REPORT NO. 673

SUNSET REVIEW INVESTIGATION OF THE ANTI-DUMPING DUTIES ON ORDINARY PORTLAND CEMENT ORIGINATING IN OR IMPORTED FROM THE ISLAMIC REPUBLIC OF PAKISTAN (PAKISTAN): FINAL DETERMINATION

The International Trade Administration Commission of South Africa herewith presents its **Report No. 673: SUNSET REVIEW INVESTIGATION OF THE ANTI-DUMPING DUTIES ON ORDINARY PORTLAND CEMENT ORIGINATING IN OR IMPORTED FROM THE ISLAMIC REPUBLIC OF PAKISTAN (PAKISTAN): FINAL DETERMINATION**

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CHIEF COMMISSIONER

PRETORIA
30/11/**2021**

INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA

SUNSET REVIEW INVESTIGATION OF THE ANTI-DUMPING DUTIES ON ORDINARY PORTLAND CEMENT ORIGINATING IN OR IMPORTED FROM THE ISLAMIC REPUBLIC OF PAKISTAN (PAKISTAN): FINAL DETERMINATION

SYNOPSIS

On 24 May 2019, the International Trade Administration Commission of South Africa (the Commission) notified interested parties through Notice No. 284 of 2019 in *Government Gazette* No. 42474, that unless a substantiated request is made indicating that the expiry of the anti-dumping duties on imports of ordinary Portland cement ("cement" or the "subject product") originating in or imported from the Islamic Republic of Pakistan ("Pakistan") would likely lead to the continuation or recurrence of dumping and injury, the anti-dumping duties on cement originating in or imported from Pakistan would expire on 17 December 2020.

A detailed consolidated application was received from Concrete Institute NPC (also referred to as "the Concrete Institute") on behalf of Afrisam (South Africa) (Proprietary) Limited ("Afrisam"), Lafarge Industries South Africa (Proprietary) Limited ("Lafarge"), Intercement South Africa (Proprietary) Limited ("NPC"), PPC Limited ("PPC") and Dangote Cement South Africa (Proprietary) Limited (also referred to as "Sephaku") on 24 August 2021. The application was supported by Mamba Cement (non-participating local producer).

The information submitted by Afrisam was verified on 26 October 2020; PPC on 28 October 2020; Lafarge on 30 October 2020; NPC on 06 November 2020 and Sephaku on 10 November 2020.

The verification reports were sent to Afrisam and PPC on 05 November 2020. Further verification reports were sent to Lafarge, NPC and Sephaku on 11 November 2020.

Responses to the verification reports were received on 17 November 2020 from Lafarge, NPC and Sephaku. Further responses to the verification reports were received on 18 November 2020 from Afrisam and PPC. The Application was accepted as properly documented on 24 November 2020.

On 11 December 2020, the Commission initiated a sunset review investigation of the anti-dumping duties on Portland cement originating in or imported from the Islamic Republic of Pakistan (Pakistan) pursuant to Notice No. 718 of 2020 in *Government Gazette* No. 43986. The deadline for comment was 19 January 2021.

The investigation was initiated after the Commission considered that the Applicant submitted *prima facie* information to indicate that there would be a likelihood of the continuation or recurrence of dumping and the recurrence of material to the Southern African Customs Union ("SACU") industry.

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

Responses were received from Lucky Cement Limited ("Lucky Cement"), D. G. Khan Cement Company Limited ("D. G. Khan Cement"), Attock Cement Limited ("Attock Cement") and Power Cement Limited ("Power Cement") and from Newcastle Steel Works (Proprietary) Limited, the importer of the subject product.

Requests for extension were received from Lucky Cement, D. G. Khan Cement, Attock Cement, Power Cement and Newcastle Steel Works (Proprietary) Limited. Deficiency letters were sent out and the deadline for responses was 22 February 2021. Full and complete responses were received on 22 February 2022.
Newcastle Steel Works (Proprietary) Limited was verified on 23 March 2021 and a verification report was sent out on 6 April 2021. Lucky Cement and Attock Cement were verified during the period 24 to 26 March 2021 and 29 to 31 March 2021 respectively. Verification reports were sent out on 7 and 9 April 2021 respectively.

Power Cement was verified during the period 5 to 7 April 2021 and a verification report was sent out on 13 April 2021. D. G. Khan Cement was verified from 9 to 14 April 2021 and a verification report was sent out on 23 April 2021. Responses to the verification reports were received on 13, 15, 28 and 30 April 2021.

Requests for oral hearings were received from Power Cement and Attock Cement on 2 and 3 August 2021. Further requests were received from Lucky Cement, D. G. Khan Cement and the Applicant on 23 and 26 August 2021. All requests for oral hearings were allowed and oral presentations before the Commission took place at the Commission's meeting of 12 October 2021.

The Commission made a final determination before essential facts that the expiry of the anti-dumping duties on the subject product originating in or imported from Pakistan would likely lead to the continuation and/or recurrence of dumping and the recurrence of material injury. The Commission's essential facts letters were sent to interested parties on 27 and 28 July 2021 and responses were received on 10 and 11 August 2021. Comments to the Commission's essential facts letters were also received from the Trade Commission of Pakistan on 2 September 2021.

After considering the interested parties' comments and representations in respect of the verified submitted information and "essential facts" letters, the Commission made a final determination the expiry of the anti-dumping duties on ordinary Portland cement originating in or imported from Pakistan would likely lead to the continuation and/or recurrence of dumping and the recurrence of material injury.

Although imports from Pakistan decreased from 15.37% to 9.24% over the investigation period because of the current anti-dumping duties in place and the fact that the Applicant was not experiencing injury during the period of investigation, the Commission made a final determination that anti-dumping measures applicable to D. G. Khan Cement and Attock Cement be maintained at their current levels. The Commission also made a final determination that a duty of 25 per cent be imposed on the subject product manufactured by Lucky Cement, calculated in terms of the lesser duty rule. As Power Cement did not participate in the original investigation and did not export to the SACU during the period of investigation, the Commission made a final determination that the subject manufactured by Power Cement be subject to the residual dumping duty.

Since Bestway Cement Limited ("Bestway Cement") did not respond to the Commission's exporter questionnaire, the Commission made a final determination that the subject product manufactured by Bestway Cement not be subject to an individual margin, but be subject to the residual dumping duty. The Commission therefore, made a final determination that all imports of ordinary Portland cement, (including those manufactured or produced by Power Cement and Bestway Cement, but excluding imports of Lucky Cement, D.G. Khan Cement and Attock Cement), be subject to the current residual dumping duty of 62.69 per cent.

The Commission therefore, made a final determination to recommend to the Minister of Trade, Industry and Competition that the following anti-dumping duties be imposed on cement originating in or imported from Pakistan:

Tariff subheading	Description	Rate of duty
2523.29		
	Portland cement manufactured or produced by Lucky Cement Limited	25%
	Portland cement manufactured or produced by D. G. Khan Cement Limited	68.87%
	Portland cement manufactured or produced by Attock Cement Limited	63.53%
	Portland cement (excluding that manufactured or produced by Lucky Cement Limited, D. G. Khan Cement Limited and Attock Pakistan Cement Limited)	62.69%

1. APPLICATION AND PROCEDURE

1.1 LEGAL FRAMEWORK

This investigation was conducted in accordance with the International Trade Administration Act, 2002 (Act 71 of 2002) (the "ITA Act") and the International Trade Administration Commission's Anti-Dumping Regulations ("ADR") read with the World Trade Organisation ("WTO") Agreement on the 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 Concrete Institute on behalf of Afrisam, Lafarge, NPC, PPC and Sephaku on behalf of the SACU industry. The application was supported by Mamba Cement (Pty) Ltd.

1.3 ACCEPTANCE OF APPLICATION

The application was accepted by the Commission as being properly documented in accordance with ADR 21 on 24 November 2020.

1.4 ALLEGATIONS BY THE APPLICANT

The Applicant alleged that the expiry of the anti-dumping duties on the subject product originating in or imported from Pakistan would likely lead to the continuation and/or recurrence of dumping and the recurrence of material injury.

The Applicant further alleged that as a result of the dumping of the subject product from Pakistan, it was experiencing material injury in the form of:

(a) Increase of imports
(b) Decline in sales volumes
(c) Decline in gross and net profit
(d) Decline in output
(e) Decline in market share
(f) Decline in productivity

(g) Decline in capacity utilisation

1.5 INVESTIGATION PROCESS

The Applicant submitted the consolidated application on 24 August 2020. The information submitted by Afrisam was verified on 26 October 2020; PPC on 28 October 2020; Lafarge on 30 October 2020; NPC on 06 November 2020 and Sephaku on 10 November 2020.

Verification reports were sent to Afrisam and PPC on 05 November 2020. Further verification reports were sent to Lafarge, NPC and Sephaku on 11 November 2020. Responses to the verification reports were received on 17 November 2020 from Lafarge, NPC and Sephaku. Further responses to the verification reports were received on 18 November 2020 from Afrisam and PPC.

The Commission initiated an investigation into the alleged dumping of ordinary Portland cement originating in or imported from Pakistan, pursuant to Notice No. 718 of 2020, which was published in *Government Gazette* No. 43986 on 11 December 2020.

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 January 2019 to 31 December 2019. The injury investigation involves evaluation of data for the period 1 January 2017 to 31 December 2019, and a forecast should the duties expire.

1.7 COMMENTS RECEIVED FROM INTERESTED PARTIES

The Commission considered all relevant comments received from all interested parties. All responses and comments received from interested parties are contained in the Commission public file for this investigation and were made available for perusal. It should be noted that this report does not purport to present all comments received and considered by the Commission. However, some of the salient comments received from interested parties and the Commission's consideration of these comments are included in this report.

1.7.1 Comments received from interested parties with regard to the Applicant's sunset review investigation

The exporters stated that a number of unsubstantiated assertions were made to suggest that a threat exists that imports at dumped prices will re-occur at volumes that will cause injury to the domestic industry, should the anti-dumping duty be allowed to lapse.

The exporters further stated that regarding the volume forecast, the Applicant indicated that if the anti-dumping duties on imports from Pakistan were to lapse:

- imports from Pakistan would increase from only 96,124 tons in 2019 (and a high of 201,680 tons per annum in 2018) to 1,309,392 tons per annum, a 15-fold increase without providing any basis for this assertion.

- imports from other countries would remain at the same level as in 2019 i.e. that increased imports from Pakistan would not take any market share away from other imports, but only from domestic producers.

The exporters stated that the volume forecast is unrealistic and unsupported by evidence. The exporters requested the Commission to obtain the basis for the Applicant's forecast, especially in light of the fact that the average free on board ("FOB") import price from other countries is significantly lower (at ZAR660/ton) than the average FOB import price from Pakistan (at ZAR795/ton). The exporters argue that if the anti-dumping duties were to lapse, imports from other countries, which were 10 times the volume of imports from Pakistan in 2019, would continue to keep Pakistani imports out of the market as the Pakistani product would simply be too expensive.

Comments by the Applicant in response to allegations made by some exporters:

The Applicant indicated that the volume forecast it provided is realistic for the following reasons:

- The basis for the increase in dumped imports from Pakistan was the volume of imports of the subject product from Pakistan in 2014 (the last full year before the imposition of anti-dumping duties). This explanation was included several times under the "basis for estimate" section in the Application. The volume information was based on the South African Revenue Services ("SARS") trade statistics.

- The Applicant further stated that this increase in dumped imports from Pakistan would result in a reasonable increase in the total imports share of the bagged and bulk market from 8.7% in 2013 (the last year of the period of investigation for injury in the original antidumping investigation) to 17.01% in the forecast year. The Applicant was of the view that this is not an unreasonable increase, as imports from Pakistan will be available at low dumped prices.

The Applicant further indicated that it should be noted that 96 124 tonnes of the subject product were imported from Pakistan in 2019 (which accounted for 9.24% of total imports), despite the higher annual average FOB price from Pakistan and the fact that these imports were also subject to anti-dumping duties of between 14.29% and 77.15%. The Applicant indicated that as the expiry of the anti-dumping duties would make imports from Pakistan significantly cheaper, it follows that this would lead to a significant increase in import volumes.

1.7.2 Comments received from interested parties with regard to the methodology used by the Commission in determining the likelihood of dumping.

Comments received from the Applicant:

The Applicant stated that certain exporters calculated dumping margins using an export price based on exports to a third country, as there were no exports of the subject product to SACU during the period of investigation for dumping. The Applicant also stated that it is impermissible in terms of the ITA Act to calculate new individual dumping margins or impose new or amend existing individual dumping duties for those companies, which cooperated in the investigation but did not export goods during the dumping period of investigation.

In substantiation of the above, the Applicant provided the following reasons:

In terms of the ITA Act, dumping means:

"the introduction of goods into the commerce of the Republic or the Common Customs Area at an export price contemplated in section 32(2)(a) that is less than the normal value, as defined in section 32(2) of those goods.

"Section 32(1) of the ITA Act states as follows:

"32. (1) Despite section 1, in this section-

(a) "export" means to bring or send goods, or to cause them to be brought or sent, from a country or territory outside the Common Customs Area; and

(b) "exporter" means any person who brings or sends goods, or causes them to be brought or sent, into the Common Customs Area from a country or territory outside the Common Customs Area."

Section 32(2) of the ITA Act provides as follows:

"For the purpose of considering an application alleging the dumping or subsidized export of goods into the Common Customs Area –

(a) "export price", subject to subsections (3) and (5), means the price actually paid or payable for goods sold for export, net of all taxes, discounts and rebates actually granted and directly related to that sale;

(b) "normal value", in respect of any goods, means –

(i) the comparable price paid or payable in the ordinary course of trade for like goods intended for consumption in the exporting country or country of origin; or

(ii) in the absence of information on a price contemplated in subparagraph (i), either –

(aa) the constructed cost of production of the goods in the country of origin when destined for domestic consumption, plus a reasonable addition for selling, general and administrative costs and for profit; or (bb) the highest comparable price of the like product when exported to an appropriate third or surrogate country as long as that price is representative;".

The Applicant further stated that it is quite clear that for the purposes of determining the export price, exports other than to SACU cannot be used. The Applicant pointed out that in terms of section 32(2), it is only in the determination of normal value where, in the absence of a comparable price paid or payable in the ordinary course of trade for like goods, that the constructed price or highest comparable price of the like product when exported to an appropriate third or surrogate country, as long as that price is representative, can be used. The Applicant argued that the export price cannot be determined using export sales to third countries.

The Applicant indicated that the Commission recognised that the ITA Act did not allow new individual margins of dumping to be determined for new exporters subject to anti-dumping duties (residual duties) in a sunset review when it sought in the International Administration Amendment Bill dated 14 October 2005 to amend section 32 of the ITA Act by the insertion of the following [1]:

"(10) A review may be carried out for the purpose of determining individual margins of dumping or subsidisation for new exporters in an exporting country which have not exported the product, subject to an anti-dumping duty or countervailing duty, during the period of investigation on which the anti-dumping or countervailing duty were based.

(11) In conducting reviews where no exports to SACU took place during the period of the investigation, the export price will be the comparable price of the like product when exported by the exporting country to a third country."

