

Report No. 476

**INVESTIGATION INTO THE ALLEGED DUMPING OF DISODIUM CARBONATE
(SODA ASH) ORIGINATING IN OR IMPORTED FROM THE UNITED STATES OF
AMERICA (USA): FINAL DETERMINATION**

The International Trade Administration Commission of South Africa herewith presents its **Report No. 476: INVESTIGATION INTO THE ALLEGED DUMPING OF DISODIUM CARBONATE (SODA ASH) ORIGINATING IN OR IMPORTED FROM THE UNITED STATES OF AMERICA (USA): FINAL DETERMINATION**



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INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA

REPORT NO. 476

INVESTIGATION INTO THE ALLEGED DUMPING OF DISODIUM CARBONATE (SODA ASH) ORIGINATING IN OR IMPORTED FROM THE UNITED STATES OF AMERICA (USA): FINAL DETERMINATION

SYNOPSIS

The Government of Botswana requested the Minister of Trade and Industry, on behalf of Botswana Ash (Pty) Ltd (Botash), the sole manufacturer of soda ash in the SACU, that the Commission be directed, in terms of the ITA Act, to launch an investigation into the alleged dumping of disodium carbonate (soda ash) originating in or imported from the United States of America. A directive to this effect was subsequently received from the Minister of Economic Development.

The investigation was initiated on 21 June 2013 after the Commission considered that there was sufficient evidence to show that the subject product was being imported at dumped prices and causing material injury to the SACU industry.

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

After considering all interested parties' comments, the Commission made a preliminary determination that the subject product originating in or imported from the USA was being dumped onto the SACU market causing material injury to the SACU industry.

The Commission therefore decided to request the Commissioner for South African Revenue Service (SARS) to impose the following provisional measures on imports of the subject product for a period of 26 weeks:

Tariff subheading	Product	Country/Manufacturer	Amount of provisional payment
2836.20	Disodium carbonate	USA: Produced by OCI Chemical Corporation	21%
		USA: Produced by TATA Chemicals (SODA ASH) Partners Inc. (TCSAP)	8%
		USA (Excluding that produced by TATA CHEMICALS (SODA ASH) PARTNERS INC. (TCSAP) and OCI Chemical Corporation)	40%

The Commission's preliminary determination was published in the *Government Gazette* on 21 December 2013.

Comments submitted by interested parties on the preliminary determination and the Commission's essential facts letters within the specified time periods, were taken into consideration by the Commission prior to making its final determination.

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

After considering all interested parties' comments, the Commission made a final determination that the subject product originating in or imported from the USA was being dumped onto the SACU market causing material injury to the SACU industry.

The Commission therefore decided to recommend to the Minister of Trade and Industry that the following anti-dumping duties be imposed on disodium carbonate (soda ash) originating in or imported from the United States of America:

Tariff subheading	Product	Country/Manufacturer	Amount of final duty
2836.20	Disodium carbonate	USA: Produced by OCI Chemical Corporation	21%
		USA: Produced by TATA Chemicals (SODA ASH) Partners Inc. (TCSAP)	8%
		USA (Excluding that produced by TATA CHEMICALS (SODA ASH) PARTNERS INC. (TCSAP) and OCI Chemical Corporation)	40%

1. APPLICATION AND PROCEDURE

1.1 LEGAL FRAMEWORK

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

1.2 APPLICANT

The Government of Botswana requested the Minister of Trade and Industry, on behalf of Botswana Ash (Pty) Ltd (Botash), the sole manufacturer of soda ash in the SACU, that the Commission be directed, in terms of the ITA Act, to launch an investigation into the alleged dumping of disodium carbonate (soda ash) originating in or imported from the United States of America. A directive to this effect was subsequently received from the Minister of Economic Development.

1.3 ACCEPTANCE OF APPLICATION

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

1.4 ALLEGATIONS BY THE APPLICANT

The Applicant alleged that imports of the subject product, originating in or imported from the USA were being dumped on the SACU market, thereby causing material injury to the SACU industry. The basis of the alleged dumping was that the goods were being exported to SACU at prices less than the normal value in the country of origin.

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

- (a) Actual increase in inventories;
- (b) Price depression;
- (c) Price undercutting;
- (d) Price suppression;
- (e) Actual and potential decline in employment;
- (f) Actual and potential decline in profit;
- (g) Actual and potential decline in market share relating to value;
- (h) Actual and potential decline in return on investment; and
- (i) Actual and potential decline in total net cash flow.

1.5 INVESTIGATION PROCESS

Information submitted by the Applicant was verified on 29 April 2013 and the verification report was sent on 7 May 2013.

The Commission initiated an investigation into the alleged dumping of disodium carbonate originating in or imported from the USA, pursuant to Notice No. 633 which was published in Government Gazette No. 36575 on 21 June 2013.

Prior to the initiation of the investigation, the trade representative of the USA was 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 PERIOD

This investigation period for dumping was from 1 March 2012 to 28 February 2013. The injury investigation involved evaluation of data for the period 1 September 2009 to 28 February 2013.

1.7 COMMENTS

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.

1.8 PARTIES CONCERNED

1.8.1 SACU industry

The SACU industry consists of one manufacturer of the subject product, Botswana Ash (Pty).

1.8.2 Foreign Manufacturers/Exporters/Importers

Two exporters namely TATA Chemicals Soda Ash Partners (TATA (USA)) and OCI Chemical Corporation (OCI) responded to the exporter's questionnaire while three importers namely TATA (SA), CHC Resources and Consol Glass (Pty) Ltd (Consol) responded to the importers questionnaire. All the responses were accepted as properly documented.

1.9 PRELIMINARY DETERMINATION

The Commission made a preliminary determination that:

- the subject product originating in or imported from the United States of America (USA) was being dumped onto the SACU market;
- the SACU industry experienced material injury during the POI; and
- there was a causal link between the alleged dumping of the subject product and the material injury experienced by the SACU industry.

The Commission therefore decided to request the Commissioner for South African Revenue Service (SARS) to impose the following provisional measures on imports of the subject product for a period of 26 weeks, being the lesser of the dumping margin and the price disadvantage:

Tariff subheading	Product	Country/Manufacturer	Amount of provisional payment
2836.20	Disodium carbonate	USA: Produced by OCI Chemical Corporation	21%
		USA: Produced by TATA Chemicals (SODA ASH) Partners INC. (TCSAP)	8%
		USA (Excluding that produced by TATA CHEMICALS (SODA ASH) PARTNERS INC. (TCSAP) and OCI Chemical Corporation)	40%

1.10 FINAL DETERMINATION

After considering all the comments submitted by interested parties within the specified time periods, the Commission made a final determination that:

- the subject product originating in or imported from the United States of America (USA) was being dumped onto the SACU market;
- the SACU industry experienced material injury during the POI; and
- there was a causal link between the alleged dumping of the subject product and the material injury experienced by the SACU industry.

