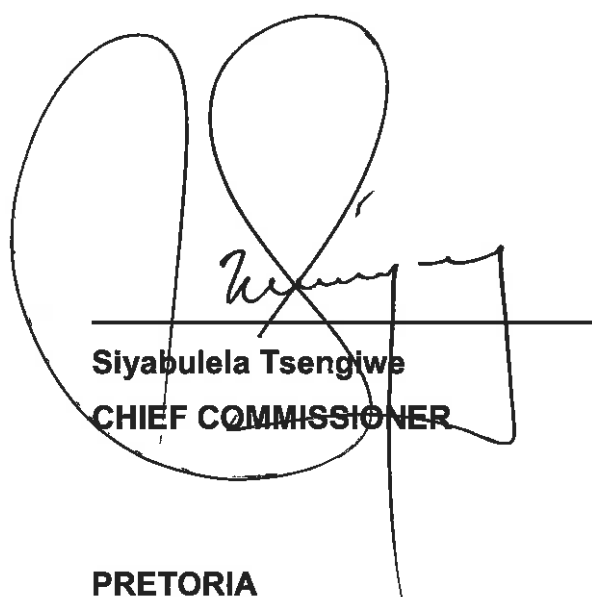


**REPORT NO. 564**

**SUNSET REVIEW OF THE ANTI-DUMPING DUTIES ON FROZEN BONE-IN PORTIONS OF FOWLS OF THE SPECIES *GALLUS DOMESTICUS* ORIGINATING IN OR IMPORTED FROM THE UNITED STATES OF AMERICA (USA): FINAL DETERMINATION**

**The International Trade Administration Commission of South Africa herewith presents its Report No. 564 : SUNSET REVIEW OF THE ANTI-DUMPING DUTIES ON FROZEN BONE-IN PORTIONS OF FOWLS OF THE SPECIES *GALLUS DOMESTICUS* ORIGINATING IN OR IMPORTED FROM THE UNITED STATES OF AMERICA: FINAL DETERMINATION**



**Siyabulela Tsengiwe**  
**CHIEF COMMISSIONER**

**PRETORIA**  
**01/11/2017**

# **SUNSET REVIEW OF THE ANTI-DUMPING DUTIES ON FROZEN BONE-IN PORTIONS OF FOWLS OF THE SPECIES *GALLUS DOMESTICUS* ORIGINATING IN OR IMPORTED FROM THE UNITED STATES OF AMERICA:FINAL DETERMINATION**

## **SYNOPSIS**

On 24 June 2016, the Commission notified the SACU industry through Notice No. 365 of 2016 in Government Gazette No.40088 that unless a substantiated request is made by the SACU industry, indicating that the expiry of the anti-dumping duties on the subject product originating in the United States of America would likely lead to the continuation or recurrence of dumping and material injury, the relevant anti-dumping duties on the subject product originating in or imported from the USA would expire on 04 April 2017.

A response was received from the South African Poultry Association supported by RCL Foods (Pty) Ltd and AFGRI Poultry (Pty) Ltd t/a Daybreak Farms on behalf of the SACU industry in this regard, indicating the likelihood of recurrence and/or continuation of dumping and material injury to the SACU industry.

On 24 March 2017, the Commission initiated a sunset review of the anti-dumping duties on frozen bone-in portions of fowls of the species *gallus domesticus* originating in or imported from the United States of America through notice number 270 which was published in the Government Gazette number 40717. All known interested parties were informed and requested to respond to the relevant questionnaires and the non-confidential application.

A response to the importer's questionnaire was received from Merlog Foods (Pty) Ltd and was found to be deficient. Comments were received from the Association of Meat Importers and Exporters (AMIE).

On 16 August 2017, essential facts letters were sent to the interested parties to allow comments on the Commission's considerations prior the final determination.

On 30 August 2017, comments were received from the Applicant, USA Poultry and Egg Export Council (USAPEEC), Association of Meat Importers and Exporters (AMIE) and Merlog Foods (Pty) Ltd.

There were no exporter's questionnaire responses received from producers and exporters of frozen bone-in portions of fowls of the species *gallus domesticus* in the USA.

After considering all interested parties comments, the dumping margin was determined based on facts available which is the information supplied by the applicant and contained in the application.

## **1. APPLICATION AND PROCEDURE**

- 1.1 This investigation was conducted in accordance with the International Trade Administration Act, 2002, the International Trade Administration Commission of South Africa Anti-Dumping Regulations (ADR) and giving due regard to 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 On 24 June 2016, the Commission notified the SACU industry through Notice No. 365 of 2016 in Government Gazette No.40088 that unless a substantiated request is made by the SACU industry, indicating that the expiry of the anti-dumping duties on the subject product originating in the USA would likely lead to the continuation or recurrence of dumping and material injury. The relevant anti-dumping duties on the subject product originating in or imported from the USA would expire on 04 April 2017.
- 1.3 A sunset review application was received from the South African Poultry Association supported by RCL Foods (Pty) Ltd and AFGRI Poultry (Pty) Ltd t/a Daybreak Farms on behalf of the SACU industry on 25 October 2016. After all the deficiencies were addressed, an updated sunset review application was received on 16 February 2017.
- 1.4 The application was lodged by the South African Poultry Association supported by RCL Foods (Pty) Ltd and AFGRI Poultry (Pty) Ltd t/a Daybreak Farms which constitute about 71.42 percent of SACU industry production of frozen bone-in chicken portions from 01 July 2015 to 30 June 2016. The applicant alleged that the expiry of the anti-dumping duties on frozen bone-in chicken portions would likely lead to the continuation and/or recurrence of dumping and material injury to the SACU industry.
- 1.5 On 24 March 2017, the investigation was initiated through Notice number 207 of 2017 published in the Government Gazette No. 40717.
- 1.6 On 30 March 2017, the initiation notice, non-confidential application and the exporters/importers questionnaires were sent to all known interested parties.

- 1.7 The investigation period for dumping as contained in this report was from 01 July 2015 to 30 June 2016 and information evaluated with regard to material injury was from 01 July 2013 to 30 June 2016, with estimates if the anti-dumping duties expire (July 2016 to June 2017). Additional information with regard to dumping was considered for the period 01 July 2016 to 31 December 2016 to determine the likelihood of dumping.
- 1.8 There were no exporter's questionnaire responses received from producers and exporters of frozen bone-in portions of fowls of the species gallus domesticus in the USA.
- 1.9 Merlog Foods (Pty) Ltd responded to the Commission's questionnaire, by the deadline date and the response was found to be deficient. Merlog was advised of the identified deficiencies and was given seven days to correct the deficiencies. However the response was still found to be deficient.

#### **Commission's consideration**

The Commission made a decision not to take into consideration information submitted by Merlog Foods in its final determination.

- 1.10 On 16 August 2017, essential facts letters were sent to the interested parties to allow comments on the Commission's considerations prior to the final determination. The deadline for comments was 30 August 2017. Comments were received from the Applicant, USA Poultry and Egg Export Council (USAPEEC), Association of Meat Importers and Exporters (AMIE) and Merlog Foods (Pty) Ltd.
- 1.11 The Commission took into account all comments received in making its final determination.
- 1.12 All non-confidential submissions made by interested parties are contained in the Commission's public file for this investigation.

