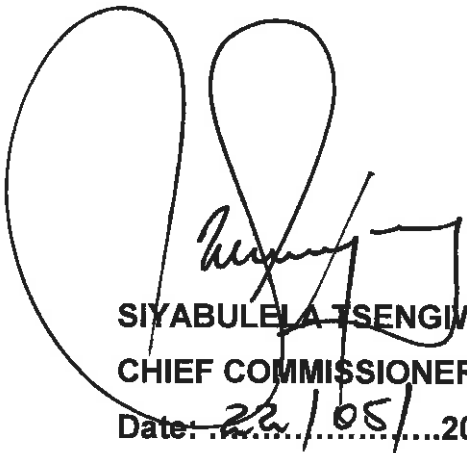


Report No. 474

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

The International Trade Administration Commission of South Africa herewith presents its
**Report No. 474: INVESTIGATION INTO THE ALLEGED DUMPING OF FROZEN
POTATO CHIPS ORIGINATING IN OR IMPORTED FROM BELGIUM AND THE
NETHERLANDS: FINAL DETERMINATION**



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CHIEF COMMISSIONER
Date: 22/05/2014

INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA

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

SYNOPSIS

On 21 June 2013, the Commission initiated an investigation into the alleged dumping of frozen potato chips originating in or imported from Belgium and the Netherlands through Notice No. 635 of *Government Gazette* No. 36575 dated 21 June 2013.

McCain Foods SA (Pty) Ltd, the major producer of the subject product in the SACU (representing about 70 percent of the SACU industry by production volume), lodged the application, supported by Nature's Choice Products and Lamberts Bay Foods.

The investigation was initiated after the Commission considered that there was *prima facie* evidence to show that the subject product was being imported into the SACU at dumped prices, causing material injury to the SACU industry.

Upon initiation of the investigation, the known producers/exporters of the subject product in Belgium and the Netherlands were sent foreign producer/exporter's questionnaires to complete. Importers of the subject product in the SACU were also sent questionnaires to complete.

The Commission made a preliminary determination that frozen potato chips originating in or imported from Belgium and the Netherlands were dumped causing material injury to the domestic industry, and decided to request the Commissioner for South African Revenue Service (SARS) to impose provisional payments for a period of twenty-six weeks in order to protect the domestic industry while the investigation continued. Provisional payments were imposed effective from 20 December 2013 up to and including 20 June 2014.

A preliminary report was issued to the interested parties and interested parties were invited to comment.

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

Essential facts letters were sent out to all interested parties, informing them of the "essential facts" which were being considered by the Commission, and invited comments from interested parties on those "essential facts".

After considering all parties' comments received, the Commission made a final determination that frozen potato chips originating in or imported from Belgium and the Netherlands were dumped, causing material injury to the domestic industry, and decided to recommend to the Minister of Trade and Industry that definitive anti-dumping duties be imposed on the imports of the subject product originating in or imported from Belgium and the Netherlands.

1 APPLICATION AND PROCEDURE

1.1 LEGAL FRAMEWORK

This investigation was conducted in accordance with the International Trade Administration Act, 2002, the International Trade Administration Commission of South Africa Anti-Dumping Regulations (ADR) having due regard to the World Trade Organisation Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, 1994 (the Anti-Dumping Agreement).

1.2 APPLICANT

McCain Foods SA (Pty) Ltd, the major producer of the subject product in the SACU (representing about 70 percent of the SACU industry by production volume), lodged the application.

1.3 DATE OF ACCEPTANCE OF APPLICATION

The application was accepted by the Commission as being properly documented in accordance with section 21 of the ADR on 11 June 2013. The trade representatives in Belgium and the Netherlands were advised accordingly.

1.4 ALLEGATIONS BY THE APPLICANT

The applicant alleged that imports of the subject product, originating in or imported from Belgium and the Netherlands were being dumped into the SACU market, causing material injury to the SACU industry. The basis of the alleged dumping was that the goods were being exported to SACU at prices less than the normal value in the country of origin.

The applicant further alleged that the dumping of the subject product from Belgium and the Netherlands was causing the SACU industry material injury in the form of:

- Price depression;
- Price suppression;
- Loss making situation;
- Loss in market share;
- Increase in inventories;
- Negative return on investment;

- Surplus capacity;
- Negative cash flow;
- Price undercutting and price disadvantage; and
- Decline in employment.

1.5 INVESTIGATION PROCESS

The applicant submitted the application on 20 December 2012. The information submitted by the applicant was verified on 21 and 22 May 2013.

The trade representatives of the countries concerned were notified of the Commission's receipt of a properly documented application on 12 June 2013, in terms of section 27.1 of the ADR.

The Commission initiated an investigation into the alleged dumping of frozen potato chips originating in or imported from Belgium and the Netherlands pursuant to Notice No.635 which was published in *Government Gazette* No. 36575 on 21 June 2013.

All known interested parties were sent a non-confidential application, relevant questionnaires and initiation notice and requested to respond.

1.6 INVESTIGATION PERIOD

The investigation period for dumping was 01 January 2012 to 31 December 2012. The injury investigation involved evaluation of data for the period 01 July 2009 to 30 June 2012 plus six months additional information for 2010 to 2012 (01 July to 31 December).

1.7 PARTIES CONCERNED

1.7.1 SACU industry

The SACU industry consists of three manufacturers of the subject product, McCain Foods SA (Pty) Ltd, that provided the material injury information, and Lamberts Bay Foods and Nature's Choice Products that both supported the application by McCain Foods SA (Pty) Ltd. Lamberts Bay Foods, and Nature's Choice Products share about 30 percent of the SACU industry by production volume.

1.7.2 Foreign Producers/Exporters

Responses to the Commission's foreign producer/exporter's questionnaire were received from the following producers/exporters of the subject product from Belgium and the Netherlands:

- Clarebout Potatoes N.V.- Belgium;
- Mydibel S.A.- Belgium;
- PinguinLutosa Foods S.A - Belgium;
- Agristo N.V. Harelbeke - Belgium;
- Farm Frites International B.V.- Belgium;
- LambWeston/Meijer V.O.F -The Netherlands;
- Agristo N.V. Tilburg - The Netherlands; and
- Farm Frites International B.V. - The Netherlands.

Initial responses from all the above exporters were found to be deficient, and the exporters were advised and given a further seven days to correct deficiencies. Updated responses from the respective exporters were received within the seven day time-frame period. Only LambWeston/Meijer and Clarebout Potatoes rectified the deficiencies in time for purposes of the preliminary determination. Their information was verified from 06 to 15 November 2013.

PinguinLutosa Foods S.A., Agristo N.V., Farm Frites International B.V., and Mydibel S.A. were informed of deficiencies in their responses and that their information would not be taken into account for the preliminary determination. They were also advised that should their information be rectified within the deadline date for comments on the preliminary determination, their information would be considered for the final determination.

Agristo N.V., Mydibel Foods and PinguinLutosa rectified the identified deficiencies within the deadline date for comments to the preliminary determination and their information was verified.

Farm Frites International B.V (Belgium) indicated that it was no longer an interested party. It determined that it did not export to SACU during the period of investigation. Farm Frites International B.V (the Netherlands) submitted an updated response within the deadline date for comments to the preliminary determination. However the response was still deficient. The cost and price build-up was incomplete. Farm Frites International B.V (the Netherlands) was informed of the deficiencies and advised that the information may not be taken into account for the final determination.

1.7.3 Importers

Responses to the Commission's importer's questionnaire were received from the following importers of the subject product in the SACU:

- Bristo's Meat;
- Chester Wholesaler KZN (Pty) Ltd;
- Etlin International Trading (Pty) Ltd; and
- Merlog Foods (Pty) Ltd.

Initial responses from all the above importers were found to be deficient. The importers were advised of the identified deficiencies and given a further seven days to correct deficiencies. Updated responses from Merlog Foods, Chester Wholesaler, and Etlin International were received within the seven day time-frame period and were verified.

Bristo's Meat did not respond to the deficiency letter. The Commission made a preliminary determination not to take the information submitted by Bristo's Meat into account for purposes of its determinations.

- 1.8** After considering the properly submitted responses and comments by interested parties, the Commission made a preliminary determination that frozen potato chips originating in or imported from Belgium and the Netherlands (excluding those produced by LambWeston/Meijer) were being imported to the SACU industry at dumped prices, thereby causing material injury to the SACU industry.

The Commission considered that the SACU industry would continue to suffer material injury during the course of the investigation if provisional payments were not imposed. The Commission therefore decided to request the Commissioner of South African Revenue Service to impose provisional measures on imports of the subject product from Belgium and the Netherlands, for a period of twenty-six weeks. Provisional payments were imposed effective from 20 December 2013 up to and including 20 June 2014 against the subject product originating in or imported from Belgium and the Netherlands.

The Commission's preliminary determination was sent to interested parties for comments. Comments on the Commission's preliminary determination were received from the applicant, Shoprite Checkers (Pty) Ltd, the European Union, and exporters (Clarebout Potatoes, Mydibel Foods SA, PinguinLutosa, Farm Frites International, Agristo N.V. and LambWeston/Meijer) through their representatives.

- 1.9** A letter of essential facts detailing the Commission's considerations was sent to interested parties for comments. Comments on the essential facts were received from the European Union, Shoprite Checkers, exporters (Clarebout Potatoes, Mydibel Foods, PinguinLutosa, Agristo N.V. Tilburg, Farm Frites International B.V) and importers (Etlin International, Merlog Foods) through their representatives.

After considering the submitted information, interested parties' comments and representations in respect of the preliminary determination and "essential facts", the Commission made a final determination that the subject product from Belgium (excluding those produced by Agristo N.V Harelbeke) and the Netherlands (excluding those produced by LambWeston/Meijer) was being dumped into the SACU market, causing material injury to the SACU industry.

The Commission therefore decided to recommend to the Minister of Trade and Industry that definitive anti-dumping duties on frozen potato chips originating in or imported from Belgium (except those produced by Agristo N.V Harelbeke) and the Netherlands (except those produced by LambWeston/Meijer), be imposed as follows:

- 6.19% *ad valorem* on imports of Chips or French fries classifiable under tariff subheading 2004.10.20, originating in or imported from Belgium and produced and exported by Clarebout Potatoes N.V.
- 9.71% *ad valorem* on imports of Chips or French fries classifiable under tariff subheading 2004.10.20, originating in or imported from Belgium and produced and exported by Mydibel Foods S.A.
- 5.81% *ad valorem* on imports of Chips or French fries classifiable under tariff subheading 2004.10.20, originating in or imported from Belgium and produced and exported by PinguinLutosa Foods B.V.
- 30.77% *ad valorem* on imports of Chips or French fries classifiable under tariff subheading 2004.10.20, originating in or imported from Belgium and produced and exported by all other exporters/manufacturers in Belgium (excluding those produced and exported by Agristo N.V Harelbeke).
- 12.52% *ad valorem* on imports of Chips or French fries classifiable under tariff subheading 2004.10.20, originating in or imported from the Netherlands and produced and exported by Agristo N.V Tilburg.
- 16.42% *ad valorem* on imports of Chips or French fries classifiable under tariff subheading 2004.10.20, originating in or imported from the Netherlands and produced and exported by all other exporters/producers in the Netherlands (excluding those produced and exported by Lamb Weston/Meijer V.O.F).

1.10 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, a summary of some of the salient comments received from interested parties and the Commission's consideration of these comments are specifically included in this report.

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 IMPORTED PRODUCTS

2.1.1 Description

The subject products are described as frozen potato chips (scientific name) and or French fries (trade name).

2.1.2 Country of origin/export

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

2.1.3 Tariff Classification

The following table shows the ordinary customs duty for the subject product:

Table 2.1.3: Applicable duties and rebates

Tariff subheading	Description		Customs Duty				Rebate Provision
			General	EU	EFTA	SADC	
2004.10.20	Chips or French fries	Kg	20%	Free	20%	Free	N/A

Source: SARS

The tariff classification under which frozen potato chips is imported is “Chips or French fries”. Prior to 29 November 2013, “Chips or French fries” were classifiable under tariff sub-heading 2004.10.90, “Other”, which may have been inclusive of other products besides the subject product. However, according to the knowledge of the applicant, the subject product makes up more than 90 percent of all imports that were imported under this tariff sub-heading. The remaining 10 percent or less could have been hash browns and other potato-based products. A 10 percent downward adjustment was made to the import statistics to account for the unknown products imported under this tariff sub-heading. There were no comments from interested parties regarding the 10% downward adjustment and the Commission could not find any information to confirm or rebut the applicant’s assertions about the exact split of products imported under this tariff heading. The Commission however considered the fact that there were other products classifiable under 2004.10.90, and found adequate justification to adjust the statistics, and to adjust

the import statistics by 10 percent. The tariff classification/subheading has since changed to be as reflected in table 2.1.3.

