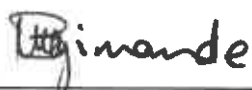


REPORT NO. 666

SUNSET REVIEW INVESTIGATION OF THE ANTI-DUMPING DUTIES ON FROZEN BONE-IN PORTIONS OF FOWLS OF THE SPECIES "*GALLUS DOMESTICUS*" ORIGINATING IN OR IMPORTED FROM GERMANY, THE NETHERLANDS AND THE UNITED KINGDOM: FINAL DETERMINATION

The International Trade Administration Commission of South Africa (the Commission) hereby presents its **Report No. 666: SUNSET REVIEW INVESTIGATION OF THE ANTI-DUMPING DUTIES ON FROZEN BONE-IN PORTIONS OF FOWLS OF THE SPECIES "GALLUS DOMESTICUS" ORIGINATING IN OR IMPORTED FROM GERMANY, THE NETHERLANDS AND THE UNITED KINGDOM: FINAL DETERMINATION**



MR MELULEKI NZIMANDE
CHIEF COMMISSIONER

PRETORIA
/5/06/2021

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LIST OF ACRONYMS

ADR	Anti-Dumping Regulations
EC	European Commission
EFTA	European Free Trade Association
EU	European Union
FOB	Free on Board
ITAC or the Commission	International Trade Administration Commission of South Africa
Kg	Kilogram
MERCOSUR	Southern Common Market (Argentina, Brazil, Paraguay and Uruguay)
POI	Period of Investigation
ROI	Return on Investment
SA	South Africa
SACU	Southern African Customs Union
SADC	Southern African Development Community
SARS	South African Revenue Service
UK	United Kingdom
WTO	World Trade Organisation

1. APPLICATION AND PROCEDURE

- 1.1** The investigation was conducted in accordance with the International Trade Administration Act, 2002 ("ITA Act"), and the International Trade Administration Commission of South Africa Anti-Dumping Regulations ("ADR"), with due regard to the World Trade Organisation Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, 1994.
- 1.2** On 24 May 2019, the International Trade Administration Commission ("ITAC" or the "Commission") notified the Southern African Custom Union ("SACU") industry through Notice No. 284 of 2019 in *Government Gazette* No. 42474 that the anti-dumping duties on the subject product originating in or imported from Germany, the Netherlands and the UK will expire on 26 February 2020, unless a substantiated application is made by the SACU industry, indicating that the expiry of the anti-dumping duties on the said subject product would likely lead to the continuation or recurrence of dumping and material injury.
- 1.3** On 03 October 2019, a sunset review application was received from the South African Poultry Association, supported by Sovereign Foods ("the Applicant"), the major manufacturers/producers of the subject product in the SACU. In the application, the Applicant alleged that the expiry of the duties would likely result in the continuation of dumping and recurrence of material injury to the SACU industry.
- 1.4** The sunset review investigation was initiated through Notice No. 115 of 2020, published in *Government Gazette* No. 43044 on 24 February 2020 ("Initiation Notice"), after the Commission considered that there was *prima facie* evidence to show that the expiry of the anti-dumping duties would likely lead to the continuation of dumping and recurrence of material injury to the SACU industry.
- 1.5** The Initiation Notice, non-confidential versions of the application and the exporters' and importers' questionnaires were sent to all known interested parties.

1.6 The investigation period for dumping was from 01 June 2018 to 31 May 2019. Information with regard to material injury was for the period 01 June 2016 to 31 May 2019 together with estimates of what the magnitude of injury would be for each indicator of injury should the anti-dumping duties expire.

1.7 Responses received from European Union ("EU") exporters were received from the following exporters:

Germany:

- Landgeflügel Group (Landgeflügel FG Vertriebsgesellschaft mbH, Emsland Frischgeflügel and Celler Land Frischgeflügel).

The Netherlands:

- BV Esbro ("Esbro");
- Van den Bor Pluimveeslachterij B.V. ("Van den Bor");
- Plukon Group (Plukon Blokker, Plukon Goor, and Plukon Dedemsvaart);
- Boparan Holding Limited (2 Sisters Storteboom; Storteboom Fresh, Storteboom Kornhon, and Storteboom Zeewolde); and
- Remkes Poultry Family B.V. (Remkes Poultry B.V., Gecombineerde Pluimvee Slachterijen B.V., and Pluimveeslachterij G.P. Remkes B.V.).

United Kingdom:

- 2 Sisters Food Group Ltd ("2 SFG") and Amber Foods Ltd; and
- Moy Park Ltd ("Moy Park").

1.8 Responses received from exporters were found to be deficient and deficiency letters were sent. Exporters were allowed seven days to address deficiencies identified. All the exporters returned their responses after addressing all the deficiencies.

1.9 The exporters from Germany, the Netherlands and the United Kingdom ("UK") were verified.

1.10 A response was received from a SACU importer, Merlog Foods (Pty) Ltd (Merlog), which was found to be deficient, and deficiency letter was sent. Merlog was allowed

seven days to address deficiencies identified. Merlog returned its response after addressing all the deficiencies.

1.10.1 The verification date for Merlog was set for 23 March 2020. During the verification, it transpired that Merlog did not import the subject product from Germany, the Netherlands and the UK during the period of investigation. As a result, the verification process was cancelled because Merlog did not have the required information to verify.

1.10.2 The Commission made a final determination to disregard Merlog's response submission in the calculation of dumping duties.

1.11 The Commission may conduct verifications to satisfy itself as to the accuracy of the information provided to it by interested parties as it deems appropriate. Prior to initiation, the Applicant provided the Commission with information requested in the Commission's questionnaire to establish a *prima facie* case.

1.11.1 Regulation 25 of the ADR states that the Commission shall satisfy itself of the accuracy and adequacy of the information provided in the application (Article 5.3 of the WTO Anti-dumping Agreement also provides for Authorities to examine the accuracy and adequacy of the evidence provided in the application to determine whether in there is sufficient evidence to justify the initiation). Regulation 25 of the ADR also provides that "[d]eficiencies or inaccuracies that do not detract from the *prima facie* establishment of a case of injurious dumping shall not result in any delay in initiating an investigation.

1.11.2 At the time of merit determination by the Commission, the Commission was presented with, and reviewed, information provided in the submission relating to dumping and material injury and thus the issue of whether the application was properly documented. Regarding certain deficiencies, principally the presentation of confidential, aggregated data that had been at issue in discussions between the Applicant and the investigating team, and which were not fully resolved, the Commission determined that in the light of the language

of Regulation 25, these were not of a kind that would, at the time of the Commission's merit determination, detract from initiation:

- 1.11.3** After initiation, two rounds of verifications were conducted to verify the applicant's information. Certain information was updated and the new information was verified. Verification reports were issued and comments received; and the material injury is therefore based on verified information.
- 1.12** The Commission's essential facts letters were sent to all known interested parties and comments were received from the Applicant, the EU, Merlog, Plukon Group, Remkes Group, Boparan Holding Group, Rothkoetter Group, Van den Bor, and BV Esbro.
- 1.13** Revised comments to an essential facts letter were received from SAPA on 20 May 2021 after the deadline date of 12 May 2021 to submit comments to essential facts letters. The Commission made a final determination not take the comments into consideration since they were received after the deadline to submit comments on essential facts.
- 1.14** The Commission took into account all relevant comments received timeously in making its final determination.
- 1.15** This report does not purport to present all comments received and considered by the Commission. However, salient comments received from interested parties and the Commission's consideration of these comments are included in this report.
- 1.16** Non-confidential versions of the submissions made by interested parties are contained in the Commission's non-confidential file for this investigation.
- 1.17** After considering all the relevant information supplied by the Applicant and the relevant comments, including comments on the essential facts letter, the Commission made a final determination that the expiry of the anti-dumping duties on the subject product originating in or imported from the Netherlands, Germany, and the UK would likely lead to the continuation of dumping and recurrence of material injury to the SACU industry.

1.18 Comments from the Applicant

The Applicant commented as follows:

- None of the entities listed have provided non-confidential version of their cost and price build-up. SAPA called on the Commission to disregard all of the submissions of the parties identified for failing to timeously provide proper non-confidential version.
- Parties employed the net realizable value approach within the costing, which would result in less transactions being regarded as below cost, as well as lower constructed normal value.
- The Applicant believes that it was irregular for the Commission to consider any submission from parties that did not cooperate during the original investigation and for which there is no indication or information provided that they did export to SACU during the original investigation and have not exported to SACU during the period of investigation in this sunset review investigation. The Applicant recommends that the parties that did not cooperate during the original investigation and for which there is no indication or information provided that they did export to SACU during the original investigation, and are now part of this sunset review, should be treated as new shippers, as catered for in Regulation 48 of the ADR.

This Regulation was followed in the “Footwear (India) investigation that was conducted by the South African Authority where the party that did not export wanted to participate in a Sunset Review and was advised to apply for a New Shipper Review.

Commission’s consideration

The Commission considered that:

- *The cost and price build-up has been treated as confidential by nature and from the investigators’ observation it is not susceptible to indexing and summarizing.*
- *It was found that the producers apportion production costs based on sales value. It was explained that the companies use joint costing amongst the different chicken portions. Joint costing is when the costs of conversion of each product cannot be separately determined; they are allocated between the*

products on a rational and consistent basis. The allocation may be based for example, on the relative sales value of each product either at the stage in the production process when the products become separately identifiable, or at the completion of production. In this case the producers apportioned the costs of production for each model based on the sales value of each product at the completion of production. The joint costs can be found in industries like extractive, agriculture, food and chemicals.

