

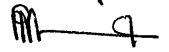
Report No. 58

**Sunset review of the anti-dumping duties on
welded stainless steel tubes and pipes of a circular
cross section with an outside diameter of
21,34 mm or more but not exceeding 114,3 mm
and a wall thickness of 2 mm or more but not
exceeding 6 mm originating in or imported from
Chinese Taipei, Malaysia and South Korea: Final
determination**

The International Trade Administration Commission presents its Report No. 58: SUNSET REVIEW OF THE ANTI-DUMPING DUTIES ON WELDED STAINLESS STEEL TUBES AND PIPES OF A CIRCULAR CROSS SECTION WITH AN OUTSIDE DIAMETER OF 21,34mm OR MORE BUT NOT EXCEEDING 114,3mm AND A WALL THICKNESS OF 2mm OR MORE BUT NOT EXCEEDING 6mm ORIGINATING IN OR IMPORTED FROM CHINESE TAIPEI, MALAYSIA AND SOUTH KOREA: FINAL DETERMINATION

PRETORIA

27/05/2004



Ms P. N. Maimela
Chief Commissioner

SUNSET REVIEW OF THE ANTI-DUMPING DUTIES ON WELDED STAINLESS STEEL TUBES AND PIPES OF A CIRCULAR CROSS SECTION WITH AN OUTSIDE DIAMETER OF 21,34mm OR MORE BUT NOT EXCEEDING 114,3mm AND A WALL THICKNESS OF 2mm OR MORE BUT NOT EXCEEDING 6mm ORIGINATING IN OR IMPORTED FROM CHINESE TAIPEI, MALAYSIA AND SOUTH KOREA: FINAL DETERMINATION

SYNOPSIS

In accordance with the provisions of Article 11.3 of the World Trade Organisation Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition, unless the authorities determine in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would likely lead to the continuation or recurrence of dumping and injury. On 31 May 2002, the International Trade Administration Commission (the Commission) notified all interested parties that unless a duly substantiated request is made by or on behalf of the domestic industry, indicating that the expiry of the duty would likely lead to the continuation or recurrence of dumping and injury, the anti-dumping duties on welded stainless steel tubes and pipes originating in or imported from Malaysia, South Korea, and Chinese Taipei would expire on 18 June 2003. The manufacturer of the subject product in the Southern African Customs Union (SACU) was notified and supplied with a copy of the Petitioner Sunset Review Questionnaire, indicating what information the Commission would need in order to determine whether the expiry of the duty would be likely to lead to the continuation or recurrence of dumping and injury. All interested parties were given an opportunity to respond or comment on the Commission's provisional finding as was communicated in the essential element letter. The comments are contained in this Report.

After consideration of all the facts concerned the Commission concluded that, should the measures in place be revoked or repealed, there is a likelihood of a continuation or recurrence of injury as a result of dumping and that the measures currently in place should, therefore, be maintained with the exception that imports from Ta Chen from Chinese Taipei be exempted from any anti-dumping duties as negligible or de minimus dumping margins were found in respect of this exporter. The Commission also decided to recommend that the present anti-dumping duties imposed on the importation of subject products from other exporters in Chinese Taipei, Malaysia and South Korea be made subject to the existing anti-dumping duty structure, as follows:

Table 7.1	
Other Chinese Taipei exports (residual (excluding that imported from Ta Chen):	41,8%
Malaysia	20%
South Korea	47,6%

1. PETITION AND PROCEDURE

1.1 LEGAL FRAMEWORK

This investigation is conducted in accordance with the International Trade Administration Act, 2002 (Act 71 of 2002) (the "ITA Act") and the World Trade Organisation Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, 1994 (the Anti-Dumping Agreement).

In accordance with the provisions of Article 11.3 of the World Trade Organisation Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition, unless the authorities determine in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to the continuation or recurrence of dumping and injury.

Article 11.3 of the Anti-Dumping Agreement provides as follows:

"Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. The duty may remain in force pending the outcome of such a review."

1.2 APPLICANT

The initial applicant in the matter was Barloworld SST, Krugersdorp, being a manufacturer of welded stainless steel tubes and pipes in the SACU. Barloworld Robor (Pty) Ltd, trading as Barloworld SST, also responded in the present sunset review matter.

1.3 INVESTIGATION PROCESS

On 31 May 2002, the Commission notified Barloworld SST through Notice No. 789 in *Government Gazette* No. 23450, that unless substantiated request is made by it indicating that the expiry of the duties on welded stainless steel tubes and pipes, originating in or imported from Malaysia, South Korea, and Chinese Taipei would be likely to lead to the continuation or recurrence of dumping and injury, relevant the anti-dumping duties will expire on 18 June 2003. The duties were imposed

with effect from 18 June 1998. A detailed but deficient response to the review questionnaire was received from Barloworld SST on 19 December 2002. Deficiencies to the petition were addressed by the Petitioner during March 2003. The Sunset Review was initiated on 23 May 2003. On 12 March 2004 interested parties were advised of the essential facts that were to be considered by the Commission in the final determination. Such interested parties were given 14 days to comment on the essential facts to be considered.

1.4 INVESTIGATION PERIOD

This Report contains information with regard to dumping for the period 1 January 2002 to 31 December 2002, and information with regard to injury for the period 1 October 2000 to 30 September 2002. An assumption of what the situation would be if the duties were revoked, was also submitted.

1.5 PARTIES CONCERNED

1.5.1 SACU industry

The SACU industry consists of Barloworld Robor (Pty) Ltd t/a Barloworld SST, the only manufacturer of the subject products in the SACU area.

1.5.2 Exporter/Foreign Manufacturer

The review is in respect of imports originating in or imported from Malaysia, South Korea, and Chinese Taipei.

1.5.3 Importers

Process Pipe from Edenvale responded to the review investigation but advised that it had not imported any of the subject goods during the period of the investigation and therefore, could not provide any financial details.

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 IMPORTED PRODUCTS

2.1.1 Subject products

The subject products are described as welded stainless steel tubes and pipes of a circular cross-section with an outside diameter of 21,34mm or more but not exceeding 114,3mm and a wall thickness of 2mm or more but not exceeding 6mm.

2.1.2 Application/end use

Welded stainless steel tubes and pipes are used mainly in the petrochemical and chemical industries. It is used for conveying high temperature and/or pressurised fluids and liquids in corrosive environments.

2.1.3 Tariff classification

The subject products are classifiable as follows:

Table 2.1.3(a)				
Tariff subheading	Description	General	EU	SADC
73.06	Other Tubes, Pipes and Hollow Profiles (for Example, Open Seam or Welded, Riveted or Similarly Closed) of Iron or Steel:			
7306.40	- Other, welded, of circular cross-section, of stainless steel (per kilogram)	10 %	10%	Free

The subject products in the initial investigation were subject to the following anti-dumping duties:

Table 2.1.3(b)			
Tariff subheading	Description	Imported from or originating in	Rate of anti-dumping duty
7306.40	Tubes and pipes, welded, of circular cross-section, of stainless steel, with an outside diameter of 21,34mm or more but not exceeding 114,3mm and a wall thickness of 2mm or more but not exceeding 6mm	Malaysia	20%
7306.40	Tubes and pipes, welded, of circular cross-section, of stainless steel, with an outside diameter of 21,34mm or more but not exceeding 114,3mm and a wall thickness of 2mm or more but not exceeding 6mm manufactured by Ta Chen Stainless Pipe Co. Ltd	Republic of China (Chinese Taipei)	6,96%
	Tubes and pipes, welded, of circular cross-section, of stainless steel, with an outside diameter of 21,34mm or more but not exceeding 114,3mm and a wall thickness of 2mm or more but not exceeding 6mm. (Excluding that manufactured by Ta Chen Stainless Pipe Co. Ltd)	Republic of China (Chinese Taipei)-	41,8%
	Tubes and pipes, welded, of circular cross-section, of stainless steel, with an outside diameter of 21,34mm or more but not exceeding 114,3mm and a wall thickness of 2mm or more but not exceeding 6mm. (Excluding that manufactured by LG Industrial Systems Co. Ltd)	Republic of Korea	47,6%

2.1.4 Production process

The tube is manufactured from annealed stainless steel and welded with no addition of filler metal. Tubes are annealed at a maximum temperature of 1050 C. The tube is then cut to length. Pressure, helium leak and eddy current tests are done on the tube and the product is then ready for packing.