2.1.4 Negligibility test

The volume of dumped imports into SACU shall be considered negligible if it accounts for less than 3 percent of total imports of the subject product during the period of investigation for dumping. The following table shows the alleged dumped imports as a percentage of the total imports:

Table 2.1.4: Import volumes

Tons	Import volumes (2012)	Volume as % of total imports
Alleged dumped imports:		
Belgium	21 380	
Netherlands	5 966	
Less SACU own imports:		
Belgium	35	
Netherlands	365	
*Alleged dumped net imports		
Belgium	19 210	67%
Netherlands	5 041	17%
*Other imports	4 982	
Other net imports	4 484	16%
Total Net imports	28 735	100%

*Note that a 10% adjustment was done to account for imports of other products than the subject product that may be imported under this tariff sub-heading.

The information above indicates that 67 percent and 17 percent of the subject product was imported from Belgium and the Netherlands respectively during the period of investigation for dumping. The Commission made a final determination that the imports from Belgium and the Netherlands were above the negligibility level.

2.2 SACU PRODUCT

2.2.1 Description

The subject product is described as frozen potato chips (scientific name) and or French fries (trade name).

Comments by interested parties

It was stated that since McCain excluded coated chips from the determination of normal value, the scope of the investigation had to change and coated chips be excluded as no allegation of dumping had been made regarding the coated products.

Commission's consideration

The Commission considered that for a *prima facie* case, the applicant did not have to provide normal value information for all models of the product, as long as the provided normal value was representative of the product investigated.

2.2.2 Production process

Raw potatoes are washed, sorted, steamed peeled, cut, blanched, dried, partly cooked in vegetable oil, cooled, frozen, weighed, packaged.

2.2.3 Raw Material used

The main raw materials used are potatoes and vegetable oil.

2.2.4 Application or end use

The end use and / or application of the subject product is for human consumption.

2.2.5 Tariff Classification

The subject product is classifiable under tariff subheading 2004.10.20.

2.2.6 LIKE PRODUCTS ANALYSIS

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

Table 2.2.6: Like product determination

	Imported product	SACU product
Raw materials	Potatoes Vegetable Oil	Potatoes Vegetable Oil
Physical characteristics and appearance	Potatoes cut into chips, lightly processed, frozen and packaged in poly bags.	Potatoes cut into chips, lightly processed, frozen and packaged in poly bags.
Tariff classification	2004.10.20	2004.10.20
Production process	Raw potatoes are washed, sorted, steamed peeled, cut , blanched in cold water, dried, partly cooked in vegetable oil, cooled, frozen, weighed, and packaged.	Raw potatoes are washed, sorted, steamed peeled, cut, blanched, dried, partly cooked in vegetable oil, cooled, frozen, weighed, and packaged.
Application or end use	For human consumption	For human consumption
Substitutability	The imported and SACU products are fully substitutable	The SACU and imported products are fully substitutable

Taking all the above factors into consideration, the Commission made a final determination that the SACU product and the imported product are “like products”, for purposes of comparison.

3. INDUSTRY STANDING

The applicant is the major producer of the subject product in the SACU, representing about 70 percent of the SACU industry by production volumes.

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

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 f.o.b export price. If the margin is less than two per cent, it is regarded as *de minimis* in terms of the Anti-Dumping Regulations (ADR) and no anti-dumping duty will be imposed.

4.1 METHODOLOGY FOR CLAREBOUT POTATOES N.V IN BELGIUM

4.1.1 Normal Value

Clarebout Potatoes produced and sold various models in Belgium. For normal value determination, the comparable models produced and exported to the SACU market are used.

Of the three comparable models exported to SACU, only two comparable models (catering cut size 10mmX10mm and retail cut size 10mmX10mm) were sold in the Belgian market. Clarebout did not sell catering cut size 12mmX12mm model in its domestic market.

Some of the sales for models catering cut size 10mmX10mm and retail cut size 10mmX10mm were sold below cost in the Belgian market during the period of investigation for dumping, in quantities exceeding 20 percent by volume of domestic sales. The Commission made a final determination to disregard sales made at a loss, exceeding 20 percent by volume of total domestic sales during the investigation period for dumping, in accordance with section 8.2 of the ADR, and determined normal values based on the remaining sales, in accordance with section 8.3 of the ADR.

Catering cut size 12mmX12mm model was however sold to various export markets. In selecting the appropriate third country, the Commission considered the following criteria:

- Volumes exported to that country must be comparable to volumes exported to SACU;
- Customers exported to in that country are comparable to customers exported to in SACU; and
- The country exported to must have a domestic industry manufacturing the subject product.

On the basis of the above, the Commission selected exports to Great Britain (GB).

The normal values before adjustments were based on domestic sales of the models: catering cut size 10mmX10mm, and retail cut size 10mmX10mm, and exports to GB for model catering cut size 12mmX12mm. These sales were made in Euro (€).

4.1.1.1 Domestic sales adjustments

The following adjustments to the normal value were claimed by the producer and were allowed by the Commission as it was shown that there were differences in costs, which were demonstrated to have affected price comparability at the time of setting the prices. The adjustments are as follows:

- Cost of payment terms;
- Transport costs/Delivery charges; and
- Discount costs.

4.1.2 Export price

Export price is defined in section 32(2)(a) of the ITA Act as the price actually paid or payable for goods sold for export, net of all taxes, discounts and rebates actually granted and directly related to the sale under consideration.

To calculate the export price, Clarebout's actual verified export sales to the SACU market were used. Clarebout exported three models to the SACU market, namely Catering cut size 10mmX10mm, Catering cut size 12mmX12mm, and Retail cut size 10mmX10mm during the period of investigation for dumping.

4.1.2.1 Adjustments to export price

The following adjustments to the export price were claimed by the producer and allowed by the Commission as it was shown that there was a difference in costs, which was demonstrated to have affected price comparability at the time of setting the prices. The adjustments are as follows:

- Cost of payment terms; and
- Transport costs/Delivery charges

4.1.3 Margin of dumping

The weighted average dumping margin for Clarebout Potatoes N.V was found to be 8.28 percent.

4.1.4 Comments from interested parties

Comments were received from the exporter indicating that Clarebout did not agree with the normal values of one model, where the weighted average cost of production for the period of investigation was used instead of monthly costs of production or costs at the time of sale.

Commission's consideration

The Commission considered the allegation to be without basis as Clarebout did not submit any monthly costs and price build-ups to the Commission at any stage of the investigation.

4.2 METHODOLOGY FOR MYDIBEL FOODS S.A. IN BELGIUM

4.2.1 Normal Value

Mydibel Foods S.A produced and sold various models in Belgium. It was found that Mydibel determines the models of the subject product based on cut size, grade and packaging. The Commission considered that although the product was packed in different sizes, it still was the same product and the costs of production per kilogram were also the same. An adjustment for the different packaging could be made where applicable. The Commission decided to determine the models of the subject product based on cut size and grade.

For normal value determination, the comparable models produced and exported to the SACU market were considered. Of the seven comparable models to those produced and exported to SACU, four comparable models (7/7A, 9/9A, 10/20A and 11/11A) were sold in Belgium during the period of investigation for dumping. Mydibel did not sell the other three models: 10/10A, 11/11B and 12/12A in Belgium during the same period.

Of the four comparable models sold in Belgium, some of the sales of models 7/7A, 10/20A and 11/11A were sold below cost. Sales of model 7/7A made at a loss exceeded 20 percent by volume of domestic sales. The Commission made a final determination to disregard sales made at a loss, exceeding 20 percent by volume of total domestic sales during the investigation period for dumping in accordance with section 8.2 of the ADR8, and determined normal values based on the remaining sales, in accordance with section 8.3 of the ADR.

Sales made at a loss for models 10/20A and 11/11A were less than 20% of sales in the Belgian market and therefore all domestic sales for these models as well as all sales of 9/9A were also used for normal value determination.

Models 10/10A, 11/11B and 12/12A that were not sold in the domestic market of the exporter were however sold to various export markets. In selecting the appropriate third country, the Commission considered the following criteria:

- Volumes exported to that country must be comparable to volumes exported to SACU;
- Customers exported to in that country are comparable to customers exported to in SACU; and
- The country exported to must have a domestic industry manufacturing the subject product.

On the basis of the above criteria, Bulgaria met the Commission's criteria for a selection of a third country, for model 10/10A. However it was determined that all sales to Bulgaria were made at a loss during the period of investigation for

dumping. The Commission made a final determination to disregard these Bulgarian sales in accordance with section 8.2 of the ADR8, and considered to use a constructed normal value based on a verified cost and price build-up and verified 'reasonable profits' also contained in the cost and price build-up.

On the basis of the above criteria, no country met the Commission's criteria for models 11/11B and 12/12A as the export volumes of these models to third countries were not comparable to the volumes of the models exported to SACU. The Commission therefore decided to use constructed normal values based on verified cost and price build-up and verified 'reasonable profits' also contained in the cost and price build-up.

The normal values before adjustments were based on domestic sales of models 7/7A, 9/9A, 10/20A and 11/11A. These sales were made in Euro (€). Normal values for models 10/10A, 11/11B and 12/12A were constructed.

4.2.1.1 Domestic sales adjustments

The following adjustments to the normal value were claimed by the producer and were allowed by the Commission as it was shown that there were differences in costs, which were demonstrated to have affected price comparability at the time of setting the prices. The adjustments are as follows:

- Cost of payment terms;
- Transport costs/Delivery charges; and
- Packaging.

4.2.2 Export price

Export price is defined in section 32(2)(a) of the ITA Act as the price actually paid or payable for goods sold for export, net of all taxes, discounts and rebates actually granted and directly related to the sale under consideration.

To enable a proper comparison with the normal value, the export price should be at the ex-factory level.

To calculate the export price, Mydibel's actual verified export sales to the SACU market were used. Mydibel exported seven models to the SACU market, namely 7/7A, 9/9A, 10/20A, 10/10A, 11/11A, 11/11B and 12/12A during the period of investigation for dumping. Export sales were made in Euro (€), and the respective volumes were in kilograms.

4.2.2.1 Adjustments to export price

The following adjustments to the export price were claimed by the producer and allowed by the Commission as it was shown that there was a difference in costs, which was demonstrated to have affected price comparability at the time of setting the prices. The adjustments are as follows:

- Cost of payment terms;
- Transport costs/Delivery charges; and
- Packaging.

4.2.3 Margin of dumping

The weighted average dumping margin for Mydibel Foods S.A was found to be 15.16 percent.

4.2.4 Comments from Mydibel and Commission's considerations thereof

- Mydibel commented that the profit used to construct the normal values for models 12x12, 11x11B and 10x10A was unreasonable, as the profit reflected in the cost and price build-up relates to profit realised on sales made to SACU and submitted that the company's average profit on frozen chips sales be used to construct normal values for the three models.

Commission's consideration

There is one cost and price build-up provided by a foreign producer in an anti-dumping investigation. It is used to conduct an ordinary course of sales test for sales in the domestic market of the foreign producer. In terms of the ADA Article 2.2.2, "the amounts for administrative, selling and general costs and for profits shall be based on actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation." The profit

used in the construction of normal values for the three models was the one provided and verified by the Commission. This is also line with the ADR8.13 which states that “the reasonable profit margin that is included in the constructed normal value shall normally be determined with reference to the actual profit realised on sales of the product under investigation, actual profit realised on sale of the narrowest range of products that can be identified,..... or any other reasonable basis.....”

The exporter does not have a problem with the cost build up being used for the ordinary cost of sales test as it also agreed with the Commission’s considered determination that sales to Bulgaria were made at a loss having been determined using the same cost and price build-up at issue. The problem seemed to have arisen when the calculation based on the price and cost build-up at issue resulted in an unfavourable outcome to Mydibel.

- The exporter questioned the determination of normal value on the basis of seven models instead of nine models as submitted in its response.

Commission’s consideration

The Commission found that Mydibel determined the models of the subject product based on cut size, grade and packaging. In considering the determination of models, the Commission took into account that although the product was packed in different sizes, it was still the same product and the costs of production per kilogram were applicable. An adjustment for the different packaging was made where applicable with regard to the two models (9x9A and 11x11B).

- The exporter indicated that the essential facts letter indicates all normal values and export price on the basis of Euro (€) cent/kg and requested the Commission to work without rounding in all the calculations.

Commission’s consideration

It was the Commission’s view that there was no issue with rounding off as it could go either way at any one point, as long as it was consistently done.