- *Regulation 48.1 states, "Only exporters that did not export to SACU during the original investigation period of dumping may request a new shipper review. Furthermore, Regulation 48.3 states that "The Commission shall not consider a request for a new shipper review before definitive anti-dumping duties have been imposed".*

1.19 Comments from Interested parties

The interested parties commented as follows:

- a) The application is not properly documented.
- b) No reasonable normal value. Normal value was brought on all bone-in chicken rather than cut.
- c) Application is still not verified.
- d) The Applicant needs to demonstrate at least a *prima facie* case of dumping, injury and causality. The question of demonstrating dumping moves beyond simply making the allegation and then leaving it up to the respondents to disprove the allegation, rather the allegation needs to be substantial enough to warrant proceeding with the investigation.
- e) The essential facts letter does not provide any evidence or arguments to show that the Commission considered the reality that exporters from the Netherlands had been excluded from exporting to SACU as a result of the Avian Influenza, during the past five years. As a result, exporters from other markets have replaced Dutch exporters in the SACU market.
- f) The calculations and explanation on how the Commission calculated the sales below cost assessment were not provided in the essential facts letter. As a result, the exporters cannot determine which sales were excluded in the calculation of the normal values.

- g) The essential facts letter does not deal with all the key findings. The Commission is requested to expand the essential facts letter to deal with all the key findings in the investigation in sufficient detail for interested parties to be in a position to respond completely to the findings proposed.
- h) Merlog stated that there has been a massive material fraud of R138 million committed at Daybreak Chicken, implicating the Chief Executive Officer and the Chief Financial Officer. Merlog believes that it is incumbent that ITAC get full disclosure of this reported fraud before concluding the investigation, to determine the financial effects and impact on the financial statements and information submitted in the application by SAPA. Merlog's opinion is that if these allegations have any foundation, the entire submission by Daybreak must be removed and adjustments be made to the "consolidated application".
- i) Merlog had submitted detailed information in its submission on "landed cost" and was prepared to present this to the verification team. Other relevant information with its references and impact on this investigation had been prepared, including a PowerPoint presentation on relevant facts. By disregarding the important and comprehensive inputs of Merlog, ITAC will be falling short of its obligation to fulfil its administrative mandate. Merlog requested ITAC to have regard to its submission.
- j) The European Commission expressed its disappointment about the initiation of this investigation since measures currently under review have been in place for five years and the conditions to further prolong them are not met.
- k) The continuation of antidumping duties is not justified because there is no likelihood of recurrence of dumping and/or injury. Exports of the subject product from the countries concerned to South Africa during the period of review decreased significantly, but continued at low levels. Most EU imports are not dumped, it is unlikely that material injury has continued. The situation of the domestic industry is comfortable.

Commission's consideration

The Commission considered that:

- a) The Commission accepted the application as properly documented.**
- b) The Commission accepted the normal value submitted as *prima facie* information for initiation purposes.**
- c) The information in the application was not verified at the time of making merit determination and sending out the non-confidential application to interested parties. The information in the application was subsequently verified from 02 to 22 March 2020 and was further verified from 16 to 26 March 2021.**
- d) The Commission accepted the information provided by the Applicant as prima facie for the purposes of initiating an investigation.**
- e) The investigation at hand is a sunset review investigation, and such an investigation does not deal with causal link issues. A sunset review investigation is based on the likelihood of recurrence and/or continuation of material injury and dumping. To that effect, the Commission has made a final determination that there is a likelihood that dumping will continue and material injury would recur, should the current anti-dumping duty expire.**
- f) The essential facts letter does not purport to explain everything. The explanation of sales below cost assessment is explained in this report.**
- g) The Commission's essential facts letter deals with all key findings that the Commission was considering in making a final determination on, i.e. Industry standing, dumping margins, major proportion, material injury, and final dumping duties. It is not clear which other key findings the interested party is referring to in this regard.**
- h) The audited financial statement submitted to ITAC did not have a qualified audit opinion. Furthermore, the investigators verified the information submitted by Daybreak.**
- i) Merlog submitted a constructed landed cost since it did not import during the period of investigation. For that reason, it would not be appropriate to use such information, and instead the inland cost submitted by the Applicant at the initiation stage of the investigation was used to determine the free on board ("FOB") export price.**

- j) To initiate an investigation the Commission considered the likelihood or continuation and /or recurrence of dumping and material injury, which the Applicant was able to provide as prima facie evidence for the purpose of initiating an investigation.*
- k) The likelihood of continuation and or recurrence of material injury is based on the estimates should the dumping duties be removed.*
 - i. the subject product from the countries concerned to South Africa during the period of review decreased significantly, but continued at low levels; and*
 - ii. The situation of the domestic industry is now comfortable.*

It is the Commission's view that should the anti-dumping duties be removed, the Applicant will revert to the situation it was in before duties were imposed.

2 PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 IMPORTED PRODUCT

2.1.1 Description

The imported product is frozen portions of meat that contain bones, of fowls of the species "*Gallus domesticus*".

2.1.2 Tariff classification

Table 2.1.2: Tariff classification

Tariff subheading	Description	Statistica l unit	Customs duty (ad valorem)				
			Gener al	EU	EFT A	SAD C	MERCOSU R
0207	Meat and edible offal, of the poultry of 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	kg	62%	free	62%	free	62%
0207.14.93	---- Leg quarters	kg	62%	free	62%	free	62%
0207.14.95	---- Wings	kg	62%	free	62%	free	62%
0207.14.96	---- Breasts	kg	62%	free	62%	free	62%
0207.14.97	---- Thighs	kg	62%	free	62%	free	62%
0207.14.98	---- Drumsticks	kg	62%	free	62%	free	62%
0207.14.99	---- Other	kg	62%	free	62%	free	62%

2.1.3 Country of origin or export

The subject product originates in or imported from the Germany, the Netherlands and the UK.

2.1.4 Application/end-use

For human consumption.

2.1.5 Currently applicable anti-dumping duties

The anti-dumping duties currently in place were imposed in 2015 as follows:

Table 2.1.5: Anti-dumping duties

Tariff Heading	Producer	Rebate Items	Country	Rate of AD Duty
0207.14.9	Anhaltinische Geflügelspezialitäten GmbH, Donautal Geflügelspezialitäten Zweinlerderlassung der Lohman & Co, Nienburger Geflügelspezialitäten Zweinlerderlassung der Oldenburger Geflügelspezialitäten GmbH, Oldenburger Geflügelspezialitäten GmbH and Wiesenhof International GmbH Co. KG.	301.00 - 399.00 401.00 - 499.00	Germany	31.3%
	All other producers/exporters	301.00 - 399.00 401.00 - 499.00	Germany	73.33%
	Plukon Dedemsvaart BV, Plukon Goor BV and Plukon Blokker BV	301.00 - 399.00 401.00 - 499.00	The Netherlands	3.86%
	All other producers/exporters	301.00 - 399.00 401.00 - 499.00	The Netherlands	22.81%
	Moy Park Ltd	301.00 - 399.00 401.00 - 499.00	United Kingdom	12.07%
	2 Sisters Food Group Ltd and Amber Foods Ltd	301.00 - 399.00 401.00 - 499.00	United Kingdom	12.07%
0207.14.9	All other producers/exporters	301.00 - 399.00 401.00 - 499.00	United Kingdom	30.99%

2.1.6 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:** The purpose of these operations is to generate eggs for own hatcheries, from where day-old-chicks are obtained. Except for the local supplier contracts for services and materials there are no supply side agreements vastly different from any local operation e.g. cleaning services,

delivery of eggs to hatcheries, feed supply etc. The cost to the business is determined by the cost of day-old-chicks placed on the broiler farm. Depleted hens are sold live 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 & processing:** These broiler chickens are delivered live at the abattoirs where the broilers are slaughtered. The slaughtered broiler birds are either processed as whole birds or cut up in portions and sold either chilled or frozen.

2.2 SACU PRODUCT

2.2.1 Description

The product produced in SACU is frozen portions of meat that contain bones, of fowls of the species "*Gallus domesticus*."

2.2.2 Application/end-use

For human consumption.

2.2.3 Tariff classification

The subject product is classified under the following tariff heading 0207.14.9.

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:** The purpose of these operations is to generate eggs for own hatcheries, from where day-old-chicks are obtained. Except for the local supplier contracts for services and materials there are no supply side agreements vastly different from any local operation e.g. cleaning services, delivery of eggs to hatcheries, feed supply etc. The cost to the business is

determined by the cost of day-old-chicks placed on the broiler farm. Depleted hens are sold live 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 & processing:** These broiler chickens are delivered live at the abattoirs where the broilers are slaughtered. The slaughtered broiler birds are either processed as whole birds or cut up in portions and sold either chilled or frozen.

2.3 LIKE PRODUCT ANALYSIS

In the original investigation, the Commission decided that the SACU products and the imported products are “like products”, for purposes of comparison in terms of Regulation 1 of the ADR.

3 SACU INDUSTRY

3.1.1 INDUSTRY STANDING

The application was lodged by the SAPA and Sovereign Foods together constituting more than 50 percent of the total SACU industry production volumes. The relevant SAPA members in the application are Country Fair; Goldi; Festive; Grain Filled; Rainbow Chickens Ltd; Daybreak and Supreme. Letters of support for the sunset review application were received from:

- Poultry Producers' Association of Namibia;
- Swaziland Poultry Association; and
- South African Cereals and Oilseeds Trade Association.

The Applicant indicated that it is not aware of any SACU producers that are opposing the application, and therefore all other non-participating SACU producers are deemed to be neutral to the sunset review investigation. The Applicant estimated that total production volume of the non-participating SACU producers constitutes less than 50 percent standing of the total SACU industry production volumes.

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 Regulation 7 of the ADR.

