

Report No. 118

Investigation into the alleged dumping of cheddar cheese originating in or imported from Ireland: Final determination

The International Trade Administration Commission of South Africa herewith presents
its Report No. 118: **INVESTIGATION INTO THE ALLEGED DUMPING OF CHEDDAR
CHEESE ORIGINATING IN OR IMPORTED FROM IRELAND: FINAL
DETERMINATION**



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PRETORIA

03 June 2005

INTERNATIONAL TRADE ADMINISTRATION COMMISSION

INVESTIGATION INTO THE ALLEGED DUMPING OF CHEDDAR CHEESE ORIGINATING IN OR IMPORTED FROM IRELAND: FINAL DETERMINATION

SYNOPSIS

On 25 June 2004, the International Trade Administration Commission of South Africa (the Commission) formally initiated an investigation into the alleged dumping of cheddar cheese originating in or imported from the Republic of Ireland (hereafter referred to as Ireland). Notice of the initiation of the investigation was published in Notice No.1157 of *Government Gazette* No.26477 dated 25 June 2004.

The Application was lodged on behalf of the Southern African Customs Union (SACU) industry by Milk SA (the Applicant), being the representative body of the majority of producers of the subject product in 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 exporter of the subject product in Ireland was sent a foreign manufacturers/exporters questionnaire 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, causing material injury to the SACU industry as a result.

As the Commission considered that the SACU industry would continue to suffer material injury during the course of the investigation if provisional payments were not imposed, it decided to request the Commissioner for South African Revenue Service to impose provisional payments for a period of twenty-six weeks.

The Commission invited comments on its 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 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, recommended to the Minister of Trade and Industry that the investigation into the alleged dumping of cheddar cheese originating in or imported from Ireland, be terminated.

1. PETITION 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 Milk SA, being the representative body of the majority of producers of the subject product in 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 15 June 2004. The trade representative of the country concerned was advised accordingly.

1.4 ALLEGATIONS BY THE APPLICANT

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

The Applicant alleged that as a result of the dumping of the product from Ireland, the SACU industry was suffering material injury in the form of:

- price undercutting
- price suppression
- increase in inventories
- decline in output
- decline in sales
- decline in market share
- decline in utilisation of production capacity
- negative effect on cash flow

1.5 INVESTIGATION PROCESS

The Commission formally initiated an investigation into the alleged dumping of cheddar cheese originating in or imported from Ireland pursuant to Notice No. 1157 which was published in *Government Gazette* No. 26477 on 25 June 2004.

Prior to the initiation of the investigation, the trade representative of the country concerned was 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 petition.

The information submitted by Clover was verified on 26 and 27 February 2004. The information submitted by Parmalat was verified on 1 March 2004. It was agreed that a new application would be submitted addressing the deficiencies pointed out during the verification. A new updated application was received on 19 May 2004. The information submitted by Pick and Pay Retailers, the Cold Chain, Piemans Pantry and Shoprite Checkers were verified during August and September 2004.

The information of the IDB was verified before the Commission made its preliminary determination. Verification visits were also undertaken in Ireland at Glanbia, Newmarket and Carbery, which are all producers of cheddar cheese.

The Commission made a preliminary determination that the subject product originating in or imported from Ireland is being dumped on the SACU market.

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

The Commission invited comments on its 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 is 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 detract from the causal link between the dumping and the material injury.

The Commission therefore indicated that it is 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 are 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 is being dumped on the SACU market and that the SACU industry is 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, recommended to the Minister of Trade and Industry that the investigation into the alleged dumping of cheddar cheese originating in or imported from Ireland, be terminated.

1.6 INVESTIGATION PERIOD

The investigation period for dumping is from 01 January 2003 to 31 December 2003. The injury investigation involved evaluation of data for the period 01 January 2001 to 31 December 2003.

1.7 PARTIES CONCERNED

1.7.1 SACU industry

The SACU industry consists of various manufacturers of the subject product.

The following producers are affiliated to Milk SA:

- (a) Parmalat Foods SA
- (b) Woodland Dairy

- (c) Lancewood Cheese
- (d) Dairybelle
- (e) Clover SA
- (g) Mooivallei Suiwel
- (h) Creighton Dairy

The following other producers in SACU are not affiliated to the Applicant:

- (a) Stormberg Kaas
- (b) Bospre Dairies
- (c) Best Buy Cheese Co.
- (d) Protos Kaas
- (e) Zandam Kaas
- (f) Fairview Dairies
- (g) Bandini Cheese
- (h) Indezi River Cheese

Parmalat Foods SA and Clover SA represented by the Applicant submitted the information contained in this report. This information was verified by the investigating officers prior to the initiation of the investigation.

1.7.2 Exporters/Foreign Manufacturers

The following exporter responded in full to the Commission's exporters questionnaire:

- (a) The Irish Dairy Board (the IDB)

The consultancy firm International Trade Services (ITS) acts on behalf of the IDB.

1.7.3 Importers

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

- (a) Shoprite Checkers
- (b) Pick and Pay Retailers
- (c) The Cold Chain
- (d) Piemans Pantry

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 IMPORTED PRODUCTS

2.1.1 Description

The subject product is described as cheddar cheese.

The material injury information submitted by Clover and Parmalat pertains only to cheddar cheese. It was indicated that the application is only with regard to the alleged dumping of cheddar cheese and not all cheese imported under tariff subheading 0406.90. The South African Revenue Service, however, indicated that it would not be able to administer anti-dumping duties only on “cheddar cheese”. Therefore, the Commission indicated in its initiation notice that if it finds that cheddar cheese originating in or imported from Ireland is being dumped on the SACU market and causing material injury, it may recommend to the Minister of Trade and Industry to impose anti-dumping duties on all cheese originating in or imported from Ireland, classifiable under tariff subheading 0406.90.

The IDB, the Cold Chain and the European Union Commission objected to the imposition of the provisional payment on all cheeses classified under tariff subheading 0406.90.

The parties indicated that the provisional payments were imposed on a product range broader than the subject product.

The Cold Chain indicated that the provisional payments should only be applicable to mild cheddar and not mature cheddar.

The Commission confirmed that the subject product is “cheddar cheese” and not all cheese imported under tariff subheading 0406.90. The Commission requested the Commissioner for South African Revenue Service to amend the provisional payments imposed on all cheese originating in or imported from Ireland and classifiable under tariff

subheading 0406.90 to apply only to cheddar cheese originating in or imported from Ireland and classifiable under tariff subheading 0406.90, in line with the Commission's preliminary determination and recommendation.

On 10 May 2005, SARS published the amendment to the provisional payments to read as follows:

Subheading	Description of goods	Provisional payment	Imported from or originating in
0406.90	Cheddar cheese imported from the Irish Dairy Board	48.0%	Ireland
0406.90	Cheddar cheese (excluding that imported from the Irish Dairy Board)	60.2%	Ireland

These provisional payments were amended with retrospective effect from 11 February 2005.

2.1.2 Tariff classification

The subject product is classifiable as follows:

Tariff Sub-Heading	Description	Unit	Rate of customs duty		
			General	EU	SADC
04.06	Cheese and Curd:				
0406.90	- Other cheese	kg	500c/kg with a maximum of 95%	500c/kg with a maximum of 95%	Free

2.1.3 Other applicable duties and rebates

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

Rebate Item	Tariff heading	Description	Extent of rebate
460.25	04.06	Minimum market access Cheese (excluding cheddar and sweetmilk cheese)	Full duty less 19%

2.1.4 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 dumped imports from Ireland account for 54.7 per cent of the total imports of the like product during the period of investigation for dumping.

2.1.5 Country of origin/export

The subject product originates in and is exported from Ireland.

2.1.6 Application/end use

The imported product is used for human consumption.

2.1.7 Production process

Cheese-making involves a number of main stages, which are common to most types of cheese. The cheese milk is pre-heated, possibly pre-ripened after addition of a bacteria culture appropriate to the type of cheese, and mixed with rennet. The enzyme activity of the rennet causes the milk to coagulate to a solid gel known as coagulum. This is cut with special cutting tools into small cubes of the desired size – in the first place to facilitate expulsion of whey. During the rest of the curd making process the bacteria grow and form lactic acid, and the curd grains are subject to mechanical treatment with stirring tools, while at the same time the curd is heated according to a preset program. The combined effect of these three actions – growth of bacteria, mechanical treatment and heat treatment – results in syneresis, i.e. separation of whey from the curd grains. The finished curd is placed in cheese moulds of metal, wood or plastic, which determine the shape of the finished cheese. The cheese is pressed, either by its own weight or more commonly by applying pressure to the moulds. Treatment during the curd-making and pressing determines the characteristics of the cheese. Finally, the cheese is coated, wrapped or packed.

2.2 SACU PRODUCT

2.2.1 Description

The SACU product is described as cheddar cheese.

2.2.2 Application/end use

The SACU product is also used for human consumption.

2.2.3 Tariff classification

The SACU product is classifiable under tariff subheading 0406.90.

2.2.4 Production process

Cheese-making involves a number of main stages, which are common to most types of cheese. The cheese milk is pre-heated, possibly pre-ripened after addition of a bacteria culture appropriate to the type of cheese, and mixed with rennet. The enzyme activity of the rennet causes the milk to coagulate to a solid gel known as coagulum. This is cut with special cutting tools into small cubes of the desired size – in the first place to facilitate expulsion of whey. During the rest of the curd making process the bacteria grow and form lactic acid, and the curd grains are subject to mechanical treatment with stirring tools, while at the same time the curd is heated according to a preset programme. The combined effect of these three actions – growth of bacteria, mechanical treatment and heat treatment – results in syneresis, i.e. separation of whey from the curd grains. The finished curd is placed in cheese moulds of metal, wood or plastic, which determine the shape of the finished cheese. The cheese is pressed, either by its own weight or more commonly by applying pressure to the moulds. Treatment during the curd-making and pressing determines the characteristics of the cheese. Finally, the cheese is coated, wrapped or packed.

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 Ireland.

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; and
- (5) customer demand and end use.

(1) Raw materials

Milk is used as the main raw material in both the imported and the SACU domestic products.

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

(2) Physical appearance and characteristics

Both the SACU and the imported product have the same physical

appearance and characteristics.

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 imported and the SACU products are manufactured for human consumption.

In its response to the Commission's exporters questionnaire, the IDB indicated that there are no material differences between the manufacturing processes used by the Irish manufacturers and those used by the SACU manufacturers. It stated that the main material difference is the price of milk. The IDB further indicated that the reason for the increase in imports from Ireland is simple and self-explanatory consumer choice. It stated that this is clearly a case of market preference, in turn dictated by the perceived health benefits of white cheddar cheese as supposed to the coloured cheese produced by the local manufacturers. It stated that the Irish cheddar cheese created a niche market and that there is very little, if any, overlapping between the two segments.

Shoprite Checkers indicated that the physical characteristics of the SACU and the imported cheese are very similar with the imported cheddar being slightly less mature. It stated that it is important for a retailer to show that a range of

products is available in its stores. It stated that the brand “Irish Red Cheddar” assisted especially the Checkers stores with a range statement.

In response to the Commission’s importers questionnaire, the Cold Chain stated that it imported highly priced mature cheddar and not bulk mild cheddar.

In response to the Commission’s importers questionnaire, Pick ‘n Pay stated that the difference between the imported product and the SACU product is that the imported product is uncoloured. It stated that it must offer its customers a range of products and the uncoloured cheddar is not available in commercially viable quantities in South Africa.

In its response to the Commission’s importers questionnaire, the Cold Chain supported the comments from Checkers and Pick ‘n Pay.

After considering all the above factors and comments received from interested parties, as it did in the preliminary determination, the Commission was satisfied that the SACU product and the imported product are “like products”, for purposes of comparison in this investigation, in terms of Article 2.6 of the Anti-Dumping Agreement.

3. SACU INDUSTRY

3.1 INDUSTRY STANDING

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 least 50 per cent by domestic production volume support such application."

The Applicant estimated the total SACU market, as this information is not available.

Based on this information, it was indicated that the output of Clover and Parmalat represented 65 per cent of the total SACU output.

The Commission decided that the application can 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."

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.”

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. ITAC considers that for an adjustment to be allowed, quantifiable and verifiable evidence has to be submitted, and it must further be demonstrated that these differences actually affected price comparability at the time of setting the prices.

4.5 COMPARISON OF EXPORT PRICE WITH NORMAL VALUE

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

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

4.6 METHODOLOGY IN THIS INVESTIGATION FOR THE IRISH DAIRY BOARD IN IRELAND

4.6.1 Normal Value

Type of economy

Ireland 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

Five types of cheddar cheese were exported to SACU by the IDB during the period of investigation. Only two of these types were sold on the Irish domestic market. White and red mild cheddar in 20 kg blocks were sold on the Irish domestic market, while mature cheddar in 250g blocks and white and red mild cheddar in 2.5kg blocks were only exported to SACU and not sold on the Irish domestic market.

