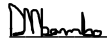


Report No. 695

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

The International Trade Administration Commission of South Africa herewith presents its **Report No. 695: INVESTIGATION INTO THE ALLEGED DUMPING OF FROZEN BONE-IN PORTIONS OF FOWLS OF THE SPECIES *GALLUS DOMESTICUS* ORIGINATING IN OR IMPORTED FROM BRAZIL, DENMARK, IRELAND, POLAND AND SPAIN: FINAL DETERMINATION**



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DEPUTY CHIEF COMMISSIONER

PRETORIA

10/06/2022

INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA

REPORT NO. 695

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

SYNOPSIS

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

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

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

After considering all interested parties’ comments and taking the exporters’ and importers’ information into account, the Commission made a preliminary determination that the subject product, originating in or imported from the subject countries, was

being dumped on the SACU market, causing material injury and threat of material injury to the SACU industry.

As the Commission was of the view that the SACU industry would continue to experience material injury during the course of the investigation if provisional payments were not imposed, it decided to request the Commissioner for the South African Revenue Service (“SARS”) to impose provisional measures on the subject product for a period of 6 months ending on 14 June 2022.

Provisional measures were imposed on the subject product originating in or imported from the subject countries through a notice published in the *Government Gazette* on 17 December 2021.

The Commission’s reasons for its preliminary determination are contained in its Preliminary Report No. 678 (“Preliminary Report”). The report was made available to interested parties for comment.

Based on the details as contained in the Commission’s preliminary report, comments received and exporters’ and importers’ verified information, the Commission made a final determination before “essential facts” that it was considering making a final determination that the subject product was being dumped on the SACU market, causing material injury and a threat of material injury to the SACU industry.

Essential facts letters were sent to all interested parties on 22 April 2022, informing them of the “essential facts” which were being considered by the Commission for purposes of its final determination and inviting interested parties to comment. The Commission provided all interested parties with 14 days to submit comments.

Based on the details as contained in the Commission’s preliminary report and taking all comments into consideration, the Commission made a final determination that the subject product originating in or imported from the subject countries was being dumped onto the SACU market, causing material injury and a threat of material injury to the SACU industry.

The Commission decided to recommend to the Minister of Trade, Industry and Competition that the following definitive anti-dumping duties be imposed on frozen bone-in portions of fowls of the species *gallus domesticus* originating in or imported from Brazil, Denmark, Ireland, Poland and Spain:

Country	Company	Tariff subheading	Rate of duty
Brazil	Agroaraçá Indústria De Alimentos	0207.14.9	39%
	Agrosul Agroavícola Industrial S/A	0207.14.9	16%
	Avivar Alimentos Ltda	0207.14.9	35%
	Aurora Cooperativa Central Aurora Alimentos	0207.14.9	17%
	Cooperativa Agroindustrial Consolata	0207.14.9	28.3%
	Jaguafrangos Indústria E Comércio De Alimentos Ltda	0207.14.9	18.18%
	Rio Branco Alimentos S/A	0207.14.9	3.31%
	Zanchetta Alimentos Ltda	0207.14.9	8%
	All other (excluding C.Vale – Cooperativa Agroindustrial; Seara Alimentos Ltda)	0207.14.9	265.1%
Denmark	HK Scan	0207.14.9	7.75%
	All other exporters	0207.14.9	67.4%
Ireland	Manor Farm	0207.14.9	2.49%
	All exporters	0207.14.9	37.52%
Poland	Animex Foods Sp. Z O.O.	0207.14.9	2.25%
	All other exporters (excluding Drobimex Sp. Z.O.O; Plukon Sieradz Sp. Z.O.O)	0207.14.9	96.9%
Spain	Distribuciones Avícolas Vázquez S.A.U.	0207.14.9	7.56%
	An Avicola Melida S.L.	0207.14.9	9.95%
	UVE S.A	0207.14.9	14.62%
	Grupo Vall Companys	0207.14.9	22.6%
	All other exporters	0207.14.9	85.8%

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

As such, the Commission made a final determination to recommend to the Minister of Trade, Industry and Competition not to impose definitive anti-dumping duties on imports of the subject product under the following tariff subheadings:

Country	Tariff subheading	Description
Brazil	0207.14.91	Whole bird cut in half
	0207.14.97	Thighs
	0207.14.98	Frozen Drumsticks
Denmark	0207.14.91	Whole bird cut in half
	0207.14.96	Breasts
Ireland	0207.14.91	Whole bird cut in half
	0207.14.96	Breasts
	0207.14.99	Other
Poland	0207.14.91	Whole bird cut in half
	0207.14.96	Breasts
	0207.14.97	Thighs
	0207.14.99	Other
Spain	0207.14.91	Whole bird cut in half
	0207.14.93	Frozen Leg Quarters
	0207.14.96	Breasts
	0207.14.99	Other

The Commission further made a recommendation that the anti-dumping duties on frozen bone-in portions of fowls of the species *gallus domesticus* originating in or imported from Brazil, Denmark, Ireland, Poland and Spain be listed in the “rebate item” column in Schedule No. 2, and therefore may not be imported under rebate of customs duty without payment of anti-dumping, countervailing and safeguard duties without a recommendation from ITAC that such trade defence duties be rebated.

1. APPLICATION AND PROCEDURE

1.1 LEGAL FRAMEWORK

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

1.2 APPLICANT

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

1.3 ACCEPTANCE OF APPLICATION

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

1.4 ALLEGATIONS BY THE APPLICANT

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

prices less than the normal value in the countries of origin.

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

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

1.5 INVESTIGATION PROCESS

The Applicant submitted the application on 20 July 2020. The information submitted by the 8 participating producers was verified from 1 December 2020 to 15 December 2020. The Commission accepted the application as properly documented on 13 January 2021.

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

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

1.6 INVESTIGATION PERIODS

The investigation period for dumping was from 1 July 2019 to 30 June 2020. The injury investigation involved evaluation of data for the period 1 July 2017 to 30 June 2020.

1.7 PARTIES CONCERNED

1.7.1 SACU industry

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

1.7.2 Responses by interested parties

Comments by Representatives

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

Interested Party Responses: Importers

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

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

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

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

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

Interested Party Responses: Exporters

Exporters	Country
Avivar Alimentos Ltda ("Avivar")	Brazil
Agroaracá Indústria De Alimentos Ltda ("Agroaraca")	Brazil
Agrosul Agroavícula Industrial S.A. ("Agrosul")	Brazil
C. Vale – Cooperativa Agroindustrial ("C Vale")	Brazil
Aurora Cooperativa Central Aurora Alimentos ("Aurora")	Brazil
Cooperativa Agroindustrial Consolata ("Copacol")	Brazil
São Salvador Alimentos S.A. ("SSA")	Brazil
Rio Branco T/a Pif Paf	Brazil
GTB Empreendimentos S.A. ("GTB")	Brazil
Jaguafrangos Indústria E Comércio De Alimentos Ltda ("Jaguafrangos")	Brazil
Seara Alimentos Ltda ("Searra")	Brazil
Gonçalves E Tortola S/A ("GT Foods")	Brazil
Zanchetta Alimentos Ltda ("Zanchetta")	Brazil
Danpo A/S ("Danpo")	Denmark
HK Scan ("HK")	Denmark
Carton Bros Unlimited Company, T/A Manor Farm ("Manor Farm")	Ireland
Plukon Sieradz Sp. Z.O.O ("Plukon")	Poland
Cedrob S.A. ("Cedrob")	Poland
Drobimex SP. Z.O.O ("Drobimex")	Poland
Roldrob S.A T/a Drosed S.A. ("Drosed")	Poland
Animex SP. Z.O.O ("Animex")	Poland
Disavasa	Spain
Grupo Vall:	
Avicola Sanchez SL ("Avicosan")	Spain
Avicola De Lleida SAU ("Avidel")	Spain
Avicola De Galicia, S.A.U. ("Avigal")	Spain

Exporters	Country
Escorxador D'Aus Torrent I Fills SL ("Torrent")	Spain
Dolz España, S.L. ("Dolz")	Spain
UVESA ("Uvesa")	Spain
An Avicola Melida S.L. ("Grupo An")	Spain

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

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

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

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

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

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

1.7.3 COMMENTS ON THE INITIATION OF THE INVESTIGATION

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

Comments by Copacol

Investigation procedures to date

Copacol stated that there have been several procedural inconsistencies to date. It also stated that it does not purport to point out all of the deficiencies below, but those that they do include below indicates a clear pattern of a failure to conduct an objective investigation, with procedures clearly aimed at advantaging the domestic industry over imports.

Differential treatment of exporters and domestic producers

Copacol stated that domestic producers only submitted costs and prices on the basis of overall frozen bone-in portions, but exporters are required to submit information separately for each product category, such as drumsticks, thighs and leg quarters. There is no justification for this differential treatment, and the industry should have been required, right from the start, but certainly before a preliminary determination can be made, to submit information on the same basis as exporters. Copacol stated that there is nothing on record to show that the industry has been required to submit an annual sales and profit contribution analysis which separately indicated the information for each of the product categories, i.e., for leg quarters, wings, breasts, thighs, drumsticks and “other”, whereas this information is required from exporters.

Copacol stated that the domestic industry has also not been requested to submit any information, other than sales, on a product category basis. Thus, there is no record evidence that the industry has submitted information, or has

been requested to submit information, on the costs to produce each different type of product, despite the Commission clearly separately investigating different products. Since this information has been requested from the exporters, this again shows a lack of an objective investigation, and the absence of positive evidence. Copacol requested that the Commission require this information from the domestic industry to consider in its preliminary determination. Without this information, the Commission should regard the application as deficient and disregard the industry's information for purposes of the preliminary determination. This is particularly so as the Commission would not be in a position to objectively determine, based on positive evidence, whether the industry is experiencing price depressions, price suppression, or price undercutting. Failing this, it would be an acknowledgement of unequal, and therefore unfair and biased, treatment of the different parties in the investigation, which would make any decision subject to judicial review.

Failure to conduct Articles 5.2 and 5.3/Regulation 25 analysis

Copacol stated that both Article 5.3 of the Agreement and section 25 of the Regulations require the Commission to satisfy itself of the "adequacy and accuracy of the information" contained in the application. The Appellate Body has ruled that there is a significant difference between Articles 5.2 and 5.3 of the Agreement and that mere sufficiency of information does not indicate merit.

Copacol stated that not all questions were truthfully answered (for instance, the questions on whether there were other factors affecting domestic prices), and information in the applicant's possession was simply not included in the application (the identity of all known exporters, including Copacol – it is reiterated that SAPA used some of Copacol's information to establish the normal values for Brazil, which confirms that SAPA had information on Copacol, yet deliberately elected not to include this in the application).

According to Copacol, the application never contained all information reasonably available to the applicant and should have been rejected on that basis. The application also contained no merit, as there was no evidence of

either injury or causal link, and the investigation should never have been initiated.

Procedural failure – Article 6.1 and Regulation 28.5

According to Copacol, the Commission failed to notify all known interested parties of the initiation of the investigation. There is a significant difference between Article 6.1, which requires the investigating authority to inform “all” known interested parties of the initiation of the investigation, and Article 6.1.3, which requires the authority to provide all exporters with a copy of the non-confidential application unless this is impracticable, in which case the application can be made available to the exporting country’s representatives or to representative exporters’ association. However, these are two separate requirements.

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

Copacol stated that the initiation notice indicated a date which significantly preceded the date on which the said notice was actually published in the Gazette. The Commission at the start insisted that parties not directly informed of the initiation, which included Copacol, had to submit within 40 days of the date indicated on the initiation notice, although this provided them with significantly less than the 40 days required under the Regulations or the 37 days provided for in the Agreement, including footnote 15 thereof. This meant that parties were severely disadvantaged not knowing what the actual period was within which to respond. Copacol went on to say, in the end there may very well be exporters that did not respond as they thought they had missed the deadline the Commission indicated in its letters. It would have been very easy to reinstate the case and provide clarity to all interested parties, but the Commission refused to properly address the issue for several weeks. This was compounded by the fact that it was not clear from the investigation what the scope of the investigation was, as the first and second pages of the notice indicated different product scopes.

Undue burden on exporters

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

Confidential treatment of information

According to Copacol the Commission has failed to provide, or require the applicant and domestic producers to provide, adequate non-confidential summaries of allegedly confidential information that provided sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence, and, inter alia, in some instances the Commission failed to provide or require the applicant and domestic producers to provide any non-confidential summary of allegedly confidential information without any indication that there were exceptional circumstances and without providing a statement of reasons as to why summarization was not possible. This applies especially to injury information, for instance on market share and growth. Copacol stated that they have previously indicated, and they reiterate, that the industry has claimed excessive confidentiality. The Regulations only provide for the confidentiality of “actual costs and selling prices”, “actual sales volumes”, “individual selling prices”, etc. It does not provide for confidentiality of the aggregated information of several parties, and the Dispute Settlement Body has specifically ruled that such information cannot be held to be confidential. It also places Copacol at a significant disadvantage, as the industry knows its own figures and the volume of imports, yet importers and

exporters do not have access to the same information. Accordingly, this is a violation of both Article 6.5 (and its subparagraphs) of the Agreement, and of Article 6.2, first sentence. As a result, Copacol is still not in a position that allows it to comment meaningfully on many of the alleged injury factors and on causality – including on price effects as discussed above. In this regard, the finding of the panel in Ukraine – Passenger Cars is instructive: “it is not apparent to us how the disclosure of the import market share in the present dispute could reveal the market share of the domestic industry, since the domestic market in the present dispute comprises

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

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

Copacol stated that despite several producers not participating in the investigation, the Commission has treated the information of those non-cooperating parties as confidential. Those parties have not requested confidential treatment. Logically, if the information of one party was submitted by another party, such information is in the public domain (otherwise the party submitting the information would not have been privy to that information), and no confidentiality can be claimed in respect of information in the public domain.

Copacol concluded by requesting the Commission to:

- Indicate on which basis it determined that the applicants represent a major proportion of the industry when it has no information on the

production and sales volumes of other SACU producers, especially producers that are not members of SAPA;

- Indicate how it verified the information the applicants submitted on behalf of non-cooperating producers;
- Send injury questionnaires to all SACU producers to determine whether, indeed, the applicants represent a major proportion of the industry, both quantitatively and qualitatively;
- Request the applicants to submit cost and price data separately for each product, as was requested from the exporters, to ensure that it has positive evidence on costs and price injury to enable it to determine whether there is, in fact, price depression, price suppression and price undercutting, and to ensure an objective investigation;
- Indicate on what basis it initiated the investigation, bearing in mind the complete lack of material injury, where there was no evidence of any increase, whether absolute or relative, in imports, and where 15 of the 19 injury factors indicate a positive trend, while three of the other four factors were significantly affected by and are obviously explained by issues other than dumping;
- Indicate on what basis it was determined not to include Argentina in the investigation;
- Indicate on what basis it determined that there was prima facie evidence of a causal link between the significantly decreasing volume of alleged dumped imports, which were significantly more expensive than the increasing volume of imports from Argentina and the US, and in the face of any possible injury clearly being caused by COVID and other issues that were in the public domain; and
- Confirm that it will immediately terminate the investigation, as required by Article 5.8, on the basis of a lack of injury; alternatively, that it will revoke the initiation of the investigation in terms of section 26(6) of the ITA Act based on the false and misleading evidence submitted (or deliberately withheld) by the applicant.

Applicant's response to Copacol's comments

The Commission noted the response by the Applicant on the comments made by Copacol with regard to the application and procedure. Non-confidential versions of the response are available on the public file.

Investigation procedures to date

The Applicant stated that Copacol alleges that there has been a "clear pattern of a failure to conduct an objective investigation, with procedures clearly aimed at advantaging the domestic industry over imports."

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

Differential treatment of exporters and domestic producers

The Applicant stated that Copacol alleges that the Commission is "*clearly investigating different products*" and that requesting information separately for the cuts of the subject product from exporters but not from the domestic industry shows a lack of an objective investigation and the absence of positive evidence.

The Applicant stated that these allegations are denied. The initiation notice clearly defines the product as

*"frozen bone-in portions of the species *gallus domesticus*, classifiable within 7 separate tariff subheadings under 0207.14.9 each providing for a different cut of the subject product originating in or imported from Brazil, Denmark, Ireland, Poland and Spain."* (own emphasis)

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

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

The Applicant also stated that Copacol then submits that the Commission should require the participating producers to provide information for the cuts of the subject product and alleges that without this information the Commission cannot determine if the SACU industry is experiencing price depression, price suppression or price undercutting.

The Applicant submits that this allegation is without merit and that the request should be denied. As there is a single subject product, the determination of material injury and causation must be done with reference to this subject product and accordingly there is no need for the participating producers to provide information separately for the cuts of the subject product.

Failure to conduct Articles 5.2 and 5.3 / Regulation 25 Analysis

The Applicant also stated that Copacol alleges that the Applicant has failed to answer questions truthfully or to provide all information in the Applicant's possession, specifically the identity of Copacol as an exporter. The Applicant denies being aware that Copacol was an exporter of the subject product to SACU and categorically denies deliberately withholding such information from the Commission. It is unclear what information belonging to Copacol (if any) was used in the calculation of normal value, but even if such information exists and was used, this would not mean that the Applicant was aware that Copacol was an exporter of the subject product to SACU.

The Applicant further stated that in any event, given that Copacol was made aware of the investigation shortly after the parties that were directly informed and ultimately received more time and a further extension in order to submit the response, it is clear that Copacol has not suffered any prejudice as a result of the failure to inform them directly.

Procedural failure – Article 6.1 and Regulation 28.5

The Applicant stated that Copacol alleges that the Commission failed to notify all known interested parties of the investigation, but fails to indicate which interested parties were known to the Commission and were not informed. This unfounded allegation is therefore baseless and without merit.

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

The Applicant submits that all interested parties, including Copacol, have been given a proper opportunity to respond to the investigation and notes that no interested party has complained that it had insufficient time to respond as a result of the delay in the publication of the Gazette. Representatives of all dumping countries and all known interested parties were notified of the initiation of the investigation. Interested parties who were notified of the investigation were given until 31 March 2021 to respond and could apply for a further extension on good cause shown. Interested parties that were not directly informed by the Commission were given until 3 April 2021 to respond and could apply for a further extension on good cause shown. Copacol applied for and was granted an extension until 19 April 2021 to respond, 56 days after publication of the publication of the initiation notice in the Gazette. It is significant that neither Copacol nor any other interested party can identify any potential interested party who did not respond because they believed that they had insufficient time to respond.

Lack of objective investigation - Article 3.1

According to the Applicant Copacol repeats its earlier allegation that the fact that exporters were required to submit information for the different cuts of the

subject product and the domestic industry was only required to submit information for the subject product shows that the Commission has failed to conduct an objective investigation.

As set out above, as there is a single Subject Product, the determination of material injury and causation must be done with reference to this Subject Product and accordingly there is no need for the Participating Producers to provide information separately for the cuts of the Subject Product.

Undue burden on exporters

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

Copacol's submission that information for third country exports could be submitted at a later stage is also not practical. The Commission, like other investigative authorities, is obliged to conclude the investigation as soon as possible and at the latest within 18 months of initiation. Expecting the investigative authority to make multiple requests for information and then undertake multiple deficiency and verification processes would place an unreasonable burden on the authority and would make it less likely that the process would be concluded within the prescribed time.

Confidential Treatment of Information

SAPA contends that it has complied with the confidentiality requirements of the International Trade Administration Act 71 of 2002 (the "ITA Act"), the Anti-Dumping Regulations (the "ADR") and the World Trade Organisation ("WTO") Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the "Anti-Dumping Agreement").

Section 33(2) of the ITA Act, Article 6.5 of the Anti-Dumping Agreement and Regulation 2 of the Anti-Dumping Regulations 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.

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

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

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

There is, therefore, no basis in law for Copacol's allegation that aggregated information for several parties cannot be considered to be confidential. This is particularly true when, as in this case, the information for individual producers could be easily determined from the consolidated information.

Copacol refers to the finding of the Panel in *Ukraine – Passenger Cars* to support this allegation. The Applicant submits that this does not support Copacol's allegation, since the question of whether the disclosure of certain information risks the disclosure of other confidential information is a question of fact, not of law, and must be decided on the particular facts and not simply by reference to precedent.

In that case, the Panel found that providing information for import market share would not disclose the confidential information of the domestic industry. That is not true in this investigation. Providing market share information for imports would allow interested parties to determine the size of the SACU market. This information, combined with the indexed annual sales volumes of the participating producers and the non-participating SACU producers, would allow for the use of simultaneous calculations to determine the actual annual sales volumes of the participating producers and the non-participating SACU producers. This would in turn reveal the monthly sales volumes of the participating producers (using information provided in the cost build-up), which could be used to reveal the actual monthly and annual sales volumes for the individual participating producers. This process can then be repeated with other information to reveal significantly more information.

As clearly and repeatedly set out in the Application, the basis for the information provided for the non-participating producers is information provided by Leading Edge Poultry Software and information submitted by the participating producers. Confidentiality has therefore been claimed correctly by the Applicant and the participating producers.

Conclusion

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

Commission's consideration

Different treatment of exporters and domestic Producers

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

Failure to conduct Articles 5.2 and 5.3

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

"We note that the words 'such information as is reasonably available to the applicant', indicate that, if information on certain of the matters listed in sub-paragraphs (i) to (iv) is not reasonably available to the applicant in any given case, then the applicant is not obligated to include it in the application. It seems to us that the 'reasonably available' language was intended to avoid putting an undue burden on the applicant to submit information which is not reasonably available to it. It is not, in our view, intended to require an applicant to submit all information that is reasonably available to it. Looking at the purpose of the application, we are of the view that an application need only include such reasonably available information on the relevant matters as the applicant deems necessary to substantiate its allegations of dumping, injury and causality. As

the purpose of the application is to provide an evidentiary basis for the initiation of the investigative process, it would seem to us unnecessary to require an applicant to submit all information reasonably available to it to substantiate its allegations. This is particularly true where such information might be redundant or less reliable than, information contained in the application."

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

In Mexico – Corn Syrup, the Panel distinguished, for the purposes of Article 5.2, between information and analysis:

"Article 5.2 does not require an application to contain analysis, but rather to contain information, in the sense of evidence, in support of allegations. While we recognize that some analysis linking the information and the allegations would be helpful in assessing the merits of an application, we cannot read the text of Article 5.2 as requiring such an analysis in the application itself."

Adequacy and accuracy of information vs sufficient evidence

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

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

In Guatemala – Cement II, on the basis of the distinction between Articles 5.2 and 5.3 described in the excerpt in paragraph 18 below, the Panel stated that "[o]ne of the consequences of this difference in obligations is that investigating authorities need not content themselves with the information provided in the application but may gather information on their own in order to meet the standard of sufficient evidence for initiation in Article 5.3." In support of this proposition, the Panel cited the panel's finding in Guatemala – Cement.

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

Procedural failure – Article 6.1 and Regulation 28.5

The Commission considered that the Governments of the subject countries were informed of the initiation of the investigation and provided the link to the non-confidential version of the Application. All known exporters were directly informed of the investigation. On 19 March 2021, Copacol first contacted the investigators to request an exporter questionnaire and the link to the non-confidential version of the Application. We responded on the same date and an extension to submit their response was provided to 19 April 2021. The Government of Brazil was notified of initiation on 5 February 2021 and provided with the questionnaire and the link to the non-confidential version. The Government of Brazil was requested to circulate the documents to those exporters not directly identified. An extension to comment on the investigation was granted until 19 April 2021.

Failure to provide parties with proper opportunity to respond – Article

6.1.1

The Commission considered that the initiation notice was published on 5 February 2021, but copies of this notice were only received on 20 February 2021. Interested parties were notified of the initiation of the investigation via written correspondence on 22 February 2021. In transmitting the notification of the initiation notice, all interested parties were advised that “Due to the delay of the publication by the Government Printers, the due date for responses will be 31 March 2021”.

An undue burden on exporters

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

Confidential treatment of information

The Commission considered that Section 33(2) of the ITA Act, Article 6.5 of the Anti-Dumping Agreement and Regulation 2 of the Anti-Dumping Regulations 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.

In all instances in the Application where confidential information has been omitted and summaries by indexed figures or otherwise have not been provided, including in relation to market share and growth, the Applicant has provided reasons why it is not possible to summarize the information without revealing the confidential information. The Commission accepted the

Application as properly documented, which included the acceptance that all information indicated as confidential was confidential and that the Applicant has provided proper non-confidential summaries or a sworn statement setting out the reasons why it was not possible to provide non-confidential summaries.

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

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

1.8 PRELIMINARY DETERMINATION

After considering all properly documented responses and comments by interested parties, the Commission made a preliminary determination that frozen bone-in portions of fowls of the species *gallus domesticus* originating in or imported from Brazil, Denmark, Ireland, Poland and Spain were dumped onto the SACU market, causing material injury and a threat of material injury

to the SACU industry.

As the Commission decided that the SACU industry would continue to experience material injury during the course of the investigation if provisional payments were not imposed, it decided to request the Commissioner for SARS to impose provisional measures on the subject product for a period of 6 months ending on 14 June 2022.

Provisional measures were imposed on the subject product originating in or imported from Brazil, Denmark, Ireland, Poland and Spain through the Notice published in the *Government Gazette* on 17 December 2021.

The Commission's reasons for its preliminary determination are contained in its Preliminary Report. The report was made available to interested parties for comment. Comments received from the Applicant, importers, exporters and other interested parties, were taken into account by the Commission in making its final determination.

After the Commission's preliminary determination, on 17 January 2022, Drosed and Roldrop submitted updated responses to the Commission's exporter questionnaire. The information submitted by Drosed and Roldrop was unverifiable, based on the supporting documentation submitted. As such, the Commission made a final determination not to take Drosed and Roldrop's information into consideration for purposes of its final determination.

After the Commission's preliminary determination, on 17 January 2022, Manor Farm, submitted an updated response to the Commission's exporter questionnaire. The information submitted by Manor Farm was verified and a verification report was sent on 30 March 2022. The Commission made a decision to consider Manor Farm's information for purposes of its final determination.

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

On 16 March 2022, the Commission granted interested parties an opportunity to make oral presentations. The following interested parties made oral presentations:

- SAPA;
- The DAFC;
- AMIE;
- The ABPA;
- Merlog;
- Avivar;
- Agroaraca;
- Agrosul;
- C Vale;
- Copacol;
- Rio Branco T/a Pif Paf;
- Jaguafrangos;
- Seara;
- Zanchetta;
- HK Scan;
- Roldrop
- Manor Farm; and
- Drosed

On 22 April 2022, taking into consideration all comments raised during the oral hearings and responses to the verification findings, the Commission issued essential facts letters detailing the essential facts it is considering for purposes of its final determination.

On 06 May 2022, the following interested parties submitted responses to the essential facts letter:

Comments by Representatives

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

Interested Party Responses: Importers

Importers
Merlog Foods (Pty) Ltd (“Merlog”)

Interested Party Responses: Exporters

Exporters	Country
Avivar Alimentos Ltda (“Avivar”)	Brazil
Agroaraçá Indústria De Alimentos Ltda (“Agroaraca”)	Brazil
Agrosul Agroavícola Industrial S.A (“Agrosul”)	Brazil
C. Vale – Cooperativa Agroindustrial (“C Vale”)	Brazil
Aurora Cooperativa Central Aurora Alimentos (“Aurora”)	Brazil
Cooperativa Agroindustrial Consolata (“Copacol”)	Brazil
Rio Branco T/a Pif Paf (“Pif Paf”)	Brazil
Jaguafrangos Indústria E Comércio De Alimentos Ltda (“Jaguafrangos”)	Brazil
Seara Alimentos Ltda (“Searra”)	Brazil
Zanchetta Alimentos Ltda (“Zanchetta”)	Brazil
HK Scan (“HK Scan”)	Denmark
Drosed S.A (“Drosed”)	Poland
Roldrob S.A (“Roldrob”)	Poland
Plukon Sieradz Sp. Z.O.O (“Plukon”)	Poland
Animex SP. Z.O.O (“Animex”)	Poland
Grupo Vall:	
Avicosan	Spain
Avidel	Spain
Avigal	Spain
UVESA (“Uvesa”)	Spain
An Avicola Melida S.L. (“Grupo An”)	Spain

1.9 FINAL DETERMINATION

After considering all comments received on the Commission’s “essential facts letter”, the Commission made a final determination that frozen bone-in portions of fowls of the species *gallus domesticus* originating in or imported from Brazil, Denmark, Ireland, Poland and Spain were being dumped onto the SACU market causing material injury and a threat of material injury to the SACU industry.

The Commission decided to recommend to the Minister of Trade, Industry and Competition that definitive anti-dumping duties on frozen bone-in portions of fowls of the species *gallus domesticus* originating in or imported from Brazil, Denmark, Ireland, Poland and Spain be imposed as follows:

Country	Company	Tariff subheading	Rate of duty
Brazil	Agroaraçá Indústria De Alimentos	0207.14.9	39%
	Agrosul Agroavícola Industrial S/A	0207.14.9	16%
	Avivar Alimentos Ltda	0207.14.9	35%
	Aurora Cooperativa Central Aurora Alimentos	0207.14.9	17%
	Cooperativa Agroindustrial Consolata	0207.14.9	28.3%
	Jaguafrangos Indústria E Comércio De Alimentos Ltda	0207.14.9	18.18%
	Rio Branco Alimentos S/A	0207.14.9	3.31%
	Zanchetta Alimentos Ltda	0207.14.9	8%
	All other (excluding C.Vale – Cooperativa Agroindustrial; Seara Alimentos Ltda)	0207.14.9	265.1%
Denmark	HK Scan	0207.14.9	7.75%
	All other exporters	0207.14.9	67.4%
Ireland	Manor Farm	0207.14.9	2.49%
	All exporters	0207.14.9	37.52%
Poland	Animex Foods Sp. Z O.O.	0207.14.9	2.25%
	All other exporters (excluding Drobimex Sp. Z.O.O; Plukon	0207.14.9	96.9%

	Sieradz Sp. Z.O.O)		
Spain	Distribuciones Avícolas Vázquez S.A.U.	0207.14.9	7.56%
	An Avicola Melida S.L.	0207.14.9	9.95%
	UVE S.A	0207.14.9	14.62%
	Grupo Vall Companys	0207.14.9	22.6%
	All other exporters	0207.14.9	85.8%

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

As such, the Commission made a final determination to recommend to the Minister of Trade, Industry and Competition not to impose definitive anti-dumping duties on imports of the subject product under the following tariff subheadings:

Country	Tariff subheading	Description
Brazil	0207.14.91	Whole bird cut in half
	0207.14.97	Thighs
	0207.14.98	Frozen Drumsticks
Denmark	0207.14.91	Whole bird cut in half
	0207.14.96	Breasts
Ireland	0207.14.91	Whole bird cut in half
	0207.14.96	Breasts
	0207.14.99	Other
Poland	0207.14.91	Whole bird cut in half
	0207.14.96	Breasts
	0207.14.97	Thighs
	0207.14.99	Other
Spain	0207.14.91	Whole bird cut in half
	0207.14.93	Frozen Leg Quarters
	0207.14.96	Breasts
	0207.14.99	Other

The Commission further made a recommendation that the anti-dumping duties on frozen bone-in portions of fowls of the species *gallus domesticus* originating in or imported from Brazil, Denmark, Ireland, Poland and Spain be listed in the “rebate item” column in Schedule No. 2, and therefore may not be imported under rebate of customs duty without payment of anti-dumping, countervailing and safeguard duties without a recommendation from ITAC that such trade defence duties be rebated.

