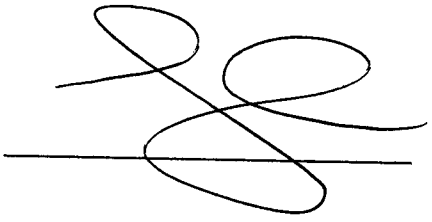
International Trade Administration Commission of South Africa

Report No. 125

Investigation into the alleged dumping of steel wheels originating in or imported from Brazil, the People's Republic of China, Chinese Taipei and Turkey: Final determination

enabling FAIR TRADE

The International Trade Administration Commission of South Africa herewith presents its **Report No. 125: INVESTIGATION INTO THE ALLEGED DUMPING OF STEEL WHEELS ORIGINATING IN OR IMPORTED FROM BRAZIL, THE PEOPLE'S REPUBLIC OF CHINA, CHINESE TAIPEI AND TURKEY: FINAL DETERMINATION**



Mr Itumeleng Masege
DEPUTY CHIEF COMMISSIONER

PRETORIA
04/07/**2005**

INTERNATIONAL TRADE ADMINISTRATION COMMISSION

INVESTIGATION INTO THE ALLEGED DUMPING OF STEEL WHEELS ORIGINATING IN OR IMPORTED FROM BRAZIL, THE PEOPLE'S REPUBLIC OF CHINA, CHINESE TAIPEI AND TURKEY: FINAL DETERMINATION

SYNOPSIS

On 28 May 2004, the International Trade Administration Commission of South Africa (the Commission) formally initiated an investigation into the alleged dumping of steel wheels originating in or imported from Brazil, the People's Republic of China (PRC), Chinese Taipei and Turkey. Notice of the initiation of the investigation was published in Notice No. 852 of *Government Gazette* No. 26374 dated 28 May 2004.

The application was lodged by CLS Consulting Services (Pty) Ltd (CLS), on behalf of Guestro Wheels (Pty) Ltd, being the only manufacturer of the subject product in the SACU, which claimed that dumped imports were causing it material injury.

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 to the SACU industry.

On initiation of the investigation, the known producers and exporters of the subject products in Brazil, the PRC, Chinese Taipei and Turkey were sent foreign manufacturers/exporters questionnaires to complete. Importers of the subject product were also sent questionnaires to complete.

After considering all parties' comments, the Commission made a preliminary determination that the subject product was being dumped on the SACU market and the SACU industry was suffering material injury. The Commission however made a preliminary determination that there were other factors than dumping, including the Applicant's export performance and its

poor service to its customers, that sufficiently detracted from the causal link between the dumping and the material injury.

The Commission, therefore, decided to recommend to the Minister of Trade and Industry that the investigation into the alleged dumping of steel wheels originating in or imported from Brazil, the PRC, Chinese Taipei and Turkey, be terminated.

Based on the details as contained in the Commission's preliminary report and the comments received on this report, the Commission indicated that it was considering to confirm its preliminary determination that the subject product is being dumped on the SACU market and that the SACU industry is suffering material injury. However, the Commission further indicated that it is considering to decide that factors other than dumping, sufficiently detracted from the causal link between the dumping and the material injury.

The Commission therefore indicated that it was considering making a final determination to recommend to the Minister of Trade and Industry that the investigation be terminated.

The Commission sent out letters to all interested parties, informing them in terms of Section 37 of the International Trade Administration Anti-Dumping Regulations and Article 6.9 of the Anti-Dumping Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade of the "essential facts" which were being considered by the Commission. The Commission invited comments from interested parties on these "essential facts" being considered by the Commission.

After considering all parties' comments in respect of the preliminary determination and the "essential facts" letters, the Commission made a final determination that the subject product was being dumped on the SACU market and that the SACU industry was suffering material injury.

The Commission, however, made a final determination that other factors sufficiently detracted from the causal link between the dumping of the subject product and the material injury suffered by the SACU industry.

The Commission, therefore, decided to recommended to the Minister of Trade and Industry that the investigation into the alleged dumping of steel wheels originating in or imported from Brazil, the PRC, Chinese Taipei and Turkey, be terminated.

1. APPLICATION AND PROCEDURE

1.1 LEGAL FRAMEWORK

This investigation was conducted in accordance with the International Trade Administration Commission Act, 2002, (the ITA Act), 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 of South Africa Anti-Dumping Regulations (ADR).

1.2 APPLICANT

The application was lodged by CLS, on behalf of Guestro Wheels (Pty) Ltd (the Applicant), being the only manufacturer of the subject product in the SACU.

1.3 DATE OF ACCEPTANCE OF APPLICATION

The application was accepted by the Commission as being properly documented in accordance with Article 5.2 of the Anti-Dumping Agreement on 19 May 2004. The trade 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 Brazil, the PRC, Chinese Taipei and Turkey were being dumped on the SACU market, thereby causing material injury and/or a threat of 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 values in the countries of origin.

The Applicant alleged that as a result of the dumping of the product from Brazil, the PRC, Chinese Taipei and Turkey, the SACU industry was suffering material injury in the form of:

- price undercutting;
- price suppression;
- decline in sales;
- decline in output;
- decline in utilisation of production capacity;
- decline in market share;
- decrease in profits;
- decline in productivity;
- decline in return on investment;
- negative effect on employment;
- negative effect on cash flow; and a
- negative effect on the company's growth.

The Applicant further alleged that the exporters have substantial unused and expanding capacity to target the SACU market with alleged dumped prices, there is a significant increase in the alleged dumped imports, the exporters will continue to undercut its prices and therefore cause price depression and price suppression of the SACU prices, the exporters have substantial inventories ready to export and the state of the economies in the countries or origin is conducive to exports, thereby causing a threat of material injury to the SACU industry.

1.5 INVESTIGATION PROCESS

The Commission formally initiated an investigation into the alleged dumping of steel wheels originating in or imported from Brazil, the Peoples Republic of China, Chinese Taipei and Turkey pursuant to Notice No. 852 which was published in *Government Gazette* No. 26374 on 28 May 2004.

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 version of the application.

The information submitted by the Applicant, the importers and the exporters was verified.

An oral hearing by Webber Wentzel Bowens (WWB) on behalf of Hayes-Lemmerz-Ind Jantas Jant San ve Tic. A.S., Maxion Componentes Estruturais and Borlem S/A Empreendimentos Industriais took place on 17 November 2004.

After considering all parties' comments, the Commission made a preliminary determination that the subject product was being dumped on the SACU market and the SACU industry is suffering material injury. The Commission however made a preliminary determination that factors other than dumping, including the Applicant's export performance and its poor service to its customers, sufficiently detracted from the causal link between the dumping and the material injury.

The Commission, therefore, decided to recommend to the Minister of Trade and Industry that the investigation into the alleged dumping of steel wheels originating in or imported from Brazil, the PRC, Chinese Taipei and Turkey, be terminated.

WWB, on behalf of its clients, and the Applicant made oral representations to the Commission after the Commission's preliminary determination.

Based on the details as contained in the Commission's preliminary report and the comments received on this report, the Commission made a final decision that it was considering to confirm its preliminary determination that the subject product was being dumped on the SACU market and that the SACU industry was suffering material injury. However, the Commission further indicated that it was considering to decide that factors other than dumping, sufficiently detracted from the causal

link between the dumping and the material injury.

The Commission therefore indicated that it was considering making a final determination to recommend to the Minister of Trade and Industry that the investigation be terminated.

The Commission sent out letters to all interested parties, informing them in terms of Section 37 of the International Trade Administration Anti-Dumping Regulations and Article 6.9 of the Anti-Dumping Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade of the "essential facts" which were being considered by the Commission. The Commission invited comments from interested parties on these "essential facts" being considered by the Commission.

After considering all parties' comments in respect of the preliminary determination and the "essential facts" letters, the Commission made a final determination, that the subject product was being dumped on the SACU market and that the SACU industry was suffering material injury.

The Commission, however, made a final determination that other factors sufficiently detracted from the causal link between the dumping of the subject product and the material injury suffered by the SACU industry.

The Commission, therefore, decided to recommended to the Minister of Trade and Industry that the investigation into the alleged dumping of steel wheels originating in or imported from Brazil, the PRC, Chinese Taipei and Turkey, be terminated.

1.6 INVESTIGATION PERIOD

The investigation period for dumping was from 1 April 2003 to 31 March 2004. The injury investigation involved evaluation of data for the period 1 April 2000 to 31 March 2004. As the Applicant originally only submitted information up to November 2003, this information was extrapolated to a full year. The Commission requested the Applicant, after initiation, to update the information and provide actual information for the period up to 31 March 2004. This information was provided by the Applicant and subsequently verified and made available to all interested parties.

1.7 PARTIES CONCERNED

1.7.1 SACU industry

The SACU industry consists of only one producer of the subject product, namely Guestro Wheels, who submitted the information contained in this report.

The Applicant stated that there are no other primary producers of steel wheels in the SACU region. The Applicant stated that it is aware of the existence of two companies that may assemble wheel rims from imported components (wheel rims and discs) for apparent use in specialized markets.

1.7.2 Exporters/Foreign Manufacturers

The following exporters responded to the Commission's exporters questionnaire:

Turkey:

- Hayes-Lemmerz-Ind Jantas Jant San ve Tic. A.S. (Jantas)

Brazil:

- Maxion Componentes Estruturais (Maxion)

- Borlem S/A Empreendimentos Industriais (Borlem)
- Mangels Industria E Vcomerico Ltda (Mangels)

Peoples Republic of China:

- Ningbo Yingdahuang Auto Parts Company Limited (Ningbo)

All the information submitted by the exporters was verified.

WWB acts on behalf of Jantas, Maxion and Borlem.

The Zhengxing Wheel Group (Zhengxing), in the PRC, submitted an incomplete questionnaire on the deadline for responses on the preliminary determination. The Commission decided not to take the information submitted by Zhengxing into consideration in accordance with the ADR, as the response was deficient at the deadline for comments on the Commission's preliminary report.

1.7.3 Importers

The following SACU importers responded to the Commission's questionnaires:

- Dunlop Tyres International (Dunlop);
- Maxiprest Tyres (Pty) Ltd (Maxiprest);
- Sandton Wheel Engineering (Pty) Ltd. (Trentyre);
- Malas Car Sales and Spares (Pty) Ltd (Malas);
- Conron Wheels and Allied CC (Conron);
- Auto Truck Engineering (Pty) Ltd (Auto Truck Engineering); and
- Maxcor Motor Sales CC (Maxcor).

All the information submitted by the importers was verified.

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 IMPORTED PRODUCTS

2.1.1 Description

The subject product was described as:

Steel wheels for the fitment with pneumatic tyres consisting of a disc and a rim designed to be mounted with both tube and tubeless pneumatic tyres in all wheel diameter sizes.

SARS indicated that it would be able to administer anti-dumping duties on: "Steel wheels (including unassembled wheel rims and wheel discs, whether or not presented together)."

2.1.2 Tariff classification

The subject product is classifiable as follows:

Tariff	Description	Duty		
		Gen	EU	SADC
8708.70 8708.70.90	Road wheels and parts of accessories thereof: - Other	20%	20%	Free

SARS indicated that the provision under 8708.70 does not cover caravan or trailer wheels and if it is the intention that those wheels should also pay the anti-dumping duty, the Commission should consider a similar provision for tariff subheading 8716.90, which reads as follows:

Tariff	Description	Duty		
		Gen	EU	SADC
8716 8716.90	Trailers and Semi-trailers; other vehicles, not mechanically propelled; parts thereof - Parts	15%	15%	Free

The Commission confirmed that the investigation was only initiated on tariff subheading 8708.70.90 and, therefore, it decided that anti-dumping duties, if any, would only be imposed on this tariff subheading.

In response to the Commission's preliminary report, WWB indicated that it agrees with the Commission that the subject products are only those classifiable under tariff subheading 8708.70.90.

2.1.3 Possible tariff loopholes

The Applicant stated that industry sources alerted them that wheels used for the local trailer and after markets are entering South Africa under the tariff heading of agricultural wheels (tariff heading 8708.10.10), which attracts a zero duty instead of the 20 per cent import duty under the correct tariff subheading and that the imports of wheels classified as agricultural wheels exceeds the estimated demand in the South African agricultural market for these wheels, by far.

The Commission indicated that this is a customs violation and it should be dealt with by SARS and not by the Commission.

2.1.4 Other applicable duties and rebates

The following provisions exist in terms whereof the subject product can be imported with rebate of the duty:

Rebate/ Drawback item	Tariff heading	Description	Extent of rebate
317.09	87.08	Parts and accessories of shuttle cars	Full duty
517.02	00.00	Parts (including fasteners) and materials, used in the assembly or manufacture of motor vehicles	Full duty

2.1.5 Import Statistics

Article 5.8 of the Anti-Dumping Agreement provide 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 indicated that the volume of alleged dumped imports accounted for 82.6 per cent of the total imports of the like product during the period of investigation for dumping.

2.1.6 Country of origin/export

The subject product originates in and is exported from Brazil, the PRC, Chinese Taipei and Turkey.

2.1.7 Application/end use

The imported subject product is used for the following applications:

- Motor vehicles (Sedans);
- Light Commercials (LCV);
- Light Trailer applications;
- Heavy Commercial Trucks (HCV);
- Medium Commercial Trucks (MCV);
- Heavy Trailer applications;
- Medium Trailer applications;
- Agricultural applications (Tractor and Irrigation Systems);
- Mining applications; and
- Earthmover applications.

2.1.8 Production process

The rim is the outer rounded section to which the tyre is fitted. The rim is formed by joining the two ends of strips of material by means of a butt welding operation, which is followed by a series of rolling operations in which the steel is cold formed into the required profile to accommodate a pneumatic tyre.

The disc is a press formed piece of steel in which the required profile is shaped and the required number of ventilation and stud holes is punched. The ventilation holes are required to provide sufficient flow of air to the brakes to allow for cooling, whilst the stud holes are required for attachment to the hub of the vehicle.

The disc is attached to the rim by means of a sophisticated CO^2 or submerged arc-welding process.

2.2 SACU PRODUCT

2.2.1 Description

The SACU industry produces steel wheels for the fitment with pneumatic tyres consisting of a disc and a rim designed to be mounted with both tube and tubeless pneumatic tyres in all wheel diameter sizes.

2.2.2 Application/end use

The SACU product is used for the following applications:

- Motor vehicles (Sedans);
- Light Commercials (LCV);
- Light Trailer applications;
- Heavy Commercial Trucks (HCV);
- Medium Commercial Trucks (MCV);
- Heavy Trailer applications;
- Medium Trailer applications;
- Agricultural applications (Tractor and Irrigation Systems);
- Mining applications; and
- Earthmover applications.

2.2.3 Tariff classification

The SACU product is classifiable under tariff subheading 8708.70.90.

2.2.4 Production process

The rim is the outer rounded section to which the tyre is fitted. The rim is formed by joining the two ends of strips of material by means of a butt welding operation,

which is followed by a series of rolling operations in which the steel is cold formed into the required profile to accommodate a pneumatic tyre.

The disc is a press formed piece of steel in which the required profile is shaped and the required number of ventilation and stud holes is punched. The ventilation holes are required to provide sufficient flow of air to the brakes to allow for cooling, whilst the stud holes are required for attachment to the hub of the vehicle.

The disc is attached to the rim by means of a sophisticated CO^2 or submerged arc-welding process.

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 at the outset whether the products produced by the SACU industry are like products to those originating in or imported from Brazil, the PRC, Chinese Taipei and Turkey.

Footnote 9 to Article 3 of the Anti-Dumping Agreement provide 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."[own underlining].

Article 4.1 of the Anti-Dumping Agreement provide 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..."[own underlining].

Article 2.6 of the Anti-Dumping Agreement provide 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."[own underlining].

2.3.2 Analysis

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

(1) raw material used;
(2) physical appearance and characteristics;
(3) tariff classification;
(4) method of manufacturing;
(5) customer demand and end use; and
(6) substitutability of the product with the product under investigation.

(1) Raw materials

Steel is the raw materials for both the imported and the SACU product.

The Commission found that the raw materials for the imported and the SACU products are comparable.

(2) Physical appearance and characteristics

The imported product has the same in appearance and fitment specifications as the SACU product, as they are produced to international specifications, designed to fit certain type axles/brake hubs.

There may be certain slight differences such as the number and size of

ventilation holes, colour finish, material thickness and steel specification. The Applicant stated that it might also be that certain tolerances are minimized by certain foreign manufacturers to reduce the import costs which compromise on quality of the product.

The Commission found that the imported and the SACU products have similar physical appearance and characteristics.

(3) Tariff classification

The Commission found that the SACU products and those imported are classifiable under the same six digit tariff subheading.

(4) Method of manufacturing

The Commission found that the imported and the SACU products are manufactured using the same method.

(5) Customer demand and end-use

Both the SACU product and the imported product are used for the fitment with pneumatic tyres.

(6) Substitutability of the imported product and the product under investigation

The imported product and the SACU product are direct substitutes.

Comments by WWB

In its exporters questionnaire, WWB, on behalf of Maxion, quoted Article 2.6 of the Anti-Dumping Agreement, as well as ADR1 that defines like product as follows:

> "Like product means-
> 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 which, although not alike in all respects, has characteristics closely resembling those of the product under consideration."

It further stated that tubeless steel wheels are made of steel sheets and comprise two main parts welded to each, namely, the disk and the rim. It stated that the following features are of significance in describing a steel wheel:

- rim size (rim width and diameter);
- offset and half dual spacing respectively;
- type of tyre- size, model (tube or tubeless), load index, ply rating, speed symbol, inflation pressure provided, maximum wheel load, maximum speed, single or dual tyres; and
- intended use (type of vehicle, conditions of use), axle and brake dimensions, connecting dimensions such as center hole diameter, pitch circle diameter (PCD), number of stud holes, type of stud holes.

It further stated that the rim serve as the seat of the tyre. The wheel disc serves as the connection between the rim and the wheel hub. The part, which attaches the hub flange or the brake drum respectively, is called the plane surface. The shape of the disc is influenced, inter alia, by the form of the rim, axle connection, brake contour, fixing of the hubcap, and the requirement for high loading capacity along with low wheel weight.

It further stated that the description of the steel wheels illustrates that there are certain key parameters which must be set out and which must be taken into account in the manufacture of a steel wheel and they conclude therefore that one type of steel

wheel with its unique set of manufacturing specifications cannot be substituted with another type of steel wheel with a different set of manufacturing specifications. It is argued by WWB that steel wheels have different sizes and other different properties as determined by, inter alia, the axle for which they are designed to fit. It was stated that different sizes of wheels are not like and are not substitutable.

It stated that not all imported steel wheels are like products to and compete with the wheels manufactured by the Applicant and that not all imported steel wheels are like products to and compete with the wheels manufactured by the Applicant. They state that it is only those imported wheels which are identical in all material respects to the steel wheels manufactured by the Applicant that are like products to the Applicants steel wheel and with which the Applicants steel wheels compete.

It stated that in order for the Applicant to sustain its claim that imported steel wheels are causing its injury, the Applicant must show which of the imported steel wheels produced by it are affected by the imported steel wheels. It is only those wheels of the Applicant that are like products to the imported steel wheels that are affected. The Applicant's injury information does not distinguish between the various types of steel wheels produced by the Applicant and is unable to demonstrate the cause of its alleged injury.

It was stated that to the extent that the Applicant has not demonstrated which of its range of steel wheels is allegedly being injured by the allegedly dumped steel wheels, the Applicant has not made out a *prima facie* case upon which the Commission could initiate the investigation.

Maxion stated that they sell the 9 x 22.5 wheel in Brazil, which is the wheel allegedly being dumped by Maxion in SACU. There is however, a 9 x 22.5 size wheel which Maxion sells to a single Brazilian customer, but this wheel is not a like product to the one exported to SACU.

According to Maxion, they stated that the differences between the two products is as follows:

Physical characteristics	SACU	Brazil
Wheel to be used with	Drum brake	Disc brake
External valve	No	Yes
Load capacity	3 750kg	4 000kg
Steel thickness	13.5 mm	14.5 mm
Internal disc face	Not machined	Machined
Customer	Not limited to specific customer	Designed and manufactured specifically for the customer in Brazil and bears this company's trade mark
Rim profile	Different from the wheel sold to the OEM wheel sold in Brazil	Different from SACU wheel
Market	Aftermarket and trailer manufacturers	Original Equipment Manufacturers
Substitutability	No	No
Tooling	Different to tooling used in the manufacture of the wheel sold in Brazil	Different to tooling used in the manufacture of the wheel exported to SACU

Maxion is therefore of the opinion that the Applicant did no possess adequate or accurate information to determine normal value for them.

Comments made by the Applicant

CLS stated that the Respondent curiously started its argument in the introductory part of the memorandum by referring to the provisions of Article 2.6 of the Anti-Dumping Agreement, which pertains to the requirement of like products. The Respondent apparently argues that where a unique manufacturing process is followed in the manufacturing of a steel wheel, it cannot be substituted with another type of steel wheel produced differently. It is further stated that steel wheels have different sizes and other different properties, as determined by inter alia the axle for which they are designed to fit. The allegation is further made that different sizes of steel wheels are

not like and are not substitutable. Without much ado, the Applicant fully supports this last contention and thought that it is self explanatory that different sizes of steel wheel are not interchangeable in their application. It is however other criteria that are applied to determine the likeness of products as set out hereinafter and which will indicate the egregious premise on which the Respondent relies.

The Respondent further went to great lengths to discuss and placed emphasis on the apparent differences in production processes applied in the manufacturing of its wheel rims. It is however apparent from the description that the Respondents production processes compare in all material aspects to that of the Applicant, as well as that of the other Respondents involved in this investigation.

If account is taken of the statutory criteria to determine "like products" the manufacturing method is but one of the criteria to be taken into account and the end use of the product, as set out hereinafter are generally regarded as the most conclusive factors.

CLS stated that attention should further be drawn to the fact that Article 2.6 of the Anti-Dumping Agreement does not require complete likeliness in all material respects. Subject goods that have characteristics closely resembling that of the product under consideration, will be regarded as a like product for purposes of an investigation. Gustav Brink ibid page 29 refers in this regard to the determination of the former Board of Trade and Tariffs in Unmodified Starch (Belgium, Denmark, France, Germany, Netherlands, Switzerland, Thailand) where it is determined that the criteria to be considered in the determination of like product, are:

- Physical characteristics
- Raw material used
- Method of manufacture
- Tariff classification
- End-use and substitutability; and
- Price.

Application of these criteria to the imported product from the Respondent, has on investigation by the Applicant reflected similar physical characteristic; use of the same raw materials; followed more or less similar methods of manufacturing; can be classified under the same tariff classification; and have a end-use and substitutability to that of the domestically produced subject goods.

The Board in the past on several occasions allowed for adjustments where products are not exactly similar but still pursued investigations where the products compete with domestic products and complied with the criteria as set out above.

Brink ibid p. 32 states that the end-use of a product is to be regarded as the most important factor and that Board will normally be prepared to find that products that compete directly against each other are like products, even if there were significant differences between the products.

The Applicant agrees that steel wheels indeed have different sizes and different properties in order to cater for the wide range of applications in so far as axle and wheel sizes are concerned. The Applicant therefore indeed manufactures most of this wide variety of products in order to comply with the South African markets requirements. The Respondents products compete directly with the Applicant on the SACU market and the notion that only products that are identical in all material respects finds no support in the provisions of the Anti-Dumping Agreement as well as in the determinations of the Board of Trade and Tariffs in the past.

Section 1 of the Anti-Dumping Regulations clearly defines like products as

> "products [that] need not to be similar in all material aspects, but it would be sufficient if it has characteristics close to resembling those of the product under consideration."

CLS further states that the Respondents further contention is that import duties are to be imposed on all steel wheels as defined in the definition of subject goods and all steel wheels imported under said customs code can be classified as subject goods in

the application. Imports of the whole range of steel wheels cause injury to the Applicant as the applicant produces these ranges of steel wheel products.

CLS stated that reference also need to be made to the fact that in terms of Section 8.6 of the Anti-Dumping Regulations, which provides that where a large number of producers, exporters, importers or types of products are involved, the investigation may be limited to a reasonable number of types of product by using samples that are statistically valid on the basis of information available to the Commission, at the time of selection. These matters were carefully taken into consideration by the investigating authorities.

To summarize, it is submitted by CLS that the notion by the Respondent that the initiation of the investigation on the basis of the unlikeliness of the products concerned, has no substance. It is inherent in the initiation of any investigation that the end use of the product be regarded as the decisive guidance when determining the likelihood of subject goods. To this end the Applicant states that it has clearly indicated that substantial exports of the subject goods from the Respondents at dumped prices are the cause of material injury to the Applicant.

Comments made by WWB

In its letter dated 27 October 2004, WWB stated that it is clear from the ADR that if products are not identical of alike in all respects, their characteristics should closely resemble each other and that the Applicant conceded that the decisive criterion in the like product enquiry is whether the products being compared are substitutable in their application. It was further stated that it was admitted by the Applicant that products that are not substitutable in their application couldn't be like products and accordingly, the only products that could cause injury to the Applicant are those which are substitutable with the Applicant's products. They repeated their contention that to the extent that the Applicant has not demonstrated which of its steel wheels is allegedly being injured by the allegedly dumped steel wheels; the Applicant did not make out a *prima facie* case upon which the Commission could initiate the investigation.

In response to the Commission's preliminary report, WWB resubmitted its comments that that the imported products which are like products to the steel wheels manufactured by the Applicant are only those that compete and are substitutable with the SACU product.

The Commission noted that there might be differences between the products exported to SACU and those sold by the exporters on their domestic markets, but indicated that these should be addressed by adjustments in calculating the dumping margin.

After considering all the above factors and the comments received, the Commission was satisfied that the SACU product and the imported product 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 provide 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".

ADR 7.3 provides as follows:

> "An application shall be regarded as brought by or on behalf of the SACU industry if-
>
> (a) at least 25 per cent of the SACU producers by domestic production volume support the application; and
>
> (b) of those producers that express an opinion on the application, at east 50 per cent by domestic production volume support such application."

The Applicant is the only manufacturer of the product in the SACU. The application is therefore supported by 100 per cent of the SACU industry.

The Applicant stated that there are no other primary producers of steel wheels in the SACU region. They stated that they are aware of the existence of two companies that may assemble wheel rims from imported components (wheel rims and discs) for apparent use in specialized markets.

The Commission decided that the application could be regarded as being 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 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 32(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", in respect of any goods, means-
>
> (i) the comparable price 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 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:

> "If the Commission, when evaluating an application concerning dumping, concludes that the 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."

WWB stated in its response to the initiation of the investigation that in the absence of any evidence on the normal value, the Applicant could not have determined that any dumping was taking place and that therefore, there was no *prima facie* case upon which the Commission could initiate the investigation. Accordingly, they submitted that the Commission erred by initiating the investigation and that the information presented to the Commission, which the Commission used to initiate the investigation did not comply with the requirements set out in Articles 5.2 and 5.3 of the Anti-Dumping Agreement and/or the requirements set out in ADR 28.

CLS, in response to the above, stated that it is also significant that the Respondent quoted freely from the provisions of the Anti-Dumping Agreement incorporated in Article VI of GATT 1994, as well as to the Sections 26 and 28 of the Anti-Dumping Regulations. The subsequent argument apparently is that due to the fact that steel wheel rims imported from Brazil and specifically from the Respondent, cannot be regarded as a like product of the subject goods produced by the Applicant as well as some other factors, the application fails to establish a *prima facie* case upon which the Commission could initiate the investigation. In so far as reference to the provisions of the Anti-Dumping Agreement is concerned, and specifically Article 5.2 of the Anti-Dumping Agreement, which, in addition to the over arching provisions contained in the introductory part of the Agreement, set out further requirements for the initiation of an anti-dumping investigation. They stated that it is important to note that it is not required from the Applicant to submit information sufficient to make a preliminary or final determination of injury. More over, the Applicant only needs to provide such information as is "reasonably available" to it with respect to the relevant factors. (See *Edwin Vermulst et al WTO Disputes* page 180 and reference to WTO Panel Decisions therein. See also Cliff Stevenson "*The Global Anti- Dumping Handbook* " p51 which requires that a complaint must contain the best information available to the complainant at the time when the complaint is lodged to satisfy the requirements for initiation of an investigation.)