- 1.13 It should be noted that this report does not purport to present all comments received and considered by the Commission. However some salient and pivotal comments received from interested parties and the Commission's consideration of these comments is specifically included in this report.

#### **Comments by USAPEEC on non-registration as an interested party**

According to USAPEEC it did not register as an interested party in this third sunset review because its members lacked confidence that their submissions will be taken into account or the anti-dumping determination will be based on information they would have provided. USAPEEC stated that ITAC has previously ignored submissions and data provide and has based its determination on misleading and inaccurate information provided by the applicant. With consistent disregard of its submissions, their members considered it useless to repeat a fruitless exercise.

#### **Response by the applicant**

In the 2011 sunset review, USAPEEC supplied information which should have been supplied by co-operating USA producers not an association and that could not be verified.

#### **Commission's consideration**

The opportunity was given to all interested parties including the USA producers and exporters to respond. The Commission forwarded all relevant questionnaires in compliance with the Anti-dumping regulations. However no responses were received. The Commission made a determination based on facts available which was the information provided by the applicant in compliance with the Anti-Dumping Regulations.

#### **Comments by AMIE on the essential facts letter**

AMIE submitted detailed comments on the SAPA application and none of these comments have been noted in the essential facts letter.

**Commission's consideration**

The essential facts letter does not intend to reproduce comments submitted by interested parties. However all comments are considered by the Commission prior to a final determination.

**Comments by the applicant to the essential facts letter**

SAPA disagrees with the Commission's proposal to maintain the current anti-dumping duty of 940c/kg because of the fluctuations in the South African Rand and the US dollar exchange rate. In 2010 it was R7, 3441 and for this period it was R14, 4423.

**Commission's consideration**

Although there have been fluctuations in the Rand and US dollar exchange rate, a substantial increase in USA imports occurred after a rebate provision was created, which gives an indication that duties were effective in assisting the industry.



## **2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES**

### **2.1 IMPORTED PRODUCT**

#### **2.1.1 Description**

The subject product to this sunset review is frozen bone-in portions of fowls of the species *gallus domesticus* which consists of whole bird cut in half, leg quarters, wings, breasts, thighs, drumsticks and other.

#### **2.1.2 Raw Materials/ inputs**

The raw materials is *gallus domesticus* ("Chicken")

#### **2.1.3 Technical characteristics and appearance**

Certain portions of the whole bird are cut up containing bones.

#### **2.1.4 Production Process**

The production of chicken meat comprises the breeding, rearing, laying, production, slaughtering and processing of chickens. SAPA believes that the producers in the USA follow essentially the same process as the SACU industry.

#### **2.1.5 Application and End-use**

The products are used for human consumption.

#### **2.1.6 Country of origin/export**

The subject product originates in or is imported from the United States of America.

#### **2.1.7 Other applicable duties and rebates**

When the duties were imposed the subject product was classifiable under tariff-subheading 0207.14.90 as follows:

**Table 2.1.7 (a): Tariff classification when duties were imposed**

| TARIFF SUB-<br>HEADINGS | DESCRIPTION                                                                   | CUSTOMS DUTY |      |      |      |
|-------------------------|-------------------------------------------------------------------------------|--------------|------|------|------|
|                         |                                                                               | General      | EU   | EFTA | SADC |
| 0207                    | Meat and edible offal, of the poultry heading 01.05, fresh, chilled or frozen |              |      |      |      |
| 0207.1                  | Of fowls of the species GALLUS DOMESTICUS                                     |              |      |      |      |
| 0207.14                 | -- Cuts and offal, frozen:                                                    |              |      |      |      |
| 0207.14.10              | Boneless cuts                                                                 | 12%          | free | 12%  | free |
| 0207.14.20              | Offal                                                                         | 30%          | free | 30%  | free |
| 0207.14.90              | <u>Other</u>                                                                  | 37%          | free | 37%  | free |

On 01 February 2015 the tariff subheading for the subject product changed as per table 2.1.7(b). The applicant stated that the change was not as a result of the products not being like products, but an attempt by SAPA to distinguish the various cuts to understand the import competition and trends.

**Table 2.1.7(b): Current tariff classification**

| TARIFF SUB -<br>HEADINGS | DESCRIPTION                                                                   | CUSTOMS DUTY |      |      |      |          |
|--------------------------|-------------------------------------------------------------------------------|--------------|------|------|------|----------|
|                          |                                                                               | General      | EU   | EFTA | SADC | MERCOSUR |
| 0207                     | Meat and edible offal, of the poultry heading 01.05, fresh, chilled or frozen |              |      |      |      |          |
| 0207.1                   | Of fowls of the species GALLUS DOMESTICUS                                     |              |      |      |      |          |
| 0207.14                  | -- Cuts and offal, frozen:                                                    |              |      |      |      |          |
| 0207.14.9                | Other                                                                         |              |      |      |      |          |
| 0207.14.91               | Whole bird cut in half                                                        | 37%          | free | 37%  | free | 37%      |
| 0207.14.93               | Leg quarters                                                                  | 37%          | free | 37%  | free | 37%      |
| 0207.14.95               | Wings                                                                         | 37%          | free | 37%  | free | 37%      |
| 0207.14.96               | Breasts                                                                       | 37%          | free | 37%  | free | 37%      |
| 0207.14.97               | Thighs                                                                        | 37%          | free | 37%  | free | 37%      |
| 0207.14.98               | Drumsticks                                                                    | 37%          | free | 37%  | free | 37%      |
| 0207.14.99               | Other                                                                         | 37%          | free | 37%  | free | 37%      |

### 2.1.8 Possible tariff loopholes

The applicant stated that it is not aware of any except for under-declaration.

### 2.1.9 Anti-dumping duties on frozen bone-in chicken portions are as follows:

| TARIFF SUB-HEADINGS | DESCRIPTION                                                                   | ORIGINATING IN OR IMPORTED FROM | RATE OF ANTI-DUMPING DUTY |
|---------------------|-------------------------------------------------------------------------------|---------------------------------|---------------------------|
| 0207                | Meat and edible offal, of the poultry heading 01.05, fresh, chilled or frozen |                                 |                           |
| 0207.1              | Of fowls of the species GALLUS DOMESTICUS                                     |                                 |                           |
| 0207.14             | -- Cuts and offal, frozen:                                                    |                                 |                           |
| 0207.14.9           | Other                                                                         |                                 |                           |
| 0207.14.91          | Whole bird cut in half                                                        | USA                             | 940c/kg                   |
| 0207.14.93          | Leg quarters                                                                  | USA                             | 940c/kg                   |
| 0207.14.95          | Wings                                                                         | USA                             | 940c/kg                   |
| 0207.14.96          | Breasts                                                                       | USA                             | 940c/kg                   |
| 0207.14.97          | Thighs                                                                        | USA                             | 940c/kg                   |
| 0207.14.98          | Drumsticks                                                                    | USA                             | 940c/kg                   |
| 0207.14.99          | Other                                                                         | USA                             | 940c/kg                   |

## 2.2 SACU PRODUCT

### 2.2.1 Description

The SACU product is described as frozen bone-in portions of fowls of the species *gallus domesticus* and consists of whole bird cut in half, leg quarters, wings, breasts, thighs, drumsticks and other. The SACU products are sold under various brand names such as Farmer Brown, Rainbow, Festive, Goldi, Daybreak, Supreme and County Fair.

