




International Trade Administration Commission of South Africa

Report No. 16

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

The International Trade Administration Commission of South Africa herewith presents its **Report No. 16: INVESTIGATION INTO THE ALLEGED DUMPING OF ARTICLES OF PLASTER OR OF COMPOSITIONS BASED ON PLASTER FACED OR REINFORCED WITH PAPER OR PAPERBOARD ONLY, COMMONLY REFERRED TO AS "GYPSUM PLASTERBOARD" ORIGINATING IN OR IMPORTED FROM THAILAND: PRELIMINARY DETERMINATION**



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PRETORIA

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INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA

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

SYNOPSIS

On 23 October 2002, the Board on Tariffs and Trade (the Board), which was replaced by the International Trade Administration Commission of South Africa (ITAC) on 1 June 2003, formally initiated an investigation into the alleged dumping of gypsum plasterboard, originating in or imported from Thailand. Notice of the initiation of the investigation was published in Notice No. 2290 of *Government Gazette* No. 23975 dated 01 November 2002. The petition was lodged on behalf of the Southern African Customs Union (SACU) industry by BPB Gypsum, which claimed that the dumped imports were causing it material injury.

The investigation was initiated after the Board 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, known producers and exporters of the subject product in Thailand were sent foreign manufacturers/exporters questionnaires to complete. Importers of the subject product were also sent questionnaires to complete.

After considering all parties' comments and representations, 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 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 to the extent of the amounts listed below:

	Provisional payment
Manufactured by The Siam Gypsum Industry Co. Ltd (SGI)	64.9%
All other exporters	121.7%

1. PETITION AND PROCEDURE

1.1 LEGAL FRAMEWORK

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

1.2 PETITIONER

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

1.3 DATE OF ACCEPTANCE OF PETITION

The petition was accepted by the Board as being properly documented in accordance with Article 5.2 of the Anti-Dumping agreement on 25 September 2002. The trade representative of the country concerned was advised accordingly.

1.4 ALLEGATIONS BY THE PETITIONER

The Petitioner alleged that imports of the subject product, originating in or imported from Thailand 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 Petitioner alleged that as a result of the dumping of the product from Thailand, the SACU industry was suffering material injury in the form of:

- price undercutting
- decline in output
- decline in sales
- decline in market share
- decline in productivity
- decrease in profits
- decline in utilisation of production capacity
- decline in return on investments
- negative effect on cash flow
- decline in employment
- decline in wages per employee
- inability to show growth

1.5 INVESTIGATION PROCESS

The Board formally initiated an investigation into the alleged dumping pursuant to Notice No. 2290 which was published in *Government Gazette* No. 23975 on 01 November 2002.

Prior to the initiation of the investigation, the trade representative of the country concerned was notified of the Board's intention to investigate, in terms of Article 5.5 of the Anti-Dumping Agreement. All known interested parties were informed and requested to respond to the questionnaires and the non-confidential summary of the petition.

On 25 November 2002 the exporter requested clarity on the thickness of the product under investigation. On 28 November 2002 the exporter was informed that the product under investigation includes all thicknesses as published in the Government Gazette. Extension to respond to the exporter's questionnaire was allowed to 24 December 2002.

In reaction to an enquiry regarding the scope of the investigation received on 13 December 2002 from Webber Wentzel Bowens (WWB) acting for the importers and exporter, a letter was sent informing them that the product under investigation is as published and that they should submit their response by 10 January 2003. They were further informed that the petitioner will be required to furnish injury information in respect of all its products classifiable under tariff subheading 6809.11 and that a copy thereof will be made available to them after which a reasonable time will be allowed for comments. Opportunity for oral representations was granted to WWB on 10 January 2003 and 21 May 2003.

The information submitted by the importer of the subject product was verified on 06 February 2003 and the information received from the exporter of the subject product was verified on 8, 9 and 10 April 2003.

1.6 INVESTIGATION PERIOD

The investigation period for dumping is from 01 September 2001 to 31 August 2002. The injury investigation involved evaluation of data for the period 01 April 2000 to 31 August 2002.

1.7 PARTIES CONCERNED

1.7.1 SACU industry

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

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

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

1.7.2 Exporters/Foreign Manufacturers

The following exporters/manufacturers were identified as interested parties:

- (a) The Siam Gypsum Industry Co.,Ltd (SGI) (Manufacturer)
- (b) SCT Company, Ltd ("SCT") (Exporter for the above manufacturer)
- (c) Thai Gypsum Co

Information was supplied with regard to both SGI and SCT. Thai Gypsum Co. did not respond.

1.7.3 Importers

The following SACU importers were identified as interested parties:

- (a) MacSteel Interior Systems (Pty) Ltd. (MIS)
- (b) Pelican MIS (Pty) Ltd. (Pelican)

As Pelican is related to MIS, information concerning Pelican was also provided and verified at MIS.

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 IMPORTED PRODUCTS

2.1.1 Description

The subject product is described as:

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

2.1.2 Tariff classification

The subject product is currently classifiable as follows:

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

2.1.3 Import Statistics

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

“There shall be immediate termination in cases where the authorities determine that the volume of dumped imports, actual or potential, is negligible. The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 per cent of imports of the like product in the importing Member, unless countries which individually account for less than 3 per cent of the imports of the like product in the importing Member collectively account for more than 7 per cent of imports of the like product in the importing Member.”

The import statistics obtained from the South African Revenue Service (SARS) indicated that the volume of alleged dumped imports from Thailand account for 92 per cent of the total imports of the like product during the period of investigation for dumping.

2.1.4 Country of origin/export

The subject product originates in and is exported from Thailand.

2.1.5 Application/end use

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

2.1.6 Production process

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

2.2 SACU PRODUCT

2.2.1 Description

The SACU product is described as gypsum plasterboard.

