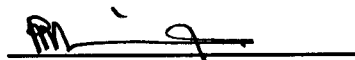


Report No. 134

Investigation into the alleged dumping of polyethylene terephthalate (PET) originating in or imported from the People's Republic of China, India, Indonesia, South Korea, Chinese Taipei and Thailand: Preliminary determination

The International Trade Administration Commission herewith presents its **Report No. 134: INVESTIGATION INTO THE ALLEGED DUMPING OF POLYETHYLENE TEREPHTHALATE (PET) ORIGINATING IN OR IMPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA, INDIA, INDONESIA, SOUTH KOREA, CHINESE TAIPEI AND THAILAND: PRELIMINARY DETERMINATION**



Ms Nomonde Maimela
CHIEF COMMISSIONER

PRETORIA

28/09/ 2005

INVESTIGATION INTO THE ALLEGED DUMPING OF POLYETHYLENE TEREPHTHALATE (PET) ORIGINATING IN OR IMPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA, INDIA, INDONESIA, SOUTH KOREA, CHINESE TAIPEI AND THAILAND: PRELIMINARY DETERMINATION

SYNOPSIS

On 8 April 2005, the International Trade Administration Commission (the Commission) formally initiated an investigation into the alleged dumping of polyethylene terephthalate (PET) originating in or imported from the People's Republic of China (PRC), India, Indonesia, South Korea, Chinese Taipei and Thailand. Notice of the initiation of the investigation was published in Notice No. 490 of *Government Gazette* No. 27434, published on 8 April 2005. The application was lodged on behalf of the Southern African Customs Union (SACU) industry by SANS Fibres (Pty) Ltd and Horsaf Fibres, who claimed that the alleged dumped imports were causing them material injury and/or a threat of material injury. The application was supported by more than 50 per cent of the SACU industry.

The investigation was initiated after the Commission considered that there was sufficient evidence to show that the subject product was being imported at dumped prices, causing material injury and/ or a threat of material injury to the SACU industry.

On initiation of the investigation, known producers and exporters of the subject product in the PRC, India, Indonesia, South Korea, Chinese Taipei and Thailand were sent foreign manufacturers/exporters questionnaires to complete. Importers of the subject product were also sent questionnaires to complete.

On the basis of the information gathered in the investigation to date, the Commission made a preliminary determination that the subject product originating in or imported from the PRC, India, Indonesia (with the exception of PT SK Keris), South Korea, Chinese Taipei and Thailand, was being dumped on the SACU market, thereby causing material injury and a threat of material injury to the SACU industry. The Commission, however, also found that the volumes of allegedly dumped imports from the PRC, Thailand and Indonesia were negligible and therefore made a preliminary determination

to recommend that the investigation against these countries be terminated. The Commission also decided to request the Commissioner for South African Revenue Service (SARS) to impose provisional payments on imports of the subject product originating in or imported from the following countries to the extent indicated, in order to prevent further injury to the SACU industry during the finalisation of the investigation:

Country	Rate of provisional payment
India	54.1%
South Korea	19.7%
Chinese Taipei	75%

1. APPLICATION AND PROCEDURE

1.1 LEGAL FRAMEWORK

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

1.2 APPLICANT

The application was lodged by International Trade Services on behalf of SANS Fibres (Pty) Ltd and Horsaf Fibres (hereafter referred to as the Applicant), being the only manufacturers of the subject product in the SACU.

1.3 ALLEGATIONS BY THE APPLICANT

The Applicant alleged that imports of the subject product, originating in or imported from the PRC, India, Indonesia, South Korea, Chinese Taipei and Thailand are being dumped on the SACU market, thereby causing material injury to the SACU industry. The basis of the alleged dumping is that the goods are being exported to the SACU at prices less than the normal value in the countries of origin.

The Applicant alleged that as a result of the dumping of the subject product from the PRC, India, Indonesia, South Korea, Chinese Taipei and Thailand, the SACU industry is suffering material injury in the form of:

- price undercutting;
- price depression;
- price suppression;
- decline in profit margins;

decline in return on investment;
negative effect on cash flow;
negative effect on growth;
decline in capacity utilization; and
employment.

The applicant also provided information regarding a threat of injury.

1.4 INVESTIGATION PROCESS

The information submitted by the Applicant was verified from 1 to 4 February 2005.

The merit assessment to accept the application as being properly documented was held on 23 March 2005.

Notice of initiation of the investigation was published in Government Gazette No. 27434, by Notice No.490 of 8 April 2005.

The responding importers' information was verified on 23, 24 and 27 June 2005 and 19 July 2005.

The only responding exporter's information was verified in the week of 4 July 2005.

1.5 INVESTIGATION PERIOD

The investigation period for the alleged dumping is 1 January to 31 December 2004. The injury investigation involved the evaluation of data for the period 1 January 2001 to 31 August 2004. The information for the period 1 January 2004 to 31 August 2004 was extrapolated for the full year up to 31 December 2004.

1.6 PARTIES CONCERNED

1.6.1 SACU industry

The SACU industry consists of two producers of the subject product, namely, SANS Fibres (Pty) Ltd and Hosaf Fibres (Pty) Ltd (the Applicant) who submitted the information contained in this submission. The application is supported by 100% of the SACU industry.

1.6.2 Exporters/Foreign Manufacturers

The following exporters/manufacturers were identified and sent exporter's questionnaires:

- (a) Reliance Industries Ltd, India;
- (b) Aspet, India;
- (c) Futura Polymers Ltd, India;
- (d) Elque Polymers, India;
- (e) Indorama, Indonesia;
- (f) Sinpoec Yizheng Chemical Fibre, the PRC;
- (g) Changzhou Worldbest Radici, the PRC;
- (h) Asia Pet Ltd ,Thailand;
- (i) Indorama, Thailand;
- (j) Tuntex Ltd, Thailand
- (k) Shinkonk Synthetic Fibres, Chinese Taipei;
- (l) SK Chemicals, Korea;
- (m) Kihap, Korea; and
- (n) Huvis, Korea.

The only exporter to respond in full to the questionnaire was PT SK Keris of Indonesia.

1.6.3 Importers

The following SACU importers were identified and sent importer's questionnaires:

- (a) OPED
- (b) Amalgamated Beverage Ind;
- (c) Thermopac;
- (d) Boxmore Plastics Int;
- (e) Nampak Liquid; and
- (f) Polyoak.

Responses to the importer's questionnaire were received from:

- (a) Bakers Attorneys on behalf of Amalgamated Beverage Ind;
- (b) Thermopac;
- (c) Polyoak;
- (d) Nampak Liquid;
- (e) Zactics and
- (f) Webber Wenzel Bowens (WWB) on behalf of the Plastic Converters Association of which (b), (c), (d) and (e) are members.

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 IMPORTED PRODUCTS

2.1.1 Description

The product subject to this investigation is polyethylene terephthalate (PET), bottle-grade resin having an intrinsic viscosity (IV) of greater than 0.68 decilitres per gram.

- Scientific name	Polyethylene Terephthalate.
- Common name and	PET chip/resin.

2.1.2 Country of origin/export

The subject product is exported from the PRC, India, Indonesia, South Korea, Chinese Taipei and Thailand.

2.1.3 Application/end use

The imported subject product is used in the manufacturing of a variety of containers for products such as soft drinks, cordials, energy drinks, cooking oils, cosmetics, detergents, bottled water and biscuits. It is also used as sheet for cakes, domes, fruit and vegetable packaging and convenience items.

2.1.4 Tariff classification

The subject product is classifiable as follows:

Table 2.1.4

Tariff	Description	Duty		
		Gen	EU	SADC
3907	Polyacetals, other polyethers and epoxide resins, in primary forms; polycarbonates, alkyd resins, polyallyl esters and other polyesters, in primary forms			
3907.60	Poly (ethylene terephthalate)			
3907.60.10	- Liquids and pastes	Free	Free	Free
3907.60.90	- Other	10%	10%	Free

The general rate of duty applicable on imports is 10%. No customs duty is applicable on imports of the product from the Southern Africa Developing Community (SADC).

The current World Trade Organisation (WTO) binding rate of the products concerned is 15 %. The existing customs duty is below the binding rate.