### 2.2.2 Raw Materials/ inputs

The raw materials is *gallus domesticus* ("Chicken")

### 2.2.3 Technical characteristics and appearance

Certain portions of the whole bird are cut up containing bones.

### 2.2.4 Production Process

**BREEDING:** Genetic material, at the grandparent level, in the form of day-old-chicks is imported and maintained locally. The import of genetic material is done on a rolling basis. Depleted stock is sold as live chicken or slaughtered.

**REARING AND LAYING:** Genetic material, at the grandparent level, in the form of day-old-chicks is imported and maintained locally. The import of genetic material is done on a rolling basis. Depleted stock is sold as live chicken or slaughtered.

**PRODUCTION:** Day-old-chicks are placed on broiler farms and grown to a point of readiness for the abattoir. The companies own most of the farms and some belong to or are leased to contract growers. The contract growers operate on a modified franchise basis, the focus being the healthy and timely growth of the birds.

**SLAUGHTER AND PROCESSING:** These chickens are delivered live at the abattoirs where the chickens are slaughtered. The slaughtered broiler birds are either processed as whole birds or cut up in portions and sold as either chilled or frozen products. A frozen bone-in portion is one of the products of the participating producers.

### **2.2.5 Application and End-use**

The products are used for human consumption.

#### **Comments by interested parties on like product**

- A product must be compared at the same level of trade and on a like product basis.
- There are non-subject items such as hen leg quarters included in the import statistics which makes import statistics misleading if not removed. Furthermore with each item there may be variances in grade due to damaged skin or bruising which would affect the price realised.
- The price of wings is misleading as the imported product from the USA is B-grade and to compare this against a full undamaged wing will be incorrect.

#### **Response by the applicant**

- It is unlawful in South Africa to sell any poultry portions as graded portions in terms of the Agricultural Product Standards Act 119 of 1990 and the Commission is therefore not required to consider any argument based on unlawful action.

#### **Commission's consideration**

- The determination of dumping is done at the ex-factory level. Note is taken of the differences in level of trade between the local products and imported products hence the comparison at ex-factory level. The product under investigation is frozen

bone-in chicken portions and is imported under different tariff sub-headings and each tariff sub-heading for product type/model/cut.

- The allegations that import statistics are inclusive of non-subject product and variances in grade are not substantiated with positive evidence. The investigation is for the entire specified chicken species.
- The allegation that the imported wings from the USA are B-grade is not substantiated with evidence.

In the original investigation, the Commission found that the SACU product and the imported product are “like products”, for purpose of comparison, in terms of Section 1 of the Anti-Dumping Regulations. Considering the original investigation and subsequent reviews and comments from interested parties the Commission made a final determination that the SACU product and the imported product are like products for the purposes of this comparison.

### **3. INDUSTRY STANDING**

The application was brought by South African Poultry Association supported by RCL Foods (Pty) Ltd and AFGRI Poultry (Pty) Ltd) which constitute about 71.42 percent of SACU production based on frozen bone-in chicken portions produced from 01 July 2015 to 30 June 2016.

#### **Comments by interested parties**

There is no substantiation on the representivity and size of SACU industry.

#### **Commission's consideration**

The industry standing was determined based on frozen bone-in chicken portions produced. Frozen bone-in chicken portions produced were verified from producers which provided financial information on this application. The production figures used in this determination were considered confidential as requested by the applicant.

After considering all comments from interested parties, the Commission made a final determination that the application can be regarded as being made "by or on behalf of the domestic industry" in terms of Section 7 of the Anti-dumping Regulations.

## **4. DUMPING**

### **Methodology used for the USA**

The applicant stated that there is a particular market situation in the USA, where there is a preference for white chicken portions over brown. Frozen bone-in chicken portions are not sold in the ordinary course of trade. Therefore for purposes of the normal value determination, the applicant provided a constructed normal value.

Since there were no responses received from producers or exporters in the USA. The dumping margin was determined based on facts available in terms of Section 1 of the Anti-dumping Regulations, which is the information supplied by the applicant and contained in the application.

#### **4.1.1 Normal Value for leg quarters, thighs, drumsticks and other**

There were no responses from producers or exporters in the USA. The normal value was determined based on facts available. The facts available in this instance is the information considered by the Commission for merit determination, being the information supplied by the applicant.

The applicant provided a constructed normal value for leg quarters, thighs, drumsticks and other. The constructed normal value was determined by taking into consideration the averaged quarterly broiler prices, cut-up costs of 13 percent and averaged quarterly profit margins of 11.31 percent of two large poultry producers in the USA.

The constructed normal value for leg quarters, thighs, drumsticks and other was determined to be US\$2.01 per kilogram and applicable for the period 01 July 2015 to 30 June 2016.

#### **4.1.2 Export price for leg quarters, thighs, drumsticks and other**

There were no responses received from producers or exporters in the USA. The export price was determined based on facts available. The facts available in this instance are the official import statistics obtained from the South African Revenue Service for the period 01 July 2015 to 30 June 2016.

The South African Rand values were converted to US Dollar. The currency conversions were sourced from aonda.com. The fob export price in US Dollars was adjusted by 5 percent for inland freight to derive the ex-factory export price.

#### **4.1.3 Dumping margin for leg quarters, thighs, drumsticks and other**

The dumping margin was determined to be:

| <b>Product</b> | <b>Sub-tariff heading</b> | <b>Constructed NV in US\$/kg</b> | <b>Export price in US\$/kg</b> | <b>Dumping margin</b> | <b>DM as % of ex-factory value</b> |
|----------------|---------------------------|----------------------------------|--------------------------------|-----------------------|------------------------------------|
| Leg quarters   | 020714.93                 | 2.01                             | 0.65                           | 1.34                  | 209%                               |
| Thighs         | 020714.97                 | 2.01                             | 0.55                           | 1.44                  | 265%                               |
| Drumsticks     | 020714.98                 | 2.01                             | 0.61                           | 1.38                  | 230%                               |
| Other          | 020714.99                 | 2.01                             | 0.65                           | 1.34                  | 209%                               |

#### **4.2.1 Normal value for breasts and wings**

There are no responses from producers or exporters in the USA. The normal value was determined based on facts available. The facts available in this instance, is the information considered by the Commission for merit determination, being the information supplied by the applicant.

The applicant provided a constructed normal value for wings and breasts. The normal value was determined by taking into consideration the averaged quarterly broiler prices, cut-up costs of 13 percent and profit margin of 11.31 percent of two large poultry producers in the USA.

The constructed normal value for breasts and wings was determined to be US\$1.93 per kilogram and applicable for the period 01 July 2016 to 31 December 2016.

#### **4.2.2 Export price for breasts and wings**

There were no responses received from producers or exporters in the USA. The export price was determined based on facts available. The facts available in this instance are the official import statistics obtained from the South African Revenue Service for the period 01 July 2016 to 31 December 2016.



The applicant stated that there were no imports of wings and breasts during the period 01 July 2015 to 30 June 2016. However, wings and breasts were imported during the period 01 July 2016 to 31 December 2016 at dumped prices, therefore the import prices during this period are relevant to indicate that the removal of the anti-dumping duty would likely lead to the continuation or recurrence of injurious dumping.

