International Trade Administration Commission of South Africa

Report No. 135

Investigation into the alleged dumping of stainless steel tubes and pipes originating in or imported from the People's Republic of China, India and Malaysia: Preliminary determination

enabling FAIR TRADE

The International Trade Administration Commission of South Africa herewith presents its **Report No. 135: INVESTIGATION INTO THE ALLEGED DUMPING OF STAINLESS STEEL TUBES AND PIPES ORIGINATING IN OR IMPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA, INDIA AND MALAYSIA: PRELIMINARY DETERMINATION**

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PRETORIA
09/09/2005

INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA

INVESTIGATION INTO THE ALLEGED DUMPING OF STAINLESS STEEL TUBES AND PIPES ORIGINATING IN OR IMPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA, INDIA AND MALAYSIA: PRELIMINARY DETERMINATION

SYNOPSIS

The investigation was initiated through Notice No.890 in *Government Gazette* No. 27641 on 10 June 2005 after the Commission considered that there was *prima facie* proof of dumping and material injury of the subject products originating in or imported from the PRC, India and Malaysia and that the material injury suffered by the SACU industry was causally linked to the dumped imports.

The application was lodged on behalf of the Southern African Customs Union (SACU) industry by Barloworld Stainless, claiming that the dumped imports from the PRC, India and Malaysia were causing it material injury. Barloworld Stainless is the manufacturer of the subject product in the SACU. Other SACU producers as supplied by the South African Stainless Steel Development Association (SASSDA) provided support for the application.

The investigation was also initiated against Chinese Taipei which is the only country that responded to the Commission's exporter questionnaire. In order to expedite proceedings, the Commission decided to split the investigation between cooperating and non-cooperating exporters in terms of section 32.3 of the Anti-Dumping Regulations. The Applicant, however, requested that the provisional payments be imposed against imports from the countries that did not respond, being the People's Republic of China (PRC), India and Malaysia.

The government representatives of the countries subject to the investigation were notified of the Commission's intention to investigate in terms of Article 5.5 of the Anti-Dumping Agreement.

Exporters and importers questionnaires were sent to various known interested parties, including the government representatives of the countries subject to the investigation. The deadline for comments was 22 July 2005. Extensions were granted on request, upon good cause shown, until 05 August 2005.

No responses were received from the PRC, India and Malaysia.

On 24 August 2005, the Commission made a preliminary determination based on the facts available, that dumping is taking place and that the material injury suffered by the SACU industry can be causally linked to the dumped imports from the PRC, India and Malaysia.

This report will therefore exclude information in respect of Chinese Taipei.

As the Commission considers that the SACU industry will continue to suffer material injury during the course of the investigation if provisional payments are not imposed, it decided to request the Commissioner for the South African Revenue Service to impose provisional payments for a period of twenty-six weeks to the extent of the amounts listed below:

Country	**Rate of provisional payments**
China	49,81%
India	34,91%
Malaysia	72,07%

1. APPLICATION AND PROCEDURE

1.1 LEGAL FRAMEWORK

This investigation was conducted in accordance with the International Trade Administration Act, 2002, (Act 71 of 2001) (the "ITA Act") and 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 of South Africa (the ADR).

1.2 APPLICANT

The application was lodged by Barloworld Stainless, a manufacturer of stainless steel tubes and pipes in the SACU.

The South African Stainless Steel Development Association (SASSDA), indicated its support for the application.

1.3 DATE OF ACCEPTANCE OF THE APPLICATION

The application was accepted as being properly documented in accordance with Article 5.2 of the Anti-Dumping Agreement on 01 June 2005. The government representatives of the countries concerned were advised accordingly.

1.4 ALLEGATIONS BY THE APPLICANT

The Applicant alleged that imports of the subject product, originating in or imported from the PRC, India and Malaysia 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 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 product from the PRC, India and Malaysia, the SACU industry is suffering material injury in the form of:

- price undercutting
- price depression
- price suppression
- decline in output
- decline in market share
- decline in productivity
- decrease in profits
- decline in utilisation of production capacity
- decline in return on investments
- negative effect on cash flow
- decline in employment
- decline in wages per employee
- inability to raise capital
- inability to show growth
- increase in inventory levels

1.5 INVESTIGATION PROCESS

On 10 June 2005, the Commission formally initiated an investigation into the alleged dumping of stainless steel tubes and pipes originating in or imported from the PRC, India and Malaysia pursuant to Notice No.890 in *Government Gazette* No. 27641.

Prior to the initiation of the investigation, the trade representatives of the countries concerned were notified of the Commission's intention to investigate, in terms of Article 5.5 of the Anti-Dumping Agreement. All known interested parties were informed and requested to respond to the questionnaires and the non-confidential summaries of the application. The deadline for comments was 22 July 2005. Extensions were granted on request, upon good cause shown, until 05 August 2005.

No responses were received from the PRC, India and Malaysia.

The investigation was also initiated against Chinese Taipei which is the only country that responded to the Commission's exporter questionnaire. In order to expedite proceedings, the Commission decided to split the investigation between cooperating and non-cooperating exporters in terms of section 32.3 of the Anti-Dumping Regulations. The Applicant, however, requested that the provisional payments be imposed against imports from the countries that did not respond, being the People's Republic of China (PRC), India and Malaysia.

On 24 August 2005, the Commission made a preliminary determination based on the facts available, that dumping is taking place and that the material injury suffered by the SACU industry can be causally linked to the dumped imports from the PRC, India and Malaysia.

1.6 INVESTIGATION PERIOD

The investigation period for dumping is from 1 October 2003 to 30 September 2004. The injury investigation involves evaluation of data for the period 1 October 2002 to 30 September 2004.

1.7 PARTIES CONCERNED

1.7.1 SACU Industry

The application was lodged by Barloworld Stainless, a manufacturer of stainless steel tubes and pipes in the SACU.

Other SACU producers as supplied by SASSDA, provided support for the application.

1.7.2 Exporters/Foreign Manufacturers

The following exporters/manufacturers were identified as interested parties:

China

(a) Dalian LG Industrial Systems Co. Ltd
(b) LG Industrial System International Trading (Shanghai) Co. Ltd
(c) Winner

The exporters from China did not respond to the Commission's questionnaire.

India

(a) Steel Tubes India
(b) Sawstik Pipes Ltd

The exporters from India did not respond to the Commission's questionnaire.

Malaysia

(a) Kanzen Tetsu

The exporter from Malaysia did not respond to the Commission's questionnaire.