2.1.7 Production process

The products are manufactured using polymerisation followed by a secondary process called solid state polymerisation (SSP).

2.1.8 Import Statistics

Article 5.8 of the Anti-Dumping Agreement provides as follows:

“There shall be immediate termination in cases where the authorities determine that the volume of dumped imports, actual or potential, is negligible. 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.”

The import statistics, as contained in paragraph 5.3.1 of this submission, indicate the volume of the allegedly dumped imports. The imports from the PRC accounted for 1.88 per cent of total imports, India 50.41 per cent, Indonesia 26.2 per cent, South Korea 4.41 per cent, Chinese Taipei 10.71 per cent and Thailand 0,85 per cent.

As the volume of imports from the PRC and Thailand were negligible, the Commission decided to recommend that the investigation against the PRC and Thailand be terminated.

2.2 SACU PRODUCT

2.2.1 Description

The product subject to this investigation is polyethylene terephthalate (PET), bottle-grade resin having an intrinsic viscosity (IV) of greater than 0.68 decilitres per gram.

- <i>Scientific name</i>	Polyethylene Terephthalate.
- <i>Common name and</i>	PET chip/resin.

2.2.2 Application/end use

The SACU PET is used in the manufacturing of a variety of containers for products such as soft drinks, cordials, energy drinks, cooking oils, cosmetics, detergents, bottled water and biscuits. It is also used as sheet for cakes, domes, fruit and vegetable packaging and convenience items.

2.2.3 Tariff classification

The SACU product is classifiable under tariff subheading 3907.60.90.

2.2.4 Production process

The SACU products are manufactured using polymerisation followed by a secondary process called solid state polymerisation (SSP).

2.3 LIKE PRODUCTS

2.3.1 General

In order to establish the existence and extent of injury to the SACU industry, it is necessary to determine whether the products produced by the SACU industry are like products to those originating in or imported from the PRC, India, Indonesia, South Korea, Chinese Taipei and Thailand.

Footnote 9 to Article 3 of the Anti-Dumping Agreement provides as follows:

“Under this Agreement the term “injury” shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article.”

Article 4.1 of the Anti-Dumping Agreement provides as follows:

“For the purposes of this Agreement, the term “domestic industry” shall be interpreted as referring to the domestic producers as a whole of the like products...”

Article 2.6 of the Anti-Dumping Agreement provides as follows:

“Throughout this Agreement the term ‘like product’ ('produit similaire') shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.”

2.3.2 Analysis

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

- (a) raw material used;
- (b) physical appearance and characteristics;
- (c) tariff classification;
- (d) method of manufacturing; and
- (e) customer demand and end use.

(a) Raw material

The raw materials for both the imported and the SACU product are the same. The raw materials are:

- Mono Ethylene Glycol (MEG) and
- Pure terephthalic acid (PTA).

(b) Physical appearance and characteristics

The imported product is the same in appearance as the SACU product (white plastic chip).

(c) Tariff classification

As indicated above, the products produced in the SACU and those imported, are classifiable under the same tariff subheading, namely tariff subheading 3907.60.90.

(d) Method of manufacturing

As stated above, the imported and the SACU products are manufactured using the same method. Base polymerisation followed by a secondary process called solid state

polymerisation (SSP).

(e) Customer demand and end use

Both the SACU product and the imported product are used by the packaging industry to make PET bottles and other containers.

COMMENTS BY IMPORTERS

Webber Wentzel Bowens (WWB), acting on behalf of the Plastic Converters Association, allege that some imports are "second grade material". Barkers Attorneys (Barkers), acting on behalf of Amalgamated Beverage Industries (ABI), claim that the PET market is effectively divided between what is known as "approved PET" and "non-approved PET". Approved PET is that which meets The Coca-Cola Company of Atlanta Georgia (TCCC) standards. Non-approved PET is that which does not. TCCC requires that the PET used for their bottles is of such strength as to contain the substantial pressure created by the gas in their soft drinks. It was claimed that approved PET sells at a premium and cannot be substituted by non-approved PET.

The Commission found that the SACU produced PET was also used in the production of containers for the soft drinks industry and noted that neither of the responding importers or the responding exporter had raised any issues regarding substantial differences between the SACU produced PET and the imported PET.

Taking the above into consideration, the Commission found that the SACU product and the imported products 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

Article 5.4 of the Anti-Dumping Agreement, provides as follows:

“An investigation shall not be initiated pursuant to paragraph 1 unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry. The application shall be considered to have been made “by or on behalf of the domestic industry” if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry.”.

Industry Standing (Total domestic production of like goods for the 12 months proceeding the lodging of the application)			
Producer	Production volume- Support application	Production volume- Oppose application	Production volume- Neutral
Hosaf	30.5%*		
SANS	69.5%*		
Other producers	0	0	0
Total SACU	100%		

*** The 2004 figures for 8 months for total production of Hosaf and SANS respectively were extrapolated.**

The Applicants are the only manufacturers of the product in the SACU. The application is therefore supported by 100 per cent of the SACU industry.

The Commission found that the application was made “by or on behalf of the domestic industry” under the relevant provisions of the Anti-Dumping Agreement.

4. DUMPING

4.1 DUMPING

Section 1(2) of the ITA Act, provides a definition of the term “dumping”. The Act provides as follows:

“‘dumping’ means the introduction of goods into the commerce of the Republic or the common customs area at an export price contemplated in section 3(2)(a) that is less than the normal value, as defined in section 32(2), of those goods;”

4.2 NORMAL VALUE

Normal values are determined in accordance with section 32(2)(b) of the ITA Act. This section provides as follows:

“‘normal value’ means

- (i) the comparable price actually paid or payable in the ordinary course of trade for like goods intended for consumption in the exporting countries of origin; or
- (ii) in the absence of a price contemplated in subparagraph (i), either –
 - (aa) the constructed cost of production of the goods in the country of origin when destined for domestic consumption, plus a reasonable addition for selling, general and administrative costs and for profit; or
 - (bb) the highest comparable price of the like product when exported to an appropriate third or surrogate country, as long as that price is representative”.

Section 32(4) of the ITA Act further provides as follows:

- (a) “If the Commission, when evaluating an application concerning dumping, concludes that normal value of the goods in question is, as a result of government intervention in the exporting country or country of origin, not determined according to free market principles, the Commission may apply to those goods a normal value of the

goods, established in respect of a third or surrogate country.”

4.3 EXPORT PRICE

Export prices are determined in accordance with section 32(2)(a) of the ITA Act, which provides as follows:

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

Section 32(5) of the ITA Act further provides as follows:

“The Commission must, despite the definition of “export price” set out in subsection (2), when evaluating an application concerning dumping that meets the criteria set out in subsection (6), determine the export price for the goods in question on the basis of the price at which the imported goods are first resold to an independent buyer, if applicable, or on reasonable basis”.

Section 32(6) of the ITA Act provides as follows:

“Subsection (5) applies to any investigation of dumping if, in respect of the goods concerned-

- (a) there is no export price as contemplated in the definition of dumping;
 - (b) there appears to be an association or a compensatory arrangement in respect of the export price between the exporter or foreign manufacturer concerned and the importer or the third party concerned;
- or
- (b) the export price actually paid or payable is unreliable for any other reason”.

4.3.1.1 ADJUSTMENTS

Article 2.4 of the Anti-Dumping Agreement provides as follows:

“A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price

comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability. In the cases referred to in paragraph 3, allowances for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made. If in these cases price comparability has been affected, the authorities shall establish the normal value at a level of trade equivalent to the level of trade of the constructed export price, or shall make due allowance as warranted under this paragraph. The authorities shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties.”.

Both the Anti-Dumping Agreement and the ITA Act provide that due allowance shall be made in each case for differences in conditions and terms of sale, in taxation and for differences affecting price comparability. The Commission considers that for an adjustment to be allowed, quantifiable and verifiable evidence has to be submitted, and it must further be demonstrated that these differences actually affected price comparability at the time of setting the prices.