The Applicant stated that from the plain wording of the ITA Act, in a sunset review, new or amended individual anti-dumping duties cannot be imposed for any cooperating foreign producers which did not export the subject product to

1 Note that this amendment was not implemented.

SACU during the investigation period for dumping. In terms of the WTO Anti-Dumping Agreement, it is also a jurisdictional requirement that the subject product be introduced i.e. exported into SACU from the subject countries.

The Applicant further indicated that in terms of the WTO Anti-Dumping Agreement, it is also a jurisdictional requirement that the subject product be introduced i.e. exported into SACU from the subject countries.

The Applicant stated that Article 2.1 of the WTO Anti-Dumping Agreement provides as follows:

"For the purpose of this Agreement, a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country."

The Applicant further stated that whilst section 32(5) of the ITA Act allows the authorities

"to determine the export price for the goods in question on the basis of the price at which the imported goods are first resold to an independent buyer, if applicable, or on any reasonable basis",

the requirement that the goods in question must be introduced into the commerce of the Republic or the Common Custom Area by an exporter (as defined above) must be satisfied. Moreover, the reference to "imported goods" in section 32(5) of the ITA Act reinforces this. In terms of ITA Act,

"import means to bring goods, or cause them to be brought, from outside the Republic into the Republic."

The Applicant referred the Commission to the WTO Appellate Body decision in the United States – Final Anti-Dumping Measures on Stainless Steel from Mexico[2], which held that there was a clear relationship between dumping, margin of dumping, exporter or importer – (at paragraphs 83 to 94). The

2 https://www.wto.org/english/tratop_e/dispu_e/344_15_arb_e.pdf.

Appellate Body held that

"to sum up, it is clear from Articles VI: 1 and VI: 2 of the GATT1994 and the provisions of the Anti-Dumping Agreement that: 'dumping' and 'margin of dumping' are exporter specific concepts."

(At paragraph 94). The Applicant stated that in certain exporter response, the exporter stated that it did not export the subject product or any cement to SACU during the period of investigation.

The Applicant stated that in a sunset review, in the absence of imports of the subject product from certain exporters during the period of investigation for dumping, the Commission cannot determine and/or impose new or amend existing individual dumping duties for those exporters. The Applicant also stated that it is also impermissible for it to construct an export price or determine an export price based on third country sales.

Comments by exporters:

The exporters argued that the ITA Act and the ADR do not prescribe a specific approach in determining the export price in instances where exporters did not export the subject product to SACU during the period of investigation. The exporters further argued that it has been the Commission's consistent practice (citing the chicken sunset review) to allow exporters that did not export during the period of investigation, to participate in the investigation. The exporters further argued that this consistent practice has created a "legitimate expectation" that the procedure would be the same in this investigation and indicated that it requires prior notice to interested parties if there would be a change in procedure.

Comments received from the Applicant on legitimate expectation:

The Applicant stated that it is unlawful to calculate new individual dumping margins or to impose new or amended individual anti-dumping duties for those companies which did not export the goods into SACU during the dumping period of the investigation; and that any past practice to the contrary is irrelevant, is not binding on the Commission and does not detract from the fact that the Commission cannot legally impose new or amended anti-dumping duties for exporters or foreign producers that did not export the subject product into SACU during the period of investigation.

The Applicant stated that it is well established that a legitimate expectation can arise from either a promise made by the decision-maker or from a regular practice that one can reasonably expect to continue.

The Applicant stated that the exporters have pointed to only one instance in which the Commission is said to have determined new dumping margins for individual exporters notwithstanding that those exporters did not export to SACU during the period of investigation. The Applicant also stated that it bears emphasis in this regard that a past practice can give rise to a legitimate expectation only if it is consistent or regular. The Applicant argued that an isolated instance cannot create a legitimate expectation.

The Applicant further indicated that it should be noted that the foreign producer/exporter questionnaire only provides for a dumping margin based on the price of exports to SACU and does not contemplate the calculation of a dumping margin on any other basis, including the price of export sales to a third country or a constructed export price. The Applicant stated that Section E of the foreign producer/exporter questionnaire requires information on exports to SACU, whilst Section G2 of the same document requires the foreign producer/exporter to:

"[i]ndicate the net export price (in both the export currency and currency) as follows (see sections E and F) for each of the specific products or models on which information was requested in the export price section of this questionnaire".

The Applicant indicated that even if it is assumed that there has been a regular practice as contended for by the exporters, their argument based on legitimate expectation suffers from two fatal flaws:

Firstly, according to the Applicant it is unlawful for the Commission to calculate new individual dumping margins or to impose new or amended anti-dumping duties in respect of an exporter or producer who has not exported the subject product into SACU during the dumping period of the sunset review investigation, and any past practice to the contrary cannot give rise to a legitimate expectation. The Applicant stated that is a well-established principle that one cannot have a legitimate expectation in respect of unlawful or *ultra vires* conduct. The Applicant noted that the Supreme Court of Appeal recently stated in National Commissioner of Police v Gun Owners South Africa[3] that "no one can have a legitimate expectation that relates to the doing of something unauthorised or unlawful".

The Applicant argued that this principle is consistent with the constitutional principle of the rule of law entrenched in section 1(c) of the Constitution and referred to the Constitutional Court explanation in Fedsure[4]:

"It seems central to the conception of our constitutional order that the Legislature and Executive in every sphere are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law

Secondly, the Applicant stated that even if it were to be found, contrary to the Applicant's submissions, that the relevant exporters or foreign producers have a legitimate expectation arising from the Commission's past practice, this would not assist the exporters. The Applicant argued that this is because our law does not provide that a legitimate expectation entitles one to substantive protection. According to the Applicant, a legitimate expectation rather gives rise to procedural protection, i.e. it triggers the right to make representations. The Applicant stated that according to Cameron J writing for the majority of the Constitutional Court, described the position as follows[5]:

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3 University of the Western Cape v Member of the Executive Council for Healthand Social Services 1998 (3) SA 124 (C) at 134; National Director of Public Prosecutions v Phillips 2002 (4) SA 60 (WLD) para 29; Gibbs v Minister of Justice and Constitutional Development [2009] 4 All SA 109 (SCA) para 26.

4 Fedsure Life Assurance Ltd v Greater Johannesburg Transitional MetropolitanCouncil 1999 (1) SA 374 (CC) para 58.

5 KwaZulu-Natal Joint Liaison Committee v MEC for Education, KwaZulu-Natal 2013 (4) SA 262 (CC) para 31 n 7.

"The current position in our law is that where a party has a legitimate expectation he or she is entitled to procedural fairness. That is, an opportunity to be heard before an adverse decision is made. Our courts have expressly left open the question whether a legitimate expectation may give rise to a substantive benefit."

The Applicant stated that while, as Cameron J noted, our courts have left open the question whether a legitimate expectation may confer a substantive benefit, at least one judgment has answered this question in the negative. It stated that in Durban Add-Ventures[6], Booysen J correctly held that:

"If the applicant enjoyed a legitimate expectation in the present circumstances at best this would have afforded it a right to be heard before the new regulations were promulgated. The applicant, however, seems to wish to use the doctrine of legitimate expectation in an effort to generate substantive rather than procedural rights. Such a strategy is not permissible in South African law."

The Applicant concluded that if the exporters have a legitimate expectation, the effect of such an expectation would be that the exporters would be entitled to a reasonable opportunity to make representations prior to the Commission making a final determination. The Applicant argued that the exporters have been given this opportunity in the Commission's essential facts letter of 27 July 2021.

The Applicant is of the view that there is thus no merit in the exporters' allegations that the Commission's process is procedurally unfair, or that the Commission should "implement its past practice" by calculating individual dumping margins for those exporters who cooperated in the sunset review.

Commission's consideration:

The Commission has been considering the question of the participation of foreign producers in sunset review investigations, specifically where such producers did not export during the investigation period. Based on the

6 Durban Add-Ventures Ltd v Premier, KwaZulu-Natal (No. 2) 2001 (1) SA 389 (N) at 408.

legislations, foreign producers that did not export during the investigation period should not participate in sunset review investigations. However, where foreign producers have been allowed to participate, the dumping information at the Commission's disposal may be used solely to determine whether such information indicates that the expiry of the duties at issue would likely lead to the continuation or recurrence, as the case may be, of dumping.

With regard to the likelihood determination, the Commission is of the view that where a foreign producer had no sales to the SACU during the investigation period in a sunset review, the Commission is not in a position to calculate an export price and, as a result, determine a dumping margin for such an interested party. The fact that certain exporters cooperated is immaterial to this determination as the cooperation did not relate to the provision of export sales data. In the current investigation, because the Commission had not formalised its position on the issue of the participation of non-exporting foreign producers, exporters that did not export to SACU during the period of investigation were permitted to participate in the investigation. Under the circumstances, and given that the Commission could not calculate an actual dumping margin, it was deemed permissible to gather information for the sole purpose of making a likelihood determination, i.e. whether there was a likelihood of a continuation or recurrence of dumping.

The Commission makes determination on a case-by-case basis, and in general, in order for the Commission to calculate an individual margin, a foreign producer must have –

(a) exported the subject product to the SACU during the investigation period; and

(b) fully cooperated in the investigation, which includes, but is not limited to, providing a completed questionnaire response and correcting all deficiencies identified by the Commission in a timeous manner.

The Commission agreed with the assessment of the Applicant and accordingly, only used the dumping information calculated based on exports to third countries to determine the likelihood of the continuation or recurrence of dumping.

The Commission is of the view that the ITA Act and the WTO Anti-Dumping Agreement set out a specific approach on the methodology to calculate an export price and that this is the overriding consideration. With regard to the claims pertaining to procedural fairness (legitimate expectation/fairness, the Commission is of the view that an exporter cannot have a legitimate expectation in respect of unlawful or ultra vires conduct and that a legitimate expectation gives rise to procedural fairness and not substantive protection, i.e. the right to be heard before an adverse decision is made. In this regard, exporters were provided with ample opportunity to be heard through providing an opportunity to submit comments on the essential facts letter and orals presentations before the Commission.

1.7.3 Comments received from interested parties with regard to adjustments claimed on the normal values and export prices:

The Commission considered comments received from interested parties with regard to the adjustments claimed on the normal values and export prices.

An adjustment is made by the Commission where it is found that the claim for an adjustment is (a) substantiated; (b) verifiable; (c) directly related to the sale under consideration; and (d) clearly demonstrated to have affected price comparability at the time of setting prices. The Commission considered all claims for adjustments against these criteria and in each instance indicated why an adjustment was not allowed.

The Commission made a final determination after essential facts not to allow certain adjustments claimed by participating exporters, as one or more of the abovementioned criteria was not met.

Comments by exporters:

The exporters stated that all aspects of their submissions were verified, including information on all adjustments to the normal value and export sales, without exception. They further stated that the Commission accepted the information submitted by them as properly documented. The exporters argued that notwithstanding this, adjustments were not allowed by the Commission.

Comments received from the Applicant:

The Applicant stated that it should be noted that the majority of the adjustments claimed by exporters to their normal value were claimed in the original anti-dumping investigation and were correctly refused by the Commission back then. The Applicant requested that the Commission reject these adjustments to normal value for the same reasons they were rejected in the original anti-dumping application.

Commission's consideration:

The Commission considered comments received from interested parties with regard to the adjustments claimed on the normal values and export prices which were not allowed by the Commission.

As stated earlier, an adjustment is made by the Commission where it is found that the claim for an adjustment is (a) substantiated; (b) verifiable; (c) directly related to the sale under consideration; and (d) clearly demonstrated to have affected price comparability at the time of setting prices. The Commission considered all claims for adjustments against these criteria and in each instance indicated why an adjustment was not allowed.

The Commission indicated that although information was submitted to support a claim for an adjustment and the information was found to be correct, this does not automatically result in an adjustment being allowed by the Commission. A claim for an adjustment must still be considered by the Commission against the set criteria and a decision made on whether the adjustment was directly related to the sale under consideration and clearly demonstrated to have affected price comparability at the time of setting prices.

The Commission made a final determination not to allow certain adjustments claimed by participating exporters, as one or more of the abovementioned criteria was not met.

1.7.4 Comments by interested parties on the Applicant's confidentiality claims

Comments by exporters:

Some interested parties claim that the non-confidential version of the application did not conform to the requirements of Article 6.5 of the WTO Anti-Dumping Agreement. They note that the Applicant indicated that most of its forecast regarding the SACU industry's performance in case the anti-dumping duties were allowed to lapse cannot be summarized. They contend that since this is numerical information which follows immediately upon other numerical indexed figures (i.e. those for 2017, 2018 and 2019), it can also be summarized using an index, by continuing the index which the Applicant used for the 2017 to 2019 information. The interested parties requested that the Applicant be required to provide an index for all forecast information that it claimed cannot be summarized, failing which the Applicant's information should be rejected.

Comments received from the Applicant:

The Applicant indicated that the claims of confidentiality comply with Regulation 2 of the ADR, the ITA Act and the WTO Anti-Dumping Agreement. Section 33(2) of the ITA Act and Article 6.5 of the WTO Anti-Dumping Agreement 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 further stated that in all instances in the Application where confidential information was omitted and summaries by indexed figures or otherwise were not provided; it provided reasons why it is not possible to summarize the information without revealing the confidential information.

The Applicant stated that the Commission accepted the Application as properly documented, as it was based in part on confidential material and contained a non-confidential version of the confidential material together with an explanation of why it is confidential.

The Applicant also stated that estimates regarding the industry's performance, if the anti-dumping duties are allowed to lapse, are based primarily on volume changes as a result of the estimated increase in import volumes of 1 213 268 166 kg relative to import volumes in 2019. The Applicant stated that this means that if (for example), the Application had included indexed information for sales volumes that showed a 10 index point decline, then it would be clear that 1 index point is equal to 121 326 816 kg. The Applicant indicated that this could then be used to calculate the actual confidential information that has been indexed for previous years. The Applicant argued that once the confidential information for prior years has been calculated, this could in turn be used to calculate the confidential information for other variables that have been indexed. The Applicant stated 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.

Furthermore, the Applicant indicated that in all instances where it was not possible to index the information, the information in question was not simply been omitted from the Application. The Applicant indicated that interested parties have in fact been provided with a summary of this information in the form of indications as to (a) whether the figure is positive or negative; (b) whether the figure has increased or decreased from the previous year; and (c) whether the figure has increased or decreased from the base year. The Applicant submitted that this summarized information is in fact sufficient to give interested parties a reasonable understanding of the confidential information provided.

The Applicant stated that industry production, sales volumes, sales prices and other consolidated financial information meets the definition of "by nature confidential" in the ITA Act.

Commission's consideration:
The Commission noted that its practice is to allow parties to index confidential information. Article 6.5 of the WTO Anti-Dumping Agreement does not require the non-confidential version to be in an aggregated form. The non-confidential version of any information furnished to an investigating authority must merely allow interested parties a reasonable understanding of the substance of the information submitted in confidence. Article 6.5 of the WTO Anti-Dumping Agreement therefore gives an investigating authority discretion in assessing the adequacy of the non-confidential versions of the information submitted in confidence.

The ITA Act and the ADR, which constitute the relevant domestic legislation, provide guidance on how to prepare non-confidential versions of confidential information. The application questionnaire refers to these requirements. Having considered the applicable law and practice, the Commission is of the view that the Applicant's information conformed to the confidentiality criteria set out in the ITA Act and the ADR.

