




International Trade Administration Commission of South Africa

Report No. 101

Investigation into the alleged dumping of wheat flour originating in or imported from India: Preliminary determination

The International Trade Administration Commission of South Africa herewith presents
its **Report No. 101: INVESTIGATION INTO THE ALLEGED DUMPING OF WHEAT
FLOUR ORIGINATING IN OR IMPORTED FROM INDIA: PRELIMINARY
DETERMINATION**



Ms N.P. MAIMELA
CHIEF COMMISSIONER

PRETORIA

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INTERNATIONAL TRADE ADMINISTRATION COMMISSION

INVESTIGATION INTO THE ALLEGED DUMPING OF WHEAT FLOUR ORIGINATING IN OR IMPORTED FROM INDIA: PRELIMINARY DETERMINATION

SYNOPSIS

On 03 November 2004, the International Trade Administration Commission of South Africa (the Commission) formally initiated an investigation into the alleged dumping of wheat flour originating in or imported from India. Notice of the initiation of the investigation was published in Notice No.2486 of *Government Gazette* No.26962 dated 12 November 2004.

The Application was lodged on behalf of the South African Customs Union (SACU) industry by the National Chamber of Milling (NCM), (the Applicant), on behalf of its members, which include Tiger Milling, Pioneer Sasko and Premier Foods, being the major domestic manufacturers of the subject product in SACU, which claimed that dumped imports were threatening to cause material injury to the SACU industry.

The investigation was initiated after the Commission considered that there was *prima facie* evidence to show that the subject product was being imported at dumped prices, threatening to cause material injury to the SACU industry.

On initiation of the investigation, the known producers and exporters of the subject product in India were sent foreign manufacturers'/ exporters' questionnaires to complete. An importer of the subject product was also sent an importers questionnaire to complete. No full and complete response was received from any interested party within the time frame allowed.

After considering all the information supplied by the Applicant, the Commission made a preliminary determination that the subject product originating in or imported from India was being dumped on the SACU market, but that a threat of material injury to the SACU industry does not exist.

The Commission made a preliminary determination to recommend to the Minister of

Trade and Industry to terminate the investigation.

1. PETITION AND PROCEDURE

1.1 LEGAL FRAMEWORK

This investigation is 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 the National Chamber of Milling (NCM) on behalf of its members which include Tiger Milling, Pioneer Sasko and Premier Foods, which are the major manufacturers of the subject product in the SACU industry.

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 3 November 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 India were being dumped on the SACU market, thereby threatening to cause 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 India, the SACU industry was suffering material injury in the form of:

- price undercutting;
- price suppression;
- actual and potential decline in sales;
- actual and potential decline in profits;
- decline in market share from 2003 to 2004;
- decrease in return on investment.

1.5 INVESTIGATION PROCESS

The Commission formally initiated an investigation into the alleged dumping of wheat flour originating in or imported from India pursuant to Notice No. 2486 which was published in *Government Gazette* No. 26962 on 12 November 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 Application.

One exporter, Empire Flour Mills Pvt Ltd, responded to the Commission's exporters questionnaire, indicating that it never exported the subject product to the SACU industry or anywhere else during the period of investigation. All other exporters that were sent exporters questionnaires did not respond. One importer was granted an extension of 14 days to submit its response to the Commission's importers questionnaire but did not submit a response within the extended time frame.

The Commission made a preliminary determination to recommend to the Minister of Trade and Industry to terminate the investigation.

Interested parties will be invited to comment on the Commission's preliminary report.

1.6 INVESTIGATION PERIOD

The investigation period for dumping is from 01 May 2003 to 30 April 2004. The injury investigation involved evaluation of data for the period 01 May 2001 to 30 April 2004.

1.7 PARTIES CONCERNED

1.7.1 SACU industry

The SACU industry consists of Tiger Milling, Pioneer Sasko and Premier Foods, being the major manufacturers of the subject product in the SACU industry.

Information was submitted by the Applicant, which was verified by the investigating officers prior to the initiation of the investigation.

1.7.2 Exporters/Foreign Manufacturers

The following exporter responded to the Commission's exporters questionnaire, indicating that it never exported the subject product to the SACU industry or anywhere else during the period of investigation:

- (a) Empire Flour Mills Pvt Ltd.