The South African rand values were converted to US Dollar. The currency conversions were sourced from aonda.com. The fob export price in US Dollars was adjusted by 5 percent for inland freight to derive the ex-factory export price.

#### **4.2.3 Dumping margin for breasts and wings**

For breasts and wings, the applicant provided an estimate dumping margin for the period 01 July 2016 to 31 December 2016, should the anti-dumping duties expire. The dumping margin should the anti-dumping duties expire is as follows:

| <b>Product</b> | <b>Sub-tariff heading</b> | <b>Constructed NV in US\$/kg</b> | <b>Export price in US\$/kg</b> | <b>Dumping margin</b> | <b>DM as % of ex-factory value</b> |
|----------------|---------------------------|----------------------------------|--------------------------------|-----------------------|------------------------------------|
| Wings          | 020714.95                 | 1.93                             | 0.46                           | 1.47                  | 319%                               |
| Breasts        | 020714.96                 | 1.93                             | 0.65                           | 1.28                  | 197%                               |

#### **4.3 Whole bird cut-in half**

With regard to whole bird cut in half, the Commission considered the applicant's submission that the removal of the anti-dumping duty would likely lead to the continuation or recurrence of injurious dumping. It was further considered that, if whole bird cut in half is exempted from a dumping duty, the risk exists that the dumping duty on bone-in portions could be circumvented by the importers.

### **Comments by interested parties on particular market situation and ordinary course of trade**

- There is no particular market situation that does not permit a proper comparison as all costs are completely covered and the subject product is sold freely in the domestic market.
- The majority, about 70 percent of all chicken leg quarters which is the principal dark meat portion of a chicken produced are sold and consumed in the USA.
- The allegation that frozen bone-in chicken portions are not sold in the ordinary course of trade is untrue. The majority of chicken portions both white and brown are sold bone-in.

### **Response by the applicant**

- The Commission is aware there have been numerous publications of factual media reporting that the USA prefers white meat of chickens breasts and cuts thereof mainly due to dietary considerations. This high demand for white meat has allowed USA producers the opportunity to capitalize on selling breasts at a higher premium. The bone portioned meat of chickens is regarded as surplus or "waste". Producers' only option is to sell these products at reduced rates which can be done by cost subsidization, allowing for the sale thereof at a loss or unrealistic value. Thus as a result of the preference of the USA customers a peculiar market situation is created.
- SAPA never claimed that there were no sales of the subject product in the USA. However, it submitted and substantiated that as result of a specific preference in the USA, the price of the subject product is not a true reflection of the product cost and that the product is sold below the actual cost of production determined by applying the weighted cost methodology and not in the ordinary course of trade. Therefore prices as submitted by USAPEEC cannot be used and should be disregarded.

### **Commission's consideration**

- The applicant indicated that sales of bone-in portions are not sold in the ordinary course of trade as a result of a particular market situation. This market situation in the USA does not permit a proper comparison of the sales of frozen dark meat bone-in portions with the product exported to SACU. This is prima facie information considered by the Commission for initiation.

- There is no evidence or substantiation that 70 percent of the subject product is sold and consumed in the USA market.
- There is no evidence provided that frozen bone-in chicken portions are sold in the ordinary course of trade i.e. producers recover the cost of production from selling prices of frozen bone-in chicken portions, since no USA producer responded to this investigation.

#### **Comments by interested parties on Normal value**

- SAPA indicated that the subject product exported to SACU is bone-in portions consisting of brown meat. Therefore only costs for frozen bone-in brown meat cuts should be considered.
- ITAC must use the producer's own records in constructing normal value.
- ITAC has chosen to ignore readily available public data and relied on the biased submission by the applicant. It is apparent from the US government data that the average market price for chicken leg quarters was US\$ 0.55/kg during the period.
- The constructed value for chicken wings and breasts is \$1.93/kg lower than the price for leg quarters, thighs and drumsticks whilst the applicant argues that there is a preference for white meat over dark.

#### **Response by the applicant**

- There is only one product that is bone-in portions and there are different cuts of bone-in portions and not separate products.
- The use of the producer's own record in constructing the normal value ignores the provisions of article 2.1.1.1 of the WTO anti-dumping agreement. In the original anti-dumping investigation BTT found that exporter's costs did not reflect the costs associated with the production and sale of the product under consideration. Costs were allocated based on relative sales. BTT found that in the USA market there is a strong preference for white meat and is sold at premium prices. There is no evidence to show that this is incorrect.
- The simplest internet inquiry that USAPEEC supplied to prove their point includes exports thus is not a domestic price and can be disregarded.
- The normal value for breasts and wings is for the period 01 July 2016 to 31 December 2016 whereas for leg quarters, thighs, drumsticks and other is for the period July 2015 to June 2016.

### **Commission's consideration**

- The subject product under investigation is frozen bone-in chicken portions. The applicant provided the constructed normal value of frozen bone-in chicken portions which was considered for initiation purposes.
- There are no responses from producers and exporters in the USA therefore the Commission is not in a position to determine normal value based on producer's records.
- The Commission considered *prima facie* information provided by the applicant for initiation in line with domestic legislation. Since then, there have been no responses from producers and exporters in the USA in order to fully comprehend the prices of the subject product in the USA market.
- The product under investigation is frozen bone-in chicken portions. The applicant submitted information indicating the likelihood for dumping in this regard. The information which indicates likelihood of dumping for breasts and wings is for the period 01 July 2016 to 31 December 2016.

### **Comments by interested parties on cost methodology and dumping margin determination**

- The use of constructed normal value is in contradiction of ITAC's handling of cost build-ups in recent investigations of tariff review in 2013, EU dumping investigation in 2013/4 and the current safeguard investigation.
- The WTO has confirmed that cost allocation based on net realizable value for chicken is correct.
- ITAC is required by international law to determine normal value and margin of dumping separately for each product type.
- An anti-dumping analysis that proceeds on the theory that all portions of animal command roughly the same price is not best information it is based on patently false information and an entirely ridiculous economic theory that is evident to who steps into the food market.

### **Response by the applicant**

- None of the investigations referred to have any relevance to current investigation. In a tariff review no normal value is calculated, the EU dumping investigation relates to a particular situation in EU not the USA and the Safeguard investigation does not require the calculation of normal value.
- The panel decision on the China case made it clear that both the weighted average and relative value methodologies are permissible methods to calculate the level of dumping if appropriately supported.
- There is no requirement under international law to determine a normal value and margin of dumping separately for each product type.
- USAPEEC must note that the USA poultry producers had the opportunity to comment on the information available, being the information supplied by SAPA and in the process supply financial and costing information to substantiate the theoretical allegations of USAPEEC.

### **Commission's consideration**

- The Commission considers each investigation on its own merit, in the EU investigation there were responses received from producers whilst in this investigation there are no responses from producers in the USA.
- The cost allocation methodology cannot be pre-determined as circumstances of each investigation are diverse.
- The anti-dumping agreement is not prescriptive on how the normal value and margin of dumping should be determined. ITAC conducts its investigation in compliance with the domestic legislation and the Anti-dumping agreement of the WTO.
- No producers and exporters from the USA responded to the exporter's questionnaire. Therefore the Commission relied on best facts available to make a final determination in this case, which is the information supplied by the applicant. To determine prices in the USA the applicant provided constructed normal values.

