producers sold the subject product at suppressed prices throughout the period of investigation for injury.

Commission’s consideration:

The table above indicates an increase in production cost over the three-year period ending June 2020. However, the increase in net ex-factory sales prices did not match the increase in production costs. The production costs to selling price ratio increased over the injury period ending June 2020. The Applicant’s gross profit also declined during the period of injury. It is clear that the Applicant not only suffered in terms of price depression, price suppression as well as losses in profits.

6.6 CONSEQUENT IMPACT OF THE DUMPED IMPORTS ON THE SACU INDUSTRY

6.6.1 Actual and potential decline in sales volumes

The following table shows the Applicant’s sales volumes:

Table 6.6.1(a): Annual Sales Volumes - Frozen Bone-In Portions

	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
SACU sales volumes (the Participating Producers) (KG)	100	101	104
SACU sales volumes (Non-Participating Producers) (KG)	100	105	114
SACU sales volumes (All SACU Producers) (KG)	100	103	109

The Applicant stated that although the Participating Producers have managed to slightly increase sales volumes over the period of investigation for injury, it should be noted that this increase was not sufficient to maintain market share and was only possible because the Participating Producers depressed and

suppressed their prices. This is not sustainable and unless action is taken to offset the injurious effects of dumping, the Participating Producers will be forced to increase prices, which will result in reduced sales volumes and market shares.

The reduction in sales volume and/or market share held by the Participating Producers will reduce their sales opportunities and deny them the opportunity to achieve economies of scale, which would improve efficiency and increase profit margins. It will also result in either increased inventory levels or a reduction in production volumes, which would also result in a decrease in employment.

Commission’s consideration:

The table above indicates that the Applicant experienced a slight increase in sales of the subject product during the period of injury. The Applicant’s sales showed an increase in the period ending June 2020 in direct relation to the decrease in imports during the same period.

6.6.2 Output

The following table outlines SACU industry’s output of frozen Bone-in Portions:

Table 6.6.2: Output

	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
Production volumes (the Participating Producers) (KG)	100	100	107
Production volumes (Non-Participating Producers) (KG)	100	105	114
Production volumes (All SACU Producers) (KG)	100	103	111

The Applicant stated that while the Participating Producers increased their production volume during the period of investigation for Injury, continued high volumes of imports of the subject product is expected to cause the Participating Producers to reduce their production volume. A decrease in

production volume will decrease their capacity utilisation, denying them the opportunity to achieve economies of scale (and thus improve efficiency and profitability) and risking further reductions in employment. The Applicant stated that if anti-dumping duties are imposed, the flood of unfairly priced dumped imports will be stemmed, allowing the Participating Producers to increase their production volumes and improve their capacity utilisation, which will improve their profitability and ensure the sustainability of their operations.

Commission’s consideration:

The table above indicates a slight increase in production due to there being a higher demand as a result of decreased imports.

6.6.3 Profit

The following table shows Applicant’s profit situation on frozen Bone-In Portions:

Table 6.6.3: Profit

	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
SACU sales volumes (the Participating Producers) (KG)(indexed)	100	101	104
Total gross profit (the Participating Producers) (Rand)(indexed)	100	76	80
Per Unit Gross Profit (the Participating Producers) (R/kg) (indexed)	100	75	77
Gross Profit Margin (the Participating Producers) (%) (indexed)	100	76	73
Total Net Profit (the Participating Producers) (R) (indexed)	100	45	59
Per Unit Net Profit (the Participating Producers) (R/kg) (indexed)	100	45	57
Net Profit Margin (the Participating Producers) (%) (indexed)	100	45	54

The Applicant stated that profitability is an important injury factor, especially where profits are declining. Profit should be considered on an EBIT (Earnings Before Interest and Tax) basis. The Applicant experienced injury in the form

of significantly decreased profitability (both gross and net) in FY2019 (July 2018 to June 2019) and FY2020 (July 2019 to June 2020).

This shows the extent to which the Participating Producers have been forced to depress and/or suppress prices, despite rising costs, and coincides with an increase in the volume and market share of dumped imports and with continued price undercutting, which is indicative of a causal relationship.

Commission’s consideration:

The table above indicates that the Applicant experienced material injury as its gross profits and net profits decreased significantly over the period of investigation.

6.6.4 Market share

The following table shows SACU industry’s market share of the subject product based on volumes:

Table 6.6.4(a): Market Share by volumes

Market share by volume	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
SACU Sales Volume (the Participating Producers) (kg) (indexed)	100	101	104
SACU Sales Volume (Non-Participating SACU Producers) (kg) (indexed)	100	105	114
SACU Sales Volume (All SACU Producers) (kg) (indexed)	100	103	109
Import volume			
Total Dumped Imports	157,802,353	163,642,452	104,487,452
Other Imports	95,115,108	95,743,474	93,495,387
Total SACU Market Volume (kg) (redacted)	Positive	Positive (Increased from FY2018)	Positive (Increased from FY2018, increased from FY2019)
Market Share by Volume (the Participating Producers) (%) (redacted)	Positive	Positive (Decreased from FY2018)	Positive (Decreased from FY2018, increased from FY2019)
Market Share by Volume (Non-Participating Producers)	Positive	Positive (Increased from	Positive (Increased from

Market share by volume	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
(%) (redacted)		FY2018)	FY2018, increased from FY2019)
Market Share by Volume (All SACU Producers) (%) (redacted)	Positive	Positive (Increased from FY2018)	Positive (Increased from FY2018, increased from FY2019)
Market Share by Volume (Dumped Imports - Brazil) (%) (redacted)	Positive	Positive (Decreased from FY2018)	Positive (Decreased from FY2018, decreased from FY2019)
Market Share by Volume (Dumped Imports - Denmark) (%) (redacted)	Positive	Positive (Increased from FY2018)	Positive (Decreased from FY2018, decreased from FY2019)
Market Share by Volume (Dumped Imports - Ireland) (%) (redacted)	Positive	Positive (Increased from FY2018)	Positive (Increased from FY2018, increased from FY2019)
Market Share by Volume (Dumped Imports - Poland) (%) (redacted)	Positive	Positive (Increased from FY2018)	Positive (Increased from FY2018, decreased from FY2019)
Market Share by Volume (Dumped Imports - Spain) (%) (redacted)	Positive	Positive (Increased from FY2018)	Positive (Increased from FY2018, increased from FY2019)
Market Share by Volume (Total Dumped Imports) (%) (redacted)	Positive	Positive (Increased from FY2018)	Positive (Decreased from FY2018, decreased from FY2019)
Market Share by Volume (Other Imports) (%) (redacted)	Positive	Positive (Decreased from FY2018)	Positive (Decreased from FY2018, decreased from FY2019)
Market Share by Volume (Total Imports) (%) (redacted)	Positive	Positive (Decreased from FY2018)	Positive (Decreased from FY2018, decreased from FY2019)

The following table shows SACU industry's market share of frozen Bone-In Portions based on values:

Table 6.6.4(b): Market Share by value

Market share by value	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
SACU Sales Net Ex-Factory Value (the Participating Producers) (R) (indexed)	100	100	110
SACU Sales Net Ex-Factory Value (Non-Participating SACU Producers) (R) (indexed)	100	103	120
SACU Sales Net Ex-Factory Value (All SACU Producers) (R) (indexed)	100	102	116
FOB Value in ZAR (Total Dumped Imports) (R)	2,377,008,998	2,366,477,000	1,674,402,197
FOB Value in ZAR (Other Imports) (R)	1,108,682,959	1,072,282,458	1,203,150,318
FOB Value in ZAR (Total Imports) (R)	3,485,691,957	3,438,759,458	2,877,552,515
Total SACU Market Value (R) (redacted)	Positive	Positive (Increased from FY2018)	Positive (Increased from FY2018, increased from FY2019)
Market Share by Value (the Participating Producers) (%) (redacted)	Positive	Positive (Decreased from FY2018)	Positive (Decreased from FY2018, decreased from FY2019)
Market Share by Value (Non-Participating SACU Producers) (%) (redacted)	Positive	Positive (Increased from FY2018)	Positive (Increased from FY2018, increased from FY2019)
Market Share by Value (All SACU Producers) (%) (redacted)	Positive	Positive (Increased from FY2018)	Positive (Increased from FY2018, increased from FY2019)
Market Share by Value (Total Dumped Imports) (%) (redacted)	Positive	Positive (Decreased from FY2018)	Positive (Decreased from FY2018, decreased from FY2019)
Market Share by Value (Other Imports) (%) (redacted)	Positive	Positive (Decreased from FY2018)	Positive (Decreased from FY2018, increased from FY2019)
Market Share by Value	Positive	Positive	Positive

Market share by value	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
(Total Imports) (%) (redacted)		(Decreased from FY2018)	(Decreased from FY2018, decreased from FY2019)

The Applicant stated that a decrease in market share held by the SACU industry is an important consideration in the determination of injury and that the Participating Producers experienced injury in the form of declining market share by volume in FY2019 (July 2018 to June 2019) and FY2020 (July 2019 to June 2020). There was a reduction in import volumes and the market share held by dumped imports during FY2020. However, this reduction is likely to be temporary. More particularly, this reduction resulted from production and logistics difficulties in export markets including reduced production shifts and global freight capacity and logistic difficulties causing significant backlogs in and around ports in importing countries, all of which has contributed to reduced global trade flows. This is expected to reverse as the pandemic abates and the global economy returns to pre-pandemic levels and practices. The reduction in market share held by SACU producers reduces their sales opportunities and denies them the opportunity to achieve economies of scale, which would improve efficiency and increase profit margins. It also results in either increased inventory levels or a reduction in production volumes, which would also result in a decrease in employment, and increases the pressure on SACU producers to reduce prices to compete with the imported products. The share of the market held by the dumped imports increased in FY2019 (July 2018 to June 2019), and the share of the market held by dumped imports from Ireland and Spain increased in FY2019 (July 2018 to June 2019) and FY2020 (July 2019 to June 2020), which trend is expected to continue, especially following the reduction in the safeguard measures imposed on imports of the subject product from, amongst other countries, Denmark, Ireland, Poland and Spain in March 2020 and March 2021. The participating producers will only be able to increase or maintain its market share if they reduce their prices to match the lower price of dumped imports, which is

unsustainable. It is expected, therefore, that the participating producers will continue to experience material injury in future.

