

REPORT NO. 706

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

The International Trade Administration Commission of South Africa herewith presents its
Report No. 706: **INVESTIGATION INTO THE ALLEGED DUMPING OF FROZEN
POTATO CHIPS ORIGINATING IN OR IMPORTED FROM BELGIUM, GERMANY AND
THE NETHERLANDS: FINAL DETERMINATION**



**Mr. AYABONGA CAWE
CHIEF COMMISSIONER**

PRETORIA

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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: FINAL DETERMINATION

SYNOPSIS

On 19 November 2022, 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 more than 60 percent of the domestic production of the subject product in SACU.

Information on the normal value of the subject product for 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 South African Revenue Services (“SARS”) import statistics.

Information on the normal value of the subject product for 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 based on South African Revenue Services (“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 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 final determination that the subject products originating in or imported from Belgium, Germany and the Netherlands are imported into the SACU market at dumped prices, thereby causing material injury to the SACU industry. The Commission further decided to request the Commissioner of SARS to impose dumping duties as per Table 8 of this Report.

1. APPLICATION AND PROCEDURE

1.1 LEGAL FRAMEWORK

This investigation is conducted in accordance with the International Trade Administration Act, No. 71 of 2002 (“ITA Act”) and the Anti-Dumping Regulations (“ADR”), having due regard for 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 had 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 self-initiated the investigation as a result of the termination of the anti-dumping duty that had been in place and that was the subject of a sunset review investigation. Although the Commission had determined in that investigation that the subject product was being dumped and had calculated significant dumping margins such that it had erstwhile determined that there was a likelihood of a continuation of dumping and recurrence material injury if the duty were to expire, the Commission recommended the termination of the duty as the statutory review period had been exceeded.

As a result, the Commission decided that the most appropriate manner in which to address the removal of the duty, in light of continued imports of dumped subject products into the SACU market, was through a self-initiated investigation. Specifically, the Commission was of the view that a self-initiated investigation would allow for a more expeditious determination of dumping, material injury and causation and, if affirmative determinations were made, for a more expeditious imposition of preliminary anti-dumping duties when compared to an investigation initiated on the basis of an application brought by the industry. The Commission was of this view as, for example, deficient questionnaire responses alone typically necessitated weeks of interaction with an applicants.

The Commission initiated an investigation into the alleged dumping of the subject products originating in or imported 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 producers of the subject products, i.e., McCain Foods SA, Nature's Garden and Lamberts Bay Foods.

1.5.2 Foreign producers/Exporters

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

- NV Mydibel S.A. (Belgium) ("Mydibel");
- Clarebout Potatoes N.V. (Belgium) ("Clarebout");
- Agristo N.V. (Belgium) ("Agristo");
- Lutosa S.A. (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 to 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 these 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 days 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 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 prior the deadline date for comments to the Commission's preliminary report and thereby have their information considered for purposes of the Commission's final determination.

The Commission took the information submitted by Mydibel, Aviko and Farm Frites into account for purposes of its preliminary determination.

- 1.5.4** Agristo, Clarebout and Lutosa rectified their deficiencies after the preliminary determination and were verified for purposes of the final determination.

The Commission took the information submitted by the six (06) producers/exporters into account for purposes of its final determination.

1.5.5 SACU Importers

Responses to the Commission's importer's questionnaire were received from Etlin International (Pty) Ltd ("Etlin") and Merlog Foods (Pty) Ltd ("Merlog"). Both importers requested an extension to 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 responses from the SACU importers were verified after they addressed their deficiencies within the 7-day timeframe given. The Commission took the information submitted by Merlog and Etlin into account for purposes of its preliminary and final determinations.

- 1.5.6** 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 pivotal comments received from interested parties and the Commission’s final determination of these comments are 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 products originating in or imported from Belgium, the Netherlands and Germany were 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 were 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.

Provisional measures were imposed through Notice R.2285 published in *Government Gazette* No.47015 with effect from 15 July 2022 up to and including 14 January 2023.

Written comments and oral presentations on the Commission's preliminary determination were received from interested parties and are summarised and incorporated in this report.

1.7 FINAL BEFORE ESSENTIAL FACTS DETERMINATION

After considering all responses, written comments and oral presentations to the Commission's preliminary determination, the Commission at its meeting of 18 October 2022 made a final before essential facts determination that the subject products originating in or imported from Belgium, the Netherlands and Germany were imported into the SACU market at dumped prices, thereby causing material injury to the SACU industry.

On 24 October 2022, the Commission sent out "essential facts letters" to all known interested parties informing them of the essential facts under consideration. The Commission invited interested parties to make comments on the Commission's considerations prior the final determination. The deadline for comments was 31 October 2022.

1.7.1 Comments on the essential facts letter were received from the following interested parties, and are summarised and incorporated in this submission:

- The European Commission;
- Merlog Foods;
- European Potato Processors' Association;
- Agristo;
- Aviko;
- Clarebout;
- Lutosa;
- Farm Frites; and
- Mydibel.

1.7.2 Comments by interested parties on essential facts letter

- a) The injury and causal link analysis is insufficient as it consists of simple statements without any substantiation or data and without addressing any comments submitted by interested parties following the preliminary determination. ITAC failed to disclose full and detailed information on everything that it considered in its injury and causality analyses. ITAC merely used single concluding sentences in each instance, containing no facts, essential or otherwise.
- b) Other interested parties such as EUPPA and the EU, whose submissions primarily focused on injury and causality were left in a position where it would seem none of their comments were even being tabled for consideration by the Commission.
- c) The dumping margin as a percentage of the FOB export price and information on price disadvantage are not provided in the essential facts letter.
- d) The essential facts letter is therefore deficient and is not consistent with WTO law. The Commission is requested to reissue an essential facts letter.

Commission's consideration

- a) *All the injury indicators that the Commission considered were listed in the essential facts letter. In the essential facts letter, the Commission indicated that McCain's material injury information is representative of the SACU industry's situation and therefore no additional injury information was requested from the other two SACU producers. It is clear that the material injury figures did not change and remained as they were in the preliminary report, which the interested parties are in possession of.*

Without listing the factors, in the essential facts letter, the Commission stated that it is considering causality factors as stipulated in ADR 16.1 and other known factors as per ADR16.5. The interested parties are aware of these causality factors.

The Commission went further to list and acknowledge the existence of other factors that other than dumping that had an impact to the material injury, such as the drought; electricity interruptions; excessive wage increases; shortage of potatoes; Covid-19 lockdown and own imports.

The Commission indicated that although these factors had an impact on material injury, they did not sufficiently detract from the causal link between the dumping of the subject product from the subject countries and the material injury experienced by the SACU Industry. These factors are addressed in detail in the causal link section.

- b) In both sections for material injury and causal link, the essential facts letter clearly stated that “taking all comments received into account, the Commission is considering making a final determination...” the Commission indeed considered all comments submitted by interested parties, including those of EUPPA and the EU.*
- c) The interested parties were given seven days to provide comments on the essential facts. In addition to the statutory seven days, interested parties were granted seven extra days to read and respond to the essential facts. Before the due date, interested parties kept in contact with the Commission and requested some additional information, such as details on price disadvantage and dumping calculations, which they felt was missing and were needed in order to strengthen their comments.*
- d) The purpose of an essential facts letter is set forth in ITAC’s Anti-Dumping Regulations. In this regard, ADR 37 provides that “All interested parties will be informed of the essential facts to be considered by the Commission”. Although the ADR does not elaborate on the meaning of this provision, the Appellate Body of the WTO in interpreting this requirement, although in terms of Article 6.9 of the Anti-Dumping Agreement, held that “[the provision] does not require the disclosure of all the facts that are before an authority but instead those that are ‘essential.’¹”*

¹ *Russia – Commercial Vehicles*, paras. 5.177

The essential facts at issue in ITAC's investigations are those facts that formed the basis of the Commission's decision to consider recommending the imposition of duties. The question to be answered in this regard is whether the Commission's disclosure of facts in the essential facts letter allowed interested parties to understand what facts the Commission used and how it used them to arrive at its decision.

The essential facts letter indeed allowed interested parties to understand what facts the Commission used and how the Commission used those facts to arrive at its decision.

1.8 FINAL AFTER ESSENTIAL FACTS DETERMINATION

After considering all written comments and oral presentations to the Commission's final before essential facts determination, the Commission at its meeting of 06 December 2022 made a final determination that the subject products originating in or imported from Belgium, the Netherlands and Germany were imported into the SACU market at dumped prices, thereby causing material injury to the SACU industry.

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

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 Comments by EC on initiation notice

ITAC is requested to clarify what are the types of frozen fries (chips) that would fall under the subheading "Other".

Commission's consideration

SARS indicated that the type of frozen fries that would fall under the subheading 2004.10.29 "Other" is all frozen fries, which are not covered under tariff subheading 2004.10.21.

2.1.5 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.

2.1.6 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 2.1.6: Negligibility test

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

Table 2.1.6 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 final determination that import volumes of the subject product from Belgium, Germany and the Netherlands are above negligibility levels.

2.1.7 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; and cold stored at 18 degrees celsius.

2.1.8 Raw materials used

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

2.1.9 Technical characteristics and appearance

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

2.1.10 Application or end use

The subject product is used for human consumption.

2.1.11 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; and 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: 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

	Imported product	SACU product
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	The imported product and the SACU product are like products for purposes of comparisons; they are fully substitutable and have similar end use.	The imported product and the SACU product are like products for purposes of comparisons; they are fully substitutable and have similar end use.

The Commission made a final 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.

2.4 Comments by interested parties on preliminary report

The production process is not differentiated between normal frozen fries and coated/battered fries which are different, have a different production process, and different cost structures.

Commission’s consideration

The subject product is frozen fries. The non-coated and coated are product models that form part of the subject product. There is no need to describe production process for each and every product model.

2.5 Comments by Merlog on essential facts

The Tariff Section of SARS has issued a tariff determination for battered fries, ruling that the product to be classifiable under tariff heading 2004.10.99. This tariff heading falls outside of the investigation and may not lawfully be included in the investigation. Batter coated fries do not fall within HS 2004.10.20 or 2004.10.29 which are the HS codes covered by this investigation. ITAC is limited to investigating products entered under the designated tariff headings.

Given that battered fries appear to be the production focus of McCain, it follows that this would be an important part of their claims of material injury. The injury information provided in the application clearly includes battered fries. The material injury and causality data need to be updated to exclude batter coated fries.

Commission's consideration

According to the documents submitted by Merlog, the said ruling by SARS is dated 21 September 2022. Before the ruling, the product was classified under the HS 2004.10.20 (the tariff subheading 2004.10.99) which is for the "wedges or other cuts or slices and whole potatoes prepared by blanching in oil, frozen but not further prepared or processed (whether or not containing added dextrose)" and therefore such imports during the POI are subject to this investigation. When the duties are imposed, this product will not attract a duty since it is now classified in a different tariff heading that is not part of the investigation.

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 more than 60 percent of the total SACU production of the subject product.

4. DUMPING

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.

4.1 Methodology used for Agristo N.V.

The Commission found that Agristo produced and sold the subject product in various models in Belgium. Agristo sold eight (08) product models to SACU during the period of investigation (POI) for dumping

The Commission found that Agristo did not account for coating costs in the cost and price build-up (CBU). The Commission made a final determination to treat all coated product models (fries) as non-coated fries, i.e., coated product models are combined with similar non-coated product models.