The Commission therefore decided to recommend to the Minister of Trade and Industry that the following anti-dumping duties be imposed on disodium carbonate (soda ash) originating in or imported from the United States of America:

Tariff subheading	Product	Country/Manufacturer	Amount of final duty
2836.20	Disodium carbonate	USA: Produced by OCI Chemical Corporation	21%
		USA: Produced by TATA Chemicals (SODA ASH) Partners INC. (TCSAP)	8%
		USA (Excluding that produced by TATA CHEMICALS (SODA ASH) PARTNERS INC. (TCSAP) and OCI Chemical Corporation)	40%

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 IMPORTED PRODUCTS

2.1.1 Description

The subject product is disodium carbonate, commonly known as soda ash, a solid white granular product. It is imported in bulk at a density of 1,041kg/m³ and a screen analysis of on 600 µm – 1% through 75 µm – 2%.

2.1.2 Country of origin/export

The subject product originates in and is exported from the USA.

2.1.3 Possible tariff loopholes

None.

2.1.4 Tariff classification

The subject product is currently classifiable as follows:

Table 2.1.4

Heading	Tariff subheading	Description	Statistical Unit	Rate of Duty			
				General	EU	EFTA	SADC
2836	2836.20	Carbonates; peroxocarbonates (percarbonates); commercial ammonium carbonate containing ammonium carbonate: Disodium carbonate	Kg	5.5%	5.5%	1.4%	free

2.1.5 Negligibility test

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

Table 2.1.5: Import volumes

	Import volumes 1 September 2009 to 28 February 2013 (POI) – kg	Volume as a percentage of total import volume
Dumped imports from the USA	971 047 345	82.12%
Other imports	211 463 711	17.88%
Total imports	1 182 511 056	100%

The Commission made a final determination that the imports from the USA are above the negligibility level.

2.2 SACU PRODUCT

The SACU product is described as disodium carbonate, commonly known as soda ash.

2.3 LIKE PRODUCT ANALYSIS

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

Table 2.3 Like product determination

	Imported product	SACU product
Raw materials	The main input is trona ($\text{Na}_3\text{HCO}_3\text{CO}_3\cdot\text{H}_2\text{O}$). This product is mined in the USA in the Green Basin of Wyoming.	Alkali-rich fossil brine, coal derived carbon dioxide, fresh water and energy.
Production process	The USA follows the monohydrate production process which is identical for	The production process used by Botash is based on the Kerr McGee

	<p>domestic and export sales. The production process is as follows: Fossil trona is mined, crushed and screened. It is then calcined and dissolved in water, filtered, crystallized and finally the monohydrate ($\text{Na}_2\text{CO}_3 \cdot \text{H}_2\text{O}$) is dried.</p>	<p>carbonation technology. In this technology alkali-brine is extracted from boreholes on the Sua Pan by pumping to the surface into evaporation ponds. Common salt crystallises out leaving a rich trona brine which is pumped to the plant. In order to extract the highly soluble sodium carbonate (Na_2CO_3) from the brine, it is first converted to sodium bicarbonate (NaHCO_3) which is relatively insoluble. The NaHCO_3 crystals are then separated from the brine and purified by washing. The purified NaHCO_3 is then converted back to ash by heating. The soda ash is then finally compacted into dense granules and stored.</p>
Physical appearance	Soda ash is a solid white granular product	Soda ash is a solid white granular product
Tariff classification	2836.20	2836.20
Application or end use	A basic chemical that is mainly used in glass manufacturing, metallurgical applications, the detergent industry, recovery of cobalt and chemical manufacturing.	A basic chemical that is mainly used in glass manufacturing, metallurgical applications, the detergent industry, recovery of cobalt and chemical manufacturing.
Substitutability	The imported product and the SACU product are direct substitutes.	The imported product and the SACU product are direct substitutes.

Comments

CHC and Tata US argued that the imported product and the SACU product are different in terms of density, purity, colour and particle distribution. The Commission was however of the opinion that it would be difficult to differentiate the imported product from the SACU product on the basis of colour, density, purity and/or particle distribution.

CHC, Tata US and the Textile Federation indicated that in terms of technical characteristics, the SACU product does not meet the requirements of certain downstream industries (i.e. the detergent and textile industries). The Commission however noted that the Applicant stated in its application that it sells an insignificant quantity of its production to the detergent and textile sectors.

In the comments received from the Applicant and Consol Glass before and after essential facts, it was pointed out that likeness of the SACU product and the imported product is not an issue, but rather user preference, pricing and availability.

After considering all the above factors, the Commission made a final determination that the SACU product and the imported product are “like products”, for purposes of comparison in this investigation, in terms of Article 2.6 of the Anti-Dumping Agreement.

3 SACU INDUSTRY

3.1 INDUSTRY STANDING

The application was submitted by Botswana Ash (Pty) Ltd, the sole manufacturer of the subject product in the SACU market.

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

4. DUMPING

4.1 METHODOLOGY IN THIS INVESTIGATION FOR OCI CHEMICAL CORPORATION AND TATA CHEMICAL CORPORATION

4.1.1 Normal Value

The Commission decided to accept the information submitted by **OCI Chemical Corporation** in its response to the Commission's questionnaire for purposes of its final determination. The normal value reported is for technical grade only since all of the products exported to the SACU during the period of investigation were of the technical grade.

Adjustments:

The Commission decided to allow the adjustments claimed by OCI Chemicals for cost of payment terms, delivery charges, packaging and other costs for purposes of the final determination.

The Commission decided to accept the information submitted by **TATA (USA)** in its response to the Commission's questionnaire for purposes of its final determination.

Adjustments:

The Commission decided to allow the adjustments claimed by TATA (USA) for billing costs, discounts & rebates; delivery charges and other costs for purposes of its final determination.

4.1.2 Export price

The Commission decided to accept the information submitted by **OCI Chemical Corporation** in its response to the Commission's questionnaire for purposes of its final determination.

Adjustments:

The Commission decided to allow the adjustments claimed by OCI Chemicals for cost of payment terms, delivery charges, packaging and other costs for purposes of the final determination.

The information submitted by **TATA Chemical Corporation** in its response to the Commission's questionnaire revealed that the importer in the SACU is a related party to TATA (USA). Therefore, the export price was constructed by deducting all costs between the exporter and the importer.

4.1.3 Margin of dumping

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

The following dumping margins were calculated:

OCI Chemical Corporation: 163%.

TATA Chemical Corporation: 13%

4.2 METHODOLOGY IN THIS INVESTIGATION FOR ALL OTHER MANUFACTURERS/EXPORTERS FROM THE USA (RESIDUAL DUMPING MARGIN)

4.2.1 Normal Value

TATA USA's normal value was used without adjustments, as this was regarded as the best information available, based on the large volume of domestic sales by TATA USA during the period of investigation.

4.2.2 Export price

The export price was based on the official SARS import statistics. An adjustment was made for transport to the port (Wyoming to Port Arthur, Texas) in order to arrive at the ex-factory export price.