Commission’s consideration:

The tables above indicate that the Applicant experienced a decrease in the percentage market share by volume over the period July 2017 - June 2018 to July 2018 – June 2019. However, the market share of the Applicant increased in the period ending June 2020. This can be attributed to the decrease in imports as a result of COVID-19, the ban on imports from the EU and the Avian Influenza in parts of the EU over the same three-year period.

6.6.5 Productivity

The following table provides SACU industry’s productivity. It is calculated based on total production by each company and employment as follows:

Table 6.6.5: Productivity

	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
Total production volumes (the Participating Producers) (KG)	100	100	107
Number of production employees (the Participating Producers) (Employees)	100	103	105
Units per production employee (the Participating Producers) (Kg/production employee)	100	97	103

The Applicant indicated that the participating producers experienced material injury in the form of a decrease in production per production employee in FY2019 (July 2018 to June 2019). It was stated that this injury correlates with changes in total dumped imports in 2018 and 2019 (increase in the volume of total dumped imports and increase in the market share of total dumped imports), which is indicative of a causal relationship and that if no anti-dumping duties are imposed to stem the flood of unfairly priced dumped imports, the participating producers may be forced to reduce employment in line with the

decline in production volumes in order to improve production per production employee and thereby decrease costs and improve profitability.

Commission's consideration:

The table above indicates that the Applicant experienced a slight increase in productivity. This can be attributed to the slight increase in demand as a result of the decrease in imports due to the COVID-19 global pandemic which saw international trade come to a standstill between 2019 and 2020.

6.6.6 Return on investment

The following table shows SACU industry's return on investment for the whole business and the subject product based on information provided by the participating producers:

Table 6.6.6: Return on investment

	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
Net Assets (the Participating Producers) (Whole Company) (R) (indexed)	100	140	164
Total Net Profit (the Participating Producers) (Whole Company) (R) (indexed)	100	17	-2
Return on Net Assets (the Participating Producers) (Whole Company) (%) (indexed)	100	12	-1

The Applicant stated that it has experienced material injury in the form of a significant reduction in return on net assets related to the subject product in 2019 and 2020 as a result of a significant decrease in total profits. It was stated that this correlates with an increase in the import volume and market share of dumped imports and continued price undercutting, which has limited the ability of the participating producers to increase prices in line with the increases in costs (price suppression) and has forced the participating producers to reduce production volumes, worsening economies of scale and reducing profits.

Commission's consideration:

The Applicant suffered material injury in the form of return on net assets and total net profit. The Applicant's return on net assets declined for the subject product and for the whole business over the period of injury.

6.6.7 Utilisation of production capacity

The following table shows SACU industry's production capacity utilisation:

Table 6.6.7(a): Capacity utilisation

	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
Production Capacity (the Participating Producers) (kg) (indexed)	100	101	104
Production Volume (the Participating Producers) (kg) (indexed)	100	100	107
Capacity Utilisation (the Participating Producers) (%) (indexed)	100	99	104
Production Capacity (Non-Participating SACU Producers) (kg) (indexed)	100	105	114
Production Volume (Non-Participating SACU Producers) (kg) (indexed)	100	105	114
Capacity Utilisation (Non-Participating SACU Producers) (%) (indexed)	100	100	100

Table 6.6.8(b): Shifts per week

	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
Number of Shifts per Week (the Participating Producers) (Whole Company) (shifts) (indexed)	100	100	107
Number of Employees per Shift (the Participating Producers) (Whole Company) (employees) (indexed)	100	97	97

The Applicant stated that as a result of production reductions, the participating producers have had significant unutilised production capacity for the subject product throughout the period under consideration and this declined further in 2019. This material injury correlates with increases in the volume and market share of dumped imports, which is indicative of a causal relationship. Reduced capacity utilisation means that the participating producers are not able to achieve economies of scale, which reduces their profitability and makes it difficult for them to sustain their operations.

It was stated that although the participating producers have managed to maintain the same average number of shifts per week, the participating producers have been forced to reduce the number of employees per shift. If anti-dumping duties are imposed to stem the flood of unfairly priced dumped imports, the participating producers will be able to increase their production volume, which will improve their capacity utilisation, profitability and employment.

Commission’s consideration:

The table above indicates that the Applicant suffered material injury in the form of a decrease in capacity utilization in the period ending June 2019. A slight increase can be seen in the period ending June 2020 as production increased in the same period.

6.6.8 Actual and potential negative effects on cash flow estimates

The table below outlines SACU industry’s cash flow provided by the participating producers:

Table 6.6.8: Net Cash flow

	July 2017-June 2018(FYP 2018)	July 2018-June 2019(FYP 2019)	July 2019-June 2020(FYP 2020)
Incoming Cash Flow (the Participating Producers) (Whole Company) (R) (indexed)	100	140	136
Outgoing Cash Flow (the Participating	-100	-144	-135

Producers) (Whole Company) (R) (indexed)			
Net Cash Flow (the Participating Producers) (Whole Company) (R) (indexed)	100	3	174
Incoming Cash Flow (the Participating Producers) (Subject product) (R) (indexed)	100	136	137
Outgoing Cash Flow (the Participating Producers) (Subject product) (R) (indexed)	-100	-135	-132
Net Cash Flow (the Participating Producers) (Subject product) (R) (indexed)	100	220	733

The Applicant stated that it has experienced material injury in the form of a decrease in net cash flow in FY 2019. This injury correlates with increases in dumped import volume and market share and continued price undercutting, which is indicative of a causal relationship.

Commission's consideration:

The table above indicates that the Applicant's net cash flow declined over the period from July 2017 to June 2018 to July 2018 to June 2019.

6.6.9 Inventories

The following table provides the SACU industry's inventories for the product under investigation:

Table 6.6.9 Inventories

Inventory	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
Volume (the Participating Producers) (Kg)(indexed)	100	177	182
Value (the Participating Producers) (R)(indexed)	100	180	198

The Applicant stated that it experienced injury in the form of an increase in inventory in FY2019 and FY2020 and that this injury correlates with changes in total dumped imports in FY2019 (increase in the volume of total dumped imports and increase in the market share of total dumped imports), which is indicative of a causal relationship.

The Applicant stated that increased inventory levels increase its expenses as it has to pay for expensive outside cold storage for the subject product. This can also force the participating producers to sell the subject product at lower prices, either when the product has been in storage for too long (the subject product can only be kept in cold store for 12 months) or in order to clear space for new products.

Increased inventory levels also result in cash flow difficulties for the participating producers as they are forced to wait longer between spending the money on producing the subject product and receiving the money when the subject product is sold.

6.6.10 Employment

The following table provides the SACU industry's employment figures:

Table 6.6.10: Employment figures

Employment	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
Total Number of Production Employees (the Participating Producers) (Whole Company) (employees) (indexed)	100	104	107
Number of Selling and Administrative Employees (the Participating Producers) (Whole Company) (employees) (indexed)	100	110	115
Total number of production employees (the Participating Producers) (Whole Company) (Employees) (indexed)	100	105	108
Number of selling and administration employees (the Participating Producers)	100	110	117

(Whole Company) (Employees) (indexed)			
Total Number of Production Employees (Non-Participating SACU Producers) (Employees) (indexed)	0	0	0

The Applicant stated that despite continuing to suffer injury caused by dumped imports, it managed to increase employment over the period of investigation, demonstrating their commitment to sustainable employment. If no action is taken to remedy the material injury caused by dumped imports then it may be forced to consider reductions in employees, as they were forced to do in 2016 and 2017.

The Applicant further stated that it is difficult to move employees to other production areas (in this case from the abattoir to farms) as these facilities are in different locations and the skills and training required differ. Furthermore, a decrease production that requires a decrease in production employees would also result in a decrease in farm level employees.

Commission's consideration:

The table above indicates that the Applicant experienced slight increases in employment over the injury period ending June 2020.

6.6.11 Wages

The following table provides the Applicants annual wages:

Table 6.6.11: Wages

Wages (Annual)	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
Remuneration to Direct Production Employees (the Participating Producers) (R) (indexed)	100	113	133
Number of Direct Production Employees (the Participating Producers) (employees) (indexed)	100	104	107
Annual Remuneration per Direct Production Employee (the Participating Producers)	100	109	124

(R) (indexed)			
Remuneration to Indirect Production Employees (the Participating Producers) (R) (indexed)	100	121	144
Number of Indirect Production Employees (the Participating Producers) (employees) (indexed)	100	110	115
Annual Remuneration per Indirect Production Employee (the Participating Producers) (R) (indexed)	100	110	126
Total Remuneration to Production Employees (the Participating Producers) (R) (indexed)	100	115	135
Total Number of Production Employees (the Participating Producers) (employees) (indexed)	100	105	108
Annual Remuneration per Production Employee (the Participating Producers) (R) (indexed)	100	109	125

The Applicant stated that despite continuing to suffer injury caused by dumped imports, it has managed to increase average wages over the period of investigation for injury, which demonstrates their commitment to sustainable employment. However, if no action is taken to remedy the material injury caused by dumped imports then it may be forced to consider either reductions in employees, as they were forced to do in 2016 and 2017, or lower increases in average wages going forward.

