

# **Report No. 741**

**INVESTIGATION INTO THE DUMPING OF ACTIVE YEASTS (BAKER'S  
COMPRESSED YEAST) ORIGINATING IN OR IMPORTED FROM THE REPUBLIC OF  
ZIMBABWE: FINAL DETERMINATION**

The International Trade Administration Commission of South Africa herewith presents its Report No.741: **INVESTIGATION INTO THE ALLEGED DUMPING OF ACTIVE YEASTS (BAKER'S COMPRESSED YEAST) ORIGINATING IN OR IMPORTED FROM THE REPUBLIC OF ZIMBABWE: FINAL DETERMINATION**



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**MR AYABONGA CAWE  
CHIEF COMMISSIONER**

**PRETORIA  
13 DECEMBER 2024**

## INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA

### INVESTIGATION INTO THE ALLEGED DUMPING OF ACTIVE YEASTS (BAKER'S COMPRESSED YEAST) ORIGINATING IN OR IMPORTED FROM THE REPUBLIC OF ZIMBABWE: FINAL DETERMINATION

#### SYNOPSIS

On 18 August 2023, the International Trade Administration Commission of South Africa ("the Commission") initiated an investigation into the alleged dumping of active yeasts (baker's compressed yeast) originating in or imported from the Republic of Zimbabwe (Zimbabwe) through Notice No. 1983 of 2023, which was published in *Government Gazette* No. 49140.

The application was lodged by Rymco (Pty) Ltd, trading as Anchor Yeast, the only producer of the subject product in the Southern African Custom Union (SACU).

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

Upon initiation of the investigation, the diplomatic representatives and all known foreign producers/exporters of the subject product in Zimbabwe were sent a non-confidential copy of the application, initiation notice and foreign manufacturer's/exporter's questionnaires to complete. Importers of the subject product in the SACU were also sent a non-confidential copy of the application, initiation notice and the importer's questionnaires to complete.

After considering all the responses and comments received from interested parties, the Commission made a final determination that the subject product originating in or imported from Zimbabwe was being imported into the SACU market at dumped prices, thereby causing material injury and threat of material injury to the SACU industry.

The Commission further made a final determination to:

- Finalise the anti-dumping investigation.
- Recommend to the Minister of Trade, Industry and Competition to impose definitive anti-dumping duties on imports of active yeasts (baker's compressed yeast), classifiable under tariff subheading 2102.10, originating in or imported from Zimbabwe by Lesaffre Zimbabwe (Pvt) Ltd., and those duties be suspended for a period of five years, provided that prior to the suspension a price undertaking agreement between ITAC and the exporter is in effect and that no violation of the price undertaking agreement occurs during this period.
- Recommend to the Minister of Trade, Industry and Competition that in the event that the price undertaking agreement is violated, definitive anti-dumping duties be imposed as per table 9.1, to address the violation.
- Recommend to the Minister of Trade, Industry and Competition that definitive anti-dumping duties be imposed on imports of active yeasts (baker's compressed yeast) produced by all other producers in Zimbabwe as per table 9.1.
- The recommended anti-dumping duties on active yeasts (baker's compressed yeast) be listed in the "rebate item" column in Schedule No. 2 of the Customs and Excise Act and therefore may not be imported under rebate of customs duty without payment of anti-dumping, countervailing and safeguard duties without a recommendation from ITAC.

## 1. APPLICATION AND PROCEDURE

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### 1.1 LEGAL FRAMEWORK

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

### 1.2 APPLICANT

The application was lodged by Rymco (Pty) Ltd, trading as Anchor Yeast, the only producer of the subject product in the Southern African Custom Union (SACU).

### 1.3 DATE OF ACCEPTANCE OF APPLICATION

The application was accepted by the Commission as being properly documented in accordance with ADR 21 on 08 August 2023. The trade representatives of the Republic of Zimbabwe were advised accordingly.

### 1.4 ALLEGATIONS BY THE APPLICANT

The information gathered by the Commission indicated that imports of the subject product originating in or imported from Zimbabwe were being dumped into the SACU market, thereby causing material injury and threat of material injury to the SACU industry. The basis for the alleged dumping is that the subject product is exported to SACU at prices lower than the normal values in the country of origin.

The information at the Commission’s disposal indicated that, as a result of dumping of the subject product from Zimbabwe, the SACU industry is suffering material injury in the form of:

- Price undercutting;
- Price suppression;
- Declining sales volume;

- Impact on market share;
- Declining in profitability;
- Decline in output;
- Decline in employment;
- Decrease in return on investment;
- Decline in capacity utilisation;
- Decline in cash flow;
- Increase in inventory levels; and
- Decline in growth.

## **1.5 INVESTIGATION PROCESS**

The application was first received by the Commission on 17 October 2022. The material injury information submitted by the Applicant was verified on 25 and 26 May 2023.

The trade representatives of Zimbabwe were notified, in terms of Regulation 27.1 of the ADR that the Commission received a properly documented application.

The Commission initiated an investigation into the alleged dumping of the subject product originating in or imported from the Republic of Zimbabwe through Notice Number 1983 of 2023, which was published in the Government Gazette No. 49140 on 18 August 2023.

On 21 August 2023, after initiation, all known interested parties were notified and sent the non-confidential version of the application and requested to respond to the relevant questionnaires.

## **1.6 INVESTIGATION PERIODS**

The investigation period for dumping is 01 January 2022 to 31 December 2022. The investigation period for material injury is 01 January 2020 to 31 December 2022.

## **1.7 PARTIES CONCERNED**

### **1.7.1 SACU industry**

The SACU industry consists of Rymco (Pty) Ltd, trading as Anchor Yeast, the only producer of the subject product in the SACU.

### **1.7.2 Manufacturers/Exporters**

Responses to the Commission's exporter questionnaire was received from Lesaffre Zimbabwe (Pvt) Ltd ("Lesaffre"). Lesaffre requested an extension of the Commission's due date for submission of its exporter response, and an extension of 14 days was granted.

Initial responses from Lesaffre were found to be deficient. Lesaffre was advised accordingly and was given seven days to rectify the identified deficiencies. On 30 October 2023, a response addressing the deficiencies was received from Lesaffre. Lesaffre's information was verified from 08 to 10 January 2024. The Commission took the information submitted by Lesaffre into account for purposes of its preliminary determination.