1.8 PARTIES CONCERNED

1.8.1 SACU Industry

The SACU industry consists of four manufacturers of the subject product, Afrisam, Lafarge, NPC, PPC and Sephaku. The application was supported by Mamba Cement (Pty) Ltd.

1.8.2 Responses by Foreign Manufacturers/Exporters/Importers

Interested Parties Responses
The investigation was initiated on 14 December 2021 and the date of response was 19 January 2021. Request for extension was received from Lucky Cement,

D. G. Khan Cement, Attock Cement, Power Cement and from Newcastle Steel Works (Proprietary) Limited, an importer of the subject product. Deficiency letters were sent out and the date for responses was 22 February 2021. Full and complete responses were received on 22 February 2022.

Newcastle Steel Works (Proprietary) Limited was verified on 23 March 2021 and verification report was sent out on 6 April 2021. Lucky Cement and Attock Cement were verified during the period 24 to 26 March 2021 and 29 to 31 March 2021. Verification reports were sent out on 7 and 9 April 2021 respectively.

Power Cement was verified during the period 5 to 7 April 2021 and a verification report was sent out on 13 April 2021. D. G. Khan Cement was verified from 9 to 14 April 2021 and a verification report was sent out on 23 April 2021. Responses to the verification reports were received on 13, 15, 28 and 30 April 2021.

The Commission's essential facts letters were sent to interested parties on 27 and 28 July 2021 and responses were received on 10 and 11 August 2021. Requests for oral hearings were submitted by Power Cement and Attock Cement on 2 and 3 August 2021. Further requests were received from Lucky Cement, DG Khan Cement and the Applicant on 23 and 26 August 2021. Comments on the Commission's essential facts letters were also received from the Trade Commission of Pakistan on 2 September 2021.

1.9 FINAL DETERMINATION AND RECOMMENDATION

After considering all relevant information, including the interested parties' comments and representations in respect of the verified submitted information and "essential facts" letters, the Commission made a final determination the expiry of the anti-dumping duties on ordinary Portland cement originating in or imported from Pakistan would likely lead to the continuation and/or recurrence of dumping and the recurrence of material injury.

The Commission therefore decided to recommend to the Minister of Trade, Industry and Competition that the following anti-dumping duties be imposed on ordinary Portland cement originating in or imported from Pakistan:

Tariff subheading	Description	Rate of duty
2523.29		
	Portland cement manufactured or produced by Lucky Cement Limited	25%
	Portland cement manufactured or produced by D. G. Khan Cement Limited	68.87%
	Portland cement manufactured or produced by Attock Cement Limited	63.53%
	Portland cement (excluding that manufactured or produced by Lucky Cement Limited, D. G. Khan Cement Limited and Attock Pakistan Cement Limited)	62.69%

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 SUBJECT PRODUCT

2.1.1 Description

The subject in this application is ordinary Portland cement classifiable under tariff heading 2523.29, and with a strength of 42.5MPa. It is the most common type of cement in general use around the world and is a basic ingredient of concrete, mortar, stucco, and non-specialty grout. It is grey, but white Portland cement is also available, and is distributed in 50kg polypropylene bags. When mixed with sand, gravel, and water, the cement makes concrete, which is an essential element of the construction industry.

2.1.2 Like product

In the original investigation, the Commission found that the SACU product and the imported product from Pakistan are like products, for purposes of comparison, in terms of Regulation 1 of the ADR.

2.1.3 Tariff classification

The subject product is classifiable as follows:

Table 2.1.3: Tariff classification

Heading	Sub-Heading	CD	Article Description	Unit	Rates of duty			
					Gen	EU	EFTA	SADC
25.23	2523.29	9	Portland cement ,aluminous cement, slag cement supersulphate & similar hydraulic cement whether or not colored or in the form of clinkers	kg	free	Free	free	Free

2.1.4 Other applicable duties and rebates

The following anti-dumping duties are applicable:

Tariff Heading	Description	Imported from or originating in	Rate of duty
2523.29	Portland cement manufactured or produced by Lucky Cement Limited	Pakistan	14.29%
	Portland cement manufactured or produced by Bestway Cement Limited	Pakistan	77.15%
	Portland cement manufactured or produced by D. G. Khan Cement Limited	Pakistan	68.87%
	Portland cement manufactured or produced by Attock Cement Limited	Pakistan	63.53%
	Portland cement (excluding that manufactured or produced by Lucky Cement Limited, Bestway Cement Limited, D. G. Khan Cement Limited, Attock Pakistan Cement Limited	Pakistan	62.69%

3. SACU INDUSTRY

3.1 INDUSTRY STANDING

The application was lodged by the Concrete Institute NPC on behalf of Afrisam, Lafarge, NPC, PPC and Sephaku on behalf of the SACU industry. The application was supported by Mamba Cement (Pty) Ltd.

These producers together constitute 100 per cent of the production of cement in the SACU.

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

4. DUMPING

4.1 METHODOLOGY IN THIS INVESTIGATION FOR LUCKY CEMENT

Sales in the ordinary course of trade

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

Calculation of normal value

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

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

Adjustments to the normal value

The following adjustments to the normal value were claimed by the manufacturer and were verified:

(a) Cost of payment terms

The interest rate applied in the calculation of the cost of payment terms was determined with reference to the month end bank discount rate from January 2019 to December 2019 plus a 1% margin added to arrive at the rate at which the bank advances loans. The margin added by the bank may range from 1% to 1.5%. For purposes of the cost of payment terms calculation, the company added a 1% to the bank discount rate. Cost of payment terms on domestic sales was established based on the number of days of the average credit period allowed to the customers.

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

(b) Sales Commission

Sales commission on local sales is paid to mediators and dealers. It is paid after 30–45 days of close of every month, based on the sales transactions concluded in the relevant month, and on the rate agreed by the management on the sales quantity. The principle behind the calculation of the factor per ton is applied when allocating the commission amounts to all sales transactions.

Commission's consideration

The Commission took into account that the rate of the sales commission was agreed between management and the agent. However, the sales commission was based on sales volumes concluded at the end of the month and paid after 30-45 days. It is the Commission's practice to consider adjustments to the normal value only if the adjustments affected price comparability at the time of setting prices. As sales commission was paid on the agreed rate by the Manager, the exporter would not have known whether sales commission would be approved or not at the time of setting of the price.

The Commission made a final determination not to allow sales commission adjustment as it was not demonstrated to have affected the price comparability at the time of the setting of the prices.

(c) Packaging cost

Packaging for domestic sales is made in kraft paper as well as in polypropylene bags which are purchased from several vendors. Kraft paper rates fall within a certain range per bag of 50kg of cement. Polypropylene bags also fall within a certain range per bag of 50kg of cement. The rates were applied to all individual transactions at an average rate, which corresponds to the packing cost charged to domestic sales.

The Commission made a final determination to allow the packaging costs adjustment as it was demonstrated to have affected price comparability at the time of setting the price.

(d) Transportation of coal

Lucky Cement has two plants, one in the Southern region ("Kharachi" plant) and the other one is situated in the Northern region (Pezu plant). Coal is imported into Pakistan via Karachi (southern part of Pakistan) and there is approximately a 1 100 km distance between the Karachi and Pezu plants. The company claimed an adjustment on the transportation of coal from Kharachi to Pezu. This is because coal is a primary input in cement production and it costs more to transport coal to Pezu plant, which caters mostly for the production of cement sold in the domestic market. This additional transportation cost, which mainly relates to the production for domestic sales, is also allocated to the Karachi plant due to cost averaging.

Commission's consideration

The Commission noted that Karachi plant manufactures a portion of the subject product for domestic consumption as well. However, it is not known what amount of the subject product is to be sold to the domestic market at the time of setting the price.

The fact that it costs more to transport coal does not make it an allowable adjustment as the coal for the manufacturing of the domestically sold product is the same which is used for SACU sales.

In the Penicillin (India) investigation the Board on Tariffs and Trade (the predecessor to the Commission) was faced with the situation that the exporter used domestically sourced raw material to manufacture for and supply the domestic market, while it used imported raw material to manufacture for and supply the SACU and other export markets. The imported raw material was significantly cheaper than domestically sourced raw material owing to high tariff barriers in India. The Board refused to make an adjustment to the normal value to account for the difference in raw material prices, arguing that there was no difference between the raw materials used for domestic and export production. The Board's finding in this regard was referred to court in Ranbaxy v Chairman of the Board on Tariffs and Trade and the Supreme Court confirmed that the Board was correct in its assessment[7].

The Commission made a final determination not to allow the coal transportation adjustment as it was not demonstrated to have affected the price comparability at the time of the setting of the prices.

(e) Power cost

Lucky Cement stated that its power plants dynamics are different because of the gas availability in Northern & Southern region of a country. In Northern areas, there is an unavailability of gas during different periods of the year, and hence, 40% of power generation in Pezu plant is made with furnace oil which costs more as compared to gas. Therefore, the cost in Pezu plant is comparatively higher as compared to the Karachi plant, where almost all of power generation is made with gas.

7 http://www.supremecourtofappeal.org.za/index.php/component/jdownloads/summary/16-judgments-2001/956-chairman-board-on-tariffs-and-trade-and-2-others-v-brenco-incorporated-and-2-others-case-number-285-99-25-may-2001

Commission's consideration

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

The Commission made a final determination <u>not to allow</u> the power cost adjustment as it was not demonstrated to have affected the price comparability at the time of the setting of the prices.

(f) Sales tax

The Commission noted that from 1 January to 31 December 2019, sales tax (i.e. indirect tax) was applicable at 17% of MRP Maximum Retail Price ("MRP"). This MRP and sales tax amounts were also shown on the sample invoices for local sales.

Commission's consideration

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

(a) substantiated;

(b) verifiable;

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

(d) clearly demonstrated to have affected price comparability at the time of setting prices.

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

Treatment of direct and indirect taxes by investigating authorities:

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

Sales tax is an indirect tax and Lucky Cement does not bear the ultimate economic burden of the tax which is borne by the customer. It is collected by Lucky Cement on behalf of the customer and paid directly to the Government treasury.

The adjustment was not substantiated in the exporter's response to the Commission's questionnaire. Further information was only provided during verification.

The Commission made a final determination not to allow this adjustment as it was not demonstrated to be directly related to the sale under consideration.

(g) Federal Excise Duty

As per the Pakistan law, Federal Excise Duty ("FED") is applicable to local and not to export sales. This is calculated at PKR1.5 per kg (PKR1 500 per ton) from 1 January 2019 to 30 June 2019. For the period from 1 July 2019 to 31 December 2019, the rate of FED was PKR2 per kg (PKR2 000 per ton).

For the same reasons as stated above, the Commission made a final determination not to allow this adjustment as it was not demonstrated to be directly related to the sale under consideration.

(h) Transport and handling cost

Lucky Cement stated that its domestic market it caters has a dynamic distribution structure. The inland (Pezu) plant is situated in a remote area, whereas the warehouses where the cement has to be dispatched to are located near main cities which are also major consumption centres.

Lucky Cement has incurred transportation cost of taking the subject product from the plant to different warehouses, and it uses its own, as well as third party's trucks. In order to deliver the bagged cement to customers, the customers arrange transportation/trucks for themselves. When dealing with the loose/bulk cement that is not bagged, Lucky Cement uses its own fleet of trucks tailored in order to transport such cement.

The Commission made a final determination to allow transport and handling cost adjustment as it was demonstrated to have affected the price comparability at the time of the setting of the prices.

(i) General sales and distribution

Lucky Cement stated that it incurs general sales and distribution cost on its domestic market. Sales are made in small lots to dealers for onward distribution to retailers. In order to reach the dealers situated at far-flung sites/areas, a heavy infrastructure and significant field force is required which besides regular market visits, remains in touch with the dealers/customers on a daily basis to assist with orders and to facilitate timely delivery.

Commission's consideration

The cost build-up was verified and it was found that costs were not allocated according to whether sales and distribution would be sold domestically or on the export market. In any business environment selling, sales and distribution expenses are incurred regardless of whether goods are to be sold in the domestic or export market. The exporter is claiming this particular adjustment in order to reduce the domestic price.

The Commission made a final determination not to allow the adjustment general sales and distribution expense as it was not demonstrated to have affected the price comparability at the time of the setting of the prices.

(J) Selling and administration expenses

Lucky Cement stated that it engages its sales team for selling in Pakistan (domestic sales) as well as cross borders (exports). In order to reach the dealers situated at far-flung sites/areas, a heavy infrastructure and significant field force is required. The domestic market is also a highly competitive market where Lucky Cement established itself as a dominant player through significant investment in logistical infrastructure and the establishment of fully staffed sales offices in more than seven locations to interact more directly with the client base.

Commission's consideration

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

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

The Commission made a final determination not to allow the adjustment for selling and administration expenses as it was not demonstrated to have affected the price comparability at the time of the setting of the prices.

(k) Corporate tax

Net income on domestic sales was subjected to a corporate tax rate of 29%.

Commission's consideration

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

In the reference book by Clive Stanbrook and Philip Bentley, "[d]irect taxes are not a matter for adjustment in anti-dumping proceedings ..." (see para. 3.3.2)[8].

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

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8 Dumping and Subsidies:Law and Procedures Governing the Imposition of Anti ... - Clive Stanbrook, Philip Bentley, Joseph Cunnane - Google Books

The Commission made a final determination not to allow an adjustment for taxation as it was not demonstrated to have affected the price comparability at the time of the setting of the prices.

Calculation of export price

The following adjustments were claimed to the export price:

(a) Cost of payment terms

The interest rate applied in the calculation of the cost of payment terms was determined with reference to the month end bank discount rate from January 2019 to December 2019 plus a 1% margin added to arrive at the rate at which the bank advances loans. The margin added by the bank may range from 1% to 1.5%.

For purposes of the cost of payment terms calculation, the company added a 1% to the bank discount rate. Cost of payment terms on export sales was established based on the number of days of the average credit period allowed to the customers.

The above rates were applied on export sales made to credit customers for the number óf credit days allowed to them. Where export consignments were based on Letters of Credit ("LCs") (usance LCs) the same rates were applied to arrive at the cost of payment terms based on the usance period/number of days of the LC.

Commission's consideration

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

The Commission made a final determination not to allow the adjustment as it was not demonstrated to have affected the price comparability at the time of the setting of the prices.

(b) Sales commission

Lucky Cement pays commission to mediators/middlemen who act as commission agents.

Commission's consideration

The sales commission incurred on the export sales is the actual commission paid in respect of each shipment at the time of setting of the price. This information was verified and found to be correct.

The Commission made a final determination to allow the sales commission adjustment as it was demonstrated to have affected the price comparability at the time of the setting of the prices.

(c) Packaging cost

Packaging for export sales is made of polypropylene bags, which are purchased from several vendors. Prices of polypropylene bags fall within a certain range per bag of 50 kg of cement. However, there is a duty drawback claim adjustment set at certain rate per ton of bagged cement sales. Net amount after deducting the duty draw back have been applied to all individual transactions at a certain average rate per 50 kg bag, which corresponds to the packing cost charged to export sales.

In addition to the above packaging for the exports, some customers require further bulk packaging in the form of sling bags. Sling bags are purchased from several vendors at varying prices based on the load they handle. The average cost of a particular sling bag was furnished to the Commission. These have been charged against consignments, where there was a specific requirement of this bulk packaging and have been claimed as adjustments.

