

**REPORT NO. 669**

**INVESTIGATION INTO THE ALLEGED DUMPING OF PASTA ORIGINATING IN OR  
IMPORTED FROM EGYPT, LATVIA, LITHUANIA AND TURKEY: FINAL  
DETERMINATION**

The International Trade Administration Commission of South Africa herewith presents its  
**Report No. 669: INVESTIGATION INTO THE ALLEGED DUMPING OF PASTA  
ORIGINATING IN OR IMPORTED FROM EGYPT, LATVIA, LITHUANIA AND  
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**MELULEKI NZIMANDE**  
**CHIEF COMMISSIONER**

**PRETORIA**

30/08/2021

# **INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA**

## **REPORT NO. 669**

### **INVESTIGATION INTO THE ALLEGED DUMPING OF PASTA ORIGINATING IN OR IMPORTED FROM EGYPT, LATVIA, LITHUANIA AND TURKEY: FINAL DETERMINATION**

#### **SYNOPSIS**

Bolux Group (Pty) Ltd, Namib Mills (Pty) Ltd, Pioneer Foods (Pty) Ltd and Tiger Brands Ltd (the Applicant) submitted an application to the International Trade Administration Commission (Commission) to investigate the alleged dumping of pasta originating in or imported from Egypt, Latvia, Lithuania and Turkey. The initiation notice for the investigation was published in the *Government Gazette* on 19 September 2020.

The investigation was initiated after the Commission considered that the Applicant submitted *prima facie* information to indicate that the subject product was being imported at dumped prices and causing material injury and a threat of material injury to the Southern African Customs Union ("SACU") industry.

Upon initiation of the investigation, the known producers/exporters of the subject product in Egypt, Latvia, Lithuania and Turkey were sent foreign manufacturers/exporters questionnaires to complete. Importers of the subject product were also sent questionnaires to complete.

After considering all interested parties' comments, the Commission made a preliminary determination that the subject product originating in or imported from Egypt, Latvia, Lithuania and Turkey is being dumped onto the SACU market causing material injury and a threat of material injury to the SACU industry.

As the Commission was of the view that the SACU industry would continue to experience material injury during the course of the investigation if provisional payments were not imposed, it decided to request the Commissioner for the South African Revenue Service ("SARS") to impose provisional measures on the subject product for period of 6 months.

Provisional measures were imposed on the subject product originating in or imported from Egypt, Latvia, Lithuania and Turkey through Notice No. 304 of 2021 and published in *Government Gazette* No. 44384 dated 1 April 2021.

The Commission's reasons for its preliminary determination are contained in its Preliminary Report No. 655 (Preliminary Report). The report was made available to interested parties for comment.

Based on the details as contained in the Commission's preliminary report, comments received and exporter's verified information, the Commission made a final determination before "essential facts" that it was considering making a final determination that the subject product was being dumped on the SACU market and that, as a result, the SACU industry was suffering material injury.

Essential facts letters were sent to all interested parties, informing them of "essential facts" which were being considered by the Commission and inviting interested parties to comment.

After considering all interested parties' comments on the "essential facts letter", the Commission made a final determination that the subject product originating in or imported from Egypt, Latvia, Lithuania and Turkey was being dumped onto the SACU market, causing material injury and a threat of material injury to the SACU industry.

The Commission decided to recommend to the Minister of Trade, Industry and Competition that the following definitive anti-dumping duties be imposed on pasta originating in or imported from Egypt, Latvia, Lithuania and Turkey:

Tariff heading and Tariff subheading	Description	Statistical unit	Final Duties					
			Egypt	Turkey	Latvia: Dobeles Dzirnavnieks	Other exporters from Latvia	Lithuania: Amber Pasta	Other exporters from Lithuania
19.02	Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni; couscous, whether or not prepared:							
1902.1	- Uncooked pasta, not stuffed or otherwise prepared:							
1902.11	---Containing eggs	kg	43%	367%	4%	4%	12%	12%
1902.19	---Other:	kg	43%	367%	4%	4%	12%	12%

## **1. APPLICATION AND PROCEDURE**

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### **1.1 LEGAL FRAMEWORK**

This investigation is conducted in accordance with the International Trade Administration Act, 2002 (Act 71 of 2002) (the “ITA Act”) and the International Trade Administration Commission’s Anti-Dumping Regulations (“ADR”)) read with the World Trade Organisation (“WTO”) Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade, 1994 (the “Anti-Dumping Agreement”).

### **1.2 APPLICANT**

The application was lodged on behalf of the SACU industry by Bolux Group (Pty) Ltd (“Bolux”), Namib Mills (Pty) Ltd (“Namib Mills”), Pioneer Foods (Pty) Ltd (“Pioneer Foods”) and Tiger Brands Ltd (“Tiger Brands”) (together referred to hereafter as the “Applicant”).

### **1.3 ACCEPTANCE OF APPLICATION**

The application was accepted by the Commission as being properly documented in accordance with ADR 21 on 9 September 2020.

### **1.4 ALLEGATIONS BY THE APPLICANT**

The Applicant alleged that imports of the subject product, originating in or imported from Egypt, Latvia, Lithuania and Turkey was being dumped on the SACU market, thereby causing material injury and a threat of material injury to the SACU industry. The basis of the alleged dumping was that the goods are being exported to SACU at prices less than the normal value in the country of origin.

The Applicant further alleged that as a result of the dumping of the subject product from Egypt, Latvia, Lithuania and Turkey it was suffering material injury in the form of:

- (i) Price suppression;
- (ii) Price depression;

- (iii) Price undercutting;
- (iv) Declining market share;
- (v) Declining profits;
- (vi) Declining return on investment;
- (vii) Declining utilisation of production capacity;
- (viii) Negative impact on cash flow;
- (ix) Negative impact on inventory levels; and
- (x) Slowdown in growth.

## **1.5 INVESTIGATION PROCESS**

The Applicant submitted the application on 7 July 2020. The information submitted by Bolux was verified on 27 July 2020, Namib Mills on 14 July 2020, Pioneer Foods on 15 July 2020 and Tiger Brands on 21 July 2020. The verification report was sent to Bolux on 27 July 2020, Tiger Brands on 22 July 2020, Namib Mills and Pioneer Foods was sent on 15 July 2020.

The information requested during verification visits was submitted on 29 July 2020 for Bolux, 27 July 2020 for Namib Mills, 24 July 2020 for Pioneer Foods and 31 July 2020 for Tiger Brands.

The Commission initiated an investigation into the alleged dumping of pasta originating in or imported from Egypt, Latvia, Lithuania and Turkey, pursuant to Notice No. 508 of 2020, which was published in *Government Gazette* No. 43726 on 19 September 2020.

Prior to the initiation of the investigation, the trade representatives of the countries concerned were notified of the Commission's intention to investigate, in terms of ADR 27.1. All known interested parties were informed and requested to respond to the questionnaires and the non-confidential version of the application.

## **1.6 INVESTIGATION PERIODS**

The investigation period for dumping is from 1 January 2019 to 31 December 2019. The injury investigation involves evaluation of data for the period 1 January 2017 to 31 December 2019.

### ***Comments by Arab Republic of Egypt Ministry of Trade and Industry Trade Remedies Sector (Egyptian Ministry)***

*The Egyptian Ministry stated that in light of the recommendation adopted by the Committee on Anti-Dumping Practices on 5 May 2000, the period of data collection for dumping investigations should end as close to the date of initiation as is practicable. In accordance with the ITA Act, and the ADR 1 the "information with regard to dumping normally covers the twelve months prior to the lodging of the complaint and the injury normally covers the last three financial years prior to the lodging of the complaint plus the current financial year."*

*It further stated that it is mentioned in the complaint that "The petitioners propose the period of January, 2019 – December 2019 as the period of investigation" which implies that there is a time lag of 9 months from the date of initiation.*

### ***Response by the Applicant***

*The Applicant indicated that the Egyptian Ministry incorrectly presents an alleged quotation from the Anti-Dumping application concerning the period of investigation ("POI"), which is not contained in the Applicant's application document. As per the Notice No. 508 of 2020, the period of investigation for purposes of determining material injury will be from 1 January 2017 to 31 December 2019. The period of investigation for purposes of determining the dumping margins for the respective exporting countries of origin, will be from 1 January 2019 to 31 December 2019.*

*Regarding the Egyptian Ministry's reference to the recommendation adopted by the Committee on Anti-Dumping Practices on 5 May 2000 and WTO Committee guidelines, which were published on 16 May 2000 as document "G/ADP/6" WTO*



Guidelines, the Applicant stated:

- *“The Committee considers that guidelines for determining what period or periods of data collection may be appropriate for the examination of dumping, and of injury would be useful. The Committee also recognises, however, that such guidelines do not preclude investigating authorities from taking account of the particular circumstances of a given investigation in setting the periods of data collection for both dumping and injury, to ensure that they are appropriate in each case.”*
- *The WTO Guidelines state as a general rule that “(a) the period of data collection for dumping investigations normally should be twelve months, and in any case no less than six months, ending as close to the date of initiation as is practicable.”*
- *The ADR state that the investigation period for dumping “shall normally be a period ending not more than 6 months before the initiation of the investigation.”*
- *It is thus clear that the WTO and the ADR allows the responsible Investigating Authority to exercise discretion regarding the date of initiation and the POI.*
- *The Applicant submitted the Anti-Dumping application to the Commission during May 2020 and complied with the criteria as set out in the ITA Act and the ADR. It is evident that the Commission used its discretion when it initiated the investigation in line with the WTO Guidelines and the ADR.*

### **Commission's consideration**

ADR 1 provides that:

- *"Investigation period for dumping is the period for which it is assessed whether dumping took place. This period shall normally be 12 months, and may be more, but in no case less than 6 months, and shall normally be a period ending not more than 6 months before the initiation of the investigation."*
- *"The investigation period for injury is the period for which it is assessed whether the SACU industry experienced material injury. This period shall normally cover a period of three years plus information available on the current financial year at the date that the application was submitted, but may be determined by the Commission as a different period provided that the period is sufficient to allow for fair investigation..."*

*The determination of the period of investigation for both dumping and material injury is therefore clearly an issue where the Commission has discretion. The Commission has exercised this discretion. It would have unduly placed an additional burden on the Applicant (four manufacturers) to submit updated injury information as the country was under COVID-19 Lockdown Alert Level 4.*

## **1.7 COMMENTS**

The Commission considered comments received from interested parties with regard to the application and procedure. Non-confidential versions of these comments are available on the public file.

### ***Comments by Mediterranean Exporters' Association (the "Exporters' Association") on the Applicant's confidentiality claims***

*The Exporters' Association stated that according to Article 6.5.1 of the WTO Anti-Dumping Agreement "authorities shall require interested parties providing confidential information to furnish non-confidential summaries thereof. These summaries shall be in sufficient detail to permit a reasonable understanding of*

*the substance of the information submitted in confidence. In exceptional circumstances, such parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why summarization is not possible must be provided.”*

*The Exporters’ Association further stated that, the domestic industry is required to submit a non-confidential version of an application, which includes sufficiently detailed information and data. According to the Exporters’ Association, the non-confidential version of the application does not properly meet this obligation. It further stated that from the non-confidential summary of the application, it is impossible to comprehend the share of domestic industry in the consumption. In fact, in Annexes E.4.1 and E.7.1, total sales volume of Applicant and/or even total estimated sales volume of all SACU producers are not disclosed. As such, the information on Applicants’ share in the market and trend of this share during the investigation period as well as whether domestic producers are capable of meeting the demand in the domestic market are not provided.*

*The Exporters’ Association stated that: “disclosing the total SACU production would not harm competitiveness of any producer, instead, this would only preclude interested parties from having a reasonable understanding of SACU domestic market. Likewise, in Annex E.10.1 of the Anti-Dumping application, the Applicant provided indexed figures of capacity utilisation rates of domestic industry rather than actual figures. Applicant merely indicate on page 54 of the non-confidential version of the application that SACU industry’s capacity utilization was below 50 percent of the installed capacity throughout the POI, which does not provide any clue on the trend of the capacity utilization rate during the POI.”*

**Comments by European Commission on the Commission’s essential facts letter**

*The European Commission stated that it appears that the majority of interested parties raised the question of transparency. According to the European Commission, the Commission did not adequately address these comments in the*

*Preliminary Determination and neither in the essential facts. The European Commission stated that the lack of transparency precludes interested parties from properly exercising their rights of defence, which is an important infringement in terms of WTO rules and jurisprudence.*

**Comments by Embassy of Lithuania on the Commission's essential facts letter**

*The Embassy of Lithuania stated that majority of interested parties raised the question of transparency. The Commission did not adequately address these elements in the previous documents and the recently provided essential facts document. The Embassy of Lithuania stated that it recalls that the respective provision of the Anti-Dumping Regulation of the Republic of South Africa (Part B 2. Confidentiality) provides that interested parties providing confidential information in any correspondence shall furnish non-confidential summaries thereof. These shall be sufficient detail to permit interested parties a reasonable understanding of the substance of the information submitted in confidence. The Embassy of Lithuania stated that in the absence of meaningful information, it is impossible for them to provide arguments concerning material injury or threat of injury. Therefore, the Embassy of Lithuania considers that this constitute the breach of rights of defence.*

**Comments by the Applicant on the Commission's essential facts letter**

*The Applicant stated that it is in agreement with the Commission's finding that the non-confidential version of the application that was presented to the Commission did enable interested parties a reasonable understanding of the substance of the confidential information. The Applicant further stated that it is also in agreement with the Commission's finding that indicated the application also conformed to the confidentiality compliance criteria as set out in the ITA Act and the ADR.*

### **Commission's consideration**

*The Commission noted that its practice is to allow Parties to index confidential information. Furthermore, Article 6.5.1 of the Anti-Dumping Agreement does not require the non-confidential version to be in an aggregated form.*

*The ITA Act and ADR prescribe how interested parties should prepare non-confidential versions of the information they submit to the Commission in confidence. The Applicant in its non-confidential version of the application submitted indexed figures of Annexures E.4.1 (sales volume), E.7.1 (market share), and E.10.1 (utilisation of production capacity). The Applicant stated that the release of these figures in an aggregated form would negatively affect its competitiveness. The Applicant explained that competitors could use these figures to benchmark prices.*

*The non-confidential version of the application furnished to the Commission by the Applicant was accepted as properly documented, as it was in sufficient detail to permit interested parties a reasonable understanding of the substance of the confidential information. The Commission is therefore of the view that the complaints about lack of transparency are unfounded, as the Applicant conformed to the relevant confidentiality provisions of the ITA Act and the ADR.*

## **1.8 PARTIES CONCERNED**

### **1.8.1 SACU industry**

The SACU industry consists of four manufacturers of the subject product, Bolux, Namib Mills, Pioneer Foods and Tiger Brands.

## **1.8.2 Responses by Foreign Manufacturers/Exporters/Importers**

### **Interested Parties Responses**

On 27 October 2020, Keriotic Investment Ltd (“Keriotic Investment”) submitted its questionnaire response and a deficiency letter was sent on 5 November 2020. A response was received on 11 November 2020 to the deficiency letter. Verification of Keriotic Investment information was done on 18 January 2020. The investigators decided not to continue with the verification. This was because at the beginning of the verification, the importer indicated that they only noticed while preparing documents for verification that the shipment transactions together with the supporting documents are for a different product classifiable under tariff subheading 1902.30. The importer did not import the product under investigation classifiable under tariff subheading 1902.19 during the period of investigation.

The Commission made a final determination not to take the information submitted by Keriotic Investment into account for purposes of its final determination.

On 6 November 2020, Shoprite Checkers submitted its response to the Commission’s importers questionnaire. A deficiency letter was sent on 27 November 2020. On 7 December 2020, Shoprite Checkers responded to the Commission’s deficiency letter. The response from Shoprite Checkers was found to be deficient. The following deficiencies were identified:

- The details and copies of documentation relevant to each shipment of the subject product were not provided;
- There was no indication of the period of the cost and price build up and the unit of measurement used;
- The information on detailed statement of sales of the subject product was not provided in the format requested in the questionnaire; and
- A signed sworn statement stating the reasons why the information claimed as confidential cannot be summarized and why such information is claimed as confidential was not provided.

On 20 April 2021, Shoprite Checkers submitted its response to the Commission's importers questionnaire. The update response from Shoprite Checkers was found to be deficient. The following deficiencies were identified:

- The details relevant to each shipment of the subject product were not provided; and
- There was no indication of the period of the cost and price build up.

The Commission made a final determination not to consider Shoprite Checkers' information for purposes of its final determination.