### **1.7.3 SACU Importers**

Responses to the Commission's importer questionnaire were received from Aries Bakery Supplies (Pty) Ltd ("Aries"). Aries requested an extension of the Commission's due date for submission of its response, and an extension of 14 days was granted. The response submitted by Aries was found to be deficient. Aries was advised accordingly and was given seven days to rectify the identified deficiencies. On 30 October 2023, a response addressing deficiencies was received from Aries. The Commission took the information submitted by Aries into account for purposes of its preliminary determination.

### **Comments by Aries and Lesaffre ("interested parties")**

Interested parties stated that the Applicant has not summarised information which it claims to be confidential and incapable of summarisation. Interested parties further stated that the reasons which the Applicant provided in an affidavit for not providing a non-confidential summary were a repeat of the provisions of

Section 33 of the ITA Act and ADR 2 and do not provide proper justification for the failure to provide a non-confidential summary of the information claimed to be confidential.

### **Comments by the Applicant**

The Applicant stated that its confidentiality claims are justified and the confidentiality affidavit does contain proper justification for confidentiality to be upheld.

### **Commission's consideration**

*The Commission considered that the Applicant has complied with the confidentiality requirements in the ADR.*

## **1.8 PRELIMINARY DETERMINATION**

After considering all responses and comments, the Commission at its meeting of 05 March 2024 and its round robin meeting from 26 March to 05 April 2024 made a preliminary determination that:

- dumping of the subject product originating in or imported from the Republic of Zimbabwe is taking place;
- there is material injury and threat of material injury to the SACU industry; and
- there is causal link between the alleged dumped imports and the material injury and threat of material injury experienced by the SACU industry.

The Commission also considered that the SACU industry would continue to experience material injury during the course of the investigation if provisional measures were not imposed. Therefore, the Commission decided to request the Commissioner for the South African Revenue Service (SARS) to impose provisional measures of 132.20% *ad valorem* on imports of the subject product, classifiable under tariff subheading 2102.10 originating in or imported from the Republic of Zimbabwe, for a period of six months.

Provisional measures were imposed through Notice R.4818 published in *Government Gazette* No.50646 with effect from 10 May 2024 up to and including 09 November 2024.

- 1.8.1** Written comments on the Commission's preliminary determination were received from interested parties and the Applicant.

**Comments by interested parties.**

Interested parties reiterates that they request the agreement between the Applicant and Chipkins Puratos, or at the very least, a non-confidential summary of the essential terms of those agreements to enable it to respond to the case against them. Interested parties further stated that they tender to protect the confidentiality of the Chipkins-Anchor Agreement through the conclusion of a confidentiality agreement/arrangement satisfactory to both the Applicant and Chipkins. The Commission has in the past agreed to such arrangements and facilitated their conclusion.

**Applicant's response**

The Applicant stated that it would have to engage with legal counsel on the matter of the request concerning the agreement. Further, the Commission is advised that as Chipkins is also party to the agreement that contains information confidential, it is not only for Anchor Yeast to make a decision about the request and consultation will also be required with Chipkins. The Applicant maintains that the agreement in question contains confidential information and should remain confidential in its entirety, without any disclosure or revelation of its contents. The Applicant stated that confidentiality was rightfully claimed regarding the agreements that Anchor Yeast has with third parties, the nature of which are intellectual property rights, technical assistance, contract manufacturing and other agreements. The Applicant further stated that parties are not entitled access to any of the agreements or the essential terms thereof, which Anchor Yeast has with third parties.

**Commission's consideration**

*The Commission considered that the contract between the Applicant and Chipkins is confidential by nature and a non-confidential summary which would enable interested parties to comment meaningfully on it cannot be produced. A sworn statement was provided in this regard as required the confidentiality requirements in the ADR and ITA Act.*

*In the non-confidential application, Anchor Yeast submitted that the nature of the information relates to confidential agreements that are in place with third parties, which Anchor Yeast wishes to keep confidential as if the information is released to any third party, especially competitors, it will impact negatively on the competitiveness of Anchor Yeast in the market. The competitors can use the data to benchmark themselves impacting negatively on Anchor Yeast's competitive position in the market. The information is as such that it cannot be summarised. Even a summation of the information will contain information that is by its very nature confidential for the same reasons as stated.*

*Interested parties noted that the Commission has previously accepted and facilitated similar arrangements, but they failed to provide specific examples or explain the underlying merits of the confidentiality issues in those cases, which were the basis for the Commission's consideration of those requests. The interested parties did not request the Commission to facilitate negotiations for a reduced agreement between the Applicant and Chipkins. The Applicant's response above was a direct result of the Commission's proactive efforts to obtain a non-confidential version of the agreement, which was requested to accommodate the interested parties' inquiry and facilitate a more transparent review process.*

**1.9 FINAL BEFORE ESSENTIAL FACTS DETERMINATION**

After considering all responses and written comments to the Commission's preliminary determination, the Commission at its meeting of 09 July 2024 made a final before essential facts determination that the subject products originating in or imported from Zimbabwe were imported into the SACU market at dumped prices, thereby causing material injury to the SACU industry.

On 15 July 2024, the Commission sent out “essential facts letters” to all known interested parties informing them of the essential facts under consideration. The Commission invited interested parties to make comments on the Commission’s considerations prior the final determination. The deadline for comments was 29 July 2024.

- 1.9.1** Written and oral comments on essential facts letter were received from the Applicant and interested parties.

**Comments by interested parties on essential facts letters.**

Interested parties stated that the Commission has not disclosed any of the essential facts under consideration which form the basis for its proposed final determination on material injury, threat of material injury and causation, other than a reference to the preliminary determination. It is also insufficient for the Commission to simply refer to the preliminary determination to satisfy its obligation to disclose the essential facts. The essential facts letters do not set out the essential facts under consideration which form the basis for the decision whether to apply definitive measures but instead only set out the proposed final determination.

Interested parties stated that Article 6.9 of the WTO Agreement on Implementation of Article VI of the GATT 1994 provides that "The authorities shall, before a final determination is made, inform all interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures. Such disclosure should take place in sufficient time for the parties to defend their interests."