2.2 SACU Product

2.2.1 Description

The subject products are described as welded stainless steel tubes and pipes of a circular cross-section with an outside diameter of 21,34mm or more but not exceeding 114,3mm and a wall thickness of 2mm or more but not exceeding 6mm.

2.2.2 Application/end use

Welded stainless steel tubes and pipes are used mainly in the petrochemical and chemical industries. It is used for conveying high temperature and/or pressurised fluids and liquids in corrosive environments.

2.2.3 Tariff classification

The subject products are classifiable as mentioned in paragraph 2.1.3 above.

2.2.4 Production process

The tube is manufactured from annealed stainless steel and welded with no addition of filler metal. Tubes are annealed at a maximum temperature of 1050 c. The tube is then cut to length. Pressure, helium leak and eddy current tests are done on the tube and the product is then ready for packing.

2.3 Like products

In the original investigation¹ the Commission decided that the SACU products and the imported products are "like products" for purposes of comparison, in terms of Article 2.6 of the Anti-Dumping Agreement.

¹

The BTT found, in paragraph 2.3.1 of the BTT Report No. 3799 (original investigation), the domestically produced products to be like products to the imported products.

3. SACU INDUSTRY

3.1 INDUSTRY STANDING

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

"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 applicant advised that although there are other producers of stainless steel pipe in the SACU area, these producers do not manufacture the subject product sizes as described in paragraph 2.1.1. The Commission, therefore, reaffirmed the Board's previous finding that the application was brought about by and on behalf of the domestic industry, in terms of the relevant provisions of the Anti-Dumping Agreement.

4. Dumping

4.1 GENERAL

Article 11.3 of the Anti-Dumping Agreement provides as follows:

"Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, **that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury.** The duty may remain in force pending the outcome of such a review." (Own emphasis)

Dumping is defined in section 1(2) of the International Trade Administration Act, (Act 71 of 2002) (*see Definitions and Interpretation*), as "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 the goods."

4.2 NORMAL VALUE

Normal values are determined in accordance with section 32(2)(b)(i) of the ITA Act. This section defines normal value as follows:

"32(2)(b)(i) the comparable price actually 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 for profit;

(bb) the highest comparable price of the like product when exported to an appropriate third country or surrogate country, as long as that price is representative;

(3) The Commission must, in determining the margin of dumping of goods, make reasonable allowances for differences in conditions and terms of sale, differences in taxation and other differences affecting price comparability."

4.3 EXPORT PRICE

Export prices are determined in accordance with the relevant provisions in section 32 of the ITA Act (Act 71 of 2002) which provide as follows:

- (2)(a) "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 that sale;"
- (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 or 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 WTO Anti-Dumping Agreement and the ITA Act (see sub-section 32(3) quoted above) 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.

4.5.1 Determination of the dumping margin when no exports were made to the SACU area during the period of investigation (POI).

The *New Shipper* review policy of the Commission requires that exporters should provide details of their exports to other countries when no exports were made to the SACU area during the POI. This same policy is applied in instances such as sunset reviews where no exports to SACU were undertaken during the POI. Although these dumping margins, if found, would not be used to determine actual anti-dumping duties, the margins so found would be used by the Commission to determine whether the likelihood exists that dumping may also be undertaken to the SACU area.

Section 32(6)(a) of the ITA Act states that if there is no export price as contemplated in the definition of dumping then, the export price may be determined on any reasonable basis. The ITA Act therefore allows the Commission a discretion on how to determine an export price when there is no export price available. In cases, therefore, where the Commission has to decide on the likelihood of whether dumping will take place the mentioned sections of the ITA Act may be applied, in that exports to other countries may be considered when no actual exports to the SACU area were made during the POI.

4.6 METHODOLOGY IN THIS INVESTIGATION

Chinese Taipei, Malaysia and South Korea are considered to be countries with a free market economies and therefore the definition of section 32(2)(b)(i) of the ITA Act applies.

4.6.1 Only one producer in Chinese Taipei, namely Ta Chen, responded to the Commission's Sunset Review. No proper responses were received from either Malaysia or South Korea. In the case of South Korea, an exporter, Sumikin Busan, requested the Commission to accept a price undertaking. This was not acceptable to the Commission. (See also paragraph 4.12 in this regard)

4.7 **Ta Chen Stainless Pipe Company Limited (Ta Chen)** **Tainan, Chinese Taipei**

Ta Chen is the only company in Chinese Taipei that responded to the Commission's sunset review. Ta Chen have not exported any of the subject goods to the SACU area since the imposition of the anti-dumping duties five years ago. The Commission, therefore, had to determine whether a likelihood exists that Ta Chen may export goods at dumped prices to the SACU area.

Ta Chen provided the Commission with details which showed that it exported stainless steel pipes within the specified subject product range to 40 countries worldwide during the period of investigation. Article 6.10 of the WTO Anti-Dumping Agreement, amongst other, provides as follows:

"In cases where the number of exporters, producers, importers or types of products involved is so large as to make such a determination impracticable, the authorities may limit their examination either to a reasonable number of interested parties ..., or to the largest percentage of the volume of the exports from the country in question which can reasonably be investigated". (Own emphasis)

The Commission considered the information submitted by Ta Chen and decided that exports to Australia, Canada, Hong Kong, Indonesia, Iran and the Philippines be considered to determine whether dumping to these countries took place. The Commission considered exports to these countries to be "the largest percentage of the volume of the exports from the country in question (Chinese Taipei) which can reasonably be investigated.". Ta Chen's export volumes to these six countries accounted for in excess of 25 per cent of its total export volumes during the period of investigation.

The Commission assumed that if Ta Chen exports the subject products to another country or countries at dumped prices, it would in all likelihood also export the subject products at dumped prices to the SACU area.

The Commission also noted that Ta Chen exported a major part of its total sales volume to the United States during the period of investigation. A review of stainless steel tube exports to the USA during 1997 (same time as the initial SACU investigation) showed a dumping margin of 0.47 per cent. A review also undertaken by the US authorities during July 2003² on stainless steel pipe fittings (also produced by Ta Chen) showed a *de minimis* dumping margin of 1.13 per cent.

² See 68 FR 40636, July 8 2003 – United States Department of Commerce – International Trade Administration – certain Stainless Steel Butt-Weld Pipe Fittings from Chinese Taipei.

4.7.1 Method of calculating the dumping margins for each of the selected countries

Dumping margins were calculated for the exports to each of the cited countries on the basis of comparing similar sized and type stainless steel tubes for the domestic and export sales. Dumping margins were, therefore, obtained for each specific size exported to each of the six countries separately. The dumping margins so obtained were then weighted on the basis of that specific size's export volumes as a fraction of the total export volume to that specific country. The weighted fractions for all the relevant sizes were then added up to determine a collective dumping margin for that specific country.

