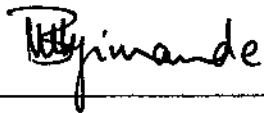


REPORT NO. 616

**SUNSET REVIEW INVESTIGATION OF THE ANTI-DUMPING DUTIES ON
DISODIUM CARBONATE (SODA ASH) ORIGINATING IN OR IMPORTED FROM
THE UNITED STATES OF AMERICA (USA): FINAL DETERMINATION**

The International Trade Administration Commission of South Africa herewith presents
its **Report No. 616: SUNSET REVIEW INVESTIGATION OF THE ANTI-DUMPING DUTIES
ON DISODIUM CARBONATE (SODA ASH) ORIGINATING IN OR IMPORTED FROM THE
UNITED STATES OF AMERICA (USA): FINAL DETERMINATION**



Meluleki Nzimande
CHIEF COMMISSIONER

PRETORIA
29/10/2019

INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA

SUNSET REVIEW INVESTIGATION OF THE ANTI-DUMPING DUTIES ON DISODIUM CARBONATE (SODA ASH) ORIGINATING IN OR IMPORTED FROM THE UNITED STATES OF AMERICA (USA): FINAL DETERMINATION

SYNOPSIS

On 8 June 2018, the International Trade Administration Commission of South Africa (the Commission) notified interested parties through Notice No. 326 of 2018 in *Government Gazette* No. 41685, that unless a substantiated request is made indicating that the expiry of the anti-dumping duties against imports of disodium carbonate (soda ash) originating in or imported from the USA would likely lead to the continuation or recurrence of dumping and injury, the anti-dumping duties on soda ash originating in or imported from the USA will expire on 18 June 2019.

A detailed response to the Commission's sunset review questionnaire was received from Botswana Ash (Pty) Ltd (Botash or the Applicant), on 17 January 2019. The information submitted by the Applicant was verified on 01 March 2019. A verification report was sent to the Applicant on 06 March 2019. After all deficiencies were identified and addressed, a properly documented application was received on 11 March 2019.

On 26 April 2019, the Commission initiated a sunset review investigation of the anti-dumping duties on soda ash originating in or imported from the USA pursuant to Notice No. 240 of 2019, in *Government Gazette* No. 42417. The deadline for comments was 4 June 2019.

The investigation was initiated after the Commission considered that the expiry of the anti-dumping duties on soda ash originating in or imported from the USA would likely lead to the continuation or recurrence of dumping and the recurrence of material injury. Subsequent to initiation of the investigation, all known producers/exporters of the subject product in the USA were sent foreign manufacturers/exporters questionnaires

to complete. Importers of the subject product were also sent questionnaires to complete. No properly documented responses were received from any of the interested parties identified in the investigation.

On 18 June 2019, correspondence was received from Baker & McKenzie acting on behalf of Tata Soda Ash Partners (Tata USA) and Tata Chemicals South Africa Proprietary Limited (Tata South Africa), informing the Commission that it will not be submitting responses to the exporters' and importers' questionnaires.

On 28 June 2019, an e-mail was received from SCM Group (Pty) Ltd requesting to address the Commission on issues relating to the injury experienced by the Applicant, including the reasons why the Applicant imported soda ash in 2018, and why the Commission is not imposing anti-dumping measures against Turkish products. On 16 July 2019, the Commission responded to SCM Group's comments.

On 14 August 2019, the Commission sent out "Essential facts" letters to all interested parties. The deadline for comments was 29 August 2019.

On 20 August 2019, a response to the Commission's "Essential facts" letter was received from the Applicant supporting the Commission's intention to make a final determination that the expiry of duties would likely lead to the continuation or recurrence of dumping the recurrence of material injury.

On 23 August 2019, Baker & McKenzie acting on behalf of Tata USA and Tata South Africa requested an extension of seven days to submit comments on the Commission's essential facts letter. An extension was granted until 05 September 2019.

On 29 August 2019, comments to the Commission's essential facts letter were received from Falcon & Hume Inc acting on behalf of Consol Glass Limited (Consol).

On 05 September 2019, comments on the Commission's essential facts letter were received from Baker & McKenzie on behalf of Tata USA and Tata Chemicals South Africa. On 09 September 2019, the Commission responded to Baker and McKenzie's

comments on the essential facts letter.

After considering all parties' comments, the Commission made a final determination that the expiry of the anti-dumping duties on soda ash originating in or imported from the USA would likely lead to the continuation or recurrence of dumping and the recurrence of material injury.

Since the subject product continued to be imported notwithstanding the duties in place, the Commission made a final determination to recommend to the Minister of Trade and Industry that the current anti-dumping duties on soda ash originating in or imported from the USA be maintained.

However, since no properly documented responses were received from any manufacturer/exporter in the USA, the Commission made a final determination to recommend to the Minister of Trade and Industry that the company specific duties for OCI Chemical Corporation and TATA Chemicals (SODA ASH) Partners INC. (TCSAP) not be retained, and that all imports of soda ash originating in or imported from the US be subject to the residual dumping margin of 40 per cent.

1. APPLICATION AND PROCEDURE

1.1 LEGAL FRAMEWORK

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

1.2 APPLICANT

The application was lodged by Botswana ash (Pty) Ltd (Botash or the Applicant), being the major producer of the subject product in the SACU, and supported by Sappi Southern Africa (Pty) Ltd.

1.3 INVESTIGATION PROCESS

On 8 June 2018, the International Trade Administration Commission of South Africa (the Commission) notified interested parties through Notice No. 326 of 2018 in *Government Gazette* No. 41685, that unless a substantiated request is made indicating that the expiry of the anti-dumping duties against imports of disodium carbonate (soda ash) originating in or imported from the USA would likely lead to the continuation or recurrence of dumping and injury, the anti-dumping duties on soda ash originating in or imported from the USA will expire on 18 June 2019.

The Government of Botswana submitted an application on behalf of Botash to the Minister of Trade and Industry and requested that the Commission be instructed, in terms of the ITA Act, to consider this application. On 16 January 2019 an instruction was received from the Minister of Economic Development to consider the application by Botash.