***Commission’s consideration***

*Comprehensive information on material injury, threat of material injury and dumping is in the preliminary report and the general section of the essential facts letter specified that where an issue is not specifically addressed the Commission intended to maintain its preliminary determination, therefore there is no*

*requirement on the Commission to repeat such issues, this is confirmed by WTO jurisprudence.*

*In Argentina – Ceramic Tiles, the Panel, further, to noting that Article 6.9 does not prescribe the manner in which the investigating authority is to comply with the disclosure obligation, provided some examples of how investigating authorities may comply with this requirement: "The Commission agree with Argentina that the requirement to inform all interested parties of the essential facts under consideration may be complied with in a number of ways. Article 6.9 of the AD Agreement does not prescribe the manner in which the authority is to comply with this disclosure obligation. The requirement to disclose the 'essential facts under consideration' may well be met, for example, by disclosing a specially prepared document summarizing the essential facts under consideration by the investigating authority or through the inclusion in therecord of documents – such as verification reports, a preliminary determination, or correspondence exchanged between the investigating authorities and individual exporters – which actually disclose to the interested parties the essential facts which, being under consideration, are anticipated by the authorities as being those which will form the basis for the decision whether to apply definitive measures. This view is based on our understanding that Article 6.9 anticipates that a final determination will be made and that the authorities have identified and are considering the essential facts on which that decision is to be made. Under Article 6.9, these facts must be disclosed so that parties can defend their interests, for example by commenting on the completeness of the essential facts under consideration.*

*Furthermore, all information received after preliminary determination was considered and is available in the public file. Salient information submitted and considered by the Commission was further disclosed in the essential facts' letters.*

- 1.10** The Commission received a price undertaking offer from interested parties on 08 August 2024.

### **1.11 FINAL AFTER ESSENTIAL FACTS DETERMINATION**

After considering the price undertaking offer, all written comments and oral presentations to the Commission's final before essential facts determination, the Commission at its meeting of 13 August 2024 reconsidered its final determination of imposing definitive anti-dumping duties on imports of the subject product, which was relayed in its essential facts' letters. It decided to consider and explore the price undertaking offer made by interested parties.

### **1.12 PRICE UNDERTAKING OFFER DETERMINATION**

After considering the written presentation to the Commission on price undertaking offer, comments from the Applicant and the importer, the Commission at its round robin meeting of 21 to 23 August 2024 accepted the price undertaking offer as a constructive remedy to the material injury suffered by the SACU industry and made a determination to suspend the finalisation of the anti-dumping duties.

### **1.13 FINAL AFTER ESSENTIAL FACTS DETERMINATION**

After the acceptance of the Commission's price undertaking offer by the exporter, the Commission made a determination to terminate the anti-dumping investigation and proceed to implement the price undertaking.

A second essential facts letter was sent to interested parties on 13 November 2024 with a deadline for comments of 20 November 2024.

#### **Comments by interested parties to the second essential facts letter.**

On 20 November 2024, comments to the second essential fact were received from the interested parties and the Applicant.

Interested parties agree with the Commission's earlier proposed final determination to recommend to the Minister of Trade, Industry and Competition to terminate the anti-dumping investigation to enable the Commission to implement the price undertaking agreement.

**Comments by the Applicant to the second essential facts letter**

- a) Anchor Yeast, a local producer, is concerned about unfair trade practices harming the domestic industry. They request the Commission to prioritize protecting the local industry and to conduct a thorough investigation.
- b) Anchor Yeast is concerned about potential manipulation of transfer pricing and the lack of clarity in the price undertaking agreement. They propose stricter enforcement measures and a clear timeline to prevent potential harm to the local industry. The Commission may face challenges in monitoring compliance due to complex financial structures and cross-border transactions.
- c) Ensuring compliance with the price undertaking will be challenging due to resource constraints and potential circumvention tactics. Anchor Yeast is concerned about the proposed unsuppressed selling price being outdated, being based on the unsuppressed selling price of Anchor Yeast for the period 1 January to 31 December 2022, and requests the Commission to consider current market conditions and allow for updated pricing information.

***Commission's consideration***

- a) *The Commission considered the unfair trade practices of the exporter and determined that the proposed price undertaking is a constructive measure provided for in the ADR and ADA, aimed at addressing unfair trade practices that cause injurious dumping.*
- b) *The Commission notes the Applicant's concerns. However, the price undertaking agreement aims to deal with such transfer pricing, as the price to be charged between the exporter and importer is determined by the Commission and adjusted annually. The Commission has further put in place measures to monitor such undertaking, with further measures to address any violation by the two parties.*
- c) *The Commission approved entering into a price undertaking, considering that there is one importer, one exporter and the relatively small monthly volume of imports, which it believed could be easily monitored with its current resources. The Commission also approved the initial price*

*undertaking of R18.09, aligning it with the unsuppressed selling price. This price will be adjusted annually based on the Producer Price Index.*

#### **1.14 FINAL AFTER SECOND ESSENTIAL FACTS DETERMINATION**

After considering all written comments to the second essential facts letter, the Commission, through a round robin meeting of 22 to 25 November 2024, made a determination to issue a third essential facts letter.

A third essential facts letter was issued on 26 November 2024 with a deadline of 03 December 2024.

**1.14.1** Having considered the issue of a potential breach of the price undertaking and the administrative process that would respond thereto, the Commission considered whether the investigation should be finalised with definitive duties to be imposed but immediately suspended. The reason for this different approach is that it would allow the Commission to not only act immediately, but also forgo having to go from provisional measures to the imposition of definitive duties via a new investigation (in the case of a termination) or a reinstated investigation (in the case of a suspension).

**1.14.2** The termination of the investigation and the imposition of provisional measures is provided for by ADR 39.1. However, terminating the investigation brings with it the following in response to a breach of the price undertaking:

- Provisional payments can be imposed.
- Because provisional payments lapse in 6 months, a new investigation would have to be initiated forthwith.
- Provisional payments could lapse if the preliminary phase of the investigation exceeds 6 months. In that case the provisional payments made would have to be refunded.
- A new investigation may be unsuccessful in terms of a lack of material injury because the price undertaking would have set imports prices at a non-injurious level.

**1.14.3** According to ADR39.1, the Commission also has the authority to suspend the investigation. The consequences of a suspension are not dissimilar to a termination but also brings with it its own challenges. These are as follows:

- Provisional payments can be imposed.
- The investigation would be reinstated and would have to be finalised in approximately 2 months to avoid the investigation being terminated without the imposition of definitive duties.
- Depending on when a breach of the price undertaking occurred, the data and information acquired by the Commission during the course of the (original) investigation period may be outdated and subject to challenge.

