



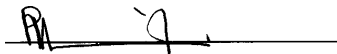
International Trade Administration Commission of South Africa

Report No. 74

**Investigation into the alleged dumping of articles
of plaster or of compositions based on plaster
faced or reinforced with paper or paperboard
only, commonly referred to as “Gypsum
Plasterboard”, originating in or imported from
Indonesia: Final determination**



The International Trade Administration Commission of South Africa herewith presents
its **Report No. 74: INVESTIGATION INTO THE ALLEGED DUMPING OF ARTICLES
OF PLASTER OR OF COMPOSITIONS BASED ON PLASTER, FACED OR
REINFORCED WITH PAPER OR PAPERBOARD ONLY, COMMONLY REFERRED
TO AS "GYPSUM PLASTERBOARD", ORIGINATING IN OR IMPORTED FROM
INDONESIA: FINAL DETERMINATION**



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COMMISSION OF SOUTH AFRICA

PRETORIA

02/09/ 2004

INTERNATONAL TRADE ADMINISTRATION COMMISSION

INVESTIGATION INTO THE ALLEGED DUMPING OF ARTICLES OF PLASTER OR OF COMPOSITIONS BASED ON PLASTER, FACED OR REINFORCED WITH PAPER OR PAPERBOARD ONLY, COMMONLY REFERRED TO AS "GYPSUM PLASTERBOARD", ORIGINATING IN OR IMPORTED FROM INDONESIA: FINAL DETERMINATION

SYNOPSIS

On 14 November 2003, the International Trade Administration Commission of South Africa (the Commission) decided to initiate an investigation into the alleged dumping of gypsum plasterboard originating in or imported from Indonesia. Notice of the initiation of the investigation was published in Notice No. 25857 of Government Gazette No. 463 dated 02 January 2004. The application was lodged on behalf of the Southern African Customs Union (SACU) industry by BPB Gypsum, which claimed that the alleged dumped imports were causing it material injury. It further claimed that circumvention of the duty in the form of country hopping was taking place as, subsequent to the imposition of provisional payments against Thailand, exports were switched to an Indonesian company, related to the exporter in Thailand. BPB Gypsum is the only manufacturer of the subject product in the SACU industry.

The investigation was initiated after the Commission considered that there was sufficient evidence to indicate that circumvention was taking place in the form of country hopping, in that subsequent to the imposition of the anti-dumping duties against dumped imports from Thailand, large quantities of gypsum plasterboard were found to be exported into the SACU market by a related producer in Indonesia.

Known producers and exporters of the subject product in Indonesia were sent foreign manufacturers/exporters questionnaires to complete. Importers of the subject product were also sent questionnaires to complete.

On 07 April 2004 the Commission made a preliminary determination that circumvention in the form of country hopping was taking place and that exports at dumped prices from Indonesia were causing material injury to the SACU industry.

As large volumes of gypsum plasterboard were being imported from Indonesia at alleged dumped prices, the Commission, prior to verifying the information received from the importers and exporters, requested the Commissioner for South African Revenue Service (SARS) to impose provisional measures on imports of the subject product originating in or imported from Indonesia, to prevent further injury to the SACU industry during the finalisation of the investigation. The provisional payments were imposed pursuant to Notice No. R.636 which was published in *Government Gazette* No. 26381 on 21 May 2004. The Commission's detailed reasons for its decision were set out in Commission Report No.54 (preliminary report). Interested parties were invited to comment to the Commission's decision.

After considering all parties' comments and representations in respect of the preliminary report, the Commission made a final determination, that circumvention in the form of country hopping was taking place, that the subject product was being dumped on the SACU market, causing material injury to the SACU industry as a result.

The Commission therefore decided to recommend to the Minister of Trade and Industry that the following definitive anti-dumping duties be imposed:

Subheading	Description of goods	Anti-dumping duties	Imported from or originating in
6809.11	Boards, sheets, panels, tiles and similar articles of plaster or of compositions based on plaster, not ornamented, faced or reinforced with paper or paperboard only, manufactured by PT Petrojaya Boral Plasterboard (PJPB)	53.3%	Indonesia
6809.11	Boards, sheets, panels, tiles and similar articles of plaster or of compositions based on plaster, not ornamented, faced or reinforced with paper or paperboard only, manufactured by PT Siam Indo Gypsum Industry (PTSI)	23.5%	Indonesia

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 Anti-Dumping Regulations of the International Trade Administration Commission of South Africa (the ADR).