4 CONTINUATION OR RECCURANCE OF DUMPING

There are eighteen (18) exporters that cooperated in the investigation: Twelve (12) from the Netherlands, three (03) from Germany and three (03) from the UK. The exporters determine product models based on different criteria, depending on each exporter's practices and/or policies. The Commission made a final determination that the models be based on product type, such as leg quarters, drumsticks, thighs, wings, whether or not it is an A-grade or B-grade; IQF or bulk freezing; brined or without brine; and oystercut or not, calibrated or uncalibrated, midwings or prime wings, 1st joint or 2nd joint cut.

The following dumping information is based on the information of eighteen verified exporters from the Netherlands, Germany, and the UK.

4.1 THE NETHERLANDS

The 12 exporters from the Netherlands are Esbro; Van den Bor; Plukon Blokker, Plukon Goor, and Plukon Dedemsvaart; 2 Sisters Storterboom B.V., Storteboom Fresh, Storteboom Kornhon, and Storteboom Zeewolde; Remkes Poultry B.V., Gecombineerde Pluimvee Slachterijen B.V., and Pluimveeslachterij G.P. Remkes BV. Their dumping information is presented below.

4.1.1 METHODOLOGY USED FOR ESBRO

It was found that the exporter produced and sold the subject products in the Netherlands and other foreign markets but not in the SACU market. It was found that domestic and foreign sales consist of the following models:

- Leg quarters;
- Drumsticks;
- Wings – (Whole wings; 1st and 2nd joint wing); and
- Thighs.

4.1.1.1 Normal value

It was found that each of leg quarters and drumsticks have sales that were made at a loss during the period of investigation for dumping, which sales constituted more than 20 percent of the total domestic sales for each model. Such sales therefore were not in the ordinary

course of trade for purposes of this investigation. They were excluded from the calculation of normal value, as per Regulation 8.2 of the ADR. Normal values for the two models were therefore determined based on the remaining sales in the domestic market (after excluding sales made below cost).

As regards wings and thighs, each have sales that were made at a loss during the period of investigation for dumping, which constituted less than 20 percent of the total domestic sales for each model, and therefore were in the ordinary course of trade for purposes of this investigation. They were included in the calculation of normal value, as per Regulation 8.2 of the ADR. Normal values for the two models were therefore determined based on all sales in the domestic market.

Adjustments to normal values: The Commission allowed the following adjustments that were found to have affected price comparability at the time of sale: cost of payment terms; delivery costs; and packaging costs.

4.1.1.2 Export price

Esbro sold four models in other countries but did not export the subject products to SACU during the period of investigation.

In this case, the export price was constructed for purposes of the determination of the likelihood of continuation of dumping.

The Commission made a final determination to determine the export price based on construction, as per Regulation 10 of the ADR. Esbro's total costs (production cost *plus* selling, general and administration costs), reasonable profit margins, and volumes from the cost and price build-up ("CBU") were used to calculate an export price per kg.

4.1.1.3 Dumping Margin

Based on the above, the weighted average dumping margin was calculated to be 2.856%. This margin was calculated for the purposes of determining the likelihood of continuation of dumping.

4.1.1.4 Comments from the Applicant

The Applicant commented as follows:

- a) It is important to note that some of the Microsoft Excel files of the response to the exporter questionnaire contains “#REF!” error and data cannot be assessed.
- b) Production capacity and actual production figures that are required to be submitted in volume, were incorrectly presented in value.
- c) Reference is made to an adjustment regarding “external transport” for the domestic sales while nothing is stated regarding the export sales.
- d) The questionnaire response from Esbro contained incomplete data being presented in its constructed normal value calculations, and an incomprehensible weighted dumping margin. The Applicant submits that it is prevented from forming a reasonable understanding of the omitted confidential data.
- e) As a result of the substantial percentage of the subject product being sold below costs it is clear that the sales are not taking place in the ordinary course of trade. Therefore, the portion not sold below cost would not be a reliable indicator of the normal values. The Applicant therefore recommend that the normal values be constructed based on the weighted cost methodology and not the actual sales.
- f) Esbro's questionnaire response clearly states that there were no domestic sales of sales of thighs, but the in the essential facts the Commission indicates that there were domestic sales for this product. This is a clear contradiction and the Commission is requested to clarify how it determined that there were domestic sales, despite the information to the contrary in the Esbro submission.
- g) In the questionnaire response normal value cost adjustments were only claimed for transport adjustment and packaging. The Commission is requested exclude the cost adjustments made for costs of payment terms on the normal value in its final determination, as this adjustment was not originally claimed.

Commission's consideration

The Commission considered that:

- a) *The Applicant is not specific on which data of the Microsoft Excel files of the response to the exporter questionnaire contains “#REF!” error and the data that cannot be assessed.*
- b) *The investigators confirmed that the capacity and production volumes are in kilograms and not values as claimed by applicant.*

- c) Adjustment for external transport was made on both the domestic and the export prices.*
- d) The exporter provided an indexed total cost as well as the profit margin percentage which is the information used to construct the normal value. This information is confidential by nature.*
- e) The only sales that the Commission consider not to be in the ordinary course of trade are those sales that are found to have been made below cost. Sales that have been found to be made above cost are considered by the Commission to be in the ordinary course of trade and are used to calculate the normal value. The remaining sales, after excluding sales made below cost, were also found to be above 5 percent of export sales.*
- f) The exporter questionnaire indeed shows no sales of thighs but chops. The exporter clarified/expained to the investigators after verification that chops is the same thing as thighs.*
- g) The adjustment allowed by the Commission were shown/claimed on all the sales schedule of Esbro including cost of payment terms.*

4.1.2 METHODOLOGY USED FOR VAN DEN BOR

It was found that the exporter produced and sold the subject products in the Netherlands and other foreign markets but not in the SACU market. It was found that domestic and foreign sales consist of the following models:

- Leg quarters;
- Drumsticks; and
- Wings – (Wing with tip; and 3 joint wing).

The normal value was based on domestic sales in the Netherlands and the export price was based on construction methodology.

4.1.2.1 Normal value

For leg quarter and wings, it was found that there were sales made below cost, which constituted more than 20 percent of the total domestic sales for each model, and therefore were not in the ordinary course of trade for purposes of this investigation and were excluded in the calculation of normal value, as per Regulation 8.2 of the ADR. Normal values for the two models were therefore determined based on remaining sales in the domestic market (after excluding all sales made below cost).

It was also found that all sales for drumsticks were made above cost, and therefore are in the ordinary course of trade for purposes of this investigation and have been included in the calculation of normal value, as per Regulations 8.2 of the ADR. The normal value for this model was therefore determined based on all sales in the domestic market.

Adjustments to normal values: The Commission allowed the following adjustments that were shown to have affected price comparability at the time of sale: discounts and rebates costs; and packaging costs.

4.1.2.2 Export price

Van Den Bor sold all three models in other countries but did not export the subject products to SACU during the period of investigation.

In this case, the export price was constructed for purposes of the determination of the likelihood of continuation of dumping.

The Commission made a final determination to determine the export price based on construction, as per regulation 10 of the ADR. Van den Bor's total costs (production cost *plus* selling, general and administration costs), reasonable profit margins, and volumes from the CBU, were used to calculate export price per kg.

4.1.2.3 Dumping Margin

Based on the above, the weighted average dumping margin was calculated to be 5.753%. This margin was calculated for the purposes of determining the likelihood of continuation of dumping.

4.1.2.4 Comments from the Applicant

The Applicant commented that:

- a) No data in section H (the inventory levels, production capacity and utilization) has been indexed or summarized.
- b) Large portions of the data fields pertaining to the export price and the dumping calculations have been omitted from the questionnaire response, which made it

impossible for the Applicant to comment in meaningful manner on the limited information available.

- c) In the questionnaire response, there are no clear indication of any adjustments being claimed. Accordingly, the Commission is requested not to allow any adjustments for discounts and rebates or packaging costs.

Commission's consideration

The Commission considered that:

- a) *The investigators acknowledge the mistake, which was an oversight. This should not be construed as a new practice by the Commission but as an oversight by the investigating team. The Commission therefore decided to accept the exporter's information contained in this section for the purposes of finalizing this investigation.*
- b) *The normal value and the export price are confidential however, the exporter indicated the calculated dumping margin.*
- c) *Adjustments claimed by the exporter and allowed by the Commission are shown on the sales schedule, which is confidential by nature.*

4.1.3 METHODOLOGY USED FOR PLUKON GROUP

Plukon Group has three plants in the Netherlands, being Plukon Blokker BV, Plukon Dedemsvaart BV and Plukon Goor BV. Each of these companies produces and sells the subject products. The Group filed separate submissions for each plant, as each is a separate legal entity and it would be very difficult to verify the information if the submissions were made as one. However, in order to arrive at a final duty position for Plukon as a group, the sales information of the three entities is consolidated.

Plukon Dedemsvaart, Goor and Blokker are part of the Plukon Food Group BV of companies characterised by the following:

- Common ownership and management by one holding company;
- Sales shift amongst the three companies and they invoice each other for these transactions;
- Procurement of inputs is done by the same company; and
- All the Plukon companies have a common pricing policy.

On the basis of the above, the Commission made a final determination that the relationship of the three companies (Dedemsvaart, Goor and Blokker) is such that the producers/exporters can be considered as a single entity for purposes of determining a single dumping margin and duty.

It was found that the Plukon Group produced and sold the subject products in the Netherlands. It was found that the Plukon Group produced and sold the following four subject products to the SACU market during the POI:

- Leg quarters A grade;
- Drumsticks A grade;
- Thighs with back bone A grade; and
- Wing – 3 joint wings.

4.1.3.1 Normal value

- **Drumsticks, Leg quarters and Thighs**

It was found that domestic sales volumes of drumsticks, leg quarters and thighs more than 5 percent of the sales volume of the product sold to the SACU, and therefore were sufficient volumes to determine a normal value, as per Regulation 8.3 of the ADR.