Calculation of normal value for white and red mild cheddar in 20kg blocks

The actual sales of the white and red mild cheddar in 20kg blocks were used to calculate the normal values for these products.

It was found that some of the transactions were made at a loss. As these transactions accounted for more than 20 per cent of the sales on the Irish market in volume, the Commission decided that these sales should be excluded from the normal value calculation.

Adjustments to the normal value for the white and red mild cheddar in 20kg blocks

The following adjustments to the normal value were claimed by the IDB 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 for the standard cost of payment terms on the Irish domestic market was made. The standard payment terms on the invoices to the customers were used to calculate this adjustment.

(ii) *Delivery charges*

An adjustment was made for the delivery charges included in the invoice amount, where applicable.

(iii) *Container loading*

An adjustment was made for the container loading costs included in the invoice amount, where applicable.

The Commission usually calculates the ex-factory selling price of the subject product on the domestic market in the exporting country and the ex-factory selling price of the exports to SACU for purposes of calculating the margin of dumping. The Commission decided that the ex-store cost of the IDB be used for purposes of calculating the margin of dumping, as the IDB incurs the same cost from ex-factory to ex-store for both the product sold on the Irish domestic market and the product exported to SACU.

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) *Currency premium*

An adjustment was claimed for the currency premium on the sales in Ireland, which were not invoiced in Euros. The adjustment is based on the interest rate differential between the two currencies involved. Depending on whether the interest rate in the other currency account is higher or lower than on the Euro account, used by the IDB for costing purposes, this adjustment will be positive or negative to the IDB.

Calculation of normal value for white and red mild cheddar in 2.5kg blocks and mature cheddar in 250g blocks

As only white and red mild cheddar in 20kg blocks were sold on the Irish market, the normal values for the other three products were calculated as follows:

(a) Mature cheddar in 250g blocks

The Commission decided to use the weighted average selling price of the white mild cheddar in 20kg blocks as the basis for calculating the normal value.

The Commission decided to make the following adjustments to the selling price of the white mild cheddar in 20kg blocks to calculate the normal value for the mature cheddar in 250g blocks:

(i) Finance cost

An adjustment was made for the finance cost incurred to mature the cheese from white mild cheddar to mature cheddar.

(ii) Storage cost

An adjustment was made for the storage cost incurred to account for the extra weeks, which it takes to mature the white mild cheddar.

(iii) Cutting and packing

An adjustment was made for the cutting and packing of the 20kg blocks into 250g blocks.

(b) Mild white cheddar in 2.5kg blocks

The Commission decided to use the weighted average selling price of the white mild cheddar in 20kg blocks as the basis for calculating the normal value.

The Commission decided to make the following adjustment to the selling price of the white mild cheddar to calculate the normal value for the white mild cheddar in 2.5kg blocks:

(i) Cutting and packing

An adjustment for the cutting and the packing of the 20kg blocks into 2.5kg blocks was made to the actual selling price of the white mild cheddar.

(c) Red mild cheddar in 2.5kg blocks

The Commission decided to use the weighted average selling price of the red mild cheddar in 20kg blocks as the basis for calculating the normal value.

The Commission decided to make the following adjustment to the selling price of the red mild cheddar to calculate the normal value for the red mild cheddar in 2.5kg blocks:

(i) Cutting and packing

An adjustment for the cutting and packing of the 20kg blocks into 2.5kg blocks was made to the actual selling price of the red mild cheddar in 20kg blocks.

4.6.2 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.

To enable a proper comparison with the normal value, the export price should be at the ex-store level and at the same level of trade.

The Commission used the actual export sales to SACU during the period of investigation to calculate the export price. A weighted average export price was calculated for each of the following different types of cheddar cheese exported to SACU during the period of investigation:

- White mild cheddar in 20kg blocks
- Red mild cheddar in 20kg blocks
- Mature cheddar in 250g blocks
- White mild cheddar in 2.5kg blocks
- Red mild cheddar in 2.5kg blocks

Adjustments to the export price

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

(i) *Cost of payment terms*

An adjustment for the cost of payment terms on the Irish domestic market was made to the export price. The standard payment terms on the invoices to the customers were verified and the adjustment is based on these payment terms. The interest rate applicable on the date of the invoice was used to calculate this adjustment.

(ii) *Commission*

The IDB paid commission to two agents in South Africa. The actual payments made to these agents were used to calculate this adjustment.

(iii) *Delivery charges*

An adjustment was made for the sea freight, container loading and carriage to the port when exporting the product.

(iv) *Marine insurance*

An adjustment was made for the marine insurance included in the CIF invoiced price.

The following adjustments, claimed by the IDB, to increase the export prices, were not allowed by the Commission:

(i) *Currency premium*

An adjustment was made for the currency premium, as claimed on the normal value, on the sales, which were not invoiced in Euros. The sales to SACU were invoiced in US\$. The adjustment is based on the interest rate differential between the two currencies involved. Depending on whether the interest rate in the other account is higher or lower than that on the Euro account, as used by the IDB for costing purposes, this adjustment will be positive or negative to the IDB.

The Commission decided not to allow this adjustment as it considered that it did not affect price comparability at the time of

setting the prices.

(ii) *Export refund and interest on the export refund*

The IDB receives an export refund from the European Commission on all exports to destinations other than the EU, including SACU. The amounts of the export refund are published in the Official Journal of the European Communities in the "L" edition.

The export refund was claimed by the IDB as an adjustment to the export price to increase the export price.

It was submitted by the IDB that it incurred an interest cost on the payment of the export refund, and that an adjustment should be made to the export refund adjustment for this interest cost incurred to reduce the export refund.

The IDB stated that looking at the ex-factory selling prices, it is clear that the difference in prices are more than explained by the EU export refund system which allows EU exports to compete at the lower prices prevailing on the world market. It stated that while this system is criticised by other countries, including South Africa, it was specifically provided for in the Uruguay Round Agricultural Agreement, though subject to restrictions and reductions under Articles 8-11 of that agreement. It stated that in addition, the Due Restraint provisions (or "Peace Clause") in Article 13 (which lasted for nine years from 1995) provide that export subsidies:

"shall be subject to countervailing duties only upon a determination or the threat thereof based on volume, effect on prices or consequent impact in accordance with Article VI of GATT 1994 and Part V of the Subsidies Agreement and due restraint shall be shown in initiating any countervailing duty investigation."

The IDB stated that the fact that the nine-year period has expired is one of the main factors influencing the renewed WTO negotiations on agriculture, which are currently taking place.

The IDB stated that the Decision adopted by the General Council of the WTO on 1 August 2004 on the Doha Work Programme referred at point 17 to export subsidies in the following terms:

"As an outcome of the negotiations, Members agree to establish detailed modalities ensuring the parallel eliminations of all forms of export subsidies and disciplines on all export measures with equivalent effect by a credible end date."

The IDB stated that since the price of Irish Cheddar sold onto the world market is consistent with the price on the world market, it would suggest that any remedial action the South African authorities may decide to take should cover all suppliers to the world market rather than being targeted at Irish exports in particular.

In response to the comments from the IDB, the Commission noted that the imports from other countries entered the SACU market at prices almost 74 per cent higher than the prices of the Irish cheese. Further, the Commission indicated that the question in any anti-dumping investigation is whether the export price from the exporting country is lower than the price of the like product on the domestic market of the exporting country.

The Commission enquired whether other authorities will allow an adjustment for an export refund and noted that the EU Commission would normally not allow this adjustment to increase the export price.

In response to the Commission's preliminary report, the IDB stated

that the disallowance of the export refund as an adjustment is the key issue in relation to the export price. It stated that the references in the EU Commission's decisions alluded to by the Commission were to disallowances where:

"benefit was accounted for as income and not as a negative item in the cost accounting system of the companies. Therefore, on the basis of the companies accounting records, there was no link between the pricing of the exported goods and the income received."

The IDB stated that during the verification, it could clearly be seen that export refunds were accounted for as a negative element in the IDB accounting system and, therefore, there was a very definite direct link between the export refund and the pricing of each consignment of the exported goods in the ordinary course of trade.

The IDB stated that the cases referred to by the unnamed official at the EU Commission have clearly been brought into the argument in order to conceal the fact that the appropriate World Trade Organisation's procedure to deal with subsidies is to seek relief through countervailing measures and not through the anti-dumping route.

The Commission considered the comments received and decided to confirm its preliminary determination not to allow this adjustment to the export prices, as it was of the opinion that the export refund received by the IDB was not income in the ordinary course of trade.

4.6.2 Margin of dumping

The weighted average margin of dumping for the IDB was calculated to be 60.1 per cent, when expressed as a percentage of the f.o.b. export price.

4.7 METHODOLOGY IN THIS INVESTIGATION FOR ALL OTHER EXPORTERS FROM IRELAND

4.7.1 Normal value

Type of economy

Ireland 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 white and red mild cheddar cheese in 20kg blocks sold on the Irish domestic market by the IDB. The Commission decided that the sales at a loss should be excluded from the normal value calculation.

The following adjustments were made to the normal value to calculate the ex-store price:

(i) *Delivery charges*

An adjustment for the delivery charges included in the invoice amount was made, where applicable.

(ii) *Container loading*

An adjustment for the container loading included in the invoice amount was made, where applicable.

4.7.2 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 actual export sales to SACU during the period of investigation from the IDB, for the white mild cheddar in 20kg blocks and the red mild cheddar in 20kg blocks, were used to calculate the export price for all non-cooperating exporters.

Adjustments to the export price

The following adjustments, as explained and calculated under paragraph 4.6.2 of this report, were made to the export price:

- *Cost of payment terms*
- *Commission*
- *Delivery charges*
- *Marine insurance*

4.7.3 Margin of dumping

The margin of dumping for all non-cooperating exporters in Ireland was calculated to be 60.2 per cent, when expressed as a percentage of the f.o.b. export price.

4.8 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 Ireland was being dumped into the SACU market with the following margins:

Exporter	Dumping margin expressed as a percentage of the f.o.b. export price
The Irish Dairy Board	60.1%
All other exporters from Ireland	60.2%

5. MATERIAL INJURY

5.1 DOMESTIC INDUSTRY FOR THE PURPOSE OF DETERMINATION OF INJURY

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

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

5.2 GENERAL

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

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

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

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

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

The following injury analysis relates to Parmalat Foods SA and Clover SA, which constitute 65 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.

In response to the Commission’s preliminary determination, the Applicant stated that the SACU industry suffered material injury, amongst other that the volume of dumped imports increased from 3.9 per cent to 54.7 per cent of all imports, the market share of the dumped imports increased relative to the market shares of the Applicant, other SACU producers and other imports, it experienced significant price undercutting from the dumped imports and it experienced significant price suppression.

In response to the Commission’s preliminary report, ITS stated that while the initial verification of statements made by the Applicant may have led to an amended application, which satisfied the Commission that there was a *prima facie* case, there was no evidence of any substantive critical examination of the Applicants’ claim of injury. It stated that any verification or critical examination should have established why Parmalat experienced results different to that of the rest of the SACU industry. ITS indicated that it suspects that Clover was unwilling to submit separate accounting figures for its cheese business as it did not support its case.

In response to the Commission’s preliminary report, the Applicant stated that the IDB highlighted certain issues and these comments tend to focus the attention away from the facts which are fundamental and decisive, namely:

- Very high dumping margins;
- Prices which were dramatically lower than the prices of other imports;
- Prices which were dramatically lower than the cost of milk required to

manufacture the cheese in Ireland;

- Prices which undercut the SACU industry's prices significantly; and
- Prices in respect of which the SACU industry experienced dramatic price disadvantage.

ITS submitted an article that it wrote in response to the article of the MPO which was published by Tralac. The Commission took note of these articles, but did not take it into consideration for purposes of its final determination, as the Commission is of the opinion that these are the opinions of individuals.

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 statistic from SARS to determine the volume of the subject product entering the SACU from the countries under investigation and other countries. It considers these statistics to be the most reliable.

The following table shows the volume of all the imports under tariff subheading 0406.90 as obtained from SARS:

Kg	2001	2002	2003
Dumped imports	36 791	111 824	1 444 346
Imports from other countries	914 716	799 793	1 195 265
Total imports	951 507	911 617	2 639 611
Dumped imports as a percentage of total imports	3.9%	12.3%	54.7%

The information in the table shows that the dumped imports increased substantially from 2001 to 2003. During 2003 more than half of all imports were from Ireland.

Comments by the Irish Dairy Board (IDB) on import volumes

With regard to import volumes, the IDB stated that it wishes to highlight that the EU-South African Free Trade Agreement negotiated a preferential quota for EU cheese. It further stated that although this preferential quota for EU cheese had never been implemented, it is important to note that South Africa saw no problem with cheese imports to the volume of 5000 tonnes in South Africa from the EU. It stated that the assumption in the negotiation would be that the 5000 tonnes sold in the SA market would not cause injury to the SA cheese producers and that otherwise the deal would not have been negotiated.