Commission’s consideration:

The table above indicates that the Applicant experienced material injury in the form of increased wages. Furthermore, the table above indicates that the increase in wages is significant in comparison to the slight increase in employment.

6.6.12 Ability to raise capital or investments

The following table provides the Applicants ability to raise capital and investments:

Table 6.6.12: Ability to raise capital and investment

Capital and investment	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
Total capital or investment in subject product (the Participating Producers) (R) (indexed)	100	105	125
Capital expenditure during the year on subject product (the Participating Producers) (R) (indexed)	100	151	233

The Applicant stated that despite continuing to suffer injury caused by dumped imports, it has continued to invest heavily in expansion projects, which demonstrates their continued commitment to economic development in the SACU region. However, if no action is taken to remedy the material injury caused by dumped imports then it may be forced to reconsider future expansion projects, which would be detrimental to SACU employment levels and economic growth. Any future investment projects, if any, would be funded by either parent companies or external sources and would have to be motivated by market related returns.

Commission's consideration:

The table above indicates that the Applicant increased its investment in the subject product and incurred significant capital expenditure over the injury period ending 30 June 2020.

6.6.13 Growth

The following table shows size of the SACU market:

Table 6.6.13(a): Growth

Growth	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
Size of the SACU Market (the Participating Producers)	Positive	Positive (Increased from FY2018)	Positive (Increased from 2018, increased from 2019)
% change from previous period for total SACU market volume (%) (redacted)	-	Positive (Increased from FY2018)	Positive (Increased from FY2018, decreased from FY2019)
SACU sales volume	100	101	104

Growth	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
(the Participating Producers) (kg)(indexed)			
Percentage Change from Previous Period for SACU Sales Volume (the Participating Producers) (%) (indexed)	-	100	199
Rest of SACU producers volume	100	105	114
Percentage Change from Previous Period for SACU Sales Volume (Non-Participating SACU Producers) (%) (indexed)	-	100	184
Alleged dumped imports	157,802,353	163,642,452	104,487,452
Alleged dumped imports %	-	3.7%	-36.15%
Other Imports	95,115,108	95,743,474	93,495,387
Other imports %	-	0.66%	-2.35%
Import Volume (Total Imports) (kg)	252,917,461	259,385,927	197,982,840
Percentage Change from Previous Period for Import Volume (Total Imports) (%)	-	2.56%	-23.67%

The Applicant stated that poultry products, including the subject product, are the most popular form of protein in the SACU countries and demand for the subject product has continued to grow throughout the period of investigation. However, sales of the subject product have increased at a lower rate than the growth of the market in FY2019 (July 2018 to June 2019) and FY2020 (July 2019 to June 2020), resulting in a loss of market share.

Commission's consideration:

The table above indicates that the Applicant experienced slight growth over the three-year investigation period ending June 2020.

6.7 SUMMARY OF MATERIAL INJURY

In determining whether the SACU domestic industry has experienced material injury, the Commission considered that although various injury factors showed a negative trend, several other factors showed a positive trend. In evaluating these diverging trends and assessing whether the SACU industry had suffered material injury, the Commission considered the totality of the evidence before it, mindful of the contextual framework – in particular, the extraordinary factors influencing the period July 2019 to June 2020 – in which its decision was being made.

In this regard, the Commission evaluation was also informed by several WTO Panel rulings. In *Korea – Anti Dumping Duties on Imports of Certain Paper from Indonesia* ("**Korea – Certain Paper**") the Panel held that:

"Finally, we note that the last sentence of Article 3.2 mentions that no one or several of these three injury factors can necessarily give decisive guidance. That is, even if the IA finds certain positive trends with respect to some of these factors, it can nevertheless reach the conclusion that there is injury, provided that that decision is premised on positive evidence and reflects an objective examination of the evidence as required by Article 3.1 of the Agreement.";

whilst the Panel in *China - Anti-Dumping Measures on Imports of Cellulose Pulp from Canada* ("**China - Cellulose Pulp**") held that:

"The "evaluation" required under Article 3.4 suggests that an investigating authority must undertake an analysis and assessment of all relevant economic factors and indices. At the same time, there is no requirement that all relevant factors, or even most or a majority of them, reflect negative developments in order to point to an overall assessment of negative impact on the relevant domestic industry. The last sentence of Article 3.4 specifies that no one or several of the relevant factors can necessarily "give decisive guidance". Article 3.4 requires an overall evaluation of the information, in context, as well as an explanation of how the facts considered by an investigating authority support its assessment."; and

the Panel in *European Union – Anti-Dumping Measures on Certain Footwear from China* ("**EU - Footwear (China)**") held that:

"Moreover, while all listed factors must be considered in every investigation, this does not mean that each of those factors will be relevant to the investigating authority's determination in a given case, as the relevance, and significance, of each factor will vary depending on the nature of the product and industry in question. In addition, we consider it clear that it is not necessary that all relevant factors, or even most or a majority of them, show negative developments in order for an investigating authority to make a determination of injury. Finally, as the text of the Article 3.4 explicitly states, no one or several factors can necessarily give decisive guidance. In our view, this means that an overall evaluation of the information, in context, is necessary, as well as an explanation of how the facts considered by the investigating authority support its determination."

The Commission noted that the period July 2019 to June 2020 has been characterised by unprecedented upheaval in the global economy as a result of the COVID-19 pandemic and government interventions in response thereto. This has resulted in production and logistics difficulties in both export and import markets, including reduced production shifts and global freight capacity and logistic difficulties causing significant backlogs in and around ports in importing countries, all of which have contributed to reduced global trade flows.

The Commission further noted that imports of the subject product from Poland were banned from February 2020, following an outbreak of highly pathogenic avian influenza, which led to a reduction in import volumes of the subject product during the period July 2019 to June 2020.

The Commission is of the view that these extraordinary factors influenced the period July 2019 to June 2020 with regard to some of the injury indicators and that the most important periods for the determination of injury are the periods when there were no extraordinary or unusual circumstances, namely, the periods July 2017 to June 2018 and July 2018 to June 2019.

The Commission took note of the decision by the panel in *China - Anti-Dumping Countervailing Duty Measures on Broiler Products from the United States*, Recourse to Article 21.5 of the DSU by the United States ("China – Broiler Products (Article 21.5)") held that:

"...nothing in Articles 3.1, 3.4, 15.1, or 15.4 prevents an investigating authority from "focusing" on a part of the POI, as long as it does not ignore relevant data and arguments, and its resulting determination is one that an objective and unbiased investigating authority could reach based on the evidence and arguments before it and the explanations given"; and

the Panel in *Argentina – Definitive Anti-Dumping Duties on Poultry from Brazil* ("Argentina – Poultry Anti-Dumping Duties") held that:

"In our view, there is a prima facie case that an investigating authority fails to conduct an "objective" examination if it examines different injury factors using different periods. Such a prima facie case may be rebutted if the investigating authority demonstrates that the use of different periods is justifiable on the basis of objective grounds (because, for example, data for more recent periods was not available for certain injury factors)."

The Commission made a preliminary determination that there are objective grounds (namely the COVID-19 and highly pathogenic avian influenza outbreaks) that justify the Commission focusing on July 2017 to June 2018 and July 2018 to June 2019 in its evaluation of material injury and causation in the present investigation.

The Commission made a preliminary determination that the SACU industry experienced material injury during the period July 2017 and June 2019 in terms of price undercutting; price depression; price suppression; a decline in profit; a decline in market share; a decline in return on investment; a decline in capacity utilisation; and an increase in inventories.

The Commission took note that the Anti-Dumping Agreement and the ADR only require that the authority investigate whether there has been an increase in imports and do not require there to have been increase throughout the entire or even most of the period of investigation before anti-dumping duties can be imposed. In this regard, the Commission took note of the report of the Appellate Body in *European Communities – Anti Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil* ("**EC – Tube or Pipe Fittings**"), which states:

"significant increases in imports have to be "consider[ed]" by investigating authorities under Article 3.2, but the text does not indicate that in the absence of such a significant increase, these imports could not be found to be causing injury"

and the report of the panel in *Korea - Anti-Dumping Duties on Pneumatic Valves from Japan* ("**Korea – Pneumatic Valves**"), which states:

"There is no basis in either the text of the Anti-Dumping Agreement or in logic for the view that an investigating authority can only make a determination of causation if it finds a significant increase in dumped imports for the period of trend analysis as a whole, or for each year of the period of trend analysis."

The Commission found that the total dumped imports from the subject countries increased during the period July 2017 to June 2019 both in absolute terms and as a percentage of domestic production and sales and accounted for more than half of all imports of the subject products throughout the period of investigation.

The Commission made a preliminary determination that there is sufficient information to indicate that the Applicant is experiencing material injury with regard to the subject product.

7. THREAT OF MATERIAL INJURY

The Applicant provided the information in the section below, which was considered by the Commission for purposes of making a preliminary determination with regard to threat of material injury.

7.1 Freely disposable capacity of the exporters

7.1.1 Brazil

The Applicant stated that Brazil is the second largest global producer and the largest exporter of chicken meat. Brazilian chicken meat production and exports are expected to respectively grow 2.5% and 5% in 2020, with chicken meat production forecast to be 13.975 million tons in 2020.