2.2.2 Application/end use

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

2.2.3 Tariff classification

The SACU product is classifiable under tariff subheading 6809.11.

2.2.4 Production process

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

2.3 LIKE PRODUCTS

2.3.1 General

In order to establish the existence and extent of injury to the SACU industry, it is necessary to determine at the outset whether the products produced by the SACU industry are like products to those originating in or imported from Thailand.

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

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

Article 4.1 of the Anti-Dumping Agreement 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 Board used 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

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

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

(2) Physical appearance and characteristics

Both the SACU and the imported product can be described as gypsum board and is fire resistant.

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

(3) Tariff classification

The Commission found that the SACU products and those imported are classifiable under the same six-digit tariff subheading.

(4) Method of manufacturing

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

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

(5) Customer demand and end-use

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

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

Comments by Webber Wentzel Bowens

WWB, acting on behalf of the importers and exporter, stated that the Petitioner limited the product under investigation to 12 mm/12.5 mm thickness in its petition. It quoted paragraph C2.2 from the petition which states that "Local SABS product is 12.5 mm thick, imported product is 12 mm

thick. As is evidenced from the above information the imported product is similar to that of the local producer and can be considered as “like”.

WWB stated that the following products were imported during the POI:

- standard board of 12 mm thickness (ceiling and partitioning)
- standard board of 9 mm thickness (ceiling and partitioning)
- standard board of 6.4 mm thickness
- standard board of 12 mm thickness (for manufacturing of ceiling tiles)
- standard board of 9 mm thickness (for manufacture of ceiling tiles)

WWB stated further that as the imported product is limited to products of 12mm thickness, the following products should be excluded from the investigation:

- standard ceiling and partitioning board of 9 mm and a width of 1200 mm.
- standard ceiling board of 6.4 mm thickness and a width of 1200 mm.
- standard board used for the manufacture of ceiling tiles, with a thickness of 9 mm and a width of 1195 mm.

It further stated that plasterboard products of different thicknesses cannot be regarded as “like” products since they have the following material differences:

- thermal insulation
- resistance
- sound/ insulation properties
- extent to which they sag
- fire ratings.

WWB stated that it is clear from paragraph C2.2 and elsewhere in the petition that the product under consideration is described and identified as “gypsum plasterboard of 12 mm thickness”, and that the Board is only entitled to initiate an investigation in respect of that product. It was further stated that there is no basis for distinguishing the product for the purposes of dumping and for the purposes of injury, and that the alleged dumped product for the purposes of dumping and injury is the same, viz: gypsum plasterboard

of 12 mm thickness.

WWB stated that the injury information provided by the Petitioner for purposes of initiation was only for gypsum plasterboard of 12.5 mm thickness. Therefore, the Board could only investigate this thickness, as this was the *prima facie* case presented by the Petitioner. WWB argued further that the request by the Board to the Petitioner to supplement the “defective” original petition, constitutes an admission of it that the information with which it was provided, is insufficient to justify the initiation by it of the investigation of all products classifiable under tariff subheading 6809.11.

Comments by the Petitioner

In response to the comments by WWB, the Petitioner stated that in its petition and as published by the Board, the product under investigation is gypsum plasterboard originating in or imported from Thailand, and that it manufactures board of 6.4 mm, 9.5 mm, 12.5 mm and 15 mm thicknesses.

The Petitioner stated further that the investigation would therefore have to focus on all products which satisfies the definition of the product under investigation and also within the ranges manufactured by the Petitioner. The Petitioner argued that to limit the scope of investigation to the 12 mm product alone would allow the importer to still import the other product ranges at alleged dumped prices thereby causing the Petitioner to still suffer material injury on products which should fall within the ambit of the investigation.

The Petitioner stated that any reference made by the Petitioner to the 12.5 mm product was purely for the purpose of comparing its product with the alleged dumped product, and that the intent was always for the scope of the investigation to be plasterboard in general and not to limit the investigation to a single size.

The Petitioner stated that in terms of the Board on Tariffs and Trade Act, as well as the International Trade Administration Act, 2002 (Act No 71 of 2002), the then Board and the newly established Commission may take the initiative when considering matters. Therefore it was to be expected that when the Board’s initial probe showed that most thicknesses of plasterboard were

being imported from Thailand, it would expand the description of like product to include all plasterboard products.

The Petitioner stated further that it is also for this reason that investigations are normally initiated on a more generic description of the product concerned, thus allowing the authorities the latitude to expand the scope of the investigation if and when desired.

The Petitioner also stated that it would not have been possible to deal with the other dumped products such as 6.4 mm if the investigation was only initiated in respect of the 12 mm product.

The Petitioner stated further that this was not the first time that the South African authorities have expanded the scope of the investigation of their own accord.

The Board considered all relevant issues in deciding to initiate the investigation on "Gypsum plasterboard". It noted the reference by WWB to the description under paragraph C2.2 of the petition and the fact that the investigation was published on "Plasterboard".

The Commission also noted the description of the product as "gypsum plasterboard" under other sections of the same petition.

During the course of the investigation the Board considered the issue of scope of the investigation as a result of the above communication and concluded that the information at its disposal warranted the initiation of the investigation as published.

The Commission, therefore, decided to confirm its decision that gypsum plasterboard of all thicknesses be included in the scope of the investigation.

The Commission was, therefore, satisfied that the SACU product and the imported products 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 provides as follows:

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

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

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

4. DUMPING

4.1 DUMPING

Section 1 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 SIAM GYPSUM INDUSTRY COMPANY LTD (SGI) IN THAILAND

4.6.1 Normal Value

Type of economy

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

4.6.1.1 The Siam Gypsum Industry Co., Ltd (SGI)

SGI is part of the Siam Cement Group of companies, and manufactures plasterboard for both the Thai domestic market and for export. Lafarge Boral Gypsum in Asia owns 71 per cent of the issued share capital in SGI, while The Siam Cement Public Company Limited owns the remaining 29 per cent of the issued share capital.