4.7.2 Normal value using the actual domestic sales

Like products to those exported to the SACU area during the initial period of investigation were sold in the domestic market in Chinese Taipei. The normal value was therefore determined in accordance section 32(2)(b)(i) of the ITA Act. Sales to distributors/wholesalers were used to determine the normal values. The weighted average domestic sales values were established on the basis of the total sales values divided by total sales volumes of the exporter. Ta Chen's total domestic market sales³ of comparable products represented in excess of 7 per cent of its total sales to the six selected countries (Australia, Canada, Hong Kong, Indonesia, Iran and the Philippines) during the POI.

4.7.3 Normal value using the constructed cost methodology⁴

In instances where it was found that Ta Chen were exporting product sizes to the various countries that it was not selling in its domestic market, it was necessary to construct the normal values for these sizes. Ta Chen produces 68 different product sizes within the subject product range but only sold 48 of these product sizes in its domestic market during the period of investigation.

³ Footnote 2 to Article 2.2 of the WTO Anti-Dumping Agreement provides that domestic sales shall normally be sufficient if it constitutes 5% or more of the sales under consideration to the importing member(s). (Own emphasis)

⁴ Section 8.11 of the Anti-Dumping Regulations promulgated on 14 November 2003 in *Government Gazette* No. 25684 provides that the constructed normal value shall normally be constructed using the producer's own costs and profit, provided such costs reflect the actual costs of the product, are GAAP consistent and are historically based.

The following methodology was used in constructing or determining the various cost elements that make up the constructed cost:

Table 4.7.3 – Constructed cost methodology	
Cost elements	Methodology applied
Cost of production	Used the cost of production of the comparable exported products
Selling, general and administrative expenses	Determined the average SGA expenses of Ta Chen and apply in the constructed costs
Profit	Determined the average profit of Ta Chen and applied it to the constructed costs

4.7.4 Australia

4.7.4.1 Normal values using actual domestic sales

The weighted average domestic sales values were established on the basis of the total actual sales values divided by total actual sales volumes of the exporter in respect of each of the sized products.

4.7.4.2 Normal values using the constructed cost methodology

Four items (sizes) out of a total of 40 items (sizes) exported to Australia were not sold on the domestic market in Chinese Taipei and accordingly required a constructed cost to determine the normal values.

4.7.4.3 Adjustments claimed - only on the actual domestic sales used

The Commission allowed the following adjustments as they were demonstrated to have affected price comparability.

(a) Inland freight

It was found that the domestic sales were largely made on the basis of the ex-factory price and buyers arranged for the delivery of the goods. A small percentage of the sales were found to have been made on a delivered basis and in these cases it was necessary to adjust the selling prices to an ex-factory basis.

(b) Credit terms

It was found that sales were largely made on credit terms. Adjustments were made on a line-by-line basis at the ruling bank interest rate.

(c) Domestic sales taxes

The sales values that were verified were net of any taxes and, therefore, no adjustments were requested for any domestic taxes.

4.7.4.4 Exports to Australia

The export prices were determined in accordance with section 32(2) of the ITA Act. Weighted average sales values were calculated on the basis of the total value of specific sized exports divided by the volumes exported in respect of each of the specific sized products. The Commission effected the following adjustments to the export prices concerned:

(a) Inland freight

The adjustments were done on an invoice-by-invoice basis and as the sales were made either on a C & F basis or on a CIF basis it was necessary to adjust the selling prices to an ex-factory level.

(b) Ocean freight

The adjustments were done on an invoice-by-invoice basis and as the sales were made either on a C & F basis or on a CIF basis it was necessary to adjust the selling prices to an ex-factory level.

(c) Packing

A steel square tube frame is used for exports, which is different to the method used in the domestic market. An adjustment was, therefore, made in this regard.

(d) Credit terms

Credit terms to Australian buyers varied and adjustments were made at the short term bank lending rate.

(e) Insurance

Goods shipped from Ta Chen on a CIF basis includes an insurance component. The insured value includes all costs and the insurance premium is calculated on the basis of the total warehouse to warehouse costs.

4.7.4.5 Margin of dumping

The margin of dumping is the extent to which the normal value is higher than the export price, after adjustments have been made for comparative purposes. In the case of Ta Chen's exports to Australia the margin of dumping amount to minus 0,15 per cent.

4.7.5 Canada

4.7.5.1 Normal values using actual domestic sales

The weighted average domestic sales values were established on the basis of the total actual sales values divided by total actual sales volumes of the exporter in respect of each of the sized products.

4.7.5.2 Normal values using the constructed cost methodology

Three items (sizes) out of a total of 32 items (sizes) exported, were not sold on the domestic market in Chinese Taipei and accordingly required a constructed cost to determine the normal values.

4.7.5.3- Adjustments claimed - only on the actual domestic sales used

The Commission allowed the following adjustments as they were demonstrated to have affected price comparability.

(a) Inland freight

It was found that the domestic sales were largely made on the basis of the ex-factory price and buyers arranged for the delivery of the goods. A small amount of the sales were found to have been made on a delivered basis and in these cases it was necessary to adjust the selling prices to an ex-factory basis.

(b) Credit terms

It was found that sales were largely made on credit terms. Adjustments were made on a line-by-line basis at the ruling bank interest rate.

(c) Domestic sales taxes

The sales values that were verified were net of any taxes and therefore, no adjustments are requested for any domestic taxes.

4.7.5.3 Exports to Canada

The export prices were determined in accordance with section 32(2) of the ITA Act. Weighted average sales values were calculated on the basis of the total value of specific sized exports divided by the volumes exported in respect of those specific sizes. The Commission effected the following adjustments to the export prices concerned:

- (a) **Inland freight**
The adjustments were done on an invoice-by-invoice basis and as the sales were made on a C I F basis and it was necessary to adjust the selling prices to an ex-factory level.
- (b) **Ocean freight**
As the sales were made either on a C & F basis or on a CIF basis it was necessary to adjust the selling prices to an ex-factory level.
- (c) **Packing**
A steel square tube frame is used for exports, which was different to the packaging used for the domestic market. An adjustment was, therefore, made in this regard.
- (d) **Credit terms**
Credit terms were allowed to Canadian buyers which were different to those allowed on domestic sales. Adjustments were therefore made at the ruling short term bank lending rate.
- (e) **Insurance**
Goods shipped from Ta Chen on a CIF basis include an insurance component which is calculated on the basis of the total warehouse to warehouse costs.

4.7.5.4 Margin of dumping

The margin of dumping is the extent to which the normal value is higher than the export price, after adjustments have been made for comparative purposes. In the case of Ta Chen's exports to Canada, the margin of dumping amount to *minus* 3,44 per cent.

4.7.6 Hong Kong

4.7.6.1 Normal values using actual domestic sales

The weighted average domestic sales values were established on the basis of the total actual sales values divided by total actual sales volumes of the exporter in respect of each of the sized products.

4.7.6.2 Normal values using the constructed cost methodology

Four items (sizes) out of a total of 26 items (sizes) exported to Hong Kong were not sold in the domestic market in Chinese Taipei and accordingly required a constructed cost to determine the normal values.

4.7.6.3 Adjustments claimed - only on the actual domestic sales used

The Commission allowed the following adjustments as they were demonstrated to have affected price comparability.