4.3.3 Residual dumping margin

The following residual dumping margin was calculated:

	Dumping margin %
Non-cooperating manufacturers/exporters	40 %

4.4 SUMMARY – DUMPING

For purpose of its final determination, the Commission found that the subject product originating in or imported from the United States of America was being dumped onto the SACU market at the following margins:

	Dumping Margin
OCI Chemical Corporation	163%
TATA Chemicals (SODA ASH) Partners Inc. (TCSAP)	13%
USA (Excluding that produced by TATA CHEMICALS (SODA ASH) PARTNERS INC. (TCSAP) and OCI Chemical Corporation)	40%

The Commission always considers the lesser duty rule but only applies it in instances where both the exporter and importer responded fully. The Commission therefore decided to apply the lesser duty rule for the two cooperating exporters.

The Commission therefore decided to recommend the following anti-dumping duties:

	Anti-dumping duty
OCI Chemical Corporation	21%
TATA Chemicals (SODA ASH) Partners Inc. (TCSAP)	8%
USA (Excluding that produced by TATA CHEMICALS (SODA ASH) PARTNERS INC. (TCSAP) and OCI Chemical Corporation)	40%

5. MATERIAL INJURY

5.1 DOMESTIC INDUSTRY – MAJOR PROPORTION OF PRODUCTION

The following injury analysis in this submission relates to Botswana Ash (Pty) Ltd that constitutes 100 per cent of the total domestic production of the subject product.

The Commission decided that this constitutes “a major proportion” of the total domestic production, in accordance with the Anti-Dumping Regulations.

5.2 IMPORT VOLUMES AND EFFECT ON PRICES

5.2.1 Import volumes

The following table shows the volume of dumped imports in kilograms, for the subject product:

Table 5.2.1: Import volumes

Kilogram	2009/2010	2010/2011	2011/2012	9/2012-2/2013
Dumped imports	223 954 250	347 995 105	293 901 050	105 196 940
Other imports	61 203 734	35 848 941	22 497 237	11 913 799
Total imports	285 157 984	383 844 046	316 398 287	117 110 739
Dumped imports as a % of total imports	78.54%	90.66%	92.89%	89.8%

Import volumes 6 month comparable period

Kilogram	9/2010-2/2011	9/2011-2/2012	9/2012-2/2013
Dumped imports	163 232 397	150 623 300	105 196 940
Other imports	11 935 862	17 490 468	11 913 799
Total imports	175 168 259	168 113 768	117 110 739
Dumped imports as a % of total imports	93.2%	89.6%	89.8%

The information in the table above indicates that the volume of the dumped imports from the USA increased by 14.35 percentage points from 78.54 per cent in 2009/2010 financial period to 92.89 per cent in the 2011/2012 financial period, while imports from other countries declined by 63 per cent. In the 6 month period from September 2012 to February 2013 only approximately 105 000 tons were imported, projected to a total of 210 000 tons for the year, which is about 80 000 tons less than the September 2011 to August 2012 figure.

The two exporters who responded, namely OCI and TATA exported approximately 30% of the total exports from the USA.

5.2.2 Effect on Domestic Prices (All the tables were indexed due to confidentiality)

5.2.2.1 Price depression

Price depression occurs where the SACU industry's ex-factory selling price decreases during the investigation period.

The table below shows the domestic industry's ex-factory selling price per kilogram:

Table 5.2.2.1: Price depression

Pula/kg	2009/10	2010/11	2011/12	Sep 12 - Feb 13
Soda ash	100	93	97	106

Price depression 6 month comparable period

Sep 10 - Feb 11	Sep 11 - Feb 12	Sep 12 - Feb 13
2011	2012	2013
100	100	118

The table indicates that the SACU industry price declined over the period 2009/10 to 2011/12 by 3 index points, while it declined by 7 index points in 2010/11 compared with 2009/10 as a result of the dumped imports from the USA, causing the SACU industry to suffer material injury. Selling prices remained the same in the 6 month period 2011 to 2012 and although they increased in the 6 month period in 2013 by 18 index points compared to the previous period in 2012, the increases were still below the cost increases.

OCI comments

OCI indicated that the allegedly “suppressed” prices and allegedly “unsuppressed” domestic prices are following the same general trends. Price depression is defined as a decrease in the selling price during the investigation period. It is unclear that there has been a significant price decrease during the investigation period, especially if one factors in the price information for the interim period 2013. However, even assuming that a price decline occurred, the pricing pattern of domestic prices is exactly the same for suppressed and unsuppressed prices, contradicting Botash’s claim that U.S. imports are causing price depression.

TATA USA comments

TATA USA indicated that SACU prices were not depressed or suppressed over the period of investigation. Even accepting as valid the indexed prices reported in the Application, it is evident that while average selling prices in the SACU market declined very slightly during the 2010-11 and 2011-12 annual periods, prices began a sustained recovery in 2012. Indeed, for the most recent six month period of September 2012 through February 2013, Botash documents that its average selling prices had not only recovered to their prior levels, but were 17% higher than during the comparison period in 2010-2011. While Botash is now quick to attribute this steady improvement in pricing to alleged rumors of an anti-dumping investigation, Botash offers no evidence to substantiate that implausible claim. Indeed, for nearly every

single indicator that improved toward the end of the period of investigation, Botash merely repeated its refrain that the improvement was due to alleged rumors of the anti-dumping investigation. Such a large increase in average selling prices during the interim periods, over such an extended period, does not support a finding of "price depression" or "price suppression" by reason of subject imports from the United States.

The Commission found that the information above indicates that prices have been depressed over the 3 year period of investigation, although they have recovered during the latest 6 month period.

5.2.2.2 Price undercutting

The following table compares the SACU industry's ex-factory prices with the landed cost of the imported product.

Table 5.2.2.2: Price undercutting

	2009/2010	2010/2011	2011/2012	Sep 12 - Feb 13
Applicant's selling price	100	77	89	112
USA: Import Landed Price	100	86	120	141
Price Undercutting	100	92	23	25
Price Undercutting	100	89	24	23

Table 5.2.2.2: Price undercutting 6 month comparable period

	Sep 10 - Feb 11 2011	Sep 11 - Feb 12 2012	Sep 12 - Feb 13 2012
Applicant selling price	100	102	124
USA landed price	100	122	145
Price undercutting	100	23	32
Price undercutting	100	22	25

The Applicant stated that Table 5.2.2.2 above indicates that price undercutting prevailed in the period of investigation at a substantial percentage. It is therefore evident that the customers were sourcing the dumped product from the USA, causing the SACU industry to suffer material injury.

From the table above it is evident that the price undercutting percentage declined by 77 index points from 2009 to 2012. In the 6 month period added, the price undercutting percentage declined by 75 index points.

5.2.2.3 Price suppression

Price suppression is the extent to which an increase in the cost of production of the product concerned, cannot be recovered in selling prices.