Normal value definition

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

Most of SGI's domestic sales (84 per cent) were made through the subsidiary company Cementhai Sales and Marketing Co Ltd (CSM), while 16 per cent of domestic sales were made directly by SGI. ITAC regarded sales by CSM as sales by SGI.

In determination of the normal values of the subject products the following methods were considered by ITAC:

- a. Normal value based on the weighted average selling prices of SGI to all its customers during the POI.

- b. Normal value based on the weighted average selling prices of SGI to its biggest customer only, namely Thamrong Watsadupan (Thamrong) during the POI.

Comments by the exporter

WWB stated that, in respect of the 12 month period from 01 September 2001 to 31 August 2002 the total domestic invoices represent a large number. As a result detailed domestic sales information provided to the Board was with regard to its biggest customer only, namely, Thamrong Watsadupan. The volume sold to Thamrong is substantially higher than the volume sold to the second highest customer. SGI, therefore, argued that Thamrong is the most comparable customer to the importer in SACU.

The Commission found that the volume of sales to one customer was not sufficient to be regarded as representative of all domestic sales for purposes of calculating the normal value.

The Commission, therefore, decided for purposes of the preliminary determination to determine the normal values for the 9 mm and 12 mm plasterboard products based on the weighted average selling prices of SGI to all its customers during the POI.

Adjustments to normal values

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

Volume rebate

The exporter provided a volume rebate to its domestic customers as an

incentive for customers to purchase its products in high volume.

Duty drawback

A duty drawback is claimable on duties paid on materials used in the production of products which are exported. As this reduces the export price an adjustment is made to reduce the normal value accordingly.

Cash discount

It was found that most of SGI's domestic customers qualified for a cash discount on purchases.

The following adjustments were claimed by the exporter but not allowed by the Commission:

Sales promotion expenses

The Commission decided not to allow this adjustment as it was not convinced that promotion expenses actually affected the price comparability at the time of setting the prices.

Volume rebate

The Commission decided not to allow for further volume rebates as the exporter did not make the debtor's records available to investigators in order to enable the verification of the processing of the credit notes issued in respect of volume rebates.

Ex-factory Domestic Prices

The ex-factory domestic prices were calculated taking the above

adjustments allowed by the Commission, into account.

4.6.2 Export prices

4.6.2.1 The Siam Gypsum Industry Co. (Pty) Ltd.(SGI)

Definition of Export price

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

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

General

Export sales to the SACU were made through the exporter's subsidiary company, SCT Co Limited (SCT).

The exports to the SACU area were made to Pelican and MIS. Neither these parties were related to the exporter during the POI.

Adjustments to export prices

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

Inland transport

The exporter paid the transportation charges per ton for delivery of products from the factory to the port. The actual amount paid was deducted from the

export price.

Wharf Freight handling

The exporter paid for wharf freight handling per m². The actual amount paid was deducted from the export price.

Cargo wharf freight

The exporter paid for cargo wharf freight per m². The actual amount paid was deducted from the export price.

Gate charge

The exporter paid for gate charge per m². The actual amount paid was deducted from the export price.

Custom's formality

The exporter paid the Custom Authority of Thailand for handling the export documentation (Custom's Formality). The actual amount paid was deducted from the export price.

Bill of lading

The exporter paid the forwarder charges for the bill of lading. The actual amount paid was deducted from the export price.

Terms of trade

The exporter provided credit terms to the importer from the date of shipment. The cost of providing credit terms was calculated and deducted

from the export price.

Packaging

The exporter incurred packaging costs on the exported products, which were not incurred on the product sold on its domestic market. The actual amount incurred was deducted from the export price.

Ex-factory Export Prices

The ex- factory export prices were calculated taking the above adjustments into account.

4.6.3 Margin of dumping

4.6.3.1 The Siam Gypsum Industry Co; (Pty) Ltd.(SGI)

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

The dumping margin was calculated by subtracting the ex-factory export price from the ex-factory normal value for each of the respective products, and the difference was expressed as a percentage of the fob export price. The margin of dumping in respect of 9 mm thickness was found to be 118.9 per cent and in respect of 12 mm thickness 92.1 per cent. The dumping margin percentages were then weighted with the export volume of each thickness to calculate the weighted average dumping margin of 102.5 per cent.

4.6.3.2 Residual dumping margin

Since there are other manufacturers of the subject product in Thailand, the Commission decided to calculate a residual margin of dumping by subtracting the weighted average ex-factory export price after adjustments from the weighted average normal value before adjustments. The difference was expressed as a percentage of the fob export price. The residual dumping margin was calculated to be 121.7 per cent.

Comments by WWB

WWB stated that the Petitioner had not provided any evidence of dumping, except for one invoice of which it (WWB) did not have sight. It stated further that a single invoice dated April 2002 cannot reflect the evolution of prices over the 29 months of the period of investigation in respect of injury or the 12 months of the period in respect of the alleged dumping. WWB also stated that the use by BPB of one single invoice is more surprising since BPB (plc) which is the holding company of BPB, also owns a majority shareholding in Thai Gypsum (the company of which the invoice was used by the petitioner as evidence of domestic prices for purposes of initiation of the investigation) and as such, BPB would have had access to more invoices evidencing dumping, had there been any.

WWB further stated that the dumping margin and the information relating to dumping furnished by the exporter have been verified by the Board, and that notwithstanding certain minor adjustments referred to in the verification report from the Board, the margin of dumping should not be significantly affected and should remain *de minimis* if not zero.