- It was indicated that Merlog Foods fully cooperated together with its exporter, Mydibel, during the course of the investigation and so a lesser duty should be applied to Merlog. However, the essential facts letter did not contain any information in this regard.

Commission's consideration

Merlog together with Mydibel fully cooperated and the Commission made a final determination to apply the lesser duty.

4.3 METHODOLOGY FOR PINGUINLUTOSA FOODS IN BELGIUM

4.3.1 Normal Value

PenguinLutosa produced and sold various models in Belgium. For normal value determination the models comparable to models produced and exported to the SACU market were considered.

It was found that PenguinLutosa determined the models of the subject product based on cut size, grade and packaging. The Commission considered that although the product was packed in different sizes, it was still the same product and the costs of production per kilogram were also the same. An adjustment for the different packaging could be made where applicable. The Commission decided to determine the models of the subject product based on cut size and grade.

PenguinLutosa had goods or models that were recorded in the sales schedules as donations. Thus they had a volume but no value. The Commission decided to exclude these "sales" volumes and their adjustments in the normal value calculations as they were not sales, nor were they made in the ordinary course of trade.

PenguinLutosa sold certain goods to Agristo N.V., an unrelated party, but did not incur certain costs such as packaging and storage for those goods sold to Agristo N.V. The Commission decided to consider those sales as normal sales in the calculation of normal value. The Commission also decided not to consider a

separate cost and price build-up for those goods sold to Agristo N.V, as the cost and price build-up was not for a particular client, but for all goods produced and sold by the producer.

Of the six comparable models exported to SACU, three comparable models (10x10 (15651&15653), 10x18 (15653) and 6x6/7x7 (15679&15681) were sold in Belgium during the period of investigation for dumping. PinguinLutosa did not sell 12x12 coated (15499), crinkle cut (15504) and 12x12 (15667&15668) models in Belgium during the same period.

Of the three comparable models sold in Belgium, some of the sales for models 10x10 and 6x6/7x7 were sold below cost in quantities exceeding 20 percent by volume of domestic sales. The Commission made a final determination to disregard sales made at a loss, exceeding 20 percent by volume of total domestic sales during the investigation period for dumping, in accordance with section 8.2 of the ADR, and to determine normal values based on the remaining sales, in accordance with section 8.3 of the ADR.

Models 12x12 coated (15499), crinkle cut (15504) and 12x12 (15667&15668) were however sold to various export markets. In selecting the appropriate third country, the Commission considered the following criteria:

- Volumes exported to that country must be comparable to volumes exported to SACU;
- Customers exported to in that country are comparable to customers exported to in SACU; and
- The country exported to must have a domestic industry manufacturing the subject product.

On the basis of the above, Great Britain (GB) met the Commission's criteria for a selection of a third country, for models 12x12 coated and 12x12.

On the basis of the above, no country met the Commission's criteria for the crinkle cut model as the export volumes of this model to third countries were not comparable to the volumes of the models exported to SACU. The Commission therefore decided to use a constructed normal value based on the verified cost and price build-up and the verified "reasonable profit" also contained in the cost and price build-up.

The normal values were based on domestic sales of models 10x10, 10x18 and 6x6/7x7, constructed values for the crinkle cut model, and export sales to GB for models 12x12 coated and 12x12.

4.3.1.1 Domestic sales adjustments

The following adjustments to the normal value were claimed by the producer and were allowed by the Commission as it was shown that there were differences in costs, which were demonstrated to have affected price comparability at the time of setting the prices. The adjustments are as follows:

- Cost of payment terms;
- Transport costs/Delivery charges; and
- Discount costs.

4.3.2 Export price

Export price is defined in section 32(2)(a) of the ITA Act as the price actually paid or payable for goods sold for export, net of all taxes, discounts and rebates actually granted and directly related to the sale under consideration.

To calculate the export price, the producer's actual verified export sales to the SACU market before adjustments were used. PinguinLutosa exported six models to the SACU market, namely cut size 10X10, 12X12 coated, 12x12, crinkle cut, 10x18 and 6x6/7x7 during the period of investigation for dumping.

4.3.2.1 Adjustments to export price

The following adjustments to the export price were claimed by the producer and allowed by the Commission as it was shown that there was a difference in costs, which was demonstrated to have affected price comparability at the time of setting the prices. The adjustments are as follows:

- Cost of payment terms;
- Transport costs/Delivery charges; and
- Discount costs.

4.3.3 Margin of dumping

The weighted average dumping margin for PinguinLutosa Foods was found to be 9.09 percent.

4.3.4 Comments from PinguinLutosa

- Lutosa indicated that it was not clear why the ADR does not have requirements for determining sales below costs, which are “at prices that do not allow for the recovery of costs within a reasonable period of time”.

Commission’s consideration

The Commission considered that picking particular periods that seem to favour one interested party would not be objective and concluded that the reasonable period of time would be the period of investigation for dumping which is the same period that is considered for all interested parties.

- Lutosa submitted that it did not incur any packaging costs on products sold to Agristo, as it provided its own packaging, and therefore, when making sales below costs, packaging should not be considered.

Commission’s consideration

During verification, it was established that Lutosa packed Agristo’s products in big boxes and plastic bags. Lutosa could not separate the costs of Agristo boxes and plastics from the overall packaging costs, as it were not only Agristo’s products that were packed in those boxes, but products of other customers as well. The

Commission also found that Lutosa also packed its own stock in these big boxes and plastics when storing its own goods.

- Lutosa was of the view that ITAC is likely to disregard sales to Agristo as not being made in the ordinary course of trade.

Commission's consideration

Sales to Agristo were treated as normal Penguin Lutosa domestic sales.

- Lutosa indicated that sales to Agristo should be compared based on the monthly cost and price build-ups instead of the cost and price build-up for the period of investigation.

Commission's consideration

The cost and price build up for the period of investigation for dumping is an average for the period in line with what is provided for in the ADA. There is no basis for doing the test the way Lutosa suggested and it is not practical. The Commission decided to use the average cost and price build up for the period of investigation.

- Lutosa stated that there were different selling prices for the different models and there were separate cost and price build-ups submitted, yet the Commission merged some models.

Commission's consideration

The Commission found that Lutosa determined the models of the subject product based on cut size, grade and packaging. In considering the determination of models, the Commission took into account that although the product was packed in different sizes, it was still the same product and the same costs of production per kilogram were applicable.

- Lutosa indicated that rounding off makes the margin of dumping different, and therefore requested the Commission not to round off the figures.

Commission's consideration

The calculation using Lutosa's submitted and verified information resulted in Euro (€) cent per kg, both in the calculation of normal values and export prices for each model. It was the Commission's view that rounding off was consistently done in the investigation and was not done only in the case of Lutosa.

- Lutosa opposed the construction of a normal value for crinkle cut, and indicated that an appropriate third country, namely Germany should have been selected by the Commission.

Commission's consideration

The Commission considered all the countries and found no appropriate third country. Sales to Germany were 55% of SACU sales volumes and these were not considered to be comparable. The constructed normal value was based on the exporter's verified cost and price build-up plus profit.

4.4 METHODOLOGY FOR AGRISTO N.V HARELBEKE IN BELGIUM

4.4.1 Normal Value

Agristo N.V Harelbeke (Agristo) produced and sold various models in Belgium. For normal value determination the comparable models to those produced and exported to the SACU market were considered.

Of the six comparable models exported to SACU, four comparable models (ALLOMET-1, crinkle cut, 10x10-1 and 14x14-1) were sold in Belgium during the period of investigation for dumping. Agristo did not sell 10x10-4 and 12x12-1 models in Belgium during the same period.

Sales of the ALLOMET-1 model that were made at a loss were less than 20% by volume of the total domestic sales, and the Commission decided to use all domestic sales of ALLOMET-1 and of crinkle cut in Belgium for normal value determination.

Sales of model 10x10-1 made at a loss exceeded 20 percent by volume of domestic sales. The Commission made a final determination to disregard sales made at a loss, exceeding 20 percent by volume of total domestic sales during the investigation period for dumping, in accordance with section 8.2 of the ADR, and to determine normal values based on the remaining sales, in accordance with section 8.3 of the ADR.

Sales of model 14x14-1 in Belgium were found to be less than 5 percent of export sales to SACU, thus not sufficient for the Commission to make a proper comparison, as these sales did not meet the requirements of section 8.3 of the ADR, which states that domestic sales of the like product shall normally be considered a sufficient volume to determine a normal value if such sales constitute 5 percent or more of the sales volume of the product to the SACU. Exports to third countries were considered and found not to be comparable to SACU exports in terms of volumes. The Commission therefore decided to construct the normal value for model 14x14-1 based on the verified cost and price build-up and the verified "reasonable profit" also contained in the cost and price build-up.

Models 10x10-4 and 12x12-1 not sold in the exporter's domestic market were however sold to various export markets. In selecting the appropriate third country, the Commission considered the following criteria:

- Volumes exported to that country must be comparable to volumes exported to SACU;
- Customers exported to in that country are comparable to customers exported to in SACU; and
- The country exported to must have a domestic industry manufacturing the subject product.

On the basis of the above criteria, Denmark was selected as an appropriate third country for model 10x10-4. Sales to Denmark were made above cost.

On the basis of the above criteria, no country met the Commission's criteria for model 12x12-1 as the export volumes of this model to third countries were not

comparable to the volumes of the models exported to SACU. The Commission therefore decided to construct normal values based on the verified cost and price build-up and the verified "reasonable profit" also contained in the cost and price build-up.

The normal values before adjustments were based on domestic sales of models ALLOMET-1, Crinkle cut and 10x10-1, export sales to Denmark for models 10x10-4 and constructed values for 12x12-1 and 14x14-1.

4.4.1.1 Domestic sales adjustments

The producer claimed an adjustment for cost of payment terms to the normal value which was allowed by the Commission as it was shown that there were differences in costs, which were demonstrated to have affected price comparability at the time of setting the prices.

4.4.2 Export price

Export price is defined in section 32(2)(a) of the ITA Act as the price actually paid or payable for goods sold for export, net of all taxes, discounts and rebates actually granted and directly related to the sale under consideration.

To calculate the export price, Agristo's actual verified export sales to the SACU market were used. Agristo exported seven models to the SACU market, namely ALLOMET-1, 10x10-4, 12x12-1, 10x10-1, Crinkle cut and 14x14-1 during the period of investigation for dumping.

4.4.2.1 Adjustments to export price

The following adjustments to the export price were claimed by the producer and allowed by the Commission as it was shown that there was a difference in costs, which was demonstrated to have affected price comparability at the time of setting the prices. The adjustments are as follows:

- Cost of payment terms; and
- Discount costs.

4.4.3 Margin of dumping

The weighted average dumping margin for Agristo N.V Harelbeke was found to be minus 6.34 percent.

METHODOLOGY FOR FARM FRITES B. V. INTERNATIONAL - BELGIUM

In response to the preliminary determination, Farm Frites International indicated that Farm Frites Belgium was no longer an interested party as it did not export to SACU during the POI, and therefore no information from Farm Frites Belgium was submitted. The Commission accepted Farm Frites B.V. - Belgium's submission.

4.5 METHODOLOGY FOR THE RESIDUAL DUMPING MARGIN - BELGIUM

4.5.1 Normal value

For purposes of normal value determination, the Commission considered that PinguinLutosa was the verified foreign producer producing a variety of models that could be considered to be representative of the many models sold in Belgium. The Commission decided to use normal value information of PinguinLutosa as being appropriate and adjusted normal value for transport to take it to an ex-factory level.

4.5.2 Export price

For purposes of export price determination, the Commission considered that the exporter that exported the most model variants to SACU than any verified exporter from Belgium was Mydibel, making its exports to be representative of exports to SACU. The Commission decided to use export sales information of Mydibel S.A. The export price was adjusted for transport costs using Mydibel's costs to bring the export price to an ex-factory level.

4.5.3 Margin of dumping

Based on the above, the residual margin of dumping was found to be 31.37 percent.

4.6 METHODOLOGY FOR LAMB WESTON/MEIJER IN THE NETHERLANDS

4.6.1 Normal value

LambWeston produced and sold various models in the Netherlands. For normal value determination the models comparable to those produced and exported to the SACU market were considered.

LambWeston produced and sold in the Netherlands two models (LW Stealth 11mmX11mm and LW Stealth 9mmX9mm) comparable to sales of the models sold to SACU during the period of investigation for dumping.

The normal values were based on domestic sales in Euros (€), of models LW Stealth 11mmX11mm and LW Stealth 9mmX9mm.