On 10 November 2020, International Food Group submitted its information and a deficiency letter was sent on 27 November 2020. A response was received on 04 December 2020 to the Commission's deficiency letter. Verification of International Food Group information was done on 18 January 2021. The cost build-up information could not be verified, as there was no information provided for the total landed cost. The importer refused to provide the investigators with management accounts, indicating that they do not see the reason why the investigators are requesting the management accounts and that there is confidential information which is not related to the investigation.

Furthermore, the importer acknowledged that it mistakenly omitted to submit information on the following cost elements: transport to warehouse, documentation fees, agency fees and total landed cost. The importer requested that they be granted an opportunity to submit this information. The investigation team did not accede as new information cannot be accepted during the process of verification and the importer was granted sufficient time to submit the correct information. Consequently, the investigating team decided to end the verification. The investigators highlighted that the importer's information lacks landed cost, which is critical in the calculation of the cooperating exporter-dumping margin. The importer was also informed that the decision to end the verification will be presented to the Commission for its consideration and may decide not to take the

response by the importer into consideration for the purposes of Commission's preliminary determination, as its response may be regarded as deficient.

The Commission made a preliminary determination not to consider International Food Group's information for purposes of its preliminary determination.

On 27 April 2021, International Food Group resubmitted its response to the Commission's importer's questionnaire, which was accepted as properly documented. Verification of International Food Group's information was done on 5 May 2021.

On 10 November 2020, Amber Pasta submitted its response to the Commission's exporter's questionnaire. A deficiency letter was sent on 26 November 2020. A response was received on 3 December 2020, which was accepted as properly documented. Verification of Amber Pasta's information was done on 15 – 16 January 2021.

On 10 November 2020, Dobeles Dzirnāvnieks submitted its response to the Commission's exporter's questionnaire. A deficiency letter was sent on 26 November 2020. A response was received on 3 December 2020, which was accepted as properly documented. Verification of Dobeles Dzirnāvnieks' information was done on 19 - 21 January 2021.

On 11 November 2020, the Commission received a request for an extension from the Republic of Turkey Ministry of Trade on behalf of Turkey exporters. The deadline for comments by directly notified exporters was 27 October 2020 and for parties not directly notified 40 days from date of initiation (18 September 2020) was 28 October 2020. The Commission rejected this request. In its rejection letter, the Commission stated that the deadline for the interested parties to submit their responses for this investigation was 27 October 2020, which is 37 days after the date of initiation. In terms of the ADR, the Commission cannot grant an extension after the deadline. The Republic of Turkey Ministry of Trade was granted an



extension of 14 days to submit its comments, as its request for extension was submitted to the Commission before the deadline, and good cause was shown.

The Commission also considered footnote 15 of the WTO Anti-Dumping Agreement states that *“as a general rule, the time-limit for exporters shall be counted from the date of receipt of the questionnaire, which for this purpose shall be deemed to have been received one week from the date on which it was sent to the respondent or transmitted to the appropriate diplomatic representative of the exporting Member or, in the case of a separate customs territory Member of the WTO, an official representative of the exporting territory.”*

The Commission has adhered to the notification requirement, as the Government of Republic of Turkey was notified about this investigation on 21 September 2020 and requested to transmit the initiation documents to all manufacturers/exporters and/or associations known to it in Turkey. The fact that there were delays by the Government of Republic of Turkey in notifying the exporters is not a sufficient reason for the Commission to grant an extension.

## **1.9 PRELIMINARY DETERMINATION**

After considering all properly documented responses and comments by interested parties, the Commission made a preliminary determination that pasta originating in or imported from Egypt, Latvia, Lithuania and Turkey was dumped onto the SACU market, causing material injury and a threat of material injury to the SACU industry.

As the Commission decided that the SACU industry would continue to experience material during the course of the investigation if provisional payments were not imposed, it decided to request the Commissioner for SARS to impose provisional measures on the subject product for a period of 6 months.

Provisional measures were imposed on the subject product originating in or imported from Egypt, Latvia, Lithuania and Turkey through Notice No. 304 of 2021 and published in *Government Gazette* No. 44384 dated 1 April 2021.

The Commission's reasons for its preliminary determination were contained in its Preliminary Report. The report was made available to interested parties for comment. Comments received from the Applicant, importers, exporters and other interested parties, were taken into account by the Commission in making its final determination.

Essential facts letters were sent to all interested parties, informing them of "essential facts" which were being considered by the Commission, and inviting interested parties to comment. Comments on the essential facts letter were received from the Applicant, Amber Pasta, European Commission, Embassy of Lithuania, Turkey Ministry of Trade Directorate General for Exports and Exporters' Association.

All responses and comments received from interested parties are contained in the Commission public file for this investigation and were made available for perusal. It should be noted that this report does not purport to present all comments received and considered by the Commission. However, some of the salient comments received from interested parties and the Commission's consideration of these comments are included in this report.

#### **1.10 FINAL DETERMINATION AND RECOMMENDATION**

After considering all comments received on the Commission's "essential facts letter", the Commission made a final determination that the subject product originating in or imported from Egypt, Latvia, Lithuania and Turkey was being dumped onto the SACU market causing material injury and a threat of material injury to the SACU industry.

The Commission therefore decided to recommend to the Minister of Trade, Industry and Competition that definitive anti-dumping duties on pasta originating in or imported from Egypt, Latvia, Lithuania and Turkey be imposed as follows:

Tariff heading and Tariff subheading	Description	Statistical unit	Final Duties					
			Egypt	Turkey	Latvia: Dobeles Dzirnavnieks	Other exporters from Latvia	Lithuania: Amber Pasta	Other exporters from Lithuania
19.02	Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni; couscous, whether or not prepared:							
1902.1	- Uncooked pasta, not stuffed or otherwise prepared:							
1902.11	---Containing eggs	kg	43%	367%	4%	4%	12%	12%
1902.19	---Other:	kg	43%	367%	4%	4%	12%	12%

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

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### **2.1 IMPORTED PRODUCTS**

#### **2.1.1 Description**

The subject product of this application is pasta.

#### **2.1.2 Country of origin/export**

The subject product originates in and is exported from Egypt, Latvia, Lithuania and Turkey.

#### **2.1.3 Possible tariff loopholes**

The Applicant indicated that there is none that the SACU industry is aware of at present. However, there is a possibility that pasta products are incorrectly cleared as pasta containing eggs (classifiable under HS 1902.11), in order to avoid the payment of the applicable *ad valorem* duty. The subject product classifiable under tariff subheading 1902.19 is fully substitutable with the above-mentioned product classifiable under tariff subheading 1902.11.

Therefore, the Applicant requested that if anti-dumping duties are imposed on pasta classifiable under tariff subheading 1902.19, the same anti-dumping duties should also be imposed on pasta containing eggs (classifiable under tariff subheading HS 1902.11) as these products are like products.

### **Commission's consideration**

*The Commission noted that SARS was consulted about the Applicant request and it indicated that it does not foresee any administrative issues as a result of the proposed final measures.*

*The Commission therefore made a final determination that the same duty will be imposed on uncooked pasta, not stuffed or otherwise prepared, containing eggs classifiable under tariff subheading 1902.11, as these two products are like products and therefore the anti-dumping duties can be circumvented.*

#### **2.1.4 Tariff classification**

The subject product is currently classifiable as follows:

**Table 2.1.4: Tariff classification**

Tariff headings and subheadings	Description	Statistical unit	Rate of duty					
			GENERAL	EU	EFTA	SADC	MERCUSOR	AfCFTA
19.02	Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni; couscous, whether or not prepared:							
1902.1	- Uncooked pasta, not stuffed or otherwise prepared:							
1902.19	-- Other	kg	40%	free	free	free	40%	40%

#### **2.1.5 Negligibility test**

The following table shows the alleged dumped imports as a percentage of the total imports.

**Table 2.1.5: Import Volumes**

<b>Dumped Import Volumes (KG)</b>	<b>Volumes</b>	<b>%</b>	<b>Volumes</b>	<b>%</b>	<b>Volumes</b>	<b>%</b>
<b>Country</b>	<b>2017</b>	<b>2017</b>	<b>2018</b>	<b>2018</b>	<b>2019</b>	<b>2019</b>
Cumulative dumped Import Volumes	15 024 390	48.57	19 923 827	57.11	21 070 969	57.47
Other imports	15 908 436	51.43	14 962 937	42.89	15 594 017	42.53
<b>Total</b>	<b>30 932 826</b>	<b>100%</b>	<b>34 886 764</b>	<b>100%</b>	<b>36 664 987</b>	<b>100%</b>

The Commission made a final determination that imports from Egypt, Latvia, Lithuania and Turkey are above the negligibility level of 3 percent.

## 2.2 SACU PRODUCT

The SACU product is described as pasta.

## 2.3 LIKE PRODUCT ANALYSIS

In determining the likeness of products, the Commission uses the following criteria:

**Table 2.3 like product determination**

	<b>Imported product</b>	<b>SACU product</b>
Raw materials	Semolina flour, water, salt and electricity and gas. Herbs, spices and juices are optional.	Semolina flour, water, salt and electricity and gas. Herbs, spices and juices are optional.
Production process	<p><u>Flouring milling and transfer:</u> The wheat flour is milled, either by the pasta manufacturer or third party. The milled semolina flour is then transferred to and stored at the manufacturing facility.</p> <p><u>Mixing and kneading:</u> The semolina flour is stored in silos, from which pipes move the flour to mixing machines, equipped with rotating blades. Warm water is also piped into the mixing machine. The mixture is</p>	<p><u>Flouring milling and transfer:</u> The wheat flour is milled, either by the pasta manufacturer or third party. The milled semolina flour is then transferred to and stored at the manufacturing facility.</p> <p><u>Mixing and kneading:</u> The semolina flour is stored in silos, from which pipes move the flour to mixing machines, equipped with rotating blades. Warm</p>

	<p>kneaded to a lumpy consistency.</p> <p><u>Flavouring and colouring:</u> Eggs are added to the mixture, if the product is an egg noodle or pasta. If pasta is to be flavoured then herbs, spices and juices are added here.</p> <p><u>Rolling:</u> The mixture moves to a laminator where it is pressed into sheets by large cylinders. A vacuum mixer-machine further flattens the dough while pressing air bubbles and excess water from the dough to reach the optimum water content.</p> <p><u>Pasteurization:</u> The roll of dough moves through a steamer, which heats the dough in order to kill any existing bacteria.</p> <p><u>Cutting:</u> Depending on the type of pasta that is produced, the dough is either cut or pushed through dies. Ribbon and string-style pasta - such as fettucine, linguine, spaghetti, and capellini (angel hair) - are cut by rotating blades. To make tube or shell-shaped pasta such as rigatoni, ziti, elbow pasta-macaroni, and fusilli, the dough is fed into an extruder which then pushes it through metal dies. The size and shape of the holes in the die determine the type of pasta. The cutting machine then cuts the pasta into lengths, after which shaping occurs, if applicable. Spaghetti pasta is left straight.</p> <p><u>Drying:</u> The pasta is placed in a drying tank in which heat, moisture, and drying time are strictly regulated. The drying period differs for the various types of pasta, which could range from three to twelve hours. The drying time is critical because if the pasta is dried too quickly it will break and if it is dried too slowly, the chance for spoilage increases. The oxygen level in the tank is also regulated, and lab technicians</p>	<p>water is also piped into the mixing machine. The mixture is kneaded to a lumpy consistency.</p> <p><u>Flavouring and colouring:</u> Eggs are added to the mixture, if the product is an egg noodle or pasta. If pasta is to be flavoured then herbs, spices and juices are added here.</p> <p><u>Rolling:</u> The mixture moves to a laminator where it is pressed into sheets by large cylinders. A vacuum mixer-machine further flattens the dough while pressing air bubbles and excess water from the dough to reach the optimum water content.</p> <p><u>Pasteurization:</u> The roll of dough moves through a steamer, which heats the dough in order to kill any existing bacteria.</p> <p><u>Cutting:</u> Depending on the type of pasta that is produced, the dough is either cut or pushed through dies. Ribbon and string-style pasta - such as fettucine, linguine, spaghetti, and capellini (angel hair) - are cut by rotating blades. To make tube or shell-shaped pasta such as rigatoni, ziti, elbow pasta macaroni, and fusilli, the dough is fed into an extruder which then pushes it through metal dies. The size and shape of the holes in the die determine the type of pasta. The cutting machine then cuts the pasta into lengths, after which shaping occurs, if applicable. Spaghetti pasta is left straight.</p> <p><u>Drying:</u> The pasta is placed in a drying tank in</p>
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	<p>test frequently for salmonella and other bacteria. Careful handling of the pasta during the drying period is also crucial. Spaghetti is the most fragile of the noodles and is therefore hung high above the floor.</p> <p><u>Packaging:</u> Fresh pasta is folded in pre-measured amounts into clear plastic containers. As the containers move along a conveyer belt, a plastic sheet covers each container and is sealed with a hot press. At the same time, a small tube sucks the air of the container and replaces it with a mixture of carbon dioxide and nitrogen to prolong the product's shelf-life. Labels listing the type of pasta, nutritional information, cooking instructions, and expiration date are attached to the containers. Workers at the floor-level stations monitor the packaging process. The mechanism allows for workers to package the pasta manually if necessary.</p>	<p>which heat, moisture, and drying time are strictly regulated. The drying period differs for the various types of pasta, which could range from three to twelve hours. The drying time is critical because if the pasta is dried too quickly it will break and if it is dried too slowly, the chance for spoilage increases. The oxygen level in the tank is also regulated, and lab technicians test frequently for salmonella and other bacteria. Careful handling of the pasta during the drying period is also crucial. Spaghetti is the most fragile of the noodles and is therefore hung high above the floor.</p> <p><u>Packaging:</u> Fresh pasta is folded in pre-measured amounts into clear plastic containers. As the containers move along a conveyer belt, a plastic sheet covers each container and is sealed with a hot press. At the same time, a small tube sucks the air of the container and replaces it with a mixture of carbon dioxide and nitrogen to prolong the product's shelf-life. Labels listing the type of pasta, nutritional information, cooking instructions, and expiration date are attached to the containers. Workers at the floor-level stations monitor the packaging process. The mechanism allows for workers to package the pasta manually if necessary.</p>
Physical appearance	Pasta is produced by a mixing, rolling, cutting and a variety of shaping process, depending on the type of pasta that is	Pasta is produced by a mixing, rolling, cutting and a variety of shaping process, depending on the



	<p>manufactured. The mixture of the ingredients and flavouring will also depend on the recipes used.</p> <p>The most basic form of Pasta, will have a composition of the following:</p> <p>Flour and water.</p>	<p>type of pasta that is manufactured. The mixture of the ingredients and flavouring will also depend on the recipes used.</p> <p>The most basic form of Pasta will have a composition of the following:</p> <p>Flour and water.</p>
Tariff classification	1902.19	1902.19
Application or end use	For human consumption	For human consumption
Substitutability	The SACU product is fully substitutable with the imported product.	<p>The SACU product is fully substitutable with the imported product.</p> <p>The SACU Pasta is fully substitutable with the subject product imported from Egypt, Latvia, Lithuania and Turkey.</p>

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

*The Commission considered that the product under investigation is "pasta" classifiable under tariff subheading 1902.19. In terms of the South African tariff schedule soft and durum wheat pasta are classifiable under tariff subheading 1902.19. Furthermore, these products can be regarded as like products due to the following:*

- the manufacturing process is similar. The only difference is with the raw material;*
- they are substitutable; and*
- the end use is the same.*

*To differentiate between the soft and durum wheat pasta, the Commission has calculated the dumping margin on a weighted average basis as provided for in ADR 12.2.*

After considering all the above factors, the Commission made a final determination that the SACU product and the imported products are "like products", for purposes of comparison in this investigation, in terms of the relevant provisions of the ADR.

### 3. SACU INDUSTRY

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#### 3.1 INDUSTRY STANDING

The application was submitted by Bolux, Namib Mills, Pioneer Foods and Tiger Brands, the manufacturers of the subject product in the SACU market.

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

*The interested parties requested clarification on whether the Applicant provided production information of pasta containing eggs classifiable under tariff subheading 1902.11, produced by other SACU producers while calculating its share of the total production of the like product. In addition, the interested parties indicated that the Commission should clarify whether the 25 percent representation test was properly done – i.e. whether the test took into consideration the production volume of pasta with eggs. The interested parties also indicated that since Tiger Brands imported the subject product during the period of investigation (POI), it should be excluded from the industry standing determination.*

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

*The Commission noted that Article 4.1(i) of the ADA states that “domestic industry” shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that: (i) when producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the term “domestic industry” may be interpreted as referring to the rest of the producers.”*

*This article is permissive and does not compel an investigating authority to exclude an importing producer. However, even if the Commission were to exclude Tiger Brands from the industry standing determination, the other three*

*manufacturers have sufficient production volumes to satisfy the industry standing requirement, as they represent a major proportion of the SACU industry production.*

*The information provided by the Applicant on the industry standing is the information for the product under investigation classifiable under tariff subheading 1902.19.*

The Commission made a final determination that the application can be regarded as being made “by or on behalf of the domestic industry”.