(a) Inland freight

It was found that the domestic sales were largely made on the basis of the ex-factory price and buyers arranged for the delivery of the goods. A small amount of sales were found to have been made on a delivered basis and in these cases it was necessary to adjust the selling prices to an ex-factory basis.

(b) Credit terms

It was found that sales were largely made on credit terms and adjustments were made on a line-by-line basis at the ruling bank interest rate.

(c) Domestic sales taxes

The sales values that were verified were net of any taxes and therefore, no adjustments were requested for any domestic taxes.

4.7.6.4 Exports to Hong Kong

The export prices were determined in accordance with section 32(2) of the ITA Act. Weighted average sales values were calculated on the basis of the total value of specific sized exports divided by the volumes exported in respect of those specific sizes.

The commission made the following adjustments to the export price:

(a) Inland freight

The sales were made on a cif basis and it was necessary to adjust the selling prices to an ex-factory level.

(b) Ocean freight

As the sales were made either on a C & F basis or on a CIF basis it was necessary to adjust the selling prices to an ex-factory level.

(c) Packing

A steel square tube frame is used for exports which is different to that used in the domestic market. An adjustment was made in this regard.

(d) Credit terms

Credit terms to Hong Kong buyers were different to those allowed on the domestic market and adjustments were made at the ruling short term bank lending rate.

(e) Insurance

Goods shipped from Ta Chen on a CIF basis include an insurance component. The insured value includes all costs and the insurance premium is calculated on the basis of the total warehouse to warehouse costs.

4.7.6.5 Margin of dumping

The margin of dumping is the extent to which the normal value is higher than the export price, after adjustments have been made for comparative purposes. In the case of Ta Chen's exports to Hong Kong the margin of dumping amount to 1,6 per cent.

4.7.7 Indonesia**4.7.7.1 Normal values using actual domestic sales**

The weighted average domestic sales values were established on the basis of the total actual sales values divided by total actual sales volumes of the exporter in respect of each of the sized products.

4.7.7.2 Normal values using the constructed cost methodology

Nineteen items (sizes) out of a total of 58 items (sizes) exported to Indonesia were not sold in the domestic market in Chinese Taipei and accordingly required a constructed cost to determine the normal values.

4.7.7.3 Adjustments claimed - only on the actual domestic sales used

The Commission allowed the following adjustments they were demonstrated to have affected price comparability.

(a) Inland freight

It was found that domestic sales were largely made on the basis of the ex-factory price and buyers arranged for the delivery of the goods. A small amount of sales were found to have been made on a delivered basis and in these cases it was necessary to adjust the selling prices to an ex-factory basis.

(b) Credit terms

It was found that sales were largely made on credit terms and adjustments were made at the ruling bank interest rate.

(c) Domestic sales taxes

The sales values that were verified were net of any taxes and therefore, no adjustments were requested for any domestic taxes.

4.7.7.4 Exports to Indonesia

The export prices were determined in accordance with section 32(2) of the ITA Act. Weighted average sales values were calculated on the basis of the total value of specific sized exports divided by the volumes exported in respect of those specific sizes.

The Commission made the following adjustments to the export prices:

(a) Inland freight

The sales were made on a CIF basis and it was necessary to adjust the selling prices to an ex-factory level.

(b) Ocean freight

As the sales were made either on a C & F basis or on a CIF basis it was necessary to adjust the selling prices to an ex-factory level.

(c) Packing

A steel square tube frame is used for exports which is different to that used in the domestic market.

(d) Credit terms

Credit terms to Indonesian buyers amounted to payment before or on shipment. No adjustments were therefore made for credit terms.

(e) Insurance

Goods are shipped on a CIF basis which includes an insurance component, on the basis of the total warehouse to warehouse costs. This cost was adjusted on a line-by-line basis.

4.7.7.5 Margin of dumping

The margin of dumping is the extent to which the normal value is higher than the export price, after adjustments have been made for comparative purposes. In the case of Ta Chen's exports to Indonesia the margin of dumping amount to 0,03 per cent.

4.7.8 IRAN**4.7.8.1 Normal values using actual domestic sales**

The weighted average domestic sales values were established on the basis of the total actual sales values divided by total actual sales volumes of the exporter in respect of each of the sized products.

4.7.8.2 Normal values using the constructed cost methodology

All the products shipped to Iran were also sold in the domestic market in Chinese Taipei. It was, therefore, not necessary to construct any normal values.

4.7.8.3 Adjustments claimed - only on the actual domestic sales used

The Commission allowed the following adjustments as it was shown that they affected price comparability:

(a) Inland freight

The domestic sales were largely made on the basis of the ex-factory price and buyers arranged for the delivery of the goods. A small amount of the sales were found to have been made on a delivered basis and in these cases it was necessary to adjust the selling prices to an ex-factory basis.

(b) Credit terms

It was found that sales were largely made on credit terms and adjustments were made at the ruling bank interest rate.

(c) Domestic sales taxes

The sales values that were verified were net of any taxes and therefore, no adjustments were requested for any domestic taxes.

4.7.8.4 Exports to Iran

The export prices were determined in accordance with section 32(2) of the ITA Act. Weighted average sales values were calculated on the basis of the total value of specific sized exports divided by the volumes exported in respect of those specific sizes.

The Commission made the following adjustments to the export prices:

- (a) **Inland freight**
The sales were made on a FOB basis and it was necessary to adjust the selling prices to an ex-factory level.
- (b) **Ocean freight**
Exports to Iran were made on an FOB basis and no adjustments were therefore, made.
- (c) **Packing**
A steel square tube frame is used for exports which is more costly to that used in the domestic market.
- (d) **Credit terms**
Sales to Iranian buyers were made on a letter of credit at sight draft basis which meant that Ta Chen obtained its payments on shipment of the goods concerned. Accordingly, no credit adjustment was made.

4.7.8.5 Margin of dumping

The margin of dumping is the extent to which the normal value is higher than the export price, after adjustments have been made for comparative purposes. In the case of Ta Chen's exports to Iran the margin of dumping amount to 0,39 per cent.

4.7.9 Phillipines

4.7.9.1 Normal values using actual domestic sales

The weighted average domestic sales values were established on the basis of the total actual sales values divided by total actual sales volumes of the exporter in respect of each of the sized products.

4.7.9.2 Normal values using the constructed cost methodology

Thirteen items (sizes) out of a total of 52 items (sizes) exported to Phillipines were not sold in the domestic market in Chinese Taipei and accordingly required a constructed cost to determine the normal values.

4.7.9.3 Adjustments claimed - only on the actual domestic sales used

The Commission allowed the following as it was demonstrated to have affected price comparability:

(a) Inland freight

The domestic sales were largely made on the basis of the ex-factory price and buyers arranged for the delivery of the goods. A small amount of the sales were found to have been made on a delivered basis and in these cases it was necessary to adjust the selling prices to an ex-factory basis.

(b) Credit terms

It was found that sales were largely made on credit terms and adjustments were made at the ruling bank interest rate.

(c) Domestic sales taxes

The sales values that were verified were net of any taxes and therefore, no adjustments are requested for any domestic taxes.

4.7.9.4 Exports to the Philippines

The export prices were determined in accordance with section 32(2) of the ITA Act. Weighted average sales values were calculated on the basis of the total value of specific sized exports divided by the volumes exported in respect of those specific sizes.

The Commission made the following adjustments to the export prices:

(a) Inland freight

The sales were made on a CIF basis and it was necessary to adjust the selling prices to an ex-factory level.