4.5 COMPARISON OF EXPORT PRICE WITH NORMAL VALUE

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 export price. If the margin is less than two percent, it is regarded as *de minimis* in terms of the Anti-Dumping Agreement and no anti-dumping duty will be imposed.

The margin of dumping is calculated in the currency of the country of export.

4.6 METHODOLOGY IN THIS INVESTIGATION FOR THE PRC

4.6.1 Normal Value

Type of economy

The normal values were calculated using section 32(4) of the ITA Act as a basis.

The Applicant obtained the price from an international publication (Reed Business Information Ltd, ICIS-LOR). As no response was received from any exporter, this was the best information available.

4.6.2 The Normal value based on the published price

The normal value before adjustments was CNY 10.40/kg.

Adjustments to normal values

The normal value was adjusted with the domestic delivery costs CNY 0.21/kg for the PRC.

Ex-factory domestic price

An ex-factory price using the normal value in the PRC of CNY 10.19/kg was calculated.

4.6.3 Export price

The export price was calculated using the import statistics obtained from the South African Revenue Services (SARS). The export price was calculated at CNY 7.79/kg.

Adjustments to the export price

The export price was adjusted with the transport and harbour fees, which was calculated to be CNY 0.08/kg.

Ex-factory export price

An ex-factory export price of CNY 7.71/kg was calculated.

4.6.4 Margin of dumping

The following dumping margin was calculated for the PRC:

Table 4.6.3.1

Normal value PRC (CNY/kg)	10.40
Less adjustment (delivery costs)	0.21
Adjusted normal value	10.19
Adjusted Export price	7.71
Margin of dumping	2.48
Margin of dumping expressed as a percentage of the invoiced or constructed export price	31.8%

4.7 METHODOLOGY IN THIS INVESTIGATION FOR INDIA

4.7.1 Normal Value

Type of economy

India is considered to be a country with a free market economy and therefore the definition of section 32 (2) (b) (i) of the ITA Act applies.

The price (normal value) was obtained from an international publication by Reed Business Information Ltd, ICISLOR. As no response was received from any exporter, this was the best information available.

The normal value before adjustments was Rupee 60.40/kg.

Adjustments to normal value

The normal value was adjusted with the domestic delivery cost and the adjustment was Rupee 0.60/kg.

Ex-factory domestic price

An ex-factory price of Indian Rupees 59.81/kg was calculated.

4.7.2 Export price

The export price was calculated using the import statistics obtained from the South African Revenue Services (SARS). This information was supported by import documentation received from an importer. The weighted average export price was Rupees 39.07/kg.

Adjustments to the export price

The export price was adjusted by the transport and harbour fees, which was calculated to be Rupees 0.39/kg.

Ex-factory export price

An ex factory export price of Indian Rupees 38.68/kg was calculated.

4.7.3 Margin of dumping

The following dumping margin for India was calculated:

Table 4.7.3.1 India

Normal value (Indian Rupee per kilogram)	60.41
Less adjustments	0.60
Adjusted normal value	59.81
Adjusted Export price	38.68
Margin of dumping	21.13
Margin of dumping expressed as a percentage of the invoiced or constructed export price	54.08%

4.8 METHODOLOGY IN THIS INVESTIGATION FOR INDONESIA

4.8.1 Normal Value

Type of economy

Indonesia is considered to be a country with a free market economy and therefore the definition of section 32 (2) (b) (i) of the ITA Act applies.

PT SK Keris of Indonesia, was the only exporter to respond to the questionnaire.

SK Keris Indonesia

The normal value was calculated as a weighted average price from the domestic sales for the equivalent grades exported to SACU, during the year 2004.

Adjustments to the normal value of PT SK Keris

Transport cost PT SK Keris

The transport cost/kg was calculated by dividing the total cost paid to contractors for delivering PET to specific clients in Indonesia, by the total domestic sales volume of PET.

Credit cost PT SK Keris

The credit terms were calculated on PT SK Keris's short term interest rate paid. The total interest was divided by the total domestic sales volume to obtain a unit cost.

Packing cost PT SK Keris

An adjustment for packing was made which was the same for the export price since the same packing was used.

Normal value of PT SK Keris after adjustments

The normal value for PT SK Keris after adjustments was calculated.

4.8.2 Export price of PT SK Keris

The weighted average export price to SACU before adjustments was calculated.

Adjustments to the export price of PT SK Keris

Delivery cost and wharfage

The delivery and wharfage cost per unit was calculated by dividing the total cost paid by the total export sales volume of PET.

Packing costs

An adjustment for packing was made which was the same for the normal value since the same packing was used.

Credit expenses

The cost of credit was calculated on PT SK Keris's short term interest paid. The total interest was divided by the total export sales volume to obtain a unit cost.

Commission

The total commission paid to PT SK Keris's SACU agent, SALINK, was subtracted from the total value of the exports.

Export price of after adjustments

The export price for PT SK Keris after adjustments was calculated.

Dumping margin calculated for PT SK Keris Indonesia

The dumping margin was calculated by subtracting the adjusted export price from the adjusted normal value and the difference expressed as a percentage of the f.o.b. export price. The margin of dumping in respect of the subject product exported by PT SK Keris was found to be – 6.3 per cent.

Residual duty for the remaining exporters from Indonesia

Normal value

There are three other known producers of PET in Indonesia. The normal value was obtained from an international publication by Reed Business Information Ltd, ICISLOR. The price obtained was Indonesian Rupiah 9 063.46/kg.

Adjustment to normal values

The normal value was adjusted with the domestic delivery cost and was calculated at Indonesian Rupiah 181.27/kg.

Ex-factory Domestic Prices

An ex-factory price of Indonesian Rupiah 8 882.19/kg was calculated.

4.8.2 Export prices

The export price was calculated from a weighted average price from export sales to SACU using the import statistics obtained from South African Revenue Services (SARS). The price obtained was Indonesian Rupiah 7 791/kg.

Adjustments to the export price

An adjustment was made to the export price for transport and harbour fees. This adjustment came to Indonesian Rupiah 78/kg.

Ex-factory export price

An ex-factory export price of Indonesian Rupiah 7 713/kg was calculated.

4.8.3 Margin of dumping

The following dumping margin for the rest of Indonesia was calculated:

Table 4.8.3.1 Indonesia

Normal value (Indonesian Rupiah per kilogram)	9 063
Less adjustments	181
Adjusted normal value	8 882
Adjusted Export price	7 713
Margin of dumping	1 169
Margin of dumping expressed as a percentage of the invoiced or constructed export price	15%

4.9 METHODOLOGY IN THIS INVESTIGATION FOR SOUTH KOREA

4.9.1 Normal Value

Type of economy

South Korea is considered to be a country with a free market economy and therefore the definition of section 32 (2) (b) (i) of the ITA Act applies.

The price was obtained from an international publication by Reed Business Information Ltd, ICIS-LOR. As no response was received from any exporter, this was the best information available.

Adjustments to normal values

The normal value was adjusted with the domestic delivery cost.

Ex-factory Domestic Prices

An ex-factory price of South Korean Won 1 154.5/ kg was calculated.

4.9.2 Export prices

The export price was calculated using the import statistics obtained from South African Revenue Services (SARS). The export price came to South Korean Won 972/kg.

Adjustments to the export price

An adjustment was made to the export price for transport and harbour fees, which was calculated to be South Korean Won 9/kg.

Ex-factory export price

An ex-factory export price of South Korean Won 963/kg was calculated.

4.9.3 Margin of dumping

The following dumping margin for South Korea was calculated:

Table 4.9.3.1 Korea

Normal value (South Korean Won per kilogram)	1 178.15
Less adjustments	23.56
Adjusted normal value	1 154.59
Adjusted Export price	963
Margin of dumping	191.59
Margin of dumping expressed as a percentage of the invoiced or constructed export price	19.7%

4.9 METHODOLOGY IN THIS INVESTIGATION FOR CHINESE TAIPEI

4.9.1 Normal Value

Type of economy

Chinese Taipei is considered to be a country with a free market economy and therefore the definition of section 32 (2) (b) (i) of the ITA Act applies.

The normal value was obtained from an international publication by Reed Business Information Ltd, ICIS-LOR. As no response was received from any exporter, this was the best information available.