The Applicant stated that processing capacity in Brazil is expected to increase as a result of:

- stable feed costs for 2020 due to projected record 2019/2020 soybean and corn harvests;
- an above average number of chicks placed in meat-growing operations over the past months; and
- an increase in the average live weight of broiler chickens due to enhanced genetics being available in Brazil.

The Applicant therefore forecasted a significant increase in freely disposable capacity in Brazil in the near future.

7.1.2 EU Dumping Countries, including Denmark, Ireland, Poland and Spain

The Applicant stated the following:

- "According to a publication by the United States Department of Agriculture ("**USDA**"), broiler meat production in the EU has exceeded consumption over the last few years. In 2019, the EU produced 12 475 000 tonnes and imported 720 000 tonnes of chicken meat. The EU, however, only consumed 11 735 000 tonnes. This implies that there was a significant excess supply of

chicken meat in the EU in 2019 and particularly dark bone-in portions available for export. In 2018, the EU produced 12 220 000 tonnes and imported 703 000 tonnes of broiler meat (mostly white meat). The EU, however, only consumed only 11 474 000 tonnes. This implies that there was also a significant excess supply of chicken meat in the EU in 2018 and particularly dark bone-in portions available for export.

- Thus far in 2020, EU-28 production of poultry meat products has exceeded consumption by 6%.
- There is a clear oversupply of chicken meat in the EU and the excess production, particularly of undesired surplus dark meat portions which is exported to markets such as South Africa, is causing and threatens to cause material injury to the SACU industry.
- EU exporters are able to lower the prices for those dark meat cuts as they get a better price in domestic EU-28 markets for more expensive breast cuts and white meat.
- In addition, as there is limited domestic demand in the EU for brown meat, and any increases in EU production are expected to increase the threat posed by the dumping of brown meat products into the SACU market.
- Poultry meat was not negatively affected by the economic downturn in the EU because it is the most affordable protein source in the EU, while other meat product consumption decreased. Several market analyses showed that EU-28 consumers generally switched from beef or pork meat to chicken meat. The consumption of Chicken in the EU per capita is stable or slightly increasing. The EU-28 chicken sector is expected to continue to grow because of the slow economic growth predicted for 2020 that favours cheap protein sources and continued strong domestic demand for poultry meat due to its convenience for consumers. This will stimulate production increases and boost the supply of brown meat available for export to the SACU market.

- Global whole-bird and breast-meat markets in the EU are, however, expected to remain pressured and have limited price upside in 2020. There is accordingly an incentive for EU producers to focus on brown meat exports, including to the SACU market.
- EU exports of chicken meat exports and particularly brown meat cuts are anticipated to increase sharply fuelled by exports of the Subject Product to among other regions, Sub-Saharan Africa. These exports are expected to increase dramatically, and are growing faster to the SACU market because of the declining levels of protection as the EU safeguard is progressively liberalised. This is especially so in light of the reduction in the safeguard measures imposed on imports of the Subject Product from, amongst other countries, Denmark, Ireland, Poland and Spain in March 2020 and March 2021.
- The significant decline in EU grain and protein prices since 2014 has also enhanced the competitiveness of the EU chicken meat industry and increased operating margins even as retail prices decreased. The foreseen grain price decline may lead EU producers to lower their prices while others will increase their profit margin. EU-28 chicken meat production will also benefit from the lower price of soybean meals imported from the United States. This trend of declining input costs in the EU is anticipated to continue.
- The EU-28 chicken meat trade surplus is also expected to increase in 2020. In particular, exports of frozen low-priced chicken meat cuts to Sub-Saharan Africa are expected to continue to grow in 2020. It is predicted that total EU exports of chicken meat will rise by 4% to 5% in 2020, with Africa seen as a key export destination.
- It is apparent from the above that the EU poultry industry has excess capacity of undesired frozen brown meat. EU exports of dumped poultry meat which consists mainly of frozen brown meat portions are growing and will probably continue to grow at the expense of the SACU chicken producers.”

The Applicant provided the following analysis of the individual EU Dumping countries below:

Denmark

Denmark is now responsible for 10% of all poultry production in the EU. Between 2018 and 2019, the annual production of poultry meat in Denmark rose by 7.5%. This significant increase in production, and the associated increase in production capacity, demonstrates that there is a material threat posed by dumped exports from Denmark to the SACU market.

On 23 January 2020, HK Scan Denmark, which is one of the largest poultry producers in Denmark, announced that it was investing €6 million to significantly increase its processing capacity by 20 per cent and its raw material yield by 10 per cent. The new capacity is expected to be installed by the end of 2020.

Similarly, Danish Finest Chicken has recently announced that it has substantially enhanced its production capacity to 43,000 chickens a day. Danish Finest Chicken has increased its number of suppliers by 18 per cent and expects to slaughter about nine million chickens in 2020.

The Applicant therefore forecasts a significant increase in freely disposable capacity in Denmark and increase in dumped exports of the Subject Product to SACU causing material injury to SACU.

Ireland

Irish production again hit record levels in 2018, with 99 million birds slaughtered in export-approved plants, an increase of 3.3% compared to 2017, with most of the increase evident in broiler and duck production. The Irish poultry sector, however, continues to face challenges particularly the ongoing uncertainty around Brexit. In 2018, the United Kingdom accounted for 78 per cent of the value of Irish poultry exports. There are serious concerns that there will not be a trade deal to mitigate the effects of Brexit

on trade between Ireland and the United Kingdom, and a substantial portion of Ireland's chicken exports stand to be diverted to third countries and particularly exports of dumped brown bone-in portions to SACU.

In this context, the pursuit and development of new markets has been an ongoing and central component of the strategic development by the Irish government of the Irish agri-food sector, as stated in the market development theme of Food Wise 2025. The Food Wise 2025 strategy was agreed to be by a committee of 35 stakeholders from the Irish agri-food sector. It aims to achieve a competitive critical mass in the international marketplace for the Irish poultry sector. The Food Wise 2025 strategy recognises that a growing understanding and utilisation of so-called 5th Quarter products, such as chicken feet, together with international demand for cuts which are not in demand in Ireland, will ensure the continuation of export opportunities. These cuts are brown bone-in portions. This poses a significant threat to South Africa, where the demand for such products is high.

Between 2018 and 2019, the annual production of poultry meat in Ireland rose by 7%. This significant increase in production, and the associated increase in production capacity, demonstrates that there is a material threat posed by dumped exports from Ireland to the SACU market.

The Applicant therefore forecasts a significant increase in freely disposable capacity in Ireland and an increase in dumped exports of the Subject Product to SACU causing material injury to SACU.

Poland

Poland is now the leading EU-28 chicken meat producing and exporting country, with close to 20 percent of all EU-28 chicken production. Polish chicken production is export-focused with about 50 percent of its production being exported.

According to the USDA, Polish annual exports of Chicken meat in 2019 increased by a substantial 12 percent to 134 million tons. This enormous growth is mainly due to the price advantage of Polish chicken and crucially the development of non-EU markets.

Stimulated by rising exports, Poland has seen major growth in production, and has raised more than a billion chickens for meat last year, which is 10 times more than in 2009. In October 2019, Polish hatcheries delivered a record 122 million day-old chicks indicating an increase in Polish production capacity. Between 2018 and 2019, the annual production of poultry meat in Poland rose by 2%. This would continue the trend of increased chicken meat production in Poland. According to the director of the Polish National Chamber of Poultry and Feed Producers, Poland's slaughtering capacity allows for even more chickens to be produced.

In 2019, there was a significant investment in Polish production capacity, with two new poultry processing plants opening in Poland. Furthermore, there are plans for at least five new slaughterhouses to be opened up within the next one to two years.

The USDA estimates that the annual chicken meat production in Poland will grow by 1.5 percent in 2020.

These significant increases in production and exports, and the increase in production capacity, demonstrate that there is a material threat of injury posed by exports and particularly dumped Subject Products from Poland to the SACU market.

In addition, the Polish poultry industry is highly dependent on exports to the United Kingdom. The UK still plans to leave the EU by the end of 2020, and this threatens to divert Polish exports and particularly dumped Subject Product to other markets, including SACU. Polish exporters will need to

refocus their market strategies in order to adjust to this new reality and are likely to divert dumped exports to other markets including SACU.

The Applicant therefore forecasts a significant increase in freely disposable capacity in Poland and increase in dumped exports of the Subject Product to SACU causing material injury to SACU.

Spain

Between 2018 and 2019, the annual production of poultry meat in Spain rose by 6%. Spain now accounts for 11% of the EU's annual chicken production. This significant increase in production, and the associated increase in production capacity, demonstrates that there is a material threat of material injury posed by dumped exports of the subject product from Spain to the SACU market.

Chicken production is expected to continue to grow in 2020 responding to upward trends in export demand including the subject product and domestic chicken meat consumption.

Spanish chicken producers have recently made substantial investments which are aimed at increasing their production capacities. For example, OSI Food Solutions Spain has added a high-capacity production line to its existing operation in Toledo, Spain. This €17 million investment doubled the production capacity of OSI Food Solutions Spain from an annual quantity of 12 000 tons of processed chicken products to 24,000 tons.

The Applicant therefore forecasts a significant increase in freely disposable capacity in Spain and an increase in dumped exports of the Subject Product to SACU causing material injury to SACU.