On 17 January 2019, a detailed response to the Commission's sunset review questionnaire was received from Botash. The information submitted by the Applicant was verified on 01 March 2019. A verification report was sent to the

Applicant on 06 March 2019. After all deficiencies were identified and addressed, a properly documented application was received on 11 March 2019.

Notice of initiation of the investigation was published in the *Government Gazette* on 26 April 2019, and the deadline for comments was 04 June 2019. Essential facts letters were sent to interested parties on 14 August 2019, and the deadline for comments was 29 August 2019. Responses to the essential facts letters were received from the Applicant, Baker & McKenzie acting on behalf of Tata USA and Tata South Africa (Tata) and Falcon & Hume Inc acting on behalf of Consol respectively.

1.4 INVESTIGATION PERIOD

The investigation period for dumping is from 1 September 2017 to 31 August 2018, and the injury investigation involve evaluation of data for the period of 1 September 2015 to 31 August 2018, as well as an estimate should the duties expire.

1.5 PARTIES CONCERNED

1.5.1 SACU industry

The application was lodged by Botash, being the major producer of the subject product in the SACU, and supported by Sappi Southern Africa (Pty) Ltd.

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 Anti-Dumping Regulations.

1.5.2 Foreign Manufacturers/Exporters

No properly documented responses were received from any manufacturer/exporter in the USA.

1.5.3 Importers

No properly documented responses were received from any of the interested parties in the investigation.

Comment by Consol to the Commission's importer questionnaire:

In response to the Commission's importer questionnaire, Consol submitted that it has not imported the subject product during the investigation period and "intends" to import from the USA if the Applicant cannot supply and/or there are cheaper products available globally.

Commission's consideration: *The Commission is of the view that since Consol did not import from a USA manufacturer or trader in the USA during the dumping investigation period, no pertinent response with regard the dumping information could be provided for the period 1 September 2017 to 1 August 2018. Consol could therefore not be regarded as an interested party in this investigation.*

The Commission directed Consol to the following definition of interested party which is contained in the Anti-Dumping Regulations (ADR):

"Interested parties" may include known –

- (a) producers in SACU;*
- (b) exporters;*
- (c) foreign producers;*
- (d) importers;*
- (e) trade or business associations whose members are SACU or foreign producers, exporters or importers; and/or*
- (f) the governments of the countries of origin and of export; of the product under investigation or the like product.*

The above definition is derived from the Anti-Dumping Agreement (ADA) which provides as follows:

"For the purposes of this Agreement, "interested parties" shall include:

- (i) an exporter or foreign producer or the importer of a product subject to investigation, or a trade or business association a majority of the members of which are producers, exporters or importers of such product;*
- (ii) the government of the exporting Member; and*

(iii) a producer of the like product in the importing Member or a trade and business association a majority of the members of which produce the like product in the territory of the importing Member.”

1.6 Comments

The Commission considered all comments received from interested parties with regard to the application and procedure. Non-confidential versions of these comments are available in the public file. It should be noted that this report does not purport to present each and every comment received and considered by the Commission. However, some of the salient comments received from interested parties and the Commission's consideration of these comments are specifically included in this report.

After considering all the information available, the Commission issued essential facts letters advising that it was considering making a final determination that the expiry of the anti-dumping duties on soda ash originating in or imported from the USA would likely lead to the continuation or recurrence of dumping and the recurrence of material injury. Responses to the Commission's essential facts letters were received from the Applicant, Tata USA, Tata South Africa and Consol.

Comment by Consol to the Commission's essential facts letter:

In response to the Commission's "Essential facts letter, Consol submitted that Section 26(3) of the ITA Act obliges the Commission to afford interested parties an opportunity to make representations on amongst others, the imposition of anti-dumping duties. It also pointed out that an interested party is any party with a direct or substantial interest, or that would be materially affected by the imposition of or continuation of such duties. It indicated that it has previously imported soda ash from the USA and elsewhere and may wish to do so in future, particularly if the Applicant proves unable to supply it with volumes of soda ash it requires. The continuation of the anti-dumping duties will affect its ability to do so.

It further stated that the fact that it did not import during the period of review does not change its status as an importer. It indicated further that the ADR does not link the definition of interested party to the period of review, and it would be irrational for the Commission to ignore relevant submissions from the parties simply because they have not imported the subject product during the period of review.

It also indicated that it qualifies as an interested party for the following reasons:

- *It is reliant on Soda Ash in its glass manufacturing process and is one of the primary consumers of subject product in SACU;*
- *Its operations and contractual negotiations with the Applicant since its current supply agreement comes to an end, are clearly affected by the proposed continuation of the current anti-dumping duty.*
- *Section 54.2 of the ADR recognizes interested parties as known parties from the last investigation as having an interest in the sunset review of the anti-dumping duty and requires them to be informed thereof. This confirms its right to participate and have submissions considered in the investigation.*

Commission's consideration:

The Commission took note of Consol's comments to its essential facts letter and considered that in any anti-dumping investigation, it determines an investigation period for dumping, for which period information is collected in order to determine whether dumping of the subject product took place. Importers and exporters are requested to provide the Commission with information of their imports and/or exports and domestic sales during this specific period.

In terms of the Government Gazette Notice, the period of investigation for purposes of determining the likelihood of continuation or recurrence of dumping in the exporting country of origin is from 1 September 2017 to 31 August 2018.

The Commission considered that the purpose of the Commission's importer's questionnaire is to assist the importer to compile the information needed by the

Commission in an anti-dumping investigation. The information received is used to validate the information received from the applicant and the exporter of the product. As Consol did not import the subject product during the period of investigation for dumping, it would not be able to provide such. By accepting it as an interested party, it would not add any value to the investigation, as it would not be able to supply a meaningful response with regard to dumping that took place from a specific manufacturer in the USA.

The Commission noted Consol's response as well as the above definition of an interested party and made a determination not to regard Consol as an interested party. However, the comments made by Consol were considered by the Commission in making its final determination.