The Commission made a final determination to allow the packaging cost adjustment as it was demonstrated to have affected the price comparability at the time of the setting of the prices.

(d) Transportation of coal

Lucky Cement imports coal from various sources, which is then shipped through the seaport, situated in the southern part of Pakistan. The coal is then transported to both manufacturing sites via land routes. The distance between seaport and northern region of Pakistan in which the plant is located is approximately 1,100 kilometres. Accordingly, a significant cost is incurred by Lucky Cement to transport coal to the northern region. This additional transportation cost, which mainly relates to the production for domestic sales, is also allocated to the southern plant due to cost averaging.

Commission's consideration

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

The Commission made a final determination not to allow the coal transportation adjustment as it was not demonstrated to have affected the price comparability at the time of the setting of the prices.

(e) Power cost

Lucky Cement stated that its power plants dynamics are different because of the gas availability in northern & southern regions of Pakistan. In northern areas, there is an unavailability of gas during different periods of the year, and hence, 40% of power generation in

Pezu plant is made on furnace oil which costs more than gas. Therefore, the cost in Pezu plant is comparatively higher than the Karachi plant, where almost all of power generation is made with gas. Therefore, the power fuel cost adjustment has been claimed from the calculation.

Commission's consideration

It is the Commission's practice to allow adjustments if there's a difference in the raw material used in the production of the subject product to account for differences, which could affect comparability, but not with regard to the price paid for such raw material. The fact that power costs more in the Pezu plant than the Karachi plant does not make it an allowable adjustment as the power used in the manufacture of the domestically sold product is the same as for the product exported to other markets including SACU.

The Commission made a final determination not to allow the power cost adjustment as it was not demonstrated to have affected the price comparability at the time of the setting of the prices.

(f) Transport and handling cost

Lucky Cement incurs the cost of transporting cements from the plant to the port.

The Commission made a final determination to allow the transport and handling cost adjustment as it was demonstrated to have affected the price comparability at the time of the setting of the prices.

(g) Selling and administration costs

Lucky Cement stated that its exports sales are mainly in bulk and few resources are being used to negotiating with customers in order to sell bigger volumes.

Commission's consideration

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

In any business environment selling, general and administration expenses are incurred regardless of whether goods are to be sold in the domestic or export market.

The Commission made a final determination not to allow an adjustment for selling and administration expenses as it was not demonstrated to have affected the price comparability at the time of the setting of the prices.

(h) Taxation

Lucky Cement indicated that exports are taxed at 1% of the gross export sales value. This amount is withheld by the bank and paid to the Pakistani Receiver of Revenue for every transaction. The exporter therefore knows beforehand that 1% of the invoice price will be deducted as export tax.

Commission's consideration

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

The Commission made a final determination to allow the taxation adjustment as it was demonstrated to have affected the selling price at the time of setting of the price.

Dumping margin

The dumping margin for Lucky Cement was calculated as 93.62%.

4.2 METHODOLOGY IN THIS INVESTIGATION FOR D. G. KHAN CEMENT

Sales in the ordinary course of trade

If more than 20% (by volume) of all sales of a particular product type or model took place at less than cost, such sales must be excluded in the determination of the normal value, and the normal value should be based on the weighted average price of all remaining sales.

Calculation of normal value

D.G. Khan Cement produces Portland cement in its plants. It indicated that this is done for reasons of efficiency and to optimise production output. In calculating normal value, the invoiced sales were used. It was found that there were sales that were made at a loss in the domestic market. In calculating the normal value, sales that were found to be made at a loss were less than 20% of the total sales volumes and all sales were therefore included in the calculation of the normal value.

Adjustments to the normal value

The following adjustments to the normal value were claimed by D.G. Khan Cement verified:

(a) Discount

D.G. Khan stated that during the 2019 financial budget, the Pakistan Government changed the tax policy for dealers and retailers. As per new tax policy, the dealers and retailers had to submit their annual income tax return showing income and expenses. In line with the policy, D. G. Khan Cement changed its commission policy and introduced an element of trade discount to narrow down the burden of tax on dealers and retailers. The discount is accounted for on a transaction-by-transaction basis and is based on the volumes purchased during the course of the month. The discount was shown to have affected the setting of the price, and it was also reflected on the invoices.

The Commission made a final determination to allow adjustment for discount as it was demonstrated to have affected the selling price at the time of setting of the price.

(b) Cost of payment terms

In the domestic market, some dealers were allowed credit for a limited period ranging from 10 -15 days. Agreement is made between the dealer and D.G. Khan Cement in which the credit period and other terms and conditions are agreed. Cost of payment has been calculated on average borrowing rate of 13.87% for the investigation period.

Commission's consideration

It is the Commission's practice to consider adjustments to the normal value only if they affected price comparability at the time of setting prices. The payment days used by D.G. Khan to calculate the cost of payment terms were displayed on the customer's contracts. The payment days were verified and found to support the claim for the adjustment.

The Commission made a final determination to allow the cost of payment terms adjustment.

(c) Delivery charges

D.G. Khan Cement has registered transporters to deliver cement to its local dealers, retailers and direct consumers. Transporters provide bills from time to time against the cement transported to different destinations in case of domestic sales. They submit the bills along with all the details to designated factory dispatch offices. The dispatch Manager verifies the bill details and forwards the bill summary to the finance department for payment. The finance department makes payment to transporter after deduction of applicable taxes. Due to the large volume of transactions, records are not maintained on order or permit basis. Therefore, transaction-by-transaction adjustment of delivery charges was made on average inland freight charges.

Commission's consideration

It is the Commission's practice to consider adjustments to the normal value to bring the price back to the ex-factory level. The delivery charges adjustment was verified and found to be correct.

The Commission made a final determination to allow the delivery cost adjustment.

(d) Packaging

In the domestic market, D. G. Khan uses kraft paper bags or polypropylene bags to package its products. The prices of these two modes of packaging differ. The packaging used was determined by client preference and both packaging options are applied. Therefore, the transaction-by-transaction adjustment of packaging cost was made on weighted average cost of domestic bags consumed during the period of investigation.

Commission's consideration

The packaging for the domestic and export market is different. This was verified and found to be correct.

The Commission made a final determination to allow the packaging cost adjustment.

(e) Sales Commission

Local commission was paid to dealers on every transaction during the first half of the investigation period. A discount was introduced in the second half the investigation period. Sales commission was based on quantity at a certain rate per metric ton in a month and credited to dealers and retailers ledgers after deduction of applicable withholding tax ("WHT") during January 2019 to July 2019. Afterwards, it was replaced by a trade discount. Total monthly commission was allocated on each monthly transaction on volume basis.

Commission's consideration

The Commission noted that there are signed agreements with agents, which were verified and found to support the claim for the adjustment.

The Commission made a final determination to allow the adjustment as it was demonstrated to have affected the price comparability at the time of setting of the prices.

(f) Minimum tax adjustment

A corporate rate of tax is 29% of taxable profits is payable in Pakistan. However, if there are taxable losses or no taxable profits, D.G. Khan is required to pay a certain percentage of local turnover (minimum tax) irrespective of status of taxable profits/losses of the year.

Commission's consideration

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

Anti-Dumping Regulation 11.2 clearly states the requirements for adjustments to be allowed, amongst which only adjustments for a cost that is directly related to the sale under consideration will be allowed. The tax adjustment is on the overall company performance and is therefore not directly related to any sale under consideration.

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

The European Union ("EU") and Australian Anti-dumping Regulations provide for adjustments to normal value for import charges and indirect taxes. Under section 773(a)(6)(B) of the Tariff Act of 1930, the Department of Commerce in the United States of America (USA ("US Department of Commerce") adjusts normal value for the amount of any indirect tax imposed on the foreign like product, but only to the extent such taxes are included in the price.

In the reference book by Clive Stanbrook and Philip Bentley, "[d]irect taxes are not a matter for adjustment in anti-dumping proceedings ..." (see para. 3.3.2) (see foot note 8).

The Commission made a final determination not to allow the corporate tax adjustment as it does not affect price comparability at the time of setting the price.

Export price calculations

D. G. Khan did not have sales of the subject product to SACU market during the period of investigation. However, it did have comparable export sales of cement to India.

Commission's consideration

The Commission noted that the subject product that is manufactured by D.G. Khan Cement and exported to India is similar and can be comparable to that produced and sold on the SACU market. India also has a domestic industry that manufactures the subject product that is also comparable to the one that is sold on the SACU market.

The Commission made a final determination to use exports to India as a basis for determining export price in order to determine the likelihood of continuation and/or recurrence of dumping.

Adjustments to the export price

The following adjustments were claimed to export in order to arrive at the ex-factory export price:

(a) Delivery charges

D.G. Khan has registered transporters to deliver cement to the port or border in case of exports. Transporters provide bills from time to time against cement/clinker transported to different ports or borders in case of exports. A transporter submits the bills along with all the details to respective factory dispatch office. The dispatch manager verifies the bill details and forwards the bill summary to the finance department for payment. The finance department makes payment to transporter after deduction of applicable taxes. Due to larger volume of transactions, records is not maintained on order or permit basis. Therefore, transaction-by-transaction adjustment of delivery charges was made on average inland freight charges.

Commission's consideration

It is the Commission's practice to consider adjustments to the export price to bring the price back to the ex-factory level. The adjustment for delivery charges was verified and found to be correct.

The Commission made a final determination to allow the adjustment as it was demonstrated to have affected the price comparability at the time of setting of the prices.

(b) Packaging cost

In the export market, the polypropylene bags are used except for Sri Lanka, which uses paper bags as required by Sri Lankan Standard Institute ("SLSI"). It was not possible to identify packaging cost to any specific transaction. Therefore, transaction-by-transaction adjustment of packaging cost was made on weighted average cost of export bags consumed during the period of investigation.

Commission's consideration

The packaging cost adjustment was verified and found to be correct.

The Commission made a final determination to allow the adjustment as it was demonstrated to have affected the price comparability at the time of setting of the prices.

(c) Sales Commission

Export commission is fixed on order to order basis. There is no written commission contract with the buyer. Once order is finalized booking is made in the system and commission rate is noted in the system. When export order is despatched and payment is received, exporter sends commission invoice. Commission is paid as per agreed rate and is also noted in the system after deduction of applicable tax is made. The commission was allocated on each monthly transaction and on volume basis.

Commission's consideration

The sales commission adjustment was verified and found to be correct.
The Commission made a final determination to allow the adjustment as it was demonstrated to have affected the price comparability at the time of setting of the prices.

(d) Other adjustments/handling charges/ocean freight

Export consignment once loaded from plant site was subjected to clearing charges, handling charges in case of break bulk shipment, pre shipment inspection charges and ocean freight in case of cost, no insurance, freight ("CNF") sale.

Commission's consideration

Other adjustments/handling charges/ocean freight were verified and found to be correct.

The Commission made a final determination to allow the adjustment as it was demonstrated to have affected the price comparability at the time of setting of the prices.

(e) Taxation

A 1% tax is levied of the gross value of export sales. It is accounted for on a transaction-by-transaction basis.

Commission's consideration

Taxation costs were verified and found to be correct.

Dumping margin

The dumping margin for D.G. Khan Cement was calculated as 10.89%. The dumping information calculated indicates that the expiry of the duties would likely lead to the continuation or recurrence of dumping. The Commission made a final determination that anti-dumping duty applicable to D.G. Khan Cement from the original anti-dumping investigation be maintained at 68.87%.

4.3 METHODOLOGY IN THIS INVESTIGATION FOR ATTOCK CEMENT

Sales in the ordinary course of trade

If less than 20% by volume of all sales of a particular product type or model took place at less than the cost of production, all transactions should be considered in the determination of the normal value, and the normal value should be based on the weighted average price of all sales.

Calculation of normal value

Attock Cement produced cement during the period of investigation. The actual invoiced sales were used to calculate the normal value. It was found that there were sales which were sold at a loss in the domestic market. In calculating the normal value, sales which were found to be at a loss were less than 20% of the total sales volumes and all sales were therefore included in the calculation of the normal value.

Adjustments to the normal value

The following adjustments were made to the normal value in order to arrive at the ex-factory level:

(a) Transport charges

Local transportation cost is handled by the company under two different models. In the first model, the company offers its products on "landed" basis and transportation cost is directly borne by the company. In the second model, the company offers its products on "ex-factory" basis under which transportation cost is borne by the customers (including dealers/distributors).

Commission's consideration

The transport cost was verified and found to be correct.

The Commission made a final determination to allow the adjustment as it was demonstrated to have affected the price comparability at the time of setting of the prices.

(b) Sales Commission

Attock Cement's domestic sales are carried out through dealers or distributors, and this is done on a commission basis. The payment for commission is paid on a month-to-month basis with the approval of Senior General Manager (Finance & Coordination) and Chief Executive.

There are different rates, which are approved for different distributors on the basis of markets/regions in which they operate. Attock Cement has applied two different average rates of commission for two different accounting periods of the same calendar year.

Commission's consideration

The Commission noted that there are no contracts between Attock and the agents, which were verified and found to be supporting claim for the adjustment. It is the Commission's practice to consider adjustments to the normal value only if the adjustments affected price comparability at the time of setting prices. As sales commission is paid on the approval of the Manager, exporter would not have known whether sales commission would be approved or not at the time of setting of the price.

The Commission made a final determination not to allow the adjustment as it was not demonstrated to have affected the price comparability at the time of setting of the prices.

(c) Cost of payment terms

Attock Cement offers payment terms to parties who are credit worthy. While giving any credit limit and period to any customer, a complete credit check is done by its marketing department and a credit approval note is prepared by the marketing department to obtain credit approval from Senior General Manager (Finance & Coordination) and Chief Executive. Once the credit is approved, then a copy of credit approval is circulated to finance department for issuance of sales on credit.

Commission's consideration

It is the Commission's practice to consider adjustments to the normal value only if the adjustments affected price comparability at the time of setting prices. The payment days used by Attock to calculate the cost of payment terms were not displayed on the invoices. If the number of days is not reflected on the invoice, at least there has to be a contract between the exporter and the customer indicating the number of days it will take before the customer make a payment. No such information was provided.

The Commission made a final determination not to allow the cost of payments terms adjustment as no substantiation was provided that this affected price comparability at the time of setting the price.

(d) Corporate tax

There are income tax laws and rules in Pakistan which are governed under the Income Tax Ordinance, 2001. Separate tax mechanisms are applied on income earned through local sales and export sales. Income from local sales is taxed at 29% corporate tax rate on the taxable income.

Commission's consideration

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

Anti-Dumping Regulation 11.2 clearly states the requirements for adjustments to be allowed, amongst which only adjustments for cost that is directly related to the sale under consideration will be allowed. The tax adjustment is on the overall company performance and is therefore not directly related to any sale under consideration.

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

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

In the reference book by Clive Stanbrook and Philip Bentley, "[d]irect taxes are not a matter for adjustment in anti-dumping proceedings ..." (see para. 3.3.2)(see foot note 8).

The Commission made a final determination not to allow the corporate tax adjustment as it does not affect price comparability at the time of setting the price.