1.7.3 Importers

The following SACU importers were identified as interested parties:

(a) Natal Stainless Steel
(b) BTA Pipe Supplies
(c) Stalcor
(d) Jacksons Metals
(e) Petro Pulp Stainless Steel cc
(f) Kendo International
(g) Steelway SA
(h) Cat Alloys cc
(i) International Metal Factoring cc
(j) Macsteel
(k) Energy Metals
(l) Eurosteel
(m) NDE
(n) Steelmor

The importers that responded to the Commission's importer questionnaire are: Natal Stainless Steel, Stalcor, Petro Pulp Stainless Steel cc, International Metal Factoring cc, Energy Metals, Eurosteel and Steelmor.

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 IMPORTED PRODUCTS

2.1.1 Description

The subject product is described as "Welded Stainless steel tubes of circular cross-section with an outside diameter of 12mm to 21,34mm and from 114mm to 160mm with a wall thickness of 1mm or more but not exceeding 6mm classified under tariff subheading 7306.40" originating in or imported from the PRC, India and Malaysia.

The subject product is described as "Welded Stainless steel tubes of circular cross-section with an outside diameter of 12mm and more, but not exceeding 160mm with a wall thickness of 1mm or more but not exceeding 6mm classified under tariff subheading 7306.40" originating in or imported from the PRC and India.

2.1.2 Country of origin/export

The subject product is exported from the PRC, India and Malaysia.

2.1.3 Main raw materials

The raw material is stainless steel coils.

2.1.4 Technical characteristics

Welded, austenitic, stainless steel tube are manufactured to the required specifications with an outside diameter of 12mm to 21,34mm and from 114mm to 160mm with a wall thickness of 1mm or more but not exceeding 6mm originating in or imported from the PRC, India and Malaysia and to the required specifications with an outside diameter of

12mm and more but not exceeding 160mm with a wall thickness of 1mm or more but not exceeding 6mm originating in or imported from the PRC and India.

2.1.6 Application/end use

The welded stainless steel tubes are used for conveyance, structural or ornamental applications.

The product is used in a wide variety of applications for structural, architectural and decorative uses through to the food and beverages industries and as general service in all types of mining, industrial, medical and petrochemical equipment.

2.1.7 Tariff classification

The subject product is classifiable as follows:

Table 2.1.7

Tariff subheading	Description	Duty		
		General	EU	SADC
73.06	Other Tubes, Pipes and Hollow Profiles (for example, Open Seam or Welded, Riveted or Similarly Closed) of Iron or Steel:			
7306.40	- Other, welded, of circular cross-section, of stainless steel	10%	3.3%	Free

2.1.8 Other applicable duties and rebates

The subject product is subject to the following revised anti-dumping duties which were re-imposed on 18 June 2004:

Table 2.1.8

Tariff subheading	Description	Imported from or originating in	Duty
7306.40	Tubes and pipes welded of circular cross section, of stainless steel, with an outside diameter of 21,34mm or more but not exceeding 114,3mm and a wall thickness of 2mm or more but not exceeding 6mm.	Malaysia	20%
		Chinese Taipei (excluding that manufactured by Ta Chen Stainless Pipe Co, Ltd)	41,8%
		South Korea	47,6%

2.1.9 Production process

The tube is manufactured from annealed stainless steel and welded with no addition of filler metal. The tube is then cut to length. Pressure, helium leak and eddy current tests are done on the tube if required.

2.1.10 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 of this submission, indicated that the volume of dumped imports for 2004 from the PRC accounted for 28,21 percent, from India for 6 percent and from Malaysia for 33,63 percent. The total dumped imports accounted for

67,85 percent, while other imports accounted for 32,15 percent of the total imports of the like product for the period under investigation.

2.2 SACU PRODUCT

2.2.1 Description

The subject product is described as "Welded Stainless steel tubes of circular cross-section with an outside diameter of 12mm to 21,34mm and from 114mm to 160mm with a wall thickness of 1mm or more but not exceeding 6mm classified under tariff subheading 7306.40" originating in or imported from the PRC, India and Malaysia.

The subject product is described as "Welded Stainless steel tubes of circular cross-section with an outside diameter of 12mm and more, but not exceeding 160mm with a wall thickness of 1mm or more but not exceeding 6mm classified under tariff subheading 7306.40" originating in or imported from the PRC and India.

2.2.2 Main raw materials

The raw material is stainless steel coils.

2.2.3 Application/end use

The welded stainless steel tubes are used for conveyance, structural or ornamental applications.

The use of the product is a wide variety of applications for structural, architectural and decorative uses through to the food and beverages industries and automotive exhaust applications as well as general service in all types of mining, industrial, medical and petrochemical equipment.

2.2.4 Tariff classification

The SACU product is classifiable under tariff subheading 7306.40.

2.2.5 Production process

The tube is manufactured from annealed stainless steel and welded with no addition of filler metal. The tube is then cut to length. Pressure, helium leak and eddy current tests are done on the tube if required.

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 and Malaysia.

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 <u>material injury to a domestic industry</u>, 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 <u>domestic producers as a whole of the like products...</u>"

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;
(e) customer demand and end use; and
(f) any other factor proved to the satisfaction of the Commission to be relevant.

(a) Raw material

The raw materials for both the imported and the domestic products are similar, being stainless steel coils.

(b) Physical appearance and characteristics

The imported and the locally produced products are similar in physical appearance and characteristics.

(c) **Tariff classification**

The products produced domestically and those imported are classifiable under the same six-digit tariff subheading.

(d) **Method of manufacturing**

The production process used for the SACU product is similar to the one used for the imported product.

(e) **Customer demand and end use**

The demand and the end use of the products sold domestically and those imported are the same for purposes of comparison.

(f) **Any other factor proved to the satisfaction of the Commission to be relevant**

No information was provided in this regard.

The Commission found that the SACU products and the imported products were "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.".

Barloworld Stainless is a manufacturer of stainless steel tubes and pipes in the SACU. Other SACU producers as supplied by SASSDA have provided support for the application.

Based on this, it was evident that the application was supported by domestic producers whose collective output constitutes more than 25 percent of the total production of the like product produced by the domestic industry and more than 50 percent of the total production of the like product produced by those expressing an opinion on the application.

The Commission, therefore, decided that the application was made "by or on behalf of the domestic industry" under the above provisions of the Anti-Dumping Agreement.

4. DUMPING

4.1 DUMPING

Section 1(2) of the ITA Act (Act 71 of 2002), 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 of the Southern African Customs Union 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 using sections 32(2)(b)(i) and 32(4) of the ITA Act (Act 71 of 2002) as basis.

Section 32(2)(b)(i) provides as follows:

"'normal value' in respect of any goods, means -

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

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

(aa) the constructed cost of production of the goods in the country of origin when destined for domestic consumption, plus a reasonable addition for selling, general and administrative costs and for profit; or

(bb) the highest comparable price of the like product when exported to an appropriate third or surrogate country, as long as that price is representative".