The IDB stated that only 1429 tonnes of cheese were imported and suddenly the SACU industry claims injury.

The IDB stated that it appears that the cause of the alleged injury suffered by the SACU industry would be more likely the 3000 tonnes of cheese exported by South Africa to the EU (mainly the UK) at a loss, as acknowledged by the

applicant in the application, to establish a market share in the EU.

In response to the arguments by the IDB regarding import volumes, the Applicant stated that in terms of the EU/South Africa Agreement, 5 000 tons of cheese can be exported to South Africa provided that the export prices are not subsidised. It further stated that no cheese has been exported to South Africa in terms of this agreement since it would be uncompetitive on the South African market at unsubsidised prices. It further mentioned that the low prices at which cheddar cheese were imported from Ireland gave retailers the opportunity to force the SACU industry to reduce its selling prices for cheddar cheese to unprofitable levels. It stated that there was a significant increase in the volume of cheddar cheese exported from Ireland to South Africa over the investigation period.

The Applicant stated that it is important to note in this regard that the market share of dumped Irish imports increased from 2001 to 2003. It stated that this is regarded as a substantial increase, particularly in view of the abnormally low import prices. The Applicant stated that the SACU industry's market share declined from 2001 to 2003 mainly as a result of dumped imports.

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 SACU product.

The Applicant stated that cheddar cheese is imported from Ireland at abnormally low prices on a continuous basis, forcing the SACU producers to sell cheese at prices which are at unprofitable levels or face a significant reduction in sales volumes resulting in increasing inventories.

The IDB stated that in order for the Commission to impose provisional payments, it must be satisfied that there is sufficient evidence to indicate that the injury experienced by the SACU industry is as a result of the dumping of the subject products. The IDB also quoted from Article 3.5 of the Anti-Dumping Agreement, which provides as follows:

"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".

The IDB indicated that this is supported by Article 16.1 of the Commission's Anti-Dumping Regulations which states that in considering whether there is a causal link between the dumping and the alleged material injury the Commission shall consider all relevant factors including, among others, the price undercutting experienced by the SACU industry vis-à-vis the imported products. The IDB stated that the Commission in its Regulations define price undercutting as the "extent to which the price of the imported product is lower than the price of the like product produced by the SACU industry, as measured at the appropriate point of comparison".

The IDB further stated that although the Commission might determine price undercutting for purposes of determining material injury at the landed cost of the imported product vs. the ex-factory selling price of the local (South African) product, for purposes of establishing whether there is a causal link

between dumping and injury, the Commission should determine price undercutting at a different, more appropriate level. It further stated that this price comparison should be where the final choice to buy is exercised, i.e. at the consumer level. The IDB also stated that it is ultimately the consumer who decides which product to buy, and that since price is a determining factor in establishing whether there is a causal link between dumping and the alleged injury, it is important to ascertain whether the consumer's right to choose is primarily influenced by price, or whether this choice is not perhaps influenced by other factors which may have contributed to the SACU industry's alleged injury.

The IDB further stated that it is important to address the price issue in general, and that although the Commission has decided to initiate the investigation on the face value of prima facie evidence submitted by the Petitioner, including information relating to its selling prices, a careful analysis of all the relevant information submitted to the Commission will lead to the termination of the investigation.

The IDB stated that Article 3 of the Anti-Dumping Agreement lists a number of factual elements that should be considered in order to determine whether or not material injury exists. It further stated that paragraph 3.1 states equivocally that any determination of injury shall be based on both a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products and, b) the consequent impact of these imports on domestic producers of such products.

The IDB advised that paragraph 3.2 elaborates with regard to the volume of dumped imports and explains that the investigating authorities shall consider whether or not there has been a significant increase in dumped imports. It also mentioned that imports from Ireland have increased substantially over the past few years. However, this fact by itself cannot give decisive guidance, and should be analysed in conjunction with the Petitioner's selling price, and consequent impact on the industry as a whole. It further stated that the reason for the increase in imports from Ireland is simple and self-explanatory, namely consumer choice. It stated that this is clearly a case of

market preference, in turn dictated by the perceived health benefits of white cheddar cheese as supposed to the coloured cheese produced by the local manufacturers.

The IDB further stated that as indicated above, the Commission cannot only consider the volume of imports in analysing the material injury suffered by the local industry. It stated that paragraph 3.2 continues to direct authorities with regard to the effect of the dumped imports on prices to consider whether there has been a significant price undercutting by the offending imports, as compared to the price of the like product of the importing member, or whether the price 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. It stated that the final sentence of paragraph 3.2 reads, “no one or several of these factors can necessarily give decisive guidance.”

The IDB submitted the selling price of the imported and the local product at the final point of resale, the consumer level. It stated that this level ultimately determines the right to choose, and that from this information it is clear that both the imported and the local product sells for exactly the same price, i.e. R32.99 per kg. It stated that it is clear that the choice to buy either the imported or the local product is not influenced by price considerations. It stated that in this particular case (as no price undercutting whatsoever exists) the imported product cannot be the cause of the local industry’s alleged injury, especially since (according to the Petitioner’s own admission) no price suppression and/or price depression exist.

The IDB reverted to the directive in Article 3 of the Anti–Dumping Agreement relating to “decisive guidance” by stating that the local industry’s alleged injury is not/ cannot be caused by the imported Irish product.

The Applicant stated that with regard to the statement by the IDB that price comparison should be done at consumer level, i.e. at retail price level, because it is ultimately the consumer who decides to buy, the Applicant responded as follows:

The Applicant stated that this statement is regarded as highly irrelevant since the prices at which products are imported are the prices used by the retailers when negotiating prices with the SACU Industry. It further stated that the import price is used as a leverage to negotiate lower prices with SACU producers. The Applicant stated that in the case of cheddar cheese the SACU industry had to reduce prices to unprofitable levels in order to get retailers to buy cheddar cheese from them. It also indicated that it is also important to note that in spite of the low prices at which the cheese was imported from the IDB, the retail price ranged between R28.00 and R29.99 per kg. It further stated that retailers realised substantial profit margins on the sales of dumped Irish cheese and did not let the consumer benefit from lower prices.

The Applicant stated that it is important to note that the prices at the point of sales include the profit margins of retailers and cannot be used in the determination of causal link. It further stated that it was proven in the application that the SACU industry's selling prices were severely suppressed and did not increase in line with production cost. It stated that the IDB's statement that the Applicant admitted that no price suppression exists is untrue.

The IDB stated that the Commission's application questionnaire requires that information on price undercutting be supplied for the period of injury, being 2001, 2002 and 2003. It stated that the information supplied by Milk SA is only for 2003. It further stated that it is clear that the application is deficient.

For purposes of its preliminary determination, the Commission noted that the relevant product is basically homogenous with price being the crucial determinant of demand. It noted that this being the case the amount of cheddar cheese bought will be determined by the retailer who will, for profit considerations, prefer the cheaper imported product at the cost of the domestic product. Therefore, the profit margin on the imported component of the product, sold at the same price to the consumer, will be higher.

The Commission decided, for purposes of its preliminary determination, that the most appropriate level at which to compare prices are the ex-factory price of the SACU product and the landed cost of the imported product, as it is the retailers that decide whether to import the product or to buy the SACU product and not the consumer.

On comparing these prices, the Commission found that the price of the imported product was undercutting the Applicant's selling price by more than 19 per cent.

The Commission decided that only the price undercutting in the year 2003 is sufficient to determine if the imported product did undercut the Applicant's price.

In response to the Commission's preliminary determination, the Applicant stated that the IDB's argument that the increase in dumped imports is the result of a preference for white cheese by the SACU consumers is not true due to the following:

- a. White cheddar cheese is manufactured and offered to the market by SACU producers.
- b. Available information regarding consumer preferences gained by the SACU industry through its daily interaction with the SACU market does not indicate a shift in preference that supports a move to white cheese which is sufficient to support the dramatic increase in dumped imports.
- c. If a change in consumer preference was the major reason for the dramatic increase in the dumped imports (which should be of monumental proportion and speed) there would be no reason for the significant dumping margin, significant price suppression, dramatic price disadvantage and the fact that the dumped imports include other cheese than white cheddar.
- d. As white cheddar is manufactured in the SACU and as it is freely available, a change in consumer preference in favour of white cheese cannot result in a dramatic increase in imports at the expense of the

sales of the SACU product.

The Applicant stated that this argument of the IDB, in light of the above, is to such an extent unfounded that the credibility of the views submitted by the IDB should be seriously questioned.

In response to these comments from the Applicant, the IDB submitted a letter which appeared in "Die Burger" of 19 February 2005. It stated that the Commission is aware that imported cheddar and the domestic equivalent are priced at similar levels. It stated that contrary to Milk South Africa's statement that, *"..... argument.... to such an extent unfounded that the credibility of the views submitted by the IDB should be seriously questioned"*, it invited the Applicant to give a plausible explanation why so many South Africans prefer imported white cheddar cheese from Ireland when the price of the two products to the consumer is very similar.

The IDB stated that it also would like to ask the Applicant in the absence of price differences to explain what happens to the imported cheese if its *"research"* shows that there is not, *".... a shift in preference that supports a move to white cheese which is sufficient to support the dramatic increase in (alleged) dumped imports."*

The IDB stated that it reiterates that it strongly believes that a niche market for Irish cheddar has been created. It stated that any injury which the industry may plead as a result of such imports is self-inflicted and/or illusory.

After considering the comments received from interested parties, the Commission decided to confirm its preliminary determination with regard to the calculation of price undercutting and its decision that the information for one year is sufficient to determine if the imported product did undercut the Applicant's price.

For purposes of its final determination, the Commission found that the price of the imported product was undercutting the Applicant's selling price by more than 19 per cent.

Price depression

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

The table below shows the SACU industry's domestic selling prices:

Rand/kg	2001	2002	2003
Parmalat	100	108	125
Clover	100	110	112
Weighted average selling price	100	110	120

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

The table above indicates that no price depression occurred.

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 between the percentage increase in cost and 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 actual selling prices for the subject product:

	2001	2002	2003
Clover's selling price (R/kg)	100	111	113
Clover's cost of production	100	117	126
Clover's cost as % of selling price	100	105	112
Parmalat's selling price (R/kg)	100	109	126
Parmalat's cost of production	100	110	130
Parmalat's cost as % of selling price	100	101	103
SACU industry's weighted average selling price (R/kg)	100	110	121
SACU's weighted average cost of production	100	114	132
SACU's cost as % of selling price	100	104	109

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

The table above indicates that the selling prices did not increase by at least the same margin as the cost and therefore, the SACU industry experienced price suppression

The IDB stated that no information is supplied nor are reasons given for the incompleteness. It stated that it is evident as the applicant did not respond to this question that the "price suppression" is not "more pronounced during the last 12 months" even when the import volume from Ireland increased, as alleged, substantially.

The Commission found that the information submitted is sufficient.

In response to the Commission's preliminary determination, the IDB requested that the Commission indicate to them whether the cost of production indices include the cost of milk. The Commission confirmed to the IDB that as milk is the main raw material in the manufacturing of cheddar cheese, this cost is included in the cost of production.

The IDB stated that it is normal in many industries for the cost of production to increase slightly faster than the selling price, particularly when a period of currency depreciation is followed by a period of currency appreciation.

The IDB stated that it has already been pointed out that, according to the Applicant's own figures, this effect was no more pronounced in 2003 than it was in 2002.

The IDB stated that the normal response is to increase productivity and this happened in the case of the Applicant. It stated that as a result of this successful policy, return on investment increased in relation to the base year (2001) even in the case of Parmalat (+38 per cent) and in the case of Clover by a spectacular +300 per cent.

The IDB stated that, however, the profit information shows that Parmalat increased its net profit margin on the selling price of cheddar cheese by 23 per cent over the base year (2001). It stated that since Parmalat clearly emerges from all the analysis in the report as a less successful company than Clover, one can only speculate what the equivalent figure for Clover was, had they chosen to make it available to the Commission. It stated that these figures can hardly support claims of price suppression and injury.

The IDB stated that it believes that the Applicant will raise the argument that the ROI figures relate to the business as a whole and not to cheese as such. However, it stated that as required by the Anti-dumping Agreement and South Africa's ADR, the Commission must base its determination on "*positive evidence*". It stated that, therefore, it is suggested that the Commission finds that as the Applicant cannot separate the figures, it cannot be used as an injury indicator.

5.3.3 Consequent impact of the dumped imports on the industry

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

"The examination of the impact of the dumped imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance."

5.3.3.1 Actual and potential decline in sales

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

Kg	2001	2002	2003
Parmalat	100	87	76
Clover	100	108	117
Total of Applicant	100	94	91

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

The information in the table above indicates that the Applicant experienced a decrease in its selling volumes.

