

**REPORT NO. 696**

**INVESTIGATION INTO THE ALLEGED DUMPING OF FROZEN POTATO  
CHIPS ORIGINATING IN OR IMPORTED FROM BELGIUM, GERMANY,  
AND THE NETHERLANDS: PRELIMINARY DETERMINATION**

The International Trade Administration Commission of South Africa herewith presents its  
Report No. 696: **INVESTIGATION INTO THE ALLEGED DUMPING OF FROZEN  
POTATO CHIPS ORIGINATING IN OR IMPORTED FROM BELGIUM, GERMANY, AND  
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29 106 2022

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

### **INVESTIGATION INTO THE ALLEGED DUMPING OF FROZEN POTATO CHIPS ORIGINATING IN OR IMPORTED FROM BELGIUM, GERMANY, AND THE NETHERLANDS: PRELIMINARY DETERMINATION**

#### **SYNOPSIS**

On 19 November 2021, the International Trade Administration Commission of South Africa (“the Commission”) initiated an investigation into the alleged dumping of frozen potato chips (“the subject product”) originating in or imported from Belgium, the Netherlands, and Germany through Notice No. 674 of 2021, which was published in *Government Gazette* No. 45500.

This investigation was self-initiated by the Commission in terms of Regulation 3 of the Anti-Dumping Regulations (“ADR”), after obtaining *prima facie* evidence indicating that the subject product was imported into the Southern African Customs Union (“SACU”) at dumped prices, causing material injury to the SACU industry.

Information on material injury was obtained from McCain Foods SA (“McCain”), whose production volumes constitute 72 percent of the domestic production of the subject product in SACU.

Information on normal value of the subject product from Belgium and the Netherlands was obtained from the verified price information of cooperating producer/exporters in the Commission's Sunset Review investigation on Frozen Potato Chips from Belgium and the Netherlands. The information on export price of the subject product was obtained from the South African Revenue Service (“SARS”) import statistics.

Information on normal value of the subject product from Germany was obtained from a retail advertisement for online sales of the subject product by Agrarfrost (Krinkle cut, 7mm cut and backfries) offered for sale to customers in Germany. The information on export price of the subject product was obtained from SARS import statistics.

Upon initiation of the investigation, the diplomatic representatives and known producers/exporters of the subject product in Belgium, Germany and the Netherlands were sent a non-confidential version of the initiation document, initiation notice, and foreign producers/exporter's questionnaire to complete. Known importers of the subject product in the SACU were also sent the non-confidential initiation document, initiation notice, and the importer's questionnaire to complete.

After considering all responses and comments received from interested parties, the Commission made a preliminary determination that the subject product originating in or imported from Belgium, Germany, and the Netherlands is imported into the SACU market at dumped prices, thereby causing material injury to the SACU industry. The Commission further decided to request the Commissioner for SARS to impose provisional payments as per Table 9 of this Report for a period of six months as the SACU industry would continue to suffer material injury while the investigation continues.

## **1. APPLICATION AND PROCEDURE**

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### **1.1 LEGAL FRAMEWORK**

This investigation is conducted in accordance with the International Trade Administration Act, No. 71 of 2002 (“ITA Act”) and the ADR, having due regard to the World Trade Organisation (“WTO”) Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, 1994 (“the Anti-Dumping Agreement”).

### **1.2 ALLEGATIONS ACCORDING TO ADR 3.3**

The information gathered by the Commission indicated that imports of the subject products originating in or imported from Belgium, Germany, and the Netherlands were being dumped into the SACU market, thereby causing material injury to the SACU industry. The basis of the alleged dumping was that the subject product was exported to SACU at prices which were less than the normal value in the country of origin. The information at the Commission’s disposal indicated that as a result of dumping of the subject product from Belgium, Germany and the Netherlands, the SACU industry is suffering material injury in the form of:

- Price undercutting;
- Price suppression;
- Declining sales volumes;
- Declining market share;
- Declining profits;
- Declining production volumes;
- Declining utilisation of production capacity;
- Declining return on investment;
- Negative cash flow;
- Declining number of employees; and
- Negative growth.

### **1.3 INVESTIGATION PROCESS**

The material injury information obtained from McCain was verified on 20 and 21 October 2021.

The trade representatives of Belgium, Germany and the Netherlands were informed, in terms of Regulation 27.1 of the ADR, that the Commission has obtained *prima facie* evidence to self-initiate an investigation into the subject product originating in or imported from Belgium, Germany and the Netherlands, in terms of Regulation 3.3 of the ADR.

The Commission initiated an investigation into the alleged dumping of the subject product originating in or imported from Belgium, the Netherlands, and Germany through Notice No. 674 of 2021, which was published in *Government Gazette* No. 45500 on 19 November 2021.

On 22 November 2021, after initiation, all known interested parties were informed and requested to respond to the relevant questionnaires and the non-confidential version of the initiation document.

#### **1.4 INVESTIGATION PERIODS**

The investigation period for dumping is from 01 July 2020 to 30 June 2021 and the investigation period for material injury is from 01 July 2018 to 30 June 2021.

#### **1.5 PARTIES CONCERNED**

##### **1.5.1 SACU industry**

The SACU industry consists of three manufacturers of the subject products, i.e. McCain Foods SA, Nature's Garden and Lamberts Bay Foods.

##### **1.5.2 Foreign Manufacturers/Exporters**

Responses to the Commission's exporter questionnaire were received from the following foreign producers/exporters (exporters):

- NV Mydibel S.A. (Belgium) ("Mydibel");
- Clarebout Potatoes N.V. (Belgium) ("Clarebout");
- Agristo N.V. (Belgium) ("Agristo");
- Lutosa SA (Belgium) ("Lutosa");
- Aviko B.V. (the Netherlands) ("Aviko"); and
- Farm Frites International B.V. (the Netherlands) ("Farm Frites").

All the foreign producers/exporters mentioned above requested an extension of the Commission's due date for submission of responses and were granted an extension of 14 days on good cause shown.

**1.5.3** Initial responses from the producers/exporters were found to be deficient. The producers/exporters were advised accordingly and were each given seven days to rectify the identified deficiencies. Mydibel, Aviko, and Farm Frites rectified the identified deficiencies within the seven-day period. The responses from Lutosa and Agristo were still considered deficient. The information submitted by Clarebout was verified from 10 to 15 March 2022. The response was found to be deficient.

The nature of the deficiencies of Agristo, Clarebout and Lutosa is addressed in sections 4.1, 4.2 and 4.3 respectively of this Report.

The Commission made a preliminary determination not to take the information submitted by Lutosa, Agristo and Clarebout into consideration for purposes of its preliminary determination. The Commission further decided to give Lutosa, Agristo and Clarebout an opportunity to rectify their responses by the deadline date for comments to the Commission's preliminary report and thereby have their information considered for purposes of the Commission final determination.

The Commission took the information submitted by Mydibel, Aviko and Farm Frites into account for purposes of its preliminary determination. This information is dealt with in sections 4.3, 4.2 and 4.6 respectively of this Report.

#### **1.5.4 SACU Importers**

Responses to the Commission's importer questionnaire were received from Etlin International (Pty) Ltd ("Etlin") and Merlog Foods (Pty) Ltd ("Merlog"). Both importers requested an extension of the Commission's due date for submission of responses and were granted 14 days extension on good cause shown. The response submitted by Merlog was found to be deficient. Merlog was advised

accordingly and was given seven days to rectify the identified deficiencies. Merlog rectified the deficiencies identified within the stipulated seven-day period.

The Commission took the information submitted by Merlog and Etlin into account for purposes of its preliminary determination. This information is dealt with in section 8.1 of this Report.

#### **1.5.5 Other Interested Parties**

Comments to the initiation document were received from the following parties:

- Agrarfrost (a producer from Germany);
- the European Commission (“EC”);
- Merlog (an importer in SACU);
- the European Potato Processors’ Association (“EUPPA”);
- the SACU Industry (McCain, Lamberts Bay Foods, and Nature’s Garden); and
- Agristo; Aviko; Farm Frites; and Lamb Western (producers’ joint statement from the Netherlands).

The Commission considered all the comments received for purposes of its preliminary determination. The comments are summarised in the relevant sections of this Report.

All submissions made by interested parties are contained in the Commission’s public file for this investigation and are 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 salient and key comments received from interested parties and the Commission’s consideration of these comments is specifically included in this Report.

### **1.6 PRELIMINARY DETERMINATION**

After considering all responses and comments, the Commission at its meeting of 14 June 2022 made a preliminary determination that the subject product originating in or imported from Belgium, the Netherlands and Germany is imported into the SACU market at dumped prices, thereby causing material injury to the SACU industry.