The following table shows the Applicant's average costs of production and its actual average selling prices for the subject product:

Table 5.2.2.3: Price suppression

Average selling price & cost
price per kg ex-factory

		2009 - 10	2010 - 11	2011 - 12	Sep12-Feb13
Selling price	P/kg	100	93	97	106
Total production cost	P/kg	100	94	99	111
Gross Profit	P/kg	100	91	95	101
Gross Profit %		100	98	98	96
Cost of production % selling price		100	102	102	105

Price suppression 6 month comparable period

	Sep 10 - Feb 11	Sep 11 - Feb 12	Sep 12 - Feb 13
	2011	2012	2013
Selling price P/kg	100	100	118
Total production cost	100	90	126
Gross Profit	100	107	108
Gross Profit %	100	108	93
Cost of production % selling price	100	91	109

Average selling price & cost price per kg ex-factory

The SACU industry was forced to suppress its selling prices over the period 2009/10 to 2011/12 to compete with the dumped imports from the USA. As the table indicates, as a result of the suppression the SACU industry profit per kilogram declined, causing the SACU industry to suffer material injury. In the 6 month period after the 3 years the profit declined even further.

The table above indicates that the Applicant's average prices are suppressed, but that there was only a one percentage point increase in cost of production as a percentage of the selling price from 2009/10 to 2011/12. This gap widened comparing the 6 months periods.

5.3 Consequent impact of the dumped imports on the Industry

5.3.1 Actual and potential decline in sales

The following table shows the Applicant's SACU sales volume of the subject product:

Table 5.3.1: Sales volume

	2009 - 10	2010 - 11	2011 - 12	Sep12-Feb13
	Ton	Ton	Ton	Ton
Botash's sales volume SACU	100	101	116	61
Sales by other SACU manufacturers	-	-	-	
Total volume of SACU sales by SACU manufacturers	100	101	116	61

Sales volume 6 month comparable period

	Sep10-Feb11	Sep11-Feb12	Sep12-Feb13
	2011	2012	2013
	Ton	Ton	Ton
Botash's sales volume SACU	100	108	119
Total volume of SACU sales by SACU manufacturers	100	108	119

The table indicates an increase in sales volumes over the period 2009/10 to 2011/12. The reason for the increase was the fact that the SACU industry had reduced its selling prices to such low (loss- making) levels to compete with the dumped imports from the USA and retain market share. It is thus evident that the low prices were not sustainable and eventually prices would have to be increased and sales would plummet to unforeseen low levels. Sales increased in the 6 months ending February 2013 as a result of the anticipated anti-dumping investigation by the industry. The cost of production escalated in the 6 months ending February 2013 as the Applicant reduced production to curb the increasing inventories. It was able to increase its selling price and sales volumes, as a result of the exchange rate depreciation, to recover the increasing costs, however not to the level of the unsuppressed selling price.

5.3.2 Profit

The following table shows the Applicants' profit margins :

Table 5.3.2: Profit

Profit for concerned products

		2009 - 10	2010 - 11	2011 - 12	Sep12- Feb13
Ton's Sold	Ton	100	101	116	61
Total Gross profit	P'000	100	92	110	61
Net Profit (EBIT)	P'000	100	-244	-245	-112
Total Gross profit per kg	P/kg	100	91	95	101
Total Net Profit (EBIT) per kg	P/kg	100	-236	-218	-118

- (P) denotes Botswana Pula

Profit for concerned products 6 month comparable period

		Sep 10 - Feb 11	Sep 11 - Feb 12	Sep 12 - Feb 13
		2011	2012	2013
Ton's Sold	Ton	100	108	119
Total Gross profit	P'000	100	116	130
Net Profit (EBIT)	P'000	100	Negative	Negative
Total Gross profit per kg	P/kg	100	107	108
Total Net Profit (EBIT) per kg	P/kg	100	Negative	Negative

As a result of price depression and suppression of the selling prices by the SACU industry it is evident from the table that the profits (P/kg) of the SACU industry declined over the period 2009/10 to 2011/12 when it realised a net loss in 2010/11 and 2011/12. The 6 months added continued to show losses.

OCI comments

When the domestic industry's profitability declined in the six-month period 2013, U.S. import volumes declined and their unit value increased. In sum, the information provided by Botash does not establish a causal relationship between the volume and value of U.S. imports and its allegations of material injury.

5.3.3 Output

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

Table 5.3.3: Output

	2009 - 10	2010 - 11	2011 - 12	Sep 12 - Feb 13
Total production (Tons)	100	109	115	57

Output 6 month comparable period

	Sep 10 - Feb 11	Sep 11 - Feb 12	Sep 12 - Feb 13
Total production (Tons)	100	112	102

The Applicant indicated that it is currently continuing to produce to obtain and maintain economies of scale to neutralize the reduced selling prices and to produce just at breakeven levels. However, it is evident that it is not currently possible as a result of the low priced imports from the USA. According to the Applicant, it cannot continue to sell at suppressed prices and subsequently would have to increase selling prices. However, once the selling prices are increased, the customers would shift to the low priced products from the USA, sales would drop and subsequently production would have to be reduced and it would face the possibility of closing down. In the 6 month period 2013 compared with 2012, production declined as the Applicant reduced inventory levels. However cost of production increased but the exchange rate buffered the expected negative effect to some extent, though the selling prices still remain suppressed.

The table indicates that the Applicant increased its production by 15 index points from 2009/10 to 2011/12, with a slight increase of 2 index points comparing the 6 month periods.

5.3.4 Market share

The following table shows the SACU market share for the subject product in kilograms:

Table 5.3.4: Market share

		2009 - 10		2010 - 11		2011 - 12		Sep 12 - Feb 13	
		Volume	%	Volume	%	Volume	%	Volume	
SACU Industry market share	Kg	100	100	101	84	116	102	61	123
Market share of dumped imports USA	Kg	100	100	155	129	131	116	47	95
Market share of other imports	Kg	100	100	59	49	37	33	20	40
Total Market	Kg	100		121		113		49	

Output 6 month comparable period

	Sep 10 - Feb 11		Sep 11 - Feb 12		Sep 12 - Feb 13	
	Volume Kg	%	Volume Kg	%	Volume Kg	%
SACU Industry market share	100	100	108	108	119	139
Market share of dumped imports - USA	100	100	92	93	64	75
Market share of other imports	100	100	146	150	99	123
Total Market	100		101		87	

The SACU industry's market share declined from 100 index points in 2009/10 to 84 index points in 2010/11 while the USA imports gained market share from 100 index points in 2009/10 to 129 index points in 2010/11.

As a result of the low- priced imports from the USA, “other” imports have also declined indicating that even these imports could not compete against the low priced imports from the USA. Although the USA market share by volume declined in the six month period 2012/13 compared with the same period in 2011/12 and 2010/11, it remained substantial and continued to put pressure on Botash as a result of the continuation of dumping and price undercutting.