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 IMPORTED PRODUCTS

2.1.1 Description

The product subject to the investigation is frozen meat of fowls of the species *gallus domesticus*, cut in pieces, with bone in (“subject product”).

2.1.2 Country of origin/export

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

2.1.3 Possible tariff loopholes

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

2.1.4 Tariff classification

The subject product is currently classifiable as follows:

Table 2.1.4: Tariff classification

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

Duties in place

The following anti-dumping duties are currently applicable:

Tariff heading	Sub-heading	Description	Imported from or Originating in	Rate of duty Anti-Dumping duty
0207		Meat and edible offal, of the poultry heading 01.05, fresh, chilled or frozen		
0207.1		Of fowls of the species <i>GALLUS DOMESTICUS</i>		
0207.14		Cuts and offal, frozen:		
0207.14.9		Other	Germany	73.33%
0207.14.9		Other	Netherlands	3.86% and 22.81%
0207.14.9		Other	UK	12.07% and 30.99%
0207.14.91		Whole bird cut in half	USA	940c/kg
0207.14.93		Leg quarters	USA	940c/kg
0207.14.95		Wings	USA	940c/kg
0207.14.96		Breasts	USA	940c/kg
0207.14.97		Thighs	USA	940c/kg
0207.14.98		Drumsticks	USA	940c/kg
0207.14.99		Other	USA	940c/kg

2.1.5 Negligibility test

Section 16.2 of the Anti-Dumping Regulations states as follows:

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

Article 5.8 of the ADA reads as follows:

An application under paragraph 1 shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case. There shall be immediate termination in cases

where the authorities determine that the margin of dumping is de minimis, or that the volume of dumped imports, actual or potential, or the injury, is negligible. The margin of dumping shall be considered to be de minimis if this margin is less than 2 per cent, expressed as a percentage of the export price. The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 per cent of imports of the like product in the importing Member, unless countries which individually account for less than 3 per cent of the imports of the like product in the importing Member collectively account for more than 7 per cent of imports of the like product in the importing Member.
(Own underlining).

Comments by the Applicant on the Commission's preliminary determination

The Applicant stated that the Commission is incorrect to apply the negligibility test separately for each of the subheadings at the 8-digit level, because there is a single subject product classifiable at the 7-digit level under tariff sub-heading, 0207.14.9 and the negligibility test should be performed at the 7-digit level. According to the Applicant the provisional payments should have been imposed accordingly. If the negligibility test is performed at the 7-digit level, 0207.14.9, imports of the subject product from each of the dumping countries passes the negligibility test and the provisional measures should be imposed on all 8-digit tariff subheadings of the subject product as anti-dumping duties are imposed on frozen bone-in portions from the USA, the Netherlands, Germany and the United Kingdom.

Commission's consideration

The Commission is of the view that although there is a single product classifiable under tariff sub-heading 0207.14.9, the disaggregation of this tariff sub-heading warrants the negligibility test to be performed at an 8-digit level. The Commission exercised its discretion, taking into consideration the provisions of Section 16.2 of the ADR's as well Article 5.8 of the ADA. The Commission made a final determination that the negligibility test be performed

at an eight-digit tariff subheading level.

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

Table 2.1.5: Import Volumes

Tariff heading 0207.14.9 (all the 8-digit tariff subheadings)

Alleged dumped Import Volumes (kg)	July 2017 - June 2018	% of total imports	July 2018 - June 2019	% of total imports	July 2019 - June 2020	% of total imports
Brazil	121 662 795	48.10%	86 534 088	33.36%	39 925 347	20.17%
Denmark	20 503 446	8.11%	21 757 179	8.39%	14 250 710	7.20%
Ireland	15 636 112	6.18%	16 822 202	6.49%	20 545 453	10.38%
Poland	0	0%	30 609 616	11.80%	21 086 562	10.65%
Spain	0	0%	7 919 368	3.05%	8 679 380	4.38%
Total dumped imports	157 802 353	62.39%	163 642 552	63.09%	104 487 452	52.78%
Other imports	95 115 108	37.61%	95 743 474	36.91%	93 495 3388	47.22%
Total imports - kg	252 917 461	100%	259 385 927	100%	197 982 840	100%

Tariff heading 0207.14.91: Whole bird cut in half

Country	July 2017 – June 2018	% of total imports	July 2018 - June 2019	% of total imports	July 2019 – June 2020	% of total imports
Brazil	0	0%	0	0%	0	0%
Denmark	27 000	34.75%	89 740	100%	0	0%
Ireland	0	0%	0	0%	0	0%
Poland	0	0%	0	0%	0	0%
Spain	0	0%	0	0%	0	0%
Total dumped imports	27 000	34.75%	89 740	100%	0	0%
Other imports	50 670	65.25%	0	0%	0	0%
Total imports - kg	77 690	100%	89 740	100%	0	100%

Commission’s consideration

The Commission considered that “Whole bird cut in half” is classifiable under tariff subheading 0207.14.91 (one of the 7 tariff subheadings mentioned by the Applicant above), there were no imports of this cut of the subject product from any of the alleged dumping countries, and the Applicant did not provide any dumping information for this specific tariff heading. The Applicant could therefore not provide prima facie information that dumping of “whole bird cut

in half” is causing material injury to the SACU industry. In terms of the provisions of the ADR, the Commission could not, and did not initiate an anti-dumping investigation pertaining to tariff subheading 0207.14.91.

Tariff heading 0207.14.93: Leg Quarters

Country	July 2017 – June 2018	% of total imports	July 2018 - June 2019	% of total imports	July 2019 – June 2020	% of total imports
Brazil	98 630 113	53,84%	72 482 349	37,77%	31 139 962	22,07%
Denmark	11 690 757	6,38%	13 402 446	6,98%	8 729 799	6,19%
Ireland	11 072 179	6,04%	1 1563 075	6,03%	13 671 077	9,69%
Poland	0	0,00%	19 608 601	10,22%	13 314 012	9,44%
Spain	0	0,00%	3 463 094	1,80%	3 292 149	2,33%
Total dumped imports	121 393 049	66,27%	120 519 565	61,70%	70 146 999	49,72%
Other imports	61 793 667	33,73%	74 805 064	38,30%	70 932 030	50,28%
Total imports	183 186 717	100,00%	195 324 630	100,00%	141 079 028	100,00%

Commission’s consideration

In conducting the negligibility test for tariff subheading 0207.14.93 (leg quarters), the Commission found that imports from Spain for tariff subheading 0207.14.93 were below 3%. The Commission found that there were no imports from other countries which could be added to Spain to collectively account for more than 7% of the total imports of the like product into the SACU market. This tariff subheading was assessed on its own, and imports from Spain for tariff subheading 0207.14.93 were excluded from the initiation of the investigation.

Tariff heading 0207.14.95: Wings

Country	July 2017 – June 2018	% of total imports	July 2018 - June 2019	% of total imports	July 2019 – June 2020	% of total imports
Brazil	7 237 780	33,28%	2 161 165	9,94%	2 142 037	11,77%
Denmark	5 150 510	23,68%	3 381 925	15,55%	2 588 842	14,22%
Ireland	1 621 054	7,45%	2 157 170	9,92%	3 312 870	18,20%
Poland	0	0,00%	8 883 535	40,85%	6 284 292	34,52%
Spain	0	0,00%	2 806 507	12,90%	2 930 559	16,10%
Total dumped imports	14 009 343	64,41%	19 390 302	89,15%	17 258 600	94,80%
Other imports	7 739 674	35,59%	2 358 922	10,85%	946 613	5,20%
Total imports - kg	21 749 016	100,00%	21 749 223	100,00%	18 205 214	100,00%

Commission's consideration

With reference to the table above, the Commission is of the view that the imports from Brazil, Denmark, Ireland, Poland and Spain for wings (tariff subheading 0207.14.95) are above the negligibility level.

Tariff heading 0207.14.96: Breast

Country	July 2017 – June 2018	% of total imports	July 2018 - June 2019	% of total imports	July 2019 – June 2020	% of total imports
Brazil	3 990	2.69%	0	0.00%	27 495	100.00%
Denmark	0	0.00%	0	0.00%	0	0.00%
Ireland	0	0.00%	0	0.00%	0	0.00%
Poland	0	0.00%	0	0.00%	0	0.00%
Spain	0	0.00%	0	0.00%	0	0.00%
Total dumped imports	3 990	2.69%	0	0.00%	27 495	100.00%
Other imports	144 213	97.31%	134 645	100.00%	0.00%	0.00%
Total imports - kg	148 203	100.00%	134 645	100.00%	27 495	100.00%

Commission's consideration

With reference to the table above the Commission is of the view that it is clearly indicated that Brazil's imports of frozen breasts (tariff subheading 0207.14.96), are above the negligibility level. The other countries subject to this investigation were excluded from initiation, as there were no imports from these countries.

Tariff heading 0207.14.97: Thighs

Country	July 2017 – June 2018	% of total imports	July 2018 - June 2019	% of total imports	July 2019 – June 2020	% of total imports
Brazil	55 320	0,80%	12 226	0,18%	6 285	0,12%
Denmark	2 485 529	35,73%	3 153 106	45,62%	1 102 152	21,42%
Ireland	1 565 457	22,50%	1 370 760	19,83%	1 434 012	27,87%
Poland	0	0,00%	0	0,00%	0	0,00%
Spain	0	0,00%	254 340	3,68%	268 240	5,21%
Total dumped imports	4 106 306	59,02%	4 790 432	69,32%	2 810 689	54,48%
Other imports	2 850 649	40,98%	2 120 668	30,68%	2 334 657	45,37%
Total imports - kg	6 956 955	100,00%	6 911 100	100,00%	5 145 346	100,00%

Commission's consideration

When conducting the negligibility test for tariff subheading 0207.14.97 (thighs), the Commission noted that imports from Brazil for tariff subheading 0207.14.97 were below 3% and from Poland there were no imports of thighs. There are no imports from other countries which could be added to Brazil to collectively account for more than 7% of the total imports of the like product into the SACU market. Imports from Brazil for tariff subheading 0207.14.97 were excluded from the initiation of the investigation.

Tariff heading 0207.14.98: Drumstick

Country	July 2017 – June 2018	% of total imports%	July 2018 - June 2019	% of total imports	July 2019 – June 2020	% of total imports
Brazil	9 683 595	30,97%	5 390 300	20,10%	825 515	2,91%
Denmark	493 663	1,58%	565 030	2,11%	1 248 914	4,40%
Ireland	939 941	3,01%	1 519 247	5,67%	2 133 544	7,52%
Poland	0	0,00%	2 036 481	7,60%	1 609 698	5,67%
Spain	0	0,00%	1 326 155	4,95%	2 455 357	8,65%
Total dumped imports	11 117 198	35,55%	10 837 213	40,42%	8 273 028	29,16%
Other imports	20 151 089	64,45%	15 974 320	59,58%	20 099 862	70,84%
Total imports - kg	31 268 287	100,00%	26 811 533	100,00%	28 372 890	100,00%

Commission's consideration

When conducting the negligibility test for tariff subheading 0207.14.98 (drumsticks), the Commission noted that imports from Brazil for tariff subheading 0207.14.98 is below 3% for the year July 2019 to June 2020. There are no imports from other countries which could be added to Brazil to collectively account for more than 7% of the total imports of the like product into the SACU market. Imports from Brazil for tariff subheading 0207.14.98 were excluded for purposes of initiating the investigation.

Tariff heading 05207.14.99: Other

Country	July 2017 – June 2018	% of total imports	July 2018 - June 2019	% of total imports	July 2019 – June 2020	% of total imports
Brazil	6 051 997	63.08%	6 488 048	70.48%	6 813 133	80,55%
Denmark	655 988	6.84%	1 164 932	12.66%	967 740	11,44%
Ireland	437 481	4.56%	211 950	2.30%	166 320	1,97%
Poland	0	0.00%	81 000	0.88%	27 000	0,32%
Spain	0	0.00%	69 270	0.75%	0	0,00%
Total dumped imports	7 145 466	74.48	8 015 200	87.07%	7 974 193	94,27%
Other imports	1 189 682	25.52%	1 189 682	12.93%	484 444	5,73%
Total imports - kg	9 593 592	100.00%	9 204 964	100.00%	8 458 637	100.00%

Commission's consideration

When conducting the negligibility test for tariff subheading 0207.14.99 (other), the Commission noted that imports from Ireland and Poland for tariff subheading 0207.14.99 is below 3% and from Spain there were no imports under tariff subheading 0207.14.99. The imports from Ireland and Poland collectively do not account for more than 7% of the total imports of the like product into the SACU market. Imports from Ireland and Poland for tariff subheading 0207.14.99 were excluded from the initiation of the investigation.

The table below indicates that there were no imports under certain tariff subheadings, which made initiation of the investigation on those tariff subheadings impossible, as the imports cannot be dumped if there were no imports. This table below provides a summary of the above mentioned tariff subheadings per country where there were no imports:

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

For purposes of initiation, the Commission made a determination to do the negligibility test for each tariff subheading on its own and not for the product under investigation (all the tariff subheadings where the imports took place under tariff subheading 0207.14.9) and the following were found to be below the negligibility level and were excluded from the investigation:

Description	Tariff subheading	Country
Leg quarter	0207.14.93	Spain
Wings	0207.14.95	None
Breasts	0207.14.96	Denmark, Ireland, Poland, Spain
Thighs	0207.14.97	Brazil
Drumstick	0207.14.98	Brazil
Other	0207.14.99	Ireland, Poland

The Commission made a final determination that based on the negligibility test for each individual tariff subheading, the products in the table above are below the negligibility level.

2.2 SACU PRODUCT

The SACU like product is frozen portions of meat that contain bones, of fowls of the species *Gallus Domesticus*, classifiable under tariff subheading 0207.14.9. All cuts of the subject product are produced by SACU producers.

2.3 LIKE PRODUCT ANALYSIS

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

Table 3.3: Like product determination

	Imported product	SACU product
Raw materials	Broiler chickens are specifically bred and raised to produce the subject product.	Broiler chickens are specifically bred and raised to produce the subject product.
Production process	The various stages in the production process for chicken meat are the breeding, laying, rearing, slaughtering and processing of the subject product.	In the SACU industry, the various stages in the production process for chicken meat are the breeding, laying, rearing, slaughtering and processing of the subject product.

		product.
Physical appearance	Certain portions of the whole bird are cut up containing bones.	Certain portions of the whole bird are cut up containing bones.
Tariff classification	The product is classified under tariff subheading 0207.14.9 (frozen portions of meat that contain bones, of fowls of the species <i>Gallus Domesticus</i>)	The product is classified under tariff subheading 0207.14.9 (frozen portions of meat that contain bones, of fowls of the species <i>Gallus Domesticus</i>)
Application or end use	The application and end-use of the products is generally for human consumption.	The application and end-use of the products is generally for human consumption.
Substitutability	The SACU like product and the imported product are identical and fully substitutable.	The SACU like product and the imported product are identical and fully substitutable.

Taking the above into consideration, the Commission made a final determination that the SACU product and the imported products are “like products”, for purposes of comparison in this investigation, in terms of the relevant provisions of the Anti-Dumping Regulations.

3. SACU INDUSTRY

3.1 INDUSTRY STANDING

The application was lodged by SAPA, on behalf of the SACU industry, and the data in the application is provided by the following producers:

- County Fair, a division of Astral Operations Limited (“**Astral County Fair**”);
- Festive, a division of Astral Operations Limited (“**Astral Festive**”);
- Goldi, a division of Astral Operations Limited (“**Astral Goldi**”);
- Afgri Poultry (Proprietary) Limited, t/a Daybreak Farms (“**Daybreak**”);
- Grain Field Chickens Proprietary Limited (“**Grain Field**”);
- RCL Foods Consumer Proprietary Limited (“**RCL Foods**”);
- Crown Chickens Proprietary Limited t/a Sovereign Foods, which is a subsidiary of Sovereign Food Investments Proprietary Limited (“**Sovereign**”); and
- Supreme Poultry Proprietary Limited (“**Supreme**”).

The Applicant’s updated information stated that the above participating producers accounts for over 60% of the SACU production by volume and of those producers that have expressed an opinion on the application, 100% by domestic production volume support this application.

COMMENTS ON INITIATION OF THE INVESTIGATION

Comments by the Association of Meat Importers and Exporters (AMIE)

AMIE stated that eight producers submitted information in support of the application. Although the Applicant, SAPA, indicates that these eight producers are representative of the industry and can be regarded as a major proportion of the industry as a whole, there is nothing on record to confirm this. In the present investigation it appears that the cooperating producers represent only around 50% of the total industry, which carries with it a serious risk of distortion if a proper qualitative assessment is not undertaken. This is

even more so where the available information contained in the application shows that other producers performed better than those who did submit information.

Applicant's response to AMIE's comments

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

Comments by the Animal Feed Manufacturers Association (AFMA)

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

AFMA further stated that if chicken imports are quantified in terms of equivalent of the South African broiler feed being replaced per year, it amounts to, on average 1.3 million tons of broiler feed. This feed being replaced equates to 13 medium-sized feed mills that could have provided permanent employment to 2000 employees, affecting 14 000 individuals in rural communities directly. Furthermore, imports replace 1.3 million tons of South African produced Grains and oilseeds used in feed production, 700 000 tons of Maize and 500 000 tons of soybeans.

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

Masterplan.

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

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

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

Comments by Copacol

Domestic industry

Copacol noted the statement in the Application that only a limited number of producers form part of the “applicant” for purposes of this investigation. Copacol also stated that the Applicant alleged that these companies represented more than 50 per cent of the total production of the product in SACU and therefore had industry standing. The Commission found, as per its initiation notice, that these companies both had industry standing and represented a major proportion of the domestic industry. However, it is not clear on what basis especially the latter decision was made, as there is no record evidence to indicate the actual size of the total domestic industry. According to Copacol the Applicant submitted unsubstantiated information regarding the volume of production and sales of other producers, but this information was never verified. In addition, many poultry producers are not SAPA members. The Commission simply accepted the information of the applicants without ever inviting any other producers to submit injury information. This is in direct contradiction to the Appellate Body’s findings in EC – Fasteners (China). Copacol stated that the Commission also failed to undertake both a quantitative and qualitative analysis to determine whether the applicants not only represented a major proportion of the domestic industry, but also whether its information reflected the performance of the industry as a whole. In this regard, it directly went against the panel’s findings in Russia – Commercial Vehicles. Accordingly, the Commission has not established, on the basis of positive evidence and through an objective examination, that the applicant represents a major proportion of the domestic industry. The Appellate Body in EC – Fasteners (China) and the panel in China – Autos have found that a failure to properly define the domestic industry as indicated below would automatically mean that the injury analysis is flawed. Copacol indicated that the Commission must specifically provide all other SACU producers with the opportunity to submit injury information and at least require them to submit information as regards their production and sales volumes over the course of the investigation period. This is especially important, as what little information is available on the record clearly indicates that other SAPA-affiliated producers outperformed the applicants. Copacol

stated that the information of the applicants is thus not indicative of the performance of the industry.

Applicant's response to Copacol's comments

The Applicant stated that it has provided a full explanation in the Application for each instance where sales or production volumes are provided for the non-participating SACU producers and supporting documents were provided in the Application. The Applicant also stated that Copacol also notes that many poultry producers are not SAPA members. This does not have any impact on the information for the non-participating SACU producers, since this information does not relate solely to SACU producers that are SAPA members. As set out in the Application, production and sales volumes for the non-participating SACU producers are based on the number of broilers slaughtered in South Africa, a conservative allowance of 10% for unknown producers and the slaughter weight and relative product volumes of the Participating Producers. The number of broilers slaughtered in South Africa is calculated and provided by Leading Edge Poultry Software CC, based on the number of day-old chicks placed, which is information provided to or estimated by Silverpath Consulting on a monthly basis for all known abattoirs and/or hatcheries in South Africa. Copacol goes on to allege that the Commission has never invited other producers to submit injury information and that then makes a bald allegation that this is a violation of the Appellate Body's findings in *EC – Fasteners (China)*. The Applicant notes that Copacol does not set out what the alleged finding of the Appellate Body was in *EC – Fasteners (China)*, nor does it explain why it believes that the conduct of the Commission violates this alleged finding. On this basis alone, no weight can be attached to Copacol's allegation. Furthermore, the Applicant submitted that nothing in the Appellate Body's report obliges the Commission to specifically invite other SACU producers to submit injury information. Any SACU producer that wished to provide injury information could have done so when the investigation was initiated, and no producer has chosen to do so.

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

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

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

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

Similarly, in *European Communities – Anti Dumping Measure on Farmed Salmon from Norway* ("**EC - Salmon**"), the Panel found that "*[t]here is certainly nothing in the AD Agreement that would necessitate obtaining information from each domestic producer in the industry on each element of an injury analysis*". The Applicant stated that it submits, therefore, that the Commission has properly defined the domestic industry, that there is no obligation on the Commission to solicit additional information from other SACU producers and that the information for the Participating Producers should be used by the Commission in determining material injury.

Commission's consideration

The Applicant supplied information for producers accounting for over 60% of domestic production by volume. Given that the non-participating producers are made up of numerous smaller scale producers, the Commission agreed with the Applicant that obtaining the detailed information required from each of these producers would be an undue administrative burden on the Applicant. The Applicant submitted information provided for a major portion of the SACU industry and that there is no obligation on the Commission to obtain further information. Further, the Applicant submitted a list of parties that supports this Application. At least 40 letters of support were attached to the Application. The domestic industry consists of people that are located in the rural areas and do not have access to internet and the infrastructure to readily submit a letter of support. The Applicant contacted these parties telephonically and they indicated their support for this application. The Commission made a determination that the application can be regarded as being made "by or on behalf of the domestic industry" and, therefore, is eligible for initiation under the provisions of the Anti-Dumping Regulations.

It is worth noting that the information contained in the "Industry standing" table above has been updated. When the Applicant was in the process of preparing for an on-going arbitration on the EU poultry safeguard case it uncovered more reliable information with regard to the calculation of sales and production volumes for the non-participating producers. The methodology used in calculating the sales and production volumes is outlined above in points 1 – 8. The updated information gives an indication that the Applicant accounts for approximately 67% of the SACU production by volume.

After the Commission's preliminary determination the Applicant provided the below for the calculation of the non-participating producers production volume which also changed the information in table 3.1 above:

1. The Applicant has adjusted its calculation of the production and sales volumes for the non-participating SACU producers.

2. Both the original and revised calculations start with the number of broilers slaughtered in South Africa. This information is provided to the Applicant by Leading Edge Poultry Software. The data is based on the number of day-old chicks placed, which is data originally collected by Silverpath Consulting, which sends input forms to producers on a monthly basis and makes estimates for abattoirs not currently reporting based on historic numbers.
3. The original calculation then included an adjustment of 10% for the unknown producers in South Africa as well as the producers in Botswana, Lesotho, Namibia and eSwatini.
4. Following the submission, the Applicant has obtained actual information for the number of broilers slaughtered in Botswana, Lesotho, Namibia and eSwatini from the Food and Agriculture Organization Corporate Statistical Database ("FAOSTAT"). This data indicates that production in these countries is significantly less than was previously believed (less than 5% of South African production).
5. Further discussions with Leading Edge Poultry Software and Silverpath Consulting indicated that there was no longer a need to adjust for 'unknown South African producers' since there were no abattoirs in South Africa that were not accounted for.
6. In the revised calculation, the total number of broilers slaughtered in SACU is now calculated as the sum of the number of broilers slaughtered in South Africa (provided by Leading Edge Poultry Software) and the number of broilers slaughtered in Botswana, Lesotho, Namibia and eSwatini. (provided by FAOSTAT).
7. The original calculation then estimated the total meat produced in SACU (using the weighted average live bird mass of the participating producers) and the total volume of the subject product produced in SACU (using the relative volume of the subject product produced by the participating producers and the weighted average brining percentage of the participating producers). The production volume for non-participating SACU producers was then estimated by subtracting the production volume for the participating producers from the estimated total SACU production.
8. The revised calculation instead estimates the production volume for non-

participating SACU producers based on the number of broilers slaughtered by the participating producers and the volume of the subject product produced by the participating producers.

Taking all the comments received into account, 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 GENERAL

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

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

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 were excluded in the determination of the normal value, and the normal value was based on the weighted average price of all remaining sales.

Commission’s Consideration

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

Volumes on the domestic market

Section 8.3 of the ADR provides that:

“Domestic sales of the like product shall normally be considered to a sufficient volume to determine a normal value if such sales constitute five per cent or

more of the sales volume of the product to the SACU. Sales representing less than 5 per cent of export sales to the SACU may nevertheless be deemed sufficient where such sales are of sufficient magnitude to provide a proper comparison.”

Commission’s consideration

In light of the above, the Commission made a final determination that sales representing less than 5 per cent of export sales to the SACU be considered not sufficient volumes to determine a normal value.

Reasonable Profit

When constructing a normal value, the normal value is based on 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.

A reasonable profit in terms of the provisions of Article 2 of the Anti-Dumping Agreement (the ADA) states the following:

The amounts for administrative, selling and general costs and for profits shall be based on actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation. When such amounts cannot be determined on this basis, the amounts may be determined on the basis of:

- (i) the actual amounts incurred and realized by the exporter or producer in question in respect of production and sales in the domestic market of the country of origin of the same general category of products;
- (ii) the weighted average of the actual amounts incurred and realized by other exporters or producers subject to investigation in respect of production and sales of the like product in the domestic market of the country of origin;
- (iii) any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin.”

To determine a reasonable profit, the Commission used operating profit (operating income) for all frozen bone-in products produced. The Commission's decision to use operating profit instead of EBIT is supported by the reasoning that the key difference between EBIT and operating income is that EBIT includes non-operating income, non-operating expenses, and other income. Operating income is a company's gross income less operating expenses and other business-related expenses, such as SG&A and depreciation.

Commission's consideration

In light of Article 2 of the ADA, the Commission made a final determination that operating profit as stated above represents reasonable profit for the purpose of constructing normal value.

4.2 METHODOLOGY IN THIS INVESTIGATION FOR BRAZIL

Responses were received from 15 exporters in Brazil, namely Avivar Alimentos Ltda ("Avivar"); Agroaraçá Indústria De Alimentos ("Agroaraçá"); Agrosul Agroavícola Industrial S/A ("Agrosul"), C.Vale – Cooperativa Agroindustrial ("C Vale"); Aurora Cooperativa Central Aurora Alimentos ("Aurora"); Cooperativa Agroindustrial Consolata ("Copacol"); São Salvador Alimentos S/A ("SSA"); Rio Branco Alimentos S/A ("Pif Paf"); GTB Empreendimentos S.A.'S ("GTB"); Jaguafrangos Indústria E Comércio De Alimentos Ltda ("Jaguafrangos"); Seara Alimentos Ltda ("Seara"); Gonçalves E Tortola S/A ("GT Foods"); and Zanchetta Alimentos Ltda ("Zanchetta").

SSA, GTB and GT Foods did not export the subject product during the period of investigation. These three exporters were advised that section 48.1 of the ADR states that exporters that did not export to the SACU during the original investigation period for dumping may request a new shipper review. These exporters were further advised that in terms of section 48.3 of the ADR's, which states that the Commission shall not consider a request for a new shipper review before definitive duties have been imposed.

Commission's consideration

The Commission decided to exclude SSA, GTB and GT Foods from this investigation for purposes of its final determination.

4.2.1 Agroaraçá

Normal Value

During the period 1 July 2019 to 30 June 2020, Agroaraçá sold leg quarters in its domestic market. The sales for frozen leg quarters did not constitute more than 5 percent of the volume of exports and as such the normal value was constructed.

To determine a reasonable profit, the Commission used operating profit (operating income) as a percentage of revenue for all frozen bone in portions.

No adjustments were taken into consideration as the normal value was constructed.

Export price

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

Agroaraçá claimed adjustments on the export price for export freight and delivery charges. The adjustments for inland freight and delivery charges were taken into account as it was demonstrated that they affected price comparability at the time of setting the price.

Dumping Margin

The dumping margin for Agroaraçá was calculated to be 39%.

Comments by Agroaraçá to the Commission's essential facts letter – normal value

Agroaraçá stated that it noted that, since the domestic sales of leg quarters (the only product exported by the company to SACU) were less than 5%, the Commission opted for the construction of the normal value. Agroaraçá observes that the Commission started from the total unit cost (production cost plus general, commercial and administrative expenses) only for the leg quarter.

However, as regards to the profit margin, the Commission maintained the same methodology used in the preliminary determination: basing it on the sum of all categories of products, instead of using the available profit only for leg quarters – which are the main product manufactured.

Agroaraçá stated that in its comments on the Preliminary Report, it emphasized that, by doing so, the Commission acts in a manner inconsistent with Article 2.2.2 of the Anti-Dumping Agreement. In fact, the usage of data concerning the like product is mandatory unless the amounts cannot be determined on that basis.

2.2.2 For the purpose of paragraph 2, the amounts for administrative, selling and general costs and for profits shall be based on actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation.

Agroaraçá quoted the below from the Anti-Dumping Regulations:

8.13 The reasonable profit margin that is included in the constructed normal value shall normally be determined –
(a) with reference to the actual profit realised on sales of the product under investigation; or

Agroaraçá stated that as the above makes it clear, the Commission cannot resort to another source when information concerning the product under investigation (leg quarters for Agroaraçá) is available. And the cost build-up, which was considered verified by the Commission through its desk verification procedures, show the amount of 1.18% as profit margin.

Agroaraçá requested the Commission to correct this mistake and, by result, to consider that the correct constructed normal value.

Export price

Concerning the export price, Agroaraçá observed two clerical mistakes in the Commission's calculation. In sum, the Commission started from the net invoice unit value and deducted from it adjustments for freight and delivery.

Agroaraçá initially points out that the margin of dumping, as per the Commission's instructions, needs to be calculated in the exporter's own currency, that means in BRL (R\$). Such price must be the starting point for export price calculations.

The second clerical mistake is regarding the adjustments considered. As stated above, the Commission deducted freight and delivery charges from the net export price. However, the start price used by the Commission does already exclude freight. The same applies to the correct start price in Agroaraçá's view. By deducting freight [again] in its ex-factory price calculation, the Commission thus subtracted twice the same expenses. Therefore, the only deduction to be made at this point are the delivery charges.

Commissions' Consideration

The Commission noted that Agroaraçá correctly points out that the domestic sales of frozen leg quarters was calculated to be less than 5% and as such the Commission had to construct the normal value. In constructing the normal value, the total cost plus selling, administration and general expenses were

considered plus reasonable profit. Agroaraçá challenges the methodology used by the Commission in determining the reasonable profit. It goes on to quote the Commission's Anti-Dumping Regulations. In doing so, Agroaraçá only quotes one part of the Regulations 8.13 (a) and leaves out the rest of Regulation 8.13.

Regulations 8.13 provides:

The reasonable profit margin that is included in the constructed normal value shall normally be determined –

- (a) with reference to the actual profit realised on sales of the product under investigation; or*
- (b) with reference to the average such actual profit realised by other sellers on sales of the same category of products in that market if the profit margin cannot be properly isolated from the information kept by the producer under investigation; or*
- (c) on any other reasonable basis;*

provided that the profit so included shall normally be based on the actual profit realised on sales before extraordinary items, interest, tax and any other circumstances that may affect such profit margin.

With regards to the export price Agroaraçá's comments were considered and the revised export price was calculated and is reflected above. A revised dumping margin was calculated for Agroaraçá.

4.2.2 Agrosul

Normal Value

During the period 1 July 2019 to 30 June 2020, Agrosul sold frozen drumsticks on the domestic market. All of the sales for frozen drumsticks were made at a loss and, as such, the normal value was constructed.

To determine a reasonable profit, the Commission used the weighted operating profit (operating income) as a percentage of revenue for all producers in Brazil.