(b) Ocean freight

As the sales were made either on a C & F basis or on a CIF basis it was necessary to adjust the selling prices to an ex-factory level.

(c) Packing

A steel square tube frame is used for exports which is more costly to that used in the domestic market.

(d) Credit terms

Credit terms allowed were different to that allowed on the domestic market and adjustments were made at the ruling short term bank interest rate.

(e) Insurance

Goods shipped on a CIF basis included an insurance component on the basis of the total warehouse-to-warehouse costs.

4.7.9.5 Margin of dumping

The margin of dumping is the extent to which the normal value is higher than the export price, after adjustments have been made for comparative purposes. In the case of Ta Chen's exports to the Philippines the margin of dumping amount to *minus* 17 per cent.

4.8 Summary of Ta Chen's dumping to six selected countries

The following dumping margins were found in respect of Ta Chen's exports to the six respective countries:

Table 4.8	
Ta Chen's exports to:	Dumping margins:
Australia	Minus 0,15%
Canada	Minus 3,44%
Hong Kong	1,6%
Indonesia	0,03%
Iran	0,39%
Philippines	Minus 17%

4.9 Other exporters (residual exporters) from Chinese Taipei

During the initial investigation a dumping margin to the extent of 41,8 per cent was found for exporters from Chinese Taipei which did not cooperate in the investigation and which was also subsequently imposed as the anti-dumping duty. The Commission found that there are other exporters/producers which did not respond in this review investigation and accordingly decided that it will recommend that the present residual anti-dumping duty of 41,8 per cent be maintained in respect of these other exporters/producers.

4.10 Comments by the applicant, Barloworld Stainless Steel Tube (Pty) Ltd, on certain aspects of the trading activities of Ta Chen.

(a) Sales of downgraded pipes sold in the domestic market

The applicant advised that it is of the opinion that downgrades could be sold in the domestic market in Chinese Taipei at less than the prime product. Downgrades are generally regarded as shorter sizes than standard sizes that are then used for the manufacture of fittings.

The Commission found that Ta Chen sold standard 6 meter and 6,2 meter lengths.

(b) Limited quantity sold by Ta Chen in its domestic market

The applicant contends that in its opinion Ta Chen sold a very limited quantity of its products in the domestic market.

The Commission found that Ta Chen's domestic sales during the period of investigation were in excess of 7 per cent of its exports to the six countries. This is more than the level of 5 per cent that is normally required by the provisions of Footnote 2 to Article 2.2 of WTO Anti-Dumping Agreement.

(c) Relationship between Ta Chen and its customers

The applicant advised that was is of the opinion that sales to only two of Ta Chen's domestic customers were of any consequence and requested that the issue of relationship be investigated.

The Commission found that Ta Chen provided audited financial statements which included a section which showed its investments in associated and/or related companies. As far as could be established, no sales were made to any of the so-listed companies.

(d) Costs of raw materials

The applicant also stated that it appears that Ta Chen's raw material costs could be below quoted MEPS (International Metal price publication) prices.

The Commission considered selected examples of raw material purchases by Ta Chen and found that the purchase values correlated with international prices.

4.11 Residual margin: Malaysia

In the case of Malaysia no response was responded was received from any interested party and accordingly the Commission to recommend that the present anti-dumping duties be maintained. The following anti-dumping margin was found during the initial investigation:

Malaysia: 20%.

4.12 Residual margin: South Korea

In the case of South Korea, an exporter Sumikin Busan International (SB), responded deficiently on its and LG Industrial Systems' behalf stating that it had not exported any subject goods during the preceding 5 years. It also rejected the Commission's request to provide the Commission with details of its domestic sales and export sales to other countries to enable the Commission to determine whether the likelihood exists that it will export dumped goods to the SACU area. It, however, requested the Commission to consider a price undertaking "without submission of the exporter's questionnaire." (Letter from SB dated 6 August 2003). The Commission rejected the price undertaking suggestion and accordingly recommended that the present anti-dumping duty of 47,6 per cent be made applicable to all imports of the subject products into the SACU area from South Korea.

4.13 Response from the Korean Government on the Commission's essential fact letter

The Korean Government responded and stated that the anti-dumping duties "... may be considered as an abuse of the anti-dumping mechanism for purpose of protecting the domestic industry and further as an attempt to substantially build trade barriers between the two countries."

The Commission noted the comments by the Korean Government on this issue but found that LG had in fact not been the subject of any anti-dumping duty during the preceding five years. The Commission also noted that the Korean exporters were in fact given an opportunity to respond to the investigation, but failed to do so.

4.14 Response by the applicant on the Commission's essential facts letter

- (a) In its response to the Commission's essential element letter, dated 12 March 2004, the applicant requested confirmation that the Commission, not Ta Chen, chose the six countries.

The Anti-Dumping regulations provides as follows:

"8.6 In cases where the number of producers, exporters, importers or types of products is large, the investigation may be limited to a reasonable number of parties or types of products by using –

(a) the largest percentage of the exports from the country in question which can reasonably be investigated

8.7 If the Commission decides to limit its investigation investigations as contemplated in subsection 6, any selection may be made after consultation with the relevant exporter;"

The six countries were chosen by the Commission and a request was directed to Ta Chen to provide the necessary details in respect of its exports to these six countries. Ta Chen provided the required information and a verification was subsequently undertaken in Chinese Taipei.

- (b) **The applicant also requested confirmation that the volume of exports to the six countries are the same as the volume of exports of the like product to SACU and that the comparisons were made at the same level of trade.**

Although the volumes of exports to the various countries are considered to be confidential, it may be stated that the export volumes to the countries concerned ranged from approximately 200 tons per country and upwards. This is more-or-less in line with the applicant's assumption that if the duties are revoked, imports of subject products from Chinese Taipei would be in the region of 270 tons per year.

- (c) **The applicant also requested the Commission to confirm why the normal values in Chinese Taipei were not used and also that the normal values that were used constituted more than 5% of the export sales under consideration.**

Domestic sales in Chinese Taipei were actually used in the determination of the normal values. The Commission only used the constructed cost methodology in instances where it was found that the like products were not sold on the domestic market in Chinese Taipei.

- (d) **The applicant also requested confirmation that the products which formed the subject of the investigation in Chinese Taipei were regarded as like products to those sold in the SACU area.**

The investigation was initiated and undertaken in the SACU area, as well in Chinese Taipei, on the basis of the subject products being welded stainless steel tubes and pipes, of a circular cross section with an outside diameter of 21,34 mm or more, but not exceeding 114,3 mm and a wall thickness of 2 mm or more, but not exceeding 6 mm. The Commission confirmed its finding in the original investigation that the products could be regarded as like products for purpose of the review.

- (e) **The applicant also stated that they were in agreement with the Commission's finding on Malaysia, South Korea and with the other exporters in Chinese Taipei.**

- (f) **The applicant also stated "We are in agreement with the ITAC's provisional finding and request the ITAC to re-evaluate the calculation of the Ta Chen normal values in the final determination."**

4.15 CONCLUSION ON THE RECURRENCE OF INJURIOUS DUMPING

In view of the aforementioned dumping information, the Commission concluded that, should the measures in place be revoked or repealed, there is a likelihood of a continuation or recurrence of dumping and that the measures currently in place should therefore, be maintained, except that in the case of Ta Chen, from Chinese Taipei, that the anti-dumping duties be revoked.