## **4. DUMPING**

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### **4.1 METHODOLOGY IN THIS INVESTIGATION FOR EGYPT**

#### **4.1.1 Normal Value**

As no properly documented (or any) responses were received from manufacturers in Egypt, the Commission decided to use the best information available, for calculating normal value, being the domestic price obtained by an independent and reputable market research company appointed by the Applicant.

#### **4.1.2 Export price**

As no properly documented (or any) responses were received from manufacturers in Egypt, the Commission decided to use the best information available, for calculating the export price, being the official SARS statistics to SACU submitted by the Applicant.

#### **Adjustment**

The Applicant stated that the export price used is the Free on Board ("FOB") price obtained from SARS' import statistics. The Applicant indicated that there is an inland transportation cost of 2 percent to adjust the FOB export price to the ex-factory export price. The Applicant further stated that the 2 percent cost was determined based on the industry practice. It is the Commission's practice to consider 2 percent transport adjustment to export price to bring the price back to the ex-factory level.

The Commission made a final determination to allow the inland transportation adjustment.

### **4.1.3 Dumping Margin**

The margin of dumping calculated for Egypt is 43 percent.

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

*The Commission considered that the dumping information submitted by the Applicant was accepted by the Commission for initiation purposes as it conforms with the Article 5.2 (iii) of the WTO Anti-Dumping Agreement and section 32(2)(b)(i) of the ITA Act and Regulation 8 of the ADR.*

*The normal value for Egypt was determined based on Research Report by an independent and reputable market research company appointed by the Applicant to obtain the domestic prices in Egypt on behalf of the SACU Industry. The export price was determined based on import statistics from the SARS.*

*The Commission noted that the Egyptian manufacturers were invited to submit their domestic prices and export prices and there were no properly documented (or any) responses received from them. Therefore, the Commission decided to use the best information available, being that provided by the Applicant for purposes of its final determination.*

## **4.2 METHODOLOGY IN THIS INVESTIGATION FOR TURKEY**

### **4.2.1 Normal Value**

As no properly documented (or any) responses were received from manufacturers in Turkey, the Commission decided to use the best information available for calculating normal value, being the domestic price obtained by an independent and reputable market research company appointed by the Applicant.

#### **4.2.2 Export price**

As no properly documented (or any) responses were received from manufacturers in Turkey, the Commission decided to use the best information available for calculating the export price, being the official SARS statistics to SACU submitted by the Applicant.

#### **Adjustment**

The Applicant stated that the export price used is the FOB price obtained from SARS' import statistics. The Applicant indicated that there is an inland transportation cost of 2 percent to adjust the FOB export price to the ex-factory export price. The Applicant further stated that the 2 percent cost was determined based on the industry practice. It is the Commission's practice to consider 2 percent transport adjustment to export price to bring the price back to the ex-factory level.

The Commission made a final determination to allow the inland transportation adjustment.

#### **4.2.3 Dumping Margin**

The margin of dumping calculated for Turkey is 367 percent.

#### ***Comments by Exporters' Association on the Commission's essential facts letter***

*The Exporters' Association stated that it is a deep regret to see that the Commission has not changed its decision to apply adverse facts available based on a biased and overstated dumping margin presented by the Applicant. The Exporters' Association stated as noted in their previous comments, imposing a duty at the rate of 367 percent is punitive whose sole purpose would be to close off SACU market to Turkish pasta exporters. Such a decision is neither fair nor consistent with SACU's commitments under WTO. The Exporters' Association stated that they once again would like to remind Article 7 of Annex II of the Anti-Dumping Agreement stating that: "If the authorities*

*have to base their findings, including those with respect to normal value, on information from a secondary source, including the information supplied in the application for the initiation of the investigation, they should do so with special circumspection. In such cases, the authorities should, where practicable, check the information from other independent sources at their disposal, such as published price lists, official import statistics and customs returns, and from the information obtained from other interested parties during the investigation.”*

*The Exporters’ Association stated that the Commission should have applied facts available with special circumspection considering that in its comments it was brought to the Commission’s attention that the FOB export price used by the Applicant does not reconcile with Turkish official statistics. In its comments to the Commission’s preliminary finding report, the Exporters’ Association submitted Turkey’s FOB export prices obtained from Turkish Statistics Institution which is the government entity responsible of publishing official statistics of Turkey. In other words, the Exporters’ Association supported its claim that the average export price of pasta in 2019 was more than 6.6 ZAR/kg in contrast to the alleged 1.94 ZAR/kg.*

*The Exporters’ Association further stated that as “instructed” by Article 7 of Annex II of the Anti-Dumping Agreement, the Commission should have checked the information obtained from other interested parties during the investigation i.e. information obtained from Exporters’ Association showing Turkey’s official FOB export prices. The Commission, instead, has kept relying on the subjective information submitted by the Applicant. The Exporters’ Association indicated that they urge the Commission to revisit its determination and instead to determine a less punitive and more fair dumping margin for Turkey. The Exporters’ Association stated that Turkish pasta exporters are already subject to high customs tariffs i.e. 40 percent, which limits their access to SACU market. Thus, according to them any additional “trade barrier” would only serve extinguishing Turkey’s presence from the SACU market, which is inconsistent with WTO’s principle to maintain a free and open trading system.*

**Commission’s consideration**

*The Commission considered that Regulation 32 of the ADR states that “In the event that no exporter or producer from a particular country cooperates in an Anti-Dumping investigation by the deadline contemplated in Regulation 29 or 30, the Commission may, subject to the provisions of Regulation 33.1, immediately request the imposition of provisional payments on the basis of the facts available.” As no properly documented (or any) responses were received from manufacturers in Turkey, the Commission therefore decided to use the best information available, being that provided by the Applicant for purposes of its final determination.*

*Furthermore, the Commission considered that in any dumping investigation, the Commission normally uses audited import statistics from SARS to determine the volume of the subject product entering the SACU from the country under investigation when there are no responses from the manufacturers or exporters from the exporting country. In this particular case, there are no facts submitted by the Exporters’ Association to refute the accuracy of SARS import statistics except for the assertion that the FOB export price used by the Commission does not reconcile with Turkish official statistics.*

*The Commission therefore decided to use SARS import statistics as best information available as there were no responses received from the manufacturers in Turkey. This decision will not be in breach with the Commission’s WTO obligations.*



### **4.3 METHODOLOGY IN THIS INVESTIGATION FOR AMBER PASTA IN LITHUANIA**

The Commission accepted information submitted by Amber Pasta in its response to the Commission's questionnaire for purposes of its final determination. Amber Pasta produces soft wheat and durum pasta and sells it on the domestic market in Lithuania. The actual invoice sales were used to calculate the normal value. It was found that there were sales of the soft wheat pasta that were made at a loss in the domestic market. In calculating the normal value, sales that were found to be made at a loss were excluded from the calculation of the weighted average normal value. This consideration was made in the instance where sales below cost were above 20 percent of all sales made in the relevant period of assessment.

All domestic sales made at a loss for soft pasta were disregarded when determining the normal value.

#### **4.3.1 Calculation of normal value of the durum wheat pasta**

In order for Amber Pasta domestic sales to be used for normal value calculation, a 5 percent threshold test was performed to determine whether the domestic sales constitute 5 percent or more of the volume of exports of the subject product sold to SACU.

It was found that durum pasta was sold to the SACU market but constituted less than 5 percent of export sales to SACU. Since the durum pasta did not pass the 5 percent threshold test, the normal value was calculated based on the verified export sales to other countries.

All domestic sales made at loss for durum pasta were disregarded when determining the normal value.

**Comments by the Applicant on the Commission's essential facts letter**

*The Applicant stated that it would again like to urge the Commission for the purpose of its final determination, to construct a normal value for durum pasta, based on the costing information supplied by Amber Pasta, instead of resorting to third country export data. The Applicant further stated that this plea is founded on the likelihood that exports to a third country could also occur at dumped prices, which probability would be eliminated with the application of the constructed pricing methodology, as proposed.*

**Commission consideration**

*The Commission noted that normal value is defined in section 32(2)(b) of the ITA Act as: "(i) the comparable price paid or payable in the ordinary course of trade for like goods intended for consumption in the exporting country or country of origin; or (ii) in the absence of information on a price contemplated in subparagraph (i), either –*

- a) the constructed cost of production of the goods in the country of origin when destined for domestic consumption, plus a reasonable addition for selling, general and administrative costs and for profit; or*
- b) the highest comparable price of the like product when exported to an appropriate third country or surrogate country, as long as that price is representative;"*

*The Commission is of the view that the ITA Act does not give a preference to any methodology. Instead, it gives a discretion to the Commission either to construct the normal value or to use export sales to an appropriate third or surrogate country. Therefore, the Commission decided to use the export sales of durum pasta to other countries, which are comparable to SACU market for its final determination.*

### **Adjustments to the normal value**

The following adjustments were claimed to arrive at the ex-factory normal value:

#### **(a) Adjustment for cost of payment terms**

Amber Pasta indicated that the interest rate applied was based on the annual overdraft from the bank. The calculation of the cost of payment terms was determined with reference to the investigating period and bank interest rate from 1 January 2019 to 31 December 2019. The payment days used by Amber Pasta to calculate the cost of payment terms were displayed on customer's contracts and invoices.

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

*It is the Commission's practice to consider adjustments to the normal value only if the adjustments affected price comparability at the time of setting prices. The payment days used by Amber Pasta to calculate the cost of payment terms were displayed on the invoices and customer's contracts. The adjustment was considered in the calculation of normal value as it was requested and substantiated in the exporter's response to the Commission's questionnaire and affected price comparability at the time of setting the prices.*

The Commission made a final determination to allow the cost of payment terms adjustment as it was demonstrated to have affected the price comparability at the time of the setting of prices.

#### **(b) Adjustment for discounts and rebates**

Amber Pasta indicated that the discounts are charged via credit invoices that are issued by Amber Pasta according to the agreements with respective customers. The value of the discount depends on the sales value to the respective customers during the month. The sales value, in turn, is the total of all sales invoices issued to the customer during the month.

***Comments by Amber Pasta on the Commission's essential facts letter***

*Amber Pasta stated that they strongly disagree with the Commission on discounts as expressed in the preliminary report and merely repeated in the essential facts letter. Their arguments that they have outlined in their responses to the report remain valid and have not been anyhow argued by the Commission. In the report under Commission's consideration, the Commission acknowledges that it shall consider adjustment to the normal value which affects price comparability at the time of setting the price. Amber Pasta stated that they once again draw the attention of the Commission to the fact that upfront agreed discount are affecting setting of the sales prices:*

*"Discount is set forth upfront in the general agreement with Amber Pasta customer that has been signed in years 2007-2019. This fact was presented to the Commission as annexures to the commission's questionnaire. Only upon general agreement being signed further actual details can be agreed (incl. price for SKUs) Amber Pasta was fully aware of discount existence before setting prices for individual products SKUs.*

*Discount is set forth at a single rate and does not depend on volumes or any other circumstances. They have demonstrated during verification, that the rate is single and individual for each customer irrespective of potential different sales volumes with that customer during the month. It means such discount was valid as stated in the contracts.*

*The ultimate goal of price calculation is profit. The profit consists of sales income, less discount, less production cost and less sales, general/ administrative costs. Assuming that discounts are expressed as a percentage of the sales price, it is not necessary to know actual sales volume in order to estimate the sales price."*

**Comments by Embassy of Lithuania on the Commission's essential facts letter**

*The Embassy of Lithuania indicated that Article 2.4 of the Anti-Dumping Agreement provides that "2.4 A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory price, and in respect of sales made at as nearly as possible at the same time. Due allowance shall be made in each case, on its merit, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, level of trade, quantities, physical characteristics and any other differences which are also demonstrated to affect price comparability."*

*The Embassy indicated that an important adjustment to take into account relates to the differences in conditions and terms of sale. The Embassy indicated that it would therefore like to underline that the existence of an appropriate discount rate which is applied on pasta sales was known for Amber Pasta, before the price of such sales has been established. Besides, they would like to draw the attention of the Commission that along with questionnaire the company has submitted has all agreements being the legal base for such discount.*

*The Embassy of Lithuania further indicated that this practice (discount agreed on specific product groups e.g. pasta before any particular sales price for the product is established) is a usual practice in Lithuania with the big supermarkets chains or wholesalers. As it allows to establish a specific purchase price for the particular supermarket which may be different from the competitor and unknown for the competitor (as the discount rate is specific and applied in agreement with that specific supermarket chain or wholesaler).*

*The Embassy indicated that their opinion is that Commission received complete and accurate argumentation to arrive at the conclusion that*

*discounts rates, which are agreed with the customer at the time of signing the general agreement and that does not depend on any other parameters e.g. sales volumes etc. are in fact affecting the estimation of the final sales price per unit at the time such price is being set.*

***Commission's consideration***

*It is the Commission's practice to consider adjustments to the normal value only if the adjustments affected price comparability at the time of setting prices. The calculation of the discount is only made once the total sales for the preceding period have been made and therefore, the exporter could not have considered this at the time of setting its prices.*

The Commission made a final determination not to allow the adjustment for the discount, as it did not affect price comparability at the time of setting prices.

**(c) Adjustment for delivery charges**

Amber Pasta indicated that there is a local delivery charge from the plant to the customers in Lithuania.

***Commission's consideration***

*It is the Commission's practice to consider adjustments to the normal value to bring the price back to the ex-factory level. The delivery charges adjustment was verified.*

The Commission made a final determination to allow the delivery charges adjustment as it affected price comparability at the time of setting the price.

**(d) Adjustment for packaging cost**

Amber Pasta indicated that the packaging for the domestic market and export market is different. In Lithuania they sell pasta in 400g and 5kg pillow bags. In SACU market, they sell pasta in 500g, 1kg, and 3 kg pillow bags. They further indicated that for the pasta produced for the Lithuania market there is a second

packaging, which is a plastic bag. For the export market, the second packaging is a carton box, because it is better for loading in containers.

***Comments by the Applicant on the Commission's essential facts letter***

*The Applicant stated that with regard to the Commission's consideration to allow normal value adjustments for delivery charges and packaging, the Applicant still wishes to stress, in reliance on the information that was made available to the Applicant, that the Commission should not consider the two adjustments. The Applicant indicated that the indications are that Amber Pasta had failed to explain and substantiate these adjustments in its original response, which it was obligated to do, as per the stipulations of the ADR. The Applicant stated that in their view such oversight by Amber Pasta is not a shortfall that it should be able to remedy after the fact.*

***Commission's consideration***

*The Commission noted that these adjustments were subsequently explained and substantiated by Amber Pasta in their response questionnaire, which is provided for in the ADR.*

*Furthermore, the packaging for the domestic and export market is different. This adjustment was verified and found to be correct. The delivery charges adjustment was also verified and found to be correct.*

The Commission made a final determination to allow the packaging cost adjustment as it affected price comparability at the time of setting the price.

**(e) Adjustment for proportion of durum flour in durum product sales**

Amber Pasta indicated that the recipes used for the domestic and export sales to SACU are different. They used a certain proportion of durum flour to produce pasta for their domestic market which is different to the proportion of durum flour used for export product to SACU. They further indicated that the price for pasta prepared from a certain proportion of durum recipe is more expensive

than the price of pasta prepared from a certain proportion of soft wheat flour and a certain proportion of durum recipe.