CLS also made reference to the provisions of Article 5.3 of the Anti-Dumping Agreement in this regard and that note can be taken of the WTO Panel decision in

Guatemala-Cement II Panel Decision on paragraph 8.31 where it is stated that:

> *"It is the sufficiency of the evidence and not the adequacy thereof and accuracy per se, which represents a legal standard to be applied in the case of the determination whether to initiate an investigation."*

It was stated by CLS that the Respondent also refers to Article 5.8 of the Anti-Dumping Agreement, which relates to the obligation of authorities that are satisfied that there is not sufficient evidence of either dumping or all of in to terminate the investigation promptly in support of its application.

CLS stated that reference needs in this regard be made to *Vermulst* ibid page 190, which states that that the provisions of Article 5.8 only imply pre-initiation. (See also reference to the *Guatemala-Cement II Panel* on paragraph 8.74 therein.) This in fact implies that in view of the fact that an investigation has already been initiated, that the application for termination brought by the respondent is fatally flawed.

The Applicant finally also refers to the Anti-Dumping Regulations applicable to SACU and published under Government Notice 3197 of 2003. The provisions hereof, it is submitted, is to be regarded as the determinative provision in analysis of the question whether the Applicant has established a sufficient basis to proceed with the investigation.

Analysis of Section 28(2) specifically requires that account be taken of the following criteria in this regard:

- The identity of the Applicant;
- A detailed description of the product under investigation including the tariff sub-heading applicable to the product;
- The country(s) under investigation;
- The basis of the allegation of dumping;
- Summary of the factors on which the allegation of injury is based;
- Address to which representations by the interested parties should be

directed;

- Time frame for responses by interested parties.

The Applicant is of the opinion that the application clearly contains all the necessary information in a format sufficient enough to warrant initiation of the investigation as required.

CLS stated that the Respondent also refers to the provisions of Section 26 of the Anti-Dumping Regulations and that it submitted that it is clear from the data and information submitted that all the relevant elements required proof of injury, which includes substantial levels of price undercutting. The Applicant sufficiently adequately demonstrated the presence of these elements, which information and data were properly verified by the Commission. The Applicant firstly contests the value of the price obtained on a steel wheel on the basis of an incorrect reference to the wheel size and apparent physical differences between the SACU wheel and the apparent similar wheel produced by Maxion. The reference to the "9x22" wheel rim is an inadvertent typing error, and the prices obtained by Applicant indeed refers to a "9x22,5" wheel rim. The Applicant however once again wishes to draw attention to the fact that an average steel wheel price was determined for Brazil based on the prices obtained from the various producers, which negate the Respondent's submissions in this regard. The Respondent conspicuously fails to note what the alleged price differences are between the two wheel sizes. Evidence will also indicate that the Applicant also produces a 9 x 22.5 inch wheel and if account is taken of the criteria to determine like products as discussed before, it is clear that the end use of the imported and domestically produced subject goods are exactly the same and the products compete in all material aspects with each other. It is submitted that the Commission was correct in accepting the prices on these wheels as *prima facie* proof of domestic prices in Brazil. The Applicant acknowledges that the 22.5 x 9 wheel currently produced does not have an external valve suitable for disc braces. The features of an outside valve do however not affect the likeness of the product with the domestically

produced product. The wheel rim with an external value can also be used with disc brakes, which implies that it has the exact same end-use as the domestically produced subject goods.

CLS stated that the Memo further alleges the steel wheel rim purchased from Borlem, is not produced by the Turkish producer. The Applicant wishes to advise that reference to 1 x 22.5 x 19 wheel is incorrect and the wheel size purchased was a SBE19.50 x 7.50 wheel. The Applicant apologizes for the inadvertent oversight in this regard. The majority of imports from Turkey is in fact 22.5 x 19 wheel rims, which compete with the domestic product. The Applicant wishes to draw attention to the fact that it has the specific wheel rim in its possession, which was readily available for inspection by the Commission. Relevant freight documents as well as invoices were submitted as prove of the purchase of the said wheel rim. Importers of subject goods from the Turkish producer concerned that disclosed their imports clearly import 22.5 x 19 wheels from Turkey and this size is fact represents the majority of imports into SACU.

CLS stated that the Respondent contests the inclusion of Rodabem and Borlem on the basis that no prices, normal values, etc. were obtained from these producers. The Applicant to this end has already submitted that for purposes of the initiation of an anti-dumping investigation only *prima facie* proof of normal value is required and prices need not to be obtained for each and every producer. The Applicant has adequately complied with these evidentiary requirements (See *Brink* ibid p37 –43).

CLS stated that in summary, the Respondent submits that no evidence of normal value was submitted to determine that anti-dumping was taking place. The contents of the application however speak for itself and the Applicant has adequately acquainted itself with the requirements to establish on a *prima facie* basis, that dumping was indeed taking place. The Respondent is required to refute these allegations by substantiating facts and not to merely make allegations that are totally unsupported and based on speculation and conjecture. The Applicant further wishes to draw the attention to the provisions

of Section 23 of the Anti-Dumping Regulations, which requires only that such information as is reasonably available on the price for the like products sold in the country of origin or of export, are to be submitted as the normal value standard for initiation purposes.

In response to the Commission's preliminary report, WWB once again indicated that the Applicant has not complied with any of the requirements of ADR 23 in respect of Rodabem and Borlem. It stated that the Respondents accordingly repeated their contention that the Applicant failed to reasonably establish the normal value in respect of goods imported from Rodabem and Borlem and the investigation should not have been initiated in respect of these companies.

The Commission noted that the Applicant's reference to the steel wheel from Brazil was wrong. It further noted that the Applicant calculated a normal value per kilogram, and compared that to the export price per kilogram.

The Commission, therefore, confirmed its decision that the Applicant submitted *prima facie* evidence of dumping and further indicated that it is not necessary for the Applicant to show that all the manufacturers in a country are exporting the subject product at dumped prices in order to establish a *prima facie* case of dumping.

4.3 EXPORT PRICE

Export prices are determined in accordance with section 32(1) 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 the sale;"

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

> "(5) 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 any reasonable basis.

(6) 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 compensatory arrangement in respect of the export price between the exporter of 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."

The Applicant stated that the official import statistics represent a distorted value of the subject goods, imported into the SACU region and that this distortion originates from the fact that the relevant tariff subheading 8708.70.90 reports on the imports of road wheels and parts of accessories thereof and is, therefore, not limited to steel wheels, the product under investigation.

In order to provide the Commission with an indication on the prevailing prices for imported steel wheels in the domestic market, the Applicant approached clients over some time to obtain quotes and although no definitive prices were obtained, it was established that the products under investigation are being imported at price substantially lower than that of the Applicant.

Pursuant to the fact that the Applicant feels that the official import statistics represent a distorted picture, the Applicant adjusted the export price as follows to allow for a proper comparison of prices on a per kilogram steel wheels price basis, taking the following into account:

a) There are two main wheel groups determined by the materials used namely steel and aluminium;
b) The Applicant only competes in the steel wheel group;
c) The Applicant is the sole supplier of locally produced steel wheels to the original equipment manufacturers;

d) The Applicant supplies the SACU steel wheel markets and competes with imports of subject goods in this sector, as it is the only manufacturer of steel wheels in SACU, except for a few very small assemblers accounting for an insignificant volume.

The Applicant applied the following methodology in determining the export price and the calculation of an anti-dumping duty:

a) Wheels sold on the foreign manufacturer's domestic market:
    1) Retail purchase transactions on steel wheel rims by substantiating invoices and/or supported quotes, were obtained on various sizes of wheels, which fall within the scope of subject goods.
    2) A per kilogram average weight for the wheel rims purchased or on which prices were obtained, were determined.
    3) A per kilogram average price for the specific wheel rims concerned in the various respondent countries, were determined.
    4) Based on the above information, the determined average per kilogram wheel rim price serves as basis for the domestic price in the country of origin, after the adjustments were made.

b) Wheels imported into SACU:
    The Applicant stated that account needs to be taken of the following premise and assumptions made in determining a per kilogram import price for the subject goods.

    1) The Applicant stated that in the absence of any other reliable source of imports into SACU, they had to rely on the official Customs and Excise import statistics, imported under tariff heading 8708.70.90, which is reported in tons and not in number of wheels imported.
    2) As the above mentioned tariff subheading includes both aluminium and steel wheels, it is necessary to eliminate the aluminium content from the imported products. In order to do this, the Applicant made the

following assumptions:

3) The market for steel and aluminium products are, based in accordance to market information obtained, on a 50:50 split between steel and aluminium in terms of volume of wheels;
4) Whereas kilogram is the unit of measurement for imported products, it is necessary to determine a per kilogram price for steel wheel rims exported to SACU;
5) pursuant to the above-noted and in order to establish a proper basis for comparison, the Applicant also had to convert its production of wheel rims from a unit basis to a per kilogram one and subsequently determine the per kilogram selling cost,
6) the fact that aluminium steel wheels represent a higher valued product than steel wheel rims, the value of imported product into SACU needed to be apportioned on a weighted average basis to cater for these differences.

Based on the above premises, the Applicant developed a model, that allowed for the conversion of the imported goods as reflected in the official statistics for the investigation periods, into volumes on a per kilogram bases and values by country for specifically steel wheels. This model enables the Applicant to determine the kilograms imported as well as the import values. This model allows for the differentiation based on type wheel rims (steel versus aluminium) as well as the individual import values of said. A detailed description of the model is found in paragraph 5.3.1 of this report.

WWB made comments on the model used and these are included in the other sections of this report.

The Commission considered the comments received from WWB and decided to use the model as described in this paragraph and paragraph 5.3.1 for purposes of the final determination, in the absence of an alternative method to calculate the import volumes and values for steel wheels.

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.".

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.

4.6 DEFICIENT INFORMATION SUBMITTED BY EXPORTERS

4.6.1 WWB's clients

Deficiency letters were sent to WWB in respect of the information submitted by their clients, Maxion and Jantas. A letter was received from WWB requesting further extensions to address the deficiencies and indicating that it clients will not be able to submit all the information requested before the deadline to address deficiencies. WWB was informed that no extension can be granted to the seven days to address the deficiencies. The Commission decided that:

- The exporter should be requested to supply all the information relating to all the exports of the subject product to the Commission during verification, regardless of whether the exporter deems these products to be like products to those manufactured by the Applicant;
- That the domestic sales information relating to all the products should be submitted during verification;
- Cost build-ups of all products should be submitted during verification;
- Export sales of all products, exported to SACU but not sold on the domestic market, should be submitted during the verification.

It was indicated to the exporters that if this information is not available during the verification, the Commission may decide not to take the information into account.

During the verifications all the outstanding information was submitted to the Commission, except the domestic sales information of Jantas to the OEM market.

Comments received from WWB

WWB stated that the obligation to provide all of the information required in terms of the initiation notice, places an extremely onerous and unreasonable burden of proof on their client.

WWB stated that only a few products exported are also manufactured by the Applicant. It stated that the remaining products exported by their clients constitute less than 1 per cent of its exports to SACU. It stated that it is of the opinion that in light of the insignificant quantities of such products, it would be an unreasonable burden of proof on their clients to compile and provide the information requested in terms of this paragraph, in respect of these products.

WWB stated that the cost and price build-up provided, accounts for more than 85 per cent of all products exported to SACU.

WWB further stated that to compile a bill of material per product for all products exported by their client to the SACU, imposes an extremely unreasonable burden of proof on their client and is not justified, in light of the expensive and time consuming exercise of compiling the information, and the fact that this information is already available in the cost and price build-ups and is readily verifiable.

They further stated that it is impossible for them to compile all the information required by the deadline and that the reason for this is the nature and availability of the information.

WWB referred to Paragraph 13 of Article 6 of the Anti-Dumping Agreement that provides that the authorities shall take due account of any difficulties experienced by interested parties, in particular small companies, in supplying information requested, and shall provide any assistance practicable.

Further correspondence was received from WWB stating that their clients have substantially complied with the requirements of the Commission, and have provided all relevant information to the Commission within the deadlines set by the Commission. Their clients are, therefore, of the opinion that there is no basis on which the Commission can disregard or fail to verify the information provided.

The Promotion of Administrative Justice Act, 2000 has been enacted to give effect

to this right, and provides for judicial review of administrative action on a number of grounds, including unreasonableness.

It was also stated that to disregard or fail to verify the information provided would also be contrary to the Anti-Dumping Agreement, and, in particular the provisions of Article 2.2.1.1, Article 6.8 and Annex II.

WWB stated that their clients complied with these paragraphs and have provided information that is verifiable and can be used in the investigation without undue difficulties, and has supplied this information in a timely fashion, in a medium requested by the Commission, and this information should be taken into account by the Commission.

On 11 August 2004 the Commission decided that the information provided was deficient and that it will not take the information into account for purposes of the preliminary determination. The Commission decided that if the deficiencies were addressed within two weeks after the publication of the preliminary determination, it would consider taking the information into account for purposes of its final determination.

On 12 August 2004 a letter was sent to WWB stating that as the information submitted by the exporters are deficient, the Commission will not take the information submitted by these exporters into consideration for purposes of its preliminary determination in accordance of the ADR. It was indicated that it would consider taking the information into consideration for purposes of its final determination.

On 2 September 2004 a letter was received from WWB stating that the decision whether or not to take into account the information submitted for the purposes of the preliminary determination is of crucial importance. It stated that if pursuant to a preliminary determination, provisional duties are imposed, the damage to their client may be irreparable and may not be remedied by a final determination.

WWB again submitted their comments that the information provided are for the majority of wheels exported to SACU. WWB stated that its clients contend that they have substantially complied with the requirements of the Commission and have provided the required information by providing a constructed normal value that is comparable to the export price in respect of more significant export sales to SACU. It was stated that it places an unreasonable burden on its clients and that it is contrary to the provisions of the Anti-Dumping Agreement, but that its clients will make such information available to the Commission at the commencement of the verification exercise.

4.6.2 Mangels

A deficiency letter was sent to Mangels in Brazil. A second letter was sent to Mangels indicating that they did not respond to the deficiency letter and the information will not be taken into account for purposes of the preliminary determination, but that the information can be taken into account for purposes of the final determination, provided that the information can be verified.

4.6.3 Commission's preliminary decision

The Commission decided that the information submitted by Jantas, Maxion and Mangels was deficient as the deficiencies were not addressed before the deadline to address deficiencies. The Commission, therefore, decided that this information will not be taken into consideration for purposes of the Commission's preliminary determination.

The Commission, therefore, decided to use the "best information" available to calculate the dumping margins for the three exporters and the dumping margin for the other exporters in these countries.

The Commission decided that the "best information" available is the verified

information received from the three exporters.

The Commission decided that the information submitted by Maxion and Mangels will be taken into consideration for purposes of its final determination. The Commission, however, decided that the information submitted by Jantas will only be taken into consideration for purposes of its final determination, if the sales to original equipment manufacturers on the Turkish market are submitted before the deadline for comments on the preliminary report.

4.6.4 Comments submitted by WWB on the Commission's preliminary decision

WWB stated that the Commission has no authority to disregard any information that has been supplied by Jantas, for the reasons set out below. It stated that, nevertheless, Jantas had compiled this information for submission to the Commission, because it had always and continued to co-operate with the Commission to the best of its abilities. However, it stated that in submitting such information, Jantas continued to contend that this information was irrelevant to the investigation and should not be taken into account by the Commission for the purposes of calculating the dumping margin or for any other purpose. It stated that Jantas reserved all of its rights including, in particular, its rights to contest any use of this information by the Commission.

WWB stated that the Commission, in its deficiency letter, indicated that Jantas should provide information on all sales of the subject product in Turkey. It stated that the Commission further indicated that if any of this information was excluded, reasons for the exclusions should be given.

WWB referred to their letters to the Commission dated 28 July 2004, 30 July 2004, 6 August 2004, 16 August 2004, 17 August 2004 and 30 December 2004, as well as the information provided to the Commission during the verification and on 25 October 2004. It stated that in all of this correspondence, taken together, Jantas had provided all information that has been requested by the Commission and that was relevant to the investigation (which information has been verified by the

Commission), and it has provided, *inter alia*, full and cogent reasons for its exclusion of information relating to sales to original equipment manufacturers in Turkey.

WWB stated that it was stated that the reasons for the exclusion of the information relating to products sold to OEMs in Turkey had been given a number of times: Jantas did not export any wheels to OEMs in SACU and none of the wheels that it exports to the SACU were sold on the OEM market in the SACU. It stated that, therefore, information relating to sales to OEMs in Turkey was irrelevant to the investigation.

WWB stated that it was their contention that Jantas had not submitted a deficient response and the Commission had no basis whatsoever for disregarding any information that had been provided by Jantas.

WWB stated that Jantas had not compiled and provided any information on its sales to OEMs on the Turkish domestic market because such information was irrelevant to the investigation. It stated that it had submitted that the differences between the OEM market and the aftermarket were too vast for any meaningful comparison to be made, and no adjustments could possibly remedy these differences sufficiently to provide a meaningful comparison between the two markets. It stated that although Jantas had been able to quantify adjustments relating to sand blasting of discs, additional machining costs and paint rework, these adjustments were insufficient to account for all differences between the OEM market and the aftermarket.

It was stated that the Commission had no authority in terms of the ITA Act and the ADR to require the provision of information that was irrelevant to the investigation and thus the requirement that Jantas provides sales to OEMs in Turkey was *ultra vires* the Commission's powers and that the compilation of such information places an extremely onerous and unreasonable burden on Jantas, particularly in light of the fact that it was not relevant to the Investigation.

It was stated that it would not only be patently unfair to Jantas to disregard the information which it had submitted and which had been verified by the Commission, but it would also be contrary to the Anti-Dumping Agreement and the Constitution of the Republic of South Africa, 1996. In addition, in terms of its enabling statute, the Commission did not have the power disregard the information that had been submitted by Jantas and verified by the Commission.

It was stated that the Commission was a body created in terms of a statute and its powers were accordingly limited to those powers which were granted to it by statute and that the Commission had no powers beyond those powers conferred upon it in terms of its enabling statute, the Act.

It stated that as it had pointed out, section 26(4) of the ITA Act provides as follows:

"The Commission may –

- *require an applicant to provide additional information in respect of the application; or*
- *request further information from any person who makes a representation in terms of subsection (3)(b)."* (own emphasis)

It was stated that in terms of section 26(4) of the Act, the Commission had the power to require applicants to provide additional information, and thus to take steps to compel compliance, or punish non-compliance, with such requirement. However, the Commission did not have similar powers with respect to parties other than applicants (for example, Jantas). The Commission could only request information from such parties and thus it did not have the power to compel compliance or punish non-compliance with its requests, because such measures would amount to requiring the provision of information. A party that did not comply with a request in terms of the Act was not in breach of the Act because the empowering provisions of the Act did not permit of any sanction for not complying with a request.

It stated that in terms of section 59 of the Act, the Minister of Trade and Industry had the power to make regulations in terms of the Act. However, the Minister had no power to grant the Commission any powers in terms of such regulations, which

exceed those granted to the Commission in terms of the Act. Regulation 35.5 of the ADR deals with deficiencies in the final investigation phase and provides as follows:

> *"35.5. Parties that have submitted deficient responses, as contemplated in section 31, and that have addressed the deficiencies prior to the deadline indicated in subsection 1 of this section, shall be deemed cooperating parties and the Commission will consider their information in its final finding, subject to the provisions of section 36.1 and the requirements to finalise an investigation timely."*

It was stated that Regulation 35.5 required the Commission to consider the information of cooperating parties in its final determination, but it did not explicitly empower the Commission to disregard all information that was submitted by any party (including information submitted timeously and verified), as a punitive measure.

WWB stated that insofar as any interpretation of Regulation 35.5 purported to give the Commission the power to disregard all information submitted by any party other than an applicant (despite that such information may constitute the best information available), Regulation 35.5 was *ultra vires* and unenforceable. Such a failure to consider the best information available can only be construed as a measure directed at parties whose submissions were deemed deficient, in order to compel their compliance or punish their non-compliance with the Commission's requirement for information. Such a measure is *ultra vires* the Commission's powers in terms of the Act because the Commission had the power only to request information from persons other than applicants, it had no power to require compliance with such request.

It was stated that the Commission had no power, in terms of the Regulations or otherwise, to disregard information submitted by parties other than applicants, and was compelled in terms of the Anti-Dumping Agreement to consider such information.

WWB stated that this was not a case of a recalcitrant or uncooperative party – full co-operation had been provided by Jantas at all times during the Investigation, to

the best of its ability. In addition, all information relevant to the investigation, which was requested by the Commission, was provided by Jantas and verified by the Commission, and there was therefore no justification for the application of any punitive sanction to Jantas.

4.6.5 Commission's final decision

The Commission noted the comments submitted by WWB and found that all the information with regard to the subject product should have been submitted by the exporters. The Commission further confirmed that the subject product includes sales to OEM customers and therefore the information requested from Jantas is relevant to the investigation.

The Commission decided to take all the information submitted by the exporters into consideration for purposes of its final determination.

4.7 METHODOLOGY IN THIS INVESTIGATION FOR BORLEM IN BRAZIL

4.7.1 Normal Value

Type of economy

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

Calculation of normal value

Borlem exported only one size wheel, 22.5x9.00, to SACU during the period of investigation. There were no sales of this specific wheel on the domestic market in Brazil.

After considering all the comments received from interested parties, including the

comments received on the verification report (non-confidential versions of which are available on the public file), the Commission decided to use a constructed normal value.

The Commission noted the comments submitted by WWB with regard to the profit margin, but decided to apply the profit margin applicable to the 22.5 x 8.25 model, when sold on the domestic market in Brazil, to the 22.5 x 9.00 model, as this represented a high volume of domestic sales and this model is the closest in size to the 22.5 x 9.00 model, for purposes of its preliminary determination.

In response to the Commission's preliminary report, WWB indicated that it was not in agreement with the profit margin used by the Commission in the constructed normal value and indicated that the question was whether the profit margin added by the Commission to the cost of manufacture of the 22.5 x 9.00 steel wheel constituted a reasonable amount within the meaning of Article 2.2 of the Anti-Dumping Agreement. WWB stated that the verified average of the profits realised by Borlem from all wheels produced by it, as a percentage of the cost of production of Borlem for the investigation period, should be used in the constructed normal value.

The Commission noted the comments submitted by WWB, but decided to confirm its preliminary determination to apply the profit margin applicable to the 22.5 x 8.25 model, when sold on the domestic market in Brazil, to the 22.5 x 9.00 model, as this represented a high volume of domestic sales and this model is the closest in size to the 22.5 x 9.00 model, for purposes of its final determination.

4.7.2 Export price

Export price is defined in section 32(2)(a) of the ITA Act as the price actually paid or payable for goods sold for export, net of all taxes, discounts and rebates actually granted and directly related to the sale under consideration.

Calculation of export price

The Commission decided to use the actual export sales to SACU to calculate the export price during the period of investigation.

Adjustments to the export price

The Commission made the following adjustments to the export prices, as verified by the investigators, for purposes of calculating the ex-factory export prices:

(i) Internal transport

An adjustment was made for the internal transport charges from the manufacturer to the port in Brazil, included in the invoice price.

In response to the Commission's preliminary report, WWB stated that the Commission used unverified information to calculate this adjustment and that the adjustment should be based on the verified information as submitted.

The Commission decided to recalculate the internal transport per wheel, to the value as verified.

(ii) Port handling charge

An adjustment was made for the port handling charges included in the invoice price.

In response to the Commission's preliminary report, WWB stated that the Commission used the incorrect information to calculate this adjustment.

The Commission decided to use the verified information, which is that used in its preliminary determination, to calculate this adjustment.

(iii) Commission

An adjustment was made for commission paid to a commission agent in SACU.

(iv) Packaging

An adjustment was made for the packaging cost.

4.7.3 Margin of dumping

A dumping margin, expressed as a percentage of the fob export price, was calculated to be 36.6 per cent.

4.8 METHODOLOGY IN THIS INVESTIGATION FOR MAXION IN BRAZIL

4.8.1 Normal value

Type of economy

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

Calculation of normal value

The Commission noted all the comments received from interested parties and the difficulties experienced during the verification of the information. All comments not specifically included in this report, are available on the public file.

The Commission noted that Maxion exported a range of wheels, rims and discs to SACU during the period of investigation.

The Commission decided not to use the export sales to third countries to calculate the normal values but to use the actual domestic sales for the products sold on the domestic market in Brazil, and to calculate constructed normal values for those not sold on the domestic market in Brazil.

The Commission noted and approved Maxion's request that the domestic sales of the 22.5x9.00 wheels to one specific original equipment manufacturer be excluded from the normal value calculations, as numerous differences exist between this wheel and the 22.5x9.00 wheel exported to SACU. After excluding these sales from the normal value calculation, the domestic sales of this wheel represented less than 5 per cent of the volume of this wheel exported to SACU. The Commission, therefore, decided to calculate a constructed normal value for this product.

Actual domestic sales in Brazil

The Commission used the actual invoiced sales to calculate the normal values for those products sold on the domestic market in Brazil, other than the 22.5x9.00 wheels.

Adjustments to the actual domestic sales values

The following adjustments to the normal value were claimed by Maxion and were allowed by the Commission as it was shown that there was a difference in costs, which was demonstrated to have affected price comparability at the time of setting the prices:

(i) *Cost of payment terms*

An adjustment was made for the cost of payment terms. The Commission calculated this adjustment based on the standard payment terms and the interest rate applicable for short-term borrowings.

(ii) *Taxes*

An adjustment was made for the taxes paid for goods sold on the domestic market, i.e. ICMS and PIS/COFINS.

The Commission decided not to allow the following adjustment as it considered that it did not affect the price comparability at the time of setting the prices:

(i) *Saving due to advance export finance*

An adjustment was claimed for the saving due to more favourable finance costs. As this saving was not factored at the time of price setting but only calculated during the verification, the Commission found that this saving could not have affected the price comparability at the time of setting the prices.

In response to the Commission's preliminary report, WWB stated that Maxion repeats its contention that the savings due to advanced export finance affected price comparability at the time of setting export prices.

The Commission noted that although it decided not to allow the adjustment for the advance export finance, this adjustment was included in the calculations as indicated in the preliminary report.

The Commission decided, for purposes of its final determination, to confirm its preliminary determination not to allow this adjustment as it

considered that it did not affect the price comparability at the time of setting the prices.

The Commission recalculated the normal values for the products sold on the domestic market in Brazil.

Constructed normal values

The Commission noted WWB's comments on the profit margin to be applied in calculating the constructed normal values.

The Commission decided to use the profit margin realized on the 22.5x8.25 steel wheel sold on the domestic market, as the profit margin for all products not sold on the domestic market, as it was found that sales of the 22.5x8.25 steel wheel represent a very high volume of the total sales on the domestic market of the product under investigation.

In response to the Commission's preliminary report, WWB indicated that it was not in agreement with the profit margin used by the Commission in the constructed normal value and indicated that the question was whether the profit margin added by the Commission to the cost of manufacture of the 22.5 x 9.00 steel wheel constitutes a reasonable amount within the meaning of Article 2.2 of the Anti-Dumping Agreement.

For purposes of its final determination, the Commission decided to confirm its preliminary determination and the methodology used to calculate the constructed normal values.

The Commission, however, noted that the constructed normal values for three of the products were calculated incorrectly, as adjustments were made that should have been excluded. The Commission therefore recalculated the constructed normal values.

4.8.2 Export price

Export price is defined in section 32(2)(a) of the ITA Act as the price actually paid or payable for goods sold for export, net of all taxes, discounts and rebates actually granted and directly related to the sale under consideration.

Calculation of export price

The Commission decided to use the actual export sales to SACU to calculate the export prices during the period of investigation.