Comment by Tata:

Tata stated that a 40% duty in respect of Soda Ash produced by it ought not to be imposed for the following reasons:

- *Time bar: The definitive anti-dumping duties had lapsed on 19 December 2018, following a five-year period. The date precedes the initiation of the current investigation. The extension of the any duty would be unlawful.*
- *ITAC's approach is flawed: The Commission may not unlawfully amend the duty levied on Tata from 8% to 40% proposed. Alternatively, on the assumption that ITAC is entitled to amend the level of duty), it must calculate a new dumping margin in accordance with the legislative requirements. The facts available supports a dumping margin of 11.34%.*
- *Likelihood of the determination of dumping: There is no proper reasoned conclusion substantiating a likelihood determination that dumping will continue or recur, should the duties be removed.*
- *Likelihood of the determination of injury: There is no evidentiary basis substantiating a likelihood determination for injury. The current record supports a negative injury determination.*
- *The US product and the Botswana Ash (Pty) Ltd (Botash) product are not like products. Hence, the competition between the US and the SACU*

Soda Ash was, and continues to be very limited, if there is competition at all.

Commission's consideration:

The Commission noted that its Anti-Dumping Regulation (ADR) 59, states that in sunset reviews, the Commission's recommendation may result in the "withdrawal, amendment or reconfirmation of the original anti-dumping duty". This leaves the Commission with wide discretion with regard to the outcome of a sunset review.

The Commission further noted that in the Appellate Body in its Report on US — Corrosion-Resistant Steel Sunset Review, that para. 149 rejected the argument that Article 6.10 would require company-specific sunset review determinations:

"We have already concluded that investigating authorities are not required to calculate or rely on dumping margins in making a likelihood determination in a sunset review under Article 11.3. This means that the requirement in Article 6.10 that dumping margins, 'as a rule', be calculated 'for each known exporter or producer concerned' is not, in principle, relevant to sunset reviews. Therefore, the reference in Article 11.4 to '[t]he provisions of Article 6 regarding evidence and procedure' does not import into Article 11.3 an obligation for investigating authorities to calculate dumping margins (on a company-specific basis or otherwise) in a sunset review. Nor does Article 11.4 import into Article 11.3 an obligation for investigating authorities to make their likelihood determination on a company-specific basis."

Furthermore, in terms of the provisions of the Anti-Dumping Agreement (ADA) and the ADR, non-cooperating producers will be subject to a residual dumping duty, determined on the best information available. In the present case, the residual dumping duty, is 40 per cent.

Regarding the time bar, the Commission recalled that it approached the High Court in 2011 after the Supreme Court of Appeal's (SCA) decision in September 2007 against ITAC and in favour of an importer of A4 paper, Progress Office Machines. The Supreme Court of Appeal ruled that ITAC erred in the way it

calculated the five-year period beyond which anti-dumping duties could not be maintained if no sunset review was initiated. The Supreme Court of Appeal determined that in the context of South African legislation, the five-year period should have commenced at the date of imposition of the provisional payments where such provisional payments were imposed and not the date of the final decision to impose definitive anti-dumping duties. The basis of ITAC's case before the High Court was to "regularise" the application of the anti-dumping duties, bearing in mind that the original initiations years ago were not done in accordance with the SCA's determination.

The High Court declared Schedule 2 to the Customs and Excise Act invalid in respect of the affected products and from the dates listed above. The High Court however suspended the order of invalidity both retrospectively, to the relevant dates before the anti-dumping duties on the affected products became invalid, and prospectively, for a period of three years to enable ITAC to carry out sunset review investigations. This meant that the anti-dumping duties would stay in place and ITAC would be able to review all those duties which have not been subject to review since the decision by the SCA.

Following this judgement, the Association of Meat Importers and Exporters and Others appealed the judgement before the Supreme Court in 2013. The Supreme Court effectively overturned the earlier decision by the Supreme Court judgement in Progress Office Machines vs the South African Revenue Service of 2008. The Supreme Court held that:

"For those reasons I concur with Nugent JA that the appeals be upheld and that a declaratory order be issued. I would confine that order to one declaring that at the time these proceedings were commenced the anti-dumping duties in issue in this case as incorporated in the Second Schedule to the Customs and Excise Act were valid and of full force and effect. As to costs the 6th to 21st appellants have been largely successful in securing the dismissal of the application and an order that the duties they sought to support are valid and of full force and effect."

1.7 Final determination

Taking all comments received into account, the Commission made a final determination that the expiry of the anti-dumping duties on the subject product would likely lead to the continuation or recurrence of dumping and the recurrence of material injury.

The Commission therefore decided to recommend to the Minister of Trade and Industry that the anti-dumping duties on soda ash originating in or imported from the USA be maintained.

However, since no properly documented responses were received from any manufacturer/exporter in the USA, the Commission made a final determination to recommend to the Minister of Trade and Industry not to retain the company specific duties for OCI Chemical Corporation and TATA Chemicals (SODA ASH) Partners INC. (TCSAP), but that all imports of soda ash originating in or imported from the US be subject to the residual dumping margin of 40 per cent.

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 Product

2.1.1 Description

The subject of this application is disodium carbonate commonly known as soda ash.

2.1.2 Like product

In the original investigation the Commission found that the SACU product and the imported product are "like products" for purposes of comparison in terms of Article 2.6 of the Anti-dumping Agreement.

Comment by Tata USA and Tata SA on the Commission's essential facts letters:

Tata stated that the USA product and the SACU product are not like products. Hence, the competition between the USA and the SACU product was, and continues to be very limited, if there is competition at all.

Commission's consideration:

In the original investigation, the Commission found that the SACU product and the imported product from the USA are like products, for purposes of comparison, in terms of section 1 of the Anti-Dumping Regulations. Since a sunset review investigation reviews the duties currently in place, a new like product determination is not made by the Commission in a sunset review.