No adjustments were taken into consideration as the normal value was constructed.

Export price

During the period 1 July 2019 to 30 June 2020, Agrosul exported frozen drumsticks to the SACU market.

Agrosul claimed an adjustment on the export price for delivery charges. The adjustment was taken into consideration for determining the export price, as supporting documentation was provided to substantiate the adjustment.

Dumping Margin

The dumping margin for Agrosul was calculated to be 16%.

Comments by Agrosul on the Commission's essential facts letter

Agrosul stated that with regard to the export price, it firstly noted that in the company's verification report sent by the Commission on 30 March 2022 the Commission stated that the company has provided "no explanation or substantiation" concerning the adjustment for delivery charges.

Although the company had at the beginning opposed to that statement, and the Commission indicated that it would change its point of view, it seems that some doubts remain with reference to such adjustment. Because of that, Agrosul respectfully requests the Commission to not consider the adjustment for delivery charges when calculating the export price.

Commission's Consideration

Agrosul in its response to the Commission did not provide explanation and proof of delivery charges. The Commission noted that there are costs involved in moving the subject product from the exporter to the SACU and as

such the delivery charge was taken into account in calculating the export price. The Commission considered the delivery charge claimed by Agrosul.

4.2.3 Avivar

Normal value

During the period 1 July 2019 to 30 June 2020, Avivar sold frozen leg quarters in its domestic market. All domestic sales of leg quarters were made below cost.

To determine a reasonable profit, the Commission used operating profit (operating income) as a percentage of revenue for all frozen bone in portions.

No adjustments were taken into consideration as the normal value was constructed.

Export price

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

Avivar claimed an adjustment on the export price for delivery costs. The adjustment was taken into consideration for determining the export price, as supporting documentation was provided to substantiate the adjustment.

Dumping Margin

The dumping margin for Avivar was calculated to be 35%.

Comments by Avivar on the Commission's essential facts letter

Avivar stated that it observed that the Commission constructed the normal value for the company starting from the total unit cost (production cost plus general, commercial and administrative expenses) only for the leg quarter. The Commission then adds to this value a profit.

Avivar stated that there is a clerical mistake as the Commission has not considered the correct cost build up sent by the company in its late submission (in January 2022).

Commission's Consideration

The Commission provides that the cost build-up used in the calculation of the normal value was the one that Avivar provided initially when it responded to the Commission's exporters questionnaire. The Commission did not identify deficiencies on the cost build-up that Avivar provided other than that it should provide total cost, selling price, profits, distribution costs, net ex-factory price, and the net delivered price. Avivar updated the cost build-up and provided the Commission with a revised cost build-up to show total costs, selling, admin and general expenses that are substantially less than what it initially provided without providing any reason for the change in costs.

4.2.4 Aurora

Normal value

During the period 1 July 2019 to 30 June 2020, Aurora sold frozen leg quarters above cost. The sales for frozen leg quarters below cost amounted to more than 20% and these sales were excluded from the calculation of the normal value.

Aurora claimed adjustments on normal value for delivery charges and other adjustments.

The delivery charge adjustment and 'other adjustments' were taken into consideration for the normal value calculation for leg quarters, as sufficient explanations and supporting documentation were provided to substantiate the adjustments.

Export price

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

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

Dumping Margin

The dumping margin for Aurora was calculated to be 28%.

Comments by Aurora on the Commission’s preliminary determination

Aurora stated that in its response it provided the normal value and corresponding adjustments of the like product sold in the Brazilian domestic market (“Chicken Whole Leg”). In the same response, it provided information on the adjustment that is requested in order for the price comparison between the Chicken Whole Leg and the Chicken Leg Quarters (which have been exported to SACU) to be fair.

Aurora stated that according to the Exporter’s Questionnaire, dumping margins were to be calculated *“after allowance has been made for any differences affecting price comparability”*.

Aurora stated that it claimed a difference in physical characteristics (the upper back and the half chicken tail are removed in order to produce “Chicken Whole Legs” and, in order to produce “Chicken Leg Quarters”, they are not).

Response by the Applicant

The Applicant stated that in Aurora’s Questionnaire response and Aurora’s preliminary determination comments, Aurora claims that the difference in production costs is a result of the differences in the production processes used to produce whole legs (sold in the domestic market) and leg quarters

(exported to SACU). The Applicant also stated that the only difference in the production process that Aurora wishes to adjust for is the difference in the cut-up process used. The Applicant notes, however, that Aurora's Questionnaire response describes the cut-up process for both domestic and export products as follows: "*[i]n the cutting rooms, in a manual or automatic handling machine, or in a cone line, the Leg Quarters are separated from the carcass*". The Applicant submitted that there should be no differences in the cost of producing whole legs or leg quarters as a result of the cut-up process, despite the difference in the physical appearance.

The Applicant further stated that the reason for the claimed difference in production cost between Whole Legs and Leg Quarters is not, as Aurora has previously claimed, a result of the different production process followed, but rather the result of the different prices charged by Aurora for the different cuts.

In conclusion, the Applicant stated that what Aurora is doing is basing the cost of production of the exported product on an export price (which may be a dumped price) and the cost of production of the domestic product on the domestic price. The Applicant stated that Aurora then uses the difference in these costs of production to determine the adjustment it claims must be made to the domestic price before determining whether the product is dumped. If the exported product is sold at a dumped price (which the Applicant submits it is), the adjustment may be significant and may result in a finding that the product is not dumped.

Commission's consideration

The Commission is of the view that Aurora provided sufficient explanation, and supporting documents to substantiate that there is a difference in physical characteristics. However, the Commission does not agree with the methodology used, meaning the difference in prices is not linked to a difference in production costs (processes), which would be a potential basis for an adjustment. It is expected that the same raw materials and fixed costs

are utilized to convert the product exported to SACU and only the extra process involved should vary in the production process. The Commission noted that during a meeting held to understand the adjustments claimed, Aurora indicated that the reason raw material costs and fixed costs vary is because of the utilization of different production plants. The Commission is therefore of the view that it is the efficiencies of different plants that results in differences in the costs of product 8287 (product exported to SACU) and products 1566, 1839, 13247, 15390 and 15430 (products sold domestically in the Brazilian market). It should also be understood that the cost of a cut is determined based on the price charged by the Exporter for that particular cut.

The Commission made a decision not to allow the adjustment for physical characteristics as the method used in calculating the difference points out to differences in costs per plant and not the cost of removing the upper back and half-chicken tail.

Aurora's comments on the Commission's essential facts letter

AURORA stated that it draws attention to the fact that the Commission has calculated its dumping margin by comparing a weighted average of all of Aurora's sales in the domestic market during the POI (July 2019 – June 2020) with one single export transaction made on 29 July 2019 – which was Aurora's only export transaction of the subject product to SACU during the POI.

Aurora stated that it recalls that the ADA establishes in Article 2.4.2, two general methods of calculating the dumping margin: (i) by comparison of a weighted average normal value with a weighted average export price; and (ii) and by comparison of individual transactions. 2.4.2 Subject to the provisions governing fair comparison in paragraph 4, the existence of margins of dumping during the investigation phase shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction-to-transaction basis. A

normal value established on a weighted average basis may be compared to prices of individual export transactions if the authorities find a pattern of export prices which differ significantly among different purchasers, regions or time periods, and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison.

Aurora also stated that given that there has been only one export transaction to SACU during the POI, it finds that the best method for calculating its dumping margin – which is fair and accurate – is by a comparison of normal value and export price on a transaction-to-transaction basis.

Commission's Consideration

The Commission considered the comments by Aurora and deemed it necessary to calculate the dumping margin for Aurora by considering normal value and export price on a transaction-by-transaction basis. Since Aurora only had one export transaction to the SACU that took place on 29 July 2019, it was decided that normal value be calculated using a transaction that closely correspond with the export transaction. A transaction on the same day as the export transaction was selected for fair comparison.

Comments by the Applicant on the Commission's essential facts letter

The Applicant stated that the adjustment for sales commission claimed by Aurora is only permissible if the amount of the sales commission was known at the time of the setting of the price and if the exporter has demonstrated that, the price was adjusted because of the commission. If the adjustment is based on, for example, the volume of goods sold in a period then this adjustment cannot be allowed, as the exporter did not know if the commission would be applied at the time of setting the price. Similarly, if the exporter cannot demonstrate that the price of sales that included sales commission were higher than sales that did not include commission than the sales commission did not affect price comparability at the time of the setting of the price.

The Applicant stated that the adjustment for sales commission claimed by Aurora is only permissible if the amount of the sales commission was known at the time of the setting of the price and if the exporter has demonstrated that, the price was adjusted because of the commission. If the adjustment is based on, for example, the volume of goods sold in a period then this adjustment cannot be allowed, as the exporter did not know if the commission would be applied at the time of setting the price. Similarly, if the exporter cannot demonstrate that the price of sales that included sales commission were higher than sales that did not include commission than the sales commission did not affect price comparability at the time of the setting of the price.

Commission's consideration

The Commission noted that that during both the meetings held with Aurora and desk verification, Aurora demonstrated to investigation officials that commission is not calculated when sales are made but rather when the terms included in the sales agreement are met. Aurora demonstrated that sales commission affected price comparability at the time of the setting of the prices.

Auroras dumping margin was revised.

Dumping Margin

The dumping margin for Aurora was re-calculated to be 17%.

4.2.5 C Vale

Normal value

C Vale sold frozen leg quarters and whole legs in its domestic market. The sales below cost for frozen leg quarters and frozen whole leg were below 20% and as such all transactions were taken into consideration in the calculation of normal value.

Taking all comments received into account, the Commission made a final determination to allow the adjustment claimed by C Vale for freight from plant to warehouse, freight from plant to the subsidiary, warehousing expenses and the difference in freight from plant to subsidiary for purposes of its final determination.

Export price

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

Taking all comments received into account, the Commission made a final determination to allow the adjustment claimed by C Vale for delivery charges, other indirect exporting charges, other direct exporting charges, expenses with customs agency, regular road transport and additional freight charges for purposes of its final determination.

Dumping Margin

C Vale was found not to be dumping.

4.2.6 Copacol

Normal value

During the period 1 July 2019 to 30 June 2020, Copacol sold frozen leg quarters, wings, breast meat and other frozen bone in products (backs) in its domestic market. None of the sales were made at a loss and as such all domestic sales were used in determining the normal values.

Taking all comments received into account, the Commission made a final determination to allow the adjustments claimed by Copacol for packaging costs, delivery costs, other adjustments and discounts and rebates for purposes of its final determination. The Commission made a final determination to allow the adjustment claimed by Copacol for cost of payment

terms as this calculation was incorrectly based on effective credit days rather than the terms that should be indicated on the invoice.

Export price

Copacol exported frozen leg quarters, breasts, wings and “other” frozen bone-in portions to the SACU market.

Taking all comments received into account, the Commission made a final determination to allow the adjustment claimed by Copacol for packaging costs, delivery costs, other adjustments and discounts and rebates for purposes of its final determination. The Commission made a final determination not to allow the adjustment claimed by Copacol for cost of payment terms as this calculation was incorrectly based on effective credit days rather than the terms that should be indicated on the invoice.

Dumping Margin

The weighted average dumping margin for Copacol was calculated to be 28.3%.

Commission's consideration

The Commission noted Copacol's comments stating that it has argued from the start that the carcasses (“backs”) that it exports to SACU are not and should not be part of the investigation, as they do not relate to a cut, but are cut-up carcasses – the remnants of cuts. According to Copacol the carcasses is what remains after all “cuts” have already been removed. Copacol went on to indicate that carcasses clearly do not form part of the investigation, but it reported its exports of cut-up carcasses because it intended to avoid any incompleteness in its submissions, for the sake of transparency and cooperation with the Commission.

The Commission also noted Copacol's comments that the preliminary report included Copacol's exports of carcasses for the purposes of calculating the

dumping margins without any reference to or consideration of Copacol's arguments and explanations.

Copacol stated that it has since confirmed with the importers that these carcasses are not imported under HS Code 0207.14, which confirms that these products do not form part of the scope of the investigation and the dumping determination should be made based on only those products that do form part of the published scope of the investigation. As regards Copacol, that means leg quarters, wings and breasts.

The Commission further noted the comment by Copacol that the impact of these carcasses on the margin of dumping determination is immense. First, carcasses make up more than two thirds of Copacol's total volume of exports to SACU. Second, it is essentially the only product that is being dumped, simply because the identical products are not sold on the domestic and export markets.

The Commission noted the Applicant's response to Copacol's comments regarding the tariff classification of backs that have been cut in two (sometimes described as 'upper backs' or 'lower backs') are incorrect and are not supported by a proper interpretation of South Africa's tariff book or the submissions made by importers.

Specifically, Copacol alleges that upper backs and lower backs are imported into the Southern African Customs Union under tariff subheading 0207.12.20. According to the Applicant the full description of this tariff subheading is: "Meat and edible offal, of the poultry of heading 01.05, fresh, chilled or frozen // Of fowls of the species Gallus domesticus // Not cut in pieces, frozen // Carcasses (excluding necks and offal) with all cuts (e.g. thighs, wings, legs and breasts) removed" (own emphasis)

The Commission also noted the Applicant's response that it is clear that in order to be classified under tariff subheading 0207.12.20 a product must not

be cut into pieces. By Copacol's own description, the upper and lower backs that they sell are "cut into two pieces" or are "cutup carcasses". They cannot, therefore, be correctly classified under tariff subheading 0207.12.20, but must instead be classified under tariff subheading 0207.14.99.

The Applicant stated that its assertions are supported by the responses to the Commission's importer questionnaires submitted by:

- Merlog Foods Proprietary Limited ("**Merlog**") (one of the two importers that imported from Copacol during the period of investigation for dumping), which states that it imports "backs" from Brazil under tariff subheading 0207.14.9;*
- Federated Meats Proprietary Limited (one of the two importers that imported from Copacol during the period of investigation for dumping), which states that it imports "CARCASS" from Brazil under tariff subheading 0207.14.99;*
- Etlin International Proprietary Limited ("Etlin"), which states that it imports "BACKS" from Denmark under tariff subheading 0207.14.99;*
- Merger Meats Proprietary Limited, which states that it imports "BACKS" from Brazil under tariff subheading 0207.14.99; and*
- South Atlantic Meat Import and Export Proprietary Limited t/a Transtrade International, which states that it imports "CARCASS" from Brazil under tariff subheading 0207.14.99.*

The Commission noted the response by the Applicant that both of the importers that imported from Copacol during the period of investigation for dumping have indicated in their submissions to the Commission that they import 'backs' or 'carcasses' from Brazil under tariff subheading 0207.14.9. This contradicts Copacol's submission that the importers of its products have 'confirmed' that upper and lower backs are classified under tariff subheading 0207.12.20.

The Applicant further stated that one of these importers, Merlog, has made extensive submissions to the Commission stating that chicken upper and lower backs are classified under tariff subheading (0207.14.99) (but that these cuts

should be classified under tariff subheading 0207.12.20) (see, for example, Merlog's submission to the Commission in the tariff structure review dated 30 April 2021). Etlin and the Association of Meat Importers and Exporters ("AMIE") made similar comments in the tariff structure review. AMIE also submitted in this investigation that 'backs' are classified under tariff subheading 0207.14.99.

It is the Commission's view that carcasses form part of frozen bone-in portions and are correctly classified under tariff subheading 0207.14.99 "other". The above claims by the Applicant in response to Copacol's comments were confirmed when Merlog foods and Federated meats indicated in their response to the Commission's importers questionnaire that they import carcasses (upper and lower backs) under tariff subheading 0207.14.99.

The Commission made a final determination that carcasses form part of frozen bone-in portions and are correctly classified under tariff subheading 0207.14.99 "other".

4.2.7 Jaguafrangos

Normal value

During the period 1 July 2019 to 30 June 2020, Jaguafrangos sold frozen leg quarters in its domestic market. Of the total sales, more than 20% but less than 80 percent were made below cost. In calculating normal value, the volume of sales made at a loss were excluded and only those sales that were made above cost were considered.

Taking all comments received into account, the Commission made a final determination not to allow the adjustment claimed by Jaguafrangos for delivery costs and commission for purposes of its final determination as these were not properly substantiated and could not be verified.

Export price

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

Taking all comments received into account, the Commission made a final determination to allow the adjustment claimed by Jaguafrangos for delivery costs for purposes of its final determination.

Dumping Margin

The dumping margin for Jaguafrangos was calculated to be 18.18%.

The Commission noted Jaguafrangos comments on the essential facts letter concerning the export price that the Commission maintained an incorrect methodology that had already been addressed by the company in its comments on the preliminary report. In fact, the Commission converted the average export price, presented in dollars (USD), at the average rate for the entire period, instead of using the rate on the day of sale, as happened with all other companies. As a result, export price (EP) was much lower than it should have been.

Commission's consideration

The Commission considered that its practice is to convert the average export price at the average rate for the entire period. The Commission does not use the exchange rate per transaction as in most cases the transactions will be numerous and it will be time consuming to convert the export price per transaction when dealing with such numbers of responses as witnessed in this investigation. The Commission will only consider using a per transaction exchange rate should there have been dramatic changes to the exchange rate during the POI, which was not the case in this investigation.

4.2.8 Pif-Paf

Normal value

During the period 1 July 2019 to 30 June 2020, Pif-Paf sold frozen leg quarters in its domestic market. None of the sales for frozen leg quarters were made at a loss and as such all transactions were taken into consideration in the calculation for normal value.

Taking all comments received into account, the Commission made a final determination to allow the adjustments claimed by Pif-Paf for packaging and delivery costs for purposes of its final determination. The Commission made a final determination not to allow the adjustments claimed by Pif-Paf for discounts and rebates, complementary freight, transfer freight and warehousing for purposes of its final determination as these were not properly substantiated and could not be verified.

Export price

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

Taking all comments received into account, the Commission made a final determination to allow the adjustments claimed by Pif-Paf for inland and international freight for purposes of its final determination. The Commission made a final determination not to allow the adjustments claimed by Pif-Paf for monitoring, commission and costs for the customs clearing agent for purposes of its final determination as these were not properly substantiated and could not be verified.

Dumping Margin

The dumping margin for Pif-Paf was calculated to be 3.13%.

4.2.9 Seara

Normal value

Seara sold frozen leg quarters, wings and drumsticks amongst other products in its domestic market. More than 20% but less than 80% of sales of frozen leg quarters, frozen wings and frozen drumsticks domestically were made below cost. For all three products, sales made below costs were excluded in determining the normal value.

Taking all comments received into account, the Commission made a final determination to allow the adjustment claimed by Seara for inland freight for purposes of its final determination. The Commission made a final determination not to allow the adjustments claimed by Seara for discounts & rebates and cost of payments terms for purposes of its final determination as these were not properly substantiated and could not be verified.

Export price

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

Taking all comments received into account, the Commission made a final determination to allow the adjustments claimed by Seara for internal freight, international freight and port expenses for purposes of its final determination.

Dumping Margin

Seara was found not to be dumping.

4.2.10 Zanchetta

Normal value

Zanchetta sold frozen leg quarters and drumsticks amongst other products in its domestic market. Zanchetta sold more than 20% but less than 80% of frozen leg quarters and more than 80 percent of frozen drumsticks in the domestic

market below cost. In calculating normal value, the volume of sales of frozen leg quarters made at a loss were excluded and only those sales that were made above cost were considered. Since the sales of frozen drumsticks below cost exceeded the 80% threshold, the domestic sales could not be used in the determination of normal value. The domestic selling price for frozen drumsticks was determined by constructing the normal value.

Taking all comments received into account, the Commission made a final determination to allow the adjustment claimed by Zanchetta for expenses (revenues) due exchange fluctuations, internal freight, port expenses and international freight for purposes of its final determination. The Commission made a final determination not to allow the adjustment claimed by Zanchetta for cost of payments terms for purposes of its final determination as it was not properly substantiated and could not be verified.

Export price

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

Taking all comments received into account, the Commission made a final determination to allow the adjustments claimed by Zanchetta for internal freight, international freight and port expenses for purposes of its final determination.

Dumping Margin

The weighted average dumping margin for Zanchetta was calculated to be 8%.

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

It is the general policy of the Commission to impose separate anti-dumping duties on specific exporters that responded to the questionnaire, and in addition, a residual duty against the country in question, to cater for other

possible manufactures of the subject product who might also have exported the subject product to the SACU, but did not participate in the investigation.

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

4.3 METHODOLOGY IN THIS INVESTIGATION FOR DENMARK

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

4.3.1 HK Scan

Normal value

During the period 1 July 2019 to 30 June 2020, HK sold frozen leg quarters, Grade A wings, Grade B wings, Grade C wings, prime wings, thighs, drumsticks and a mix of frozen drumsticks and thighs on the domestic market.

HK Scan did not sell drumsticks and thigh mix in its domestic market. As such the normal values for these cuts were constructed. For leg quarters and thighs more than 20 percent and just below 80 percent of all sales were sold below cost respectively and as such, sales that were made at a loss were excluded in calculating the normal value. The normal value is based on the weighted

average price of all remaining sales. No sales were made below cost for wings and normal values were based on domestic sales.

Comments by HK Scan on the Commission's essential facts letter

HK Scan indicated that the standard salary cost for the packaging process was claimed to allow comparability between bulk products and IQF. The bulk packaging line requires more labour than IQF and this has a direct impact on the cost and price structure. HK Scan stated that it provided sufficient documentary proof to substantiate this adjustment and requested that the commission consider the adjustment for standard salary cost for packaging process.

Taking all comments received into account, the Commission made a final determination to allow the adjustments claimed by HK Scan for cost of payment terms, standard packaging cost, freight and bonus rebates to customers for purposes of its final determination. The Commission made a final determination not to allow the adjustment claimed for standard salary cost for the packaging process as it was not demonstrated to have affected price comparability at the time of setting its prices.

Export price

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

Taking all comments received into account, the Commission made a final determination to allow the adjustments claimed by HK scan for cost of payment terms, standard packaging cost, freight and bonus rebates to customers for purposes of its final determination. The Commission made a final determination to allow the adjustment claimed for standard salary cost for the packaging process as it was not demonstrated to have affected price comparability at the time of setting its prices.

**Comments by the Applicant on the Commission's essential facts letter
HK SCAN**

The Applicant stated that the adjustments for cost of payment terms and standard packaging cost should not be allowed. The verification report issued by the Commission following the verification of HK Scan the cost of payment terms adjustment was based on effective credit days and could not be verified.

In response, HK Scan stated that there are no differences between the products sold in the Denmark and the products exported to SACU." (own emphasis). Despite this, HK Scan still claims an adjustment for packaging. If there are no differences between the product sold in the domestic market and exported to SACU, then there is no reason to make any adjustment for packaging, since there is no difference that could affect price comparability.

Commission's Consideration

The Commission noted that in its response to the verification report, HK scan demonstrated that the cost of payment terms was actually based on the payment terms contained in the invoices it submitted in its response. The Commission accepted this and made a decision to consider this adjustment for purposes of its final determination. The Applicant states that HK Scan indicated that there are no differences between the products sold in the Denmark and the products exported to SACU. The Commission noted that this statement was made with reference to the product and not the packaging of the product as stated by the Applicant.

Comments by HK Scan on the Commission's essential facts letter

HK Scan stated that it provided a cost build up by month as there can be significant variation in the cost for each month. It requested that the sales below cost assessment be conducted using the cost build by month. Sales should be compared to the costs for each month when the transaction occurred. Only sales made in that month at prices that were below the cost incurred during that month could be regarded as having been made at a loss. HK scan made a

request that the Commission use the monthly cost build up to assess if sales were made in the ordinary course of trade.

HK Scan further stated that there is a difference in the level of trade for products sold in SACU and the domestic market. To perform a fair comparison between the export price and the normal value, due allowances should be made for the level of trade that affects price comparability. When we calculated our dumping margin, we compared products on the same level of trade. Sales through different channels follow different pricing patterns.

Commission's Consideration

The Commission noted the comments submitted by HK Scan. However, it is the practice of the Commission to analyse the average cost and price build-up for the 12-month period under investigation for dumping and not on a per month basis. Furthermore, HK Scan did not provide the Commission with substantive reasons for the Commission to detract from its normal practice. The Commission made a final determination not to analyse HK Scan's cost and price build-up on a per month basis.

The Commission also noted that HK Scan failed to adequately demonstrate that the level of trade adjustment affected price comparability at the time of setting the price. The Commission made decision not to allow this adjustment for purposes of its final determination.

Dumping Margin

The weighted average dumping margin for HK Scan was calculated to be 7.75%.

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

It is the general policy of the Commission to impose separate anti-dumping duties on specific exporters that responded to the questionnaire, and in addition, a residual duty against the country in question, to cater for other

possible manufactures of the subject product who might also have exported the subject product to the SACU, but did not participate in the investigation.

On the basis above, it is therefore proposed that the Commission makes a final determination to use the information from HK Scan to calculate the residual duty for Denmark. Using this information, a residual dumping margin of 67.4% was calculated for Denmark.

4.4 METHODOLOGY IN THIS INVESTIGATION FOR IRELAND

MANOR FARM

Normal value

Manor Farm sold drumsticks, frozen leg quarters, frozen thighs and frozen wings in the domestic market. Sales for leg quarters, thighs and drumsticks were all less than 5% of the export volumes, these normal values were constructed. Sales for wings were made above cost, as such domestic sales were used for the normal value.

Taking all comments received into account, the Commission made a final determination to allow the adjustments claimed by Manor Farm for packaging costs for purposes of its final determination. The Commission made a final determination not to allow the adjustments claimed for cost of payment terms and the delivery as these adjustments could not be verified.

Export price

Manor Farm exported frozen drumsticks, frozen leg quarters, frozen thighs and frozen wings to the SACU.

Taking all comments received into account, the Commission made a final determination to allow the adjustments claimed by Manor Farm for packaging costs and cost of payment terms for purposes of its final determination.

Comments by the Applicant on the Commission's essential facts letter

The Applicant stated that Manor Farm also requested an adjustment to normal value for discounts and rebates, which the Commission was unable to verify. As such, the Applicant submits that the Commission should not allow this adjustment.

Commission's consideration

The Commission noted that the essential facts letter states that the Commission is considering only allowing the cost of packaging adjustment claimed by Manor Farm. The adjustment on discounts and rebates was not allowed, as it could not be verified.

Dumping Margin

The weighted average dumping margin for Manor Farm was calculated to be 2.49%.

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

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

On the basis above, it is therefore proposed that the Commission makes a final determination to use the information from Carton Brothers T/A Manor Farm to calculate the residual duty for Ireland. Using this information, a residual dumping margin of 37.52% was calculated for Ireland.

4.5 METHODOLOGY IN THIS INVESTIGATION FOR POLAND

After the Commission's preliminary determination, on 17 January 2022, Drosed and Roldrop submitted updated responses to the Commission's exporter

questionnaire. The information submitted by Drosed and Roldrob was unverifiable, based on the supporting documentation submitted.

Comments by the Drosed and Roldrob on the Commission's essential facts letter

Roldrob and Drosed stated that the process followed by the Commission allowing some exporters virtual verification meetings and requesting clarity on the items like reconciling sales values to the respondents management accounts, the allocation of cost in the cost build up as well as the reconciliation of the allocated cost management accounts would have assisted the Commission in being able to verify key aspects on the submissions made by these exporters.

Roldrob and Drosed further stated that not being allowed to clarify these key aspects with regards to their own submissions represents unequal treatment resulting in flawed verification findings.

Commission's consideration

The Commission took note of the comments submitted by Roldrob and Drosed. The Commission is of the view that Roldrob and Drosed were not treated unfairly and that the onus lies with each party to ensure that they submit accurate information and address deficiencies timeously. In light of the above, the Commission made a final determination not to accept the information submitted by Drosed and Roldrob for purposes of its final determination.

4.5.1 ANIMEX

Normal value

During the period 1 July 2019 to 30 June 2020, Animex sold frozen leg quarters, wings and drumsticks in its domestic market. None of the sales for wings were sold at a loss and as such all transactions were taken into consideration in the calculation of the normal value. For frozen leg quarters and drumsticks, more than 80 percent of all sales were sold below cost. The remaining sales for

frozen leg quarters and drumsticks constituted less than 5 percent of the volume of exports and as such the normal values were constructed.

To determine a reasonable profit, the Commission used operating profit (operating income) as a percentage of revenue for all frozen bone in portions.

Taking all comments received into account, the Commission made a final determination to allow the adjustments claimed by Animex for cost of payment terms as well as insurance for purposes of its final determination. The Commission made a final determination not to allow the adjustments claimed for packaging and inland freight as these adjustments could not be verified.

Export price

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

Taking all comments received into account, the Commission made a final determination to allow the adjustments claimed by Animex for cost of payment terms as well as insurance for purposes of its final determination. The Commission made a final determination not to allow the adjustments claimed for packaging and inland freight as these adjustments could not be verified.

Applicant's comments on the Commission's essential facts letter

The Applicant stated that the Commission should not allow the adjustments to normal value for packaging, discounts and rebates and inland freight as these could not be verified. Animex did not provide an explanation of what the inland insurance adjustment entails. The Applicant submits that it is not possible to verify the adjustment without such an explanation and as such submits that the adjustment should not be allowed.

Commission's Consideration

The Commission noted that in its response to the verification report, Animex demonstrated that the contract submitted for discounts and rebates, although

under a different name actually relates to the customer selected for verification purposes. As discounts and rebates were verifiable, the Commission made a decision to consider this adjustment in its essential facts letter. In the Commission's essential facts letter, it indicated that it was considering not allowing the adjustments claimed for packaging and inland freight as these adjustments could not be verified. The adjustment on inland insurance was verified and found to be correct. Animex provided detailed calculations as well as proof of insurance rates to allow the Commission a reasonable understanding of this adjustment.

Dumping Margin

The dumping margins calculated for frozen leg quarters, wings and drumsticks were weighted using export volumes to determine a single weighted average dumping margin. A weighted average dumping margin of 2.25 percent was calculated for Animex.

4.5.2 Drobimex

Normal value

Drobimex sold frozen leg quarters, wings and drumsticks in its domestic market. More than 80% percent of sales for 3-joint A-grade wings and all sales for prime wings were sold at a loss and as such the normal values were constructed. Sales for B-grade 3-joint wings were made above cost and as such the normal value was determined using domestic sales. None of the domestic sales of drumsticks was made at a loss and as such the domestic price was used to determine the normal value.

To determine a reasonable profit, the Commission used operating profit (operating income) as a percentage of revenue for 3-joint A-grade wings and prime wings.

Taking all comments received into account, the Commission made a final determination to allow the adjustments claimed by Drobimex for cost of

payment terms, delivery costs, packaging costs and sales commission for purposes of its final determination. The Commission made a final determination not to allow the adjustment claimed for discounts and rebates this adjustment could not be verified.

Export price

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

Taking all comments received into account, the Commission made a final determination to allow the adjustments claimed by Drobimex for cost of payment terms, packaging costs, delivery charges and sales commission for purposes of its final determination.

Comments by Drobimex on the Commission's preliminary determination

The Commission noted the comments by Drobimex stating that it noted that the constructed the normal value for 3 Joint wings, Prime wings, and leg quarters. This is because there were sales below cost of more than 80% and all sales had to be discarded for the purposes of the normal value. It stated that while this is clear, it did not agree with the profit margin used to construct the normal value. This is simply too high for any producer in Poland. Drobimex stated that the Commission used profit margins for 3 joint wings, prime wings, and leg quarters respectively based on the sales and profit analysis for 2019, which is directly linked to the 2019 cost build-up.

Drobimex further stated that in its submission it presented that the Commission should only look at the first half of the investigation period since that is the only period Poland exported to SACU.