(e) Withholding Tax

Withholding tax is explained in clause 236(H) of the Pakistani Income Tax Ordinance 2001 and is applicable to retailers. Attock Cement is required to collect additional amount equals to 1% of sales value amount from retailers and deposit it in Government treasury. Retailers who are not registered under the local tax network do not pay this additional 1% amount of sales value to company. Thus, in order to comply with the applicable income tax laws, it is borne by Attock Cement.

Commission's consideration

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

(a) Substantiated;
(b) Verifiable;
(c) Directly related to the sale under consideration; and
(d) Clearly demonstrated to have affected price comparability at the time of setting prices".

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

Treatment of direct and indirect taxes by investigating authorities:

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

In the reference book by Clive Stanbrook and Philip Bentley, "[d]irect taxes are not a matter for adjustment in anti-dumping proceedings …" (see para. 3.3.2) (see footnote 8).

Withholding tax is an indirect tax and Attock Cement does not bear the ultimate economic burden of the tax and is borne by the customer. It is collected by Attock on behalf of the customer and paid directly to the Government treasury.

The Commission made a final determination not to allow the withholding tax adjustment as it does not affect price comparability at the time of setting the price.

Export price calculation

Attock Cement did not have sales of the subject product to SACU market during the period of investigation. However, it did have export sales of cement to other foreign markets, including Sri Lanka.

Commission's consideration

The Commission noted that the subject product that is manufactured by Attock Cement and exported to Sri Lanka is similar and is comparable to that produced and sold on the SACU market. Sri Lanka also has a domestic industry that manufactures the subject product that is also comparable to the one that is sold on the SACU market.

The Commission made a final determination to use exports to Sri Lanka as a basis for determining export price to SACU, in order to determine the likelihood of continuation and/or recurrence of dumping.

Adjustments to the export price

The following adjustments were claimed to the export price in order to arrive at the ex-factory export price:

(a) Ocean Freight

During the period of investigation ocean freight costs were incurred on export sales.

Commission's consideration

Ocean freight was verified and found to be correct.

The Commission made a final determination to allow the adjustment as it affected price comparability at the time of setting the price.

(b) Inland transport charges

Export transportation of cement is carried out mostly in containers from factory to port through transporters, which work for the company under tender agreements. Rate of transportation is agreed with transporters on per ton basis. A variance in per ton rate of transportation during the investigation period arose due to change in fuel rates.

Commission's consideration

Inland transport charges were verified and found to be correct.

The Commission made a final determination to allow the adjustment as it affected price comparability at the time of setting the price.

(c) **Sales commission**

There are commission agents involved in export orders, who work on commission basis. Their commission is set within a certain range depending on order, size, market dynamics etc.). The marketing department obtains approval for commission along with price approval for each export order from Senior General Manager (Finance & Coordination) and Chief Executive.

Commission's consideration

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

The Commission made a final determination to allow the adjustment as it affected price comparability at the time of setting the price.

(d) **Handling and other costs**

Handling and other costs starts from entry of cargo at port terminal and ends as soon as the containers are on board (boarded on vessel). Attock Cement engages different clearing agents to perform handling job, with whom rate of clearance or handling has been agreed on per ton basis. The rate of clearance and handling includes service charges of clearing agents, wharfage (charges of port terminal) and examination charges (if applicable) etc. as there are four different terminals at Karachi, namely KPT, KICT, SAPT and PICT and one terminal at port Qasim (the export movements occur using these ports).

Commission's consideration

Handling and other costs were verified and found to be correct.

The Commission made a final determination to allow the adjustment as it affected price comparability at the time of setting the price.

(e) Corporate tax

There are income tax laws and rules in Pakistan that are governed under the Pakistani Income Tax Ordinance, 2001. Separate tax mechanisms are applied on income earned through export sales. Export sales are taxed at 1% of export volumes at the time of payment.

Commission's consideration

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

The Commission made a final determination to allow the adjustment as it was demonstrated to have affected the price comparability at the time of setting of the prices.

(f) Average exchange gain/loss

Exchange Gain / Loss is the difference of US Dollar conversion rate in PKR at the time of sales booking and at the time of realization of payment. Attock Cement has applied two different average rates of exchange gain or loss for two different accounting periods of same calendar year.

Commission's consideration

Although the calculated adjustment was verified and found to be correct, it did not affect the setting of the price as the exporter only obtained the favourable exchange rate on the foreign exchange market following an export sale.

The Commission made a final determination not to allow the adjustment as it was demonstrated to have affected the price comparability at the time of setting of the prices.

Dumping margin

The dumping margin for Attock Cement was calculated to be 44.27%. The dumping margin calculated indicates that the expiry of the duties would likely lead to the continuation or recurrence of dumping.

The Commission made a final determination that anti-dumping measures applicable to Attock Cement be maintained at 63.53%.

4.4 METHODOLOGY IN THE INVESTIGATION FOR POWER CEMENT

Sales in the ordinary course of trade

If less than 20% by volume of all sales of a particular product type or model took place at less than cost, all transactions should be considered in the determination of the normal value, and the normal value should be based on the weighted average price of all sales.

Calculation of normal value

Power Cement produced and sold cement during the period of investigation. The actual invoiced sales were used to calculate the normal value. It was found that there were sales which were sold at a loss in the domestic market. In calculating the normal value, sales which were found to be at a loss were less than 20% of the total sales volumes and therefore all sales were included in the calculation of the normal value.

Adjustments to the normal value

The following adjustments were claimed to the normal value:

(a) Sales Commission

Commission is paid to dealers on domestic sales, and there is no fixed rate. It is negotiated by the marketing department depending on geographical area of the dealer, quantities moved, customer relationship and market factors. It also not paid per transaction but offered on a monthly basis for each dealer.

It was found during verification that there was a difference between information submitted in the domestic sales data and audited financial statements. The reason submitted by the exporter was that sales commission which was made prior to the investigation period was approved and concluded by the marketing department during the investigation period. Accordingly, the same was expensed out during the investigation period.

Commission's consideration

The Commission noted that there are no contracts between Power Cement and dealers, which were verified to be supporting claim for the adjustment. It is the Commission's practice to consider adjustments to the normal value only if the adjustments affected price comparability at the time of setting prices. Sales commission depends on the geographical area of the dealer, quantities moved, customer relationship and market factors. Therefore, the exporter would not have known sales commission to be paid at the time of setting of the price.

The Commission made a final determination <u>not to allow</u> the adjustment as it was not demonstrated to have affected the price comparability at the time of setting of the prices.

(b) Cost of payment terms

Power Cement offers credit on domestic sales and credit limits like bank overdraft facility are offered to such customers. Customers' accounts are debited by the sales made to them and credited by the lump-sum payments received from them. Finance cost of these credit periods is borne by the exporter.

The days used in the cost of payment terms calculation are based on the difference between actual number of days from when an invoice is issued and when payment is received.

Commission's consideration

It is the Commission's practice to consider adjustments to the normal value only if the adjustments affected price comparability at the time of setting prices. The payment days used by Power Cement to calculate the cost of payment terms were verified and found to support the claim for the adjustment. The adjustment affected price comparability at the time of setting the prices.

The Commission made a final determination to allow the adjustment as it was not demonstrated to have affected the price comparability at the time of setting of the prices.

Export price calculations

Power Cement did not have sales of the subject product to SACU during the period of investigation. However, it did have export sales of cement to other foreign markets, including Madagascar.

Commission's consideration

The Commission noted that the subject product that is manufactured by Power Cement and exported to Madagascar is similar and can be comparable to that produced and sold on the SACU market. Madagascar also has a domestic industry that manufactures the subject product that is also comparable to the one that is sold on the SACU market.

The Commission made a final determination to use exports to Madagascar as a basis for determining export price, in order to determine the likelihood of continuation and/or recurrence of dumping.

Adjustments

The following adjustments were claimed on the export price:

(a) Inland transport charges

During the period of investigation, inland delivery transport charges were incurred from factory to port on export sales to other markets. The inland charges were allocated based on sales volumes.

Commission's consideration

Inland transport charges were verified and found to be correct.

The Commission made a final determination to allow the adjustment as it affected price comparability at the time of setting the price.

(b) Ocean Freight

During the period of investigation ocean freight costs were incurred on export sales to other markets.

Commission's consideration

Ocean freight charges were verified and found to be correct.

The Commission made a final determination to allow the adjustment as it affected price comparability at the time of setting the price.

(c) Sales commission

Commission is paid to dealers on export sales, and there is no fixed rate. It is negotiated by the marketing department depending on geographical area of the dealer, quantities moved, customer relationship and market factors. It also not paid per transaction but offered on a monthly basis for each dealer.

Commission's consideration

The Commission noted that there are no contracts between Power Cement and dealers, which were verified to be supporting claim for the adjustment. It is the Commission's practice to consider adjustments to the normal value only if the adjustments affected price comparability at the time of setting prices. Sales commission depends on the geographical area of the dealer, quantities moved, customer relationship and market factors. Therefore, the exporter would not have known sales commission to be paid at the time of setting of the price.

The Commission made a final determination not to allow the adjustment as it was not demonstrated to have affected the price comparability at the time of setting of the prices.

(d) Port charges and other miscellaneous export costs

Handling and port costs were incurred on export sales. The handling cost per ton was calculated and allocated based on volume.

Commission's consideration

Port charges and other miscellaneous export costs were verified and found to be correct.

The Commission made a final determination to allow the adjustment as it affected price comparability at the time of setting the price.

(e) Corporate tax

A corporate tax of 1% on the value of export sales is payable. The 1% is calculated on the basis on the invoice value and is collected by the bank when a customer makes payment for export products. The Bank then pays the amount over to the government. This tax expense is therefore, carried by Power Cement and not the customer.

Commission's consideration

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

The Commission made a final determination to allow the adjustment as it was demonstrated to have affected the price comparability at the time of setting of the prices.

Dumping margin

The dumping margin for Power Cement was calculated as 18.84%.

The Commission noted that although Power Cement responded in its sunset review exporter's questionnaire, it was not a participant in the original anti-dumping investigation. The fact that it provided a properly documented exporter's response does not warrant exclusion from the residual margin as it did not participate in the original investigation.

The dumping margin calculated indicates that the expiry of the duties would likely lead to the continuation or recurrence of dumping. The Commission therefore made a final determination that the exporter be subject to the current residual dumping margin of 62.69%.

SUMMARY: DUMPING

Although imports from Pakistan decreased from 15.37% to 9.24% over the investigation period because of the current anti-dumping duties in place and the fact that the Applicant was not experiencing injury during the period of investigation, the Commission made a final determination that anti-dumping measures applicable to D. G. Khan Cement, and Attock Cement be maintained at their current levels. The Commission made a final determination that a duty of 25% be imposed on the subject product manufactured by Lucky Cement, calculated in terms of the lesser duty rule. As Power Cement did not participate in the original investigation and did not export to the SACU during the period of investigation, the Commission made a final determination that the subject product manufactured by Power Cement be subject to the residual dumping duty.

Since Bestway Cement did not respond to the Commission's exporter questionnaire, the Commission made a final determination that the subject product manufactured by Bestway Cement not be subject to an individual margin, but be subject to the residual dumping duty. The Commission therefore made a final determination that all imports of ordinary Portland cement, (including those manufactured or produced by Power Cement and Bestway Cement be subject to the current residual dumping margin of 62.69%.

The Commission therefore decided to recommend to the Minister of Trade, Industry and Competition that the following anti-dumping duties be imposed on ordinary Portland cement originating in or imported from Pakistan:

Tariff subheading	Description	Rate of duty
2523.29		
	Portland cement manufactured or produced by Lucky Cement Limited	25%
	Portland cement manufactured or produced by D. G. Khan Cement Limited	68.87%
	Portland cement manufactured or produced by Attock Cement Limited	63.53%
	Portland cement (excluding that manufactured or produced by Lucky Cement Limited, D. G. Khan Cement Limited and Attock Pakistan Cement Limited)	62.69%

5. RECURRENCE OF MATERIAL INJURY

GENERAL

There are two separate and distinct markets for cement classifiable under tariff sub-heading 2523.29, namely, the market for bagged and bulk cement. The Applicant stated that ordinary Portland cement classifiable under tariff sub-heading 2523.29 is imported from Pakistan only in bagged form and it is only where Pakistan imports compete with the SACU industry and suffer material injury. It also stated that its bagged cement data is presented separately from the bulk cement statistics. It further indicated that the injury data furnished is not only in respect of bagged cement market, but also material injury to the SACU industry as a whole (i.e. the combined bulk and bagged cement markets).

5.1 IMPORT VOLUMES AND EFFECT ON PRICES

5.1.1 Import volumes and values

The following table shows the volumes of allegedly dumped imports of the subject product which were obtained from SARS:

Table 5.1.1: Import volumes

Kg	1 Jan 2017-31 Dec 2017	1 Jan 2018-31 Dec 2018	1 Jan 2019-31 Dec 2019	Forecast year (w/o AD duties)
Alleged dumped imports (Pakistan)	77 260 067	201 680 035	96 124 462	1 309 392 628
Other Imports	425 357 731	726 086 632	944 469 530	944 469 530
Total Imports	502 617 798	927 766 667	1 040 593 993	2 253 862 158
Alleged dumped imports as % of total imports	15.37%	21.74%	9.24%	58.10%
Other imports as a % of total imports	84.63%	78.26%	90.76%	41.90%
Total %	100%	100%	100%	100%

During the period 2018, the dumped imports accounted for 22% of total imports. The information in the table indicates that over the investigation period, imports from other countries continued to flow into the SACU market, confirming the fact that the demand for imported low priced products continues, in which 9.24% is from Pakistan and 90.76% is from other countries. Should the duties be revoked against the alleged countries, it is estimated that there will be an influx of imports.