Adjustments to normal values

The normal value was adjusted with the domestic delivery cost of TWD 1.07.

Ex-factory normal value

An ex-factory price of TWD 52.29/kg was calculated.

4.9.2 Export prices

The export price was calculated using the import statistics obtained from South African Revenue Services (SARS). The export price was TWD 30/kg.

Adjustments to the export price

An adjustment was made for transport and harbour fees. The adjustment was TWD 0.30.

Ex-factory export price

An ex-factory export price of TWD 29.70/kg was calculated.

4.9.3 Margin of dumping

The following dumping margin for Chinese Taipei was calculated:

Table 4.9.3.1 Chinese Taipei

Normal value (TWD per kilogram)	53.36
Less adjustments	1.07
Adjusted normal value	52.29
Adjusted Export price	29.70
Margin of dumping	22.59
Margin of dumping expressed as a percentage of the invoiced or constructed export price	75%

4.9 METHODOLOGY IN THIS INVESTIGATION FOR THAILAND

4.9.1 Normal Value

Type of economy

Thailand is considered to be a country with a free market economy and therefore the definition of section 32 (2) (b) (i) of the ITA Act applies.

The price (normal value) was obtained from an international PCI publication. As no response was received from any exporter, this was the best information available.

Adjustments to normal values

The normal value was adjusted with the domestic delivery cost. This adjustment was calculated to be Thai Baht 0.78/kg

Ex-factory normal value

An ex-factory price of Thai Baht 38.21/kg was calculated.

4.9.2 Export prices

The export price was calculated using the import statistics obtained from South African Revenue Services (SARS). The export price was calculated to be Thai Baht 34.61/kg.

Adjustments to the export price

An adjustment was made for transport and harbour fees. This was calculated to be Thai Baht 0.35/kg.

Ex-factory export price

An ex factory export price of Thai Baht 34.26/kg was calculated.

4.9.3 Margin of dumping

The following dumping margin for Thailand was calculated:

Table 4.9.3.1

Normal value (Thai Baht per kilogram)	38.99
Less adjustments	0.78
Adjusted normal value	38.21
Adjusted Export price	34.26
Margin of dumping	3.95
Margin of dumping expressed as a percentage of the invoiced or constructed export price	11.41%

COMMENTS BY IMPORTERS

According to WWB, the basis and methodology in terms of which the normal values have been calculated, have not been explained and are not available to the respondents.

The Commission found that information was obtained from reputable international publications and that the investigation was initiated within the stipulations as contained in Article 5 of the Agreement on Implementation of Article VI of GATT, 1994 ("Anti-Dumping Agreement") as well as the South African Anti-Dumping Regulations.

COMMENTS BY IMPORTERS

WWB pointed out that the United States Department of Commerce made two final determinations that PET resin from Chinese Taipei and Indonesia were not being sold "at less than fair value."

WWB further stated that the normal value used in the dumping calculations, is unsubstantiated.

Barkers stated that the Applicants do not present evidence to support the allegation of the dumping of both the approved and non-approved PET and that they do not even differentiate between the different grades of PET.

WWB stated that the SACU converters imported only second grade material.

The Commission noted that the determination of the United States Department of Commerce relating to Chinese Taipei was based on the period 1 January 2003 to 31 December 2003 and that this period did not coincide with that of the current investigation.

The Commission found that as the product is only sold to converters and is not available on the open market, it was an acceptable method according to the regulations to have used published prices to determine the normal value as this was the best information available.

The Commission further noted that according to the information received from the importers that co-operated, no second grade material was imported.

4.10 SUMMARY - DUMPING

Based on the information provided, the Commission made a preliminary determination that dumping of the subject product originating in or imported from the PRC, India, Indonesia (excluding PT SK Keris), South Korea, Thailand and Chinese Taipei was taking place.

5. MATERIAL INJURY

5.1 DOMESTIC INDUSTRY FOR THE PURPOSE OF DETERMINATION OF INJURY

Article 3 of the Anti-Dumping Agreement is entitled "Determination of injury". Footnote 9 of Article 3 of the Anti-Dumping Agreement to the word "injury" provides as follows:

"Under this agreement the term "injury" shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article."

5.2 GENERAL

Article 3.1 of the Anti-Dumping Agreement provides as follows:

"A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both.

- (a) the volume of the dumped imports and the effects of the dumped imports on the prices in the domestic market for the like products, and
- (b) the consequent impact of these imports on domestic producers of such products".

Article 4.1 of the Anti-Dumping Agreement further provides as follows:

"For purposes of this Agreement, the term "domestic industry" shall be interpreted as referring to the domestic industry as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products,...".

The Applicant stated that it experienced price undercutting, price depression

and price suppression due to low priced imports, which have affected its profitability.

It also stated that the SACU industry is under enormous threat of injury due to remedial action taken by the EU (on 29/11/2000), the USA (07/06/2004) and Turkey (during 2004) against dumping of PET against India, Indonesia, South Korea, Malaysia, Chinese Taipei and Thailand.

The following injury analysis relates to SANS (70 per cent) and Horsaf (30 per cent), who together constitute 100 per cent of the total domestic production of the subject product. This constitutes “a major proportion” of the total domestic production, in accordance with Article 4.1 of the Anti-Dumping Agreement.

5.3 IMPORT VOLUMES AND EFFECT ON PRICES

5.3.1 Import volumes

With reference to Article 3.1(a) of the Anti-Dumping Agreement, Article 3.2 of the Anti-Dumping Agreement provides as follows:

“With regard to the volume of the dumped import, the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing Member.”.

In any dumping investigation, the Commission normally uses audited import statistics from SARS to determine the volume of the subject product entering the SACU from the countries under investigation and other countries. It considers these statistics to be the most reliable.

The following table shows the volume of the allegedly dumped imports of the subject product since 2001:

Table 5.3.1

	2001	2002	2003	2004
Alleged dumped imports	Volume kilogram	Volume kilogram	Volume kilogram	Volume kilogram
PRC	2			210 000
India	580 199	420 224	140 075	5 622 000
Indonesia	580 000	700 000	1 735 800	2 916 000
- PT SK Keris	0	0	0	2 700 000
- Other Indonesian	0	0	0	216 000
South Korea	2 496 430	3 303 694	3 034 600	491 500
Chinese Taipei	4000	453 300	1 557 411	1 195 000
Thailand	0	180 000	588 000	66 000
Total for countries above	3 662 631	5 057 218	7 055 886	10 500 500
Imports from other countries	2 377 839	2 316 612	2 112 385	652 566
Total imports	6 040 470	7 373 830	9 168 271	11 153 066
Imports from the PRC as % of total imports	0	0	0	1.88
Imports from India as % of total imports	9.6	5.7	1.6	50.41
Imports from Indonesia as % of total imports	9.6	9.5	18.9	26.15
Imports from PT SK Keris as % of total imports	0	0	0	24.21
Imports from rest of Indonesia as % of total imports	0	0	0	1.94
Imports from South Korea as % of total imports	41.4	44.8	33.1	4.41
Imports from Chinese Taipei as % of total imports	0.1	6.2	17.0	10.71
Imports from Thailand as % of total imports	0	2.4	6.4	0.85
Imports from other countries	39.4	31.4	23.0	5.6

Article 5.8 of the Anti-dumping Agreement states that “the volume of dumped imports shall 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 country.” The imports from the PRC and Thailand as well as the imports from the rest of Indonesia are clearly negligible even if the un-dumped volumes are taken out of the calculation.

5.3.2 Effect on Domestic Prices

With reference to Article 3.1(a) of the Anti-Dumping Agreement, Article 3.2 of the Anti-Dumping Agreement further provides as follows:

“With regard to the effect of the dumped imports on the prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing Member, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.”.

5.3.2.1 Price undercutting

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, as measured at the appropriate point of comparison.