***Comments by Amber Pasta on the Commission's essential facts letter***

*Amber Pasta stated that they found inconsistency in the durum flour treatment as outline in ITAC's Preliminary Report. They drew the attention of the Commission to section 2.3 (like product analysis) of the Report where the Commission acknowledged that "the manufacturing process of the soft wheat and durum pasta is similar. The only difference is with the raw material. Once these raw materials are acknowledged as being different, the approach of the Commission towards adjustment, as motivated in the report is that "it is the Commission practice to allow adjustments if there's a difference in the raw material used in the production of the subject product to account for the differences in two products which could affect comparability".*

*Amber Pasta further stated that they do acknowledge that the price for durum flour is different from price on soft wheat flour, but this is because the raw material is different as acknowledged by the Commission in the report. They indicated that they also acknowledge that Amber Pasta imports durum flour, but this is because it is not planted in Lithuania. Once durum pasta is produced, it is produced from the imported durum flour irrespective from country it is later sold to.*

***Comments by Embassy of Lithuania on the Commission's essential facts letter***

*The Embassy of Lithuania stated that it does not agree with the Commission's conclusion not to allow adjustment for the proportion of durum flour in the durum sales. The Embassy further stated that durum flour and soft wheat flour are different raw materials because of physical characteristics. Therefore, they kindly requested the Commission to reconsider adjustment related to the durum pasta proportion. The Embassy of Lithuania stated that the Commission acknowledged that durum flour and soft wheat flour are different raw materials.*



*The Embassy of Lithuania stated that the Commission shall not disregard adjustment related to this differences in respect of the normal value estimates. The Embassy further stated that it is the practice of the Commission to allow adjustments if there is difference in the raw material used in the production of the subject product to account for differences in the two products, which affected comparability.*

### **Commission's consideration**

*It is the Commission's practice to allow adjustments if there's a difference in the raw material used in the production of the subject product to account for differences in the two products, which could affect comparability, but not with regard to the price paid for such raw material. The fact that it costs more for durum recipe does not make it an allowable adjustment as the durum flour used for manufacturing the domestically sold product is the same as the durum flour used for manufacturing the product sold to SACU.*

*In the Penicillin (India) investigation, the Commission's predecessor, the Board on Tariffs and Trade (the "Board") was faced with the situation that the exporter used domestically sourced raw material to manufacture for and supply the domestic market, while it used imported raw material to manufacture for and supply the South African and other export markets. The imported raw material was significantly cheaper than domestically sourced raw material owing to high tariff barriers in India. The Board refused to make an adjustment to the normal value to account for the difference in raw material prices, arguing that there was no difference between the raw materials used for domestic and export production. The Board's finding was challenged in the High Court (then called Supreme Court) in *Ranbaxy v Chairman of the Board on Tariffs and Trade*, and the Court confirmed that the Board was correct in its assessment (*Ranbaxy v Chairman of the Board* (Case 659/98 T) in respect of Penicillin (India) (Board Report 3799)).*

The Commission made a final determination not to allow the proportion of durum flour in durum product sales adjustment as there are no differences between the raw materials

used for domestic and export production which affected the price comparability at the time of the setting of the prices.

#### **4.3.2 Export price for Amber Pasta**

The Commission accepted the information submitted by Amber Pasta in its response to the Commission's questionnaire for purposes of its final determination.

##### **Adjustments to the export price**

The adjustments set out below were claimed in respect of the export price in order to determine the ex-factory export price.

##### **(a) Adjustment for cost of payment terms**

Amber Pasta indicated that the interest rate applied was based on the annual overdraft from the bank. The calculation of the cost of payment terms was determined with reference to the investigating period and bank interest rate from 1 January 2019 to 31 December 2019. The payment days used by Amber Pasta to calculate the cost of payment terms were displayed on customers' contracts and invoices.

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

*It is the Commission's practice to consider adjustments to the normal value only if the adjustments affected price comparability at the time of setting prices. The payment days used by Amber Pasta to calculate the cost of payment terms were displayed on the customers contracts and invoices. The adjustment was considered in the calculation of normal value as it was requested and substantiated in the exporter's response to the Commission's questionnaire and affected price comparability at the time of setting the prices.*

The Commission made a final determination to allow the cost of payment terms adjustment as it was demonstrated to have affected the price comparability at the time of the setting of prices.

**(b) Adjustment for delivery charges**

Amber Pasta indicated that the delivery charges consist of a local delivery cost to move products from the plant to the port and shipping charges in Lithuania port.

***Commission's consideration***

*It is the Commission's practice to consider adjustments to the normal value to bring the price back to the ex-factory level. The delivery charges adjustment was verified.*

The Commission made a final determination to allow the delivery charges adjustment as it affected price comparability at the time of setting the price.

**(c) Adjustment for packaging cost**

Amber Pasta indicated that the packaging for the domestic market and export market is different. Domestically they sell pasta in 400g and 5kg pillow bags and for SACU market, they sell pasta in 500g, 1kg, and 3 kg pillow bags. They further indicated that for the pasta produced for the Lithuania market there is a second packaging, which is a plastic bag. For the export market, the second packaging is a carton box, because it is better for loading in containers.

***Commission's consideration***

*The packaging for the domestic and export market is different. This was verified and found to be correct.*

The Commission made a final determination to allow the packaging cost adjustment as it affected price comparability at the time of setting the price.

**(d) Adjustment for the proportion of durum flour in durum product sales**

Amber Pasta indicated that the recipes used for the domestic and export sales to SACU are different. They used a certain proportion of durum flour to produce

pasta for domestic market and a different proportion of durum flour for the export product to SACU. They further indicated that the price for pasta prepared from a certain proportion of durum flour is higher than the price of pasta prepared from a mixture of a certain proportion of soft wheat flour and a certain proportion of durum flour.

***Comments by Amber Pasta on the Commission's essential facts letter***

*Amber Pasta's comments on the adjustment to the export price for the proportion of durum flour in the product are identical to its comments on this adjustment in relation to the normal value – refer to paragraph 4.3.1, page 40.*

***Comments by Embassy of Lithuania on the Commission's essential facts letter***

*The comments of the Embassy of Lithuania on the adjustment to the export price for the proportion of durum flour in the product are identical to its comments on this adjustment in relation to the normal value – refer to paragraph 4.3.1, pages 40-41.*

***Commission's consideration***

*The Commission has dealt with this issue when it was raised in relation adjustments to the normal value. Its response appears on page 41 and is repeated here.*

The Commission accordingly made a final determination not to allow the proportion of durum flour in durum product sales adjustment as there are no difference between the raw materials used for domestic and export production which affected the price comparability at the time of the setting of the prices.

#### **4.3.3 Dumping Margin**

The dumping margin calculated for soft pasta and durum pasta were weighted with the export volumes to determine a weighted average dumping margin. A weighted average dumping margin of 12 percent was calculated for Amber Pasta.

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

*For the purpose of final determination, the dumping margin was calculated based on the weighted average dumping margin of the subject product under investigation, which includes both soft pasta and durum pasta classifiable under tariff subheading HS 1902.19.*

#### **4.3.4 METHODOLOGY IN THIS INVESTIGATION FOR ALL OTHER MANUFACTURERS/EXPORTERS FROM LITHUANIA (RESIDUAL DUMPING MARGIN)**

It is the general policy of the Commission to impose separate anti-dumping duties on specific exporters that responded to the questionnaire, and in addition, a residual duty against the country in question, to cater for other any manufactures of the subject product which might also have exported the subject product to the SACU, but did not participate in the investigation.

On this basis, the Commission made a final determination to use the verified information from the cooperating exporter to calculate the residual duty for the Lithuania.

#### **Normal value**

The Commission made a final determination to use the weighted average normal value of the verified exporter (Amber Pasta) to calculate the residual dumping margin.

### **Adjustments**

In order to obtain the ex-factory price, the Commission made a final determination to make an adjustment for cost of payment, delivery charges and packaging cost to the normal value, based on the information submitted by Amber Pasta, as it was regarded as the best information available.

### **Export price**

The Commission made a final determination to use the weighted average export price of the verified exporter (Amber Pasta) to calculate the residual dumping margin.

### **Dumping Margin**

The residual dumping margin calculated for soft pasta and durum pasta were weighted with the export volumes to determine a weighted average residual dumping margin. A weighted average residual dumping margin of 12 percent was calculated for Lithuania.

## **4.4 METHODOLOGY IN THIS INVESTIGATION FOR DOBELES DZIRNAVNIKS IN LATVIA**

### **Sales in the ordinary course of trade**

If less than 20 percent (by volume) of all sales of a particular product type or model took place at less than the cost of production, such sales must be included in the determination of the normal value, and the normal value should be based on the weighted average price of all the sales.

The Commission accepted information submitted by Dobeles Dzirnavnieks in its response to the Commission's questionnaire for purposes of its final determination. Dobeles Dzirnavnieks produces soft pasta and durum pasta and sold it on the domestic market in Latvia. The actual invoiced sales were used to calculate the normal value. It was found that soft and durum pasta that were sold at a loss in the domestic market were less 20 percent in volume of the total

volume of sales by the Dobeles Dzirnavnieks. In calculating the normal value, sales that were found to be at a loss were included in the calculation of the weighted average normal value.

#### **4.4.1 Calculation of normal value for Dobeles Dzirnavnieks**

The sales made at a loss for soft pasta were included in the database when determining the normal value.

All domestic sales made at a loss for durum pasta were included in the database when determining the normal value.

#### **Adjustments to the normal value**

The following adjustments were claimed to arrive at the ex-factory normal value:

##### **(a) Adjustment for cost of payment terms**

Dobeles Dzirnavnieks indicated that the interest rate applied in the calculation of the cost of payment terms was determined with reference to the investigating period and bank interest rate from 1 January 2019 to 31 December 2019. Cost of payment terms on domestic sales was established at the number of days of average credit period allowed to the customers. The payment days used by Dobeles Dzirnavnieks to calculate the cost of payment terms were displayed on the invoices.

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

*It is the Commission's practice to consider adjustments to the normal value only if the adjustments affected price comparability at the time of setting prices. The payment days used by Dobeles Dzirnavnieks to calculate the cost of payment terms were displayed on the invoices. The adjustment was considered in the calculation of normal value as it was requested and substantiated in the exporter's response to the Commission's questionnaire and affected price comparability at the time of setting the prices. The payment days were verified and found to support the claim for the adjustment.*

The Commission made a final determination to allow the cost of payment terms adjustment as it was demonstrated to have affected the price comparability at the time of the setting of prices.

**(b) Adjustment for discounts and rebates**

Dobeles Dzirnavnieks gives the following two types of discounts and rebates to their customers:

**Distribution service fee**

Dobeles Dzirnavnieks indicated the distribution service fee is paid by Dobeles Dzirnavnieks to customers, if they did not deliver the ordered goods to every delivery place of the customer's retail chain but only delivered to the customer's central warehouse. Payment of the distribution service fee is paid after the end of the respective period. The calculation is based on the concluded agreement as percentage of the actual delivered amount.

**Turnover discount**

Dobeles Dzirnavnieks indicated that this discount is calculated according to the concluded agreement, as percentage of volume of goods actually delivered, and is paid after the end of the corresponding period.

***Commission's consideration***

*It is the Commission's practice to consider adjustments to the normal value only if the adjustments affected price comparability at the time of setting prices. This adjustment was not considered in the calculation of the normal value because at the time of setting the price Dobeles Dzirnavnieks did not know how much volume the customer will purchase during that period.*

*Dobeles is correct in highlighting that the Commission verified how the adjustment for discounts and rebates was calculated and presented the contracts with selected customers to the Commission. It is further understood that the discounts are a real cost to the company. However, the timing is of essence. The discounts must have affected the setting of the price at the time of setting the price.*



The Commission made a final determination not to allow the adjustment for discount as it did not affect price comparability at the time of setting prices.

**(c) Adjustment for delivery charges**

Dobeles Dzirnāvnieks indicated that there is a local delivery charge for moving products from the plant to the customers in Latvia.

***Commission's consideration***

*It is the Commission's practice to consider adjustments to the normal value to bring the price back to the ex-factory level. The delivery charges were verified.*

The Commission made a final determination to allow the adjustment for delivery charges as it did affect price comparability at the time of setting prices.

**(d) Adjustment for marketing cost**

Dobeles Dzirnāvnieks indicated that in order to maintain its position in the pasta market, promote pasta market and increase sales volume, they perform a wide range of marketing and promotion activities for their branded pasta products. For example, product promotions in chain stores, advertising, regular communications on social networks.

***Commission's consideration***

*Marketing, promotion and advertising are part of the selling, general and administrative expenses. It could not be established that Dobeles Dzirnāvnieks knew the marketing costs at the time of setting the prices.*

The Commission made a final determination not to allow the marketing cost adjustment as it did not affect price comparability at the time of setting prices.

**(e) Adjustment for sales cost**

Dobeles Dzirnāvnieks indicated that they incurred sales cost for domestic sales.

***Commission's consideration***

*Sales costs are part of the selling, general and administrative expenses. It could not be established that Dobeles Dzirnavnieks knew the sales costs at the time of setting the prices.*

The Commission made a final determination not to allow the sale cost adjustment as it did not affect price comparability at the time of setting prices.

**(f) Adjustment for profit**

Dobeles Dzirnavnieks indicated the company's management defined planned average profit margin or target profit for a reasonable percentage expected for sales in domestic market.

***Commission's consideration***

*It could not be established that Dobeles Dzirnavnieks knew the profit for domestic market at the time of setting the prices. Furthermore, in determining the normal value, the actual sales prices are used and not estimate sales values with a reasonable profit.*

The Commission made a final determination not to allow the profit adjustment as it did not affect price comparability at the time of setting prices.

**4.4.2 Export price**

The Commission accepted the information submitted by Dobeles Dzirnavnieks in its response to the Commission's questionnaire for purposes of its final determination.

**Adjustments to the export price**

The adjustments set out below were claimed in respect of the export price to arrive at the ex-factory export price.

**(a) Adjustment for cost of payment terms**

Dobeles Dzirnavnieks indicated that the interest rate applied in the calculation of the cost of payment terms was determined with reference to the investigating period and bank interest rate from 1 January 2019 to 31 December 2019. Cost of payment terms on domestic sales was established at the number of days of average credit period allowed to the customers. The payment days used by Dobeles Dzirnavnieks to calculate the cost of payment terms were displayed on the invoices.

***Commission's consideration***

*It is the Commission's practice to consider adjustments to the normal value only if the adjustments affected price comparability at the time of setting prices. The payment days used by Dobeles Dzirnavnieks to calculate the cost of payment terms were displayed on the invoices. The adjustment was considered in the calculation of normal value as it was requested and substantiated in the exporter's response to the Commission's questionnaire and affected price comparability at the time of setting the prices. The payment days were verified and found to support the claim for the adjustment.*

The Commission made a final determination to allow the cost of payment terms adjustment as it was demonstrated to have affected the price comparability at the time of the setting of prices.

**(b) Adjustment for delivery charges**

Dobeles Dzirnavnieks indicated that the delivery charge consists of:

- Inland transport costs from Dobeles's factory to Riga sea port; and
- Freight costs from Riga sea port to Durban or Cape Town sea port in South Africa.

**Commission's consideration**

*It is the Commission's practice to consider adjustments to the normal value to bring the price back to the ex-factory level. The delivery charges adjustment was verified.*

The Commission made a final determination to allow the delivery charges adjustment as it did affect price comparability at the time of setting prices.

**(c) Adjustment for profit**

Dobeles Dzirnavnieks indicated the company's management define planned average profit margin or target profit for reasonably percentage expected for sales to SACU.

**Commission's consideration**

*It could not be established that Dobeles Dzirnavnieks knew the profit for domestic market at the time of setting the prices. Furthermore, in determining the normal value, the actual sales prices are used and not estimate sales values with a reasonable profit. In determining the export price, the actual sales prices are used and not estimated sales values with a reasonable profit.*

The Commission made a final determination not to allow the profit adjustment as it did not affect price comparability at the time of setting prices.

**4.4.3 Dumping Margin**

The dumping margin calculated for soft pasta and durum pasta were weighted with the export volumes to determine a weighted average dumping margin. A weighted average dumping margin of 4 percent was calculated for Dobeles Dzirnavnieks.

#### **4.4.4 METHODOLOGY IN THIS INVESTIGATION FOR ALL OTHER MANUFACTURERS/EXPORTERS FROM LATVIA (RESIDUAL DUMPING MARGIN)**

It is the general policy of the Commission to impose separate anti-dumping duties on specific exporters that responded to the questionnaire, and in addition, a residual duty against the country in question, to cater for other any manufactures of the subject product which might also have exported the subject product to the SACU, but did not participate in the investigation.

On this basis, the Commission made a final determination to use the verified information from the cooperating exporter to calculate the residual duty for the Latvia.

##### **Normal value**

The Commission made a final determination to use the weighted average normal value of the verified exporter (Dobeles Dzirnavnieks) to calculate the residual dumping margin.

##### **Adjustment**

In order to obtain the ex-factory price, the Commission made a final determination to make an adjustment for cost of payment and delivery charges to the normal value, based on the information submitted by Dobeles Dzirnavnieks, as it was regarded as the best information available.

##### **Export price**

The Commission made a final determination to use the weighted average export price of the verified exporter (Dobeles Dzirnavnieks) to calculate the residual dumping margin.