Section 32(4) of the ITA Act (Act 71 of 2002) further provides as follows:

> "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 relevant provisions in section 32(2)(a) of the ITA Act (Act 71 of 2002), 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 (Act 71 of 2002) 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 (Act 71 of 2002) 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

(c) the export price actually paid or payable is unreliable for any other reason".

4.4 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.".

Section 11(1) of the ITA Act (Act 71 of 2002), provides as follows:

> "Adjustments shall be made in each case, on its merit, for differences which affect price comparability at the time of setting prices, including, but not limited to-
>
> (a) conditions and terms of trade;
> (b) taxation;
> (c) levels of trade;
> (d) physical characteristics; and
> (e) quantities.".

Both the WTO 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 normally calculated in the currency of the country of export.

4.6 METHODOLOGY IN THIS INVESTIGATION

No exporter from the subject countries responded in the matter and the Commission must therefore consider the *facts available* that were provided by the Applicant.

The Applicant indicated that the normal values for the PRC, India and Malaysia could not be obtained. It further indicated that its efforts to obtain normal values in the subject countries using agents were unsuccessful because for one to get a quote, an order needs to be placed.

The Applicant believes this was because Barloworld Stainless has been involved in anti-dumping actions recently and the overseas suppliers are aware of this and are reluctant to supply quotes, etc. The Applicant also believes that as the subject countries are not "newcomers" to anti-dumping actions and sunset reviews it is very difficult to obtain a domestic sales value.

Normal values were therefore calculated using the constructed cost of production of the goods in the countries of origin plus a reasonable addition for selling cost and profit.

The Applicant indicated that in their 1997 application and the 2002 sunset review, the constructed cost of production was accepted by ITAC and was based on a combination of internationally published steel prices, a benchmarking exercise in 1997 by the Industrial Development Cooperation (IDC) as part of their "Stainless Steel Macro Cluster Study" in conjunction with the Department of Trade and Industry (DTI) (which was updated for cost increases) and certain data based on the Applicant's business which it believes valid based on international experience and regular visits to stainless steel producers worldwide.

The Applicant indicated that it applied the same logic as it was the "best information available" to it.

The Applicant indicated that the methodology followed to calculate the constructed normal value for 2004 consisted of the following:

a. Raw material costs were based on the average values of transacted prices for stainless steel coil from October 2003 to September 2004 (allowing a 3 month lead time in comparison to the sales into SACU from January to November 2004) published in the MEPS publication (MEPS is a leading supplier of steel market information. MEPS regular monitoring of steel markets provides them with a unique insight of consumption and production trends worldwide).

b. Slitting scrap rates and costs (net of scrap recoveries) were based on South African industry norms which have been verified by international plant visits undertaken by Barloworld Stainless for benchmarking purposes.

c. Manufacturing scrap and profit rates were based on the IDC study and the costs were calculated using the IDC study as the base increased by inflation.

Barloworld Stainless indicated that it applied its kg/metre total manufactured mix for October 2003 to May 2004 as a proxy for the subject products. It indicated that it considers this reasonable as no information was readily available regarding the product mix of the imported goods under tariff subheading 7306.40.

4.6.1 METHODOLOGY IN THIS INVESTIGATION FOR THE PRC

Normal Value

Type of economy

In calculating the normal value for the PRC, section 32(4) of the ITA Act was applied as a basis.

The Applicant indicated that normal value for the PRC was calculated using Chinese Taipei as the basis, i.e Chinese Taipei was nominated as a third country for the PRC as the Applicant believes that this is the most suitable third country due to a combination of geographical proximity, similar industrial conditions and production methods.

The normal value for the PRC using the constructed selling price per metre in the domestic market was determined to be US$13.40/m. When converted to price per kg, it was determined to be US$3.91/kg.

Export Price

The export prices were based on import statistics for the period January 2004 to September 2004.

Adjustments to the export price

The Applicant indicated that the adjustments were made based on its experience with the 1997 stainless steel tubes and pipes investigation and its sunset review, which had similar characteristics to this investigation.

Therefore, agent's commission, brokerage, inland freight, packaging and payment terms which amounted to US$0.43 were made to the FOB price of the import statistics to determine the ex-factory export price.

Ex-factory export price

The export price was therefore calculated to be as follows:

Country	**China**
FOB export price (Rand/kg)	19.90*
Adjustments	2.86
Ex factory export price (Rand/kg)	17.04**
Ex factory price (USD/kg)	2.61

* US$3.05 FOB export price x Average exchange rate of 6.52436 of Jan-Sept 2004
** Ex factory export price in USD per kg x Average exchange rate of 6.52436 of Jan – Sept 2004

Margin of dumping

Based on the above information, the following margin of dumping was calculated:

	USD/kg	CNY/kg
Normal Value	3.91	32.40
Export price	2.61	21.63
Margin of Dumping	1.3	10.77
Margin of dumping as a percentage export price	49,8%	49,8%

Exchange Rate USD 1 = CNY 8.2873

4.6.2 METHODOLOGY IN THIS INVESTIGATION FOR INDIA

Normal Value

Type of economy

In calculating the normal value for India, section 32(2)(b) of the ITA Act was applied as a basis.

The normal value for India using the constructed selling price per metre in the domestic market was determined to be US$12.97/m. When converted to price per kg, it was determined to be US$3.71/kg.

Export Price

The export prices were based on import statistics for the period January 2004 to September 2004.

Adjustments to the export price

The Applicant indicated that the adjustments were made based on its experience with the 1997 stainless steel tubes and pipes investigation and its sunset review, which had similar characteristics to this investigation.

Therefore, agent's commission, brokerage, inland freight, packaging and payment terms which amounted to US$0.44 were made to the FOB price of the import statistics to determine the ex-factory export price.

Ex-factory export price

The export price was therefore calculated to be as follows:

Country	India
FOB export price (Rand/kg)	20.88*
Adjustments	2.93
Ex factory export price (Rand/kg)	17.95**
Ex factory price (USD/kg)	2.75

* US$3.20 FOB export price x Average exchange rate of 6.52436 of Jan-Sept 2004
** Ex factory export price in USD per kg x Average exchange rate of 6.52436 of Jan – Sept 2004

Margin of dumping

Based on the above information, the following margin of dumping was calculated:

	USD/kg	INR/kg
Normal Value	3.71	168.67
Export price	2.75	25.02
Margin of Dumping	0.96	43.64
Margin of dumping as a percentage of export price	34,91%	34,91%

Exchange Rate USD 1 = INR 45.46240

4.6.3 METHODOLOGY IN THIS INVESTIGATION FOR MALAYSIA

Normal Value

Type of economy

In calculating the normal value for Malaysia, section 32(2)(b) of the ITA Act was applied as a basis.