**Conclusion**

After considering all the above and comments received from interested parties, the Commission made a final determination that the expiry of the anti-dumping duties would likely lead to the recurrence of dumping of the subject product originating in or imported from the USA.

## **5. MATERIAL INJURY**

### **5.1 DOMESTIC INDUSTRY MAJOR PROPORTION OF PRODUCTION**

The information used for the analysis of the likelihood of recurrence and/ or continuation of material injury relates to the following producers: AFGRI Poultry (Pty) Ltd T/A Daybreak Farms, Astral Foods Ltd, with poultry divisions consisting of County Fair, Festive and Goldi, RCL Foods (Pty) Ltd, Sovereign Food Investments Ltd and Supreme Poultry (Pty) Ltd which constitute about 71.42 percent of SACU production based on frozen bone-in chicken portions produced from 01 July 2015 and 30 June 2016.

Based on this information as provided by the Applicant, the Commission made a final determination that this constitutes “a major proportion” of the total domestic production, in accordance with Section 7 of the Anti-Dumping Regulations.

### **5.2 IMPORT VOLUMES AND EFFECT ON PRICES**

#### **5.2.1 Import volumes**

The following table 5.2.1 shows the consolidated import volumes of the subject product excluding wings and breasts as sourced from the South African Revenue Service from 01 July 2013 to 30 June 2016 and estimates as provided by the applicant should the anti-dumping duties be withdrawn:

**Table 5.2.1: Import Volumes**

| <b>Kilograms</b>                         | <b>2014</b>        | <b>2015</b>        | <b>2016</b>        | <b>Estimate if the anti-dumping duties expire</b> | <b>Increase/decrease if the anti-dumping duties expire</b> |
|------------------------------------------|--------------------|--------------------|--------------------|---------------------------------------------------|------------------------------------------------------------|
| USA imports                              | -                  | 1443               | 14 040 502         | 125 000 000                                       | Increase                                                   |
| Other countries                          | 157 959 889        | 159 032 569        | 223 912 426        | 223 912 426                                       | Constant                                                   |
| <b>Total imports</b>                     | <b>157 959 889</b> | <b>159 034 012</b> | <b>237 952 928</b> | <b>348 912 426</b>                                | <b>Increase</b>                                            |
| <b>USA imports as % of total imports</b> | <b>-</b>           | <b>0.000009%</b>   | <b>6%</b>          | <b>36%</b>                                        | <b>Increase</b>                                            |

It is estimated that should the anti-dumping duties be removed, imports from the USA are likely to increase by 125 000 000 kilograms. The applicant stated that the estimate is based on the initial proposal by USA Poultry & Egg Export Council during the negotiations for a rebate provision.

Table 5.2.1 above indicates that USA imports increased from 0 to 1443 kilograms from 2014 to 2015, increased by 972907.76 percent from 2015 to 2016 and is estimated to increase should the anti-dumping duties be removed. Imports from other countries increased by 0.68 percent from 2014 to 2015, increased by 40.80 percent from 2015 to 2016, increased by 41.75 percent during the period of investigation and are estimated to remain constant should the anti-dumping duties be removed.

The applicant further provided imports for wings and breasts for the period 01 July 2016 to 31 December 2016. Volumes for wings and breasts were found to be 454 169 and 762 kilograms respectively.

### **Commission's consideration**

There were no imports for whole bird cut in half, wings and breasts from 01 July 2015 to 30 June 2016. Wings and breasts were imported from 01 July 2016 to 31 December 2016 whilst there were no imports of whole bird cut in half during the same period. There was a substantial increase in imports from the USA after a rebate provision of 65 000 metric tons was created, before then imports from the USA were minimal.

### **Comments by interested parties on import statistics**

- The allegation that if the anti-dumping duty is removed there would be a continuation of dumping is unlikely since the agreed quota has not been fully utilised on any single quarter up to March 2017.
- There is no evidence on which USA imports could be deemed to threaten material injury to the applicant. USA imports into South Africa during the period of investigation are minuscule only account for 4.9 percent of imports based on data reported by SARS to Global Trade database.



## **Response by the applicant**

- If the anti-dumping duties are revoked imports of the subject product from the USA will be imported at dumped prices forcing the SACU industry to suppress its prices and subsequently suffer material injury. The effect is already seen on the SACU industry with regard to the rebated imported USA products.
- The argument that there is no evidence on which US imports could be deemed to threaten material injury to the applicant is entirely flawed as it is based on incorrect assumptions and using imports that took place during the period of investigation. A sunset review is based on substantiated estimates of what will happen if the anti-dumping duties fall away.

## **Commission's consideration**

- The applicant provided *prima facie* information to indicate that should the anti-dumping duties be removed there is likely to be an increase in imports of the subject product.
- Imports statistics sourced from SARS by ITAC indicate that USA imports account for 6 percent of the total imports to SACU for the period from 01 July 2015 to 30 June 2016. The applicant provided information to indicate that should the anti-dumping duties be removed there is likely to be an increase in imports of the subject product.

### **5.2.2 Effect on Domestic Prices**

On price estimates, the applicant stated that in order to remain competitive SACU industry will have to maintain 2016 prices.

#### **5.2.2.1 Price Undercutting**

Price undercutting is the extent to which the price of the imported product is lower than the price of the like product produced by the SACU industry. The price undercutting for 2016 was determined based on applicant's ex-factory price and landed cost of the imported product from the USA. The landed cost was based on the fob export price, custom duty and freight, insurance and clearing costs of 14 percent. An anti-dumping duty of 940c per kg was excluded from the calculation as imports under a rebate provision are exempted from the duty.

The applicants experienced price undercutting on leg quarters, thighs, drumsticks and other from 01 July 2015 to 30 June 2016 in 2016 and on wings and breasts from 01 July 2016 to 31 December 2016 and it is estimated that should the anti-dumping duties be removed the applicant will continue to experience price undercutting. It is estimated that if the SACU industry and USA prices remain the same in 2017, the USA imports will continue to undercut the SACU producers selling prices by a substantial margin.

#### **Comments by interested parties on level of trade**

- Imported bulk product must first be processed before it is a comparable product to the domestic IQF that it competes with. No consideration was given to the fact that the product is shipped in bulk and has to be repackaged for the consumer market.
- The use of 15.83 percent for freight, insurance and clearing costs as submitted June 2016 in the safeguard investigation is incorrect as the European and USA ex works values are different.

#### **Response by the applicant**

- The notion that the bulk product has to be processed before it is a comparable product to the domestic IQF has no basis, as the correct level of comparison is between the landed cost of imports and ex-factory prices of the domestic industry. Bone-in portions imported from the USA whether in separate portions (cuts) or mixed portions (cuts) are all like products to the SACU products and compete with the SACU product. Furthermore importers of the subject product do not always process the product.
- USAPEEC raised the issue of the level of trade without properly substantiating the allegations.

#### **Commission's consideration**

- The allegation of further processing that occurs on the subject product once it has landed in SACU is not substantiated with costs involved. The Commission compares the SACU product with imported product at landed level. Furthermore there is no substantiation that the subject product only competes with SACU IQF.