5.2 Effect on domestic prices

5.2.1 Price undercutting

Table 5.2.1 (a): Price undercutting: imports (Pakistan)

R/kg	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
Ex-factory price **(bagged)**	100	103	108	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [UNCHANGED FROM 2019]
Landed cost (R/g): Pakistan	0.75	0.92	1.16	1.16
Price undercutting per unit **(bagged)**	[CONFIDENTIAL] [POSITIVE]	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017]	[CONFIDENTIAL] [NEGATIVE] [DECREASED FROM 2017] [DECREASED FROM 2018]	[CONFIDENTIAL] [NEGATIVE] [DECREASED FROM 2017] [UNCHANGED FROM 2019]
Price undercutting (%) **(bagged)**	[CONFIDENTIAL] [POSITIVE]	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017]	[CONFIDENTIAL] [NEGATIVE] [DECREASED FROM 2017] [DECREASED FROM 2018]	[CONFIDENTIAL] [NEGATIVE] [DECREASED FROM 2017] [UNCHANGED FROM 2019]
Ex-factory price **(bulk)**	100	104	112	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [UNCHANGED FROM 2019]
Landed cost (R/kg): Pakistan	0.00	0.00	0.00	0.00
Price undercutting per unit **(bulk)**	[CONFIDENTIAL]	[CONFIDENTIAL] [UNCHANGED FROM 2017]	[CONFIDENTIAL] [UNCHANGED FROM 2017]	[CONFIDENTIAL] [UNCHANGED FROM 2017]

			[UNCHANGED FROM 2018]	[UNCHANGED FROM 2019]
Price undercutting (%) **(bulk)**	[CONFIDENTIAL]	[CONFIDENTIAL] [UNCHANGED FROM 2017]	[CONFIDENTIAL] [UNCHANGED FROM 2017] [UNCHANGED FROM 2018]	[CONFIDENTIAL] [UNCHANGED FROM 2017] [UNCHANGED FROM 2019]
Ex-factory selling price **(bagged and bulk)**	100	103	110	CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [UNCHANGED FROM 2019
Landed cost (R/kg): Pakistan	0.75	0.92	1.16	1.16
Price undercutting per unit **(bagged and bulk)**	[CONFIDENTIAL] [POSITIVE]	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017]	[CONFIDENTIAL] [NEGATIVE] [DECREASED FROM 2017] [DECREASED FROM 2018]	[CONFIDENTIAL] [NEGATIVE] [DECREASED FROM 2017] [UNCHANGED FROM 2019]
Price undercutting (%)	[CONFIDENTIAL] [POSITIVE]	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017]	[CONFIDENTIAL] [NEGATIVE] [DECREASED FROM 2017] [DECREASED FROM 2018]	[CONFIDENTIAL] [NEGATIVE] [DECREASED FROM 2017] [UNCHANGED FROM 2019]

The information above was indexed using 2017 as the base year, due to confidentiality

Table 5.2.1 (b): Price undercutting: Other imports

R/kg	**1 Jan 2017 – 31 Dec 2017**	**1 Jan 2018 – 31 Dec 2018**	**1 Jan 2019 – 31 Dec 2019**	**Forecast year (w/o AD duties)**
Ex-factory price **(bagged)**	100	103	108	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [UNCHANGED FROM 2019]
Landed cost (R/kg): Other imports	1.10	1.06	1.13	1.13
Price undercutting per unit **(bagged)**	[CONFIDENTIAL] [NEGATIVE]	[CONFIDENTIAL] [NEGATIVE] [INCREASED FROM 2017	[CONFIDENTIAL] [NEGATIVE] [INCREASED FROM 2017] [DECREASED FROM 2018]	[CONFIDENTIAL] [NEGATIVE] [INCREASED FROM 2017] [UNCHANGED FROM 2019
Price undercutting (%) **(bagged)**	[CONFIDENTIAL] [NEGATIVE]	[CONFIDENTIAL] [NEGATIVE] [INCREASED FROM 2017]	[CONFIDENTIAL] [NEGATIVE] [INCREASED FROM 2017] [DECREASED FROM 2018]	[CONFIDENTIAL] [NEGATIVE] [INCREASED FROM 2017] [UNCHANGED FROM 2019]

Ex-factory price **(bulk)**	100	104	112	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [UNCHANGED FROM 2019]
Landed cost (R/kg): Other imports	0.00	0.00	0.00	0.00
Price undercutting per unit **(bulk)**	[CONFIDENTIAL]	[CONFIDENTIAL] [UNCHANGED FROM 2017]	[CONFIDENTIAL] [UNCHANGED FROM 2017] [UNCHANGED FROM 2018]	[CONFIDENTIAL] [UNCHANGED FROM 2017] [UNCHANGED FROM 2019]
Price undercutting (%) **(bulk)**	[CONFIDENTIAL]	[CONFIDENTIAL] [UNCHANGED FROM 2017]	[CONFIDENTIAL] [UNCHANGED FROM 2017] [UNCHANGED FROM 2018]	[CONFIDENTIAL] [UNCHANGED FROM 2017] [UNCHANGED FROM 2019]
Ex-factory price **(bagged and bulk)**	100	103	110	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [UNCHANGED FROM 2019]
Landed cost (R/kg): Other imports	1.10	1.06	1.13	1.13
Price undercutting per unit **(bagged and bulk)**	[CONFIDENTIAL] [NEGATIVE]	[CONFIDENTIAL] [NEGATIVE] [INCREASED FROM 2017]	[CONFIDENTIAL] [NEGATIVE] [INCREASED FROM 2017] [DECREASED FROM 2018]	[CONFIDENTIAL] [NEGATIVE] [INCREASED FROM 2017] [UNCHANGED FROM 2019]
Price undercutting (%) **(bagged and bulk)**	[CONFIDENTIAL] [NEGATIVE]	[CONFIDENTIAL] [NEGATIVE] [INCREASED FROM 2017]	[CONFIDENTIAL] [NEGATIVE] [INCREASED FROM 2017] [DECREASED FROM 2018]	[CONFIDENTIAL] [NEGATIVE] [INCREASED FROM 2017] [UNCHANGED FROM 2019]

The information above was indexed using 2017 as the base year, due to confidentiality

Table 5.2.1 (c): Price undercutting: Total imports

R/kg	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
Ex-factory price **(bagged)** (Total imports)	100	103	108	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [UNCHANGED FROM 2019]
Landed cost (R/kg): Total imports	1.05	1.03	1.13	1.15
Price undercutting per unit **(bagged)**	[CONFIDENTIAL] [NEGATIVE]	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017]	[CONFIDENTIAL] [NEGATIVE] [DECREASED FROM 2017] [DECREASED FROM 2018]	[CONFIDENTIAL] [NEGATIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Price undercutting (%) **(bagged)**	[CONFIDENTIAL] [NEGATIVE]	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017]	[CONFIDENTIAL] [NEGATIVE] [DECREASED FROM 2017] [DECREASED FROM 2018]	[CONFIDENTIAL] [NEGATIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Ex-factory price **(bulk)** (Total imports)	100	104	112	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [UNCHANGED FROM 2019]
Landed cost (R/kg): Other countries	0.00	0.00	0.00	0.00
Price undercutting per unit **(bulk)**	[CONFIDENTIAL]	CONFIDENTIAL] [UNCHANGED FROM 2017]	[CONFIDENTIAL] [UNCHANGED FROM 2017] [UNCHANGED FROM 2018	[CONFIDENTIAL] [UNCHANGED FROM 2017] [UNCHANGED FROM 2019]]
Price undercutting (%) **(bulk)**	[CONFIDENTIAL]	[CONFIDENTIAL] [UNCHANGED FROM 2017	[CONFIDENTIAL] [UNCHANGED FROM 2017] [UNCHANGED FROM 2018]	[CONFIDENTIAL] [UNCHANGED FROM 2017] [UNCHANGED FROM 2019]
Ex-factory price **(bagged and bulk)** (Total imports)	100	103	110	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [UNCHANGED FROM 2019]
Landed cost: Total imports	1.05	1.03	1.13	1.15
Price undercutting per unit	[CONFIDENTIAL] [NEGATIVE]	[CONFIDENTIAL] [POSITIVE]	[CONFIDENTIAL] [NEGATIVE] [INCREASED	[CONFIDENTIAL] [NEGATIVE] [DECREASED

(bagged and bulk)		[INCREASED FROM 2017]	FROM 2017] [DECREASED FROM 2018]	FROM 2017] [DECREASED FROM 2019]
Price undercutting (%) (bagged and bulk)	[CONFIDENTIAL] [NEGATIVE]	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017]	[CONFIDENTIAL] [NEGATIVE] [INCREASED FROM 2017] [DECREASED FROM 2018]	[CONFIDENTIAL] [NEGATIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]

The information above was indexed using 2017 as the base year, due to confidentiality

The information in the table above indicates that the SACU industry experienced price undercutting over the investigation period.

5.2.2 Price depression

The table below shows the SACU industry's selling price for the period 1 January 2017 to 31 December 2019, and forecast in the event the duties expire:

Table 5.2.2: Price depression

R/kg	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
Ex-factory selling price: **bagged**	100	103	108	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [UNCHANGED FROM 2019]
Ex-factory selling price: **bulk**	100	104	112	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [UNCHANGED FROM 2019
Ex-factory selling price **(bagged and bulk)**	100	103	110	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [UNCHANGED FROM 2019]

The information above was indexed using 2017 as the base year, due to confidentiality

The information in the above table indicates that the SACU industry did not experience price depression during the period of investigation for injury. If the anti-dumping duties expire, it is expected that the Applicant may have to decrease prices in order to compete with the expected flood of dumped imports, which would result in them suffering price depression.

5.2.3 Price suppression

The following table shows the SACU industry's cost of production and selling prices for the subject product for the period 1 January 2017 to 31 December 2019, and forecast in the event the duties expire:

Table 5.2.3 (a): Price suppression - bagged

R/kg	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
Ex-factory selling price R/kg	100	103	108	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [UNCHANGED FROM 2019]
SACU's production cost per kg	100	106	120	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [INCREASED FROM 2019]
Gross profit per kg	100	100	82	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Gross profit margin (%)	100	96	77	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Cost as % selling price	100	102	111	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [INCREASED FROM 2019]
Per unit total cost R/kg	100	104	118	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [INCREASED FROM 2019]

Per unit net profit	100	104	79	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Net profit margin %	100	99	71	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Per unit total Cost as a percentage of net ex-factory price %	100	100	109	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [INCREASED FROM 2019]

The information above was indexed using 2017 as the base year, due to confidentiality

Table 5.2.3 (b): Price suppression- bulk

R/kg	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
Ex-factory selling price	100	104	112	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [UNCHANGED FROM 2019]
SACU's production cost per kg	100	104	120	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [INCREASED FROM 2019]
Gross profit per kg	100	100	97	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Gross profit margin (%)	100	97	86	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019
Cost as % selling price	100	101	107	CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [INCREASED FROM 2019

Per unit total cost	100	103	116	CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [INCREASED FROM 2019]
Per unit net profit	100	105	95	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Net profit margin %	100	101	85	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Per unit total Cost as a percentage of net ex-factory price %	100	100	104	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [INCREASED FROM 2019]

The information above was indexed using 2017 as the base year, due to confidentiality

Table 5.2.3 (c): Price suppression - bagged and bulk

R/kg	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
Ex-factory selling price	100	103	110	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [UNCHANGED FROM 2019]
SACU's production cost per kg	100	106	120	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017]
				[INCREASED FROM 2019]
Gross profit per kg	100	100	88	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Gross profit margin (%)	100	97	80	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]

Cost as % selling price	100	102	109	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [INCREASED FROM 2019]
Per Unit Total Cost R/kg	100	103	116	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [INCREASED FROM 2019]
Per Unit Net Profit	100	104	83	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [UNCHANGED FROM 2019]
Net Profit Margin %	100	99	76	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Per Unit Total Cost as a percentage of net ex-factory price %	100	100	107	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] INCREASED FROM 2019

The information above was indexed using 2017 as the base year, due to confidentiality

The information in the table above indicates that the SACU industry suffered price suppression over the investigation period. If the anti-dumping duties expire, it is estimated that it will suffer further depression. The Applicant stated should the duties be withdrawn, the industry will be unable to increase prices in line with increases in costs due to unfair competition from the dumped imports.

5.3 Economic factors and indices having a bearing on the state of the industry

5.3.1 Actual and potential decline in volumes and values

The following table shows the SACU industry's sales volumes of cement for the period 1 January 2017 to 31 December 2019, and forecast in the event the duties expire:

Table 5.3.1 (a): Sales volumes

Kg	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
Sales volumes: **bagged**	100	94	83	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Sales volumes: **bulk**	100	103	101	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [UNCHANGED FROM 2019]
Total sales volumes: **bagged and bulk**	100	97	89	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]

The information above was indexed using 2017 as the base year, due to confidentiality

The table above indicate that the SACU industry's sales volumes decreased over the investigation period by 11.29%. If the anti-dumping duties expire, sales volume is expected to lead to a further decrease.

Table 5.1.3.1 (b): Sales values

Rand	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
Sales values: **bagged**	100	97	89	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Sales values: **bulk**	100	106	112	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [UNCHANGED FROM 2019]
Total sales values: **bagged and bulk**	100	100	97	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]

The information above was indexed using 2017 as the base year, due to confidentiality

The table above indicates that there was a decrease in total domestic sales values over the investigation period. Should the duties be withdrawn, this would lead to a continuation of further injury in the form of a decline in sales value.

5.3.2 Profit

The following table shows the SACU industry's profit before interest and tax for the period 1 January 2017 to 31 December 2019, and forecast in the event the duties expire.

Table 5.3.2: (a): Profit - bagged

	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
Unit sold (Kg)	100	94	83	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Total Gross profit (R)	100	93	69	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Total gross profit per unit (R/unit)	100	100	82	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Total gross profit margin (%)	100	96	77	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Total net Profit (R)	100	96	64	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Net profit per unit (R/unit)	100	104	79	CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]

Net profit margin (%)	100	99	71	CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]

The information above was indexed using 2017 as the base year, due to confidentiality

Table 5.3.2: (b): Profit - bulk

	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
Unit sold (Kg)	100	103	101	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [UNCHANGED FROM 2019]
Total Gross profit (R)	100	103	96	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Total Gross profit per unit (R/unit)	100	100	97	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Total gross profit margin (%)	100	97	86	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019
Total net Profit (R)	100	108	96	CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Net profit per unit (R/unit)	100	105	95	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Net profit margin (%)	100	101	85	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]

The information above was indexed using 2017 as the base year, due to confidentiality

Table 5.3.2: (c): Profit - bagged and bulk

	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
Unit sold (Kg)	100	97	89	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Total Gross profit (R)	100	96	78	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Total Gross profit per unit (R/unit)	100	100	88	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Gross profit margin (%)	100	97	80	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Total net profit (R)	100	99	73	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Net profit per unit (R/unit)	100	104	83	CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Net profit margin (%)	100	99	76	CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]

The information above was indexed using 2017 as the base year, due to confidentiality

The table above indicates that SACU industry's profitability decreased over the period 2017 to 2019. Should the duties be revoked, there will a further decline in industries' profitability. This will be as a result of lower sales volumes and prices from dumped imports.

5.3.3 Output

The following table outlines the SACU industry's output for the subject product for the period 1 January 2017 to 31 December 2019, and forecast in the event the duties expire:

Table 5.3.3: Output

Kg	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
Volumes: **bagged**	100	100	89	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Volumes: **bulk**	100	90	86	CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [UNCHANGED FROM 2019]
Volumes: **bagged and bulk**	100	97	88	CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]

The information above was indexed using 2017 as the base year, due to confidentiality

The Applicant stated that the SACU industry experienced injury in the form of a decline in production volume over the investigation period. Should the duties be revoked, production volumes will decline significantly. The Applicant also stated that the industry will be forced to reduce production volumes as the flood of dumped imports will not allow for sales in sufficient volumes in the SACU market.