7.2 Significant Increase in dumped imports

Imports of the alleged dumping imports under the tariff subheading are indicated as follows:

Table 6.2: Volume of alleged dumped imports: Frozen bone-in portions 0207.14.9

Import Volume (kg)	Volumes	%	Volumes	%	Volumes	%
	2017/2018	2017/2018	2018/2019	2018/2019	2019/2020	2019/2020
Alleged dumped imports	157 802 353	62.39%	163 642 452	63.09%	104 487 452	52.78%
Other imports	95 115 108	37.61%	95 743 474	36.91%	93 495 387	47.22%
Total	252 917 461	100.00%	259 385 926,00	100.00%	197 982 839,00	100.00%

Brazil

Chicken meat production in Brazil is expected to continue to increase in 2020, with export opportunities being the main driver. There was a significant increase in the dumped imports volume from Brazil into South Africa in FY2018 of 40 546 kg. This constituted an alarming annual increase of 150,17%. It was stated that this strongly indicates that Brazilian exporters will continue to increase their sales of dumped imports to the SACU market.

The South African consumer market for chicken meat has also been targeted for intense promotion by Brazilian traders. A Brazilian government private sector promotion program aimed at market promotion for 2020-2021 in South Africa was recently signed.

Denmark

In light of Denmark's expanded production capacity, it is expected that Danish chicken meat production and exports will continue to increase in 2020. There was a significant increase in the dumped imports volume from Denmark into South Africa in FY2018 of 1 855 474 kg. This constituted an alarming annual increase of 127,12%. It was stated that this strongly indicates that Danish exporters will continue to increase their sales of dumped imports to the SACU market.

Ireland

The annual value of Irish poultry exports increased recently in 2018 by 7% to approximately €300 million compared to €278 million in 2017. At just under €30m, South Africa holds the second largest share of Irish poultry export value, a 10% increase from 2017.

Ireland's recent record production levels give rise to the expectation that Irish chicken meat production and exports will continue to increase in 2020. There was a significant increase in the Dumped Imports Volume from Ireland into South Africa in FY2018 of 180 834 kg. This constituted an annual increase of 13,28%.

The Applicant stated that this strongly indicates that Irish exporters will continue to increase their sales of dumped imports to the SACU market.

Poland

In line with the trend of increasing exports of chicken meat from Poland, there was a significant increase in the dumped import volumes from Poland into South Africa in FY2018 of 725 390kg. Already, the dumped imports volumes in FY2019 is 2 527 709 kg which already constitutes a 248,46% increase compared to the total dumped imports volume in FY2018. It was stated that this strongly indicates that Polish exporters will continue to increase their sales of dumped imports to the SACU market.

Poultry producers in Poland have also been encouraged by the Polish National Chamber of Poultry and Feed Producers to increase their exports to South Africa. The director of the Chamber, Katarzyna Gawrońska, stated that Poland was the largest European exporter of poultry to South Africa in 2019 and that "export to South Africa seems to be an interesting direction that can help remove surplus poultry from the European market".

Spain

The increased investments that have been made by Spanish producers have been correlated with a significant increase in the sales of Spanish Dumped Imports to the SACU market. Already, the dumped import volumes in FY2019 is 2 297 230 kg which already constitutes a substantial 460,18% increase compared to the total dumped import volumes in

FY2018. It was stated that this strongly indicates that Spanish exporters will continue to increase their sales of dumped imports to the SACU market.

7.3 Threat of Price Depression or Suppression

The Applicant stated that it is necessary for SAPA's members to lower their prices to match or undercut the price of the alleged dumped imports in order to make sales in the SACU market. If SAPA's members do not lower their prices, then their customers will simply import dumped subject product from the allegedly dumping countries. This has already resulted in SAPA's members experiencing price depression, price suppression, decline in profitability, decline in return on investment and decline in cash flow. The increase in freely disposable capacity in the Dumping Countries and the increased focus on exports of the subject product to the SACU market means that it is likely that the price of dumped imports will decrease in the coming years. This will put more pressure on SAPA's members to reduce their ex-factory prices, exacerbating the material injury demonstrated above.

Commission's consideration:

The Applicant is experiencing price suppression. The Applicant experienced price depression in the period July 2018 to June 2019 and several months in the period July 2019 to June 2020.

7.4 Exporter Inventories

The Applicant stated that the high levels of overcapacity in the subject countries and the ease with which they have recently increased their exports to SACU strongly indicates that they have significant inventories of the subject product which they are able to opportunistically export to SACU.

7.5 State of the Economy in the Country of Origin / Export

Brazil

Despite the competitive price of chicken in Brazil compared to pork and beef, domestic demand is being impacted by the poor performance of the

Brazilian economy which has suffered from high rates of unemployment and household debt. Lower inflation is expected in 2020. Lower domestic price levels can be expected to incentivise producers of the subject product to increase their dumped exports.

This effect has been exacerbated by the COVID-19 pandemic which has reduced expected domestic demand for the subject product. In addition, the significant devaluation of the Brazilian currency is making Brazilian product more competitive in the world market.

Denmark

The EU-27+UK domestic consumption of chicken meat is expected to increase more than total population growth in 2020, indicating a small increase in per-capita consumption. This is due to the switch from other meats to chicken meat because of weak economic conditions in some EU-27+UK countries as well as consumer preference changes toward leaner and easier to prepare meats. It was stated that this will likely lead to an increase in the Danish production and exports of the dumped subject product.

Ireland

The EU-27+UK domestic consumption of chicken meat is expected to increase more than total population growth in 2020, indicating a small increase in per-capita consumption. This is due to the switch from other meats to chicken meat because of weak economic conditions in some EU-27+UK countries as well as consumer preference changes toward leaner and easier to prepare meats. It was stated that this will likely lead to an increase in the Irish production and dumped exports of the subject product.

Poland

The EU-27+UK domestic consumption of chicken meat is expected to increase more than total population growth in 2020, indicating a small increase in per-capita consumption. This is due to the switch from other

meats to chicken meat because of weak economic conditions in some EU-27+UK countries as well as consumer preference changes toward leaner and easier to prepare meats. It was stated that this will likely lead to an increase in the Polish production and dumped exports of the subject product.

Spain

The EU-27+UK domestic consumption of chicken meat is expected to increase more than total population growth in 2020, indicating a small increase in per-capita consumption. This is due to the switch from other meats to chicken meat because of weak economic conditions in some EU-27+UK countries as well as consumer preference changes toward leaner and easier to prepare meats. The Applicant stated that this will likely lead to an increase in the Spanish production and dumped exports of the subject product.

7.6 SUMMARY ON THREAT OF MATERIAL INJURY

Regulation 14.2 directs the Commission in making a determination of threat of material injury to consider various factors such as the rate of increase of dumped imports; freely available or increased capacity; the availability of other export markets; the prices at which the subject product is or will be entering; and exporters' inventories. The consideration of these and other factors point to a clearly foreseeable and imminent threat of material injury in light of the facts discussed in the previous sections.

The Commission's evaluation of these and other factors takes place in the context of a unique framework. Specifically, in most, if not all the subject exporting countries, there is a market preference of white chicken meat over dark chicken meat. The Commission's determination that various foreign producers/exporters in this investigation sold the subject product at a loss in their respective domestic markets substantiates this preference. As a result, it is foreseeable that increases in production in the subject exporting countries, as

set out in section 7.1, in will result in sufficiently freely available, or an imminent substantial increase in, capacity of exporters.

The potential for exporting such capacity to the SACU will be enhanced by several factors. This includes the reopening of the global economy following the COVID-19 pandemic. The Commission is of the view that the period July 2019 to June 2020 has been characterised by unprecedented upheaval in the global economy as a result of the COVID-19 pandemic and government interventions in response thereto and the outbreak of highly pathogenic avian influenza in Poland. This has resulted in production and logistics difficulties in both export and import markets, including reduced production shifts and global freight capacity and logistic difficulties causing significant backlogs in and around ports in importing countries, all of which has contributed to reduced global trade flows. Although this has led to a decrease in dumped imports during July 2019 to June 2020, this is expected to reverse as the pandemic abates and the global economy returns to pre-pandemic levels and practices and the import bans resulting from avian influenza are removed.

Additionally, the Commission took into account that both Ireland and Denmark have declared that their territories are free from high pathogenicity avian influenza as of 16 March 2021 and 9 August 2021 respectively and that it appears that the outbreak in Poland is reaching an end.

Finally, it is foreseeable that the termination of the safeguard duty currently applicable to imports of the subject product from the EU, which will take place on 12 March 2022, will lead to a decrease in the landed cost of imports and an increase in the volume of the subject product imported from Denmark, Ireland, Poland and Spain.

The above price-related issue is noteworthy because, as indicated early, subject imports entered the SACU at prices that undercut domestic prices substantially throughout the period of investigation. Specifically, there were increases in price undercutting and price disadvantage from the 2018 financial year to the 2019

financial year. Although there were slight decreases in price undercutting and price disadvantage thereafter, the Commission took into account that trade in the period ending 2020 was not in the ordinary course of business. As a result, it is foreseeable that in the face of such low prices, the subject product will have, and continue to have, a significant depressing or suppressing effect on SACU prices.

Finally, the Commission found that dumped imports from the subject countries increased in absolute terms and relative to SACU consumption and production during the period July 2018 to June 2019 and that dumped imports from Ireland and Spain have also increased in volume and market share over the period of investigation for injury.

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

8. CAUSAL LINK

8.1 GENERAL

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

8.2 VOLUME OF IMPORTS AND MARKET SHARE

An indication of causality is the extent of the increase in the volume of the dumped subject imports from Brazil, Denmark, Ireland, Poland and Spain relative to the extent to which the market share of the SACU Industry has decreased since the commencement of injury, with a corresponding increase in the market share of the dumped product.