The Applicant’s weighted average selling price for PET compared to the f.o.b. price of the subject product as reflected by the import statistics shows that there was undercutting by the following margins:

Table 5.3.2.1

Country	Margin of undercutting
India	5.1%
Indonesia	(15.7%)
Chinese Taipei	5.7%
South Korea	11.7%
The PRC	(1.6%)
Thailand	8.0%

Information, which was submitted by importers and verified, provided the landed cost of the subject product from India, Indonesia and the PRC. Inadequate responses were received regarding the imports from Chinese Taipei, South Korea

and Thailand and consequently the landed cost for these countries is based on best information available, as provided by the Applicant.

The above table indicates that the products from India, Chinese Taipei, South Korea and Thailand are undercutting the selling prices of the Applicant.

The margin of undercutting is in some instances not substantial, or negative, due to the fact that the Applicant's price is depressed. This is due to the fact that the Applicant endeavors to maintain market share by competing on price.

5.3.2.2 Price depression

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

The table below shows the domestic industry's domestic selling price:

Table 5.3.2.2

	2001	2002	2003	2004
Ex-factory price per Kg SANS	100	116	100	96

This table was indexed due to confidentiality using 2001 as the base year

The table indicates that Applicant's prices were depressed over the period 2002 to 2004. It is also evident that in 2004 compared to 2002 the selling price declined by 20 index points.

COMMENTS BY IMPORTERS

WWB claimed that the Applicants did not suffer price depression.

The Commission found that, based on the weighted annual average prices verified, the Applicants and therefore the SACU industry, did suffer price depression.

5.3.2.3 Price suppression

Price suppression takes place where the cost-to-price-ratio of the SACU industry increases, or where the SACU industry sells at a loss during the investigation period or part thereof.

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

Table 5.3.2.3

Rand/KG	2001	2002	2003	2004
Cost of production	100	116	108	109
Variance from base year	-	16	8	9
Selling price	100	116	100	96
Variance from base year	-	16	-	-4
COP as % selling price	100	100	108	113

This table was indexed due to confidentiality using 2001 as the base year

The above table indicates that price suppression is taking place as a result of the alleged dumped imports. Unit costs increased at a higher rate than unit selling prices and it is clear that the Applicant could not recover the increased costs in its selling prices.

COMMENTS BY IMPORTERS

According to WWB the application shows that the Applicant's prices increased during the year from September 2003 to August 2004, contradicting their claim to have suffered price depression. Local prices for PET increased towards the end of the investigation period and the figures used by the Applicant to allege price depression, do not include prices in the later months of 2004. They submit that the Commission must consider the actual figures for the whole Investigation period, and not merely annualised figures based on the earlier months in the period. An unsubstantiated allegation is made by WWB that the demand for PET fibre is depressed, "...due to a huge surplus of cotton on the fibre market."

The Commission noted that the Application and the information presented for consideration was only with regard to PET bottle grade in the SACU market and did not include any fibre and/or filament business or exports sales. From the information received and verified the Commission found that the Applicant experienced price depression and suppression.

5.3.2.4 Price elasticity

The Commission considered price elasticity for PET during the investigation period. Price elasticity measures the responsiveness of quantity to change in price, with all other factors held constant.

COMMENTS BY IMPORTERS

Barkers stated that if the price of PET bottles rise past a certain point, elasticity will be evident in its operation and sales of product in PET will drop and be replaced in all likelihood, to returnable or non-returnable glass bottles which represent a cheaper alternative. The decline in the sale of product in PET bottles will be reflected in a decline in PET sales by the Applicant.

The Commission noted that while the product was price elastic, certain of the importers stated that the reason for importing was to have an alternative source of supply for strategic reasons. Price was not the major factor in deciding to import.

5.3.3 Consequent Impact of the dumped imports on the Industry

With reference to Article 3.1(b), Article 3.4 of the Anti-Dumping Agreement provides the following:

"The examination of the impact of the dumped imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of

capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance."

5.3.3.1 Actual and potential decline in sales

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

Table 5.3.3.1

Sales volume	2001	2002	2003	2004 (Jan – Aug)	2004 extrapolated
Total volume sales by SACU producers	100	120	137	102	153

This table was indexed due to confidentiality using 2001 as the base year

The SACU industry has managed to maintain and grow sales volume in a rapidly growing market by aggressively competing on price, which is reflected in its price suppression and depression.

COMMENTS BY IMPORTERS

WWB argued that the Application stated that they suffered a reduced sales value in 2003 compared to 2002, although the sales volume increased. The investigation period, however, is not 2003. In respect of the investigation period, that is 2004, an indexed annualised sales value of 147 was provided by the Commission, which demonstrates that the Applicants enjoyed an increase in sales value during the Investigation period.

The Commission found that during the investigation period for injury covering three years and not only 2004, the total sales volume increased.

5.3.3.2 Profit

SANS suffered a 46 per cent decline in net profit from 2001 to 2004.

COMMENTS BY IMPORTERS

WWB mentioned in their response that the Applicants' business is a US Dollar margin driven business and this is confirmed in AECI Limited's annual report for 2004. Also on page 39 of the AECI Limited annual report 2004, it is stated in relation to SANS Fibres that: "in US dollar (US\$) terms, revenue increased by 8 per cent" and that "[i]n rand terms, revenue decreased by 7 per cent". On the same page of the report, it was stated in relation to PET only, that contribution to overheads increased "by some 6 per cent in US\$ terms. Notwithstanding negative currency effects, rand denominated operating profit for PET remains satisfactory". The Applicants' profit margins denominated in Rands were affected negatively by the Rand's recent gains relative to the US Dollar and, in order to eliminate the effect of the exchange rate on the Applicants' profit margins, the margins denominated in US Dollars should be considered. It is submitted that an examination of the Applicants' profit margins denominated in US Dollars during the Investigation period, will reveal that they suffered no decline in profit margins. Accordingly, the Applicants suffered no injury in this regard.

Barkers stated that there is no proper basis for determining whether any reduction in profit, which the Applicants may have suffered, is in fact material, or caused by dumping. They state that in any concentrated market where manufacturers price in concert (which they allege is the case in the SACU), free of competition, their efficiency reduces over time, especially as they fall behind the latest developments, which occur in competitive markets as a result of pressure of competition.

The Commission found that there was a decline in profit margins of the SACU PET industry with regards to the domestic market sales. The export transactions were not included in the injury information and were therefore not considered.

5.3.3.3 Output

The following table outlines the Applicant's production volumes of PET:

Table 5.3.3.3

Tons	2001	2002	2003	2004 (Jan – Aug)	2004 Extrapolated
Total production	100	107	113	95	143

This table was indexed due to confidentiality using 2001 as the base year

It is evident from the above table that the output of the SACU industry increased over the period 2001 to 2003 by 13 index points.

5.3.3.4 Market share

The following table shows the market share for the subject product:

Table 5.3.3.4

	2001	2002	2003	2004 (Jan - Aug)	2004 Extrapolated
Total SACU producers' market share	89%	89%	88%	91%	86%
Market share of alleged dumped imports by country					
-India	1.1%	0.7%	0.2%	4.5%	6.6%
-Indonesia	1.1%	1.1%	2.3%	2.6%	3.5%
-Chinese Taipei	0.0%	0.7%	2.1%	0.7%	1.4%
-South Korea	4.6%	5.1%	4.1%	0.1%	0.8%
-PRC	0.0%	0.0%	0.0%	0.4%	0.3%
-Thailand	0.0%	0.3%	0.8%	0.1%	0.1%
Total market share of alleged dumped imports	6.8%	7.8%	9.5%	8.5%	12.7%
Market share of other imports	4.2%	3.2%	2.5%	0.5%	1.3%
Total Market	100%	100%	100%	100%	100%

Table 5.3.3.4 indicates that the alleged dumped imports from the PRC, India, Indonesia, Chinese Taipei, Thailand and South Korea gained market share in the SACU market, from 6.8 per cent in 2001 to 9.5 per cent in 2003. In the period January 2004 to August 2004 the alleged dumped import market share was already 8.5 per cent and extrapolated to a year (Jan – August), it will be 12.7 per cent. It is also clear from the table that the imports from other countries market share declined from 4.2 per cent in 2001 to 0.5 per cent in the period January to

August 2004. The Applicant's market share in 2001 and 2002 was 89 per cent and in 2004 extrapolated, it declined to 86 per cent.