The Commission found that Agristo sold "skin-on" product model to SACU. The Commission made a final determination not to take information regarding "skin-on" product model into consideration for purposes of dumping calculation, as this product does not form part of the scope of the investigation.

The Commission made a final determination to determine the dumping margin on based on four (04) product models, and not eight (08) product models that were presented by Agristo.

4.1.1 Normal value

For the three (03) models, the Commission determined the normal value based on Agristo's domestic sales of these product models. For the remaining one (01)

product model, the Commission determined the normal value based on the construction method using Agristo's verified total cost of production including SG&A cost *plus* a reasonable profit.

Some of Agristo's domestic sales of the product models for which the normal value was determined using domestic sales, were made at below cost. The Commission found that sales made below cost were less than 20 percent by volume of the total domestic sales. Therefore, the Commission made a final determination that sales made below cost in quantities that are less than 20 percent by volume of total domestic sales of the product model be included in the determination of normal as per ADR 8.3.

The Commission made a final determination to allow the following adjustments which were shown to have affected price comparability at the time of setting prices:

- Cost of payment terms;
 - Transport costs;
 - Packaging cost;
 - Level of trade;
 - Discount;
 - Marketing expenses;
 - Oil cost; and
 - Documentation cost.
- a) The Commission made a final determination not to allow adjustment for cut size as it was not shown to have affected price comparability at the time of setting prices. During verification, Agristo was requested to update the CBU and all sales schedules to provide a breakdown of model Fries A into two different cut sizes, i.e., B and C. This would enable the Commission to clearly identify Fries B and Fries C. Agristo indicated that their system does not have models' information broken down into cut sizes and therefore the task will take long as it will have to be done manually. The adjustment was not sufficiently substantiated and demonstrated that the difference between the two cut sizes affected the price comparability at the time of setting prices. The Commission

made a final determination not to allow the adjustment for cut size to the normal value.

- b) The Commission made a final determination not to allow a spot versus contract price adjustment as it was not shown to have affected price comparability at the time of setting prices. In the response questionnaire, Agristo indicated that it buys a large portion of its requirement for raw potatoes based on contracts made with farmers, and another part is bought on the free (spot) market. According to verification documents, more than seventy (70) percent of potatoes were bought through contracts and less than thirty (30) percent were bought on the spot market. In Agristo's sales strategy, the contracted potato prices are used as a basis to determine the sales price for the long-term (contract) customers, and the prices of the spot potatoes are used to establish sales prices for short-term customers. Agristo further explained that European clients often want to close long-term contracts, while export clients, including customers in the SACU, do not want to commit to a long-term contract. According to Agristo, the contract purchasing prices can be more expensive than spot purchasing prices, which affects the selling price of the subject product. Therefore, Agristo argued, since they know at the time of setting a price that the subject product will be produced using a potato that is purchased based on a spot price, the spot price should be used when constructing the selling prices. Agristo claimed a price adjustment to adjust the contract selling prices downwards to the level of spot selling prices.

During verification, Agristo provided evidence/documentation to substantiate that:

- Firstly, spot purchasing prices and contract purchasing prices are different, namely contract prices for potatoes are more expensive than spot prices;
- Secondly, Agristo's suppliers and customers are mixed between contract customers and non-contract customers; and
- Lastly, the selling prices to contract customers and non-contract customers are different.

Agristo relied on its explanations and documentation as indicated above. As a result, Agristo argues that it fully substantiated this adjustment and sufficiently

demonstrated that this adjustment affected price comparability at the time of setting prices.

As a general matter, based on the documents Agristo provided, the Commission does not dispute that Agristo sourced its potatoes based on contract purchases and purchases on the spot market (Agristo provided contracts in this regard). The Commission also does not dispute that spot prices are different from (and lower than) contract prices (Agristo provided invoices in this regard). However, as explained below, Agristo failed to substantiate that this adjustment applied to each export sale of the subject product as it could not directly link the use of potatoes bought on the spot market to the manufacture of the subject products. Constrained by the inability to demonstrate such a direct link, Agristo instead advanced a general proposition, namely that sales to South Africa (SACU) were “predominately” based on potatoes bought on the spot market as its South African customers were not (all) long-term contract customers.

Specifically, during verification, Agristo could not substantiate with evidence/documentation that when an order is produced (final product) Agristo is able to show the source of the potato that was actually used in producing that final product. Agristo was asked to do a paper trail from the time a customer places an order, back to the production process, until the time the potatoes arrive and are delivered inside the plant. The intention was to prove, based on documentation, and not merely an explanation, that all the spot raw potatoes are solely dedicated to produce final product that is only sold to non-contract or short-term contract customers.

The substantiations provided by Agristo failed to identify the source/supplier of the raw potato (whether spot or contract) that was used to produce a subject product. As a result, the contracts and/or invoices for farmers that were provided by Agristo could not be linked to the sale of goods to a particular customer (whether spot or contract).

Therefore, instead of a direct link between the actual potatoes purchased by Agristo and the manufacture of the subject product, Agristo relied on the existence

of contracted farmers and the free market, and the existence of contract customers and non-contract customers, as motivation for the need for an adjustment.

Without this direct attribution and link, this adjustment is not fully substantiated and sufficiently demonstrated to have affected price comparability at the time of setting prices. Additionally, it is also the Commission's opinion that Agristo simple does not have customers that are priced for spot or contract, it's only an assertion that it knows as much.

The assertion of the Commission is based on explanations from Agristo as well as previous factory visits. As part of the production process, potatoes are sorted based on size and grade (clean vs. black spots), and production lines inside the factory run on either the cut type or cut size. In other words, which potato is actually used to make subject and non-subject products cannot be ascertained.

Further analysis of Agristo's sales schedules shows the following concerning issues central to whether the adjustment should be granted:

- The SACU sales schedule showed that all the customers in SACU are spot. When commenting on the essential facts letter, Agristo was uncertain whether all SACU customers would be affected by this adjustment because not all sales to the SACU were necessarily based on spot market purchases, hence the use of the word "predominantly" to characterise such sales. In other words, a majority of SACU (South Africa) customers, but not all of them (as indicated in the sales schedule) might qualify for the adjustment.
- The 3rd country sales schedules showed that customers in other markets are both contract and spot. However, Agristo did not claim this adjustment in its 3rd country sales schedule. This is puzzling, given Agristo's explanation that where the subject product is sold based on spot market purchases in other markets and based on contract purchases in the domestic market, an adjustment should be made. This calls into question Agristo's contention that it has a sale strategy, not to mention a rigorous

strategy, which is guided by the nature of its customers, i.e., contract customers are supplied with potatoes purchased in terms of a contract and short-term (non-contract) customers are supplied with potatoes purchased on the spot market.

- The domestic sales schedule showed that customers in Belgium are based both contract and spot market purchases. Agristo claimed this adjustment in domestic sales schedules for all the customers, including spot customers. This is puzzling given Agristo's explanation that the adjustment is to adjust only the contract transactions in order to make them level with the spot transactions.

For the Commission to grant the adjustment for contract versus spot purchases of potatoes, the adjustment must be substantiated, directly attributable or related to the sale, and clearly demonstrated to have affected price comparability at the time of setting prices, as provided for in ADR 11.2. In this instance as elaborated above, Agristo's adjustment was not adequately substantiated, was not demonstrated how it was directly attributable or related to the transaction sales and was not clearly demonstrated how it affected price comparability at the time of setting prices.

The Commission made a final determination not to allow this adjustment to the normal value.

4.1.2 Export price

The Commission made a final determination to determine the export price based on based on Agristo's verified export price sales to SACU market during the POI for dumping.

The Commission made a final determination to allow the following adjustments which were shown to have affected price comparability at the time of setting prices:

- Cost of payment terms;
- Transport costs;
- Packaging cost;

- Commission cost; and
- Discount.

The Commission made a final determination not to allow cut size adjustment as it was not shown to have affected price comparability at the time of setting prices. During verification, Agristo was requested to update the CBU and all sales schedules to provide a breakdown of model Fries A into two different cut sizes, i.e., B and C. This would enable the Commission to clearly identify Fries B and Fries C. Agristo indicated that their system does not have models' information broken down into cut sizes and therefore the task will take long as it will have to be done manually. The adjustment was not sufficiently substantiated and demonstrated that the difference between the two cut sizes affected the price comparability at the time of setting prices. The Commission made a final determination not to allow the adjustment for cut size to the export price.

4.1.3 Dumping margin

The weighted average dumping margin for Agristo was calculated to be 10.81 percent when expressed as a percentage of the ex-factory export price.

4.1.4 Comments by Agristo on preliminary report

- a) ITAC's cancellation of the verification infringes WTO law and misinterprets the role of the verifications in anti-dumping proceedings. From all the foregoing it emerges that any doubts ITAC may have in relation to the content of the CBU table could have been easily and constructively addressed and clarified during the verification.
- b) Should the CBU table be considered as incomplete or unreliable, this finding could not put into question the completeness and veracity of the whole response submitted by Agristo. ITAC is not entitled under WTO law to disregard the whole response for the purposes of its determination due to the mere existence of some doubts relating to a single table (out of many tables, files and information supplied by Agristo).

Commission's consideration

- a) *Agristo's CBU was found to be deficient and Agristo was informed. The Commission found that the CBU was based on sales volumes, instead of production volumes as required by the questionnaire. A decision was made not to accept a new CBU as the 7 days period to address deficiencies had already passed. Agristo has since fixed their deficiency and their information was verified and is now used for the final determination. It is important to add that the entire CBU was based on sales volumes and could not be used as it was. Agristo's CBU did not have production volumes in order to calculate total cost per kg that is used in the sales below cost test or construction of the normal value.*
- b) *The CBU information is crucial in the calculation of the company specific dumping margin. Without a proper CBU, it was not possible for the Commission to calculate a company specific dumping margin for Agristo. For example, the Commission could not test whether or not domestic sales (used to calculate normal value) were in the ordinary course of trade as required by Regulation 8.2 of the ADR.*

4.1.5 Comments by Agristo on essential facts letter

Agristo stated that:

- a) The cut size adjustment should be maintained. During the investigation, Agristo explained that there are several major differences in terms of quality, production, cost and price for B and C cut sizes. Therefore, the difference in cut size affected the setting of the prices. As such, Agristo respectfully submits that the cut size adjustment should be maintained.
- b) The contract vs. spot adjustment should be maintained. The purchase prices of potatoes during the investigation period for contract and spot potatoes, respectively, were shown to the investigation team and this was correctly acknowledged in the verification report. Additionally, copies of contracts and spot orders were taken as exhibits during verification to further strengthen the claim. The existence or absence of a long-term contract is clearly recorded by Agristo, it entails a difference in terms of purchase of raw material and, consequently, contrary to ITAC's finding, it affects the setting of the price for each customer.

- c) Product model D is more expensive than "normal" fries E. This is due to the fact that some customers demand a specific origin of the raw potatoes for their product, plus specific features, notably in terms of cutting to make them appear as if they were homemade. These factors have a significant impact on the cost of the product model D, compared to the "normal" fries. It follows that these products cannot be merged together without prejudicing a fair comparison between fries which are different and have different costs.

Coating is not the only differentiating element between coated and non-coated products. Regardless of coating, the other costs are different for coated and non-coated products. Therefore, the absence of a line on coating does not call into question the fact that the costs for the two products are different.

Therefore, Agristo respectfully submits that the product type categories provided by the company and verified by the case team (eight in total) should be maintained for the purposes of dumping margin calculation.