The Commission also made a preliminary determination that the SACU industry would continue to suffer material injury during the course of the investigation if provisional measures are not imposed. The Commission therefore decided to request the Commissioner of SARS to impose provisional measures on imports of frozen potato chips originating in or imported from Belgium, the Netherlands and Germany for a period of six months, as per Table 9 of this Report.

Comments submitted by interested parties within the specified period on the preliminary determination will be considered by the Commission prior to making its final determination and recommendation to the Minister of Trade, Industry and Competition.

## 2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

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### 2.1 IMPORTED PRODUCT

#### 2.1.1 Description

The subject product is frozen potato chips.

#### 2.1.2 Countries of origin

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

#### 2.1.3 Tariff Classification

The subject product is classifiable under the following tariff-subheadings:

**Table 2.1.3: Subject product tariff classification**

Tariff subheading	Description	unit	Rate of duty					
			General	EU	EFTA	SADC	Mercosur	AFCFTA
2004.10.2	Chips or French fries							
2004.10.21	Prepared by blanching in water and prevented from discolouration by blanching in oil, frozen but not further prepared or processed (whether or not containing added dextrose)	kg	20%	free	20%	Free	18%	20%
2004.10.29	Other	kg	20%	free	20%	Free	18%	20%

#### 2.1.4 Other applicable duties and rebates

There are no rebate provisions and/or trade remedies duties on the subject product from Belgium, Germany, and the Netherlands.

### 2.1.5 Negligibility test

The Commission considers the volume of imports to be negligible if alleged dumped imports account for less than 3 percent of total imports of the subject product during the period of investigation for dumping. The following table shows the percentage of alleged dumped imports from the three countries as a percentage of total imports:

**Table 2.1.5: Negligibility test**

<b>Tons</b>	<b>Import volumes</b>	<b>As a % of total imports</b>
Alleged dumped imports: Belgium	15 861	71%
Alleged dumped imports: The Netherlands	3 049	14%
Alleged dumped imports: Germany	3 503	16%
<b>Cumulated alleged dumped imports</b>	<b>22 413</b>	<b>100%</b>
Other imports	27	0%
<b>Total imports</b>	<b>22 440</b>	<b>100%</b>

Table 2.1.5 above indicates that imports of the subject product from each of the three countries are above 3 percent as a percentage of total imports. The Commission made a preliminary determination that import volumes of the subject product from Belgium, Germany and the Netherlands are above negligibility levels.

### 2.1.6 Production process

The production process is similar worldwide for frozen potato chips, which are partially cooked in oil and then frozen according to the following steps: Raw potatoes are washed; steam peeled; cut; blanched in cold water; dried; partly par-fried in vegetable oil; cooled; frozen; weighed; poli-bag packaged; cased corrugated board packaged; palletised; cold stored at 18 degrees Celsius.

### 2.1.7 Raw materials used

The raw materials for the subject product are potatoes and oil (vegetable and palm oil).

### 2.1.8 Technical characteristics and appearance

The technical characteristics and appearance for the subject product are as follows: The potatoes are cut into chips, lightly processed, frozen and packaged in poly bags ready for cooking.

### **2.1.9 Application or end use**

The subject product is used for human consumption.

### **2.1.10 Substitutability**

The imported subject product is similar in appearance and application to the SACU manufactured product, and is sold in the same markets as full substitutes for the SACU manufactured product.

## **2.2 SACU PRODUCT**

### **2.2.1 Description**

The SACU produced subject product is frozen potato chips, commonly known in South Africa as chips, slap chips and/or skyfries.

### **2.2.2 Production process**

The production process is similar worldwide for frozen potato chips/fries partially cooked in oil and then frozen according to the following steps:

Raw potatoes are washed; steam peeled; cut; blanched in cold water; dried; partly par-fried in vegetable oil; cooled; frozen; weighed; poli-bag packaged; cased corrugated board packaged; palletised; cold stored at 18 degrees Celsius.

### **2.2.3 Raw materials**

The raw materials for the subject product are potatoes and oil (vegetable and palm oil).

### **2.2.4 Technical characteristics and appearance**

The technical characteristics and appearance for the subject product are as follows:

The potatoes are cut into chips, lightly processed, frozen and packaged in poly bags ready for cooking.

### **2.2.5 Application or end use**

The subject product is used for human consumption.

### 2.2.6 Substitutability

The SACU produced subject product is similar in appearance and application to the imported subject product and is sold in the same markets as full substitutes for the imported subject product.

### 2.3 Summary

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

**Table 2.3: Like product determination**

	<b>Imported product</b>	<b>SACU product</b>
Raw materials	Raw potatoes and oil	Raw potatoes and oil
Production processes	Raw potatoes are washed; steam peeled; cut; blanched in cold water; dried; partly par-fried in vegetable oil; cooled; frozen; weighed; poli-bag packaged; cased corrugated board packaged; palletised; cold stored at 18 degrees Celsius	Raw potatoes are washed; steam peeled; cut; blanched in cold water; dried; partly par-fried in vegetable oil; cooled; frozen; weighed; poli-bag packaged; cased corrugated board packaged; palletised; cold stored at 18 degrees Celsius
Tariff classifications	2004.10.21 and 2004.10.29	2004.10.21 and 2004.10.29
Technical characteristics/appearances	The potatoes are cut into chips, lightly processed, frozen and packaged in poly bags ready for cooking	The potatoes are cut into chips, lightly processed, frozen and packaged in poly bags ready for cooking
Applications and/or end-use	Human consumption	Human consumption
Substitutability	Fully	Fully

The Commission made a preliminary determination that the SACU product and the imported product are “like products”, for purposes of comparison, in terms of the definition of “like product” in Regulation 1 of the ADR.

### **3 INDUSTRY STANDING**

The investigation was initiated by the Commission in terms of Regulation 3.3 of the ADR. Unlike investigations based on an application lodged by a domestic industry where the industry standing requirement in terms of Regulation 7 of the ADR must be met, there is no such requirement in the case of an investigation that is self-initiated.

However, support for the investigation has been obtained from the three SACU producers, i.e. McCain, Nature's Garden and Lamberts Bay Foods. Based on production, McCain constitutes 72 percent of the total SACU production of the subject product.

## 4. DUMPING

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The margin of dumping is calculated by subtracting the export price from the normal value of the product (after all the adjustments have been made). The margin is then expressed as a percentage of the export price. If the margin of dumping is less than two percent, it is regarded as *de minimis* in terms of the ADR and no anti-dumping duty will be imposed.

### BELGIUM

There were four producers/exporters that responded to the Commission's exporter questionnaire, which are Agristo, Clarebout, Mydibel, and Lutosa. Responses from Agristo, Clarebout and Lutosa were found to be deficient.

The nature of the deficiencies for Agristo, Clarebout and Lutosa is discussed below:

#### 4.1 Agristo

Agristo's deficiencies are as follows:

- The CBU is incomplete, as a result of a breakdown of "other" column in CBU not being provide;
- The CBU is based on sales volume instead of production volume as per the questionnaire requirement;
- The total sales volumes of subject product in the CBU and total sales volumes in the sales schedules of paragraphs D1.1, D2.1 and E1.1 in the questionnaire, do not reconcile; and
- The unit of measurement in the CBU is not provided.

There were numerous engagements with Agristo regarding the above mentioned deficiencies, which are contained in the public file. The Commission considered that although the pre-verification letter was issued to Agristo, the response was considered deficient.

The Commission made a preliminary determination not to take the information submitted by Agristo into account for purpose of its preliminary determination. The Commission further decided to give Agristo an opportunity to rectify their response by

the deadline date for comments to the Commission's preliminary report and have their information considered for purposes of the Commission's final determination.

#### **4.2 Clarebout**

On the 04 December 2021, Clarebout requested to provide the CBU only for models which it considered comparable to models exported to the SACU, which would have deviated from ITAC's standard procedure and from the instruction in the questionnaire to provide all models/types produced. On the 08 December 2021, the Commission declined Clarebout's request. The information submitted by Clarebout was verified on 10, 11 and 15 March 2022. Whilst further analysing Clarebout information, it was discovered that there was a possibility that there was other/additional information that was grouped together. A clarity seeking meeting was set up with Clarebout. In the meeting Clarebout confirmed that the product models/types grouped under column "All Other French Fries" are subject products, falling within the scope of the investigation. A breakdown of at least five product types/models to be separated from the column "All other French Fries", in order to view the costing information, was requested. This information was submitted by Clarebout on 5 April 2022 which was quarantined by ITAC's email system. Clarebout further submitted an updated CBU.