COMMENTS BY IMPORTERS

WWB stated that the Applicant has increased market share during the investigation period. They stated that the alleged gain in market share by exporters from the subject countries was not at the expense of the Applicant, but rather at the expense of the other exporters. They further stated that, on its website, SANS estimates that local market demand for PET has been growing in excess of 20 per cent per annum over the past five years. In the light of this, they said, it is not surprising that both the volume of imports and production by the Applicant have increased during the investigation period and have the potential and scope to continue this trend.

The Commission noted from the information that the SACU industry's market share remained the same in 2001 and 2002. In 2003 it declined and in 2004 increased by 2 per cent from 2002 in a growing market.

The Applicant stated that they regret to mention that the website information quoted is out of date and in the process of being updated. Therefore, the 20 per cent stated in WWB response is not correct.

5.3.3.5 Productivity

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

Table 5.3.3.5

SANS	2001	2002	2003	2004 Extrapolated
Total production volume (Kg 000's)	100	110	112	121
Number of employees (manufacturing only)	100	100	104	93
Kg (000's) per employee	100	110	108	131

This table was indexed due to confidentiality using 2001 as the base year

By addressing the alleged dumped imports in the SACU market the Applicant has also focused on enhancing its productivity and has managed to increase its productivity by 31 index points from 2001 to 2004.

5.3.3.6 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 before interest and tax expressed as a percentage of its net value of assets:

Table 5.3.3.6

SANS	2001	2002	2003	2004 (Jan – Aug)
Return on net assets (total)	100	82	41	22

This table was indexed due to confidentiality using 2001 as the base year

It is clear from the table that the return on net assets declined over the investigation period.

COMMENTS BY IMPORTERS

WWB stated that "...until demand catches up to the new supply levels". As a result of the dumped imports the SACU industry lost domestic sales and were forced to export the excess production as the dumped imports gained market share.

The Commission noted that SANS's best performing years were 2000 and 2001 and that there had been a steady decline in the return on net assets.

5.3.3.7 Utilisation of production capacity

The following table provides the Applicant's capacity and production for the subject product based on 3 shifts per day in a 7 day week:

Table 5.3.3.7

Tons	2001	2002	2003	2004 (Jan – Aug)
SACU Capacity	100	100	106	83
SACU Actual production	100	107	113	95
SACU Capacity utilisation %	100	107	107	115

This table was indexed due to confidentiality using 2001 as the base year

From the above table it is evident that the SACU capacity and capacity utilisation increased in a growing market.

COMMENTS BY IMPORTERS

WWB stated that the Applicant's capacity increases, and not any allegedly dumped imports of PET, caused any decrease in their capacity utilisation rates during the investigation period. In the Application, it is stated that SANS has mothballed some capacity, but it is not stated when such capacity was mothballed and the level of efficiency at which such capacity could be operated.

On page 41 of the AECI Limited annual report 2004, it is stated that the original plant was "mothballed when the new facility was installed in 2000". It is submitted that older plants using dated technology result in the production of PET inefficiently, at greatly increased costs per unit and of a lower quality. Such capacity could not be utilised unless PET could be sold at higher prices, which given that the demand for PET is price elastic, is unlikely to be feasible.

The Commission noted that the SACU industry seeks to balance its capacities

as closely as possible to domestic demand and that SANS has idle SSP/PET capacity available for regional growth. The capacity increases done by the Applicant were done in anticipation of a rapidly growing market.

5.3.3.7 Other factors affecting domestic prices

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

5.3.3.9 The magnitude of the margin of dumping

In Chapter 4 of this submission, it was found that the subject product was imported at alleged dumped prices into the SACU during the investigation period at the following margin:

Table 5.3.3.9

Country	PRC	Indian	Indonesia		Korea	Chinese Taipei	Thailand
			PT SK Keris	Rest of Indonesia			
Margin of dumping expressed as a % export price	31.8%	54.08%	-6.3%	15.00%	19.7%	75%	11.41%

PT SK Keris was the only exporter to respond in full to the Commission's exporter questionnaire. The other alleged dumping margins calculated appear to be substantial for a commodity product such as PET.

5.3.3.10 Actual and potential negative effects on cash flow

The following table reflects the Applicant's cash flow situation:

Table 5.3.3.10

R000	2001	2002	2003	2004 (Jan – Aug)
<u>SANS</u>				
Product specific				
Net cash flow	100	151	97	40
Debtors (value)	100	164	223	231
Debtors: average days outstanding	100	128	176	276

This table was indexed due to confidentiality using 2001 as the base year

The table clearly indicates a downward trend with regard to the net cash flow. It is also clear that the average debtor days increased by 176 index points from 2001 to 2004.

5.3.3.11 Inventories

The Applicant provided the following inventory levels:

Table 5.3.3.11

Tons	2001 Dec 31	2002 Dec 31	2003 Dec 31	2004 Aug 31
- Volume	100	133	108	77
- Value	100	173	119	89

This table was indexed due to confidentiality using 2001 as the base year

The Applicant stated that inventories remain fairly stable as they manage to ensure that inventories do not increase to unmanageable levels. If they did not sell at low prices in order to retain market share, the inventories would have increased.

5.3.3.12 Employment

The following table shows SANS's employment levels:

Table 5.3.3.12

SANS	2001	2002	2003	2004 (Aug)
Total labour units: production	100	100	96	93

This table was indexed due to confidentiality using 2001 as the base year

The employment levels at SANS decreased by 7 index points between 2001 and 2004.

5.3.3.13 Wages

The following table provides SANS's wages per employee:

Table 5.3.3.13

SANS	2001 (Jan-Dec)	2002 (Jan-Dec)	2003 (Jan-Dec)	2004 (Jan – Aug)
Wages/employee; production	100	110	113	87

This table was indexed due to confidentiality using 2001 as the base year

The wages are determined through negotiations with the trade unions. The table shows an increasing trend in wages.

5.3.3.14 Growth

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

Table 5.3.3.14

Tons	2001	2002	2003	2004 (Jan –Aug)
Size of the SACU market	100	120	138	100
SACU Industry	100	120	137	102

This table was indexed due to confidentiality using 2001 as the base year

It is clear from the above table that the total SACU market grew at a slightly higher rate than the SACU industry in 2003. The SACU industry had to reduce prices to enable it to achieve this growth.

COMMENTS BY IMPORTERS

WWB stated that not only did the SACU PET market grow during the investigation period, but that the Applicant's sales volume also increased and that there has accordingly been no negative effect on growth. They further state that due to the high price elasticity of the demand for PET, any increase in the price of PET would reduce demand and negatively affect growth of the market.

The Applicant agreed in principle with WWB, namely that if the capacity of the SACU industry cannot be fully utilised as a result of the dumped imports, the SACU industry's cost of production will increase. They further stated that there is no alternative to the 2 litre carbonated soft drink bottle other than PET as no other material provides the strength coupled with the clarity of PET.

The Commission noted that the SACU industry's domestic sales grew at a lower rate than the overall SACU market in 2003.

5.3.3.15 Ability to raise capital or investments

The Applicants stated that with the low level of returns on the subject product, it is extremely difficult to motivate further capital expenditure for increased capacity. By also continually selling at low profit levels the SACU industry is not in a position to reinvest in the SACU market. Over the long term the SACU industry will be forced to close the production lines, as it will not be competitive against any imports as a result of the inability of reinvesting in technology.

COMMENTS BY IMPORTERS

WWB denied that the Applicants have suffered material injury because in AECl's annual report for 2004 it states that; "Rapid growth in local and international polyethylene terephthalate (PET) packaging markets continued. SANS' Bellville PET plant remains fully occupied, with sales to the South African market steadily replacing capacity-filling exports. Selling prices were adjusted to match increased raw material inputs, allowing contribution to overheads to increase by

some 6 per cent in US\$ terms. Notwithstanding negative currency effects, and denominated operating profit for PET remains satisfactory." (our emphasis)

The Commission noted that the application and the initiation included a "threat of injury".

5.4 SUMMARY - MATERIAL INJURY

The Commission made a preliminary determination that the Applicant and therefore the SACU industry, is suffering material injury.