- d) The Commission did not provide explanation for its decision to consider construction method, instead of third country sales as submitted by Agristo. Agristo submitted that the Commission should consider sales to Chile for product model F and Bulgaria for Coated-fries - G. Agristo reiterates that sales to a third country is the most representative methodology as actual prices should be preferred to constructing the normal values. Indeed, both countries are adequate proxies to SACU in terms of market characteristics and customers.

Should ITAC decide to construct the normal value for this product, Agristo requests ITAC to use a profit margin of less than five (5) percent of Fries F, not more than five (5) percent of merged products as done by ITAC.

- e) The fact that Lutosa and Mydibel responded with their importers, alone, is not sufficient to determine whether a lower duty should be enough to offset the alleged injury suffered by the domestic industry. More

comprehensive analysis should be required to determine whether such injury could be removed by applying a duty different from the dumping margin.

Commission's consideration

- a) *During verification, Agristo was requested to update the CBU and all sales schedules to provide a breakdown of model Fries A into two different cut sizes, i.e., B and C. This would enable the Commission to clearly identify Fries B and Fries C. Agristo indicated that their system does not have models' information broken down into cut sizes and therefore the task will take long as it will have to be done manually. The adjustment was not sufficiently substantiated and demonstrated that the difference between the two cut sizes affected the price comparability at the time of setting prices. The Commission made a final determination not to allow the adjustment for cut size to the normal value and export price.*
- b) *In the response questionnaire, Agristo indicated that they buy a large portion of its requirement for raw potatoes based on contracts made with farmers, and another part is bought on the free (spot) market. According to verification documents, more than seventy (70) percent of potatoes were bought through contracts and less than thirty (30) percent were bought on the spot market. In Agristo's sales strategy, the contracted potato prices are used as a basis to determine the sales price for the long-term (contract) customers, and the prices of the spot potatoes are used to establish sales prices for short-term customers. Agristo further explained that European clients often want to close long-term contracts, while export clients, including customers in the SACU, do not want to commit to a long-term contract. According to Agristo, the contract purchasing prices can be more expensive than spot purchasing prices, which affects the selling price of the subject product. Therefore, Agristo argued, since they know at the time of setting a price that the subject product will be produced using a potato that is purchased based on spot a price, a spot price should be used when constructing the selling prices.*

Agristo claimed a price adjustment to adjust the contract selling prices downwards to the level of spot selling prices.

During verification, Agristo provided evidence/documentation to substantiate that:

- Firstly, spot purchasing prices and contract purchasing prices are different, namely contract prices for potatoes are more expensive than spot prices;*
- Secondly, Agristo's suppliers and customers are mixed between contract customers and non-contract customers; and*
- Lastly, the selling prices to contract customers and non-contract customers are different.*

Agristo relied on its explanations and documentation as indicated above. As a result, Agristo argues that it fully substantiated this adjustment and sufficiently demonstrated that this adjustment affected price comparability at the time of setting prices.

As a general matter, based on the documents Agristo provided, the Commission does not dispute that Agristo sourced its potatoes based on contract purchases and purchases on the spot market (Agristo provided contracts in this regard). The Commission also does not dispute that spot prices are different from (and lower than) contract prices (Agristo provided invoices in this regard). However, as explained below, Agristo failed to substantiate that this adjustment applied to each export sale of the subject product as it could not directly link the use of potatoes bought on the spot market to the manufacture of the subject products. Constrained by the inability to demonstrate such a direct link, Agristo instead advanced a general proposition, namely that sales to South Africa (SACU) were "predominately" based on potatoes bought on the spot market as its South African customers were not (all) long-term contract customers.

Specifically, during verification, Agristo could not substantiate with evidence/documentation that when an order is produced (final product) Agristo is able to show the source of the potato that was actually used in producing that final product. Agristo was asked to do a paper trail from the time a customer places an

order, back to the production process, until the time the potatoes arrive and are delivered inside the plant. The intention was to prove, based on documentation, and not merely an explanation, that all the spot raw potatoes are solely dedicated to produce final product that is only sold to non-contract or short-term contract customers.

The substantiations provided by Agristo failed to identify the source/supplier of the raw potato (whether spot or contract) that was used to produce a subject product. As a result, the contracts and/or invoices for farmers that were provided by Agristo could not be linked to the sale of goods to a particular customer (whether spot or contract).

Therefore, instead of a direct link between the actual potatoes purchased by Agristo and the manufacture of the subject product, Agristo relied on the mere existence of contracted farmers and the free market, and the existence of contract customers and non-contract customers, as motivation for the need for an adjustment.

Without this direct attribution and link, this adjustment is not fully substantiated and sufficiently demonstrated to have affected price comparability at the time of setting prices. Additionally, it is also the Commission's opinion that Agristo simple does not have customers that are priced for spot or contract, it's only an assertion that they know as much.

The assertion of the Commission is based on explanations from Agristo as well as previous factory visits. As part of the production process, potatoes are sorted based on size and grade (clean vs. black spots), and production lines inside the factory run on either the cut type or cut size. In other words, which potato is actually used to make subject and non-subject products cannot be ascertained.

Further analysis of Agristo's sales schedules shows the following concerning issues central to whether the adjustment should be granted:

- *The SACU sales schedule showed that all the customers in SACU are spot.*

When commenting on the essential facts letter, Agristo was uncertain whether all SACU customers would be affected by this adjustment because not all sales to the SACU were necessarily based on spot market purchases, hence the use of the word “predominantly” to characterise such sales. In other words, a majority of SACU (South Africa) customers, but not all of them (as indicated in the sales schedule) might qualify for the adjustment.

- *The 3rd country sales schedules showed that customers in other markets are both contract and spot.*

However, Agristo did not claim this adjustment in its 3rd country sales schedule. This is puzzling, given Agristo’s explanation that where the subject product is sold based on spot market purchases in other markets and based on contract purchases in the domestic market, an adjustment should be made. This calls into question Agristo’s contention that it has a sale strategy, not to mention a rigorous strategy, which is guided by the nature of its customers, i.e., contract customers are supplied with potatoes purchased in terms of a contract and short-term (non-contract) customers are supplied with potatoes purchased on the spot market.

- *The domestic sales schedule showed that customers in Belgium are based both contract and spot market purchases.*

Agristo claimed this adjustment in domestic sales schedules for all the customers, including spot customers. This is puzzling given Agristo’s explanation that the adjustment is to adjust only the contract transactions in order to make them level with the spot transactions.

For the Commission to grant the adjustment for contract versus spot purchases of potatoes, the adjustment must be substantiated, directly attributable or related to the sale, and clearly demonstrated to have affected price comparability at the time of setting prices, as provided for in ADR 11.2. In this instance as elaborated above, Agristo’s adjustment was not adequately substantiated, was not demonstrated how it was directly attributable or related to the transaction sales and was not clearly demonstrated how it affected price comparability at the time of setting prices.

The Commission made a final determination not to allow this adjustment to the normal value.

- c) *Agristo does not provide any new information regarding the Fries D product. After considering the comments raised by Agristo on the product, which are the same issues that were discussed during verification, covered in the verification report, and presented to the Commission for final determination before essential facts, the Commission made a final determination to combine fries - D with other normal fries' models.*

The coating matter was discussed in detail during verification, Agristo did not explain that there are other elements, other than coating, that makes a product to be classified as a coated product. Again, in their comments, Agristo does not indicate the other elements that they are referring to so that the Commission can consider those elements and make a final determination.

The Commission is not aware of other cost elements that could be used to differentiate coated products from non-coated products.

The Commission made a final determination to use four models to determine dumping margin, not the eight models submitted by Agristo.

- d) *The normal value was determined based on merged products, not separate products as requested by Agristo. The Commission found no appropriate third country for the merged Fries E. Chile and Bulgaria that Agristo is referring to were for Fries E and coated-fries-F, respectively, before they were combined.*

As indicated above, Fries E were sold at a loss. A reasonable profit margin of more than five (05) percent that was used was for the combined three products. The Commission made a determination to combine the three products as one product. Details on the combining of product models is provided at the beginning Agristo's dumping section. Individually, the profit margin for Fries X is less than five (5) percent; more than twenty (20) percent for coated fries Y; and more than ten (10) percent for fries Z.

Agristo's request is that the lowest profit margin of a Fries X, which has now been combined and therefore does not exist as a separate/single product for purposes of calculating dumping margin, should be used. The comments from Agristo do not provide any new facts but seem to be driven by desire to obtain the lowest dumping margin. The Commission made a final determination to use construction methodology, and reasonable profit of more than five (5) percent in determining the normal value for Fries E model.

- e) *ADR 17 provides that the Commission shall consider applying a lesser duty rule if both a cooperating exporter and its SACU importer fully cooperate to the investigation. There is no further analysis that is required.*

4.2 Methodology used for Clarebout Potatoes N.V.

The Commission found that Clarebout produced and sold the subject product in various models in Belgium. Clarebout sold three (03) models to SACU during the POI for dumping. The Commission made a final determination of the dumping margin based on the information submitted for these three (03) products models.

4.2.1 Normal value

For the two (02) models the Commission made a final determination to determine the normal value based on Clarebout's domestic sales of these product models. For the remaining one (01) product models, the Commission determined the normal value based on construction method using Clarebout's verified total cost of production including SG&A cost plus a reasonable profit.

The Commission found that no sales were made below cost for the product models which the normal value was determined using the domestic sales.

The Commission made a final determination to allow the following adjustments which were shown to have affected price comparability at the time of setting prices:

- Cost of payment terms;
- Transport costs;
- Lab cost; and
- Discount and rebates.

4.2.2 Export price

The Commission made a final determination to determine the export price based on Clarebout's verified export price sales to SACU market during the POI for dumping.

The Commission made a final determination to allow the following adjustments which were shown to have affected price comparability at the time of setting prices:

- Cost of payment terms;
- Transport costs;
- Credit insurance;
- Lab cost; and
- Export certificates.

4.2.3 Dumping margin

The weighted average dumping margin for Clarebout was calculated to be *minus* 9.80 percent when expressed as a percentage of the ex-factory export price.

4.2.4 Comments by Clarebout on preliminary report

The deficiency identified by ITAC regarding the CBU table does not justify it from disregarding the said document. The content of the CBU table, even though not ideal in all respects, is in line with the essence of what was requested and, therefore, cannot be disregarded by ITAC in its entirety.

Commission's consideration

The entire CBU was not correctly presented in the format as requested by the questionnaire. Certain products were not shown and the CBU was not in the required format as certain products were not shown. Therefore, Clarebout's CBU was incomplete and unreliable and could not be used. The CBU information is very crucial in the calculation of company specific dumping margin. Without a complete and reliable CBU, it was not possible for the Commission to calculate a company specific dumping margin for Clarebout. For example, the Commission could not test whether or not domestic sales (used to calculate normal value) are in the ordinary course of trade as required by Regulation 8.2 of the ADR. Clarebout has since corrected deficiency and their information is now used for the final determination and in the calculation of dumping.

4.3 Methodology used for Lutosa S.A.

The Commission found that Lutosa produced and sold the subject product in various models in Belgium. Lutosa sold fourteen (14) models to SACU during the POI for dumping. The Commission found that five (05) product models were samples for testing. The Commission made a final determination not to consider the export sales transaction of these five (05) products models for purposes of dumping margin calculation as these product models were sold in a non-commercial volume. As a results, the Commission made a final determination to determine the dumping margin based on nine (09) product models, and not the fourteen (14) product models that were presented by Lutosa.