Commission's consideration

The Commission noted that the calculation for leg quarters is based on domestic sales. The Commission noted that during desk verification and

meetings held, Drobimex and other exporters explained that given the nature of the subject product, companies do not realize high profit margins. This was verified and the Commission found that although Drobimex claims that the Commission should use the profit margin suggested by it for constructing normal value, the Commission's practice is to use the profit realised per cut. The Commission thus used the profits per cut and not the profit as suggested by Drobimex.

Drobimex also suggested that the Commission should only consider the first half of the investigation period since that is the only period Poland exported to SACU.

The Commission noted that Section 1 of the ADR define the period of dumping as the period for which it is assessed whether dumping took place. It further states that this period shall normally be 12 months and may be more, but in no case less than 6 months...".

The Commission is of the view that Drobimex did not provide any valid reasons as to why the Commission should only consider 6 months of the period of dumping. The Commission made a final determination not to detract from its usual practice and thus considers Drobimex's information for the full investigation period of dumping.

Applicant's comments on the Commission's essential facts letter

The Applicant stated that Commission should not allow the adjustments to normal value for packaging and sales commission. Drobimex stated there are no differences between the products sold in Poland and the products exported to SACU. (own emphasis) Despite this, Drobimex still claimed an adjustment for packaging and the Commission is proposing making a final determination to allow this adjustment. If there are no differences between the product sold in the domestic market and exported to SACU, then there is no reason to make any adjustment for packaging, since there is no difference that could affect price comparability.

The Applicant stated that any adjustment for sales commission is only permissible if the amount of the sales commission was known at the time of the setting of the price and if the exporter has demonstrated that, the price was adjusted because of the commission.

Commission's Consideration

The Commission noted that the Applicant states that Drobimex indicated that there are no differences between the products sold in the Poland and the products exported to SACU. This statement is made with reference to the product and not the packaging of the product as stated by the Applicant. During the meetings held with Drobimex and during desk verification it demonstrated and provided proof that sales commission was actually determined at the time of setting prices and that this commission is not based on sales volumes.

Dumping Margin

Drobimex was found not to be dumping.

4.5.3 Plukon

Normal value

During the period 1 July 2019 to 30 June 2020, Plukon sold frozen leg quarters, wings and drumsticks in its domestic market. Of the total sales for wings, over 20 percent were sold at a loss and as such only, the remaining sales were taken into consideration in the calculation for normal value. No sales were made at a loss for drumsticks and leg quarters and as such, all normal values were based on domestic sales.

Taking all comments received into account, the Commission made a final determination to allow the adjustments claimed by Plukon for cost of payment terms, packaging costs and transport costs for purposes of its final determination.

Export price

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

Taking all comments received into account, the Commission made a final determination to allow the adjustments claimed by Plukon for cost of payment terms and packaging costs for purposes of its final determination.

Dumping Margin

Plukon was found not to be dumping.

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

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

On the basis of the above, a residual dumping margin was calculated using the highest normal values for each applicable tariff subheading and the lowest export price for each applicable tariff subheading. Using this information, a weighted average dumping margin for all other exporters was calculated and amounted to 96.9%.

4.6 METHODOLOGY IN THIS INVESTIGATION FOR SPAIN

4.6.1 Disavasa

Normal value

During the period 1 July 2019 to 30 June 2020, Disavasa sold frozen wings and drumsticks in its domestic market. None of the Grade A drumsticks were

sold at a loss, while more than 20 percent of the sales of Grade B drumsticks were sold at a loss. As such all transactions were taken into consideration in the calculation for normal value. Of the total sales of joint wings and prime wings, less than 20 percent were sold at a loss. As such all transactions for wings were taken into account.

Taking all comments received into account, the Commission made a final determination to allow the adjustments claimed by Disavasa for cost of payment terms, delivery costs, and packaging costs for purposes of its final determination. The Commission made a final determination not to allow the adjustment claimed for sales workforce adjustment as it was not demonstrated to have affected the price comparability at the time of the setting of the prices.

Export price

During the period 1 July 2019 to 30 June 2020, Disavasa exported 3 joint wings, frozen prime wings, grade B drumsticks and frozen grade A drumsticks to the SACU market.

Taking all comments received into account, the Commission made a final determination to allow the adjustments claimed by Disavasa for cost of payment terms, packaging and delivery costs for purposes of its final determination. The Commission made a final determination not to allow the adjustment claimed for sales workforce adjustment as it was not demonstrated to have affected the price comparability at the time of the setting of the prices.

Applicant's comments on the Commission's essential facts letter

The Applicant stated that the Commission should not allow the adjustment to normal value for packaging. It argued that Disavasa stated that there are no differences between the products sold in Spain and the product exported to SACU.

Commission's Consideration

The Commission noted the Applicant's argument that Disavasa indicated that there are no differences between the products sold in the Poland and the products exported to SACU. The Commission noted that this statement is made with reference to the product and not the packaging of the product as stated by the Applicant.

Dumping Margin

The weighted average dumping margin for Disavasa was calculated to be 7.56%.

Comments by Disavasa on the Commission's preliminary determination

The Commission noted Disavasa's comments on the preliminary report stating that the most salient issues with the normal value is the fact that IQF products, which is not exported at all to SACU, is considered as part of the value. According to Disavasa IQF products sold on the domestic market and the bulk product that is exported to SACU are not comparable. It stated that the differences between the two is that Bulk products are packed in either 5kg or 10 kg bags, placed in a box and frozen as a single unit, whereas IQF products are placed on a conveyer belt by hand and frozen as individual products before being packed generally in 2kg bags. Disavasa stated that IQF products are more expensive than bulk products.

Commission's consideration

The Commission considered that Disavasa demonstrated the difference in domestic selling prices per kilogram for both bulk frozen and IQF products. The Commission is of the view that the selling price differences between the subject product frozen in bulk and the product frozen individually is minimal. It follows that the cost difference must be immaterial. Furthermore, the freeze type is not a determining factor in establishing if a product should be subject to this investigation. The subject product in this case is frozen bone in chicken portions and whether bulk or individually quick frozen portions, these are one

and the same product. The Commission made a final determination that bulk frozen products and IQF products are comparable.

4.6.2 Grupo An

Normal value

During the period 1 July 2019 to 30 June 2020, Grupo An sold frozen thighs, grade A wings and grade A frozen drumsticks on the domestic market. Grupo An did not sell grade B wings or drumsticks in the domestic market. All sales for frozen wings, drumsticks and thighs were made below cost. As such the normal values for all frozen bone-in products was constructed.

In determining Grupo An's reasonable profit, the Commission found that Grupo An made losses on sales of all frozen bone in portions. To come to a reasonable profit for Grupo An, the Commission used the weighted average operating profit (operating income) as a percentage of revenue for the other producers in Spain.

Grupo An claimed adjustments on normal value for cost of payment terms and packaging costs. As the normal value was constructed, no adjustments were taken into account.

Export price

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

Taking all comments received into account, the Commission made a final determination to allow the adjustments claimed by Grupo An for packaging cost for purposes of its final determination. The Commission made a final determination not to allow the adjustment claimed for cost of payment terms, as it was not verifiable.

Dumping Margin

The dumping margins calculated for frozen wings, thighs and drumsticks were weighted using export volumes to determine a single weighted average dumping margin. A weighted average dumping margin of 9.95% was calculated for Grupo An.

4.6.4 Uvesa

Normal value

During the period 1 July 2019 to 30 June 2020, Uvesa sold frozen thighs, wings and drumsticks in its domestic market. Wings constituted less than 5 percent of the volume of exports and as such the normal values were constructed. Of the total sales for frozen leg quarters, over 80 percent were sold below cost. The remaining sales for frozen leg quarters did not represent more than 5 percent of the volume of exports and as such the normal value was constructed. All sales of frozen drumsticks were made below costs, as such, the normal values were constructed.

To determine a reasonable profit the Commission used operating profit (operating income) as a percentage of revenue for all frozen bone in portions.

Uvesa claimed adjustments on normal value for cost of payment terms, delivery costs and packaging costs. As the normal value was constructed, no adjustments were taken into account.

Export price

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

Taking all comments received into account, the Commission made a final determination to allow the adjustment claimed by Uvesa for packaging costs for purposes of its final determination. The Commission made a final

determination not to allow the adjustment claimed by Uvesa for cost of payment terms, as it could not be verified.

Dumping Margin

The dumping margins calculated for frozen wings, thighs and drumsticks were weighted using export volumes to determine a single weighted average dumping margin. A weighted average dumping margin of 14.62% was calculated for Uvesa.

Methodology in this investigation for Grupo Vall Companys (Grupo Vall) in Spain

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

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

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

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

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

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

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

Commission's consideration

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

4.6.5 Avicosan

Normal value

During the period 1 July 2019 to 30 June 2020, Avicosan sold frozen wings and drumsticks in its domestic market. Avicosan did not sell frozen grade A prime yellow wings or grade B mis-cut yellow chicken wings in the domestic market, for these, the normal value was constructed. The total sales for frozen wings did not represent more than 5 percent of the volume of exports and as such, the normal value was constructed. Sales for drumsticks constituted more than 5 percent of the volume of exports and as such the normal values are based on domestic sales.

To come to a reasonable profit for Avicosan, the Commission used the weighted average operating profit (operating income) as a percentage of revenue determined for Avigal and Avidel for all frozen bone in portions.

As normal values for wings were constructed, the Commission made a final determination not to take any of the adjustments that Avicosan claimed into consideration for purposes of its final determination.

Taking all comments received into account, the Commission made a final determination to allow the adjustment claimed by Avicosan for delivery costs for purposes of its final determination. The Commission made a final determination not to allow the adjustments claimed for cost of payment terms and sales commission as these were not verifiable.

Export price

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

Taking all comments received into account, the Commission made a final determination not to allow the adjustment claimed by Avicosan for cost of payment terms for purposes of its final determination as this adjustment was not verifiable.

Dumping Margin

The dumping margins calculated for frozen wings and drumsticks were weighted using export volumes to determine a single weighted average dumping margin. A weighted average dumping margin of 13.93% was calculated for Avicosan.

4.6.6 Avidel

Normal value

During the period 1 July 2019 to 30 June 2020, Avidel sold frozen wings and drumsticks in its domestic market. Avidel did not sell frozen grade B white chicken drumettes in the domestic market and as such the normal value was constructed. In determining the normal value for frozen wings, it was found that

all sales were made at a loss and as such the normal values were constructed. Sales for drumsticks constituted more than 5 percent of the volume of exports and as such the normal values are based on domestic sales.

To come to a reasonable profit for Avidel, the Commission used Avidel's operating profit (operating income) as a percentage of revenue for all frozen-bone in portions.

As normal values for wings were constructed, the Commission made a final determination not to take any of the adjustments that Avidel claimed into consideration for purposes of its final determination.

Taking all comments received into account, the Commission made a final determination not to allow the adjustments claimed by Avidel on drumsticks for cost of payment terms and delivery for purposes of its final determination, as these were not verifiable.

Export price

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

Taking all comments received into account, the Commission made a final determination not to allow the adjustment claimed by Avidel for cost of payment terms for purposes of its final determination, as this adjustment was not verifiable.

Dumping margin

The dumping margins calculated for frozen wings and drumsticks were weighted using export volumes to determine a single weighted average dumping margin. A weighted average dumping margin of 46% was calculated for Avidel.

4.6.7 Avigal

Normal value

During the period 1 July 2019 to 30 June 2020, Avigal sold frozen wings and drumsticks in its domestic market. In determining the normal value for frozen white chicken drumsticks, it was found that the total domestic sales for frozen white chicken drumsticks did not represent more than 5 percent of the volume of exports and as such the normal value was constructed.

All sales of frozen white grade B wings were sold below cost while less than 80 percent of the frozen yellow grade B chicken wings were also sold below cost. The remaining 25 percent of frozen yellow grade B chicken wings sold above cost did not constitute 5 percent of the volumes exported to SACU. Normal values for both classes of wings were thus constructed. Sales for yellow drumsticks constituted more than 5 percent of the volume of exports and as such the normal values are based on domestic sales.

To come to a reasonable profit for Avigal, the Commission used Avigal's operating profit (operating income) as a percentage of revenue for all frozen-bone in portions.

As normal values for wings and frozen white drumsticks were constructed, the Commission considered not taking any of the adjustments that Avigal claimed into consideration for purposes of its final determination.

Taking all comments received into account, for frozen yellow drumsticks, the Commission made a final determination not to allow the adjustments claimed by Avigal for delivery costs and sales commission for purposes of its final determination, as these were not verifiable.

Export price

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

Taking all comments received into account, the Commission made a final determination not to allow the adjustment claimed by Avigal for cost of payment terms for purposes of its final determination, as this adjustment was not verifiable.

Dumping Margin

The dumping margins calculated for frozen wings and drumsticks were weighted using export volumes to determine a single weighted average dumping margin. A weighted average dumping margin of 7.87% was calculated for Avigal.

The Vall Group stated the following:

“Although they have not exported to SACU during the POI, they are an intrinsic part of the Group Vall, are fully collaborative to this investigation procedure, their data is part of the simulations of Section G of this questionnaire, and are fully capable of exporting. For that reason, they should be able to export to SACU with whatever results come to the Vall producers as a group, instead of being penalised with a mandatory new shippers’ review in the coming future.”

A group dumping margin for the Vall Group was determined to be 22.6 percent. This was determined by calculating a weighted average for all 3 slaughterhouses that exported to the SACU during the period of investigation.

Comments by the Applicant on the Commission’s essential facts letter

The Applicant stated that Torrent and Dolz should be subject to the same dumping margin. Neither Torrent nor Dolz exported the subject product to the SACU during the investigation period for dumping and as such, it believes that these producers/exporters should be subject to the same anti-dumping duty as other companies that did not export the subject product to the SACU during the investigation period for dumping or did not cooperate in this investigation.

Commission's Consideration

The Commission notes that in its preliminary determination, the Commission, based on proof submitted by Grupo Vall, accepted that the group comprising of five slaughterhouses namely; Avigal, Avicosan, Avidel, Dolz and Torrent is a single entity. As the group has clearly demonstrated that it is a single entity, the Applicant's claim that Torrent and Dolz, who are currently subject to the group dumping margin should be subject to the residual dumping margin is unreasonable.

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

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

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

COMMENTS ON INITIATION OF THE INVESTIGATION

Comments by the Brazilian Association of Animal Protein (ABPA)

ABPA stated that although the scope of this investigation is clearly defined, ABPA notes that ITAC has, for initiation purposes, calculated specific margins of dumping for each cut, instead of calculating a single margin for the product as a whole. ABPA understands that there is no legal basis in the WTO Anti-Dumping Agreement (hereinafter referred to as "ADA") for the Commission to do so. In fact, "dumping" and "margins of dumping" are defined in terms of

a "product(s)". In addition, that "product" must be understood as "product as a whole" and therefore "dumping" and "margins of dumping" could not be applied to models, types, categories, sub-groups or transactions.

APBA stated that the Commission should have calculated a unique margin of dumping for the product. It made reference to *EC – Bed Linen* and stated that the Appellate Body found it clear from the texts of Article VI:1 of the GATT 1994 and Article 2.1 of the ADA that dumping is defined in relation to a product as a whole (as defined by the investigating authority). The Appellate Body also found that “[d]umping, within the meaning of the ADA, can therefore be found to exist only for the product under investigation as a whole, and cannot be found to exist only for a type, model, or category of that product.”

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

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

Applicant’s response to ABPA

The Applicant stated that retail prices provided by the Applicant to calculate the dumping margin were the best information available to the Applicant and were based on 221 different retail prices, sourced from 9 different stores on 8 different dates. This information therefor covers a wide range of prices,

stores, and dates and the Applicant submits that this makes it sufficiently representative to use as the basis for normal value.

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

Commission's consideration

The Commission noted that the subject product of this investigation is "Frozen Bone-In portions", classifiable within 7 separate tariff subheadings, each providing for a different cut of the subject product. Although the different cuts are derived from a broiler chicken/bird and the production process is the same, the costs allocated for each portion of the bird and the sales price thereof, differ for each portion. Furthermore, these portions have different weights and are exported at different prices. There are certain cuts that were not exported to the SACU market. These cuts have been excluded from the scope of this investigation. Where more than one product model (in this investigation "cut") forms part of an investigation, it is the Commission's practice to calculate a separate margin for each model for a particular exporter and then to calculate a weighted average dumping margin for the exporter concerned, for purposes of calculating a dumping duty.

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

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

Comments by the Embassy of the Federative Republic of Brazil (the Government of Brazil)

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

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

cooperatives are subject to the assessment of PIS and COFINS under the non-cumulative regime. As a general rule, that system operates and produces the same economic effects of a value added tax (VAT), because it taxes the value added along the production chain.

Commission's consideration

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

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

With regards to dumping, the European Commission stated that the dumping margin calculation disregards any qualitative differences between white and dark meat. The domestic markets in Denmark, Ireland, Spain and Poland show a clear preference for fresh products. The Applicant confirms that practically no demand for frozen bone in portions exists in the domestic market of the four EU countries whereas there is high demand for fresh, boneless portions (breast meat mostly), and high margins are achieved with that product. The cost allocation methodology proposed by the Applicant for the constructed normal value (CNV) is inadequate. The normal value is constructed according to the weighted cost methodology, which allocates the cost of producing a broiler to the cuts of the broiler in accordance with the weight of each cut. However, due to the differences in consumer preferences, white meat, in particular breasts, achieve a much higher selling price than dark meat. Thus, in order to reflect the economic reality of the EU domestic market, for constructing the normal value, the cost allocation should be based

on the relative sales value.

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

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

Commission's consideration

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

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

Comments by the Applicant on the Commission's essential facts letter

The Applicant stated the following on the allocation of costs and their determination.

The Applicant stated that the Commission's methodology for determining whether sales of the various models of the subject product were made above or below cost is unclear. It stated that it was not clear whether costs were allocated by each producer according to the weighted cost methodology

(which allocates the cost of producing a broiler to the cuts of the broiler in accordance with the weight of each cut), the relative sales value allocation methodology (which allocates the cost of producing a broiler to the cuts of the broiler in accordance with the sales value of each cut) or on another basis.

The Applicant stated that the Anti-Dumping Agreement provides as follows:
"Sales of the like product in the domestic market of the exporting country or sales to a third country at prices below per unit (fixed and variable) costs of production plus administrative, selling and general costs may be treated as not being in the ordinary course of trade by reason of price and may be disregarded in determining normal value only if the authorities determine that such sales are made within an extended period of time in substantial quantities and are at prices which do not provide for the recovery of all costs within a reasonable period of time. If prices which are below per unit costs at the time of sale are above weighted average per unit costs for the period of investigation, such prices shall be considered to provide for recovery of costs within a reasonable period of time."

The Applicant further stated that Article 2.2.1.1 of the Anti-Dumping Agreement provides as follows:

"For the purpose of paragraph 2, costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration. Authorities shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer in the course of the investigation provided that such allocations have been historically utilized by the exporter or producer, in particular in relation to establishing appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs. Unless already reflected in the cost allocations under this sub-paragraph, costs shall be adjusted appropriately for those non-recurring items of cost which benefit

future and/or current production, or for circumstances in which costs during the period of investigation are affected by start-up operations. “(Own emphasis)

The Applicant stated that the Commission made a preliminary determination that “in most, if not all the subject exporting countries, there is a market preference of white chicken meat over dark chicken meat”. The EU agrees with this. This preference means that producers that produce white meat for consumption in countries that have a preference for white chicken meat (which includes all of the Dumping Countries, as Brazil exports a significant volume of white chicken meat to the EU) are able to charge significantly higher prices for the white chicken meat cuts than for the dark chicken meat cuts.

The Applicant submitted that the cost of production should be determined in accordance with the weighted cost methodology and not the relative sales value allocation methodology because the relative sales value allocation methodology does not reasonably reflect the costs associated with the production of the subject product as:

- the overall cost of production of chicken meat is derived from the cost of the whole chicken, and the costs (labour and factory overheads) incurred in converting the whole chicken into its saleable form;
- there is a uniform raw material input (the bird), and the same production process and costs up to a late stage of the production – where the different cuts might be separated;
- in these circumstances, the allocation of the overall production costs between the boneless white meat and bone-in portions can only rationally be performed based upon a sensible measure of underlying activity – typically weight;
- it is only by allocating the costs based on the relative weight that the proper measure of the costs of production can be determined so as to logically reflect the actual costs associated with such production;
- an allocation of the overall production costs between boneless white

meat and bone-in portions based on the relative ultimate sales value would not result in a faithful representation or a rational reflection of the actual costs of production of the boneless white meat relative to the costs of production of the bone-in portions – which in fact are indistinguishable (until a late stage of production, by which time most of the production costs have been incurred).

The Applicant also stated that in the original dumping investigation of meat fowls of the species *gallus domesticus* originating in or imported from the United States of America, the Commission's predecessor, the Board on Trade and Tariffs employed the weighted average cost allocation methodology because as a result of the particular market situation that existed, the relative sales value allocation methodology did not reasonably reflect the costs associated with the production of the subject product.

The Applicant further stated that it is important to note that the Panel in Anti-Dumping and Countervailing Duty Measures on broiler products from the United States found that neither of the two cost allocation methodologies, namely the weighted average cost allocation methodology and relative value methodology, were inherently unreasonable. The Chinese authorities employed the weighted cost methodology.

Commission's Consideration

The cost of production was based on the total production cost per cut, this would be the sum of the total production costs as well as the SG and A costs per cut. It is important for the Commission to note that it is the practice of the subject product costs to be allocated based on the net realisable value. Portions that are sold at higher prices attract a higher cost allocation percentage. A weighted average cost allocation method could potentially skew the reality of the actual costs of production resulting in a greater percentage of sales made below cost.

Furthermore, the determination of the sales below cost test was based on a

transaction-by-transaction basis.

Comments by the ABPA on the Commission's essential facts letter

ABPA stated that the Commission failed to explain the calculation concerning the “all others” rate, which remains the same as the preliminary determination – even with all changes since then. The commission did not observe the ceiling for the “all others” rate, which prevents investigation authorities from exceeding the weighted average margin of dumping established. Article 9.4 of the ADA states: when the authorities have limited their examination in accordance with the second sentence of paragraph 10 of Article 6, any anti-dumping duty applied to imports from exporters or producers not included in the examination shall not exceed:

- (i) the weighted average margin of dumping established with respect to the selected exporters or producers or,
- (ii) where the liability for payment of anti-dumping duties is calculated on the basis of a prospective normal value, the difference between the weighted average normal value of the selected exporters or producers and the export prices of exporters or producers not individually examined, provided that the authorities shall disregard for the purpose of this paragraph any zero and de minimis margins and margins established under the circumstances referred to in paragraph 8 of Article 6. The authorities shall apply individual duties or normal values to imports from any exporter or producer not included in the examination who has provided the necessary information during the course of the investigation, as provided for in subparagraph 10.2 of Article 6.

ABPA stated that in US – Anti-Dumping and Countervailing Duties (Korea) it was stated that a “ceiling is to be established [...] seek[ing] to prevent the exporters, who were not asked to cooperate in the investigation, from being prejudiced by gaps or shortcomings in the information supplied by the investigated exporters”. Subparagraph (i) of Article 9.4 sets out the general rule that the relevant ceiling is to be established by calculating a ‘weighted average margin of dumping established’ with respect to those exporters or producers who were ‘selected’ or investigated. However, this general rule is

qualified by the proviso that, 'for the purpose of this paragraph', investigating authorities 'shall disregard', first, zero and de minimis margins and, second, 'margins established under the circumstances referred to in paragraph 8 of Article 6'. Thus, the provision constrains the discretion of investigating authorities in two ways: first, by imposing a ceiling that the 'all others' rate 'shall not exceed'; and, second, by requiring investigating authorities to disregard, for the purposes of that paragraph, any zero, de minimis, and 'facts available' margins. By requiring investigating authorities to disregard 'facts available' margins, Article 9.4 'seeks to prevent the exporters, who were not asked to cooperate in the investigation, from being prejudiced by gaps or shortcomings in the information supplied by the investigated exporters'.

ABPA stated that in the same dispute, it was also noted that despite the margins being calculated based on facts available, it did not cease the applicability of Article 9.4. We note that although Article 9.4 prohibits the use of certain margins in the calculation of the ceiling for the 'all others' rate, 'it does not expressly address the issue of how that ceiling should be calculated in the event that all margins are to be excluded from the calculation, under the prohibitions'. However, nothing in the text of Article 9.4 indicates that the provision ceases to be applicable in a situation where all rates established by the investigating authority are either zero, de minimis, or based on facts available. In the absence of such a limitation in the text of Article 9.4, Article 3.2 of the DSU prevents us from 'add[ing] to or diminish[ing] the rights and obligations provided in the covered agreements'. We therefore disagree with the United States that Article 9.4 of the Anti-Dumping Agreement is 'inoperative' in light of the facts and circumstances of the present case.

ABPA concluded that the commission should have established the "all others" rate as a weighted average margin of dumping imposed.

Commission's Consideration

It is the general policy of the Commission to use the highest verified ex-factory normal value and the FOB import price obtained from SARS statistics. The

methodology used for the calculation of the residual dumping margin was provided in both the preliminary report as well as the essential facts letter. The ABPA has been advised in prior communication that the information used to calculate the residual duty contains confidential information belonging to Brazilian exporters.

4.7 SUMMARY - DUMPING

Brazil

The dumping margins for Brazil were calculated as follows:

Tariff subheading	Country	Company	Margin of dumping as a % of export price
0207.14.9	Brazil	Agroaraçá	39%
0207.14.9	Brazil	Agrosul	16%
0207.14.9	Brazil	Avivar	35%
0207.14.9	Brazil	Aurora	17%
0207.14.9	Brazil	C Vale	-3.32%
0207.14.9	Brazil	Copacol	28.3%
0207.14.9	Brazil	Jaguafrangos	18.18%
0207.14.9	Brazil	Pif Paf	3.31%
0207.14.9	Brazil	Seara	-0.07%
0207.14.9	Brazil	Zanchetta	8%
0207.14.9	Brazil	All other	265.1%

Denmark

The dumping margins for Denmark were calculated as follows:

Tariff heading	Country	Company	Margin of dumping as a % of export price
0207.14.9	Denmark	HK Scan	7.75%
0207.14.9	Denmark	All other exporters	67.4%

Ireland

The dumping margins for Ireland were calculated as follows:

Tariff heading	Country	Company	Margin of dumping as a % of export price
0207.14.9	Ireland	Carton Brothers T/a Manor Farm	2.49%
0207.14.9	Ireland	All exporters	37.52%

Poland

The dumping margins for Poland were calculated as follows:

Tariff heading	Country	Company	Margin of dumping as a % of export price
0207.14.9	Poland	Animex	2.25%
	Poland	Drobimex	-7%
	Poland	Plukon	-29%
	Poland	All other exporters	96.9%

Spain

The dumping margins for Spain were calculated as follows:

Tariff heading	Country	Company	Margin of dumping as a % of export price
0207.14.9	Spain	Disavasa	7.56%
0207.14.9	Spain	Grupo An	9.95%
0207.14.9	Spain	Uvesa	14.62%
0207.14.9	Spain	Grupo Vall	22.6%
0207.14.9	Spain	All other exporters	85.8%

For the purpose of its final determination, the Commission, after considering all the relevant comments from interested parties, found that the subject product originating in or imported from Brazil, Denmark, Ireland, Poland and Spain is being dumped onto the SACU market.

5. MATERIAL INJURY

5.1 DOMESTIC INDUSTRY – MAJOR PROPORTION OF PRODUCTION

The following injury analysis in this submission is based on information provided by the following producers: County Fair, a division of Astral Operations Limited (“Astral County Fair”); Festive, a division of Astral Operations Limited (“Astral Festive”); Goldi, a division of Astral Operations Limited (“Astral Goldi”); Afgri Poultry (Proprietary) Limited, t/a Daybreak Farms (“Daybreak”); Grain Field Chickens Proprietary Limited (“Grain Field”); RCL Foods Consumer Proprietary Limited (“RCL Foods”); Crown Chickens Proprietary Limited t/a Sovereign Foods, which is a subsidiary of Sovereign Food Investments Proprietary Limited (“Sovereign”); and Supreme Poultry Proprietary Limited (“Supreme”), which constitute over 60 percent of SACU production. The SACU production is based on frozen bone-in chicken portions produced from 01 July 2019 to 30 June 2020.

Commission’s consideration:

The Commission considered that the updated information that was provided by the Applicant indicates that the participating producers’ production volume accounts for over 60% of the total SACU production by volume. The Applicant indicated that during its preparation for the EU-SADC EPA arbitration on the safeguard measure imposed on the subject product, it managed to obtain more accurate information for the number of broilers slaughtered in Botswana, Lesotho, Namibia and eSwatini from the Food and Agriculture Organization Corporate Statistical Database (“FAOSTAT”). According to the Applicant the data indicated that the production in these countries is significantly less than was previously believed (less than 5% of South African production).

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

5.2 MATERIAL INJURY ANALYSIS

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

The Commission noted that the alleged dumped imports are causing material injury and that there is a threat of material injury. The Applicant submitted information for the period 1 July 2017 – 30 June 2020 to substantiate its claim.

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

The Commission further noted that imports of the subject product from Poland were banned from February 2020, following an outbreak of highly pathogenic avian influenza, which led to a reduction in import volumes of the subject product during the period July 2019 to June 2020, but this is expected to reverse as the pandemic abates and the global economy improves and trade normalises and the outbreak of highly pathogenic avian influenza end and the import ban is lifted.

The Commission also considered that there was an increase in the ordinary customs duties, implementation of EU safeguard duties and an import ban on imports from the EU. These factors contributed to the decrease in imports in this part of the period of investigation.

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

periods July 2017 to June 2018 and July 2018 to June 2019.

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

The Commission made a final determination that there are objective grounds (namely the COVID-19 and highly pathogenic avian influenza outbreaks) that justify the Commission focusing on July 2017 to June 2018 and July 2018 to June 2019 in its evaluation of material injury and causation in the present investigation. Despite these extraordinary factors, most of the injury factors were still present during the entire period of investigation for injury.

Comments by Aurora to the Commission's essential facts letter

Aurora stated that in its comments to the preliminary determination, it has questioned the fact that, in this investigation, the injury period of analysis does not coincide with the dumping period of analysis. However, not only did the Commission fail to consider Aurora's arguments on that respect in the essential facts letter, but the Commission also continued to affirm that less importance would be placed on the 2019/2020 period (which reduced the injury period of

analysis to 2 years, which goes against the recommendation by the Committee on Anti-Dumping Practices 23).

Applicant's response to the Commission's essential facts letter

The Applicant agrees with the Commission's confirmation of its preliminary determination that the period 1 July 2019 to 30 June 2020 was an extraordinary period due to the Covid-19 pandemic and lockdowns as well as the ban on imports of the subject products from parts of Europe, particularly Poland, as a result of avian influenza. The Applicant also agrees with the Commission's proposed final determination to place more emphasis on the period 1 July 2018 to 30 June 2019 as opposed to 1 July 2019 to 30 June 2020 in making its final determination on material injury.

Commission's consideration:

The Commission made a final determination to place less reliance on the July 2019 to June 2020 financial period, as trade in this period was of an unusual nature, when making a determination of material injury and causality.

5.3 UPDATED MATERIAL INJURY ANALYSIS AT 8-DIGIT SUBHEADING

The Commission considered the request by the interested parties that the Applicant provide pricing information at an 8-digit tariff subheading level. Based on its evaluation of the comments received, the Commission requested the Applicant to provide pricing information per cut at an 8-digit tariff subheading level. The Applicant provided the Commission with the requested information on 04 April 2022 and the information was verified from 05 to 08 April 2022.