5.5 THREAT OF MATERIAL INJURY

Article 3.7 of the Anti-Dumping Agreement provides for the following:

“A determination of threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances, which would create a situation in which the dumping would cause injury, must be clearly foreseen and imminent. In making a determination regarding the existence of threat of material injury, the authorities should consider, *inter alia*, such factors as:

- (4) a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;
- (5) sufficient freely disposable, or imminent substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to the importing Member's market, taking into account the availability of other export markets to absorb any additional exports;
- (6) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and
- (7) inventories of the product being investigated.”.

5.5.1 Increase in imports

On 29 November 2000 the EU (Commission Decision 2000/745/EC) instituted anti-dumping duties against India, Indonesia, Malaysia, South Korea, Chinese Taipei and Thailand. On 17 June 2004 the USA instituted anti-dumping duties (published in USITC 3694) against India, Indonesia, Chinese Taipei and Thailand. Turkey (2004) is presently busy with an anti-dumping investigation against Far Eastern countries.

The combined import volumes from the PRC, India, Indonesia, Chinese Taipei, Thailand and South Korea, as a percentage of total imports into the SACU market, increased from 60.6 per cent in 2001 to 94.1 per cent in 2004. However, in 2004, there was a decrease in import volumes from South Korea, Chinese

Taipei and Thailand.

5.5.2 Increase in capacity

In the last couple of years the PRC has created new capacity in anticipation of the growth in the PET market. Two of the new PRC PET production plants are:

Yizheng Chemical of the PRC is the 5th largest polyester manufacturer in the world. Yizheng Chemical has a present capacity of 1,000,000 tons per year in PET products.

Jiangyin XingYe Plastic Co. Ltd, is a joint venture subordinated to Jiangsu San FangXiang Group Co. Ltd, which was established at the end of 1999 with enormous production scale of mainly bottle-grade PET. The fibre-making polyester chip production lines each have a capacity of 120,000 tons per year.

An Indian integrated producer of PET has just started up a new plant with a capacity of 220 000 tons per year.

PCI Consulting Group's publication on world capacity expansion for the period 2004 to 2007 shows that from 2005 to 2007 the estimated expansion of PET capacity in the Asia Pacific will be in the region of 1,666,000 tons per year. This clearly substantiates that available and growing capacity of the Asian Pacific countries are causing a threat to the SACU market as major markets such as Europe and the USA are protected against the dumped imports from the Far Eastern countries. Turkey has also initiated remedial action against alleged dumping.

5.5.3 Prices

According to the Applicant, It is evident from an electronic message in their

possession, sent by an exporter in the PRC to a major importer in the SACU, that the customers use the alleged dumped import prices as a negotiation instrument. If the SACU industry cannot meet the low prices, the customers will import. The importation of the 110 tons from India in March 2004 at a price of R5.80/kg f.o.b. is an example that the alleged dumped imports will continue to flow into the SACU market causing material injury to the SACU industry. According to the ICIS-LOR July 2004 publication a new plant commissioned in India is offering PET at below USD0.95/kg.

As indicated under prices in paragraphs 5.3.2.2 and 5.3.2.3, the SACU industry is experiencing price depression and price suppression, which negatively effects overall profitability.

The Applicant's ex factory prices are in line with those of Europe and the USA.

5.5.4 The inventories of the subject product

The SACU industry is not aware of the exact inventory levels of the exporters. However, as the EC and USA have implemented remedial action against India, Indonesia, Thailand, Chinese Taipei and South Korea, the Applicant assumes that there must be substantial inventories available and that these countries will now divert their exports to the rest of the world.

The Applicant stated that according to the June 2004 ICIS-LOR publication, South Korea exporters, due to high inventories, were offering PET at USD 0.92/kg to USD 0.93/kg.

5.5.5 State of the economy of the country of origin/export and its influence on the operations of the manufacturers/exporters.

In 2005 the realisable capacity in exceeding demand is estimated 2,200,000 tons per year.

5.5.6 Give any other information relevant to your allegation that the infliction of material injury is imminent.

Since the subject product is produced through a continuous process, stock levels can easily get out of hand. Manufacturers might therefore be prepared to sell their surpluses at below cost.

COMMENTS BY IMPORTERS

According to WWB the Applicants cite increases in production capacity of exporters as evidence of a threat of material injury. In light of the estimate of SANS Fibres that local demand has been growing by 20% annually and in light of the fact that global demand is also increasing, it is submitted that such an increase in capacity does not constitute a threat of material injury. The Respondents deny that the initiation by any other country of an anti-dumping investigation against the subject countries is relevant to local supply and demand and the Respondents therefore deny that such an investigation constitutes a threat of material injury to the Applicants.

The Applicant pointed out that its forecast of a 20 per cent growth in the market was an error.

The Commission noted that international capacity and the surplus production of the eastern countries according to international publications must be a threat to the producers in the SACU region.

5.6 SUMMARY ON THREAT OF MATERIAL INJURY

The Commission made a preliminary determination that the Applicant and therefore the SACU industry is experiencing a threat of material injury.

6. CAUSAL LINK

6.1 GENERAL

In order for the Commission to impose provisional payments, 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 products.

Article 3.5 of the Anti-Dumping Agreement provides for the following:

"It must be demonstrated that the dumped imports are, through the effects of dumping, 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."

6.2 VOLUME OF IMPORTS AND MARKET SHARE

In a growing market, the alleged dumped import's market share grew from 6.8 per cent in 2001 to 9.5 per cent in 2003 and then to 12.7 per cent in 2004 (extrapolated). The market share of other imports declined from 4.4 per cent in 2001 to 1.06 per cent in 2004. The Applicant's market share decreased from 89 per cent in 2001 to 86 per cent in 2004 (extrapolated).

COMMENTS BY IMPORTERS

WWB stated that a comparison of the volume of allegedly dumped imports during the Investigation period (a total of 10 416.5 tonnes) and the size of the domestic PET market in total (estimated to be approximately 83 000 tonnes in 2004), demonstrates that the volume of allegedly dumped imports is too small to cause any material injury to the Applicants.

The Commission noted that Article 5.8 of the Anti-Dumping Agreement defines negligibility regarding import volumes.

6.3 EFFECT OF DUMPED IMPORTS ON PRICES

It has already been shown in Section 5 of this report that there was price undercutting, price suppression and price depression which is claimed by the Applicant to be the direct effect of the alleged dumped imports of the subject product from the PRC, India, Indonesia, South Korea, Thailand and Chinese Taipei.

Although the Applicant's sales increased, the alleged dumped import volumes increased at a higher rate. As previously stated, the Applicant's clients use the prices of the imported subject products to force the SACU manufacturers to supply them at the same price level. If it is not possible to supply at the alleged dumped price levels the clients import the products.

According to the Applicant, its list prices are an indication of where "unsuppressed, ex-works prices" would have been. These likewise represent the relative movement in the market price, and the international cost base.

As a result of price depression and suppression the profit margin of the Applicant decreased steadily. If the imports continue to be imported at dumped prices the profit will decline even further.

COMMENTS BY IMPORTERS

Price undercutting

WWB stated that the fact that the Applicant negotiates prices with its customers on an import price parity basis, any price undercutting experienced by the Applicant (which the Respondents deny) is irrelevant to the causation of their alleged injury.

Price depression and suppression

Price elasticity is mentioned by WWB. Customers will source where they can

obtain the most favourable price.

The Commission noted that it was found that the Applicant was experiencing price undercutting, price depression and price suppression with regards to the alleged dumped imports.

6.4 CONSEQUENT IMPACT OF DUMPED IMPORTS

With a substantial capital investment and low marginal profits, the Applicant stated that it cannot further invest in extending and upgrading the present production facilities, thereby impacting negatively in producing at economies of scale.

6.5 FACTORS OTHER THAN THE DUMPING CAUSING INJURY

Article 3.5 of the Anti-Dumping Agreement provides the following:

"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".