4.16 SUMMARY - DUMPING

The Commission found and reaffirmed the following dumping margins:

Ta Chen's exports to:	Dumping margins:
Australia	Minus 0,15%
Canada	Minus 3,44%
Hong Kong	1,6%
Indonesia	0,03%
Iran	0,39%
Philippines	Minus 17%
Other Chinese Taipei exports (residual):	41,8%
Malaysia (residual)	20%
South Korea (residual)	47,6%

5. MATERIAL INJURY

5.1 DOMESTIC INDUSTRY FOR THE PURPOSE OF DETERMINATION OF INJURY

Article 3 of the Anti-Dumping Agreement is entitled "Determination of injury". Footnote 9 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 material injury analysis in this section of the Report relates to that of Barloworld SST which represents 100 per cent of the total domestic production of the subject product in SACU. The Commission decided that this constitutes "a major proportion" of the total domestic production, in accordance with Articles 4.1 and 4.1(ii) of the Anti-Dumping Agreement. The information in the Report, therefore, contains the applicant's position for the financial years stated, in respect of each factor, as well as an assumption of what the effect of the expiry of the duty would have on the local industry.

5.3 IMPORT VOLUMES AND EFFECT ON PRICES

5.3.1 Import volumes

With reference to Article 3.1(a), Article 3.2 of the Anti-Dumping Agreement provides as follows:

"With regard to the volume of the dumped import, 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 import statistic from SARS to determine the volume of the subject product entering the SACU from the countries under investigation and other countries.

During the initial investigation⁵ the BTT made the following comment in its Report No. 3977 on the issue of the relevance of SARS import stats:

In its petition, the Petitioner provided import statistics relating to tariff item 7306.40. While these import statistics were obtained from the South African Revenue Services (SARS), they relate to total welded stainless steel tubes and pipes and not only to the ASTM A312 specification tubes and pipes under investigation. This limited the usefulness of the import statistics. The Board was unable to accurately determine the percentage of imports under tariff heading 7306.40 that were the A312 specification tubes and pipes under investigation. Not all the importers under this tariff item over the investigation period had provided the Board with their import figures." (Own emphasis)

The following table shows the import statistics from 1997 to 2003, in tons, for tariff subheading 7306.40, as obtained from SARS:

Table 5.3.1 - SARS Import Statistics for tariff subheading 7306.40 (in tons)							
	1997	1998	1999	2000	2001	2002	2003
ChineseTaipei	303	316	232	637	329	403	575
Malaysia	138	352	276	186	177	453	484
Korea	92	231	16	141	nil	nil	nil
	533	899	524	963	505	856	1059
Other countries	653	551	527	387	613	683	809
All imports	1186	1450	1051	1350	1119	1539	1868

The import statistics also contain products that fall outside the sizes of the subject products, the extent of which is unknown. Note that the subject product range from 21,34 mm to 114,3 mm outside diameter, whilst generally stainless steel tubes are produced in a range from approximately 8 mm to 300 mm outside diameter. The applicant made the assumption that the subject products make up approximately 5% of the stated import volumes, for at least from 2001 onwards.

The import statistics show a fairly steep rising tendency from 2001 to 2003 in respect of imports from Chinese Taipei (175%) and Malaysia (273%) whilst imports from Korea ceased from 2000 onwards. This situation raised the question of whether the significant increase in imports from Chinese Taipei and Malaysia from 2001 to 2003 should not,

⁵ Refer to Section 5, paragraph 5.2 "Import Volumes" of the BTT Report No. 3977.

in itself, be seen as indicative of a trend to warrant the continuation of the anti-dumping duties.

Although the applicant assumed that the subject products make up a very small percentage of the actual imports (estimated at $\pm 5\%$ from at least 2001 onwards – *see note in the table above*), the products that are being imported from the cited countries are *nonetheless* stainless steel welded tubes/pipes in the size ranges, either below or above the sizes that form the subject of the investigation. The products are, therefore, still being imported by the same importers that imported subject products in the past years. The distribution and/or sales channels, therefore, still exist in the SACU market and it would be relatively simple for existing importers of the supporting and ancillary stainless steel products (flanges, fittings and outside sized tubes etc) to again re-activate its subject product acquisitions (imports) from the countries that have been made subject to the anti-dumping duties, if such duties are revoked.

In addition, or alternatively, it must also be borne in mind that the SACU and the imported subject products are manufactured to stringent international quality standards and the issue of price therefore becomes critical. The only factor, therefore, that could be perceived to be inhibiting the importation of the subject product range from the cited countries is the definitive dumping duties, because of its comparative cost effect on imports. It could, therefore, be assumed that, if the duties are revoked, the importers (which still maintain supply arrangements with the cited country suppliers – *see previous paragraph*) could again source the dumped products from the cited countries.

On the issue of possible dumped imports from the cited countries the applicant also provided the following comments on Malaysia: "In a press release on 28 November 2002 the Malaysian stainless steel pipe producer Kanzen Tetsu stated that they will raise capacity by around 3 000 tons per annum from 2003 ... increasing capacity to 18 000 tons per annum in the first quarter of 2004."

5.3.2 Effect on Domestic Prices

With reference to Article 3.1(a), 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 in respect of the market is the extent to which the price of the imported product is lower than the price of the SACU product.

The price undercutting calculation was done on the basis of comparing the weighted average actual ex-factory selling price of the SACU products to that of an assumed landed cost of the imported goods that was based on an average of the SARS import statistics, as no importer had responded. The Commission regarded this as the best information available. In the case of Chinese Taipei the landed cost assumptions were compared to adjusted calculations based on certain of Ta Chen's exports to the six selected countries, which were converted to SA Currency and to which were added, the customs and anti-dumping duties as well as sea freight and port charges. The landed cost so calculated compared favourably with the average SARS statistics.

The following tables show the extent of undercutting for 2002 and an assumption of what the situation would be if the anti-dumping duties are removed in respect of probable imports from the three cited countries.

(a) Korea

Table 5.3.2(a)			
Per kilogram	2002		If duties are revoked
	LG Korea	Residual Korea	LG & Korea
Undercutting %	(21%)	(73%)	22,5%

(b) Chinese Taipei (Chinese Taipei)

Table 5.3.2(b)			
Per kilogram	2002		If duties are revoked
	Ta Chen Chinese Taipei	Chinese Taipei residual	Chinese Taipei
Undercutting %	(28,5%)	(66,5%)	22,5%

(c) Malaysia

Table 5.3.2(c)		
Per kilogram	2002	If duties are revoked
	Malaysia	Malaysia
Undercutting %	(43%)	22,5%

The information in the respective tables above shows that although the applicant did not suffer price undercutting in 2002, that it will suffer price

undercutting if the anti-dumping duties are revoked. The Commission also noted that the applicant increased its selling prices in post 2002, which was largely based on an increase in the cost of its production inputs.

Price depression

Price depression occurs when the domestic industry experiences a decrease in its selling prices over time. The table below shows the domestic industry's indexed selling prices per ton and an assumption in the event of the duty being revoked (1997 was the year that the dumping duty was introduced):

Table 5.3.2(d)						
1997	1998	1999	2000	2001	2002	If duty revoked
89	87	89	100	97	107	123

Table indexed due to confidentiality, with 2000 as the base year

The information in the indexed table shows that the applicants average selling prices per ton increased during the period of investigation for material injury, from 89 index points in 1997 to 107 index points in 2002. The increase in the applicant's selling price from 107 to 123 index points (post 2002) was largely due to an increase in the cost of production inputs. The industry, therefore, did not suffer price depression over the period of investigation. Although the assumption could be made that the situation will improve if the duty is revoked, the benefit could be perceived to be superficial as the applicant assumes that it will suffer volume and revenue losses, as is detailed in the other complementary injury factor analyses.