The normal value for Malaysia using the constructed selling price per metre in the domestic market was determined to be US$13.38/m. When converted to price per kg, it was determined to be US$3.82/kg.

Export Price

The export prices were based on import statistics for the period January 2004 to September 2004.

Adjustments to the export price

The Applicant indicated that the adjustments were made based on its experience with the 1997 stainless steel tubes and pipes investigation and its sunset review, which had similar characteristics to this investigation.

Therefore, agent's commission, brokerage, inland freight, packaging and payment terms which amounted to US$0.33 were made to the FOB price of the import statistics to determine the ex-factory export price.

Ex-factory export price

The export price was therefore calculated to be as follows:

Country	Malaysia
FOB export price (Rand/kg)	16.62*
Adjustments	2.12
Ex factory export price (Rand/kg)	14.50**
Ex factory price (USD/kg)	2.22

* US$2.55 FOB export price x Average exchange rate of 6.52436 of Jan-Sept 2004
** Ex factory export price in USD per kg x Average exchange rate of 6.52436 of Jan – Sept 2004

Margin of dumping

Based on the above information, the following margin of dumping was calculated:

	USD/kg	MYR/kg
Normal Value	3.82	14.52
Export price	2.22	8.44
Margin of Dumping	1.6	6.08
Margin of dumping as a percentage of export price	72,07%	72,07%

Exchange Rate USD 1 = MYR 3.80144

4.7 SUMMARY - DUMPING

The Commission found that the subject product originating in the PRC, India and Malaysia was being dumped into the SACU market with the following margins:

Country	Dumping margin
China	49,81%
India	34,91%
Malaysia	72,07%

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 following injury analysis in this submission relates to Barloworld Stainless, the Applicant, which constitutes a percentage of the total domestic production of the subject product that 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.".

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 percent of imports of the like product in the importing member, unless countries which individually account for less than 3 percent of imports of the like product in the importing Member collectively account for more than 7 percent of imports of the like product 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(s) 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 alleged dumped imports in kilograms, for the subject product as obtained from SARS:

Table 5.3.1

	2001	2002	2003	2004 Jan - Sept
The PRC	0	0	1	366,344
Dumped imports %	-	-	-	28,21%
India	54,014	111,480	51,067	77,946
Dumped imports %	7,14%	10%	3,96%	6%
Malaysia	176,254	448,854	483,553	436,713
Dumped imports %	23,29%	40,27%	37,47%	33,63%
Total dumped imports	560,449	963,245	1, 103,741	2, 058,931
Imports from other countries	526,360	554,210	756,002	417,482
Dumped imports from other countries %	69,57%	49,72%	58,58%	32,15%
Total imports	756,628	1, 114,544	1,290,623	1, 298,485
Dumped imports as % of total imports	30,43%	50,27%	41,42%	67,85%

The Applicant indicated that the volume of dumped imports for 2004 from the PRC accounted for 28,21 percent, from India for 6 percent and from Malaysia for 33,63 percent. The total dumped imports accounted for 67,85 percent, while other imports accounted for 32,15 percent of the total imports of the like product for the period under investigation.

The Applicant also indicated that the information in the table indicates that the volume of the alleged dumped imports increased from 30,43 percent in 2001, to 67,85 percent in 2004, when measured against total imports and that from 2001 to 2003 there were practically no imports of the subject products from the PRC.

The Applicant indicated that imports from the PRC started penetrating the SACU market in 2004, which is the reason why this application covers a wide range of sizes of the subject products, i.e from 12mm to 21,34mm and from 114mm to 160mm.

The Applicant indicated that the existing anti-dumping duties were amended in Report No.58 in 2004 in the sunset review of stainless steel tubes and pipes welded of circular cross section, of stainless steel, with an outside diameter of 21,34mm or more but not exceeding 114,3mm and a wall thickness of 2mm or more but not exceeding 6mm originating in or imported from Chinese Taipei, Malaysia and South Korea.

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.".

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.

The Applicant indicated there has been price undercutting starting in 2003 from the PRC and Malaysia (except for India) and that as the dumping of the subject product accelerated in 2004, Barloworld Stainless experienced severe price undercutting from all the subject countries which resulted in severe injury from 2004. The Applicant indicated that the subject product is a commodity and hence is considered to have a high price elasticity.

The Applicant further indicated that the high levels of price undercutting are evidence of dumping.

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

	2002	2003	2004
Ex factory price (R per kg)	100	122	125

The figures in the table above have been indexed due to confidentiality with 2002 as the base year

The Applicant indicated that Barloworld Stainless has not suffered price depression as can be seen from the selling prices, but has suffered price suppression. It indicated that international stainless steel prices (the prices are published in the MEPS publication) have risen sharply in 2004 by 22 percent but Barloworld Stainless has only been able to pass on a 3 percent increase.

Price suppression

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

To determine price suppression, a comparison is made of the percentage increase in cost with the percentage increase in selling price (if any), and whether or not the selling prices have increased by at least the same margin at which the cost of production increased.

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

Table 5.3.2.3

R/kg	2002	2003	2004
Ex-factory price	100	121	125
Unit cost (total)	100	114	129
Net Profit	100	189	91
Net %	100	155	82
Unsuppressed Selling Price	100	121	135

The figures in the table above have been indexed due to confidentiality with 2002 as the base year

The Applicant highlighted the price suppression suffered by detailing that the input cost of steel from Columbus, the SADC supplier, increased in line with world prices for stainless steel. It indicated that Cold Rolled coil was based on a base price and a surcharge based on monthly values for Nickel, Chrome and Molybdenum costed at the prevailing Rand/USD exchange rate.

The Applicant indicated that Barloworld Stainless has suffered severe injury from not being able to pass increases in cost of production largely caused by sharply higher international stainless steel prices from 2002 to 2004 to their customers. It indicated that this was as a result of pricing pressure caused the dumped imports of the subject products.

The Applicant indicated that the unsuppressed selling price above was based on maintaining the 2003 net profit percentage in 2004. It indicated that the fact that prices could not be increased at the same rate as costs is indicative of price suppression.

It also indicated that the dumping of the subject product has caused the net profit percentage to drop dramatically from 2003 to 2004.

The Applicant indicated that the subject product is a commodity and hence is considered to have a high price elasticity.

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 or these factors necessarily give decisive guidance.".

5.3.3.1 Actual and potential decline in sales

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

Table 5.3.3.1

Sales Volumes (Tons)	2002	2003	2004
Barloworld Stainless sales volume	100	100	79
Barloworld Stainless sales value	100	121	99

The figures in the table above have been indexed due to confidentiality with 2002 as the base year

The Applicant indicated that the 2002 and 2003 sales levels were stable but in 2004 there has been a decline in a single year as a result of the surge of dumped imports and this caused major injury to Barloworld Stainless and the rest of the SACU industry.