It was found that there were sales that were made below cost, which constituted more than 20 percent of the total domestic sales for leg quarters, and therefore were not in the ordinary course of trade for purposes of this investigation. These sales were excluded from the calculation of normal value, as per Regulation 8.2 of the ADR. Normal values for this product were therefore determined based on remaining sales in the domestic market (after excluding all sales made below cost). The remaining sales volumes constituted more than 5 percent of leg quarter's export sales to SACU, and therefore were sufficient volumes to determine a normal value.

It was found that there were sales that were made below cost, which constituted less than 20 percent of the total domestic sales for drumsticks and thighs, and therefore were in the ordinary course of trade for purposes of this investigation. These sales were included in the calculation of normal value, as per Regulation 8.2 of the ADR. Normal values for these two models were therefore determined based all sales in the domestic market.

Adjustments to normal values: The Commission allowed the following adjustments that were found to have affected price comparability at the time of sale: costs of payment terms; delivery costs; and packaging costs.

- **Wings**

It was found that domestic sales volumes of wings constituted less than 5 percent of the sales volume of the product sold to the SACU, and therefore were insufficient volumes to determine a normal value, as per Regulation 8.3 of the ADR.

The Commission made a final determination to determine the normal value based on construction. Plukon Group's total costs (production cost *plus* selling, general and administration costs), reasonable profit margin, and volumes from the CBU, were used to calculate normal value per kg.

4.1.3.2 Export price

The Commission determined the export price for Plukon Group based on subject products exported to SACU. Plukon exported four models to the SACU market, namely drumsticks, leg quarters, thighs and wings.

Adjustments to export prices: The Commission allowed the following adjustments that were found to have affected price comparability at the time of setting prices: cost of payment terms; and packaging cost.

4.1.3.3 Dumping Margin

Based on the above, the weighted average dumping margin was calculated to be 0.482%.

4.1.3.4 Comments from the Applicant

The Applicant commented as follows:

- a) From the questionnaire response submitted by the Plukon Group, the data indicates a period starting with January to "December, although the last 12 months of the period of investigation is June 2018 to May 2019, which would render the submitted data deficient.

- b) It is submitted that as a result of the substantial percentage of the subject product being sold below costs with regard to leg quarters, it is clear that the sales are not taking place in the ordinary course of trade. Therefore, the portion not sold below cost would not be a reliable indicator of the normal value and therefore it is submitted that the normal value must be constructed based on the weighted cost methodology.
- c) The response questionnaire of Plukon shows that the only adjustments claimed were distribution cost and packaging. The Commission is requested to exclude the cost adjustments made for costs of payment terms on the normal value in its final determination, as this adjustment was not originally claimed.

Commission's consideration

The Commission considered that:

- a) *The information provided by Plukon is within the period of investigation. Instead of June 2018 to May 2019, Plukon opted to submit the information in a monthly sequence starting from January 2019 to May 2019, and then went back from June 2018 to December 2018.*
- b) *The only sales that the Commission consider not to be in the ordinary course of trade are those sales that are found to have been made below cost. Sales that have been found to be made above cost are considered by the Commission to be in the ordinary course of trade and are used to calculate the normal value.*
- c) *Adjustments claimed by the exporter and allowed by the Commission are shown on the sales schedule of the Plukon Group, and these sales schedules are confidential by nature.*

4.1.4 METHODOLOGY USED FOR REMKES POULTRY FAMILY GROUP

Remkes Group has two plants in the Netherlands, being Pluimveeslachterij G.P Remkes (GPR) and Gecombineerde Pluimvee Slachterijen (GPS), and one selling and logistic entity, being Remkes Poultry B.V. Both plants produce the subject products and Remkes Poultry B.V. sells the subject products to the final independent consumer on behalf of the Group. The Remkes Group filed separate submissions for each entity, stating that as each is a separate legal entity, it would have been very difficult to verify the information if the

submissions were made as one. However, in order to arrive at a final duty position for Remkes as a group, the sales information of the three entities was consolidated.

GPR and GPS and Remkes Poultry B.V. are part of the Remkes Poultry Family Group of companies characterised by the following:

- Common ownership and management by one holding company;
- Sales shift amongst the three companies and they invoice each other for these transactions;
- Procurement of inputs is done by the same company; and
- All the Remkes Family companies have a common pricing policy.

On the basis of the above, the Commission made a final determination that the relationship of the three entities is such that the producers/exporters can be considered as a single entity for purposes of determining a single dumping margin and duty.

Remkes Group produced the subject product in the Netherlands. Remkes sold wings to the SACU market during the period of investigation for dumping.

4.1.4.1 Normal value

Remkes Group did not sell wings in the domestic market during the period of investigation for dumping, however, the model was sold to other third countries.

In this case, the normal value can be calculated based on export sales to an appropriate third country or construction.

When determining the normal value based on exports to third countries, the Commission uses the export price of the subject product to an appropriate third country. The country selected is evaluated based on the following criteria:

- Volumes exported to that country are comparable to the volumes exported to SACU.
- Customers exported to in that country are comparable to the customers in SACU.
- The country exported to should have a domestic manufacturing industry.

Upon applying the Commission's criteria outlined above, the Commission found that none of the third countries met the Commission's criteria. All the countries sold to have incomparable volumes, and therefore do not meet the criteria.

The Commission made a final determination to determine the normal value based on construction. Remkes Group's total costs (production cost *plus* selling, general and administration costs), reasonable profit margin, and volumes were used to calculate normal value per kg.

4.1.4.2 Export price

The Commission determined the export price based on subject product exported to SACU. The Remkes Group exported one model to the SACU market, namely wings.

Adjustments to export prices: The Commission allowed the following adjustment that were found to have affected price comparability at the time of sale: cost of payment terms.

4.1.4.3 Dumping Margin

Based on the above, the dumping margin was calculated to be 10.47%.

4.1.4.4 Comments from the Applicant

The Applicant commented as follows:

- a) It appears from the Remkes submission that an extremely small volume of this product was exported to SACU. This small volume should not be considered as a reasonable basis for recalculating the duties imposed on the Remkes Poultry Family BV or the residual dumping duty applied to exports from the Netherlands.
- b) No substantiation has been provided for a reasonable profit margin of 2 percent used in the construction.
- c) In the questionnaire response, a cost adjustment for packaging was claimed, however the Commission is considering to only make an adjustment for cost of payment terms to the export price.
- d) It is stated in the Remkes response questionnaire that the transactions between Remkes Poultry and the two manufacturing companies responsible for the slaughter of live birds, are intercompany transfers and not domestic sales. However, in the Commission's

essential facts letter states that Remkes did produce and sell the subject product in the Netherlands, which is in conflict with the data presented.

- e) From the Gecombineerde Pluimvee Slacherijen (GPS) verification report, it was indicated that due to a liquidation process that was taking place during the time of the verification, the company did not have access to the accounting system. Thus, the Applicant submits that the Commission was not able to verify a majority of the information.

Commission's consideration

The Commission considered that:

- a) *Although the volume exported to SACU by Remkes are minimal, there is not a stipulated volume which needs to be exported to SACU in order to be considered for purposes of determining the export price.*
- b) *The exporter stated that the 2 percent is a reasonable profit margin in its response to the Commission's exporter questionnaire.*
- c) *The cost of payment terms is the only cost adjustment that the exporter has claimed in its export sales schedule for SACU sales.*
- d) *The Commission concedes that it was incorrect to state that there were domestic sales for Remkes. Remkes did not have domestic sales, all sales were export sales.*
- e) *Gecombineerde Pluimvee Slacherijen (GPS) information was verified against the management account except that substantiating documents such as invoices and proof of payment could not be provided due to the liquidation that was taking place during the time of verification.*

4.1.5 METHODOLOGY USED FOR BOPARAN HOLDINGS LIMITED

Boparan Holdings has three plants in Netherlands, being Storteboom Fresh B.V., Storteboom Kornhorn B.V. and Storteboom Zeewolde, one selling and logistic entity, being 2 Sisters Storteboom B.V. Each of these plants produces the subject products and 2 Sisters Storteboom B.V. acts as the invoicing entity for the three production facilities. The Group filed separate submissions for each entity, stating that as each is a separate legal entity, it would have been very difficult to verify the information if the submissions were made as

one. However, in order to arrive at a final duty position for Boparan Holding as a group, the sales information of the four entities was consolidated.

This Group of companies is characterised by the following:

- Common ownership and management by one holding company;
- A group invoice is generated at by the selling and logistic company. The production facilities invoice 2 Sisters Storteboom B.V. (Selling and Logistics Company) which generates a group sales invoice and sends invoices to the end client.
- Procurement of inputs is done by the same company; and
- All the Boparan Holdings Ltd companies have a common pricing policy.

On the basis of the above, the Commission made a final determination that the relationship of the four companies is such that the producers/exporters can be considered as a single entity for purposes of determining a single dumping margin and duty.

The exporter produced and sold the subject product in the Netherlands but not in the SACU market. The models sold in the domestic market during the period of investigation for dumping are as follows:

- Leg quarters – (A grade and B grade);
- Drumsticks – (A grade and B grade);
- Thighs – (A grade and B grade); and
- Wings – (Whole wings, 1st joint wings; and Midwings A grade).

4.1.5.1 Normal value

For leg quarters and drumsticks, it was found that there were sales that were made below cost, which constituted more than 20 percent of the total domestic sales, and therefore were not in the ordinary course of trade for purposes of this investigation. These sales were excluded from the calculation of normal value, as per Regulation 8.2 of the ADR. Normal values for the two models are therefore determined based on remaining sales in the domestic market (after excluding all sales made below cost).

With regard to thighs and wings, it was found that all sales for were made above cost, therefore are in the ordinary course of trade for purposes of this investigation and included in the calculation of normal value, as per Regulations 8.2 of the ADR. The normal values for the two models were therefore determined based on all sales in the domestic market.