2.1.3 Tariff classification

The subject product is classifiable as follows:

Table 2.1.3: Tariff classification

Tariff heading	Tariff subheading	Description	Statistical unit	Rate of duty				
				General	EU	EFTA	SADC	MERCOSUR
28.36		Carbonate; peroxocarbonates (percarbonates); commercial ammonium carbonate containing ammonium carbamate						
	2836.20	- Disodium carbonate	kg	5.5%	5.5%	free	free	5.5%

2.1.4 Other applicable duties

The subject product attracts the following anti-dumping duties:

Table 2.1.5: Other applicable duties

Item	Tariff heading	Description	Imported from or originating in	Rates of anti-dumping duties
206.13	2836.20	Disodium carbonate produced by OCI Chemical Corporation	United States of America	21%
206.13	2836.20	Disodium carbonate produced by TATA chemicals (SODA ASH) partners INC. (TCSAP)	United States of America	8%
206.13	2836.20	Disodium carbonate (excluding that produced by TATA Chemicals (SODA ASH) partners INC. (TCSAP) and OCI Chemicals Corporation)	United States of America	40%

3. INDUSTRY STANDING

The Government of Botswana submitted an application on behalf of Botash to the Minister of Trade and Industry and requested that the Commission be instructed, in terms of the ITA Act, to consider this application. On 16 January 2019 an instruction was received from the Minister of Economic Development to consider the application by Botash.

Botash is the major producer of the subject product in the SACU and is supported by Sappi Southern Africa (Pty) Ltd, the other producer of the subject product 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" in terms of Section 7 of the Anti-Dumping Regulations.

4. CONTINUATION OR RECURRENCE OF DUMPING

The margin of dumping is calculated by subtracting the export price from the normal value of the product (after all adjustments have been made). The margin is then expressed as a percentage of the f.o.b. export price. If the margin is less than two percent, it is regarded as de minimis in terms of ADR 12.3 and no anti-dumping duty will be imposed.

4.1 METHODOLOGY FOR ALL MANUFACTURERS/EXPORTERS FROM THE USA

4.1.1 Normal Value

As no properly documented responses were received from any manufacturer/exporter in the USA, the Commission made a final determination to use the best information available, being that provided by the Applicant.

The normal value was therefore calculated based on selling prices obtained from editions of "Global Soda Ash Monthly" publications, for the period 01 September 2017 to 31 August 2018. The publications are issued by IHS Markit, a reputable data and information services business that delivers comprehensive monthly market reports on the world's soda ash markets, with access to current prices and forecasts for the United States, Western Europe and Asia.

Adjustments

No adjustments were made to the normal value as the prices are supplied at ex-factory level.

4.1.2 Export Price

As no properly documented responses were received from any manufacturer/exporter in the USA, the Commission made a final determination to use the best information available, being that provided by the Applicant.

The export selling price was therefore calculated based on the import statistics obtained from the South African Revenue Services (SARS) for the period 01 September 2017 to 31 August 2018.

Adjustments

The Applicant did not provide any adjustment to the f.o.b import price. It stated that it did not calculate the f.o.b import price back to the ex-factory export level, as there already exists a dumping margin (more than 2%), when compared at the f.o.b import price level. The Applicant also stated that any further adjustment downwards from the f.o.b price, such as road or rail freight from the source in the USA to the export port, will increase the dumping margin. It also indicated that the average f.o.b import prices (Rand/kg) for the USA product as per the SARS statistical import trade data indicated a declining price trend over the period September 2015 to August 2018.

4.2 Margin of Dumping

The dumping margin for the USA was calculated as follows:

Country	Margin of dumping
USA	11.34%

Comment by Consol on the Commission's Essential Facts letter:

Consol stated that it is inappropriate for the Commission to compare IHS Markit's estimate of USA with FOB import data for South Africa reported by SARS. It also stated that in constructing the normal value, several adjustments have to be made to the sales values of the goods to account for differences in physical characteristics, taxes and terms and conditions of trade. It indicated that none of the adjustments have been made, and any of these factors could have inflated the prices reported in the Global Ash Monthly statistics compared to the unit values reported by SARS for imports into South Africa.

Consol also pointed out that the duration of the contracts that the Global Ash Monthly figures are based on is not stated, and they would have a meaningful impact on the prices, and hence the normal value, since longer-term contracts would secure greater discounts than short-term contracts. It also stated that it is not indicated whether rebates are accounted for, as they would also result in lowering prices.

In response to the calculation of the export price, Consol stated that it does not have any concern with the Commission using SARS trade statistics to arrive at the export price. However, the calculation of normal value at ex-factory level would require an adjustment to the export price from the FOB to ex-factory level. It further stated that as no transport adjustments were made, that implied SARS FOB price will have been adjusted to make a reasonable comparison.

In demonstrating against the calculation of the dumping margin, Consol stated that the Commission's view is based on errors of fact and results from irrelevant considerations being taken into account and relevant considerations being afforded insufficient weight.

Consideration by the Commission:

The Commission is of the view that in an anti-dumping investigation, the information submitted by manufacturers/exporters is used to calculate an individual dumping margin for the party submitting the information. Should an exporter/manufacturer therefore participate fully in the investigation and provide details on its domestic sales and export prices for the subject product during the period of investigation, the Commission will calculate an individual dumping margin for that particular exporter/manufacturer. The effect thereof will be that imported products produced by this particular manufacturer, will be subject to the payment of the calculated individual dumping duty. Imports from all exporters/manufacturers who select not to participate in the investigation, will be subject to a residual dumping duty, which is calculated on the best information available to the Commission.

With regard to the comments relating to the normal value and export price, the Commission indicated that it can only take verifiable information into account in making its final determination. The Commission advised Consol that it is at liberty to submit any information, which is verifiable, for consideration by the Commission.

With regard to Consol's comment on the calculation of the dumping margin, the Commission stated that it should be borne in mind that manufacturers in the USA elected not to participate in the investigation, and that the Commission is not in possession of verifiable information relating to the issues it refers to. The Commission further indicated that an anti-dumping duty is imposed on a particular manufacturer/exporter in a particular country, and not on importers.

Comment by Tata Chemicals to the Commission's essential facts letter:
Tata Chemicals stated that there is no proper reasoned conclusion substantiating the fact that should the duties be removed, there will be a likelihood of the continuation or recurrence of dumping.

Commission's consideration:

The Commission noted that Tata Chemicals opted not to participate in the investigation by not providing a properly documented response to the Commission's questionnaire. Therefore, the Commission's determination is made on the best available information available, being the information submitted by the Applicant, which shows that should the duties be revoked, there will be a continuation or recurrence of dumping.