The Commission considered that Clarebout ignored the Commission's letter dated 08 December 2021 that requested Clarebout to submit CBU for all product types/models produced by Clarebout, and that specified that the determination of the models is done by the Commission after considering all information provided.

The Commission further considered that although an updated CBU was subsequently submitted, this was done after the due date for deficiencies.

Based on the above, the Commission made a preliminary determination not to take the information submitted by Clarebout after the deadline date for deficiencies into account for purpose of its preliminary determination, in accordance with the ADR. The Commission further decided to give Clarebout an opportunity to rectify their response by the deadline date for comments to the Commission's preliminary report and have their information considered for purposes of the Commission's final determination.



### **4.3 Lutosa**

Lutosa's deficiencies are as follows:

- The cost and price build-up (CBU) is incomplete, as a result of a breakdown of "other" column in CBU not being provide; and
- The notarised sworn statement is not provided.

Based on the above, the Commission made a preliminary determination not to take the information submitted by Clarebout after the deadline date for deficiencies into account for purpose of its preliminary determination, in accordance with the ADR. The Commission further decided to give Lutosa an opportunity to rectify their response by the deadline date for comments to the Commission's preliminary report and have their information considered for purposes of the Commission's final determination.

### **4.4 METHODOLOGY USED FOR MYDIBEL**

It was found that Mydibel produced and sold the subject product in various models in Belgium, but sold only one model in the SACU, i.e. Model A. The cut size of Model A ranges between 9-11mm. The model is herein referred to as a Model A.

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

*The exporters in Belgium and the Netherlands determine the subject product models based on different methods. These methods are based on their customers' order specifications, practices, policies, etc. The Commission made a preliminary determination to determine the subject product models/types based on cut type; cut size; product grade/quality; cooking method; coated/non-coated; and type of oil used.*

#### **4.4.1 Normal value**

It was found that the domestic sales volumes of Model A constituted more than 5% of export sales volumes sold to the SACU, and therefore are of sufficient volumes to determine a normal value, as per Regulation 8.3 of the ADR.

It was also found that sales that were made below cost constituted more than 20% of the total domestic volumes sold in Belgium, and therefore are not in the ordinary course of trade and were excluded in the calculation of the normal value, as per

Regulation 8.2 of the ADR. The Commission therefore determined the normal value based on Mydibel's remaining domestic sales in Belgium.

Mydibel claimed the following adjustments to the normal value:

- Cost of payment terms;
- Cost of transport;
- Cost of packaging;
- Cost of warehousing;
- And cost of inventory carrying.

The Commission made a preliminary determination to allow adjustments of payments terms, transport and packaging, as these were verified and substantiated with documentation.

The Commission made a preliminary determination not to allow adjustments of warehouse and inventory carrying. With regarding to the warehousing cost adjustment, the Commission noted that although the cost was verified and substantiated, however, it could not be demonstrated by Mydibel how this cost has affected price comparability at the time of setting the prices. The Commission found that this cost is part of the selling and general admiration cost that are necessary in the production and/or selling and storing of the subject product until it is collected by or delivered to the customer. With regard to the inventory carrying cost, the Commission noted that although the cost was verified and substantiated, it could not be demonstrated by the Mydibel how this cost is different to cost of payment terms that is already claimed and allowed, and how the cost on its own (if it is not part of payment terms) have affected price comparability at the time of setting the selling price.

#### **4.4.2 Export price**

The Commission determined the export price based on Mydibel's export sales of Model A to SACU.

Mydibel claimed the following adjustments to the export price:

- Cost of payment terms;
- Cost of transport;
- Cost of packaging;
- Cost of warehousing; and
- Cost of inventory carrying.

The Commission made a preliminary determination to allow adjustments of payments terms, transport and packaging, as these were verified and substantiated with documentation.

The Commission made a preliminary determination not to allow adjustments of warehouse and inventory carrying. With regarding to the warehousing cost adjustment, the Commission noted that although the cost was verified and substantiated it could not be demonstrated by Mydibel how this cost has affected price comparability at the time of setting the prices. The Commission found that this cost is part of the selling and general admiration cost that are necessary in the production and/or selling and storing of the subject product until it is collected by or delivered to the customer. With regard to the inventory carrying cost, the Commission noted that although the cost was verified and substantiated, it could not be demonstrated by the Mydibel how this cost is different to cost of payment terms that is already claimed and allowed, and how the cost on its own (if it is not part of payment terms) has affected price comparability at the time of setting the selling price.

#### **4.4.3 Dumping margin**

The dumping margin for Model A was calculated to be 21.84%.

#### **4.5 METHODOLOGY USED FOR ALL OTHER EXPORTERS IN BELGIUM**

The residual dumping margin is applicable to other exporters in Belgium that are exporting to SACU but did not respond and/or fully cooperated in the investigation.

Mydibel is the only producer that fully cooperated in the investigation. The residual dumping margin is therefore calculated based on Mydibel's verified information, as the Commission regarded this information as the best available information.

##### **4.5.1 Normal value**

The Commission determined the average normal value for all the subject products produced by Mydibel based on construction, using Mydibel's total cost plus profit margin in the CBU. It is the Commission's practice to use the highest normal value when determining dumping for non-cooperative exporters. The construction method yielded the highest normal value for the Commission to use.

##### **4.5.2 Export price**

The Commission determined the export price based on Mydibel's export sales to SACU. The Commission made a preliminary determination to adjust the export price by the cost of transport and cost of packaging, which are the costs the Commission deems to be necessary in the sale of the product and are not company specific.

##### **4.5.3 Margin of dumping**

The dumping margin was calculated to be 24.34%.

## **THE NETHERLANDS**

There were two producers/exporters that responded to the Commission's exporter questionnaire, which are Aviko and Farm Frites.

### **4.6 METHODOLOGY USED FOR AVIKO**

It was found that Aviko produced and sold the subject product in various models in the Netherlands. Of the various models produced and sold, three models were exported to the SACU market during the period of investigation for dumping, namely:

- Model A (with a cut size of 11/11mm);
- Model B (with a cut size of 10/10mm); and
- Model C (with a cut size of 6/6mm).

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

*The exporters in Belgium and the Netherlands determine the subject product models based on different methods. These methods are based on their customers' order specifications, practices, policies, etc. The Commission made a preliminary determination to determine the subject product models/types based on cut type; cut size; product grade/quality; cooking method; coated/non-coated; and type of oil used.*

#### **4.6.1 Normal value**

For Model A, Model B, and Model C, it was found that domestic sales volumes of each model constituted more than 5% of the sales volume of the corresponding model sold to the SACU, and therefore are of sufficient volumes to determine normal values, as per Regulation 8.3 of the ADR. It was also found that for all the three models there were no sales made below cost and therefore all sales transactions are in the ordinary course of trade and are included in the calculation of normal values, as per Regulation 8.2 of the ADR. Therefore, the Commission determined the normal values for Model A, Model B and Model C based on Aviko's domestic sales in the Netherlands.

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

*Article 2.4 of the Anti-Dumping Agreement states that "A fair comparison shall be made between the export price and the normal value. The comparison shall be made at the*

*same level of trade, normally at ex-factory level, and in respect of sales made at as nearly as possible the same time". [own underlining]*

*In this case, Aviko's export sales to the SACU for Model A, Model B and Model C were made in few transactions. It should be noted that the price of the subject product is seasonal and therefore fluctuates. The Commission decided that comparing the average export price of the few transactions exported to the SACU, with the average normal value of all transactions that were made in the domestic market throughout the period of investigation, would not be reasonable.*

*Therefore, to calculate the normal values, the Commission decided, for each model, to use domestic sales transactions that took place on the same day on which exports to SACU were made.*

Aviko claimed the following adjustments to the normal value for the three models:

- Cost of payment terms;
- Cost of transport;
- Cost of packaging;
- Cost of discounts and rebates;
- Cost of packaging tax;
- Cost of sales and marketing; and
- Cost of cash discounts.

The Commission made a preliminary determination to allow adjustments of payments terms, transport, packaging, discounts and rebates, packaging tax, and sales and marketing, as these were verified and substantiated with documentation.

The Commission made a preliminary determination not to allow adjustment of cash discount. With regarding to this adjustment, the Commission noted that although the cash discount cost was verified and substantiated it could not be demonstrated by Aviko how this cost has affected price comparability at the time of setting the selling price. It is the Commission's opinion that this cost could not have affected the setting of the selling price as it is conditional on whether the customer will pay promptly or not

(should the customer not pay promptly, the cash discount is forfeited).

#### **4.6.2 Export price**

The Commission determined the export price based on the Aviko's export sales of Model A, Model B and Model C to the SACU.