4.3.1 Normal value

For the three (03) models, the Commission made a final determination to determine the normal value based on Lutosa's domestic sales of these product models. For the five (05) models, the Commission made a final determination use Lutosa's verified export sales of the product to third countries. For the remaining one (01) product model, the Commission determined the normal value based on construction method using Lutosa's verified total cost of production including SG&A cost *plus* a reasonable profit.

The Commission found that no sales were made below cost for the product models for which the normal value was determined using the domestic sales and third countries.

Using the Commission's criteria for the selection of an appropriate third country, the Commission made a final determination to select the following countries as appropriate countries for purposes of determining the normal value:

- Italy;
- Chile;
- United Arab Emirates; and
- Pakistan.

Commission's source to determine whether there is a third country manufacturing industry

To check the existence or not of the domestic manufacturing industry, the Commission relied on desktop research, particularly PotatoPro website. For over 10 years, PotatoPro has been the online information provider of the global potato industry, with thousands of news articles, company descriptions, industry events and statistics (<https://www.potatopro.com/about-potatopro>).

The Commission made a final determination to allow the following adjustments which were shown to have affected price comparability at the time of setting prices:

- Transport;
- Packaging;
- Commission; and
- Discounts and rebates.

4.3.2 Export price

The Commission made a final determination to determine the export price based on based on Lutosa's verified export price sales to SACU market during the POI for dumping.

Lutosa claimed two adjustments to export price, namely transport cost and packaging. The Commission made a final determination to allow the following adjustments which were shown to have affected price comparability at the time of setting prices:

- Transport costs; and
- Packaging.

4.3.3 Dumping margin

The weighted average dumping margin for Lutosa was calculated to be 10.29 percent when expressed as a percentage of ex-factory export price.

4.3.4 Comments by Lutosa on essential facts letter

- a) There were five transactions in the domestic market for product model A. Three of these transactions were made at zero price. The remaining two transactions were sample sales of very low volumes not made in the ordinary course of trade and, as such, cannot be used in the determination of the normal value. Lutosa proposes that the Commission should use the constructed normal value.
- b) For product model B, the profit of more than fourteen (14) percent that the Commission used is unreasonable and in violation of both the ADR and the Anti-Dumping Agreement. Lutosa indicated that the Commission should use the actual realised profit margin of less than five (5) percent. Lutosa indicated that the Commission should consider the fact that the POI was a difficult year due to Covid-19.
- c) Lutosa does not agree with the Commission consideration to select Italy, instead proposes Oman, which had closer volumes to those exported to SACU. Lutosa does not agree with the Commission consideration to select Pakistan, instead proposes Spain, which had closer volumes to those exported to SACU.

Commission's consideration

- a) *The three transactions that did not have values were filtered out and the remaining two transactions were used. The Commission found that sales volumes of the two transactions constituted more than five (5) percent of the sales volume in the domestic market of the comparable product sold to SACU, and therefore are sufficient to determine a normal value, as per Regulation 8.3 of the ADR. Therefore, there is no need for the Commission to change the methodology from domestic sales to construction method.*
- b) *The more than fourteen (14) percent profit that was used was for the whole company. The Commission reassessed the profitability performance of Lutosa. The Commission found that Lutosa's more than fourteen (14) percent profit is coming from other/specialised products, which are not the subject product. The majority of subject products were made at a lost and/or low profit margins. Therefore, it is the Commission's opinion that it is not appropriate to apply the profit margin from specialised products to the French fries products.*

The Commission is also mindful of the fact that business operations during half of the POI for dumping were severely affected by the Covid-19 pandemic. Therefore, it is the Commission's opinion that a profit percentage of less than five (5) percent is the correct reflection of Lutosa's business operation for the product model B and can be accepted as a reasonable profit. The Commission made a final determination to use a profit percentage that is less than five (5) percent in determining the normal value for the product model B. As a result, the dumping margin changes from 16.79% to 10.29%.

c) Oman and Spain do not have a frozen potato chips domestic industry. According to the criteria set forth in the ADR, an appropriate third country must have a domestic manufacturing industry of the subject product. Therefore, there is no need for the Commission to change its consideration to select Italy and Pakistan as appropriate third countries.

To check the existence or not of the domestic manufacturing industry, the Commission relied on desktop research, particularly PotatoPro website. For over 10 years, PotatoPro has been the online information provider of the global potato industry, with thousands of news articles, company descriptions, industry events and statistics (<https://www.potatopro.com/about-potatopro>).

4.4 METHODOLOGY USED FOR MYDIBEL

The Commission found that Mydibel produced and sold the subject product in various models in Belgium. Mydibel sold one (01) product model to SACU during the POI for dumping.

4.4.1 Normal value

The Commission found that the domestic sales volumes constituted more than five (5) percent 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.

The Commission also found that sales that were made below cost constituted more than twenty (20) percent 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 for one model based on Mydibel's remaining domestic sales in Belgium.

The Commission made a final determination to allow the following adjustments to the normal value that were found to have affected price comparability at the time of setting prices:

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

The Commission made a final determination not to allow inventory carrying adjustment as it was not found to have affected price comparability at the time of setting prices. Mydibel explained that, while waiting for goods to be collected and/or delivered to the customer, Mydibel incurs financing costs. Mydibel claims an adjustment because some customers are charged more while some are charged less, depending on the average number of days the finished goods of the customer are kept at the warehouse.

Although the inventory carrying cost was verified and substantiated, it could not be demonstrated by Mydibel how this cost is different to cost of payment terms that is already claimed, 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. At the time of setting the price it is almost impossible for Mydibel and/or the customer to know exactly when the goods will be collected.

The Commission made a final determination to not allow this adjustment to the normal value.

4.4.2 Export price

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

The commission made a final determination to allow the following adjustment to export that were found to be affecting price comparability at the time of setting prices:

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

The Commission made a final determination not to allow inventory carrying cost adjustment to export price as it was not found to have affected price comparability at the time of setting prices. The Commission made a final determination not to allow inventory carrying adjustment as it was not found to have affected price comparability at the time of setting prices. Mydibel explained that, while waiting for goods to be collected and/or delivered to the customer, Mydibel incurs financing costs. Mydibel claims an adjustment because some customers are charged more while some are charged less, depending on the average number of days the finished goods of the customer are kept at the warehouse.

Although the inventory carrying cost was verified and substantiated, it could not be demonstrated by Mydibel how this cost is different to cost of payment terms that is already claimed, 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. At the time of setting the price it is almost impossible for Mydibel and/or the customer to know exactly when the goods will be collected.

The Commission made a final determination to not allow this adjustment to the export price.

4.4.3 Dumping margin

The weighted average dumping margin for Mydibel was calculated to be 18.14 percent when expressed as a percentage of the ex-factory export price.

4.4.4 Comments by Mydibel on preliminary report

- a) The adjustment was explained clearly during the initial submission in the exporter questionnaire, namely that the warehousing cost is equal to the cost Mydibel pays to store its finished goods physically. In the previous sunset review, the Commission allowed the warehousing adjustment for both the normal value and the export price, as it showed to have affected price comparability.
- b) Mydibel's sales to SACU were all to the food services industry, while the comparable product was sold in the domestic market to both the food services and retail industry. Therefore, ITAC is requested to take into account the level of trade when calculating Mydibel's dumping margin, and only compare the food services transactions in the domestic market with the SACU food services transactions.

Commission's consideration

- a) *The Commission reassessed the warehousing adjustment information and the Commission found that the adjustment was verified, substantiated and Mydibel provided proof that the adjustment affected the setting of the selling price. The adjustment was claimed on normal value and export price. The dumping calculation has been updated and Mydibel's dumping margin is now calculated to be 18%, from 22% that was calculated at preliminary stage. The Commission made a final determination to allow this adjustment.*
- b) *ADR11, together with section F of the exporter's questionnaire, guide the exporters/producers on how to make a claim on level of trade adjustment. In section F of the exporter's questionnaire, Mydibel merely indicated that the Commission should use domestic sales that were made to wholesales and ignore sales to retailers as SACU customers are not retailers. Mydibel did not quantify the difference in level of trade, did not adjust the domestic sales and did not explain how the difference in the level of trade have affected price comparability at the time of setting price, as required by ADR 11.2.*

Mydibel wants to use sales made at wholesale level and ignore other sales of the same product because they are made at retail level. This assertion by Mydibel is incorrect. The Commission cannot ignore sales of the same product

merely because they were made at a different level of trade. The correct way to deal with such a situation was for Mydibel to make an adjustment for the level of trade and adjust the retail sales. Mydibel did not do that. To calculate the normal value, the Commission used all sales of the subject product, except those made below cost as reported above, irrespective of the level of trade as it was not demonstrated to have affected price comparability at the time of setting price.

4.4.5 Comments by Mydibel on essential facts letter

Mydibel considered the level of trade adjustment in calculating the dumping margin. The level of trade information was provided in Annexures D1.1, E1.1 and F3 and this was subsequently verified by ITAC.

Commission's consideration

In annexures D1.1, E1.1 and F3, Mydibel merely indicated which sales were made to retailers and sales that were made to wholesalers. Mydibel did not quantify the difference in level of trade, did not adjust the domestic sales and did not explain how the difference in the level of trade have affected price comparability at the time of setting price, as required by ADR 11.2. No adjustment of level of trade was verified by the Commission. The verification report of Mydibel makes no reference to the level of trade adjustment that was claimed and verified.

4.4.6 Comments by Merlog on preliminary report

- a) Mydibel only sold non-coated french fries to South Africa during the POI. This model should not be compared against the McCain coated (higher value) french fry when calculating any dumping margin or injury.
- b) The current methodology is incorrect in excluding sales below cost where it is part of the nature of selling across a range of markets. In any business there are sales (at times) made below cost. Domestic sales made below cost should not be excluded from calculating normal value.

Commission's consideration

- a) *Mydibel's non-coated fries exported to SACU are compared with Mydibel's non-coated fries sold in Belgium. The dumping calculation does not compare exporter's information with SACU producer's information. It should be noted that coated product that Merlog is referring to forms part of the scope of the investigation and therefore cannot be excluded.*
- b) *According to ADR 8.2, sales that are made below cost, constituting more than 20% of the total sales volumes, are deemed to be not in the ordinary course of trade for purposes of the investigation and are excluded in the calculation of normal value. Mydibel's sales that were made below cost were correctly excluded.*

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.

4.5.1 Normal value

Out of the four producers/exporters, Lutosa sold many models of different cut sizes and grades in its domestic market contrary to Agristo, Clarebout and Mydibel, which sold few models during the POI for dumping. Lutosa is considered to have sold models that are more representative of a variety of models sold in Belgium. Therefore, the Commission made a final determination to use Lutosa's domestic sales of products that are comparable to those that were sold to SACU to determine normal value.

The Commission made a final determination to adjust normal value by transport and packaging cost, which are the costs the Commission deems to be necessary in the sale of the product and are not company specific.

4.5.2 Export price

Out of the four producers/exporters, Clarebout is the biggest exporter of the subject product in terms of export sales to SACU. However, The Commission found that Clarebout is not dumping. Agristo is the second biggest exporter in terms of export sales to SACU, with the second highest variety of product models (after Lutosa, which is the smallest exporter to SACU in terms of export volumes) during the POI for

dumping. Agristo's export sales volumes and variety of models are representative of exports to SACU.