**1.14.4** One of the reasons for a re-evaluation of the procedural step to accompany a price undertaking was the concern over the (legal) ability to recommend to the Commission the finalisation of the investigation and the imposition and immediate suspension of a definitive duty. In this regard, ADR 39.1 speaks of terminating or suspending proceedings:

Proceedings may be suspended or terminated following the receipt of a satisfactory price undertaking from any exporter to revise its prices or to cease exports to the SACU at dumped prices so that the Commission is satisfied that dumping or the injurious effect thereof is eliminated, provided it has made at least a preliminary determination in the matter.

Although domestic legislation is silent about finalising an investigation, the WTO Anti-Dumping Agreement addresses this issue. ITAC takes guidance from the agreement, particularly where no similar provision is found in the ITA Act or the ADR.

Article 8.4 provides, in relevant part –

*If an undertaking is accepted, the investigation of dumping and injury shall nevertheless be completed if the exporter so desires or the authorities so decide.*

It should also be noted that the Minister has previously suspended definitive duties immediately in other investigations, such as the poultry investigation, although this was not in the context of a price undertaking. Thus, it is the view of the investigating team that the investigation may proceed in such a manner.

**1.14.5** Additionally, under this approach, the Applicant would be able to request a sunset review investigation at the end of this period (note that a sunset review necessitates an existing final duty).

**1.14.6** In summation, in contrast to the complexities of terminating (or suspending) the investigation, the proposed approach offers procedural simplicity: upon violation of the price undertaking, a final duty is imposed for what remains of the 5-year period at the time the price undertaking is violated.

**Comment by interested parties to the third essential facts letter.**

- a) Lesaffre argue that anti-dumping duties on their baker's compressed yeast exports are unjustified, and that Anchor Yeast (the applicant) has not suffered any significant harm from these imports.
- b) Interested parties are seeking clarification from the Commission on several aspects of the quarterly reporting requirements for 12 months after the commencement date of the price undertaking, specifically: (i) the requirement for the Applicant to provide sales volume and capacity information, (ii) the method for making specific determinations, and (iii) whether market share calculations will be done annually or quarterly.
- c) Interested parties disagree with the proposed procedural approach and instead support the Commission's recommendation to terminate the anti-dumping investigation and implement the price undertaking agreement.

***Commission's consideration***

- a) *The Commission based on sufficient evidence at its disposal, made a determination that the Applicant suffered material injury as outlined in Section 5 of the submission.*
- b) *Interested parties are seeking clarity on issues, and when issues are*

*addressed, they find other clarity-seeking issues, thus apparently attempting to delay the finalisation of the investigation. Notwithstanding these tactics, the Commission wish to state that during the first three months after implementing the price undertaking, the Applicant will be requested to provide the Commission with quarterly reports containing sales volume, capacity information, market share, and other relevant data, such as unsuppressed selling prices. However, the Applicant's agreement to this request is required, and the terms of reporting required will be subject to consultation and mutual agreement. The frequency of these reports may be adjusted by the Commission as needed, potentially switching to annual or bi-annual submissions. Upon receiving these reports, interested parties will be invited to provide their own information as outlined in the agreement.*

- c) *Notwithstanding the objections raised by interested parties, the Commission is proceeding with the proposed procedural approach as outlined in the third essential facts letter. Furthermore, the Commission was not provided with any legal reason for not proceeding with its proposed approach or what prejudice interested parties would suffer as a result of the proposed approach.*

**Comments by the Applicant**

- a) Anchor Yeast recommends that the Commission should obtain a signed price undertaking from Aries and Lesaffre before terminating the anti-dumping duty, as required by Section 39.1 of the South African Anti-Dumping Regulations. "Prior to terminating the anti-dumping duty, Anchor Yeast suggests that the Commission should first secure a binding price undertaking from Aries and Lesaffre, in accordance with Section 39.1 of the South African Anti-Dumping Regulations".
- b) The Commission proposes to impose anti-dumping duties not only on specific exporters but also on "all other producers/exporters". Since only Lesaffre Zimbabwe has submitted a price undertaking proposal, the Commission must maintain the residual anti-dumping duty, which cannot be terminated at any time.
- c) Anchor Yeast recommends independent third-party verification to ensure compliance with the price undertaking agreement and detect potential breaches.

- d) Anchor Yeast is arguing that the price undertaking proposed by Lesaffre is flawed. The undertaking is based on historical data from 2022, which cannot be used as a starting point for the undertaking in 2024. Additionally, Lesaffre's undertaking only commits to not exporting below a certain price level, rather than ensuring fair prices. Anchor Yeast also disputes the Commission's claim that this price level falls within their unsuppressed selling price range, citing that their current price is significantly higher.
- e) Anchor Yeast argues that linking the base price to the general Producer Price Index (PPI) would unfairly penalize them, as their cost increases are driven by specific input materials (molasses and electricity) that exceed the general PPI. They propose that the price undertaking should be adjusted more frequently to reflect their actual cost increases.
- f) Anchor Yeast is requesting an urgent meeting with the Commission, citing that their numerous previous requests have been ignored, and this is impacting their right to a fair hearing.

**Commission's consideration**

- a) *The Commission will ensure that a signed binding price undertaking agreement is concluded between itself and the exporter.*
- b) *The price undertaking agreement is with Lesaffre only, which is the sole producer and exporter of the subject product in Zimbabwe. However, to prevent potential circumvention, the Commission is recommending that a residual dumping duty is imposed on all other producers.*
- c) *The Commission will be responsible for verifying all information submitted by interested parties, it reserves the right to engage external experts, if required, taking into consideration the confidentiality of information submitted.*
- d) *To ensure accuracy, the Commission may review the unsuppressed selling price at the end of the first quarter following the implementation of the price undertaking, as the initial price used for implementing the price undertaking is over two years old.*
- e) *Although the Commission understands the Applicant's concerns about using the Producer Price Index (PPI) to adjust prices, the Commission may consider alternative reliable and verifiable sources of data when made available.*

*However, at this point, the Commission will continue to use the PPI for price adjustments.*

- f) *The Commission has reviewed the Applicant's requests for a meeting and found that their concerns were already addressed in a letter dated 12 August 2024, which was discussed during the Commission's meeting of 21 – 23 August 2024. As there were no new or compelling reasons for a meeting the Commission did not grant the meeting.*

### **1.15 FINAL DETERMINATION AFTER THIRD ESSENTIAL FACTS**

After considering all written comments to the third essential facts, the Commission on its meeting of 10 December 2024 made a final determination that the subject product originating in or imported from Zimbabwe was being imported into the SACU market at dumped prices, thereby causing material injury and threat of material injury to the SACU industry.