5.3.4 Market share

The following table shows SACU industry's market share for the subject product during the period 1 January 2017 to 31 December 2019, and forecast in the event the duties expire:

Table 5.3.4: (a): Market Share (volume) - bagged

Kg	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
Sales volumes (Participating producers)	100	94	83	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Sales volumes (Non-participating producers)	100	115	109	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019
Total SACU Producers	100	95	85	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019
Alleged dumped imports (Pakistan)	77 260 067	201 680 035	96 124 462	1 309 392 628
Other imports	425 357 731	726 086 632	944 469 530	944 469 530
Total market share of imports	502 617 798	927 766 667	1 040 593 993	2 253 862 158
SACU market volume	[CONFIDENTIAL] [POSITIVE]	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017]	CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2018	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [UNCHANGED FROM 2019]
Market share by volume (%) participating producers	[CONFIDENTIAL] [POSITIVE]	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017]	CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2018	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [UNCHANGED FROM 2019]
Market share by volume (%) non-participating producers	[CONFIDENTIAL] [POSITIVE]	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2018	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Market share by volume (%) All SACU producers	[CONFIDENTIAL] [POSITIVE]	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017]	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2018]	CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]

Kg	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
Market share by volume (%) Dumped imports	[CONFIDENTIAL] [POSITIVE]	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [DECREASED FROM 2018]	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [INCREASED FROM 2019]
Market share by volume (%) Other imports	[CONFIDENTIAL] [POSITIVE]	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017]	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [INCREASED FROM 2018	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [UNCHANGED FROM 2019]
Market share by volume (%) Total imports	[CONFIDENTIAL] [POSITIVE]	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017]	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [INCREASED FROM 2018]	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [INCREASED FROM 2019]

The information above was indexed using 2017 as the base year, due to confidentiality

Table 5.3.4: (b): Market Share (volume) - bulk

Kg	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
Sales volumes (Participating producers)	100	103	101	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [UNCHANGED FROM 2019]
Sales volumes (Non-participating producers)	100	96	106	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [UNCHANGED FROM 2019
Total SACU Producers	100	102	101	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [UNCHANGED FROM 2019
Alleged dumped imports (Pakistan)	0	0	0	0
Other imports	0	0	0	0
Total market share of imports	0	0	0	0
SACU market volume	[CONFIDENTIAL] [POSITIVE]	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017]	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [DECREASED FROM 2018	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [UNCHANGED FROM 2019]

Kg	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
Alleged dumped imports (Pakistan)	77 260 067	201 680 035	96 124 462	1 309 392 628
Other imports	425 357 731	726 086 632	944 469 530	944 469 530
Total market share of imports	502 617 798	927 766 667	1 040 593 993	2 253 862 158
SACU market volume	[CONFIDENTIAL] [POSITIVE]	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017]	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2018	[CONFIDENTIAL] [POSITIVE] DECREASED FROM 2017] [UNCHANGED FROM 2019]
Market share by volume (%) participating producers	[CONFIDENTIAL] [POSITIVE]	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017]	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2018	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Market share by volume (%) non-participating producers	[CONFIDENTIAL] [POSITIVE]	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [INCREASED FROM 2018	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [DECREASED FROM 2019]
Market share by volume (%) All SACU producers	[CONFIDENTIAL] [POSITIVE]	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017]	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2018]	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Market share by volume (%) Dumped imports	[CONFIDENTIAL] [POSITIVE]	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [DECREASED FROM 2018]	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [INCREASED FROM 2019]
Market share by volume (%) Other imports	[CONFIDENTIAL] [POSITIVE	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017]	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [INCREASED FROM 2018	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [UNCHANGED FROM 2019]
Market share by volume (%) Total imports	[CONFIDENTIAL] [POSITIVE	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017]	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [INCREASED FROM 2018	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [INCREASED FROM 2019

The information above was indexed using 2017 as the base year, due to confidentiality

The information in the table indicates that the SACU industry experienced a decline in market share over the period 2017 to 2019. If the anti-dumping duties expire, the industry will experience decline in market share, and this will be as a result of influx in imports.

Commission's consideration

It is clear from the information submitted that should the current anti-dumping duties be revoked, imports from Pakistan will increase making it difficult for the SACU industry to compete and sell its product on the domestic market, thus leading to the recurrence of material injury.

5.3.5 Productivity

The following table shows the SACU industry's productivity in respect of the subject product for the period 1 January 2017 to 31 December 2019, and forecast in the event the duties expire:

Table 5.3.5 (a): Productivity: bagged

Kg	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
Total production volume (kg)	100	100	89	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Number of employees (manufacturing only)	100	108	113	113
Kg per employee	100	93	79	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019

The information above was indexed using 2017 as the base year, due to confidentiality

Table 5.3.5 (b): Productivity: bulk

Kg	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
Total production volume (kg)	100	90	86	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [UNCHANGED FROM 2019]
Number of employees (manufacturing only)	100	108	113	113
Kg per employee	100	84	76	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019

The information above was indexed using 2017 as the base year, due to confidentiality

Table 5.3.5 (c): Productivity: bagged and bulk

Kg	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
Total production volume (kg)	100	97	88	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Number of employees (manufacturing only)	100	108	113	113
Kg per employee	100	89	78	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019

The information above was indexed using 2017 as the base year, due to confidentiality

The table above indicates that SACU industry's productivity declined in 2018 and 2019. The Applicant stated that production volumes declined over the period of investigation despite an increase in the total number of production employees. If the anti-dumping duties expire, productivity will decrease dramatically. It also stated this clearly demonstrates that the expiry of the anti-dumping duties will lead to the continuation or recurrence of injury in the form of reduced productivity.

5.3.6 Return on investment

The following table shows the SACU industry's return on investment on earnings before interest and tax basis for the period 1 January 2017 to 31 December 2019, and forecast in the event the duties expire:

Table 5.3.6 (b): Return on investment – bagged

Rands	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
Net profit (product concerned)	100	96	64	CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Net assets	100	86	50	50
Return on net assets (product)%	100	112	126	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]

The information above was indexed using 2017 as the base year, due to confidentiality

Table 5.3.6 (b): Return on investment – bulk

Rands	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
Net profit (product concerned)	100	108	96	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Net assets	100	73	46	46
Return on net assets (product %)	100	148	207	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]

The information above was indexed using 2017 as the base year, due to confidentiality

Table 5.3.6 (c): Return on investment – bagged and bulk

Rands	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast Year (w/o AD duties)
Net profit (product concerned)	100	99	73	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Net assets	100	82	49	49
Return on net assets (product %)	100	122	149	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019

The information above was indexed using 2017 as the base year, due to confidentiality

The table above indicates that SACU industry's productivity declined in 2018 and 2019. The Applicant stated that production volumes declined over the period of investigation despite an increase in the total number of production employees. If the anti-dumping duties expire, productivity will decrease dramatically. It also stated this clearly demonstrates that the expiry of the anti-dumping duties will lead to the continuation or recurrence of injury in the form of reduced productivity.

5.3.7 Utilization of production capacity

The following table provides the SACU industry's production capacity for the subject product over the period 1 January 2017 to 31 December 2019, and forecast in the event the duties expire:

Table 5.3.7 (a): Utilization of production capacity- bagged

Kg	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 - 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
Applicant's capacity	100	107	105	105
Applicant's actual production	100	100	89	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Capacity utilisation (%)	100	94	85	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Production Capacity (Non-Participating SACU Producers)	100	100	100	[CONFIDENTIAL] [POSITIVE] [UNCHANGED FROM 2017] [UNCHANGED FROM 2019]
Production Volume (Non-Participating SACU Producers)	100	115	109	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Capacity Utilisation (% Non-Participating SACU Producers)	100	115	109	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Production Capacity (All SACU Producers)	100	106	105	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [UNCHANGED FROM 2019]
Production Volume (All SACU Producers)	100	101	91	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Capacity Utilisation (% All SACU Producers)	100	95	86	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]

The information above was indexed using 2017 as the base year, due to confidentiality

Table 5.3.7 (a): Utilization of production capacity- bulk

Kg	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 - 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
Applicant's capacity	100	92	94	94
Applicant's actual production	100	90	86	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [UNCHANGED FROM 2019]
Capacity utilisation (%)	100	99	92	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [UNCHANGED FROM 2019]
Production Capacity (Non-Participating SACU Producers)	100	100	100	[CONFIDENTIAL] [POSITIVE] [UNCHANGED FROM 2017] [UNCHANGED FROM 2019]
Production Volume (Non-Participating SACU Producers)	100	96	106	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [UNCHANGED FROM 2019]
Capacity Utilisation (% Non-Participating SACU Producers)	100	96	106	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [UNCHANGED FROM 2019]
Production Capacity (All SACU Producers)	100	92	94	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [UNCHANGED FROM 2019]
Production Volume (All SACU Producers)	100	91	88	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [UNCHANGED FROM 2019]
Capacity Utilisation (% All SACU Producers)	100	99	93	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [UNCHANGED FROM 2019]

The information above was indexed using 2017 as the base year, due to confidentiality

Table 5.3.7 (c): Utilization of production capacity- bagged and Bulk

Kg	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 - 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
Applicant's capacity	100	100	100	100
Applicant's actual production	100	97	88	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Capacity utilisation (%)	100	97	88	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Production Capacity (Non-Participating SACU Producers)	100	100	100	[CONFIDENTIAL] [POSITIVE] [UNCHANGED FROM 2017] [UNCHANGED FROM 2019]
Production Volumes (Non-Participating SACU Producers)	100	107	107	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Capacity Utilisation (% Non-Participating SACU Producers)	100	107	107	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Production Capacity (All SACU Producers)	100	100	100	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [UNCHANGED FROM 2019]
Production Volumes (All SACU Producers)	100	97	90	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Capacity Utilisation (% All SACU Producers)	100	98	89	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]

The information above was indexed using 2017 as the base year, due to confidentiality

The Applicant stated that all SACU producers experienced injury in the form of a decrease in capacity utilisation over the period 2018 and 2019. It also stated that there was a decline in actual over the investigation period, and should the duties be withdrawn, there will be a further decline in production.

5.3.8 Actual and potential negative effects of cash flow

The following table provides the SACU industry's cash flow for period 1 January 2017 to 31 December 2019, and forecast in the event duties expire:

Table 5.3.8 (c): Cash flow- bagged

Rands	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
Cash flow: incoming	100	100	95	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Cash flow: outgoing	(100)	(98)	(93)	[CONFIDENTIAL] [NEGATIVE] [INCREASED FROM 2017] [INCREASED FROM 2019]
Net cash flow	100	208	188	[CONFIDENTIAL] [NEGATIVE] [DECREASED FROM 2017] [DECREASED FROM 2019])

The information above was indexed using 2017 as the base year, due to confidentiality

Table 5.3.8 (b): Cash flow- bulk

Rands	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
Cash flow: incoming	100	110	114	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [UNCHANGED FROM 2019]
Cash flow: outgoing	(100)	(106)	(107)	[CONFIDENTIAL] [NEGATIVE] [DECREASED FROM 2017] [INCREASED FROM 2019]
Net cash flow	100	873	1 314	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [INCREASED FROM 2019])

The information above was indexed using 2017 as the base year, due to confidentiality

Table 5.3.8 (c): Cash flow- bagged and bulk

Rands	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
Cash flow: incoming	100	103	100	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Cash flow: outgoing	(100)	(100)	(97)	[CONFIDENTIAL] [NEGATIVE] [INCREASED FROM 2017] [INCREASED FROM 2019]
Net cash flow	100	264	282	[CONFIDENTIAL] [NEGATIVE] [DECREASED FROM 2017] [DECREASED FROM 2019])

The information above was indexed using 2017 as the base year, due to confidentiality

The Applicant stated that the industry's net cash flow increased over the investigation period. Should the duties be revoked, cash flow will decline extensively.

5.3.9 Inventories

The SACU industry provided the following levels of inventories for the period 1 January 2017 to 31 December 2019, and forecast in the event the duties expire:

Table 5.3.9 (a): Inventories- bagged

Kg	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
Volumes (kg):	100	120	90	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [INCREASED FROM 2019]
Volumes: Value (R)	100	109	107	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [INCREASED FROM 2019]

The information above was indexed using 2017 as the base year, due to confidentiality

Table 5.3.9 (b): Inventories- bulk

	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
Volumes (kg):	100	92	99	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]]
Volumes: Value (R)	100	103	114	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [INCREASED FROM 2019

The information above was indexed using 2017 as the base year, due to confidentiality

Table 5.3.9 (c): Inventories- bagged and bulk

Kg	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
Volumes (kg):	100	100	97	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Volumes: value (R)	100	106	110	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [INCREASED FROM 2019]

The information above was indexed using 2017 as the base year, due to confidentiality

The information in the above table shows that the SACU industry's inventories decreased over the period 2017 and 2019. The Applicant stated that the expiry of the anti-dumping duties expire is expected to lead to decrease in inventory levels, especially if the is not able to reduce production volumes in line with increased volumes of dumped imports. This shows that the expiry of the anti-dumping duties will lead to a continuation or recurrence of injury in the form of increased inventory levels.

5.3.10 Employment

The following table shows the SACU industry's employment level for the period 1 January 2017 to 31 December 2019, and forecast in the event duties expire:

Table 5.3.10 (a): Employment – bagged and bulk

No. of employees	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
Direct labour units: production	100	109	111	111
Indirect labour units: production	100	99	141	141
Total labour units: production	100	108	113	113
Selling and administrative employees (participating producers)	100	94	96	96
Total number of production employees (non-participating producers	100	116	128	128

The information above was indexed using 2017 as the base year, due to confidentiality

The table above indicates the total number of employees has increased over the 2017 to 2019 period and is expected to remain at the 2019 levels if the anti-dumping duties expire.

The Applicant indicated that if increased volumes of dumped imports do not abate, it would have to consider reducing the number of employees as production capacity is taken offline.

5.3.11 Wages

Using the production wages and employment figures sourced from the SACU industry's production wages per employee in respect of the subject products is as follows:

Table 5.3.11: Wages

Rands (R)	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
Total wages: Production	100	104	112	125
Wages per employee (R)	100	96	99	111

The information above was indexed using 2017 as the base year, due to confidentiality

The Applicant stated that the total remuneration per production employee increased in 2018 and 2019. It is expected to continue to increase, despite lower production and sales volumes, even if anti-dumping duties expire. This will further decrease profitability of the Applicant and clearly shows that the expiry of the anti-dumping duties will lead to a continuation or recurrence of injury in the form of increased inventory levels.