The Applicant stated that although it has managed to slightly increase sales volumes over the period of investigation for injury, it should be noted that this increase was not sufficient to maintain market share and was only possible because it depressed and suppressed its prices. This is not sustainable and unless action is taken to offset the injurious effects of dumping, it will be forced to increase prices, which will result in reduced sales volumes and market shares.

The following table shows the volume of imports:

Table 8.2.2: Import volumes

Country	July 2017 – June 2018	July 2018 – June 2019	July 2019 - June 2020
Total dumped imports	157 802 353	163 642 552	104 487 452
Other imports	95 115 108	95 743 474	93 495 387
Total imports - kg	252 917 461	259 385 926	197 982 839

Commission's consideration

The Commission noted that the total dumped imports increased over the period July 2017 – June 2018 to July 2018 to June 2019. It is expected that the level of the import volumes of the subject product will reverse to

the July 2018 to June 2019 levels as the pandemic abates and the global economy improves and trade normalizes and the outbreak of highly pathogenic avian influenza end and the import ban is lifted.

8.3 EFFECT OF DUMPED IMPORTS ON PRICES

The following table shows the price effects of the Applicant:

Table 8.3.1: Price depression, price suppression and price undercutting

Rand	July 2017 – June 2018	July 2018 – June 2019	July 2019 - June 2020
SACU Sales Net Ex-Factory Price (the Participating Producers) (R/kg) (indexed) (Price depression)	100	99	106
Unsuppressed SACU Sales Net Ex-Factory Price (Non-Participating SACU Producers) (R/kg) (indexed) (price suppression)	100	106	116
Price Undercutting Margin - the Participating Producers (Dumped Imports - Brazil) (%) (redacted)	Positive	Positive (Decreased from FY2018)	Positive (Decreased from FY2018, decreased from FY2019)
Price Undercutting Margin - the Participating Producers (Dumped Imports - Denmark) (%) (redacted)	Positive	Positive (Increased from FY2018)	Positive (Decreased from FY2018, decreased from FY2019)
Price Undercutting - the Participating Producers (Dumped Imports - Ireland) (R/kg) (redacted)	Positive	Positive (Increased from FY2018)	Positive (Decreased from FY2018, decreased from FY2019)
Price Undercutting Margin - the Participating Producers (Dumped Imports - Poland) (%) (redacted)	Positive	Positive (Increased from FY2018)	Positive (Increased from FY2018, decreased from FY2019)
Price Undercutting Margin - the Participating Producers (Dumped Imports - Spain) (%) (redacted)	Positive	Positive (Increased from FY2018)	Positive (Increased from FY2018, decreased from FY2019)

Commission's consideration

The Commission noted that, for the period July 2017 to June 2018 to July 2018 to June 2019, the ex-factory selling price declined, the Applicant experienced price suppression and price undercutting.

8.4 CONSEQUENT IMPACT OF DUMPED IMPORTS

Material injury indicator	Analysis (2017/2018– 2018/2019)
Price suppression	Injury present
Price depression	Injury present
Sales volume	Increase in sales: no injury present
Market share by volume	Injury present
Profit	Injury present
Production	No injury present
Productivity	No injury present
Return on investment	Injury present
Utilisation of production capacity	Injury present
Cash flow	Injury present
Inventory levels	Injury present
Growth	No injury present

8.5 FACTORS OTHER THAN THE DUMPING CAUSING INJURY

8.5.1 Examination of Brazil, Denmark, Ireland, Poland and Spain

Variable	Year			Change (%)
	2017/2018	2018/2019	2019/2020	2017/2018 – 2019/2020
Prices of imports sold at alleged dumped prices (fob price) (R/kg) Tariff subheading 0207.14.9	13.77	13.91	14.41	4.65%
Prices of imports not sold at dumping prices (fob price) (R/kg)	11.66	11.20	12.87	10.37%
Volume of imports not sold at dumping (Kg)	95 115 108	95 743 474	93 495 387	-1.70%
Contraction in demand:				
Percentage Change from Previous Period for Total SACU Market Volume (%) (redacted)	-	Positive (Increased from FY2018)	Positive (Increased from FY2018, decreased from FY2019)	

Prices of imports sold at alleged dumped prices (fob price) (R/kg) Tariff subheading 0207.14.9	The prices of imports not sold at dumped prices increased and the growth rate of the industry increased. However, when the prices of the imports sold at alleged dumped prices are compared with the prices of imports not sold at dumped prices, it indicates that the prices are lower. The market share of imports not sold at dumped prices is less than 10 percent and the prices of these imports could thus not detract significantly from the causal link between the alleged dumping and the material injury suffered by the SACU industry.
Changes in the patterns of consumptions	The Applicant stated that demand for the subject product in the SACU market has increased continuously through the period of investigation for Injury and this is expected to continue.
Trade-restrictive practices of foreign and domestic producers	The Applicant stated that it is not aware of any trade restrictive practices.
Developments in technology	The Applicant stated that there have been no recent technological advances regarding the subject product.
Export performance of the domestic industry	The Applicant stated that the SACU industry has limited export opportunities for the subject product. In 2019, 1 920 tonnes of the subject product were exported from South Africa. Of this, 1 612 tonnes were exported to SADC countries and less than 2 tonnes were exported outside of Africa. There is little to no demand for the subject product in North America or Europe (as a result of the well documented preference for fresh chicken products, especially boneless breast meat).
Productivity of the domestic industry	The Applicant believes that SACU broiler producers are globally competitive and stated that this was confirmed by the Bureau for Food and Agricultural Policy in a March 2019 report titled "Competitiveness of the South African broiler industry".

The Applicant stated that that demand for the subject product in the SACU market has increased continuously through the period of investigation for injury and this is expected to continue, but that the volumes of the subject product sold by the Participating Producers has not increased at the same rate, resulting in a loss of market share.

8.6 SUMMARY ON CAUSAL LINK

The Commission found that the subject product is exported at dumped prices by exporters/manufactures from Brazil, Denmark, Ireland, Poland and Spain.

The Commission took note of the information available with regard to other factors that could have contributed to the material injury and threat of material injury experienced by the SACU industry, such as the COVID restrictions; access to reliable water and electricity sources and the additional costs companies had to incur to obtain such reliable access; the impact of increasing feed costs; the volume of imports from countries not subject to the investigation, such as the United States of America (USA) and Argentina. The Commission also took note of the comments received with regard to the alleged fraud at Daybreak.

From the information provided, it is clear that the SACU industry experienced material injury as a result of the increase in imports from the countries under investigation, before the closure of the hospitality, restaurant and quick restaurant sectors. The Commission noted that whilst there were price decreases following the outbreak of COVID-19 and before the end of the period of investigation for injury in April 2020 and May 2020, these were more than offset by the increase in prices between May 2020 and June 2020. The Commission is of the view that there was no clear decrease in prices during this period that can be attributed solely to the COVID-19 restrictions, and notes that these decreases were lower than the monthly decreases in several preceding months, which cannot be attributed to the COVID restrictions. Similarly, the effects of COVID-19 on price and supply and demand conditions in South Africa and the SACU region only applied from the beginning of the first lockdown period, 26 March 2020, only three months of which fall into the period of investigation for injury.

With regard to the impact of imports from other countries, including imports from the USA, it should be noted that these imports accounted for 27.30% of total imports in the period July 2017 to June 2018, 30.03% of total imports in the period July 2018 to June 2019 and 38.44% of total imports in the period July 2019 to June 2020. Imports of the subject product from Argentina accounted for 8.91%, 6.03% and 7.68% of total imports during the same

period. During this same period, imports of the subject product from the subject countries accounted for 62.39%, 63.10% and 52.78% of total imports respectively.

The Commission further noted that imports of the subject product from the USA are subject to anti-dumping duties and that no information was submitted to indicate that the imports from Argentina were at dumped prices. The Commission also noted that even though imports from the United States of America and Argentina were cheaper than imports from the subject countries, imports of the subject product from the subject countries significantly undercut the SACU producers throughout the period of investigation for injury. This shows that whilst imports from the USA and Argentina may have been a contributory cause to the material injury suffered by the SACU domestic industry, the main cause was imports of the subject product from the subject countries.

The Commission took note of the fact that Astral's 2020 financial year ended on 30 September 2020 and that the second half of Astral's 2020 financial year covers the period April 2020 to September 2020, of which only three months fall within the period of investigation for injury. The effects of the closure of the hospitality, restaurant and quick restaurant sectors and increase in non-feed expenses as a result of the COVID-19 outbreak and the feed price increases in the second half of Astral's financial year therefore could not have had any impact in the preceding 33 months of the period of investigation for injury. This is clear from the Astral Press Release also states that:

"Despite the higher import tariffs on frozen bone-in portions announced in March 2020, poultry imports have continued unabated. This proves what the industry has been advocating for some time – that poultry imports into South Africa typify classic dumping, where prices are merely reduced to maintain export volumes from the producing countries."

It is clear from the above that both Astral and RCL Foods believed that dumped imports were a cause of the material injury they are experiencing.

The Commission noted the Applicant's comments that the alleged R138 million fraud relates to distribution costs of Daybreak which are not part of its cost and price build-up and therefore has an immaterial impact on the information provided by it and that any change to this amount will also have no material impact on the information provided by Daybreak. As all costs, prices and profits are presented at the ex-factory level, distribution costs (which are incurred after the ex-factory level) do not have any impact on the financial data submitted, including price suppression, net profit or return on investment. As such, the alleged fraud would have no impact on the information provided by SAPA. It also appears that the alleged fraud relates to the period 21 January 2020 to 10 February 2021. As the investigation period for injury for this investigation is July 2017 to June 2021, a significant portion of the alleged fraud falls outside of the investigation period for injury and the vast majority of the investigation period for injury would be unaffected if they were taken into account. The Commission further noted that these allegations are disputed and have not been verified by the auditors and that the credentials of Schaeffer- Schmidt which produced the forensic report have also been questioned. Fin24 on the 19 May reported that "parts of Schaeffer Schmidt's website, which is now offline, were copied from US based FTI Consulting which says it has never heard of it."