Aviko claimed the following adjustments to the export price of each of the three models:

- Cost of payment terms;
- Cost of transport; and
- Cost of packaging.

The Commission made a preliminary determination to allow adjustments of payments terms, transport, and packaging, as these were verified and substantiated with documentation.

#### **4.6.3 Dumping margin**

The weighted average dumping margin for Model A, Model B and Model C was calculated to be 10.23%.

### **4.7 METHODOLOGY USED FOR FARM FRITES INTERNATIONAL**

It was found that Farm Frites produced and sold the subject product in various models in the Netherlands. Of the various models produced and sold, two models were exported to the SACU market during the period of investigation for dumping, namely:

- Model A (with a cut size of 10mm); and
- Model B (with a cut size of 12mm).

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

*The exporters in Belgium and the Netherlands determine the subject product models based on different methods. These methods are based on their customers' order specifications, practices, policies, etc. The Commission made a preliminary determination to determine the subject product models/types based on cut type; cut size; product grade/quality; cooking method; coated/non-coated; and type of oil used.*

#### 4.7.1 Normal value

For **Model A**, it was found that domestic sales volumes constituted more than 5% of the sales volume of the product sold to the SACU, and therefore are of sufficient volumes to determine a normal value, as per Regulation 8.3 of the ADR. It was also found that there were sales made below cost, constituting over 90 percent of the total domestic sales of this model. All sales below cost are excluded as they are considered not to be in the ordinary course of trade, as per Regulation 8.2 of the ADR.

The Commission decided not to use the remaining sales (after excluding all sales made below cost). The Commission made a preliminary determination to determine the normal value for Model A based on construction, using Farm Frites' CBU information.

For **Model B**, it was found that domestic sales volumes constituted more than 5% of the sales volume of the product sold to the SACU, and therefore are of sufficient volumes to determine a normal value, as per Regulation 8.3 of the ADR. It was also found that there were sales made below cost, constituting more than 20 percent of the total domestic sales of this model. All sales below cost are excluded as they are considered not to be in the ordinary course of trade, as per Regulation 8.2 of the ADR.

The Commission made a preliminary determination to determine the normal value for Model B based on the remaining domestic sales information (after excluding all sales made below cost).

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

*Article 2.4 of the Anti-Dumping Agreement states that "A fair comparison shall be made between the export price and the normal value. The comparison shall be made at the same level of trade, normally at ex-factory level, and in respect of sales made at as nearly as possible the same time". [own underlining]*

*In this case, Farm Frites' export sales to the SACU for Model B were made in few quantities, while the domestic sales of the same model were made in large quantities, spreading throughout the period of investigation for dumping. It should be noted that the price of the subject product is seasonal and therefore fluctuates. The Commission*



*decided that comparing the average export prices of these few quantities exported to SACU with the average normal value of all transactions that were made in the domestic market throughout the POI, would not be reasonable.*

*Therefore, to calculate the normal value for Model B, the Commission decided to use domestic sales transactions that took place during the same months that are similar to the months in which exports to the SACU were made.*

Farm Frites claimed the following adjustments to the normal value for Model B:

- Cost of payment terms;
- Cost of transport;
- Cost of packaging;
- Cost of discount and rebates; and
- Cost of direct selling expenses.

The Commission made a preliminary determination to allow adjustments of payments terms, transport, and packaging, discounts and rebates, and direct selling expenses, as these were verified and substantiated with documentation.

#### **4.7.2 Export price**

The Commission determined the export price based on Farm Frites' export sales of Model A and Model B to the SACU.

Farm Frites claimed the following adjustments to the export price of each of the two models

- Cost of payment terms;
- Cost of transport;
- Cost of packaging; and
- Cost of direct selling expenses.

The Commission made a preliminary determination to allow adjustments of payments terms, transport, and packaging, and direct selling expenses, as these were verified and substantiated with documentation.

### **4.7.3 Dumping margin**

The weighted average dumping margin for Model A and Model B was calculated to be 25.20%.

## **4.8 METHODOLOGY USED FOR ALL OTHER EXPORTERS IN THE NETHERLANDS**

The residual dumping margin is for all the other Dutch exporters that are exporting to the SACU but did not respond and/or fully cooperated in the investigation.

Aviko and Farm Frites are the only two exporters of the subject product in the Netherlands that responded in this investigation. The Commission found that Aviko produced more variety of models and has more sales in the domestic market. The Commission also found that Farm Frites has more export sales to the SACU.

### **4.8.1 Normal value**

The Commission determined the average normal value for the subject product produced by Aviko, based on Aviko's domestic sales in the Netherlands. The Commission made a preliminary determination to adjust the normal value by the cost of transport and cost of packaging, which the Commission deem to be necessary in the sale of the product and are not company specific.

### **4.8.2 Export price**

The Commission determined the export price based on Farm Frites' verified export sales to the SACU. The Commission made a preliminary determination to adjust the export by the cost of transport and cost of packaging, which the Commission deem to be necessary in the sale of the product and are not company specific.

### **4.8.3 Margin of dumping**

The dumping margin was calculated to be 121.30%.

## **GERMANY**

There were no producers/exporters from Germany that responded to the Commission exporter's questionnaire.

#### **4.9 METHODOLOGY USED FOR ALL EXPORTERS FROM GERMANY**

The dumping margin for all the producers/exporters of the subject product in Germany was determined based on facts available, which is the information used by the Commission for initiation.

##### **4.9.1 Normal value**

The weighted average normal value for the subject product in Germany, determined using a retail advertisement for online sales of the subject product by Agrarfrost, was found to be €1.97/kg. The normal value was at a retail level and therefore adjustments, namely 1.75% for inflation, 7% for VAT, 20% for retail margin, and 5% for inland domestic freight cost, were made to reflect an ex-factory normal value of €1.37/kg.

##### **4.9.2 Export price**

The export price was determined based on imports statistics obtained from SARS for the period of investigation. The export price was determined to be €0.496/kg after being converted from Rands to Euro. The conversion rates were sourced from [oanda.com](http://oanda.com) for the period of investigation. The SARS-based export price was at a FOB level and therefore an adjustment of 5% for inland freight cost was made to reflect an ex-factory export price of €0.472/kg.

##### **4.9.3 Margin of dumping**

The dumping margin was calculated to be 190.25%.

#### **4.10 SUMMARY - DUMPING**

For the purpose of its preliminary determination, the Commission, after considering the comments from interested parties, found that the subject product originating in or imported from Belgium, the Netherlands and Germany is being dumped onto the SACU market as reflected with the following calculated dumping margins:

**Table 4.10: Dumping margins**

<b>Country of origin</b>	<b>Producer/ exporter</b>	<b>Dumping margin</b>
Belgium	Mydibel	22%
	All other producers/exporters	24%
The Netherlands	Aviko	10%
	Farm Frites	25%
	All other producers/exporters	121%
Germany	All the producers/exporters	190%

#### **4.11 COMMENTS FROM INTERESTED PARTIES' COMMENTS**

The comments from interested parties were as follows.

- a) The actualizing of the outdated normal values from a previous investigation with inflation rates over the years and converting them to ZAR with the current exchange rate could not be accepted as representative of the normal value of the product concerned during the period of investigation.
- b) Whose information was used in the calculation of the normal value for each country, and was the normal value information inserted confidential or not?
- c) McCain is a multinational structure, with production in Europe and ample sales in the countries concerned and thus, information of current normal values and export prices is surely reasonably available to McCain.
- d) Which part of the application did McCain complete, and which part was completed by ITAC?
- e) The sample chosen is too small to be representative of the normal value in Germany, and therefore such a normal value calculation cannot represent sufficient evidence for initiating this investigation.
- f) Report No.657, which is the culmination of the expired Sunset Review on French Fries imported from Belgium and the Netherlands, is flawed. Errors were identified in the essential facts letter from the sunset review and there is no reason to believe they were corrected in the current investigation.
- g) The allegations of subsidies and other support are irrelevant in a dumping investigation.