- With regard to the percentage used for freight and clearing costs the applicant stated that this is the best information available to SAPA and refers to 2015 which is part of the investigation period. The applicant further indicated that this information was supplied by a prominent importer to motivate to the Commission the cost it incurs when importing. The Commission made a decision to use 14 percent for freight and clearing costs. The percentage was accepted by the Commission in previous sunset review against the USA in 2011 and was verified.

#### **5.2.2.2 Price depression**

Price depression takes place where the SACU industry's ex-factory selling price decreases during the period of investigation.

**Table 5.2.2.2: Price depression**

| R/kg                         | 2014 | 2015 | 2016 | Estimates if the anti-dumping duties expire | Increase/decrease if the anti-dumping duties expire |
|------------------------------|------|------|------|---------------------------------------------|-----------------------------------------------------|
| Applicant's ex-factory price | 100  | 112  | 115  | 115                                         | Constant                                            |

The information in the table was indexed due to confidentiality using 2014 as a base year

Table 5.2.2.2 above indicates that the applicant's average ex-factory price increased by 15 index points during the period of investigation and it is estimated to remain constant should the anti- dumping duties be removed. It is estimated that the SACU industry will have to maintain 2016 selling prices but the industry will eventually have to reduce prices to match the landed cost of USA imports. As a result of low priced dumped imports, it is estimated that imports will replace the SACU industry's sales and thus production will decline and costs will increase.

#### **5.2.2.3 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.

**Table 5.2.2.3: Price suppression**

| R/kg                                                 | 2014 | 2015 | 2016 | Estimates if the anti-dumping duties expire | Increase/decrease if the anti-dumping duties expire |
|------------------------------------------------------|------|------|------|---------------------------------------------|-----------------------------------------------------|
| Applicant's ex-factory price                         | 100  | 112  | 115  | 115                                         | Constant                                            |
| Applicant's cost of production                       | 100  | 105  | 117  | 119                                         | Increase                                            |
| Applicant's cost of production as % of Selling price | 100  | 94   | 102  | 103                                         | Increase                                            |

The information in the table was indexed due to confidentiality using 2014 as a base year

Table 5.3.2.3 shows that cost of production as a percentage of selling price increased during the period of investigation and it is estimated to further increase should the anti-dumping duties be removed. It is estimated that given the low prices of the US product, the sales volumes and production volumes of the SACU industry will decline by the same volume. This will lead to an increase in the cost of production.

## **5.2.3 CONSEQUENT IMPACT OF THE DUMPED IMPORTS ON THE SACU INDUSTRY**

### **5.2.3.1 Actual and potential decline in sales volumes**

The following table shows the applicant's sales volumes of frozen bone-in chicken portions:

**Table 5.2.3.1: SACU sales volumes**

| Kilograms                 | 2014 | 2015 | 2016 | Estimates if the anti-dumping duties expire | Increase/decrease if the anti-dumping duties expire |
|---------------------------|------|------|------|---------------------------------------------|-----------------------------------------------------|
| Applicant's sales volumes | 100  | 99   | 100  | 82                                          | Decrease                                            |

The information in the table was indexed due to confidentiality using 2014 as a base year

Table 5.2.3.1 above shows that applicant's sales volumes remained constant during the period of investigation and is estimated to decrease should the anti-dumping duties be removed. It is estimated that applicant's sales volumes would be reduced by 125 000 000 kilograms should the anti-dumping duties be withdrawn.

### 5.2.3.2 Actual and potential decline in sales values

The following table shows the applicant's sales values of frozen bone- in chicken portions:

**Table 5.2.3.2: SACU sales values**

| Rands                    | 2014 | 2015 | 2016 | Estimates if the anti-dumping duties expire | Increase/decrease if the anti-dumping duties expire |
|--------------------------|------|------|------|---------------------------------------------|-----------------------------------------------------|
| Applicant's sales values | 100  | 111  | 115  | 95                                          | Decrease                                            |

The information in the table was indexed due to confidentiality using 2014 as a base year

Table 5.2.3.2 above shows that applicant's sales values increased by 15 index points during the period of investigation and are estimated to decrease should the anti-dumping duties be removed. It is estimated that applicant's sales volumes would be reduced by 125 000 000 kilograms should the anti-dumping duties against the USA be withdrawn and the SACU industry sells at 2016 prices.

### 5.2.3.3 Profit

The following table shows applicant's profit situation on frozen bone-in chicken portions:

**Table 5.2.3.3: Profit**

| R/kg                     | 2014 | 2015  | 2016   | Estimate if the anti-dumping duties expire | Increase/decrease if the anti-dumping duties expire |
|--------------------------|------|-------|--------|--------------------------------------------|-----------------------------------------------------|
| Applicant's gross profit | 100  | 185   | 94     | 72                                         | Decrease                                            |
| Applicant's net profit   | 100  | 4 750 | -1 950 | -5 200                                     | Decrease                                            |

The information in the table was indexed due to confidentiality using 2014 as a base year

Table 5.2.3.3 above indicates that the applicant's gross profit and net profit decreased by 6 and -2050 index points respectively during the period of investigation and are estimated to further decrease should the anti-dumping duties be removed. It is estimated that 125 000 000 kilograms will be lost to the USA if the SACU industry sells 2016 prices while production volumes will be reduced to prevent the increase in stockholding. Profits declined in 2016. Should the anti-dumping duties expire; profits will decline even further in 2017 as costs will increase.

### 5.2.3.4 Output

The following table shows the applicant's output of frozen bone-in chicken portions:

**Table 5.2.3.4: Output**

| Kilograms                      | 2014 | 2015 | 2016 | Estimates if the anti-dumping duties expire | Increase/decrease if the anti-dumping duties expire |
|--------------------------------|------|------|------|---------------------------------------------|-----------------------------------------------------|
| Applicant's production volumes | 100  | 100  | 102  | 85                                          | Decrease                                            |

The information in the table was indexed due to confidentiality using 2014 as a base year

Table 5.2.2.4 above indicates that the applicant's output increased by 2 index points during the period of investigation and is estimated to decrease should the anti-dumping duties be removed. It is estimated that applicant's sales volumes would be reduced by 125 000 000 kilograms should the anti-dumping duties against the USA be withdrawn. Production volumes will decline in 2017 to below 2014 production levels. This will be as a result of the declining sales volumes of the SACU industry as a result of the inflow of the dumped product from the USA. The SACU industry will reduce production to prevent the unnecessary increase in stockholding and costs as all production will not be sold.

### 5.2.3.5 Market share

The following table shows market share of frozen bone-in chicken portions based on volumes:

**Table 5.2.3.5: Market share based on volumes**

| Kilograms                          | 2014        | 2015        | 2016        | Estimate if the anti-dumping duty expire | Increase/decrease if the anti-dumping duties expire |
|------------------------------------|-------------|-------------|-------------|------------------------------------------|-----------------------------------------------------|
| Applicant's sales volumes          | 100         | 99          | 100         | 82                                       | Decrease                                            |
| Other SACU producers sales volumes | 100         | 100         | 96          | 96                                       | Constant                                            |
| Total SACU producers               | 100         | 99          | 99          | 87                                       | Decrease                                            |
| USA Imports                        | -           | 1443        | 14 040 502  | 125 000 000                              | Increase                                            |
| Other countries imports            | 157 959 889 | 159 032 569 | 223 912 426 | 223 912 426                              | Constant                                            |
| Total SACU market                  | 100         | 100         | 106         | 104                                      | Decrease                                            |

Except for USA and other countries imports, the information in the table was indexed due to confidentiality using 2014 as a base year

Table 5.2.3.5 above indicates that the applicant's market is estimated to decrease should the anti-dumping duties be removed. Other SACU producers' market share decreased by 4 index points during the period of investigation and is estimated to remain constant should the anti-dumping duties be removed. USA market share increased during the period of investigation and is estimated to further increase should the anti-dumping duties be removed. Other imports market share increased during the period of investigation and is estimated to remain constant should the anti-dumping duties be removed. It is estimated that if the anti-dumping duties expire, the SACU industry's market share will decline even further in 2017 as a result of the increased US imports taking away market share from the SACU industry. The imports of the other countries were kept constant from 2016 to 2017 to indicate the effect of the US imports; it is most likely that those sales will also increase.