Adjustments to the export price

The Commission made the following adjustments to the export prices, as verified by the investigators, for purposes of calculating the ex-factory export prices:

(i) Internal transport

An adjustment was made for the transport charges from Maxion to the port, included in the invoiced price.

(ii) Terminal handling

An adjustment was made for the terminal handling included in the invoiced price.

(iii) Cost of payment terms

An adjustment was made for the standard payment terms given to one of the importers in SACU. The Commission used the interest rate applicable to the export finance, as opposed to the commercial rate of finance.

(iv) CIF charges

Adjustments were made to the sales, when made on a CIF basis, for the CIF charges included in these invoiced prices.

4.8.3 Margin of dumping

A dumping margin, expressed as a percentage of the fob export price, was calculated to be 42.5 per cent.

4.9 METHODOLOGY IN THIS INVESTIGATION FOR MANGELS IN BRAZIL

4.9.1 Normal value

Type of economy

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

Calculation of normal value

All comments received from interested parties were considered by the Commission.

The Commission decided not to use the export sales to third countries to calculate the normal values, but to use the actual domestic sales to wholesalers for the products sold on the domestic market in Brazil. For those not sold on the domestic market in Brazil, the Commission decided to calculate constructed normal values.

Actual domestic sales in Brazil

The Commission used the actual invoiced sales to calculate the normal values.

Adjustments to the actual domestic sales values

The following adjustments to the normal value were claimed by Mangels and were allowed by the Commission as it was shown that there was a difference in costs, which was demonstrated to have affected price comparability at the time of setting the prices:

(i) Cost of payment terms

An adjustment was made for the standard payment terms applicable to a specific wholesaler on the Brazilian domestic market at the interest rate applicable to Mangels.

(ii) Delivery expense

An adjustment was made for the transport and delivery expenses to the sales invoiced on a delivered basis.

The Commission decided not to allow the following adjustment as it considered that it did not affect the price comparability at the time of setting the prices:

(i) Packaging

The Commission found that there was no difference in the packaging cost for the product sold on the domestic market in Brazil and that exported to SACU.

Constructed normal values

The Commission decided to use the weighted average profit margin realized on the domestic wholesale market for all triangular steel wheels to wholesalers, as the profit margin for purposes of calculating the constructed normal values.

4.9.2 Export price

Export price is defined in section 32(2)(a) of the ITA Act as the price actually paid or payable for goods sold for export, net of all taxes, discounts and rebates actually granted and directly related to the sale under consideration.

Calculation of export price

The Commission decided to use the actual export sales to SACU to calculate the export price during the period of investigation.

Adjustments to the export price

The Commission made the following adjustments to the export price, as verified by the investigators, for purposes of calculating the ex-factory export prices:

(i) Internal transport

An adjustment was made for the transport charges from Mangels to the port in Brazil.

(ii) Harbour charges

An adjustment was made for the harbour charges applicable when exporting the product.

4.9.3 Margin of dumping

A dumping margin, expressed as a percentage of the fob export price, was calculated to be 6.7 per cent.

4.10 METHODOLOGY IN THIS INVESTIGATION FOR ALL OTHER EXPORTERS FROM BRAZIL

4.10.1 Normal value

Type of economy

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

Calculation of normal value

It is the Commission's policy to calculate the normal value for non-cooperating exporters based on the highest normal value for the subject product in the same country without any adjustments.

The Commission decided to calculate the normal value based on the highest normal value, being that calculated for Borlem for the 22.5x9.00 wheel.

4.10.2 Export price

It is the Commission's policy to use the lowest export price for the exported product from the same exporting country, after all adjustments, to calculate the export price for all non-cooperating exporters.

The Commission decided to calculate the export price based on the information submitted by Maxion. The Commission decided to make all the adjustments, as made to the export price for Maxion.

4.10.3 Margin of dumping

The margin of dumping for all non-cooperating exporters in Brazil was calculated to be 42.4 per cent, when expressed as a percentage of the export price.

4.11 METHODOLOGY USED FOR ALL EXPORTERS IN CHINESE TAIPEI

4.11.1 Normal value

No exporter from Chinese Taipei responded to the Commissions questionnaire. The Commission, therefore, decided to use the "best information available" to calculate the normal value for all exporters from Chinese Taipei. The Commission regarded the information submitted by the Applicant as the "best information available".

Based on this information, the Commission calculated an ex-factory normal value of TWD 51.43 per kilogram.

4.11.2 Export price

As none of the manufacturers/exporters of the subject product in the Chinese Taipei responded fully to the Commissions questionnaire and none of the SACU importers of the subject product from the Chinese Taipei responded, the Commission decided to use the "best information available" to calculate the export price for all exporters from Chinese Taipei. The Commission regarded the information submitted by the Applicant as the "best information available".

The Commission, therefore, decided to use the import statistics obtained from

South African Revenue Service (SARS), and applying the model as submitted by the Applicant.

Based on this information, the Commission calculated an export price of TWD 46.55.

4.11.3 Margin of dumping

The margin of dumping for all exporters in Chinese Taipei was calculated to be 10.5 per cent, when expressed as a percentage of the export price.

4.12 METHODOLOGY IN THIS INVESTIGATION FOR NINGBO YINGDAHUANG AUTO PARTS CO. LTD IN THE PRC

4.12.1 Normal Value

Type of economy

The PRC is considered to be a country where price are influenced by Government intervention and therefore the definition of Section 32(4) of the ITA Act applies.

Ningbo Yingdahuang Auto Parts Co Ltd responded to the Commission's questionnaire and requested that the Commission consider them to be a company operating under market conditions.

Market economy status of Ningbo Yingdahuang Auto Parts Co Ltd

The following information was submitted by Ningbo Yingdahuang Auto Parts Co Ltd in its response to the Commission's questionnaire:

1. Shareholding and Board of Directors

Ningbo Yingdahuang Auto Parts Co Ltd is a foreign-joint venture between a Chinese company, Ningbo Yingdahuang Machinery Co. Ltd (Machinery), and an American company, International Manufacturing Inc. (International). Ningbo Yingdahuang Auto Parts Co Ltd was established in June 2003. A copy of the Certificate of Approval for the Establishment of enterprises with foreign investment in the PRC was submitted. International is the major shareholder of the company.

The Board of Directors, their function and their voting rights were as follows:

Member	Representing	Function	Voting right
Mr Li Jianping	Machinery	Chairman of the Board of Directors	1/3
Mr Li Shuiliang	Machinery	Director	1/3
Mr Jean Baron	International	Vice Chairman of the Board of Directors	1/3

Ningbo Yingdahuang Auto Parts Co Ltd indicated that in accordance with Section Four of the Articles of Association of its company, the Board of Directors was responsible for all of the important issues of the company and any issue shall be approved by at least two of the three directors. The Articles of Association was submitted.

2. Raw materials and other cost components for production

The main raw material for the manufacturing of steel wheels was steel. Ningbo Yingdahuang Auto Parts Co Ltd purchased its steel from one

company that was not Government controlled.

Ningbo Yingdahuang Auto Parts Co Ltd indicated that it was free to determine which supplier and at what price to buy any of its raw materials and that there was no Government interference in this process.

Ningbo Yingdahuang Auto Parts Co Ltd indicated that it would request at least three companies to supply it with quotations and specifications. Based on these quotations it would decide from which company to source its raw materials.

Ningbo Yingdahuang Auto Parts Co Ltd indicated that it purchases its raw materials in the PRC and did not pay any attention to the international market, but that it believed that the Chinese domestic market and the international market were closely related, especially in the steel market.

The Yin Zhou District Ningbo City Power Supply Bureau supplies the electricity, which was a Government utility.

3. Finance and investment

The paid-in capital is from investors. Ningbo Yingdahuang Auto Parts Co Ltd had no loans during the period of investigation. It indicated that it would in future go to the commercial banks in China for loans, if necessary.

Ningbo Yingdahuang Auto Parts Co Ltd indicated that it could freely repatriate profits from trading activities. It submitted that if the company wants to repatriate any capital invested, it needed to get prior approval from the Chinese Government. It submitted that to get prior approval from the Government, it needed to submit its Articles of Association and a profit and loss to indicate that the company made profit. An extract from the "Law of the PRC on Chinese-Foreign Equity Joint Ventures" was submitted.

Ningbo Yingdahuang Auto Parts Co Ltd submitted that there were no limitations to the amount that may be invested, the amount that may be invested in the industry or the amount that a foreign enterprise may invest in their industry or company.

Ningbo Yingdahuang Auto Parts Co Ltd indicated that there were no incentives or assistance available to them in respect of investments.

4. *Intellectual property rights and legal requirements*

Ningbo Yingdahuang Auto Parts Co Ltd stated that it never had any contractual links with any company, authority or government with regard to research and development, production, sales, licensing, technical and patent agreements.

Ningbo Yingdahuang Auto Parts Co Ltd submitted that there were no specialized techniques involved to manufacture this product and the foreign company only invested in the PRC.

Ningbo Yingdahuang Auto Parts Co Ltd indicated that it was free to make its own determinations regarding the production, domestic sales and exports of the subject product. It stated that there were no limitations on the export of the product.

Ningbo Yingdahuang Auto Parts Co Ltd stated that before 1 July 2004, Chinese companies dealing with imports and exports should have been authorized by government. It indicated that the right to import and export was not based on the characteristics of the company and that it was possible for any company to obtain authorization to import and export, based on the following:

- The company should have its own name and organization facility;

- The company should have a clear business scope;
- The company should have the necessary working space, capital and professional staff for the aim of importing and exporting;
- The company should have enough import and export business scale through an agent or have the necessary resources; and
- The company should meet the other requirements specified in other relevant laws or regulations.

Ningbo Yingdahuang Auto Parts Co Ltd stated that from 1 July 2004, with the execution of the revised Chinese Trade Law, any company and even natural persons were entitled to import and export if they are legally registered.

5. Labour

Ningbo Yingdahuang Auto Parts Co Ltd stated that only a small percentage of the labour force came from Machinery. Ningbo Yingdahuang Auto Parts Co Ltd hired unskilled workers in the village close to the factory.

The following recruitment process was followed:

- Employment Advertisement: The Department of Human Resources publishes an employment advertisement in the newspaper or other media
- Collecting Employee Materials: The candidates sent their CVs and an application form to the Department of Human Resources
- Selection: The Department of Human Resources selects the suitable candidates for interviews according to the requirements of the post to be filled.
- Interview: Interviews will be conducted and an on-spot examination and evaluation will be done.
- Decision: The Department of Human Resources and the department

where the vacancy is will make a preliminary decision on the candidates and report to the general manager, which will make the final decision.

- Employment: A labour contract will be signed when appointing the person. A standard labour contract is provided by the Government, but specific terms, i.e. term of probation, salary, leave, etc, is negotiated.

A copy of a labour contract was submitted.

No persons under the age of 16 were employed. There was no labour union represented in the company. The employee would indicate its expected salary when applying for the position. The negotiations would be done in accordance with the Government Regulations.

The following procedure was followed when dismissing an employee:

- The company can give an employee 30 days notice.
- If an employee steals something small, they are educated and they will pay a fine.
- If an employee steals something big, they are prosecuted and will be dismissed immediately.
- When an employee did something wrong, the manager will decide if that person will be dismissed and the employee will receive 30 days notice.
- When an employee gets 30 days notice and he deems this to be unfair, he can discuss it with the manager and if no agreement is reached, he can go to labour arbitration or sue the company and go to the civil court.

6. *Production facilities, production and investment*

Ningbo Yingdahuang Auto Parts Co Ltd indicated that it determined its production volumes according to market demand. When receiving an order from their clients, it would arrange the production schedule in the workshop to produce these wheels.

The machines were purchased and a table with the depreciation of the capital goods was submitted.

7. *Sales*

Ningbo Yingdahuang Auto Parts Co Ltd didn't have any price list with its name on. All prices were negotiated with the customers. Ningbo Yingdahuang Auto Parts Co Ltd only had one export transaction to SACU during the period of investigation and only one other export transaction to Mexico during the period of investigation. There were no domestic sales in the PRC during the period of investigation.

8. *Financial statements*

The financial year of Ningbo Yingdahuang Auto Parts Co Ltd is January to December. As the company was only established during June 2003, the profit and loss statement for this financial year did not have any entries. An independent auditor had audited the financial statements of the company and the financial statements were registered at the local tax collection bureau.

9. *Accounting principles and practice*

All accounting records were kept in Chinese and in Renminbi.

Ningbo indicated that the general accounting principles and practices were as follows:

- Accuracy;
- Relevant;
- Comparability;
- Consistency;
- Going concern;
- In time record keeping;
- Realize the income and expenses on accrual basis;
- Income and relevant charges are taken into account together;
- Prudence principle;
- Historical cost principle;
- Separation of general income and income from capital;
- Financial report reflects a general and important financial status and operation result.

Ningbo Yingdahuang Auto Parts Co Ltd indicated that the Minister of Finance set the rules that the company has to comply with. It stated that the most important one was the "Enterprise Accounting Standards". An extract from this law was submitted.

10. Foreign currency transactions

Ningbo Yingdahuang Auto Parts Co Ltd indicated that the State Foreign Currency Administrative Bureau and the commercial banks release the rate of exchange to be used. It indicated that this rate changed with the market supply and demand.

Ningbo Yingdahuang Auto Parts Co Ltd had a foreign currency account in dollars. If the balance was over the predetermined limit, the amount exceeding this limit should be sold to the bank within 10 working days.

As indicated above, Ningbo Yingdahuang Auto Parts Co Ltd stated that there was no limitation to the amount of profit that could be repatriated to the USA.

Based on the information submitted, the Commission, for purposes of its final determination, decided to confirm its preliminary determination that it considered Ningbo Yingdahuang Auto Parts Co Ltd to be a company operating under market conditions.

Normal value calculation

Ningbo Yingdahuang Auto Parts Co Ltd did not sell any steel wheels on the Chinese domestic market during the period of investigation. Therefore, Section 32(2)(b)(ii) of the ITA applies.

The Commission decided not to use the exports to third countries to calculate the normal value, but to calculate a constructed normal value. The Commission used the cost of production of the exported product as the basis for this calculation.

Calculation of Selling, General and Administrative cost (SG&A)

The Commission decided that the SG&A should be calculated by using the actual SG&A of the product exported as a percentage of the production cost of the exported product. The Commission calculated the weighted average SG&A as a percentage of the production cost and added this to the cost of production.

Calculation of profit margin

The Commission decided that the profit should be determined by calculating the difference between the total cost of the product and the ex-factory invoiced price of the company (for the products exported to SACU). This profit margin was added to the total cost of the product.

4.12.2 Export prices

Export price is defined in section 32(2)(a) of the ITA Act as the price actually paid or payable for goods sold for export, net of all taxes, discounts and rebates actually granted and directly related to the sale under consideration.

Calculation of export price

The Commission decided to use the actual export sales to SACU to calculate the export price during the period of investigation.

Adjustments to the export price

The Commission made the following adjustments to the export price for purposes of calculating the ex-factory export prices:

(i) Delivery charges

An adjustment was made for the delivery charges from the factory to the port. The cost of two 40ft containers was used and allocated to the different products.

(ii) Payment terms

An adjustment was made for the standard payment terms as indicated on the invoice. The interest rate for the foreign currency account, as issued by the Bank of China, was used to calculate the adjustment.

(iii) LC cost

As the payment was made by letter of credit, an adjustment was made for the letter of credit costs. The letter of credit cost was allocated to the different

products.

The following adjustment, claimed by Ningbo Yingdahuang Auto Parts Co Ltd, to increase the export price, was not allowed by the Commission:

(i) Waste recovery

Ningbo Yingdahuang Auto Parts Co Ltd claimed an adjustment to the export price, to increase the export price, for the waste recovery. The amount received for waste sold was allocated to the different products.

The Commission decided not to make the adjustment to the export price as it considered that the waste recovery was already included in the calculation of the constructed normal value.

4.12.3 Margin of dumping

The margin of dumping for Ningbo Yingdahuang Auto Parts Co Ltd, expressed as a percentage of the fob export price, was calculated to be 2.5 per cent.

4.13 METHODOLOGY IN THIS INVESTIGATION FOR ALL OTHER EXPORTERS FROM THE PRC

4.13.1 Normal value

The PRC is considered to be a country where price is influenced by Government intervention and therefore the definition of Section 32(4) of the ITA Act applies.

It is the Commission's policy to calculate the normal value for non-cooperating exporters based on the highest normal value for the subject product in the same country without any adjustments. As the PRC is considered to be a country where

price is influenced by Government intervention, the Commission decided to calculate the normal value based on the information submitted by the Applicant.

The Applicant submitted that Chinese Taipei be used as a third country for the PRC. The Applicant alleged that Chinese Taipei has a manufacturing industry, of the subject goods, at a similar level of development to that of the PRC.

4.13.2 Export price

The Commission decided to use the export of Ningbo Yingdahuang Auto Parts Co Ltd to SACU to determine the export price for all other non-cooperating exporters from the PRC.

Adjustments to the export price

The Commission made the following adjustments to the export price, as calculated for Ningbo Yingdahuang Auto Parts Co Ltd, for purposes of calculating the ex-factory export prices:

(i) Delivery charges
(ii) Payment terms
(iii) LC cost

4.13.3 Margin of dumping

The margin of dumping for all non-cooperating exporters from the PRC, expressed as a percentage of the fob export price, was calculated to be 56.0 per cent.

4.14 METHODOLOGY IN THIS INVESTIGATION FOR JANTAS IN TURKEY

4.14.1 Normal Value

Type of economy

Turkey 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.

Calculation of normal value

The Commission considered all comments received from interested parties, included those made by WWB on the verification report, copies of which were available on the public file.

Jantas only submitted the domestic sales in Turkey on the aftermarket and not the sales to original equipment manufacturers. It stated that the wheels exported to SACU were only for the aftermarket and not to original equipment manufacturers. The Commission requested that Jantas submit all its sales to original equipment manufacturers on the Turkish domestic market, as these products were all subject to this investigation.

In response to the preliminary report of the Commission, Jantas submitted its sales to its OEM customers in Turkey. WWB indicated and strongly objected to the Commission using these sales in determining the normal value, for reasons as set out in paragraph 4.6.4 of this report.

The Commission decided to use the actual domestic sales for the products exported to SACU and sold on the domestic market in Turkey, and to do a constructed normal value for all the products exported to SACU but not sold on the Turkish domestic market. The Commission, therefore, decided not to use the export sales to third countries to determine the normal value for products not sold

on the domestic market in Turkey, as it considered that these export sales might be at dumped prices.

The Commission decided to exclude the sales, of which more than 20 per cent by volume, were made at a loss on the Turkish domestic market, from the normal value calculation, in accordance with Section 8.2 of the Anti-Dumping Regulations.

The Commission decided to take the sales to the related party into consideration to calculate the normal value, as it considered these sales to be as arms length transactions.

Actual domestic sales in Turkey

The Commission used the actual invoiced sales to calculate the normal values. The Commission decided to use only the domestic sales to the aftermarket, as the exports to SACU were only to customers in the aftermarket.

Adjustments to the actual domestic sales values

The following adjustments to the normal value were claimed by Jantas and were allowed by the Commission as it was shown that there was a difference in costs, which was demonstrated to have affected price comparability at the time of setting the prices:

(i) Delivery charges

An adjustment was made for the transportation cost for the domestic sales. The total transportation cost on the aftermarket was allocated to the products based on the number of units.

(ii) *Cost of payment terms*

An adjustment was made for the standard payment terms. This adjustment was based on an average Turkish Lira interest rate for the period of investigation.

(iii) *Discounts and rebates*

An adjustment was made for the volume rebates and discounts given to customers. The Commission, however, decided not to allow the adjustment, claimed as part of the adjustment for discounts and rebates, for the advertisement cost paid to the related party.

(iv) *Paint cost*

An adjustment was made for the difference in paint cost between the sales in Turkey and the exports to SACU of the 22.5x9.00 wheel. The total paint cost of both the wheels exported and sold on the domestic market in Turkey was calculated and the adjustment was based on the difference in the cost.

Constructed normal values

The constructed normal values were calculated in accordance with Section 8.10 of the Anti-Dumping Regulations.

The Commission calculated the constructed normal values based on the cost of production of the exported products.

Calculation of SG&A costs

The Commission decided that the SG&A cost should be based on the average SG&A of the company for the 2003/2004 period. This SG&A cost was added to

the cost of production to determine the total cost of the products.

Calculation of the profit margin

The Commission decided to calculate the profit margin based on the average profit of the company for the 2003/2004 period. This profit was added to the total cost of the products to determine the constructed normal values.

4.14.2 Export prices

Export price is defined in section 32(2)(a) of the ITA Act as the price actually paid or payable for goods sold for export, net of all taxes, discounts and rebates actually granted and directly related to the sale under consideration.

Calculation of export price

The Commission decided to use the actual export sales to SACU to calculate the export price during the period of investigation.

Adjustments to the export price

The Commission made the following adjustments to the export price for purposes of calculating the ex-factory export prices:

(i) *Delivery charges*

An adjustment was made for all the delivery charges from Jantas to the port. The adjustment is based on the number of units of a specific wheel size that can be fitted into a 40ft container. The freight cost of one 40ft container was used to calculate the delivery charges per unit.

(ii) Cost of payment terms

An adjustment was made for the standard payment terms as indicated on the invoice. The adjustment was based on an average US dollar interest rate for the period of investigation.

(iii) Letter of credit charges

An adjustment was made for the letter of credit charges on sales paid by letter of credit.

(iv) Customs brokerage

An adjustment was made for the customs brokerage payable on each export transaction.

4.14.3 Margin of dumping

In response to the Commission's preliminary report, WWB stated that the Commission used an unverified average percentage to calculate the FOB export prices of some of the wheels. It requested that the Commission recalculate the FOB export prices using the actual FOB values.

The Commission decided to use the actual FOB export prices for the products as indicated by WWB, and as verified, to calculate the margin of dumping.

The Commission recalculated the margin of dumping, based on the actual FOB export prices, to be 9.1 per cent, expressed as a percentage of the FOB export price.

4.15 METHODOLOGY IN THIS INVESTIGATION FOR ALL OTHER EXPORTERS IN TURKEY

4.15.1 Normal value

Type of economy

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

Calculation of normal value

It is the Commission's policy to calculate the normal value for non-cooperating exporters based on the highest normal value for the subject product in the same country without any adjustments.

The Commission decided to calculate the normal value for non-cooperating exporters in Turkey based on products sold on the domestic market in Turkey by Jantas. The Commission decided not to make any adjustments to these selling prices.

4.15.2 Export price

It is the Commission's policy to use the lowest export price for the exported product from the same exporting country, after all adjustments, to calculate the export price for all non-cooperating exporters.

The Commission decided to use the export prices of Jantas for the products sold on the domestic market in Turkey and exported to SACU to calculate the export price for all non-cooperating exporters in Turkey.

The Commission decided to make the following adjustments, as calculated for Jantas, to the export price:

- Delivery charges
- Cost of payment terms
- LC Charges
- Customs brokerage

4.15.3 Margin of dumping

As the FOB export prices for Jantas were recalculated, the Commission decided to recalculate the margin of dumping for all other exporters in Turkey.

The Commission calculated the margin of dumping to be 29.3 per cent, expressed as a percentage of the FOB export price, for all non-cooperating exporters in Turkey.

4.16 CONCLUSION - DUMPING

For purposes of its final determination, the Commission considered all the comments from interested parties and found that the subject product originating in Brazil, the PRC, Chinese Taipei and Turkey was being dumped into the SACU market with the following margins:

Exporter	Country of origin	Dumping margin expressed as a percentage of the fob export price
Borlem	Brazil	39.3%
Maxion	Brazil	42.5%
Mangels	Brazil	6.7%
All other exporters	Brazil	42.4%
All exporters	Chinese Taipei	10.5%
Ningbo Yingdahuang Auto Parts Co Ltd	People's Republic of China	2.5%
All other exporters	People's Republic of China	56.0%
Jantas	Turkey	9.1%
All other exporters	Turkey	29.3%

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 provide 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 relates to the Applicant, which constitutes 100 per cent of the total domestic production of the subject product. The Commission

decided that this constitutes "a major proportion" of the total domestic production, in accordance with Article 4.1 of the Anti-Dumping Agreement.

WWB stated that they would like to draw the Commission's attention to the fact that the Applicant was permitted to amend its application a month after initiation, without notice to all interested parties.

The Commission noted the comments from WWB and confirmed that the Applicant was requested by the Commission to update its extrapolated figures for the period 1 April 2003 to 31 March 2004 with the actual information. The information submitted by the Applicant was distributed to all interested parties to comment on. The Commission, therefore, decided that this updated information would be taken into consideration for purposes of its preliminary and final determinations.

WWB stated that the injury information did not distinguish between three types of markets, namely:

- the export market;
- the original equipment market; and
- the aftermarket and replacement market (parts and accessories market).

WWB stated that the Applicant recognised these distinctions in the market, but did not deal with it in its injury analysis and that the injury analysis was fundamentally flawed for this reason alone.

It was stated by WWB that the imports, particularly from Brazil and Turkey were wholly and mainly imported for the aftermarket and accordingly it was this market that was relevant to the alleged injury suffered by the Applicant. In addition to this they felt it was important to distinguish between the Applicant's export market and aftermarket as the Applicant had been affected by the appreciation of the Rand in the export market and the aftermarket and the export business. The impact of the

allegedly dumped imports on the Applicant could not be ascertained if the injury information did not distinguish between these various markets. Without such a distinction, it was not possible to attribute the cause of the alleged injury to the Applicant to the dumped imports.

WWB stated that the difference between the OEM market and the aftermarket was as follows:

- the number of products of the OEM market was narrow and the number of OEM products were relatively few which enables the OEM to exercise market power;
- the aftermarket was often categorised by a wide range of products;
- their respective customers were largely different;
- their respective distribution channels were distinguishable;
- more stringent technical requirements and standards set in the OEM sector; and
- scale of production and distribution.

CLS stated that WWB argued that whereas there was a distinction between certain market types, the Applicant should have distinguished between those market types, in so far as determination of injury was concerned.

The Applicant stated that it wished to draw attention to the provisions of Section 13.1 of the Anti-Dumping Regulations stating that in determining material injury to the SACU industry, the Commission shall consider whether it has been a significant depression and/or suppression of SACU's industry's prices. Reference in this regard was obviously made to the industry as a whole and whereas all the steel products produced by the Applicant were prone to injury due to the imports of dumped products into SACU, the Applicant had suffered severe injury in so far as all the market sectors were concerned which manifested in price suppression, price depression and price undercutting on all or on certain of the subject goods. Other factors associated with sustained injury, had also been proven in the application.

It would make no sense to the Applicant to delineate market along lines of distinct sectors as suggested by WWB in apparent following of decisions by the European Commission. Analysis of the aforementioned decisions applied specifically to the situation in the European Union with distinct producers and production facilities for the several sectors that accommodate such distinction. The provisions of Article 6.3 of the ADA was clear that where factors such as production of the like product, such as producers' profits and sales cannot be separately identified, consideration of a broader group of product is allowed. In this instance all products are produced at the same facilities and products produced regardless of the sector is homogenous, which renders it impossible to distinguish between market sectors.

Malas stated that if one studies the scant information in the non-confidential application, it was difficult to understand the severe negative impact on the Applicant's profitability, taking cognizance of its domestic sales, costs and price movements. It submitted that the turnabout in the Applicant's overall performance was attributable to distinct negative developments in its export business. It stated that firstly the Rand led to lower sales volumes and lower prices. It stated that it believed that exports to the USA in particular decreased significantly. It stated that the Applicant was also faced with an anti-dumping duty in Australia and had to give an undertaking that it would desist from dumping. It stated that it reiterated that it believed that these negative developments were the sole reason for the fact that its operations became unprofitable.

It requested that the Commission to request the Applicant to provide injury information for each market segment separately to enable Malas to understand the case against it. It further stated that the Applicant should divide these segments into the various categories, i.e. trailer and caravan, light commercial and commercial vehicles.