The following exporters did not respond to the Commission's exporters questionnaire:

- (a) M/s. The South India Flour Mills Pvt. Ltd
- (b) M/s. Narasu's Roller Flour Mills
- (c) M/s. ShreeMurugan Flour Mills Pvt. Ltd

- (d) Apex Roller Flour Mills (P) Ltd
- (e) Ayyappa Roller Flour Mills Ltd
- (f) Trivandrum Flour Mills (Pvt) Ltd
- (g) Shivaji Roller Flour Mills
- (h) Century Flour Mills
- (i) Kovilpatti Lakshmi Roller Flour Mills

1.7.3 Importers

The following SACU importer requested an extension for submission of its response to the Commission's importers questionnaire but did not respond within the extended time frame:

- (a) Akila Trading South Africa

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 IMPORTED PRODUCTS

2.1.1 Description

The subject product is described as "wheat flour, i.e. the finely ground meal of either the whole wheat kernel or of the endosperm portion".

The Applicant indicated that wheat as such is any of the many varieties of the cereal grass species, *Triticum Aestivum*, and their grain, and that it is the principal cereal used in bread production because of the unique properties of its proteins which, when the grain is ground into flour and mixed with water, form the gluten that is needed to produce a light, aerated crumb structure in the baked loaf. It is further indicated that wheat kernel is the individual grain or berry of the wheat plant *Triticum Aestivum*.

2.1.2 Tariff classification

The subject product is classifiable as follows:

Table 2.1.2: Tariff classification

Tariff subheading	Description	Unit	General duty	EU	SADC
1101.00	Wheat or meslin flour	Kg	2.80c/kg	2.80c/kg	free

2.1.3 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 India accounted for 75.67 per cent of the total imports of the like product during the period of investigation for dumping.

2.1.4 Country of origin/export

The subject product originates in and is exported from India.

2.1.5 Application/end use

Wheat flour is used in baked products such as bread and confectionery.

2.1.6 Production process

When the grain is received at the mill silos, it is weighed and the quality checked to ensure that it meets the grade specified, and then stored until it is required for milling. At this stage it is given a preliminary cleaning and fumigated.

The next stage involves further cleaning (to remove any impurities such as foreign seeds, straw, stick or stones), blending (the different grades of grain are blended to produce a flour which has the required characteristics) and conditioning (whereby water is added and the grain allowed to “lay over” until it has “mellowed”).

2.2 SACU PRODUCT

2.2.1 Description

The SACU product is described as wheat flour.

2.2.2 Application/end use

The SACU product is also used in baked products such as bread and

confectionery.

2.2.3 Tariff classification

The SACU product is also classifiable under the same six-digit tariff subheading.

2.2.4 Production process

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

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 India.

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) production process;
- (3) physical appearance and characteristics;
- (4) customer demand and end use;
- (5) substitutability of the product with the product under investigation;
- (6) tariff classification;
- (7) any other factor proved to the satisfaction of the Commission to be relevant

(1) Raw materials

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

(2) Production process

Both the SACU and the imported products are manufactured using the same method.

(3) Physical appearance and characteristics

Both the imported and the SACU products have the same physical appearance and characteristics.

(4) Customer demand and end use

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

(5) Substitutability of the product with the product under investigation

The Commission found that the imported and the SACU products are substitutable.

(6) Tariff classification

Both the imported and the SACU products are classifiable under tariff subheading 1101.00.

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

No information was provided in this regard.

After considering all the above factors, 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 east 50 per cent by domestic production volume support such application."

The three companies that submitted information represent 84% of the SACU wheat flour milling industry. The total support for the investigation constitutes 95 per cent of the SACU production volume.

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

4.5 COMPARISON OF EXPORT PRICE WITH NORMAL VALUE

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

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

4.6 METHODOLOGY IN THIS INVESTIGATION FOR INDIA

4.6.1 Normal Value

Type of economy

India is considered by the Commission 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

Since no responses to the Commission's importers and exporters

questionnaires were received, the Commission used the best information available to it for purposes of calculating the normal value.