4.7 FINAL DETERMINATION: DUMPING

The Commission made a final determination that the expiry of the duties would likely lead to the continuation or recurrence of dumping of the subject product originating in or imported from the USA.

5. CONTINUATION OR RECURRENCE OF MATERIAL INJURY

5.1 DOMESTIC INDUSTRY – MAJOR PROPORTION OF PRODUCTION

The following injury analysis relates to Botash being the major producer of the subject product in the SACU. The Commission decided that this constitutes “a major proportion” of the total domestic production, in accordance with the Anti-Dumping Regulations.

5.2 IMPORT VOLUMES AND THE EFFECT ON PRICES

5.2.1 Import volumes

The following table shows the volume of allegedly dumped imports of the subject product obtained from SARS:

Table 5.2.1: Import volumes

Import Volumes in kg	1 Sept 2015 – 31 Aug 16	1 Sept 2016 – 31 Aug 17	1 Sept 2017 – 31 Aug 18	2019 Estimate if duties expire
USA	92 908 002	87 055 002	82 300 000	276 059 483
Other imports	85 096 023	80 453 713	121 786 738	121 786 738
Total	178 004 026	167 508 715	204 086 738	397 846 220

The Applicant stated that import volumes from the USA over the period 2015/2016 to 2017/2018 showed a decreasing trend as a result of the current dumping duties in place. However, notwithstanding the duties in place, the product continued to be imported in significant quantities during the period of investigation.

In substantiating the estimates for 2019, the Applicant stated that as the import volumes from the USA in 2012 prior to the imposition of the anti-dumping duties were 293 901 050 kg, it can reasonably be expected that if the duties are revoked, the dumped imports would eventually surge again to the same level as in 2011/2012.

It also estimated that based on its existing customer base, should the anti-dumping duties be revoked, it will lose a large portion of its sales to customers that used to import, imported and threaten to import, as they would be resorting to sourcing all of their products from the USA, instead of supporting the SACU industry.

The Applicant further stated that the estimate for the 2019 imports if the anti-dumping duties are revoked is also based on the 2017/2018 import volume from the USA, plus the estimated reduction of its sales from 2017/2018 to 2019.

5.2.2 Effect on Domestic Prices

5.2.2.1 Price undercutting

Price undercutting is the extent to which the price of the imported product is lower than the price of the SACU product.

Table 5.2.2.1: Price undercutting

Pula/kg	1 Sept 2015 – 31 Aug 16	1 Sept 2016 – 31 Aug 17	1 Sept 2017 – 31 Aug 18	2019 Estimate if duties expire
Applicant's ex-factory selling price	100	111	104	101
Landed cost of imports from the USA	3.24	3.06	2.75	2.37
Undercutting per kg	Negative	Negative	Negative	(0.51)
Undercutting per %	Negative	Negative	Negative	(27%)

Table indexed due to confidentiality using 2015/2016 as base year

The Applicant indicated that it did not experience price undercutting over the period 2015/2016 to 2017/2018 as it continued to sell at suppressed selling prices, even with the anti-dumping duties being in place. It also stated that its selling price in 2019 is estimated to be further severely suppressed as a result of the cutback in production and escalating distribution costs.

The Applicant further stated that when the estimated landed import price from USA is compared with its unsuppressed selling price in 2017/2018, there is clear evidence of price undercutting, indicating that it will experience material injury if the anti-dumping duties are revoked.

The Applicant stated that the estimate for its selling price in 2019 should the duties expire, is based on its listed selling price in 2017/2018, while it has to cut-back on production to ensure that the stock levels do not increase. As a result its ex-factory price will decline. The import price is based on the landed price of the subject product in 2017/2018. The Applicant estimates that the USA exporters will reduce its selling prices to the same level or below the level of the Applicant's selling price in 2019 to recapture market share.

5.2.2.2 Price depression

The table below shows the Applicant's selling price for 2015/2016 to 2017/2018, and an estimate in the event the duties expire:

Table 5.2.2.2: Price depression

Pula/kg	1 Sept 2015 – 31 Aug 16	1 Sept 2016 – 31 Aug 17	1 Sept 2017 – 31 Aug 18	2019 Estimate if duties expire
Applicant's ex-factory selling price	100	111	104	101

Table indexed due to confidentiality using 2015/2016 as base year

The above table indicates that the Applicant's selling price experienced an increasing trend over the period 01 September 2016 to 31 August 2017, but declined in 2017/2018 even though there were anti-dumping duties in place.

The Applicant stated that if the anti-dumping duties are revoked, and the production volume curbed, it is estimated that the product from the USA will be landed below the 2017/2018 import prices and its ex-factory price will be further depressed causing it to suffer material injury. It also indicated that it would not be able to continue to depress its selling price, as it needs to retain

an acceptable profit margin/cost structure to maintain feasibility and offer a return on investment.

The Applicant further stated that its estimated selling price in 2019 is based on the costing with regard to the reduced sales and production volume, while the same cost structure must be maintained as in 2017/2018.

5.2.2.3 Price suppression

The following table shows the Applicant's costs of production and its selling prices for the subject product for the years 2015/2016 to 2017/2018, and an estimate in the event the duties expire:

Pula/kg	1 Sept 2015 – 31 Aug 16	1 Sept 2016 – 31 Aug 17	1 Sept 2017 – 31 Aug 18	2019 Estimate if duties expire
Applicant's ex-factory selling price per unit	100	111	104	101
Total cost per kg	100	113	103	309
Gross profit per kg	100	105	97	(0.82)
Gross profit margin (%)	100	94	93	(81)
Net profit per kg	100	108	109	(517)
Net profit margin (%)	100	97	105	(510)
Cost as % selling price	100	101	98	304

Table indexed due to confidentiality using 2015/2016 as base year

The Applicant indicated that it experienced price suppression in 2015/2016, 2016/2017 and it is estimated to continue in 2019 if the anti-dumping duties are revoked, based on its 2017/2018 cost structure, resulting in further material injury. The estimated price in 2019 is based not only on the costing with regard to the reduced production volume, but also inventory levels, whilst at the same time maintaining the cost structure.