5.3.5 Productivity

Using the production and employment figures sourced from the Applicant, its productivity in respect of the subject product is as follows:

Table 5.3.5: Productivity

		2009 - 10	2010 - 11	2011 - 12	Sep12-Feb13
Production volume	Ton	100	109	115	57
Number of employees (Production)	No.	100	104	94	90
Ton per employee	Ton	100	96	123	63

Productivity 6 month comparable period

		Sep 10-Feb11	Sep 11-Feb12	Sep 12-Feb13
Production volume	Ton	100	109	100
Number of employees (Production)	No	100	99	90
Ton per employee	Ton	100	113	114

As the industry had not scaled down and employee numbers had been reduced, the productivity was still at acceptable levels. However, once production is reduced as a result of declining sales, productivity would reduce, causing the SACU industry material injury. In the six months 2012/13, productivity increased slightly compared with the same period

2011/12 as employment levels declined together with production. The table above indicates that the per ton output per employee from 2009/10 to 2011/12 increased from 100 to 123 index points.

5.3.6 Return on investment

Return on investment is normally regarded by the Commission as being the profit before interest and tax as a percentage of the net value of assets. The following table provides the Applicant's profit after interest and tax expressed as a percentage of its net value of assets.

The Applicant stated that, as profits declined the return on investment declined, over the period 2009/10 to 2011/12. In fact in both 2010/11 and 2011/12 return on investment was negative indicating that the industry is suffering material injury. In the 6 months added, the return on investment remained negative.

Table 5.3.6: Return on investment

		2009 - 10	2010 - 11	2011 - 12	Sep12- Feb13
Net profit (product concerned)	P'000	100	-157	-178	-107
Net profit (all product) * (EBIT)	P'000	100	36	78	53
Net assets (product concerned)@85:15	P'000	100	98	111	114
Total net assets (All)	P'000	100	98	111	114
Return on net assets (product concerned)		100	Negative	Negative	Negative
Return on net assets (All)		100	36	70	46

**Return on investment 6
month comparable period**

		Sep 10 - Feb 11	Sep 11 - Feb 12	Sep 12 - Feb 13
		2011	2012	2013
Net profit (product concerned)	P'000	100	Negative	Negative
Net profit (all product) * (EBIT)	P'000	100	83	180
Net assets (product concerned)@85:15	P'000	100	107	119
Total net assets (All)	P'000	100	107	119
Return on net assets (product concerned)		100	Negative	Negative
Return on net assets (All)		100	78	151

5.3.7 Utilisation of production capacity

The following table provides the Applicant's capacity and production for the subject product:

Table 5.3.7: Utilisation of production capacity

		2009 - 10	2010 - 11	2011 - 12	Sep12- Feb13
Company: Capacity	Ton	100	100	100	50
Company: Actual production	Ton	100	109	115	57
Capacity utilisation %		100	109	115	114

Utilisation of production capacity 6 month comparable period

		Sep 10 - Feb 11	Sep 11 - Feb 12	Sep 12 - Feb 13
		2011	2012	2013
Company: Capacity	Ton	100	100	100
Company: Actual production	Ton	100	112	102
Capacity utilisation %		100	112	102

The production levels were increased to reduce cost of production and to capture market share. As result of the depressed selling prices, sales volume increased. In the six months ending 2012/13, production capacity utilisation

dropped below the same period in 2011/12 as well as the average for 2011/12.

The table above indicates that capacity utilisation increased from 2009 to 2012 by 14 index points.

5.3.8 Factors affecting domestic prices

There are no other known factors which could have affected the domestic prices negatively.

5.3.9 The magnitude of the margin of dumping

The following margins of dumping were calculated:

Table 5.3.9: Margins of dumping

Tata Chemicals (Soda Ash) Partners Inc.	13%
OCI Chemical Corporation	163%
Non-co-operating exporters residual dumping margin	40%

5.3.10 Actual and potential negative effects on cash flow

The following table reflects the Applicant's cash flow situation with regard to the product under investigation:

Table 5.3.10: Cash flow situation

		2009 – 10	2010 – 11	2011 – 12	Sep12-Feb13
<u>Product Specific</u>					
Cash flow : incoming	P'000	100	44	54	4
Cash flow : outgoing	P'000	100	101	58	104
Net cash flow	P'000	100	Negative	Negative	Negative

Debtors (value)	P'000	100	106	151	193
Debtors : average days outstanding	Days	100	106	106	103

Cash flow situation 6 month comparable period

		Sep10-Feb11	Sep11-Feb12	Sep12-Feb13
Product Specific				
Cash flow : incoming	P'000	100	-114	14
Cash flow : outgoing	P'000	100	79	197
Net cash flow	P'000	100	Negative	Negative
Debtors (value)	P'000	100	123	192
Debtors : average days outstanding	Days	100	121	114

As a result of the SACU industry's effort to compete with the low priced imports from the USA, the selling prices of the SACU industry were depressed and suppressed and therefore the net cash flow was negative over the period 2009/10 to 2011/12. Over the six months 2010/11, 2011/12 and 2012/13, cash flow remained negative and deteriorated further.

5.3.11 Inventories

		2009 – 10	2010 – 11	2011 – 12	Sep12-Feb13
Volume	Ton	100	137	169	142
Value	P'000	100	134	153	148
Value per unit	P/Ton	100	98	91	104

Inventories 6 month comparable period

		Sep 10 - Feb 11	Sep 11 - Feb 12	Sep 12 - Feb 13
		2011	2012	2013
Volume	Ton	100	177	126
Value	P'000	100	162	133
Value per unit	P/Ton	100	92	105

The table indicates that inventories escalated by 69 index points by year

end 2011/12 causing the SACU industry to suffer material injury. The SACU industry recently commenced with exporting some of the build-up inventories to try and recover the cost and lower the inventory levels.

As a result of the dumped product in the market, inventories had escalated to an extremely high level which had a negative impact on cash flow causing the SACU industry to suffer material injury. This trend continued over the six month periods.

5.3.12 Employment

The following table provides the Applicant's employment figures for the subject product:

Table 5.3.12: Employment

	2009 – 10	2010 – 11	2011 – 12	Sep12-Feb13
Direct labour units: Production	100	101	92	88
Indirect labour units: Production	100	108	95	93
Total labour units: Production	100	104	94	90
Labour units selling & administration	100	100	90	90
Total labour units	100	103	93	90

Employment 6 month comparable period

	Sep 10 - Feb 11	Sep 11 - Feb 12	Sep 12 - Feb 13
	2011	2012	2013
Direct labour units: Production	100	97	89
Indirect labour units: Production	100	101	90
Total labour units: Production	100	99	90
Labour units selling & administration	100	98	91
Total labour units	100	99	90

The Applicant indicated that employment levels have decreased over the period 2009/10 to 2011/12. It is important to note that the soda ash industry is a very important industry for Botswana and SACU. Thus the

Applicant has a large number of employees, technicians and engineers that do their internship at Botash. The Applicant has embarked on a policy of not filling posts which became vacant in a bid to reduce costs. This is impacting negatively on it and Botswana as expertise is lost. The declining trend continued with the added six months.