The Commission made a final determination to use Agristo's export sales to SACU to determine the export price. The Commission made a final 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 for non-co-operating producers/exporters in Belgium was calculated to be 68.42 percent when expressed as a percentage of ex-factory export price.

4.5.4 Comments by interested parties on preliminary report

- a) ITAC did not conduct the required comparative and systematic evaluation and assessment of the data submitted, as required by Article 6.8 and Paragraph 7 of Annex II when establishing the dumping margin and duty rate for non-cooperating exporters/exporter. ITAC failed to select the best information available as a reasonable replacement for the allegedly missing information. ITAC used the highest possible normal value it could find, namely the constructed normal value for Mydibel.
- b) While Paragraph 7 of Annex II recognises that if an interested party does not cooperate such that relevant information is withheld, which "could lead to a result which is less favourable to the party", that does not give a license to authorities to select "adverse" facts or to manufacture high dumping margins unsupported by the evidence.

Commission's consideration

- a) *When calculating the residual dumping margin, the Commission does not use information that is still deficient at the preliminary stage. In this case, the Commission used Mydibel's information as it was the only information that was verified and considered by the Commission for its preliminary determination. This was the best information available, and it was properly assessed and evaluated for use in the calculation of the residual dumping margin. At the final*

stage, there are now four verified exporters, and the residual dumping margin has been updated. For example, normal value is now based on Lutosa's domestic sales, not Mydibel's as it was at the preliminary stage.

- b) The residual dumping margin was not manufactured and/or unsupported by evidence. The margins were based on Mydibel's verified CBU and export sales to SACU.*

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

The Commission found that Aviko produced and sold the subject product in various models in the Netherlands. Aviko sold three (03) product models exported to the SACU during the POI of dumping:

4.6.1 Normal value

For all three product models, the Commission 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 sufficient volumes to determine normal values, as per Regulation 8.3 of the ADR. The Commission 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 all included in the calculation of normal values, as per Regulation 8.2 of the ADR. Therefore, the Commission determined the normal values for all three product models 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 SACU for all three product models were made in a few transactions. It should be noted that the price of the subject product is seasonal

and therefore fluctuates. The Commission made a final determination that comparing the average export price of a 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 made a final determination for each product model to use domestic sales transactions that took place on the same day that are similar to the dates in which exports to SACU were made.

The Commission made a final determination to allow the following adjustments to normal value that were found to have affected the price comparability at the time of setting prices:

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

The Commission made a final determination not to allow adjustment for cash discount. Aviko explained that the cash discount is a discount for prompt payment and is agreed with a customer via the payment terms. The terms of this discount were not indicated in the verified sales invoices. Aviko could not demonstrate 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). The Commission made a final determination not to allow this adjustment to the normal value.

4.6.2 Export price

The Commission made a final determination to determine the export price based on the Aviko's verified export sales SACU during the POI of dumping.

The Commission made a final determination to allow the following adjustments to the export price to SACU:

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

4.6.3 Dumping margin

The weighted average dumping margin for Aviko was calculated to be 10.06 percent when expressed as a percentage of the ex-factory export price.

4.6.4 Comments by Aviko on preliminary report

- a) ITAC did not use the full period of investigation and neither the minimum period as required by the ADR to calculate the normal value. By using a period less than 6 months, ITAC is in direct contravention of its own regulations. Section 1 of ITAC anti-dumping regulations is clear that the investigation period for dumping shall normally be 12 months, and may be more, but in no case less than 6 months. If ITAC were to use the transaction-to-transaction method, ITAC would need to use a monthly cost build up. ITAC cannot use a weighted average cost for the full investigation period to determine if a few transactions were in the ordinary course of trade. ITAC's approach is fundamentally flawed.

In the Chicken anti-dumping investigation against Brazil, Ireland, Poland, Spain, and Denmark, ITAC refused to only consider the first half of the investigation period given that there were no exports in the second half of the POI. It is surprising that ITAC would reject a methodology in one investigation and allow the same methodology in a separate investigation. This points to serious inconsistencies that have detrimental effects to the exporters.

- b) Cash discounts are directly and completely related to payment agreements with Aviko's customers, this was explained during verification, and the agreements are commercially driven and allows Aviko's customers to deduct a certain percentage by paying within an agreed period of time after the invoice date. If the customer does not fulfil this requirement, they forfeit the right to

deduct the agreed percentage. This adjustment has a direct influence on price comparability given that almost all customers that have agreed on such a construction are using this and actually deducting the agreed percentage of cash discount from the value. The cash discount is negotiated at the time of setting the prices. During verifications, Aviko demonstrated that the cash discount is deducted from the bank transfer to Aviko according to the agreement made with specific customers

Commission's consideration

- a) *According to the Appellate Body in US – Software Lumber, the first sentence of Article 2.4.2 of the Anti-Dumping Agreement sets out the two methodologies that shall normally be used by investigative authorities to calculate dumping, i.e., transaction-to-transaction and weighted average-to-weighted average methodologies. Although the two are distinct, they are equivalent and serve the same purpose. An investigative authority may choose between the two, depending on which is the most suitable for the particular investigation.*

In this case, Aviko's export sales to SACU for product model X were made in small quantities, over three different dates, i.e., 11 September 2020, 07 October 2020, and 14 June 2021. While the domestic sales of the same product model were made in big quantities, spreading throughout the POI.

The Commission made a final determination that comparing the weighted average export price of three transactions/invoices to SACU with the weighted average normal value of more than 400 transactions that were made in the domestic market throughout the POI is not suitable in this case. Therefore, the Commission made a final determination to use the domestic sales transactions that took place on the same dates when transaction sales to SACU were made for this model, i.e., 11 September 2020, 07 October 2020, and 14 June 2021.

This method does not suggest a change in the POI. The mere fact that a comparison between normal value and export price is done on a transaction-to-transaction basis as allowed in the ADR, and is equivalent to weighted average basis, does not mean a change in POI.

The sales below cost test were done for all domestic sales of this model before the daily transactions were selected. This meant that, if the selling prices of this model on 11 September 2020, 07 October 2020 and 14 June 2021 were below cost, those prices would have been eliminated by the below cost test. The fact that, after conducting sales below cost test, the selling prices on those three days still appeared on the sales schedule, means that those prices were made in the ordinary course of trade.

The assertion by Aviko that a monthly and/or daily CBU is needed where transaction-to-transaction method is used, is incorrect. As explained above, sales below cost test are done for the POI, using the CBU for the POI, not a monthly CBU. Furthermore, the Commission's exporter questionnaire does not require the exporters to provide monthly or daily CBU, for the same reason that the Commission does not use monthly or daily CBU.

- b) The exporter claims a cost of payment terms (cash discount), discounts and rebate and cost of payment terms (credit days). It is the Commission's opinion that cost of payment terms (cash discount) and cost of payment terms (credit days) contradict each other. It is understood that the cash discount is for early payment and the cost of payment terms credit days is the charge for paying late after the invoice date and the two cannot be applicable/adjusted on the same transaction. Furthermore, there is also a discount and rebate on the same transaction. Based on the above understanding, the Commission made a final determination not to allow a cash discount adjustment.*

4.6.5 Comments by Aviko on essential facts letter

- a) Aviko reiterates its disagreement with ITAC's transaction-to-transaction method. In terms of ADR 8.2(a)(i), ITAC may disregard domestic sales made at a loss for a considerable period, usually where such losses are not recovered within a year. Following ITAC's approach, one cannot determine if losses are not recovered within a year as ITAC only selected a few transactions. ITAC is requested to use the full investigation period to calculate the dumping margin for Aviko.

- b) The essential facts letter indicated that ITAC constructed the normal values for some of the models sold in the domestic market. However, the detailed calculations shows that no construction was made by ITAC to determine normal value. ITAC is requested to update the essential facts letter to match the calculations.
- c) ITAC included transactions for 01 September 2020, while there were no exports for 11mm model to SACU on that date. ITAC is requested to exclude Aviko's domestic sales transactions of 01 September 2020 in determining normal value for this model.

Commission's consideration

- a) *The Commission explained to Aviko in the essential facts letter that both weighted-to-weighted and transaction-to-transaction methods are equal and serve one purpose. The Commission has a choice to use either of the two. The Commission made a final determination to use the transaction-to-transaction method to determine the dumping margin for Aviko.*
- b) *It is correct that the essential facts letter indicated that ITAC constructed the normal values for some of the models sold in the domestic market. This statement is incorrect, as the Commission acknowledged and explained to Aviko by the Commission. At the time of sending detailed dumping calculations, the Commission explained to Aviko that all normal values were based on domestic sales. The detailed calculation for dumping correctly reflected that all normal values were based on domestic sales. Aviko was aware of which methodology was used between construction and domestic sales. Therefore, there is no need to give additional seven days to Aviko.*
- c) *The Commission noticed the error and fixed it. The transaction of 01 September 2020 has now been removed from the calculation. As a result, the dumping margin changed from 10.26% to 10.06%.*

4.7 METHODOLOGY USED FOR FARM FRITES INTERNATIONAL

The Commission found that Farm Frites produced and sold the subject product in various models in the Netherlands. Of the various models produced and sold, two (02) models were exported to the SACU during the POI for dumping.

4.7.1 Normal value

For product model A, The Commission found that domestic sales volumes constituted more than 5% of the sales volume of the product sold to the SACU, and therefore are sufficient volumes to determine a normal value, as per Regulation 8.3 of the ADR. The Commission then found that there were sales made below cost, constituting over ninety (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 made a final determination not to use the remaining sales (after excluding all sales made below cost). The Commission made a final determination to determine the normal value for product model A was based on construction, using Farm Frites' CBU information.

For product model B, the Commission found that domestic sales volumes constituted more than 5% of the sales volume of the product sold to the SACU, and therefore are sufficient volumes to determine a normal value, as per Regulation 8.3 of the ADR. The Commission found that there were sales made below cost, constituting more than sixty (60) 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 final determination to determine the normal value for product model B be 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 a few quantities, while the domestic sales of the same model were made in big 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 made a final determination 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 product model B, the Commission made a final determination 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.

The Commission made a final determination to allow the following adjustment to normal value for Model B which were found to have affected price comparability at the time of setting prices:

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

4.7.2 Export price

The Commission made a final determination to determine the export price based on verified Farm Frites' export sales to SACU during the POI for dumping.

The Commission made a final determination to allow the following adjustment to export price which were found to have affected the price comparability at the time of setting prices:

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

4.7.3 Dumping margin

The weighted average dumping margin for Farm Frites was calculated to be 21.08 percent when expressed as a percentage of ex-factory export price.

4.7.4 Comments by Farm Frites on preliminary report

- a) ITAC did not use the full period of investigation and neither the minimum period as required by the ADR to calculate the normal value. By using a period less than 6 months, ITAC is in direct contravention of its own regulations. Section 1 the ADR is clear that the investigation period for dumping shall normally be 12 months, and may be more, but in no case less than 6 months. The month-to-month comparison does not satisfy the fair comparison requirement within the meaning of Article 2.4 of the Anti-Dumping Agreement. ITAC has not demonstrated any significant differences in the normal value sufficient to conclude that the use of the full investigation period would be unreasonable.

If ITAC uses a month-to-month method, a monthly CBU needs to be used. ITAC cannot use a weighted average cost for the full investigation period to determine if a few transactions in a specific month were in the ordinary course of trade. ITAC's approach is fundamentally flawed.