Adjustments to normal values: The Commission allowed the following adjustments that were found to have affected price comparability at the time of sale: costs of payment terms; transport costs; packaging costs; and sales commission costs.

4.1.5.2 Export price

Although Boparan Holdings sold all four models in other third countries, it did not export the subject products to SACU during the period of investigation.

In this case the export price was constructed for purposes of the determination of the likelihood of continuation of dumping.

The Commission made a final determination to determine the export price based on construction, as per Regulation 10 of the ADR. Boparan Holdings total costs (production cost *plus* selling, general and administration costs), reasonable profit margins, and volumes from the CBU, were used to calculate export price per kg.

4.1.5.3 Dumping Margin

Based on the above, the weighted average dumping margin was calculated to be 7.978%. This margin was calculated for the purposes of determining the likelihood of continuation of dumping.

4.1.5.4 Comments from the Applicant

The Applicant commented as follows:

- a) Very little information has been provided in the exporter questionnaire responses with regard to the normal value, export price and the dumping calculation. Large portions of the data fields in these sheets have been omitted, with no provision in the sworn statement for such omissions.

- b) It is submitted that as a result of the substantial percentage of the subject product being sold below costs it is clear that the sales are not taking place in the ordinary course of trade. Therefore, the portions not sold below cost would not be a reliable indicator of the normal value and therefore it is submitted that the normal value must be constructed based on the weighted cost methodology.
- c) In the questionnaire responses there is no indication of any normal value cost adjustments being claimed. The Commission is requested not to consider any cost adjustments made for costs of payment terms, transport cost, packaging costs and sales commission in its final determination, as these adjustments were not originally claimed.

Commission's consideration

The Commission considered that:

- a) *The information relating to normal value and export price is confidential by nature and therefore not shown in the non-confidential version. The Applicant indexed the normal values and export price, hence these did not appear in the sworn statement.*
- b) *The only sales that the Commission consider not to be in the ordinary course of trade are those sales that are found to have been made below cost. Sales that have been found to be made above cost are considered by the Commission to be in the ordinary course of trade and are used to calculate the normal value.*
- c) *The exporter in its exports sales schedules to third countries claimed the adjustments for costs of payment terms, transport cost, packaging costs and sales commission. These spread sheets are however confidential in nature and therefore are not in the public file for the Applicant to have view of these adjustments.*

4.1.6 METHODOLOGY USED FOR THE RESIDUAL DUMPING MARGIN – THE NETHERLANDS

Esbro, Van den Bor, Plukon, Remkes and Boparan Holdings are the only producers/exporters that cooperated in the investigation and their information was verified. The residual dumping margins are therefore calculated based on verified exporters' information.

4.1.6.1 Normal value

Out of the responding exporters, Boparan Holdings is the biggest producer in terms of domestic sales volumes, with the mixture of different product types produced and sold in the

domestic market. For the purposes of calculating a residual dumping margin for the Netherlands, Boparan Holdings domestic sales, except those sales made below cost, were utilised for determining the normal value. The normal values were adjusted for packaging cost. The adjustment of packaging was found to be standard in the normal course of sale and is not company specific.

4.1.6.2 Export price

Plukon Group and Remkes Group are the only two exporters/producers that exported the subject product to the SACU market during the period of investigation. Out of these companies, Plukon Group had the highest volumes to SACU and a mixture of different product types sold to SACU. For the purposes of calculating a residual dumping margin for the Netherlands, Plukon Group's export sales to SACU were utilised for determining the export price. The export prices were adjusted for packaging cost. The adjustment for packaging was found to be standard in the normal course of sale and is not company specific.

4.1.6.3 Dumping Margin

The weighted average residual dumping margin was calculated to be 88.292%.

4.1.6.4 Comments from the Applicant

The Applicant commented as follows:

- a) The Commission is proposing allowing an adjustment to normal value for packaging and delivery costs. These adjustments are company specific and should not be allowed in the calculation of a residual dumping margin.
- b) The Applicant does not agree with the Commission's methodology to use the exporters that cooperated in this investigation to recalculate residual dumping duties, as it is applicable on the parties that do not cooperate. The Applicant recommends that the Commission should just maintain the current applicable residual dumping duties.

Commission's consideration

The Commission considered that:

- a) *The adjustment for packaging is not company specific and it was found this adjustment is standard to all the exporters verified. The Commission made a final determination to*

not allow adjustment for delivery since it was found that for this service, not all exporters have delivery adjustment.

- b) It is the Commission's practice to use the information of the cooperating exporters/importers to calculate the residual dumping duties. There is nothing that precludes the Commission from calculating new dumping duties (company specific duty or residual duty) if there is information that can be used to calculate such.*

4.2 GERMANY

4.2.1 METHODOLOGY USED FOR ROTHKOETTER GROUP

Rothkoetter Group has two production plants in Germany, being Emsland Frischgeflügel (Emsland) and Celler Land Frischgeflügel (Celler land), and the selling and logistics entity, being Landgeflügel FG Vertriebsgesellschaft mbH (Landgeflügel). Each of these plants produces the subject products and Landgeflügel sells the subject products on behalf of the production plants. The Group filed separate submissions for each plant, stating that as each is a separate legal entity it would have been very difficult to verify the information if the submissions were made as one. However, in order to arrive at a final duty position for Rothkoetter as a group, the sales information of the three entities was consolidated.

Landgeflügel, Emsland and Celler Land are part of the Rothkoetter Group of companies characterised by the following:

- Common ownership and management by one holding company;
- Selling and logistics for the subject products are done by the same company within the group;
- Procurement of inputs is done by the same company; and
- All the Rothkoetter Group companies have a common pricing policy.

Based on the above, the Commission made a final determination that the relationship of the three companies (Landgeflügel, Emsland, and Celler land) is such that the producers/exporters can be considered as a single entity for purposes of determining a single dumping margin and/or duty.

It was found that the exporter produced and sold the subject products in Germany and other

foreign markets but not in the SACU market. It was found that domestic and foreign sales consist of the following models:

- Leg quarters - (A grade and B grade);
- Drumsticks – (A grade); and
- Wings – (Midwings A grade; Prime wings A-grade; and Prime wings and Midwings mix).

The normal value is based on domestic sales in Germany and the export price was based on construction methodology.

4.2.1.1 Normal value

For leg quarters and wings, it was found that there were sales made below cost, which constituted less than 20 percent of the total domestic sales, and therefore were in the ordinary course of trade for purposes of this investigation and included in the calculation of normal value, as per Regulation 8.2 of the ADR. Normal values for the two models were therefore determined based on all sales in the domestic market.

With regard to drumsticks, all sales were made above cost and therefore are in the ordinary course of trade for purposes of this investigation and were included in the calculation of normal value, as per Regulation 8.2 of the ADR. The normal value for this model was therefore determined based on all sales in the domestic market.

Adjustments to normal values: The Commission allowed the following adjustments that were found to have affected price comparability at the time of sale: costs of payment terms; delivery costs; packaging costs; and discounts and rebates costs.

4.2.1.2 Export price

Although the Rothkoetter Group sold all three models in other third countries, it did not export the subject products to SACU during the period of investigation.

In this case the export price was constructed for purposes of the determination of the likelihood of continuation of dumping.

The Commission made a final determination to determine the export price based on construction, as per Regulation 10 of the ADR. Rothkoetter Group total costs (production cost *plus* selling, general and administration costs), reasonable profit margins, and volumes from the CBU, were used to calculate export price per kg.

4.2.1.3 Dumping Margin

Based on the above, the weighted average dumping margin was calculated to be 11.942%. This margin was calculated for the purposes of determining the likelihood of continuation of dumping.

4.2.1.4 Comments from the Applicant

The Applicant commented as follows:

- a) It was noted that the Commission stated that the "Vet fees were verified to be", which comment is not clear.
- b) The exporter questionnaire responses contained confusing indexing and no explanation was provided how the weighted dumping margin of 9.968% was reached. The confidentiality affidavits that were submitted for the entities that form part of the Landgeflügel Group, were incomplete without containing any references to the annexures that pertain to section G.
- c) In the Rothkoetter Group companies' questionnaire responses, the adjustments being claimed were for delivery charges, packaging and discounts and rebates. The Commission is requested not to consider allowing cost of payment terms in its final determination since such an adjustment was not originally claimed.

Commission's consideration

The Commission considered that:

- a) It was a typing error, the non-confidential verification report should read "Vet fees were verified", and not "Vet fees were verified to be".*
- b) The information relating to normal values and export prices used in the calculation of dumping, is confidential by nature. This information was indexed by the exporter, hence it does not appear in the sworn statement.*
- c) The adjustments for costs of payment terms, delivery cost, packaging costs and, discount and rebates were claimed by the exporter in its domestic sales schedule. This spread*

sheets is however confidential in nature and therefore is not in the public file for the Applicant to have view of these adjustments.

4.2.2 METHODOLOGY USED FOR THE RESIDUAL DUMPING MARGIN – GERMANY

Rothkoetter Group is the only producer/exporter from Germany that cooperated in the investigation. The normal value and export price were based on Rothkoetter's information for purposes of the determination of the likelihood of continuation of dumping.

4.2.2.1 Normal value

Rothkoetter Group domestic sales were utilised for the determination of the normal value. The normal values were adjusted for packaging cost. The adjustment for packaging was found to be standard in the normal course of sale and is not company specific.

4.2.2.2 Export price

Rothkoetter Group total costs (production cost *plus* selling, general and administration costs), reasonable profit margins and volumes from the CBU were used to calculate an export price per kg.

4.2.2.3 Dumping Margin

Based on the above, the weighted average residual dumping margin was calculated to be 13.553%. This margin was calculated for the purposes of determining the likelihood of continuation of dumping.