1.2 PETITIONER

The petition was lodged by BPB Gypsum (the Petitioner), being the producer of the subject product in the SACU.

1.3 DATE OF ACCEPTANCE OF PETITION

The petition was accepted by the Commission as being properly documented in accordance with Article 5.2 of the Anti-Dumping Agreement on 14 November 2003. The trade representative of the country concerned was advised accordingly.

1.4 ALLEGATIONS BY THE PETITIONER

Subsequent to the imposition of the provisional payments against the exporter in Thailand, large quantities of gypsum plasterboard were found to be exported to the SACU market by a company in Indonesia, which was claimed to be related to the company investigated in Thailand. The Commission received a complaint from the SACU industry alleging that this constitutes circumvention in the form of country hopping.

Comments by Webber Wentzel Bowens (WWB) acting on behalf of the exporter (PJPB) and the importers (Pelican and MIS)

In response to the preliminary determination, WWB stated that the regulations relating to anti-circumvention review and country hopping in particular are imprecise and unclear with respect to causation and are voidable on the ground of being vague.

The Commission considered this comment but was of the opinion that the ADR provides sufficient guidance in this regard.

1.5 INVESTIGATION PROCESS

The Commission formally initiated an investigation into the alleged dumping pursuant to Notice No. 25875 which was published in *Government Gazette* No. 463 on 02 January 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 summary of the petition.

The information submitted by the importers of the subject product was verified on 06 February 2003 and the information received from the exporters of the subject product was verified on the 24th to the 28th of May 2004.

The Commission made a preliminary determination that circumvention of Anti-Dumping duties in the form of country hopping was taking place and that the subject product originating in Indonesia was being imported at dumped prices, causing material injury to the SACU industry as a result. The Commission therefore, prior to verifying the information received, decided to request the Commissioner for SARS to impose provisional measures, which

were published in Notice No. R.636 of *Government Gazette* No. 26381 on 21 May 2004.

Interested parties were given an opportunity to respond to the Commission's preliminary report and were given opportunity to comment on each others' non-confidential responses.

1.6 INVESTIGATION PERIOD

The investigation period for dumping was from 01 June 2003 to 30 November 2003. The injury investigation involved evaluation of data for the period 01 April 2000 to 30 November 2003, based on information submitted in the investigation of alleged dumped imports originating in Thailand.

1.7 PARTIES CONCERNED

1.7.1 SACU industry

The SACU industry consists of the following producer of the subject product:

- (a) BPB Gypsum (Pty) Ltd. (the Petitioner)

1.7.2 Exporters/Foreign Manufacturers

The following exporters/foreign manufacturers were identified as interested parties:

- (a) PT Petrojaya Boral Plasterboard (PJBP)
- (b) PT Siam Indo Gypsum Industry (PTSI)

Information was supplied with regard to both PJBP and PTSI in respect of domestic sales, export sales and adjustments claimed thereon, which was verified on the 24th to the 28th of May 2004.

Comments by WWB

WWB contended that PTSI, in its view, is not a related party to the exporter in Thailand, Siam Gypsum Industries (SGI) and requested the Commission to explain the exclusion of other Indonesian exporters from the investigation.

The Commission considered this comment and found that PTSI indicated an indirect common shareholding between it and Lafarge/ Boral in Asia through Siam Cement public company. The Commission therefore decided that PTSI is deemed to be a related party in terms of definition (a) of related parties in section 1 of the Anti-Dumping Regulations.

As the complaint was brought on the grounds of country hopping, the investigation was confined to parties related to SGI, the exporter in Thailand.

1.7.3 Importers

The following SACU importers were identified as interested parties:

- (a) MacSteel Interior Systems (Pty) Ltd. (MIS)
- (b) Pelican MIS(Pty) Ltd. (Pelican)
- (c) Ceiling and Partitioning Components (CAPCO)

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 IMPORTED PRODUCTS

2.1.1 Description

The subject product is described as:

Articles of plaster or of compositions based on plaster, faced or reinforced with paper or paperboard only, commonly referred to as "gypsum plasterboard".

Comments by WWB

WWB stated that the extension of the scope of the investigation beyond plasterboard of 12mm thickness to include plasterboard of all thicknesses is unjustified and unlawful.

In paragraph 6.4 of its injury memorandum, WWB concedes that thicknesses of 9mm, 12mm and 6.4mm were imported during the period of investigation.