4.6.1.1 Domestic sales adjustments

The following adjustments to the normal value were claimed by the producer and were allowed by the Commission as it was shown that there were differences in costs, which were demonstrated to have affected price comparability at the time of setting the prices. The adjustments are as follows:

- Cost of payment terms;
- Transport costs/Delivery charges;
- Discount costs;
- Packaging costs; and
- Special costs.

4.6.2 Export price

Export price is defined in section 32(2)(a) of the ITA Act as the price actually paid or payable for goods sold for export, net of all taxes, discounts and rebates actually granted and directly related to the sale under consideration.

To calculate the export price, LambWeston's actual verified export sales to the SACU market were used. LambWeston exported two models to the SACU market, namely LW Stealth 11mmX11mm and LW Stealth 9mmX9mm during the period of investigation for dumping.

The Commission found that some of the sales were invoiced to a SACU importer, while delivery was not in SACU, but in other markets. The Commission decided not to consider sales not destined for the SACU market for determining the export price.

4.6.2.1 Adjustments to export price

The following adjustments to the export price were claimed by the exporter and it was shown that there was a difference in costs, which was demonstrated to have affected price comparability at the time of setting the prices. These adjustments were verified and were as follows:

- Cost of payment terms;
- Transport costs/Delivery charges;
- Discount costs; and
- Packaging costs.

The exporter claimed an adjustment for special costs. These costs were said to be costs of handling the subject product and other customer specific requests. During verification these costs could not be substantiated, and it could not be determined how they affected price comparability at the time of setting the prices. The Commission made a final determination not to allow this adjustment.

4.6.3 Margin of dumping

The weighted average dumping margin for LambWeston/Meijer was found to be minus 15.27 percent.

4.7 METHODOLOGY FOR AGRISTO N.V TILBURG IN THE NETHERLANDS

4.7.1 Normal Value

Agristo N.V Tilburg (Agristo) produced and sold various models in the Netherlands. For normal value determination the models comparable to those produced and exported to the SACU market were considered.

There were three comparable models to those exported to SACU, 12x12-1 14x14-1 and 10x10-4. Two models (12x12-1 and 14x14-1) were sold in the Netherlands during the period of investigation for dumping. Agristo did not sell 10x10-4 model in the Netherlands during the same period.

Some of the sales for models 12x12-1 and 14x14-1 sold in the Netherlands were sold below cost in quantities exceeding 20 percent by volume of domestic sales. The Commission made a final determination to disregard sales made at a loss, exceeding 20 percent by volume of total domestic sales during the investigation period for dumping, as sales made in the ordinary course of trade, in accordance with section 8.2 of the ADR, and determine the normal values based on the remaining sales, in accordance with section 8.3 of the ADR.

Model 10x10-4 that Agristo did not sell in the Netherlands was however sold to various export markets. In selecting the appropriate third country, the Commission considered the following criteria:

- Volumes exported to that country must be comparable to volumes exported to SACU;
- Customers exported to in that country are comparable to customers exported to in SACU; and
- The country exported to must have a domestic industry manufacturing the subject product.

On the basis of the above criteria, no country met the Commission's criteria for model 10x10-4 as the export volumes of this model to third countries were not comparable to the volumes of the models exported to SACU. The Commission therefore decided to construct the normal value based on the verified cost and price build-up and verified "reasonable profit" also contained in the cost and price build-up.

The normal values were based on the remaining domestic sales of models 12x12-1 and 14x14-1 and constructed value for the 10x10-4 model.

4.7.1.1 Domestic sales adjustments

The following adjustments to the normal value were claimed by the producer and were allowed by the Commission as it was shown that there were differences in costs, which were demonstrated to have affected price comparability at the time of setting the prices. The adjustments are as follows:

- Cost of payment terms;
- Transport costs/Delivery charges;
- Discount costs; and
- Oil costs.

4.7.2 Export price

Export price is defined in section 32(2)(a) of the ITA Act as the price actually paid or payable for goods sold for export, net of all taxes, discounts and rebates actually granted and directly related to the sale under consideration.

To calculate the export price, Agristo's actual verified export sales to the SACU market were used. Agristo exported three models to the SACU market, namely cut size 10x10-4, 12x12-1 and 14x14-1 during the period of investigation for dumping.

4.7.2.1 Adjustments to export price

An adjustment to the export price for cost of payment terms was claimed by the exporter and allowed by the Commission. It was shown that there was a difference in costs, which was demonstrated to have affected price comparability at the time of setting the prices.

4.7.3 Margin of dumping

The weighted average dumping margin for Agristo N.V Tilburg was found to be 12.52 percent.

4.7.4 Comments from interested parties

- Agristo disagreed with the normal values of two models, where the weighted average cost of production for the period of investigation were used instead of monthly costs of production or costs at the time of sale. Agristo indicated that

using the costs for the entire period of investigation where costs of raw materials fluctuated, would result in prices below cost for periods during the year where the costs were higher.

Commission's consideration

No monthly costs and price build-ups were submitted at any stage of the investigation to the Commission.

- Agristo indicated that the Commission constructed a normal value for model F10-4, instead of selecting a third country, such as Brazil as there were sales of that model to Brazil. Agristo also disputed the profit used in constructing the normal value, arguing that the profit used was the profit that was not realised in the sale of the product in Agristo's domestic market since it did not sell that product in its domestic market.

Commission's consideration

The selection between using an appropriate third country or construction is not the decision of interested parties, but the Commission's consideration depending of the merits of the case. In this regard the Commission considered all the countries to which there were sales of this model and found that there was no appropriate third country that met the Commission's criteria for selection of a third country. The export volumes to Brazil were 492% higher than export sales to SACU and were not considered to be comparable. The Commission made a final determination to construct the normal value based on Agristo's verified cost and price build up, plus a reasonable profit as submitted in the verified cost and price build-up. Also, Agristo did not specify any differences in the realisable profit from different market sales in their response.

The profit used was profit which would have been realised if Agristo had sold the subject product in its domestic market. The Commission considered that Agristo was disputing the profit it provided because the Commission's calculations resulted in a dumping margin for Agristo.

4.8 METHODOLOGY FOR FARM FRITES INTERNATIONAL B.V IN THE NETHERLANDS

In the initial response to the foreign producer/exporter questionnaire, Farm Frites International B.V (FF) indicated that it had two frozen potato chips producing plants, one in Belgium and another in the Netherlands. In this regard, FF submitted a set of information for both Belgium and the Netherlands. Deficiencies (including the fact that separate information for FF- Belgium and FF – the Netherlands should have been submitted) were identified and relayed to FF. The response was that FF could not and was unable to separate the cost and price build-up as the information is kept in a central office with no knowledge of the plant from which the product originates. The same was said about the domestic and export sales. It was explained to FF why it was necessary to provide the separate information for each plant and the implications of not providing the information as requested.

At the time of making the preliminary determination, the response was still deficient. Among the deficiencies identified were, duplicate information for: the cost and price build-up; normal value; export price; and inventory provided for Belgium and the Netherlands.

FF subsequently submitted an updated response within the specified time frame for comments on the preliminary determination. The information submitted was said to relate only to FF – the Netherlands; even though the information was to a large extent similar to the information submitted for Farm Frites Belgium and Netherlands combined. The information on cost and price build-up was however incomplete. The “other products” and “total company” information as required and stipulated in the foreign producer/exporter questionnaire was not provided.

FF was informed of the incompleteness and advised that the Commission might not take its information into account in making a final determination. The ADR 31.1 provides that, submissions may be deemed deficient if any relevant information has not been submitted. Further, in terms of ADR 35.5, parties that have submitted deficient responses, as contemplated in section 31, and that have addressed the deficiencies prior to the deadline indicated in subsection 1 of this section

(comments on preliminary report), shall be deemed cooperating parties and the Commission will consider their information in its final finding, subject to the provisions of section 36.1 and the requirements to finalise an investigation timeously.

Upon advice that the information was deficient, the response from FF was that the missing information was submitted to the Commission in the previous submission. A meeting was also requested and was granted, in an attempt to resolve the matter.

In the meeting, FF representatives explained how the information should be interpreted to ascertain that, though the information on other products and total company was not submitted in January 2014, it had been as submitted in August 2013. However, the information was reviewed and found to be inconsistent with the explanation given in the meeting. This was communicated to FF and they were advised that the Commission might not take the information into account in making a final determination.

FF requested an oral hearing to address the Commission about the FF situation, which was granted.

On the same day of the oral hearing, FF submitted information relating to “other” and “total company” cost and price build-up information. The information was different from any other information that FF had submitted previously to the Commission during the course of the investigation.

The Commission noted the following with regard to FF information:-

- There were inconsistencies in the information submitted by Farm Frites International (both for normal value and export price) that rendered the factual basis of FF submissions questionable and unreliable. As a result the information was unverifiable.
- Due to incompleteness of the information submitted in January 2014, the information was unverifiable.
- Because the information was unverifiable and unreliable, it could not be determined whether or not sales were made in the ordinary course of trade;

- The information on the cost build-up on “other” products and “total company” components was subsequently submitted very late after the due date. The information was submitted on 11 March 2014 when the deadline was 10 January 2014.
- The information on “other” products and “total company” components of the cost and price build-up was submitted separately from the rest of the cost and price build-up. To try and put together the various pieces of the cost and price build-up would have been fraught with difficulties, because of the voluminous nature of this information and the details necessary for compiling the information, such as formulas, that could be lost or omitted during the process. This meant that the “other” and “total company” information cannot be used without undue difficulty.

In view of the above, the Commission made a final determination to treat Farm Frites International BV (the Netherlands) as a non-cooperating interested party.

Comments from Farm Frites

In response to the essential facts FF denied that:

- The Commission could not determine whether or not sales were made in the ordinary course of trade, and FF stated that it provided more information than was required by ITAC. It stated that the only information which was in contention was the “other products” and “total company”;
- The information was unreliable;
- The information submitted cannot be used without undue difficulties; and that
- The information was submitted late.

Commission’s consideration

- FF appears to be concentrating only on the volume of information submitted. The Commission however noted that even though an interested party may have submitted voluminous information, if the quality of that information was sub-standard, it would be difficult to accept the information as having met the Commission’s requirements for the submission of complete information.

- The information ultimately submitted late that relates to “other” and “total company” is crucial in aiding the verification of the product investigated, hence exporters are informed very early in the investigation what information is required and how it should be submitted. FF was aware as early as 28 June 2013 when the initiation pack was deemed to have been received by interested parties that the cost and price build-up information had to include “other” and “total company” information.
- The consideration about reliability or otherwise of the information was brought about by the inconsistencies in FF responses, resulting in the information being unverifiable.
- Separately submitted information of big volumes, as admitted by FF was of such a nature that it could not be used without undue difficulties as explained earlier in this report.
- Although FF’s denial that information was submitted late, there was no contention about the late submission of other and total company components of the cost and price build-up.

Therefore the Commission made a determination to treat FF as a non- cooperating party.

4.9 METHODOLOGY FOR THE RESIDUAL DUMPING MARGIN – THE NETHERLANDS

4.9.1 Normal value

For purposes of normal value determination, the Commission considered that LambWeston sold many models, both normal cut sizes and premium/specialities, in the Netherlands that could be considered to be representative of a variety of models sold in the Netherlands. The Commission decided to use domestic sales information of LambWeston.

4.9.2 Export price

For purposes of the export price determination, the Commission considered that LambWeston exported only two premium fries models to SACU in quantities less than 10 per cent of total exports to SACU. Agristo exported small quantities of the subject product to SACU. These were not considered to be representative of the variety of models exported to SACU and were inadequate for proper comparison with the normal value. The Commission therefore decided to use import statistics obtained from the South African Revenue Service for the period of investigation for dumping.

The export price was converted from ZAR to Euro using the average exchange rate of R1= €0.0886 (average exchange rate obtained from Oanda for the period of investigation for dumping).

The Commission decided to adjust the export price for transport charges using LambWeston's transport costs in order to bring export price to an ex-factory level.

4.9.3 Margin of dumping

Based on the above, the residual margin of dumping was calculated to be 26.23 per cent.

Comments by interested parties

- Interested parties contested the determination of domestic sales in the exporting country being determined as sales in Belgium and the Netherlands respectively instead of using sales in the EU as domestic sales in the respective exporting countries, i.e. Belgium and the Netherlands.

Commission's consideration

The initiation notice specifically mentioned the individual countries within the EU that are covered by the investigation.

- EU sales as domestic sales were recently accepted for purposes of determining the normal value on tall oil fatty acid (TOFA) investigations.

Commission's consideration

This is an unfounded allegation. In the TOFA investigations referred to and any other investigation involving EU member states, the individual member states were named, for example, Sweden and Finland in the TOFA case. Information on domestic sales in the respective markets was used for normal value determination.