### **Commission's consideration**

- a) *The Commission considered the Netherlands and Belgium exporters' information, inflation rate, and conversion rate, as prima facie evidence for the purposes of initiating this investigation. The adjustment that was made by the Commission was necessary in order to ensure that the normal value and the export price are fairly compared at as nearly as possible the same time (the period of investigation for dumping).*
- b) *Normal values for the Netherlands and Belgium were calculated using the exporters' information from each country. The information published is not confidential. This information was manipulated in such a manner that (i) it is different from the information that was originally provided to the Commission in the earlier sunset review and (ii) cannot be traced back to the individual exporter that provided the information.*
- c) *The investigation was self-initiated by the Commission; hence certain information, in particular information related to dumping, was not requested from McCain or the industry.*
- d) *McCain provided information on material injury and causal link. Other information, in particular dumping information, was completed by the Commission.*
- e) *The Commission's practice is to use information that is adequate and that represents the best information available as prima facie evidence for the purposes of initiating an investigation. More specifically, in keeping with Regulation 23.2 of the ADR, the Commission used an online price as reasonable proof of the domestic price.*
- f) *Report No.657 was not a basis for calculation of the normal values and has no impact on this investigation.*
- g) *The investigation is an anti-dumping investigation; any reference to subsidy in the initiation document has no bearing on the decision of the Commission in this investigation.*

## 5. MATERIAL INJURY

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### 5.1 DOMESTIC INDUSTRY – MAJOR PROPORTION OF PRODUCTION

The material injury information was provided by McCain, which represents 72 percent of the total production volumes of the SACU industry.

The Commission made a preliminary determination that this constitutes “a major proportion” of the total domestic production, in accordance with Regulation 7 of the ADR.

### 5.2 Cumulative assessment

There are three countries involved in this anti-dumping investigation. Therefore, the Commission decided to determine whether to cumulatively assess the effect of the imports from these three countries.

In considering whether cumulative assessment is appropriate with regard to the imports from these countries in terms of Regulation 16.3 of ADR the Commission considered the following:

**Table 5.2: Consideration for cumulative assessment**

The imports from the countries are not negligible	Import volumes from Belgium, the Netherlands and Germany account for 100 percent of total imports during the period of investigation for dumping. Therefore, they are not negligible. This information is contained in Table 5.3.1.
The margin of dumping is above the <i>de minimis</i> level	The dumping margins calculated for these countries are above 2 percent as shown under section 4 of this Report
Competition between imports from the different countries	All three countries exported to SACU at dumped prices, these countries are each other's competitor based on imports' market shares that they gained with the dumped imports. SACU market share for all three countries throughout the period of investigation has increased when cumulatively assessed, which is evidence of competition. Imports from all three countries undercuts the SACU's prices at different levels, which is also evidence of competition.
Competition between imported product and SACU like product	The imported product and the SACU product are like products for purposes of comparisons; they are fully substitutable and have similar end use.

### 5.3 MATERIAL INJURY ANALYSIS

The injury information presented below relates to the evaluation of data for the period 01 July 2018 to 30 June 2021.

#### 5.3.1 IMPORT VOLUMES AND EFFECT ON PRICES

The injury information presented below relates to the evaluation of data for the period 01 July 2018 to 30 June 2021.

##### 5.3.1 Import volumes

The following table shows the volume of the allegedly dumped imports of the subject product as sourced from the SARS for the period 01 July 2018 to 30 June 2021.

**Table 5.3.1: Import volumes**

<b>Period</b>	<b>2018/19</b>	<b>2019/20</b>	<b>2020/21</b>
Dumped imports: Belgium	18 353	13 378	15 861
Dumped imports: The Netherlands	654	479	3 049
Dumped imports: Germany	1 012	2 861	3 503
<b>Total dumped imports (tons)</b>	<b>20 019</b>	<b>16 718</b>	<b>22 413</b>
Other imports	762	74	27
<b>Total imports (tons)</b>	<b>20 780</b>	<b>16 792</b>	<b>22 440</b>
Dumped imports from Belgium as a % of total imports	88%	80%	71%
Dumped imports from the Netherlands as a % of total imports	3%	3%	14%
Dumped imports from Germany as a % of total imports	5%	17%	16%
<b>Total dumped imports as a % of total imports</b>	<b>96%</b>	<b>100%</b>	<b>100%</b>
Other imports as a % of total imports	4%	0%	0%
<b>Total imports</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

The table above shows that dumped imports from the three countries decreased by 17 percentage points from 2018/19 to 2019/20, and started to increase by 34.06 percentage points from 2019/20 to 2020/21, with an overall increase of 11.96 percentage points during the POI. Imports from other countries decreased throughout the POI, with an overall decline of 96.48 percentage points.

The Commission noted that the dumped imports of the subject product have increased significantly during the period of investigation for dumping.

### 5.3.2 Growth of subject imports relative to domestic production and consumption

Tables 5.3.2(a) & (b) below shows the effects of the alleged dumped imports on production and consumption:

**Table 5.3.2 (a): Growth of the subject imports relative to production**

Period	2018/19	2019/20	2020/21
Import volumes/SACU production volumes	100	94	125

The figures were indexed due to confidentiality using 2018/2019 as a base year.

Information in table above indicates that imports relative to domestic production decreased by 6 percentage points in 2019/20 from the base year and further increased by 32 percentage points from 2019/20 to 2020/21, with an overall increase of 25 percentage points over the POI.

**Table 5.3.2 (b): Growth of the subject imports relative to consumption**

Period	2018/19	2019/20	2020/21
Import volumes/SACU consumption volumes	100	94	116

The figures were indexed due to confidentiality using 2018/2019 as a base year.

Information in table above indicates that imports relative to domestic consumption decreased by 6 percentage point in 2019/20 from the base year and further increased by 16 percentage points from 2019/20 to 2020/21, with an overall increase of 16 percentage points over the POI.

### 5.3.3 Effect on Domestic Prices

#### 5.3.3.1 Price undercutting for the period 2020/2021

Price undercutting is the extent to which the price of the imported product is lower than the price of the like product produced by the SACU industry. The following table compares the McCain's ex-factory prices with the landed cost of the dumped imports.

The landed cost is calculated based on FOB export price plus cost of freight, insurance and clearing costs, plus average anti-dumping duties. The following tables show price undercutting of the subject product from the three countries.



**Table 5.3.3.1: Price undercutting**

R/kg	Belgium	The Netherlands	Germany	Combined average
Price undercutting as a % of SACU's ex-factory selling price	89.47%	89.48%	90.54%	89.58%

The figures were indexed due to confidentiality

The table above indicates that the SACU industry experienced price undercutting during the POI for dumping.

### 5.3.3.2 Price depression

Price depression occurs when the SACU industry's ex-factory selling price decreases during the investigation period. The ex-factory prices applicable to the subject products are as follows:

**Table 5.3.3.2: Price depression**

Period	2018/19	2019/20	2020/21
Ex-factory selling prices (R/kg)	100	102	111

The figures were indexed due to confidentiality using 2018/19 as a base year

The table above indicates that selling prices increased by 2 percentage points from 2018/19 to 2019/20, and further increased 9 percentage points from 2019/20 to 2020/21, with an overall of increase of 11 percentage points during the POI.

### 5.3.3.3 Price suppression

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

**Table 5.3.3.3: Price suppression**

Period	2018/19	2019/20	2020/21
Ex-Factory Selling Price (R/kg)	100	102	111
Production cost (R/kg)	100	103	117
Production cost as a % of selling price	100	102	105

The figures were indexed due to confidentiality using 2018/19 as a base year

The table above indicates that cost as percentage of selling price increased by 2 percentage points from the base year to 2019/20, and further increased by 3

percentage points from 2019/20 to 2020/21, with an overall of increase of 5 percentage points during the POI.

According to information obtained from McCain, the ready availability of imported chips at low landed prices has put pressure on local ex-factory pricing. Over and above discounting this has required McCain to provide additional support such as promotional activity, and bolstering bulk discounts to distributors. Local climatic conditions also have affected negatively on the price and availability of raw materials.

### 5.3.2 CONSEQUENT IMPACT OF THE DUMPED IMPORTS ON THE SACU INDUSTRY

#### 5.3.2.1 Actual and potential decline in sales volumes

The following table shows the SACU sales volumes of the subject product:

**Table 5.3.2.1: Sales volumes**

Period	2018/19	2019/20	2020/21
Sale volumes (tons)	100	90	95

The figures were indexed due to confidentiality using 2018/19 as a base year

The table above indicates that sales decreased by 10 percentage points from 2018/19 to 2019/20 and increased by 5 percentage points from 2019/20 to 2020/21, with an overall of decline of 5 percentage points during the POI.

#### 5.3.2.2 Profit

The following table shows applicant's profit situation applicable to the period of investigation:

**Table 5.3.2.2: Profit**

Period	2018/19	2018/20	2020/21
Gross profit (R)	100	83	76
Net Profit (R)	100	78	62

The figures were indexed due to confidentiality using 2018/19 as a base year.

The table above indicates that gross profits decreased by 17 percentage points from 2018/19 to 2019/20, and further decreased by 7 percentage points from 2019/20 to

2020/21, with an overall of decline of 24 percentage points during the POI. The net profits followed the same trend, with a decrease of 22 percentage points from 2018/19 to 2019/20, and further decreased of 16 percentage points from 2019/20 to 2020/21, with an overall of decline of 38 percentage points during the POI.