4.2.2.4 Comments from the Applicant

The Applicant commented as follows:

- a) The adjustments for packaging and delivery costs are company specific and should not be allowed in the calculation of a residual dumping margin.
- b) It is inconceivable that the residual duty for Germany is lower than the level of duty calculated for a company that fully cooperated. This is not only alarming but factually incorrect. Should the Commission impose a residual duty that is lower than the level of duty of the only cooperating party in Germany, will encourage non-cooperation by parties.
- c) Rothkoetter Group stated that the Commission seems to have incorrectly calculated the packaging adjustment. The Group was not shown exactly how the Commission got the

packaging adjustment wrong as there have been no worksheet calculation provided by the Commission. This has affected the normal values after adjustments. The Group provided excel worksheets to show the correct packaging costs adjustments.

Commission's consideration

The Commission considered that:

- a) The adjustment for packaging is not company specific and it was found this adjustment is standard to all the exporters verified. The Commission made a final determination to not allow adjustment for delivery since it was found that for this service, not all exporters have delivery adjustment.*
- b) The dumping margins for Rothkoetter Group and all other non-cooperating exporter from Germany have now been updated to take into accounts comments raised by Rothkoetter in the essential facts letter. The updated residual dumping margins are now above Rothkoetter's individual dumping margins.*
- c) There was a miscalculation on the packaging adjustment, and that has affected normal value after adjustment and the proposed final dumping duty for the Rothkoetter Group. The normal values, dumping margins and duties calculations have been updated.*

4.3 THE UNITED KINGDOM

The three exporters from the UK are Moy Park, and 2 SFG and Amber foods. Their dumping information is herein presented below.

4.3.1 METHODOLOGY USED FOR MOY PARK

It was found that the exporter produced and sold the subject products in the UK and other foreign markets but not in the SACU market. It was found that domestic and foreign sales consist of the following models:

- Leg quarters;
- Drumsticks; and
- Wings.

The normal value is based on domestic sales in the UK and the export price is based on construction methodology.

4.3.1.1 Normal value

For each of the three models, it was found that there were sales that were made below cost, which constituted more than 20 percent of the total domestic sales for each model, and therefore were not in the ordinary course of trade for purposes of this investigation. These sales were excluded from the calculation of normal value, as per Regulation 8.2 of the ADR. Normal values for the three models were therefore determined based on the remaining sales in the domestic market (after excluding sales made below cost).

Adjustments to normal values: The Commission allowed the following adjustments that were found to have affected price comparability at the time of sale: costs of payment terms; transport costs; and packaging costs. The adjustment for labour was disallowed since the exporter could not demonstrate how labour cost affected price comparability at the time of setting prices.

4.3.1.2 Export price

Although Moy Park sold all the three model in other foreign markets, Moy Park did not export the subject products to SACU during the period of investigation.

In this case the export price was constructed for purposes of the determination of the likelihood of continuation of dumping.

The Commission made a final determination to determine the export price based on construction, as per Regulation 10 of the ADR. Moy Park total costs (production cost *plus* selling, general and administration costs), reasonable profit margins, and volumes from the CBU, were used to calculate an export price per kg.

4.3.1.3 Dumping Margin

Based on the above information, the weighted average dumping margin was calculated to be 1.378%. This margin was calculated for the purposes of determining the likelihood of continuation of dumping.

4.3.1.4 Comments from the Applicant

The Applicant commented as follows:

- a) The Commission should not allow adjustments for discount and rebate costs and costs for payment terms as these adjustments were not originally claimed in the response questionnaire. The Commission did not mention whether it investigated any additional adjustments that were required to be made to the export price, such as transport costs.
- b) The verification report of Moy Park states that there were no differences in packaging for products meant for domestic sales and export sales. The Applicant recommends that the Commission not allow a packaging adjustment.

Commission's consideration

The Commission considered that:

- a) *The adjustments allowed were all shown/claimed on the sales schedule of Moy Park, including transport cost.*
- b) *The sales volume has an impact when calculating price per kilogram, hence Applicant's argument that there is no difference in packaging for both domestic and export sales was rejected.*

4.3.2 METHODOLOGY USED FOR 2 SFG AND AMBER FOODS

2 SFG and Amber Foods Ltd are subsidiaries of the Boparan Holdings Ltd characterised by the following:

- Common ownership and management by Boparan Holdings Ltd;
- Sales shift amongst 2 SFG and Amber Foods for A-grade frozen bone-in portions and they invoice each other for these transactions. Shift sales of whole chickens and products that could not be sold as fresh at no cost; and
- Procurement of inputs is done through Hooks 2 Sisters which is 50 percent owned by 2 SFG.

It was explained that the 2SFG main business is fresh A-grade meat sold to retailers in the UK but, they also sell frozen products to retailers. 2SFG supplies Amber Foods with fresh whole chicken for cutting, grading, freezing and packing and provide bone-in portions that

could not be sold to retailers as A- grade due to damages or bruises and/or sell by date. All transfers of chicken from 2SFG to Amber foods are at no cost.

Amber Foods then grades, freezes and packs the bone-in portions that could not be sold to retailers and then sell to traders in the UK and abroad. Amber Foods also sells A-grade frozen bone-in portions and these are bought from 2SFG as fresh A-grade and then frozen.

It was stated that the main purpose of Amber Foods' existence is to recover the costs of the meat that could not be sold in the UK as Fresh A-grade due to damages or bruises and/or sell by date. It was also stated that Amber Foods is a trading arm for 2SFG as from 2013.

On the basis of the above, the Commission made a final determination that the relationship of the 2SFG and Amber Foods is such that the producers/exporters can be considered as a single entity with integrated production process for purposes of determining a single dumping margin and duty.

It was found that 2 SFG and Amber Foods did not export to SACU during the period of investigation for dumping. It was found that all sales made by 2 SFG and Amber Foods in the domestic market are made below costs, and therefore are considered as not being in the ordinary course of trade for purposes of normal value determination.

Due to these sales not being in the ordinary course of trade, it can also be concluded that the allocation of costs in the consolidated cost and price build-up is also unreasonable. The Commission made a final determination that the total costs per kg do not reasonably reflect the costs associated with production and sale of the product under consideration.

To the extent that 2 SFG and Amber Foods cooperated fully in this investigation, the Commission made a final determination to impose an individual dumping margin for 2 SFG and Amber Foods, based on verified information of the cooperating producer in the UK, i.e. Moy Park.

The dumping margin for each of 2 SFG and Amber Foods was determined to be 1.378%. This margin was calculated for the purposes of determining the likelihood of continuation of dumping.

4.3.2.1 Comments from the Applicant and Merlog

The Applicant and Merlog commented as follows:

- a) The Commission should construct the normal values for 2 SFG and Amber Foods, using the weighted cost methodology based on the costs of the companies. If this is not possible, the Commission must keep the current duties in place. The Applicant is in not agreement with the Commission's consideration of imposing an individual dumping margin for 2 SFG and Amber Foods, based on verified information of Moy Park. The costing information of Moy Park is company specific and cannot merely be masked onto 2 SFG and Amber Foods.
- b) Merlog does not see how the information supplied by 2 SFG and Amber Foods can be excluded and replaced by the information of another producer, i.e. Moy Park, for the purposes of calculation of dumping.

Commission's consideration

The Commission considered that:

- a) *Due to 2 SFG and Amber Foods' sales not being in the ordinary course of trade, the Commission concluded that the allocation of costs in the consolidated cost and price build-up is also unreasonable. The Commission made a final determination that the total costs per kg do not reasonably reflect the costs associated with production and sale of the product under consideration.*
- b) *It was found that 2 SFG and Amber Foods did not export to SACU during the period of investigation for dumping. It was also found that all sales made by 2 SFG and Amber Foods in the domestic market are made below costs, and therefore are considered as not being in the ordinary course of trade for purposes of normal value determination. Due to these sales not being in the ordinary course of trade, it was concluded that the allocation of costs in the consolidated cost and price build-up is also unreasonable.*

To the extent that 2 SFG and Amber Foods cooperated fully in this investigation, the Commission decided that, 2 SFG and Amber Foods should be given an individual dumping margin based on verified information of the cooperating producer in the United Kingdom, i.e. Moy Park. Moy Park.

4.3.3 METHODOLOGY USED FOR THE RESIDUAL DUMPING MARGIN – UK

Moy Park, 2 SFG and Amber Foods are the only three producers/exporters from the UK that cooperated in the investigation. Moy Park is the biggest producer in terms of domestic sales

volumes and product mix.

The normal value and export price were based on Moy Park's information for purposes of the determination of the likelihood of continuation of dumping.

4.3.3.1 Normal value

Moy Park's domestic sales, except those sales made below cost, are utilised for normal value determination. The normal values were adjusted for packaging cost. The adjustments for packaging was found to be standard in the normal course of sale and is not company specific.

4.3.3.2 Export price

Moy Park's total costs (production cost *plus* selling, general and administration costs), reasonable profit margins and volumes from the CBU, were used to calculate an export price per kg.

4.3.3.3 Dumping Margin

Based on the above information, the weighted average residual dumping margin was calculated to be 23.374%. This margin was calculated for the purposes of determining the likelihood of continuation of dumping.

4.3.4 SUMMARY

The Commission made a final determination that the dumping information for Esbro, Van den Bor, Remkes Poultry Family, Boparan Holdings, Rothkoetter Group, and all other producers/exporter, except Plukon Group, Moy Park and 2 SFG and Amber Foods, indicates that the expiry of the anti-dumping duties would likely lead to the continuation of dumping.

4.3.4.1 Comments from the Applicant

The Applicant commented as follows:

- a) The application of net realizable value approach in the cost and price build-up would result in less transactions being regarded as below cost, as well as to cater for lower constructed normal values. The Applicant objects to the application of net realizable value approach and requests that the Commission use the weighted cost methodology, which was the

practice that the Commission did apply in the past when either normal values are not available, or the sales are not in the ordinary course of trade.