The Applicant indicated in its reconciliation of the sales volume figures, for purposes of calculating the net profit for cheddar cheese, that an amount of export sales were included in the figures submitted by it to the Commission as domestic SACU sales.

The Commission indicated that it is not clear how these export sales could have been included in the domestic sales volumes as these figures were

verified. The Commission raised its concern on why Clover did not amend these figures, with an explanation, after or during the verification or even in response to the Commission's preliminary report.

The Applicant submitted the following amended sales volume information:

Kg	2001	2002	2003
Parmalat	100	87	76
Clover	100	105	102
Total	100	94	85

In response to this response of the Applicant, the IDB stated that it is strange that Clover only "discovers" the discrepancies many months after the information was verified. It requested the Commission to reject the new unverified information.

The IDB stated that not only did the sales volumes of Clover increased over the period of investigation, but their sales value also increased substantially over the period of investigation as a result of price increases.

5.3.3.2 Profit

The following table shows Clover's net profit after tax for the company as a whole, and not for the subject product and Parmalat's net profit before tax for its cheddar cheese:

Year	2001	2002	2003
Parmalat's net profit margin on selling price	100	189	123
Clover's profit after tax	(100)	(27)	310

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

The information in the table above indicates that Clover experienced an increase in profit. It should, however, be noted that this profit is for the company as a whole and might not correctly reflect the profit situation of the cheese division. Parmalat's profit for its cheddar cheese increased over the

period of investigation for material injury, but decreased from 2002 to 2003.

The Applicant stated that Clover's profit increase is a result of the improvement of management tools. It furthermore stated that Clover's fresh products like yoghurt and fruit juices performed extremely well. The Applicant stated that Parmalat's profit level declined as a result of the competition experienced from alleged dumped products.

The IDB stated that this table indicates clearly that the profit of both companies increased over the period of investigation. It stated that Clover came from a loss situation into a profit making situation. It further stated that it is also emphasized by the Applicant that the reason for the weak performance of Clover is as a result of "bad management tools", not alleged dumping. It stated that what is also apparent is that there appears to be a lack of efficient management tools as Clover cannot distinguish between cheese and "fresh products like yoghurt and fruit juices" in its costing.

In response to the Commission's preliminary determination, the IDB stated that it is clear from the Commission's finding on profit that it is not indicative of injury. It stated that not only has the profit increased over the period of investigation, but also the information submitted by the Applicant was not "*positive evidence*" as the profit figures of Clover include "*other*" products. Therefore, it stated that the statement of the Applicant that "*the SACU industry had to reduce prices to unprofitable levels in order to get retailers to buy cheddar cheese from them*" must also be rejected with contempt.

The IDB stated that it wishes to add that although it might appear that Parmalat has some problems in the short term, when its performance is taken over the period of investigation it shows an increase in profitability on the product in question of 23 index points in 2003 over the 2001 base year. It stated that the decrease in 2003 compared to 2002 was more a case of returning to normal profitability after an 89 index point increase in profits in 2002.

The Commission decided to disregard the profit information originally

submitted by Clover as it is only for bulk cheddar and not for all cheddar. Clover resubmitted the profit information to include the profit on all cheddar cheese. In response to the “essential facts” letter, Clover submitted a reconciliation between the figures submitted and those verified by the investigating officials.

The Applicant indicated in its reconciliation of the sales volume figures, that an amount of export sales was included in the figures submitted by it to the Commission as domestic SACU sales.

The Commission found that as the Applicant only corrected the sales volumes at this late stage of the investigation, this cast doubt on the other figures submitted by Clover.

Clover submitted the following loss figures with regard to cheddar cheese:

	2001	2002	2003
Clover – loss on selling price	100	449	106

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

In response to this response of the Applicant, the IDB stated that it is strange that Clover only “discovers” the discrepancies many months after the information was verified. It requested the Commission to reject the new unverified information.

The IDB stated that it is further noted that notwithstanding the Commission’s request, Clover still refuses to supply information pertaining “*only to cheddar cheese*” with regard to the return on investment and cash flow, nor were reasons submitted why the information is only available on a company total basis.

The IDB stated that the profitability information that could previously not be separated are now suddenly supplied and it appears that it can now even distinguish between “*bulk*” and other cheddar cheese.

The IDB stated that the Commission is urged to treat this information with circumspection and to disregard it as the information was not submitted to the Commission as requested in the questionnaire in the first instance.

The Commission decided to take the above loss figures submitted by Clover into consideration for purposes of its final determination.

The IDB stated that as also indicated, the Applicant still refuses to supply certain information requested by the Commission. The IDB stated that in this regard it refers the Commission to the precedent established in the sunset review investigation of Stainless Steel hollowware. It stated that in this instance the information requested by the Commission was not submitted timeously, as the Applicant could not extract the information at that stage. It stated that consequently, the Commission disregarded the information and terminated the anti-dumping duties.

The IDB stated that it requests the Commission to disregard all the injury information submitted by Clover and terminate the investigation immediately.

The Commission decided not to disregard all the information submitted by Clover, as requested by ITS, as it considered that the facts relevant to the sunset review on stainless steel hollowware were different to the facts in this investigation. The Commission noted that in the sunset review on stainless steel hollowware, the Applicant originally refused to submit the necessary documentation during the verification to enable the Commission to verify the information submitted in its application. As the injury information in total could not be substantiated, the Commission decided that the Applicant could not provide substantiated information to indicate that the expiry of the duties would be likely to lead to the continuation or recurrence of material injury. The Applicant only indicated at a later stage, in response to the "essential facts" letter, that it is willing to cooperate fully in the investigation.

In the sunset review on stainless steel hollowware, the Commission decided not to verify the information submitted by the Applicant, as the Commission was of the opinion that all interested parties should receive equal treatment

and that information submitted by exporters, who then do not cooperate with the verification, is not taken into consideration. Therefore, the Commission decided that no precedent was created in the sunset review on stainless steel hollowware to be followed in this investigation.

In response to the “essential facts” letter, the Applicant stated that the manufacture of cheddar cheese by Clover during the period of investigation was not profitable and that the loss in 2003 was higher than the loss in 2001.

In response to these comments from the Applicant, the IDB stated that if the Commission were to take the profit information supplied by Clover at this late stage into consideration, it wishes to point out that Clover’s *“net profit”* was negative at least since 2001. It stated that in that year Irish cheese only represented 3 per cent of the total imports of the subject product. It stated that Clover’s profit situation also improved dramatically in 2003 compared with 2002 when 1 444 tons of Irish cheese were imported. It stated that, as contended in its previous communications, there cannot be a causal link between the increased imports of Irish cheese and the profit situation of Clover and for that matter Parmalat.

The IDB stated that Clover’s loss was dramatically reduced in 2003 compared to 2002. It stated that this would seem to indicate that the alleged dumping in 2003 improved rather than damaged Clover’s profitability in respect of cheddar cheese.

The IDB stated that on the other hand, by way of contrast, it will be recalled that the Commission’s preliminary report noted in paragraph 5.3.3.2 that Parmalat’s net profit margin on cheese increased in 2002 and was 123 per cent of the 2001 level in 2003. It stated that neither of these varying trends in cheddar profitability can be causally linked to imported Irish cheddar cheese in 2003 or over the investigation period.

5.3.3.3

Output

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

Kg	2001	2002	2003
Parmalat	100	88	84
Clover	100	111	116
Total Applicant	100	96	95
Other SACU producers	100	109	127

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

The table above shows that the Applicant's output declined slightly over the period of investigation while the other SACU producers' output increased.

The Applicant stated that the production volumes of both Parmalat and Clover declined directly as a result of the pressure experienced from alleged dumped imports and is expected to decline further if remedial action is not taken.

The IDB stated that the table clearly indicates that the production volume of "other SACU producers" increased substantially over the period while the "Applicants" production allegedly decreased. It stated that the question is raised how it is possible that the other SACU producers are immune against the alleged dumped imports. It stated further that it is clear that the other SACU producers' production volumes are increasing as they are gaining market share from Clover and Parmalat.

In response to the Commission's preliminary determination, the IDB stated that the International Dairy Federation was supplied with figures from the South African Dairy Federation, which show total South African cheese output as follows:

	2001	2002	2003
SA Cheese Output (^{'000}) tons	47.4	48.1	50.2

The IDB stated that the preliminary report includes the statement that *“The Applicant stated that the production volumes of both Parmalat and Clover declined directly as a result of the pressure experienced from alleged dumped imports and is expected to decline further if remedial action is not taken”*.

The IDB stated that if the figures for Clover are studied in the table as set out in the preliminary report, it is clear that the indexed figures for Clover increased from the base year, 2001, from 100 to 111 and 116 in 2002 and 2003 respectively. It stated that it is thus clear that the statement *“that the production volumes of both Parmalat and Clover declined”*, is unfounded and not true as Clover’s own figures show that Clover’s production did not decline. It stated that it is disturbing that the Commission made no comment on this anomaly and this confirms our earlier comment of a lack of critical examination of the injury claim. It stated that more than that, it is direct evidence that the injury claim is unfounded. It stated that the report in fact confirms that the South African cheese industry is a thriving one, with the exception perhaps of Parmalat.

5.3.3.4 Market share

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

	2001	2002	2003
Market share percentage based on volume			
Applicant	100	95	82
* Clover	100	109	105
* Parmalat	100	88	68
Other SACU producer	100	109	114
Total SACU	100	100	93
Alleged dumped imports	100	300	3200
Other imports	100	88	118

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

The information in the table above shows that the total market share of Clover and Parmalat decreased over the investigation period. However, the market share of the other manufacturers in SACU increased slightly over the investigation period. The market share of the alleged dumped imports increased dramatically.

The Applicant stated that the market share of both the manufacturers declined significantly in relation to the increase in alleged dumped imports. It stated that retailers reduced their purchases from Clover and Parmalat in favour of the imported products. It stated that some of the smaller cheese producers with lower production costs increased their market share by reducing their prices.

The IDB stated that its statement above is confirmed as it is clearly indicated that the other producers market share increased over the period of investigation. It stated that the Commission is requested to confirm that the imports by Clover are excluded under the heading “market share of other imports” as the inclusion of the data will have a skew impact on the market share of the applicants.

It stated further that it is clear from the application that the other SACU producers gained market share and showed substantial growth over the period of investigation. It stated that most probably the lack in “effective management tools” and the strong rand impacting negatively on the exports of Clover and Parmalat affected them negatively.

The Commission confirmed that the imports of Clover are not excluded from the “other imports”, as Clover did not import the alleged dumped product originating in or imported from Ireland.

In response to the Commission’s preliminary determination, the IDB stated that Clover imported cheddar cheese during the period of investigation. It stated that, however, the very fact that Clover imports the subject product indicates that Clover could not supply the subject product or niche products to the growing diverse SACU market.

The IDB stated that this statement can be substantiated by an article in the daily newspaper *“Beeld”* of 21 February 2005, which proclaims that, *“n Groter verskeidenheid sal groter belangstelling wek”* (Translated as *“A larger variety will create more attention”*). It stated that it is further stated in the article that although gouda and cheddar represent 62 per cent of all cheese sales in South Africa, sales of these products do not grow. It stated that it confirms that an interest in other cheese is growing the SACU cheese market. It stated that currently cheese is the dairy product with the fastest growth in sales.

The IDB stated that the article also confirmed its contention that the other SACU producers are prospering in that these and new cheese makers with a diverse range of products are giving the traditional large producers, such as Parmalat and Clover, serious competition.

The IDB stated that the fact that the Applicant stated that *“....the reduction in demand for cheddar cheese, production capacity at its plants are currently utilized for the production of other cheese”* is indicative of the change in market demand in SACU and not the alleged dumped imports from Ireland.

5.3.3.5 Productivity

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

Description	2001	2002	2003
Parmalat	100	98	119
Clover	100	100	106
Total	100	99	116

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

The information in the table indicates that the productivity of the SACU industry increased over the investigation period.

The Applicant stated that the productivity increased from 2002 to 2003 as a result of the fact that the number of employees was reduced to a greater extent than the decline in production.

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 return on total net assets:

Return on net assets	2001	2002	2003
Clover	100	109	400
Parmalat	100	163	138

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

It should be noted that the return on net assets for Clover has been calculated for the whole group and that of Parmalat for the company. The information indicates that the return on net assets of Clover and Parmalat increased over the investigation period.

The Applicant stated that Parmalat's total return on net assets is significantly influenced by the excellent performance of its yoghurts and in particular UHT milk. It stated that since 2000 the demand for these products increased constantly. It stated that Clover has also diversified its business into new product lines like fruit juices, which led to improved results.

The IDB stated that this table indicates clearly that both companies' net profit and return on net asset levels increased substantially over the period of investigation.