In both the Thailand and Indonesian investigation the Commission made a finding that the subject product is gypsum plasterboard without reference to models (thicknesses) all falling within the description of plasterboard for reasons of manufacturing tolerances and application substitutability.

2.1.2 Tariff classification

The subject product is currently classifiable as follows:

Heading	Sub Heading	Article Description	Statistical Unit	Rates of duty		
				General	EU	SADC
68.09		Articles of plaster or compositions based on plaster:				
	6809.1	--Boards, sheets, panels, tiles and similar articles, not ornamented:				
	6809.11	= Faced or reinforced with paper or paperboard only	kg	15%	15%	Free
	6809.19	= Other	kg	15%	15%	Free
	6809.90	= Other articles	kg	15%	15%	Free

2.1.3 Other applicable duties and rebates

No rebate provisions exist in terms whereof the subject product can be imported with rebate of the duty.

2.1.4 Import Statistics

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

"There shall be immediate termination in cases where the authorities determine that ... the volume of dumped imports, actual or potential, is negligible. The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports

from a particular country is found to account for less than 3 per cent of imports of the like product in the importing Member, unless countries which individually account for less than 3 per cent of the imports of the like product in the importing Member collectively account for more than 7 per cent of imports of the like product in the importing Member.”

The import statistics obtained from the South African Revenue Services (SARS) indicated that the volume of dumped imports from Indonesia account for 90.6 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 is exported from Indonesia.

2.1.6 Application/end use

The product is used for internal walling and ceiling applications, viz. drywall and partitioning, used in office, shopping malls and housing walls and ceilings.

2.1.7 Production process

The production process being used is a continuous process whereby gypsum and paper are formed into plasterboard.

2.2 SACU PRODUCT

2.2.1 Description

The SACU product is described as:

Articles of plaster or of compositions based on plaster, faced or reinforced with paper or paperboard only, commonly referred to as “gypsum plasterboard”.

2.2.2 Application/end use

The SACU product is also used for internal walling and ceiling applications, viz. drywall and partitioning, used in office, shopping malls and housing walls and ceilings.

2.2.3 Tariff classification

The SACU product is classifiable under tariff subheading 6809.11.

2.2.4 Production process

The production process being used is a continuous process whereby gypsum and paper are formed into plasterboard.

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 Indonesia.

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

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

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

"For the purposes of this Agreement, the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products.." [own underlining].

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

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

Both the SACU and the imported product are manufactured from gypsum and paper.

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 can be described as gypsum board and is fire resistant.

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

3 Tariff classification

The Commission found that both the imported and the SACU product are currently classifiable under tariff subheading 6809.11.

4 Method of manufacturing

The method of manufacturing of both the imported and the SACU product is a continuous process whereby gypsum and paper is formed into plasterboard.

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 product are used for internal walling and ceiling applications, viz. drywall and partitioning, used in offices, shopping malls and housing walls and ceilings.

The Commission found that the SACU products and those imported were the same for purposes of comparison.

3. SACU INDUSTRY

3.1 INDUSTRY STANDING

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

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

The Petitioner, BPB Gypsum, is the sole manufacturer of gypsum plasterboard in the SACU. Based on this, it is evident that the Petitioner's production represents 100% of the total production of the subject product in the SACU.

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

4. DUMPING

4.1 DUMPING

Section 1(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;”

Sales invoices from the exporter to the importer were verified.

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 verified 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 INDONESIA

4.6.1 Normal Value

Type of economy

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

4.6.1.1 PT Petrojaya Boral Plasterboard (PJBP)

Normal value definition

Like products to those exported to the SACU were sold in the domestic market in Indonesia in the ordinary course of trade during the period of investigation (POI). In accordance with section 32(2) of the ITA Act, invoiced sales values to distributors were used as the basis for determining the normal values.

Adjustments to normal values

The following adjustments were claimed by the exporter and allowed by the Commission as it was found that these affected price comparability at the time of setting the prices:

Volume rebate

The exporter provided a volume rebate and loyalty bonuses to its domestic customers as an incentive for customers to purchase its products in high volume. The calculation was based on actual volume rebates allowed during the period of investigation and was deducted.

Duty drawback

Duty drawback calculated on the volumes of imported input material used to produce products intended for export purposes were received by the exporter. The amounts of the rebates were verified from claims made by the exporter to the department of customs and were deducted.

Packaging cost

The exporter claimed an adjustment for wrapping and palletising the product intended for the domestic market. The calculation was based on the actual cost to pack one tonne of product for domestic delivery and was deducted.