The Applicant indicated that the severity of the injury suffered due to dumped imports of the subject product can be further seen if the actual sales in October 2004 to January 2005 were extrapolated to a full year. It indicated that assuming that December is half a month, the projected annual sales tons based on October 2004 to January 2005 depicts a substantial drop.

Barloworld Stainless indicated that it cannot economically survive any further injury due to this severe loss of volume as a large portion of the costs were fixed.

The Applicant indicated that its sales value declined and that this corresponds with the decline in sales volume and it indicated the extent to which Barloworld Stainless has been injured by the dumped imports. The Applicant also indicated that the ratio of decrease is less than the percentage reduction in tons due to the rise in stainless steel prices.

5.3.3.2 Profit

The following table shows the Applicant's profit situation:

Table 5.3.3.2

	2002	2003	2004
Gross profit margin (%)	100	114	104
Gross profit per unit (R'000)	100	140	131
Units sold (tons)	100	100	78
Total gross profit (R'000)	100	140	103
Net profit margin (%)	100	155	73
Net profit per unit (R'000)	100	189	91
Units sold (tons)	100	100	78
Net profit (R'000)	100	189	72

The figures in the table above have been indexed due to confidentiality with 2002 as the base year

The Applicant stated that the actual decline in profit was startling in 2004 as the net profit per unit declined from 2003. It indicated that this indicated that in absolute values the net profit has fallen dramatically from both 2002 and 2003 due to a combination of volume loss and price suppression and or price undercutting by dumped imports of the subject product.

The Applicant also indicated that the consequences of further declines in Barloworld Stainless's profitability if the current trends continued and no relief was available against the dumped imports were too ghastly to contemplate for the business, its employees and shareholders. It indicated that it is doubtful that it can continue in business if the current impact continued.

5.3.3.3 Actual and potential decline in output

The following table shows the actual production volumes over the last three years:

Table 5.3.3.3

Tons	**2002**	**2003**	**2004**
Barloworld's total production of the product concerned	100	98	93
Barloworld's production for SACU consumption	100	111	69

The figures in the table above have been indexed due to confidentiality with 2002 as the base year

The Applicant stated that the production of the subject product declined markedly from 2002/2003 to 2004 as a result of the surge in imported subject products in 2004. It also indicated that there was also a stock reduction in 2004. It further indicated that if the current trends caused by dumped imports are continued, production will continue to fall and will potentially cause further severe injury to the SACU industry.

5.3.3.4 Actual and potential decline in market share

The following table shows the SACU market share for the subject products in tons and Rand value and is based on sales (and not on output) value, for the past three years:

Table 5.3.3.4

Rands	**2002**	**2003**	**2004**
Barloworld Stainless market share	100	120	99
Other SACU producers' market share	100	112	87
Total SACU producers market share	100	115	92
Market share of alleged dumped imports by country			
- China	-	100	121
- Malaysia	100	79	64
- India	100	40	35
Total market share of alleged dumped imports	100	104	129
Market share of other imports	100	90	64
TOTAL MARKET	100	114	97

The figures in the table above have been indexed due to confidentiality with 2002 as the base year

The information in the table clearly indicates that the Applicant will be unable to gain the market share it lost if dumped imports continue to penetrate the SACU market from the alleged subject countries as can be seen from the decreases from 2002 to 2004.

The Applicant indicated that this alarming decrease was taken up by the dumped imports as the other imports have roughly the same market share. It further indicated that the dumped imports were usurping/devouring market share against the SACU industry at a rate which threatened the existence of the SACU industry if no remedial action was taken by ITAC.

The Applicant indicated that the rate of decline is less than in volume terms which illustrates the price undercutting experienced by the SACU market.

5.3.3.5 Productivity

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

Table 5.3.3.5

	2002	2003	2004
Total production volume – Tons	100	111	70
Number of employees (manufacturing only)	100	115	89
Units per employee	100	97	80

The figures in the table above have been indexed due to confidentiality with 2002 as the base year

The information in the table indicates that the Applicant's units per employee decreased in 2003 to 2004. The Applicant stated that it had to reduce its shift system in 2004 due to the drop-off in the domestic demand caused by dumping.

It is indicated that productivity has remained reasonable even in light of the much lower volume. It is further indicated that in 2004 because of dwindling sales, production was curbed and productivity declined. Unfortunately, in December 2004, the Applicant indicated that there was again a change in the shifts.

The Applicant indicated that in order to increase productivity to compete with the dumped imports and in the global market, it invested in new laser welding technology to remain competitive and improve its productivity.

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 asset value.

The following table provides the Applicant's return on current value of total assets (before interest and tax and ignoring abnormal expenditure):

Table 5.3.3.6

	2002	2003	2004
Net profit (product concerned)	100	190	72
Net assets (product concerned)	100	186	174
Return on net assets (product)	100	102	42

The figures in the table above have been indexed due to confidentiality with 2002 as the base year

The above table shows that the Applicant's return on net assets decreased between 2003 and 2004.

The Applicant stated that the reduction in profitability of the subject products was indicative of the injury caused by the dumped imports and that if the rate of decline in profitability and return on assets for the subject products continued, Barloworld Stainless will not be able to offer its shareholders an adequate return and will also not be able to generate funds for periodic investment in plant renewals and upgradings.

5.3.3.7 Utilisation of production capacity

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

Table 5.3.3.7 (a)

Tons	2002	2003	2004
Barloworld capacity (total)	100	109	118
Barloworld actual production/sales (SACU)	100	111	70
Barloworld capacity utilisation % (SACU)	100	100	59
Rest of SACU capacity	100	101	115
Rest of SACU production	100	93	70
Rest of SACU capacity utilisation %	100	92	60

The figures in the table above have been indexed due to confidentiality with 2002 as the base year

The above table clearly indicates that the rest of SACU capacity utilisation suffered great harm caused by the dumped imports as can be seen by the severe drops in capacity utilisation.

The Applicant indicated that the SACU capacity utilisation has been compared against total capacity as the subject products and the exported products were produced with the same productive capacity.

The Applicant also indicated that the rest of the SACU capacity of the total business from 2002 to 2004 indicated an increase because of the investments in a pickling plant at the end of 2002 which was introduced for the purposes of de-bottlenecking the pickling process and also a new tig mill with laser welding technology that was introduced in 2003/2004.

However, Barloworld Stainless indicated that it cannot survive at decreasing production levels and the continuing decreases in used capacity.