## **Adjustments**

In order to obtain the ex-factory price, the Commission made a final determination to make an adjustment for cost of payment and delivery charges to the export price, based on the information submitted by Dobeles Dzirnavnieks, as it was regarded as the best information available.

### **4.4.5 Dumping Margin**

The residual dumping margin calculated for soft pasta and durum pasta were weighted with the export volumes to determine a weighted average residual dumping margin. A weighted average residual dumping margin of 4 percent was calculated for Latvia.

## **4.5 SUMMARY – DUMPING**

For the purpose of its final determination, the Commission, after considering all the relevant comments from interested parties, found that the subject product originating in or imported from Egypt, Turkey, Latvia and Lithuania is being dumped onto the SACU market as the following dumping margins were calculated:

<b>Country</b>	<b>Dumping margin</b>
Egypt	43%
Turkey	367%
Latvia	4%
Other exporters from Latvia	4%
Lithuania	12%
Other exporters from Lithuania	12%

## **5. MATERIAL INJURY**

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

The following injury analysis relates to the Applicant which accounts for more than 50 percent of the total SACU production of the subject product.

The Commission made a final determination that this constitutes “a major proportion” of the total domestic production, in accordance with the ADR – See paragraph 3 of this report.

### **5.2 CUMULATIVE ASSESSMENT**

There are four countries involved in this investigation, Egypt, Latvia, Lithuania and Turkey. In terms of the ADR16.3, the Commission may cumulatively assess the effect of the dumped imports only if it finds that cumulating is appropriate in light of –

- competition between imports from the different countries; and
- competition between the imported products and SACU like products; and if
- the imports from the countries are not negligible as contemplated in subsection 3; and
- the margin of dumping is two percent or more when expressed as a percentage of the export price.

In considering whether cumulating is appropriate with regard to the imports from Egypt, Latvia, Lithuania and Turkey, the Commission took note of the following:

<b>Imports from the countries are not negligible</b>	Imports from four countries are above negligibility, as contained in table 2.1.5 of this report.
<b>The residual margin of dumping is above <i>de minimis</i> level</b>	The dumping margins calculated are above two percent, as expressed as a percentage of the export price.
<b>Competition between imports from different countries</b>	They are like products for purposes of comparison; they are fully substitutable and have a similar end use. They are traded in the SACU market, and therefore part of the SACU market share analysis and the cumulative volume of imports shows an increase throughout the period of investigation.
<b>Competition between imported product and SACU like product</b>	The imported product and the SACU product are like products for the purposes of comparison; they are fully substitutable and have a similar end use. They are traded in the SACU market.

In light of the above the Commission made a final determination to conduct a cumulative assessment of the effect of the alleged dumped imports on the SACU industry.

## 5.3 IMPORT VOLUMES AND EFFECT ON PRICES

### 5.3.1 Import volumes

The following table shows the volume of allegedly dumped imports in kg, for the subject product:

**Table 5.3.1: Import volumes**

Import Volume (kg)	Volumes	%	Volumes	%	Volumes	%
	2017	2017	2018	2018	2019	2019
<b>Dumped imports</b>	<b>15 024 390</b>	<b>48,57%</b>	<b>19 923 827</b>	<b>57,11%</b>	<b>21 070 969</b>	<b>57%</b>
Egypt	2 111 480	6,83%	4 235 320	12,14%	3 793 927	10,35%
Latvia	5 220 173	16,88%	6 510 174	18,66%	8 073 728	22,02%
Lithuania	7 253 252	23,45%	7 740 936	22,19%	7 645 467	20,85%
Turkey	439 486	1,42%	1 437 397	4,12%	1 557 848	4,25%
<b>Other imports</b>	<b>15 908 435</b>	<b>51,43%</b>	<b>14 962 937</b>	<b>42,89%</b>	<b>15 594 017</b>	<b>43%</b>
<b>Total</b>	<b>30 932 826</b>	<b>100%</b>	<b>34 886 764</b>	<b>100%</b>	<b>36 664 987</b>	<b>100%</b>



The Applicant indicated that the market share of imports of the subject product (volume - kg) of Egypt, Latvia, Lithuania and Turkey each increased over the period 2017 to 2019. The four countries' combined import market share (volume - kg) increased by 40 percent over the period 2017 to 2019.

***Comments by European Commission on Commission's essential facts letter***

*The European Commission indicated that it still maintains that even if there has been an increase of imports in the POI, it is by far not comparable for the four investigated countries. However, this point was not addressed in the Essential Facts. In particular, mostly imports from Turkey and Egypt increased in a way disproportionate to those of Latvia and Lithuania, for which there has been some increase, generally following world demand, but not as significant. Turkey in particular seems to have redirected a substantial part of its imports to world markets other than USA.*

*The European Commission furthermore indicated that EU export prices have been consistently higher than Turkish and Egyptian prices. Therefore, EU imports should be decumulated from Turkish and Egyptian imports for the purpose of the injury analysis.*

***Commission's consideration***

*As discussed in section 5.2 on page 55 to 56 of this report, the Commission decided to conduct a cumulative assessment of the effect of the alleged dumped imports on the SACU industry.*

*Table 5.3.1 above indicates that the cumulative dumped imports increased by 40 percent over the period 2017 to 2019. The Commission noted that not only has these countries' combined dumped imports' market share increased over the injury period of investigation, but the same also applied to these countries individually with the exception of Lithuania.*

### 5.3.2 Effect on Domestic Prices

#### 5.3.2.1 Price depression

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

The table below shows they are fully substitutable and have a similar end use the Applicant industry's ex-factory selling price per kilogram:

**Table 5.3.2.1: Price depression**

<b>Rand/kg</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Ex-factory selling price	100	92	96

\*The information above was indexed using 2017 as base year, due to confidentiality

The Applicant stated that their selling prices decreased from 2017 to 2019, which is clearly indicative that price depression was taking place over the period of investigation for injury. According to the applicant, in 2018 they had to depress their selling prices, in an attempt to capture lost market share that was brought about by the influx of low-priced dumped products from Egypt, Latvia, Lithuania and Turkey. The Applicant also stated that although prices in 2019 were higher when compared to 2018, the prices in 2019 were still lower than in 2017.

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

*The Applicant experienced price depression over the period 2017 to 2019. The Applicant indicated that in 2018 it had to depress its selling prices in an attempt to capture lost market share that was brought about by the influx of dumped products from Egypt, Latvia, Lithuania and Turkey.*

### 5.3.2.2 Price undercutting

The following table compares the Applicant ex-factory prices with the landed cost of the imported product.

**Table 5.3.2.2: Price undercutting**

<b>Rand/kg</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Domestic Selling Price (R/kg)	100	92	96
Alleged Dumped products:			
Import Price FOB (R/kg)			
Egypt	4.99	5.60	6.05
Latvia	6.46	6.94	7.60
Lithuania	7.74	8.43	9.33
Turkey	2.38	2.13	1.94
Import Price landed (R/kg)			
Egypt	7.31	8.21	8.88
Latvia	9.48	8.21	8.88
Lithuania	8.26	8.99	9.95
Turkey	2.54	2.27	2.07
Price undercutting (R/kg)			
Egypt	Yes	Yes	Yes
Latvia	Yes	Yes	Yes
Lithuania	Yes	Yes	Yes
Turkey	Yes	Yes	Yes
Price undercutting %			
Egypt	Yes	Yes	Yes
Latvia	Yes	Yes	Yes
Lithuania	Yes	Yes	Yes
Turkey	Yes	Yes	Yes

**\*The information above was indexed using 2017 as base year, due to confidentiality**

From the above table it is clear that the landed prices of the imported products from the Egypt, Latvia, Lithuania and Turkey undercut the Applicant's suppressed selling prices (See paragraph 5.3.2.3 below for information on price suppression) significantly in 2017, 2018 and 2019. The margin of undercutting of the Applicant's unsuppressed selling prices (the prices at which the SACU Industry ought to have sold, had it not been for the dumped imports forcing it to suppress prices in an attempt to compete) is even higher.

### 5.3.2.3 Price suppression

Price suppression is the extent to which increase in the cost of production of the product concerned, cannot be recovered in selling prices.

The following table shows the trends in the Applicants' average costs of production and its average selling prices for the subject product over the period of investigation.

**Table 5.3.2.3: Price Suppression**

<b>Rand/kg</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Ex-factory price per unit R/kg	100	92	96
Production cost per unit	100	101	115
Gross profit per unit	100	69	43
Gross profit%	100	75	45
Production cost as a % of selling price	100	109	120

\*The information above was indexed using 2017 as base year, due to confidentiality

The Applicant stated that its selling prices in 2017 were already suppressed. Therefore, the cost as a percentage of the selling price in 2017 is already a conservative percentage. The Applicant stated that it was selling at suppressed selling prices to maintain market share and to drive sales over the period of investigation for material injury.

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

*The price suppression experienced by the Applicant increased by 20 index points from 2017 to 2019. The table above indicates that production cost increased by 15 index points from 2017 to 2019 but the Applicant's price decreased by 4 index points, indicating that it could not recover the full increase in cost by increasing its prices. The Commission noted that the Applicant was selling at a loss over the period of investigation as reflected in paragraph 5.4.2.*

## 5.4 Consequent Impact of the dumped imports on the SACU Industry

### 5.4.1 Actual and potential decline in sales

The following table shows the Applicant's sales volume of the subject product:

**Table 5.4.1: Applicant's Sales volume**

<b>Kg</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Sales value (R)	100	93	96
Sales volume (Kg)	100	101	100

\*The information above was indexed using 2017 as base year, due to confidentiality

The Applicant stated that although the sales volume increased from 2017 to 2018 (as a result of price depression), this was followed with a volume decrease from 2018 to 2019.

### 5.4.2 Profit

The following table shows the Applicant's profit margins for the subject products:

**Table 5.4.2: Applicant's Profit**

		<b>2017</b>	<b>2018</b>	<b>2019</b>
Kg Sold	Kg	100	101	100
Total Gross profit	Rand	100	70	43
Total Net Profit	Rand	100	44	-2
Total Gross profit per kg	R/kg	100	69	43
Total Net Profit per kg	R/kg	100	44	-2

\*The information above was indexed using 2017 as base year, due to confidentiality

The Applicant indicated that they did realise Rand/kg gross and net profits regarding the subject product over the period the Injury POI, but these profits declined year-on-year. The gross profit margin percentage decreased from 100 index points in 2017 to 45 index points in 2019, whilst the net profit margin (%) decreased from 100 index points in 2017 to an alarming -2 index points in 2019, which presents a decrease of 102 index points. These declining trends demonstrate that the Applicant is suffering material injury.

### **Commission's consideration**

*The Commission noted that the gross profit and net profit of the Applicant declined by 57 and 102 index points over the period of investigation respectively. These are substantial decreases in profit.*

### **5.4.3 Output**

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

**Table 5.4.3: Output**

		2017	2018	2019
Subject Product - SACU only	kg	100	100	102

*\*The information above was indexed using 2017 as base year, due to confidentiality*

The Applicant stated that it is common cause that production cannot just be cut back without increasing costs. According to the Applicant there was a slight increase in production from 2017 to 2018, and over the Injury POI there was an increase of 2 index points for subject product total.

The Applicant further stated that the dumped imports volumes from Egypt, Latvia, Lithuania and Turkey gained increased market share during the Injury POI. The Applicant stated that if this is not addressed, its output would be adversely affected.

### **Commission's consideration**

*The Commission considered that although there was an increase of 2 index points on the output of the Applicant, the situation is not sustainable as the Applicant continues to lose the market share to dumped imports in a SACU growing market. If the issue of dumped imports is not addressed urgently, the Applicant will be forced to decrease production volumes, which may result in job losses.*

#### 5.4.4 Market share

The following table shows the SACU Industry market share for the subject product.

**Table 5.4.4: Market share**

		2017	%	2018	%	2019	%
Applicant	kg	100	100	101	98	100	98
Estimate of other SACU Producers	kg	100	100	95	94	85	81
<b>Total SACU producers Sales</b>	<b>kg</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>97</b>	<b>97</b>	<b>95</b>
Market share: Imports							
Dumped Imports	kg	15 024 390	10,58%	19 923 827	14,03%	21 070 969	14,84%
Other Countries	kg	15 908 435	11,20%	14 962 937	10,26%	15 594 017	10,77%
Total Imports	kg	30 932 826	21,78%	34 886 764	23,92%	36 664 987	25,33%
<b>Total Market</b>	<b>kg</b>	<b>100</b>	<b>100%</b>	<b>103</b>	<b>100%</b>	<b>102</b>	<b>100%</b>

\*The information above was indexed using 2017 as base year, due to confidentiality

The Applicant indicated that its market share showed a declining trend over the period 2017 to 2019, because of the dumped imports, causing the Applicant to suffer material injury. The individual import volumes from Egypt, Latvia, Lithuania and Turkey all increased from 2017 to 2019. The combined import volumes from Egypt, Latvia, Lithuania and Turkey increased from 15,024,390 kg in 2017 to 21,070,969 kg in 2019, which amounted to a 40 percent increase over the Injury POI.

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

*The Commission noted that the Applicant's market share declined by 2 index points, for the period 2017 to 2019, while the dumped imports were able to increase their share in a growing market.*

#### 5.4.5 Productivity

Using the production and employment figures sourced from the Applicant, productivity in respect of the subject product is as follows:

**Table 5.4.5: Productivity**

		2017	2018	2019
Total production volume	kg	100	99	101
Number of employees (Production)	No	100	101	87
Kg per employee	Kg	100	98	117

\*The information above was indexed using 2017 as base year, due to confidentiality

The Applicant stated that its productivity showed an increasing trend over the Injury POI, which was realised due to a reduction in the number of employees from 2018 to 2019. However, the Applicant stated that should the influx of dumped imports from Egypt, Latvia, Lithuania and Turkey continue to increase, the sales volumes of the Applicant are likely to reduce and they will be under pressure to reduce production volumes in an attempt to keep inventory levels from increasing, which would result in a decrease in productivity, unless employee numbers are further reduced. The Applicant concluded that this demonstrates material injury to them.

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

*Although the Applicant did not suffer injury in terms of productivity, the Commission is of the view that if the issue of dumped imports is not addressed urgently it shows a threat of material injury to the SACU industry.*

#### **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. The following table provides the Applicant's profit after interest and tax expressed as a percentage of its net value of assets:

**Table 5.4.6: Return on investment – Rand**

	2017	2018	2019
Net profit	100	44	-2
Net assets (Book value)	100	105	104
Return on net assets (Book value)	100	42	-2

\*The information above was indexed using 2017 as base year, due to confidentiality



The Applicant indicated that the return on investment is based on two calculations, namely the total profit of the subject product, expressed as a percentage of the total investment and then on the net assets. It is clear that the return on investment based on net asset book value, as well as the insured replacement value (total investment), show decreasing trends over the period 2017 to 2019, indicating that the SACU Industry is suffering material injury.

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

*The Commission noted from the above table the return on investment on the subject product decreased significantly from 2017 to 2019 by 102 index points.*

#### **5.4.7 Utilisation of production capacity**

The following table provides the Applicant's capacity and production for the subject product.

**Table 5.4.7: Utilisation of production capacity**

<b>Pasta</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Capacity kg	100	100	100
Actual Production kg	100	99	101
Capacity utilization %	100	99	101

\*The information above was indexed using 2017 as base year, due to confidentiality

The Applicant indicated that of the increase in capacity utilisation over the Injury POI represents 1 index point.

The Applicant further indicated that should the dumped imports from Egypt, Latvia, Lithuania and Turkey continue to increase, the sales volumes of the Applicant are likely to reduce further and the Applicant would be under pressure to reduce production volumes, which would result in a decrease in capacity utilisation.

#### 5.4.8 Factors affecting domestic prices

The Applicant stated that there are no other known factors, which could affect the domestic prices negatively.

#### 5.4.9 The magnitude of the margin of dumping

The following dumping margins were calculated:

**Table 5.4.9: Dumping margins**

Country	Dumping margin
Egypt	43%
Turkey	367%
Latvia - Dobeles	4%
Other exporters from Latvia	4%
Lithuania – Amber Pasta	12%
Other exporters from Lithuania	12%

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

The following table reflects the Applicant's cash flow situation with regard to the product under investigation.

**Table 5.3.10: Applicant's Cash flow situation**

Rand	2017	2018	2019
Cash flow: incoming	100	95	99
Cash flow: outgoing	100	105	120
Net cash flow	100	46	3

\*The information above was indexed using 2017 as base year, due to confidentiality

The Applicant stated that net cash flow indicated a year on-year declining trend over the period 2017 to 2019, mostly because of price depression and price suppression. The decrease from 2017 to 2018 amounted to 54 index points, followed by a large decrease of 43 index points for the period 2018 to 2019, which is a clear indication of the massive extent of injury being suffered by the Applicant.