5.3.3.7 Utilisation of production capacity

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

Kg	2001	2002	2003
Parmalat Capacity	100	100	100
Parmalat Production	100	88	84
Parmalat Utilisation	100	88	84
Clover Capacity	100	100	112
Clover Production	100	112	116
Clover Utilisation	100	112	106
Total SACU industry Capacity	100	100	105
Total SACU industry Production	100	96	95
Total SACU industry Utilisation	100	95	91

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

The information in the table indicates that the utilization of production capacity decreased.

The Applicant stated that there are no plans to increase production capacity. It stated that the capacity is severely under-utilized at present. It stated that due to the reduction in the demand for cheddar cheese, production capacity at its plants are currently utilized for the production of other cheese in order to minimize under-utilisation of capacity.

The IDB stated that the question that is raised is, if you have spare capacity in 2002, why increase your capacity in 2003? It stated that the answer appears to be that if the capacity was not increased to 105 index points, the Applicants would have operated at full or near full capacity in 2003. It stated

that this factor cannot be indicative of injury.

In response to the Commission's preliminary determination, the IDB stated that it is noted that Parmalat's capacity is not showing an increase in capacity although it acquired two leading cheese brands in South Africa, Simonsberg and Melrose, as well as the production facility in Stellenbosch in 2003. It stated that there must be an increase in capacity and capacity utilisation. It stated that the correctness of the information supplied by Parmalat is again queried.

The IDB stated that in a statement Parmalat said that, *"the acquisition would give it greater access to the South African market, and provide an opportunity not only to increase sales of the acquired brands but also to push sales of its own cheese brands in the country."* It requested the Commission to investigate this aspect further.

The Applicant stated that Parmalat's *"capacity is not showing an increase in capacity although it acquired two leading cheese brands in South Africa, Simonsberg and Melrose, as well as the production facility in Stellenbosch in 2003"*, as the acquired capacity is with respect to the production of other types of cheese (speciality cheeses like Camembert, Brie and Blue cheese).

5.3.3.8 Factors affecting domestic prices

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

5.3.3.9 The magnitude of the margin of dumping

The following dumping margins were calculated:

Company	Margin of dumping expressed as a percentage of the f.o.b. export price
Irish Dairy Board	60.1%
All other exporters from Ireland	60.2%

5.3.3.10 Actual and potential negative effects on cash flow

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

Net cash flow	2001	2002	2003
Parmalat	100	3261	(798)
Clover	100	(543)	600

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

The information in the table is the total for the companies and not only for the product under investigation.

The Applicant stated that it is not possible to provide an accurate indication of cash flow on a product specific basis. It stated that cheddar cheese production is under significant pressure due to a decline in demand and forced price reductions. It stated that it is, therefore, safe to assume that the cash flow situation with regard to cheese is negative at present.

The IDB stated that it is indicated by the Applicant that "it is not possible to provide an accurate indication of cash flow on a product specific basis" and "it is therefore safe to assume that the cash flow situation with regard to cheese is negative at present". It stated further that the Commission's attention is drawn to AD Regulation 13.4 in this regard and requested to disregard this injury indicator. It stated that it wishes to highlight that it is most probably as a result of the lack of "management tools" that the cash flow cannot be managed and not as a result of the alleged dumping from Ireland.

In response to the Commission's preliminary determination, the IDB stated that it questions the indexed figure of 3261 in 2002 for Parmalat. It stated that the information regarding cash flow as supplied in this table relates to the *"total for the companies and not only for the product under investigation"*.

The IDB stated that although it has referred to AD Regulation 13.4 the Commission made a preliminary finding that the injury indicator *"cash flow"* is indicative of material injury.

The IDB stated that it wishes to point out that it appears that the Commission did not apply *"special circumspection"* in considering this injury indicator. It stated that it bases its argument on the fact that the Applicant made an unsubstantiated assumption as it is clearly indicated that Clover's cash flow increased substantially over the period of investigation.

The IDB requested the Commission to apply *"special circumspection"* in considering this injury indicator especially bearing in mind Clover's situation, and the fact that Parmalat acquired Simonsberg and Melrose in 2003 and that this transaction would have impacted on Parmalat's cash flow.

5.3.3.11 Inventories

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

Volume- Kg	2001	2002	2003
Parmalat	100	68	89
Clover	100	111	128
Total	100	84	103

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

The information in the table above indicates that there was an increase in the level of inventories.

The Applicant indicated that the level of inventories depend on domestic sales and exports. It stated that the inventory levels are balanced by way of

changes to production levels and also exports.

The IDB stated that according to the Applicant, it is clear that the export volume affects the inventory levels, and that if that is the case, the exports would also influence the cash flow situation.

In response to the Commission's preliminary determination, the IDB stated that it is interesting to note that Parmalat's inventories declined over the period of investigation while Clover's stockholding increased. It stated that the SACU industry's inventories increased marginally with 3 index points over the period of investigation.

The IDB stated that it is also stated that *"the inventory levels are balanced by way of changes to production levels and also exports"*. It stated that it is thus clear that imports from Ireland are not causing material injury.

5.3.3.12 Employment

The following table shows the Applicant's employment level:

Number of employees	2001	2002	2003
Parmalat	100	89	70
Clover	100	111	110
Total	100	103	94

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

The table above indicates that employment decreased over the period of investigation.

The Applicant stated that employment is of a sensitive nature and it is virtually impossible to reduce employees as a result of reduced sales and/ or profitability. It stated that the alleged dumped imports, therefore, did not have an effect on the employment levels.

5.3.3.13 Wages

The following table provides the SACU industry's wages:

	2001	2002	2003
Parmalat	100	105	91
Clover	100	109	117
Total	100	108	106

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

The information in the table above indicates that the wages increased over the period of investigation.

The Applicant stated that increase in wages and salaries are negotiated annually with the labour unions and cannot be withheld as a result of a decline in sales and/ or profit levels. It stated that the alleged dumped imports, therefore, did not have an effect on wages and salaries.

5.3.3.14 Growth

The Applicant provided the following information obtained from SAMPRO with regard to the growth of the market:

	2001	2002	2003
Size of SACU market	100	99	111
SACU market % growth from previous year		(1)	12
Sales volume of Applicant	100	94	85
Sales growth % from previous year (Parmalat & Clover)		(6)	(10)
Rest of SACU producers sales volume	100	109	127
Sales growth % from previous year (Other SACU producers)		9	17

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

The Applicant stated that the growth of the SACU market for cheese increased significantly from 2002 to 2003 as a result of surplus removal by the

Applicants and incorrect comparable figures supplied by SAMPRO in 2002. The market share of imports and smaller lower-cost producers increased.

The IDB stated that it is clear that the SACU cheddar cheese market declined in 2002 and as a result of this decline it would have impacted negatively on the SACU producers and not necessarily as the results of the imports from Ireland.

It stated further that it is clear that the other SACU producers showed substantial growth over the period of investigation, even in 2002 when the SACU market declined. It stated that it is clear that the alleged injury experienced by the Applicant is as a result of increased competition between the domestic producers in the SACU market.

In response to the Commission's preliminary determination, the IDB stated that it noted that 2001 was used by the Commission to index. It stated that no reason was supplied for this action, other than that the 2002 figures that were supplied by SAMPRO were incorrect. It stated that reference is also made to the issue of "*surplus removal*".

The IDB requested the Commission to provide it with more detailed information relating to the "*surplus removal*" to enable it to respond meaningfully.

In response to the Commission's preliminary determination, the Applicant stated that the total table should be considered by the Commission and not only the three rows indicating the changes from year to year.

For purposes of its final determination, the Commission considered the total table as submitted by the Applicant, as it did in the preliminary determination, as this information was incorporated in other material injury indicators.

The Applicant stated that its explanation under this paragraph in its application had certain deficiencies. It stated that the comments contained in the non-confidential application under market share also apply to this

paragraph and are as follows: *“Market share of the applicants declined in relation to the increase in dumped imports. Retailers reduced their purchases from Clover and Parmalat in favour of the imported products. Some of the smaller cheese producers with lower production costs increased their market share by reducing their prices.”* It stated that bigger companies are generally in a better position to export surplus production than smaller companies which sell surplus production in the domestic market at lower prices.

In response to these comments, the IDB stated that notwithstanding the fact that the table referred to by the Applicant is outdated, it is clear that the Applicant confirms its statement that the other producers caused the alleged injury to the Applicant as their sales increased as the other SACU producers reduced their selling prices while Clover and Parmalat increased their selling prices over the investigation period. It stated that taken together with the fact that Clover and Parmalat account for 65 per cent of the market, it can be calculated from the sales volume data that overall sales of SACU cheddar cheese on the SACU market increased by 4 per cent in 2003.

The IDB stated that this would seem to be yet another indicator that the SACU industry did not suffer any damage, but rather that the modest increase in imports served to enlarge the SACU cheddar market as a whole. It stated that the Applicant had ample time to address the alleged *“deficiency”* but only now wishes to *“manipulate”* the information that was submitted and verified to suit its needs.

5.3.3.14 Ability to raise capital or investments

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

Rand	2001	2002	2003
Capital expenditure during the year on subject product			
• Parmalat	100	12	23
• Clover	100	137	125
• Total	100	19	29

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

The Applicant stated that because of the unfavourable market conditions created by the alleged dumped imports from Ireland, no investment was planned for 2004.

5.4 Other comments by interested parties

In response to the Applicant's alleged material injury, the IDB stated that it is clear that the SACU industry is not suffering material injury when the injury information submitted by the Applicant, SA Milk, is separated between the largest dairy company in South Africa, Clover and the relative new entrant to the market, Parmalat.

The IDB indicated further that Clover's injury indicators, excluding pricing, showed in an increasing trend over the investigation period for sales volume, sales value, output, market share, productivity, employees, profit, return on net assets, capacity utilization and cash flow.

The IDB stated that although it is alleged that Clover's inventories increased, it believed that the increased inventories can be attributed to Clover's own imports that needed to be stocked.

The IDB further stated that from the above summarised information it is clear that the SACU industry is not experiencing injury, and that it is only the one

company, Parmalat, that cannot compete successfully on the SACU market against a large player.

The Applicant stated with regard to the statement by the IDB that the SACU industry is not suffering material injury, that the secondary dairy industry in SACU is represented by Clover and Parmalat. It further stated that the information contained in the submission can therefore not be considered on an individual per company basis, since the two companies are not representative of the SACU industry individually. It stated that Clover did suffer a decline in market share, number of employees and capacity utilisation from 2002 to 2003. The Applicant stated that the IDB's statement that these factors show an increasing trend is therefore untrue. It stated that with regard to profit, return on net assets and cash flow, it is very important to note that the figures for Clover reflect the total company's position and not the position with regard to cheddar cheese. It stated that Clover produces a wide variety of other products that are very profitable, and that cheddar cheese represents only a small percentage of Clover's total product mix. The Applicant further stated that with regard to Clover's increased inventories, it is important to note that Clover imported small quantities of cheese that were utilised for processing. It further mentioned that Clover's inventories of cheddar cheese increased because retailers chose to import dumped cheese from Ireland.

In response to the Commission's preliminary determination, the IDB stated that it is stated in the preliminary report that the Applicant claims that, *"Clover did suffer a decline in market share, number of employees and capacity utilisation from 2002 to 2003. The Applicant stated that the IDB's statement that these factors show an increasing trend is therefore untrue"*.

The IDB stated that it is interesting to note that the Applicant makes no attempt to deny the increasing trend in respect of the other seven of the ten injury indicators cited by the IDB.

The IDB stated that the allegation of the Applicant that Clover *"did suffer a decline"* in number of employees must be read with the Applicant's statement in paragraph 5.3.3.12, i.e. *"it is virtually impossible to reduce employees as a*

result of reduced sales and/or profitability. It stated that the alleged dumped imports, therefore, did not have an effect on the employment levels.”

The IDB stated that it, therefore, agrees with the Commission’s conclusion on material injury that the injury indicator “*Employment*” is not indicative of injury, and if it were there exists no causal link as acknowledged by the Applicant.

However, the IDB stated that it again wishes to highlight that the following percentage increases were declared by Clover over the period of investigation using 2001 as the base year:

- Market share +5 index points
- Number of employees +10 index points
- Capacity Utilisation +6 index points

The IDB stated that it confirms its previous statement that none of the ten injury indicators show that Clover did suffer injury. It stated that it is thus clear that based on information supplied by both parties, no injury has been proven.

5.5 Comments submitted by the Animal Feed Manufacturers Association (AFMA)

The AFMA stated that it represents more than 50 per cent of all animal feed produced in South Africa. It stated that it would support the application by Milk South Africa. The imports from Ireland are causing material injury, not only to the dairy industry, but also to the animal feed industry.

In response to the Commission’s preliminary determination, the IDB stated that the input of the AFMA is noted and it requests the Commission to disregard this unsubstantiated theoretical attempt by the AFMA to support the Applicant.

The IDB stated that as AFMA is now an interested party it requests the Commission to investigate the causal link between the AFMA pricing policy and the alleged injury the SACU industry is suffering.