Comments by the Petitioner

In response to the comments by WWB, the Petitioner stated that its sister

company competes directly with the exporting manufacturer in Thailand, and that it (the Petitioner) had provided ample proof of discounts, including quantity discounts in that country. The Petitioner stated further that any claim for discounts exceeding 2.5 percent should not only be treated with circumspection, but should probably be disregarded completely. The Petitioner stated further that if the more than 50 percent dumping margin found in New Zealand is used as a yardstick, it would be most surprised if a similar dumping margin i.e. 50 percent, does not apply to exports to South Africa.

4.7 CONCLUSION - DUMPING

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

	Dumping margin
Manufactured by The Siam Gypsum Industry Co. Ltd (SGI)	102.5%
All other exporters	121.7%

5. MATERIAL INJURY

MATERIAL INJURY

5.1 DOMESTIC INDUSTRY FOR THE PURPOSE OF DETERMINATION OF INJURY

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

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

5.2 GENERAL

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

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

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

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

"For purposes of this Agreement, the term "domestic industry" shall be interpreted as referring to the domestic industry as a whole of the like products or to those of them

whose collective output of the products constitutes a major proportion of the total domestic production of those products,...".

The following injury analysis relates to BPB Gypsum, the Petitioner which constitutes 100% of the total domestic production of the subject product. This constitutes "a major proportion" of the total domestic production, in accordance with Article 4.1 of the Anti-Dumping Agreement. All information relates to BPB's fiscal years which end in March.

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.

The following table shows the volume of imports of the subject product from the petitioned country for the period April 2000 to August 2002 (based on audited stats from SARS):

Table 5.3.1

Year ending	2000	2001	2002	April to Aug 2002 (5 months)
imports	Tonnes	Tonnes	Tonnes	Tonnes
Thailand (dumped)	0	1592	8173	13148
Imports from other countries	89	212	134	25
Total imports	89	1804	8307	13173
Dumped imports as % of total Imports	0	88	98	100

The information in the above table shows that the volume of dumped imports increased from zero in 2000 to 8173 tonnes in 2002 and increased further from April 2002 to August 2002 by 61 per cent. The information further indicates that the volume of imports from other countries have declined from 2001 to 2002 and even further in the period April to August 2002.

5.3.2 Effect on Domestic Prices

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

"With regard to the effect of the dumped imports on the prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing Member, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance."

Price undercutting

Price undercutting is the extent to which the price of the imported product is lower than the price of the SACU product.

The Commission decided that the most appropriate level at which to compare prices is the ex-factory price of the SACU product and the landed cost of the imported product.

On comparing these prices, ITAC found that the price of the imported product was undercutting the Petitioner's selling price by 25.3 per cent.

Price depression

Price depression occurs when the domestic industry experiences a decrease in its selling prices over time. The table below shows the SACU industry's domestic selling prices:

Table 5.3.2(a)

Selling prices	2000	2001	2002
9 mm	100	109	127
12 mm	100	107	124

This table was indexed due to confidentiality using 2000 as the base year.

The table above indicates that no price depression occurred.

Price suppression

Price suppression is the extent to which increases in the cost of production of the product concerned, cannot be recovered in selling prices. To determine price suppression, a comparison is made of the percentage increase in cost with the percentage increase in selling price (if any), and whether or not the selling prices have increased by at least the same margin at which the cost of production increased.

The following table shows the Petitioner's average costs of production and its average selling prices for the subject product:

Table 5.3.2(b)

Rand/m²	2000	2002	2002
Cost of production	100	108	116
Selling price (Ave 9 mm & 12 mm)	100	108	125
Cost as % of selling price		100	93

This table was indexed due to confidentiality using 2000 as the base year.

The table above indicates that the selling prices increased at least by the same margin as the cost and therefore, no price suppression occurred.

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 Petitioner's sales volume of the all plasterboard products:

Table 5.3.3.1(a)

Description Volume/ million m²	2000	2001	2002	5 months Apr-Aug 2002
Petitioner's sales in SACU	100	103	102	41

This table was indexed due to confidentiality using 2000 as the base year.

The table above shows that the Petitioner's sales for plasterboard increased from 2000 to 2002 by 3 index points and decreased slightly from 2001 to 2002 by 1 index point.

The importer was the single biggest customer to the Petitioner. The following table shows sales of 9.5 mm and 12.5 mm plasterboard products to the importer and to all customers.

Table 5.3.3.1(b)

<u>9.5mm</u>				
<u>Gypsum plasterboard</u>				
	To importer only		<i>To all customers</i>	
	Value	Volume	Value	Volume
April 01 - Aug 01	100	100	100	100
April 02 - Aug 02	18	16	123	103
<u>12.5mm Gypsum</u>				
<u>plasterboard</u>				
	To importer only		<i>To all customers</i>	
	Value	Volume	Value	Volume
April 01 - Aug 01	100	100	100	100
April 02 - Aug 02	28	24	91	75

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

The information in the table above indicates that large volumes of the Petitioner's sales were lost to the importer from 2001 to 2002.

Comments by WWB.

In order to gain some perspective on the importation by MIS of 12 mm standard plasterboard, it is necessary to appreciate the extent to which BPB is dominant, can and does exert power in the plasterboard industry in South Africa including the power to control prices, exclude competition and behave to an appreciable extent independently of its competitors, customers or suppliers. The following statistics are indicative of the market power exerted by BPB: In 2001 BPB supplied almost all of the plasterboard within the Republic of South Africa and competition via the importation of plasterboard accounted for a very small portion of supply in 2001, indicating the extent to which importation in 2001 was not material.

BPB's dominance in the plasterboard industry is partly attributable to its supply of gypsum since BPB owns the mines for all gypsum currently utilised for the production of plasterboard in South Africa. Whilst MIS does import 12 mm plasterboard, during the period of investigation, its imports have played an insignificant role in competing with local production. During the financial year ended 2002 (i.e. 1 April 2001 to 31 March 2002) the total volume of imported 9 mm and 12 mm plasterboard sold accounted for only a small portion of the total market for plasterboard in South Africa.