#### 5.4.11 Inventories

**Table 5.3.11: Inventories**

		<b>2017</b>	<b>2018</b>	<b>2019</b>
Volume	kg	100	101	98
Value	R	100	111	119
Value per unit	R/kg	100	110	122

\*The information above was indexed using 2017 as base year, due to confidentiality

The Applicant indicated that the inventory levels are subject to fluctuations, based on production levels and market demand, as well as the impact that dumped imports have on the of SACU market trading conditions. The Applicant further indicated that they tried to maintain constant inventory levels (volume).

#### 5.4.12 Employment

The following table provides the Applicants' employment figures for the subject product.

**Table 5.4.12: Employment**

<b>Pasta</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Direct labour (units): production	100	100	83
Indirect labour (units): production	100	103	93
Total labour (units): production	100	101	87

\*The information above was indexed using 2017 as base year, due to confidentiality

The Applicant stated that the average employment was calculated based on the number of workers that were employed during the specific periods, inclusive of contract workers. The Applicant further stated that retrenching of production workers as result of dumping would be a last consideration for them, but if the dumping continues, they will be forced to reduce employee numbers. The Applicant explained that the production employment levels for the Injury POI shows a declining trend. This, according to the Applicant, relates to labour reallocation due to the reduced proportion of subject product and not actual retrenchment at this stage.

#### 5.4.13 Wages and salaries

The following table provides the Applicant's wages paid:

**Table 5.4.13: Wages & Salaries**

		<b>2017</b>	<b>2018</b>	<b>2019</b>
Direct Wages: Production	R	100	97	107
Indirect Wages: Production	R	100	101	103
Total wages: Production	R	100	100	104
Wages per employee	R	100	98	119

\*The information above was indexed using 2017 as base year, due to confidentiality

The Applicant indicated that wages (production) showed an increasing trend over the period 2017 to 2019, as increased wages are negotiated with Unions.

#### 5.4.14 Growth

The following table indicates the growth of the SACU market as provided by the Applicant.

**Table 5.4.14: Growth (kg)**

<b>Pasta</b>					<b>2017/2019 % Change</b>
	<b>kg</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	
Applicant Sales		100	101	100	0%
Dumped imports		15 024 390	19 923 827	21 070 969	40.24%
Other imports		15 908 435	14 962 937	15 594 017	(1.97%)
<b>Total imports</b>		<b>30 932 826</b>	<b>34 886 764</b>	<b>36 664 987</b>	<b>18.53%</b>

\*The information above was indexed using 2017 as base year, due to confidentiality

The Applicant stated that the SACU market showed growth in 2018 compared with 2017, but a negative rate in 2019, compared to 2018. If the Applicant's growth over the Injury POI is assessed, it was more or less stagnant.

Egypt, Latvia, Lithuania and Turkey each experienced positive growth rates for the Injury POI. Their combined volume growth reflects a year-on-year growth, as well as a substantial growth rate for the 2017 to 2019 period of 40

percent. By contrast, the total the Applicant sales volume contracted. The Commission noted that this demonstrates that the Applicant suffered material injury.

#### **5.4.15 Ability to raise capital or investments**

The Applicant provided the following information with regard to the Applicant's ability to raise capital or investments:

**Table 5.4.15: Ability to raise capital or investments**

<b>Rand</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Total capital/investment in subject product	100	105	107
Capital expenditure during year on subject product	100	87	62

*\*The information above was indexed using 2017 as base year, due to confidentiality*

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

*The Commission noted that the Applicant's capital expenditure on the subject product decreased by 38 index points during the injury POI.*

#### **5.4.16 SUMMARY – MATERIAL INJURY**

From the above information, it is evident that the Applicant is suffering price injury, considering that it is experiencing price undercutting; price depression and price suppression and a decline in profits and cash flow.

Market share of the Applicant declined by 2 index points over the period 2017 to 2019. Cumulating imports over the period 2017 to 2019 indicates that the volume of dumped imports increased over the period 2017 to 2019.

#### ***Comments by European Commission on the Commission's essential facts letter***

*The European Commission indicated that Article 3.4 of the WTO Anti-Dumping Agreement lists a number of factors that need to be analysed in order to show injury to the domestic industry, such as actual and potential decline in sales and profits; decline in market share, productivity and capacity*

*utilisation; negative effect on cash flow, inventories and employment.*

*The European Commission further indicated that according to Article 6.9 of the WTO Anti-Dumping Agreement “The authorities shall, before a final determination is made, inform all interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures. Such disclosure should take place in sufficient time for the parties to defend their interests.” Nevertheless, the Essential Facts completely omit the analysis of the situation of the domestic industry. There was also no analysis of the situation of the domestic industry made available in the Preliminary Determination. Thus, any allegations regarding material injury made at initiation are in no way confirmed. Due to the absence of any information with regard to the situation of the domestic industry, the Essential Facts letter is highly deficient in this regard and interested parties are deprived of their rights of defence. In absence of any analysis of injury, which may indicate that the domestic industry is actually not suffering any injury, the investigating authority now switches to a threat of injury.*

***Comments by Embassy of Lithuania on the Commission’s essential facts letter***

*The Embassy of Lithuania stated that they recall that an increase in imports in the investigation period is by far not comparable for the four investigated countries. In particular, mostly from Turkey and Egypt increased in a way disproportionate to those of Lithuania, for which there has been some increase, generally following SACU market demand, but not as significant.*

*Furthermore, the Embassy of Lithuania stated that based on the Commission’s findings it is proved that the price of imported product from Lithuania is higher by 30-200 percent compared to the average import FOB price of products imported from other countries subjected to the investigation. Therefore, they kindly request the Commission to present additional evidence proving an impact of pasta originated in Lithuania on the price of pasta produced by domestic SACU producers.*

*The Embassy of Lithuania stated that when looking at trends of subject imports from Lithuania, it has remained stable during the last three years (period 2018-2020) and market share has decreased. Imports price from Lithuania are the highest and show an increasing trend. Average FOB imports price constantly increased from 7.74 to 9.33 R/kg over the period 2017-2019, arise of 20 percent.*

**Comments by Exporters' Association on the Commission's essential facts letter**

*The Exporter's Association stated that on the essential facts, the Commission notes that the Applicant experienced price injury, price undercutting, price depression and price suppression, decline in profits and cash flows, and concludes that the domestic industry is experiencing material injury. As noted in the Exporter's Association previous comments, they believe that the domestic industry is in a good shape considering that production, utilization of the production capacity, sales, productivity, growth and wages are all increasing whereas inventory is decreasing. Thus, it is a regret to see in the essential facts that the Commission ignores the positive trends in the Applicant's economic indicators and only focuses on "price injury" and "deterioration in profitability".*

*The Exporter's Association further stated that any finding on price injury is incorrect since alleged export price of Turkey submitted by the Applicant is false. Thus, the only injury indicator that would be used to support an injury finding bases on groundless, contradictory, biased and incorrect information submitted by the Applicant. Finding the presence of material injury based on such weak and groundless reasons does not have any merit and cannot justify imposition of such a punitive dumping margin. The Exporter's Association stated that in short, the Applicant and the Commission's price analysis is false. Turkey's official export prices clearly show that there is no*

*price injury due to imports from Turkey. As noted in the Exporters' Association in their previous submissions, it seems from the financial indicators of the domestic industry that the only deteriorated indicator is profitability, which is strictly related to increase in the cost of production and decrease in the sales price.*

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

*The interested parties reiterated the same comments made on the Commission's initiation determination. The Commission in the preliminary report addressed these issues.*

*Although the Applicant showed positive performance on some injury indicators during the injury POI, the Commission noted that it is evident that the Applicant is suffering price injury, considering that it is experiencing price undercutting; price depression and price suppression and a decline in profits and cash flow.*

*Market share of the Applicant declined by 2 index points over the period 2017 to 2019. Cumulating imports over the period 2017 to 2019 indicates that the volume of dumped imports increased over the period 2017 to 2019.*

*Furthermore, the Commission noted that in terms of ADR there is no requirement to make a conclusion on each of the injury indicators, only to consider each of the indicators. The Commission therefore considered each of the indicators but made an overall assessment of whether the industry was experiencing material injury.*

The Commission made a final determination that the SACU industry is experiencing material injury.



## 6. THREAT OF MATERIAL INJURY

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### 6.1 Freely disposable capacity of the exporters

The Applicant provided the following information in substantiating the above:

- It was reported on 28 February 2020, on [www.worldstopexports.com](http://www.worldstopexports.com), that in 2018, Turkey was the fourth biggest global exporter of pasta with a value of USD 552.5 million.
- It was reported on 19 March 2020, that five of the top ten spaghetti manufacturers in Turkey had a combined annual pasta production capacity of the 599,040 tons.
- It was reported on in the website [www.magazinebbm.com](http://www.magazinebbm.com) that in 2010, Turkey was already regarded as one of the largest pasta producer countries of the world with its installed capacity over 1,300 million tons. This capacity was estimated to increase up to 1,700 million tons with the plant and technology investments of the companies in the recent years. Since 1990, there has been a surplus production over the domestic demand and as a result an industrialization strategy for export was heavily applied and the production volumes and capacity usage rates of the companies with export potential increased its exports.
- The Turkish Ministry of Economy in its Food & Agriculture Pasta publication of 2018 stated that the Turkish pasta industry annually produced almost 1.2 million tons of pasta. Total pasta exports of Turkey totalled 1,055 thousand tons in 2017, which presented an increase of 26.98 percent from the 2016 and an increase of 57.07 percent from the 2015 volume.
- The Regina Company for Pasta and Food Industries, which regards itself as a pioneer in its field of operation in Egypt, on 25 September 2014, stated on their website ([www.pastaregina.com/corporate/](http://www.pastaregina.com/corporate/)) that it had a production capacity of 80,000 tons per year.

- The Milano, which is the biggest pasta producer in Egypt stated on their website ([www.milano-eg.com/our-story/](http://www.milano-eg.com/our-story/)) on 24 October 2017 that it had a production volume per year of 119,250 ton of short pasta and 58,750 tons of long pasta. It was further indicated that it would be adding additional production lines for short and long pasta to increase its production capacity.
- The Macaroni Queen Company, which has nine manufacturing facilities in Egypt, states on its website ([www.macaroniqueen.com/eng\\_ourfactories](http://www.macaroniqueen.com/eng_ourfactories)) that it has a production capacity of 147,500 tons per year.
- Dobeles Dzirnavnieks in Latvia with its advanced production lines has a total production capacity of more than 150 tons per day, with an annual estimate of 37,950 tons.
- According to the Amber Pasta website ([www.pasta.lt/en/sales-markets](http://www.pasta.lt/en/sales-markets)) it exports an estimated 70 percent of the production, with the African region at present being the largest consumer of its pasta, where it has a number of important long-term partners.

The Applicant indicated that from the above, which does not include up to date detail of all the manufactures in Egypt, Latvia, Lithuania and Turkey, the existence of surplus production, the vast manufacturing volumes and production capacities, as well as recent increases in production capacities, indicates that there is most likely free capacity available. The majority of pasta manufacturers operate from large premises with sufficient size and adequate storage facilities to keep larger inventory volumes, if required. With the dried pasta having a shelf life of up to 3 years under the correct and controlled conditions, the increase in export volumes to SACU can be easily achieved, especially as there are already existing relationships with SACU importers.

## **6.2 Significant increase of dumped imports**

The Applicant stated the dumped imports increased by 40 percent during the period of investigation. Furthermore, the average prices of the products from Egypt, Latvia, Lithuania and Turkey, were each well below other importing countries' prices for the same period. The Applicant further stated that there exists the real threat that the imports of the subject product from Egypt, Latvia, Lithuania and Turkey will increase even further in 2020, if the dumping of the subject product in the SACU market is not addressed. This has not materialised partly due to COVID-19. The Applicant stated that they are already suffering as a result of the dumped imports, and they will lose even more sales to the dumped imports should the dumping not be addressed.

## **6.3 Prices of imports which will have a significant depressing or suppressing effect on domestic prices**

The Applicant stated that because of the increased imports from Egypt, Latvia, Lithuania and Turkey, there already exists price suppression over the period 2017 to 2019, with regard to the subject product, as well as price depression. These are, and will be affecting the profitability of the Applicant, causing it to suffer further material injury. The Applicant stated that there exists a real threat of the continuation of material injury to the SACU industry if the dumped imports are not addressed as a matter of urgency.

## **6.4 Exporter's inventories of the subject product**

The Applicant indicated that it does not have any information available about the inventory levels in Egypt, Latvia, Lithuania and Turkey.

The Applicant indicated that however, as the United States of America in 2019 has confirmed that the existing Anti-Dumping duties against Turkey will be kept in place; manufacturers in Turkey will be forced to continue their exploration of viable markets such as SACU, to contain inventory levels.

The Applicant further indicated that as there is an increasing demand for pasta as a primary food source, with a highly competitive global market, foreign manufacturers will constantly be seeking for markets to increase export volumes, such as to SACU.

## **6.5 State of the economy of the country of origin**

The Applicant stated the following:

### **Egypt**

Occupying the northeast corner of the African continent, Egypt is bisected by the highly fertile Nile valley where most economic activity takes place. Egypt's economy was highly centralized during the rule of former President Gamal Abdel Nasser, but opened up considerably under former Presidents Anwar EL-SADAT and Mohamed Hosni MUBARAK. Agriculture, hydrocarbons, manufacturing, tourism, and other service sectors drove the country's relatively diverse economic activity.

Despite Egypt's mixed record for attracting foreign investment over the past two decades, poor living conditions and limited job opportunities have contributed to public discontent. These socioeconomic pressures were a major factor leading to the January 2011 revolution that ousted Mubarak. The uncertain political, security, and policy environment since 2011 has restricted economic growth and failed to alleviate persistent unemployment, especially among the young.

In late 2016, persistent dollar shortages and waning aid from its Gulf allies led Cairo to turn to the International Monetary Fund ("IMF") for a 3-year, \$12 billion loan program. To secure the deal, Cairo floated its currency, introduced new taxes, and cut energy subsidies - all of which pushed inflation above 30 percent for most of 2017, a high that had not been seen in a generation. Since the currency float, foreign investment in Egypt's high interest treasury bills has risen exponentially, boosting both dollar availability and central bank reserves. Cairo will be challenged to obtain foreign and local investment in manufacturing and other sectors without a sustained effort to implement a range of business reforms.

The Government of Egypt successfully implemented a first wave of macro-economic and structural reforms that successfully addressed a number of deep-seated issues and helped to stabilize the economy, sustain growth and lay the groundwork for more dynamic private sector participation in the economy.

In the Financial Year ("FY") 2019 (ending June 30th, 2019), real Gross Domestic Product ("GDP") growth reached 5.6 percent, up from 5.3 percent in FY18. Data for the first nine months of FY19 show that this pickup is driven by net exports. Private investment is also picking up, although from a low base and with sluggish Foreign Direct Investment ("FDI") mainly directed to hydrocarbons.

On the sectoral side, gas extractives, tourism, wholesale and retail trade, real estate and construction have been the main drivers of growth. Unemployment decreased to 7.5 percent in the fourth quarter of FY19 (from 9.9 percent a year earlier), although accompanied by shrinking labour force participation.

The Central Bank of Egypt cut policy rates by 150 basis points in August 2019, a move that should improve private sector cash flow via its impact on lending rates. The monetary easing was triggered by the remarkable decline in headline inflation in August 2019 to 7.5 percent, due to favourable base effects, as well as moderating food inflation; altogether diluting the inflationary impact of the July 2019 energy price hikes. The budget and primary balances have improved to an estimated -8.3 percent and 1.9 percent of GDP, respectively in FY19, from -9.7 percent and 0.1 percent of GDP a year earlier.

This comes on the back of the containment of energy subsidies and civil servants' wages, in addition to increased revenues collection (notably from the VAT and income tax). In tandem, even though significant risks remain in terms of debt size, composition and contingent liabilities, government debt is estimated to have decreased to 90.5 percent of GDP in end-June 2019, from 97.3 percent of GDP in end - June 2018, with the decline mostly stemming from the domestic portion, which

accounts for 80 percent of Egypt's debt. Egypt's external position has stabilized at broadly favorable levels, as foreign reserves reached US\$44.97 billion in end - August 2019 (covering around eight months of merchandise imports). The Egyptian pound strengthened against the US\$, reaching EGP/US\$16.4 by mid-September 2019; cumulatively appreciating by around 16 percent since the Pound's weakest point around mid-December 2016.