The Applicant also stated that the estimated indexed cost increase for 2019 from 103 in 2017/2018 to 309 is brought about as a result of the volume reduction, due to the likely decline in the 2019 sales volume. It further stated that Botash customers have been and are still importing the subject product

at a reduced rate, which would imply that because of the existing supply lines, a volume swing over to import can be achieved with little effort. Customers will resort to importing the dumped product from the USA, instead of sourcing it from Botash, as the imported product will be a cheaper option without the anti-dumping duty portion.

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

5.2.3.1 Actual and potential decline in volumes

The following table shows the Applicant's sales volume of soda ash in 2015/2016 to 2017/18, and an estimate in the event the duties expire:

Table 5.2.3.1 (a) Sales volume

Kg	1 Sept 2015 – 31 Aug 16	1 Sept 2016 – 31 Aug 17	1 Sept 2017 – 31 Aug 18	2019 Estimate if duties expire
Applicant's sales	100	104	110	35

Table indexed due to confidentiality using 2015/2016 as base year

The Applicant stated that sales volumes increased from 2015/2016 to 2017/2018 as a result of the anti-dumping duties that reduced the volume of the dumped imports from the USA. The Applicant also stated that if the anti-dumping duties on USA soda ash are revoked, it is estimated that its sales volumes will decline in 2019 as large portion of its customers will revert to importing from the USA, thereby resulting in material injury.

The Applicant stated that based on its existing customer base in 2016/2017 that reflects the sales volumes to the various customers, including those that have been importing the subject product, it is estimated that should the anti-dumping duties be revoked, it will lose its sales to such customers, who would resort to importing all of their products, instead of supporting the SACU industry.

The Applicant also stated that the estimated sales for the 2019, if the anti-dumping duties are revoked, are based on the estimated 63.61 per cent decline in the 2017/2018 sales volume as a result of the customers resorting to importing the dumped product from the USA.

Table 5.2.3.1 (b) Sales value

Pula value	1 Sept 2015 – 31 Aug 16	1 Sept 2016 – 31 Aug 17	1 Sept 2017 – 31 Aug 18	2019 Estimate if duties expire
Applicant's sales in SACU	100	116	117	35

Table indexed due to confidentiality using 2015/2016 as base year

The Applicant stated that its sales values showed an increasing trend from 2015/2016 to 2017/2018. The Applicant also stated that in 2019 it is estimated that as its sales values will decline below the 2015/2016, 2016/2017 and 2017/2018 values, should the duties be revoked this will result in the recurrence of material injury.

The Applicant further stated that it is estimated that the 2019 sales volumes, if the anti-dumping duties are revoked, will decline. This percentage decline is based on the 2017/2018 sales volume as a result of the customers resorting to importing the dumped product from the USA.

5.2.3.2 Profit

The following table shows the Applicant's profit before interest and tax for the years 2015/2016 to 2017/2018 and an estimate in the event the duties expire:

Table 5.2.3.2 Profit

Kg	1 Sept 2015 – 31 Aug 16	1 Sept 2016 – 31 Aug 17	1 Sept 2017 – 31 Aug 18	2019 Estimate if duties expire
Gross profit margin(%) indexed**	100	94	93	(82)
Gross profit per kg**	100	105	97	(83)
Kg sold: Local (Volumes)	100	104	102	37
Net profit margin (%) indexed **	100	97	105	(511)
Net profit per Kg**	100	108	109	(518)

**Relates to domestic sales

Table indexed due to confidentiality using 2015/2016 as base year

The Applicant stated that gross profit margins decreased from 2015/2016 to 2017/2018. It also stated that if the anti-dumping duties against the USA are revoked, it is estimated that there will be a considerable increase in imports re-entering the SACU market at dumped prices.

The Applicant further stated that it estimates that the sales volumes will decline and in order to manage the inventory levels, production will be cut back at the same level the sales volume is estimated to decline.

5.2.3.3 Output

The following table outlines the Applicant's domestic production volume of the subject product for the years 2015/2016 to 2017/2018 and an estimate in the event duties expire:

Table 5.2.3.3 Output

Kg's	1 Sept 2015 – 31 Aug 16	1 Sept 2016 – 31 Aug 17	1 Sept 2017 – 31 Aug 18	2019 Estimate if duties expire
Applicant's production	100	94	104	40

Table indexed due to confidentiality using 2015/2016 as base year

The Applicant stated that there was an increasing trend in output over the period 2015/2016 to 2017/2018. It also stated that should the anti-dumping duties expire, it is estimated that the production will decline in 2019 with the same percentage as the declining sales volumes. This will result in customers

reverting to importing the dumped products causing material injury to the SACU industry.

The Applicant further stated that as the sales volumes are expected to decline and in order to manage the inventory levels, production will be cut back with the same percentage as the estimated sales volumes.

5.2.3.4 Market share

The following table shows the market share for the subject product for the years 2015/2016 to 2017/2018 and an estimate in the event the duties expire:

Table 5.2.3.4 Market share (Volume)

	1 Sept 2015 – 31 Aug 16	1 Sept 2016 – 31 Aug 17	1 Sept 2017 – 31 Aug 18	2019 Estimate if duties expire
Applicant	100	104	110	35
Other SACU producers' market share	100	119	113	113
USA (kg)	92 908 002	87 055 002	82 300 000	276 059 483
Other (kg)	85 096 023	80 453 713	121 786 738	121 786 738
Total market share of imports (kg)	178 004 026	167 508 715	204 086 738	397 846 221
Total SACU market	100	105	112	103

Table indexed due to confidentiality using 2015/2016 as base year

The Applicant stated that it experienced a decreasing market share for the SACU industry over the years 2015/2016 to 2017/2018. It also stated that should the anti-dumping duties expire, the importers will change over to the alleged dumped USA product and its sales volume will be lost. As a result, its market share will reduce substantially in 2019, while the USA market share increases, resulting in it experiencing material injury.