5.3.12 Growth

The following table provides the SACU industry's growth information for the period 1 January 2017 to 31 December 2019, and forecast in the event the duties expire:

Table 5.3.12: (a): Actual and potential effect on growth- bagged

Kg	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
SACU Market Volumes (OPC) **(bagged)** (SACU) (kg) (redacted)	[CONFIDENTIAL] [POSITIVE]	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017]	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2018]	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [UNCHANGED FROM 2019]
Percentage growth in SACU Market Volumes (OPC) **(bagged)** (SACU) (%)	[CONFIDENTIAL]	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017]	[CONFIDENTIAL] [NEGATIVE] [DECREASED FROM 2017] [DECREASED FROM 2018]	[CONFIDENTIAL] [UNCHANGED FROM 2017] [INCREASED FROM 2019]
Sales Volumes (OPC) **(bagged)** (SACU) (the Participating Producers) (kg) (partially indexed, partially redacted)	100	94	83	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Percentage growth in Sales Volumes (OPC) **(bagged)** (SACU) (the Participating Producers) (%) (partially indexed, partially redacted)	0	(100)	(204)	[CONFIDENTIAL] [NEGATIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Sales Volumes (OPC) **(bagged)** (SACU) (Non-Participating SACU Producers) (kg) (partially indexed, partially redacted)	100	115	109	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Percentage growth in Sales Volumes (OPC) **(bagged)** (SACU) (Non-Participating SACU Producers) (%) (partially indexed, partially redacted)	0	100	(36)	[CONFIDENTIAL] [NEGATIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]

Kg	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
Sales Volumes (OPC) **(bagged)** (SACU) (All SACU Producers) (kg) (partially indexed, partially redacted)	100	95	85	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Percentage growth in Sales Volumes (OPC) **(bagged)** (SACU) (All SACU Producers) (%) (partially indexed, partially redacted)	0	(100)	(252)	[CONFIDENTIAL] [NEGATIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Import Volumes (OPC) **(bagged)** (SACU) (Dumped Imports) (kg)	77 260 067	201 680 035	96 124 462	1 309 392 628
Percentage growth in Import Volumes (OPC) **(bagged)** (SACU) (Dumped Imports) (%)	0.00%	161.04%	(52.34%)	1 262.18%
Import Volumes (OPC) **(bagged)** (SACU) (Other Imports) (kg)	425 357 731	726 086 632	944 469 530	944 469 530
Percentage growth in Import Volumes (OPC) **(bagged)** (SACU) (Other Imports) (%)	0.00%	70.70%	30.08%	0.00%
Import Volumes (OPC) **(bagged)** (SACU) (Total Imports) (kg)	502 617 798	927 766 667	1 040 593 993	2 253 862 158

Percentage growth in Import Volumes (OPC) **(bagged)** (SACU) (Total Imports) (%)	0.00%	84.59%	12.16%	116.59%

The information above was indexed using 2017 as the base year, due to confidentiality

Table 5.3.12: (b): Actual and potential effect on growth- bulk

Kg	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
SACU Market Volumes (OPC) **(bulk)** (SACU) (kg) (redacted)	[CONFIDENTIAL] [POSITIVE]	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017]	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [DECREASED FROM 2018]	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [UNCHANGED FROM 2019]
Percentage growth in SACU Market Volumes (OPC) **(bulk)** (SACU) (%) (redacted)	[CONFIDENTIAL]	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017]	[CONFIDENTIAL] [NEGATIVE] [DECREASED FROM 2017] [DECREASED FROM 2018]	[CONFIDENTIAL] [UNCHANGED FROM 2017] [INCREASED FROM 2019]
Sales Volumes (OPC) **(bulk)** (SACU) (the Participating Producers) (kg) (partially indexed, partially redacted)	100	103	101	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [UNCHANGED FROM 2019]
Percentage growth in Sales Volumes (OPC) **(bulk)** (SACU) (the Participating Producers) (%) (partially indexed, partially redacted)	0	100	(81)	[CONFIDENTIAL] [UNCHANGED FROM 2017] [INCREASED FROM 2019]
Sales Volumes (OPC) **(bulk)** (SACU) (Non-Participating SACU Producers) (kg) (partially indexed, partially redacted)	100	96	106	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [UNCHANGED FROM 2019]

Kg	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
Percentage growth in Sales Volumes (OPC) **(bulk)** (SACU) (Non-Participating SACU Producers) (%) (partially indexed, partially redacted)	0	(100)	263	[CONFIDENTIAL] [UNCHANGED FROM 2017] [DECREASED FROM 2019]
Sales Volumes (OPC) **(bulk)** (SACU) (All SACU Producers) (kg) (partially indexed, partially redacted)	100	102	101	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017] [UNCHANGED FROM 2019]
Percentage growth in Sales Volumes (OPC) **(bulk)** (bACU) (All SACU Producers) (%) (partially indexed, partially redacted)	0	100	(57)	[CONFIDENTIAL] [UNCHANGED FROM 2017] [INCREASED FROM 2019]
Import Volumes (OPC) **(bulk)** (SACU) (Dumped Imports) (kg)	0	0	0	0
Percentage growth in Import Volumes (OPC) **(bulk)** (SACU) (Dumped Imports) (%)	0.00%	0.00%	0.00%	0.00%
Import Volumes (OPC) **(bulk)** (SACU) (Other Imports) (kg)	0	0	0	0
Percentage growth in Import Volumes (OPC) **(bulk)** (SACU) (Other Imports) (%)	0.00%	0.00%	0.00%	0.00%

Kg	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
Import Volumes (OPC) **(bulk)** (SACU) (Total Imports) (kg)	0	0	0	0
Percentage growth in Import Volumes (OPC) **(bulk)** (SACU) (Total Imports) (%)	0.00%	0.00%	0.00%	0.00%

The information above was indexed using 2017 as the base year, due to confidentiality

Table 5.3.12: (c): Actual and potential effect on growth- bagged and bulk

Kg	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast Year (w/o AD duties)
SACU Market Volumes (OPC) **(bagged and bulk)** (SACU) (kg) (redacted)	[CONFIDENTIAL] [POSITIVE]	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017]	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2018]	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [UNCHANGED FROM 2019]
Percentage growth in SACU Market Volumes (OPC) **(bagged and bulk)** (SACU) (%) (redacted)	[CONFIDENTIAL]	[CONFIDENTIAL] [POSITIVE] [INCREASED FROM 2017]	[CONFIDENTIAL] [NEGATIVE] [DECREASED FROM 2017] [DECREASED FROM 2018]	[CONFIDENTIAL] [UNCHANGED FROM 2017] [INCREASED FROM 2019]
Sales Volumes (OPC) **(bagged and bulk)** (SACU) (the Participating Producers) (kg) (partially indexed, partially redacted)	100	97	89	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Percentage growth in Sales Volumes (OPC) **(bagged and bulk)** (SACU) (the Participating Producers) (%) (partially indexed, partially redacted)	0	(100)	(297)	[CONFIDENTIAL] [NEGATIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]

Kg	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
Sales Volumes (OPC) **(bagged and bulk)** (SACU) (Non-Participating SACU Producers) (kg) (partially indexed, partially redacted)	100	107	107	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Percentage growth in Sales Volumes (OPC) **(bagged and bulk)** (SACU) (Non-Participating SACU Producers) (%) (partially indexed, partially redacted)	0	100	8	[CONFIDENTIAL] [NEGATIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Sales Volumes (OPC) **(bagged and bulk)** (SACU) (All SACU Producers) (kg) (partially indexed, partially redacted)	100	98	90	[CONFIDENTIAL] [POSITIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Percentage growth in Sales Volumes (OPC) **(bagged and bulk)** (SACU) (All SACU Producers) (%) (partially indexed, partially redacted)	0	(100)	(362)	[CONFIDENTIAL] [NEGATIVE] [DECREASED FROM 2017] [DECREASED FROM 2019]
Import Volumes (OPC) **(bagged and bulk)** (SACU) (Dumped Imports) (kg)	77 260 067	201 680 035	96 124 462	1 309 392 628
Percentage growth in Import Volumes (OPC) **(bagged and bulk)** (SACU) (Dumped Imports) (%)	0.00%	161.04%	(52.34%)	1262.18%
Import Volumes (OPC) **(bagged and bulk)** (SACU) (Other Imports) (kg)	425 357 731	726 086 632	944 469 530	944 469 530

Kg	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
Percentage growth in Import Volumes (OPC) **(bagged and bulk)** (SACU) (Other Imports) (%)	0.00%	70.70%	30.08%	0.00%
Import Volumes (OPC) **(bagged and bulk)** (SACU) (Total Imports) (kg)	502 617 798	927 766 667	1 040 593 993	2 253 862 158
Percentage growth in Import Volumes (OPC) **(bagged and bulk)** (SACU) (Total Imports) (%)	0.00%	84.59%	12.16%	116.59%

The information above was indexed using 2017 as the base year, due to confidentiality

The Applicant stated that SACU market increased in size in 2018 and decreased in size in 2019. If the anti-dumping duties expire, the Applicant's SACU sales volume will decrease whilst dumped imports will increase dramatically, implying that these imports will hold a larger share of the market. This clearly shows that the expiry of the anti-dumping duties will lead to a recurrence or continuation of injury

5.3.13 Ability to raise capital or investments

The following table provides the SACU industry's ability to raise capital and investment for the period 1 January 2017 to 31 December 2019, and forecast in the event the duties expire:

Table 5.3.13: Ability to raise capital or investment

Rands	1 Jan 2017 – 31 Dec 2017	1 Jan 2018 – 31 Dec 2018	1 Jan 2019 – 31 Dec 2019	Forecast year (w/o AD duties)
Total capital/investment: **bagged**	100	95	96	96
Capital expenditure per period: **bagged**	100	104	101	0
Total capital/investment: **bulk**	100	99	111	111
Capital expenditure per period: **bulk**	100	110	121	0
Total capital/investment: **bagged and bulk**	100	96	101	101
Capital expenditure per period: **bagged and bulk**	100	106	107	0

The information above was indexed using 2017 as the base year, due to confidentiality

With regards to the ability to raise capital or investment, the SACU industry pointed out the following:

AfriSam

Afrisam stated that currently it is difficult to attract additional capital or investment due to poor economic conditions and uncertainty, particularly for the construction sector. Due to the current state of AfriSam's balance sheet, the ability to raise debt facilities is impossible as debt covenants are exceeding limits.

Lafarge

Lafarge indicated that it had not raised any additional capital prior to 2017. However, since the beginning of 2018 it had to raise additional capital in the form of parent company loans because of the poor financial results of the company due to the combination of the general subdued economic environment and increased imports.

It also stated that there is a serious doubt whether it will be capable to raise the fluctuating short term working capital requirements on the local capital and financial markets due the markets high risk profile currently attributed to the cement industry. This risk profile has increased dramatically in the last two years due to the major failure of major listed construction companies.

NPC Intercement

NPC Intercement stated that currently it is difficult to attract additional capital or investment due to poor economic conditions and uncertainty, particularly for the construction sector. Additional capital would have to be raised/provided by the parent company, which will not allocate capital in a low return on capital economy.

PPC

PPC stated that it is difficult to attract additional capital or investment due to poor economic conditions and uncertainty, particularly for the construction sector.

Sephaku

Sephaku indicated that it is difficult to attract additional capital or investment due to poor economic conditions and uncertainty, particularly for the construction sector. Investors would have to achieve returns on current investment before offering further capital.

5.4 SUMMARY – RECURRENCE OF MATERIAL INJURY

Commission's consideration

The Commission noted Article 11.3 of the Anti-Dumping Agreement where investigating authorities, based on substantiated evidence submitted by the Applicant, are to determine whether the expiry of the anti-dumping duties would likely lead to the continuation or recurrence of dumping and injury.

Although there was an increase in imports over the period 2017 to 2018 from Pakistan, there was a slight decrease in imports during 2019. This was because of the existence of the current duties that are in place. It is the investigators' view that there will be a recurrence of material injury should the duties be withdrawn.

6. SUMMARY OF FINDINGS

6.1 INDUSTRY STANDING

The application was lodged by the Concrete Institute NPC (the Applicant) on behalf of Afrisam, Lafarge, NPC, PPC and Sephaku on behalf of the SACU industry and supported by Mamba Cement. These producers constitute 100 per cent of the production of cement in the SACU.

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

6.2 CONTINUATION OR RECURRENCE OF DUMPING

After considering the parties' comments and representations in respect of the verified submitted information and "essential facts" letters, the Commission made a final determination that the expiry of the anti-dumping duties on ordinary Portland cement originating in or imported from Pakistan would likely lead to the continuation and/or recurrence of dumping.

Although imports from Pakistan decreased from 15.37% to 9.24% over the investigation period because of the current anti-dumping duties in place and the fact that the Applicant was not experiencing injury during the investigation period, the Commission made a final determination that anti-dumping measures applicable to D. G. Khan Cement and Attock Cement be maintained at their current levels. The Commission made a final determination that the subject product manufactured by Lucky Cement be subject to a duty of 25% duty calculated in terms of the lesser duty rule. As Power Cement did not participate in the original investigation and did not export to the SACU during the period of investigation, the Commission made a final determination that the subject product manufactured by Power Cement be subject to the residual duty.

Since Bestway Cement did not respond to the Commission's exporter questionnaire, the Commission made a final determination that the subject product manufactured by Bestway Cement be subject to the residual dumping duty. The Commission therefore made a final determination that all imports of Portland cement, (including those manufactured or produced by Power Cement and Bestway Cement, but excluding imports of Lucky Cement Limited, D.G. Khan and Attock Cement Limited), be subject to the current residual dumping margin of 62.69%.

The Commission therefore decided to recommend to the Minister of Trade, Industry and Competition that the following anti-dumping duties be imposed on ordinary Portland cement originating in or imported from Pakistan:

Tariff subheading	Description	Rate of duty
2523.29		
	Portland cement manufactured or produced by Lucky Cement Limited	25%
	Portland cement manufactured or produced by D. G. Khan Cement Limited	68.87%
	Portland cement manufactured or produced by Attock Cement Limited	63.53%
	Portland cement (excluding that manufactured or produced by Lucky Cement Limited, D. G. Khan Cement Limited and Attock Pakistan Cement Limited)	62.69%

6.3 RECURRENCE OF MATERIAL INJURY

The Commission made a final determination that the expiry of the duties would likely lead to the recurrence of material injury. The Commission made a final determination that there will be price undercutting, price suppression, decline in profits, including sales volumes, output, SACU industry's market share, capacity utilization, inventories and growth of SACU market, should the duties be withdrawn.

7. AMOUNT OF DUTY

Price disadvantage

The price disadvantage is the extent to which the price of the imported product (landed cost) is lower than the unsuppressed and undepressed ex-factory selling of the SACU product. It is the Commission's policy that the price disadvantage is only applied when both the exporter and the importer responded in the investigation.

Lucky Cement

The price disadvantage for Lucky Cement was calculated based on the weighted average landed cost of Newcastle Steel Works (Proprietary) Limited, the cooperating importer.

The SACU unsuppressed selling price was based on an estimate by the Applicant in the absence of dumped imports. In calculating the unsuppressed price, the profit margins for the subject product before the entry of the dumped imports were used.

The price disadvantage was then expressed as a percentage of the FOB export price and was calculate as 25%.

8. FINAL DETERMINATION

The Commission made a final determination that the expiry of the anti-dumping duties on the subject product would likely lead to the continuation and/or recurrence of dumping and the recurrence of material injury.

Although imports from Pakistan decreased from 15.37% to 9.24% over the investigation period because of the current anti-dumping duties in place and the fact that the Applicant was not experiencing injury during the period of investigation, the Commission made a final determination that anti-dumping measures applicable to D. G. Khan Cement, and Attock Cement be maintained at their current levels. The Commission made a final determination that a duty of 25% be imposed on the subject product manufactured by Lucky Cement, calculated in terms of the lesser duty rule. As Power Cement did not participate in the original investigation and did not export to the SACU during the period of investigation, the Commission made a final determination that the subject product manufactured by Power Cement be subject to the residual dumping duty.

Since Bestway Cement did not respond to the Commission's exporter questionnaire, the Commission made a final determination that the subject product manufactured by Bestway Cement not be subject to an individual margin, but be subject to the residual dumping duty. The Commission therefore made a final determination that all imports of ordinary Portland cement, (including those manufactured or produced by Power Cement and Bestway Cement be subject to the current residual dumping margin of 62.69%.

The Commission therefore decided to recommend to the Minister of Trade, Industry and Competition that the following anti-dumping duties be imposed on ordinary Portland cement originating in or imported from Pakistan:

Tariff subheading	Description	Rate of duty
2523.29		
	Portland cement manufactured or produced by Lucky Cement Limited	25%
	Portland cement manufactured or produced by D. G. Khan Cement Limited	68.87%
	Portland cement manufactured or produced by Attock Cement Limited	63.53%
	Portland cement (excluding that manufactured or produced by Lucky Cement Limited, D. G. Khan Cement Limited and Attock Pakistan Cement Limited)	62.69%