- b) In several instances, significant portion of the dumping calculation annexures have been omitted from the non-confidential versions, without any sworn statement being submitted concerning such omissions.
- c) It is not clear how the dumping margin as presented by the BV Esbro, Van den Bor, Plukon Group, Boparan Holdings Limited and Rothkoetter Group was calculated on section G3 of the exporter's questionnaire.
- d) The Applicant submits that it is not permissible to determine and impose new dumping duties where there were no exports to SACU during the period of investigation for dumping and the existing dumping duties should be maintained. The Applicant submits that it is not permissible to determine and impose new residual dumping duties based on the information provided by cooperating foreign producers. This is particularly so where the cooperating foreign producers did not export to SACU during the period of investigation for dumping, as in the case of Moy Park, Rothkoetter Group, and Boparan Group.
- e) The Applicant indicated that there is a particular market situation in the subject countries where there is consumer preference for white meat over dark meat, in addition, there is also a preference to fresh meat over frozen meat. Therefore, due to the existence of the said preference, there is no ordinary market for frozen bone-in portions in any of the subject countries, and the sales of dark meat bone-in portions do not permit for a proper comparison with the subject products being exported to SACU, which are frozen bone-in dark meat portions. The applicant recommends that normal values be calculated based on construction.

Commission's consideration

The Commission considered that:

- a) *The Commission does not dictate to the exporters as to which accounting methodology they must use in preparation and presentation of their price and cost build-up.*
- b) *The Applicant has not pointed which exporter omitted the significant portion of the dumping calculation. The information which is not provided is the normal value and the export prices which were claimed confidential.*

- c) *The dumping margin calculation is done using the normal value of sales in the domestic market, constructed normal value or sales to third country and the export price to SACU, constructed export price depending on the situation applicable to a particular exporter. It should be noted that the Commission is the one which calculates the dumping margin after taking into consideration factors such as sales below cost, whether the domestic sales of the exporter is more than 5 percent of the export to SACU and in a situation where third country is used whether the selected country meet the criterion for selecting a third country. Based on the explanation provided, the Commission accepted the information provided by the exporters.*
- d) *It is the Commission's practice to use the information of the cooperating exporters/importers to calculate the residual dumping duties. There is nothing that precludes the Commission from calculating new dumping duties if there is information that can be used to calculate such.*
- e) *The Commission did not investigate whether there is or there is not a particular market situation in this investigation. In the original investigation of this sunset review the Commission did not make any finding regarding the existence of a particular market situation in Germany, the Netherlands and United Kingdom.*

5 CONTINUATION OR RECURRENCE OF MATERIAL INJURY

5.1 DOMESTIC INDUSTRY – MAJOR PROPORTION

The injury information considered by the Commission relates to the verified information of County Fair; Goldi; Festive; Grain Field; Rainbow Chickens Ltd; Sovereign Foods; Daybreak and Supreme, which together represent more than 50 percent of the total SACU industry by production volumes.

The Commission made a final determination that the Applicant's production constitutes "a major proportion" of the total domestic production, in accordance with Regulation 7 of the ADR.

5.2 IMPORT VOLUMES AND EFFECT ON PRICES

5.2.1 Import volumes

The following table shows the volume of the allegedly dumped imports of the subject product as obtained from the South African Revenue Services and estimates should anti-dumping duties expire:

Table 5.2.1: Import volumes

	2016/17	2017/18	2018/19	Estimate if duties expire
Germany (kg)	457 216	40 073	18 520	23 485 427
The Netherlands (kg)	49 831 145	0	24 310	62 169 942
The UK (kg)	18 576 062	0	105 570	36 460 053
Alleged dumped imports (kg)	68 864 424	40 073	148 400	122 115 421
Other imports (kg)	163 624 909	250 876 536	254 399 195	254 395 165
Total imports (kg)	232 489 332	250 916 609	254 547 595	376 514 616
Dumped imports as a % of total imports	29.62%	0.02%	0.06%	32.43%
Other imports as a % of total imports	70.38%	99.98%	99.94%	67.57%

Table 5.2.1 indicates that the alleged dumped imports decreased over the period when duties were in place.

5.3 Effect on Domestic Prices

5.3.1 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 was calculated by comparing the Applicant's ex-factory selling price and landed cost of imported product.

The landed cost for the subject products was less than the Applicant's ex-factory selling prices and the Applicant estimated that should the anti-dumping duties be removed the imports of the subject products will still undercut the Applicant's selling prices.

5.3.2 Price depression

The table below shows the SACU industry's domestic ex-factory selling prices indexed:

Table 5.3.2: Price depression

R/Kg	2016/17	2017/18	2018/19	Estimate if duties expire
Ex-factory selling price	100	114	115	115

The figures in the table are indexed due to confidentiality using 2016/17 as the base year.

Table 5.3.2 indicates that selling prices increased over the period when duties were in place. The Applicant stated that it did not experience price depression during the POI, with a year-on-year increase in the net ex-factory selling prices.

5.3.3 Price suppression

The following table compares the Applicant's production costs and its actual selling prices for the subject products, and estimates should duties expire:

Table 5.3.3: Price suppression

R/unit	2016/17	2017/18	2018/19	Estimates if duties expire
Applicant's ex-factory selling price per Kg	100	114	115	115
Production cost per Kg	100	99	107	112
Cost as a percentage of selling price	100	86	92	97

The figures in the table are indexed due to confidentiality using 2016/17 as the base year.

Table 5.3.3 shows that production costs as percentage of selling prices has decrease over the period when duties were in place.

5.4 CONSEQUENT IMPACT OF THE DUMPED IMPORTS ON SACU INDUSTRY

5.4.1 Actual and potential decline in sales

The following table shows the SACU's sales situation:

Table 5.4.1: The Applicant's sales volumes

	2016/17	2017/18	2018/19	Estimates if duties expire
Sales volumes (kg)	100	94	94	85

The figures in the table are indexed due to confidentiality using 2016/17 as the base year.

Table 5.4.1 shows that the applicant's sales volumes decreased during the period when duties were in place.

5.4.2 Profit

The following table shows the SACU industry's profit situation:

Table 5.4.2: The Applicant's profits

	2015/16	2016/17	2017/18	Estimates if duties expire
Total Gross profit (R)	100	429	289	146
Net Profit/loss (R)	-100	153	45	60

The figures in the table are indexed due to confidentiality using 2016/17 as the base year.

Table above 5.4.2 shows that the Applicant's profits increased during the period when duties were in place, with gross profits and net profits recording overall increases during the same period.

5.4.3 Production volume

The following table outlines the SACU industry's domestic production volume of the subject product:

Table 5.4.3: The Applicant's output volumes

KG	2016/17	2017/18	2018/19	Estimates if duties expire
Applicant's production volumes	100	96	94	87

The figures in the table are indexed due to confidentiality using 2016/17 as the base year.

Table 5.4.3 shows that the applicant's production volumes decreased throughout the period when duties were in place.

5.4.4 Market share

The following table shows the market share based on sales of the subject products:

Table 5.4.4: Market share

	2016/17	2017/18	2018/19	Estimate if duties expire
Applicant	100	96	96	87
Other SACU producers	100	101	101	91
Total SACU	100	98	98	89
Germany (kg)	457 216	40 073	18 520	23 485 427
The Netherlands (kg)	49 831 146	-	24 310	62 169 942
The UK (kg)	18 576 062	-	105 570	36 460 053
Total Alleged Dumped imports	100	0.06	0.22	
Other countries	100	157	159	159
Total imports	100	111	112	166

The figures in the table are indexed due to confidentiality using 2016/17 as the base year.

Table 5.4.4 shows that the Applicant's market share has been relatively stable throughout the period when duties were in place.

5.4.5 Productivity

The following table shows the Applicant's productivity per employee for the subject products:

Table 5.4.5: Productivity

	2016/17	2017/18	2018/19	Estimate if duties expire
Total production volumes(kg)	100	96	94	87
Total number of production employees	100	101	106	106
Kilograms produced per employee	100	94	88	81

The figures in the table are indexed due to confidentiality using 2016/17 as the base year.

Table 5.4.5 indicates that the production volumes per employee decreased throughout the period when duties were in place.

5.4.6 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.

Table 5.4.6: Return on Investment (subject product)

R'000	2016/17	2017/18	2018/19	Estimate if duties expire
Applicants net profit/loss	-100	153	45	60
Applicants total net assets	100	72	59	59
Applicants total return on net assets	-100	214	76	35

The figures in the table are indexed due to confidentiality using 2016/17 as the base year.

Table 5.4.6 shows that the Applicant's return on investment improved from a negative return at the beginning of the period when duties were in place.

5.4.7 Utilisation of production capacity

The following table provides the SACU industry's production capacity utilisation for the subject product:

Table 5.4.7: Production capacity utilisation

	2016/17	2017/18	2018/19	Estimate if duties expire
Applicants total Capacity (kg)	100	97	99	99
Total production volumes	100	96	94	87
Applicants capacity utilisation	100	99	95	88

The figures in the table are indexed due to confidentiality using 2016/17 as the base year.

Table 5.4.7 indicates that the Applicant's capacity utilisation decreased throughout the period when duties were in place.

5.4.8 Actual and potential negative effects on cash flow estimates

The following table reflects the SACU industry's cash flow situation:

Table 5.4.8: The Applicant's cash flow

R	2016/17	2017/18	2018/19	Estimate if duties expire
Applicant's net cash flow (R)	100	252	-50	-50

The figures in the table are indexed due to confidentiality using 2016/17 as the base year.

Table 5.4.8 indicates the Applicant's net cash flow decreased during the period when duties were in place. The table also shows that should the duties be removed, it is expected that that the net cash flow will remain unchanged.