The Commission confirmed that the comments submitted by AFMA were noted, but that these comments did not influence the Commission's preliminary or final determination.

5.6 Comments from IDB in response to the preliminary report

In response to the Commission's preliminary determination, the IDB had the following comments with regard to the determination on material injury:

"Article 12.2 of the Anti-dumping Agreement requires that " Each such notice shall set forth, or otherwise make available through a separate report, in sufficient detail the findings and conclusions reached on all issues of fact and law considered material by the investigating authorities."

When studying the Commission's preliminary report it is noted that there is a general lack of meaningful analysis of the injury factors quoted. The arguments of the parties are cited without the Commission stating their findings on the subject indicator or indicating their own analysis in line with the objective examination principle of Article 3.1 of the Anti-dumping Agreement and the "before initiation" (*prima facie*) and "after initiation" (substantive) examination approach in accordance with Article 5.7 (a) and (b) of the Anti-dumping Agreement.

The required examination of the impact on the domestic industry as required by Article 3.4 of the Anti-dumping Agreement was particularly hampered by the failure of Clover to make available data relating to the profitability of its cheese operations. See paragraph 5.5 of the Report.

The flaws regarding the alleged injury claimed by the SACU industry, represented by Clover and Parmalat was highlighted in the IDB's response to the Commission's exporter's questionnaire.

In response, Milk South Africa, as quoted in paragraph 5.5 of the preliminary report, stated that *"The applicant in this case is the secondary industry in SACU represented by Clover and Parmalat. The information*

contained in the submission can therefore not be considered on an individual per company basis since the two companies are not representative of the SACU industry individually”.

However, we wish to point out that the Anti-dumping Agreement states that in the determination of injury the determination “*shall be based on positive evidence*”. It is also further stated in Article 3.4 of the Anti-dumping Agreement that “*all relevant economic factors and indices having a bearing on the state of the industry*”, shall be evaluated.

Article 3.1 of the Anti-dumping Agreement states that the “*consequent impact of these imports on domestic producers of such products*” (own underlining) must be objectively examined.

Article 4.1 of the Anti-dumping Agreement states that the domestic industry shall be “*the domestic producers as a whole of the like products or those of them whose collective output of the products constitutes a major proportion of the total domestic production*” (own underlining).

When the injury information that was submitted by Clover is analysed it is clear that Clover is not experiencing material injury during the period of investigation, 2001 to 2003 as there is no:

- Price depression;
- Price suppression;
- Decline in sales volume;
- Decline in sales value;
- Decline in output;
- Decline in market share;
- Decline in productivity;
- Decline of employees;
- Decline in growth;
- Decline of profit;
- Decline on the return on net assets;
- Decline in capacity utilization; and

- Negative cash flow.

In fact the only indicator that might be seen as indicative of injury is an increase in Clover's inventories. But as is generally known in the industry, this increase can be causally linked to the declining export volumes as a result of the strong Rand. In fact the export of South African cheese declined by 47.8 per cent in 2003 compared with 2002 (ZMP Dairy Review). This decline in export volume can be causally linked to the alleged injury suffered by Parmalat.

It is thus clear that the "*positive evidence*" submitted by Clover, the largest dairy company in South Africa (Clover Industries Ltd 2004 Annual Report), is not indicative of injury during the period of investigation. In fact as the imports increased, Clover's market share ought to have declined, but it did not. What happened is that Clover and the other producers gained market share from Parmalat. It is thus highly unlikely that the alleged dumping of cheddar cheese can only impact on one smaller SACU producer while the largest company, as well as the other smaller ones seem to prosper. This in itself is indicative that there is no causal link between the alleged dumping and the alleged injury suffered by Parmalat.

It is evident from the application that the rest of the SACU industry gained market share, increased output and showed growth during the period of investigation. These figures support our contention that the Irish cheddar cheese created a niche market and that there is very little, if any, overlapping between the two segments.

It is thus clear that it is not the "*domestic industry*" that is allegedly suffering material injury, but only Parmalat, whose worldwide problems are well documented. Obviously Parmalat is finding it difficult to compete with other SACU producers and on the export market. This clearly detracts from a causal link and needs to be investigated. We believe the information currently before the Commission does not support a finding of causality. Consequently we request the Commission to seriously reconsider its preliminary finding in accordance with Article 3.5 of the Anti-dumping Agreement.

Parmalat does not have “*industry standing*” and the alleged injury information submitted by them relates only to Parmalat and cannot be seen as representative of the SACU industry. As the Commission is aware, the anti-dumping mechanism was not created to protect a company in a country from alleged unfair trade, but an industry.

Based on information, as submitted by the SACU industry, we believe the Commission has no option but to terminate the investigation, or to request additional information to establish the impact that Clover and other domestic producers had on Parmalat or to determine why only Parmalat is experiencing injury and not Clover. A plausible explanation and not a hypothesis or vague answer is required.

In conclusion the IDB stated that as mentioned above, many of the reasons advanced by the Commission for making a determination of material injury are questionable. It stated that the fact that South African cheese output was increasing steadily and that profit levels increased even in the case of Parmalat are the most telling arguments. It stated that the fact that the “*Cash Flow*” figures presented show wild fluctuations in both directions for both Clover and Parmalat, while no attempt was made to present any “*Cash Flow*” figures for the product in question, makes the retention of “*Cash Flow*” as an accepted indicator of injury in this case, a clear example of the shaky foundations on which the Commission’s findings are based.”

The Applicant’s comments on these comments by the IDB is included in paragraph 5.8 of this report.

5.7 Comments from Applicant in response to comments from IDB on the preliminary report

In response to the comments from the IDB, the Applicant stated that it is noted that the IDB repeatedly distinguishes between Clover and Parmalat in its comments. It stated that the application was submitted by Milk SA on behalf of the SACU industry and the application was accepted by the Commission as

such. It stated that the Commission decided that the production of both Parmalat Foods SA and Clover SA, which constitute 65% of the total domestic production, constitutes "*a major portion*" of the total domestic production. It stated that the Commission accepted the SACU industry to be Parmalat Foods SA and Clover SA jointly. It stated that the IDB's comments on an individual company basis cannot be substantiated on the basis of the preliminary report. It stated that the comments from the IDB should not focus the attention away from the facts which are fundamental and decisive, namely:

In the investigating period cheddar cheese was dumped from Ireland in the SACU market at very high dumping margins, prices which are dramatically lower than the prices of other imports, prices which are dramatically lower than the cost of the milk required to manufacture the cheese in Ireland, prices which undercut the SACU industry's prices significantly and prices in respect of which the SACU industry experienced dramatic price disadvantages.

The SACU industry suffered material injury, as amongst other the volume of dumped imports increased dramatically from 3,9 percent of imports to 54,7 percent of imports, the market share of the dumped imports increased dramatically relative to the market shares of the applicant, other SACU producers and other imports, it experienced significant price undercutting from the dumped imports and it experienced significant price suppression.

The Applicant stated that it applied for action against the dumping of Irish cheese and not for action against subsidies through the imposition of a countervailing duty. It stated that the reasons for a low (dumped) export price are not normally considered during an investigation with respect to alleged dumping. It stated that the comments made by the IDB in this regard do not detract from the fact that the export price of the product was significantly lower than the normal value thereof in Ireland which is dumping by definition.

The Applicant stated that strong competition exists between the SA producers of cheddar cheese and the action of one producer would therefore impact on the rest of the producers. It stated that the preliminary report suggests that Parmalat is suffering injury with respect to more variables than Clover but the

report does not support the notion that the competition between domestic producers detracts from the causal link between the dumping and material injury. It stated that it is again emphasized that the Applicant is not an individual company but the SACU industry. It stated that the comment by the IDB that *"only Parmalat is experiencing injury and not Clover"* is not supported by the preliminary report where it is indicated that Clover suffered material injury with regard to the following variables:

- Price undercutting
- Price suppression
- Decline in market share from 2002 to 2003
- Decline in capacity utilization from 2002 to 2003
- Increase in inventories

The Applicant stated that additional information submitted by Clover clearly indicates a decline in profitability over the investigation period with a subsequent negative influence on cash flow.

In response to these comments, the IDB stated that it is noted that the Applicant confirms its statement that strong competition is experienced amongst the SA producers. It stated that it further also states that *"the action of one producer would therefore impact on the rest of the producers"*. The IDB stated that, therefore, its argument that the injury experienced by Parmalat cannot be causally linked to the alleged dumped imports, but to the competition Parmalat is experiencing on the SACU market, is accurate.

The IDB stated that the Applicant lists certain alleged injury indicators applicable to Clover. It stated that, however, these are misleading as the period of investigation is between 2001 and 2003. It stated that for the sake of expediency 2001 is ignored by the Applicant. The IDB stated that the determination of injury is based on a three year period and if the trend is analysed over the whole period it is clear that Clover did not suffer material injury. It stated that if 2002 and 2003 are isolated, there is a downward trend, and this trend correlates and can be causally linked to the decline in export volume.

5.8 CONCLUSION - MATERIAL INJURY

After considering all relevant factors and taking all comments into account, the Commission made a final determination that the Applicant was suffering material injury in that:

- the dumped imports increased significantly;
- there was price undercutting;
- it experienced price suppression;
- its output declined;
- its sales declined;
- its market share declined;
- its utilisation of production capacity declined; and
- its inventories increased.

6. CAUSAL LINK

6.1 GENERAL

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

In response to the Commission's preliminary determination, the IDB stated that it is important for the Commission to take note of the fact that it believes that there does not exist a causal link between the alleged injury to the SACU industry, or as it has pointed out, the injury Parmalat is allegedly suffering and the alleged dumping of Irish cheddar cheese.

The IDB stated that it is common knowledge that the Parmalat group experienced problems in 2003. It stated that in an article that appeared in *"Beeld"* on 25 February 2005, it is stated that *"The international Parmalat group hopes to make a new beginning this year after more than a year of threatening collapse"*. It stated that it is therefore not strange that the South African company also suffered injury as it forms part of the international group. It stated that it is thus clear that there cannot be a causal link between the injury suffered by Parmalat and the alleged dumping of cheddar cheese.

The IDB stated that it wishes to highlight that Parmalat is a relative new entrant to the SACU market and it is thus not surprising that it struggles to compete with the more established dairy companies in the SACU industry. It

stated that this is most probably the reason why Parmalat acquired the new brands. It stated that a further aspect is that Parmalat is still in the process of establishing an effective distribution network.

The IDB stated that it believes that it has submitted and substantiated in detail that the SACU industry is not suffering material injury. It stated that it is clear that only one company, not representing a major proportion of the SACU industry may be suffering injury.

The IDB stated that it is clear from the information submitted that the alleged injury of the one company cannot be causally linked to the alleged dumped imports from Ireland.

In response to these comments by the IDB, the Applicant stated that the financial problems of the international Parmalat Group did not have any effect on its cheddar operations.

The Applicant stated that the IDB places emphasis on the fact that "*Parmalat is a relative new entrant to the SACU market...*". It stated that Parmalat entered the SACU market in November 1998 using its internationally well known brand name. A well established local brand name and Simonsberg was acquired by Parmalat to expand its product range.

The Applicant stated that the fact that "*Parmalat is still in the process of establishing an effective distribution network*" cannot in any way be linked to a significant decline in variables like sales and production.

In response to these comments, the IDB stated that the Commission will no doubt reject the unsubstantiated statement by the Applicant that "*the financial problems of the international Parmalat Group did not have any effect on its cheddar operations*".

The IDB stated that Applicant confirmed that Parmalat is a "*relative new entrant to the SACU market*" as they entered the market only in November 1998. It stated that it is clear that Milk South Africa has difficulty in

understanding the link between an effective distribution network and sales.

The Commission decided that the information submitted by Parmalat, with regard to the statement by the IDB that the financial problems of the Global Parmalat Group affected the cheddar operations of Parmalat in South African negatively, is not sufficient. The Commission noted the comments from the IDB and agreed that the financial problems of the Global Parmalat Group were well publicised. In its “essential facts” letter, the Commission requested that Parmalat submit additional substantiated information and comments to the Commission to enable the Commission to make a determination on what effect the financial problems of the Global Parmalat Group had on its SACU cheddar operations.

In response to the “essential facts” letter, the IDB stated that Parmalat ought to have submitted the information requested by the Commission at an earlier stage and the Applicant is now impeding the investigation. It stated that it requests the Commission to disregard any new information, which the company may submit.

In response to the “essential facts” letter, the Cold Chain indicated that Parmalat should have supplied the information requested at an earlier stage.

In response to the “essential facts” letter, the Applicant stated that the essence of the matter is as follows:

- The problem of Parmalat International is financial fraud and it became known in the last quarter of 2003, which is also the last quarter of the investigation period in respect of dumping.
- The nature of the problem, namely financial fraud, was formally confirmed by the opening of a fraud investigation in Italy on 20 December 2003, the arrest of the chairperson of Parmalat International, Calisto Tanzi on 27 December 2003 (who resigned on 15 December 2003 as chairman) and his admission on 30 December 2003 of financial fraud in respect of Parmalat International.