The Commission further made a final determination to:

- Finalise the anti-dumping investigation.
- Recommend to the Minister of Trade, Industry and Competition to impose definitive anti-dumping duties on imports of active yeasts (baker's compressed yeast), classifiable under tariff subheading 2102.10, originating in or imported from Zimbabwe by Lesaffre Zimbabwe (Pvt) Ltd., and those duties be suspended for a period of five years, provided that prior to the suspension, a price undertaking agreement between ITAC and the exporter is in effect and that no violation of the price undertaking agreement occurs during this period.
- Recommend to the Minister of Trade, Industry and Competition that in the event that the price undertaking agreement is violated, definitive anti-dumping duties be imposed as per table 9.1, to address the violation.
- Recommend to the Minister of Trade, Industry and Competition that definitive anti-dumping duties be imposed on imports of active yeasts (baker's compressed yeast) produced by all other producers in Zimbabwe as per table 9.1.
- The recommended anti-dumping duties on active yeasts (baker's compressed yeast) be listed in the "rebate item" column in Schedule No. 2

of the Customs and Excise Act and therefore may not be imported under rebate of customs duty without payment of anti-dumping, countervailing and safeguard duties without a recommendation from ITAC.

## 2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

### 2.1 IMPORTED PRODUCTS

#### 2.1.1 Description

The Applicant described the imported product to be a type of Active Yeast, commonly known as fresh yeast or Baker's compressed yeast ("BCY").

#### 2.1.2 Country of origin/export

The subject product originates in or imported from Zimbabwe.

#### 2.1.3 Possible tariff loopholes

The Applicant indicated that it is not aware of any possible tariff loopholes.

#### 2.1.4 Tariff Classification

The subject product is classifiable under the following tariff subheading:

Table 2.1.4: Tariff classification

Heading / Subheading	Description	Unit	General	EU/UK	EFTA	SADC	MERCOSUR	AfCFTA
21.02	Yeast (active or inactive); other single -cell micro-organisms, dead (but not including vaccines of heading 30.02); prepared baking powder:							
2102.10	Active yeasts	Kg	15%	free	Free	free	15%	12%

Source: SARS

#### 2.1.5 Other applicable duties and rebates

The Applicant stated that there are currently no other applicable duties and rebates on active yeast.

#### 2.1.6 Negligibility test

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

**Table 2.1.6: Negligibility test**

<b>Import volumes in kg</b>	<b>Import volumes 01 January 2022 – 31 December 2022</b>	<b>Volume as a % of total imports</b>
Dumped imports (BCY)	635 250	100%
*Other imports	0	0%
<b>Total imports</b>	<b>635 250</b>	<b>100%</b>

\*Excluding other imports regarded as not to be the subject product

The table above indicates that imports of the subject product from Zimbabwe are above 3 percent as a percentage of total imports. The Commission made a preliminary determination that the volumes of imports from Zimbabwe are above the negligibility level in terms of ADR 16.2.

### **Comments by the Applicant**

The Applicant stated that all active yeasts that were exported from other countries (excluding Zimbabwe) to SACU, will be dry yeast that is also commonly referred to as imported dry yeast (“IDY” or “DAY”). The Applicant further stated that from its market intelligence that is based on the ongoing monitoring of the trade activities in the SACU market, the only form of fresh yeast that was found that did not originate within SACU, was the BCY that originates from Zimbabwe. In addition, based on its market intelligence, the forms of IDY (DAY), other than the Anchor Yeast product, that were found in the SACU market that did not originate within SACU and did not originate within Zimbabwe, were imported from other countries.

The Applicant stated that as per the SARS data, the imports from Zimbabwe would pertain to BCY only and the imports from other countries would be for IDY and not include BCY. Accordingly, there is no dumped subject product from other countries.

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

Interested parties in the SACU market have expressed concerns about the injury suffered by the Applicant, who has a lion’s share of the SACU BCY market. They argue that this application is an attempt to drive out Lesaffre, the exporter of the subject product, and its importer, Aries, from the SACU BCY submarket to

establish itself as the sole producer and supplier of BCY. The parties also stated that their share of the SACU active yeast market is 1.4%, a slightly higher percentage of the SACU active yeast baking market, and 5.47% of the SACU BCY market. They also noted that the proportion of BCY originating from Zimbabwe relative to the SACU market during the injury investigation period is extremely small, with a small proportion of BCY from Zimbabwe being assessed. Therefore, the injury allegedly suffered by the Applicant is not attributable to Zimbabwean yeast imports.

***Commission's consideration***

*The Commission considered that the investigation is for BCY. The market share of the subject product from Zimbabwe is above the negligibility level set out in ADR16.2.*

The Commission made a final determination that the volume of imports from Zimbabwe are above the negligibility level in terms of ADR16.2 as they are above 3 percent.

**2.1.7 Raw Material used**

The Applicant stated that the main raw materials are molasses, phosphoric acid, ammonia, starch and water.

**2.1.8 Production process**

The Applicant described the production process of the subject product as follows:

**a) Conservation**

The production process starts in a laboratory where the different strains of yeasts are conserved and stored at an extremely low temperature in what is called a strain bank.

**b) Multiplication**

The multiplication process commences with an initial liquid culture that is prepared within a tube and few milligrams of yeast are then transferred to culture medium, which is thereafter placed in an incubator at a temperature, allowing for the yeast cells to develop.

**c) Pre-Fermentation**

From the laboratory, the yeast cells are then transferred to a larger environment where the cells are placed in a series of tanks that are increasing in size where pre-fermentation takes place, in order for the yeast cell biomass (the quantity of cells that are produced) to reach a sufficient quantity of yeast.

**d) Fermentation**

A fermenter (e.g., molasses, nutrients and water) is then “pitched” to obtain the first-generation yeast. The yeast then develops into commercially generation volume of several tons within a few days.

**e) Centrifugal separator**

The yeast is then separated from the culture medium, which enables the cells to multiply using a centrifugal separator.

**f) Cooling process**

The process produces a cream that is then cooled and stored in chilled conditions at around 4°C to ensure the yeast cells are inactive. At this stage the cream yeast can be processed to be sold as a liquid yeast by preparing just the cream yeast that could be sold in refrigerated bags, in containers as big as 1m<sup>3</sup> or in tank containers.