The Commission is further of the view that the removal of Daybreak's information from the consolidated information will have no impact on industry standing as Daybreak will still support the application.

The Commission made a preliminary determination that although there were factors other than the dumped imports that may have been a contributory cause to the material injury experienced by the SACU domestic industry, these did not sufficiently detract from the causal link between the dumping and the material injury and threat of material injury experienced by the SACU industry.

9. SUMMARY OF FINDINGS

9.1 DUMPING

The Commission found that the subject product originating in or imported from Brazil, Denmark, Ireland, Poland and Spain was exported at dumped prices to the SACU during the period of investigation. The following dumping margins were calculated:

Country	Company	Margin of dumping as a % of export price
Brazil	Agroaraçá	41.0%
	Agrosul	33.0%
	Avivar	13.0%
	Aurora	34.0%
	C Vale	22.0%
	Copacol	50.0%
	Jaguafrangos	48.0%
	Pif Paf	10.0%
	Seara	6.0%
	Zanchetta	31.0%
	All other	265.1%
Denmark	HK Scan	39.0%
	All other exporters	67.4%
Ireland	All exporters	158.4%
Poland	Animex	5.0%
	Drobimex	9.0%
	All other exporters (excluding Plukon)	96.9%
Spain	Disavasa	16.0%
	Grupo An	3.0%
	Uvesa	4.0%
	Grupo Vall	26.0%
	All other exporters	85.8%

The Commission made a preliminary determination that dumping of the subject product originating in or imported from Brazil, Denmark, Ireland, Poland and Spain is taking place.

9.2 MATERIAL INJURY

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

- Price Suppression
- Price Depression
- Decline in Market share
- Decline in profit
- Decline in Return on investment
- Decline in Cash flow
- Decline in Employment
- Increase in wages
- Increase in inventory

9.3 THREAT OF MATERIAL INJURY

Regulation 14.2 directs the Commission in making a determination of threat of material injury to consider various factors such as the rate of increase of dumped imports; freely available or increased capacity; the availability of other export markets; the prices at which the subject product is or will be entering; and exporters' inventories. The consideration of these and other factors point to a clearly foreseeable and imminent threat of material injury in light of the facts discussed in the previous sections.

The Commission's evaluation of these and other factors takes place in the context of a unique framework. Specifically, in most, if not all the subject exporting countries, there is a market preference of white chicken meat over dark chicken meat. The Commission's determination that various foreign producers/exporters in this investigation sold the subject product at a loss in their respective domestic markets substantiates this preference. As a result, it is foreseeable that increases in production in the subject exporting countries, as set out in section 7.1, in will result in sufficiently freely available, or an imminent substantial increase in, capacity of exporters.

The potential for exporting such capacity to the SACU will be enhanced by several factors. This includes the reopening of the global economy following the COVID-19 pandemic. The Commission is of the view that the period July

2019 to June 2020 has been characterised by unprecedented upheaval in the global economy as a result of the COVID-19 pandemic and government interventions in response thereto and the outbreak of highly pathogenic avian influenza in Poland. This has resulted in production and logistics difficulties in both export and import markets, including reduced production shifts and global freight capacity and logistic difficulties causing significant backlogs in and around ports in importing countries, all of which has contributed to reduced global trade flows. Although this has led to a decrease in dumped imports during July 2019 to June 2020, this is expected to reverse as the pandemic abates and the global economy returns to pre-pandemic levels and practices and the import bans resulting from avian influenza are removed.

Additionally, the Commission took into account that both Ireland and Denmark have declared that their territories are free from high pathogenicity avian influenza as of 16 March 2021 and 9 August 2021 respectively and that it appears that the outbreak in Poland is reaching an end.

Finally, it is foreseeable that the termination of the safeguard duty currently applicable to imports of the subject product from the EU, which will take place on 12 March 2022, will lead to a decrease in the landed cost of imports and an increase in the volume of the subject product imported from Denmark, Ireland, Poland and Spain.

The above price-related issue is noteworthy because, as indicated early, subject imports entered the SACU at prices that undercut domestic prices substantially throughout the period of investigation. Specifically, there were increases in price undercutting and price disadvantage from the 2018 financial year to the 2019 financial year. Although there were slight decreases in price undercutting and price disadvantage thereafter, the Commission took into account that trade in the period ending 2020 was not in the ordinary course of business. As a result, it is foreseeable that in the

face of such low prices, the subject product will have, and continue to have, a significant depressing or suppressing effect on SACU prices.

Finally, the Commission found that dumped imports from the subject countries increased in absolute terms and relative to SACU consumption and production during the period July 2018 to June 2019 and that dumped imports from Ireland and Spain have also increased in volume and market share over the period of investigation for injury.

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

9.4 CAUSAL LINK

The Commission made a preliminary determination that although there were factors other than the dumped imports that may have been a contributory cause to the material injury experienced by the SACU domestic industry, these did not sufficiently detract from the causal link between the dumping and the material injury and threat of material injury experienced by the SACU industry.

10. PROVISIONAL PAYMENTS

10.1 Price disadvantage

The amount of provisional payments is the amount required to prevent further material injury experienced by the SACU industry as a result of further imports of the subject product originating in or imported from Brazil, Denmark, Ireland, Poland and Spain at dumped prices during the course of the investigation before the Commission makes its final determination.

The “lesser duty” is the provisional payment to be imposed at the lesser of the margin of dumping and the margin of injury, which is deemed sufficient to remove the injury caused by the dumped imports.

Properly documented responses were received from certain exporters and its correlating importers of the subject product. The Commission made a preliminary determination to apply the lesser duty rule for purposes of its preliminary determination, in instances where the price disadvantage is lower than the dumping margin calculated. This was only applied to the parties where corresponding importers participated fully.

The price disadvantage was calculated to be as follows:

Price disadvantage	July 2019-June 2020 (FYP 2020)
Price Disadvantage	
Brazil	30.5%
Denmark	16.9%
Ireland	23.4%
Poland	33.1%
Spain	36.8%

The lesser duty rule was applied for the following exporters:

Brazil:

Exporter	Importer	Dumping margin	Price disadvantage
Agroaraçá	<ul style="list-style-type: none"> • Etlin • Excellent • Merlog • Merger meats 	41.0%	30.5%
Agrosul	<ul style="list-style-type: none"> • Excellent Meats 	33.0%	30.5%
Avivar	<ul style="list-style-type: none"> • Merlog • Etlin • Britos 	13.0%	30.5%
Aurora	<ul style="list-style-type: none"> • Etlin 	34.0%	30.5%
C Vale	<ul style="list-style-type: none"> • Federated Meats 	22.0%	30.5%
Copacol	<ul style="list-style-type: none"> • Federated Meats • Merlog 	50.0%	30.5%
Jaguafrangos	<ul style="list-style-type: none"> • Non-participating importers 	48.0%	-
Pif Paf	<ul style="list-style-type: none"> • Excellent Meats 	10.0%	30.5%
Seara	<ul style="list-style-type: none"> • BRM • Chester • Excellent meats • Merger Meats • Merlog • Etlin 	6.0%	30.5%
Zanchetta	<ul style="list-style-type: none"> • Merlog • Merger Meats • Federated • Excellent Meats • Etlin • Britos • DC Meats 	31.0%	30.5%

As no corresponding importer from Jaguafrangos participated in the investigation, the Commission made a preliminary determination not to apply the lesser of the duty rule for Jaguafrangos.

Denmark:

Exporter	Importer	Dumping margin	Price disadvantage
HK Scan	<ul style="list-style-type: none"> • Chester • Merlog • Federated meats 	39.0%	16.9%

Ireland:

No properly documented response was received from any exporter in Ireland. The Commission therefore made a preliminary determination not to apply the lesser of the duty rule for Ireland.

Poland:

Exporter	Importer	Dumping margin	Price disadvantage
Animex	<ul style="list-style-type: none"> • Merlog 	5.0%	33.1%
Drobimex	<ul style="list-style-type: none"> • Etlin 	9.0%	33.1%
Plukon	<ul style="list-style-type: none"> • Non-participating importers 	-34.0%	-

Spain:

Exporter	Importer	Dumping margin	Price disadvantage
Disavasa	<ul style="list-style-type: none"> • Non-participating importers 	16.0%	-
Grupo An	<ul style="list-style-type: none"> • Non-participating importers 	3.0%	-
Uvesa	<ul style="list-style-type: none"> • Non-participating importers 	4.0%	-
Grupo Vall	<ul style="list-style-type: none"> • Etlin • Merger meats • DC Meat • Merlog foods • Excellent • Britos • Transtrade 	26.0%	36.8%

As no corresponding importer from Disavasa, Grupo An, and Uvesa responded, the Commission made a preliminary determination not to apply the lesser of the duty rule for Disavasa, Grupo An, and Uvesa.