5.4.9 Inventories

The following table reflects the SACU industry's inventory situation:

Table 5.4.9: Inventories

kg	2016/17	2017/18	2018/19	Estimate if duties expire
Applicants total Inventory volumes	100	57	104	104

The figures in the table are indexed due to confidentiality using 2016/17 as the base year.

Table 5.4.9 indicates that the Applicant's inventory volumes increased by 4 basis points during the period when duties were in place. The table also shows that should the duties be removed the inventory levels are expected to remain unchanged since less will be sold.

The Applicant indicated that over the POI, the inventory levels experienced a slight increasing trend with regard to volumes. The Applicant further stated that if the anti-dumping duties against dumped imports are removed, the inventory volume is estimated to remain unchanged from the period 2018/2019.

The Applicant further stated that the only way that such inventory level containment can be realized is when the SACU participating producers' reduce production for the period 2018 to 2019. If the SACU participating producers did not implement a reduction in production of subject product and continue to produce at the same level of production as in the period 2018/2019, it is estimated that the inventory levels will increase while the sales volumes are decreasing, causing the SACU industry to suffer material injury.

Comments by the Applicant

The Applicant is of the view that this factor should have been a primary focus point, due to the anomaly that exist in the volume and value trends and the threat it poses that the SACU producers will continue to sell the product (even at significantly reduced prices) to reduce the inventory level once the anti-dumping duties are revoked.

Commission's consideration

The subject product can be stored for up to a year prior to it being unsuitable for human consumption. The Applicant cannot stop production as its chickens would get older and unsuitable for slaughtering if it stops production. The industry operates in such a way that production does not stop, except for maintenance, however stock is mostly kept in outside storages, if they cannot store the product on site.

5.4.10 Employment

The following table provides the Applicant's employment levels:

Table 5.4.10: The Applicant's employment

	2016/17	2017/18	2018/19	Estimate if duties expire
Total number of production employees	100	101	106	106

The figures in the table are indexed due to confidentiality using 2016/17 as the base year.

Table 5.4.10 shows that total number of employees increased by 6 basis points during the period when duties were in place. The table also shows that should the duties be removed, production employees are expected to remain constant.

5.4.11 Wages and Salaries

The following table reflects the Applicant's wages and salaries situation:

Table 5.4.11: The Applicant's wages and salaries

R'000	2016/17	2017/18	2018/19	Estimate if duties expire
Applicants total wages	100	104	116	123

The figures in the table are indexed due to confidentiality using 2016/17 as the base year.

Table 5.4.11 indicates that the Applicant's total wages increased by 16 basis points from 2016/17 to 2018/19. The table also shows that should the duties be removed, wages are estimated to further increase. The Applicant indicated that it is estimated that the total number of production employees will remain the same in the period 2019/2020, as in the period 2018/2019 if the duty is removed. The Applicant further stated that if the same productivity

level were to be retained in the period 2019/2020, as in the period 2018/2019, employees will need to be retrenched.

5.4.12 Ability to raise capital or Investments

The following information shows the situation of the SACU industry with regard to its ability to raise capital or investments:

Table 5.4.12: The Applicant's ability to raise capital and Investment

R'000	2016/17	2017/18	2018/19	Estimate if duties expire
Capital investment	100	106	101	101
Applicants total capital expenditure	100	232	368	0

The figures in the table are indexed due to confidentiality using 2016/17 as the base year.

Table 5.4.12 indicates that the Applicant's ability to raise capital investment and capital expenditure on the subject product increased by 1 and 368 basis point respectively during the period when duties were in place. Should the duties be removed it is estimated that there will be no capital expenditure for the period 2019/2020.

The Applicant stated that it is clear that there has been an increasing capital expenditure investment trend by the SACU participating producers concerning the production of the subject product. The Applicant further stated that if the anti-dumping duties on dumped imports are removed, it is estimated that there will not be any capital expenditure for the period 2019/2020 due to the increasing dumped import volume.

5.4.13 Growth

The following table shows the growth for the subject products based on sales volume:

Table 5.4.13: Growth

kg	2016/17	2017/18	2018/19	Estimate if duties expire
Applicant's sales volumes	100	94	94	85
Other SACU producers	100	98	98	89
Alleged dumped imports (kg)	68 864 424	40 073	148 400	122 115 421
Other imports (kg)	163 621 909	250 826 009	254 370 165	254 370 165
Total size of SACU market	100	97	98	98

The figures in the table are indexed due to confidentiality using 2016/17 as the base year.

Table 5.4.13 shows that the total size of the SACU market decreased throughout the period when duties were in place.

5.5 SUMMARY - MATERIAL INJURY

After considering all the factors above, the Commission made a final determination that the expiry of the anti-dumping duties on the subject product originating in or imported from the Netherlands, Germany, and the UK would likely lead to the recurrence of material injury.

Comments from Interested parties

The interested parties commented as follows:

- a) The Applicant's information is unreliable. The Applicant did not demonstrate that Netherlands' imports would cause material injury as there were no imports from Netherlands because of:
 - (i) The MFN duties increase on imports of frozen bone cuts;
 - (ii) Production is expected to reduce as a results of Covid-19 outbreak and therefore cuts to be exported are likely to be reduced; and
 - (iii) More export of poultry meat products is likely to go to Asian countries due to multiple animal diseases (Trade diversion).
- b) The essential facts letter does not contain any information on the likelihood that material injury would recur.
- c) The data submitted in the exporter questionnaire indicate period starting with "January to December", instead of June 2018 to May 2019 of which clearly indicate that that the response is deficient.

- d) It appears that none of the comments regarding material injury and causal link have been taken into consideration by the Commission.

Commission's consideration

The Commission considered that:

- a) *The Commission accepted the forecast as presented by the Applicant.*
- b) *The essential facts letter indicates that the Commission is considering making a final determination that the expiry of the anti-dumping duties would likely lead to the recurrence of material injury to the SACU industry. Even though the Commission did not reproduce the material injury information in the essential facts letter, the detailed material injury information that the Commission is making a reference to in its essential facts letter, is contained in the application's non-confidential versions that the interested parties are in possession of.*
- c) *The data provided by the exporter is within the investigation period June 2018 to May 2019. The exporter provided the data following a monthly sequence and started with January 2019 to May 2019 and then continues from June 2018 to December 2018.*
- d) *Commission took into account all comments received in making its final determination. It should also be noted there is no causal link assessment on the sunset review investigation.*

6 SUMMARY OF FINDINGS

6.1 Continuation or recurrence of dumping

The Commission made a final determination that the dumping information for Esbro, Van den Bor, Remkes Poultry Family, Boparan Holdings, Rothkoetter Group, and all other producers/exporter, except Plukon Group, Moy-Park and 2 SFG and Amber Foods, indicates that the expiry of the anti-dumping duties would likely lead to the continuation of dumping.

6.2 Continuation or recurrence of material injury

The Commission made a final determination that the expiry of the anti-dumping duties on the subject product originating in or imported from Germany, the Netherlands, and the UK would likely lead to the recurrence of material injury to the SACU industry.

7 FINAL ANTI-DUMPING DETERMINATION

7.1 Lesser duty rule

The lesser duty rule means the anti-dumping duty is imposed at the lesser of the margin of dumping or the margin of injury, which is deemed to be sufficient to remove the injury caused by the dumping.

Regulation 17 of the ADR provides that the Commission shall consider applying the lesser duty if both the cooperating exporter and importer responded fully. In this instance, no importer sourcing the subject product from the Netherlands, Germany, and the UK responded to the investigation. The Commission made a final determination not to apply the lesser duty.

7.2 Amount of final anti-dumping duties

- The dumping information for Plukon Group and Moy Park, 2 SGF and Amber Foods does not show that there is a likelihood that dumping will continue should the anti-dumping duties be removed. The Commission therefore made a final determination that the current applicable anti-dumping duties on these exporters be allowed to lapse.
- The dumping information for Esbro, Van den Bor, Remkes Group, and Boparan Holdings indicates that there is a likelihood that dumping will continue should the anti-dumping duties be removed. The Commission therefore made a final determination that the anti-dumping duties for these exporters be maintained at the current applicable residual anti-dumping duties.
- The dumping information used to calculate residual margins indicates that there is a likelihood that dumping will continue should the anti-dumping duties be removed. The Commission therefore made a final determination that anti-dumping duties for all other export that did not cooperate in this investigation be maintained at the current applicable anti-dumping residual duties for each country.

8 RECOMMENDATION

The Commission made a final determination to recommend to the Minister of Trade, Industry and Competition that anti-dumping duties on the subject product originating in or imported from the Netherlands, Germany and the UK be maintained for a further period of five years, as indicated in table 8 below.

Table 8: Recommended anti-dumping duties

Tariff heading	Description	Producer/Exporter	Country	Rate of AD Duty
0207.14.9	- - - Other	BV Esbro	The Netherlands	22.81%
		Van den Bor Pluimveeslachterij	The Netherlands	22.81%
		Remkes Poultry Family (Remkes Poultry B.V., Gecombineerde Pluimvee Slachterijen B.V., and Pluimveeslachterij G.P. Remkes B.V.)	The Netherlands	22.81%
		Boparan Holdings Ltd (2 Sisters Storteboom; Storteboom Fresh, Storteboom Kornhon, and Storteboom Zeewolde)	The Netherlands	22.81%
		All other producers/exporters, except Plukon Group	The Netherlands	22.81%
		Rothkoetter Group (Landgeflügel FG Vertriebsgesellschaft mbH, Emsland Frischgeflügel and Celler Land Frischgeflügel)	Germany	73.33%
		All other producers/exporters	Germany	73.33%
		All other producers/exporters, except Moy Park Ltd and 2 Sister Food Group and Amber Foods	United Kingdom	30.99%