The Applicant was of the opinion that a substantiated case was made out that the Applicant was suffering injury in all relevant sectors, as evidenced by the injury data submitted.

In response to the Commission's preliminary report, WWB indicated that the Commission was wrong in not requesting the Applicant to provide information on the aftermarket and OEM market separately. It again indicated that the imported products were sold onto the aftermarket only. WWB stated that none of the imported products were used by the OEM's for vehicles manufactured by them. It stated that the imported products were used only for trailers, or otherwise by purchasers in the aftermarket.

WWB stated that the Commission made no reference to the export market. It indicated that distinguishing the export market was fundamental to the assessment of the cause and extent of the alleged injury suffered by the Applicant.

WWB stated that it followed then that the failure by the Commission and the Applicant to distinguish between the different markets, in particular, the export market, was a material defect in the application and the Respondents accordingly repeat their contention that the Applicant's application should fail for this reason alone. WWB further submitted comments indicating that the imported product did not cause the material injury, but that it should be attributed to the decline in exports.

WWB indicated that it assume that the Commission was in possession of the information with regard to the different market sectors, as the Commission requested this information from the Applicant.

CLS responded to the comments by WWB and indicated that the premise of the Respondent was clearly wrong, as only updated information was submitted.

The Commission noted the comments submitted by the interested parties and confirmed that the material injury information related only to the domestic market and export information was not included, unless specified. The Commission indicated that, therefore, it only commented on the export market under causal

link.

The Commission further confirmed that it was not in possession of the information referred to by WWB with regard to the different domestic market sectors. The Commission confirmed that the information requested from the Applicant, was only production and price information with regard to the products imported during the period of investigation for dumping, i.e. 1 April 2003 to 31 March 2004.

The Commission decided to confirm its preliminary determination that it would not request the Applicant to split the injury information between the original equipment market and aftermarket, as the products imported were both for the original equipment market and the aftermarket. Therefore, the Commission decided that the injury information should be considered as one market.

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 imports, 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 Applicant stated that it was obliged to make certain assumptions and apply a specific methodology to calculate import values and volumes in order to lend the necessary integrity to the import statistics for purposes of this investigation. The

Applicant stated that the available import statistics are distorted by the fact that it includes products other than steel wheels under the applicable tariff heading and that the volumes and values of steel wheels being imported from the respondent countries were not readily available or accessible due to confidentiality restraints.

The Applicant developed a methodology that calculates a value and volume for steel wheels under various assumptions for the respective variables, which in turn influenced the result. This model submitted by the Applicant was well documented in application and available on the public file for inspection by interested parties.

WWB indicated that it did not agree that the model used by the Applicant was accurate and enabled it to determine the export price of the imported steel wheels. WWB submitted that the Applicant did not have objective information to enable it to determine the export price of imported steel wheels from the import statistics and that they did not provide documentary evidence in support of its assumptions.

In response to the comments from WWB, the Applicant submitted comments to indicate that it acted consistently with the requirements and provisions of the Anti-Dumping Regulations.

WWB, in response, stated that the Applicant had not substantiated its model or its assumptions and that the Applicant, being the complainant in this investigation bears the burden of proof in respect of all the allegations it makes, including proof of its alleged injury and the Commission could only initiate an investigation when the Applicant had provided *prima facie* evidence that the alleged dumping of steel wheels had caused the Applicant material injury. They contend that in failing to provide *prima facie* evidence of injury and by failing to produce evidence substantiating its assumptions in respect of its model, the Applicant did not discharge its onus.

In response to the Commission's preliminary report, WWB stated that the Respondents had contended that the model used by the Applicant in an attempt to

remedy import statistics was methodologically unsound and fatally flawed. WWB indicated that it wished to repeat their submissions in this regard.

The Commission decided that it would use the model, as submitted by the Applicant, to determine the import volumes for steel wheels under tariff subheading 8708.70.90.

The following table shows the volume of the dumped imports of the subject product since 2000, using the model as submitted by the Applicant:

	2000/2001	2001/2002	2002/2003	2003/2004
	Tons	Tons	Tons	Tons
Dumped imports				
Brazil	1 102	606	642	2 956
The PRC	46	42	292	1 123
Chinese Taipei	649	511	463	1 272
Turkey	28	104	52	1 600
Imports from other countries	1 899	1 459	1 458	1 464
Total imports	3 724	2 722	2 906	8 415
Imports from Brazil as % of total imports	29.6%	22.3%	22.1%	35.1%
Imports from the PRC as % of total imports	1.2%	1.5%	10.0%	13.3%
Imports from Chinese Taipei as % of total imports	17.4%	18.8%	15.9%	15.1%
Imports from Turkey as % of total imports	0.8%	3.8%	1.8%	19.0%

The information in the table above indicates that the volume of the dumped imports from Brazil increased from less than 30 per cent of total imports to more than 35 per cent of total imports over the period of investigation for the purposes of determining material injury. The imports from the PRC increased with more than 12 per cent of total imports over the period. The same increasing trend is also true

for dumped imports from Chinese Taipei and Turkey.

In response to the Commission's preliminary report, WWB stated that the import statistics were unreliable and the Applicant's model in respect of such statistics was methodologically unsound and flawed, and no reliable conclusions could be drawn from such model.

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, as measured at the appropriate point of comparison.

In its response to the exporters questionnaire WWB stated that the Applicant had indicated that it determined price undercutting using the exporter's ex-factory level prices. They submit that this was an inappropriate method for determining price undercutting. They further submitted that the appropriate price to be used in the calculation of price undercutting was the in-store cost of the imported product. It was also stated that the manner in which the Applicant has determined the export price relies on the import statistics and the model used by the Applicant to determine the volume and value of steel wheels, and they were of the opinion that

the model used was flawed.

Based on the information submitted by the Applicant it stated that the trend indicates and substantiates the degree of underselling experienced in the SACU market and that the importers continued to peg their prices well below those of the applicant in a move to gain an increased share at the SACU market. The Applicant stated that the unlikeliness that domestic importers would import the subject product at higher prices than the domestic selling prices and the fact that subject goods were being sold at dumped prices from these producers, should be conclusive proof of the fact that subject goods were subject to substantial underselling.

In response to the Commission's preliminary report, WWB stated that to the extent that the imported product still needed to be moved from the harbour to the warehouses from which it was sold and/or distributed, there were additional costs, which must be taken into account in calculating price undercutting. WWB submitted that the price undercutting should be done at an in store level of the imported product. It stated that the proper inquiry in determining the appropriate level at which to compare prices should be to determine the price payable by the SACU customer when such customer was first faced with an economic choice between the SACU produced product and the imported product.

The Commission noted the comments submitted by WWB and the Applicant and decided that the level at which to compare prices were the ex-factory price of the SACU product and the landed cost of the imported product, as it considered this to be the appropriate level to compare the prices.

The Commission calculated the Applicant's average ex-factory selling price for each of the different wheel sizes sold during the period of investigation and this was compared to the landed cost of each of the products exported during the period of investigation, using the information as submitted by the importers. As no exporter or importer from Chinese Taipei responded to the Commission's

questionnaires, the Commission used the "best information available" to calculate the price undercutting from Chinese Taipei, being that submitted by the Applicant.

On comparing these prices, the Commission found that the price of the imported product was undercutting the Applicant's selling prices by the following margins:

Country	Price undercutting as a percentage of the Applicant's ex-factory price
Brazil	38.5%
People's Republic of China	27.8%
Chinese Taipei	27.3%
Turkey	30.5%

Price depression

Price depression occurs when the domestic industry experiences a decrease in its selling prices over time.

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

Rand/kg	2000/2001	2001/2002	2002/2003	2003/2004
Price per kg	100	93	91	112

This table was indexed due to confidentiality using 2000/2001 as the base year.

The information in the table indicates that the Applicants' ex-factory selling price, per kilogram, increased from April 2000 to March 2004, which indicates that no price depression took place. The Applicant, however, stated that individual wheel prices were decreased.

The Applicant stated that trading conditions had become more difficult and pressure form customers for higher stock levels, more incentives and longer payment terms were increasing.

In its response to the exporters questionnaire WWB stated that there was an increase in the Applicant's ex-factory selling price, which contradicts the Applicant's claim of price depression and that it was noteworthy that although the Applicant alleged that it was suffering price depression, it conceded that its prices did not decrease on average over the past 12 months. It stated that in the media the Applicant's difficulties had been attributed to the strengthening of the Rand.

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 average costs of production and its average selling prices for the subject product:

R/kg	2000/2001	2001/2002	2002/2003	2003/2004
Cost of production	100	98	103	124
Selling price	100	93	91	112
Cost as a % of selling price	100	105	113	111

This table was indexed due to confidentiality using 2000/2001 as the base year.

The information in the table above shows that the cost as a percentage of selling prices increased from 2000/2001 to 2003/2004. As a result, the Applicant experienced price suppression since its 2000 financial year.

The Applicant stated that the substantial suppression of prices was particular pronounced in the financial period starting April 2003, despite the necessary cuts taken in the labour force and introduction of other cost saving factors to maintain a

presence in the market. The Applicant stated that the substantial and surging increases in exports clearly correlate with the degree of price suppression experienced by them, who were unable to increase prices in line with cost increments.

The Applicant stated that trading conditions had become more difficult and pressures from customers for higher stock levels, more incentives and longer payment terms were increasing.

WWB stated that in the media the Applicant's difficulties had been attributed to the strengthening of the Rand.

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 SACU sales volume of the subject product:

Metric tons per annum	2000/2001	2001/2002	2002/2003	2003/2004
Sales volume (ton)	100	109	132	96

This table was indexed due to confidentiality using 2000/2001 as the base year.

The sales volume of the Applicant increased from the 2000/2001 year to the 2002/2003 year, and there was a decreased in 2003/2004.

The Applicant stated that the significant volumes of imports priced at dumped prices, caused it to significantly decrease volume, due to lost sales.

The Applicant stated that the product generally was not of a cyclical nature, but fluctuations would generally follow the motor industry. These were linked to general economic cycles and interest fluctuations.

In response to the Commission's preliminary report, WWB stated that the decline in the 2003/2004-year was attributable to factors other than imported products, as the Commission had found.

5.3.3.2 Profit

The following table shows the Applicant's profit margins:

	2000/2001	2001/2002	2002/2003	2003/2004
Net profit margin (%)	100	69	64	(98)
Net profit per unit Rand in kg	100	72	72	(120)

This table was indexed due to confidentiality using 2000/2001 as the base year.

The Applicant's net profit decreased since 2000/2001 to a loss in the last financial year.

The Applicant stated that in order to compete with the subject imports, they suffered substantial loss of revenue. The Applicant was of the opinion that this problem, created by the volume and pricing of the subject imports, reached a critical point at the beginning of 2003, and from that point, a profit making business had changed to a loss making business despite measures to reduce costs and optimise capacity utilisation.

In response to the Commission's preliminary report, WWB referred the Commission to the statement contained in the Group Executive Review in the Dorbyl Annual Report for the year ending March 2004 (which fell within the investigation period)

> "short term profitability will continue to be affected significantly by the strong Rand, increases in labour costs and the exceptionally high level of steel price increases now being experienced, which is symptomatic of the position experienced in the automotive components industry worldwide."

WWB stated that the Applicant's Annual Report for financial year 2002/2003 also stated that HIV Aids and costs associated therewith had reduced the profitability of the Applicant.

5.3.3.3 Output

The following table outlines the Applicant's actual production volume of the subject product:

Tons	2000/2001	2001/2002	2002/2003	2003/2004
Production for SACU consumption (excluding exports)	100	109	132	96
Total Production	100	88	96	74

This table was indexed due to confidentiality using 2000/2001 as the base year.

The Applicant's production for SACU consumption increased from 2000/2001 to 2002/2003 and then decreased to 2003/2004. The level in 2003/2004 is lower than that in 2000/2001. The table indicates that the total production, including the production for exports, decreased by 26 index points over the period of investigation and the production for SACU consumption decreased by 4 index points over the period of investigation.

The Applicant stated that the decline in production followed a decline in market demand, caused by an influx of cheaper imports. The Applicant also stated that the current level of production for the SACU market was lower than the previous period.

WWB stated that it appeared that the Applicant's exports declined more rapidly than its production for the SACU market due to the appreciation of the Rand.

5.3.3.4 Market share

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

	2000/2001	2001/2002	2002/2003	2003/2004
Percentage share held by:				
- domestic sales	100	108	110	76
- dumped imports	100	68	66	302
- other imports	100	75	64	61

This table was indexed due to confidentiality using 2000/2001 as the base year.

The Applicant's market share decreased from 2000/2001 to 2003/2004 while the dumped imports increased for the same period.

WWB stated that the information was dependent on the import statistics that they believed were unreliable and that the Applicant had not demonstrated that the

imported steel wheels had caused it to suffer injury during the injury period.

In response to the Commission's preliminary report, WWB stated that the decline in market share of the Applicant in 2003/2004 was attributable to factors other than imported products.

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:

	2000/2001	2001/2002	2002/2003	2003/2004
Total production volume tons	100	88	96	74
Number of employees (manufacturing only)	100	93	104	87
Unit/employee tons	100	95	92	85

This table was indexed due to confidentiality using 2000/2001 as the base year.

Total production volume decline from the 2000/2001 financial year to the 2003/2004 financial year. The number of employees in die production process declined over the period of investigation.

The Applicant stated the decline in productivity bear testimony to the degree of pressures under which it was at the need for urgent relief. The Applicant further stated that due to the effect of the economies of scale in the manufacturing process, the lower production volume had a negative effect on the units per employee ratio. The Applicant also stated that unless relief was obtained, it had no alternative but to reduce headcount in line with lower volumes with serious consequences for the local economies in which it operated.

WWB stated that the Applicant had failed to distinguish between the different markets and therefore the information contained in this table did not provide evidence of injury.

In response to the Commission's preliminary report, WWB stated that the report failed to distinguish between production volume earmarked for the SACU market and production volume earmarked for the export market. It stated that this was a material failure, which rendered the information presented in the table unhelpful.

WWB stated that the Applicant had failed to demonstrate its alleged injury in respect of productivity.

The Commission noted that, with regard to productivity, that the production volume was split between SACU consumption and export market in the preliminary report, but that it is not possible to split the employees between these markets.

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

	2000/2001	2001/2002	2002/2003	2003/2004
Net profit (Rand)	100	64	68	(88)
Net assets (Rand)	100	104	115	103
Return on net assets	100	61	60	(86)

This table was indexed due to confidentiality using 2000/2001 as the base year.

Return on net assets declined from 2000/2001 to 2003/2004. The Applicant stated that the substantial decline in return on investment experience is significant and substantiates the degree of injury experienced by it.

WWB stated that the Applicant had failed to distinguish between the different

markets and therefore the information contained in this table did not provide evidence of injury.

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 5-day week:

	2000/2001	2001/2002	2002/2003	2003/2004
Capacity (tons)	100	100	100	100
Production	100	88	96	74
Utilisation	100	88	96	74

This table was indexed due to confidentiality using 2000/2001 as the base year.

The Applicant stated that total plant capacity couldn't be increased without significant additional investment, which is not justifiable with the current capacity utilisation.

The Applicant stated that the decline in capacity utilisation was evidence of the severe injury inflicted on it due to the imports and that it also necessitated the reduction of shifts. It stated that this in turn had a very negative effect on the workforce and adversely affected productivity.

WWB stated that the Applicant had failed to distinguish between the different markets and therefore the information contained in this table did not provide evidence of injury. The exporters repeated their contention that the import statistics were fatally flawed and the model used by the Applicant to interpret these statistics was flawed and did not remedy the situation.

5.3.3.8 Factors affecting domestic prices

There were no other known factors that could affect the domestic prices negatively.

In response to the Commission's preliminary report, WWB stated that although the Commission reported that there were no other known factors that could affect domestic prices negatively, the Respondents contend that to the extent that the Applicant's customers also include OEMs, the specific requirements of the OEMs and in particular the market power that OEMs enjoy relative to the Applicant, would exert downward pressure on prices.

5.3.3.9 The magnitude of the margin of dumping

The following dumping margins were calculated:

Exporter	Country of origin	Dumping margin expressed as a percentage of the fob export price
Borlem	Brazil	39.3%
Maxion	Brazil	42.5%
Mangels	Brazil	6.7%
All other exporters	Brazil	42.4%
All exporters	Chinese Taipei	10.5%
Ningbo Yingdahuang Auto Parts Co Ltd	People's Republic of China	2.5%
All other exporters	People's Republic of China	56.0%
Jantas	Turkey	9.1%
All other exporters	Turkey	29.3%

5.3.3.10 Actual and potential negative effects on cash flow

The following table reflects the SACU industry's cash flow situation:

Amount in Rand	2000/2001	2001/2002	2002/2003	2003/2004
Cash flow: incoming	100	74	108	(84)
Cash flow: outgoing	100	79	355	198
Net cash flow	100	73	76	(121)

This table was indexed due to confidentiality using 2000/2001 as the base year.

The Applicant stated that the above table reflects the serious negative effect on cash flow in the current period. The Applicant stated that a capital restructure was effected which reduced the negative cash flow, but is not reflected above.

In response to the Commission's preliminary report, WWB stated that the Applicant's failure to account for the loss of cash flow occasioned by its decline in export sales, rendered the information provided by the Applicant in this regard meaningless. It stated that the Respondents accordingly denied that the Applicant had provided any evidence of alleged injury in respect of the Applicant's cash flow position.

5.3.3.11 Inventories

The Applicant provided its inventory level figures listed in the table below:

	2000/2001	2001/2002	2002/2003	2003/2004
Stockholding Volume (tons)	100	109	121	76
Stockholding Value	100	126	152	108

This table was indexed due to confidentiality using 2000/2001 as the base year.

The Applicant stated that against the background of increased dumped imports,

its only viable option was to idle its plant and work down its inventories. It further stated that reducing inventories always carry a degree of inefficiency in that one has to carry all stock lines and optimum stock level management is difficult overall. It stated that stock levels were higher in real terms as they could not effectively be reduced in line with reduced demand.

5.3.3.12 Employment

The following table shows the Applicant's employment level:

	2000/2001	2001/2002	2002/2003	2003/2004
Direct labour units: production	100	93	105	88
Indirect labour units: production	100	92	94	87
Total labour units	100	93	104	87
Labour units: Administrative and selling	100	101	106	81
Total employment units	100	93	104	87

This table was indexed due to confidentiality using 2000/2001 as the base year.

There was a decline in total employment from 100 index points in 2000/2001 to 87 index points in 2003/2004.

The Applicant stated that although there was a reduction in head count, further cuts were in progress. It stated that the dumped imports had severely impacted on the Port Elizabeth plant, which faced possible closure. The Applicant stated that the plant in isolation had reduced headcount of 15 per cent, which was evident from the above table.

The Applicant also stated that productivity levels deteriorated and drastic action was required to bring headcount in line with current volumes should imports be allowed to continue at current rates.

5.3.3.13 Wages

The following table provides the Applicant's wages per employee:

R'000	2000/2001	2001/2002	2002/2003	2003/2004
Total wages: Production	100	94	119	117
Total Salaries and Wages	100	95	121	124

This table was indexed due to confidentiality using 2000/2001 as the base year.

The Applicant stated that wages of production employees were determined in terms of statutory wage agreements.

5.3.3.14 Growth

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

Tonnes	2000/2001	2001/2002	2002/2003	2003/2004
Size of the SACU market	100	101	120	126
Applicant's sales volume (excluding exports)	100	109	132	96

This table was indexed due to confidentiality using 2000/2001 as the base year.

The table indicates that the Applicants sales growth was less than the growth of the SACU market.

The Applicant stated that although some fully built up units including wheels were being imported into SACU contrary to the situation in the past, they had no reason to believe that the market for steel wheels had declined. It stated that the increase in locally manufactured vehicles for the export market should increase the demand for steel wheels, which had not realised due to the effect of imports.

In response to the Commission's preliminary report, WWB stated that the table indicates that the Applicant's sales growth was higher than the growth of the SACU market for the period 2000/2001 until 2002/2003. It stated that such results also suggested that the Applicant was not only growing its sales volume, but also taking market share away from other players in the industry. It stated that the decline in the financial year 2003/2004 was not attributable to the imported products, but rather that such decline was attributable to factors other than imported products, as had been found by the Commission.

5.3.3.15 Ability to raise capital or investments

The following table indicates the Applicants capital expenditure information:

Amount	2000/2001	2001/2002	2002/2003	2003/2004
Total Capex	100	78	374	194

This table was indexed due to confidentiality using 2000/2001 as the base year.

The Applicant stated that the company had plans to significantly upgrade the existing facilities, but the serious decline in volume of sales, due to the imports, and the exchange rate impact on export business, the abovementioned capital investment program had been put on hold. It stated that in the event that business conditions improved to the extent that the investment was once again economically viable, then the funds for this upgrade would have been financed within the Dorbyl Group.

In response to the Commission's preliminary report, WWB stated that it was notable that the Applicant acknowledged the severe impact that the exchange rate had had on its business and this reinforced that factors other than the imported product were the real cause of the Applicant's difficulties.

5.4 Further information submitted by interested parties

The Applicant stated that the application had come about due to a very serious situation that faced its company and which threatens its very existence and livelihood of its workforce and the Applicant felt it necessary to summarise some of the key points contained in the application and some additional background. The Applicant provided the following:

Guestro Wheels was part of the Dorbyl Group and had factories in Port Elizabeth, Heidelberg and Rosslyn. The company was established in 1962 and was the sole primary manufacturer of steel wheels in South Africa. Employment in the group numbered around 860 people and a further 1 000 were estimated to be involved in upstream and downstream activities. However, the company was in crisis and faced the very real prospect of closing down due to continued imports of the subject product at dumped prices into the SACU market. Earlier 200 employees in the group had to be retrenched and unless urgent measures were taken to counteract the attack on its business, a total closure was inevitable.

The Applicant stated that the problem in a nutshell was that wheels were being imported into South Africa at prices below its variable cost and that they had lost substantial volume due to these imports. The substantiated assessment was that these imported wheels were entering South Africa at prices below the domestic prices for the countries of origin. The Applicant stated that their factories had reduced both production and shifts significantly and they were in a loss-making situation, which could not be sustained.

It stated that the Port Elizabeth division was the one most impacted by the dumping as it was the one supplying the after market for steel wheels, which was the sector being most affected by the imported product.

The Applicant stated that the injury being caused by the dumping activity was of such magnitude that they were at risk of having to close the operation down in the

very near future. It stated that this would create a disastrous situation for the economy in general and specifically that of the Eastern Cape Region and a major setback of local content in South Africa of a product which was strategic in nature and for which know how and technology had been built up over a 40 year period.

The Applicant stated that it had also taken up this matter with local government in the Eastern Government and had the understanding that they were concerned about its situation and were prepared to offer support where possible.

In response to the Commission's preliminary report, WWB stated that the Applicant asserts that it was in a crisis and it was facing a real prospect of closing down factories due to imported products. It stated that the Applicant also stated that it had retrenched some 200 employees and that its Port Elizabeth division was the one which was most hit by the imported products. WWB repeated its comments in this regard.

5.5 CONCLUSION - MATERIAL INJURY

After considering all relevant factors and taking all comments, including those included other sections of this report, into account, the Commission made a final determination that the Applicant was suffering material injury in that:

- the dumped imports had increased significantly;
- there was price undercutting;
- it experienced price suppression;
- its output declined;
- its sales declined;
- its profits decreased;
- its market share declined;
- its utilisation of production capacity declined;
- its productivity declined;
- there was a negative effect on its cash flow;

- its return on investment declined;
- its employment declined; and
- there was a negative effect on its growth.

5.6 THREAT OF MATERIAL INJURY

Article 3.7 of the Anti-Dumping Agreement provides 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:

1. a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;

2. 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;

3. 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

4. inventories of the product being investigated.".

5.6.1 Freely disposable capacity of the exporters

The Applicant stated that the SACU industry wass threatened with material injury by reason of the subject imports and that there was a substantial unused and expanding capacity in each of the exporter's countries targeting the SACU market, selling increased volumes at dumped prices. The Applicant was also of the opinion that global supply of steel wheel rims was under threat due to oversupply.

WWB stated that the Applicant made these allegations but produced no evidence to substantiate such allegations. They advised the Commission that their clients did not have "substantial and unused capacity" as alleged by the Applicant and feels that the statement was therefore not based on facts and constituted mere allegations and conjecture.

The following table indicates the capacity utilization of the exporters who responded to the exporter's questionnaire:

Country:	2002	2003
Brazil:		
Borlem	100	97
Maxion	100	105
Mangels	100	145
The PRC		
Ningbo	-	-
Turkey:		
Jantas	100	106

This table was indexed due to confidentiality using 2002 as the base year.

5.6.2 Significant increase of alleged dumped imports

Imports increased from the 2000/2001 year to the 2003/2004 year, as follows:

	2000/2001	2001/2002	2002/2003	2003/2004
Brazil	1 102	606	642	2 956
PRC	46	42	292	1 123
Chinese Taipei	649	511	463	1 272
Turkey	28	104	52	1 600

The Applicant stated that the increase in the dumped products during the past three years bear testimony to the available capacities. The Applicant also stated that foreign producers in the exporting countries had aggressively marketed their products in SA, offering cut-rate prices, thus taking business from it. The Applicant stated that given the success of imports at gained market share at the expense of itself, and the excess capacities and inventories still present in the market, foreign respondent producers were likely to continue their current sales strategy, increasing imports and penetrating the SACU market.

WWB stated that the Applicant produced no evidence to substantiate its allegation and its statement was, therefore, not based on facts and constitutes mere allegation and conjecture and it was based on import statistics that had been demonstrated to be unreliable.

WWB stated that the Applicant's failure to meet the requirements of its SACU customers had caused such customers to rely on imports.

5.6.3 Prices of imports which would have a significant depressing or suppressing effect on domestic prices

The Applicant stated that imports of the product under investigation pushed SACU prices down over the period of investigation and that this accounted for the substantial underselling and reduced market share experienced despite efforts to meet the exporter's competitive pricing. The Applicant expected that because of the fact that importers often locked into fixed prices for a given volume, that the low prices with its subsequent depressing and suppressing effects would hold or drop even further through 2004. The Applicant further stated that there was no evidence that the decreasing price trend would be reversed, as foreign producers would continue to offer prices below domestic selling prices in order to obtain market share. The Applicant submitted that while subject import price suppression and depression ruined its profits, an even more serious problem for it was that the domestic industry could not afford to lower its prices further, and that the trend of

suppression and depression effect on prices would continue. It felt that import pricing thus far indicated that exporters intend to keep dumping until they were forced to exit the market.

The Applicant stated that the imports of the product under investigation were being sold in the SACU market at prices substantially below normal value. The injurious effect of these sales had been severe and the Applicant anticipated even more injury in the future, if dumping was allowed to continue, and that this was imminent.

In response to the Commission's preliminary report, WWB stated that the Applicant stated that it expected that because of the fact that importers often lock into fixed prices for a given volume, the alleged low prices would continue into the future. It stated that the Applicant had not provided any evidence in this regard and the Commission had verified no such evidence. It stated that the Respondents contended that the Applicant had therefore not demonstrated a threat of material injury in respect of price suppression and/or price depression.

5.6.4 Inventories of subject product

The Applicant stated that it believed that the exporters had substantial inventories available, which they were prepared to liquidate on the export market.

WWB stated that the exporters did not have substantial inventories which they were prepared to liquidate into the export market as alleged by the Applicant and that the exporter's inventories had not increased to any significant extent during the period of the investigation.

The following table was compiled from the actual information received from the exporters who responded to the Commission's exporters questionnaire:

Country	2002	2003	Jan – March 2004
Brazil			
Borlem	100	198	235
Maxion	100	106	75
Mangels	100	84	108
The PRC			
Ningbo	-	-	100
Turkey:			
Jantas	100	129	142

This table was indexed due to confidentiality using 2002 as the base year.