**g) Vacuum filter**

By passing the cream yeast through a rotary/vacuum filter fresh or compressed yeast is produced. The filter sucks away the liquid, making it possible to obtain a fine layer of yeast, which is then processed in a mixer that compresses the yeasts. The compressed fresh yeast is then cut into cubes and packed.

**2.1.9 The products' technical characteristics and appearance**

The Applicant stated that Fresh yeast is a slurry of yeast and water formed into a crumbly in a semi-solid crumbly in a semi-solid consistency in block form, with a creamy coloured appearance. Active dry yeast is approximately 0.2 to 3 millimetres in diameter and spherical. Instant yeast is porous and cylindrical. It is about 0.5 millimetres in diameter and a few millimetres long. Yeast can vary in colour from dark brown to almost white.

**Baker's Compressed Yeast/ Fresh Yeast**



**2.1.10 Application or end use**

The Applicant stated that active yeasts are used in food and beverage preparation for human and animal consumption.

### 2.1.11 Substitutability

The Applicant stated that there are no differences between the imported subject product and the SACU like product. The Applicant believes that they are identical in all aspects. The SACU subject product is fully substitutable with the product imported from Zimbabwe.

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

Interested parties stated that all three commercial forms of active yeast are substitutable for and can be used interchangeably by industrial and semi-industrial bakeries who are the major customers of the Applicant. Interested parties further stated that this substitutability has become apparent in the last 10 years when most of the industrial and semi-industrial bakeries have shifted from BCY to liquid yeast. Interested parties stated that the market has also evolved, which has further affected the substitutability of these commercial yeast forms.

#### **Comments by the Applicant**

The Applicant confirms that liquid yeast, BCY, and dry yeast are used in SACU baking, but dry active yeast is not used industrially, preferring fresh yeast. BCY is primarily utilized in industrial baking processes in SACU due to its fast-acting characteristics, resulting in consistent bread quality, aroma, and flavour. The Applicant argues that replacing BCY with dry active yeast is not economically or operationally viable for commercial bakery operations.

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

*The comments relating to substitutability are noted, however the Commission considered that these do not affect the current matter as the like product from Zimbabwe is only BCY, and no other product. If there were other types of yeasts imported from Zimbabwe, the issue of ignoring those other yeasts would arise, had the Commission done so. In this instance, there are no such yeast exports from Zimbabwe. Furthermore, the Commission considered the fact that the exporter during verification when asked if it is able to export liquid yeast, clearly stated there is no way that it would export liquid yeast into SACU and can only export BCY.*

## **2.2 SACU PRODUCT**

### **2.2.1 Description**

The Applicant describes the SACU like product as Active Yeast, commonly known as fresh yeast or Baker's compressed yeast ("BCY").

### **2.2.2 Raw Material used**

The Applicant stated that the main raw materials are molasses, phosphoric acid, ammonia, starch and water.

### **2.2.3 Production process**

The Applicant described the production process of the subject product as follows:

#### **a) Conservation**

The production process starts in a laboratory where the different strains of yeasts are conserved and stored at an extremely low temperature in what is called a strain bank.

#### **b) Multiplication**

The multiplication process commences with an initial liquid culture that is prepared within a tube and few milligrams of yeast are then transferred to culture medium, which is thereafter placed in an incubator at a temperature, allowing for the yeast cells to develop.

#### **c) Pre-Fermentation**

From the laboratory the yeast cells are then transferred to a larger environment where the cells are placed in a series of tanks that are increasing in size where pre-fermentation takes place, in order for the yeast cell biomass (the quantity of cells that are produced) to reach a sufficient quantity of yeast.

**d) Fermentation**

A fermenter (e.g., molasses, nutrients and water) is then “pitched” to obtain the first-generation yeast. The yeast then develops into commercially generation volume of several tons within few days.

**e) Centrifugal separator**

The yeast is then separated from the culture medium, which enables the cells to multiply using a centrifugal separator.

**f) Cooling process**

The process produces a cream that is then cooled and stored in chilled conditions at around 4°C to ensure the yeast cells are inactive. At this stage the cream yeast can be processed to be sold as a liquid yeast by preparing just the cream yeast that could be sold in refrigerated bags, in containers as big as 1m<sup>3</sup> or in tank containers.

**g) Vacuum filter**

By passing the cream yeast through a rotary/vacuum filter fresh or compressed yeast is produced. The filter sucks away the liquid, making it possible to obtain a fine layer of yeast, which is then processed in a mixer that compresses the yeasts. The compressed fresh yeast is then cut into cubes and packed.

**2.2.4 The products’ technical characteristics and appearance**

Fresh yeast is a slurry of yeast and water formed into a crumbly in a semi-solid consistency in block form, with a creamy coloured appearance. Active dry yeast is approximately 0.2 to 3 millimetres in diameter and spherical. Instant yeast is porous and cylindrical. It is about 0.5 millimetres in diameter and a few millimetres long. Yeast can vary in colour from dark brown to almost white.

### Baker's Compressed Yeast/Fresh yeast



#### 2.2.5 Application or end use

The Applicant stated that active yeasts are used in food and beverage preparation for human and animal consumption.

#### 2.2.6 Substitutability

There are no differences between the imported subject product and the SACU like product. The Applicant believes that they are identical in all aspects. The SACU subject product is fully substitutable with the product imported from Zimbabwe.