In the Chicken anti-dumping investigation against Brazil, Ireland, Poland, Spain and Denmark, ITAC refused to only consider the first half of the investigation period given that there were no exports in the second half of the POI. It is surprising that ITAC would reject a methodology in one investigation and allow the same methodology in a separate investigation. This points to serious inconsistencies that have detrimental effects to the exporters.

- b) ITAC used an incorrect profit margin of more than five (05) percent to construct the normal value. ITAC should use a profit margin of less than (05) percent as per the CBU.

Commission's consideration

- a) *Farm Frites' export sales to SACU for the 12mm were made in small quantities, over two different dates i.e., 11 January 2021; and 28 December 2020. While the domestic sales of the same model were made in big quantities, spread throughout the POI. The Commission made a final determination that comparing*

the weighted average export price in two months in SACU with the weighted average normal value of 12 months in the domestic market, is not suitable in this case.

Therefore, the Commission made a final determination to use the weighted average domestic sales transactions in January 2021 and December 2020, compared with weighted average export sales transactions in the same months. This method does not suggest a change in POI. The mere fact that a comparison between normal value and export price is done on a month-by-month basis does not mean a change in POI. The sales below cost test were done for all domestic sales of this model before the monthly transactions were selected. This meant that, if the selling prices of this model in January 2021 and December 2020, those prices would have been eliminated by the below cost test. The fact that, after conducting sales below cost test, the selling prices on those three days still appeared on the sales schedule, means that those prices were made in the ordinary course of trade.

The assertion by Farm Frites that a monthly CBU is needed where month-by-month comparison is used, is incorrect. As explained above, sales below cost test are done for the POI, using the CBU for the POI, not a monthly CBU. Furthermore, the Commission's exporter questionnaire does not require the exporters to provide monthly or daily CBU, for the same reason that the Commission does not use monthly or daily CBU.

- b) The profit percentage of more than five (05) percent was calculated from Farm Frites' CBU. This is the profit margin that is in the CBU. The profit of less than five (05) that Farm Frites is referencing to, is more than five (05) percent when expressed as a percentage.*

4.7.5 Comments by Farm Frites on essential facts letter

- a) Farm Frites reiterates its disagreement with the Commission's use of month-to-month approach in comparing normal value and export price. No new information was provided by Farm Frites.

- b) Farm Frites reiterates that the profit margin of more than five (5) percent used by the Commission is incorrect. The correct profit that was actually incurred by Farm Frites for this product is less than five (05) percent.
- c) The Commission excluded the domestic transactions for 29 January 2021, and no explanation given as to why these transactions are excluded from the calculation.

Commission's consideration

- a) *The Commission explained to Farm Frites on essential facts that this approach provides fair comparison between normal value and export price and does not in any way suggest a change in the POI. The Commission made a final determination to use month-to-month approach to determine dumping margin for Farm Frites.*
- b) *The Commission noticed the error and corrected it. The actual profit realised is less than five (05) percent, and not more than five (05) percent. This was an incorrect reading by the Commission. The Commission made a final determination to use a less than five (05) percent in determining the normal value for product model B. As a result, the dumping margin changed from 25.68% to 21.08%.*
- c) *The transactions Farm Frites is referring to were excluded as per ADR8.3. As indicated at the beginning of Farm Frites' dumping section, these sales were made at a loss, in quantities which are more than sixty (60) percent of the total domestic sales.*

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 to the investigation. Aviko and Farm Frites are the only two exporters of the subject product in the Netherlands that responded in this investigation.

4.8.1 Normal value

Out of the two producers/exporters, the Commission found that Aviko is the largest producer in terms of domestic sales of product models that are comparable to those exported to SACU during the POI for dumping.

The Commission made a final determination to use Aviko's domestic sales to determine the normal value. The Commission made a final determination to adjust the normal value by the cost of transport and cost of packaging, which the Commission deems to be necessary in the sale of the product and are not company specific.

4.8.2 Export price

Out of the two producers/exporters, the Commission found that Farm Frites is the largest producer in terms of export sales to SACU during the POI for dumping.

The Commission made a final determination to use Farm Frites' export sales to SACU to determine the export price. The Commission made a final determination to adjust the export price by the cost of transport and packaging, which the Commission deems to be necessary in the sale of the product and are not company specific.

4.8.3 Margin of dumping

The dumping margin for non-co-operating producers/exporters in the Netherlands was calculated to be 277.64 percent when expressed as a percentage of the ex-factory export price.

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 retail advertisements for online sales of the subject product by Agrarfrost, was found to be €1.97/kg. The normal value was at retail level and therefore adjustments, namely 1.75 percent 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 during the POI for dumping.

4.9.2 Export price

The export price was determined based on imports statistics obtained from SARS for the period of investigation for dumping. The export price was determined to be €0.496/kg after being converted from Rands to Euros. The conversion rates were sourced from ounda.com for the period of investigation. The SARS 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 for non-co-operating producers/producers in Germany was calculated to be 190.25 percent when expressed as a percentage of the ex-factory export price.

4.9.4 Comments by Agrafrost on initiation notice

- a) The dumping calculation is flawed because it is based on comparison of export price to distributors (wholesaler) in SACU, with a selling price [normal value] to supermarkets (retailer) in Germany, without making any adjustment. The sales and marketing costs for sales to retail market makes a price difference of more than 20 percent compared to the cost to produce fries destined to wholesale market.
- b) ITAC is requested to calculate dumping margin for Agrafrost based on facts available that adequate and accurate such as the average normal value from Mydibel, Aviko and Farm Frites. The normal value would be appropriate, given the fact that ITAC concluded that imports from Belgium, Germany, and the Netherlands can be considered on cumulative basis as they compete with each other.

Commission's consideration

- a) *From the outset, the normal value, which was at retail level, was adjusted downwards by 1.75% for inflation, 7% for VAT, 20% for retail margin, and 5% for inland domestic freight cost, to reflect an ex-factory normal value. Equally*

so, the export price, which was at FOB level, was adjusted downwards by 5% for inland freight cost, to reflect an ex-factory export price. Therefore, the dumping calculation is correct since it is based on a comparison of normal value and export price at an ex-factory level.

- b) The information of exporters/producers from Belgium and the Netherlands is used to calculate residual dumping margin for those countries. Therefore, that information cannot be used to calculate company specific duty for companies in Germany. Agrafrost was given an opportunity to submit a complete exporter's questionnaire response however, decided not to submit comments. This is after Agrafrost was provided an extension of 14 days to provide such a response.

4.10 SUMMARY - DUMPING

The Commission, after considering all 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

Country	Producer/ exporter	Dumping margin as % of ex-factory export price
Belgium	Agristo N.V.	10.81%
	Clarebout Potatoes N.V.	-9.80%
	Lutosa S.A.	10.29%
	Mydibel S.A.	18.14%
	All other producers/exporters	68.42%
The Netherlands	Aviko B.V.	10.06%
	Farm Frites International B.V.	21.08%
	All other producers/exporters	277.64%
Germany	All the producers/exporters	190.25%

4.11 Comments by Agrafrost on the preliminary report

The preliminary report does not include information about the normal value and export price used to calculate the margin of dumping for individual companies and general duty calculated for each country. This lack of information makes it impossible for interested parties to understand the margin of dumping determined. ITAC is in breach

of article 12.2 of the WTO agreement which requires that the investigation authorities to provide sufficient detail of the findings and conclusions reached on all issues of fact and law considered. ITAC is requested to disclose the information about normal values and export prices used to determine dumping.

Commission's consideration

The normal values and export prices used to calculate residual dumping margins are Mydibel's, Aviko's and Farm Frites' information, and are confidential by nature. The methodology used for each producer/exporter and residual margins was explained in detail in the preliminary report.

4.12 Comments by Interested parties on initiation notice

- a) Actualizing 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) ITAC is requested to explain the source of the information used in the calculation of the normal value for each country and whether the information was confidential or not.
- c) McCain Foods 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) EUPPA wanted to confirm on which part of the application did McCain complete, and which part was completed by ITAC;
- e) EUPPA stated that it is questionable and a potential issue of concern, that a calculation based on normal value transactions, which were provided to ITAC in confidence by five Belgian and two Dutch exporters during the previous review, appears in a document (application) signed by a private company and a global competitor of the EU industry. This confidential information was publicly disclosed without the permission of the respondents from the sunset review.
- f) The EC and EUPPA stated that the sample chosen is too small to be representative of the normal value in Germany. However, such a normal value calculation cannot represent sufficient evidence for initiating this investigation.

- g) Merlog stated that 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.
- h) Merlog stated that the allegations of subsidies and other support are irrelevant in a dumping investigation.

Commission's consideration

- a) *In instances where normal value is not reasonably available within the investigation period, it is the Commission's practice to use best information available as prima facie evidence for the purposes of initiating an investigation. In this case, the Commission used the available normal value information (the Netherlands and Belgian exporter's information) and adjusted it accordingly to reflect a normal value that would have been within the investigation period of dumping. The information used was reasonable evidence of such domestic prices in terms of the ADR. Additionally, the information complies with the terms of the Anti-Dumping Agreement Article 2.4: "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". In this case, the Commission made a fair comparison between the export price and the normal value in respect of sales made at, as nearly as possible, the same time by using the available normal value information (Netherlands and Belgium exporter's information at its disposal). Subsequent to initiation, exporters have the opportunity to address this issue by responding to the Commission's exporter's questionnaire and providing information on normal values, which are within the period of investigation.*
- b) *Normal values for the Netherlands and Belgium were calculated using the exporters' information for each country at the disposal of the Commission. The information referred to 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 obtained by the Commission. As a result, the Commission was in possession of sufficient evidence of dumping, material injury and a causal link to justify self-initiation of the investigation.*
- e) *The contention by EUPPA is without merit. As noted above, the Commission used the information in such a way that it could not be traced back to a particular exporter.*
- f) *EUPPA's contention misconprehends the standard that applies to the Commission's initiation of investigations. The question is not whether the information the Commission has at its disposal is ideal or flawless, but whether the information is sufficient or adequate. In this regards, 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. It compared that price with the corresponding export price, which demonstrated that dumping of the subject price was taking place.*

The Commission also examined monthly (August) export price data, which similarly demonstrated that dumping had occurred. Finally, the Commission's approach is in line with WTO jurisprudence. WTO jurisprudence provides that an investigating authority need not have before it at the time it initiates investigation evidence of dumping within the meaning of Article 2 of a quantity and quality necessary to support a preliminary or final determination.

- g) *Report No.657 was not a basis for calculation of the normal values and has no impact on this investigation.*
- h) *The investigation is an anti-dumping investigation; any reference to subsidy in the application has no bearing on the decision of the Commission in this investigation.*

4.13 Comments by interested parties on essential facts letters

- a) The essential facts letter, without reason, continues to base the dumping analysis for Germany on information from the initiation of the investigation without regard to the information collected during the investigation from other cooperating producers.
- b) EUPPA reiterates its disagreement with ITAC's month-to-month or transaction-to-transaction methods.

Commission's consideration

- a) *The information of exporters/producers from Belgium and the Netherlands is used to calculate residual dumping margin for those countries. That information cannot be used to calculate company specific duty and/or residual duty for companies in Germany. The producers/exporters from Germany did not respond to the Commission's exporter questionnaire and are regarded as non-cooperating. Therefore, the Commission based the dumping analysis for Germany on information from the initiation of the investigation.*
- b) *As indicated under Aviko's and Farm Frites' comments sections, the Commission is not acting inconsistent with any legislation by using month-to-month approach and transaction-to-transaction methodology. The Commission determined that using month-to-month approach and transaction-to-transaction methodology would result in a fair comparison and determination of dumping.*

5. MATERIAL INJURY

5.1 DOMESTIC INDUSTRY – MAJOR PROPORTION OF PRODUCTION

The material injury information was provided by McCain, which represents more than 60 percent of the total production volumes of the SACU industry.