BPB not only controls the supply of gypsum but is dominant in the distribution of plasterboard in the Republic of South Africa.

MIS as a distributor of plasterboard and other plasterboard derived products (such as ceiling tiles) used in the construction and assembly of interior systems in South Africa, relied exclusively on the supply of 12.5 mm plasterboard and other plasterboard from BPB. Importation was considered for a number of reasons, the most important of which are detailed below:

BPB sold steel and plasterboard products package deals to its customers at more favourable prices than at which it sold the same products to MIS even though MIS was one of BPB's biggest customers. This conduct constitutes price discrimination by a dominant firm as provided for in section 9 of the Competition Act and, together with other practices exhibited by BPB, is to form the subject matter of a complaint to the Competition Commission in the near future.

BPB publicly informed market players at a market in Durban for the industry in September 1998 that they would within a space of three years be the only vinyl gypsum ceiling tile laminating company operating in the market.

The selling price of the 12.5 mm production board to MIS by the petitioner and used by MIS as a raw material to manufacture its own vinyl ceiling tiles was subsequently increased. In contrast, the price of the gypsum ceiling tiles sold by BPB and manufactured by them with the same raw material, did not

increase by the same margin. This made BPB's product artificially and substantially more competitive.

As evidenced by BPB's April 2000 price list which has been furnished to the Board in MIS's injury memorandum, BPB subsidised the selling price of certain types of 12.5 mm gypsum vinyl tiles to its Bloemfontein and Welkom regional centres. The selling price in these regions as indicated is lower than ex-factory selling prices.

In 1999 BPB withdrew MIS' additional export discount but continued to propose this discount directly to MIS' previous export customers as part of its standard terms and conditions. In some instances, BPB offered a greater discount even to the standard terms and conditions quoted. Our client has been privy to a circular which BPB issued to its staff members with clear instructions to undercut or meet MIS' prices on previous import attempts.

In September 2001, BPB revised its price list with respect to square edge boards in respect of which an extra 15% premium was imposed. In addition, an increased lead time of 6 to 8 weeks for deliveries was implemented. This directly and adversely affected MIS' manufacturing of ceiling tiles and partitioning systems since 3 out of 4 of its partitioning systems utilise these square edge boards whereas only one out of the 2 partitioning systems manufactured by BPB-Donn use square edge boards. In this way MIS' partitioning systems became prohibitively expensive and undesirable in the market.

MIS and its customers also suffered from the poor quality of BPB plasterboards the rebate scheme issued by the only South African producer of plasterboard, being BPB-Donn-LBS on 30 April 2002 and with which the Board has been furnished in MIS' injury memorandum, offers unfair incentives to their customers and unlawfully discriminates against MIS.

The rebate scheme provided rebates applicable to gypsum products while the percentage of the rebates related to purchase levels based on combined purchase from BPB and Donn. In this way, the rebate was therefore based

on the total volume of products (in gypsum or non-gypsum products) bought from the factories of BPB and Donn. This scheme is discriminatory against MIS' whole range of products sold in South Africa and is designed to induce South African customers to purchase the BPB-Donn products in a manner that is anti-competitive and unlawful.

As has been evidenced above, BPB has used various anti-competitive means to increase the selling price of gypsum plasterboard with a thickness of 12.5 mm being supplied to MIS for various purposes, which effectively meant that MIS was unable to sustain a competitive profit, if it were to sell or use only BPB's 12.5mm boards. MIS was therefore compelled to seek raw material elsewhere in order to remain competitive in business and avoid staff lay-offs.

As has been stated before, MIS has resorted to importation in order to counter price hikes and other anti-competitive behaviour being implemented by BPB against MIS.

BPB by effectively raising the price of the local 12.5 mm thick plasterboard used by MIS, and by abusing its monopolistic position as the sole local manufacturer of plasterboard has attempted to unlawfully force MIS out of the market. This investigation is yet a further attempt by the petitioner to thwart competition in the industry in which it operates.

5.3.3.2 Profit

The following table shows the Petitioner's profit before interest and tax for all its plasterboard products:

Table 5.3.3.2

Year	3/2000	3/2001	3/2002	8/2002(5months)
Profit (R'000)	100	114	103	41
Profit margin on selling price	100	102	89	96

This table was indexed due to confidentiality using 2000 as the base year.

The table above shows that the Petitioner's profit declined from 2000 to 2002 by 3 index points.

The Petitioner stated that this is attributed to loss of sales to the dumped imports.

5.3.3.3 Output

The following table outlines the Petitioner's domestic production volume of plasterboard in million m²:

Table 5.3.3.3

Description Volume/ million m ²	2000	2001	2002
Petitioner	100	103	102

This table was indexed due to confidentiality

The table above shows that the Petitioner's output remained fairly constant over the period of investigation.

5.3.3.4.1 Market share

The following table shows the Petitioner's market share for plasterboard:

Table 5.3.3.4

Market share (Tonnes)	2000	2001	2002	5 months to Aug 2002
Dumped imports	0	1592	8137	13148
Other imports	89	212	134	25
Total imports	89	1804	8307	13173
Petitioner sales *	100	104	98	39
% market share held by petitioner's sales	100	98.55	93.08	77.26
% market share held by dumped imports	0	1.45	6.92	22.74

***The petitioner's sales were indexed due to confidentiality using 2000 as the base year.**

The information shows that the domestic industry's market share decreased from 2000 to August 2002 by 22.74%.

5.3.3.5 Productivity

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

Table 5.3.3.5

Description	2000	2001	2002
Productivity In 1000m ² / employee/ annum	100	109	109

This table was indexed due to confidentiality using 2000 as base year.