5.2.3.5 Productivity

Using the production and employment figures sourced from the Applicant, its productivity in respect of the subject product was as follows for the years 2015/2016 to 2017/2018, including an estimate in the event the duties expire:

Table 5.2.3.5 Productivity

Kg's	1 Sept 2015 – 31 Aug 16	1 Sept 2016 – 31 Aug 17	1 Sept 2017 – 31 Aug 18	2019 Estimate if duties expire
Total production volume	100	94	104	40
Number of employees (Manufacturing only)	100	95	90	34
Kg per employee	100	98	115	115

Table indexed due to confidentiality using 2015/2016 as base year

The Applicant stated that its productivity experienced an increasing trend over the period 2015/2016 to 2017/2018. The Applicant also stated that if the anti-dumping duties are revoked and it cuts back on production to manage the inventory levels, without reducing the employment levels, productivity will decline substantially, causing it to suffer material injury as depicted in the table. It further stated that a substantial number of employees will need to be retrenched to maintain the same productivity level as in 2017/2018.

5.2.3.6 Return on investment

The following table shows the Applicant's return on investment earnings before interest and tax basis, and an estimate in the event the duties expire

Table 5.2.3.6 Return on investment

Pula	1 Sept 2015 – 31 Aug 16	1 Sept 2016 – 31 Aug 17	1 Sept 2017 – 31 Aug 18	2019 Estimate if duties expire
Net profit (product concerned)	100	112	112	(192)
Net assets	100	100	130	105
Return on net assets (product)	100	112	86	(184)

Table indexed due to confidentiality using 2015/2016 as base year

The Applicant stated that its total assets continued to increase over the period 2015/2016 to 2017/2018, while return on net assets showed a declining trend over the same period. The Applicant also stated that if the anti-dumping duties are revoked, it is estimated that it will realise a net loss and thus a negative return on net assets and investment causing it to experience material injury.

5.2.3.7 Utilization of production capacity

The following table provides the Applicant's capacity and production for the subject products for the years 2015/2016 to 2017/2018 and an estimate in the event the duties expire:

Table 5.2.3.7 Production capacity

Kgs	1 Sept 2015 – 31 Aug 16	1 Sept 2016 – 31 Aug 17	1 Sept 2017 – 31 Aug 18	2019 Estimate if duties expire
Applicant's capacity	100	100	100	100
Applicant's actual production	100	94	104	40
Capacity utilisation	100	94	104	40

Table indexed due to confidentiality using 2015/2016 as base year

The Applicant stated that even though capacity utilisation was at mid-high levels over the period 2015/2016 to 2017/2018, the utilisation was not at optimal level. The Applicant also stated that there will not be a need for the increase in capacity at this stage.

5.2.3.8 Actual and potential negative effects of cash flow

The following table provides the Applicant's cash flow for year 2015/2016 to 2017/2018 and an estimate in the event the duties expire:

Table 5.2.3.8 cash flow

Pula	1 Sept 2015 – 31 Aug 16	1 Sept 2016 – 31 Aug 17	1 Sept 2017 – 31 Aug 18	2019 Estimate if the duties expire
Cash flow: incoming	100	114	110	44
Cash flow: outgoing	100	99	115	114
Net cash flow	100	178	89	(249)

Table indexed due to confidentiality using 2015/2016 as base year

The information in the table above indicates that the Applicant's cash flow increased from 2015/2016 to 2016/2017 and decreased in the periods 2016/2017 to 2017/2018.

The Applicant stated that the continuation of the alleged dumped imports from the USA forced it to continue suppressing its selling prices and contributed to this decline.

It also stated that it estimates, based on reduced sales value, that should the anti-dumping duties be revoked, the net cash flow will decline even further (become negative) in 2019, causing the SACU industry to suffer material injury.

5.2.3.9 Inventories

The Applicant provided the following levels of inventories for 2015/2016 to 2017/2018 and an estimate in the event the duties expire:

Table 5.2.3.9 Inventories

	1 Sept 2015 – 31 Aug 16	1 Sept 2016 – 31 Aug 17	1 Sept 2017 – 31 Aug 18	2019 Estimate if the duties expire
Volume – Kg's	100	63	111	134
Value – (Rands)	100	91	96	117

Table indexed due to confidentiality using 2015/2016 as base year

The table above indicates that inventory levels showed an increasing trend over the period 2015/2016 to 2017/2018. The Applicant stated that it is constantly managing its inventory, aiming to maintain acceptable levels. It also stated that the higher inventory level in 2017/2018 was as a result of the increasing trend in the monthly inventories over the 12-month period of 2018.

The Applicant further stated that if the anti-dumping duties are revoked, it is estimated that it would cut back on production to prevent the increase in the inventory levels. If the duties are in place, it will continue to produce at the same level of production as in 2017/2018, and the inventory level would increase substantially.

5.2.3.10 Employment

The following table shows the Applicant's employment level for the years 2015/2016 to 2017/2018 and an estimate in the event of the duties expire:

Table 5.2.3.10: Employment

Kg's	1 Sept 2015 – 31 Aug 16	1 Sept 2016 – 31 Aug 17	1 Sept 2017 – 31 Aug 18	2019 Estimate if the duties expire
Direct labour units: production	100	98	97	37
Indirect labour units: production	100	93	84	32
Total labour units: production	100	95	90	34

Table indexed due to confidentiality using 2015/2016 as base year

The Applicant stated that there was a declining trend in employment (production) over the period 2015/2016 to 2017/2018. It stated that if the anti-dumping duties are revoked, it is estimated that to retain the previous productivity rate as in 2017/2018 a substantial number of employees will need to be retrenched in 2019.

5.2.3.11 Wages

Using the production wages and employment figures sourced from the Applicant, its production wages per employee in respect of the subject products is as follows, including an estimate in the event of the duties expire:

Table 5.2.3.11 Wages

Rand	1 Sept 2015 – 31 Aug 16	1 Sept 2016 – 31 Aug 17	1 Sept 2017 – 31 Aug 18	2019 Estimate if the duties expire
Direct Wages: Production	100	98	111	111
Indirect Wages: Production	100	95	125	125
Total wages: Production	100	96	122	122

Table indexed due to confidentiality using 2015/2016 as base year

The Applicant stated that wages increased over the period 2015/2016 to 2017/2018. The Applicant also stated that if the anti-dumping duties are revoked it is estimated that the wage bill will increase in 2019 if no employees are retrenched, which will impact on the costing of the product (increasing the cost of production) as less product will be produced, causing the SACU industry to experience material injury.