In response to the Commission's preliminary report, WWB stated that Maxion's levels of inventory had not increased in any significant way and had in fact declined, between 2003 and 2004.

WWB stated that although the inventory levels of Borlem and Jantas increased as illustrated by the aforesaid table, their production levels also increased in the same period. It stated that from a management perspective, if the volume of production increases, inventories were normally increased because what was important is the turnover rate during a certain period of time, and not only the inventory level. It stated that such an increase in inventory was not an increase in real terms and did not evidence any ability to liquidate inventories into the export market.

WWB stated that in addition, the Commission was aware that Borlem stopped exporting any products to SACU.

5.6.5 State of the economy of the country of origin

The Applicant stated that the imports of the product under investigation were being sold in the SACU market at prices substantially below normal value. The injurious effect of these sales had been severe and the Applicant anticipated even more injury in the future, if dumping was allowed to continue, and that this was imminent.

The Applicant commented as follows on the economies of Brazil, the PRC, Chinese Taipei and Turkey:

Brazil

The Brazilian economy in general was under pressure, although it appeared to be on recovery. In as far as hot rolled coil sheet was concerned, the Brazilian steel industry produced 1 680 000 metric tons of hot rolled coil in 1998 and 1 764 000 tons in 2001. Maxion Componentes, a manufacturer of wheels and chassis and an exporter of the product under investigation to SACU, experienced a slump in the domestic market, which was offset by new business and exports. During the same period the production of buses, trucks and light commercial vehicles increased by 3.0 per cent, 11.6 per cent and 16.8 per cent respectively over the previous year. Exports reached R$53 million.

The PRC

An OEDC Report indicated that China would in the foreseeable future, account for 8 – 12 per cent of world GDP and 20 per cent of world trade. China experienced a real GDP growth of 7.7 per cent in 2000. China's hot rolled steel production increased from 5 751 000 metric tones in 1998 to 10 067 000 metric tones in 2001.

Chinese Taipei

The Chinese Taipei economy was expected to keep on growing at approximately

2.5 per cent per annum. The Chinese Taipei steel industry was closely associated with the manufacturing of wheel rims. To this end the production of hot rolled steel utilized in the wheel rim manufacturing industry, increased from 3 792 000 metric tones in 1998 to 4 081 000 metric tones in 2001.

Turkey

An OECD report indicated that interest rates declined and increasing confidence should help to maintain GDP growth, which increased to 5 per cent in 2003. Hot rolled coiled production in 1998 amounted to 80 000 tons but declined to 70 000 tons in 2001, primarily because of production problems.

WWB stated that the preliminary report provided certain information in respect of Turkey, but did not indicate how such information had influenced either the Respondents or the Applicant. Maxion denied the Applicant's allegations. It stated that it was apparent from Maxion's output figures that the Applicant's claim was incorrect, as the decrease in output in 1999 was caused by currency crisis in Brazil and Argentina at that time. WWB stated that 1999 fall outside the investigation period and accordingly, occurrences of that year were irrelevant. It stated that the Applicant's contentions were self-contradictory because the increase in production of buses, trucks and light commercial vehicles would increase purchases of wheels from Maxion since Maxion's main domestic customers comprise producers of buses, trucks and light commercial vehicles. It stated that the Applicant also failed to explain how the information it provided in respect of the Brazilian economy or Maxion affected the its business.

5.7 CONCLUSION - THREAT OF MATERIAL INJURY

The Commission considered all the information and comments submitted by interested parties and made a final determination that there was not sufficient evidence of a threat of injury to the SACU industry.

6. CAUSAL LINK

6.1 GENERAL

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

Article 3.5 of the Anti-Dumping Agreement provide 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 dumped product.

The information with regard to market share table in paragraph 5.3.3.4 of this report shows the Applicant's market share decreased in the last financial year. The dumped imports decreased from the 2001 to the 2003 financial years, but then it increased significantly in the 2004 financial year.

The Applicant stated that the import figures into SACU were substantial and on the increase. It stated that the condition of the SACU industry had deteriorated since 2000, when imports started to increase. The Applicant stated that the situation was worse since 2003 and the Applicant was losing money due to

injurious increased imports. The Applicant also stated that they were operating at low levels of capacity and were losing money due to injurious increased imports.

Comments from WWB

WWB stated that it wished to emphasise that, due to the extremely small volume of exports by Borlem to South Africa during the investigation period, such exports could not possibly have had any effect (negative or otherwise) on the Applicant, and thus could not have caused the Applicant any injury.

6.3 EFFECT OF DUMPED IMPORTS ON PRICES

It has already been shown in section 5 of this report there was price undercutting and price suppression. The SACU industry was unable to increase its prices in line with the increase in costs, as the imported product was undercutting its prices.

The Applicant stated that they had to reduce prices on selected high volume products although the overall average prices have not declined. The Applicant felt it was getting pressure from its distributors to reduce prices, and improve terms of sales.

Although the Applicant did not suffer any price depression from 2000/2001 to 2003/2004, it suffered price suppression.

6.4 CONSEQUENT IMPACT OF DUMPED IMPORTS

Although the Applicant's sales increased since 2000, it experienced a decline in sales since 2003 to a level lower than in the 2001 financial year. In line with this the Applicant's net profit margin declined from 2000/2001 to a loss situation in 2003/2004. The Applicant's output increased slightly form 2001/2002 to 2002/2003 and then it decreased in 2003/2004 to its lowest level since 2000/2001. The Applicant's productivity and return on investment declined every year from

2000/2001 to 2003/2004. The utilisation of capacity declined by 26 index points from 2000/2001 to 2003/2004.

The Commission noted that the majority of the decrease in utilisation of capacity, output and productivity could be attributed to the decline in production for exports.

The Applicant's net cash flow declined slightly over the material injury period. The Applicant already experienced a decline in employment and a further reduction of around 7 per cent is indicated. The Applicant experienced no growth and plans to upgrade the existing facilities have been put on hold.

6.5 FACTORS OTHER THAN THE DUMPING CAUSING INJURY

Article 3.5 of the Anti-Dumping Agreement provide 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 dumped imports and imports from other countries:

Dumped imports	2000/2001	2001/2002	2002/2003	2003/2004
Volume	1 825	1 263	1 449	6 951
Price/kg	4.45	5.78	7.30	4.55
Imports from other countries	**2000/2001**	**2001/2002**	**2002/2003**	**2003/2004**
Volume	1 899	1 459	1 457	1 464
Price/kg	8.68	12.27	15.99	6.55

The average unit price of the dumped imports was R4.55 per kilogram in the period 2003/2004, compared to the average unit price of the imports from other countries for the same period of R6.55 per kilogram.

The Applicant stated that it was unlikely that any imported steel wheel rims were not being sold at dumped prices as the various exporters compete with each other for the domestic SACU market.

WWB stated that the Applicant's table was substantially based on the import statistics, which had repeatedly been shown as unreliable. In addition, the Applicant's table did not distinguish between the various markets and accordingly the Applicant was unable to show that its alleged injury was caused by allegedly dumped exports. It was also stated that the Applicant conveniently relied on the import statistics when it suited it but, when they did not, seek refuge in the fact that the import statistics were unreliable.

In response to the Commission's preliminary report, WWB stated that it was apparent from the table that the volume of imported products from "other countries" was higher than the volume of imported products from subject countries.

WWB stated that this demonstrates that the Applicant's products could not compete in the market place even with products, which on the Applicant's own version, were not dumped into the SACU market. It stated that in light of this, it was clear that there were other factors that affected the Applicant's business, other than imported products from the subject countries.

In response to the comments from WWB, the Applicant stated that the quantities of imported product at dumped prices exceed the *de minimus* threshold substantially and it was thus clear that the Commission was justified to initiate the investigation. It stated that imports at the levels experienced by the Applicant at dumped prices obviously caused material injury to Applicant, which rendered it impossible to compete with fair valued imports. It stated that the statement that

Applicant was not able to compete against the higher priced imports were also clearly based on the wrong premise that the other products all represent steel wheel rims and excludes higher valued alloy wheels and other products classifiable under the relevant tariff code.

The Applicant stated that the argument further implied in this paragraph, acknowledges the fact that the Respondents imported and sold products in SACU at dumped prices, as it distinguished between the lower and higher priced products.

6.5.2 Competition between domestic producers

The Applicant was the only manufacturer of the subject product in SACU.

6.5.3 Developments in technology

The Applicant stated that they had, over the past three years, developed a range of alloy look-alike wheels called bead seat wheels. These wheels were cosmetically similar to alloy wheels, but were made from steel and sell at 70 per cent of the normal selling price of an alloy wheel. It stated that it had invested in excess of R1 million in developing these wheels, which had been well received in the local market.

In response to the Commission's preliminary report, WWB stated that the Commission reported that the Applicant had advised the Commission that it invested in excess of R1 million to develop, over the past three years, a range of alloy look-alike wheels called bead seat wheels. It stated that seat wheels were apparently cosmetically similar to alloy wheels, but were made from steel and were sold at 70 per cent of the normal selling price of an alloy wheel.

WWB stated that it would appear therefore that by Applicant's own admission, the Applicant's steel wheel volumes had reduced as a consequence of, *inter alia*, the introduction by the Applicant of the seat wheels into the SACU market.

WWB stated that it would appear also from this disclosure by the Applicant that there had been a change in the pattern of consumption by the Applicants customers, which change was brought about by the Applicant's own technological advancements.

In response to the comments by WWB, the Applicant stated that although the Respondents argued that a market swing to alloy wheels were the cause of the problems experienced by themselves, the fact remained that they clearly distinguished between steel wheels and alloy wheels and that the application pertains only to steel wheels accounting for 50 per cent of the SACU wheel rim market.

The Applicant stated that the Respondents further failed to advice adduce evidence of a decreasing market share in the SACU market, favouring alloy wheels and not steel wheels. It was stated that should this had been the case, the imports of steel products should in fact also declined accordingly.

6.5.4 Contraction in demand or changes in the patterns of consumption

The Applicant stated that the local aftermarket showed a substantial reduction for passenger and commercial wheels respectively and that this contraction was due to the influx of the dumped product into the SACU market and not necessarily to a change in consumption patterns.

The Applicant stated that steel wheels do not have a high replacement market and tend to move in conjunction with what was developing in the motor industry. The replacement of motor vehicles and heavy trucks was, according to the Applicant, influenced by local inflation and interest rates. The Applicant found that with high interest rates, the local market tended to delay capital purchases until interest rates drop. With the interest rates falling, the Applicant had not experienced the increase in volumes expected because of the high level of imports entering their market at dumped prices.

There were no other known factors that might affect sales volumes and prices.

6.5.5 Export performance

The Applicant's export sales over the years 2000/2001 to 2003/2004 were as follows:

2000/2001	100
2001/2002	78
2002/2003	88
2003/2004	67

This table is indexed due to confidentiality using 2000/2001 as the base year.

The information indicates that the Applicant's exports decreased by 33 index points from 2000/2001 to 2003/2004.

In response to the Commission's preliminary report, WWB stated that the Applicant indicated that its selling prices had been negatively impacted by the stronger Rand particularly for the SACU aftermarket and export business. It stated that the Applicant further indicated that it had to lower selling prices into the local aftermarket to remain competitive with imports while export prices have generated lower revenue in Rand terms as its exports were sold in either US Dollar or Euro. It stated that it was clear from such statements by the Applicant that the cause of the Applicant's alleged injury was not the imported products, but other factors, and in particular, the exchange rate between the Rand and the Euro and/or the Dollar.

WWB stated that the finding of dumping against the Applicant in Australia also added to the Applicant's difficulties in the export market.

CLS stated that the Respondents refer to the decline of exports by the Applicant. The Applicant stated that this matter was fully explained in their comments on the preliminary finding where it was demonstrated that a decline in exports, could not

have in any way detracted from the causal link between imports of dumped products and the injury suffered by the Applicant.

6.5.6 Trade restrictive practices

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

6.5.7 Productivity of the domestic industry

The Applicant stated that it had recognized the need to continuously upgrade facilities and had, as a result, allocated Capex in the 2004/2005 budget for Capital Expenditure for this purpose. It was only prepared to implement this if trading conditions improve and imports were reduced significantly.

The Applicant recently signed a Technical Assistance Agreement with a leading Japanese Wheel Manufacturer called CMW in an attempt to improve productivity.

The Applicant stated that the influx of dumped imports was an obstacle in order to implement this as it was trading under adverse conditions on its own domestic market.

6.6 COMMENTS BY WWB ON CAUSAL LINK

In its response to the exporters questionnaire WWB, on behalf of Maxion, Jantas and Borlem stated the following:

In order to contextualise the importation of steel wheels by the SACU importers, it is useful to have an understanding of the state of the automotive sector in which the key players, namely, the exporters, importers and the Applicant operate. There are a number of key industry factors that either serve as constraints or provide opportunities for players in this sector and these factors are discussed below.

The Applicant has indicated that it is the sole primary producer of steel wheels in the SACU. Accordingly, its customers were traditionally dependant on the Applicant for steel wheels supplies. It is common knowledge that for a long time and until about the middle of 2002, the Rand had been depreciating against the US Dollar and that such depreciation accelerated sharply from about year 2000. The Applicant took advantage of such Rand weakness and aggressively grew its export sales; apparently to such a degree that it could no longer adequately service the SACU steel wheel purchasers, particularly the aftermarket segment of the market.

The prices for the steel wheels exported by the Applicant are denominated in US Dollars and therefore the weaker the Rand the higher the income and the better the profits. In addition, the weaker the Rand the more the exporter is able to export its steel wheels. The stronger the Rand, the lesser the income and the lower the profits. The export sales also provided the Applicant with large volumes within a narrow range of products and hence better operational and/or production efficiencies. The aforegoing assertions that the weakened Rand in the 2001 to early 2002 period facilitated export opportunities for Dorbyl whilst the strengthening Rand in later years did the opposite, are evident from the following quoted sections of Dorbyl's Annual Reports and Interim Profit Statements / Group Results. These quotes show the emphasis and drive that Dorbyl places on its automotive component exports.

- In Dorbyl's Interim Profit Statement for the six months ended 30 September 2000 the following is stated under the heading "Prospects":

  "However, the weakened Rand provides an improved export competitiveness and the Group will continue to pursue vigorously all export opportunities".

- In its Interim Group Results for the six months ended 30 September 2001, Dorbyl states the following under comments relating to its Automotive Manufacturing segment:

"Exports have notably declined over the period, due to slow down of the American economy in particular. Numerous other export opportunities have however been successfully realized and the major part of the group's capital expenditure will be in support of the export initiative."

- In Dorbyl's 2001 Annual Report under the heading "Executive Review", the following is stated:

"The Group's stated strategy of increasing offshore sales and exports has progressed during the year under review. Dorbyl Automotive Technologies succeeded in growing exports despite difficult world economic conditions, increasing its exports by 54%."

- In Dorbyl's 2002 Annual Report, in the section entitled "Executive Review", it is stated that:

"....significant capex is expected, at least for the next two years, to optimize the export thrust. The medium term commitment is still to achieve a minimum of 50% of sales via exports."

- In Dorbyl's Group Results for the year ended 31 March 2003, under the section relating to the divisional review of Dorbyl's Automotive Manufacturing division, the following is stated:

"The division consists of Dorbyl Automotive Technologies (Guestro) and Dorbyl Transport Products. The Automotive division achieved much improved results, largely from high export activity at good margins due to the weak Rand for the major part of the year. Capital expenditure amounted to R66 million, mainly in support of that export growth which is now threatened as a result of the strong Rand".

- In Dorbyl's Interim Group Results for the six months ended 30 September 2003, under the section relating to the divisional review of Dorbyl Automotive Technologies, the following is stated:

"The much improved results of last year, achieved largely from high export activity at

good margins, could not be sustained in the environment of the strengthened Rand. Volume and margins have deteriorated and, while there was some improvement in local activity, it was insufficient to offset the adverse effects of the strong Rand. Capital expenditure has however continued, on a selective basis, in the expectation that the Rand will not maintain current levels in the long term, thereby restoring the division's ability to export at satisfactory margins".

The Applicant's export strategy was at the expense of the SACU aftermarket that had to find alternative suppliers of steel wheels outside SACU.

In the latter part of 2002 when the Rand started appreciating against the US dollar, the SACU steel wheel purchasers benefited from the cheaper import prices and in contrast, the Applicant's prices became increasingly uncompetitive both internationally and within the SACU market. The Applicant has admitted in the application and in various other publications (including its annual reports) that it has lost significant volumes in its export sales and that such decline in exports has directly affected its profitability.

The Commission was referred to the comments made by the Chairman of Dorbyl Limited (Dorbyl), in the Chairman's report contained in the annual financial results for the year ended 31 March 2003, which provides as follows::

"...Significantly higher profits at Automotive Manufacturing (up to 141% on previous year) and ..., served to minimize the income reduction resulting from disposals. Though profits were significantly enhanced by the weaker Rand in the earlier part of the financial year, the strengthening Rand in the latter few months impacted results in both divisions adversely. In the case of Automotive Technologies, not only are export prices lower in Rand terms, but the weak Rand earlier in the year caused substantial cost increases in raw materials , particular steel, which have not reduced to any extent since. Export margins are accordingly being squeezed by both cost pressures and Rand price realizations.

...

OPERATIONAL REVIEW AND OUTLOOK

...

Dorbyl Automotive Technologies is largely dependent on certain key factors, each of which applies constraints, or, when favourable, provides opportunities:

(i) The most critical is the Rand/Dollar exchange rate, which has a direct and central impact

on profitability. The South African cost base has been negatively affected by significant cost increases over the last year, especially basic raw materials (steel). When this coincides with a stronger Rand, the negative impact on export margins and earnings is immediate. To the extent that the Rand remains strong, all manufactured exports will suffer... While in the medium term export prospects are considered sound, they will be poor until the Rand weakens from current levels.

(ii) *The higher real interest rates in South Africa not only affect the Rand value but also slow the GDP growth rate, This has a negative effect on local sales of motor vehicles. The next year is therefore unlikely to show any significant vehicle market growth until there is a general economic improvement and local interest rates reduce.*

(iii) *The international car markets are clearly subject to the state of the world economy, and there is an expectation of a reduction in car sales in most markets. This will affect automotive component exports from South Africa as well as restrain growth in vehicle exports. With cost and pricing pressures being extreme, even margin maintenance on exports cannot be achieved in the short term.*

While future prospects in this sector appear to be positive, short term profitability will decline due to the expected economic environment and a strong Rand/Dollar rate.

Divisional Review

Dorbyl Automotive Technologies

The much improved results of last year, achieved largely from high export activity at good margins, could not be sustained in the environment of a strengthened Rand. Volume and margins have deteriorated and, while there was some improvement in local activity it was sufficient to offset the adverse effects of the strong Rand. Capital expenditure has however continued, on a selective basis, in the expectation that the Rand will not be maintained current levels in the long term, thereby restoring the division's ability to export at satisfactory margins.

However, significant cost containment has taken place in the period and retrenchments were unavoidable. In particular, it was necessary to close the Commercial Wheel plant in Port Elizabeth at a cost of R6.5 million, which was charged to exceptional items."

With regard to the closure of the Applicant's Port Elizabeth plant, the Commission is referred to the application where the Applicant attempts to blame imported steel wheels for such closure.

A report by the African Automotive Industry dated 1 July 2004 under the heading

"Rapid growth as South African automotive component industry becomes a global player" states as follows:

"In 2002 the component industry headed for new record export levels and stimulated by the Motor Industry Development Programme- continued with the rationalisation of production and continuing capital investment to align it with international requirements.

...

Although the industry may not return to year 2000 levels of profitability until 2003 or 2004, and OEMs are continually squeezing supplier margins, the extension of the MIDP to 2012 is providing an improved basis for longer term strategic planning and growth. Component makers are moving to take advantage of developing export opportunities such as the US African Growth and opportunity Act (AGOA) that is opening up the American market to their products.

Reduced local content trend

...at the same time South African OEMs are building a larger proportion of higher specification and more technologically sophisticated vehicles, with each model introduction creating new challenges for local content suppliers.

The fall in the value of the Rand during 2002 has helped the export competitiveness of component makers, but is a mixed blessing for the many dependent on importing material and sub-components. Managing currency risk has become vital.

The HIV/Aids issue and the vulnerability of their trained workers is another critical concern for component makers, as they seek to control payroll costs and meet higher international quality and continuity of supply requirements from OEMs.

Suppliers of direct and indirect raw materials as well as finished components have to prepare to meet environmental standards such as ISO 14001. A significant industry milestone reached in 2002 was Toyota South Africa qualifying for ISO TS16949 as the OEM pressurised their suppliers to deliver zero defects and products that meet the toughest recycling and environmental requirements around the world."

An article in the Engineering News dated 3 February 2003 stated that:

"towards the latter half of last year, the South African steel producer signalled that it will increase its prices to the auto sector by as much as 22% as from January."

Responding to this statement, Dorbyl responded by stating that its wheel business will have to accept an increase on hot-rolled coil prices, which it will pass on to the automotive companies.

The automotive component manufacturers stated that the rising steel prices could shut down domestic operations.

In the Business Day Online the Applicant confirmed that the key factors that have significantly impacted the Applicant's sales volumes and hence its profitability are the Rand/US dollar exchange rate, the steel prices, motor vehicle sales and pressure by OEM's on component manufacturers for lower prices and better quality. Another factor referred to is HIV/Aids, which is said to have increased "payroll" costs.

Other factors adversely impacting the Applicant's sales volumes and profitability include:

- Anti-dumping duties imposed against the Applicant in Australia;
- The need for the manufactures to cope with South African's OEM's, which are said to be building a larger proportion of higher specification and more technologically sophisticated vehicles.

The sole reason put forward by the Applicant for reasons for its belief that the alleged unfair trade practice is the cause of the alleged material injury or threat thereof is the substantial increase of the import figures into SACU, and they are of the opinion that the import statistics are unreliable.

The alleged trade practice is not the cause of the alleged material injury of the Applicant. The reasons for the cause of the Applicant's alleged injury are set out below.

The Applicant stated the following, which WWB alleged is the main reason for the cause of the Applicant's alleged injury:

"The selling price has been negatively impacted by the stronger Rand particularly for the local

aftermarket and export business. The Applicant had to lower selling prices into the local aftermarket to remain competitive with inputs while export prices have generated lower revenue in Rand terms as our exports are sold in either US Dollar or Euro.

The price of the imported product is directly affected by the exchange rate which has shown a Rand strengthening of over 50% over the past 18 months."

Another cause for the alleged injury suffered by the Applicant is the increase in the market share of imports other than those that are the subject of this investigation.

The rise in steel prices has also affected the competitiveness of the Applicant and is responsible for the alleged injury suffered by the Applicant.

The finding of dumping against the Applicant in Australia also added to the Applicant's difficulties in the export market.

The Group Executive Review in the Dorbyl Annual Report for the year ending March 2004 (which falls within the investigation period) contains no reference to the alleged unfair trade practice. The factors affecting Dorbyl Automotive Technologies of which the Applicant forms part are stated to be as follows:

"The external value of the Rand has been the dominating influence over the last year. Given the restructuring of the Group, and the consequent focus on automotive exports and the offshore businesses, the stronger Rand has adversely impacted overall profitability very significantly.

While there are many opinions as to the future levels of the Rand's value, it is very clear that at the current levels it is very difficult to compete locally against imports and that manufacturing value-adding will continue to decline, with the potential consequence of further job losses.

In respect to DAT (Dorbyl Automotive Technologies), the following factors are key determinants of opportunities or threats:

- *The most important is the Rand exchange rate. The strengthening over the last financial year has translated what were profitable exports at R8,50/US$ into loss-making contracts at R6,50/US. In addition, cheaper imports have been very disruptive to the business locally in both the OEM and the aftermarket;*
- *The pressures on profitability in the international automotive sector have not been conducive to increases in selling prices and even overseas component suppliers are threatening to stop*

supply to the industry, as many are selling Original Equipment components below cost;

- *The reduction in South African interest rates has facilitated growth in local vehicle sales, but this includes a large increase in the imported vehicle market share. Vehicle exports have shown little growth, having been affected by both the strong Rand and soft international demand;*
- *Vehicle build in South Africa has therefore increased slowly, but is projected to increase a slightly faster rate due to both local demand and new export contracts;*
- *However, if inflation-based interest increases are effected in the second half of calendar 2004, local demand will be impacted negatively.*

At current Rand exchange rates, an improvement in DAT's profitability can only result from a reduction of heads and costs, coupled with productivity and efficiency improvements. A weakening of the Rand to R8/US$, is needed for this division to return to a satisfactory level of profitability. In summary, there are good growth fundamentals in both divisions, but the results in Rand are being held hostage by the exchange rate.

While South Africa's trade account has weakened substantially, this has been offset by large international institutional inflows, searching for higher returns. While the South African interest rate structure is largely determined by the inflation targeting parameters, and international interest rates continue to stay low, it seems the Rand is likely to remain relatively strong. As this will continue to be negative for South African based value-added manufacturing and exports, it is likely to further exacerbate the trade account. Unless this lead at some point to the Rand weakening to the US Dollar, the Group will have to manage its business to an optimum under the circumstances.

Divisional Review

The division (DAT) reflected an adverse financial performance when compared to the results achieved in the previous year. As reported previously, export earnings have been eroded by the considerable strengthening of the local currency. This erosion exceeded local gains resulting from improved productivity at all manufacturing sites.

The export drive in the USA and Europe has continued at volumes similar to those supplied in the previous year. The Rand value of these exports has declined from 24,3% of total sales in the previous period to 21,2% in the year under review. To recover profitability and retain a foothold in these export markets a more direct route to market is being negotiated for future supply.

Prospects

In addition, to alleviate export-orientated losses, major restructuring has been carried out at the wheels plant in Port Elizabeth and Heidelberg. However, short term profitability will continue to be affected significantly by the strong Rand, increases in labour costs and the exceptionally high level

of steel price increases now being experienced, which is symptomatic of the position experienced in the automotive components industry worldwide."

The Applicant stated that it is world renowned for producing good quality steel wheels and that its quality standards compare favourably with other leading manufacturers worldwide. The Applicant is also claiming that it works on a three months' delivery period for new bulk orders and that it obtains from its customers a six monthly forecast which is firmed up monthly and which then enables it to deliver monthly in accordance with customer requirements. WWB stated that they understand from players in the industry that there are a number of quality problems with the Applicant's steel wheels. These include incorrect colour of steel wheels (e.g. off-white instead of white) and wheels with an irregular shape. We also understand that the Applicant always has a backlog of orders and has generally not been able to deliver timeously to its customers.

WWB stated that when the Applicant's export sales were high, the local market was starved of steel wheels and local consumers of steel wheels had to look elsewhere for the supply of such wheels. The refocus by the Applicant on the domestic market is precisely because of its loss of sales on the export market. In addition, a substantial portion of imports into the SACU comprises products that are sold in the SACU region at non-dumped prices. They state that to the extent that the Applicant says it cannot compete with such imports, it clearly demonstrates that the Applicant's problems lie elsewhere and the Applicant is merely using this anti-dumping application as a means of achieving what it could not achieve in the market place through fair competition.

WWB, in response to the comments from the Applicant below, stated that the Applicant bears the onus of providing the Commission with sufficient information to establish a *prima facie* case that dumping is causing material injury to the SACU industry. They submitted that an important way in which the Applicant could demonstrate a clear link between the allegedly dumped steel wheels and the injury it allegedly suffered was by showing in each segment of the market in which the allegedly dumped imports were being sold the Applicant had suffered injury which

could only be attributed to the presence of the allegedly dumped imports in that market segment. They again submitted that failure to indicate the market segments in which it is active and in which it allegedly suffered injury has prevented the Applicant from establishing the link between the allegedly dumped imports and the injury it suffered.

WWB also stated that it is notable that the Applicant does not deny that certain extraneous factors such as the strengthening of the Rand relative to the US Dollar have in fact caused it injury and attempts to down play the effects of the strengthening Rand on its business. They reiterated their assertion that the strengthening Rand has lead to a substantial drop in the Applicant's profitability and evidence of this has been provided by the Applicant itself in the form of statements made by its officers in various publications.