The normal value in India provided by the Applicant was obtained by buying the actual product at retail level in the market. Five different brands of wheat flour were purchased in India on 16 February 2003. The following table indicates the brand and its price per kilogram (kg):

<u>Brand</u>	<u>Rs</u>	<u>Kg</u>	<u>Rs/kg</u>
Hindustan Lever	79.50	5.00	15.90
Pilsbury	43.00	2.00	21.50
Cargill	43.00	2.00	21.50
ITC Ltd	100.00	5.00	20.00
Blue Bird	<u>22.00</u>	<u>1.00</u>	<u>22.00</u>
	287.5	15.00	19.17

Of the above brands, Hindustan Lever's brand sold at Rs 15.90/kg, which was the lowest price of the brands purchased at a retail level. Based on the retail price for Hindustan Lever, the following normal value after the adjustments for India was calculated:

Retail price in India	Rs 15.90/kg
Less adjustments:	
Central Sales Tax (10%)	Rs 1.45/kg
Gross margin (15%)	Rs 1.89/kg
Excise duties (9%)	Rs 1.04/kg
Freight (5%)	Rs 0.55/kg
Packing material (8%)	Rs 0.81/kg
Ex-factory price in India	Rs 10.17/kg

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.

Since no responses to the Commission's importers and exporters questionnaires were received, the Commission used the best information available to it for purposes of calculating the normal value.

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 export price was determined based on Deloitte's import/export ("IMEX") monitor system which is based on the SARS data. The average f.o.b. export price of wheat flour originating in or imported from India was Rs 8.94/kg. This equates to South African Rands R1.33/kg, using the conversion rate R1 = Rs 6.7228, which was the applicable rate for the period January to March 2004 obtained from the internet website www.oanda.com.

4.6.3 Margin of dumping

The following table shows the margin of dumping calculated using the best information available to the Commission:

Table 4.6.3

India	Rs/kg
Normal value	10.17
Export price	8.94
Margin of dumping	1.22
Margin of dumping as a % of the export price	13.76%

4.7 CONCLUSION - DUMPING

For purposes of its preliminary determination, the Commission found that the subject product originating in India was being dumped into the SACU market with the following margin:

India	Dumping margin expressed as a percentage of the f.o.b. export price
All exporters from India	13.76%

5. THREAT OF MATERIAL INJURY

5.1 DOMESTIC INDUSTRY FOR THE PURPOSE OF DETERMINATION OF INJURY

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

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

5.2 GENERAL

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

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

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

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

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

The following injury analysis relates to NCM, which constitutes 84 per cent of the total domestic production of the subject product in SACU. 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.

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 provide as follows:

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

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

The following table shows the volume of all the imports under tariff subheading 1101.00 as obtained from SARS:

Table 5.3.1.1 Import volumes in tonnes

Volume of alleged dumped imports	May to April 2002	% of imports	May to April 2003	% of imports	May to April 2004	% of imports
India	1	2.01%	1 530	94.54%	2 274	75.67%
Other imports	32	97.99%	88	5.46%	731	24.33%
Total imports	33		1 618		3 005	

The table above indicates that imports from India constitute 76 per cent of the total 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 Commission found that the Applicant experienced price undercutting over the period 2003 to 2004, and also that the imported prices have decreased over the period.

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:

	2002	2003	2004
NCM	100	115	115

This table was indexed due to confidentiality using 2002 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 of the percentage increase in cost with the percentage increase in selling price (if any), and whether or not the selling prices have increased by at least the same margin at which the cost of production increased.

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

Table 5.3.2.2: Price depression

Rand/tonne	2002	2003	2004
NCM	100	115	116

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

The information in the table shows that no price depression occurred, as prices increased from 2002 to 2003 with no significant price increase in 2004 when prices of the imported product decreased.

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:

Table 5.3.3.1: Actual and potential decline in sales

	2002	2003	2004
NCM	100	97	95

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

The table above indicates that the Applicant's sales volume decreased by 3 per cent from 2003 to 2003 and by 5 per cent from 2003 to 2004.

5.3.3.2 Profit

The following table shows the Applicant's profit margin situation:

Table 5.3.3.2 Profit (NOP = Nett operating profit)

	2002	2003	2004
NCM	100	105	20

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

The table above indicates that the Applicant's profit margin decreased significantly from 2003 to 2004.

5.3.3.3 Output

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

Table 5.3.3.3: Output

Tonnes	2002	2003	2004
NCM	100	97	88

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

The table above shows that output declined by 3 percentage points from 2002 to 2003 and by 9 percentage points from 2003 to 2004.