The productivity improved from 2000 to 2001 and remained constant in 2002.

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 Petitioner's return on total net assets:

Table 5.3.3.6

Years	2000	2001	2002
Return on total net assets	100	121	96

This table was indexed due to confidentiality using 2000 as base year.

The table above shows that the Petitioner's return in total net assets increased by 21 index points from 2000 to 2001 and decreased by 25 index points from 2001 to 2002.

5.3.3.7 Utilisation of production capacity

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

Table 5.3.3.7

	2000	2001	2002
Petitioner's production			
By volume 1000m²			
Capacity	100	102	108
Actual production	100	102	102
Capacity utilisation	100	101	95

This table was indexed due to confidentiality using 2000 as base year.

The information in the table above indicates that the Petitioner's capacity increased from 2000 to 2001 by 2 index points and increased further from 2001 to 2002 by 6 index points. The Petitioner's utilisation of capacity increased slightly from 2000 to 2001 by 1 index point and decreased from 2001 to 2002 by 6 index points.

The Petitioner stated that no investment in plant and equipment was made. It stated further that the increase in capacity is due to less downtime as a result of improved maintenance and an increase in average running speed of the production line.

5.3.3.8 Factors affecting domestic prices

Other than the competition between the imported and the SACU products there are no other known factors that could affect the domestic prices negatively.

5.3.3.9 The magnitude of the margin of dumping

In Chapter 4 of this report, it was found that the subject product manufactured by SGI was imported at dumped prices into the SACU during the investigation period at a margin of 102.5 per cent. A residual dumping

margin of 121.7 per cent was calculated for other exporters.

5.3.3.10 Actual and potential negative effects on cash flow

The Petitioner stated that a decrease in sales will have a negative impact on its cash flow which will increase as the imported product gains more market share.

5.3.3.11 Inventories

The Petitioner provided its total inventory level since 2000.

These figures are listed in the table below:

Table 5.3.3.11

Stockholding	2000	2001	2002
Value	100	111	96

This table was indexed due to confidentiality using 2000 as the base year.

Inventories of the subject product remained fairly constant in volume, as output equals sales.

5.3.3.12 Employment

The following table shows the Petitioner's employment level:

Table 5.3.3.12

EMPLOYMENT	2000	2001	2002
Units of employment: production	100	93	91
Units of employment: total	100	94	94

This table was indexed due to confidentiality using 2000 as base year.

The table above indicates that the Petitioner's units of employment decreased from 2000 to 2001 by 7 index points and from 2001 to 2002 by 2 index points.

The Petitioner stated that, owing to a reduction in plant output and a slight reduction in headcount, the workforce is extremely concerned about the future of the plant. It stated that this has a negative effect on production

performance and plant output, which also affects the cost structure in a negative way. The Petitioner stated that it will not be able to carry on at existing levels without drastic headcount reductions in the near future. It stated that it might consider closing its Cape Town production plant and consolidate production in Brakpan.

5.3.3.13 Wages

The information provided by the Petitioner indicated that the total wage bill has decreased due to shorter hours being worked, while wages per employee have also declined.

5.3.3.14 Growth

The Petitioner stated, that owing to the increase in the volume of the dumped product, its capacity utilisation of the plant is decreasing. This will lead to a decrease in its growth potential.

5.3.3.15 Ability to raise capital or investments

The Petitioner stated that since this is a volume-based industry, the attractiveness of the business declines as the volume declines, making it difficult to attract investment.

Comments by WWB

WWB stated that plasterboard of 6.4 mm thickness was only sold by the importer subsequent to the period of investigation and consequently the Petitioner could not have suffered material injury as a result thereof. WWB stated further that the Petitioner has not suffered injury with respect of 15 mm Rhinoboard over the injury investigation period, but instead, it has enjoyed increases in sales (in respect of volume and value) to all customers of this product. WWB also stated that the indexed figures reflect increases of 353 per cent and 461 per cent respectively. It is further stated by WWB that MIS

has not imported 15 mm plasterboard during the investigation period. WWB stated further that MIS's purchases of 12.5 mm plasterboard indicate a drop of 2.3 percent over the two financial years, while the Petitioner's sales dropped by 14.2 percent. WWB claimed that this indicates a shift in the market, which is not caused by dumping.

WWB further stated that there are certain discrepancies in the information presented by the Petitioner which cast doubt on the accuracy of the figures which have been presented to the Board and consequently the ability to initiate an investigation in proper accordance with the WTO Anti-Dumping Agreement.

Comments by the Petitioner

The Petitioner stated that WWB's submissions regarding injury hold no water as the Commission should by now be well aware of the importer's substitution practices. It further stated that this confirms the correctness of the then Board's decision to define the like product as plasterboard in line with practices by other jurisdictions.

5.4 CONCLUSION - MATERIAL INJURY

After considering all relevant factors, the Commission found that the Petitioner was suffering material injury in the form of:

- price undercutting
- decline in output
- decline in sales
- decline in market share
- decline in productivity
- decrease in profits
- decline in utilisation of production capacity
- decline in return on investments
- negative effect on cash flow
- decline in employment
- decline in wages per employee
- inability to show growth

5.5 THREAT OF MATERIAL INJURY

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

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

- (1) a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;
- (2) sufficient freely disposable, or imminent substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to the importing Member's market, taking into account the availability of other export markets to absorb any additional exports;
- (3) whether imports are entering at prices that will have a significant depressing or suppressing

effect on domestic prices, and would likely increase demand for further imports; and

(4) inventories of the product being investigated.”.