4.10 SUMMARY – DUMPING

The following dumping margins were calculated:

Table 4.10: Final anti-dumping margins

Magnitudes of dumping:	
Clarebout Potatoes - Belgium	8.28%
Mydibel Foods S.A. -Belgium	15.60%
PinguinLutosa - Belgium	9.09%
All other producers in Belgium excluding Agristo N.V Harelbeke	31.37%
Agristo N. V. Tilburg - Netherlands	12.52%
Farm Frites International B.V - Netherlands	26.23%
All other producers in the Netherlands excluding LambWeston/Meijer V.O.F	26.23%

For the purpose of its final determination, the Commission considered all comments from the interested parties and found that the subject product originating in or imported from Belgium (excluding those produced by Agristo N.V Harelbeke) and the Netherlands (excluding those produced by LambWeston/Meijer) was being dumped in the SACU market as reflected in Table 4.10.

5. MATERIAL INJURY

5.1 DOMESTIC INDUSTRY – MAJOR PROPORTION OF PRODUCTION

The following injury analysis relates to information submitted by McCain Foods SA (Pty) Ltd, representing about 70 percent of SACU production volumes.

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

5.2 CUMULATIVE ASSESSMENT

There are two countries involved in this investigation, Belgium and the Netherlands. In terms of the ADR 16.3, the Commission may cumulatively assess the effect of the dumped imports only if it finds that cumulation is appropriate in light of–

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

In considering whether cumulation is appropriate with regard to the imports from Belgium and the Netherlands the Commission considered the following:

Table 5.2: Consideration for cumulation

The imports from the countries are not negligible	• The imports from all countries are above negligibility, as contained in table 2.1.4 of this report.
The residual margin of dumping is above <i>de minimis</i> level	• The dumping margins calculated are above two percent, as expressed as a percentage of the export price. This is evident in section 4 of this report.
Competition between imports from the different countries	• They are both like products for purposes of comparison, their end use and substitutability is similar. • They are both traded in the SACU market, and therefore part of the SACU market share analysis and the fluctuating market share throughout the POI for both parties as contained in table 5.5.4 is evident of competition. • The price undercutting of the imports from both countries is evident of competition as they are both undercutting the applicant's prices at different levels.
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. • They are both traded in the SACU market and the market share analysis shows that there is competition as table 5.6.4 shows the fluctuating levels of market share throughout the POI for both parties. • The imported product from both countries is undercutting the SACU prices.

The Commission made a final determination to cumulatively assess the impact of imports from Belgium and the Netherlands for purposes of injury determination.

Comments from interested parties

ITAC specifically noted that it would cumulatively determine the effect of imports from both Belgium and the Netherlands. However, tables in the report do not contain any figures regarding the impact of all alleged dumped imports combined.

Commission's consideration

In each table, where imports from the two concerned countries are reported, a cumulative analysis is made both in the relevant table and analysis of that table.

5.3 MATERIAL INJURY ANALYSIS

The injury information presented below relates to the verified information of McCain Foods SA for the period 01 July 2009 to 30 June 2012, plus six months additional information (01 July to 31 December).

5.4 IMPORT VOLUMES AND EFFECT ON PRICES

5.4.1 Import volumes

The following table shows the volume of the allegedly dumped imports of the subject product as sourced from the South African Revenues Service from 01 July 2010 to 31 June 2012, and the respective six months additional information for the periods 01 July to 31 December.

Table 5.4.1(a): Import volumes - full year figures

Tons	Jul – Jun 2010	Jul–Jun 2011	Jul –Jun 2012
Alleged dumped net imports			
^Cumulated imports	17 392	30 206	18 095
*Other Net Imports (undumped)	12 343	12 729	7 575
Total imports	29 735	42 935	25 670
Alleged dumped net imports as a % of total imports			
Cumulated imports	58.5%	70.4%	70.49%
Other net imports as a % of total imports	41.5%	29.6%	29.51%

* Other net imports include un-dumped import volumes from Belgium and the Netherlands

^The dumped imports are after considering the 10% downward adjustment, adjustment for own imports and un-dumped imports from Belgium and the Netherlands.

The information in table 5.4.1(a) above indicates that the alleged dumped import volumes increased from 17 392 tons to 18 095 tons during the period of investigation when cumulatively assessed, an increase of 4 percent. The total imports decreased from 29 735 tons to 25 670 tons. Un-dumped imports decreased from 12 343 tons to 7 575 tons, representing a decline of 39 percent.

The above table shows that the volume of dumped imports when cumulatively assessed, as a percentage of total imports, increased during the period of investigation.

Table 5.4.1(b): Import volumes – half year figures

Tons	Jul – Dec 2010	Jul – Dec 2011	Jul – Dec 2012
Alleged dumped imports less own imports & un-dumped imports:			
^Cumulated imports	17 714	9 809	13 619
*Other imports	8 991	3 835	3 459
Total imports	26 705	13 644	17 078
Imports as a % of total imports			
Cumulated dumped imports %	66.3%	71.9%	79.75%
Other imports as a % of total imports	33.7%	28.1%	20.25%

*These are half year imports after considering the 10% downward adjustment. The figure of 3 459 tons includes un-dumped imports from Belgium and the Netherlands.

^The dumped imports are after considering the 10% downward adjustment, adjustment for own imports un-dumped imports from Belgium and the Netherlands.

The information in table 5.4.1(b) above indicates that the alleged dumped import volumes decreased from 17 714 tons to 13 619 tons during the period of investigation, and total imports also decreased from 26 705 tons to 17 078 tons during the same period.

The above table shows that the volume of dumped imports, when cumulatively assessed, as a percentage of total imports increased during the six months additional information for 2010 to 2012 (01 July to 31 December).

Comments from interested parties

- The fact that imports of the subject product from both Belgium and the Netherlands decreased during the period of investigation when expressed as percentage of SACU production volumes, and total imports from the two countries decreased, could not have caused material injury.

Commission's consideration

The determination of dumped imports causing injury to the domestic industry is not made on individual factors but on an overall assessment of all the injury indicators.

- The Commission used different import statistics for the same product and same financial years, therefore should clarify the position both in the anti-dumping investigation and safeguard, as there are inconsistencies between the reports.

Commission's consideration

The so called inconsistencies are inherent differences necessitated by the different investigations. In the safeguard investigation analysis was done with regard to all imports from all sources and in the dumping investigation the analysis was mainly with regard to the named countries.

- Imports from LambWeston which were found not to be dumped were not excluded, and therefore the market share of the dumped imports was overstated.

Commission's consideration

The Commission noted the omission in the preliminary report, and subsequently excluded all imports found not to be dumped both from Belgium and the Netherlands and market share calculations were updated accordingly, and this is reflected in this report.

5.4.2 Growth of the subject imports

The effects of dumped imports on domestic consumption and production were considered and the following table 5.4.2 shows details:

Table 5.4.2(a): Growth of Subject Imports: Full year figures

	2010 Jul - Jun	2011 Jul - Jun	2012 Jul - Jun
Cumulated subject imports/domestic production	100	206	92
Cumulated subject imports/domestic consumption	100	170	108

The table was indexed due to confidentiality using 2010 as a base year.

Subject imports relative to production reduced over the period of investigation.

There was a dramatic increase in 2011, followed by reduced imports in 2012. Subject imports relative to consumption however increased during the period of investigation for injury. The subject imports relative to consumption increased in 2011 and, although reduced in 2012, were still at an increased level during the period of investigation for injury.

Table 5.4.2(b): Growth of Subject Imports: Half year figures

	Jul – Dec 2010	Jul – Dec 2011	Jul – Dec 2012
Cumulated subject imports/domestic production	100	66	69
Cumulated subject imports/domestic consumption	100	62	78

The table was indexed due to confidentiality using 2010 as a base year.

Subject imports relative to production reduced over the period of investigation for injury. The decrease started in 2011 and, although it increased in 2012, subject imports relative to production remained at decreased levels during the period of investigation for injury. Subject imports relative to consumption reduced over the period of investigation for injury. The decrease started in 2012 and, although it increased in 2011, subject imports relative to consumption remained at decreased levels during the period of investigation for injury.

5.4.3 Effect on Domestic Prices

5.4.3.1: Price undercutting

Price undercutting is the extent to which the price of the imported product is lower than the price of the like product produced by the SACU industry. The price undercutting was cumulated based on the weighted average exports of verified exporters found to be dumping and the landing and clearing costs; internal transport costs (from plant to harbour); sea freight and insurance; documentation fees and other port charges obtained from the verified importers of the subject product.

The landed cost was converted from Euro to ZAR using the average exchange rate of €1= R11.2867 (average exchange rate obtained from Oanda for the period of investigation for dumping).

It was found that the imported product from Belgium and the Netherlands undercut the applicant's selling price by 46.9 percent during the period of investigation for dumping.

Comment from interested parties

On the calculation of price undercutting, ITAC based the applicant's ex-factory selling price on Euro instead of Rand as indicated by the definition of price undercutting for Belgium and the Netherlands. It is not clear which period ITAC based its price undercutting calculation on.

Commission's consideration

The Commission's calculation on price undercutting was based on cumulated weighted average exports of verified exporters found to be dumping plus costs incurred to bring the product from the factory to the final destination during the period of investigation for dumping as obtained from the verified importers. Cumulated price undercutting was expressed in the applicant's domestic currency. The outcome is the same whether done in Euros or Rands, as the price undercutting is expressed as a percentage.

5.4.3.2 Price depression

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

Table 5.4.3.2(a): Price depression - full year figures

R/ton	2010 (Jul-Jun)	2011 (Jul-Jun)	2012 (Jul-Jun)
Applicant's ex-factory price	100	101	98

The table was indexed due to confidentiality using 2010 as a base year.

Table 5.4.3.2(a) above indicates that the applicant's selling prices increased by 1 index point during that period 2010 to 2011 and decreased by 3 index points during the period 2011 to 2012. The table 5.4.3.2(a) indicates that the applicant experienced price depression during the period of investigation.

Table 5.4.3.2(b): Price depression - half year figures

R/Ton	2010 (Jul-Dec)	2011 (Jul-Dec)	2012 (Jul-Dec)
Applicant's ex-factory price	100	102	97

The table was indexed due to confidentiality using 2010 as a base year.

Table 5.4.3.2(b) above indicates that the applicant's selling prices increased by 2 index point during that period 2010 to 2011 and decreased by 5 index points during the period 2011 to 2012. Table 5.4.3.2(b) above also indicates that the applicant experienced price depression during the six month additional period for 2010 to 2012 (01 July to 31 December 2012).

Both full year and half year figures indicate that prices of the applicant were depressed during the period of investigation for injury. The applicant had to reduce its prices to compete with dumped imports.

5.4.3.3 Price suppression

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

Table 5.4.3.3(a): Price suppression – full year figures

R/Ton	2010 (Jul –Jun)	2011 (Jul-Jun)	2012 (Jul-Jun)
Applicant's ex-factory selling price	100	101	98
Production cost	100	84	84
Gross profit per unit	100	194	169
Cost as a percentage of selling price	100	83	86

The table was indexed due to confidentiality using 2010 as a base year.

Table 5.4.3.3(a) above indicates that the applicant's cost as percentage of selling price decreased by 17 index points during period 2010 to 2011 and increased by 3 index points during the period 2011 to 2012.

Table 5.4.3.3(a) above also indicates that the applicant did not experience price suppression during the period of investigation, as the applicant's cost as percentage of selling price decreased by 14 index points during that period.

Table 5.4.3.3(b): Price suppression – half year figures

R/Ton	2010 (Jul-Dec)	2011 (Jul- Dec)	2012 (Jul-Dec)
Applicant's ex-factory selling price	100	102	97
Production cost	100	133	131
Gross profit per unit	Negative	100	126
Cost as a percentage of selling price	100	83	87

The table was indexed due to confidentiality using 2010 as a base year.

Table 5.4.3.3(b) above indicates that the applicant's cost as percentage of selling price decreased by 17 index points during period 2010 to 2011 and increased by 4 index points during the period 2011 to 2012.

Table 5.4.3.3(b) above indicates that the applicant did not experience price suppression during the six month additional period for 2010 to 2012 (01 July to 31 December 2012), as the applicant's cost as percentage of selling price decreased by 13 index points during that period.

Price suppression over the period of investigation improved against the profit improvement realised from 2011 onwards. The applicant therefore, on the basis of the above information, did not experience price suppression.