6.7 COMMENTS MADE BY THE APPLICANT

The Applicant stated that it, at all times was able to and willing to service the SACU steel wheel purchases if account was taken of the under utilization of production capacities. Substantiated evidence to that effect was submitted which include proof of the reduction of shifts work as a measure to address the declining demand over a period of time. It was however clear that preference was given to dumped goods by domestic steel wheel purchasers, to the detriment of the Applicant.

The Applicant stated that the Respondent further alleged that the effect of fluctuations in the Rand / dollar exchange rate and specifically the strengthening of the Rand and abstracts from financial reports in so far as the Dorbyl Group was concerned, specifically the automotive manufacturing divisions, was out of context. It stated that the argument was further flawed if account was taken of the fact that the Dorbyl Group comprises of several business divisions and sub-divisions, which fell under Dorbyl Automotive Technologies. It stated that the Applicant's export market was now relatively small in comparison to the domestic market and

although the weakening of the US $ against the Rand did effect all industries involved in exports, this was not determined to be a conclusive factor in the decision by the Commission to initiate proceedings.

It stated that conclusive proof had been submitted as part of this application of several offers for sale at substantially discounted prices being declined by domestic purchasers due to the presence of dumped imports even before the so-called spur in exports by the Applicant as alleged. It stated that it should be noted that efforts to export lately were done as a means to keep production running due to the decline in demand brought about by the influx of dumped subject goods into SACU.

It stated that it should once again be reiterated that Dorbyl Automotive Technologies included some other business divisions and to impute their situation on the Applicant was wrong. The injury suffered by the Applicant, being a private company, spoke for itself and all injurious factors had been adequately proved, justifying the initiation the investigation.

The Applicant stated that the Respondent once again endeavours to place the blame for the injurious situation endured by the Applicant over the past few years to other factors such as the weakening or strengthening of the Rand, imports of other products and the rise in steel prices. It stated that it was in this regard significant that most of the producers had also endured the strengthening of their monetary units against the dollar, and had also suffered the effects of the increase in steel price, which were universal and should also had been restricted in exports, due to the presence the above-noted factors. However, it stated that if analysis of the current situation was made, it was clear that the SACU market had been inundated with cheap dumped imports of steel wheels pouring into the country and which cause serious injury to the domestic industry. It stated that this was once again evidenced by all the data submitted by the Applicant, which warranted that the initiation of an anti-dumping investigation.

The Applicant further submitted that the level of exports by the noted exporters would be determined beyond reasonable doubt during the verification by the Commission. It stated that to this end the Commission had already verified all data submitted by the Applicant and determined it to be acceptable and sufficient to justify the initiation of the anti-dumping investigation.

6.8 COMMENTS FROM IMPORTERS AND OTHER INTERESTED PARTIES

The following comments were received from importers:

Maxiprest:

Maxiprest stated that the reasons for importing the product are as follows:

- Superior steel and product certification;
- Superior paint specifications;
- Based on Rand/US$ at under R9.00 for $1 – a more competitive price;
- More reliable availability and supply in wheel product range;
- Better stock levels.

Maxiprest stated that for the period December 2002 to March 2003 it received about 6720 wheels from the Applicant, which had been ordered for delivery latest June 2001. It stated that the reason for the delays in supply were because of production delays from the Applicant. It stated that this 5-month delay in delivery occurred at the same time as the strengthening of the Rand against the US$. It stated that the end result of this was that an imported wheel imported by its competitors was landing at 7 per cent lower than the Applicant's price. It stated that this resulted in them being uncompetitive in the open market and causing it to sell below its own cost to remain competitive and sustain and service its customer base.

Maxiprest stated that the above was addressed at formal meetings with the

Applicant where it tried to reach an arrangement with the Applicant to enable Maxiprest to support the Applicant and remain competitive in the wheel industry. However, it stated that the Applicant were unable to match or even come within 10 per cent of the then imported price. It stated that the result was that it had no option other than to import its own wheels. It stated that its first imports arrived in South Africa during August 2003. It stated that these imports were motivated by poor supply from the Applicant and also a more competitive imported price.

An e-mail from Dorbyl Automotive Technologies to the Applicant, after the initiation of the investigation, was submitted to the Commission indicating its concerns that the Applicant was not able to service the market adequately and on schedule. Maxiprest further submitted two memos to its questionnaire. This information was available on the public file.

In response to the Commission's preliminary report, the Applicant stated that Maxiprest's statement that they could import the product at a competitive price illustrates the propensity to import products at dumped prices by the company concerned. The Applicant stated that the international accreditation of the Applicant as a producer of steel wheel rims used by most of the leading vehicle manufacturers clearly refuted the allegations of inferiority of the Applicant's products. It was stated that the unsubstantiated allegations made by Maxiprest was further without foundation, if account was taken of the fact that the products imported were regarded as "like product" to the subject product, produced by the Applicant. The Applicant stated that the imported product competed directly with the domestically produced product.

The Applicant stated that allegations of superior quality paint specifications did not justify or did not entitle imports of products at dumped prices and that the presence or absence of these qualities also did not justify a finding of "poor service" on the part by the Applicant. It was stated that the Anti-Dumping Agreement did not discriminate between like products and require that the duties be determined based on a comparison of the domestic price and the imported

price. It was also stated that the Respondents were fully justified to import the product if it indeed possess qualities superior to that of the domestic products, but not at dumped prices.

Dunlop:

Dunlop stated that it imported the subject product because of the inability of the South African sole manufacturer, the Applicant, to reliably supply Dunlop of its required quantities, together with the Applicant's poor service.

Dunlop stated that it had had a business relationship with the Applicant as far as the purchasing of wheel rims for resale.

Conron:

Conron stated that approximately 50 per cent of the wheels it used were not available on the local market or manufactured locally and it was forced to seek suppliers from other countries such as Turkey.

It stated that it further imported the subject product as a result of poor service by the local supplier.

Conron stated that an import duty of 20 per cent was applicable on all road wheels and feels that it was not necessary, as a large amount of these wheels were not manufactured locally.

Conron stated that due to Jantas not been allowed to supply the South African market until the anti-dumping investigation was finalized, the following was happening:

- Trailer wheels not manufactured locally could not be supplied for trailers presently under construction.

- The wheel size specified by Anglo American for their underground machinery could not be supplied, as their standard was Jantas wheels. It stated that this standard had been enforced on Anglo Mines for safety reasons.

Conron stated that up to 1997 it supported the Applicant. It stated that there were however two incidents that did not help to improve relations between the Applicant and itself. It stated that efforts had been made over the past few years to improve the situation.

The Applicant, however, stated that the wheel sizes noted were indeed not locally produced by it and had special application and did not form part of the same tariff heading under which the subject goods were classified.

Maxcor:

Maxcor stated that it was formed in 1997 and commenced trading during that year. It stated that as the owner has a driving passion for motor vehicles, a sound knowledge and vast experience of the motor industry at large, he decided to venture into the wholesale trade of tyres and related products. It stated that this enterprise was primarily concerned with wholesale of pneumatic tyres and tubes as well as rims. It stated that accessories such as car mats, wheel caps, lock nuts, valves and bolts and nuts formed part of its secondary trade. It stated that through his endeavours he strived to maintain competitive prices without compromising on quality. It stated that over the years he had established loyal support from the lower end of the retailing customers in Gauteng and a few neighbouring provinces. It stated that his excellent entrepreneurial skills enabled him to maintain and steadily grow his clientele with a preferred class of service.

Maxcor stated that although being a small enterprise, it was continuously making an effort to grow its business in a tough climate. It stated that during its cause of trading it had enquired telephonically from the applicant about business trading

which did not prove successful. It stated that it was informed by the applicant that business trade in their products could be conducted with a company called Smith Wheels. It stated that due to the applicant not involving itself in business trade with tail enders, it felt that they poorly represented themselves and portrayed a lack of interest to Maxcor. However, it stated that the applicant's employees visited its business premises for the purposes of examining its products sold from other suppliers.

It stated that Smith Wheels were the sole buyers and distributors of the applicant's product. It stated that upon trade enquiries with Smith Wheels it was found that they were less cost effective with their terms and conditions of sales, and had since closed down. It stated that upon closure, the applicant began using its own logistic distribution system that was also poorly represented in the market. It stated that the applicant was interested in bulk orders only, which did not suit Maxcor as it catered more for the retail and fitment markets who buy small quantities.

Maxcor stated that it wished to highlight the fact that applicant exported many of its products, and was the official supplier of original equipment to major motor manufacturers in South Africa. It stated that as favourable foreign currencies attract export sales due to a weaker South African Rand, it held less value in the eyes of the exporter. It stated that due to the applicant's focus on the export market for sales, a vacuum had been created within South Africa for these and related products. It stated that this contributed to its reason for importing these products, which in its opinion, had a minimal impact to the injury of the applicant. It stated that as its exporter had given the agency to Malas in South Africa it no longer imports from them. It stated that it noticed that sales in these products were showing a downward trend. It stated that it attributed this to government's attempts to regulate the taxi industry with a 25-seater coach as opposed to the present 15-seater minibus taxis.

Maxcor stated that as an afterthought, how was it possible for Chinese manufacturers to import raw steel from South African producers, than manufacture

quality steel wheels in their own country and export them to South Africa, all related and relevant costs were paid by the importer and yet it was still cheaper than buying from our local suppliers who buy and manufacture the steel locally. It stated that surely it indicated our production costs, our labour costs and related manufacturing costs were exorbitant. It stated that thus the applicant felt injured as a result of the abovementioned factors.

In response to these comments, the Applicant submitted that the Respondent failed to submit any arguments, which justified the imports of subject goods at dumped prices, causing injury to the Applicant. The argument that the Applicant in the past focused on the export market was wrong if account was taken of the information provided in its application. The Applicant further submitted that not only the imports by the Respondent but also the effect of imports by several other respondents were to be taken into account to determine the injury suffered by the Applicant, due to the import of dumped products. The Applicant submitted that no information was presented by the Respondent that justifies the imports of products at dumped prices and that the Respondent clearly admitted that subject goods were being imported at dumped prices into SACU.

The Applicant further denied the unsubstantiated allegation that its logistical distribution system was poorly represented in this market. The Applicant was prepared to supply subject goods in small quantities, even less than imported minimum quantities.

Auto Truck Engineering:

Auto Truck Engineering stated that it imported the products for the following reasons:

- Superior steel and product certification
- Superior paint specifications
- More compatible pricing, based on a favourable Rand/dollar exchange

- More reliable availability and supply in wheel product range
- Better stock levels.

Auto Truck stated that the Applicant, still to date, did not manufacture a disc brake wheel for the market. It stated that Jantas manufactured a variety of disc brake / valve protected wheels. It stated that this was not a launch of a new wheel, this wheel had been available for the last three years from Jantas and other manufacturers for the European market. It stated that the industry felt that the 20 per cent duty on these specific wheels was totally unacceptable. It stated that a tariff code heading on these wheels needed to be addressed.

Auto Truck stated that the local manufacturer did not have an aluminium wheel product range and did not manufacture any sizes of aluminium wheels at any of their plants in South Africa. It stated that it believed that all classification aluminium tubeless truck wheels, which operate on the road and were utilised for specific payload applications, should be zero duty rated and should fall under a new tariff code heading or sub-classification heading.

Auto Truck submitted the following factors, which had caused the import of tubeless wheels into South Africa:

- uncompetitive pricing verses imported Rand / US$ prices.
- their pricing structures to distributors are quoted and duplicated to end users as well.
- purchasing in volume warrants a better price versus imported wheels where pricing is the same irregardless of quantity.
- minimum orders need to be accumulated for certain sizes to be produced. This leaves a huge lag time for production.
- inconsistent stock levels of less popular wheels.
- no stock levels in the not so popular type wheels.
- lead time to manufacture is unrealistic.
- continuous change in pricing into the market.

Auto Truck attached a letter from the Applicant enquiring from its company to supply their two most popular wheels, which were in question in this application. It stated that this seemed very strange and needed some verification in this application, as it was totally contradictory as to what was happening. It stated that from looking at this, the Applicant at this point in time, were exporting a majority of their production in wheels, because the Rand/US$ exchange rate was more in their favour to export it. It stated that at this point in time they left the local market totally neglected with stock and product availability. It stated that its assumption was that they could have supplemented their local market with wheels. It stated that it found this instance totally hypocritical to what they were trying to achieve with this dumping duty action.

It stated that its opinion was that the Applicant was a monopoly in this country and if this dumping duty was implemented, they would become and "autocratic" monopoly and to the detriment of the end user of wheels and ultimately the broader South African.

In response to these comments, the Applicant stated that the non-confidential version of the application did contain a substantial amount of information usually classified as confidential and was therefore specifically significant in so far as the determination for the presence of dumping and injury was concerned.

The Applicant stated that it would in the most instances draw attention to relevant indicators to prove that dumping was indeed taking place through imports from the Respondent and Respondent's agents into SACU. It stated that to this end note could be taken of the following observations:

> It is important to note that the production process used for imported subject goods was similar to the domestic process and in fact is with little variance followed by all steel wheel rim producers in the world.

The Respondent acknowledged that other than for slight differences such as the number and size of the ventilation holes, colour finish, material thickness and steel specifications, the physical appearance and characteristics of the domestic and imported product were more or less similar. It is hence clear that the imported product is a like product for purposes of the anti-dumping investigation of the domestically produced product. The observation by the Respondent producer and importer were that the imported product competed directly with the domestically produced product for market share and possessed characteristics that was like, or in absence of like were most similar to the product produced by the Applicant.

The document attached to the questionnaire response under the letterhead of the Respondent importer, served as clear proof of the existence of dumping in so far as imports of the subject goods were concerned. The importer acknowledged the imports of subject goods at prices below that of the domestically sold product and without any allowance for adjustments, it was already apparent that subject goods were being imported into SACU at substantially dumped prices. The further allegation that the Applicant had on several occasions endeavoured to meet the requirements of the Respondent in so far as pricing was concerned, were substantiated by the Respondent. The Applicant, even when granting considerable discounts, was unable to meet the prices of dumped subject goods.

Analysis of invoices of imports and pricing pertaining thereto, clearly supported the above contention. It is also significant that in the light of the allegations by Brazilian producers, that the size 22.5 x 9 was heavy duty tubeless wheel that represented one of the most common wheel sizes imported into SACU by the 2nd Respondent, which in turn correlated with the exact wheel size produced by the Brazilian producers and which competed on the domestic market with the Applicant's products.

Insight into data not classified as confidential allowed the Applicant a clear and

lucid picture of the level and degree of dumping that was taking place. It was further submitted that the methodology applied, which was not contested by the Exporter Respondent or the Importer Respondent represented a valid basis for comparison to determine the anti-dumping margins as well as imports into SACU.

Trentyre:

Trentyre stated that it imported the subject product as the local manufacturer cannot supply the demand, did not manufacture the complete range, had inventory availability and product quality problems.

It stated that it was in some instances required to supply tyre and steel wheel assemblies to the highest quality standards and could not rely on the Applicant for an acceptable quality product and on time delivery or consistent pricing.

In response to these comments. The Applicant submitted that due to deficiency in so far as the non-confidential version of the questionnaire response was concerned, that the Commission rejected the response.

Malas:

Malas stated that it imports both white epoxy-coated steel rims and a chrome coated steel wheel. It stated that the Applicant did not manufacture the chrome coated wheels and requested the Commission to indicate whether these chrome coated wheels were included in the investigation. It was indicated that all the steel wheels imported under the applicable tariff subheading were subject products.

Malas stated that in assessing the product under investigation it was important to take into consideration that these products were used in a variety of applications (from trailers to heavy commercial trucks) by three distinctly different market segments – aftermarket, original equipment manufacturers and exports. It stated that although the Applicant stated this fact in its application, it largely ignored it in

the injury section. It stated that it was common practice to distinguish between market segments. It stated that in the past the Commission frequently requested that in the case of distinct market segmentation, injury information was provided for each segment separately.

Malas stated that owing to the said segmentation and the huge difference in the products subject to this investigation, it was impossible for Malas, who operated in one market segment and only traded in one specific product range, to answer or sensibly defend the case against it. It stated that, therefore, it should like to provide the Commission with some background information from its perspective.

Malas stated that it only operated in the replacement market. It stated that the Applicant's target markets had predominantly been the OEM and the export market. It stated that it believed that owing to a contraction in demand for OEM products and a contraction in demand for the Applicant's products on the export market (owing to the strengthening of the Rand), the Applicant decided to venture into the domestic replacement market in 2002/2003. It stated that imports traditionally supplied this market. It stated that the Applicant entered this distinct market segment by appointing a few distributors in the industry to sell its white steel wheels. Malas was one of the appointed distributors. It stated that the Applicant's entry into the replacement market might explain the increase in its sales volume from 2001/2002 to 2002/2003. It stated that it probably also explained the decrease in its ex-factory selling prices from 2001/2002 to 2002/2003. It stated that it was common knowledge that the prices in the OEM market were higher than those in the replacement market. It stated that because of the Applicant's own lack of commitment and supply constraints it was unable to successfully penetrate this market.

Malas stated that some of the problems it experienced were the following:

- Stock problems and availability which led to a delay in deliveries
- The Applicant was not prepared to pack products under Malas' own label. In

this regard it should be taken into consideration that in order to be competitive in the replacement market Malas identified having your own brand identity as a key factor.

- The Applicant also did not differentiate between retailers and wholesalers in their pricing strategy. This meant that the price Malas paid for the product and the price the Applicant was selling to Malas' customers was exactly the same.

Malas stated that in order to stay competitive in this highly volatile market, it had no option but to expand its supply options. It stated that it is of the opinion that owing to the fact that the Applicant traditionally supplied the OEM market, which was normally stable in nature, the Applicant was not sufficiently prepared to enter the volatile replacement market where aggressive marketing of your products is required.

Malas stated that the fact that the Applicant was now seeking to capture market share, not by adapting its strategies to suit the specific requirements of the replacement market, but by applying for blanket protection instead against the traditional players in the market.

Malas stated that if one studied the scant information in the non-confidential application, it was difficult to understand the severe negative impact on the Applicant's profitability, taking cognizance of its domestic sales, costs and price movements. It submitted that the turnabout in the Applicant's overall performance was attributable to distinct negative developments in its export business. It stated that firstly the Rand led to lower sales volumes and lower prices. It stated that it believed that exports to the USA in particular decreased significantly. It stated that the Applicant was also faced with an anti-dumping duty in Australia and had to give an undertaking that it would desist from dumping. It stated that it reiterated that it believed that these negative developments were the sole reason for the fact that its operations became unprofitable.

It requested that the Commission to request the Applicant to provide injury information for each market segment separately to enable Malas to understand the case against it. It further stated that the Applicant should divide these segments into the various categories, i.e. trailer and caravan, light commercial and commercial vehicles.

In response to these comments, the Applicant submitted that the white epoxy-coated steel rims imported from the PRC were "like product" to the locally produced wheel and subject to investigation.

The Applicant however submitted that the chrome coated wheel for fitment to either 4x2 or 4x4 bakkies from China, should also be regarded as "like product" considering the end-use of the product. The chrome coated product comprised a steel wheel covered in chrome, which had the same physical characteristics as a steel wheel; used similar raw materials; were subject to similar method of manufacturing; were classified under the exact similar tariff classification; and had exactly the same end-use and substitutability of the domestically produced product concerned. Presence of these criteria, rendered it obviously a like product of the domestic product and the Applicant submitted that it be treated as such.

The Applicant further submitted that the argument that a distinction be drawn between the specific market segments on the basis of the independency of these market sectors had been refused by the Commission. The Applicant wished to refer to the provisions of Section 13.1 of the Anti-Dumping Regulations stating that in determining material injury to the SACU industry, the Commission shall consider whether there had been a significant depression and/or suppression of SACU's industry prices. Reference in this regard was obviously made to the industry as a whole and whereas all steel wheel products produced by the Applicant were prone to injury, due to the imports of dumped product into SACU, the Applicant suffered injury in so far as all the market sectors were concerned. It stated that this clearly manifested in a price suppression, price depression and price undercutting on all or on certain of the subject goods suffered by the Applicant. The Applicant had

also proven the presence of all other factors associated with sustained injury in its application.

The Applicant further submitted that it would make no sense to delineate market along the lines of destined sectors as suggested by the Respondent. The provisions of Article 6.3 of the Anti-Dumping Agreement were clear that where factors such as production of the like product, production, profits and sales could not be separately identified, consideration of the broader group of products was allowed. It stated that in this investigation, all products were produced at the same facilities as a product regardless of the sector concerned, which rendered it further difficult to distinguish between the various market sectors as proposed.

The Applicant stated that the Respondent further argued that due to the factors such as the decline in the OEM market and the strengthening of the Rand, the Applicant started venturing into the replacement market. The Applicant refuted this allegation. It stated that the Applicant had always directly or indirectly maintained an interest in the replacement market, but increased its marketing efforts to establish additional markets when it started to become apparent that imports were serious jeopardizing the Applicant's market standing. In order to secure economic survival, the Applicant started aggressive marketing campaigns to sell its products to all consumers regardless of the respective market sector. The Applicant submitted that the notion that the Applicant was not prepared to enter the replacement market, was incorrect as the Applicant welcomed all opportunities for business as could be expected from a prudent business.

The Applicant submitted that it was entitled to protection on the products applied for in view of the substantial amounts of imports entering into the domestic SACU market at hugely dumped prices. The Applicant rejected the notion that a weakening export market as well as strengthening of the Rand was a primary cause of any injury sustained, as the continuous increase in the number of dumped imports was a primary cause of the Applicants predicament.

The Applicant lastly submitted that no justification existed for the exclusion of chrome-coated wheels as substantiated above or for the provision of injury information for each separate market segment as requested by the Respondent.

Henred Fruehauf (Henred):

Henred stated that Route (Pty) Ltd is the holding company for several companies, which include Henred Fruehauf (Pty) Ltd and SA Truck Bodies (Pty) Ltd. Both companies manufactured heavy-duty trailers for use in the South African and sub-Saharan African countries. It also had 22 depots through which it supplied a limited amount of wheel rims to fleet owners.

Henred stated that both SA Truck Bodies and Henred had been dealing with the Applicant for many years and that they continued buying from them under trying circumstances until recently. SA Truck Bodies purchased directly from the Applicant whilst Henred purchased wheel rims indirectly from the Applicant in terms of a purchase partnership agreement with Maxiprest tyres. They stated that the main reasons for their continued purchases from them were that they were committed to local industry in circumstances where these suppliers were competitive and also because local supply was easier to administrate than imports. They stated that they continued buying from the Applicant during a period when competitors like Trentyre were importing from Brazil at better prices than the prices they paid to the Applicant.

It was stated the during the period following the rapid decline of the Rand in December 2001 they faced major price increases from the Applicant which were driven by the export prices they could demand for their products as well as unjustified increases in the steel price from ISCOR. They stated that it should be noted that both the Applicant and ISCOR held monopolistic positions in the market at the time. They stated that during the many occasions when they approached the Applicant on excessive pricing policies their standard response was that they were charging international prices for their products. Trentyre and other importers of wheel rims decided to return to purchasing from the Applicant because it was

cheaper to do so in light of the weaker Rand and this, combined by the Applicant's export drive led to serious shortages in the local market and the Applicant's regular customers suffered as a result. They stated that their status as a supplier moved from mediocre to very poor. They stated that because of the abuse of their dominant status as sole manufacturer of steel rims in the South African market and their poor service levels the Applicant became very unpopular amongst the local market and many of their customers started looking outside South Africa for a reliable source of supply.

Henred stated that towards the end of 2002 the Rand started to strengthen against foreign currencies. During their own investigations into the import market they found that international suppliers priced their products within a narrow band and that the Applicant fell out of this price band by an unacceptable margin. It was stated that to aggravate the situation the Applicant introduced a 13 per cent price increase in January 2003 which was driven by a steel price increase from ISCOR and that during negotiations with the Applicant they pointed out that they could buy far cheaper from international wheel rim manufacturers and provided them with international prices in an attempt to get them to reduce prices to international levels which would allow Henred to stay competitive whilst continuing to support the local market. It was stated by Henred that the Applicant then pointed out that they could not sell at these levels on a profitable basis. During a meeting between SA Truck Bodies, Maxiprest, Henred Fruehauf and the Applicant which was held on 8th April 2003 Henred offered to continue to support the Applicant by offering to pay a pre-negotiated price and then to subsidize some exchange rate fluctuations and that this would allow them to continue to supply to the local market and in return they would expect them to support Henred with the same margins and period when the Rand weakened again. It was stated that when they declined Henred's offer Henred was forced to find alternative sources of supply and they decided to start importing rims from Brazil.

Henred stated that during the period that they had now been doing business with the international wheel rim suppliers they had become accustomed to excellent customer care and service levels and that with the Applicant they were forced into

long lead-time forecasts and orders but did not receive any of the benefits of long-term planning. They stated that SA Truck Bodies had a standing order from the Applicant to supply 1000 rims per month and that these wheel rims were ordered to be delivered on the first day of each month. Henred stated that it was never delivered on time or in the correct order quantities and that on a number of occasions the wheel rims were only ready on the last day of the month in which it was due. Henred stated that SA Truck Bodies were then given the choice to either accept delivery on the last day or lose the consignment to other customers and that this held negative cash-flow implications since they were effectively forced into paying for the wheel rims a month earlier than planned. They stated that their production lines regularly stood as a result of broken promises from the Applicant with no, or unacceptable excuses for the delays and that as a result of the arrogance of the Applicant's personnel and their poor service levels they do not see their way clear to return to the Applicant even if punitive duties are imposed on international manufacturers in the market.

Henred stated that as a direct result of the anti-dumping claim the Brazilian and Turkish suppliers had effectively stopped supplying South African customers in anticipation of the outcome of the investigation and that this caused substantial financial losses to them. They stated that the Applicant could not supply local demand and on recent enquiry indicated lead times of three months and in addition the Applicant had warned them that ISCOR would push their January 2005 prices up by 47 per cent. It was stated that the Applicant did send out a few letters to selected customers to assure them of their intention to fight the increase but their track record on fighting increases had not been good in the past. They stated that market speculation was that the Applicant would pass a 25 per cent increase early in the new year and if this was the case an alternative source was imperative from a pricing point of view to ensure the continued existence of our company and other local users of rims. Henred enquired from one of the Chinese suppliers with whom they have formed a relationship as to why they did not assist the DTI in their investigations. Henred was informed that they had in fact prepared their submission but that they were told by the Chinese authorities to hold back

their responses in anticipation of a Chinese trade delegation that would visit South Africa. After a few months the authorities informed them that the issues around the dumping claim had been resolved.

Henred as a trailer manufacturer stated that they faced the same problems as the Applicant in that the strong Rand was deteriorating their export income and they also faced major competition from international trailer and axle manufacturers. They stated that they used the strong Rand to allow them to buy competitively to keep them competitive in the export and local markets. They stated that they chose to find their own solutions to a global problem and that they did not attempt to abuse the regulatory process to protect its position in the market. It was stated that the Applicant already benefited from high duties (20 per cent), very expensive shipping and clearing costs and an established infrastructure. They stated that their export income was augmented by the MIDP program but they still could not compete. They asked if the Applicant really needed further protection and, if so, why should the local market suffer as a result? They were of the opinion that it needed competition from international players to keep the Applicant in check and that they honestly could not afford any further punitive duties to be imposed on this already expensive product. They stated that wheels made up a large proportion of its trailer cost and that they were already finding it difficult to be competitive as a result of the very high steel price increases and current rate of exchange. They stated that if they were forced to pay more duties on the rims it would worsen their position further.

They stated that they understand that the period that was reviewed in order to determine the extent (if any) of dumping ended on 31 April 2004 and that since this period the prices of Maxion wheel rims increased by 56.6 per cent during the course of this year. Henred also obtained several prices from Chinese manufacturers. They stated that it appeared that international prices were driven by demand and supply as well as international steel prices and that the world demand for wheel rims was very high at the moment and many wheel manufacturers were producing at full capacity. This was, in Henred's opinion one of the reasons for the escalating wheel rim prices.