### 5.2.3.6 Productivity

The following table shows applicant's productivity based on total production for all products and number of employees:

**Table 5.2.3.6: Productivity**

| Kilograms/No of employees             | 2014 | 2015 | 2016 | Estimate if the anti-dumping duties expire | Increase/decrease if the anti-dumping duties expire |
|---------------------------------------|------|------|------|--------------------------------------------|-----------------------------------------------------|
| Applicant's production                | 100  | 104  | 107  | 94                                         | Decrease                                            |
| Applicant's no of employees           | 100  | 106  | 107  | 94                                         | Decrease                                            |
| Applicant's productivity per employee | 100  | 98   | 100  | 100                                        | Constant                                            |

The information in the table was indexed due to confidentiality using 2014 as a base year

Table 5.2.3.6 above shows that employee productivity remained constant during the period of investigation and is estimated to remain constant should the anti-dumping duties be removed. It is estimated that if the anti-dumping duties expire and production volumes decline as a result of declining sales and if there are no employees retrenched productivity will decline in 2017.

### Commission's consideration

Productivity per employee will not change should the anti-dumping duties be removed.

### 5.2.3.7 Return on investment

The following table shows applicant's return on investment for the whole business:

**Table 5.2.3.7: Return on investment**

| Rands                          | 2014 | 2015 | 2016 | Estimate if the anti-dumping duties expire | Increase/decrease if the anti-dumping duties expire |
|--------------------------------|------|------|------|--------------------------------------------|-----------------------------------------------------|
| Applicant's return on Assets % | 100  | 657  | 134  | 57                                         | Decrease                                            |

The information in the table was indexed due to confidentiality using 2014 as a base year

Table 5.2.3.7 above indicates that return on net assets increased by 34 index points during the period of investigation and is estimated to decrease should the anti-dumping duties be removed. It is estimated that applicant's sales volumes would be reduced by 125 000 000 kilograms should the anti-dumping duties against the USA be withdrawn. Then profits will decline as a result of the increase in the cost of production and the volume of production declining. It was indicated that if net assets are kept constant from 2016 to 2017 profits will decline as a result of the increase in the cost of production.

### 5.2.3.8 Utilisation of production capacity

The following table shows the applicant's capacity utilisation based on volume of poultry that can be produced with the available resources against the actual production volumes:

**Table 5.2.3.8: Capacity utilisation**

| Kilograms              | 2014 | 2015 | 2016 | Estimate if the anti-dumping duties expire | Increase/decrease if the anti-dumping duties expire |
|------------------------|------|------|------|--------------------------------------------|-----------------------------------------------------|
| Applicant's capacity   | 100  | 101  | 102  | 102                                        | Constant                                            |
| Applicant's production | 100  | 100  | 102  | 85                                         | Decrease                                            |
| Capacity utilisation % | 100  | 99   | 100  | 83                                         | Decrease                                            |

The information in the table was indexed due to confidentiality using 2014 as a base year

Table 5.2.3.8 above shows that applicant's capacity utilisation has been constant during the period of investigation however it is estimated to decrease should the anti-dumping duties expire. It is expected that should the anti-dumping duties expire capacity will not be increased and may even be decreased by means of factory shutdowns in the foreseeable future.



### 5.3.3.9 Factors affecting domestic prices

Sections 5.2.2.1 to 5.2.2.3 indicate that should the anti-dumping duties be removed the applicant would experience price undercutting and price suppression.

### 5.3.3.10 The magnitude of the margin of dumping

The following margin of dumping was calculated:

**Table 5.2.3.10: Margin of dumping**

| Tariff- Sub-headings |              | Margin of dumping expressed as % of ex- factory export price |
|----------------------|--------------|--------------------------------------------------------------|
| 0207.14.93           | Leg quarters | 209%                                                         |
| 0207.14.95           | Wings        | 319%                                                         |
| 0207.14.96           | Breasts      | 197%                                                         |
| 0207.14.97           | Thighs       | 265%                                                         |
| 0207.14.98           | Drumsticks   | 230%                                                         |
| 0207.14.99           | Other        | 209%                                                         |

With regard to whole bird cut in half, the Commission considered that the applicant submitted that the removal of the anti-dumping duty will likely to lead to the continuation or a recurrence of injurious dumping. It was further considered that if the whole bird cut in half is exempted from a dumping duty, the risk exists that the dumping duty on bone-in portions can be circumvented by the importers.

### 5.2.3.11 Actual and potential negative effects on cash flow

The table following shows applicant's cash flow for the whole business:

**Table 5.2.3.11: Net Cash flow**

| Rands                     | 2014 | 2015 | 2016 | Estimate if the anti-dumping duties expire | Increase/decrease if the anti-dumping duties expire |
|---------------------------|------|------|------|--------------------------------------------|-----------------------------------------------------|
| Applicant's net cash flow | 100  | 2500 | -334 | -5469                                      | Decrease                                            |

The information in the table was indexed due to confidentiality using 2014 as a base year

Table 5.2.3.11 above indicates that the applicant's net cash flow decreased by -434 index points during the period of investigation and is estimated to decrease should the anti-dumping duties be removed.

It is estimated that the applicant's net cash flow will decline as a result of the expiry of the anti-dumping duties, due to a result of lost sales to the dumped product.

#### 5.2.3.12 Inventories

The following table provides the applicant's inventories for frozen-bone in chicken portions:

**Table 5.2.3.12 Inventories**

|                                   | 2014 | 2015 | 2016 | Estimate if the anti-dumping duties expire | Increase/decrease if the anti-dumping duties expire |
|-----------------------------------|------|------|------|--------------------------------------------|-----------------------------------------------------|
| Applicant's inventory volumes(kg) | 100  | 148  | 173  | 654                                        | Increase                                            |
| Applicant's inventory values(R)   | 100  | 159  | 208  | 808                                        | Increase                                            |

The information in the table was indexed due to confidentiality using 2014 as a base year

Table 5.2.3.12 above indicates that inventory volumes and values increased by 73 and 108 index points respectively during the period of investigation and are estimated to increase should the anti-dumping duties be removed. It is estimated that should the anti-dumping duties expire, the SACU industry sales will decline as a result of the influx of dumped products from the USA. Therefore if the selling prices of the SACU industry are not depressed and the production volumes are not reduced inventories will increase rapidly. This increase in inventory volumes will result, in a substantial increase in the value of the inventories impacting negatively on the SACU industry's cash flow.

