

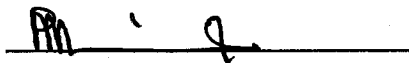


International Trade Administration Commission of South Africa

Report No. 95

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

The International Trade Administration Commission of South Africa herewith presents
its **Report No. 95: INVESTIGATION INTO THE ALLEGED DUMPING OF CHEDDAR
CHEESE ORIGINATING IN OR IMPORTED FROM IRELAND: PRELIMINARY
DETERMINATION**



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01/02/ 2005

INTERNATIONAL TRADE ADMINISTRATION COMMISSION

INVESTIGATION INTO THE ALLEGED DUMPING OF CHEDDAR CHEESE ORIGINATING IN OR IMPORTED FROM IRELAND: PRELIMINARY 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 producer and 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 considers that the SACU industry will continue to suffer material injury during the course of the investigation if provisional payments are not imposed, it decided to request the Commissioner for South African Revenue Service to impose provisional payments for a period of twenty-six weeks.

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

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 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)

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.

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	kg	450c/kg	450c/kg	100c/kg

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.

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 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 (POI) 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 POI:

- 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 from other authorities if an adjustment for an export refund will be allowed as an adjustment and noted that the EU Commission would normally not allow this adjustment to increase the export price.

The Commission decided 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 POI 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 preliminary 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.

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.

Response by the Applicant to comments by the IDB on import volumes

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.

Comments from the IDB

The Irish Dairy Board 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.

Response by the Applicant to comments by the IDB

With regard to the statement by the Irish Dairy Board 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.

Comments by the IDB

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.

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 that the most appropriate level at which to compare prices are the ex-factory 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.

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

Comments by the IDB on 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.

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.

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 (Rand)	(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.

Comments by the IDB on profit

The IDB stated that this table indicates clearly that both companies profit increased over the POI. 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.

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.

Comments by the IDB on output

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.

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.

Comments by the IDB on market share

The IDB stated that its statement above is confirmed as it is clearly indicated that the other producers market share increased over the POI. 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.

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.

Comments by the IDB on return on investment

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.

Comments by the IDB on capacity utilisation

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.

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.

Comments by the IDB on cash flow

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.

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.

Comments by the IDB on inventories

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.

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
SACU market % growth from previous year		100	1162
Sales growth % from previous year (Parmalat & Clover)		100	(15)
Sales growth % from previous year (other SACU producers)		100	193

This table was indexed due to confidentiality using 2002 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.

Comments by the IDB on growth

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.

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

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 Comments by the IDB on alleged injury

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 the following instances an increasing trend over the investigation period:

- Sales volume
- Sales value
- Output
- Market share
- Productivity
- Employees
- Profit
- Return on net assets
- Capacity utilization
- Cash flow

It 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.

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

5.5 Response by the Applicant to arguments by the IDB on alleged material injury

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.

5.6 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.

It stated that it calculated the following loss to the feed industry following the imports of 1 444 tons of cheese from Ireland between the period 1 January to 31 December 2003:

Feed	2 kg	=	5 liter milk
Milk	10 liter	=	1 kg cheese
Therefore:	4 kg feed	=	1 kg cheese
Imports:	1 444 tons	=	5 776 tons of feed
Average feed cost		=	R1 700 per ton

The AFMA stated further that the animal feed sector has lost R9.8 million during the 2003 calendar year due to the importation of Irish cheese. It stated that it accepts that the dairy sector has to be competitive against fair imports, but the animal feed sector needs protection against the unfair (dumped prices) imports from Ireland.

The AFMA provided the following information of the animal feed sector:

Throughput	4.2 million ton per annum
Turnover	R8.4 billion per annum
Employment	+/- 2 500 employees

5.7 CONCLUSION - MATERIAL INJURY

After considering all relevant factors and taking all comments into account, the Commission made a preliminary 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;
- there was a negative effect on its cash flow; and
- its inventories increased.

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."

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.

Comments from the IDB

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

The Commission considered all the comments from interested parties and found that a causal link existed between the material injury suffered by the SACU industry and the dumped imports as the dumped imports increased significantly and the SACU industry's market share decreased.

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, cash flow 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".

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

Comments by the IDB

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 the following instances an increasing trend over the investigation period:

- Sales volume
- Sales value
- Output
- Market share
- Productivity
- Employees
- Profit
- Return on net assets
- Capacity utilization
- Cash flow

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.

The IDB stated that it is clear that the SACU cheddar cheese market declined. 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 can not compete successfully on the SACU market against a large player.

Response by the Applicant to arguments by the IDB

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.

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.

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.

Comments by the IDB

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.

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 CONCLUSION ON CAUSAL LINK

After considering all relevant factors and comments, the Commission found that there was a causal link between the dumped products and the material injury suffered by the Applicant. In coming to this conclusion, the Commission considered relevant factors other than dumping, such as the competition between the domestic producers and the export performance of the domestic producers, that could be causing material injury and decided that these did not sufficiently detract from the causal link.

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, negative effect on cash flow an increase in inventory levels.

7.3 Causal link

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

8. PROVISIONAL PAYMENTS

8.1 General

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

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

8.2 Calculation of duty

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

In accordance with Article 9.1 of the Anti-Dumping Agreement, the provisional payment should be less than the dumping margin if such lesser duty would be adequate to remove the injury to the domestic industry. The provisional payment should therefore not be more than the amount of the price disadvantage experienced by the SACU industry. If this is lower than the dumping margin it can be considered to be the amount of duty required to prevent further injury to the SACU industry during the investigation as a result of the further importation of the subject product at the dumping margins that were found by the Commission.

8.3 Price disadvantage

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

The ADR in section 17 provides that the Commission shall consider applying the lesser duty rule if both the corresponding importer and exporter have cooperated fully. The exporter in Ireland, the IDB, and the importers in the SACU industry, cooperated in the investigation.

The following table shows the price disadvantage margins (expressed as a percentage of the f.o.b. export price). The table also includes the dumping margins determined in section 4 above:

Exporter	Dumping margin as a percentage of the f.o.b. export price	Price disadvantage as percentage of f.o.b export price
The Irish Dairy Board	60.1%	48%
All other exporters from Ireland	60.2%	N/A

8.4 Amount of provisional payments

The amounts of provisional payments were concluded to be the following, being the lesser of the price disadvantage or the dumping margin:

Exporter	Provisional payments
The Irish Dairy Board	48%
All other exporters from Ireland	60.2%

9. DETERMINATION

The Commission made a preliminary 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 was a causal link between the dumping of the subject product and the material injury.

As the Commission considers that the SACU industry will continue to suffer material injury during the course of the investigation if provisional payments are not imposed, it decided to request the Commissioner for South African Revenue Service to impose provisional payments on further imports of the subject products, for a period of twenty-six weeks, and to the extent as listed in the table below, being the lesser of the dumping margin and the price disadvantage:

Exporter	Provisional payments
The Irish Dairy Board	48.0%
All other exporters from Ireland	60.2%

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