5.3.13 Wages and salaries

The following table provides the Applicant's wages paid:

Table 5.3.13: Wages

		2009 – 10	2010 – 11	2011 – 12	Sep12-Feb13
Total salaries : Production	P	100	119	126	59
Wage/time period: Production	Month	Month	Month	Month	Month
Total salaries : Selling, general and admin	P	100	112	115	59
Wage/time period: Selling, general and admin	Month	Month	Month	Month	Month
Average Wages per employee	P	100	112	132	66
Wage/time period: total	Month	Month	Month	Month	Month

Wages 6 month comparable period

		Sep 10 - Feb 11	Sep 11 - Feb 12	Sep 12 - Feb 13
		2011	2012	2013
Total salaries : Production	P	100	112	104
Wage/time period: Production	Month	Month	Month	Month
Total salaries : Selling, general and admin	P	100	108	111
Wage/time period: Selling, general and admin	Month	Month	Month	Month
Average Wages per employee	P	100	112	118
Wage/time period: total	Month	Month	Month	Month

Wage increases are given annually in line with labour agreements.

5.3.14 Growth

The following table indicates the growth of the SACU market as provided by the Applicant:

Table 5.3.14: Growth

	2009 – 10	2010 – 11	Growth	2011 – 12	Growth	Growth
	Kg	Kg	Y/Y	Kg	Y/Y	2009/10 – 2011/12
Size of the SACU market Growth from previous year	100	121	21	113	-6	13
Company sales volume	100	101	1	116	14	16
Dumped imports: USA	100	155	55	131	-16	31
Other imports	100	59	-41	57	-37	-63

Growth 6 month comparable period

	Sep 10 - Feb 11	Sep 11 - Feb 12		Sep 12 - Feb 13		Growth
	Kg	Kg	Growth	Kg	Growth	2010/11 - 2012/13
Size of the SACU market growth from previous year	100	100	0	86	-14	-14
Company sales volume	100	108	8	119	11	19
Dumped imports: USA	100	92	-8	64	-30	-36
Other imports	100	147	47	100	-32	0

The SACU industry showed growth of 1 index point and 14 index points in 2010/11 and 2011/12 respectively from 2009/10 on a year on year basis while the USA imports growth over the same periods was 55 index points and -16 index points. Although the SACU industry gained some market share in volume in the six months 2012/13 compared with the same period in 2010/11 and 2011/12, the sales value was still at suppressed levels and the USA product had substantial market share.

The table indicates that other imports declined by 63 index points over the period 2009/10 to 2011/12, while imports from the USA increased by 31 index points over the same period.

5.3.15 Ability to raise capital or investments

The Applicant provided the following information with regard to the SACU industry's ability to raise capital or investments:

Table 5.3.15: Ability to raise capital or investments

		2009 – 10	2010 – 11	2011 – 12	Sep12-Feb13
Total capital/investment in subject product	P'000	100	98	111	114
Capital expenditure during year on subject product	P'000	100	112	99	5

		Sep 10 - Feb 11	Sep 11 - Feb 12	Sep 12 - Feb 13
		2011	2012	2013
Total capital/investment in subject product	P'000	100	107	119
Capital expenditure during year on subject product	P'000	100	201	19

The Applicant continued to invest over the period 2009/10 to 2011/12. However, if the alleged dumped products continue to flood the SACU market causing the SACU industry further material injury, they would not be able at the estimated levels of profits to invest further in 2013 and beyond. Therefore, it is clear that in the six month period 2012/13, capital expenditure declined substantially compared to the same period in 2010/11 and 2011/12.

OCI Comments

OCI indicated that the information submitted by the Applicant did not exhibit material injury. Domestic sales, production, productivity, market share and capacity utilization of the Applicant increased.

TATA USA Comments

To assess the question of material injury, the SACU Anti-Dumping Regulations ("AD Regulations") specify that ITAC must consider: (1) whether there has been a significant depression and/or suppression of the SACU

industry's prices; and (2) whether there have been significant changes in the domestic performance of the SACU industry in respect of: (a) sales volume; (b) profit and loss; (c) output; (d) market share; (e) productivity; (f) return on investments; (g) capacity utilization; (h) cash flow; (i) inventories; (j) employment; (k) wages; (l) growth; (m) ability to raise capital or investments; and (n) any other relevant factors placed before the Commission. During the period of investigation the SACU industry enjoyed positive results and favorable trends in nearly all of these performance indicators.

Consol's comments after essential facts

Consol states that it is of the view that the termination of supply by Botash to Consol's Bellville plant remains an important factor in assessing injury. It further stated that capacity constraints and transportation costs had little to do with the ex-factory price of soda ash and that this represents self-inflicted injury because Botash terminated its supply to the Bellville plant.

Applicant's comments after essential facts

The Applicant stated that the prices that Consol tried to negotiate were too low and were linked to the dumped USA prices. In order to allow itself to sell at a profit, Botash backed out of the negotiations. The Applicant further stated that if Consol did not use the USA price to force Botash to accept the lower price, it would have been able to sell to the Bellville plant.

5.3.16 SUMMARY – MATERIAL INJURY

In analysing the material injury factors, the Commission noted the following:

Although the SACU industry gained market share over the period 2009/10 to 2011/12, the total market grew by 13 index points over this period, of which the SACU industry was only able to capture 2 index points.

With regard to the increase in productivity, the Commission noted that the SACU industry reduced the number of employees during the period 2009/10 to 2011/12, which had a direct impact on the productivity.

The wage increase over the period 2009/10 to 2011/12 was not regarded as a factor relevant to the injury analysis, as wage increases were as a result of labour agreements negotiated.

In making a determination on whether or not the SACU industry was experiencing material injury, the Commission considered that an industry normally suffers either “price” or “volume” injury.

From the information above, it is not evident that the Applicant is suffering volume injury, given its sales volume and output figures, although inventories increased by 69 index points during the period 2009/12.

It is however clear that the Applicant is suffering price injury, when considering a decline in prices and profits. Although the Applicant’s prices increased over the last six months, there was still price undercutting and price suppression. The Applicant experienced a substantial decline on return on investment and cash flow over the period 2009/13.

The Commission made a final determination that material injury to the SACU industry exists.

6. CAUSAL LINK

6.1 GENERAL

In order for the Commission to impose anti-dumping duties, it must be satisfied that there is sufficient evidence to indicate that the material injury experienced by the SACU industry is as a result of the dumping of the subject product.

6.2 VOLUME OF IMPORTS AND MARKET SHARE

An indication of causality is the extent of the increase in volume of the imports and the extent to which the market share of the domestic industry decreased since the commencement of injury, with a corresponding increase in the market share of the dumped product.

The following table compares the market share of the SACU industry with that of the alleged dumped imports:

Table 6.2.1: Market share

Percentage market share held by:				
	2009/2010	2010/2011	2011/2012	Sep12-Feb13
Applicant	100	84	102	123
Dumped imports	100	129	116	95

Market share 6 month comparable period

Percentage market share held by:			
	9/2010-2/2011	9/2011-2/2012	9/2012-2/2013
Applicant	100	108	139
Dumped imports	100	93	75

The information in the table indicates that the market share of the Applicant increased over the period 2009/12, with a corresponding increase in the market share of the dumped imports.