10.2 Amount of provisional payments

The Commission therefore determined the provisional payments to be the following:

Country	Company	Tariff subheading	Rate of duty
Brazil	Agroaraçá Indústria De Alimentos	0207.14.9	30.5%
	Agrosul Agroavícula Industrial S.A.	0207.14.9	30.5%
	Avivar Alimentos Ltda	0207.14.9	13.0%
	Aurora Cooperativa Central Aurora Alimentos	0207.14.9	30.5%
	C.Vale – Cooperativa Agroindustrial	0207.14.9	22.0%
	Cooperativa Agroindustrial Consolata	0207.14.9	30.5%
	Jaguafrangos Indústria E Comércio De Alimentos Ltda	0207.14.9	48.0%
	Rio Branco Alimentos S/A	0207.14.9	10.0%
	Seara Alimentos Ltda	0207.14.9	6.0%
	Zanchetta Alimentos Ltda	0207.14.9	30.5%
	All other	0207.14.9	265.1%
Denmark	HK Scan	0207.14.9	39.0%
	All other exporters	0207.14.9	67.4%
Ireland	All exporters	0207.14.9	158.4%
Poland	Animex Foods Sp. Z O.O.	0207.14.9	5.0%
	Drobimex Sp. Z.O.O	0207.14.9	9.0%
	All other exporters (excluding Plukon Sieradz Sp. Z.O.O)	0207.14.9	96.9%
Spain	Distribuciones Avícolas Vázquez S.A.U.	0207.14.9	16.0%
	An Avicola Melida S.L.	0207.14.9	3.0%
	UVE S.A	0207.14.9	4.0%
	Grupo Vall Companys	0207.14.9	26.0%
	All other exporters	0207.14.9	85.8%

11. PRELIMINARY DETERMINATION

The Commission made a preliminary determination that there is sufficient information to indicate that:

- dumping of the subject product originating in or imported from Brazil, Denmark, Ireland, Poland and Spain is taking place;
- there is a causal link between the dumped imports of the subject product originating in or imported from Brazil, Denmark, Ireland, Poland and Spain and the material injury and threat of material injury experienced by the SACU industry.

The Commission therefore decided to request the Commissioner of SARS to impose the following provisional measures for a period of 6 months on the imports of frozen bone-in portions of fowls of the species *Gallus Domesticus* originating in or imported from Brazil, Denmark, Ireland, Poland and Spain, classifiable under tariff subheading 0207.14.9:

Country	Company	Tariff subheading	Rate of duty
Brazil	Agroaraçá Indústria De Alimentos LTDA	0207.14.9	30.5%
	Agrosul Agroavícola Industrial S.A.	0207.14.9	30.5%
	Avivar Alimentos Ltda.	0207.14.9	13.0%
	Aurora Cooperativa Central Aurora Alimentos	0207.14.9	30.5%
	C.Vale – Cooperativa Agroindustrial	0207.14.9	22.0%
	COPACOL - Cooperativa Agroindustrial Consolata	0207.14.9	30.5%
	Jaguafrangos Indústria E Comércio De Alimentos Ltda	0207.14.9	48.0%
	Rio Branco Alimentos S/A	0207.14.9	10.0%
	Seara Alimentos Ltda	0207.14.9	6.0%
	Zanchetta Alimentos Ltda	0207.14.9	30.5%
	All other exporters	0207.14.9	265.1%
Denmark	HK Scan Denmark A/S	0207.14.9	39.0%
	All other exporters	0207.14.9	67.4%
Ireland	All exporters	0207.14.9	158.42%
Poland	Animex Foods Sp. Z O.O.	0207.14.9	5.0%

Country	Company	Tariff subheading	Rate of duty
	Drobimex Sp. Z.O.O	0207.14.9	9.0%
	All other exporters (excluding Plukon Sieradz Sp. Z.O.O)	0207.14.9	96.9%
Spain	Distribuciones Avícolas Vázquez S.A.	0207.14.9	16.0%
	An Avicola Melida S.L.	0207.14.9	3.0%
	UVE SA.	0207.14.9	4.0%
	Grupo Vall Companys:		
	Avicola Sanchez SL	0207.14.9	26.0%
	Avicola De Lleida SAU	0207.14.9	26.0%
	Avicola De Galicia, S.A.U.	0207.14.9	26.0%
	Dolz España, S.L.	0207.14.9	26.0%
	Escorxador D'Aus Torrent I Fills S.L.	0207.14.9	26.0%
	All other exporters	0207.14.9	85.8%

Because of the tariff structure of the portions, the Commission made a decision to conduct the negligibility test separately for each of the tariff subheadings at the 8-digit level and found that imports of the subject product imported under some tariff subheadings were below the 3% threshold.

As such the Commission made a preliminary decision not to initiate an investigation or impose provisional measures on imports of the subject product under the following tariff subheadings:

Country	Tariff subheading	Description
Brazil	0207.14.91	Whole bird cut in half
Denmark	0207.14.91	Whole bird cut in half
	0207.14.96	Breasts
Ireland	0207.14.91	Whole bird cut in half
	0207.14.96	Breasts
Poland	0207.14.91	Whole bird cut in half
	0207.14.96	Breasts
	0207.14.97	Thighs
Spain	0207.14.91	Whole bird cut in half
	0207.14.96	Breasts
	0207.14.99	Other

Annexure A: Documents and articles referenced in Report 678

The following documents are referenced in Report 678: "Investigation into the alleged dumping of frozen bone-in portions of fowls of the species *Gallus Domesticus* originating in or imported from Brazil, Denmark, Ireland, Poland and Spain: Preliminary determination":

- The Appellate Body Report, European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China. Available at www.wto.org/english/tratop_e/dispu_e/397abrw_e.pdf;
- The Appellate Body's findings in EC – Fasteners (China). Available at www.wto.org/english/tratop_e/dispu_e/cases_e/ds397_e.htm;
- The Panel Report, China - Anti-Dumping Countervailing Duty Measures on Broiler Products from the United States. www.wto.org/english/tratop_e/dispu_e/427r_a_e.pdf;
- The Panel Report, EU — Anti-Dumping Measure on Farmed Salmon from Norway. Available at www.wto.org/english/tratop_e/dispu_e/cases_e/ds337_e.htm;
- The Panel Report Korea – Anti Dumping Duties on Imports of Certain Paper from Indonesia ("Korea – Certain Paper") Available on www.wto.org/english/tratop_e/dispu_e/312rw_e.pdf;
- The Panel Report China - Anti-Dumping Measures on Imports of Cellulose Pulp from Canada ("China - Cellulose Pulp"). Available on www.wto.org/english/tratop_e/dispu_e/483r_a_e.pdf;
- The Panel Report in European Union – Anti-Dumping Measures on Certain Footwear from China ("EU - Footwear (China)"). Available on www.wto.org/english/tratop_e/dispu_e/ds405e.htm;
- The Appellate Body report in China - Countervailing and Anti-Dumping Duties on Grain Oriented Flat-Rolled Electrical Steel from the United States ("China - GOES"). Available on www.wto.org/english/tratop_e/dispu_e/414w_a_e.pdf;

- The Panel Report in Argentina – Definitive Anti-Dumping Duties on Poultry from Brazil ("Argentina – Poultry Anti-Dumping Duties"). Available on www.wto.org/english/tratop_e/dispu_e/241r_a_e.pdf;
- The Panel Report in European Communities – Anti Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil ("EC – Tube or Pipe Fittings"). Available on www.wto.org/english/tratop_e/dispu_e/219r_a_e.pdf;
- The Appellate Body Report in Korea - Anti-Dumping Duties on Pneumatic Valves from Japan ("Korea – Pneumatic Valves"). Available on www.wto.org/english/tratop_e/dispu_e/504abr_e.pdf;
- The Appellate Body Report in Russia – light Commercial Vehicles from Germany and Italy. Available on www.wto.org/english/tratop_e/dispu_e/479abr_e.pdf;
- The Panel Report in China – Measures Affecting Imports of Automobile Parts. Available on www.wto.org/english/tratop_e/dispu_e/cases_e/ds34_e.htm;
- Thailand — Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel and H Beams from Poland. Available on www.wto.org/english/tratop_e/dispu_e/cases_e/ds122_e.htm;
- The Panel Report in the Definitive Anti-Dumping Duties on X-Ray Security Inspection Equipment from the European Union. Available on www.wto.org/english/tratop_e/dispu_e/cases_e/ds425_e.htm;
- The Panel Report, Ukraine — Definitive Safeguard Measures on Certain Passenger Cars. Available at www.wto.org/english/tratop_e/dispu_e/cases_e/ds425_e.htm;
- Appellate Body Report, Mexico – Definitive Anti-Dumping Measures on Beef and Rice. Available at www.wto.org/english/tratop_e/dispu_e/cases_e/ds425_e.htm;
- Dr Martin Blake, OIE Delegate for Ireland, Chief Veterinary Officer, Veterinary Services, Department of Agriculture, Food and the Marine *Self-declaration for the recovery of country freedom from Avian Influenza in poultry in Ireland*

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Dr Hanne Larsen, OIE Delegate for Denmark, Ministry of Environment and Food Self-declaration of the recovery of country freedom from infection with high pathogenicity avian influenza viruses (HPAI) by Denmark (9 August 2021). Accessed 13 October 2021. Available at <https://www.oie.int/app/uploads/2021/08/2021-08-denmark-hpai-eng-1.pdf>.
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 - RCL Foods Limited Abridged Integrated Annual Report 2020. Available at [2020_Abridged-Integrated-Annual-Report_compressed.pdf \(rcloffoods.com\)](2020_Abridged-Integrated-Annual-Report_compressed.pdf);
 - Ms. Thoko Didiza, MP Minister of Agriculture, Land Reform and Rural Development *A Message to the Agriculture and Food Sector of South Africa* (24 March 2020). (Accessed 16 October 2021). Available at: <https://www.gov.za/speeches/minister-thoko-didiza-message-agriculture-and-food-sector-south-africa-coronavirus-24-mar>;
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