The Commission made a final 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 made a final determination to cumulatively assess the effect of the imports from these three countries as discussed below.

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. The 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 undercut 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.

5.2.1 Comments by Merlog on essential facts letter

The imports from Germany and Netherlands have increased in quantum exponentially over the POI, while those for Belgium have been reduced. If the competition between the three countries was so fierce then Belgium exporters would have merely reduced pricing to maintain their dominance and keep the German and Dutch exports out. The Commission is requested to reconsider the cumulation and remove own imports and imports from Belgium, from any determination of import volumes.

Commission's consideration

The Commission's final determination to cumulate is supported by the analysis in table 5.2 above. Amongst other factors, imports from the three countries compete with each other in SACU market as they are priced in the same range (see table 8.3.1.2.1). Since the preliminary determination, the Commission has removed Lambert Bay's and Natures Garden's own imports from the analysis of imports. After the exclusion of own imports, nothing changed in the analysis of the factors presented in table 8.2 above. Therefore, the Commission's decision to cumulative is still valid.

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.

Interested parties' comments

The EU stated that evidence of material injury is insufficient.

Commission's consideration

The material injury submitted by McCain and subsequently verified, was deemed by the Commission to be sufficient evidence of material injury in a form of 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; increasing salaries and wages; and negative growth for purposes of initiation.

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.

5.3.1.1 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 5.3.1.1: Import volumes

Period	2018/19	2019/20	2020/21
Dumped imports: Belgium (tons)	18 353	13 378	15 861
<i>*Less verified un-dumped imports by Clarebout (tons)</i>	-	-	-100
Net dumped imports: Belgium (tons)	18 353	13 378	15 792
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	22 344
*Other net imports (tons)	762	74	96
Total imports (tons)	20 780	16 792	22 440
Dumped imports from Belgium as a % of total imports	88%	80%	71%
Dumped imports from the Netherlands as a % of total imports	3%	3%	13%
Dumped imports from Germany as a % of total imports	5%	17%	16%
Total dumped imports as a % of total imports	96%	100%	100%
Other imports as a % of total imports	4%	0%	0%
Total imports	100%	100%	100%

*Clarebout's import volume indexed

The table above shows that dumped imports, after eliminating un-dumped imports by Clarebout, from the subject countries decreased by 16.49 percent from 2018/19 to 2019/20, and increased by 34.06 percent from 2019/20 to 2020/21, with an overall increase of 11.96 percent during the POI. Imports from other countries decreased throughout the POI, with an overall decline of 87.40 percent.

Information at the Commission's disposal therefore indicate that the dumped imports of the subject product have increased significantly during the period of investigation for dumping.

5.3.1.2 Interested parties' comments on initiation notice

- a) The allegedly dumped imports from the three countries concerned decline by 16% in period 2 with respect to period 1 but recover in period 3, ending at a level 12% higher than period 1. This fluctuation has to be assessed in line with the fluctuation in consumption. German imports amounted to 3.503 ton in period 3, which represents 15.5% of total imports during the dumping investigation period. Based on information provided by World Potato Markets and SARS data, the South African market can be assessed at around 220.800 tons and therefore, German imports only represent 1.43% of the total market size. This does not seem to be enough to cause material injury.
- b) No indication was given in the sunset review that the companies who were exempted from the anti-dumping duties were causing the industry harm. This leaves only imports from Germany, which at 6% of total import volume is not able to cause material injury. Covid-19 caused injury to McCain.
- c) McCain has not shared the import volume, the value of import statistics on E7.1, E7.2, G2.1, G2.2, G2.3 and G 5.1 of the non-confidential application.
- d) McCain, Nature's Choice, 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". All of the SACU producers/processors have imported the subject product either directly or through intermediaries in substantial quantities over the investigation period.

Commission's consideration

- a) *The alleged dumped imports from the three countries were assessed cumulatively in terms of Regulation 16.3 of the ADR.*
- b) *This is a new anti-dumping investigation and not a sunset review investigation. Therefore, 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 investigation or not. The previous investigation's information has, as such, no impact on the current investigation.*
- c) *The imports information in paragraphs E7.1, 7.2, G2.1, G2.2, and G2.3 was erroneously claimed as confidential.*

d) SACU Industry's response

Lamberts Bay Foods and Nature's Garden indicated that their own imports are immaterial and a non-issue in injury analysis. In both instances an immaterial volume of imports for their own account were made. Collectively the own imports by the two minor SACU producers from countries subject to investigation represents less than 5% of total subject imports over the full investigation period. It is also worth recalling that McCain Foods, being fully representative of the SACU industry, made no imports at all from the countries subject to investigation during any of the three years of the investigation period.

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 2020/21

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.

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 2018/2019 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

(tons)	2018/19	2019/20	2020/21
Applicant's market share	100	90	95
Other SACU producers' market share	100	90	95
Total SACU market share	100	88	97
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

Tons	2018/19	2019/20	2020/21
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 percent 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 producers 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 of 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 20219/20 and 2022/21, with an overall decline of 118 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 decline 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 decline 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	Producer/ exporter	Dumping margin as % of ex-factory export price
Belgium	Agristo N.V.	10.81%
	Clarebout Potatoes N.V.	-9.80%
	Lutosa S.A.	10.29%
	Mydibel S.A.	18.14%
	All other producers/exporters	68.42%
The Netherlands	Aviko B.V.	10.06%
	Farm Frites International B.V.	21.08%
	All other producers/exporters	277.64%
Germany	All the producers/exporters	190.25%

5.3.3 Comments by interested parties on preliminary report

- a) Material injury needs to be determined product-by-product (or model-by-model), to make an overall assessment. In order for this to happen, McCain needs to update their injury information to account for costs and prices for different models that they produce. The assessment of injury information in its current form is not valid.
- b) The import trend from Belgium is decreasing. The investigation against Belgium should be terminated and Belgium be excluded from the dumping investigation.

Commission's consideration

- a) *The material injury information provided by McCain covers the costs and prices of all the product models that form part of the subject product. For the*

presentation and assessment of injury, there is no need for the industry to provide injury information for per product model. However, for purposes of determining dumping using exporters' information, information per product model is required. The Commission made a final determination that the presentation and assessment of McCain's injury information in its current form is proper.

- b) The effect of the imports from the three countries under investigation is cumulatively assessed. Cumulatively, the imports from the three countries have increased during the POI.*

5.3.4 Comments by interested parties on essential facts letter

- a) The deduction of own imports by Nature's Garden and Lamberts Bay, and the elimination of Lambert's Bay as a competitor of McCain and Nature's Garden will increase McCain's dominance to probably over 90%. The Commission is requested to recalculate the actual market dominance of McCain and not to fall into the trap of further entrenching McCain absolute dominance and monopoly of the SACU French Fry market. By further entrenching McCain dominance will further concentrate the SACU french fry monopoly which reduces competition and is not in the public interest.
- b) McCain's material injury is not representative of SACU industry situation. Very different circumstances apply to the other two SACU producers.
- c) The actual injury figures under consideration, including the effect of interested parties' comments on such information, should be disclosed to allow interested parties to defend their interests. Providing the injury indicators does allows interested parties to decipher what has transpired and if the local industry suffered injury.

Commission's consideration

- a) *The purpose of the anti-dumping investigation is to address unfair trade, not to promote market dominance and or monopoly. Should the latter happen, parties are at liberty to approach relevant agencies such as the Competition Commission to investigate. At present, the Commission has prima facie evidence that unfair trade is taking place through dumping.*

- b) *McCain represents more than sixty (60) percent of total production volumes in the SACU. In accordance with ADR 7, this constitutes “a major proportion” of the total domestic production and therefore representative of the SACU domestic situation. It is worth noting that the two other SACU producers are supporting the investigation.*
- c) *The actual injury figures are confidential. The indexed (non-confidential) figures are disclosed to the interested parties in the public file and were further disclosed on the Commission’s preliminary report. In both disclosures, interested parties have commented extensively on the issue of material injury. The essential facts letter indicated that “Where an issue is not specifically addressed, the Commission is considering confirming its preliminary determination as set out in its Preliminary Report”. This is the case for its material injury determination.*

Based on this information the Commission made a final 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

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.

6.1.1 Examination of causality under ADR16.1

6.1.1 The change in the volume of dumped imports

Table 6.1.1: Growth of the subject imports

	2018/19	2019/20	2020/21	Change 2019-2021
Net dumped imports in absolute terms (kg)	20 019	16 718	22 433	11.61%
Net dumped imports relative to domestic production volumes (%)	100	94	125	25 percentage point
Net dumped imports relative to domestic consumption volumes (%)	100	93	116	16 percentage points

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

6.1.2 Price undercutting

Table 6.1.2: Price undercutting calculation

R/kg	Belgium	The Netherlands	Germany	Combined average
Price undercutting as a % of SACU's ex-factory selling price	100%	100%	101%	100%

The figures were indexed due to confidentiality

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

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 decreased since the commencement of injury, with a corresponding increase in the market share of imports.

6.2.1 Import volumes

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

Table 6.2.1: Import volumes (excluding own imports and un-dumped imports)

Period	2018/19	2019/20	2020/21
Net dumped Imports (tons)	20 019	16 718	22 344
Less own imports	(781)	-	(2 141)
Total net dumped Imports (tons)	19 238	16 718	20 203
Other net imports (tons)	1 543	74	2 237
Total Imports volumes (tons)	20 781	16 792	22 440
Total net dumped imports as a % of total imports	93%	100%	90%
Other net imports as a % of total imports	7%	0%	10%
Total imports	100%	100%	100%

Own imports represent 4 percent of the total dumped imports during the 2018/19 and 10 percent of the total imports during 2020/21 period.

It is the Commission's opinion that these own imports are insignificant when compared to the volumes of the dumped imports, which amongst others significantly undercut the domestically produced product, and therefor own imports did not cause the material injury determined by the Commission and do not detract from the causal link established by the Commission.

6.2.2 Market share

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

Table 6.2.2: Market share (excluding own imports and un-dumped 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	101	100
Total net dumped imports as % of total market	100	100	100
Other Imports' market share as % of total market	100	100	100
Total market share	100	100	100

From the table above, it is the Commission's opinion that Lambert's Bay and Nature's Garden 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 experienced by McCain is caused by Lamberts Bay's and Nature's Garden own imports.

6.3 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.

6.4 Consequent impact of dumped imports

The information at the Commission's disposal indicates that 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.