While macroeconomic environment has improved, social conditions remain difficult. Between 2016 and 2018, nominal wage growth fell below inflation. Official estimates reported that the share of the population living below the national poverty line in FY18 increased to 32.5 percent, from 27.8 in 2015, with the highest poverty rates still in rural Upper Egypt.

To alleviate the adverse effects of the economic reforms on the poor and vulnerable and increase investments in Egypt's human capital, the government has scaled up key short-term social protection mitigating measures, including through higher allocations of food smart cards and expanded targeted conditional and unconditional cash transfer programs.

## **Latvia**

Latvia is a small, open economy with exports contributing more than half of GDP. Due to its geographical location, transit services are highly developed, along with timber and wood-processing, agriculture and food products, and manufacturing of machinery and electronics industries. Corruption continues to be an impediment to attracting foreign direct investment and Latvia's low birth rate and decreasing population are major challenges to its long-term economic vitality.

Latvia's economy experienced GDP growth of more than 10 percent per year during 2006-07, but entered a severe recession in 2008 as a result of an unsustainable current account deficit and large debt exposure amid the slowing world economy. Triggered by the collapse of the second largest bank, GDP plunged by more than 14 percent in 2009 and, despite strong growth since 2011, the economy took until

2017 return to pre-crisis levels in real terms. Strong investment and consumption, the latter stoked by rising wages, helped the economy grow by more than 4 percent in 2017, while inflation rose to 3 percent. Continued gains in competitiveness and investment will be key to maintaining economic growth, especially in light of unfavourable demographic trends, including the emigration of skilled workers, and one of the highest levels of income inequality in the EU.

In the wake of the 2008-09 crisis, the IMF, EU, and other international donors provided substantial financial assistance to Latvia as part of an agreement to defend the currency's peg to the euro in exchange for the government's commitment to stringent austerity measures. The IMF/EU program successfully concluded in December 2011, although, the austerity measures imposed large social costs. The majority of companies, banks, and real estate have been privatized, although the state still holds sizable stakes in a few large enterprises, including 80 percent ownership of the Latvian national airline. Latvia officially joined the WTO in February 1999 and the EU in May 2004. Latvia also joined the euro zone in 2014 and the Organisation for Economic Co-operation and Development ("OECD") in 2016.

The economy of Latvia is an open economy in Northern Europe and is part of the EU's single market. Latvia is a member of the WTO since 1999, a member of the EU since 2004, a member of the Eurozone since 2014 and a member of the OECD since 2016. The Ease of Doing Business Index prepared by the World Bank Group ranks Latvia the 14th in the world. According to the Human Development Report 2011, Latvia belongs to the group of very high human development countries. Due to its geographical location, transit services are highly developed, along with timber and wood-processing, agriculture and food products, and manufacturing of machinery and electronic devices.

Privatization is mostly complete, except for some of the large state-owned utilities. Export growth contributed to the economic recovery; however, the bulk of the country's economic activity is in the services sector.

## **Lithuania**

After Lithuania declared independence from the Soviet Union in 1990, Lithuania faced an initial dislocation that is typical during transitions from a planned economy to a free-market economy. Macroeconomic stabilization policies, including privatization of most state-owned enterprises, and a strong commitment to a currency board arrangement led to an open and rapidly growing economy and rising consumer demand. Foreign investment and EU funding aided in the transition. Lithuania joined the WTO in May 2001, the EU in May 2004, and the euro zone in January 2015, and is now working to complete the OECD accession roadmap it received in July 2015. In 2017, joined the OECD Working Group on Bribery, an important step in the OECD accession process.

The Lithuanian economy was severely hit by the 2008-2009 global financial crisis, but it has rebounded and become one of the fastest growing in the EU. Increases in exports, investment, and wage growth that supported consumption helped the economy grow by 3.6 percent in 2017. In 2015, Russia was Lithuania's largest trading partner, followed by Poland, Germany, and Latvia; goods and services trade between the US and Lithuania totalled \$2.2 billion. Lithuania opened a self-financed liquefied natural gas terminal in January 2015, providing the first non-Russian supply of natural gas to the Baltic States and reducing Lithuania's dependence on Russian gas from 100 percent to approximately 30 percent in 2016.

Lithuania's ongoing recovery hinges on improving the business environment, especially by liberalizing labour laws, and improving competitiveness and export growth, the latter hampered by economic slowdowns in the EU and Russia. In addition, a steady outflow of young and highly educated people is causing a shortage of skilled labour, which, combined with a rapidly aging population, could stress public finances and constrain long-term growth.

The economy of Lithuania is the largest economy among the three Baltic States. Lithuania is a member of the European Union and its GDP per capita is the highest in the Baltic States. Lithuania belongs to the group of very high human development countries and is a member of WTO and OECD.



Lithuania was the first country to declare independence from Soviet Union in 1990 and rapidly moved from centrally planned to a market economy, implementing numerous liberal reforms. It enjoyed high growth rates after joining the European Union along with the other Baltic States, leading to the notion of a Baltic Tiger. Lithuania's economy (GDP) grew more than 500 percent since regaining independence in 1990. Half of the workforce in the Baltic States – 3.3 million live in Lithuania – 1.4 million.

GDP growth reached its peak in 2008, and is approaching the same levels again in 2018. Similar to the other Baltic States; the Lithuanian economy suffered a deep recession in 2009, with GDP falling by almost 15 percent. After severe recession, the country's economy started to show signs of recovery already in 3rd quarter of 2009, returned to growth in 2010 with positive 1.3 outcome and with 6.6 per cent growth during the first half of 2011. The Applicant indicated that the country is considered as one of the fastest growing economies in the EU.

Lithuania has a sound fiscal position. The 2017 budget resulted in a 0.5 percent surplus, the gross debt is stabilising at around 40 percent of GDP. The budget remained positive in 2017 and is expected do so in 2018.

Lithuania is ranked 11th in the world in the Ease of Doing Business Index prepared by the World Bank Group and 16th out of 178 countries in the Index of Economic Freedom, measured by The Heritage Foundation. On average, more than 95 percent of all foreign direct investment in Lithuania comes from European Union countries. Sweden is historically the largest investor with 20 percent – 30 percent of all FDI in Lithuania. FDI into Lithuania spiked in 2017, reaching its highest ever-recorded number of Greenfield investment projects. In 2017, Lithuania was the third country, after Ireland and Singapore, by the average job value of investment projects.

Based on OECD data, Lithuania is among the top five countries in the world by postsecondary (tertiary) education attainment. Educated workforce attracted investments especially in ICT sector during the past years. The Lithuanian government and the Bank of Lithuania simplified procedures for obtaining licenses for the activities of e-money and payment institutions, positioning the country as one of the most attractive for the FinTech initiatives in EU.

## **Turkey**

Turkey's largely free-market economy is driven by its industry and, increasingly, service sectors, although its traditional agriculture sector still accounts for about 25 percent of employment. The automotive, petrochemical, and electronics industries have risen in importance and surpassed the traditional textiles and clothing sectors within Turkey's export mix. However, the recent period of political stability and economic dynamism has given way to domestic uncertainty and security concerns, which are generating financial market volatility and weighing on Turkey's economic outlook.

Current government policies emphasize populist spending measures and credit breaks, while implementation of structural economic reforms has slowed. The government is playing a more active role in some strategic sectors and has used economic institutions and regulators to target political opponents, undermining private sector confidence in the judicial system. Between July 2016 and March 2017, three credit ratings agencies downgraded Turkey's sovereign credit ratings, citing concerns about the rule of law and the pace of economic reforms.

Turkey remains highly dependent on imported oil and gas but is pursuing energy relationships with a broader set of international partners and taking steps to increase use of domestic energy sources including renewables, nuclear, and coal. The joint Turkish-Azerbaijani Trans-Anatolian Natural Gas Pipeline is moving forward to increase transport of Caspian gas to Turkey and Europe, and when completed will help diversify Turkey's sources of imported gas.

After Turkey experienced a severe financial crisis in 2001, Ankara adopted financial and fiscal reforms as part of an IMF program. The reforms strengthened the country's economic fundamentals and ushered in an era of strong growth, averaging more than 6 percent annually until 2008. An aggressive privatization program also reduced state involvement in basic industry, banking, transport, power generation, and communication. Global economic conditions and tighter fiscal policy caused GDP to contract in 2009, but Turkey's well-regulated financial markets and banking system helped the country weather the global financial crisis, and GDP growth rebounded to around 9 percent in 2010 and 2011, as exports and investment recovered following the crisis.

The growth of Turkish GDP since 2016 has revealed the persistent underlying imbalances in the Turkish economy. In particular, Turkey's large current account deficit means it must rely on external investment inflows to finance growth, leaving the economy vulnerable to destabilizing shifts in investor confidence. Other troublesome trends include rising unemployment and inflation, which increased in 2017, given the Turkish lira's continuing depreciation against the dollar. Although government debt remains low at about 30 percent of GDP, bank and corporate borrowing has almost tripled as a percent of GDP during the past decade, outpacing its emerging-market peers and prompting investor concerns about its long-term sustainability.

The economy of Turkey is an emerging market economy as defined by the International Monetary Fund. Turkey is among the world's developed countries according to the CIA World Fact book. Turkey is also defined by economists and political scientists as one of the world's newly industrialized countries. Turkey has the world's 19th-largest nominal GDP, and 13th-largest GDP by PPP. The country is among the world's leading producers of agricultural products; textiles; motor vehicles, transportation equipment; construction materials; consumer electronics and home appliances (see the related chapters below).

In 2018, Turkey went through a currency and debt crisis, characterised by the Turkish lira (TRY) plunging in value, high inflation, rising borrowing costs, and correspondingly rising loan defaults. The crisis was caused by the Turkish economy's excessive current account deficit and foreign-currency debt, in combination with the ruling Justice and Development Party's increasing authoritarianism and President Erdoğan's unorthodox ideas about interest rate policy.

Turkey's economic and social development performance since 2000 has been impressive, leading to increased employment and incomes and making Turkey an upper middle-income country. However, growing economic vulnerabilities and a more challenging external environment are threatening to undermine those achievements.

For most of the period since 2000, Turkey has maintained a long-term focus on implementing ambitious reforms in many areas, and government programs have targeted vulnerable groups and disadvantaged regions. Poverty incidence more than halved over 2002-15, and extreme poverty fell even faster.

During this time, Turkey urbanized dramatically, maintained strong macroeconomic and fiscal policy frameworks, opened to foreign trade and finance, harmonized many laws and regulations with European Union (EU) standards, and greatly expanded access to public services. It also recovered well from the global crisis of 2008/09.

However, there has been a slowdown in reforms in several areas in recent years that, together with a number of economic vulnerabilities, risks reversing some of the progress made to date.

The economic outlook is subject to higher levels of uncertainty than usual, given rising inflation and unemployment, contracting investment, elevated corporate and financial sector vulnerabilities, and only patchy implementation of corrective policy actions and reforms.

There are also significant external headwinds due to weakening relationships with some key trading partners, ongoing geopolitical tensions in the sub region, global trade tensions, and concerns about a global recession.

***Commission's consideration***

*The Commission is of the view that the above information submitted by the Applicant on the state of the economy of Egypt, Latvia, Lithuania, and Turkey does not indicate that the threat of material exists to the SACU industry.*

**6.6 Other information submitted by the Applicant regarding its allegation that the infliction of material injury is imminent.**

The Applicant's submissions are set out below:

On 17 December 2019, it was reported by [www.businesswire.com](http://www.businesswire.com) that Technavio has announced its latest market research report titled "Global Pasta Market 2019-2023." Technavio has been monitoring the global pasta market since 2017, stated that the market is poised to grow by USD 11.42 billion during 2019-2023, progressing at a Compound Annual Growth Rate ("CAGR") of over 5 percent during the forecast period. The market is driven by new product launches. In addition, the growing popularity of health and wellness pasta is anticipated to further boost the growth of the global market. The launch of new products will be one of the major drivers in the global pasta market. Pasta manufacturers are adopting innovative strategies to increase their market share.

On 06 March 2020, it was also reported by [www.businesswire.com](http://www.businesswire.com) that the global pasta market is poised to grow by USD 12.23 billion during 2020-2024, progressing at a compound annual growth rate (CAGR) of almost 6 percent during the forecast period.

The market is driven by the increased demand for instant pasta. In addition, the rising demand for local flavours and varieties is anticipated to boost the growth of the pasta market.

The growing popularity and preference for convenience food products among individuals, especially the working population is increasing the demand and consumption of instant pasta. Some of the major factors propelling the sale of instant pasta is their longer shelf life, easy preparation, and shorter cooking time. This is encouraging many vendors to introduce new pre-cooked or instant pasta of different flavours with diverse sauces.

With a constant growing market, the number of international manufacturers is increasing and its production volumes are on the rise as well.

#### **6.7 SUMMARY ON THREAT OF MATERIAL INJURY**

The Commission noted that Egypt, Latvia, Lithuania and Turkey increased their freely disposable capacity; the imports from these countries have increased; the average prices of the products from these countries were each well below other importing countries' prices for the same period. This indicates that a threat of material injury to the SACU industry exists.

#### ***Comments by European Commission on the Commission's essential facts letter***

*The European Commission stated that threat of injury is not analysed in the Essential Facts. According to Article 3.7 of the WTO ADA: "A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the authorities should consider, inter alia, such factors as:*

- (i) a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;*
- (ii) sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to the importing Member's market, taking into account the availability of other export markets to absorb any additional exports;*
- (iii) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and*
- (iv) inventories of the product being investigated."*

*The European Commission further stated that none of these elements have been analysed in the Essential Facts. In any event, on the basis of information provided in the complaint, it appears that certain indicators, such as capacity utilisation or return on investments, improve immediately after the POI, which seems to indicate a further improvement of the situation of the domestic industry, rather than an imminent threat of injury. As pointed out in their submissions upon initiation and Preliminary Determination, if the domestic industry is experiencing any difficulties, they must be caused by other factors, in particular, increase in wages, currency fluctuations or insufficient revitalisation measures. Therefore, it has not been demonstrated that the domestic injury is suffering serious injury or threat of serious injury.*

### **Commission's consideration**

*The Commission noted that Egypt, Latvia, Lithuania and Turkey increased their freely disposable capacity; the imports from these countries have increased by 40 percent over the injury POI and the average prices of the products from these countries were each well below other importing countries' prices for the same period. This indicates that a threat of material injury to the SACU industry exists.*

*Furthermore, as discussed in section 7.5 on page 92 to 95 of this report the Commission acknowledged that there are factors other than the dumping that*

*contributed to the injury such as increasing production cost of the domestic industry and the competition within the domestic industry. However, the Commission is of the view that these factors did not sufficiently detract from the causal link between the dumping of the subject product and the material injury.*

*The Commission is of the view that the European Commission's claim that the Essential Facts Letter did not conform with the requirements of Article 3.7 of the WTO Anti-Dumping Agreement is unfounded. In its Preliminary Report the Commission made a preliminary determination that the threat of material injury exists to SACU industry as the freely disposable capacity of Egypt, Latvia, Lithuania and Turkey increased; the imports from these countries increased by 40 percent over the injury POI; and the average prices of the products from these countries were each well below other importing countries' prices for the same period. This issue was not analysed in the Essential Facts letter, as it has been addressed in the Commission's Preliminary Report and the essential facts letter must be read in conjunction with the Commission's Preliminary Report.*

The Commission therefore made a final determination that the SACU industry is experiencing a threat of material injury. This conclusion is supported by the fact that Egypt, Latvia, Lithuania and Turkey increased their freely disposable capacity; the imports from these countries increased by 40 percent over the injury POI and the average prices of the products from these countries were each well below other importing countries' prices for the same period.



## 7. CAUSAL LINK

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### 7.1 GENERAL

In order for the Commission to impose final measures, it must be satisfied that there is sufficient evidence to indicate that the material injury experienced by the SACU industry is as a result of the dumping of the subject product.

### 7.2 VOLUME OF IMPORTS AND MARKET SHARE

An indication of causality is the extent of the increase in the volume of the dumped subject imports from Egypt, Latvia, Lithuania, and Turkey relative to the extent to which the market share of the SACU Industry has decreased over the Injury POI.