5.3.3.4 Market share

The following table shows the Applicant's market share for the subject product:

Table 5.3.3.4: Market share

	2002	2003	2004
India	0.00%	0.08%	0.12%
Other imports	0.00%	0.00%	0.04%
Total imports	0.00%	0.09%	0.16%
Applicants	82.54%	99.26%	95.39%
Other SACU producers	17.46%	0.74%	4.61%
Total market	100.00%	100.00%	100.00%

The table above indicates that the market share of the imported product is not significant.

The Commission also considered Imports for the period May to October 2004, subsequent to the period of investigation, and found that there was no evidence of an increase in imports from India and the market share held by the Indian imports was found to decline.

In 2004, market share was lost by the Applicant which was gained by the other SACU producers.

5.3.3.5 Productivity

The Applicant stated that due to the structure of the companies in that the assets cannot be attributed to the milling division, the information cannot be provided in the format required in such a way that it could be compared across the firms. It stated that it, therefore, believes that this information will not provide an equitable injury analysis.

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.

As the industry comprises three main millers which had different results, no conclusion could be made regarding return on investment as an indicator of threat of material injury.

5.3.3.7 Utilisation of production capacity

The following table provides the SACU industry's capacity and production for the subject production:

Table 5.3.3.7: Utilisation of production capacity

NCM	2002	2003	2004
Capacity	100	95	90
Tons milled	100	131	118
% utilisation	100%	137%	132%

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

The table indicates an improvement in capacity utilisation in 2003 and a decrease in 2004.

5.3.3.8 Factors affecting domestic prices

No information was submitted in this regard.

5.3.3.9 The magnitude of the margin of dumping

In Section 4 of this report, a dumping margin of 13.76 per cent was found.

5.3.3.10 Actual and potential negative effects on cash flow

The information provided by the Applicant could not substantiate any link between the volume of dumped imports and the impact on the cash flow of the SACU industry.

The Applicant stated that if the increased inventory levels are being financed through debt, a further negative cash flow implication would be the added interest charge related to this finance.

5.3.3.11 Inventories

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

Table 5.3.3.11 Inventories (in value)

Company Name	2002	2003	2004
Tiger Brands		100	94
Pioneer Foods	100	120	115
Premier foods	100	45	51
Total	100	247	237

Inventories (tons)

Company Name	2002	2003	2004
Tiger Milling		100	96
Pioneer Sasko	100	123	113
Premier Foods	100	38	44
Total	100	226	220

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

The Applicant stated that the stock levels at the end of the financial years are not material and merely represent unsold stock at the end of the year. It stated that over the last three years there were no material changes in stock levels except maybe for Premier Foods in 2002, and that for all other years inventory levels are more or less in line with sales and production changes.

5.3.3.12 Employment

The following table shows the Petitioner's employment level:

Number of employees	2002	2003	2004
Total	100	102	102

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

The table above indicates employment levels to be fairly stable.

5.3.3.13 Wages

The following table provides the SACU industry's wages:

	2002	2003	2004
Tiger Brands	100	77	122
Pioneer Sasko	100	105	103
Premier Foods	100	55	58
Total	100	76	113

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

The information in the table above indicates that the Applicant's wages per employee increased over the period of investigation.

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

5.3.3.14 Growth

The Applicant alleged that the dumped imports would gain market share and impair growth of the SACU industry. However, the information provided by the Applicant could not substantiate any link between the volume of the dumped imports and the impact on growth of the SACU industry as imports did not increase.

5.3.3.15 Ability to raise capital or investments

The Applicant stated that the milling industry is a low margin, high volume industry, and that capital investment in the industry is considered high risk by investors due to the low margins and therefore it is not easy to raise capital. It stated further that it is unlikely that the local industry would consider expansion due to the over capacity within the Industry.

5.3.3.16 Own imports

No information was provided in this regard.

5.4 SUMMARY – MATERIAL INJURY

The Commission found that the SACU industry is not suffering material injury.

5.5 THREAT OF MATERIAL INJURY

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

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

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

5.5.1 Significant increase of alleged dumped imports

The Applicant stated that India has made a public statement on 23 June 2003 at the International Grains Council that they will become an exporting country with regard to wheat flour and will aggressively pursue the global market. It stated that India indeed increased its' exports of wheat flour to the SACU from 0,666 tons to 2 274 tons from 2002 to 2004, and that there is a clear

dumping issue is not addressed.