6.5 Factors other than dumping causing material injury

Table 6.5: Examination of causality under ADR16.5

Table 6.5: Other factors

	2018/19	2019/20	2020/21	Change 2018-2021
FOB prices for imports not sold at dumped prices (R/kg)	8.09	19.26	15.30	89%
Volume of imports not sold at dumped prices (tons)	762	74	96	84%
Changes in demand and patterns of consumption	Despite the contraction in McCain's sales, the overall demand in the SACU is growing and consumption has not declined.			
Trade restrictive practices of foreign and domestic producers	There is no information on trade restrictive practices by foreign and domestic producers.			
Developments in technology	<p>In 2007 McCain spent more than R500 million to upgrade its Delmas plant, and further investment were made in 2018 both for increasing capacity and innovation.</p> <p>The information at the Commission's disposal indicates that continuous improvement projects are undertaken by the McCain Centre of Excellence focusing on developing and implementing new technology which further enhances productivity.</p>			
Export performance of the domestic industry	The information at the Commission's disposal indicates that the SACU industry does not export the subject product.			
Productivity of the domestic industry vis-à-vis that of the exporting countries	The information at the Commission's disposal indicates that the SACU industry is at least as productive as the European manufacturing units. McCain South Africa consistently compares favorably 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	Other factors are discussed below in details			
Strikes, go-slows, or lockouts during the past twelve calendar months	The information at the Commission's disposal indicates that McCain has not experienced any labour unrest during the past financial year.			

Changes in the exchange rates	The information at the Commission's disposal indicates that the effect of the exchange rate on the price of the imported product is low, and that there is no effect on production costs and selling prices of the SACU industry.
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6.5.1 Commission's consideration

The other factors were raised by interested parties and are presented in detail in the comments sections. When analysing these comments, the Commission considered the following arguments by the SACU industry when assessing the impact of these other factors:

The drought, shortage of raw potatoes and French fries, and own imports

The interested parties indicated that the SACU industry faced drought during the POI and the availability potatoes and/or the right quality of potatoes was affected. Interested parties argue that, as a result of shortage of potatoes which was caused by the drought, the SACU industry is unable to supply the SACU market and therefore resorted to importing the subject product directly and/or indirectly from the producers/exporters in Belgium and the Netherlands.

Drought: *Drought affected other SACU producers and was concentrated in Marble Hall area. McCain has not been materially injured by the drought. In the case of severe drought affecting raw potato supplies, McCain indicated it would have imported French fries to make good the raw material losses from McCain plants located elsewhere in the world.*

Shortages of raw potatoes: *If one SACU producer finds that it is adversely affected by localised severe frost damage from contracted production farm, for example in Marble Hall area, this is in no way reflective of the SACU industry as a whole or of manner in which potatoes are grown. Frost reported in one town is not indicative of an overall crop failure. McCain indicated that is not procuring potatoes from one farm or from farms in one town. McCain purchases potatoes from all of South Africa's growing areas from independent growers and cultivates potatoes on its growing sites. The 3 SACU producers have sufficient built-in capacity to fully satisfy the SACU demand for frozen chips across all supply channels. There is a sufficient supply of locally grown*

potatoes to supply chip factories. There is no local potato shortage of raw potatoes and/or French fries.

Own imports: *The immaterial volume of own imports was 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 two years within the POI. The other two SACU producers opted to make stopgap imports themselves to augment their own supplies to meet customer demand, and hence retain their supplier relationships for the future. Without this, these producers could have lost their customers to importers/exporters permanently. McCain, being fully representative of the SACU industry, made no imports at all from the countries subject to investigation during the POI. Moreover, own imports represented an insignificant volume when compared to dumped imports entering South Africa over the POI.*

Increased costs

Interested parties indicated that McCain's wages and salaries increased significantly, despite having fewer staff.

The Commission noted that the SACU industry's employee belongs to organised labour unions. As a result, sometimes the industry does not have a choice but to pay high wages and salaries as negotiated and agreed with the unions. However, the increased salaries did not represent a significant increase in the overall costs of producing frozen fries.

Impact of power interruptions and Covid-19

Interested parties indicated that the SACU industry was affected by power outages and lock-down restrictions, resulting to the business to suffer.

Power outage: *The data indicates that during the affected period within the POI, McCain's 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 addition, the industry indicated that it is noted that the outages were not sustained over long periods (i.e., they were sporadic), and neither was the impact such that it forced customers to seek alternate sources of frozen chip supply.*

Lock-down: *The SACU's frozen chip producers were considered as essential service providers and as such, production capability was not impacted significantly by lockdowns as the companies continued to produce chips throughout the lockdown periods.*

In conclusion, it is the Commission's opinion that the impact of other factors is immaterial and do not detract from the causal link, considering the fact that:

- *the drought was concentrated in one area and affected only the two minor SACU producers.*
- *The SACU industry has enough locally sourced potatoes for processing and enough capacity to supply French fries to the local market;*
- *Own imports were immaterial and were only sporadic over two years within the POI. McCain, made no imports from the countries subject to investigation during the POI;*
- *The domestic industry paid higher wages and salaries as negotiated and agreed with the unions. However, such increases did not represent a significant increase in the overall costs of producing frozen chips;*
- *Only 6 months of the POI was affected by load-shedding and approximately only 1% of the frozen chip production was lost during that time period.*
- *The production capability was not impacted significantly by lockdowns per se as the companies continued to produce chips throughout the lockdown periods. Only 4 months of the POI (March to June 2021) was affected by lockdown.*

6.6 Comments from Interested parties

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.

Industry's response

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.

The Commission made a final 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.

6.7 Consequent impact of dumped imports

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

- 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;
- Increasing salaries and wages; and
- Negative growth.

6.8 Comments by Agrafrost and EUPPA on preliminary report

- a) The report indicates that McCain did not import while the information from cooperating exporters and importers show that McCain is one of the importers of the subject product. ITAC is requested to request SARS to confirm if McCain imported.
- b) ITAC has not addressed the weather-related constraints and severe frost damage to potatoes that could have caused injury to the domestic industry. It is a requirement for ITAC to fully disclose the impact of the weather-related factors to the domestic industry.

- c) McCain lost market share during the investigation period. Most of this was taken up by the other two SACU producers. It is important that ITAC request that these two producers submit fully documented information relating to production, imports, and sales to allow ITAC to consider the whole market. As the majority of what McCain lost in market share was gained by their domestic competition. The change in McCain market share cannot be blamed on imports.

Commission's consideration

- a) *All six cooperating exporters/producers and two importers were verified and none of them exported to McCain. Bills of entry were requested from SARS for the period of investigation for dumping, and McCain was not one of the companies importing the subject product from Belgium, Germany, and the Netherlands.*
- b) *All the above factors raised by interested parties were considered by the Commission when making its preliminary determination. The SACU industry, particularly McCain, addressed these points. McCain's arguments are presented in this submission as "industry response". There is no new evidence provided by interested parties to substantiate these points. The Commission made a final determination to reiterates its preliminary determination that although there are factors other than the dumping that might have contributed to the injury, these factors did not sufficiently detract from the causal link between the dumping of the subject product and the material injury.*
- c) *According to table 6.2.2 (a) above, McCain lost 3% market share, while other SACU producers gained 4% and dumped imports gained 0% during the same period. It is therefore not true that majority of what McCain lost was gained by the other SACU producers, and that dumped imports cannot be blamed. McCain is the major producer of the subject product in SACU, with more than 60% industry standing. Their information is representative of the industry and therefore there is no need or requirement for the Commission to obtain additional injury information from the two other SACU producers. The two other SACU producers are in support of the investigation.*

6.9 Comments from Interested parties on preliminary report

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 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.

6.10 Comments by interested parties on essential facts letter

There is an insufficient supply of potatoes in the SACU market and therefore a shortage of chips. McCain was not able to meet demand during the investigation period. The shortage persists, and the local producers are still requesting supply from exporters under investigation. There is a real risk that for as long as there is a shortage, the local producers will increase prices to the detriment of an already cash strapped consumer. Importantly, despite imposing provisional duties and proposing to impose final duties, the domestic industry is still unable to meet demand, hence the very high prices.

SACU Industry's response

The three SACU manufacturers have sufficient built-in capacity to fully satisfy the SACU demand for frozen chips across all supply channels. There is a sufficient supply of locally grown potatoes to supply chip factories and present. There is no local potato shortage. This in itself speaks to the resilience of the local farmers who are delivering potatoes despite numerous lapses in their ability to irrigate their crops as there has been disrupted power to operate the irrigation pumps.

The Commission made a final determination that there is a causal link between the dumping of the subject product and the material injury experienced by the SACU industry.

7. SUMMARY OF FINDINGS

The Commission made the following final findings:

Table 7.1: final findings

Subject	Final 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 Agristo in Belgium is being dumped in SACU at 10.81%
	The subject product imported from Clarebout in Belgium is <i>minus</i> 9.80%
	The subject product imported from Lutosa in Belgium is being dumped in SACU at 10.29%
	The subject product imported from Mydibel in Belgium is being dumped in SACU at 18.14%
	The subject product imported from all other producer/exporters in Belgium is being dumped in SACU at 68.42%
	The subject product imported from Aviko in the Netherlands is being dumped in SACU at 10.06%
	The subject product imported from Farm Frites International in the Netherlands is being dumped in SACU at 21.08%
	The subject product imported from all other producers/exporters in the Netherlands is being dumped in SACU at 277.64%
Material injury	The SACU industry is experiencing material injury
Causal link	There is a causal link between the alleged dumped imports of the subject product and the material injury experienced by the SACU industry and there were no other factors detracting from causal link.

8. FINAL DETERMINATION

The Commission made a final determination that:

- the subject product originating in or imported from Belgium (excluding that produced by Clarebout Potatoes N.V.), Germany, and the Netherlands is being dumped into the SACU market;
- the SACU industry is experienced material injury; and
- there is a causal link between the dumped imports and the material injury experienced by the SACU industry.

The Commission made a final determination to recommend to the Minister of Trade, Industry and Competition that anti-dumping duties on frozen potato chips originating in or imported from Belgium (excluding that produced by Clarebout Potatoes N.V.), Germany, and the Netherlands, be imposed as follows:

Table 8: Final duties

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)		
Country of origin	Producer/ exporter	Final dumping duties
Belgium	Agristo N.V.	9.82% <i>ad valorem</i>
	Lutosa S.A.	9.73% <i>ad valorem</i>
	N.V. Mydibel S.A.	16.89% <i>ad valorem</i>
	All other producers/exporters (excluding that produced/exported by Agristo N.V., Lutosa S.A, Mydibel S.A., and Clarebout Potatoes N.V.)	67.33% <i>ad valorem</i>
The Netherlands	Aviko B.V.	8.80% <i>ad valorem</i>
	Farm Frites International	19.60% <i>ad valorem</i>
	All other producers/exporters, excluding Aviko B.V. and Farm frites International	239.10% <i>ad valorem</i>
Germany	All the producers/exporters	181.05% <i>ad valorem</i>
2004.10.29—Chips or French fries: Other		
Belgium	Agristo N.V.	9.82% <i>ad valorem</i>
	Lutosa S.A.	9.73% <i>ad valorem</i>
	N.V. Mydibel S.A.	16.89% <i>ad valorem</i>
	All other producers/exporters (excluding that produced/exported by Agristo N.V., Lutosa S.A, N.V. Mydibel S.A., and Clarebout Potatoes N.V.)	67.33% <i>ad valorem</i>
The Netherlands	Aviko B.V.	8.80% <i>ad valorem</i>
	Farm Frites International	19.60% <i>ad valorem</i>
	All other producers/exporters, excluding Aviko and Farm frites International	239.10% <i>ad valorem</i>
Germany	All the producers/exporters	181.05% <i>ad valorem</i>

The Commission further made a final determination to recommend to the Minister of Trade, Industry and Competition that the anti-dumping duties be listed in the “rebate item” column in Schedule No. 2 and therefore not be imported under rebate of the customs duty without payment of the anti-dumping duties without a recommendation by the Commission.