Delivery charge

The exporter's domestic sales were on a delivered basis and it claimed an average cost for delivery. The calculation was based on the total cost of delivery in respect of domestic sales divided by the tonnage delivered as reflected in the financial reports of the exporter and was deducted.

Payment terms

The exporter claimed an adjustment for terms of payment based on an interest rate of 0.65 per cent per annum. For purposes of its final determination, the Commission applied an interest rate of 30 per cent per annum based on the prime overdraft rate as it considered it to be indicative of the cost of financing and deducted the amount so calculated.

4.6.1.2 PT Siam Indo Gypsum Industry (PTSI)

Adjustments to normal values

The following adjustments were claimed by the exporter and allowed by the Commission as it was found that these affected price comparability at the time of setting the prices:

Delivery charge

The exporter's domestic sales were on a delivered basis and it claimed an average cost for delivery. The calculation was based on the total cost of delivery in respect of domestic sales divided by the tonnage delivered as reflected in the financial reports of the exporter and was deducted.

Payment terms

The exporter claimed an amount for payment terms which was based on the contracted payment period and an interest rate of 30 per cent per annum. This amount was verified and was deducted.

Commission

The exporter pays a commission to its distributors in respect of domestic sales. This amount was verified and deducted.

Duty drawback

Duty drawback calculated on the volumes of imported input material used to produce products intended for export purposes were received by the exporter. The amounts of the rebates were verified from claims made by the exporter to its department of customs and were deducted.

Discount and rebates

Discounts and rebates allowed in the domestic market were claimed by the

exporter. These were verified and deducted.

Packaging cost

The exporter claimed a cost for wrapping and palletising products intended for domestic market, which was verified and deducted.

Stock carrying cost

The amount for carrying stock based on the average value of stock held was claimed by the exporter as it indicated that the size and the brand of the product exported is different from that sold domestically, and that stock is held only for domestic sales in accordance with a contractual agreement with its distributors. Product intended for export is manufactured only to order. This adjustment was verified and deducted.

Warehouse cost

The exporter claimed an amount for warehouse rental to hold stock for domestic sales as per agreement with its distributors. This adjustment was verified and deducted.

Trade mark, know how and technical assistance

A trade mark fee which is based on domestic sales of Elephant brand only was claimed by the exporter. As the product exported was not Elephant brand and not subject to this fee, the Commission decided to allow this adjustment.

The following adjustment were claimed by the exporter and not allowed by the Commission:

Administration/ marketing and sales expense

An adjustment in respect of administration, marketing and sales expense was claimed on the basis that all administrative expenses should be for domestic sales only. The Commission in its final determination decided not

to allow this adjustment as it was not proved that this affected price comparability at the time of setting the prices.

Brand premium

The exporter sells both Star brand and the Elephant brand in the domestic market. It made a marketing decision to sell the Star brand at a lower price than the Elephant brand. As it exports only the Star brand, it claims that the average domestic selling price should be based on Star brand only. The specifications and physical properties of both brands are identical. The average normal value calculated includes both brands.

This adjustment was not allowed by the Commission as it considered that the product intended for domestic purposes was identical to that exported, and as it has already granted an adjustment for trademark costs.

Comments by Webber Wentzel Bowens (WWB) acting on behalf of the exporter (PJPB) and the importers (Pelican and MIS)

WWB stated that the respondents did not know what case they have to meet in that they do not know how the normal value was calculated.

The Commission considered this comment and found that detailed information on the calculation of the normal value in respect of the Thailand investigation was provided to the exporter. A request by MIS to provide normal value information was refused as this was regarded as confidential information of the exporter.

The normal value in Thailand was applied by the Commission only for purposes of its preliminary determination. For purposes of its final determination the Commission applied the normal value based on verified information supplied by the exporter in Indonesia.

Ex-factory Domestic Prices

The ex-factory domestic prices were calculated taking the adjustments allowed by the Commission, into account.

4.6.2 Export prices

4.6.2.1 PT Petrojaya Boral Plasterboard (PJPB)

Definition of Export price

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

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

General

The exports to the SACU area were made to Pelican and MIS. These parties were related companies to the exporter during the POI. However, the selling prices were considered to be set in the ordinary course of trade.

Adjustments to export prices

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

Delivery charge

The exporter incurred costs for internal freight, trucking and port charges which were verified. These costs were deducted from the invoiced export price.

Packing expenses

The exporter incurred costs for packaging which were verified. These costs were deducted from the invoiced export price.