5.5.1 A significant increase in alleged dumped at imports prices that could have either a depressing or suppressing effect on domestic prices

Imports for the 12 months ending March 2002 amounted to 8504 tonnes valued at R 8.9 million. And for the 5 months period, April to August 2002 imports amounted to 13173 tonnes. Subsequent to the POI over the period of 4 months from September 2002 to December 2002, a further 6500 tonnes were imported. The above indicates a significant rate of increase of dumped imports into the SACU market, indicating the likelihood of substantially increased importation.

5.5.2 Disposable capacity of the exporter

The exporter owns three gypsum paperboard manufacturing plants of which the capacity of two are not fully utilised, and the third has been mothballed. It is clear that the exporter possesses freely disposable capacity indicating the likelihood of substantially increased exports.

5.5.3 State of the economy in the country of origin

No information was provided in this regard.

5.5.4 Inventories

Inventories remained fairly constant as production is geared according to sales.

5.6 CONCLUSION ON THREAT OF MATERIAL INJURY

As the Commission found that the SACU industry is suffering material injury, it decided, for purposes of this preliminary determination, not to make a determination with regard to threat of material injury.

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 provides 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 2000. The table reflects that the dumped imports captured 1.4 percent of the market share in 2001; 6.9 percent in 2002 and 22.7 percent of the market share for the five month period April to August 2002, with a corresponding loss of market share by the Petitioner.

The information with regard to market share shows that there is a clear correlation between the decrease in the petitioner's market share and the increase in the market share of the dumped imports.

6.3 EFFECT OF DUMPED IMPORTS ON PRICES

It has already been shown in chapter 5 of this report that there was no price suppression or price depression experienced by the Petitioner. However, price undercutting has been demonstrated. The Commission found that this indicated that the SACU industry was suffering material injury, which was causally linked to the dumped imports.

6.4 CONSEQUENT IMPACT OF DUMPED IMPORTS

The Commission found the following material injury indicators that were indicative of material injury to be causally linked to the dumping:

- price undercutting
- decline in output
- decline in sales
- decline in market share
- decline in productivity
- decrease in profits
- decline in utilisation of production capacity
- decline in return on investments
- negative effect on cash flow
- decline in employment
- decline in wages per employee
- inability to show growth

6.5 FACTORS OTHER THAN THE DUMPING CAUSING INJURY

Article 3.5 of the Anti-Dumping Agreement provides 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 of dumped imports and imports from other countries:

	2000	2001	2002	April to August 2002(5months)
Imports	Tonnes	Tonnes	Tonnes	Tonnes
Thailand (dumped)	0	1592	8173	13148
Other countries	89	212	134	25
Total imports	89	1804	8307	13173

Compared to the volumes of the dumped imports, the volumes of imports from other countries are insignificant.

6.5.2 Competition between domestic producers

The Petitioner is the sole producer within the SACU.

6.5.3 Developments in technology

There has been no significant change in technology for the past five years.

6.5.4 Contraction in demand or changes in the patterns of consumption

Comments by WWB

Recent changes in the market of gypsum plasterboard

The product (which was the subject of the original petition) was imported gypsum plasterboard with a thickness of 12 mm. The following standard plasterboard products with a thickness of 12 mm were imported by MIS during the period of investigation for injury i.e. 1 April 2000 to 31 August 2002 ("injury period")

standard ceiling board and standard partitioning board	12 mm (thickness) x 1200 mm (width)
standard board used for the manufacture of 12 mm ceiling tiles	12 mm (thickness) x 1195 mm (width)

The petitioner contends that its decline in sales of gypsum plasterboard with a thickness of 12.5 mm was directly attributable to alleged dumped imports by MIS of the like products described in paragraph 3.1. At paragraph G4.1.1 of the revised petition the petitioner contends that it suffered a decline of 14.2% in sales volume of the 12.5 mm over the injury period but enjoyed a 5.1% increase in sales value of such products. During the same period MIS dropped its volume purchases of 12.5 mm plasterboard from the petitioner by a mere 2.3% but notwithstanding this insignificant decline in volume, the value of 12.5 mm plasterboard purchased by MIS from BPB increased by 17.4%. What the petitioner does not take into account is that the demand for gypsum standard plasterboard with a thickness of 12.5/12 mm used for ceilings and partitions as well as for the manufacture of 12.5/12 mm ceiling tiles was declining prior to the importation by MIS of gypsum plasterboard.

Factors which contributed to the reduction in sales of gypsum plasterboard of 12.5/12 mm thickness market are discussed below.

Independent research by the Bureau of Economic Research revealed that from

roughly the 2nd quarter of 2001 the residential activity in the building industry was improving whilst the non-residential sector of the building industry was slower in tempo.

In assessing these findings it is important to bear in mind that MIS operates predominantly in the non-residential sector.

Gypsum plasterboard with a thickness of 12.5/12 mm is predominantly used in the commercial (non-residential) sector both for ceilings and partitions. In addition to this decline in demand for gypsum plasterboard of 12.5/12 mm thickness linked to the decline in the commercial sector, BPB has "cashed in" on the strength of the residential sector by aggressively marketing a 15 mm thick product for use in internal walling and dry walling systems in both the residential and commercial sectors of the market.

It is clear that BPB is investing a considerable amount of expense and effort in marketing a 15 mm gypsum plasterboard product for the residential market which adds new technical features, but which has been promoted to the detriment of the previously marketed 12.5 mm Rhinoboard (manufactured by BPB) in the same market. BPB is going so far as to set up (previously abandoned) training schools to this end.

It is no coincidence that the residential market is strengthening and that this is where the petitioner believes it should be focusing its attention. The 15 mm board was introduced by BPB on the 28 October 1999 for the first time (just before the start of the injury period under investigation). This 15 mm board has also been marketed, in some cases where sound insulation and impact resistance criteria were of no importance, as a cheaper alternative for commercial sector contractors to use a system called "13/60" which does not provide the equivalent technical characteristics to the 12.5 mm plasterboard used in the "12/60" system (sound reduction and impact resistance are reduced in the 13/60 system). We assume that this change has not been generally accepted in the market.