The SACU industry has lost substantial market share in 2010/11 while the dumped imports from the USA have gained substantial market share as its customers switched to imports from the USA. As a result of the suppressed selling prices it had managed to recover some market share in 2011/12. Comparing the 6 month period, the local market share increased by 39 index points while the dumped imports decreased by 25 index points.

The following table shows the volume of imports:

Table 6.2.2: Import volumes

Kilogram	2009/2010	2010/2011	2011/2012	Sep12-Feb13
Dumped imports	223 954 250	347 995 105	293 901 050	105 196 940
Other imports	61 203 734	35 848 941	22 497 237	11 913 799
Total imports	285 157 984	383 844 046	316 398 287	117 110 739
Dumped imports as a % of total imports	78.54%	90.66%	92.89%	89.8%

Import volumes 6 month comparable period

Kilogram	9/2010-2/2011	9/2011-2/2012	9/2012-2/2013
Dumped imports	163 232 397	150 623 300	105 196 940
Other imports	11 935 862	17 490 468	11 913 799
Total imports	175 168 259	168 113 768	117 110 739
Dumped imports as a % of total imports	93.2%	89.6%	89.8%

The dumped imports increased over the period 2009 to 2012, but decreased over the comparable 6 month period.

6.3 EFFECT OF DUMPED IMPORTS ON PRICES

The following table shows the price effects of the Applicant:

Table 6.3.1: Price undercutting, price depression and price suppression

Pula/kg	2009/10	2010/11	2011/12	Sep12-Feb13
Applicant's ex-factory average price	100	92	97	106
Cost as a % of selling price	100	102	102	105
Price undercutting	100	89	24	23

Price undercutting, price depression and price suppression 6 month comparable period

Pula/kg	9/2010-2/2011	9/2010-2/2012	9/2012-2/2013
Applicant's ex-factory average price	100	100	118
Cost as a % of selling price	100	91	109
Price undercutting	100	22	25

From the table above it is evident that the price undercutting percentage declined by 77 index points from 2009 to 2012. In the 6 month comparison, it decreased by 75 index points.

6.4

CONSEQUENT IMPACT OF DUMPED IMPORTS

Material injury indicator	Analysis (2009– 2012)
Sales volume	Increase
Profit	Decrease
Output	Increase
Market share	Increase
Productivity	Increase
Return on investment	Decrease
Utilisation of capacity	Increase
Cash flow	Decrease
Inventories	Increase
Employment	Decrease
Wages	Increase
Growth	Increase
Total capital investment in subject product	Increase

Comparable 6 month period

Material injury indicator	Analysis (2009– 2013)
Sales volume	Increase
Profit	Increase
Output	Increase
Market share	Increase
Productivity	Increase
Return on investment	Increase
Utilisation of capacity	Increase
Cash flow	Decrease
Inventories	Increase
Employment	Decrease
Wages	Increase
Growth	Increase
Total capital investment in subject product	Increase

6.5 FACTORS OTHER THAN THE DUMPING CAUSING INJURY

6.5.1 Examination of causality under Article 3.5

The Applicant provided the following information:

Variable	Year			Change (%) 2009/2012
	2009/10	2010/11	2011/12	
Prices of imports not sold at dumped prices (fob price) (R/kg)	1.61	1.45	1.80	11.8%
Volume of imports not sold at dumped prices (Kg)	61 203 734	35 848 691	22 497 237	(63.2%)
Contraction in demand: • Growth rate for subject product industry (Kg)	100	101	116	16

Variable	6 month period			Change (%) 2010/2013
	2010/11	2011/12	2012/13	
Prices of imports not sold at dumped prices (fob price) (R/kg)	1.46	1.66	1.95	33.6%
Volume of imports not sold at dumped prices (Kg)	11 935 862	17 490 468	11 913 799	(0.2%)
Contraction in demand: • Growth rate for subject product industry (Tons)	100	108	119	19

Changes in the patterns of consumptions	Worldwide demand decreased as a result of the recession. However, as most of the economies are now emerging from the recession, the demand for soda ash is increasing. This is evident in that the SACU market showed growth over the period 2009/10 to 2011/12. However, the growth is substantially less than the alleged dumped imports from the USA that has captured the growing market.
Trade-restrictive practices of foreign and domestic producers	Except for the normal customs duties on imports and the restriction on ANSAC, being a cartel, to trade in SACU, no information on other trade restrictive practices is known.
Competition between foreign and domestic producers	None.
Developments in technology	The SACU industry technology compares well with overseas technology.
Export performance of the domestic industry	The SACU industry is not traditionally orientated for deep sea exports. However, as a result of declining SACU sales of the subject product it is now exploring deep sea export markets to sell its excess stock.
Productivity of the domestic industry	The SACU industry believes its productivity is comparable to the overseas producers. Even with the alleged dumped imports from the USA, the SACU industry has maintained its productivity. However, if the production is reduced to counter inventory increases, productivity will be negatively influenced.

As the inputs for the production of the subject product are not imported, the exchange rate would not impact on the production cost. The SACU industry's selling prices are based on the actual costing. However to be able to sell the product and compete with the dumped product it has to match the imported USA price. At this stage, any change in the exchange rate might benefit or hurt the SACU industry if the imported product price increases or decreases. However exchange rates fluctuate on a daily basis and normally the importers take forward cover. The prices are also normally set in US\$ thus the exporters' income remains constant.

Comments submitted by OCI, TATA and Consol

OCI and TATA argued that as the SACU industry enjoyed positive results and favorable trends in nearly all of the performance indicators of material injury, there is no causal link between the material injury and the imports from the USA.

The Applicant informed Consol that it would no longer supply them with soda ash to their plant in Cape Town and therefore Consol started to import from OCI Chemical Corporation. Consol does not resell soda ash. It is only used as a key raw material for the manufacture of glass

containers. They mainly serve the food and beverage market, including wine, beer, spirits and fruit juices. Their export of plain empty bottles represents less than 10% of their production. The Bellville plant is a crucial supplier to the wine and fruit juice industry in Cape Town which exports the filled products to international markets. The major customers of Consol are SABMiller, Distell, Heineken and Namibian Breweries, Tiger Brands etc.

OCI only exports to Consol Bellville and requested that the lesser duty be applied for them as OCI has no intention of dumping the product under investigation into the SACU market and based on the fact that the product is sold through long term contracts, OCI requests that should the Commission find that OCI is indeed dumping the product in the SACU market, the Commission should rely on the lesser duty rule provided for by Anti-dumping Regulation 17. In this regard OCI, draws the Commission's attention to the fact that it has very few sales within SACU with only one customer, and it has provided all requested information on behalf of OCI and its importer. As such OCI requests the Commission to impose anti-dumping duties at the lesser of the dumping margin or the margin of injury which is deemed sufficient to remove the injury caused by the dumping. In this respect OCI notes that Botash only alleges a dumping margin and injury of 13%.