6.5.1 The volume and price of imports not sold at dumping prices

The following table shows the volume and price of the alleged dumped imports and imports from other countries:

Table 6.5.1

Alleged dumped imports	2001	2002	2003	2004
Volume Tons	3 663	5 057	7 055	10 500
Price R/kg	6.70	6.90	6.50	6.20
Imports from other countries				
Volume Tones	2 377	2 316	2 112	652

Price R/kg	9.50	9.55	9.56	9.60
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The average unit price of the alleged dumped imports is substantially lower than the average unit price of the imports from other countries for the same period.

6.5.2 Competition between domestic producers

There are two SACU producers who welcome normal competition between them, but cannot carry on competing against alleged dumped imports.

6.5.3 Developments in technology

The Applicant stated that it could not invest in new technology because of the threat of increased allegedly dumped volumes, which will depress the marginal profit margins further.

6.5.4 Contraction in demand or changes in the patterns of consumption

There is a substantial increase in the demand for the product. This increase in demand is fueled in particular by the increase in demand for bottled water.

6.5.5 Export performance

The Applicant managed to continue servicing its export market.

6.5.6 Trade Restrictive practices

There are no trade restrictive practices regarding trade of the product in the SACU.

6.5.7 Productivity in the domestic industry

Productivity increased during the investigation period. Where productivity measurements of the SACU industry are benchmarked with Western producers of PET, the output per worker is more or less the same.

COMMENTS BY IMPORTERS

With regard to raw material price increases, WWB stated that the primary raw materials of PET are MEG and PTA which are oil and natural gas derivatives and which, together, account for more than 75 percent of the cost of producing PET. Driven by high costs of crude oil and natural gas, prices for MEG and PTA increased throughout 2004. In addition, it appears from the application that the Applicant increased its capacity for the production of PET during 2003 and 2004. As a result, any such increases in capacity, would constitute another factor preventing the domestic industry from raising prices sufficiently to fully recoup the increase in raw material costs.

Rand strength

WWB stated that the Applicant claimed that: "[t]he strength of the Rand has favoured the importers and has continually forced the reduction of SACU industry selling prices". They submit that the strength of the Rand has been a primary cause of the Applicant's alleged injury. In this regard, they also refer to:

- (i) an article published in the Business Day dated 25 February 2004 and which is accessible from the website of AECI which blames the "strong and volatile rand" as the overriding cause of the "misery" of SANS Fibres;
- (ii) an article published in the Cape Business News dated April 2005 in which it is stated that SANS Fibres' export markets "are causing most of its predicaments" and that "the past two years especially put a drain on its resources due to the stronger rand";
- (iii) an article published in the Cape Argus dated 10 May 2005 in which the SANS Fibres managing director Thys Loubser is quoted as

having said that "business had been tough, especially since the rand dropped to below R6 to the dollar";

(iv) page 39 of the AECI Limited annual report for the year ended 31 December 2004, in which it is stated that:

"the further strengthening of the Rand as well as sharp escalations in raw material prices had a marked effect on the company's performance. In response to this, a strategy was finalised based on new product development,

(v) pg 1 of the AECI Limited annual report 2004 (Schedule 6), in which it is stated that:

"the ZAR/US\$ exchange rate's impact on SANS' recent financial performance cannot be overstated ... the sustained strength of the rand has required additional strategies to restore SANS' profitability";

WWB further submitted that the Commission must take into account and exclude the effect of the strengthening of the Rand on the Applicants' export businesses in its assessment of the Applicant's alleged injury, because the Applicants have been negatively affected by the appreciation of the Rand.

The Commission noted that WWB quoted selectively from Schedule 6 and left out "...but the company said it would have been inevitable due to poor global and domestic demand" as well as "...volume losses in the local market". The material injury relates only to the SACU market and not the export market.

WWB's comments on the Rand strength relate to SANS Fibres as a filament/fibres business from which typically most of its profit is derived and not the PET business.

General

WWB alleged that the importers have "no negotiating power".

Barkers claimed that the Applicants do not show that they have, as a result of the importation of PET, suffered material injury. They state that any injury appears

likely to be the result of factors other than competition from imports. They say that this is particularly so when regard is taken of the low volumes of imports which the Applicants demonstrate in their application.

The Commission noted that several of the importers, who were the converters of the product, indicated that price was not a major consideration in their decision to import the product. They said that the main reason for importing was to have an alternative source of supply for strategic reasons. They said that they needed to continuously place import orders, albeit in small volumes, to maintain relationships with their alternative supplier.

The Commission further noted that the application was brought and initiated on material injury as well as a threat of material injury.

6.6 SUMMARY ON CAUSAL LINK

Taking the above into consideration, the Commission made a preliminary determination that there is a causal link between the alleged dumped imports and the material injury and threat of material injury suffered by the Applicant.

7. PROVISIONAL PAYMENTS

7.1 General

Article 9.1 of the Anti-Dumping Agreement provides as follows:

“The decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled, and the decision whether the amount of anti-dumping duty to be imposed shall be the full margin of dumping or less, are decisions to be made by the authorities of the importing member. It is desirable that the imposition be permissive in the territory of all Members, and that the duty be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry.”

7.2 Calculation of provisional payment

In accordance with Article 9.1 of the Anti-Dumping Agreement, the provisional payment should be less than the dumping margin if such lesser amount would be adequate to remove the injury to the domestic industry. The provisional payment should therefore not be more than the amount of the price disadvantage experienced by the SACU industry. If this is lower than the dumping margin it can be considered to be the amount required to prevent further injury to the SACU industry during the investigation as a result of the further importation of the subject product at the dumping margins that were found by the Commission.

7.3 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 price of the SACU product.

The Commission always considers applying the lesser duty rule for all countries. However, since exporters from the PRC, India, South Korea, Chinese Taipei and

Thailand did not provide information it was decided not to apply it in these instances because of non-cooperation. The lesser duty rule was considered for Indonesia since an exporter and importers responded to the Commission's questionnaire.

An unsuppressed selling price was calculated for the Applicant based on the 2004 costs and profits realised in 2002.

Based on the unsuppressed selling price, a price disadvantage of 10.4 per cent was calculated for Indonesia on information supplied by the exporter, PT SK Keris.

7.4 Amount of provisional payment:

The amount of provisional payment was calculated to be the following:

Table 7.4

Country of export	Rate of provisional payment
PRC	31.8%
India	54.1%
Indonesia (excluding PT SK Keris)	10.4%
South Korea	19.7%
Chinese Taipei	75%
Thailand	11.4%

8. SUMMARY OF FINDINGS

8.1 Dumping

There is sufficient evidence that the subject product originating in or imported from the PRC, India, Indonesia (excluding PT SK Keris), South Korea, Chinese Taipei and Thailand, were imported at dumped prices into the SACU market. The following dumping margins were calculated:

Table 8.1

Country of export	Rate of provisional payment
PRC	31.8%
India	54.1%
Indonesia (excluding PT SK Keris)	10.4%
South Korea	19.7%
Chinese Taipei	75%
Thailand	11.4%

8.2 Material injury

The Commission made a preliminary determination that the Applicant suffered material injury. The Commission however, found that the imports from the PRC, Thailand and Indonesia were negligible.

8.3 Causal link

The Commission found that material injury suffered by the Applicant could be causally linked to the dumped imports and that other factors did not detract from this finding.

9. DETERMINATION

Based on the information contained in this submission, the Commission made a preliminary determination that:

- (1) The subject product originating in or imported from the PRC, India, Indonesia (excluding from PT SK Keris), South Korea, Chinese Taipei and Thailand is being dumped into the SACU market;
- (2) The SACU industry is suffering material injury and/or a threat of material injury from imports originating in India, South Korea and Chinese Taipei;
- (3) There is a causal link between the dumping of the subject product and the material injury and/or threat of material injury;
- (4) That the investigation against the PRC, Thailand and Indonesia be terminated on the grounds that the allegedly dumped imports are negligible.

The Commission decided to request the Commissioner for South African Revenue Service to impose the following provisional payments for a period of twenty-six weeks, on polyethylene terephthalate (PET), classifiable under tariff subheading 3907.60.90 against imports originating in or exported from the following countries, in order to prevent further material injury to the domestic manufacturers during the duration of the investigation:

Table 8.1

Country	Rate of provisional payment
India	54.1%
South Korea	19.7%
Chinese Taipei	75%