5.2.3.12 Growth

The following table provides the Applicant's growth information for the years 2015/2016 to 2017/2018 and an estimate in the event of the duties expire:

Table 5.2.3.12 Growth

Kg's	1 Sept 2015 – 31 Aug 16	1 Sept 2016 – 31 Aug 17	1 Sept 2017 – 31 Aug 18	2019 Estimate if the duties expire
Size of the SACU market	100	100	112	112
Applicant's sales volume (Kg)	100	104	110	35

Table indexed due to confidentiality using 2015/2016 as base year

The Applicant stated that it showed a positive growth over the period 2015/2016 to 2017/2018, which was possible as a result of the anti-dumping duties having a containing effect on the volume of the USA dumped product entering the market. However, if the anti-dumping duties are revoked, the SACU industry will show negative growth while the USA imports will show substantial growth in 2019, causing material injury to the SACU industry.

5.2.3.13 Ability to raise capital or investments

The following table provides the Applicant's ability to raise capital and investment for the years 2015/2016 to 2017/2018 and an estimate in the event of the duties expire:

Table 5.2.3.13 Ability to raise capital or investments

Rand	1 Sept 2015 – 31 Aug 16	1 Sept 2016 – 31 Aug 17	1 Sept 2017 – 31 Aug 18	2019 Estimate if the duties expire
Total capital/investment in the subject product	100	107	128	0
Capital expenditure during year on subject product	100	397	1138	0

Table indexed due to confidentiality using 2015/2016 as base year

The Applicant stated that it continued to invest on a yearly basis over the period 2015/2016 to 2017/2018. The Applicant also stated that if the anti-dumping duties are revoked and sales volume and production decline, impacting on the cost of production it will be very difficult for it to raise capital to reinvest and hence the zero estimated investment in 2019.

Comment by SCM Group (Pty) Ltd to the Applicant injury information contained in the non-confidential confidential application:

In response to the injury information contained in the Applicant's non-confidential application, SCM Group (Pty) Ltd stated that it was of importance for the Applicant to have explained the injury information over the past five years.

Response by the Applicant to SCM Group's comment:

In response to the above comment, the Applicant stated that that there was no need to explain its injury information as it has complied with the legislative and regulatory requirements in supplying information for a three year period and estimate should the duties be removed. It also indicated that the information was sufficient to enable the Commission to determine that should the duties be removed, there will be a likelihood of the continuation or recurrence of dumping of the subject product and material injury to the SACU industry.

Commission's consideration:

The Commission considered that it is the normal practise of the Commission to consider information with regard to the continuation of material injury for the three most recent years. Further the information submitted by the Applicant and verified

by investigators indicated that there was a likelihood of the recurrence of material injury should the anti-dumping duties be revoked.

Comment by Tata Chemicals regarding the determination of the likelihood of injury by Commission in the Essential facts letter:

Tata Chemicals stated that there is no evidentiary basis substantiating a likelihood determination for injury. It stated also that the current records supports a negative injury determination.

Commission's consideration:

The Commission is of the view that the information submitted indicates that should the duties be revoked, there will be a recurrence of material injury to the SACU industry. Tata Chemicals seems to misunderstand the standard for injury determination in a sunset review, which is likelihood of continuation or recurrence of material injury and not material injury. The Commission initiated the sunset review on the basis of recurrence of material.

5.3 CONCLUSION – RECURRENCE OF MATERIAL INJURY

After considering all the information available, the Commission made a final determination that the expiry of the anti-dumping duties would likely lead to the recurrence of material injury.

6. FINAL DUTIES

6.1 Amount of duties

The table below is provided for the purposes of comparison between the applicable anti-dumping duties and the calculated anti-dumping margin in the investigation:

Table 6.1

Item	Tariff heading	Description	Imported from or originating in	Rates of anti-dumping duties	Calculated AD margin
206.13	2836.20	Disodium carbonate produced by OCI Chemical Corporation	United States of America	21%	11.34%
206.13	2836.20	Disodium carbonate produced by TATA chemicals (SODA ASH) partners INC. (TCSAP)	United States of America	8%	
206.13	2836.20	Disodium carbonate (excluding that produced by TATA Chemicals (SODA ASH) partners INC. (TCSAP) and OCI Chemicals Corporation)	United States of America	40%	

Since the subject product continued to be imported notwithstanding the duties in place, the Commission made a final determination to recommend to the Minister of Trade and Industry that the current anti-dumping duties on soda ash originating in or imported from the USA be maintained.

However, since no properly documented responses were received from any manufacturer/exporter in the USA, the Commission made a final determination to recommend to the Minister of Trade and industry not to retain the company specific duties for OCI Chemical Corporation and TATA Chemicals (SODA ASH) Partners INC. (TCSAP), and that all imports of soda ash originating in or imported from the US be subject to the residual dumping margin of 40 per cent.

7. SUMMARY OF FINDINGS

7.1 Continuation or recurrence of dumping

The Commission made a final determination that the expiry of the anti-dumping duties would likely lead to the continuation or recurrence of dumping of the subject product originating in or imported from the USA.

7.2 Recurrence of material injury

The Commission made a final determination that the expiry of the anti-dumping duties would likely lead to the recurrence of material injury to the SACU industry.

8. RECOMMENDATION

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

The Commission therefore decided to recommend to the Minister of Trade and Industry that the anti-dumping duties on soda ash originating in or imported from the USA be maintained.

However, since no properly documented responses were received from any manufacturer/exporter in the USA, the Commission made a final determination to recommend to the Minister of Trade and Industry not to retain the company specific duties for OCI Chemical Corporation and TATA Chemicals (SODA ASH) Partners INC. (TCSAP), and that all imports of soda ash originating in or imported from the US be subject to the residual dumping margin of 40 per cent.