Terms of payment

The export sales payment terms was by letter of credit allowing deferred payment, the cost of which which was calculated based on the same interest rate as applied to the normal value.

Ex-factory Export Price

Taking the above adjustments into account, the ex-factory export price was calculated for the subject product.

4.6.2.2 PT Siam Indo Gypsum Industry (PTSI)

General

The exports to the SACU area were made to Ceiling and Partitioning Components (CAPCO). These parties were not related companies during the POI.

Adjustments to export prices

The following adjustments to the CFR export price were made to calculate the ex-factory export prices:

Delivery charges

The exporter incurred costs for sea freight, internal freight, trucking and port charges which were verified and adjusted from the invoiced export price.

Packing expenses

The exporter incurred a cost for packaging which was verified and deducted from the invoiced export price.

Ex-factory Export Price

Taking the above adjustments into account, the ex-factory export price was

calculated for the subject product.

4.6.3 Margin of dumping

4.6.3.1 PT Petrojaya Boral Plasterboard (PJBP)

The dumping margin is the difference between the normal value and the export price after allowance has been made for any differences affecting price comparability.

The dumping margin was calculated by subtracting the ex-factory export price from the ex-factory normal value for each of the respective products, and the difference was expressed as a percentage of the ex-factory export price. The margin of dumping in respect of PJBP was found to be 69.3 per cent.

4.6.3.2 PT Siam Indo Gypsum Industry (PTSI)

The dumping margin is the difference between the normal value and the export price after allowance has been made for any differences affecting price comparability.

The dumping margin was calculated by subtracting the ex-factory export price from the ex-factory normal value for each of the respective products, and the difference was expressed as a percentage of the ex-factory export price. The margin of dumping in respect of PTSI was found to be 27.7 per cent.

4.7 CONCLUSION - DUMPING

The Commission found that the subject product originating in Indonesia was being dumped into the SACU market with the following margins:

Table 4.7

Exporter	Dumping margin as percentage of the ex-factory export price
PT Petrojaya Boral Plasterboard (PJPB)	69.3%
PT Siam Indo Gypsum Industry (PTSI)	27.7%

5. MATERIAL INJURY

Section 62 of the ADR provides, *inter alia*, as follows:

62.2 “ *provided an anti-circumvention complaint is lodged with the Commission prior to, or within one year of the publication of the Commission's final determination, the SACU industry shall not be required to update its injury information.*”

As the complaint was lodged within one year of the final determination in the Thailand investigation, no new injury information was required to be submitted.

The Commission therefore, for purposes of its final determination, applied its finding in respect of material injury made in the Thailand investigation, that the SACU industry is suffering material injury and that it is causally linked to the imports in significant volumes at dumped prices, as set out in Commission's report no.54, to this investigation.

Comments by WWB

WWB states that the Petitioner has been unable to substantiate its allegation of injury in respect of the investigation. It quotes from BPB Group annual financial reports of 2003 and 2004 and concludes that the reports contradicts the Petitioner's claim that it is suffering material injury as a result of plasterboard imports.

The Commission considered this comment and found that in terms of ADR62.2 the SACU industry is not required to update its injury information as the anti-circumvention complaint was lodged with the Commission within one year of the publication of the Commission's final determination in the Thailand investigation.

In the Thailand investigation the Commission found material injury and a causal link to the imports in significant volumes at dumped prices.

Comments by WWB

WWB stated that the Petitioner failed to prove any threat of material injury.

The Commission considered this comment and found that the investigation was not initiated on threat of material injury.

The Commission made a final determination that the SACU industry was suffering material injury as a result of the dumped imports.

6. COUNTRY HOPPING

Article 60.8 of the ADR provides as follows:

"Country hopping shall be deemed to take place if imports, following the imposition of anti-dumping duties or provisional payments or the initiation of an anti-dumping investigation switch to a supplier related to the supplier against which an anti-dumping investigation has been or is being conducted and that is based in another country or customs territory."

The exporter in Thailand against whom the anti-dumping duties were imposed is Siam Gypsum Industry Ltd (SGI), whose shares are held by Lafarge/ Boral in Asia and Siam Cement Public company Ltd.

The exporters from Indonesia are:

- 1 PT Petrojaya Boral Plasterboard (PJPB) which is owned and operated by Lafarge Boral Gypsum in Asia.
- 2 PT Siam Indo Gypsum (PTSI) which is a joint venture in which Cemen Thai Gypsum Singapore Pte Ltd holds 50% interest. Siam Cement Public Company Ltd and Cemen Thai Gypsum (Singapore) Pte Ltd share a common share holding.