### 5.3.2.3 Market share

The following table provides market share for the subject product based on sales and import volumes:

**Table 5.3.2.3: Market share**

<b>(tons)</b>	<b>2018/19</b>	<b>2019/20</b>	<b>2020/21</b>
Applicant's market share	100	90	95
Other SACU producers' market share	100	90	95
<b>Total SACU market share</b>	<b>100</b>	<b>88</b>	<b>97</b>
Alleged dumped import's market share	100	84	112
Imports from other countries market share	100	10	4

The figures were indexed due to confidentiality using 2018/19 as a base year.

The table above indicates that the SACU industry's market share decreased by 6 percentage points from 2018/19 to 2019/20, but increased by 3 percentage points from 2019/20 to 2020/21, with an overall of decline of 3 percentage points during the POI. The dumped imports market share followed the opposite trend and started by decreasing by 6 percentage points from 2018/19 to 2019/20, and increasing by 28 percentage points from 2019/20 to 2020/21, with an overall of increase of 12 percentage points during the POI.

### 5.3.2.4 Output

The following table shows applicant's total output of the subject product:

**Table 5.3.2.4: Output volumes**

<b>Tons</b>	<b>2018/19</b>	<b>2019/20</b>	<b>2020/21</b>
Applicant's output	100	89	90

The figures were indexed due to confidentiality using 2018/19 as a base year.

The table above shows that production volumes decreased by 11 percentage points from 2018/19 to 2019/20, and increased by 1 percentage point from 2019/20 to 2020/21, with an overall decrease of 10 percentage points during the POI.

According to information obtained from McCain, the Covid-19 restrictions have had an impact on overall production. However, the increased import volume has meant that, at times, production requirements have been below initial planned production. Raw material had been contracted and grown to service the planned production and this has, on occasion, resulted in fluctuations in inventory levels.

### 5.3.2.5 Productivity

The following table provides the SACU industry’s productivity, based on output and number of employees in production:

**Table 5.3.2.5: Productivity**

	2018/19	2019/20	2020/21
Total production (tons)	100	89	90
No. of employees (production)	100	94	87
Productivity per employee	100	94	102

The figures were indexed due to confidentiality using 2018/19 as a base year.

The table above shows that production per employee decreased by 6 percentage points from 2018/19 to 2019/20, but increased by 8 percentage points from 2019/20 to 2020/21, with an overall slight increase of 2 percentage points during the POI.

Information obtained from McCain indicated that in terms of output, its Delmas plant is key to maintaining, and in the medium-to-longer term, reducing costs. Scales of economy will improve overhead recovery. McCain also indicated that reducing or negating the volume of the dumping of imports into the SACU would provide the opportunity for local manufacturers to increase production and assist with overhead recovery rates, productivity per unit would also improve due to the scale of economies. Labour productivity is also affected by imports as the stress the dumped imports places on the business negatively affects employee wellness (morale) and decreases worker productivity.

### 5.3.2.6 Employment

The following table provides the total employment figures:

**Table 5.3.2.6: Employment**

	2018/19	2019/20	2020/21
Number of employees (manufacturing)	100	94	87
Number of employees in selling, general & Admin	100	103	96
Total number of employees	100	98	91

The figures were indexed due to confidentiality using 2018/19 as a base year.

The table above indicates that the number of employees involved in the production process decreased by 6 percentage points from 2018/19 to 2019/20, and further decreased by 7 percentage points from 2019/20 to 2020/21, with an overall decline of 13 percentage points during the POI. The total number of employees also decreased by 2 percentage points from 2018/19 to 2019/20, and further decreased by 7 percentage points from 2019/20 to 2020/21, with an overall decline of 9 percentage points during the POI.

### 5.3.2.7 Growth of the subject imports

The following tables show size of the SACU market applicable to the subject product:

**Table 5.3.2.7: Growth**

Period	2018/19	2019/20	2020/21
Size of the SACU market (tons)	100	88	97
% growth from previous year	-	-100	82
McCain sales volume (tons)	100	90	95
% growth from previous year	-	-100	61
Rest of the SACU producers (estimated tons)	100	90	95
% growth from previous year	-	-100	61
Alleged dumped imports (volume: tons)	100	84	112
% growth from previous year	-	-100	207
Other imports (volume: tons)	100	10	4
% growth from previous year	-	-100	-70

The figures were indexed due to confidentiality using 2018/19 as a base year.

The table above indicates the size of the SACU market contracted by 12 percentage points from 2018/19 to 2019/20, and gained by 9 percentage points from 2019/20 to 2020/21, with an overall of decline of 3 percentage points during the POI.

McCain, the major producer of the subject product, followed the same trend, with a contraction of 10 percentage points from 2018/19 to 2019/20, and gain of 5 percentage points from 2019/20 to 2020/21, with an overall of decline of 5 percentage points during the POI.

The dumped imports experienced a decline of 6 percentage points from 2018/19 to 2019/20, and increased by 28 percentage points from 2019/20 to 2020/21, with an overall of gain of 12 percentage points during the POI.

### 5.3.2.8 Utilisation of production capacity

The following table provides the SACU industry's capacity utilisation.

**Table 5.3.2.8: Capacity utilisation**

Period	2018/19	2019/20	2020/21
Capacity (tons)	100	100	100
Volumes produced (tons)	100	89	90
Capacity utilisation percentage	100	89	90

The figures were indexed due to confidentiality using 2018/19 as a base year.

The table above indicates that capacity utilisation decreased by 11 percentage points from 2018/19 to 2019/20, and increased by 1 percentage points from 2019/20 to 2020/21, with an overall of decline of 10 percentage points during the POI.

### 5.3.2.9 Return on Investment

The following table shows SACU industry's return on investment on the subject product:

**Table: 5.3.2.9: Return on investment**

Period	2018/19	2019/20	2020/21
Net profits (R'000)	100	78	62
Net assets/investments (R'000)	100	119	116
Return on net investments (%)	100	65	53

The figures were indexed due to confidentiality using 2018/19 as a base year.

The table above indicates that return on investments decreased by 35 percentage points from 2018/19 to 2019/20, and further decreased by 12 percentage points from 2019/20 to 2020/21, with an overall decline of 47 percentage points during the POI.

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

The table below outlines net cash flow applicable to the subject product:

**Table 5.3.2.10: Cash flow**

Period	2018/19	2019/20	2020/21
Cash flow: incoming (R)	100	90	101
Cash flow: Outgoing (R)	-100	-206	-101
Net cash flow (R)	100	-30	-18

The figures were indexed due to confidentiality using 2018/19 as a base year.

The table above indicates that the SACU industry's net cash flow changed from positive in 2018/19 to negatives in 2021/20 and 2022/21, with an overall decline of 118 percentage point during the POI

#### 5.3.2.11 Inventories

The following table provides the SACU industry's inventory volumes of the subject products:

**Table 5.3.2.11: Inventory volumes**

Period	2018/19	2019/20	2020/21
Finished goods (tons)	100	102	71

The figures were indexed due to confidentiality using 2018/19 as a base year.

The table above shows that inventory volumes increased by 2 percentage points from 2018/19 to 2019/20, and decreased by 31 percentage points from 2019/20 to 2020/21, with an overall decrease of 29 percentage points during the POI.

### 5.3.2.12 Wages

The following table provides the SACU industry's annual wages:

**Table 5.3.2.12: Wages and salaries**

Period	2018/19	2019/20	2020/21
Wages and salaries in production (R)	100	104	108

The figures were indexed due to confidentiality using 2018/19 as a base year.

The table above indicates that wages and salaries for employees involved in the production process increased by 4 percentage points from 2018/19 to 2019/20, and further increased by 4 percentage points from 2019/20 to 2020/21, with an overall of increase of 8 percentage points during the POI.

### 5.3.2.13 Ability to raise capital or investments

The following table provides the SACU industry's ability to raise capital and investments on the subject products:

**Table 5.3.2.13: Ability to raise capital and investments**

Period	2018/19	2019/20	2020/21
Total capital investment (R)	100	127	144
Total Capital expenditure (R)	100	149	200

The figures were indexed due to confidentiality using 2018/19 as a base year.

The table above indicates that capital investment increased by 27 percentage points from 2018/19 to 2019/20, and further increased by 17 percentage points from 2019/20 to 2020/21, with an overall of increase of 44 percentage points during the POI. The capital expenditure followed the same trend, with an increase of 49 percentage points from 2018/19 to 2019/20, and further increase of 51 percentage points from 2019/20 to 2020/21, with an overall of increase of 100 percentage points during the POI.