For BPB to attribute all of its decline in the sales of gypsum plasterboard of 12.5/12 mm thickness to the importation by MIS of like products, is therefore not

an accurate reflection of the trends in the market and the factors influencing the decline in the demand for this product.

As is evident from BPB plc's results in its financial reports for the years 2000, 2001 and 2002, the situation in respect of BPB in South Africa is described as fairly good despite adverse conditions. One of these adverse conditions is an increased price for imported key commodities such as for instance plasterboard liner. Plasterboard liner represents one of the major raw material costs in the making of plasterboard and is imported by BPB South Africa from BPB plc's papermill in Scotland.

It must thus be stressed that the reports do not raise the question of alleged material injury due to the dumping of imported boards in South Africa.

In addition the quality of the imported product is superior to the local equivalent product. Customers' letters submitted in the injury memorandum indicate this to be the case. We have also submitted a comparative test between the local 12.5 mm and the 9.5 mm standard plasterboard products which indicates that the imported product sags far less than the local product. This quality is a very important criterion in the market for ceiling tiles (which are manufactured from standard plasterboard).

6.5.5 Export performance

The Petitioner is not active in the export market.

6.5.6 Competition between foreign and domestic producers

No information was provided in this regard, however, it is clear that competition is confined to that between the products of the Petitioner and the alleged dumped imports.

6.5.7 Trade restrictive practices

No information was supplied in this regard.

6.5.8 Productivity of the domestic industry

The Petitioner is the sole manufacturer in the SACU and its productivity has increased.

Comments by WWB

Restructuring of BPB

WWB stated that BPB and Donn operated as independent companies until circa 1999, when a move was initiated to gradually merge the two companies. The first step was a merger of the debtors departments of both companies during 1999. Other departments such as creditors, product development and training followed suit. The Pretoria factory ceased activity circa 2000, while BPB closed down its Woodmead's Head Office during the same period of time.

In June 2001, a new regional director was appointed by BPB.

WWB stated that BPB, which is wholly owned subsidiary of BPB plc, currently has a 66.7% holding in Donn, which is a distributor of plasterboard products in South Africa. In April 2002, BPB and Donn merged their distribution operations. It was further announced that the Donn Pretoria and BPB Pretoria depots would be merged and the Donn Durban and BPB Pinetown depots would be merged.

WWB further stated that following all these changes in the structuring of BPB, MIS experienced an unusual increase of its overall sales, which indicates that this restructuring process caused BPB considerable injury since MIS prices increased in accordance with their usual practice.

WWB stated that BPB also changed their pricing structure. Gypsum plasterboard is also sold worldwide. It stated that in the plasterboard industry, norms have developed in the manner in which price lists are drawn up and pricing structures are put in place. In October 2001, BPB modified their pricing structure taking two unusual characteristics of plasterboard into account when

establishing price.

The first characteristic was whether the plasterboard was cut with a square edge or a tapered edge. Internationally this distinction does not affect price. BPB has made the square edge a more expensive choice than a tapered edge. In addition BPB has modified its price structure so as to take small variations of size of the plasterboard which is purchased into account when determining price.

This applies for instance to the length (price list modified in April 2002) and to the width of the 12.5 mm plasterboard, where BPB introduced a price increase and a different categorisation for 1195 mm wide boards.

The aim of the change in pricing structure was clearly intended to drive other ceiling tile manufacturers (such as MIS, OWA South Africa (Pty) Ltd in Johannesburg, and Specially Designed Products (Pty) Ltd in Cape Town) who use such plasterboard products as raw materials to manufacture ceiling tiles out of business.

Finally, a further modification to the Donn-Lbs pricing structure brought about during April 2002 was that transport costs, which had previously been incorporated into the price, were now being charged in addition to the list price.

WWB stated that it submits, therefore, that these factors and not the imports of plasterboard by MIS contributed to destabilising the BPB-Donn-Lbs customer base and contributed to the increase in total sales experienced by MIS.

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 Petitioner. In coming to this conclusion, the Commission considered relevant factors other than dumping that could be causing material injury and decided that these did not detract from the causal link.

7. SUMMARY OF FINDINGS

7.1 Dumping

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

Table 7.1

Manufactured by The Siam Gypsum Industry Co. Ltd (SGI)	102.5%
All other exporters	121.7%

7.2 Material injury or threat of material injury

The Commission found that the Petitioner suffered material injury in the form of price undercutting, decrease in profits, loss of market share, decrease in return on investment, negative effect on cash flow, decline in output, decline in sales, decline in utilisation of production capacity, decline in employment, decline in wages per employee, inability to show growth.

As the Commission found that the SACU industry is suffering material injury, it decided, for purposes of this preliminary determination, not to make a determination with regard to threat of material injury.

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 Board.

8.3 Price disadvantage

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

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

The 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:

Table 8.3.1

	Dumping Margin	Price disadvantage
Manufactured by The Siam Gypsum Industry Co. Ltd (SGI)	102.5%	64.9 %
All other exporters	121.7%	

8.4 Amount of provisional payments:

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

Table 8.4.1

	Provisional payments
Manufactured by The Siam Gypsum Industry Co. Ltd (SGI)	64.9%
All other exporters	121.7%

9. DETERMINATION

The Commission made a preliminary determination that:

1. The subject product originating in or imported from Thailand was being dumped into the SACU market;
2. The SACU industry suffered material injury;
3. There was a causal link between the dumping of the subject products 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 in accordance with Article 7 of the Anti-Dumping Agreement, 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:

Table 9.1

	Provisional payments
Manufactured by The Siam Gypsum Industry Co. Ltd (SGI)	64.9%
All other exporters	121.7%

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.