#### 5.2.3.13 Employment

The following table shows the applicant's employment figures:

**Table 5.2.3.13: Employment**

|                              | 2014 | 2015 | 2016 | Estimate if the anti-dumping duties expire | Increase/decrease if the anti-dumping duties expire |
|------------------------------|------|------|------|--------------------------------------------|-----------------------------------------------------|
| Applicant's no. of employees | 100  | 106  | 107  | 94                                         | Decrease                                            |

The information in the table was indexed due to confidentiality using 2014 as a base year

Table 5.2.3.13 above shows that the applicant's employment increased by 7 index points during the period of investigation and is estimated to decrease should the anti-dumping duties be removed.

It is stated that employees will need to be retrenched if the industry wants to manufacture and retain the 2016 productivity levels when production declines as a result of the inflow of the dumped product from the USA when the anti-dumping duties expire.

#### 5.2.3.14 Wages

The following table shows applicant's wages:

**Table 5.3.3.14: Wages**

| Rands             | 2014 | 2015 | 2016 | Estimate if the anti-dumping duties expire | Increase/decrease if the anti-dumping duties expire |
|-------------------|------|------|------|--------------------------------------------|-----------------------------------------------------|
| Applicant's wages | 100  | 115  | 128  | 142                                        | Increase                                            |

The information in the table was indexed due to confidentiality using 2014 as a base year

Table 5.2.3.14 shows that the wages increased by 28 index points during the period of investigation and are estimated to further increase should the anti-dumping duties be removed. It was considered that the applicant stated that wages are not a clear indicator of injury as a result of the unknown impact of retrenchment on the wage bill.

#### 5.2.3.15 Ability to raise capital or investments

The following table shows applicant's ability to raise capital and investments:

**Table 5.2.3.15: Ability to raise capital and investment**

| Rands                                              | 2014 | 2015 | 2016 | Estimate if the anti-dumping duties expire | Increase/decrease if the anti-dumping duties expire |
|----------------------------------------------------|------|------|------|--------------------------------------------|-----------------------------------------------------|
| Applicant's capital/investment in subject product  | 100  | 87   | 88   | 88                                         | Constant                                            |
| Capital expenditure during year on subject product | 100  | 192  | 132  | 66                                         | Decrease                                            |

The information in the table was indexed due to confidentiality using 2014 as a base year

Table 5.2.3.15 above shows that the applicant's investment decreased by 12 indexed points during the period of investigation and is estimated to remain constant should the anti-dumping duties be removed. Capital expenditure increased by 32 index points during the period of investigation and is estimated to decrease should the anti-dumping duties be removed.

It is envisaged that if the anti-dumping duties expire and the dumped US products flood the SACU market the producers would not be able at the estimated profits levels to invest further in 2017 and beyond.

### 5.3.3.15 Growth

The following table shows the growth of the industry based on volumes:

**Table 5.3.3.15: Growth**

| kg                       | 2014        | 2015        | 2016        | Estimate if the anti-dumping duties expire | Increase/decrease if the anti-dumping duties expire |
|--------------------------|-------------|-------------|-------------|--------------------------------------------|-----------------------------------------------------|
| Size of SACU market      | 100         | 100         | 106         | 104                                        | Decrease                                            |
| Applicant's sales volume | 100         | 99          | 100         | 82                                         | Decrease                                            |
| Other SACU producers     | 100         | 100         | 96          | 96                                         | Constant                                            |
| Imports: USA             | 0           | 1443        | 14 040 502  | 125 000 000                                | Increase                                            |
| Other imports            | 157 959 889 | 159 032 569 | 223 912 426 | 223 912 426                                | Constant                                            |

Except for USA and other countries imports, the information in the table was indexed due to confidentiality using 2014 as a base year

Imports from the USA increased during the period of investigation and are estimated to further increase should the anti-dumping duties be removed. The applicant stated that the SACU industry will realise negative growth if the anti-dumping duties expire, as the imports from the USA will grow substantially over the period.

### Comments by interested parties on Injury

- The Commission needs to take into consideration other factors that attribute to injury like the effects of the drought on SACU maize prices, changes in brining legislation, recent large increases in regulated costs, the effect of imports of subject products from other sources and any other factors which may influence SACU costs. In terms of the WTO causality can only be attributed after all other factors have first been discounted prior to making a determination on material injury.
- The risk alleged by the applicant that 125 000 tons of American chicken could destroy the local industry is simply not credible. The probability of importing 125 000 tons when imports could not achieve 65 000 tons limit on a rebate in the midst of Avian flu outbreak is not likely.

- The essential facts letter provides no data or analysis to support a conclusion that the expiry of anti-dumping duties would likely lead to the recurrence of material injury.

### **Response by the applicant**

- Causality is not a requirement in a sunset review. Neither the ADR nor the ITAC sunset review questionnaires require any information concerning causal link between likely dumping and likely injury.
- Stating that USA import volumes are less than 65 000 tons quota rebate is of little consequence as no anti-dumping duty is paid on products imported under a rebate provision. The capacity does exist in the USA for an even higher volume to be exported to South Africa.

### **Commission's consideration**

- It is the Commission's practice not to make a determination on causality in sunset review investigations. A determination is made on the basis of what is likely to happen to the industry going forward should the anti-dumping duties be removed.
- The applicant determined the likelihood of injury based on 125 000 tons likely to be imported from the USA should the anti-dumping duties be removed based on the initial request made by the USAPEEC during negotiations for a rebate. The Commission does not make a decision based on the provisions and utilisation of a quota but on the likelihood of injury should the anti-dumping duties be removed.
- The applicant provided information on the likelihood of continuation and/or recurrence of material injury should the anti-dumping duties be removed. Essential facts letter does not intend to reproduce the submission of information which is provided in the application but to inform interested parties decisions likely to be taken by the Commission in the final determination.

After the evaluation of all material injury indicators and consideration of all comments received from interested parties, the Commission made a final determination that the expiry of the anti-dumping duties would likely lead to the recurrence or continuation of material injury.

## **6. SUMMARY OF FINDINGS**

### **6.1 Continuation or Recurrence of Dumping**

The Commission made a final determination that the expiry of the anti-dumping duties on frozen bone-in portions of fowls of the species *gallus domesticus* originating in or imported from the USA would likely lead to the recurrence of dumping.

### **6.2 Continuation or Recurrence of Material Injury**

After the evaluation of material injury information the Commission made a final determination that the expiry of the anti-dumping duties on frozen bone-in portions of fowls of the species *gallus domesticus* originating in or imported from the USA would likely lead to the recurrence or continuation of material injury to the SACU industry.

## **7. FINAL DETERMINATION**

The Commission made a final determination that:

- The expiry of the anti-dumping duties on frozen bone-in portions of fowls of the species *gallus domesticus* originating in or imported from the USA would likely lead to the recurrence of dumping and continuation or recurrence of material injury to the SACU industry.

The Commission therefore made a final determination to recommend to the Minister of Trade and Industry that the anti-dumping duties on frozen bone-in portions of fowls of the species *gallus domesticus* originating in or imported from the USA classified under the following tariff sub-headings: 0207.14.91, 0207.14.93, 0207.14.95, 0207.14.96, 0207.14.97, 0207.14.98 and 0207.14.99 be maintained at 940c/kg.