- The financial fraud in respect of Parmalat International was from the beginning not seen as a reflection of Parmalat's ability to operate successfully in the market. The validity of this viewpoint is not only demonstrated by the development history of Parmalat but also by the progress made by Parmalat International since the fraud came to light.
- On 9 January 2004, less than three weeks after the investigation regarding fraud commenced, the CEO of Parmalat SA (Pty) Ltd issued a statement. In this statement it was emphasized amongst other that Parmalat SA:
 - Is an independent business entity
 - Is very successful in the market
 - Is financially sound
 - The performance of Parmalat SA in 2003 is the best up to date
 - The fraud in respect of Parmalat International in 2003 did not impact negatively on Parmalat SA's performance
 - Parmalat SA *"is a solid company and that we are able to meet our commitments and to honour all contractual obligations"*

The Applicant stated that on 9 January 2004 it was announced that the subsidiaries of Parmalat International in Africa, that include Parmalat SA were unaffected by the fraud in respect of their parent company. It stated that this position was confirmed by the statement issued by Parmalat SA on 4 May 2005, in response to the "essential facts" letter.

The Applicant stated that based on the abovementioned facts, it is reasonable to argue that the fraud in respect of Parmalat International came to light at the end of 2003 and as the fraud was unknown before the end of 2003, and as it was only in respect of Parmalat International, it could not negatively affect Parmalat SA during the investigation period that ended on 31 December 2003.

The Applicant stated that the facts clearly demonstrate that the unsubstantiated allegation that the fraud had a meaningful negative impact on Parmalat SA should be rejected. It stated that even if the facts concerned were not available the allegation should be rejected due to the lack of supporting evidence.

In response to these comments, the IDB stated that the Applicant pointed out that the fraud only became known in the last quarter of the investigation period. It stated that one can therefore conclude that during the investigation period fraud existed.

The IDB stated that it is clear from this that Parmalat is *"very successful in the market"* and that their performance *"in 2003 is the best to date"*.

For purposes of its final determination, the Commission decided to take the information submitted by Parmalat into consideration, as the Commission can request additional information at any stage of the investigation, in order to make an informed decision.

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 market share table in paragraph 5.3.3.4 of this report shows the market share for the subject product since 2001. The market share of the Applicant decreased by 9 index points.

The information with regard to the volume of imports in paragraph 5.3.1 of this submission shows that there was a corresponding increase in the dumped imports. The dumped imports increased from only 3.9 per cent of total imports to 54.7 per cent of total imports. The total imports increased by 190 per cent from 2001 to 2003.

The IDB stated that it is clear from the Application that the other SACU producers gained market share and showed substantial growth over the period of investigation. It stated that most probably the lack of effective "management tools" and the strong rand impacted negatively on the Applicant.

In response to the Commission's preliminary determination, the IDB submitted the export statistics for the EU and Irish cheese exports to South Africa in 2004.

The IDB stated that this trend shows that the exports to SACU declined in the year following the investigation period, even though provisional anti-dumping duties were not imposed until February 2005.

The IDB stated that it has already been pointed out that the total EU export figure is substantially less than the 5 000 tonnes envisaged under the EU/SA TDC Agreement.

The IDB stated that it should also be pointed out that South African imports of 2 639 tonnes of cheese in 2003 was 5.3 per cent of the 50 200 tonnes South African cheese market (International Dairy Federation). It stated that this percentage is, therefore, approximately the same as the 5 per cent Minimum Access requirement prescribed by the Uruguay Round Agreement on Agriculture.

6.3 EFFECT OF DUMPED IMPORTS ON PRICES

It has already been shown in section 5 of this report that 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 is undercutting its prices by more than 19 per cent.

The Applicant indicated that the SACU industry's unsuppressed selling price should be higher compared to its selling price in 2003.

The Applicant stated that the significant increase in imports impacted negatively on SACU producers' market share. It stated that retailers are offering processors prices which are below production cost forcing processors to lower the prices paid to milk producers. The demand for cheese produced in SACU has declined significantly resulting in increased inventories and a decline in the demand for milk. It stated that cheddar cheese imported at alleged dumped prices are forcing SACU producers to sell cheese at unprofitable margins on the domestic market as well as to export cheese at a loss. It stated that Irish milk producers are paid R2.61 per liter of milk delivered for processing and to produce one kilogram of cheese, a total of 10 liters of milk is required. It stated that this information indicates that the cost of milk to produce one kilogram of cheese is therefore R26.10. It stated that this indicates that the Irish cheese is being exported at a price, which is significantly below the cost of production.

The Commission considered the comments received from interested parties, including those included in section 5 of this report, and found that the price undercutting and the price suppression were causally linked to the dumped imports.

6.4 CONSEQUENT IMPACT OF DUMPED IMPORTS

The SACU industry's sales volume decreased over the investigation period with a corresponding decrease in output. The utilization of capacity of the SACU industry decreased from 2001 to 2003. The inventories increased slightly from 2001 to 2003.

The Applicant stated that due to imports the demand for locally produced cheddar cheese reduced significantly which forced the SACU industry to reduce its ex-factory selling prices. It stated that the lack of demand led to an oversupply of cheddar cheese, some of which was exported at a loss.

The Commission considered all the comments received from interested parties, including those already discussed under section 5 of this report, and

found that there was a causal link between the dumped imports and decline in output, sales volumes, market share, utilization of capacity and employment and the increase in inventories.

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".

In response to the Commission's preliminary determination, the IDB stated that the Commission's attention is drawn to the balanced analysis made by Mr. Berthus De Jongh in his address to the 2003 Annual General Meeting of the West Cape Milk Producer Organisation as reported in "*Landbou Weekblad*" of 4 July 2003.

The IDB stated that in his analysis Mr. De Jongh mentions the following factors:

- The decline in maize prices
- The decline in the size of the national dairy herd
- The fact that consumption had been larger than production for a couple of years
- The strong Rand and the consequent fall in exports
- EU export subsidies

The IDB stated that it is thus clear that in Mr. De Jongh's analysis the problems of the South African dairy industry in 2003 were the consequence of a number of interrelated factors, and, as he is quoted as saying, "*The big problem is the strong Rand, which has literally brought exports to a stop*".

The IDB stated that if consumption of milk products was higher than domestic production for a couple of years before 2003, as a result of high maize prices leading to high prices for animal feedstuffs and a decline in the size of the national dairy herd, it is only to be expected that retailers will have a greater interest in importing dairy products such as cheese.

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

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

	2001		2002		2003	
	Volume (kg)	Rand/kg	Volume (kg)	Rand/kg	Volume (kg)	Rand/kg
Dumped imports	36 791	24.02	111 824	18.94	1 444 346	15.60
Other imports	914 716	26.71	799 793	40.14	1 195 265	27.08
Total imports	951 507		911 617		2 639 611	

The information in the table indicates that the imports from other countries also increased, but the price of the imports from other countries increased from 2001 to 2003 with a corresponding decrease in prices of the alleged dumped imports.

The Commission found that this factor did not detract from the causal link between the dumping and the material injury suffered by the SACU industry.

6.5.2 Competition between domestic producers

The IDB stated that the table under output in paragraph 5.3.3.3 clearly indicates that production volume of “other SACU producers” increased substantially over the period while the “Applicant’s” production allegedly decreased. It stated that the question is raised how is it possible that the other SACU producers are immune against the alleged dumped imports. It stated further that it is clear that the other SACU producers production are increasing as they are gaining market share from Clover and Parmalat.

The IDB stated that it is clear that the SACU cheddar cheese market declined in 2002 and as a result of this decline it would have impacted negatively on the SACU producers and not necessary as the results of the imports from Ireland.

It stated further that it is clear that the other SACU producers showed substantial growth over the period of investigation, even in 2002 when the SACU market declined. It stated that it is clear that the alleged injury experienced by the Applicant is as a result of increased competition between the domestic producers in the SACU market.

In response to the Applicant's alleged material injury, the IDB stated that it is clear that the SACU industry is not suffering material injury when the injury information submitted by the Applicant, SA Milk, is separated between the largest dairy company in South Africa, Clover and the relative new entrant to the market, Parmalat.

The IDB indicated further that Clover's injury indicators, excluding pricing, showed in sales volume, sales value, output, market share, productivity, employees, profit, return on net assets, capacity utilization and cash flow an increasing trend over the investigation period.

It stated that although it is alleged that Clover's inventories increased, it believed that these increased inventories can be attributed to Clover's own imports that needed to be stocked.

It further stated that from the above summarised information it is clear that the SACU industry is not experiencing injury, and that it is only the one company, Parmalat, which cannot compete successfully on the SACU market against a large player.

The Applicant stated with regard to the statement by the IDB that the SACU industry is not suffering material injury, that the secondary dairy industry in SACU is represented by Clover and Parmalat. It further stated that the information contained in the submission can therefore not be considered on an

individual per company basis, since the two companies are not representative of the SACU industry individually. It stated that Clover did suffer a decline in market share, number of employees and capacity utilisation from 2002 to 2003. The Applicant stated that the IDB's statement that these factors show an increasing trend is therefore untrue. It stated that with regard to profit, return on net assets and cash flow it is very important to note that the figures for Clover reflect the total company's position and not the position with regard to cheddar cheese. It stated that Clover produces a wide variety of other products that are very profitable, and that cheddar cheese represents only a small percentage of Clover's total product mix. The Applicant further stated that with regard to Clover's increased inventories, it is important to note that Clover imported small quantities of cheese that were utilised for processing. It further mentioned that Clover's inventories of cheddar cheese increased because retailers chose to import dumped cheese from Ireland.

In response to the Commission's preliminary determination, the IDB stated that as indicated the largest dairy company in SACU, Clover, did not suffer material injury, nor did the other SACU manufacturers, notwithstanding the allegation that Irish Cheddar cheese is dumped on the SACU market. It stated that, therefore, Parmalat itself cannot represent the SACU industry in the injury analysis. It stated that Parmalat's alleged injury cannot be causally linked to the alleged dumping, as the other SACU producers would also have been affected. It stated that it is submitted that Parmalat is allegedly suffering material injury as a result of competition between the SACU producers as stated in the article in "Beeld" and the export performance of Parmalat.

The IDB stated that from the preliminary report it is clear that the Commission did not investigate the reasons why the other producers of the subject product, both those who are members of Milk SA and those outside, appear to have done better than Parmalat. It stated that as the issue was highlighted by it, it requested reasons for the failure of the Commission to investigate "*any known factors*" as set out in Article 3.5 of the Agreement on Implementation of Article VI of GATT.

In response to the Commission's preliminary determination, the Applicant

stated that the views of the IDB that the decline in the production of the Applicant is as a result of an increase in the production of other SACU producers are factually incorrect as the market share clearly shows that the market share of the total SACU industry decreased significantly. It stated that the gain of the other producers is smaller than the decline of the Applicant. It stated that the decrease in market share of the total SACU industry should be seen against the background of the dramatic increase in the market share of the dumped imports and it clearly shows that it is unfounded to argue that the other SACU producers are immune against the negative impact of the dumped imports.

In its "essential facts" letters, the Commission indicated that it reconsidered the information before it and decided that the competition between the domestic producers detracted from the causal link between the injury to the SACU industry and the dumping of the subject product. In coming to this conclusion, the Commission noted that the market share calculations are based on the sales volumes and not the production volumes. The Commission noted that while Parmalat lost market share over the period of investigation, all the other SACU producers, including Clover, increased their market share. The Commission noted that increase in the market share of the other SACU producers (all except Parmalat) and the dumped imports from Ireland were almost equal to the decrease in the market share of Parmalat. The Commission further noted that the SACU producers (excluding Parmalat) and the dumped imports from Ireland shared almost equally in market share increase. The Commission noted that the production of Parmalat decreased over the period of investigation while that of the other SACU producers, including Clover, increased by substantially more than the decrease of Parmalat. The Commission further noted that the Applicant itself indicated that the action of one producer would impact on the rest of the producers.

In response to the "essential facts" letter, the Applicant stated that the decrease in the sales volume in absolute terms of Parmalat is more than the increase in absolute volume sales of the other SACU producers including Clover.

The Applicant stated that the increase in the volume of dumped imports in absolute terms and the increase in the market share (in absolute terms) of the other SACU producers (all except Parmalat) in the period 2001 to 2003 is nearly 60 per cent more than the volume with which the sales of Parmalat dropped in the same period.

The Applicant stated that the market share as a percentage of the dumped imports dramatically outstripped the increase in the market share of Clover and the other SACU producers respectively and the combined market share of Clover and the other SACU producers (excluding Parmalat).