Applicant's comments

According to the Applicant it could no longer supply Consol in Bellville, because of price and not due to manufacturing shortages, although they had a shortage problem in 2008 when they could not supply Consol's Gauteng operations.

The Commission is of the view that this factor does not detract from the causal link between the dumping and the material injury.

Comments by OCI

OCI stated that the fact that Botash is locked in long-term contracts and cannot freely increase its prices to match local cost increases, is the cause of any price suppression it alleges during the period of investigation, not U.S. imports. See ITAC Article 16.5 (e) “other factors affecting prices” and Agreement on Implementation of Article VI of the general Agreement on Tariffs and Trade, 1994. Article 3.5 states “the authorities shall examine any known factors other than the dumped imports which at the time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports.”

Applicant's comments

Although Botash and Consol are linked into a long-term contract, it is misleading. The contract provides for the review of prices regularly based on the SARS import data, thus the dumped prices of the USA product during the investigation period directly influenced the selling price of Botash to Consol and can thus be causally linked to the material injury Botash is suffering.

The Commission is of the view that these factors do not detract from the causal link between the dumping and the material injury experienced by the SACU industry.

Comments by CHC Resources

CHC Resources, an importer, commented on the better quality of the subject product sourced from the USA compared to the domestic product with regard to use in the detergent industry. According to them the SACU industry already finds itself in a desperate battle with the imported final product where SACU production capacity and significant jobs are at stake.

Comments by Applicant

According to the Applicant, extended tests were conducted at Unilever's Boksburg factory which indicated an excessive generation of dust, which raised safety concerns as the detergent product contains enzymes.

According to the Applicant its product is mechanically compacted and thus friable. However, this on its own does not mean the quality and purity of their product is inferior, but dictates that factories using the product must be emission- free which appears not to be the case with the Unilever plant in South Africa. Unilever's pneumatic tankers use compressed air to transport the soda ash in the plant which leads to particle breakdown, and hence dust. According to the Applicant this can be addressed by investing in new technology.

Comments by TATA USA

TATA USA stated that in its causation analysis, the Commission acknowledged some, but not all, of the factors unrelated to subject imports that likely had an adverse impact on the Applicant, and provided the following examples:

- Imports of soda ash from the United States have also significantly declined in volume since the middle of 2011.*
- The Applicant "lost two key supply contracts in the Democratic Republic of Congo (DRC)" during 2012.*
- Export data from Botswana tends to indicate that any "injury" suffered by the Applicant may be due to a significant decline in its exports of soda ash rather than to imports from the United States.*

It concluded that the Commission's analysis and explanation detracted from its causation finding.

Comments by Applicant

The Applicant responded to the comments by TATA USA by stating that no contract was in place between it and any DRC customers and that sales were done on an ad hoc basis. Therefore no “contract to supply” the product was “lost”.

The Applicant further stated that in its application it pointed out that it is not traditionally export oriented but engaged in export to sell excess stock as was the case with the DRC.

The Commission is of the view that these factors do not detract from the causal link between the dumping and the material injury experienced by the SACU industry.

Consol’s comments after essential facts

Consol stated that the contract with OCI only arose as a result of Botash’s decision to stop supplying the Bellville plant, presumably in order to improve their price realisation in the rest of South Africa. Consol stated that this was due to capacity constraints and transportation costs (the Bellville plant is much farther from Botash than the Gauteng factories) and had little to do with the ex-factory price of soda ash. The point is that this represents a self-inflicted injury because Botash terminated its supply to the Bellville plant.

Applicant’s comments after essential facts

The applicant stated that the price that Consol tried to negotiate was too low, and linked to the dumped USA prices, to allow Botash to sell at a profit, therefore Botash backed out of the negotiations. Clearly, if Consol did not use the USA price to try and force Botash to accept the lower price, Botash would have been able to sell to the Bellville plant. Therefore, the loss of the Bellville plant can be causally linked to the dumped imports

from the USA, and is not self-inflicted.

The Commission is of the view that these factors do not detract from the causal link between the dumping and the material injury experienced by the SACU industry.

6.6 SUMMARY ON CAUSAL LINK

The Commission made a final determination that there is a causal link between the alleged dumping of the subject product and the material injury suffered by the SACU industry.

7. SUMMARY OF FINDINGS

7.1 Dumping

The Commission found that the subject product originating in or manufactured by OCI Chemicals and TATA USA in the USA, is exported at dumped prices to the SACU.

As imports by these two cooperating companies represent around 30 per cent of the total imports of the subject product during the period of investigation, it is clear that there are other manufacturers/exporters in the USA that did not cooperate in the investigation. It was therefore decided to impose a residual dumping duty on these manufacturers/exporters. The normal value is based on the normal value of TATA USA without adjustments, as this is regarded as the best information available, based on the large volume of domestic sales by TATA USA during the period of investigation. The export price is based on the SARS statistics for the period of investigation. Based on this, the residual dumping margin was calculated to be 40 per cent.

7.2 Material Injury

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

- Decline in profit;
- Increase in inventories; and
- Decline in return on investment.

7.3 Causal link

It was established that the subject product was exported at dumped prices to SACU during the period of investigation.

Although there are factors other than the dumping that were alleged to have contributed to the injury, such as the fact that the Applicant could not supply Consol's Bellville plant and the concerns with regard to the quality of the product, the Commission was of the view that these do not sufficiently detract from the causal link between the dumping of the subject product and the material injury.

8. PRICE DISADVANTAGE

The price disadvantage is the extent to which the price of the imported product (landed cost) is lower than the unsuppressed ex-factory selling of the SACU product. The price disadvantage was calculated as the difference between the landed cost of the cooperating importer, namely Consol and the constructed export price of TATA USA landed in the SACU.

The Commission always considers the lesser duty rule but only applies it in instances where both the exporter and importer responded fully. The Commission is therefore applying the lesser duty rule for the two cooperating exporters.

The lesser duty was calculated to be 21 per cent for OCI Chemicals and 8 per cent for TATA USA.

9. FINAL DETERMINATION

The Commission made a final determination that:

- the subject product originating in or imported from the United States of America (USA) is being dumped onto the SACU market;
- the SACU industry experienced material injury during the POI; and
- there is a causal link between the alleged dumping of the subject product and the material injury experienced by the SACU industry.

The Commission therefore decided to recommend to the Minister of Trade and Industry that the following anti-dumping duties be imposed on disodium carbonate (soda ash) originating in or imported from the United States of America:

Tariff subheading	Product	Country/Manufacturer	Amount of final duty
2836.20	Disodium carbonate	USA: Produced by OCI Chemical Corporation	21%
		USA: Produced by TATA Chemicals (SODA ASH) Partners INC. (TCSAP)	8%
		USA (Excluding that produced by TATA CHEMICALS (SODA ASH) PARTNERS INC. (TCSAP) and OCI Chemical Corporation)	40%