The Commission found that from the above, it is clear that both the exporters in Indonesia being PJPB and PTSI, are related to the exporter in Thailand (SGI) against whom anti-dumping duties were imposed.

The following table shows the average monthly volume of imports in tonnes of the subject product since January 2002.

Table 5.3.1

Period	2002	2003 Jan to May	2003 June to Aug
Alleged dumped imports	Tonnes	Tonnes	Tonnes
Thailand	1 702	2 512	0
Indonesia	0	0	2 453
Other countries	48	69	34
Total	1 750	2 581	2 487

The table indicates that imports have switched from Thailand to Indonesia after the imposition of the anti-dumping duties against imports originating in Thailand.

The Commission made a final determination that country hopping was taking place.

7. SUMMARY OF FINDINGS

7.1 Dumping

There is sufficient evidence that the subject product originating in or imported from Indonesia was imported at dumped prices into the SACU market. The following dumping margins (DM) were calculated:

Table 7.1

Exporter	Dumping margin
PT Petrojaya Boral Plasterboard (PJBP)	69.3%
PT Siam Indo Gypsum Industry (PTSI)	27.7%

7.2 Material Injury

As the complaint was lodged within one year of the final determination in the Thailand investigation, no new injury information was submitted.

The Commission therefore, for purposes of its final determination, applied its finding in respect of material injury made in the Thailand investigation, that the SACU industry is suffering material injury and that it is causally linked to the imports in significant volumes at dumped prices, to this investigation.

7.3 Country hopping

As the exporters in Indonesia are related to the exporter in Thailand against whom anti-dumping duties were imposed and exports have switched from Thailand to Indonesia, in its final determination the Commission found that country hopping was taking place.

8. FINAL ANTI-DUMPING DUTIES

8.1 General

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

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

8.2 Calculation of duty

The Commission found that all requirements for the imposition of an anti-dumping duty have been fulfilled.

In accordance with Article 9.1 of the Anti-Dumping Agreement, the duty should be less than the dumping margin if such lesser duty would be adequate to remove the injury to the domestic industry.

The final anti-dumping duties should therefore not be more than the amount of the price disadvantage experienced by the SACU industry. If this is lower than the dumping margin it can be considered to be the amount of duty required to remove the injury to the domestic industry as a result of the importation of the subject product at the dumping margins that were found by the Commission.

8.3 Price disadvantage

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

It is the Commission's policy to take the price disadvantage into account only in instances where both the exporter and the importer concerned cooperated with

the investigation.

The landed cost of the imported product was calculated by adding duty, sea freight and clearing charges provided by the importer to the f.o.b. export prices.

The following table shows the price disadvantage margins and the dumping margins, expressed as a percentage of the f.o.b.

Table 8.3.1

	Dumping Margin	Price disadvantage
PT Petrojaya Boral Plasterboard (PJPB)	53.3%	70 %
PT Siam Indo Gypsum Industry (PTSI)	23.5%	42%

The dumping margins of of 69.3% and 27.7% for PJPB and PTSI respectively reflected in table 4.7 were expressed as a percentage of the ex-factory export price.

8.4 Amount of duty:

The amount of duty was concluded to be the following, being the lesser of the price disadvantage or the dumping margin:

Table 8.4.1

Exporter	Final anti-dumping duties
PT Petrojaya Boral Plasterboard (PJPB)	53.3%
PT Siam Indo Gypsum Industry (PTSI)	23.5%

9. RECOMMENDATION

The Commission made a final determination that:

1. Circumvention in the form of country hopping was taking place;
2. The subject product originating in or imported from Indonesia was being dumped into the SACU market;
3. The SACU industry suffered material injury;
4. There was a causal link between the dumping of the subject products and the material injury;

The Commission, therefore, decided to recommend to the Minister of Trade and Industry that definitive anti-dumping duties be imposed on gypsum plasterboard originating in or imported from Indonesia, classifiable under tariff subheading 6809.11, in the following amounts, being the lesser of the dumping margin and the price disadvantage:

Table 9.1

Exporter	Anti-dumping duties
PT Petrojaya Boral Plasterboard (PJPB)	53.3%
PT Siam Indo Gypsum Industry (PTSI)	23.5%

and that these anti-dumping duties be imposed retroactive to the date of the provisional payments, that is 21 May 2004.