In response to these comments, the IDB stated that from its analysis, it is clear that the production and sales volumes for the total SACU cheddar industry increased over the three-year period in question. It stated that the Irish imports added marginally to the total growing SACU market. It stated that it is evident that a situation in which production and sales volumes (and profitability) all increase can hardly be described as material injury.

The Commission noted that the Applicant indicated in its reconciliation of the sales volume figures, that an amount of export sales were included in the figures submitted by it to the Commission as domestic SACU sales.

The Commission found that as the Applicant only corrected the sales volumes at this late stage of the investigation, this cast doubt on the other figures submitted by Clover.

However, the Commission found that even if the "new" figures are used, the increase in sales volumes of Clover and the other SACU producers accounted for 91 percent of the decrease in sales volume of Parmalat.

In response to the comments by the IDB, the Applicant stated that as indicated above, Parmalat suffered injury with respect to more variables than Clover but that this is overshadowed by the impact of the dumping on the industry as a whole. It stated that in light of the magnitude and impact of the dumping as set out in the preliminary report, it is simply not reasonable to argue that Parmalat

alone suffered injury.

In making its preliminary determination, the Commission requested that the Applicant be requested to indicate the types of cheddar cheese are produced and sold by the "Other producers" of cheddar cheese in SACU. The Applicant stated that the SACU industry (Clover, Parmalat and "other producers") produces all types of cheddar cheese. The Applicant was again requested to request the "other producers" of cheddar cheese to indicate to the Commission the types of cheddar cheese produced and sold by them and to indicate whether they produce cheese mainly for a niche market, i.e. only mature cheddar, etc. rather than mainly bulk mild cheddar cheese.

The Applicant responded and indicated that the "other producers" of cheddar cheese produce mainly mild cheddar and a number of producers produce speciality matured cheddar cheese in small quantities for niche markets.

In response to this, the IDB stated that from the information supplied it is clear that the other SACU producers grew market share with regard to the subject products.

In response to the "essential facts" letter, the Applicant stated that in light of the above, it is justified to conclude that

- the SACU industry consisting of Parmalat and Clover suffered material injury
- the material injury is not only the result of the figures of Parmalat but also the figures of Clover. Viewed on its own Clover suffered material injury due to the lack of profit in respect of cheddar cheese and the other indicators in respect of which the preliminary report indicated that injury exists.
- the mere fact that the other SACU producers (other than Clover and Parmalat) increased their sales volume in the period concerned is not sufficient to conclude that they are not suffering injury. To make such conclusion, it is necessary to determine that they are enjoying profitability which renders them economically viable over the medium

and long term. Clearly attention should be given to the fact that the other cheddar manufacturers supported the application.

The Commission considered all the comments received from interested parties and made a final determination that the competition between domestic producers detracted from the causal link between the dumping of the subject product and the material suffered by the SACU industry.

6.5.3 Developments in technology

The Applicant indicated that no technology developments have taken place since it last updated its manufacturing process.

6.5.4 Contraction in demand or changes in the patterns of consumption

The Applicant stated that there has been an increase in overall demand but the market share of the SACU industry has been eroded by the alleged dumped imports.

In response to the Commission's preliminary determination, the IDB stated that as stated in the article in "Beeld", the sales of cheddar cheese in SACU are not increasing and this is as a result of the demand for other cheeses in the SACU market that include the niche markets.

6.5.5 Export performance

The Applicant stated that the SACU dairy industry is historically a net exporter. Exports exceeded imports until 2003 when the strengthening of the Rand influenced export prices negatively.

The IDB stated that it is clear that the alleged injury suffered by the Applicant is as a result of its exports of "cheese at losses" and not the import of Irish cheese as such. It stated further that the causal link between the exports, strong rand and the alleged injury suffered are thus apparent.

It stated further that it is clear from the application that the other SACU producers gained market share and showed substantial growth over the period of investigation. It stated that most probably the lack in effective "management tools" and the strong rand impacting negatively on the exports of Clover and Parmalat affected them negatively.

The IDB stated that it is acknowledged by the Applicant that the SACU industry was historically a net exporter. It stated that it then continues to state that the strengthening of the Rand influenced the export prices negatively.

The IDB stated that it is thus clear that the export performance of Parmalat is causing the company material injury. It stated that this is substantiated in the article that appeared in the *"Beeld"* on 25 February 2005. It stated that it is stated by Theo Hendrickse of Parmalat that the strong Rand put pressure on the group's exports. It stated that it then also continues to elaborate on the fact that Parmalat invested large sums of money to ensure that it can comply with the high standards of cheeses in Europe. It stated that it appears that the target was the supermarkets in Britain. It stated that, however, when Parmalat complied with all the standards, the strong Rand made it unprofitable for them to export. It stated that it was indicated that Parmalat *"currently"* focuses on the South African market. It stated that it is thus clear that the SACU market was in the first instance not the target market for Parmalat, but that the export market was.

In response to the Commission's preliminary report, the Applicant stated that the IDB's arguments in respect of the exports by the Applicant, the strong value of the Rand and material injury are indicative of an unbalanced presentation of certain facts and the brushing aside of other relevant facts.

It stated that the strong Rand limits the competitiveness of SACU industry in the SACU and the export markets and puts severe pressure on the SACU industry in respect of issues such as prices and profitability. It stated that under such conditions the industry is much more vulnerable to suffer material injury as a result of dumping as would have been the case if the value of the

Rand deteriorates.

The Applicant stated that as indicated, it is logical to accept that the strong Rand puts pressure on the Applicant in the SACU and export market, but it is illogical to argue that such a situation detracts from the causal link between the dumping from Ireland and the material injury as a result of the dumping. It stated that the dumping margin, price suppression, price undercutting, price disadvantage, increase in the volume of dumped imports relative to the other imports and the increase in the market share of the dumped imports are so significant that the material injury suffered by the Applicant is obviously causally linked to the dumped imports. It stated that the existence of other factors which impact negatively on the SACU industry, clearly do not detract from this causal link.

In response to these comments from the Applicant, the IDB stated that it agrees fully with the Applicant that the "*strong*" Rand led to the evaporation of Parmalat's export markets. It stated that it follows that should Parmalat be suffering injury, that one of the main reasons for it would be the loss of its export markets.

The IDB stated that it reiterated that there is no causal link between the alleged dumping of the subject product and the alleged injury, which the SACU industry (particularly one company) may be suffering. It stated that the said claimed injury is owing to a loss of market share to other, mostly smaller local producers, the dramatic loss of exports markets and management problems stemming from its affiliation to a troubled overseas parent.

The following export figures for the period of investigation were submitted by the Applicant:

	2001	2002	2003
Export volumes			
Clover	100	195	70
Parmalat	100	10 165	4 049
Applicant	100	4 703	1 403
Export value			
Clover	100	1 910	118
Parmalat	100	9 417	2 872
Applicant	100	4 895	1 213

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

The Applicant stated that it is important to note that the SACU industry exported at unprofitable prices during 2003. It stated that a comparison of the export price during 2003 with the production cost confirms this statement.

In response to the information submitted by the Applicant, the IDB stated that it is clear that the figures submitted by the Applicant substantiate its arguments that factors other than dumping sufficiently detracted from the causal link between the alleged dumping and any injury which the SACU industry may be suffering, to warrant a negative finding.

The IDB submitted the following table. It stated that it divided the indexed export value by the indexed export volume to determine an indexed export price per unit for the two companies:

Export price index	2001	2002	2003
Clover	100	102	169
Parmalat	100	93	70

The IDB stated that the above table shows that it was Parmalat that was continuing to export at a loss and this decision would seem to have contributed to the fact that their experience was less favourable than Clover's in 2003.

The IDB stated that one of the most important factors is the decline in the export volume and value as a result of the strengthening of the Rand, and as stated by the Applicant, the industry "*exported at unprofitable prices in 2003*".

The IDB stated that it is also clear from the preliminary report that as Parmalat did not expand its capacity over the period of investigation and its exports rocketed in 2002, that Parmalat at that stage sacrificed the domestic market in favour of the more profitable export market. It stated that Parmalat focused on the British supermarkets. It stated that, however, when the Rand strengthened in 2003, Parmalat turned again to the SACU market. It stated that the purchasing of the brands, Simonsberg and Melrose is indicative of the group's effort to re-focus on the SACU market as the strengthening of the Rand made it uncompetitive in export markets.

The IDB stated that an analysis of the 2003-import and export figures of the Irish and SACU cheese respectively, in relation to movement of the SA Rand, shows a definitive correlation between the strengthening of the Rand and the declining in export volume. It stated that on the other hand, there is clearly no correlation between the import volumes of Irish cheese and exports of SACU cheese.

The IDB stated that it is thus evident that the Applicant's allegation that the importation of Irish cheese forced it to export at unprofitable levels is unfounded.

In response to the "essential facts" letter, the Applicant stated that the export recorded in 2002 remained the property of Clover as consignment stock and the export was only recorded by Clover as sales once the product was sold. It stated that in reality some of the exports in 2002 were sold in 2002 (and form part of the sales in 2002) while the bulk was sold in 2003.

In response to this, the IDB stated that it is clear that the main reason why Clover suffered huge losses in 2002 was that it exported the subject products in 2002 on a consignment stock basis and that the "*bulk was sold in 2003*". It stated that, therefore Clover incurred costs for the consignment stock for

more than a year adding to the losses in 2002.

The Commission considered all the comments received from interested parties and made a final determination that the decrease in export performance over the period of investigation and the fact that the SACU industry exported the subject product at a loss, detracted from the causal link between the injury to the SACU industry and the dumping of the subject product.

6.5.6 Competition between foreign and domestic producers

The Applicant stated that the SACU dairy industry is on par with the Irish dairy industry with regards to productivity and would be able to compete with Irish dairy exports, if they are not subsidised.

6.5.7 Trade restrictive practices

The Applicant stated that none are known.

6.5.8 Productivity of the domestic industry

The Applicant stated that cheddar cheese produced locally is of excellent quality and has been approved for export to the EU. It stated that the SACU industry's clients are highly satisfied with delivery times and have praised the industry for its excellent service, which includes after sales service.

6.6 OTHER COMMENTS SUBMITTED ON CAUSAL LINK

In response to the "essential facts" letter, the IDB indicated that it fully supports the determination of the Commission in this regard.

In response to the "essential facts" letter, the Applicant stated that the available evidence shows that the unfavourable export conditions and competition between domestic manufacturers of cheddar cheese have a negative impact on the SACU industry consisting of Clover and Parmalat. It stated that these two factors make the SACU industry more vulnerable to

injury due to dumping as the industry is, due to the two factors less able to meet the competition of dumped imports without suffering material injury.

The Applicant stated that the evidence does not indicate that the factors mentioned eliminated the dumping as one of the reasons for the material injury suffered by the SACU industry. It stated that it is not logical to conclude that dumping is not a reason for the material injury especially if the following is taken into account:

- the dramatic rise in the volume of imports of the dumped products relative to the percentage market share of the SACU industry and the market share of the other SACU manufacturers. A continuation of this trend in the volume of dumped imports will be disastrous for all cheddar cheese manufacturers in SACU;
- the extend to which the prices of the dumped imports undercut the prices of the SACU industry; and
- the price disadvantage experienced by the SACU industry versus the dumped product.

The Applicant stated that the dramatic rise in the volume of dumped imports, the significant price undercutting by the dumped imports, the significant price disadvantage experienced by the SACU industry and the lack of profitability of the SACU industry, do not justify a conclusion that the impact of the dumping is so limited that it is possible to conclude that there is not a causal link between the dumping and the material injury.

In response to these comments from the Applicant, the IDB stated that the Applicant is confirming the Commission's finding with regard to causal link.

6.7 CONCLUSION ON CAUSAL LINK

After considering all relevant factors and comments, the Commission made a final determination that the export performance of the SACU industry and the competition between domestic producers in SACU, sufficiently detracted from the causal link between the dumping of the subject product and the material injury of the SACU industry.

7. SUMMARY OF FINDINGS

7.1 Dumping

The Commission found that the subject product originating in or imported from Ireland was dumped into the SACU market with the following margins:

Company	Margin of dumping expressed as a percentage of the f.o.b export price
Irish Dairy Board	60.1%
All other exporters from Ireland	60.2%

7.2 Material injury

The Commission found that the Applicant suffered material injury in the form of price undercutting, price suppression, the decline in output, sales, market share, capacity utilization and increase in inventory levels.

7.3 Causal link

The Commission found that factors other than the dumping of the subject product sufficiently detracted from the causal link between the dumping of the subject product and the material injury suffered by the SACU industry.

8. RECOMMENDATION

The Commission made a final determination that:

- The subject product originating in or imported from Ireland was being dumped into the SACU market;
- The SACU industry suffered material injury;
- There were factors other than the dumping of the subject product that 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 recommended to the Minister of Trade and Industry that the investigation into the alleged dumping of cheddar cheese originating in or imported from Ireland, be terminated.

The Commission further recommended that the provisional payments imposed on 11 February 2005 be terminated.