### 5.3.2.14 Factors affecting domestic prices

As indicated in paragraphs 5.3.3.1; and 5.3.3.3 of this Report the SACU industry experienced price undercutting and suppression.



### 5.3.2.15 Magnitude of dumping

The following margins of dumping were calculated:

Table 5.3.2.15: Dumping margins

Country of origin	Producer/ exporter	Dumping margin
Belgium	Mydibel	22%
	All other producers/exporters	24%
The Netherlands	Aviko	10%
	Farm Frites	25%
	All other producers/exporters	121%
Germany	All the producers/exporters	190%

### 5.3.3 COMMENTS FROM INTERESTED PARTIES

Comments from interested parties are summarised as follows:

- a) The evidence of material injury is insufficient.
- b) German imports represented 5.5% of total imports during the period of investigation for dumping and represented 1.43% of the total SACU market size. This does not seem to be enough to cause material injury.
- c) No indication was given in the previous sunset review that the companies who were exempted from the anti-dumping duties were causing the industry injury. This leaves only imports from Germany, which at 6% of total import volume cannot cause material injury.
- d) McCain, Nature's Garden, and Lamberts Bay have been substantial importers and/or users of imported fries over the investigation period. It is misleading for McCain to claim only inconsequential "own imports".

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

- a) *The material injury submitted by McCain and subsequently verified, was deemed by the Commission to be sufficient evidence of material injury as indicated in paragraph 1.2 of this submission.*
- b) *The alleged dumped imports from the three countries were assessed cumulatively in terms of Regulation 16.3 of the ADR. Therefore, the impact of imports from Germany are is not assessed in isolation.*

c) *This is a new anti-dumping investigation, all exporters of the subject product from the three countries are affected, irrespective of whether the exporter was found to be dumping in the previous investigations or not.*

d) **Industry's response**

*Lamberts Bay Foods and Nature's Garden indicated that their own imports are immaterial and a non-issue in injury analysis, representing only 5% of the total imports. These own imports were made, not by choice, but rather to alleviate weather related raw material constraints in the SACU supply chain, and this was only sporadic over the years covered by the investigation.*

*McCain, being fully representative of the SACU industry, made no imports at all from the countries subject to investigation during period of the investigation.*

Based on this information the Commission made a preliminary determination that the SACU industry is suffering material injury in the form of:

- Price undercutting;
- Price suppression;
- Declining sales volumes;
- Declining market share;
- Declining profits;
- Declining production volumes;
- Declining utilisation of production capacity;
- Declining return on investment;
- Negative cash flow;
- Declining number of employees; and
- Negative growth.

## 6. CAUSAL LINK

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### 6.1 General

In order to justify the imposition of provisional measures, the Commission must be satisfied that that material injury and/or threat thereof experienced by SACU industry is a result of the dumping of the subject product.

The Commission evaluated the following factors to establish whether there is a causal link between the dumped imports and the material injury experienced by the SACU industry.

### 6.2 Volumes of imports and market share

An indication of causality is the extent of the increase in volume of imports and the extent to which the market share of the domestic industry has correspondingly decreased since the commencement of injury.

#### 6.2.1 Import volumes

The following tables show the volume of the dumped imports of the subject products as sourced from SARS for the period 01 July 2018 to 30 June 2021.

**Table 6.2.1: Import volumes (All imports)**

Period	2018/19	2019/20	2020/21
Dumped imports: Belgium (tons)	18 353	13 378	15 861
Dumped imports: The Netherlands (tons)	654	479	3 049
Dumped imports: Germany (tons)	1 012	2 861	3 503
Total dumped Imports (tons)	20 019	16 718	22 413
Other imports (tons)	762	74	27
Total Imports (tons)	20 780	16 792	22 440
Dumped imports Belgium as a % of total imports	88.32%	79.67%	70.68%
Dumped imports Netherlands as a % of total imports	3.14%	2.85%	13.59%
Dumped imports Germany as a % of total imports	4.87%	17.04%	15.61%
Dumped imports as a % of total imports	96.34%	99.56%	99.88%
Other imports as a % of total imports	3.66%	0.44%	0.12%
<b>Total imports</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

The table above shows that dumped imports from decreased by 16.49 percentage points from 2018/19 to 2019/20, and started to increase by 34.06 percentage points

from 2019/20 to 2020/21, with an overall increase of 11.96 percentage points during the POI. Imports from other countries decreased throughout the POI, with an overall decline of 96.48 percentage points.

The exclusion of own imports does not change the trend of imports that is experienced and explained above in Table 6.2.1. The SACU industry’s own imports represents 4 percent of the total dumped imports during the 2018/2019 and 10 percent of the total imports during 2020/2021 period.

It is the Commission’s opinion that these own imports are insignificant and could not have caused (or sufficiently detract from) material injury to the SACU industry.

### 6.3 Market share

The following table shows the market share based on sales and import volumes:

**Table 6.3 (a): Market share (All imports)**

Period	2018/19	2019/20	2020/21
McCain market share as % of total market	100	98	97
Other SACU producers market share as % of total market	100	112	104
Total SACU industry market	100	102	99
Total dumped imports as % of total market	100	92	108
Other Imports’ market share as % of total market	100	10	40
<b>Total market share</b>	<b>100</b>	<b>100</b>	<b>100</b>

The figures were indexed due to confidentiality using 2018/19 as a base year.

The table above indicates that McCain’s market share decreased by 2 percentage points from 2018/19 to 2019/20, and decreased by 1 percentage points from 2019/20 to 2020/21, with an overall of decline of 3 percentage points during the POI.

The dumped imports market share followed the opposite trend and started by decreasing by 2 percentage points from 2018/19 to 2019/20 and increased by 16 percentage points from 2019/20 to 2020/21, with an overall of increase of 8 percentage points during the POI. Other imports market share remained minimal at less than 1 percent throughout the POI.

**Table 6.3 (b): Market share (excluding SACU own imports)**

<b>Period</b>	<b>2018/19</b>	<b>2019/20</b>	<b>2020/21</b>
McCain market share as % of total market	100	98	98
Other SACU producers market share as % of total market	100	112	104
Total SACU industry market	100	101	100
Total net dumped imports as % of total market	100	101	100
Other Imports' market share as % of total market	100	11	40
<b>Total market share</b>	<b>100</b>	<b>100</b>	<b>100</b>

The figures were indexed due to confidentiality using 2018/19 as a base year.

From the table above, the Commission noted that the SACU industry's own imports, given the insignificant volumes at issue, did not have an impact on the market share of McCain as the major producer of the subject product that provided material injury information. Consequently, there is no basis supporting the contention that the material injury that is being suffered by McCain might be caused by the SACU industry's own imports.

#### **6.4 Effects of dumped imports on prices**

The price effects on the SACU are indicated above in section 5 of this Report. The SACU industry suffered price suppression and price undercutting during the period of investigation for dumping.

#### **6.5 Consequent impact of dumped imports**

The information at the Commission's disposal indicates that the SACU industry suffered material injury during the POI as follows:

- Undercut selling prices;
- Suppressed selling prices;
- Declining sales volumes;
- Declining market share;
- Declining profits;
- Declining production volumes;
- Declining utilisation of production capacity;
- Declining return on investment;
- Negative cash flow;

- Declining number of employees; and
- Negative growth.

## 6.6 Factors other than dumping causing material injury

Table 6.6: Examination of causality under Article 3.5

Period	2018/19	2019/20	2020/21	Change 2019-2021
FOB prices for imports not sold at dumped prices (R/kg)	8.09	19.26	15.30	89.12%
Volume of imports not sold at dumped prices (tons)	762	74	27	(96.46%)
Changes in demand and patterns of consumption	The information obtained from McCain indicates that overall SACU demand generally is growing, and consumption has not declined. However McCain has experienced a contraction in demand, caused by imports and further exacerbated by the current recessionary activities which are impacting the buying patterns in the local marketplace for foodstuffs generally.			
Trade restrictive practices of foreign and domestic producers	The Commission and/or McCain is not aware of any trade restrictive practices of foreign and domestic producers			
Developments in technology	The information obtained from McCain indicates that McCain upgraded its Delmas Plant in 2007 and further investment was done in 2018 to increase capacity and innovation. According to McCain, the 2018 new installed second chip processing line that has coating capability represents the latest technology.			
Export performance of the domestic industry	The SACU industry does not export.			
Productivity of the domestic industry	The information obtained from McCain indicates that the SACU industry is at least as productive as the European manufacturing units. McCain South Africa consistently compares favourably with other McCain facilities around the globe in relation to its efficiency in processing potatoes into frozen chips.			
Indicate any other factors affecting the SACU prices	The Commission and/or McCain is not aware of other factors affecting SACU prices.			
Strikes, go-slows or lock-outs during the past twelve calendar months	The information obtained from McCain indicates that McCain has not experienced any labour unrest during this period.			