Henred was of the opinion that the main reason why the Applicant had lost its market share was their extremely arrogant attitude to the local market, pathetic service levels and long lead-times. Henred stated that they were as of today quoting lead times of three months that could easily become five months given their track record. They stated that another issue that led to their pricing problem was that the Applicant could not contain their input cost and this factor led to international suppliers becoming competitive at a stage when the Rand was still relatively weak against the US Dollar. They stated that the final obstacle was the strengthening Rand that led to international competitors becoming very competitive and that it should be noted that international manufacturers such as Maxion had similar problems to the Applicant in that their own currency appreciated to the US dollar at a similar rate to our own, but that Maxion managed to absorb the reduced income that this dilemma brought about through negotiating better deals with their steel-mills. They stated that this situation could not last and prices obtained from Brazil and from China show that the playing field had been levelled due the normal workings of demand and supply and that factors that might have influenced the Commission to allow punitive duties therefore no longer existed. Henred stated that by awarding punitive duties the Commission would in fact be putting international manufacturers in an uncompetitive position if compared to the Applicant and that this was in contradiction with world trends where duties were reducing. They stated that the Reserve Bank allowed the Rand to appreciate without interference in order to find its rightful place in the international currency markets and that they believed that the same principle should apply to local manufacturers competing in an international market. They stated that they needed the benefits that a strong Rand brings to import inexpensively in order to offset the losses that it made in the export market as a result of the strong currency. Henred stated that the effects of punitive duties would be significant as it would not only affect the financial position of local purchasers of steel rims but employment levels in the market and the economy as a whole.

They requested that the Commission do not grant the Applicant the anti-dumping award that they requested.

6.9 COMMENTS FROM INTERESTED PARTIES ON COMMISSION'S PRELIMINARY DETERMINATION WITH REGARD TO CAUSAL LINK

Comments from WWB on the preliminary finding

WWB stated that in the Group Executive Review in the Dorbyl Annual Report for the year ending March 2004 (which fell within the investigation period), it was stated as follows:

> **"The pressures on profitability in the international automotive sector have not been conducive to increases in selling prices and even overseas component suppliers are threatening to stop supply to the industry, as many are selling Original Equipment components below cost."**

WWB stated that it was clear from the aforesaid statement that by Applicant's own admission, OEM's were exerting downward pressure on selling prices on suppliers such as the Applicant. It stated that the statement was similar to the statement that was made in the Applicant's Annual Report for the financial year 2002/2003 where it was stated that OEM's were continually squeezing supplier margins. It stated that it was further stated that OEM's were also exerting pressure on suppliers (such as the Applicant) to invest in technological upgrades to meet the OEM's technological requirements while also exerting pressure for lower prices.

Poor quality of Applicant's products and poor quality of service to customers

WWB stated that the Respondents had previously advised the Commission of information received from the industry indicating that the Applicant's products were of inferior quality and that the Applicant was delivering poor service to the SACU customers. It stated that this assertion had now been confirmed by submissions made to the Commission by a number of interested parties.

The Rand / US Dollar exchange rate

WWB stated that the Applicant had admitted that the exchange rate between the Rand and the Dollar and/or Euro had adversely affected its export sales. It stated that the strong Rand did not affect the Applicant alone but also the export business of other South African manufacturers. It referred the Commission to its letter where the Commission was referred to a report of the Bureau for Economic Research which indicated, *inter alia* that almost 40 per cent of South African manufacturers had to shut down their export capacity over the past 2 years due to the strength of the Rand

Raw material prices

WWB stated that the rise in steel prices had increased the Applicant's input costs and therefore affected the competitiveness of the Applicant.

Other factors, identified by the Applicant itself

WWB stated that the Group Executive Review in the Dorbyl Annual Report for the financial year ending March 2004 listed some of the factors set out hereunder as having affected Dorbyl Automotive Technologies, of which the Applicant forms part.

WWB stated that the pressures on profitability in the international automotive sector had not been conducive to increases in selling prices and even overseas component suppliers were threatening to stop supply to the industry, as many were selling Original Equipment components below cost. Such pressure, as admitted by the Applicant, was the cause of the price suppression allegedly suffered by the Applicant.

WWB stated that the reduction in South African interest rates had facilitated growth in local vehicle sales, but this included a large increase in the imported vehicle market share. Vehicle exports, however, had shown little growth recently, having been affected by both the strong Rand and soft international demand.

Clarification of certain facts

WWB stated that the Applicant had also alleged that it was likely that steel wheel rims were being dumped into the SACU market. It stated that the Commission was advised that Maxion had discontinued its export sales in respect of rims for safety reasons.

WWB stated that the Respondents wished to emphasise that the onus or providing the Commission with sufficient information to establish a *prima facie* case that dumping was causing material injury to the Applicant rested with the Applicant.

WWB stated that the Applicant had not denied that there were certain extraneous factors such as the strengthening of the Rand relative to the US Dollar that had, in fact, caused the Applicant to suffer injury. It stated that the Applicant had however, failed to distinguish between the alleged injury caused by such factors and any injury allegedly caused by the imported products (which it denied).

Comments made by the Applicant on the preliminary finding

The Applicant made comments on the Commission's preliminary determination, but these are included under chapter 7 of this report.

The Commission confirmed that the quality of the products was not considered to be one of the factors that detracted from the causal link.

The Applicant stated that almost all the other importers offer as rationale for their imports of the subject product at dumped prices, the fact that the Applicant allegedly did not have the product available at a given time (e.g. Trentyre, Maxcor, Auto Truck, Malas and Henred Fruehuaf). The Applicant acknowledged that due to insufficient local demand, it was not able to produce each and every type of product, but denied the availability arguments raised by the Respondents. It stated that it produced a wide range of products as was evidence in the application and that such availability was dependent upon reliable forecasts from customers and

raw material delivery lead time of three months. The Applicant stated that it would have preferred to maintain its production levels at optimum levels, but due to the imports of the dumped products was unable to do so.

The Applicant further stated that it wished to remind the Commission of the provisions of Article 6.6 of the Anti-Dumping Agreement, which required that an investigating authority shall satisfy itself as to the accuracy of the information supplied by interested parties upon which their findings were based. It referred the Commission to the panel report with regard to Guatemala – Definitive Anti-Dumping measures on Grey Portland Cement from Mexico (Report 24 October 2000).

The Applicant stated that the allegations by the importers in this regard was based on mere allegation or on conjecture and the Applicant rejected the mischaracterization of the Applicant as a unreliable supplier of the subject product. The Applicant stated that the essential fact remained that it did not justify the import of the products at dumped prices, and that a necessary consequence of this was that the non-availability of a product could never be a justification for the import of the subject product at dumped prices. It was stated that the Respondent's own arguments implied that the subject product was readily available for imports at higher prices.

The Applicant stated that other factors identified as detracting from causal link between imports and material injury suffered by the Applicant were comprehensively addressed in its comments.

Comments received from Henred

Henred stated that the conditions that prevailed during the period when the Rand weakened against all major currencies, were as follows:

- Exports took preference over local supply. The attitude from the Applicant was that they where entitled to ask similar prices to what they could earn in export markets.

- Local consumers of wheel rims started purchasing from the Applicant again. This coupled to increased export volumes led to serious shortages in the South African market. The Applicant's traditional customer base suffered serious shortages as a result.

- Prices into local market increased since there where no other local manufacturers with the capacity to compete against the Applicant.

- The Applicant consciously went onto a drive to maximize profits with little or no concern for their loyal customer base.

It was stated that the conditions that prevailed when the Rand started to strengthen against all major currencies, were as follows:

- Shortly before the Rand started appreciating against the Dollar ISCOR increased steel prices to unprecedented levels. This lead to increases that the market could ill afford.

- Local consumers of wheel rims established that conditions where, once again, favourable to import rims again from the countries under investigation

- Henred Fruehauf, SA Truck bodies and Maxiprest made a conditional offer to subsidize the Applicant's rim. The offer was rejected and importers proceeded to import rims.

Henred stated that the general feeling amongst the Applicant's customers that they interviewed was that the Applicant's arrogance played a major role in them losing

their customer base and that the Applicant had a proven record of monopolistic behavior.

Henred stated that the changes in the market since the Applicant lodged their anti-dumping claims were that international prices increased dramatically as a result of rising international steel prices and that the Applicant did not suffer the same inflation pressure and their prices should be more competitive than ever before. It was stated that these market changes should be brought into account when calculating the perceived dumping percentage.

The relative position of the Applicant in the international market

It stated that international players in the wheel rim market did not suddenly changed their pricing policies when the Rand strengthened against the Dollar. There was a worldwide shortage of wheel rims and many of the manufacturing plants were running at full capacity and they did not grant South Africa special prices over other countries

Henred stated that the appearance of international players dumping wheel rims into our market was mainly the result of our strong Rand and dumping played a small part. When the weak Rand opened the export market for the Applicant they conveniently used the standpoint that local customers should pay international prices. International players did not change their prices into South Africa nor did they increase their prices in their own domestic market during the period when the Rand was weak against other currencies. Being consistent in their marketing policies they did not change their strategy when the Rand started to strengthen again. The only factors that played a role in the Applicant losing the local market to international players were that the Rand strengthened against the Dollar, the poor relationship they have with their local client base and their arrogance not to accept help when it was offered.

Henred stated that the perceived dumping from international players was already in place during the period when the Applicant's export business flourished and that the Applicant used the opportunity to dump products into Australia as was evidenced by a claim that was successfully lodged against them by the Australian authorities. It was stated that they where more than happy to compete using prevailing International practices when the Rand was weak and showed no sympathy to their local customers who had to bear the brunt of their greed by accepting exorbitant prices and poor service, but now that the Rand was strong and the export market was no longer as profitable they realize the importance of recovering the local market and would do anything to prevent international players competing in the market. It was stated that the Applicant opted to use strong-arm tactics instead of rebuilding customer relationships and confidence.

Henred stated that the same international players that the Applicant lodged an anti-dumping claim against believed that the Applicant was dumping wheel rims into their domestic markets. At least one of these suppliers indicated to Henred that they were in the process of lodging an anti-dumping claim against the Applicant. It stated that the Applicant damaged their relationships with local customers to such an extent that, even if pricing were brought to similar levels, a number of customers would prefer dealing with international suppliers

Henred stated that they would like to quote Bill Gates who said "... any company is 6 months away from bankruptcy... ". The ability for an enterprise to survive was heavily influenced by the ability of its management to adapt to changing environments.

6.10 COMMENTS SUBMITTED IN RESPONSE TO THE COMMISSION'S "ESSENTIAL FACTS" LETTER

CLS, consultants for the Applicant, and WWB, consultants for Jantas, Maxion and Borlem, submitted comments on the Commission's "essential facts" letter.

Comments submitted by CLS

The following comments were submitted by CLS:

1. Introduction

Applicant found the recommendation of the Commission in view of previous evidence and argument submitted, disappointing.

The Applicant did not agree with the proposed preliminary finding in the essential facts letter for the reasons set out hereinafter for the following reasons:

- The Commission confirmed that dumping of wheels was taking place at a dumping margin of up to 42.5 per cent;

- The Commission respectfully failed to provide a satisfactory explanation why it was recommended that sufficient factors existed to detract from a finding that a causal link between dumping and injury existed;

- The Commission respectfully failed to establish linkages between information obtained and conclusions drawn;

- The Commission respectfully failed to follow the WTO precedents;

- The Commission respectfully considered unsubstantiated evidence in so far as allegations of poor performance was concerned;

Applicant would in its comments primarily focus on the Commission's findings in so far as causality was concerned.

The Applicant also wished to submit further additional comments on issues such as poor service, quality and export markets as it was of the opinion that careful consideration of these submissions justifies a re-consideration of the

recommendation.

2. Discussion of causality finding

2.1 Quality of Applicant's Products

The applicant stated that the fact that the Commission categorically stated that it had not considered "quality" as a factor when the recommendation was made, was with respect inconsistent with and not supported by the contents of the preliminary report.

It stated that the preliminary report stated *"The Commission noted comments received from importers of the subject product."* Alleged quality complaints formed part and parcel of the comments made and was incorporated in the preliminary report.

It further stated that uncertainty was added to this if account was taken of the following remark made in paragraph 14 of the Essential Facts Letter:

> **"The Commission confirmed that all comments and factors taken into consideration by the Commission in determining the causal link were included in the preliminary report"**

It stated that the apparent inconsistency in so far as the above noted was concerned spoke for itself and was with respect specifically problematic for the Applicant as it was still not certain what factors were indeed considered and regarded as tantamount to "poor service" by the Applicant.

It stated that this also leaves the question what role some of the other factors played in convincing the Commission to come to the conclusion that sufficient factors existed to detract from a finding that dumped imports caused the material injury suffered by the Applicant. It stated that these inconsistencies in the essential facts letter were misleading and to the detriment of the Applicant.

It stated that it could further reasonably be concluded that if all factors referred to in the report, were taken into account as was categorically stated in the essential facts letter, the Commission had indeed considered factors like "pricing structures", "purchasing volume discrimination" and "continues changing pricing into the market" as factors manifesting in "poor service".

It stated that the Commission was once again reminded that these factors were clearly associated with pricing or functions of price, which could not be associated with "poor service" in any way. The Commission was further reminded that in terms of the anti-dumping legislation, an applicant only needs to show that prices of the imported product were below the prices of the domestic (SACU) market and that factors like pricing structures etc. should not play any part in consideration of an anti-dumping application.

It stated that to equate functions of "price" to "poor performance" that apparently contributed in the recommendation that a causal link existed between dumping and injury represented a significant departure from the interpretation of the Anti–Dumping agreement around the world.

2.2 Reference to "subsidized imports"

The Applicant stated that it did not refer to subsidized imports in the Application, or in any subsequent comments or in the documents submitted as part of its oral presentation of the application. It stated that mention was made by some of Applicant's management to the Commission during the oral presentation that it is known that in addition to the import of product below domestic prices, some of the respondents concerned in the investigation were also subsidized by their respective Governments. It stated that it however appreciated that this application only refers to an anti-dumping investigation and not a subsidy investigation as such.

2.3 The Failure of the Commission to Follow WTO Precedents

It stated that in the essential facts letter, it was stated that the Commission was of the opinion that as it was not required, it was not stated under each causal link factor whether it detracted from the causal link.

The Commission was once again referred to the WTO's Appellate Body decision in *US –Hot Rolled Steel.* The Appellate Body dealt with the so-called "interpretive approach" followed by the Panel and adopted by a previous panel in United States- Atlantic Salmon Anti-Dumping Duties. The Panel (in US Hot Rolled Steel) stated:

> **"[t]he non-attribution language] did not mean that, in addition to examining the effects of imports under Article 3.1,3.2 and 3.3, the USITC should somehow have identified the extent of injury caused by these other factors from the injury caused by the imports from Norway"**

It stated that it was apparent that the Commission followed the exact approach and interpretation in their finding in this investigation as evidenced in the essential facts letter.

However, it stated that the Appellate Body clearly stated the following in so far as this approach was concerned:

> *"It is clear to us that the interpretive approach adopted by the panel in United States Atlantic Salmon Anti-Dumping Duties is at odds with the interpretive approach for Article 3.5 of the ADA that we have just set forth. As we said, in order to comply with the non-attribution language in that provision, investigating authorities must make an appropriate assessment of the injury caused to the domestic industry by the other known factors, and they must separate and distinguish the injurious effects of the dumped imports from the injurious effects of those other factors. This requires a satisfactory explanation of the nature and extent of the injurious effects of the other factors, as distinguished from the injurious effects of the dumped imports. However, the panel in United States- Atlantic Salmon Anti-Dumping Duties, expressly disavowed any need to "identify" the injury caused by the other factors. According to the Panel such separate identification of the injurious effects of the other causal factors is not required."* (Emphasis

added)

It stated that the Appellate Body proceeded to emphasize the requirements to separate and distinguish between the factors and to provide a satisfactory explanation of the nature and extent of the injurious effect of the other factors as distinguished from the injurious effects of dumped imports. It stated that the Commission with respect failed to consider the impact of the various factors identified to detract from a causal link finding which did not satisfy the requirements of the Anti-Dumping Agreement.

It stated that the Commission clearly failed to provide such satisfactory explanation of the nature and extent of the injurious effects of the other factors as distinguished from the injurious effects of the dumped imports. The Commission failed to explain the factual basis and reasoning that supports the reasoning. The Commission with respect stated conclusions without supporting reasoning or factual basis, which made it impossible to establish the linkages between information obtained and the conclusions drawn.

2.4 Importers Evidence and Correspondence

Applicant firstly wished to draw the attention to the fact that the Commission's approach in the essential facts letter indicates that:

- The Commission accepted the unsubstantiated allegations of the importers but fail to state or provide reasons in the Preliminary Report why the opposing evidence adduced by the Applicant were apparently rejected *in toto*. It is to this end necessary to draw attention to the fact that the "evidence" adduced by the Respondents by enlarge comprises of statements made after initiation of the investigation, purposefully prepared to create the impression that Applicant's poor performance detract from a finding that dumped imports caused injury to the Applicant;

- The Commission relies on information not originally included in the

Preliminary Report such as specific reference to an internal e- mail by Applicant's management, to substantiate a finding of poor performance. This e–mail, as is the case with the other correspondence are taken out of context, refers to an isolated incident and does not demonstrate any pattern of poor performance on the side of the Applicant. The e-mail represents an internal corporate communication document of the Applicant not uncommon in most corporate environments. Management regularly uses this means of communication in order to keep employees alert and conscientious in order to maintain production and performance levels;

- The Commission brushed aside evidence gathered before the initiation of the investigation by Applicant that price advantages are the sole reason for imports as well as evidence of the Applicant's reputation as a reputable producer of the subject goods, without offering any reasons or explanations in the Preliminary Report or the Essential Facts Letter on how opposing evidence was weighed and why Applicant's evidence was rejected;

- The Commission accepted the fact that imports at dumped prices is justified under alleged circumstances of poor performance, contrary to the provisions of anti-dumping legislation.

It stated that it was clear that even if some adverse inferences were warranted, the Commission went much too far and the presence of certain communiqués do not in any way support more general adverse inferences and such overbroad application of adverse inferences were clearly not justified.

2.5 Price Disadvantage

The Applicant submitted that it was not clear from the table how the apparent differences between price disadvantage and the margin of dumping supports the conclusion that factors other than dumping caused the material injury suffered.

It stated that the table was therefore with respect meaningless without disclosing

the relevant factors taken into account to determine the margin of dumping as well as the weights attached to these factors. It was in fact respectfully submitted that Section 17 requires this in the application of the lesser duty rule, which was not in any way reflected in the preliminary report.

It stated that it was lastly significant that if the factors in the preliminary report identified to detract from a finding of a causal link between dumped imports and injury were already discounted in the difference between price disadvantage and margin of dumping as implied in the paragraph, the Commission was obliged to follow previous precedent. It stated that in the *Optical Fibre Cable* case the then Board of Trade Tariffs found that no reasons existed not to impose the anti-dumping duties, after all the factors which might detract from a finding of causality between dumping and material and injury, had already been discounted.

2.6 Paragraph 20

The approach of the Commission with respect once again iterated the inconsistencies referred to above. The Commission stated that "*The Commission further confirmed that no factor, other than those listed in the report were considered by the Commission*" It stated that the discrepancy was apparent if account was taken of the fact that the Commission in this paragraph, stated that <u>all comments</u> received from interested parties were taken into account, obviously including comments and evidence not included in the report.

3. Other

3.1 Applicant wished to express its concern with the fact that the essential facts letter did not address the issue of imports, identified as one of the factors that detract from a causality finding. It stated that clear evidence was adduced that of the three market sectors concerned, it was the after market sector which declined significantly. It stated that the fact that imports over the period increased by nearly 3000 tons indicated that the loss of Applicant's business was due mainly to import substitution and

not as a result of strengthening of the Rand.

3.2 The Applicant noted the amendments to the anti-dumping and countervailing duty findings which forms part of the essential facts letter and for the reasons above noted respectfully requested the Commission to impose the anti-dumping duties.

3.3 Poor Service

It stated that it must be noted that the complaints of poor service were unsubstantiated complaints from importers, and such complaints were not uncommon to all importers. A number of complainants were frank enough to state price as a reason for poor performance. The Applicant had no record of such poor service. Those complaining should provide written proof of such poor service, as no prior complaints were received by the Applicant.

The Applicant was the recipient of a number of customer supplier awards and delivery performance was a major contributing factor to the attainment of these awards. The Applicant could not have been the recipient of several awards if our services were poor. It stated that you simply do not win awards on poor service.

The Applicant stated that it was restricted to a single source local steel supplier. The delivery lead-time for material from the South African steel supplier was 3 months from receipt of order. The Applicant endeavoured to hold the maximum possible stock at any one time to satisfy customer demand. However, should there be a requirement for a new product type or a sudden increase beyond the norm for existing products, the Applicant was compelled to fall in line with the 3 month raw material delivery lead time. It stated that in this scenario the Applicant would only be able to deliver product within a 3-month delivery period. This should with respect not be viewed as poor delivery service by the Applicant, but a restriction placed upon the Applicant by its sole supplier.

3.4 Effect of Dumped Imports on Applicant's Business

The Applicant stated that the Commission had confirmed that dumping of wheels was taking place at dumping margins of up to 42.5 per cent.

The Applicant stated that it was currently unable to compete on a level playing field with these dumped products. This had already resulted in the sale of the Heidelberg Wheels operation to a foreign owner on 1 April 2005. The economic viability of the remaining two wheel plants in Port Elizabeth and Rosslyn was now at stake.

It stated that significant job losses had already taken place over the past year. Current employment levels of 500 employees were again being reviewed and further job losses would take place under the current circumstances.

It stated that the closure of the Applicant would also result in the loss of a key industry, which was established in 1962. Due to the high capital investment, if the wheel-making business was lost, it would be very difficult to re-establish.

The Applicant stated that it had shown their commitment to the future by investing over the past twelve months a capital investment of R35million. This would ensure that the Applicant had the manufacturing capability to compete with other world-class wheel manufacturers on an equal basis. This investment would come to nothing if the playing fields were not leveled by stopping the importation of dumped product.

4. Conclusion

Applicant in conclusion submitted that:

- The essential facts letter contained some serious inconsistencies and discrepancies on what factors the Commission took into account in making its recommendation that a lack of a causal link exists between dumped imports

and material injury suffered by the Applicant;

- The Commission failed to follow WTO Appellate Body precedents in this regard and specifically to provide a satisfactory explanation on the injurious effects of the other factors in comparison to the injurious effects of the dumped imports;

- The Commission failed to explain on what grounds evidence submitted by the Applicant and Respondent was rejected or accepted and how the Commission weighed this evidence.

In view of the above, the Applicant submitted that the Commission reconsidered its proposed recommendation.

Applicant further wishes to reserve all its rights in this matter and failure to comment on certain aspects of the Essential Facts letter should not be construed as acceptance thereof.

Comments submitted by WWB

The following comments were submitted by WWB:

It stated that in relation to the essential facts letter, it referred to their letter to the Commission, in which it pointed out that section 17 of the lesser duty rule did not assist the Applicant's case and was irrelevant to causation. In terms of Section 1 of the Regulations. "lesser duty" meant the provisional payment or anti-dumping duty imposed at the lesser of the margin of dumping or the margin of injury and which was deemed to be sufficient to remove the injury caused by the dumping. It stated that Section 17 of the Regulations required the Commission to consider applying the lesser duty rule if both the corresponding importer and exporter had co-operated fully in order to reward them for their co-operation, although there was no obligation on the Commission to apply the lesser duty. It stated that the lesser duty rule did not mean that the injury caused by the dumping should not be

material or that causation did not have to be proved. It stated that in the present circumstances, the Commission was considering confirming its preliminary determination that factors other than dumping sufficiently detracted from the causal link between dumping and injury. In this context, Section 17 of the Regulations was not relevant.

It submitted that, in light of the fact that the investigation was an anti-dumping investigation and not a countervailing investigation, any allegations of subsidization of the imported products were irrelevant.

It stated that with the exception of the dumping margins in respect of Borlem, Jantas and Maxion, which it dispute, in its view the findings of the Commission were correct and it supported the Commission's conclusion and proposed final determination.

7. INFORMATION PRESENTED TO THE COMMISSION DURING ORAL HEARINGS BY WWB AND THE APPLICANT

7.1 General

On 17 November 2004, WWB on behalf of its clients, Jantas, Borlem and Maxion addressed the Commission during an oral hearing on the irregular initiation of the investigation, with regard to the import statistics, the export prices and the injury information submitted.

WWB indicated that the Commission had insufficient evidence to initiate this investigation and that their clients had been prejudiced thereby, the import statistics did not provide any evidence of the export price of the imported products to prove dumping nor of injury and the assumptions underpinning the model used by the Applicant to interpret the import statistics were not substantiated by documentary evidence and amounted to nothing more than mere speculation and conjecture. In light of this, the model therefore did not remedy the defect in the statistics.

WWB stated that the Applicant did not in its injury information distinguish the like products in respect of which they had suffered injury (if any) from its other products and the specific market in respect of which they had suffered injury (if any). The injury information did not in particular distinguish between the Applicant's export market, OEM market and the aftermarket.

Complete details of the issues presented during the oral hearing were included in the Commission's preliminary report. (Report No. 96)

In response to the comments made by WWB during its oral presentation and other comments submitted with regard to the investigation, the Applicant submitted a comprehensive memorandum. The Commission was not duplicating these issues in

its final report, but complete details were available in Chapter 8 of the Commission's preliminary report. (Report No. 96)

WWB stated that the Commission should disregard the Applicant's memorandum, as the ADR did not contemplate a submission in the nature of the Applicant's reply and requested the Commission to clarify the legal status of the Applicant's reply. They also stated that the investigation was initiated on the basis of the Applicant's application to the Commission and that, accordingly, the onus of providing sufficient evidence to prove a *prima facie* case that the alleged dumping of the steel wheels had caused the alleged injury to the Applicant rested with the Applicant. They contended that the Applicant had failed to discharge the onus and that the investigation was improperly initiated and should accordingly be terminated forthwith. They stated that their clients had demonstrated the existence of other factors that had caused the Applicant to suffer injury and that the Applicant had not denied this.

The Commission decided that the information and comments submitted by the Applicant after the initiation of the investigation would be taken into consideration by the Commission for purposes of its preliminary and final determinations, as all comments and information submitted within the prescribed time-limits would be considered by the Commission.

The following were details of the oral representations by CLS and WWB to the Commission on 4 May 2005, in response to the Commission's preliminary report.

7.2 Oral representations by CLS on behalf of the Applicant

On 4 May 2005, CLS addressed the Commission orally on the following:

1. Introduction

The Applicant challenged the Commission's decision that factors other than dumping was causing injury to the industry and that these factors sufficiently detract from the

causal link between the dumping and material injury. The Applicant submitted that the decision was by nature erroneous and should never have been made for the reasons hereinafter stated.

In this regard, the Applicant wished to make special reference to:

- The failure by the Commission to apply the required standards of review and to separate and distinguish between the factors alleged to be the cause of Applicant's injury in terms of Section 16.4 of the Anti-Dumping Regulations and Article 3.5 of the Anti–Dumping Agreement;

- Insufficient factors were identified in the preliminary report to justify the Commission's conclusion that the presence of these factors warranted an impugned conclusion that it sufficiently detracted from the causal link between dumped imports and the material injury suffered by the Applicant.

2. The Standard of Review

2.1 Regulatory Provisions

Section 16.4 of the Anti-Dumping regulations compelled the Commission to determine whether there was a causal link between dumping and material injury.

It stated that it was important to note that it was not required from any applicant to prove that dumping was the only or even the major cause of the material injury.