During the preparation of the above information, the Applicant discovered a number of errors in the original submission to the Commission and those errors were also corrected during the process.

The corrections were made at the individual level of the participating producers and the consolidated Application was also corrected, where applicable.

5.4 CUMULATIVE ASSESSMENT

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

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

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

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

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

5.5. IMPORT VOLUMES

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

Tariff heading: 0207.14.9: Frozen bone in portions

Country	July 2017 – June 2018	July 2018 – June 2019	July 2019 - June 2020
Brazil	121 662 795	86 534 088	39 925 347
Denmark	20 503 446	21 757 179	14 250 710
Ireland	15 636 112	16 822 202	20 545 453
Poland	0	30 609 616	21 086 562
Spain	0	7 919 368	8 679 380
Total dumped imports	157 802 353	163 642 552	104 487 452
Other imports	95 115 108	95 743 474	93 495 3388
Total imports - kg	252 917 461	259 385 927	197 982 840

Tariff heading 0207.14.93: Leg Quarters

Country	July 2017 - June 2018	July 2018 - June 2019	July 2019 - June 2020
Brazil	98 630 113	72 482 349	31 139 962
Denmark	11 690 757	13 402 446	8 729 799
Ireland	11 072 179	1 1563 075	13 671 077
Poland	0	19 608 601	13 314 012
Spain	0	3 463 094	3 292 149
Total dumped imports	121 393 049	120 519 565	70 146 999
Other imports	61 793 667	71 364 064	70 932 030
Total imports - kg	18 3186 717	194 883 630	141 079 028

Tariff heading 0207.14.95: Wings

Country	July 2017 - June 2018	July 2018 - June 2019	July 2019 - June 2020
Brazil	7 237 780	2 161 165	2 142 037
Denmark	5 150 510	3 381 925	2 588 842
Ireland	1 621 054	2 157 170	3 312 870
Poland	0	8 883 535	6 284 292
Spain	0	2 806 507	2 930 559
Total dumped imports	14 009 343	19 390 302	17 258 600
Other imports	7 739 674	2 358 922	946 613
Total imports - kg	21 749 016	21 749 223	18 205 214

Tariff heading 0207.14.96: Breast

Country	July 2017 - June 2018	July 2018 - June 2019	July 2019 - June 2020
Brazil	3 990	0	27 495
Denmark	0	0	0
Ireland	0	0	0
Poland	0	0	0
Spain	0	0	0
Total dumped imports	3 990	0	27 495
Other imports	144 213	134 645	788 825
Total imports - kg	148 204	134 645	816 320

Tariff heading 0207.14.97: Thighs

Country	July 2017 - June 2018	July 2018 - June 2019	July 2019 - June 2020
Brazil	55 320	12 226	6285
Denmark	2 485 529	3 153 106	887215
Ireland	1 565 457	1 370 760	1333442
Poland	0	0	0
Spain	0	254 340	210 520
Total dumped imports	4 106 306	4 790 432	2 437 462
Other imports	2 850 649	2 120 668	2 120 668
Total imports - kg	6 956 955	6 512 273	4 558 130

Tariff heading 0207.14.98: Drumstick

Country	July 2017 - June 2018	July 2018 - June 2019	July 2019 - June 2020
Brazil	9 683 595	5 390 300	744 515
Denmark	493 663	565 030	1 229 914
Ireland	939 941	1 519 247	2 061 744
Poland	0	2 0364 81	1 461 258
Spain	0	1 326 155	2 246 152
Total dumped imports	11 117 198	10 837 213	7 743 583
Other imports	20 151 089	15 974 320	19 011 709
Total imports - kg	31 268 287	26 811 533	26 755 292

Tariff heading 0207.14.99: Other

Country	July 2017 - June 2018	July 2018 - June 2019	July 2019 - June 2020
Brazil	6051997	6 488 048	5 865 053
Denmark	655988	1 164 932	814 940
Ireland	437481	211 950	166 320
Poland	0	81 000	27 000
Spain	0	69 270	0
Total dumped imports	8 015 682	8 015 200	6 873 313
Other imports	1 189 682	1 189 682	484 368
Total imports - kg	9 530 592	9 204 882	7 357 681

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

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

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

Commission's consideration:

From the tables above, total dumped imports increased by 3.7 per cent from the 2018 FY to the 2019 FY, but decreased by 36.15 percent from the 2019 FY to the 2020 FY. There was a decrease of 33.79 per cent in dumped imports during the injury period ending June 2020. Although the tables above show a decrease in dumped imports in the 2020 financial year, the Commission took into account that this could be because of an increase in the ordinary customs duties, EU safeguard duties, and the import ban on imports from the EU. Furthermore, the decrease in imports could also be attributed to the worldwide lock down periods as a result of COVID which first emerged in mid-November 2019 which forced most countries to close off borders for international trade. The Commission, in making its decision, placed less reliance on the imports in the 2020 financial period as trade in this period was of unusual nature.

Comments by the Association of Poultry Processors and Poultry Trade in EU countries (AVEC)

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

Commission's consideration:

Avec, in making its comments on behalf of the four EU countries subject to this investigation (Denmark, Ireland, Poland and Spain), stated that imports from these countries decreased over the injury period being 1 July 2017 to 30 June 2020.

However, Avec, in its analysis failed to consider that imports increased during the period ending June 2019 and that imports during the injury period from 1 July 2019 to 30 June 2020 cannot be considered to have occurred in the business as usual manner due to extended worldwide lock down periods as a result of Covid-19 which first emerged in mid-November 2019 forcing most countries to close off borders for international trade. Furthermore, Poland did not export the subject product in the second half of the 2020 injury period due to a bird flu outbreak in 2019.

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

When looking at the data in the injury period 1 July 2018 to June 2019 there is an increase in imports and in addition, Spain and Poland began exporting the

products subject to this investigation to the SACU market. The decrease in imports from the four EU countries in 2019/2020, despite the factors stated above, was not significant enough to conclude that the SACU industry did not suffer material injury as a result of dumped imports originating in the EU in particular during the period July 2017 to June 2019.

The Government of Spain's response to the Preliminary report

The Government of Spain stated that it does not agree with the exclusion of the 2019/2020 injury period due to the corona virus crisis. Although it could have partially influenced the evolution of imports this circumstance would be confined only to the last 3 months of the POI. It further stated that there were reasons other than Covid-19 such as increases in customs and the imposition of a bilateral safeguard measure and that these do not invalidate the fact that imports have descended and the decision to disregard the last year of the period of investigation is not justified.

The Government of Spain also stated that due to the reasons stated above it is clear that the first requirement established by the ADA to impose anti-dumping measure, that is, significant increase in dumped imports, has not been met.

Applicant's response to the Government of Spain

The Applicant stated that the ADA does not require that the volume of dumped imports must increase during the period of investigation. Article 3.2 of the Anti-Dumping Agreement instead requires an investigating authority to take into account whether there has been a significant increase in dumped imports. This is only one of several factors, which the authorities must take into account (in determining causation). Article 3.2 expressly provides "No one or several of these factors can necessarily give decisive guidance".

The Applicant also stated that it is also important to note that the investigation was not initiated solely on the basis of material injury, but also on the basis of threat of material injury to the SACU industry. The absence of a historic increase in imports does not preclude a finding that these imports pose a threat of

material injury to the SACU industry.

The Applicant stated that imports of the subject product from the subject countries increased in absolute terms and relative to SACU consumption and production in FY18 (July 2017 to June 2018) and FY19 (July 2018 to June 2019) and accounted for more than half of all imports of the subject products through the period of investigation. It stated that import volumes of the subject product from Spain during FY2019 (from 0kg to 7,919,368kg) and an increase of 760 012 kg or 9.6 percent in FY2020 (from 7,919,368 kg to 8,677,836kg). This has continued to increase after the end of the period of investigation for injury and imports for FY21 were higher than in FY2020. The Applicant stated that a large part of FY20 was impacted both by Covid-19 as well as the Highly Pathogenic Avian Influenza ("HPAI") (in relation to Poland), imports of the subject product from Poland were banned on 3 January 2020, due to an outbreak of avian influenza, i.e. for the 12 months of the period FY2020 (July 2019 to June 2020).

Commission's consideration:

It is important to note that the Government of Spain incorrectly states that the 2019/2020 FY has been excluded from the analysis. The Government of Spain admits that Covid-19 did influence the evolution of imports. The Commission did not exclude 2019/2020 from its analysis, but made a decision to place less reliance on this period due to exceptional trade circumstances. The Commission decided to continue placing less reliance on the 2019/2020 period due to its exceptional trade circumstances for purposes of its final determination.

Comments by the European Commission (EU) on the Commission's essential facts letter

The EU stated that according to Article 3.1 of ADA, the investigating authority shall consider if there has been a significant increase of dumped imports. However, in the present case, allegedly dumped imports decreased significantly, both in absolute and relative terms.

The EU also stated that this is confirmed by the essential facts letter (EFL). The

total dumped imports decreased by 33,78% over the POI, and the import share decreased by 36%. It is noteworthy that the imports from other origins remained roughly the same, slightly increasing for certain cuts of brown meat.

The EU further stated that the Commission does not address the general decrease of imports of most of the cuts in the EFL. Nevertheless, the imports have decreased significantly and thus, the most important condition for the imposition of any measure is not fulfilled.

Commission’s consideration:

As previously discussed and at great length the imports did decrease significantly in the last year of the POI. The Applicant made a solid case that the imports decreased as a result of the Covid-19 pandemic and the ban on the imports from some EU countries as a result of the Avian influenza (AI) that was detected in those countries. The lockdown period and the AI are temporary in nature and it is believed that when trade is back to normal the imports of the subject product will increase.

5.5 EFFECT ON DOMESTIC PRICES

5.5.1 Price Undercutting and price disadvantage

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

(a): Price undercutting: Frozen Bone-In portions (0207.14.9)

Price Undercutting%	July 2017- June 2018	July 2018- June 2019	July 2019- June 2020
Brazil	100	73	51
Denmark	100	90	-107
Ireland	100	103	7
Poland		100	145
Spain		100	56

(b): Price undercutting: Frozen Leg Quarters (0207.14.93)

Price Undercutting	July 2017- June 2018	July 2018- June 2019	July 2019- June 2020
Undercutting %			
Brazil	100	83	37
Denmark	100	96	26
Ireland	100	122	57
Poland		100	82
Spain	100	100	69

(c): Price undercutting: Frozen Wings (0207.14.95)

Price Undercutting	July 2017- June 2018	July 2018- June 2019	July 2019- June 2020
Undercutting %			
Brazil	100	257	456
Denmark	100	157	149
Ireland	100	84	64
Poland		100	81
Spain		100	83

(d): Price undercutting: Frozen Breasts (0207.14.96)

Price Undercutting	July 2017- June 2018	July 2018- June 2019	July 2019- June 2020
Undercutting %			
Brazil	100	0	-13

(e): Price undercutting: Frozen Thighs (0207.14.97)

Price Undercutting	July 2017- June 2018	July 2018- June 2019	July 2019- June 2020
Undercutting %			
Brazil	100	311	74
Denmark	100	84	-33
Ireland	100	154	-6
Poland			
Spain		100	49

(f): Price undercutting: Frozen Drumsticks (0207.14.98)

Price Undercutting	July 2017- June 2018	July 2018- June 2019	July 2019- June 2020
Undercutting %			
Brazil	100	75	65
Denmark	100	90	114
Ireland	100	106	69
Poland		100	96
Spain		100	78

(g): Price undercutting: Frozen Other (0207.14.99)

Price Undercutting	July 2017-June 2018	July 2018-June 2019	July 2019-June 2020
Undercutting %			
Brazil	100	933	1,275
Denmark	100	-20	-93
Ireland	100	391	-24
Poland		100	1,020
Spain		100	0

5.5.2 Price depression

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

Table 5.5.2: Price depression

	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
Ex-factory price per unit (the Participating Producers) (0207.14.9)	100	98	105
Ex-factory price per unit (the Participating Producers) (0207.14.93)	100	102	106
Ex-factory price per unit (the Participating Producers) (0207.14.95)	100	103	107
Ex-factory price per unit (the Participating Producers) (0207.14.96)	100	97	89
Ex-factory price per unit (the Participating Producers) (0207.14.97)	100	98	93
Ex-factory price per unit (the Participating Producers) (0207.14.98)	100	102	110
Ex-factory price per unit (the Participating Producers) (0207.14.99)	100	101	106

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

Commission's consideration:

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

5.5.3 Price suppression

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

Table 5.5.3 (a): Price suppression (Frozen bone in portions - 0207.14.9)

	July 2017 - June 2018	July 2018 - June 2019	July 2019 - June 2020
Ex-factory price per unit (R/kg)	100	98	105
Production cost per unit (R/kg)	100	105	114
Gross profit per unit (R/kg)	100	58	56
Gross profit percentage (%)	100	59	53
Production cost as a % of selling price (%)	100	107	108

Table 5.5.3 (b): Price suppression (Frozen Leg Quarters - 0207.14.93)

	July 2017 - June 2018	July 2018 - June 2019	July 2019 - June 2020
Ex-factory price per unit (R/kg)	100	102	106
Production cost per unit (R/kg)	100	105	114
Gross profit per unit (R/kg)	100	90	78
Gross profit percentage (%)	100	89	74
Production cost as a % of selling price (%)	100	103	108

Table 5.5.3 (c): Price suppression (Frozen Wings - 0207.14.95)

	July 2017 - June 2018	July 2018 - June 2019	July 2019 - June 2020
Ex-factory price per unit (R/kg)	100	103	107
Production cost per unit (R/kg)	100	105	114
Gross profit per unit (R/kg)	100	99	96
Gross profit percentage (%)	100	96	90
Production cost as a % of selling price (%)	100	103	107

Table 5.5.3 (d): Price suppression (Frozen Breasts - 0207.14.96)

	July 2017 - June 2018	July 2018 - June 2019	July 2019 - June 2020
Ex-factory price per unit (R/kg)	100	97	89
Production cost per unit (R/kg)	100	105	114
Gross profit per unit (R/kg)	100	42	-70
Gross profit percentage (%)	100	43	78
Production cost as a % of selling price (%)	100	109	103

Table 5.5.3 (e): Price suppression (Frozen Thighs - 0207.14.97)

	July 2017 - June 2018	July 2018 - June 2019	July 2019 - June 2020
Ex-factory price per unit (R/kg)	100	98	93
Production cost per unit (R/kg)	100	105	114
Gross profit per unit (R/kg)	100	278	2
Gross profit percentage (%)	100	284	2
Production cost as a % of selling price (%)	100	57	123

Table 5.5.3 (f): Price suppression (Frozen Drumsticks - 0207.14.98)

	July 2017 - June 2018	July 2018 - June 2019	July 2019 - June 2020
Ex-factory price per unit (R/kg)	100	102	110
Production cost per unit (R/kg)	100	105	114
Gross profit per unit (R/kg)	100	95	101
Gross profit percentage (%)	100	93	92
Production cost as a % of selling price (%)	100	103	104

Table 5.5.3 (g): Price suppression (Frozen Other - 0207.14.99)

	July 2017 - June 2018	July 2018 - June 2019	July 2019 - June 2020
Ex-factory price per unit (R/kg)	100	101	106
Production cost per unit (R/kg)	100	105	114
Gross profit per unit (R/kg)	100	-51	-194
Gross profit percentage (%)	100	-50	184
Production cost as a % of selling price (%)	100	101	98

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

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

Commission's consideration:

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

The Government of Spain's response to the preliminary report

The Government of Spain stated that it observed that the prices of dumped imports increased over the period of injury and that these prices are higher than those of other imports. It also stated that if the impact of dumping of the dumped imports is high, then in that case, the impact of dumping must be higher since their prices are significantly lower than those of the investigated imports.

The Government of Spain stated that imports from the USA and Argentina accounted for 36 percent in 2019 and 46.12 percent in 2020. It stated that these should be taken into account as a contributory cause of the alleged injury.

Applicant's response to the Government of Spain

The Applicant stated that if the market share of the dumped imports are assessed cumulatively, the share of the market held by dumped imports increased in FY2019 (July 2018 - June 2019). Furthermore, the Spanish market share by volume increased positively from FY2018 (i.e., in FY2019). The Applicant stated that no or very little weight can be attached to the FY20 period in regard to some of the injury including sales volume and market share and the most important period for these indicators are FY2018 and FY2019.

The Applicant stated that the GoS does not appear to take into account the fact that imports of the subject product from Spain (as well as Denmark,

Ireland, Poland and other EU countries) are subject to lower import duties, and as such the price comparison they make does not truly reflect the differences in prices.

The Applicant stated that a significant portion of imports from other countries referred to are imports from the United States of America that are being imported into SACU at dumped prices and that the effect of these imports is limited by the restriction on volumes that can be imported free of anti-dumping duty. It is noteworthy that imports from the United State of America accounted for 27.3 percent of total imports in FY18, 30.03 percent in FY19 and 38.44 percent in FY20. Whereas the imports from Argentina accounted for 8.91 percent, 6.03 percent and 7.86 percent of total imports in the same period. During this same period, imports of the subject product from the subject countries accounted for 62.39 percent, 63,1 percent and 52.78 percent of total imports respectively.

Commission’s consideration:

Imports from the countries subject to investigation account for the majority of all imports throughout the period of investigation. Accordingly, even if imports from other countries increased, this does not detract from the adverse impact that such subject imports had on the domestic industry.

5.6 CONSEQUENT IMPACT OF THE DUMPED IMPORTS ON THE SACU INDUSTRY

5.6.1 Actual and potential decline in sales volumes

The following table shows the Applicant’s sales volumes:

Table 5.6.1(a): Annual Sales Volumes - Frozen Bone-In Portions (0207.14.9)

Kg	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
SACU sales volumes (the Participating Producers)	100	102	105
SACU sales volumes (Non-Participating Producers)	100	107	119
SACU sales volumes (All SACU Producers)	100	104	109

Table 5.6.1(b): Annual Sales Volumes - Frozen Wings (0207.14.91)

Kg	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
SACU sales volumes (the Participating Producers)	100	106	103
SACU sales volumes (Non-Participating Producers)	100	109	117
SACU sales volumes (All SACU Producers)	100	107	107

Table 5.6.1(c): Annual Sales Volumes - Frozen Quarter Leg (0207.14.93)

Kg	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
SACU sales volumes (the Participating Producers)	100	123	148
SACU sales volumes (Non-Participating Producers)	100	125	167
SACU sales volumes (All SACU Producers)	100	124	154

Table 5.6.1(d): Annual Sales Volumes - Frozen Wings (with Bone-In) (0207.14.95)

Kg	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
SACU sales volumes (the Participating Producers)	100	106	103
SACU sales volumes (Non-Participating Producers)	100	109	117
SACU sales volumes (All SACU Producers)	100	107	107

Table 5.6.1(e): Annual Sales Volumes - Frozen Breasts (0207.14.96)

Kg	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
SACU sales volumes (the Participating Producers)	100	90	86
SACU sales volumes (Non-Participating Producers)	100	115	91
SACU sales volumes (All SACU Producers)	100	98	88

Table 5.6.1(f): Annual Sales Volumes - Frozen Thighs (0207.14.97)

Kg	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
SACU sales volumes (the Participating Producers)	100	92	118
SACU sales volumes (Non-Participating Producers)	100	105	135
SACU sales volumes (All SACU Producers)	100	96	123

Table 5.6.1(g): Annual Sales Volumes - Frozen Drumsticks (0207.14.98)

Kg	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
SACU sales volumes (the Participating Producers)	100	98	97
SACU sales volumes (Non-Participating Producers)	100	108	105
SACU sales volumes (All SACU Producers)	100	101	99

Table 5.6.1(h): Annual Sales Volumes - Other Frozen Bone-In (0207.14.99)

Kg	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
SACU sales volumes (the Participating Producers)	100	103	90
SACU sales volumes (Non-Participating Producers)	100	110	104
SACU sales volumes (All SACU Producers)	100	105	94

Table 5.6.1(i): Annual Sales Volumes - Frozen Mixed Portions (No tariff heading)

Kg	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
SACU sales volumes (the Participating Producers)	100	101	108
SACU sales volumes (Non-Participating Producers)	100	104	122
SACU sales volumes (All SACU Producers)	100	102	112

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

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

Commission’s consideration:

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

5.6.2 Output

The following table outlines SACU industry’s output of frozen bone-in portions:

Table 6.6.2: Output

Kg	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
Production volumes (the Participating Producers)	100	101	108
Production volumes (Non-Participating Producers)	100	107	119
Production volumes (All SACU Producers)	100	103	111

The Applicant stated that while the participating producers increased their production volume during the period of investigation for Injury, continued high volumes of imports of the subject product is expected to cause the participating producers to reduce their production volume. A decrease in production volume will decrease their capacity utilisation, denying them the opportunity to achieve economies of scale (and thus improve efficiency and profitability) and risking further reductions in employment. The Applicant stated that if anti-dumping duties are imposed, the flood of unfairly priced dumped imports will be stemmed, allowing the participating producers to increase their production volumes and improve their capacity utilisation, which will improve their profitability and ensure the sustainability of their operations.

Commission’s consideration:

The table above indicates a slight increase in production due to there being a higher demand as a result of decreased imports. The Applicant did not suffer material injury in the form of production during the period injury based on the above data.

5.6.3 Profit

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

Table 5.6.3: Profit

	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
SACU sales volumes (the Participating Producers) (KG)(indexed)	100	102	105
Total gross profit (the Participating Producers) (Rand)(indexed)	100	61	59
Per Unit Gross Profit (the Participating Producers) (R/kg) (indexed)	100	60	56
Gross Profit Margin (the Participating Producers) (%) (indexed)	100	61	53
Total Net Profit (the Participating Producers) (R) (indexed)	100	-20	-10
Per Unit Net Profit (the Participating Producers) (R/kg) (indexed)	100	-20	-10
Net Profit Margin (the Participating Producers) (%) (indexed)	100	-20	-9

The Applicant stated that profitability is an important injury factor, especially where profits are declining. Profit should be considered on an EBIT (Earnings Before Interest and Tax) basis. The Applicant experienced injury in the form of significantly decreased profitability (both gross and net) in FY2019 (July 2018 to June 2019) and FY2020 (July 2019 to June 2020).

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

Commission's consideration

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

5.6.4 Market share

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

Table 5.6.4(a): Market Share by volumes - Frozen Bone-In Portions (0207.14.9)

Market share by volume Kg	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
SACU Sales Volume (the Participating Producers)	100	102	105
SACU Sales Volume (other SACU Producers)	100	107	119
SACU Sales Volume (All SACU Producers)	100	104	109
Import volume			
Total Dumped Imports	157,802,353	163,642,452	104,487,452
Other Imports	95,115,108	95,743,474	93,495,387
Total Imports	252 917 461	259 385 927	197 982 840
Total SACU Market Volume (kg) (redacted)	Positive	Positive (Increased from FY2018)	Positive (Increased from FY2018, decrease from FY2019)
Market Share by Volume (the Participating Producers) (%) (redacted)	Positive	Positive (Decreased from FY2018)	Increased from FY2018, decrease from FY2019
Market Share by Volume (non- Participating Producers)	Positive	Positive (Decreased from FY2018)	Positive (Increased from FY2018, increased from FY2019)
Market Share by Volume (Non-Participating Producers) (%) (redacted)	Positive	Positive (Increased from FY2018)	Positive (Increased from FY2018, increased from FY2019)
Market Share by Volume (All SACU Producers) (%) (redacted)	Positive	Positive (Increased from FY2018)	Positive (Increased from FY2018, increased from FY2019)
Market Share by Volume (Dumped Imports - Brazil) (%) (redacted)	Positive	Positive (Decreased from FY2018)	Positive (Decreased from FY2018, decreased from FY2019)
Market Share by Volume (Dumped Imports - Denmark) (%) (redacted)	Positive	Positive (Increased from FY2018)	Positive (Decreased from FY2018, decreased from FY2019)
Market Share by Volume (Dumped Imports - Ireland)	Positive	Positive (Increased from	Positive (Increased from

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

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

Table 5.6.4(b): Market Share by value

Market share by value (Rands)	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
SACU Sales Net Ex-Factory Value (the Participating Producers)	100	100	111
SACU Sales Net Ex-Factory Value (other SACU Producers)	100	104	125
SACU Sales Net Ex-Factory Value (All SACU Producers)	100	102	115
FOB Value in ZAR (Total Dumped Imports)	2,377,008,998	2,366,477,000	1,674,402,197
FOB Value in ZAR (Other Imports)	1,108,682,959	1,072,282,458	1,203,150,318
FOB Value in ZAR (Total Imports)	3,485,691,957	3,438,759,458	2,877,552,515
Total SACU Market Value (R) (redacted)	Positive	Positive (Increased from FY2018)	Positive (Increased from FY2018,

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

Market share by value (Rands)	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
			decreased from FY2019)

The Applicant stated that a decrease in market share held by the SACU industry is an important consideration in the determination of injury and that the Participating Producers experienced injury in the form of declining market share by volume in FY2019 (July 2018 to June 2019) and FY2020 (July 2019 to June 2020). There was a reduction in import volumes and the market share held by dumped imports during FY2020. However, this reduction is likely to be temporary. More particularly, this reduction resulted from production and logistics difficulties in export markets including reduced production shifts and global freight capacity and logistic difficulties causing significant backlogs in and around ports in importing countries, all of which has contributed to reduced global trade flows. This is expected to reverse as the pandemic abates and the global economy returns to pre-pandemic levels and practices.

The Applicant further stated that the reduction in market share held by SACU producers reduces their sales opportunities and denies them the opportunity to achieve economies of scale, which would improve efficiency and increase profit margins. It also results in either increased inventory levels or a reduction in production volumes, which would also result in a decrease in employment, and increases the pressure on SACU producers to reduce prices to compete with the imported products.

The Applicant also stated that the share of the market held by the dumped imports increased in FY2019 (July 2018 to June 2019), and the share of the market held by dumped imports from Ireland and Spain increased in FY2019 (July 2018 to June 2019) and FY2020 (July 2019 to June 2020), which trend is expected to continue, especially following the reduction in the safeguard measures imposed on imports of the subject product from, amongst other countries, Denmark, Ireland, Poland and Spain in March 2020 and March 2021. The participating producers will only be able to increase or maintain its

market share if they reduce their prices to match the lower price of dumped imports, which is unsustainable. It is expected, therefore, that the participating producers will continue to experience material injury in future.

Commission's consideration:

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

5.6.5 Productivity

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

Table 5.6.5: Productivity

	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
Total production volumes (the Participating Producers) (Kg)	100	101	108
Number of production employees (the Participating Producers) (Employees)	100	103	105
Units per production employee (the Participating Producers) (Kg/production employee)	100	98	103

The Applicant indicated that it experienced material injury in the form a decrease in production per production employee in FY2019 (July 2018 to June 2019). This injury correlates with changes in total dumped imports in FY2019 (July 2018 to June 2019) (increase in the volume of total dumped imports and increase in the market share of total dumped imports), which is indicative of a causal relationship.

The Applicant further stated that if no anti-dumping duties are imposed to stem the flood of unfairly priced dumped imports, it may be forced to reduce employment in line with the decline in production volumes in order to improve production per production employee and thereby decrease costs and improve profitability.

Commission’s consideration:

The table above indicates a slight increase in productivity. This may be due to there being a higher demand as a result of decreased imports. Based on the above table, the Applicant did not suffer material injury in the form of decreased productivity during the period injury.

5.6.6 Return on investment

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

Table 5.6.6: Return on investment - Frozen Bone-In Portions (0207.14.9)

	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
Net Assets (the Participating Producers) (Whole Company) (R) (indexed)	100	140	167
Total Net Profit (the Participating Producers) (Whole Company) (R) (indexed)	100	-20	-20
Return on Net Assets (the Participating Producers) (Whole Company) (%) (indexed)	100	-14	-6

Table 5.6.6: Return on investment - Whole Company

	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
Net Assets (the Participating Producers) (Whole Company) (R) (indexed)	100	140	164
Total Net Profit (the Participating Producers) (Whole Company) (R) (indexed)	100	-10	-46
Return on Net Assets	100	-7	-28

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

Commission’s consideration:

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

5.6.7 Utilisation of production capacity

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

Table 5.6.7(a): Capacity utilisation

	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
Production Capacity (the Participating Producers) (kg)	100	102	106
Production Volume (the Participating Producers)(kg)	100	101	108
Capacity Utilisation (the Participating Producers)(%)	100	99	102
Production Capacity (other SACU Producers)(kg)	100	107	119
Production Volume (other SACU Producers)(kg)	100	107	119
Capacity Utilisation (other SACU Producers)(%)	100	100	100

Table 5.6.7(b): Shifts per week Frozen Bone-In portions (0207.14.9)

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

The Applicant stated that as a result of, it has had significant unutilized production capacity for the subject product throughout the period under consideration and this declined further in FY2019 (July 2018 to June 2019). This material injury correlates with increases in the volume and market share of dumped imports, which is indicative of a causal relationship.

The Applicant further stated that reduced capacity utilisation means that it is not able to achieve economies of scale, which reduces their profitability and makes it difficult for it to sustain their operations. Although it has managed to maintain the same average number of shifts per week in FY2018 (July 2017 to June 2018) and FY2019 (July 2018 to June 2019) and the average number of shifts per week increased marginally in FY2020 (July 2019 to June 2020), it has been forced to reduce the number of employees per shift.

The Applicant also stated that if anti-dumping duties are imposed to stem the flood of unfairly priced dumped imports, it will be able to increase its production volume, which will improve their capacity utilisation, profitability and employment.

Commission's consideration:

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

5.6.8 Actual and potential negative effects on cash flow estimates

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

Table 5.6.8: Net Cash flow

Rands	July 2017-June 2018(FYP 2018)	July 2018-June 2019(FYP 2019)	July 2019-June 2020(FYP 2020)
Incoming Cash Flow (the Participating Producers) (Whole Company)	100	140	136
Outgoing Cash Flow (the Participating Producers) (Whole Company)	100	-144	-135
Net Cash Flow (the Participating Producers) (Whole Company)	100	3	174
Incoming Cash Flow (the Participating Producers) (Subject product)	100	136	137
Outgoing Cash Flow (the Participating Producers) (Subject product)	100	-135	-132
Net Cash Flow (the Participating Producers) (Subject product)	100	220	733

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

Commission’s consideration:

The table above indicates that the Applicant’s net cash flow increased over the period the period of investigation.

5.6.9 Inventories

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

Table 5.6.9 Inventories

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

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

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

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

5.6.10 Employment

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

Table 5.6.10: Employment figures

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

(the Participating Producers) (Whole Company) (employees) (indexed)			
Total number of production employees (the Participating Producers) (Whole Company) (Employees) (indexed)	100	103	105
Number of selling and administration employees (the Participating Producers) (Whole Company) (Employees) (indexed)	100	110	117
Total Number of Production Employees (Non-Participating SACU Producers) (Employees) (indexed)	0	0	0

The Applicant stated that despite continuing to suffer injury caused by dumped imports, it managed to increase employment in FY2019 (July 2018 to June 2019) and FY2020 (July 2019 to June 2020), demonstrating their commitment to sustainable employment. If no action is taken to remedy the material injury caused by dumped imports then it may be forced to consider reductions in employees, as they were forced to do in 2016 and 2017.

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

Commission's consideration:

The table above indicates a slight increase in direct and indirect production employees during the period of investigation. It is evident that the Applicant did not suffer material injury in the form of employment.