5.5 CONSEQUENT IMPACT OF THE DUMPED IMPORTS ON THE INDUSTRY

5.5.1 Actual and potential decline in sales

The following table shows the SACU sales volumes and values of the subject product for the period of investigation:

Table 5.5.1(a): Sales – full year figures

	2010 (Jul-Jun)	2011 (Jul-Jun)	2012 (Jul-Jun)
Applicant's sales volume (tons)	100	89	98
Applicant's sales value (R)	100	90	96

The table was indexed due to confidentiality using 2010 as a base year.

Table 5.5.1(a) above indicates that the applicant's sales volume and sales values both decreased by 11 and 10 index points respectively during the period 2010 to 2011, and increased by 9 and 6 index points respectively between 2011 and 2012. Over the full year period (Jul– Jun) the applicant's sales volume and sales values both decreased by 2 index points and by 4 index points respectively.

Table 5.5.1(b): Sales – half year figures

	2010 (Jul-Dec)	2011 (Jul-Dec)	2012 (Jul-Dec)
Applicant's sales volume (Tons)	100	87	96
Applicant's sale value (R)	100	88	92

The table was indexed due to confidentiality using 2010 as a base year.

Table 5.5.1(b) above indicates that the applicant's sales volume and sales values both decreased by 13 and 12 index points respectively between 2010 and 2011, and increased by 9 and 4 index points respectively between 2011 and 2012. Over the six month period (01 July to 31 December) sales volumes and values decreased.

Although there was an improvement between 2011 and 2012, applicant's sales declined during period of investigation as a result of dumped imports from Belgium and the Netherlands.

5.5.2 Profit

The following table shows the applicant's profit situation:

Table 5.5.2(a) Profit – full year figures

	2010 (Jul-Jun)	2011 (Jul-Jun)	2012 (Jul-Jun)
Applicant's sales value	100	90	96
Total Gross profit (R)	100	-98	395
Net Profit (R)	Negative	Negative	Negative
Gross profit per ton (R)	100	-110	395

The table was indexed due to confidentiality using 2010 as a base year.

Table 5.5.2(a) above indicates that the applicant realised a gross loss in 2011 compared to the 2010 period and realised a gross profit in 2012 compared to the

2011 gross loss. The applicant experienced a net loss situation in the 2010, 2011 and 2012 periods. Table 5.5.2(a) above also indicates that the applicant's gross profit increased by 295 index points during the period of investigation. It can be seen that the drop in profits between 2010 and 2011 is in line with the increased price in the same period, which could not be maintained in the face of dumped imports, as well as a corresponding decline in sales.

Table 5.5.2(b): Profit – half year figures

	2010 (Jul-Dec)	2011 (Jul-Dec)	2012 (Jul-Dec)
*Applicant's sales value (R)	100	104	118
**Total gross Profit (R)	Negative	100	342
**Gross profit per ton (R)	Negative	100	126
Total Net profit (R)	Negative	Negative	Negative

*The table was indexed due to confidentiality using 2010 as a base year.

**The table was indexed due to confidentiality using 2011 as a base year.

The applicant's loss situation improved during the period of investigation although still making a loss. The improved loss situation is also driven by the increased volumes.

5.5.3 Output

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

Table 5.5.3(a): Output – full year figures

Tons	2010 (Jul-Jun)	2011 (Jul-Jun)	2012 (Jul-Jun)
Applicant's production volumes	100	84	112

The table was indexed due to confidentiality using 2010 as a base year.

Table 5.5.3(a) above shows that the applicant's production volumes decreased by 16 index points between 2010 and 2011. Production increased by 28 index points between 2011 and 2012. Over the twelve-month period, the applicant's production volumes increased by 12 index points.

Table 5.5.3(b): Output – half year figures

Tons	2010 (Jul-Dec)	2011 (Jul-Dec)	2012 (Jul-Dec)
Applicant's production volumes	100	155	139

The table was indexed due to confidentiality using 2010 as a base year.

Table 5.5.3(b) above shows that the applicant's production volumes increased by 55 index points during the period 2010 to 2011 and decreased 11 index points during the period 2011 to 2012. Over the six month period (01 July to 31 December), the applicant's production volumes increased by 39 index points.

In both periods production increased to maintain volumes in the market even though sales were made at reduced prices in order to compete with the dumped imports. It is important to note that the increased output did not enable the applicant to produce at full capacity, with capacity utilisation at roughly 60% in 2012.

5.5.4 Market share

The following table shows the market share for the subject product based on volumes:

Table 5.5.4(a): Market share –full year figures

	2010 (Jul-Jun)	2011 (Jul-Jun)	2012 (Jul-Jun)
Applicant's sales volumes (Tons)	100	89	98
Applicant share as a % of total market	100	88	103
^Other SACU sales (Tons)	100	89	99
Other SACU sales as a % of total market	100	88	103
*Cumulative dumped imports (tons)	100	174	104
Cumulated imports as % total imports	100	170	108
^Other imports (Tons)	100	103	61
Other imports as % of total market	100	102	64
Total SACU market (Tons)	100	102	96

The table was indexed due to confidentiality using 2010 as a base year. ^Other SACU sales are estimated by the applicant. *Imports adjusted downwards by 10% excluding own and un-dumped imports. ^Other imports adjusted downwards by 10% and include un-dumped imports

Table 5.5.4(a) above indicates that the applicant's market share decreased by 11 index points between 2010 and 2011. The impact of dumped imports started showing with the reduced market share of the applicant. The market share of the applicant showed some improvement between 2011 and 2012. Over the twelve month period, there was a marginal increase in both the applicant's and the dumped imports.

Table 5.5.4(b): Market share – half year figures

	2010 (Jul-Dec)	2011 (Jul-Dec)	2012 (Jul-Dec)
Applicant's sales volumes (Tons)	100	110	117
Applicant share as a % of total market	100	124	120
^Other SACU sales (Tons)	100	110	117
Other SACU sales as a % of total market	100	124	120
*Cumulative dumped imports	100	55	77
Cumulated imports as % total imports	100	62	78
^Other imports (Tons)	100	43	39
Other imports as % of total market	100	48	39
Total SACU market (Tons)	100	89	98

The table was indexed due to confidentiality using 2010 as a base year. ^Other SACU sales are estimated by the applicant. *Imports adjusted downwards by 10% excluding own and un-dumped imports. ^Other imports adjusted downwards by 10% and include un-dumped imports

Table 5.5.4(b) above indicates that the applicant's market share increased by 10 index points during the period 2010 to 2011 and decreased by 7 index points during the period 2011 to 2012. The increased applicant's market share over the six-month period was however obtained as a result of increased output sold at reduced prices as shown in section 5.4.3.2. Should the dumped imports continue without any action taken, the applicant would have to further lower its prices to unsustainable levels in an attempt to compete with unfairly traded imports.

5.5.5 Productivity

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

Table 5.5.5(a): Productivity – full year figures

	2010 (Jul-Jun)	2011 (Jul-Jun)	2012 (Jul-Jun)
Applicant's total production (Tons)	100	84	112
No. of employees (manufacturing)	100	103	90
Productivity	100	82	125

The table was indexed due to confidentiality using 2010 as a base year.

Table 5.5.5(a) above shows that productivity decreased by 18 index points between 2010 and 2011, and increased by 43 index points between 2011 and 2012. Over the period twelve-month period, productivity increased by 25 index points.

Table 5.5.5(b): Productivity – half year figures

	2010 (Jul-Dec)	2011 (Jul-Dec)	2012 (Jul-Dec)
Applicant's total production (Tons)	100	155	139
No. of employees(manufacturing)	100	103	90
Productivity	100	151	155

The table was indexed due to confidentiality using 2010 as a base year.

Table 5.5.5(b) above shows that productivity decreased by 51 index points between 2010 and 2011. It increased further by 4 index points between 2011 and 2012. In the six-month period (01 July to 31 December), productivity increased by 39 index points.

The increase in productivity over the period of investigation was achieved at the cost of employment and the increase in output (sold at a depressed price).

5.5.6 Return on investment

The following table shows the applicant's return on investment of the subject product:

Table 5.5.6(a): Return on investment – full year figures

(R)	2010 (Jul-Jun)	2011 (Jul-Jun)	2012 (Jul-Jun)
Applicant's net loss	Negative	Negative	Negative
Applicant's total net assets	100	102	89
Return on net asset	Negative	Negative	Negative

The table was indexed due to confidentiality using 2010 as a base year.

Table 5.5.6(a) above indicates that the applicant experienced a negative return on investment during the period of investigation.

Table 5.5.6(b): Return on investment – half year figures

(R)	2010 (Jul-Dec)	2011 (Jul-Dec)	2012 (Jul-Dec)
Applicant's net profit	Negative	Negative	Negative
Applicant's total net assets	100	102	89
Return on net assets	Negative	Negative	Negative

The table was indexed due to confidentiality using 2010 as a base year.

Table 5.5.6(b) above indicates that the applicant experienced a negative return on investment during the six month additional period for 2010 to 2012 (01 July to 31 December).

Although the return on investment improved over the period of investigation for injury in line with improvements in profit levels, the situation of the applicant is still not sustainable in the face of dumped imports as the applicant is still making losses.

5.5.7 Utilisation of production capacity

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

Table 5.5.7(a): Utilisation of production capacity – full year figures

Tons	2010 (Jul-Jun)	2011 (Jul-Jun)	2012 (Jul-Jun)
Capacity	100	100	100
Actual production	100	84	112
Capacity utilisation	100	84	114

The table was indexed due to confidentiality using 2010 as a base year.

Table 5.5.7(a) above indicates that the applicant's capacity utilisation decreased by 16 index points during the period 2010 to 2011. It increased by 30 index points between 2011 and 2012. During the full year period, the applicant's capacity utilisation increased by 14 index points.

Table 5.5.7(b): Utilisation of production capacity – half year figures

Tons	2010 (Jul-Dec)	2011 (Jul-Dec)	2012 (Jul-Dec)
Capacity	100	100	100
Actual production	100	155	139
Capacity utilisation	100	153	137

The table was indexed due to confidentiality using 2010 as a base year.

Table 5.5.7(b) above indicates that the applicant's capacity utilisation increased by 53 index points between 2010 and 2011. It decreased by 16 index points between 2011 and 2012. During the six-month period considered, the applicant's capacity utilisation increased by 37 index points.

Capacity utilisation improved during the period of investigation for dumping, but capacity is still far from being fully utilised, at approximately 60% in 2012.

5.5.8 Factors affecting domestic prices

The applicant stated that there are no other known factors that could affect domestic prices negatively.

5.5.9 The magnitude of the margin of dumping

The following margins of dumping were calculated:

Table 5.5.9: The magnitude of the margin of dumping

Magnitudes of dumping:	
Clarebout Potatoes - Belgium	8.28%
Mydibel Foods S.A. -Belgium	15.60%
PinguinLutosa - Belgium	9.09%
Agristo N. V. Harelbeke - Belgium	Minus 6.34%
All other producers - Belgium	31.37%
LambWeston/Meijer - Netherlands	Minus 15.27%
Agristo N. V. Tilburg - Netherlands	12.52%
All other producers - Netherlands	26.23%

5.5.10 Actual and potential negative effects on cash flow

The following tables reflect the applicant's cash flow situation for the total business:

Table 5.5.10(a): Cash flow situation – full year figures

	2010 (Jul-Jun)	2011 (Jul-Jun)	2012 (Jul-Jun)
Applicant's Cash flow: incoming	100	1	28
Applicant's Cash flow: outgoing	100	188	58
Applicants Net cash flow	Negative	Negative	Negative
SACU Debtors value	100	121	130
Debtors: average days outstanding	100	128	119

The table was indexed due to confidentiality using 2010 as a base year.

Table 5.5.10(a) above indicates that the applicant experienced a negative net cash flow during the full year period considered.

Table 5.5.10(b): Cash flow situation – half year figures

	2010 (Jul-Dec)	2011 (Jul-Dec)	2012 (Jul-Dec)
Applicant's Cash flow: incoming	100	1 608	2 437
Applicant's Cash flow: outgoing	100	30	79
Applicants Net cash flow	Negative	Negative	Negative
SACU Debtors value	100	105	141
Debtors: average days outstanding	100	96	138

The table was indexed due to confidentiality using 2010 as a base year.

Table 5.5.10(b) above indicates that the applicant experienced a negative net cash flow during the six month additional period for 2010 to 2012 (01 July to 31 December).

The cash flow situation of the applicant worsened during the full year period. Looking at the half year periods, although it improved between the 2010 and 2011 periods, the cash flow situation deteriorated between 2011 and 2012, making the situation over the period of investigation to be still delicate in the face of increasing low-priced imports.