### 2.3 LIKE PRODUCTS ANALYSIS

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

**Table 2.3: Like product determination**

	<b>Imported product</b>	<b>SACU product</b>
<b>Raw materials</b>	Molasses, phosphoric acid, ammonia, starch, water, vitamins, urea, antifoam and electricity.	Molasses, phosphoric acid, ammonia, starch, water, and electricity.
<b>Physical characteristics and appearance</b>	Fresh yeast is a slurry of yeast and water formed into a crumbly a semi hard constancy in block form, with a creamy coloured appearance. Active dry yeast is approximately 0.2 to 3	Fresh yeast is a slurry of yeast and water formed into a crumbly a semi hard constancy in block form, with a creamy coloured appearance. Active dry yeast is approximately 0.2 to 3

	Imported product	SACU product
	<p>millimetres in diameter and spherical. Instant yeast is porous and cylindrical. It is about 0.5 millimetres in diameter and a few millimetres long. Yeast can vary in colour from dark brown to almost white.</p>	<p>millimetres in diameter and spherical. Instant yeast is porous and cylindrical. It is about 0.5 millimetres in diameter and a few millimetres long. Yeast can vary in colour from dark brown to almost white.</p>
<b>Tariff classification</b>	2102.10	2102.10
<b>Production process</b>	<p>a) Conservation - The production process starts in a laboratory where the different strains of yeasts are conserved and stored at an extremely low temperature in what is called a strain bank.</p> <p>b) Multiplication - The multiplication process commences with an initial liquid culture that is prepared within a tube and few milligrams of yeast are then transferred to culture medium, which is thereafter placed in an incubator at a temperature, allowing for the yeast cells to develop.</p> <p>c) Pre-Fermentation - From the laboratory the yeast cells are then transferred to a larger environment where the cells are placed in a series of tanks that are increasing in size where pre-fermentation takes place, in order for the yeast cell biomass (the quantity of cells that are produced) to reach a sufficient quantity of yeast.</p> <p>d) Fermentation - A fermenter (e.g., molasses, nutrients, and water) is</p>	<p>a) Conservation - The production process starts in a laboratory where the different strains of yeasts are conserved and stored at an extremely low temperature in what is called a strain bank.</p> <p>b) Multiplication - The multiplication process commences with an initial liquid culture that is prepared within a tube and few milligrams of yeast are then transferred to culture medium, which is thereafter placed in an incubator at a temperature, allowing for the yeast cells to develop.</p> <p>c) Pre-Fermentation - From the laboratory the yeast cells are then transferred to a larger environment where the cells are placed in a series of tanks that are increasing in size where pre-fermentation takes place, in order for the yeast cell biomass (the quantity of cells that are produced) to reach a sufficient quantity of yeast.</p> <p>d) Fermentation - A fermenter (e.g., molasses, nutrients, and water) is</p>

	Imported product	SACU product
	<p>then “pitched” to obtain the first-generation yeast. The yeast then develops into commercially generation volume of several tons within few days.</p> <p>e) Centrifugal separator - The yeast is then separated from the culture medium, which enables the cells to multiply using a centrifugal separator.</p> <p>f) Cooling process - The process produces a cream that is then cooled and stored in chilled conditions at around 4°C to ensure the yeast cells are inactive. At this stage the cream yeast can be processed to be sold as a liquid yeast by preparing just the cream yeast that could be sold in refrigerated bags, in containers as big as 1m<sup>3</sup> or in tank containers.</p> <p>g) Vacuum filter - By passing the cream yeast through a rotary/vacuum filter fresh or compressed yeast is produced. The filter sucks away the liquid, making it possible to obtain a fine layer of yeast, which is then processed in a mixer that compresses the yeasts. The compressed fresh yeast is then cut into cubes and packed.</p>	<p>then “pitched” to obtain the first-generation yeast. The yeast then develops into commercially generation volume of several tons within few days.</p> <p>e) Centrifugal separator - The yeast is then separated from the culture medium, which enables the cells to multiply using a centrifugal separator.</p> <p>f) Cooling process - The process produces a cream that is then cooled and stored in chilled conditions at around 4°C to ensure the yeast cells are inactive. At this stage the cream yeast can be processed to be sold as a liquid yeast by preparing just the cream yeast that could be sold in refrigerated bags, in containers as big as 1m<sup>3</sup> or in tank containers.</p> <p>g) Vacuum filter - By passing the cream yeast through a rotary/vacuum filter fresh or compressed yeast is produced. The filter sucks away the liquid, making it possible to obtain a fine layer of yeast, which is then processed in a mixer that compresses the yeasts. The compressed fresh yeast is then cut into cubes and packed.</p>

	<b>Imported product</b>	<b>SACU product</b>
<b>Application or end use</b>	The Zimbabwe imported products are used in food and beverage preparation for human and animal consumption.	The SACU products are used in food and beverage preparation for human and animal consumption.
<b>Substitutability</b>	The SACU products are fully substitutable with the imported product.	The SACU subject product is fully substitutable with the product imported from Zimbabwe.

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

### 3. INDUSTRY STANDING

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The application was lodged by Rymco (Pty) Ltd, trading as Anchor Yeast, the only producer of the subject product and constitute 100% of the domestic production of the subject product in the SACU.

The Commission made a final determination that the application can be regarded as being made by or on behalf of the SACU industry in terms of ADR 7.2.

## 4. DUMPING

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The margin of dumping is calculated by subtracting the export price from the normal value of the product (after all the adjustments have been made). In terms of ADR 12.3, the margin of dumping shall be regarded as *de minimis* if it is less than two percent when expressed as a percentage of the export price.

There was one exporter that responded to the investigation. The individual and residual dumping information is based on the information of the verified exporter with regard to the normal value. It was found that Lesaffre produced and sold the subject product to different type of customers in Zimbabwe. It was also found that sales to SACU were made to a related company, Aries Baking supplies.

### 4.1 METHODOLOGY USED FOR LESAFFRE

#### 4.1.1 Normal Value

The normal value is based on domestic sales. It was found that domestic sales volume constituted more than 5 percent of export sales volumes sold to the SACU market, and therefore are of sufficient volumes to determine a normal value, in accordance with ADR 8.3.

It was found that sales that were below cost, constituted less than 5 percent of the total domestic sales volume. Therefore, such sales are negligible and are included in the calculation of the normal value.

Lesaffre claimed the following adjustments to the normal value:

#### a) Cost of payment terms

It was explained that the payment terms are determined on a case-by-case basis, are currency driven and depend on the relationship with the customers and historical payments. It was found that Lesaffre allowed some of its domestic customers to make payments within a specific period of days from the date of invoice at a certain interest rate percentage. It was also found that the payment terms were not reflected or shown in the invoice however it is recorded in the account statement which is issued after sales took place.

**Comments by interested parties to the essential facts.**

Interested parties reiterates their comments to the preliminary report that "although the payment terms for the customers do not appear on the invoices, they are known to both Lesaffre and its customers at the time the sale is concluded". Lesaffre further referred the Commission to the provisions of Item 5 of Annex 2 to the WTO Agreement on Implementation of Article VI of the GATT 1994 which provides as follows: "Even though the information provided may not be ideal in all respects, this should not justify the authorities from disregarding it, provided the interested party has acted to the best of its ability."