5.5.2 Freely disposable capacity of the exporters

The Applicant stated that since 1997, the Indian government has liberalised the country's flour and rice milling sectors by repealing licensing requirements relating to the establishment of new milling operations. It stated that together with this, the Indian government has also relaxed restrictions on foreign investment for modernisation, and that both these factors will enable the milling Industry in India to expand and increase their capacities by establishing new mills and increasing the production capacity through the use of more modern milling technology.

The Applicant stated that another factor that has encouraged increased capacity is the fact that the exports of wheat flour are subsidised by the Indian government in order to encourage increased exportation and to allow the product to be sold on the Indian market at fixed prices.

The Commission found that for the period May to October 2004, subsequent to the period of investigation, there was no evidence of an increase in imports from India and the market share held by the Indian imports was found to be declining.

5.5.3 Prices of imports which will have a significant depressing or suppressing effect on domestic prices

The Applicant stated that the cost of wheat flour production is ever increasing. It stated that due to the fact that wheat flour is a low margin product, producers have to increase the price of wheat flour as production prices increase, to maintain the profit margins. The Applicant stated further that the wheat flour imported from India is imported at far lower prices compared to selling prices on the local market, and that in order to be competitive, the local producers have to sell their products at prices which are lower than the desired prices and this is eroding their profit margins. It stated further that the SACU industry's prices are thus suppressed as a result of the low prices of

the Indian products.

The Applicant stated that there exists a further threat in that if this trend continues, the production of wheat flour will no longer be profitable and the local wheat flour industry, which is already suffering injury, will be permanently harmed.

5.5.4 Inventories of subject product

The Applicant stated that the Indian government have been stock-piling surpluses (up to 9 months of stock) of wheat production in order to ensure that there are sufficient stocks in the case of a famine. It stated that the costs of maintaining these ever increasing wheat stocks are now becoming burdensome. It stated further that the wheat production has been increasingly improved and the likelihood of a drastic famine is decreasing due to the modernising of farming methods in India of the past few decades. The Applicant stated further that it has been established that the Indian government has large stocks of wheat and this poses a threat to the SACU market as the Indian government could decide at any time to make available this surplus of wheat stock for the export market to reduce the expenditure incurred in storing this inventory.

5.5.5 State of the economy of India

With regard to the state of economy in India, the Applicant stated that a large majority of the population live in rural areas and are dependent on agriculture for their livelihood. It stated that the agricultural sector is therefore an integral part of the Indian economy, and that small scale farming constitutes the large majority of this sector. The Applicant stated that in the 1970s and 1980s the Indian government made significant investment in order to boost agricultural yield with the result that in the 1990s India enjoyed net exporter status for grains in most years.

The Applicant stated that India's wheat production volumes have increased substantially in the last few years, and that these substantial increases in

production have also been used as buffer stocks for possible periods of famine and bad harvest. However the government has now reached a situation where the cost of maintaining these surpluses has become burdensome.

The Applicant stated that this situation has also been a result of the fact that the government has subsidised farmers producing wheat, which is an incentive to produce more wheat. It stated that as the demand for local consumption decreases, wheat surpluses increase and the logical action by government would be to export surpluses so as to reduce the costs of maintaining the surpluses.

5.6 SUMMARY ON THREAT OF MATERIAL INJURY

The Commission found that the alleged threat of material injury to the SACU industry did not materialise as there was no increase in imports from India subsequent to the period of investigation and the market share taken by the dumped imports was negligible.

6. CAUSAL LINK

6.1 GENERAL

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

Article 3.5 of the Anti-Dumping Agreement 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."

As the Commission did not find evidence of injury or of threat of material injury, it did not consider causal link.

7. SUMMARY OF FINDINGS

7.1 Dumping

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

	Margin of dumping expressed as a percentage of the f.o.b export price
All exporters from India	13.76%

7.2 Threat of Material injury

The Commission found that the alleged threat of material injury to the SACU industry did not materialise as there was no increase in imports from India subsequent to the period of investigation and the market share taken by the dumped imports was negligibly small.

7.3 Causal link

As the Commission did not find evidence of a threat of material injury, it did not consider causal link.

8. RECOMMENDATION

The Commission made a preliminary determination that:

1. The subject product originating in or imported from India was dumped into the SACU market;
2. The alleged threat of material injury to the SACU industry did not materialise.

As the Commission found that the alleged threat of material injury to the SACU industry did not materialize, it decided to recommend to the Minister of Trade and Industry that the investigation into the alleged dumping of wheat flour originating in or imported from India be terminated.