The following table compares the market share of the SACU Industry with that of the alleged dumped imports:

**Table 7.2.1: Market share**

Percentage market share held by:	2017	2018	2019
	%	%	%
Applicant	100	98	98
Estimate of other SACU producers' market share (%)	100	94	81
Total dumped imports	21.78%	23.92%	25.33%
Total Market	100%	100%	100%

\*The information above was indexed using 2017 as base year, due to confidentiality

The Applicant indicated that the market share (volumes) of the Applicant showed a declining trend over the period 2017 to 2019, because of the dumped imports, causing SACU Industry to suffer material injury. The individual import volumes from Egypt, Latvia, Lithuania and Turkey all increased from 2017 to 2019. The combined import volumes from Egypt, Latvia, Lithuania and Turkey increased from 15,024,390 kg in 2017 to 21,070,969 kg in 2019, which amounted to a 40 percent increase over the Injury POI.

**Commission's consideration**

*The Commission noted that the Applicant's market share declined by 2 index points, for the period 2017 to 2019, while the size of the SACU market increased over the same period.*

The following table shows the volume of imports:

**Table 7.2.2: Import volumes**

Import Volume (kg)						
	Volumes	%	Volumes	%	Volumes	%
	2017	2017	2018	2018	2019	2019
<b>Dumped imports</b>	<b>15 024 390</b>	<b>48,57%</b>	<b>19 923 827</b>	<b>57,11%</b>	<b>21 070 969</b>	<b>57,47%</b>
Egypt	2 111 480	6,83%	4 235 320	12,14%	3 793 927	10,35%
Latvia	5 220 173	16,88%	6 510 174	18,66%	8 073 728	22,02%
Lithuania	7 253 252	23,45%	7 740 936	22,19%	7 645 467	20,85%
Turkey	439 486	1,42%	1 437 397	4,12%	1 557 848	4,25%
<b>Other imports</b>	<b>15 908 435</b>	<b>51,43%</b>	<b>14 962 937</b>	<b>42,89%</b>	<b>15 594 017</b>	<b>43%</b>
<b>Total</b>	<b>30 932 826</b>	<b>100%</b>	<b>34 886 764</b>	<b>100%</b>	<b>36 664 987</b>	<b>100%</b>

The Applicant indicated that the subject product import market share (volume - kg) of Egypt, Latvia, Lithuania and Turkey each increased over the period 2017 to 2019. The four countries' combined import market share (volume - kg) increased over the period 2017 to 2019, an increase of 40 percent.

### 7.3 EFFECT OF DUMPED IMPORTS ON PRICES

The following table shows the price effects of the Applicant:

**Table 7.3.1: Price depression, price suppression and price undercutting**

<b>Rand</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Ex-factory selling price in SACU (Price depression)	100	92	96
Cost of production % selling price( suppression)	100	109	120
Price Undercutting			
Egypt	100	70	68
Latvia	100	104	101
Lithuania	100	68	60
Turkey	100	33	99

\*The information above was indexed using 2017 as base year, due to confidentiality

### 7.4 CONSEQUENT IMPACT OF DUMPED IMPORTS

<b>Material injury indicator</b>	<b>Analysis (2017– 2019)</b>
Price suppression	The Applicant suffered price suppression, as it could not increase prices to recover rising costs.
Price depression	The Applicant suffered price depression, as its selling price decreased during the injury POI.
Sales volume	The Applicant did not suffer injury in terms of sales volume as the sales volume increased during the injury POI. However, this increasing trend was due to price depression.
Market share	The market share of the Applicant showed a declining trend over the injury POI, while the dumped imports were able to increase their share in a growing market.
Profit	The gross and net profit of the Applicant substantially decreased over the injury POI, as the dumped imports gained increased market share.
Production	The Applicant minimally increased its output over the injury POI. However, this is not sustainable as the Applicant continues to loss the market share to the dumped imports in a growing market.
Productivity	The productivity of the Applicant showed an increasing trend over the injury POI, which was realised due to a reduction in employees from 2018 to 2019.
Return on investment	The return on investment showed decreasing trends over the injury POI. This indicates that the Applicant is suffering material injury.
Utilisation of production capacity	Utilisation of production capacity showed an increasing trend for the injury POI. However, should the dumped imports continue to increase the sales volumes of the Applicant are likely to reduce further and the Applicant would be under pressure to reduce production volumes, which would result in a decrease in capacity utilisation.

Cash flow	The Applicant cash flow indicate a declining trend over the injury POI, mostly due to price depression and price suppression.
Inventory levels (volume)	The inventory levels slightly decreased as sales volume also increased slightly
Growth	The SACU market size showed growth during the injury POI. However, the Applicant's market share decreased over this period, while the dumped imports increased. This shows that the Applicant is suffering material injury.
Wages	The wages showed an increasing trend over the period 2017 to 2019, as increased wages are negotiated with Unions.

## 7.5 FACTORS OTHER THAN DUMPING CAUSING INJURY

### 7.5.1 Examination of Egypt, Latvia, Lithuania and Turkey under Article 3.5 of the WTO Anti-Dumping Agreement

Variable	Year			Change (%)
	2017	2018	2019	2017-2019
Prices of imports not sold at dumped prices (fob price) (R/kg)	11.79	15.19	14.37	21.88
Volume of imports not sold at dumping (Kg)	15 908 435	14 962 937	15 594 017	(1.97%)
Contraction in demand:				
Growth rate for the subject product industry (kg)	100	67.31	100.32	0.32%
<b>Changes in the patterns of consumptions</b>	The Applicant stated that there is no change in the pattern of consumption that the SACU Pasta Industry is aware of.			
<b>Trade-restrictive practices of foreign and domestic producers</b>	The Applicant stated that there are no trade restrictive practices in place except for normal customs duties on imports.			
<b>Developments in technology</b>	The Applicant stated that there are no known recent developments in technology that would place the Applicant at a disadvantage.			
<b>Export performance of the domestic industry</b>	The Applicant stated that it is primarily focusing on supplying the domestic market, but do have limited exports to African countries outside SACU. However, it should be noted that the injury data as supplied relates only to the sales in the SACU market.			
<b>Productivity of the domestic industry</b>	The Applicant stated that it believes that its productivity is comparing favourably with its competitors. However, as a result of the continuing of dumping the SACU Industry's productivity will be affected as these imports impact on the production of the Applicant.			

\*The information above was indexed using 2017 as base year, due to confidentiality

The Applicant stated that the exchange rate does impact on the SACU industry, with fluctuations in the currency more severely impacting the Applicants' selling prices than the Applicants' production costs. This is currently the case due to the dumped imports, as maintaining market share is critical for the sustainability of the Applicant.

***Comments by Exporters' Association on the Commission's essential facts letter***

*The Exporters' Association stated that the Commission's conclusion on the existence of injury relies on false and biased information. The Exporters' Association further stated that it reiterates that there is no material injury suffered by the domestic industry due to dumped imports. If there is injury, it is caused by factors other than dumped imports. On the essential facts, the Commission itself notes that these other factors contributed to the injury:*

*"The Commission is of the opinion that although there are factors other than dumping that contributed to the injury such as increasing production cost of the domestic industry and the competition within the domestic industry, these factors did not sufficiently detract from the causal link between the dumping of the subject product and the material injury."*

*The Exporters' Association further stated although the Commission accepts that other factors have caused injury, the Commission essentially blames dumped imports. Dumped imports would cause injury to the domestic industry but not imports from Turkey. The Exporters' Association stated it cannot comprehend how such an immaterial share of Turkish exports within SACU market could affect the Applicant's profitability.*

*The Exporters' Association stated that in 2019, imports of pasta from Turkey accounted for only 4 per cent in SACU's pasta imports. Turkish products almost do not exist in SACU market if their share is calculated in SACU's domestic consumption rather than imports. The Exporters' Association stated that as discussed above, Turkey does not apply cheap and dumped prices. In that sense, The Exporters' Association invited the Commission to explain how*

*such negligible volumes in fair prices could cause injury to the domestic industry. As it believes that the Commission is well aware of its commitments under WTO Agreements. The Exporters' Association stated that as the Commission appreciates, any injury caused by other factors like competition with foreign producers located in SACU's customs union and in free trade agreement partners or deterioration in profitability due to internal factors in SACU market cannot be attributed to imports from Turkey. The Exporters' Association stated that imposition of a measure based on the Applicant's false assumptions against Turkish exports would absolutely be in breach of SACU's commitments under WTO. The Exporters' Association stated that due to the reasons listed above, they strongly believe that imports of pasta from Turkey do not cause any material injury or threat of injury on the domestic industry. Within this context, the Exporters' Association invited the Commission to revisit its evaluations in the essential facts and to rescind this investigation for Turkey.*

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

*The interested parties reiterated the same comments made on the Commission's initiation determination. The Commission in the preliminary report addressed these issues. In this regard, the Commission noted that:*

- Over the injury POI, the volume of dumped imports from Egypt, Turkey, Latvia and Lithuania increased from 15 024 390 kg to 21 070 969, an increase of 40 percent;*
- During the injury POI, dumped imports as a percentage of total imports grew from 46 percent to 57 percent;*
- The proportion of dumped imports increased relative to imports from other countries; and*
- Dumped imports were priced significantly lower than other imports.*

*In addition, the Commission noted the fact that it made a final determination to conduct a cumulative assessment of the effect of dumped imports on the SACU market, as discussed in section 5.2 on pages 55 to 56 of this report.*

*Therefore, the effect of Turkey's imports were not individually assessed.*

*Although there are factors other than the dumping that contributed to the injury such as increasing production cost of the domestic industry and the competition within the domestic industry, the Commission is of the view that these factors did not sufficiently detract from the causal link between the dumping of the subject product and the material injury.*

## **7.6 SUMMARY ON CAUSAL LINK**

The Commission noted that:

- Over the injury POI, the volume of dumped imports from Egypt, Turkey, Latvia and Lithuania increased from 15 024 390 kg to 21 070 969, an increase of 40 percent;
- During the injury POI, dumped imports as a percentage of total imports grew from 46 percent to 57 percent;
- The proportion of dumped imports increased relative to imports from other countries; and
- Dumped imports were priced significantly lower than other imports.

The Commission made a final determination that although there are factors other than the dumping that contributed to the injury such as increasing production cost of the domestic industry and the competition within the domestic industry, these factors did not sufficiently detract from the causal link between the dumping of the subject products and the material injury.

## **8. SUMMARY OF FINDINGS**

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### **8.1 NEGLIGENCE**

The Commission made a final determination that imports from Egypt, Latvia, Lithuania and Turkey are above the negligibility level of 3 percent.

### **8.2 LIKE PRODUCT**

The Commission made a final determination that the SACU product and the imported product from Egypt, Latvia, Lithuania and Turkey are “like products”, for purposes of comparison, in terms of the ADR.

### **8.3 INDUSTRY STANDING**

The application was lodged by Bolux, Namib Mills, Pioneer Foods and Tiger Brands on behalf of the SACU industry. Together they constitute major proportion of the production of SACU producers.

The Commission made a final determination that the application can be regarded as being made “by or on behalf of the domestic industry” under the provisions of the ADR.

### **8.4 DUMPING**

The Commission found that the subject product originating in or manufactured by Amber Pasta from Lithuania, Dobeles Dzirnānieks from Latvia, Turkey, and Egypt, was exported at dumped prices to the SACU.



The following dumping margins were calculated:

<b>Country</b>	<b>Dumping margin</b>
Egypt	43%
Turkey	367%
Latvia (Dobeles Dzirnavnieks)	4%
Other exporters from Latvia	4%
Lithuania (Amber Pasta)	12%
Other exporters from Lithuania	12%

The Commission made a final determination that dumping of the subject product originating in or imported from Egypt, Latvia, Lithuania and Turkey is taking place.

## **8.5 MAJOR PROPORTION**

The injury analysis in this investigation relates to the Applicant who constitutes more than 50 percent of the total domestic production of the subject product.

The Commission made a final determination that this constitutes “a major proportion” of the total domestic production, in accordance with the ADR.

## **8.6 CUMULATIVE ASSESSMENT**

As discussed in section 5.2 on pages 55 to 56 of this report, the Commission made a final determination to conduct a cumulative assessment of the effect of the alleged dumped imports on the SACU industry.

## **8.7 MATERIAL INJURY**

The Commission made a final determination that the SACU industry is experiencing material injury in the form of:

- Price Suppression
- Price Depression
- Decline in Market share
- Decline in Profit
- Decline in Return on investment
- Decline in Cash flow
- Decline in Employment

## **8.8 THREAT OF MATERIAL INJURY**

The Commission noted that Egypt, Latvia, Lithuania and Turkey increased their freely disposable capacity; the imports from these countries have increased; the average prices of the products from these countries were each well below other importing countries' prices for the same period. This indicates that a threat of material injury to the SACU industry exists.

The Commission therefore made a final determination that a threat of material injury to the SACU industry exists.

## **8.9 CAUSAL LINK**

The Commission noted that:

- Over the injury POI, the volume of dumped imports from Egypt, Turkey, Latvia and Lithuania increased from 15 024 390 kg to 21 070 969, an increase of 40 percent;
- During the injury POI, dumped imports as a percentage of total imports grew from 46 percent to 57 percent;
- The proportion of dumped imports increased relative to imports from other countries; and
- Dumped imports were priced significantly lower than other imports.

The Commission made a final determination that although there are factors other than the dumping that contributed to the injury such as increasing production cost of the domestic industry and the competition within the domestic industry, these factors did not sufficiently detract from the causal link between the dumping of the subject products and the material injury.

## **9. AMOUNT OF DUTY**

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### **9.1 Lesser Duty Rule**

The “lesser duty” is the anti-dumping duty imposed at the lesser of the margin of dumping or margin of injury, and which is deemed to be sufficient to remove the injury caused by the dumped imports. The Commission always considers the lesser duty rule but the application of the lesser duty rule is not mandatory.

#### **Price disadvantage**

The price disadvantage is the extent to which the price of the imported product (landed cost) is lower than the unsuppressed and un-depressed ex-factory selling of the SACU product. It is the Commission’s practice that the price disadvantage is only applied when both the exporter and the importer respond in the investigation.

#### **Dobeles Dzirnavnieks**

The price disadvantage for Dobeles Dzirnavnieks was calculated based on weighted average landed cost of International Food Group (cooperating importer). The SACU unsuppressed price is based on an estimate by the Applicant in the absence of dumped imports. The Applicant applied the profit margins for the subject product before the entry of the dumped imports. The price disadvantage was then expressed as a percentage of the FOB export price and calculated to be 80 percent.

#### **Amber Pasta**

Price disadvantage for Amber Pasta was not calculated as importers of the subject product from Amber Pasta did not fully cooperate in the investigation.

#### **Duties to be imposed**

The rates of duty to be imposed were concluded to be the following, being the lesser of the price disadvantage or the dumping margin expressed as a

percentage of the fob export price:

Tariff heading and Tariff subheading	Description	Statistical unit	Final Duties					
			Egypt	Turkey	Latvia: Dobeles Dzirnavnieks	Other exporters from Latvia	Lithuania: Amber Pasta	Other exporters from Lithuania
19.02	Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni; couscous, whether or not prepared:							
1902.1	- Uncooked pasta, not stuffed or otherwise prepared:							
1902.11	---Containing eggs	kg	43%	367%	4%	4%	12%	12%
1902.19	---Other:	kg	43%	367%	4%	4%	12%	12%

## 10. FINAL DETERMINATION

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The Commission made a final determination that there is sufficient information to indicate that:

- dumping of the subject product originating in or imported from Egypt, Latvia, Lithuania and Turkey is taking place;
- the SACU industry is experiencing material injury and a threat of material injury, caused by the alleged dumped imports of the subject product originating in or imported from Egypt, Latvia, Lithuania and Turkey.

Furthermore, the Commission made a final determination that the same measures be imposed on uncooked pasta, not stuffed or otherwise prepared, containing eggs classifiable under tariff subheading (HS 1902.11), as these two products are like products.

The Commission therefore decided to recommend to the Minister of Trade, Industry and Competition that the following Anti-Dumping duties are imposed on pasta originating in or imported from Egypt, Latvia, Lithuania and Turkey:

Tariff heading and Tariff subheading	Description	Statistical unit	Final Duties					
			Egypt	Turkey	Latvia: Dobeles Dzirnavnieks	Other exporters from Latvia	Lithuania: Amber Pasta	Other exporters from Lithuania
19.02	Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni; couscous, whether or not prepared:							
1902.1	- Uncooked pasta, not stuffed or otherwise prepared:							
1902.11	---Containing eggs	kg	43%	367%	4%	4%	12%	12%
1902.19	---Other:	kg	43%	367%	4%	4%	12%	12%

The Commission made a further recommendation that the anti-dumping duties on pasta be listed in the “rebate item” column in Schedule No. 2, and therefore may not be imported under rebate of customs duty without payment of anti-dumping, countervailing and safeguard duties without a recommendation from ITAC.