The applicant advised as follows on the issue of price depression "Barloworld SST would not be in a position to depress its selling prices to the same extent that the importers will be sourcing 'low priced' imports from these subject countries once the anti-dumping duties are revoked and will suffer material injury."

Price suppression

Price suppression is the extent to which increases in the cost of production of the product concerned, cannot be recovered in prices. The following table shows the applicant's cost of production expressed as an indexed fraction of its average selling prices with 2000 as the base year, and an assumption of what the situation would be if the anti-dumping duty is revoked:

Table 5.3.2(e)							
Cost of production as a fraction of the selling price	1997	1998	1999	2000	2001	2002	If duty revoked
	107	104	100	100	110	107	96

Note: Table indexed due to confidentiality with 2000 as the base year.

The applicant's ability to recover its production costs from 1997 to 2000 improved, whilst the information shows that the situation declined from 2000 to 2002. The Commission also noted that the applicant increased its selling prices in post 2002, which was largely based on an increase in the cost of its production inputs. Although the assumption could also be made under this factor that the situation will improve if the duty is revoked, (from 107 to 96 index points from 2002 onwards) the benefit could also be perceived to be superficial as the applicant assumes that it will suffer volume and revenue losses, as is detailed in the other complementary injury factor analyses.

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 indexed sales volume (based on tonnage sales) of the subject product and an assumption in the event of the revocation of the duty:

Table 5.3.3.1							
Indexed sales volumes	1997	1998	1999	2000	2001	2002	If duty revoked
	50	75	81	100	109	114	72

Table indexed due to confidentiality reasons with 2000 as the base year.

The information in the table above shows that the sales volumes of the applicant increased from 50 to 114 index points from 1997 to 2002, but

assumes that it will decline to 72 index points if the anti-dumping duty is revoked.

5.3.3.2 Profit

The following table shows the applicant's profit comparison and an assumption of what the situation would be if the anti-dumping duties are revoked:

Table 5.3.3.2							
Profits	1997	1998	1999	2000	2001	2002	If duty revoked
	6	52	94	100	35	16	(2)

Table indexed due to confidentiality reasons with 2000 as the base year.

The information in the table shows that the applicant's profits increased from 6 to 100 index points from 1997 to 2000, but then decreased from 100 to 16 index points from 2000 to 2002. The assumption is made that the applicant's profit situation will deteriorate to a level of minus 2 index points and experience a loss situation, if the duties are revoked.

It is also assumed by the applicant that the probability of re-occurring imports (if the duties are revoked) will not only capture the expected 5% market growth but also a bigger slice of the market, hence the deterioration of the profit situation.

5.3.3.3 Output

The following table shows the applicant's indexed domestic production (output) volumes, and an assumption of the situation in the event of the expiry of the duty:

Table 5.3.3.3							
Output	1997	1998	1999	2000	2001	2002	If duty revoked
	59	76	88	100	122	113	81

Table indexed due to confidentiality reasons with 2000 as the base year.

The information in the table shows that the applicant's output volumes increased from 59 index points in 1997 to 122 in 2001. From 2001 to 2002 a marginal decline of 9 index points was experienced. The applicant, however, assumes that its output will decrease from 113 to 81 index points, if the duty is revoked.

5.3.3.4 Market share

The following table shows the indexed market share and an assumption, if the duties are revoked:

Table 5.3.3.4				
INDEXED VOLUMES	2000	2001	2002	If duties are revoked
Dumped imports				
Chinese Taipei:	100	50	63	840
South Korea:	100	0	0	350
Malaysia	100	100	390	302
Other imports:	100	80	90	84
Domestic sales	100	109	114	72
Total market	100	94	102	103
Indexed share held by:				
- SACU industry:	100	115	112	71
- Dumped imports:	100	63	100	1625

Table indexed due to confidentiality reasons, with 2000 as the base year.

The information in the table shows that the applicant's market share increased from 100 to 112 index points from 2000 to 2002, but assumes that it's market share will decrease to 71 index points, if the duties are revoked.

Barloworld SST stated that with the expected 5% volume growth based on international trade information projections the volume of output of the SACU will increase. However, if the anti-dumping duties are revoked, this expected increase in the sales of Barloworld SST will not be realised and instead the sales and production for the domestic market will decrease and the market share of Barloworld SST would be lost against the growing import market share of the subject countries that would grow by the expected 5% or more as their pricing would undercut Barloworld SST sales.

5.3.3.5 Productivity

The following table shows the indexed productivity analyses, on the basis of the indexed output-ton per employee:

Table 5.3.3.5	1997	1998	1999	2000	2001	2002	If duty revoked
	69	67	80	100	107	89	64

Table indexed due to confidentiality reasons with 2000 as the base year.

The information in the table shows that the applicant's output per employee, expressed as a factor of the base year 2000, increased from 69 index points in 1997 to 107 index points in 2001, but decreased to 89

index points in 2002. The assumption is made that the output-ton per employee will decline to 64 index points if the duties are revoked.

It shows that if the duties are withdrawn productivity will decline, assuming that employment levels remained fairly consistent from 2001 onwards.

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 shows the applicant's return on the net allocated assets, measured over the stated years:

Table 5.3.3.6	1997	1998	1999	2000	2001	2002	If duty revoked
Indexed return	3	37	100	100	62	16	-1,7

Table indexed due to confidentiality reasons with 2000 as the base year. Note that the allocated net assets were calculated on the basis of the allocated fixed assets, plus stock and debtors, less the calculated creditors – the fluctuations (year-on-year assets) were, therefore, largely as a result of fluctuations in the working capital.

The indexed information in the table shows that the applicant's return on net asset increased from 1997 to 1999/2000 from 3 to 100 index points. From 2000 to 2002 the applicant's return decreased from 100 to 16 index points, with the assumption that it will decrease to a negative return of 1,7 index points, if the duties are revoked.

The applicant advised that its income statement, for post 2002 (if the duties are withdrawn) was based on both a 5% volume growth expected in the SACU market for the subject product and that Barloworld SST would continue to sell at 2002 suppressed prices to prevent imports. The subsequent 15% increase from the domestic supplier, Columbus, would have to be absorbed thus exacerbating the poor financial return of Barloworld SST on the subject products. However, the losses could be higher if the anti-dumping duties are revoked, as it can then be reasonably expected that the "dumped" imports would capture the market growth and penetrate the client base of Barloworld SST.

5.3.3.7 Utilisation of production capacity

The following table provides the applicant's indexed production capacity utilization and an assumption of what the situation would be if the duties are revoked:

Table 5.3.3.7	2000	2001	2002	If duty revoked
Utilization of production capacity	100	122	100	56

Table indexed due to confidentiality reasons with 2000 as the base year.

The information in the table shows that the applicant's production capacity utilization increased from 100 to 122 index points from 2000 to 2001, and then declined to 100 index points in 2002. The applicant assumes that the utilization will decline from 100 to 56 index points, if the duties are revoked.

This factor correlates with the *Output* factor in paragraph 5.3.3.3, in that it is shown that the applicant's output will decrease from 133 to 81 index points if the duties are revoked. In the case of the *Productivity* factor (paragraph 5.3.3.5), it must be noted that the applicant assumed that the number of employees would remain constant, with the resultant effect that it would reflect a decrease in the productivity or output per employee.