5.6.11 Wages

The following table provides the Applicants annual wages:

Table 5.6.11: Wages

Wages (Annual)	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
Remuneration to Direct Production Employees (the Participating Producers) (R) (indexed)	100	113	133
Number of Direct Production Employees (the Participating Producers) (employees) (indexed)	100	104	107
Annual Remuneration per Direct Production Employee (the Participating Producers) (R) (indexed)	100	109	124
Remuneration to Indirect Production Employees (the Participating Producers) (R) (indexed)	100	121	144
Number of Indirect Production Employees (the Participating Producers) (employees) (indexed)	100	110	115
Annual Remuneration per Indirect Production Employee (the Participating Producers) (R) (indexed)	100	110	126
Total Remuneration to Production Employees (the Participating Producers) (R) (indexed)	100	115	135
Total Number of Production Employees (the Participating Producers) (employees) (indexed)	100	105	108
Annual Remuneration per Production Employee (the Participating Producers) (R) (indexed)	100	109	125

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

Commission’s consideration:

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

5.6.12 Ability to raise capital or investments

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

Table 5.6.12: Ability to raise capital and investment

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

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

Commission’s consideration:

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

5.6.13 Growth

The following table shows size of the SACU market:

Table 5.6.13(a): Growth frozen Bone-In portions

Growth	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
Size of the SACU Market	Positive	Positive (Decreased from FY2018)	Positive (Increased from FY2018, decreased from FY2019)
% growth from previous year (the Participating Producers)	Confidential	Positive (Increased from FY2018)Positive	Negative (decreased from FY2018, decreased from FY2019)- 0.09%
Applicants sales volume (the Participating Producers)	100	102	105
Applicants growth % (the Participating Producers)	0	100	125
Rest of SACU producers volume	100	107	119
Rest of SACU growth %	100	104	109
Total Alleged dumped imports	157,802,353	163,642,452	104,487,452
Alleged dumped imports %	0.00%	3.70%	-36.15%
Other Imports	95,115,108	95,743,474	93,495,387
Other Imports %	0.00%	0.66%	-2.35%
Total imports	252,917,461	259,385,927	197,982,840
Total Imports %	0.00%	2.56%	-23.67%

Table 5.6.13(b): Growth (participating producers)

Growth	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
Astral County Fair			
Sales volumes	100	99	99
% Growth from prior year		100	68
Other participating producers sales volume	100	101	104
Other participating producers sales volume		100	192
Astral Festive			
Sales volumes	100	107	91
% Growth from prior year		100	-216
Other participating producers sales volume	100	100	106
Other participating producers sales volume		100	1459
Astral Goldi			
Sales volumes	100	91	100

% Growth from prior year		100	-115
Other participating producers sales volume	100	104	105
Other participating producers sales volume		100	24
Daybreak Poultry			
Subject Product			
Sales volumes	100	108	112
% Growth from prior year		100`	39
Other participating producers sales volume	100	101	103
Other participating producers sales volume		100	450
Grainfield Chickens			
Sales volumes	100	108	100
% Growth from prior year		100	-88
Other participating producers sales volume	100	101	104
Other participating producers sales volume		100	401
RCL Foods			
Sales volumes	100	100	103
% Growth from prior year		100	-1300
Other participating producers sales volume	100	102	104
Other participating producers sales volume		100	142
Sovereign Foods			
Sales volumes	100	107	119
% Growth from prior year		100	146
Other participating producers sales volume	100	101	102
Other participating producers sales volume		100	280
Supreme Poultry			
Sales volumes	100	101	110
% Growth from prior year		100	1661
Other participating producers sales volume	100	101	103
Other participating producers sales volume		100	110

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

Commission's consideration:

The tables above show growth throughout the period of investigation for the Applicant.

COMMENTS BY INTERESTED PARTIES ON MATERIAL INJURY AT INITIATION

Comments by the Danish Agriculture & Food Council (DAFC)

DAFC stated that the Applicant argues that injury has taken place but fails to demonstrate clearly, what facts claimed injury should be based on. All economic and financial variables are positive in the injury period in an indexed form. Sales volume and value have increased, and market share has gone up even more than increase in sales, which indicates an increase in total consumption and/or drop in imports. Clearly, the last component is identified in the application. It is evident that the application for imposition of anti-dumping measures against imports from Denmark is primary based on an alleged threat of material injury rather than on factual injury caused by the imports from Denmark.

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

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

constitutes a significant causation for alleged injury.

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

Commission's considerations

DAFC believes that the Applicant did not suffer material injury and that the Applicant's case has been brought on threat of material injury rather than actual material injury and as a result of that, the investigation should not have been initiated. DAFC further believes that because the Applicant allegedly only suffered a decline in profits, it has not suffered material injury.

Section 1 of the Anti-Dumping Regulations defines material injury as follows:

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

Injury is not determined on the basis of the Applicant having suffered injury across all injury factors. Material injury suffered in one or more indicators can be sufficient to claim material injury.

*Information in the Commission's possession indicates that the Applicant suffered injury in the form of a decline in profit; decline in return on investment; and increases in inventory. It should be noted that the initiation notice states that the Applicant submitted sufficient evidence and established a prima facie case to enable the Commission to arrive at a reasonable conclusion that an investigation should be initiated on the basis of dumping, material injury, and **a threat of material injury** and causality.*

With regard to imports, it should be noted that the Commission decided, for purposes of initiation of this investigation, to do a cumulative assessment of injury caused by imports from all countries under investigation. Therefore, the Commission will not consider the trend of imports by individual countries, but rather what the trend of imports from all subject countries, when cumulated, will reflect.

Comments by the Brazilian Association of Animal Protein (ABPA)

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

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

Applicant's response to ABPA

The Applicant stated that the period July 2019 to June 2020 has been characterised by unprecedented upheaval in the global economy as a result of the COVID-19 pandemic and government interventions in response thereto. This has resulted in production and logistics difficulties in both export and import markets, including reduced production shifts and global freight capacity and logistic difficulties causing significant backlogs in and around ports in importing countries, all of which has contributed to reduced global trade flows. Imports of the Subject Product from Poland were also banned from February 2020, following an outbreak of highly pathogenic avian influenza. This led to a reduction in import volumes of the Subject Product during FY2020 (July 2019 to June 2020), but this is expected to reverse as the pandemic abates and the global economy improves and trade normalises and the outbreak of highly pathogenic avian influenza end and the import ban is lifted. In addition, the termination of the safeguard duties on imports of the Subject Product from the European Union in March

2022 will lead to an increase in the Dumped Imports from the Dumping Countries. Accordingly, no or very little weight can be attached to the FY2020 (July 2019 to June 2020) period in regard to some of the injury indicators, including sales volume and market share. The most important periods for these indicators and the determination of injury are the periods when there were no extraordinary or unusual circumstances, namely, the periods FY2018 (July 2017 to June 2018) and FY2019 (July 2018 to June 2020) as well as a consideration of threat. There is nothing in this regard that prevents an authority from doing this. In fact, the panel in *China - Anti-Dumping Countervailing Duty Measures on Broiler Products from the United States, Recourse to Article 21.5 of the DSU by the United States ("China – Broiler Products (Article 21.5)")* held that: "...nothing in Articles 3.1, 3.4, 15.1, or 15.4 prevents an investigating authority from "focusing" on a part of the POI, as long as it does not ignore relevant data and arguments, and its resulting determination is one that an objective and unbiased investigating authority could reach based on the evidence and arguments before it and the explanations given." Whilst the panel in *Argentina – Definitive Anti-Dumping Duties on Poultry from Brazil ("Argentina – Poultry Anti-Dumping Duties")* held that: "In our view, there is a prima facie case that an investigating authority fails to conduct an "objective" examination if it examines different injury factors using different periods. Such a prima facie case may be rebutted if the investigating authority demonstrates that the use of different periods is justifiable on the basis of objective grounds (because, for example, data for more recent periods was not available for certain injury factors)."⁴ 4.2.6 The Applicant submits that there are objective grounds (namely the COVID-19 and highly pathogenic avian influenza outbreaks) that justify the Commission focusing on FY2018 (July 2017 to June 2018) and FY2019 (July 2018 to June 2019) in its evaluation of material injury and causation in the present investigation. Furthermore, despite this upheaval most of the injury factors were still present during the period of investigation for injury.

The Applicant stated that it has shown that during the period of investigation for injury 9 of the 15 injury indicators were present. This is a clear indication that the domestic industry was suffering material injury during the period of investigation for injury and ITAC correctly found after an objective evaluation of all listed factors that there was prima facie proof that the domestic industry was suffering material injury caused by the dumping of the Subject Products. However, ABPA goes further. It states that not only is the investigating authority required to evaluate all the listed factors, "it is necessary to pass objectively through each one of them to subsequently identify whether, in fact, the domestic injury is suffering material injury". This is incorrect and not supported by any authority. An investigating authority is not required to find that all the factors are present. It is sufficient in terms of the Anti-Dumping Regulations "in determining material injury to the SACU industry the Commission shall consider whether there has been a significant depression and/or suppression of the SACU industry's prices ... [and] shall further consider whether there have been significant changes in the domestic performance of the SACU industry in respect of ... potential injury factors" These include the list of 15 factors. The WTO Anti-Dumping Agreement specifically provides that, the "list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance". In determining whether the SACU domestic industry has suffered material injury, the Applicant notes that the panel in Korea – Anti Dumping Duties on Imports of Certain Paper from Indonesia ("Korea – Certain Paper") that: "Finally, we note that the last sentence of Article 3.2 mentions that no one or several of these three injury factors can necessarily give decisive guidance. That is, even if the IA finds certain positive trends with respect to some of these factors, it can nevertheless reach the conclusion that there is injury, provided that that decision is premised on positive evidence and reflects an objective examination of the evidence as required by Article 3.1 of the Agreement. Additionally, the investigation was not initiated solely on the basis of material injury, but also on the basis of threatened material injury to the SACU industry.

Firstly, it should be noted that the volume of Dumped Imports increased in FY2019 (July 2018 to June 2019). Although there was a decrease in the volume of Dumped Imports in FY2020 (July 2019 to June 2020), this was due to the effects of the COVID-19 pandemic, which is set out in detail in the Application. Furthermore, in determining causation, price undercutting and price disadvantage are important factors. Dumped Imports (from all countries) undercut the Participating Producers in all periods under consideration, which caused in the period of investigation for injury, continues to cause and/or threatens to cause material injury to the SACU industry. The significant dumping margins calculated by the Applicant also demonstrates causation.

ABPA also alleges that the ordinary customs duty of 62% on imports of the Subject Product from Brazil shows that these imports do not cause impact on the price of the subject product sold by the SACU domestic producers. This is also incorrect. This duty has been included in the calculation of the landed cost of imports and this landed cost still significantly undercuts the SACU domestic producers. BPP also claims that "it is also known that imports of the subject product are and will face further challenges, in addition to trade remedies and high import tariffs". The Applicant notes that a number of the policies referred to by BPP will not pose any challenge to imports (this includes the report on the impact of trade measures, a reduction in the number of tariff subheadings and import licenses) or are still being considered by the Commission (this includes the introduction of specific rather than ad valorem duties, further anti-dumping duties, rebates and an entry price system). As such, there has not been a final decision regarding any of the policies set out in the BPP Submission and there is no clear indication on the effect of these policies (if any) on Dumped Imports.

Commission's consideration:

ABPA and the Brazilian Government stated that the Applicant did not suffer material injury as the Applicant's submission indicating injury in only four of the material injury indicators. However, the Commission is mindful that

injury is not determined on the basis of the Applicant having suffered injury across all injury factors. The Commission considered all information presented in the merit submission and determined that the Applicant submitted sufficient evidence and established a prima facie case to enable the Commission to arrive at a reasonable conclusion that an investigation should be initiated on this basis of dumping, material injury, and a threat of material injury and causality.

Concerning imports from Brazil, ABPA is correct in its statement that imports from Brazil showed a decline over the period of injury, with the exception of frozen bone-in breasts and other frozen bone-in portions, which showed an increase in the same period. However, as stated above, the Commission decided, for purposes of initiation of this investigation, to do a cumulative assessment of injury caused by imports from all countries under investigation. Therefore, the Commission will not consider the trend of imports by individual countries, but rather what the trend of imports from all subject countries, when cumulated, will reflect.

Comments by the Association of Poultry Processors and Poultry Trade in EU countries (AVEC)

Avec stated that the Commission's essential fact letter clearly concludes that the applicant only experienced price depression on frozen breast and frozen thighs. These two cuts constitute a limited part of the imports into SACU from the target countries. This is supported by the fact that price undercutting is not a general observation but is limited to certain cuts, in certain periods and for certain countries. In general, the conclusion is that price undercutting has decreased significantly which has also limited the calculated price depression. These conclusions are based on re-calculation using updated information provided by the applicant. It should encourage the investigating Authority to conclude that no systematic material injury can be demonstrated and therefore no measures should be decided.

Commission's consideration:

The Commission noted Avec's view that the Applicant only experienced price depression on frozen breast and frozen thighs. However, the Commission made determination that injury is not determined on the basis of the Applicant having suffered injury across all injury factors.

Comments by Brindis Remedies CC on the Commission's Essential facts letter

Brindis Remedies stated that as regards material injury, we repeat our arguments that (a) the major proportion of the domestic industry has not been properly determined, as the way in which it was done introduced a very strong risk of distortion since the facts before ITAC, even before initiation, clearly shows that non-participating producers performed better than the participating producers, and since those other producers were never invited to participate or to submit any relevant information, and (b) as there is clearly no injury in the stated investigation period, which ended on 30 June 2020. Effectively all evidence points to a significant improvement in the state of the industry in the final year. We incorporate by reference all submission preciously made in this regard.

Comments by the Government of Brazil

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

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

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

Comments by the Commercial Office of the Embassy of the Kingdom of Spain in South Africa (Government of Spain)

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

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

The Government of Spain also stated that the main and economic financial indicators do not show an extremely harmful period of investigation situation. The petitioners maintain their sales, which rise slightly, as well as production, market share in the 2020 POI and production capacity. Only profitability and stocks show signs of a decrease. It should be noted that these indicators maintained a worse performance while decreased and prices increased.

This shows that there is no correlation between the situation of the domestic industry and imports. For this reason, we ask ITAC authorities for termination of the investigation without the application of any additional measures. The Government of Spain recalls the need to analyze the impact of all other factors which could be causing any harm to the industry and being attributed to imports. It was stated that it cannot be ruled out that the industry's problems are due to other factors such as inefficiency, lack of competitiveness and competition with other non-participating producers or with imports from other regions.

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

Applicant's response to the Government of Spain

The Applicant submits that the Anti-Dumping Agreement does not include a minimum requirement that the volume of dumped imports increase during the period of investigation. Article 3.2 of the Anti-Dumping Agreement instead requires an investigating authority to take into account whether there has been a significant increase in dumped imports. The investigating authority is not required to make a definitive determination regarding the volume of the dumped imports. It should be noted that Article 3.2 itself notes that "No one or several of these factors can necessarily give decisive guidance", meaning that even if there has not been a significant increase in imports, this does not exclude a finding of injury. It is also important to note

that the investigation was not initiated solely on the basis of material injury, but also on the basis of threatened material injury to the SACU industry. The absence of a historic increase in imports does not preclude a finding that these imports pose a threat of material injury to the SACU industry. Spain correctly notes that there was an increase in dumped imports relative to total imports in FY2019. The Applicant would also like to note that the reduction in Dumped Imports during FY2020, was a result of an unprecedented upheaval in the global economy as a result of the COVID-19 pandemic. This upheaval resulted in production and logistics difficulties in export markets, including reduced production shifts and global freight capacity and logistic difficulties causing significant backlogs in and around ports in importing countries, all of which has contributed to reduced global trade flows.

This is expected to reverse as the pandemic abates and the global economy returns to pre-pandemic levels and practices. The Government of Spain also makes several references to imports of the Subject Product from Spain. It is noted that there is no indication in the text of Article 3.2 that the analyses of volume and prices must be performed on a country-by-country basis where an investigation involves imports from several countries; and this may be done on a cumulative basis, as opposed to an individual country basis, when dumped imports originate from more than one country. Article 3.3 of the Anti-Dumping Agreement specifically provides for cumulation. Given that the SACU industry faces the impact of the dumped imports as a whole, the Applicant submits that the effects of imports will not be adequately taken into account in a country specific analysis and that the Commission consider the injurious effects of dumped imports from all countries and not from one country in particular. The Applicant submits that all the requirements of Article 3.3 of the Anti-Dumping Agreement have been met and that a cumulative assessment of the effects of imports is appropriate.

Import volumes are only one of the considerations in determining causation. The effect of dumped imports on prices is also an important determinant. A key consideration is price undercutting and Dumped Imports (from all

countries) undercut the Participating Producers in all periods under consideration and caused in the period of investigation for injury, continues to cause and/or threatens to cause material injury. The Participating Producers have also experienced Price Depression, Price Suppression, Price Disadvantage and significantly decreased profitability (both gross and net) and this is expected to continue and worsen if anti-dumping duties are not imposed. The significant dumping margins calculated by the Applicant also demonstrates causation. The Government of Spain alleges that the main economic and financial indicators do not show an extremely harmful situation and that only profitability and stocks show signs of decrease. The Applicant stated that this is incorrect. Most of injury factors were present during the period of investigation for injury.

The Government of Spain also requested the Commission to closely examine the reason for the increase in costs and alleges that the increase in wages is contradictory if the Participating Producers have been forced to lower prices as a result of intense competition from imports. The Applicant submits that there is no reason for the Commission to determine a reason for the increased costs. The test for price suppression caused by dumped imports, as set out in Article 3.2 of the Anti-Dumping Agreement, is "whether the effect of such imports is otherwise to ... prevent price increases, which otherwise would have occurred, to a significant degree." The Participating Producers' costs have increased and but for the Dumped Imports (and in particular the significant levels of price undercutting and price disadvantage), the price of the SACU like product would also have increased.

The Government of Spain alleges that the price of the Subject Product from Spain is 25% higher than imports of other origins. The Government of Spain again makes specific analysis of imports of the Subject Product from Spain. The Applicant submitted that the Commission should consider the effects of Dumped Imports cumulatively.

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

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

"Even if production capacity in Spain is not expected to increase further, chicken meat production in the EU consistently exceeds consumption.¹² This has continued in 2020 and 2021, with EU production now 13% higher than consumption.¹³ This shows that there is a clear oversupply of chicken meat in the EU and the excess production, particularly of undesired surplus dark meat portions which is exported to markets such as South Africa, is causing and threatens to cause material injury to the SACU industry. EU producers are also able to discount their exported bone-in products as they get a better price in domestic markets for more expensive breast cuts and white meat.

Given that there is little to no market in the EU for the Subject Product, increased domestic consumption of breast cuts and white meat will therefore lead to further exports of even lower priced dumped imports of the Subject

Product. This is particularly true for Spain, where exports of the Subject Product are expected to increase further, with a reported focus by the Spanish poultry industry on expansion of exports outside the EU.

The termination of the safeguard duty currently applicable to imports of the Subject Product from the European Union 12 March 2022, will also lead to increased price undercutting, which will lead to further demand for the Dumped imports.”

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

Commission’s consideration:

The comments by the Government of Spain do not contradict data showing that despite the action taken against the EU, imports of chicken portions from countries in the EU continue to be exported to the SACU market and at increased levels during part of the investigation period. Moreover, the Government of Spain tacitly acknowledges that there are several injury factors that support the Commission’s views on injury.

Although cumulated imports are relevant to a determination of injury in the present investigation, imports from Spain at a 7-digit tariff heading level indicate that contrary to the comments made by the Government of Spain, there was an increase in imports of the subject product from Spain over the period of injury.

Comments by Merlog Foods (Pty) Ltd (Merlog)

Merlog stated that it had been reported that there has been a massive material fraud committed at Daybreak Farms (Daybreak) and that the CEO and CFO are implicated. It stated that it believes that it is incumbent that the

Commission get full disclosure of this reported R 138 million fraud, to determine the nature and extent of the impact which it may have on the application submitted by SAPA. The financial effects and impact on the financial statements and information submitted in the application must be determined. If any of the implicated parties to the reported fraud had any participation in the preparation of the application and submissions the veracity thereof has to be proven, irrelevant of any verification performed.

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

Comments by Association of Meat Importers and Exporters (AMIE) and other parties

XA stated that the Applicant indicated that the ‘alleged’ R163 million fraud only affected distribution costs and therefore does not affect the injury information. It stated that it strongly disagrees with this statement. It indicated that distribution costs form part of a company’s overall costs to produce and sell the product. It there has a direct impact on the only 3 injury indicators actually showing injury:

- price suppression
- net profit
- return on investment

XA stated that if Daybreak’s information will remain as part of the consolidated application, the ‘alleged’ R163 million fraud should be added back to Daybreak's profit and that of the industry as a whole, as this is loss of profit caused by factors other than the alleged dumping. The new Daybreak and industry consolidated figures for these three injury factors should be made available and we should be provided with a reasonable

opportunity to comment. In addition, the 'alleged' R136 million fraud should be specifically considered in the causal link analysis as another factor causing injury to the industry. It is not sufficient to state that Daybreak only accounts for 5% of total SACU production. Daybreak are part of the application and the impact of the 'alleged fraud' can only be determined once the information has been updated. Even if Daybreak only accounts for 5% of the production volume, fraud is a theft of net profit, which means the full value of the fraud must be deducted from the net profit of the industry and it is not clear at all that this will only be 5%.

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

The Applicant stated that it emphasizes that the alleged R136 million fraud relates to distribution costs of Daybreak which are not part of its cost and price build-up and therefore has an immaterial impact on the information provided by it. In addition, any change to this amount will also have no material impact on the information provided by Daybreak. Again, these allegations are disputed and have not been verified by the auditors. The credentials of Schaeffer-Schmidt which produced the forensic report have also been questioned. Fin24 on the 19 May reported that "parts of Schaeffer-Schmidt's website, which is now offline, were copied from US-based FTI Consulting which says it has never heard of it."

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

The Applicant stated that the alleged fraud at Daybreak relates to distribution costs of Daybreak, which do not form part of its cost and price build-up. As all costs, prices and profits are presented at the ex-factory level, distribution costs (which are incurred after the ex-factory level) do not have any impact on the financial data submitted, including price suppression, net profit or return on investment. As such, the alleged fraud would have no impact on the information provided by SAPA. It also appears that the alleged fraud relates to the period 21 January 2020 to 10 February 2021. As the investigation period for injury for this investigation is July 2017 to June 2021, a significant portion of the alleged fraud falls outside of the investigation period for injury and the vast majority of the investigation period for injury would be unaffected if they were taken into account (which it is submitted would be incorrect). Further, it needs to be noted that, the reported allegations of Schaeffer-Schmidt relating to the alleged fraud in Daybreak are disputed and have not been verified by Daybreak's auditors. The credentials of Schaeffer-Schmidt which produced the forensic report have also been questioned. Fin24 on 19 May 2021 reported that "parts of Schaeffer Schmidt's website, which was offline, were copied from US based FTI Consulting which says it has never heard of it". There is, therefore, no basis to add back the alleged fraud to the information submitted by Daybreak or to the consolidated information. There is also no basis for considering the alleged fraud in the causal link analysis as it is not included in the injury information. The allegation of XA that "[i]t is not sufficient to state that Daybreak only accounts for 5% of total SACU production. Daybreak are part of the application and the impact of the 'alleged fraud' can only be determined once the information has been updated." is not relevant as:

- the reference to the production of Daybreak was only in relation to industry standing and not to the impact of the alleged fraud on any other figures;
- the alleged fraud relates to distribution costs that would not form part of the cost and price build-up and would not have an impact on profitability, price suppression or return on investment; and
- a significant portion of the alleged fraud falls outside of the investigation period for injury and the vast majority of the investigation period for injury

would be unaffected.

The Applicant stated that there is no need to provide "the updated Injury factors affected by the 'alleged' R163 million fraud", as requested by XA, as no injury factors have been affected by the alleged fraud.

Comments by the Association of Meat Importers and Exporters (AMIE)

AMIE stated that for products to be "assessed separately by tariff subheading" presupposes that the information is separately available for each injury factor in respect of each tariff subheading. To date, we have separate injury information by tariff subheading only in respect of the volumes of the alleged dumping, sales volumes and market share. No information is available by tariff subheading for: price depression, price suppression and price undercutting, output, profit, capacity utilisation, productivity, employment, wages, return on investment, cash flow, growth, etc. The only reasonable solution, therefore, is for the Commission to terminate the investigation and require the industry to submit specific injury information on each of the injury factors in respect of each tariff subheading.

Commission's consideration

The Commission has since requested the Applicant to provide injury information by tariff subheading. The Applicant provided the information for price depression, price undercutting, price advantage and production volumes per tariff subheading. The information provided by the Applicant was analysed and it was found that the Applicant is experiencing price material injury at the different sub-headings level as well.

Comments by the Government of Brazil on the Commission's essential facts letter

The Government of Brazil stated that the manner in which the Commission conducted the injury analysis in this procedure disregards technical standards established by Article 3 of the ADA and the WTO jurisprudence.

The Commission has not sufficiently demonstrated the injury to the domestic industry based on the indicators required by Article 3.4 of the ADA, at the same time it failed to properly analyse other potential causes of injury as determined by Article 3.5 of the ADA (such as “non-dumped” imports, imports from other sources, increase in feeding costs and the COVID-19 pandemic). It is important to recall that the Commission did not find dumping for some of the Brazilian exporters that account for a significant proportion of the Brazilian exports, therefore such volumes should not be considered among the dumped imports for the purpose of determining injury.

The Government of Brazil stated that other core elements for the injury analysis have been omitted from the ITAC’s essential facts letter, namely the criteria adopted for the calculation of unsuppressed prices and the calculation of the landed cost to obtain the price disadvantage. Such lack of transparency from the authority is impairing interested parties’ rights to due process, as they are hindered from making further analysis on these topics. Parties are lacking the necessary methodological details to allow a full comprehension of the calculations.

Commission’s consideration

The Commission should note that the methodology used to determine the price disadvantage was outlined in both the Preliminary report as well as the Commission’s essential facts letter. Various interested parties were informed that the Commission could not share the updated unsuppressed selling price nor and the calculation as these include confidential information of the corresponding importers. Furthermore, the Applicant submitted the non-confidential version of it updated selling price alongside all the other updated information.

Comments by the European Commission (EU) on the Commission’s essential facts letter

The EU stated that according to the data provided, and contrary to the claims in the EFL, the domestic industry does not seem to suffer material

injury due to subject imports.

According to the EU, all the main indicators of the domestic industry show an increasing trend as confirmed in the EFL: production +8%, market share +6%, employment +5%, productivity +3%, and investments +25%. Cash flow and return on assets also increased; wages increased. The applicant's growth in SACU market amounted to 25%.

Profits decreased in 2019 but increased again in 2020 and the domestic industry remained profitable throughout the period analysed.

The EU further stated that the fact that capacity utilisation decreased while output increased, is undoubtedly due to an increase in capacity, which also explains the increase in investments and decrease in profitability.

Furthermore, in the EFL it is explained that the subject imports undercut the domestic industry's prices and exercised price suppression. However, it is highlighted once again, that prices of other imports are 20% lower than subject imports and thus any price suppression must be rather due to other imports.

Commission consideration

The Commission noted that the sales volumes of other cuts have decreased during the POI, frozen breasts and drumsticks sales volumes decreased, the SACU industry inventories increased and net profits decreased significantly so. The EU's assertions that the SACU industry is not experiencing any material injury are far from the truth. The SACU industry may not be experiencing material injury in all injury indicators but it could be seen at the manner in which the profits declined over the POI that there's a degree of injury that is experienced by the SACU industry.

5.7 SUMMARY OF MATERIAL INJURY

Material injury indicator	Analysis (2017/2018 – 2019/2020)
Price suppression	Injury present
Price depression	Only present from 2017/2018 -2018/2019
Sales volume	Increase in sales: no injury present
Market share by volume	Injury present from 2017/2018 -2018/2019
Profit	Injury Present
Production	No injury present
Productivity	No injury present
Return on investment	Injury present
Utilisation of production capacity	Injury present from 2017/2018 -2018/2019
Cash flow	Injury present
Inventory levels	Injury present
Growth	No injury present

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

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

"Finally, we note that the last sentence of Article 3.2 mentions that no one or several of these three injury factors can necessarily give decisive guidance. That is, even if the IA finds certain positive trends with respect to some of these factors, it can nevertheless reach the conclusion that there is injury, provided that that decision is

premised on positive evidence and reflects an objective examination of the evidence as required by Article 3.1 of the Agreement.";

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

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

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

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

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

capacity and logistic difficulties causing significant backlogs in and around ports in importing countries, all of which have contributed to reduced global trade flows.

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

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

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

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

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

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

available for certain injury factors)."

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

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

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

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

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

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

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

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

6. THREAT OF MATERIAL INJURY

6.1 Freely disposable capacity of the exporters

6.1.1 Brazil

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

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

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

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

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

The Applicant stated the following:

- "According to a publication by the United States Department of Agriculture ("**USDA**"), broiler meat production in the EU has exceeded consumption over the last few years. In 2019, the EU produced 12 475 000 tonnes and imported 720 000 tonnes of chicken meat. The EU, however, only consumed 11 735 000 tonnes. This implies that there was a significant excess supply of chicken meat in the EU in 2019 and particularly dark bone-in portions available for export. In 2018, the EU produced 12 220 000 tonnes and imported 703 000 tonnes of broiler meat (mostly white meat).

The EU, however, only consumed only 11 474 000 tonnes. This implies that there was also a significant excess supply of chicken meat in the EU in 2018 and particularly dark bone-in portions available for export.

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

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

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

Denmark

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

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

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

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

Ireland

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

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

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

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

Poland

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

According to the USDA, Polish annual exports of Chicken meat in 2019 increased by a substantial 12 percent to 134 million tons. This enormous

growth is mainly due to the price advantage of Polish chicken and crucially the development of non-EU markets.

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

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

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

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

In addition, the Polish poultry industry is highly dependent on exports to the United Kingdom. The UK still plans to leave the EU by the end of 2020, and this threatens to divert Polish exports and particularly dumped Subject Product to other markets, including SACU. Polish exporters will need to refocus their market strategies in order to adjust to this new reality and are likely to divert dumped exports to other markets including SACU.

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

Spain

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

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

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

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

6.2 Significant Increase in dumped imports

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

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

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

Brazil

Chicken meat production in Brazil is expected to continue to increase in 2020, with export opportunities being the main driver. There was a significant increase in the dumped imports volume from Brazil into South Africa in FY2018 of 40 546 kg. This constituted an alarming annual increase of 150.17%. It was stated that this strongly indicates that Brazilian exporters will continue to increase their sales of dumped imports to the SACU market.

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

Denmark

In light of Denmark's expanded production capacity, it is expected that Danish chicken meat production and exports will continue to increase in 2020. There was a significant increase in the dumped imports volume from Denmark into South Africa in FY2018 of 1 855 474 kg. This constituted an alarming annual increase of 127.12%. It was stated that this strongly indicates that Danish exporters will continue to increase their sales of dumped imports to the SACU market.

Ireland

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

Ireland's recent record production levels give rise to the expectation that Irish chicken meat production and exports will continue to increase in 2020. There was a significant increase in the Dumped Imports Volume from Ireland into South Africa in FY2018 of 180 834 kg. This constituted an annual increase of 13.28%.

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

Poland

In line with the trend of increasing exports of chicken meat from Poland, there was a significant increase in the dumped import volumes from Poland into South Africa in FY2018 of 725 390kg. Already, the dumped imports volumes in FY2019 is 2 527 709 kg which already constitutes a 248.46% increase compared to the total dumped imports volume in FY2018. It was stated that this strongly indicates that Polish exporters will continue to increase their sales of dumped imports to the SACU market.