5.5.11 Inventories

The following table provides the SACU industry's inventories for the subject product:

Table 5.5.11(a): Inventories - full year figures

	2010 (Jul-Jun)	2011 (Jul-Jun)	2012 (Jul-Jun)
Inventory (Tons)	100	132	145
Inventory (R)	100	128	133

The table was indexed due to confidentiality using 2010 as a base year.

Table 5.5.11(a) above indicates that the applicant's inventory volumes and inventory values increased by 32 index points and 28 index points respectively during the period 2010 to 2011. Both increased by 13 index points and 5 index points respectively between 2011 and 2012. Over the full year periods, the applicant's inventory volumes and inventory values both increased by 45 index points and 33 index points respectively.

Table 5.5.11(b): Inventories – half year figures

	2010 (Jul-Dec)	2011 (Jul-Dec)	2012 (Jul-Dec)
Inventory (Tons)	100	74	38
Inventory (R)	100	70	38

The table was indexed due to confidentiality using 2010 as a base year.

The applicant's inventory volumes and inventory values both decreased by 26 and 30 index points respectively between 2010 and 2011. Both decreased by 36 and 32 index points respectively between 2011 and 2012. During the six month period, inventory volumes and inventory values both decreased by 62 index points. The analysis of inventory over the period of investigation does not provide a conclusive picture in light of the underlying factors affecting inventory, e.g. sales, output.

5.5.12 Employment

The following table provides the SACU industry's production employment figures:

Table 5.5.12(a): Employment – full year figures

	2010 (Jul-Jun)	2011 (Jul-Jun)	2012 (Jul-Jun)
Labour units (production)	100	103	90
Labour units (SGA)	100	88	97
Total employment	100	100	91

The table was indexed due to confidentiality using 2010 as a base year.

Table 5.5.12(a) above shows that the applicant's employment in the production of the subject product increased by 3 index points during the period 2010 to 2011, while total employment remained constant during the same period. The applicant's employment in the production of the subject product and total employment both decreased by 13 index points and 9 index points during the period 2011 to 2012.

Table 5.5.12(a) above also shows that the applicant's employment, both in the production of the subject product and company total, decreased during the period of investigation.

Table 5.5.12(b): Employment – half year figures

	2010 (Jul-Dec)	2011 (Jul-Dec)	2012 (Jul-Dec)
Total labour units (production)	100	103	90
Labour units (SGA)	100	88	97
Total employment	100	100	91

The table was indexed due to confidentiality using 2010 as a base year.

Table 5.5.12(b) above shows that the applicant's employment in the production of the subject product increased by 3 index points during the period 2010 to 2011, while total employment remained constant during the same period. The applicant's employment in the production of the subject product and total employment both decreased by 13 index points and 9 index points during the period 2011 to 2012.

Table 5.5.12(b) above also indicates that the applicant's employment, both in the production of the subject product and company total, decreased during the six month additional period for 2010 to 2012 (01 July to 31 December).

The employment situation is a concern in a country that is experiencing high unemployment. Thus a loss of one job is one too many. The applicant had to cut labour units to reduce costs in its fight for market share against low priced imports from Belgium and the Netherlands.

5.5.13 Wages and Salaries

The following table provides the SACU industry's wages:

Table 5.5.13(a): Wages and Salaries – full year figures

	2010 (Jul-Jun)	2011 (Jul-Jun)	2012 (Jul-Jun)
Total wages and salaries (Production)	100	111	133
Wages per employee (production)	100	107	149

The table was indexed due to confidentiality using 2010 as a base year.

Table 5.5.13(a) above shows that wages and salaries for employees directly involved in the production of the subject product increased by 11 index points between 2010 and 2011. Between 2011 and 2012 the wages and salaries increased by 22 index points, with an overall increase of 33 index points during the full year period.

Table 5.5.13(b): Wages and Salaries – half year figures

	2010 (Jul-Dec)	2011 (Jul-Dec)	2012 (Jul-Dec)
Total wages and salaries (Production)	100	111	133
Wages per employee (production)	100	107	149

The table was indexed due to confidentiality using 2010 as a base year.

Table 5.5.13(b) above shows that wages and salaries for employees directly involved in the production of the subject product increased by 11 index points between 2010 to 2011; increased by 22 index points between 2011 and 2012. There was an overall increase of 33 index points during the six-month period.

The increase in wages and salaries should not be perceived as lack of injury to the domestic industry as, in South Africa salaries and wages are usually determined

during collective bargaining between Trade Unions and employers. It is not surprising to see an increase in wages and salaries values in a distressed industry. The wages increased for the reduced number of employees.

5.5.14 Growth

The applicant provided the following information with regard to the growth of the market:

Table 5.5.14(a): Growth – full year figures

	2010 (Jul-Jun)	2011 (Jul-Jun)	2012 (Jul-Jun)
Size of SACU market (Tons)	100	102	96
SACU market growth during POI (%)	-4%		
Applicant's sales volume (Tons)	100	89	98
Applicant's growth during POI (%)	-2%		
Other SACU Producers (Tons)	100	89	98
Other SACU producer's growth during POI (%)	-2%		
Cumulative dumped imports(tons)	100	174	104
Growth of alleged dumped imports from Belgium and the Netherlands during POI (%)	+4%		
Other imports (Tons)	100	103	61
Growth of other imports during POI (%)	-39%		

The table was indexed due to confidentiality using 2010 as a base year.

The SACU market declined by 6 index points between 2011 and 2012, while dumped imports grew by four percent during the twelve month period. From table 5.5.14(a) above, it is evident that the SACU producers and the SACU market did not grow during the period of investigation. Inflationary pressures on domestic consumers became evident in increased demand for low priced dumped imports as observed in their growth levels in the same period.

Table 5.5.14(b): Growth – half year figures

	2010 (Jul-Dec)	2011 (Jul-Dec)	2012 (Jul-Dec)
Size of SACU market (Tons)	100	89	98
SACU market growth during POI (%)	-2%		
Applicant's sales volume (Tons)	100	110	117
Applicant's growth during POI (%)	+17%		
Other SACU Producers (Tons)	100	110	117
Other SACU producer's growth during POI (%)	+17%		
Cumulative dumped imports(Tons)	100	55	77
Growth of alleged dumped imports from Belgium and the Netherlands during POI (%)	-23%		
Other imports (Tons)	100	43	39
Growth of other imports during POI (%)	-61%		

The table was indexed due to confidentiality using 2010 as a base year.

Table 5.5.14(a) above shows that the SACU market declined by 11 index points during the period 2010 to 2011, while that of the applicant and that of other SACU producers both grew by 10 index points during the same period. The SACU market grew by 9 index points during the period 2011 to 2012. That of the applicant and that of other SACU producers both grew by 7 index points respectively during the same period.

Table 5.5.14(b) above indicates that the applicant's growth and other SACU producers' growth both increased by 17 percent during the six months additional period for 2010 to 2012 (01 July to 31 December), while the growth in the SACU market decreased by 2 percent during the same period.

5.5.15 Ability to raise capital or investments

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

Table 5.5.15(a): Ability to raise capital or investments – full year figures

	2010 (Jul-Jun)	2011 (Jul-Jun)	2012 (Jul-Jun)
Capital investment in subject product	100	102	89
Capital expenditure in subject product	100	43	8

The table was indexed due to confidentiality using 2010 as a base year.

Table 5.5.15(a) above indicates the applicant's capital investment increased by 2 index points during the period 2010 to 2011, while capital expenditure decreased by 57 index points during the same period. The applicant's capital investment and expenditure decreased by 13 index points and 35 index points during the period 2011 to 2012.

Table 5.5.15(a) above indicates the applicant's capital investment and expenditure both decreased by 11 index points and 92 index points respectively during the period of investigation.

Table 5.5.15(b): Ability to raise capital or investments - half year figures

	2010 Jul-Dec	2011 Jul-Dec	2012 Jul-Dec
Capital investment in subject product	100	102	89
Capital expenditure in subject product	100	43	8

The table was indexed due to confidentiality using 2010 as a base year.

Table 5.5.15(b) above indicates the applicant's capital investment increased by 2 index points during the period 2010 to 2011, while capital expenditure decreased by 57 index points during the same period. The applicant's capital investment and expenditure decreased by 13 index points and 35 index points during the period 2011 to 2012.

Table 5.5.15(b) above indicates that the applicant's capital investment and expenditure both decreased by 11 index points and 92 index points respectively during the six months additional period for 2010 to 2012 (01 July to 31 December).

Capital investment increased in 2011 after taking into account depreciation and impairment of assets of about R100m. Capital expenditure decreased in the same year.

5.6 COMMENTS FROM INTERESTED PARTIES

- McCain experienced a shortage of the subject product and is unable to meet the demand of the local market. At the same time importers are facing difficulties in

importing due to increased import prices as a result of provisional safeguard measures.

Commission's consideration

The Commission considered the shortage experienced occurred outside the period of investigation and the increased prices was a result of the safeguard provisional measures that were in place and are no longer an issue as they lapsed on 20 January 2014.

- The non-confidential version of the applicant does not show material injury. All the injury indicators in the non-confidential version of the application are showing positive trends.

Commission's consideration

The fact that a number of injury indicators show positive trends is not in itself an indication of lack of injury to the domestic industry.

- McCain excluded coated chips from the determination of normal value, therefore the scope of the investigation had to change and coated chips excluded as no allegation of dumping had been made regarding the coated products.

Commission's consideration

The fact that the applicant did not base its normal value on all types of chips produced, does not limit the scope of the investigation. The applicant produced various types of frozen chips and only brought normal value substantiation representative of the different models of frozen potato chips. The applicant is not required to provide *prima facie* proof of normal values for each model of the product under investigation.

- The essential facts letter did not contain any information on material injury or causal link or analysis of the injury indicators, nor did it refer to any of the submissions made on behalf of interested parties.

Commission's consideration

In the essential facts letters reference was made to the preliminary report in which injury and causal link were mainly dealt with. The purpose of essential facts letters is to communicate the facts that are essential and are being considered by the Commission in making its final determination whether to apply definitive anti-dumping duties. The role of the essential facts letters is not to provide an analysis or explanations of why information was taken or not taken into account.

5.7 Summary - Material Injury

The examination of the impact of the dumped imports on the domestic industry included import volumes, price effects, the relevant economic factors and any other relevant information brought before the Commission that would have a bearing on the state of the industry.

It was established that dumped imports increase during the full year period. In the six-month period, the dumped imports as percentage of total imports were increasing although decreasing in absolute terms. The domestic prices were depressed during the period of investigation and were significantly undercut by the dumped imports. It was observed that the domestic industry suffered injury in the form of:

- Price undercutting;
- Price depression;
- Decline in sales volumes and values;
- Ability to raise capital; and
- Decline in employment.

Dumped import volumes significantly increased during the POI as a percentage of total imports. The increase in imports during the POI occurred, against the backdrop of a declining SACU market, declining sales of the applicant, decline in other SACU producer's sales and a decline in import volumes from other countries. The only increase in volumes was that of the alleged dumped imports.

The alleged dumped imports are affecting the applicant's prices as they significantly undercut the SACU industry by 46.9 percent, and should this trend persist, it has the

potential of destroying the entire SACU industry, as the latter would have to lower its prices to compete with the dumped imports or lose out completely to imports. The prices of the SACU industry have already been depressed during the POI, as the applicant could not afford to maintain its prices, nor could it increase them, given the increased lower priced imports, and should the alleged dumped imports continue at this rate (volumes and prices), the SACU industry would be forced to close down or significantly reduce operations to unsustainable levels.

The productivity of the applicant increased. However, this was as a result of the applicant having to shed jobs as part of its cost-saving measures to mitigate the effects of the dumped imports. The applicant's output could not be wholly consumed by the SACU market as the applicant felt the impact of the increased imports.

While it appeared as if there were improvements in the return on investment during the period of investigation, the Commission considered that these were a result of depreciating assets and slight improvements in the loss situation of the company which cannot be maintained if the applicant continues to be pressured by the dumped imports.

Considering the negative effects of dumped imports on domestic prices through price depression and undercutting, loss of sales, inability to raise capital and loss of employment, the Commission concluded that these were causing material injury to the domestic industry.

From the above, it can be seen that even though there were improvements in some indicators, such as profit, return on investments, output, price suppression, capacity utilisation, all were affected by changes in productivity. It should be noted that productivity improvements were achieved at the expense of job losses. Further while wages were also increasing, it should be considered against the backdrop of a reduced workforce.

The Commission considered that while each injury indicator was analysed, the determination of material injury was based on an overall assessment of all the injury indicators. The Commission made a final determination that the information contained in the application indicates that the SACU industry was suffering material injury.