The Applicant provided the following information in support of the above statements:

Table 5.3.3.7 (b)

	2002	**2003**	**2004**
Barloworld Stainless capacity (tons)	100	109	118
Barloworld actual sales (tons) – SACU and exports	100	189	88
Barloworld capacity utilisation %	100	87	73

The figures in the table above have been indexed due to confidentiality with 2002 as the base year

The Applicant indicated that it also produces for the export market and was forced to switch the production capacity to the currently marginal export market when it could not sell into the SACU market as a result of the dumped products.

The Applicant provided the following information in support of its decline in production:

Table 5.3.3.7 (c)

Subject Product	**2002**	**2003**	**2004**
Number of shifts per week	100	100	40
Number of hours per shift	100	100	100
Workers per shift	100	105	90

The figures in the table above have been indexed due to confidentiality with 2002 as the base year

The Applicant indicated that the number of workers per shift had to be derived from the total production and allocated per tons as most of Barloworld Stainless's production was interchangeable between domestic and export production. It indicated that the above numbers were total including non-manufacturing.

The Applicant indicated that as a result of the continued import of dumped products in 2004, the number of shifts has also been reduced as production volume has been cut back. It indicated that until 2003, Barloworld Stainless was working at full capacity which enabled Barloworld Stainless to work 24 hours, 7 days a week. It indicated that during 2004, it had to stop the shift system due to a fall in domestic demand for the subject product as a result of the dumped products that are imported. However, it indicated that production capacity can be increased by adding more shifts.

The Applicant further indicated that it does not have any plans to increase production capacity due to the injury caused by dumped products, that it was unfortunate that it had to reduce the business due to the dumped imports. It indicated that if there were remedies in place against dumped imports, there will be a potential to invest in further laser welding technology.

5.3.3.8 Actual and potential negative effects on cash flow

The table below shows the Applicant's cash flow position over the comparative period:

Table 5.3.3.8

Product specific	2002	2003	2004
Net cash flow R'000	100	7	81
Debtors (value) R'000	100	127	137

The figures in the table above have been indexed due to confidentiality with 2002 as the base year

The Applicant stated that cash flows from the subject product fell from 2002 and that the sharp fall in 2003 was due to extra stock invested in the business to improve service levels in the light of the dumped imports.

The Applicant indicated that they were not able to reduce these stock levels due to the drop in sales.

It further indicated that its record keeping only permits an allocated balance sheet for the subject product due to the integrated nature of Barloworld Stainless. It indicated that it has allocated on a consistent basis.

5.3.3.9 Inventories

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

Table 5.3.3.9 (a)

	2002	2003	2004
Volume - Tons	100	234	185
Value - R'000	100	231	228

The figures in the table above have been indexed due to confidentiality with 2002 as the base year

The Applicant indicated that the above figures were finished goods only and that the valuation of the finished goods was based on material cost, standard slitting and production scrap (offset by scrap recoveries) and slitting overhead charges but did not include any allocated factory overheads or direct production costs.

The Applicant indicated that the inventories were not subject to fluctuation under normal trading circumstances. The Applicant further indicated that in the face of lower sales caused by dumped imports, it attempted to improve its service levels to their customers by holding stock and that from December 2004, they changed to a MTS operation and their stock levels have since dropped.

5.3.3.10 Employment

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

Table 5.3.3.10

Subject product	2002	2003	2004
Direct labour units: production	100	115	85
Indirect labour units: production	100	116	92
Total labour units: production	200	115	88
Labour units: Selling and Administrative	100	160	120

The figures in the table above have been indexed due to confidentiality with 2002 as the base year

The Applicant stated that there has been a direct effect on its employment levels in 2004 as they had to reduce their levels of employment as a direct result of dumped imports which increased rapidly during this period. It also indicated that their exports were marginal at the moment due to the continued strong Rand and hence, it cannot use more people to produce exports.

The Applicant indicated that there has been a direct effect on employment levels in 2004 as it had to reduce their level of employment as a direct result of dumped imports which increased rapidly during this period.

The Applicant further indicated that, unless the SACU industry can operate profitably in the SACU market it cannot be expected to economically increase the exports to compensate for the lost SACU market share.

It is indicated that unfortunately it reduced all contract labour in August 2004 to reduce production to lesser shifts. It further indicated that after a consultation period with the employees and an offer of voluntary retrenchment it had forced retrenchments in December 2004 to reduce the manufacturing shifts further. However, the Applicant indicated that the retrenchments in December were not included in the numbers.

5.3.3.11 Wages

The information in table 5.3.3.11 shows the Applicant's total and average wages for the comparative period:

Table 5.3.3.11

Price R'000	2002	2003	2004
Total wages: Production	100	121	105
Total salaries: Production	100	129	145
Wage/Month: Production	100	121	105
Salary/month: Production	100	128	145
Total Salaries & wages: Selling and Administration	100	128	174
Wage and Salaries per month: S&A	100	126	174

The figures in the table above have been indexed due to confidentiality with 2002 as the base year

The Applicant indicated that the wage rates changed but the absolute numbers dropped due to a drop in domestic demand caused by dumped imports. It indicated that no annual remuneration increases were granted to salaried staff in October 2004.

It stated that in addition an annual increase was not given to wage earners on 1 July 2004 and that an application was made to SEIFSA which was granted, but that further wage increases in subsequent years were not possible unless anti-dumping measures were imposed as a matter of urgency.

The Applicant indicated that this unfortunate occurrence was brought about by the escalating level of dumped imports which resulted in Barloworld Stainless being unable to afford any cost of living increases for employees.

Barloworld Stainless indicated that it is making every effort possible to reduce costs.

5.3.3.12 Growth

The Applicant submitted the following information regarding the growth of the SACU industry:

Table 5.3.3.12

Tons	2001	2002	2003	2004
Size of the SACU market	100	124	125	113
Barloworld sales volume	100	107	107	85
Rest of SACU producers	100	132	123	92

The figures in the table above have been indexed due to confidentiality with 2002 as the base year

From the information in the table the Applicant indicated that it was clear that the overall SACU market has grown and then flattened in 2003 and then dropped in 2004. It indicated that what is clearly evident is the dramatic decrease in the market share experienced by Barloworld Stainless and the rest of the SACU producers as a result of the increase in alleged dumped imports.

5.3.3.13 Ability to raise capital or investment

The Applicant submitted the following information regarding its ability to raise capital or investment:

Table 5.3.3.13

	2002	2003	2004
Total capital/investment in subject product (R'000)	100	186	174
Capita expenditure during year on subject product (R'000)	100	87	-

The figures in the table above have been indexed due to confidentiality with 2002 as the base year

The Applicant stated that the allocation of capital invested as per the above table is based on tons of subject product to the total tons in the business. It indicated that this basis was used consistently throughout this application and was consistent with the 2002 Sunset Review and the 1997 application. It also indicated that the movements in 2002 were related to the investment in a pickling plant and in 2003 to a tig mill with laser welding technology. It indicated that as it is part of the Barloworld group, the Barloworld group dictates that all investment must exceed the shareholder cost of capital to ensure that shareholder value was not reduced.