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

Spain

The increased investments that have been made by Spanish producers have been correlated with a significant increase in the sales of Spanish Dumped Imports to the SACU market. Already, the dumped import volumes in FY2019 is 2 297 230 kg which already constitutes a substantial 460.18% increase compared to the total dumped import volumes in

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

Comments by AMIE on the Commission’s preliminary report

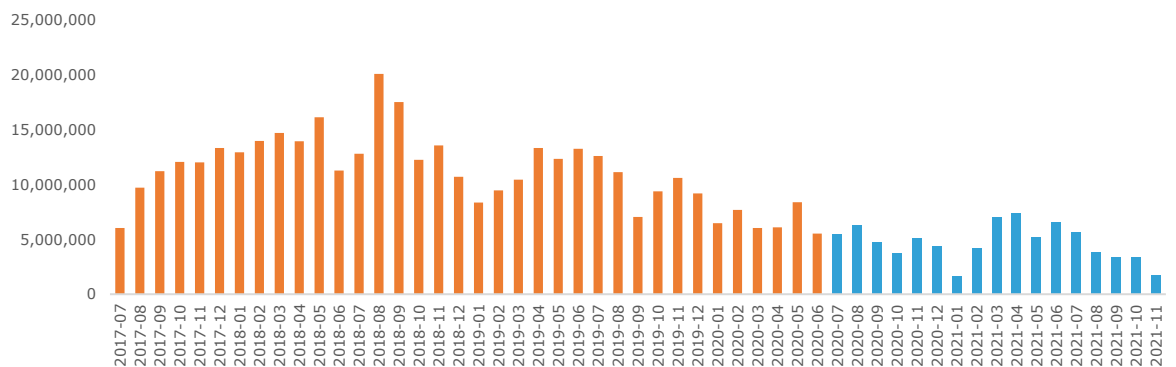
Amie stated that on page 3 of the Report 678, the preliminary report, states *The investigation was initiated after the Commission considered that the Applicant submitted prima facie information to indicate that the subject product was being imported at dumped prices, causing material injury and a threat of material injury to the SACU industry. (own emphasis).*

On page 11 of the report it states

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

According to AMIE there is neither material injury nor threat of injury from the subject product. The period of investigation (“POI”) ended in June 2020. This means we have had 17 months of import statistics since the end of the POI to see if any of this threat of injury actually materialised. According to AMIE it did not, as the chart below shows. The blue bars show the import volumes since the end of the POI.

Import volumes from subject countries



AMIE further stated that there would appear to be no material injury nor threat of injury.

Bearing in mind, that only 4 indicators show any level of injury (page 16 of the report)

The Commission found that the Applicant experienced injury in the form of a decline in profit; decline in return on investment; decline in capacity and increases in inventory.

AMIE stated that the question they are then left with is whether the injury suffered as per the Commission's report could have been caused by imports from the subject countries or are there other reasons for this injury.

Commission's Considerations

The investigators are of the view that the Applicant experienced material injury, more so if the periods July 2017 to June 2018 and July 2018 and June 2019 are being considered. Had it not been the combination of the lockdown and the avian influenza imports of the subject product from the subject countries could have caused even more material injury to the SACU Industry.

6.3 Threat of Price Depression or Suppression

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

coming years. This will put more pressure on SAPA's members to reduce their ex-factory prices, exacerbating the material injury demonstrated above.

Price suppression

HS 0207.14.9 Frozen bone in chicken		2017/2018	2018/2019	2019/2020
Selling price (Ex-factory)	R/kg	100	98	105
Cost of production % selling price		100	106	107

Price Depression

HS 0207.14.9 Frozen bone in chicken	2017/2018	2018/2019	2019/2020
Ex-factory selling price in SACU	100	98	105
Change in net ex-factory price		100	-216

The Participating Producers experienced annual price depression in FY2019 (July 2018 to June 2019), and experienced monthly price depression in August 2019, November 2019, January 2020, March 2020, April 2020 and May 2020.

This reduction in prices reduces the Participating Producers' profitability and returns on investment and threatens the long-term sustainability of the industry.

Commission's Consideration

The Applicant is experiencing price suppression. The Applicant experienced price depression in the period July 2018 to June 2019 and several months in the period July 2019 to June 2020, but the average price for the 8 participating producers indicates that there is no price depression. The Applicants indicated that the lowering of prices is not a practice that the sustainability of the industry.

6.4 Exporter Inventories

The Applicant stated that the high levels of overcapacity in the subject countries and the ease with which they have recently increased their

exports to SACU strongly indicates that they have significant inventories of the subject product which they are able to opportunistically export to SACU.

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

Brazil

Despite the competitive price of chicken in Brazil compared to pork and beef, domestic demand is being impacted by the poor performance of the Brazilian economy which has suffered from high rates of unemployment and household debt. Lower inflation is expected in 2020. Lower domestic price levels can be expected to incentivise producers of the subject product to increase their dumped exports.

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

Denmark

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

Ireland

The EU-27+UK domestic consumption of chicken meat is expected to increase more than total population growth in 2020, indicating a small increase in per-capita consumption. This is due to the switch from other meats to chicken meat because of weak economic conditions in some EU-27+UK countries as well as consumer preference changes toward leaner

and easier to prepare meats. It was stated that this will likely lead to an increase in the Irish production and dumped exports of the subject product.

Poland

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

Spain

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

Comments by the Applicant on the Commission's essential facts letter

The Applicant indicated that the application should have stated in paragraph F1 that "Denmark is now responsible for 1.59% of all poultry production in the EU." and not that "Denmark is now responsible for 10% of all poultry production in the EU." The effect of the error was to overstate the size of the poultry industry in Denmark, but would have had no effect on a determination of threat of material injury since the size of the poultry industry in Denmark relative to the EU industry does not itself show any threat of material injury. The Application erroneously stated in paragraph

F1 that: "On 23 January 2020, HK Scan Denmark, which is one of the largest poultry producers in Denmark, announced that it was investing €6 million to significantly increase its processing capacity by 20 per cent and its raw material yield by 10 per cent. The new capacity is expected to be installed by the end of 2020."

The Applicant stated that the announcement referred to an increase in capacity in Finland. This could only have a minimal impact, if any, impact on the determination of threat of material injury as the Commission has correctly made a preliminary determination to assess the impact of dumped imports cumulatively and there are a clear indication of freely disposable or increased capacity in other dumping countries and for other foreign producers / exporters and the Commission has correctly made a preliminary determination that as a result of the market preference of white chicken meat over dark chicken meat, increases in production in the Dumping Countries will result in sufficiently freely available, or an imminent substantial increase in, capacity of exporters.

The Applicant stated that it also noted that it stated that poultry production in Denmark had increased by 7.5% between 2018 and 2019. Despite the disruptions caused by the global pandemic, this growth continued in 2020, with production volumes reaching 166 500 tonnes, an increase of 4.85% from 2019 and 12.67% from 2018. Denmark exports approximately 60% of its poultry production and exports of the Subject Product from Denmark to South Africa accounted for 14.37%, 12.70% and 7.33% of total poultry production in Denmark in calendar year 2018, 2019 and 2020 respectively. The updated information contained in the letter of 27 October 2021 was essentially repeated in the comments on the preliminary determination. This included the correction of the errors. Despite there still being significant disruptions to the global economy and global logistics as a result of the Covid 19 pandemic, as well as an increase in the ordinary customs duty for Brazil, from 37% to 62% in March 2020, the volume of the subject product imported from Brazil and Spain (the only dumping countries not

subject to avian influenza bans) was higher in calendar year 2021 than calendar year 2019.

The Applicant stated that this supports the Commission's preliminary determination that the decrease in imports is expected to reverse as the pandemic abates and the global economy returns to pre pandemic levels and practices and the import bans resulting from avian influenza are removed.

Comments by AVEC on the Commission's essential facts letter

AVEC stated that by excluding possible imports from non-cooperating exports from the EU due to high Anti-Dumping duties, the proceeding has already cut off a significant share of the ordinary trade of poultry cuts to SACU. The remaining potential exports from EU to SACU is of its nature not being dumped in general and therefore do not constitute a threat to SACU poultry production. Considering this information, it is evident that the potential export from the EU to SACU will be significantly lower than what is being exported from other countries (such as USA or Argentina) not subject to the same measures or investigation and exported at significant lower prices. From a causal link perspective, it is evident that any dominant factor in threat of material injury is coming from imports from other countries rather than the EU countries targeted in this investigation.

AVEC stated that it is of the opinion that arguments put forward on the likelihood of resumption of increased exports from the EU and continued dumping considering cessation of HPAI outbreak and covid have not been sufficiently substantiated. Those arguments are primarily based on speculation without considering the necessity for SACU to import poultry meat to meet the local demand and the fact that the SACU industry has significantly strengthened its competitive position, following the significant increase in import duties for important importing countries (Brazil and US especially). The latest financial report underpins this conclusion that the applicant's financial situation is improving significantly and new

investments in local production are taking place.

AVEC also stated that it would like to describe the difficulties and threats experienced by the EU poultry meat sector. Although the EU poultry meat production is expected to grow by 2-3 % in the coming years which will reflect the increase in EU consumption, this will cover a likely production increase in some countries but also an expected decrease in production in several countries like Germany, Netherlands, Denmark or France. In these countries, policy pressure in relation to sustainability objectives may limit the production. In the rest of EU also, the implementation of the Green Deal plan will have significant impact on local production. This includes measures on animal welfare as well as environmental measures, which may decrease the productivity of the sector and will reduce de facto the production capacities of the EU. Therefore, it is difficult to imagine that EU production can constitute a threat for any export destinations. The aftermath of the Covid crisis and the war in Ukraine will also have significant consequences for the EU sector. The increase of the feed costs (which represent 70 % of the production costs) resulting from these crises has been estimated at 200 €/Tons between April 2021 and April 2022. Energy costs have also dramatically increase, which will translate into an increase of around 20-25 % for the production of an EU chicken compared to the same period last year.

Avec stated that less efficient producers will have to stop producing when increased production cost are not fully compensated. This also happens in a very difficult animal health context for the sector, since we experience the worst highly pathogenic Avian Influenza epizootic season with outbreaks carried by wild birds that have affected almost all EU countries. As of April 22, 1,429 highly pathogenic avian influenza (HPAI) outbreaks have been registered across Europe so far in 2022. Outbreaks have been recorded in 18 European countries over this period and already the figure is approaching the 1,756 outbreaks registered with the EC by 24 European states during the whole of 2021. In France only, 5 % of the total poultry

production (around 15 million birds) had to be culled due to Avian Influenza and shortages are not excluded. For this reasons, it is unlikely that the total EU production will increase in the coming years.

AVEC concluded that this clearly indicates that other imports have caused injury – if any – and that most of these imports was imported duty free at prices significantly below the prices of imports from the four EU countries.

6.6 SUMMARY ON THREAT OF MATERIAL INJURY

Commission's Consideration

The information above indicates that the Applicant is experiencing a threat of material injury.

The COVID-19 pandemic and government interventions in response thereto and the outbreak of avian influenza in Poland resulted in reduced global trade flows. This has led to a decrease in dumped imports during July 2019 to June 2020, but this is expected to reverse as the pandemic abates and the global economy returns to pre-pandemic levels and practices and the import bans resulting from avian influenza are removed.

The termination of the safeguard duty currently applicable to imports of the Subject Product from the European Union, which took place on 12 March 2022, will lead to a decrease in the landed cost of imports and an increase in the volume of the subject product imported from Denmark, Ireland, Poland and Spain. This will have a greater impact on domestic prices. These imports will be in addition to the existing and increasing imports of the subject product from Brazil.

This shows that there is an imminent threat that material injury caused by increased volumes of dumped imports of the Subject Product from the Dumping Countries. Chicken production is expected to increase further in coming years, driven primarily by exports and the reopening of the global

economy following the COVID-19 pandemic. Imports of the subject product from all of the countries under investigation have undercut the SACU like product throughout the period of investigation for injury. This makes it necessary for the SACU producers to lower their prices or restrain price increases to match or undercut the price of the imports in order to make sales in the SACU market. If SACU producers do not lower their prices, then their customers will simply import the subject product. This has already had a depressing and suppressing effect on SACU prices, this is expected to continue and increase.

Ireland and Denmark have declared that their territories are free from high pathogenicity avian influenza as of 16 March 2021 and 9 August 2021 respectively and that it appears that the outbreak in Poland is reaching an end. Imports of the subject product from these countries can be expected to return to the July 2018 to June 2019 levels.

There is an imminent change in circumstances from that which existed in the period July 2018 to June 2019 and the period July 2019 to June 2020, which will create a situation in which the dumping will cause more material injury to the SACU domestic industry than that which existed during the period of investigation for injury.

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

7. CAUSAL LINK

7.1 GENERAL

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

7.2 VOLUME OF IMPORTS AND MARKET SHARE

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

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

The following table compares the market share of the SACU industry with that of the alleged dumped imports:

Table 7.2.1: Market share

Percentage market share held by:	2017/2018	2018/2019	2019/2020
HS 0207.14.9	%	%	%
Applicant (participating producers)	100	99	102
All SACU producers	100	102	106
Total Alleged dumped imports	12.20%	12.23%	7.82%
Total Market	100%	100%	100%

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

The following table shows the volume of imports:

Table 7.2.2: Import volumes: Tariff heading: 0207.14.9: Frozen bone in portions

Country	July 2017 – June 2018	July 2018 – June 2019	July 2019 - June 2020
Brazil	121 662 795	86 534 088	39 925 347
Denmark	20 503 446	21 757 179	14 250 710
Ireland	15 636 112	16 822 202	20 545 453
Poland	0	30 609 616	21 086 562
Spain	0	7 919 368	8 679 380
Total dumped imports	157 802 353	163 642 552	104 487 452
Other imports	95 115 108	95 743 474	93 495 3388
Total imports - kg	252 917 461	259 385 927	197 982 840

Commission's consideration

The Commission noted that the total dumped imports increased over the period July 2017 – June 2018 to July 2018 to June 2019. It is expected that the level of the import volumes of the subject product will reverse to the July 2018 to June 2019 levels as the pandemic abates and the global economy improves and trade normalizes and the outbreak of highly pathogenic avian influenza end and the import ban is lifted.

Comments by AMIE on the Commission's preliminary report

AMIE stated that the determination of causality is a three-step process:

1. It must be established that there is a clear discernible link between the increased volume of dumped imports and the industry's injury;
2. All injury caused by factors other than the dumping must be removed and may not be attributed to the dumping; and
3. After all injury caused by other factors has been removed, it must be determined whether there is still a causal nexus between the dumping

and the injury. In this case, there are problems with the application and the facts of this case in all three steps. AMIE addressed the issues under these steps consecutively.

No link between the increased dumped imports and the industry's injury

AMIE stated that in order to establish a causal relationship between the increased dumped imports and the industry's injury, it must normally be shown that import volumes increased at the same time as the industry's sales volumes decreased or their market share declined. That is, there has to be contemporaneity between the increased dumped imports and the industry's deteriorating performance. Without such a link, it is very difficult to prove any nexus between the imports and the dumping.

AMIE stated that in this case imports declined sharply, while on most of the injury indicators improved. In order to impose an anti-dumping duty, the Commission would thus be arguing that material injury was suffered from rapidly declining imports. AMIE stated that this is patently ridiculous, yet the case was initiated on this basis without any apparent concern for this very clear fact. Provisional duties have been imposed using the same logic.

AMIE further stated that their analysis shows how the industry's sales volume and market share improved during the 3-year investigation period, and how of the alleged dumped imports declined during the same period.

AMIE stated that of even more significance is that only 47% of the trade in bone-in chicken, within the scope of this investigation, is imported from the countries which are part of the investigation. 53% comes from countries, either outside of the scope, or from countries which already attract Anti-Dumping duties. The weighted average FOB price for countries in scope is R15.73 per kg, compared to R11.55 per kilogram for the USA, whose Anti-Dumping duties have been rebated and R15.60 for all of the other countries excluded from this investigation.

Put differently, the countries excluded from the investigation account for most of the volume imported, at prices cheaper than imports within the scope of this investigation.

AMIE is of the view that if most of the imports entering SACU are out of the scope of the investigation and these imports are cheaper than the products in scope, then those products would be causing most of the injury. To argue otherwise would be to say that products imported in small volumes at higher prices is causing more injury than the higher volume, cheaper products, which is clearly ridiculous, yet this is exactly what the applicant is alleging and the Commission is accepting.

AMIE stated that on page 8 of the report it states

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

AMIE stated that the above statement makes no sense. The Commission concedes that imports from the USA and Argentina were cheaper than the countries covered by the investigation, yet then concludes that:

the main cause was imports of the subject product from the subject countries.

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

Country: Volume	Jul 17- Jun 18	Jul 18 - Jun 19	Jul 19 - Jun 20
Brazil	121,585,514.62	86,534,087.86	39,925,346.57
Denmark	20,503,446.31	21,757,178.60	14,250,710.41
Ireland	15,636,112.07	16,822,201.92	20,545,453.00
Poland	-	30,609,616.20	21,086,562.20
Spain	-	7,919,367.75	8,679,380.19
Total	157,725,073.00	163,642,452.33	104,487,452.37
Movement Index	100	104	66

AMIE stated that there has been no increase in alleged dumped imports, neither in absolute nor in relative terms. The investigation should be terminated on this basis alone. As indicated above, there are three injury components in an Anti-Dumping investigation, all of which must be met in any investigation before Anti-Dumping measures can be imposed. These are; an increase in imports, price injury, and injury on the basis of the factors listed in Article 3.4 of the ADA.

While the application does not contain per-tariff subheading injury information on other injury factors, it does contain sales volume information separately for each of the seven tariff subheadings.

AMIE stated that the total industry's sales increased significantly over the period (while imports decreased significantly). As regards the different tariff subheadings, the industry's sales decreased for breasts (-10%), and drumsticks (-3%). However, only a single container (27 tons) of breasts were imported in period 3 (and 4 tons in period 1, with nothing in period 2). The decrease in drumstick sales is not significant, and has to be considered in light of the more than 30% decrease in alleged dumped drumstick imports. On the other hand, the industry's sales of leg quarters grew massively (by 60%), while its sales of wings, thighs and "other" products all grew as well. It is important to note that as regards each and every product, the non-cooperating producers significantly outperformed the cooperating producers. Put differently, the non-cooperating producers are causing injury to the non-cooperating producers (sp).

Commission's consideration

The Commission noted that imports increased for all subject countries except Brazil from 2018 FY (July 2017 – June 2018) to 2019 FY (July 2018 – June 2019). Imports decreased in the period 2019 to 2020 due to the Covid-19 lockdowns and the ban on imports from certain EU countries. It is expected that the level of the import volumes of the subject product will reverse to the July 2018 to June 2019 levels as the pandemic abates and the global economy improves and trade normalizes and the outbreak of highly pathogenic avian influenza end and the import ban is lifted.

Comments by Brazilian Government on the Commission's Essential facts letter

Brazilian Government stated that it is important to highlight that an inference of causal link between dumping and injury is not possible to be made in this procedure, given that the period of dumping analyzed by the Commission (July 2019-June 2020) is not included in the period of injury (which ends on June 30, 2019). The basic requirements for the application of an antidumping measure have not been met. Therefore, the present investigation was inconsistent with Article 3.5 of the ADA, since it was not conducted based on an objective examination.

Commission's consideration

The Commission noted the comments by the Government of Brazil that an inference of causal link between dumping and injury is not possible to be made in this procedure, given that the period of dumping analysed by the Commission is not included in the period of injury. The Commission considered that the dumping period i.e. July 2019 – June 2020 is not excluded from the analysis but less focus will be given to this period as it is considered to be unusual in nature.

7.3 EFFECT OF DUMPED IMPORTS ON PRICES

The following tables shows the price effects of the Applicant:

Table 7.3.1: Price depression Frozen Bone-In portions (0207.14.9)

(R/kg)	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
Ex-factory price per unit (the Participating Producers)	100	98	105

Table 7.3.2: Price suppression Frozen Bone-In portions (0207.14.9)

	July 2017-June 2018 (FYP 2018)	July 2018-June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
Ex-factory price per unit (the Participating Producers) (R/kg)	100	98	105
Production cost per unit (R/kg)	100	105	114
Gross profit per unit (the Participating Producers) (R/kg)	100	60	56
Gross profit percentage (the Participating Producers)	100	61	53
Production cost as a % of selling price (the Participating Producers)	100	107	108

Table 7.3.3: Price undercutting Frozen Bone-In portions (0207.14.9)

Price Undercutting	July 2017-June 2018 (FYP 2018)	July 2018- June 2019 (FYP 2019)	July 2019-June 2020 (FYP 2020)
Ex-factory selling price (All participating producers)	100	98	105
Landed cost of imports:			
Brazil	20.46	20.84	22.98
Denmark	22.26	21.96	25.66
Ireland	20.44	19.99	24.31
Poland	0.00	20.20	22.54
Spain	0.00	18.61	21.93
Price Undercutting Margin - the Participating Producers (Dumped Imports - Brazil) (%) (redacted)	Positive	Positive (Decreased from FY2018)	Positive (Decreased from FY2018, decreased from FY2019)
Price Undercutting Margin - the Participating Producers (Dumped Imports - Denmark) (%) (redacted)	Positive	Positive (decreased from FY2018)	Negative (Decreased from FY2018, decreased from FY2019)
Price Undercutting - the Participating Producers (Dumped Imports - Ireland) (%) (redacted)	Positive	Positive (Increased from FY2018)	Positive (Decreased from FY2018, decreased from FY2019)
Price Undercutting Margin - the Participating Producers	Confidential	Positive (Increased)	Positive (Increased from FY2018,

(Dumped Imports - Poland) (%) (redacted)		from FY2018)	decreased from FY2019)
Price Undercutting Margin - the Participating Producers (Dumped Imports - Spain) (%) (redacted)	Confidential	Positive (Increased from FY2018)	Positive (Increased from FY2018, decreased from FY2019)

The tables above indicate that the Applicant experienced price suppression and price undercutting. The Applicant experienced price undercutting during the period the period of investigation. However, the Applicant indicated that it cannot continue to lower its selling prices.

European Commission’s comments on the preliminary report

The European Commission stated that the total dumped imports decreased by 33.78 percent over the POI, and the import share decreased by close to 10 percent from 62.39 percent to 52.77 percent. Other imports remained roughly the same; slightly increasing for certain cuts of brown meat. It further stated that the price of allegedly dumped imports increased by around 6% over the POI and is around 20% higher than prices of other imports, which represent 47% of total imports. Given this high volume and low prices, the impact of other imports must be significant and needs to be taken adequately into account in the causal link analysis.

The European Commission stated that other producers on the SACU market increased production and market share more than the Applicant. As explained above, the Applicant increased its market share by 4 percent, while non-participating producers increased their market share by 14 percent. Overall, all SACU producers, increased their market share by 9 percent. It stated that a similar trend is observed for market share by value.

The European Commission stated that this undoubtedly indicates that the Applicant has a problem with competitiveness and the impact of domestic competition also needs to be analyzed and taken into account. It stated that the impact of non-participating producers needs to be assessed; they constitute almost half of all domestic producers and they have increased their market share by 10% points more than the participating producers.

Commission's consideration

The investigators noted the comment by the European Commission with regard to the dumped imports that decreased and wish to highlight that there were factors such as the lockdowns as a result of the Covid-19 pandemic and the avian influenza that led to the ban of imports from the EU. The Commission considered that the combination of this factors that are temporary in nature might have led to the decrease in imports, however, they do not serve as a remedy to the dumping of the subject product by the subject countries in the SACU market.

7.4 CONSEQUENT IMPACT OF DUMPED IMPORTS

Material injury indicator	Analysis (2017/2018 – 2019/2020)
Price undercutting	Injury present
Price suppression	Injury present
Price depression	Only present from 2017/2018 -2018/2019
Sales volume	Increase in sales: no injury present
Market share by volume	Injury present from 2017/2018 -2018/2019
Profit	Injury Present
Production	No injury present
Productivity	No injury present
Return on investment	Injury present
Utilisation of production capacity	Injury present from 2017/2018 -2018/2019
Cash flow	Injury present
Inventory levels	Injury present
Growth	No injury present

The above table indicates that the SACU industry experienced material injury in the form of (i) price undercutting; (ii) price depression; (iii) price suppression; (iv) decline in profit; (v) a decline in market share; (vi) a decline in return on investment; (vii) a decline in capacity utilisation; and (viii) an increase in inventories.

7.5 FACTORS OTHER THAN THE DUMPING CAUSING INJURY

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

Variable	Year			Change (%)
	2017/2018	2018/2019	2019/2020	2017/2018 – 2019/2020
Prices of imports sold at alleged dumped prices (fob price) (R/kg) Tariff subheading 0207.14.9	100	101	105	4.65%
Prices of imports not sold at dumping prices (fob price) (R/kg)	100	96	110	10.37%
Volume of imports not sold at dumping (Kg)	95 115 108	95 743 474	93 495 387	-1.70%
Contraction in demand:				
Percentage Change from Previous Period for Total SACU Market Volume (%) (redacted)	-	Positive (Increased from FY2018)	Positive (Increased from FY2018, decreased from FY2019)	

The Applicant provided the following information regarding causal link:

Prices of imports sold at alleged dumped prices (fob price) (R/kg) Tariff subheading 0207.14.9	The prices of imports not sold at dumped prices increased and the growth rate of the industry increased. However, when the prices of the imports sold at alleged dumped prices are compared with the prices of imports not sold at dumped prices, it indicates that the prices are lower. The market share of imports not sold at dumped prices is less than 10 percent and the prices of these imports could thus not detract significantly from the causal link between the alleged dumping and the material injury suffered by the SACU industry.
Changes in the patterns of consumptions	The Applicant stated that demand for the subject product in the SACU market has increased continuously through the period of investigation for Injury and this is expected to continue.
Trade-restrictive practices of foreign and domestic producers	The Applicant stated that it is not aware of any trade restrictive practices.
Developments in technology	The Applicant stated that there have been no recent technological advances regarding the subject product.
Export performance of the domestic industry	The Applicant stated that the SACU industry has limited export opportunities for the subject product. In 2019, 1 920 tonnes of the subject product were exported from South Africa. Of this, 1 612 tonnes

	were exported to SADC countries and less than 2 tonnes were exported outside of Africa. There is little to no demand for the subject product in North America or Europe (as a result of the well documented preference for fresh chicken products, especially boneless breast meat).
Productivity of the domestic industry	The Applicant believes that SACU broiler producers are globally competitive and stated that this was confirmed by the Bureau for Food and Agricultural Policy in a March 2019 report titled "Competitiveness of the South African broiler industry".

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

Comments on the Commission's preliminary report

Copacol's comments on the Commission's preliminary report

Copacol alleged that the Applicant failed to disclose and the Commission failed to investigate under Article 5.3 of the Anti-Dumping Agreement, the following matters and their impact on the poultry industry "despite this being in the public domain" and in the case of Covid-19 despite this being in the "public domain and common knowledge":

- the COVID restrictions;
- not having access to reliable water and electricity sources and the additional costs companies had to incur to obtain such reliable access;
- the impact of increasing feed costs;
- increasing water, electricity and wage costs;
- very high volume of very low priced dumped imports from the United States of America;
- the impact of the significant volume of low priced imports from Argentina, which were high in volume and imports from two of the subject countries and at lower prices.

The Government of Spain's comments on the preliminary report

The Government of Spain stated that it believes that it should not be ruled out that there are other factors causing injury i.e. inefficiency, lack of competitiveness and competition with non-participating producers or with import from other origins. It stated that it is possible that there is self-inflicted injury i.e. having made wrong economic decisions.

Comments by the European Commission on the Commission's preliminary report

The European Commission stated that the domestic industry suffers low profitability mostly due to disproportionate increase in costs, caused by high feed costs, high salary increases and excessive investment expansion projects. It concluded that most indicators show a positive development; in any event, and that injury is not caused by alleged dumped imports, as they decrease, but by other factors, imports from the US and Argentina, domestic competition, increased costs and inability to satisfy domestic demand.

Comments by AMIE on the Commission's preliminary report

Imports from Argentina and the USA

AMIE stated that very significant anti-dumping duties are in place against imports of bone-in products from the USA. However, in terms of a special agreement reached between South Africa and the USA, a certain volume of bone-in portions are exempted from payment of the anti-dumping duties. This means that although it was found that these products are dumped, no anti-dumping duties are applied. Whereas the exempted volume started out at 65,000,000 kg in the first year, the volume has grown over time, and the volume reached 69,085 tonnes, 77,913 tonnes and 76,100 tonnes in F2018, F2019 and F2020, respectively.

Whereas USA imports only represented 43.8% of the volume of imports from the five subject countries in F2018, this increased to 47.6% in F2019 and to 72.8% in F2020. USA imports, along with increased sales by the SACU producers, therefore squeezed imports from the other five countries out of the market.

Accordingly, if any overall bone-in portion imports were causing injury, it would primarily be the anti-dumping duty-exempt imports from the USA.

The following table sets out the volume of imports, by product, from the five countries alleged to be dumping, and the imports from Argentina and the USA:

All bone-in	Jul 17-Jun 18	Jul 18 - Jun 19	Jul 19 - Jun 20
Brazil	121 585 514	86 534 087	39 925 346
Denmark	20 503 446	21 757 178	14 250 710
Ireland	15 636 112	16 822 201	20 545 453
Poland	Zero	30 609 616	21 086 562
Spain	Zero	7 919 367	8 679 380
Argentina	22 522 806	15 637 072	15 198 399
USA	69 085 086	77 913 110	76 100 270

AMIE stated that the above table shows that the import volume of all bone-in portions from Argentina was greater than the import volumes from either Denmark or Spain and the imports from the USA was larger than all of Denmark, Ireland, Poland and Spain combined for each of the 3 years of the period of injury.

Article 9.2 of the Anti-Dumping Agreement provides that anti-dumping duties must be collected in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be dumped and causing injury.

However, equally important is that an anti-dumping application should be brought against all sources that may be dumping and causing injury.

The evolution of imports from the different countries can be viewed as follows:

All bone-in	Jul 17-Jun 18	Jul 18 - Jun 19	Jul 19 - Jun 20
Brazil	100	71	33
Denmark	100	106	70
Ireland	100	108	131
Poland	0	100	69
Spain	0	100	110
Total alleged dumped	100	104	66
Argentina	100	69	67
USA	100	113	110

Sales and performance of other SACU producers

The application contains information on various injury factors. For some of these factors, the application contains not only the information of the eight applicant companies, but also of the “rest of the SACU producers”. The table below sets out a comparison of the information of the applicant’s vis-à-vis the performance of the rest of the SACU producers. Unfortunately, the application did not include information for the other SACU producers as regards the other injury factors. However, bearing in mind the trends indicated below, for those factors for which data of the other SACU producers are available, it is submitted that ITAC has an obligation to obtain and evaluate the information of the rest of the SACU producers on the other factors as well, failing which its investigation cannot be said to be objective.