6. CAUSAL LINK

6.1 GENERAL

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

6.2 VOLUME OF IMPORTS AND MARKET SHARE

An indication of causality is the extent of the increase in volume 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 the alleged dumped product.

6.2.1 Market share

The following table shows the market share for the subject product based on volumes:

Table 6.2.1(a): Market share –full year figures

	2010 (Jul-Jun)	2011 (Jul-Jun)	2012 (Jul-Jun)
Applicant share as a % of total market	100	88	103
Other SACU sales as a % of total market	100	88	103
Alleged dumped imports:			
Cumulated imports as % total imports	100	170	108
Other imports as % of total market	100	102	64

The table was indexed due to confidentiality using 2010 as a base year.

According to table 6.2.1(a) above, a cumulative assessment of the dumped imports shows that market share of the alleged dumped imports increased from 100 to 170 index points between 2010 to 2011 (full years), and then declined from 170 to 108 index points from 2011 to 2012 (full years), with an overall increase of 8 index points during the POI (full year period). While in the same period (full years), the applicant's market share decreased from 100 to 88 index points between 2010 to

2011, after which it increased from 88 to 103 index points, resulting in an overall 3 index points increase during the POI.

Table 6.2.1(b): Market share – half year figures

	2010 (Jul-Dec)	2011 (Jul-Dec)	2012 (Jul-Dec)
Applicant share as a % of total market	100	124	120
Other SACU sales as a % of total market	100	124	120
Alleged dumped imports:			
Cumulated imports as % total imports	100	62	78
Other imports as % of total market	100	48	39

The table was indexed due to confidentiality using 2010 as a base year.

According to table 6.2.1(b) above, a cumulative assessment of the dumped imports shows that market share of the alleged dumped imports decreased from 100 to 62 index points between 2010 to 2011 (half years), and then increased again from 62 to 78 index points from 2011 to 2012 (half years), with an overall decrease of 22 index points during the POI (half year period). While in the same period (half years), the applicant's market share increased from 100 to 124 index points between 2010 to 2011 and after which it decreased from 124 to 120 index points, resulting in an overall 20 index points increase during the POI.

6.3 EFFECT OF DUMPED IMPORTS ON PRICES

It has already been shown in section 5 of this report that the applicant suffered price depression and price undercutting.

6.4 CONSEQUENT IMPACT OF DUMPED IMPORTS

The Commission found that there was a causal link between the dumped imports and the following material injury suffered by the SACU industry:

Table 6.4 (a): Material Injury Indicators – full year

	Analysis (2010 – 2012)
Sales volume and values	Decreased
Gross profit (R)	Increased
Output (tons)	Increased
Market share (alleged dumped)	Increased
Market share (applicant)	Decreased
Productivity (tons)	Increased
Return on investment	Increased
Utilisation of capacity	Increased
Net Cash flow	Decreased
Inventories (R)	Increased
Employment (number of employees)	Decreased
Wages and Salaries (R)	Increased
Applicant's Growth	Decreased
Ability to raise capital (R)	Decreased

Table 6.4 (b): Material injury indicators – half year

	Analysis (2010 – 2012)
Sales volume and values	Decreased
Gross profit (R)	Increased
Output (tons)	Increased
Market share (alleged dumped)	Decreased
Market share (applicant)	Increased
Productivity (tons)	Increased
Return on investment	Increased
Net Cash flow	Increased
Utilisation of capacity	Increased
Inventories (R)	Decreased
Employment(number of employees)	Decreased
Wages and Salaries (R)	Increased
Applicant's Growth	Increased
Ability to raise capital (R)	Decreased

6.5 FACTORS OTHER THAN THE DUMPING CAUSING INJURY

The Commission further considered the following information:-

Table 6.5: Examination of causality under Article 3.5

	Year		
	2010	2011	2012
FOB prices of imports not sold at dumping prices (R/ton)	6.50	6.29	7.21
Volume of imports not sold at dumping prices (tons)	17 923	8 414	7 593
Contraction in demand or changes in patterns of consumption	Demand of the subject product declined.		
Trade-restrictive practices of foreign and domestic producers	The applicant stated that it is not aware of such practices.		
Developments in technology	The applicant stated that it just spent R700 million to upgrade its Delmas Plant and that continuous improvement projects are undertaken by the McCain Centre of Excellence (MCE) focusing on developing and implementing new technology which would further enhance productivity.		
Export performance of the domestic industry	The applicant stated that SACU industry does not export the subject product.		
Productivity of the domestic industry	The applicant stated that the local processing industry does not have the accessibility to many processing potato varieties as have the European Processors. However, the SACU industry is at least as productive as the foreign producers.		
Indicate any other factors affecting the SACU prices	The applicant highlighted that in 1994 when South Africa became a signatory to the WTO Agreement and made the tariff commitments with respect to frozen potato chips, some developments were not anticipated by the South African government and when tariffs on frozen potato chips from the EU into SACU were being phased out European producers were encouraged to dump frozen potato chips in SACU, thereby forcing local manufacturers to compete with imports at that price level, resulting in the material injury inflicted on the local manufacturers of frozen potato chips.		

6.6 COMMENTS FROM INTERESTED PARTIES

- The interested parties indicated that the Commission should consider the effect of customs duty reduction in terms of the TDCA as causing injury to domestic industry.

Commission's consideration

The reduction of duties in terms of the TDCA may have been an encouragement for EU exporters to increase exports to SACU. Of more importance however whether the imported products were entering SACU at dumped prices, which has been established to be positive.

- Any price related injury that might have existed during the POI has been negated by subsequent events, such as a significant change in the exchange rate, the provisional safeguard measures, etc.

Commission's consideration

The argument about fluctuation in the exchange rate that happened after the period of investigation is not convincing. This suggests that information would have to be gathered throughout the investigation to establish what happened since the investigation was initiated. The definition of the period of investigation would under these circumstances be ignored. The provisional safeguard measure is no longer in place as of 21 January 2014.

- ITAC failed to take cognisance of the decreased market share of the alleged dumped imports from Belgium and the Netherlands and other factors that contributed to the industry's alleged injury.

Commission's consideration

The Commission considered all injury indicators and took into account that injury indicators do not all have to be negative to find injury or the fact that other indicators are positive is not in itself an indication of a lack of injury. The finding of injury was made after an overall assessment of all injury indicators. The Commission then found that a causal link between the alleged dumped imports of the subject product originating in or imported from Belgium and the Netherlands and the material injury suffered by the SACU industry exists.

- The fact that the domestic industry does not export shows it either cannot compete internationally or does not have the capacity to do so or both; the industry does not have accessibility to processing varieties, and does not enjoy ideal weather conditions as in the EU.

Commission's consideration

The applicant, through its holding company has various operations around the world and so does not have to prove its competitiveness through exports only. It is not operating at full capacity and therefore it cannot be said there is no capability to export. Further, it made massive investments in 2007 as part of upgrading the facilities and has invested in the research and development of potato varieties. In terms of weather conditions, SACU has the advantage of being able to produce and harvest throughout the year, which the Belgian and Dutch producers do not have.

- The applicant seems to have been rather affected by factors such as changes in the local weather and impossibility to meet high-end customer product specifications such as McDonald's.

Commission's consideration

The effect of black frost can be noticed from McCain's imports of the subject product between 2011 and 2012. McCain imported from both Belgium and the Netherlands. However its imports were deducted from subject imports and were rather insignificant relative to total imports from Belgium and the Netherlands.

It was noted that the applicant invested in a plant specifically designed to meet demands of its high end customers including McDonald's. Further, the applicant's imports to meet McDonald's specifications in 2011/2012 were excluded in the injury determination.

6.7 Summary - Causal Link

The alleged dumped imports have increased and are significantly undercutting the SACU industry resulting in the industry having had to reduce its prices as is evident in price depression experienced by the SACU industry. This injury in terms of price effects was as

a result of the high volume of dumped imports from Belgium and the Netherlands, entering the SACU market at significantly low prices, capturing a big chunk of the market share which was previously occupied by the SACU industry and other (un-dumped) imports. Although growth in market share was seen, it was not as high as the growth experienced by the alleged dumped imports in a declining SACU market.

As a result of the dumped imports from Belgium and the Netherlands, employment has been reduced, as the sales values and volumes were declining too (full years). The company is not operating at full capacity although capacity utilisation is on the increase.

The net profits of the SACU producers have increased but they were still in a loss-making situation. The applicant's sales for the full year periods also declined and this resulted in an increase in inventory levels as the applicant could not sell the goods produced.

The overall impact of the dumped imports was felt by the SACU industry, and this can be seen from the magnitude of dumping margins resulting in material injury, which if not curtailed will lead to the SACU market relying on imports and closing down or reducing its operations as a result of this dumping.

Further, the information of the applicant shows that the 2011 period was a particularly difficult one for the applicant with the injury indicators almost all being negative. A combination of factors put pressure on the applicant. These were the black frost experienced and increased imports from Belgium and the Netherlands,

After considering all relevant factors, the Commission made a final determination that there was causal link between the alleged dumped imports of the subject product from Belgium and the Netherlands and the material injury suffered by the SACU industry, and that there were no other factors detracting from the causal link.

7. SUMMARY OF FINDINGS

7.1 Dumping

The Commission found that the subject product originating in or imported from Belgium and the Netherlands was being dumped in the SACU market with the following dumping margins:

Table: 7.1: Dumping Margins

Magnitudes of dumping:	
Clarebout Potatoes - Belgium	8.28%
Mydibel Foods S.A. -Belgium	15.60%
Pinguin Lutosa - Belgium	9.09%
Agristo N. V. Harelbeke - Belgium	Minus 6.34%
Farm Frites - Belgium	31.37%
All other producers - Belgium	31.37%
LambWeston/Meijer - Netherlands	Minus 15.27%
Agristo N. V. Tilburg - Netherlands	12.52%
Farm Frites - Netherlands	26.23%
All other producers - Netherlands	26.23%

7.2 Material Injury

The Commission found that the applicant was suffering material injury in the form of:

Based on full year information:

- Increase in import volumes and as a % of total imports;
- Decline in sales volumes and values;
- Decline in market share;
- Negative effects on net cash flow;
- Decline in employment;
- Negative growth; and
- Price depression.

Injury suffered half year information:

- Increase in import volumes and as a % of total imports;
- Decline in sales volumes and values;

- Decline in employment; and
- Price depression.

7.3 Causal Link

The Commission found that a causal link between the alleged dumped imports of the subject product originating in or imported from Belgium and the Netherlands and the material injury suffered by the SACU industry exists, and that there were no other factors detracting from the causal link.

8. FINAL ANTI-DUMPING DUTIES

8.1 Calculation of duty

The Commission found that all requirements for the imposition of final anti-dumping duties have been fulfilled.

8.2 Lesser duty

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

Section 17 of the ADR provides that the Commission shall consider applying the lesser duty rule if both the cooperating exporter and importer responded fully. In this instance, Merlog Foods and Etlin International that imported from the verified exporters fully cooperated together with their respective exporters. The Commission made a final determination to apply the lesser duty.

8.3 Amount of final anti-dumping duties

The amounts of final anti-dumping duties to be imposed on frozen potato chips originating in or imported from Belgium and the Netherlands, classifiable under tariff subheading 2004.10.20 were concluded to be the following:

Table 8.3: Final anti-dumping margins

Country	Producer	Final dumping margins
Belgium	Clarebout Potatoes N.V	6.19%
	Mydibel Foods S.A	9.71%
	PinguinLutosa Foods B.V	5.81%
	Agristo N.V Harelbeke	No duty
	All other producers/exporters (excluding those produced by Agristo N.V Harelbeke)	30.77%
The Netherlands	Agristo N.V Tilburg	12.52%
	LambWeston/Meijer	No duty
	All other producers/exporters (excluding those produced by LambWeston/Meijer V.O.F)	16.42%

9. DETERMINATION AND RECOMANDATION

The Commission made a final determination that:

- Dumping of the subject product originating in or imported from the Netherlands (excluding those produced by Lamb Weston/Meijer V.O.F) is taking place;
- Dumping of the subject product originating in or imported from Belgium (excluding those produced by Agristo N.V Harelbeke) is taking place;
- The SACU industry is experiencing material injury; and
- There is a causal link between the dumping of the subject product originating in or imported from Belgium and the Netherlands and the material injury suffered by the SACU industry and that there were no other factors detracting from the causal link.

The Commission made a final determination to recommend to the Minister of Trade and Industry that definitive anti-dumping duties be imposed on frozen potato chips originating in or imported from Belgium and the Netherlands, classifiable under tariff sub-heading 2004.10.20 as contained in table 8.3 of this report.