The Applicant further indicated that it was not in a position to raise further additional capital at present as the returns would be substandard for the SACU market. It indicated that this situation was largely due to unfairly dumped imports into the SACU market.

It is indicated that, if this application was accepted and supported by ITAC to address the unfair trade in the SACU market, the Applicant's return on capital employed should increase significantly which may allow for additional capital to be raised as the SACU industry would not suffer material injury anymore and can compete on a fair basis with imports.

5.3.3.14 Previous Injury

The Applicant substantiated the allegation for previous injury with the under-mentioned extract from the Commission's Report No. 58 whereby the anti-dumping duties were imposed on 18 June 1998 and then re-imposed on 18 June 2004:

Table 5.3.3.14

Tariff subheading	Description	Imported from or originating in	Duty
7306.40	Tubes and pipes welded of circular cross section, of stainless steel, with an outside diameter of 21,34mm or more but not exceeding 114,3mm and a wall thickness of 2mm or more but not exceeding 6mm.	Malaysia	20%
		Chinese Taipei (excluding that manufactured by Ta Chen Stainless Pipe Co, Ltd)	41,8%
		South Korea	47,6%

5.3.3.15 Other injury information

The Applicant indicated that in June 2004 the South African Stainless Steel Development Association (SASSDA) commissioned a research project of which a report was issued, to assess the stainless steel hollowware manufacturing sectors of China, Chinese Taipei and India in comparison with the South African sector. It indicated that the report contained evidence of various government support mechanisms in China and India which were in conflict with the World Trade Organisation (WTO) regulations. The Applicant believes that this support had contributed to the high level of dumped imports from China and India.

5.4 CONCLUSION – MATERIAL INJURY

After considering all the relevant factors, the Commission found that the SACU industry was suffering material injury. Particularly as regards:

- price undercutting
- decline in output
- decline in sales
- decline in market share
- decline in utilisation of production capacity
- decline in return on investments
- negative effects on cash flow
- decline in employment
- decline in wages
- inability to show growth
- inability to raise capital or investments

6. CAUSAL LINK

6.1 GENERAL

In considering whether there is a causal link between the dumping and the material injury, the Commission 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 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

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

The Applicant stated that the import volume from the subject countries increased substantially over the period of the investigation. It indicated that in this same period the sales of the SACU industry declined by the same levels. It also indicated that the SACU producers' product decreases can be directly linked to the import of dumped products as the product is very price sensitive.

The Applicant stated that however, the unfair imports in the SACU market was causing the SACU industry severe material injury and if the imports continued at this trend the material injury will increase even further.

The Applicant indicated that the severity and the speed of the injury suffered in 2004 as seen by falling volumes, high levels of price undercutting, price suppression, falling profitability and returns and falling employment levels and capacity utilisation were evidence and that speedy remedial action against the dumped imports from the subject countries is needed for ITAC to save Barloworld Stainless and the rest of the SACU producers.

The Applicant substantiated its claim on how dumping caused material injury in the table below:

Table 6.2

	2002	2003	2004
Sales			
- Barloworld production – volume	**100**	**100**	**79**
- Barloworld imports - volume	**0**	**0**	**0**
" Other SACU production	**100**	**93**	**70**
- Total	**100**	**95**	**73**
Imports			
- dumped imports volume	**100**	**139**	**211**
- rest of the world volume excluding own imports	**100**	**91**	**84**
- Total imports – volume	**100**	**122**	**165**
Total RSA Market	**100**	**100**	**91**
RELATIVE MARKET SHARES			
SACU – volume%	**100**	**95**	**81**
Dumped – volume%	**100**	**139**	**233**
Other imports volume – volume %	**100**	**90**	**93**
PRODUCTION			
Capacity (ton)	**100**	**109**	**118**
Actual (ton)	**100**	**111**	**70**

Utilisation (%)	**100**	**100**	**59**
Stockholding (end of financial year)	**100**	**234**	**184**
Price per tonne history (average)	**100**	**121**	**125**
Capital employed	**100**	**185**	**173**
Productivity of capital per Ton	**100**	**56**	**40**
Employment (totals)	**100**	**120**	**92**
Productivity of labour	**100**	**97**	**79**
Gross wages per unit employment	**100**	**104**	**140**
Profit per unit	**100**	**189**	**91**
Return on investment	**100**	**103**	**41**
Ability to attract (additional capital/investment/credi	**100**	**87**	**0**
Growth of industry %	**24%**	**1%**	**(10%)**

The figures in the table above have been indexed due to confidentiality with 2002 as the base year

6.3 EFFFECT OF DUMPED IMPORTS ON PRICES

It has already been shown in chapter 5 of this submission that there was price undercutting and price suppression which was claimed by the Applicant to be the direct effect of the alleged dumped imports of the subject products from the PRC, India and Malaysia.

The Applicant highlighted the price suppression suffered by detailing that the input cost of steel from Columbus, the SADC supplier, increased in line with world prices for stainless steel. It indicated that Cold Rolled coil was based on a base price and a surcharge based on monthly values for Nickel, Chrome and Molybdenum costed at the prevailing Rand/USD exchange rate.

It also indicated that Barloworld Stainless had therefore suffered price suppression in 2004. The Applicant has had to absorb the unavoidable increases in the cost of input material which was a large percentage of the total product cost.

The Applicant further indicated that it was important to note that the SASSDA's members were supporting the SACU industry by sourcing its raw material from Columbus Steel.

6.4 CONSEQUENT IMPACT OF DUMPED IMPORTS

The Commission found the following material injury indicators that were indicative of material injury to be causally linked to the dumping:

- price undercutting
- decline in output
- decline in sales
- decline in market share
- decline in utilisation of production capacity
- decline in return on investments
- negative effects on cash flow
- decline in employment
- decline in wages
- inability to show growth
- inability to raise capital or investments

6.5 FACTORS OTHER THAN 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 quality of the product

The Applicant indicated that Barloworld Stainless was ISO 9001, TUV and PED accredited.

6.5.2 Delivery times

The Applicant indicated that the delivery times were good as Barloworld Stainless invested in new scheduling software in the last year (BAAN Scheduler) and increased stock holding.

6.5.3 Service

The Applicant indicated that their service was good and that it provided the best after sales service to customers, including guarantees and warranties and technical training to its customers.

6.5.4 The state of Barloworld Stainless workforce and its attitude towards the company, including how wage negotiations are conducted.