## 6.7 Comments from Interested parties

Comments from interested parties are summarised as follows:

- a) Impact of Covid-19 – given the severe restrictions placed on restaurants during the investigation period, it is inconceivable that Covid-19 did not have a material impact on the SACU industry in the investigation period.
- b) Potato shortages – both Nature’s Garden and Lambert’s Bay imported substantial volumes of chips during the period of investigation. The Commission is requested to request McCain and the SACU industry to disclose the impact of the potato shortages on the injury claimed in the application.
- c) Increased costs and power interruption – McCain has indicated that its wages and salaries increased significantly, despite having fewer staff and electricity costs in South Africa increased significantly and power interruptions occurred. The Commission is requested to investigate the impact of these increased costs.
- d) Other factors – factors such as the lack of connection between domestic production and input costs to global production and input costs, are the cause of injury to the SACU industry.
- e) Own imports – imports by Lamberts Bay and Nature’s Garden should be disregarded in the import analysis, as these are industry-imports. The Commission is requested to request both Nature’s Garden and Lamberts Bay Food to provide full information on their volumes of imports, as well as their sales of the imported products.

### **Industry’s response**

The industry responded as follows to comments regarding causality:

- a) Impact of Covid-19 – The SACU industry indicated that as food manufacturers, SACU’s frozen chip manufacturers were considered as essential service providers and as such, production capability was not impacted significantly by lockdowns per se as the companies continued to produce chips throughout the lockdown periods.
- b) Potato shortages – The SACU industry indicated that McCain is not procuring potatoes from one farm or from farms in just one town, and therefore, if one minor SACU producer finds that it is adversely affected by localised ‘severe frost damage’ from contracted production in say Marble Hall, this is in no way reflective of the SACU industry as a whole or of the manner in which potatoes are grown. Lamberts Bay and Nature’s Garden have voluntarily provided their import information, which confirms that their own imports are immaterial and a non-issue

in the injury analysis. Own imports by the two minor SACU manufacturers collectively represents less than 5% of total subject imports. The SACU industry indicated that McCain has not been materially injured by adverse weather conditions that allegedly caused shortage of potatoes.

- c) Increased costs and power interruption - The SACU industry stated that the data from McCain indicates that during this period of instigation the Delmas facility lost 4 010 hours of production ascribed to Eskom power outages, which translated approximately 1% of the frozen chip production during that overall time period. In the overall assessment, 1% is clearly a *de minimis* level and cannot be considered to have caused material injury.
- d) Other factors - The international benchmarking research study by Potatoes South Africa shows that yield per hectare in South Africa is on par with Europe where potatoes are cultivated under irrigation. On a region (EU) to region (SACU) comparison, the EU farmer makes better returns (more money) because of the financial assistance that they receive directly and indirectly in the form of agricultural subsidies from their governments and from the European Commission.

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

- e) *Own imports - Lamberts Bay and Nature's Garden provided their own imports information to the Commission. The Commission excluded own imports figures in the causal link assessment. The Commission saw no need to request sales information from the two SACU producers. The Commission relied on McCain's injury information, whose information represent a major proportion. McCain did not import from the countries subject to the investigation during the POI. It was further found that own imports of other two producers represent represents 5% of total subject imports over the period of investigation. It is therefore not factual that the material injury that is being suffered by McCain is caused by the own imports of Lamberts Bay and Nature's Garden.*

The Commission made a preliminary determination that the factors raised by interested parties do not eliminate the fact that there is a causal link between the dumping of the subject product and the material injury suffered by the SACU industry.



## 7. SUMMARY OF FINDINGS

The Commission made the following preliminary findings:

**Table 7.1: Preliminary findings**

Subject	Preliminary Findings
Like product	The subject product imported from Belgium, Germany and the Netherlands and the SACU produced subject product, are like products
Dumping	The subject product imported from Mydibel in Belgium is being dumped in SACU at 22%
	The subject product imported from all other producer/exporters in Belgium is being dumped in SACU at 24%
	The subject product imported from Aviko in the Netherlands is being dumped in SACU at 10%
	The subject product imported from Farm Frites International in the Netherlands is being dumped in SACU at 25%
	The subject product imported from all other producers/exporters in the Netherlands is being dumped in SACU at 121%
	The subject product imported from all the exporters/producers in Germany is being dumped in SACU at 190%
Material injury	The SACU industry is suffering material injury
Causal link	There is a causal link between the alleged dumped imports of the subject product and the material injury suffered by the SACU industry and there were no other factors detracting from causal link.

## **8. PROVISIONAL PAYMENTS**

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Regulation 17 of the ADR provides that the Commission consider applying a lesser duty rule if both a cooperating exporter and its SACU importer fully cooperate in the investigation. The price disadvantage is the extent to which the price of the imported product (landed cost) is lower than the unsuppressed and undepressed ex-factory selling price of the SACU product.

### **8.1 Mydibel**

Mydibel and its SACU importers, being Etlin and Merlog, fully cooperated in this investigation.

The Commission made a preliminary determination to apply the lesser duty rule, that is, the lesser duty between the dumping duty expressed as percentage of the FOB export price and the price disadvantage expressed as percentage of the FOB export price. In this case, the dumping duty expressed as percentage of FOB export price is lesser than the price disadvantage expressed as percentage of the FOB export price.

Provisional measures for Mydibel in Belgium was determined to be 20.55%.

### **8.2 All other producers in Belgium**

Provisional measures for all the other producers and exporters of the subject product in Belgium was determined to be 23.06%.

### **8.3 Aviko**

The SACU importers that are buying from Aviko, did not respond to the investigation. Therefore, the Commission made a preliminary determination not to apply the lesser duty rule for Aviko.

Provisional measures for Aviko in the Netherlands was determined to be 9.23%.

#### **8.4 Farm Frites**

The SACU importers that are buying from Farm Frites did not respond to the investigation. Therefore, the Commission made a preliminary determination not to apply the lesser duty rule for Farm Frites.

Provisional measures for Farm Frites in the Netherlands was determined to be 23.66%.

#### **8.5 All other producers in the Netherlands**

Provisional measures for all the other producers and exporters of the subject product in the Netherlands was determined to be 104.52%.

#### **8.6 All producers in Germany**

Provisional measures for all producers and exporters of the subject product in Germany was determined to be 181.05%.

## 9. PRELIMINARY DETERMINATION

The Commission made a preliminary determination that:

- Dumping of the subject product originating in or imported from Belgium, the Netherlands and Germany is taking place;
- The SACU industry is experiencing material injury; and
- A causal link between the alleged dumped imports and material injury suffered by the SACU industry exists.

The Commission therefore decided to request the Commissioner of SARS to impose provisional payments for a period of six months on the subject products from Belgium, the Netherlands and Germany, classifiable under the following tariff subheadings as follows:

**Table 9: Provisional duties**

<b>2004.10.21 - Chips or French fries: Prepared by blanching in water and prevented from discolouration by blanching in oil, frozen but not further prepared or processed (whether or not containing added dextrose)</b>		
<b>Country of origin</b>	<b>Producer/ exporter</b>	<b>Amount of provisional duties</b>
Belgium	Mydibel S.A.	20.55% <i>ad valorem</i>
	All other producers/exporters, excluding Mydibel	23.06% <i>ad valorem</i>
The Netherlands	Aviko B.V.	9.23% <i>ad valorem</i>
	Farm Frites International	23.66% <i>ad valorem</i>
	All other producers/exporters, excluding Aviko and Farm frites International	104.52% <i>ad valorem</i>
Germany	All the producers/exporters	181.05% <i>ad valorem</i>
<b>2004.10.29--Chips or French fries: Other</b>		
Belgium	Mydibel S.A.	20.55% <i>ad valorem</i>
	All other producers/exporters, excluding Mydibel	23.06% <i>ad valorem</i>
The Netherlands	Aviko B.V.	9.23% <i>ad valorem</i>
	Farm Frites International	23.66% <i>ad valorem</i>
	All other producers/exporters, excluding Aviko and Farm frites International	104.52% <i>ad valorem</i>
Germany	All the producers/exporters	181.05% <i>ad valorem</i>

Interested parties are invited to submit comments and make presentations on the preliminary determination within the specified time periods, the Commission will consider prior to making its final determination and recommendation to the Minister of Trade, Industry and Competition.