Injury factor	Participating producers			Other SACU producers		
	Jul 17 to Jun 19	Jul 18 to Jun 19	Jul 19 to Jun 20	Jul 17 to Jun 19	Jul 18 to Jun 19	Jul 19 to Jun 20
Sales volume: all bone-in portions	100	101	104	100	105	114
Leg quarters	100	127	154	100	126	165
Wings	100	107	105	100	107	107
Breasts	100	87	84	100	111	95
Thighs	100	90	117	100	102	128
Drumsticks	100	96	94	100	106	99
Other frozen bone-in portions	100	106	94	100	114	107
Mixed portions	100	98	104	100	101	114
SACU sales values	100	100	110	100	99	103
Output	100	100	107	100	105	114
Production capacity	100	101	104	100	105	114
Capacity utilisation	100	99	104	100	100	100

Wherever the final figure is emphasised (in bold), this shows a better performance by the other producers than by the applicants, and it raises serious questions as to whether the applicant is injured as a result of the alleged dumped imports, or as a result of the market share it lost to other SACU producers. Thus, for bone-in products as a whole, as well as for the products sold under every single one of the seven tariff subheadings, other SACU producers outperformed the applicants. In fact, whereas the applicants recorded decreased sales for breasts, drumsticks and “other”, the rest of SACU saw decreased sales only for drumsticks, and then by only 1% (while the alleged dumped imports decreased by 30% over the same period).

For instance, for breasts, the applicants lost 16% of its sales, yet other producers increased their sales by 11%, while for other portions the applicants’ sales decreased by 6%, yet other producers’ sales increased by 7%. Even where the applicants’ sales increased by as much as 54%, for leg quarters - which happens to form the bulk of the declining alleged dumped imports - the rest of the SACU producers still outperformed the applicants by increasing their sales by 65%.

The applicants' injury is therefore more likely to be as a result of the increased competition from other SACU producers. This is further underscored by the fact that when the industry lodged the first sunset review application relating to the US anti-dumping duties in 2005, the application was brought by only Earlybird and Rainbow, who were regarded as representative of the industry as a whole and who represented a major proportion of the industry. When the anti-dumping application was lodged against imports from Brazil in 2011 information was supplied by Rainbow, Earlybird and Country Fair. When the anti-dumping application was lodged against imports from Germany, the Netherlands and the UK in 2013, injury information was submitted by AFGRI, County Fair, Earlybird (two plants), Rainbow, Sovereign and Supreme, yet they represented only approximately 44% of the domestic industry by production volume (as per ITAC Report 479, para. 1.2). For this application, injury information was submitted by Country Fair, Festive, Goldi (all part of Astral), Daybreak, Grain Field, RCL (formerly Rainbow), Sovereign and Supreme. The list is longer each time an application is filed, which shows how competition is increasing within the industry itself.

We therefore request the Commission to obtain the necessary information on the relevant injury factors from the rest of the SACU producers to determine whether the industry is in fact experiencing injury, or whether the applicants' injury is caused by the other SACU producers.

Increasing feed costs

Several different publications have commented on the increase in feed costs during the investigation period (and subsequent thereto). Increased feed costs cannot be attributed to the alleged dumped imports, and the effect thereof has to be separated out when injury to the industry, and the link between the alleged dumped imports and the injury, is determined.

Netwerk24 indicated that chicken feed costs increased by 7.7%, which was more than double the consumer inflation rate. The same figure is indicated by Astra, also indicates that

“substantially higher raw material costs driven by a weaker local currency, weather concerns on the international grain markets, higher global coarse grain prices and increased demand from China led to higher feed prices in the second half of Astral’s financial year. Higher feed costs, which have a 65% contribution to the total live cost of producing a broiler, together with lower poultry selling prices resulted in a steep decline in poultry margins during the second half of the year under review.”

Wandile Sihlobo, who is also an ITAC Commissioner, indicated in February 2021 that soy prices had increased by 65% over the past year.

More detailed information available from SmallTalkDaily Research, shows that soya prices were around R5,200/tonne at the end of June 2019 (after being below R4,500/tonne at the end of May 2019), but that this increased to around R6,000/tonne from October to December 2019, before increasing to nearly R6,500/tonne in January 2020. Although prices then eased back to around R6,000/tonne for the next few weeks, prices increased to more than R7,000/tonne by the end of April 2020, before easing to R6,200/tonne by the end of June 2020. This was still 20% higher than at the start of the period. SmallTalkDaily Research also indicates that soya constitutes around 40% of the total broiler feed mix costs. Bearing in mind that feed contributes roughly 65% of the overall cost of production of the like product, this means that soya alone contributes around 27% of the cost. Thus, an increase of 20% (point-to-point, but on average more than 30%) in soya prices in F2020, would on its own indicate a cost increase of at least 5.4%.

SmallTalkDaily indicates that the cost of maize and of sunflower oil also increased significantly during the period. SmallTalkDaily also indicates that:

“The key negatives are the extremely strong soft commodity prices. I have commented extensively on the year-on year increases in input

costs of maize and soya which constitute 80% of feed costs. An inability to fully recover these soaring costs from a weakened consumer in a depressed Covid-19 wracked economy has been the domestic producer's (sic) biggest problem."

Commission's consideration on factors other than dumped imports causing injury.

The Commission noted the above comments by Copacol, the Government of Spain, the European Commission and AMIE on factors other than dumped imports causing injury to the SACU Industry.

The Commission noted that the above interested parties jointly raised the following factors other than the dumped imports that could possibly cause material injury:

- *Covid-19 restrictions*
- *SACU industry not having access to reliable water and electricity*
- *The impact of increasing feed costs*
- *Imports from other regions (United states of America and Argentina)*

Covid-19 restrictions

The Commission noted that there were price decreases following the outbreak of Covid-19 and before the end of the period of investigation for injury in April 2020 and May 2020, these were more than offset by the increase between May 2020 and June 2020. The Commission noted information on record stating that there was no clear decrease in prices during this period that can be attributed solely to the Covid-19 restrictions, and notes that these decreases were lower than the monthly decreases in several preceding months, which can in no way be attributed to the Covid-19 restrictions. Not only was the Commission aware of the impact of Covid-19 on industries in general but it actively participated in providing assistance to industries and to the economy generally to deal with the effects of Covid-19.

It is important to note that the agricultural sector which included the poultry sector was declared an essential service on 26 March 2020 and therefore exempt from many of the restrictions imposed under the regulations promulgated under the Disaster Management Act, 2002.

SACU industry not having access to reliable water and electricity

The Commission noted the response by the Applicant to the comment made by Copacol, the Applicant stated that the additional costs to obtain reliable water and electricity sources, the increasing water, electricity and wage costs, formed part of the financial information furnished to the Commission in the Application. These costs are reflected in the application including, the increase in production costs and profits (price suppression). The cost and price build-up reflects the breakdown of costs for the period July 2019 to June 2020. The Commission was able to determine the impact of these costs on the profitability of the industry.

The impact of increasing feed costs

The Commission noted there were increases in the SACU domestic industry's costs and it does not dispute that there was volatility in raw material and input costs during the POI. But such volatility, in particular in relation to feed costs, is integral to the business environment for the agricultural sector, and their consequent sensitivity.

There were increases in the cost-base of the SACU domestic industry during the POI, which were noted in the Applicant's price and cost build-up, including in the SACU domestic industry producers' own annual reports and this was noted in the investigation. But crucially, there was nothing to indicate that any of these cost increases were structural and permanent, rather than temporary cost increases attributable to certain events, which the agricultural sector commonly faces from time to time. As can be seen from the extract above from SmallTalkDaily Research the Soya price was sensitive and varied from month to month.

Imports from other regions (United States of America and Argentina)

The Commission noted the comments that the imports from other regions have been increasing whilst imports from the subject countries have been decreasing significantly so. The Commission considered that imports of the subject product from the United States of America accounted for 27.30% of total imports during the period June 2017 to July 2018, 30.03% of total imports during the period July 2018 to June 2019 and 38.44% of total imports during June 2019 to July 2020. Over the same period, imports of the subject product from the subject countries accounted for more than half of total imports. The impact of imports of the subject product from the subject countries was considerably higher than the impact of the imports of the subject product from the United States.

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

Imports of the subject product from Argentina accounted for 8.91% of total imports in the period June 2017 to July 2018, 6.03% of total imports in the period July 2018 to June 2019 and 7.68% of total imports in the period June 2019 to July 2020. Over the same period, imports of the subject product from the dumping countries accounted for 62.39%, 63.10% and 52.78% of total imports respectively. The volume of imports of the subject product from the dumping countries was higher than the volume of the imports of the subject product from Argentina.

The Commission considered that although there are factors other than the dumped imports including the increasing costs of feeds, that may have been a contributory cause to the material injury experienced by the SACU

domestic industry, these did not sufficiently detract from the causal link between the dumping and the material injury and threat of material injury experienced by the SACU industry.

Comments by AMIE on the Commission's essential facts letter

AMIE stated that in order to impose anti-dumping duties, the Commission would have to show that dumping which is alleged to have occurred from July 2019 to June 2020, caused material injury a year earlier in July 2018 to June 2019. This is impossible. Not only has there not been a significant increase in imports, but there has also been a very significant fall in import volumes. Given the material fall in import volumes this means the applicant is arguing (and ITAC is accepting) that the industry is suffering material injury as they gain market share, which is non-sensical.

AMIE stated that Article 3.5 of the Anti-Dumping Agreement (ADA) provides that:

"It must be demonstrated that the dumped imports are, [...] causing injury within the meaning of this Agreement. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, inter alia, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry." (own emphasis)

AMIE further stated that the word "causing" in Article 3.5 above, implies that dumping is "causing" injury and not that it caused injury at some stage in

the past. It therefore requires a present or recent analysis, whereas the Commission is analysing in exactly the opposite way.

AMIE stated that the Applicant is no stranger to bringing anti-dumping applications and could have brought the case when they were actually suffering injury, rather than when the injury had passed. The case was initiated for the period defined in the initiation gazette and needs to be assessed as such, even if such an assessment gives an undesirable outcome. It is not the job of the Commission to find reasons to impose anti-dumping duties, but rather to act independently to determine if there was material injury caused by dumping during the investigation period. In this regard, AMIE draws the Commission's attention to section 7(2) of the International Trade Administration Act (ITAA)

7 (2) The Commission-

(a) is independent and subject only to-

(i) the Constitution and the law;

...

(b) must be impartial and must perform its functions without fear, favour or prejudice. (own emphasis)

AMIE further stated that Covid-19 and lockdowns are a cause of injury to the domestic industry, not only in the year for which dumping was assessed, but also for a portion of the year which the Commission wishes to focus on. The impact of this has not been measured in the report. They are not just 'unusual'. The disclosure of such information forms the very basis of what an essential facts letter should contain as it determines causality, a factor which undoubtedly has to be considered by the Commission in reaching the final determination.

AMIE stated that in China - GOES, the Panel stated that [...] we understand the "essential facts" to refer to those facts that are significant in the process of reaching a decision as to whether or not to apply definitive measures.

Clearly, it is of importance to determine whether Covid-19 and lockdowns are indeed a factor which is also causing injury to the domestic industry and the extent to which this is happening also has to be considered and addressed.

AMIE stated that the ban on imports from parts of Europe makes it impossible for those countries to cause injury to the domestic industry. Rather than this merely being identified as a 'unusual', it should be identified as a factor making it impossible for them to cause material injury. Furthermore, the tenuous link between alleged dumping and material injury is a theme in this investigation. Not only does the essential facts letter contend that dumping in year 3 caused injury in year 2, it also ignores the other factors which need to be considered in any properly executed causal link analysis.

AMIE's stated that it wished to re-iterate its response to the preliminary report:

- The industry's sales increased by 9%, while imports from the subject countries decreased by 34% over the same period (and no it is not sufficient to decide to focus on an earlier period. This reality has to be addressed by the Commission).
- Increased feed costs.

AMIE stated that the Commission has not done any work to demonstrate there are factors other than dumping that contributed to the injury, how this can be the case in the face of the evidence provided. Article 3.5 of the ADA provides that "the authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports."

AMIE also stated that moreover, in China - GOES at para 240 - 241, the Panel stated that: Thus, we understand the 'essential facts' to refer to those

facts that are significant in the process of reaching a decision as to whether or not to apply definitive measures. Such facts are those that are salient for a decision to apply definitive measures, as well as those that are salient for a contrary outcome. An authority must disclose such facts, in a coherent way, so as to permit an interested party to understand the basis for the decision whether or not to apply definitive measures. In our view, disclosing the essential facts under consideration pursuant to Articles 6.9 and 12.8 is paramount for ensuring the ability of the parties concerned to defend their interests. [...]In order to apply definitive measures at the conclusion of anti-dumping investigations, an investigating authority must find dumping, injury and a causal link' between the dumping and the injury to the domestic industry. What constitutes an essential fact must therefore be understood in the light of the content of the findings needed to satisfy the substantive obligations with respect to the application of definitive measures under the Anti-Dumping Agreement, as well as the factual circumstances of each case. (own emphasis)

AMIE concluded that it is a firm requirement for the Commission to make a positive finding in dumping, injury and causality before anti-dumping duties can be imposed and on the issue of either injury or causality, this positive finding cannot be made. Anti-dumping duties cannot therefore be legally imposed.

Comments by AVEC on the Commission's essential facts letter

AVEC stated that it wishes to reiterate its concern of the causal link assessment excluding other third country imports from the investigation. The data clearly shows that imports from US and Argentina have significantly increased over the period at prices far below the EU prices. AVEC finds this as a clear-cut case of discrimination against countries covered by the Anti-Dumping proceeding. The fact that the applicant did not include the named other countries in the application despite their awareness of increased imports at significantly lower prices does not exempt the investigating Authority from the responsibility to include other

countries in the investigation, especially when all import data and prices are available and transparent.

AVEC stated that the lack of inclusion of all relevant imports in the investigation is not only discrimination against countries concerned in the proceeding but also breaks the causal link assessment by excluding important factors, which have had major impact on price levels and thereby claimed negative impact for the local producers in SACU.

Comments by European Commission to the Commission's essential facts letter

The European Commission stated that other producers on the SACU market increased production and market share more than the Applicant. As underlined in the Commission's previous submission, the Applicant increased its market share by 6%, while non-participating producers increased their market share by 15%. This undoubtedly indicates that the Applicant has a problem with competitiveness and the impact of domestic competition needs to be analysed and taken into account as other producers represent 47% and thus constitute almost half of all domestic producers and they have increased their market share by 10% points more, than the participating producers.

The European Commission further stated that The BFAP report, as submitted in the Application (figure 1, annex G9.6), confirms that poultry meat demand and consumption increased rapidly in SACU, faster than any other meat type, nevertheless the domestic production has stagnated in recent years. According to the BFAP report, SACU producers have not been able to satisfy domestic demand, which de facto depends on imports. The reasons for it were found to be the highly integrated poultry value chain, including the feed production sector. According to the said report, SACU producers must become competitive in order to remain sustainable.

Commission's consideration

Taking into consideration the comments by AMIE, AVEC and the European Commission, it must be noted that the Commission has already determined and reiterated that it is aware that there may have been factors other than the dumped imports that may have been a contributory cause to the material injury experienced by the SACU industry. These did not sufficiently detract from the causal link between the dumped imports, the material injury and threat of material injury experienced by the SACU industry.

7.6 SUMMARY ON CAUSAL LINK

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

The Commission took note of the information available with regard to other factors that could have contributed to the material injury and threat of material injury experienced by the SACU industry, such as the Covid-19 restrictions; access to reliable water and electricity sources and the additional costs companies had to incur to obtain such reliable access; the impact of increasing feed costs; the volume of imports from countries not subject to the investigation, such as the United States of America (USA) and Argentina. The Commission also took note of the comments received with regard to the alleged fraud at Daybreak.

From the information provided, it is clear that the SACU industry experienced material injury as a result of the increase in imports from the countries under investigation, before the closure of the hospitality, restaurant and quick restaurant sectors. The Commission noted that whilst there were price decreases following the outbreak of COVID-19 and before the end of the period of investigation for injury in April 2020 and May 2020, these were more than offset by the increase in prices between May 2020 and June 2020. The

Commission is of the view that there was no clear decrease in prices during this period that can be attributed solely to the Covid-19 restrictions, and notes that these decreases were lower than the monthly decreases in several preceding months, which cannot be attributed to the Covid-19 restrictions. Similarly, the effects of Covid-19 on price and supply and demand conditions in South Africa and the SACU region only applied from the beginning of the first lockdown period, 26 March 2020, only three months of which fall into the period of investigation for injury.

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

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

The Commission took note of the fact that Astral's 2020 financial year ended on 30 September 2020 and that the second half of Astral's 2020 financial year

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

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

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

The Commission noted the Applicant's comments that the alleged R138 million fraud relates to distribution costs of Daybreak which are not part of its cost and price build-up and therefore has an immaterial impact on the information provided by it and that any change to this amount will also have no material impact on the information provided by Daybreak. As all costs, prices and profits are presented at the ex-factory level, distribution costs (which are incurred after the ex-factory level) do not have any impact on the financial data submitted, including price suppression, net profit or return on investment. As such, the alleged fraud would have no impact on the information provided by SAPA. It also appears that the alleged fraud relates to the period 21 January 2020 to 10 February 2021. As the investigation period for injury for this investigation is July 2017 to June 2021, a significant portion of the alleged fraud falls outside of the investigation period for injury and the vast majority of the investigation period for injury would be unaffected if they were taken into account. The Commission further noted that these allegations are disputed and have not been verified by the auditors and that the credentials of

Schaeffer- Schmidt which produced the forensic report have also been questioned. Fin24 on the 19 May reported that "parts of Schaeffer Schmidt's website, which is now offline, were copied from US based FTI Consulting which says it has never heard of it."

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

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

8. SUMMARY OF FINDINGS

8.1 DUMPING

From the verified information, it is evident that the subject product originating in or imported from Brazil Denmark, Ireland, Poland and Spain was exported at dumped prices to the SACU during the period of investigation.

The following dumping margins were calculated:

Country	Company	Tariff subheading	Dumping Margin
Brazil	Agroaraçá Indústria De Alimentos	0207.14.9	39%
	Agrosul Agroavícola Industrial S/A	0207.14.9	16%
	Avivar Alimentos Ltda	0207.14.9	35%
	Aurora Cooperativa Central Aurora Alimentos	0207.14.9	17%
	C.Vale – Cooperativa Agroindustrial	0207.14.9	-3.32%
	Cooperativa Agroindustrial Consolata	0207.14.9	28.3%
	Jaguafrangos Indústria E Comércio De Alimentos Ltda	0207.14.9	18.18%
	Rio Branco Alimentos S/A	0207.14.9	3.31%
	Seara Alimentos Ltda	0207.14.9	-0.07%
	Zanchetta Alimentos Ltda	0207.14.9	8%
	All other	0207.14.9	265.1%
Denmark	HK Scan	0207.14.9	7.75%
	All other exporters	0207.14.9	67.4%
Ireland	Manor Farm	0207.14.9	2.49%
Ireland	All exporters	0207.14.9	37.52%
Poland	Animex Foods Sp. Z O.O.	0207.14.9	2.25%
	Drobimex Sp. Z.O.O	0207.14.9	-7%
	Plukon Sieradz Sp. Z.O.O	0207.14.9	-29%
	All other exporters	0207.14.9	96.9%
Spain	Distribuciones Avícolas Vázquez S.A.U.	0207.14.9	7.56%
	An Avicola Melida S.L.	0207.14.9	9.95%

UVE S.A	0207.14.9	14.62%
Grupo Vall Companys	0207.14.9	22.6%
All other exporters	0207.14.9	85.8%

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

8.2 MATERIAL INJURY

Based on the verified information of the Applicant, it is evident that the Applicant is experiencing material injury in a form of:

Price undercutting	Injury present
Price suppression	Injury present
Price depression	Only present from 2017/2018 -2018/2019
Sales volume	Increase in sales: no injury present
Market share by volume	Injury present from 2017/2018 -2018/2019
Profit	Injury Present
Production	No injury present
Productivity	No injury present
Return on investment	Injury present
Utilisation of production capacity	Injury present from 2017/2018 -2018/2019
Cash flow	Injury present
Inventory levels	Injury present
Growth	No injury present

The Commission made a final determination that the SACU industry is suffering material injury.

8.3 THREAT OF MATERIAL INJURY

Regulation 14.2 directs the Commission in making a determination of threat of material injury to consider various factors such as the rate of increase of dumped imports; freely available or increased capacity; the availability of

other export markets; the prices at which the subject product is or will be entering; and exporters' inventories. The consideration of these and other factors point to a clearly foreseeable and imminent threat of material injury in light of the facts discussed in the previous sections.

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

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

Additionally, the Commission should take into account that both Ireland and Denmark have declared that their territories are free from high

pathogenicity avian influenza as of 16 March 2021 and 9 August 2021 respectively and that it appears that the outbreak in Poland is reaching an end.

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

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

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

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

8.4 CAUSAL LINK

It was established that the subject product is exported at dumped prices by exporters/manufacturers from Brazil, Denmark, Ireland, Poland and Spain.

The volumes of imports not sold at dumped prices are decreasing over the period of investigation. The prices of imports not sold at dumped prices increased and the growth rate of the industry increased. However, when the prices of the imports sold at alleged dumped prices are compared with the prices of imports not sold at dumped prices, it indicates that the prices are lower. The market share of imports not sold at dumped prices is 5.06% and the prices of these imports could thus not detract significantly from the causal link between the alleged dumping and the material injury suffered by the SACU industry.

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

9. FINAL DUTIES

9.1 Price disadvantage

The price disadvantage is the extent to which the price of the imported product (landed cost) is lower than the unsuppressed and un-depressed ex-factory selling of the SACU product. It is the Commission's practice that the price disadvantage is only considered when both the exporter and the corresponding importer fully cooperated in the investigation.

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

The price disadvantage for each exporter was calculated as follows:

Unsuppressed selling price

The SACU unsuppressed selling price was has been prepared on the basis of the required return of the SACU industry for the like or similar products. an unsuppressed selling price as the price for the Subject Product required to achieve an average profit margin (measured by an EBIT) of 12% for the whole business (excluding feed, breeding and other parts of the total business), which is required to allow a reasonable return on capital employed ("**ROCE**") of 15%.

Landed cost

The landed cost for each exporter was calculated based on the weighted average landed cost of the respective cooperating importer(s).

As no corresponding importer from Jaguafrangos responded, the Commission made a final determination not to apply the lesser of the duty rule for

Jaguafrangos. The Commission made a final determination not to apply the lesser duty rule to Jaguafrangos.

As no corresponding importer from Plukon responded, the Commission made a final determination not to apply the lesser of the duty rule for Plukon.

As no corresponding importer from Disavasa, Grupo An, and Uvesa responded, the Commission made a final determination not to apply the lesser duty rule for Disavasa, Grupo An, and Uvesa. The Commission made a final determination not to apply the lesser duty rule for Disavasa, Grupo An, and Uvesa.

Comments by the Applicant on the Commission's essential facts letter

The Applicant stated that regulation 17 of the Anti-Dumping Regulations (ADR's) provides that the Commission shall consider applying the lesser duty rule if both the corresponding importer and exporter have cooperated fully". The Commission has a discretion in the application of the lesser duty rule, even where both the corresponding importer and exporter have cooperated fully.

The Applicant stated that the nature of the subject product as a surplus/ waste product in the dumping countries allows exporters to rapidly adapt their export prices to offset additional duties. This means that a dumping duty set at the current level of price disadvantage will not remedy the material injury suffered by the SACU industry as the exporters will lower their prices and the SACU industry will continue to suffer price disadvantage. The Applicant stated that it requests the Commission to exercise its discretion to refuse to apply the lesser duty rule and to make a final determination to impose the dumping duties equal to the dumping margin.

The Applicant stated that the Commission should not exclude certain tariff sub-headings of the subject from imposition of anti-dumping duties. The Commission is incorrect in its determination that anti-dumping duties not be imposed on certain tariff subheadings at the 8 digit level, when, it correctly

found that there is a single subject product classifiable at the 7-digit level under tariff sub-heading, 0207.14.9.

The Applicant stated that applying the duty only to selected tariff subheadings creates the opportunity for circumvention of the anti-dumping duties. According to importers, mixed portions can be imported under tariff subheading 0207.14.99 (other). Since the Commission is proposing recommending to the Minister that imports under this tariff subheading from Ireland, Poland and Spain not be subject to anti-dumping duties, it would be possible for importers to entirely circumvent all anti-dumping duties by importing two or more cuts that are subject to anti-dumping duties in a single carton as 'mixed portions', pay no anti-dumping duty, and then separate the cuts at minimal cost (certainly less than the cost of the duty) in SACU. Similarly, the Commission is proposing recommending to the Minister that imports under tariff subheading 0207.14.91 (frozen whole bird cut in half) from all Dumping Countries not be subject to anti-dumping duty. The Applicant stated that exporters in any of these countries could export product under this tariff subheading, which could then be cut into a breast, a wing, a back portion and a leg quarter or a thigh and a drumstick, at minimal expense and without paying any anti-dumping duty.

The Applicant stated that it requests the Commission to recommend to the Minister that anti-dumping duties be imposed on all 8-digit tariff subheadings of the subject product, the same as the anti-dumping duties which are imposed on frozen bone-in portions from Germany, the Netherlands, the United Kingdom and the United States of America.

Commission's consideration:

The Commission noted that the Section 16.2 of the Anti-Dumping Regulations states the following:

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

unless countries which individually account for less than 3% of the total imports of the like product into the SACU market for the like product collectively account for more than 7% of the total imports of the like product into the SACU market.

In its meeting of 19 January 2021, the Commission made a decision to perform the negligibility test at a 8 digit tariff sub-heading level. The outcome of that negligibility test are highlighted below:

There were no imports of whole bird cut in half, classifiable under tariff subheading 0207.14.91 and the Applicant did not provide any dumping information for this specific tariff heading. The Applicant could therefore not provide prima facie information that dumping of "whole bird cut in half" is causing material injury to the SACU industry. In terms of the provisions of the ADR, the Commission could therefore not initiate an anti-dumping investigation pertaining to tariff subheading 0207.14.91.

Imports of leg quarters tariff subheading 0207.14.93 from Spain were found to be below 3%. Furthermore, only imports of frozen breasts, tariff sub-heading 0207.14.96 from Brazil were above the negligibility level. The Commission made a decision to exclude all other countries from initiation, as there were no imports of frozen breasts from those countries. Imports of frozen thighs and drumsticks under tariff sub-headings 0207.14.97 and 0207.14.98 respectively from Brazil fell below the negligibility level. Imports of other frozen chicken portions under tariff sub-heading 0207.14.99 (other), from Ireland and Poland were below 3% while there were no imports under tariff subheading 0207.14.99 from Spain. The Commission made a decision to exclude these countries from initiation.

The Commission also noted that the disaggregation of the tariff subheading from a 7-digit level to an 8-digit level was done at the request of the local industry. The industry was advised of the challenges this would pose as well as the potential repercussions thereof. Despite this advice, the industry decided to

pursue disaggregation of the tariff sub-heading. This poses a risk of circumvention, a consequence the industry placed on itself.

Comments by the DAFC on the Commission's essential facts letter

DAFC stated that it noted that the price disadvantage and price undercutting has been recalculated based on new information from the applicant submitted 4 April 2022. DAFC stated that it is unclear why updated prices have been provided for a period July 2017 to June 2020 and not been provided at the initial stage of the application or latest at the stage drafting the report for provisional measures. According to DAFC it is in addition unclear how and why the new prices differ from the prices provided by the applicants at an earlier stage.

DAFC stated that since the new calculations lead to significant increase in price disadvantage for the individual exporters it calls for a more transparent approach and explanation of the new findings. DAFC is increasingly concerned about the new finding of increased price disadvantage when referring to the non-confidential letter from the applicant's representative dated 12 April 2022. On this basis the essential fact letter does not explain why the updated price information has led to increased price disadvantage for almost all individual exporters cooperating when the applicant conclude that price disadvantage has decreased following the updated price information provided by the applicant. The legal certainty and general level of transparency is of concern as not only small adjustments have been made for the price disadvantage calculation, but the updated price information has resulted in significant increases in the level of price disadvantage without any further explanation.

Commission's consideration

The Commission noted that information on the methodology used in determining the price disadvantage was included in both the preliminary report as well as the Commission's essential facts letter. The Commission also noted that the price disadvantage of the only exporter in Denmark increased from 16.9 percent to 22.2 percent. This is a difference of about five percent. The DAFC in previous communication was informed that the change in the price

disadvantage comes as a result of the decrease in the Applicant's updated unsuppressed selling price.

9.2 Amount of final duty

The Commission made a final determination that the lesser duty rule should be applied in instances where both the exporter and importer responded fully. The Commission made a further final determination not to apply the lesser duty rule for Jaguafrangos, Plukon, Disavasa, Grupo An and UVESA.

10. FINAL DETERMINATION

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

- dumping of frozen bone-in portions of fowls of the species *gallus domesticus* originating in or imported from Brazil, Denmark, Ireland, Poland and Spain is taking place;
- the SACU industry is experiencing material injury and a threat of material injury, as a result of the dumped imports of frozen bone-in portions of fowls of the species *gallus domesticus* originating in or imported from Brazil, Denmark, Ireland, Poland and Spain.

The Commission therefore decided to recommend to the Minister of Trade, Industry and Competition that the following anti-dumping duties be imposed on frozen bone-in portions of fowls of the species *gallus domesticus*, classifiable under tariff subheading 0207.14.9:

Country	Company	Tariff subheading	Rate of duty
Brazil	Agroaraçá Indústria De Alimentos	0207.14.9	39%
	Agrosul Agroavícola Industrial S/A	0207.14.9	16%
	Avivar Alimentos Ltda	0207.14.9	35%
	Aurora Cooperativa Central Aurora Alimentos	0207.14.9	17%
	Cooperativa Agroindustrial Consolata	0207.14.9	28.3%
	Jaguafrangos Indústria E Comércio De Alimentos Ltda	0207.14.9	18.18%
	Rio Branco Alimentos S/A	0207.14.9	3.31%
	Zanchetta Alimentos Ltda	0207.14.9	8%
	All other (excluding C.Vale – Cooperativa Agroindustrial; Seara Alimentos Ltda)	0207.14.9	265.1%
Denmark	HK Scan	0207.14.9	7.75%
	All other exporters	0207.14.9	67.4%

Ireland	Manor Farm	0207.14.9	2.49%
Ireland	All exporters	0207.14.9	37.52%
Poland	Animex Foods Sp. Z O.O.	0207.14.9	2.25%
	All other exporters (excluding Drobimex Sp. Z.O.O; Plukon Sieradz Sp. Z.O.O)	0207.14.9	96.9%
Spain	Distribuciones Avícolas Vázquez S.A.U.	0207.14.9	7.56%
	An Avicola Melida S.L.	0207.14.9	9.95%
	UVE S.A	0207.14.9	14.62%
	Grupo Vall Companys	0207.14.9	22.6%
	All other exporters	0207.14.9	85.8%

The Commission made a final determination to recommend to the Minister of Trade, Industry and Competition not to impose anti-dumping duties on the following tariff subheadings of subject product:

Country	Tariff subheading	Description
Brazil	0207.14.91	Whole bird cut in half
	0207.14.97	Thighs
	0207.14.98	Frozen Drumsticks
Denmark	0207.14.91	Whole bird cut in half
	0207.14.96	Breasts
Ireland	0207.14.91	Whole bird cut in half
	0207.14.96	Breasts
	0207.14.99	Other
Poland	0207.14.91	Whole bird cut in half
	0207.14.96	Breasts
	0207.14.97	Thighs
	0207.14.99	Other
Spain	0207.14.91	Whole bird cut in half
	0207.14.93	Frozen Leg Quarters
	0207.14.96	Breasts
	0207.14.99	Other

The Commission further made a recommendation that the anti-dumping duties on frozen bone-in portions of fowls of the species *gallus domesticus*, classifiable under tariff subheading 0207.14.9 be listed in the “rebate item” column in Schedule No. 2, and therefore may not be imported under rebate of customs duty without payment of anti-dumping, countervailing and safeguard duties without a recommendation from ITAC that such trade defence duties be rebated.