The Applicant indicated that its industrial relations were considered good as Barloworld Stainless falls under SEIFSA, and therefore, wage negotiations were conducted on an industry level.

6.5.5 Strikes, go-slows or lock-outs during the past twelve calendar months

The Applicant stated that it had a one day partial strike in July linked to the SEIFSA wage negotiations and that prior to this there have been no strikes for at least 5 years. The Applicant also indicated that unfortunately it had to start a consultation process to consider reducing its labour size during October 2004 due to the effect of dumped imports on the market. The Applicant further indicated that this resulted in forced retrenchments in November and December 2004.

6.5.6 The effect of the changing exchange rate on:

(a) Production Cost and Selling Price

The Applicant indicated that the SACU industry's raw material price from SACU supplier Colombus is partially denominated in USD for cold rolled and fully for hot rolled. It indicated that the exchange rate therefore had a direct impact on Barloworld Stainless production cost. It further indicated that as the Rand strengthened the SACU industry's production cost decreased.

(b) The price of the decreased imported product

The Applicant indicated that the exchange rate would directly impact the price of the imported product in a similar fashion to the SACU industry's production costs.

6.5.7 The volume and the prices of imports not sold at dumped prices

The Applicant stated that it cannot respond to this question as it did not have the normal selling prices of the "like products" in the other countries of export.

6.5.8 Contraction in demand for Barloworld Stainless product or a change in consumption patterns

The Applicant stated that the demand for the SACU product decreased against the growing demand for the dumped imported product. It indicated that the important issue was the relative market shares in tons which showed that the SACU market share declined from 2002 to 2004.

6.5.9 Trade restrictive practices regarding the trade of Barloworld Stainless product in the SACU.

The Applicant indicated that it was not aware of any.

6.5.10 Technology developments that have taken place since Barloworld Stainless last updated its manufacturing process.

The Applicant indicated that in 2003 it commissioned its first use of laser welding technology which was at a substantial capital cost for a mill and a laser welder.

It also indicated that the SACU industry technology was generally in line with global technology and that the investment of a mill and a laser welder was done to compete with the dumped imports and the global players when exporting. It further indicated that in addition it had also invested in a fittings/laser cutting plant to increase efficiencies by utilising downgrade pipes in the fittings manufacture.

6.5.11 Barloworld Stainless productivity vis-a-vis that of the exporters

The Applicant stated that its productivity was as high if not better than the exporters abroad. It indicated that this was borne out by the fact that Barloworld Stainless had until 2003/2004 exported a large percentage of their capacity to approximately 20 countries (mainly European Union and North America). It indicated that this success in these developed world markets was conclusive proof of Barloworld Stainless productivity against global competition.

In addition, the Applicant further indicated that Barloworld Stainless management visited various tube manufacturers around the world and that these fact-finding and benchmarking visits confirmed the view that productivity of Barloworld Stainless made it competitive with regard to fair trade in the global environment.

6.5.12 Changes in Barloworld Stainless export performance over the last three years.

The Applicant indicated that its export performance has remained strong over the last 3 years in terms of volumes but profitability has declined in 2003/2004 largely due to the strong Rand.

6.5.13 Any other factors that affecting Barloworld Stainless sales or sales prices, including the state of the economy and the industry.

The Applicant stated that it was not aware of any other factors at this stage.

6.5 CONCLUSION ON CAUSAL LINK

After considering all relevant factors and comments, the Commission found that there was a causal link between the dumped products 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 imported from the PRC, India and Malaysia were dumped into the SACU market with the following margins:

Country:	Dumping margin
China	49,81%
India	34,91%
Malaysia	72,07%

7.2 Material injury

The Commission found that the SACU industry suffered material injury in the form of decline in output, price undercutting, price suppression, decline in sales, decline in market share, decline in capacity utilisation, negative effect on cash flow, negative effect on employment and increase in inventory levels.

7.3 Causal link

The Commission found that there was a causal link between the dumping and the material injury experienced by the SACU industry.

8. PROVISIONAL PAYMENTS

8.1 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."

8.2 Calculation of duty

The Commission found that all requirements for the imposition of a provisional payment have been fulfilled.

In accordance with Article 9.1 of the Anti-Dumping Agreement, the provisional payment should be less than the dumping margin if such lesser duty 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 of duty 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.

8.3 Price disadvantage

The price disadvantage is the extent to which the price of the imported product (landed cost) is lower than the unsuppressed selling price of the SACU product.

The Commission's policy is to compare the unsuppressed and undepressed ex-factory price of the Applicant to that of the landed cost (dockside) of the imported subject goods.

The price disadvantage was calculated by taking the Applicant's unsuppressed selling price and deducting the landed cost of the imported product, which resulted in a price disadvantage per unit.

The following price disadvantage percentages were therefore calculated:

- China 23,1%
- India 19,3%
- Malaysia 31,2%

In cases where either the importer or the exporter does not cooperate with the investigation, a price disadvantage cannot be properly calculated and the provisional payment to be imposed will therefore be based on the dumping margin, and not the price disadvantage. Therefore, the Commission decided not to apply the lesser duty as there was no cooperation from the exporters of the subject countries.

8.4 Amount of provisional payments

The provisional payments were determined to be the following:

Country	**Margin of dumping**
China	49,81%
India	34,91%
Malaysia	72,07%

9. DETERMINATION

The Commission made a preliminary determination that:

- the subject product originating in or imported from the PRC, India and Malaysia is being dumped into the SACU market.;

- the SACU industry is suffering material injury;

- There is a causal link between the dumping and material injury suffered by the SACU industry.

As the Commission considers that the SACU industry will continue to suffer material injury during the course of the investigation if provisional payments are not imposed, it decided to request the Commissioner for the South African Revenue Service to impose provisional payments for a period of twenty six weeks, while the investigation is being conducted, on further imports of "Welded stainless steel tubes of circular cross-section with an outside diameter of 12mm to 21,34mm and from 114mm to 160mm with a wall thickness of 1mm or more but not exceeding 6mm classified under tariff subheading 7306.40" originating or imported from the PRC, India and Malaysia and "Welded stainless steel tubes of circular cross-section with an outside diameter of 12mm and more, but not exceeding 160mm with a wall thickness of 1mm or more but not exceeding 6mm classified under tariff subheading 7306.40" originating in or imported from the PRC and India.

The provisional payments should be imposed to the extent as listed in the table below:

Country	Rate of provisional payments
China	49,81%
India	34,91%
Malaysia	72,07%

Interested parties will be invited to submit comments and make representations on the preliminary determination within the specified time periods. The Commission will consider all comments prior to making its final determination and recommendation to the Minister of Trade and Industry.