It stated that it was also no coincidence that Section 17 of the Regulation provides:

> "The Commission shall consider applying the lesser duty rule if both the corresponding importer and exporter have cooperated fully"

The Applicant acknowledges that the Anti-Dumping Agreement as well as the Regulations did not contain real guidance on how to evaluate the information concerning causal link, nor does it provide for any particular methodology. *Judith Czako & Others "A Handbook on Anti-dumping Investigations"* page 355:

> "... investigating authorities are free to access the relevant information and draw their conclusions on the basis of whatever reason or method they consider appropriate".
>
> It is however emphasized by the writer that, specifically in view of the lack of specific guidance, "[that] ... it is critical that the analyses be clearly set out and explained in the written determination, in order to establish the linkages between the information obtained and the conclusions drawn"

The provisions of Section 16.5 of the Anti-Dumping Regulations by enlarge originated from the wording of Article 3.5 of the Anti-Dumping Agreement. Interpretation of this provision by WTO Panel and Appellate Bodies set precedent for the interpretation of Section 16.5. It was in this regard also significant that the report in fact did not refer to the provisions of Section 16.5 at all, but only to Article 3.5 of the Anti-Dumping Agreement.

WTO Panels and the Appellate Body interpreted Article 3.5 to require an investigating authority to separate and distinguish the injury caused by such other known factors from the injury caused by dumping. It referred the Commission to the EC – Tube and Pipe Fittings Case of the Appellate Body.

The requirement that a satisfactory explanation be given of the nature and extent of the injurious effects of the other factors as distinguished from the injurious effects of dumped imports was underscored by WTO Appellate Body decisions.

The EC Tube and Pipe Fittings case (Ibid) referred to the enormously important case of United States-Anti Dumping Measures on certain Hot Rolled Steel Products from Japan (Appellate Body Report 24 July 2001). The Appellate Body in par.225 of the decision rejected the finding of the Panel that followed the Panel decision in United States-Atlantic Salmon Anti-Dumping Duties:

"... [the non-attribution language] did not mean that, in addition to examining the effects of the imports under Articles 3.1,3.2 and 3.3 , the USITC should somehow have *identified the extent of injury caused by these other factors* in order to *isolate* the injury caused by these factors from the injury caused by the imports from Norway." (emphasis added)

The Report further (par. 226) stated:

"As we said, in order to comply with the non-attribution language in that provision, investigating authorities must make an appropriate assessment of the injury caused to the domestic industry by the other known factors, and they must separate and distinguish the injurious effects of the dumped imports from the injurious effects of those other factors. This requires a satisfactory explanation of the nature and the extent of the injurious effect of the other factors as distinguished from the injurious effects of the dumped imports. However, the panel in United States –Atlantic Salmon Anti-Dumping Duties, expressly disavowed any need to 'identify' the injury caused by other factors. According to the panel such separate identification of the injurious effects of the other causal factors is not required"

Par. 228 of the Appellate Body decision continued:

"We recognize, therefore, that it may not be easy, as a practical matter, to separate and distinguish the injurious effects of different causal factors. However, although this process may not be easy, this is precisely what is envisaged by the non-attribution language. If the injurious effects of the dumped imports and the other known factors remain lumped together and indistinguishable, there is simply no means of knowing whether injury ascribed to dumped imports was, in reality, caused by other factors. Article 3.5 therefore, requires investigating authorities to undertake the process of assessing appropriately, and separating and distinguishing, the injurious effects of dumped imports from those of other known causal factors"

It is clear from the wording of Article 3.5 that the Commission must demonstrate an explicit separation and distinction between the various factors, found to affect the causal relationship. Such analysis did not appear in this report as indicated hereunder. A useful analytical tool set forth in US-Steel (U.S. – Definitive Safeguard Measures on Imports of Certain Steel Products (Panel Report, 2 May 2003) was to determine whether there was a correlation between an increase in targeted imports and any

alleged material injury experienced by the domestic industry. On examination of the trends in import volumes and charting those against the various indicia of industry performance, it was demonstrated by applicant that a definite correlation exists between the injury suffered by the applicant and the increase in imports of steel wheel rims at dumped prices. The panel further in US Steel Safeguard suggested that only where the correlation was not clear, an investigating authority had to analyse and distinguish between the other factors and imports.

In the final analysis, Section 16.5 and Article 3.5 did not allow for any short cuts based on generalised and unsubstantiated evidence. The Report should identify and quantify all factors considered to have an effect on causality.

The Commission noted the Applicant's reference to Section 17 with regard to the causal link. The Commission decided to request the Applicant to indicate the relevance of Section 17 of the Anti-Dumping Regulations in this context.

2.2 Analysis of the Preliminary Report to determine compliance with required standard of review

The Report refers to the factors identified as relevant in terms of Section 16.5. The report did not reflect any substantive finding in so far as these factors might be concerned by the Commission, but only continued to reflect data and facts submitted by the parties in the investigation.

The preliminary report thereafter continuous to reflect the viewpoints of the respective parties and without deliberation on the merits of the respective viewpoints took the position under the heading "Conclusion on Causal Link" that the presence of alleged injurious factors, detract from a finding that a causal link existed between the selling of dumped product and the material injury suffered by the applicant. To this end the specific conclusion reached in the Report was:

> "After considering all relevant factors and all the comments received from interested parties, the Commission decided that there are other factors than dumping, that sufficiently

detracted from the causal link between the dumping and material injury"

The report failed to make any substantive or quantified findings in so far as the allegedly injurious factors might be concerned. The report reflected the viewpoints of the respective parties in length without reflecting the Commission's viewpoint and findings in so far as these factors may be concerned. To this end note needed to be taken of the following;

(a) The report on p.134 under the heading "Conclusion on Causal Link" stated in par.6.9 "The Commission, in making its finding on causal link, took the following into account;"

This clearly implies the likely presence of factors other than those listed in the remainder of the paragraph, which suspicion was confirmed if account was taken of the factors listed as considered in the "Summary of Findings" at the end of the report.

(b) The report proceeds to address the Applicant's export performance. This was then followed by a paragraph under the heading "Poor service to domestic customers". This paragraph concentrated on alleged factors of poor performance but also included factors such as "pricing structures", "purchase volume discrimination" [and] "continuous change in pricing." These factors were clearly not related to or associated with "poor performance" as more fully discussed hereunder.

(c) A further concern was the fact that it was stated in the beginning of the paragraph that "The Commission noted comments received from importers of the subject product ..." The vague unassertive approach of the Commission left doubt to what extent these factors were taken into account and what other factors were as such "noted" by the Commission and what was meant with the term "noted" in context of the report. Did the term "noted" imply a definitive finding on the side of the Commission accepting the allegations of importers and rejecting the responses of applicant or merely that the Commission took

notice of the factors?

(d) The final paragraph of 6.9 "Conclusion on Causal Link" unfortunately added to the confusion by stating

> "After considering all relevant factors and all the comments received from interested parties, the Commission decided that there are factors other than dumping, that sufficiently detracted from the causal link between the dumping and material injury."

It was once again not clear whether the paragraph referred to factors other than those listed in 6.9 namely export performance and poor service, or to factors not listed in the report at all.

(e) Further to the aforementioned in the Summary of Findings the following were recorded in so far as the presence of a causal link may be concerned;

> "The Commission considered all the comments received from interested parties and decided that there are other factors than dumping including the applicant's export performance, poor service to domestic customers and the strengthening of the Rand, that sufficiently detracted from the causal link between the dumping and the material injury."

It could, in sum, reasonably from the aforementioned, be concluded that:

- The list of factors referred to above was not exhaustive and as noted in par 10.4 of the report "there are other factors than dumping...." that was considered by the Commission;

- No information on the analysis or quantification of the methodology followed as required by the Appellate Body , which resulted in the finding of no causality, was included in the report. The report has appeared to rely on inferences, which lack proper factual basis.

2.3 Summary on Standard of Review findings

It is in sum clear that the Anti-Dumping Regulations as well as the Anti-Dumping Agreement require from an investigating authority a satisfactory explanation of the nature and extent of the injurious effects of the other factors, as distinguished from the injurious effects of the dumped imports.

The Commission in its determination identified certain factors other than subsidised imports that were potentially causing injury to the applicant including poor export performance, the strengthening of the Rand and the poor service levels of the Applicant. The Commission however did not disclose any other factors in its report.

These factors were further improperly assessed without reasoned and adequate explanation in a clear and unambiguous way. It was clearly not sufficient to merely imply or suggest an explanation, as the finding must be a straightforward explanation in express terms.

The Commission failed in its obligation to separate and distinguish injury caused by these other factors and the Commission did not go beyond stating conclusions in its determination as required by WTO precedent. Applicant strongly submits that the report lacks proper reasoning and a factual basis supporting the conclusion reached.

It was also respectfully submitted that the above approach renders it impossible for applicant to submit meaningful comment on the preliminary report as:

- There might be factors which the Commission have considered of which the applicant was not aware and which were not disclosed in the report;

- The absence of any meaningful analysis on how the Commission came to its conclusion, prevented meaningful comment by the Applicant;

The Commission noted the Applicant's reference to "subsidized imports". The Commission requested that the Applicant elaborate on the reference to "subsidized

imports", as it was not clear why the Applicant was referring to "subsidized imports" in an anti-dumping investigation.

The Commission confirmed that all the factors considered by the Commission were included in the preliminary report. The Commission stated that as it is not required, it was not indicated under each causal link factor whether it detracted from the causal link. The Commission, however, confirmed that in the conclusion, it was indicated which factors were considered by the Commission to sufficiently detract from the causal link.

3. Analysis of factors considered by the Commission

3.1 Introduction

Applicant disclosed in the Application for Remedial Action against the imports of dumped products that distinctive marketing channels exist. These were the export market, the after market, the original equipment market and parts and accessories. Applicant in fact, in its initial application, did distinguish between the respective sectors which application was however turned down in terms of Section 22 of the Regulations.

Applicant was after discussion with the Commission officials advised to show its consolidated financial data in the Application, which incorporated export, original equipment and after market data in consolidated format in accordance with applicant's financial reporting practice.

3.2 Decline in exports as a result of the strengthening of the Rand

Applicant acknowledged from the time of initiation of the investigation that the export sector suffered profitability losses unrelated to the influx of dumped imports. The original equipment sector was also not affected by the imports of dumped products. The sector that suffered substantially from the influx of dumped products was identified as primarily the after market sector.

3.3 Poor Service to Domestic Customers

The Applicant submitted that the Commission completely ignored the significance of the fact that substantiated evidence was adduced at the verification of data as well as in the application itself of the Applicant's registration and standing as a reputable producer of subject goods. The undue and improper weight attached to isolated incidents of complaints by importers, who obviously cannot be objective in their approach, was improper and did not represent a finding based on positive evidence, as required.

Positive evidence, which must be considered, must include all of the relevant evidence, and not just some evidence. To this end, the Applicant submitted evidence of the fact that the company has been in business for 43 years and has established a reputable and respected name amongst its long-standing clients.

Information orally presented at verification during the plant visit to Applicant's advanced testing facility indicated that customer returns amount to less than 1 per cent of annual sales. This excellent track record haf been sustained over Applicant's past 43-year history.

It should be remembered that the product concerned, required a very high level of quality in manufacturing, considering the end use of the product. Detail was presented in the Application on the quality controls implemented by applicant that includes the use of "Failure Mode Effect Analysis" "Computer Assisted Design" "Total Manufacturing Control", "Statistical Process Control" and "Calibration Control" in the manufacturing process of the applicant's products. The applicant was further accredited as a manufacturer of wheel rims for most of the major vehicle producers in the world such as Daimler Chrysler, VW, GM, Ford, Toyota and Nissan. All of these manufacturers had very stringent technical and quality requirements for their products. Evidence was presented of the Applicant's international accreditation in terms of ISO 9002, VDA6, TuV and QS 9000 which accreditation was continuously audited under international supervision.

To place undue importance to the complaints received, against the aforementioned background, was inappropriate and inconsistent with obligations of the Commission. It was further apparent that if the characterization of Applicant as an unreliable supplier had indeed been proven, Applicant would have lost its international accreditation long ago.

Ad paragraph 6.9 "Conclusion on Causal Link" of the Report includes under a separate heading "Poor Service to Domestic Customers" a list of factors considered by the Commission. It appeared that the Commission attached a lot of weight to this factor in making their final recommendation and it was therefore necessary to address some of the factors therein listed, to reflect the inconsistency in so far as this was concerned. It was firstly recorded that the Commission's "noted comments" received from importers on the subject product, and it was once again submitted that these comments should have been analysed against the relative rates of complaints and the accreditation and certifying of the Applicant in terms of International quality standard requirements, as set out in the application.

It was also unclear to Applicant how factors like "pricing structures" and "purchasing volume discrimination" and "continuous changing pricing into the market" could indeed be regarded as elements of a "poor service." This simply implied that where an importer could not agree on a price or on a discount or did not like a change in a price for subject goods, it was impliedly tantamount to "poor service", which in turn apparently warranted imports of the product concerned at dumped prices by importers. The aforementioned factors were clearly factors of market supply and demand and to attribute a price difference as a reason for not granting it relief, was not only patently unfair, but defied the reality of any market situation.

No rationale was once again provided why such a finding was made on these factors by the Commission and a consequence of these factors were that parties would be entitled to import in future, should they not find the domestic price arrangements acceptable. The Applicant acknowledged that as was done in its responses that certain exclusive products were not manufactured by Applicant as it had very limited

application in South Africa, or that there might from time to time be delays in the supply of certain line of product, mostly due to the fact that a prospective client had not timeously advised the Applicant of its future requirements or due the three month delivery lead lines from the exclusive South African steel producer. However, an objective assessment surely required that the quality of the evidence under discussion be evaluated against all relevant factors. The subjective approach followed by the Commission, ignored this requirement. It was apparent that the Commission did not fully address the nature and the complexities of the data and failed to accept plausible interpretations of the data as submitted by the Applicant.

4. Effect of Dumped Imports on Applicant's Workforce

It was necessary that note be taken of the effects other than the material injury suffered by Applicant as a result of the influx of dumped imports. To this end, the Applicant, one of the oldest employers in the Port Elizabeth area, had been forced to continually cut on its workforce. The anticipated employee rationalisation referred to in the application had since unfortunately be realised and the decision of the Commission to be taken herein, might have an adverse effect on the livelihood and future of the Applicant's employees. The employees had requested that this fact be brought to the attention of the Commission.

5. Conclusion

For the foregoing reasons the Applicant submitted that the Commission acted inconsistently with its obligations under Section 16.4 of the Anti-Dumping Regulations and Article 3.5 of the Anti-Dumping Agreement. Through its failure to separate and distinguish factors determined to detract from the causal link between dumped imports and material injury, the Applicant had been prejudiced. The Commission's further failure to disclose and quantify all the factors which influenced their decision and which were "noted" by the Commission was clearly inconsistent with both the requirements of administrative fairness with required statutory obligations.

The conclusion that factors like the strengthening of the Rand and poor service

performance sufficiently detracted from causal link to exclude the effect of substantive imports at hugely dumped prices was egregious.

The Applicant submitted that the issue had been going on for a considerable time and at a significant loss of employment. The Applicant had also endured substantial losses during this period. A conclusion was urgently needed to prevent further losses.

The Applicant respectfully requested the Commission to reconsider their decision and to find that dumped imports were the cause of the material injury suffered by the Applicant.

7.2 Oral representations by WWB on behalf of its clients

On 4 May 2005, WWB, on behalf of Jantas, Borlem and Maxion address the Commission during an oral hearing on the following:

G Brink was incorrect insofar as he seems to suggest the injury caused by the dumped imports need not be material. In order to establish dumping duties, it was not sufficient merely to show that the dumped imports contributed to the material injury as was suggested by the author, but plain language of Article 3.5 demanded that it must be demonstrated that the dumped imports were causing the material injury. The very purpose of other factors from the injurious effects of the dumped imports was to precisely determine whether the dumped imports were causing the material injury.

Section 17 of the Regulations dealing with the lesser duty rule did not assist the Applicant's case. In terms of the definition of the lesser duty rule in the Anti-Dumping Regulations, lesser duty meant the provisional payment or anti-dumping duty imposed at the lesser of the margin of dumping or the margin of injury and which was deemed to be sufficient to remove the injury caused by the dumping. It did not mean that the injury caused by the dumping should not be material. There was moreover no obligation on the Commission to apply the lesser duty rule that was established only in order to reward an importer and exporter who have co-operated fully. In terms of the

Anti-Dumping Agreement, the authorities were entitled to impose the full margin of dumping but authorities were in terms of the Anti-Dumping Agreement permitted to impose a lesser duty rule if such lesser duty would be adequate to remove the injury to the Domestic Industry (Article 9.1).

It was submitted that the Commission correctly followed the procedures set out above.

WWB stated that they agree that in terms of the EC- Tube and Pipe Fittings Case, the Appellate Body required the separation and distinction of the injurious effect of other factors from the injurious effect of the dumped products. This supports their contention that after having effected such separation, the dumped imports must be shown to have caused the material injury.

WWB stated that it was also true that, as was stated by the Appellate Body, in that case that if the injurious effect of the dumped imports were not appropriately separated and distinguished, the authorities would be unable to conclude that the injury ascribed to dumped imports was actually caused by those imports rather than by other factors and the authorities would have no rational basis to conclude that the dumped imports were indeed causing the injury which under the Anti-Dumping Agreement justifies the imposition of anti-dumping duties. It was stated that to the extend that the authorities had been unable to separate and distinguish the injurious effects of the dumped imports from other factors, causation would not have been established and no dumping duty could be justified.

Analysis of the Preliminary report to determine compliance with the required standard of review

It was stated that the Commission in its report appears to consider at the first stage, as it was required to do, the evidence available to it in an attempt to demonstrate the causal relationship between the dumped imports and the material injury. It was stated that the Commission, however, erred in concluding at the first stage that it was demonstrated that the dumped imports were, through the effects of dumping, causing

injury within the meaning of the Anti-Dumping Agreement. It was stated that the Commission erred in failing to take into account at the first stage the following:

- the unreliability of the import statistics;
- the failure of the Applicant to distinguish between:
  the export market;
  the original manufacturing market (OEM); and
  the after market or replacement market (parts and accessories markets).

It was stated that had the Commission properly taken into account the above factors, it would at the first stage of the enquiry found that the Applicant had failed to demonstrate that the dumped products were, through the effects of dumping as set forth in Articles 3.2 and 3.4 of the Anti-Dumping Agreement causing material injury.

WWB stated that the Commission quite correctly, as it was required to do so, proceeded at the second stage of the enquiry to consider any known factors other that the dumped imports, which at the same time are injuring the domestic industry. These factors include:

- The volume and price of imports not sold at dumped prices;
- Competition between domestic producers;
- Developments in technology;
- Contraction and demand of changes in the patterns of consumption;
- Export performance;
- Trade restrictive practices;
- Productivity of the domestic industry;
- Detailed comments by them on the causal link;
- Public statements of the Applicant's group in relation to its financial performance; and
- Comments from importers and other interested parties.

It was stated that the Commission found at the first stage of the enquiry of the causal

relationship between the dumped imports and the material injury (which they say was incorrect), but had found correctly that there were other factors other than dumping that sufficiently detracted from the causal link between the dumping and material injury, i.e. that the other factors broke the causal link that appeared to exist between the dumped imports and material injury found by it to exist at the first stage.

Analysis of factors considered by the Commission

The respondent noted the admission of the Application of the following markets:

- the export market;
- the after market;
- the original equipment market; and
- parts and accessories markets

which were properly identified by the Respondents in their injury analysis and other documents submitted to the Commission.

The Respondents stated that it had always been their case that the injury information submitted by the Applicant did not distinguish between these types of markets and that was a fundamental flaw in its application. The Respondents had no knowledge of what the initial application contained and what the Commission advised the Applicant.

Decline and exports as a result of the strengthening of the Rand

The Respondents noted the admission by the Applicant that:

- the export sectors' loss was unrelated to the influx of allegedly dumped imports;
- the original equipment sector was also not affected by the imports of allegedly dumped products;
- the sector that suffered substantially for the influx of dumped products was identified primarily as the after market sector.

It was stated that these admissions supported the Respondent's view that:

- the Applicant's application should have distinguished between these different markets and that the Applicant has failed to prove that the dumping caused material injury,
- the original equipment market was irrelevant to the investigation.

In the injury memorandum submitted in July 2004, the Respondents complain "having recognised the distinction in these markets, the Applicant, does not deal with these distinctions in its injury analysis. The Injury analysis is fundamentally flawed for this reason alone" (Paragraph 3.2). WWB stated that in terms of paragraph 35.4 of the Anti-Dumping Regulations, it was not open to the Applicant to submit new information as it had sought to do so and that the Commission should accordingly ignore the information. It was also stated that the information did not comply with the confidentiality provisions and that the data was susceptible to indexing and should have been indexed in an order to permit the Respondents a reasonable understanding of the substance of the information. It was stated that under the circumstances, the Respondents were unable to comment on the information furnished by the Applicant.

Poor service to domestic customers

It was contended that the Commission properly attached due weight to the complaints of importers who independently submitted comments in concluding that those complaints sufficiently detracted from the causal link from dumping and material injury and accordingly the Commission acted rationally in the circumstances.

The Respondent contended that the Commission properly determined that the investigation should be terminated and that the determination should be made final.

8. CONCLUSION ON CAUSAL LINK

The Commission confirmed that all comments and factors taken into consideration by the Commission in determining the causal link were included in the preliminary report. The Commission further confirmed that no factors, other than those listed in the preliminary report, were considered by the Commission. The Commission indicated that detailed information was available on the public file. The Commission, therefore, indicated that it should be clear to the Applicant which factors were considered by the Commission.

The Commission, in making its finding on causal link, took the following into account:

Applicant's export performance

The Commission noted that the Applicant's export sales decreased by 33 index points from 2000/2001 to 2003/2004. The Commission also noted WWB's comments regarding the Applicant's export strategy, which was considered to be at the expense of the SACU aftermarket, leaving them no choice but to find alternative suppliers outside SACU. WWB also stated that when the Applicant's export sales were high, the local market was starved of product. The refocus by the Applicant on the domestic market, it is claimed, was because of its loss of sales on the export market.

Poor service to domestic customers

The Commission noted comments received from importers of the subject product. Comments included issues regarding long delays in delivery, poor supply, some products not manufactured by the Applicant, pricing structures, purchasing volume discrimination, inconsistent stock levels, continuous change in pricing into the market and unavailability of brand identity.

The Commission confirmed that the importers submitted evidence, and correspondence with the Applicant, of the problems experienced with the Applicant's service and even an e-mail from the Applicant itself to its relevant division, indicating that it should make sure that delivery is on time.

Price disadvantage

The following table compares the price disadvantage experienced by the SACU industry with the margin of dumping:

	Price disadvantage	Margin of dumping
Borlem	**82.2%**	**39.3%**
Jantas	**95.7%**	**9.1%**
Maxion	**107.4%**	**42.5%**
Ningbo	**56.9%**	**2.5%**

In comparing the price disadvantage with the margin of dumping, the Commission found that this indicates that the factors other than the dumping of the subject product caused the material injury suffered by the SACU industry.

After considering all relevant factors and all the comments received from interested parties, the Commission made a final determination that there were other factors than dumping, that sufficiently detracted from the causal link between the dumping and the material injury.

9. CONFIDENTIALITY OF INFORMATION

In response to the questionnaires submitted by the importers and exporters, the Applicant submitted that certifying without discrimination of all numerical data as confidential and due to the fact that it is in numerical format, not subject to summarisation, defies the whole purpose for submitting a non-confidential questionnaire response.

The Applicant stated that it is unable to submit any meaningful comments and wish to advise that numerical data can be summarised in indexed format, which would have allowed a more meaningful analysis of the non-confidential response. To this end the Applicant wishes to draw attention to *Gustav F Brink: Anti-Dumping and Countervailing Investigations in South Africa* on p188:

> *"In so far as confidentiality is concerned, it is not deemed sufficient to include a blanket statement that all omitted information is confidential on the basis that it would grant other parties a competitive advantage. If the confidential information is not susceptible to summarization, reasons should be supplied in each case."*

The Applicant stated that the Respondents in this matter clearly applied a blanket qualification to each and every number incorporated into the questionnaire response and tried to justify this by a further statement that the numerical nature of the data prevents summarization thereof.

The Applicant stated that Article 6.5.1 of the Anti-Dumping Agreement requires that summaries be provided of all confidential information required. These summaries are to be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. Only in exceptional circumstances may parties indicate that such information is not susceptible of summary and in such event a statement of reasons why summarization is not possible must be provided. The abuse of the confidentiality constraints by the Respondent by certifying without exception all numerical data as confidential and not as an exception was clearly not contemplated by the WTO and defies the

whole purpose and rationale for submitting a non-confidential version of the questionnaire response. It has been proven and is common practice by all WTO members to require that numerical data be submitted to indexed format and the applicant complied with this requirement in accordance to directives received.

The Applicant referred the Commission to *Edwin Vermulst and Folkert Graafsma "WTO Disputes Anti-dumping, Subsidies and Safeguard"* which states that the requirement pertaining to the fact that confidential summaries should be in sufficient detail to permit a reasonable understanding represents a very important element of the Anti-Dumping Agreement, which reflects the balance struck by the agreement. On the one hand there is the need to protect the confidential reality of certain information, and on the other hand, the need to ensure that all parties have a full opportunity to defend their interests. It is clear that the certifying of confidential information by the Respondent does not allow the Applicant to defend its interest at all.

The Applicant stated that in view of the above-noted, it is unable to submit any meaningful comments on the non-confidential questionnaire response as such. The Applicant stated that its non–confidential version of the application on the other hand, provides indexed data which allowed the Respondents ample opportunity for analysis, as is evident by the memorandum submitted in support of the Respondents' response.

The Commission noted the Applicant's request that the exporters and importers index its confidential information. The Commission decided that it accepts the exporters' and importers' claims for confidentiality and further noted that it is not meaningful for exporters and importers to index the information submitted for only one year.

10. SUMMARY OF FINDINGS

10.1 Dumping

The Commission found that the subject product originating in or imported from Brazil, the PRC, Chinese Taipei and Turkey was dumped into the SACU market with the following margins:

Exporter	Country of origin	Dumping margin expressed as a percentage of the fob export price
Borlem	Brazil	39.3%
Maxion	Brazil	42.5%
Mangels	Brazil	6.7%
All other exporters	Brazil	42.4%
All exporters	Chinese Taipei	10.5%
Ningbo Yingdahuang Auto Parts Co Ltd	People's Republic of China	2.5%
All other exporters	People's Republic of China	56.0%
Jantas	Turkey	9.1%
All other exporters	Turkey	29.3%

10.2 Material injury

The Commission decided that it would not request the Applicant to split the injury information between the original equipment market and aftermarket, as the products imported are both for the original equipment market and the aftermarket. Therefore, the Commission decided that the injury information should be considered as one market.

The Commission found that the Applicant suffered material injury in the form of price undercutting, price suppression, the decline in output, sales, profit, market

share, productivity, capacity utilization, negative effect on cash flow, employment return on investment and growth.

10.3 Threat of material injury

The Commission decided that the information submitted by the Applicant and the exporters was not sufficient to find that there was a threat of material injury to the SACU industry.

10.4 Causal link

The Commission considered all the comments received from interested parties and decided that there were other factors than dumping, including the Applicant's export performance and poor service to domestic customers, that sufficiently detracted from the causal link between the dumping and the material injury.

10.5 Confidential information

The Commission noted the Applicant's request that the exporters and importers index its confidential information. The Commission decided to accept the Applicant's, exporters' and importers' claims for confidentiality and further noted that it is not meaningful for exporters and importers to index the information submitted for only one year.

11. FINAL DETERMINATION

The Commission made a final determination that the subject products originating in or imported from Brazil, the PRC, Chinese Taipei and Turkey were being dumped on the SACU market and that the SACU industry was suffering material injury.

The Commission however made a final determination that factors other than dumping sufficiently detracted from the causal link between the dumping and the material injury.

The Commission therefore decided to recommend to the Minister of Trade and Industry to terminate the investigation.