Barloworld SST states that the capacity utilisation is based on the assumption that the market will grow with 5%. However, as indicated above if the dumped imports capture the 5% or more as a result of the revoking of the anti-dumping duties the sales and capacity utilisation on the domestic market will decline if the duties are withdrawn causing material injury to Barloworld SST.

5.3.3.8 Factors affecting domestic prices

No other known factors were provided by the applicant which could affect the domestic prices negatively. The Commission has to decide whether the expiry of the duty would likely lead to the continuation or recurrence of injury.

5.3.3.9 The magnitude of the margin of dumping

In Chapter 4 of this Report, it was found that the subject products were imported at dumped prices into the SACU during the investigation period at the following margins.

The following margins of dumping were calculated:

Table 5.3.3.9	
Ta Chen's exports to:	Dumping margins:
Australia	Minus 0,15%
Canada	Minus 3,44%
Hong Kong	1,6%
Indonesia	0,03%
Iran	0,39%
Philippines	Minus 17%
Other Chinese Taipei exports (residual):	41,8%
Malaysia	20%
South Korea	47,6%

The Commission found these margins to be significant.

5.3.3.10 Actual and potential negative effects on cash flow

The applicant stated as follows: *"The cash flow will be affected when the profits are suppressed further."*

5.3.3.11 Inventories

The following table provides the applicant's inventory volumes for the subject product :

Table 5.3.3.11	2000	2001	2002	If duties revoked
	100	43	101	90

Table indexed due to confidentiality reasons with 2000 as the base year.

The indexed information in the table shows that the applicant's inventory levels declined from 100 to 43 index points from 2000 to 2001 but then increased to 101 index pints in 2002. The applicant assumes that its inventories will decrease to 90 index points if the duties are revoked. As was already explained earlier in this Report, the assumption that the situation will improve (decline in inventory levels) if the duty is revoked could be perceived to be superficial as the applicant stands to suffer volume, revenue and market share losses, as is detailed in the other complementary injury factor analyses.

5.3.3.12 Employment

The applicant provided the following indexed information in respect of number of units employed by it:

Table 5.3.3.12	1997	1998	1999	2000	2001	2002	If duty revoked
Employees	85	111	111	100	115	126	126

Table indexed due to confidentiality reasons with 2000 as the base year.

The information in the table shows that the applicant's employment levels increased from 85 to 111 index points from 1997 to 1999 and then decreased to 100 index points in 2000. Employment levels increased to 126 index points from 2000 to 2002. The assumption is that the employment levels will remain constant at 126 index points if the duties are revoked.

The applicant also advised that although it is perceived that the employment levels will initially remain at 126 index points, workers could be retrenched if the dumping duty is revoked.

5.3.3.13 Wages

The applicant provided the following information on the issue of the actual and potential negative effects on wages: "If the duties are revoked Barloworld SST indicate that they would have to consider relocating the workers or to retrench them, especially on the A312 products as the demand will be reduced, making it unprofitable to manufacture the products as a result of the products from the subject countries. The salaries cannot be reduced as it is negotiated with the Unions."

5.3.3.14 Growth

The applicant advised as follows on the issue of the actual and negative effects of growth "Barloworld SST will not be able to grow to match the approximately 5% growth per annum in the South African Stainless steel market."

5.3.3.15 Ability to raise capital or investments

The applicant advised as follows on this issue "If Barloworld SST can compete without unfair trade in the SACU market it will be able to expand their current position. However, if the anti-dumping duties are revoked this would not be possible as market share will be lost to the imports of the subject countries, sales would decline as well as production cost will increase as a result of economies of scale etc."

5.4 CONCLUSION ON THE RECURRENCE OF MATERIAL INJURY

The Commission found that a likelihood exists that the imports of the dumped goods would increase, with a corresponding undercutting of the ex-factory price of the local industry. The Commission also found that a likelihood exists that the sales, profits, output, return on investment, utilisation of production capacity and market share of the local industry would also decrease, also that the applicant's growth and its ability to raise capital or investments would be impeded, if the anti-dumping duties are revoked. The Commission, however, did not find that the applicant would suffer either price depression or suppression, but noted in this regard that although these two factors could not be perceived to be injurious, it should be understood to be superficial as the applicant will have suffered volume and revenue losses under circumstances where it was forced to increase its selling prices in order to accommodate the price increases of its suppliers.

After a proper analysis of the aforementioned material injury factors, including the comments by the interested parties, therefore, the Commission concluded that, should the measures in place be revoked or repealed, there is a likelihood of a continuation or recurrence of injury and, therefore, that the measures currently in place should be maintained.

5.5 Comments by the applicant on the Commission's provisional finding

The applicant advised as follows on the issue of the Commission's provisional finding: "We strongly agree with ITAC's provisional determination that if the anti-dumping duties that are in place against Chinese Taipei, Malaysia and South Korea are withdrawn that it would lead to the continuation and recurrence of dumping and will cause material injury to the SACU industry."

6. SUMMARY OF FINDINGS

6.1 Dumping

6.1.1 The following dumping margins were found:

Table 6.1.1	
Ta Chen's exports to:	Dumping margins:
Australia	Minus 0,15%
Canada	Minus 3,44%
Hong Kong	1,6%
Indonesia	0,03%
Iran	0,39%
Philippines	Minus 17%
Other Chinese Taipei exports (residual):	41,8%
Malaysia	20%
South Korea	47,6%

6.2 Material injury - conclusion on the recurrence of material injury

The Commission considered the material injury factors and found that the following situation will arise if the duties are revoked:

- that the imports from the respective countries will increase;
- that the applicant's ex-factory selling prices will be undercut;
- that sales volumes will decline;
- that the applicant's profit margins will decline;
- that the applicant's output will decline;
- that the applicant's market share will decline;
- that the applicant's return on investment will decline;
- that the applicant's capacity utilization will decline;
- the magnitude of the dumping margins found;
- investments would be impeded; and
- that the applicant's growth and ability to raise capital would also be impeded.

The Commission, however, also found that the applicant will not suffer price depression and suppression as it was assumed that average increased selling prices would have to be maintained. In view of the aforementioned material injury factors, the Commission, therefore, concluded that, should the measures in place be revoked or repealed, there is a likelihood of a continuation or recurrence of injury and that the measures currently in place should, therefore, be maintained.

6.3 Causal link

The Board does not consider the issue of causal link in sunset reviews as this issue was already addressed in the initial investigation's findings.

7. CONSIDERATION – Final determination

The Commission made a final determination that:

- the expiry of the duty is likely to lead to the continuation or recurrence of dumping; and
- the expiry of the duty is likely to lead to the continuation or recurrence of material injury.

The Commission therefore recommends to the Minister of Trade and Industry:

- (a) that the present anti-dumping duties imposed in respect of imports of the subject products from Ta Chen, Chinese Taipei be revoked;
- (b) that the present exemption of anti-dumping duties that exists in respect of subject product imports originating and imported from LG Industrial Systems, South Korea be withdrawn and that any subject product imports, that originated and are imported from this exporter, be made subject to the residual anti-dumping duty imposed on the importation of subject products originating in and imported from South Korea; and
- (c) that the anti-dumping duties in the table below be maintained until such time as it is revised for whatever reason, subject to the prevailing conditions of the ITA Act and the WTO Anti-Dumping Agreement:

Table 7.1	
Other Chinese Taipei exports (residual (excluding that imported from Ta Chen):	41,8%
Malaysia	20%
South Korea	47,6%