**Applicant's response to the preliminary comments by the interested parties**

The Applicant reiterates that Lesaffre's explanatory claim that "*although the payment terms for the customers do not appear on the invoices*", Lesaffre and its customers knew what the sales terms were, at the time the sale is concluded, no substantiation was also provided for this claim. There is thus no evidence that at the time of setting the prices the payment terms would have affected the price comparability at that time, and therefore no adjustment can be made and allowed by the Commission.

**Commission's consideration**

*The Commission consider each case on its own merits, and also when considering adjustments claimed. The Commission is obligated by ADA Article 2.4 to make "due allowance, in each case on its merits, for differences which affect price comparability." It is also important to note that the exporter claiming such an adjustment also has an obligation to substantiate the adjustment. The exporter questionnaire is also clear in section F that adjustments should be properly substantiated by documentary proof and calculations, and that such should be on a transaction-by-transaction basis.*

*In this instance the exporter is quoting a part in the WTO Agreement that refers to a complete disregard of information and use of facts available. The Commission did not disregard the exporter's information, and in this instance no documentary evidence provided to substantiate the adjustment claimed. The exporter is aware that when making a claim for an adjustment it is a requirement that such an adjustment be substantiated and be verifiable. The requirement to substantiate adjustments and other*

information with records kept is not an unnecessary burden of proof. In this instance the exporter merely claimed an adjustment which was not substantiated with records kept as is required by the WTO Agreement, it merely stated that this adjustment is known to both the exporter and its client. The following WTO jurisprudence applies in this matter:

- In *US – Anti-Dumping and Countervailing Duties (Korea)*, the Panel examined Korea's claim that the USDOC had acted inconsistently with paragraph 5 of Annex II, among other provisions, in resorting to the use of facts available in respect of an interested party's reporting of certain sales data. The Panel considered that, notwithstanding the obligation set forth in paragraph 5, where an interested party supplies information that is not verifiable or does not meet the other criteria in paragraph 3, an investigating authority is not required to use this information, even where an interested party has acted to the best of its ability for purposes of paragraph 5:
- The Panel in *EC – Fasteners (China)* considered a claim that the antidumping authorities had violated Article 2.4 by denying certain adjustments. The Panel noted that "[t]here is no methodological guidance in Article 2.4 as to how due allowance for differences affecting price comparability is to be made. "It found that although the investigating authorities are obligated to make a fair comparison: "[U]nder Article 2.4, it is the investigating authorities, not the foreign exporters, that must ensure a fair comparison between the normal value and the export price. This does not, however, mean that the exporters have no obligation in this process. Although the obligation to make a fair comparison lies with the investigating authorities, it is for the exporters, who would be expected to have the necessary knowledge of the product in question, to make substantiated requests for adjustments in order to ensure such comparison. If it is not demonstrated to the authorities that there is a difference affecting price comparability, there is no obligation to make an adjustment. Moreover, the fair comparison obligation does not mean that the authorities must accept each request for an adjustment. The authorities 'must take steps to achieve clarity as to the adjustment claimed and then determine whether and to what extent that adjustment is merited'. If no adjustment is requested, or if an adjustment is requested with respect to a difference that is not demonstrated to affect price comparability, or if the authority determines that an adjustment is not merited, no adjustment need be made. It follows that, in order to make a prima facie case of violation of Article 2.4 in this dispute, China has to

*demonstrate to the Panel that an adjustment should have been made with respect to (1) a difference (2) that was demonstrated to affect price comparability between the normal value and the export price, and that the Commission failed to make the adjustment.*

*In making its final determination, the Commission considered that the terms and conditions were not indicated in the invoices, and they were only indicated in the statement account which is issued to customers at a later date. Without payment terms on the invoices, it is the Commission's view that it was not demonstrated to have affected the price comparability at the time of setting prices, since it was not proved that such payment terms were agreed on at the time of setting prices even though it is said that the payment terms were known by the customer and Lesaffre at the time the sale is concluded.*

*Based on the above the Commission maintains its preliminary determination of not allowing this adjustment and made a final determination not to allow an adjustment for payment terms.*

**b) Delivery charges**

It was found that Lesaffre charged delivery cost for delivery of some of the finished goods from the factory to their customers in Zimbabwe. During verification delivery charges adjustment was only reflected on the sales schedule and not on the sales invoice.

**Comments by interested parties to the essential facts.**

Interested parties reiterates their comments to the preliminary report that Lesaffre has provided thorough documentation to support their request for an adjustment to normal value for delivery charges. They have submitted: extracts from their accounting records, showing total distribution costs for domestic sales during the period, signed or stamped delivery notes for deliveries made.

Interested parties further stated that denying this adjustment is not consistent with the Commission's past practice and cited the following investigations:

- The final determination in the AD Windscreens investigation (ITAC Report 722) allowed an adjustment for delivery charges, even though they weren't reflected on

the invoice. This adjustment was calculated similarly to a previous case. The investigation concerned alleged dumping of windscreens from China for use in the Southern African Customs Union market as replacement glass in the aftermarket.

- The final determination in the sunset review investigation of antidumping duties on ordinary Portland cement from Pakistan has been made (ITAC report 673). The Commission allowed an adjustment for delivery charges, using average inland freight charges, as transaction-by-transaction records were not maintained due to the large volume of transactions. This is consistent with the Commission's practice of adjusting normal value to ex-factory level.
- The Commission made final determinations in the alleged dumping of pasta from Egypt, Latvia, Lithuania, and Turkey, and the alleged dumping of clear float glass from Saudi Arabia and the United Arab Emirates (ITAC report 669). In both cases, the Commission allowed adjustments for delivery charges to bring the price back to the ex-factory level, consistent with their established practice.
- In the investigation into alleged dumping of Portland cement from Pakistan, the Commission allowed an adjustment to normal value for transport costs (ITAC report 512). Since the exporter didn't have delivery charges for each transaction, they calculated an average unit delivery charge by dividing total delivery cost by total domestic sales quantity for the investigation period.
- The investigation into alleged dumping of new pneumatic tyres from China, the Commission allowed an adjustment for delivery charges (ITAC report 210). The delivery charges were allocated on a transaction-by-transaction basis, using monthly expenses and invoice values. The delivery expenses were verified through financial statements, and a unit cost was calculated. This adjustment was made for tyres used on motor cars, buses, and lorries (HS Codes 4011.10.00, 4011.20.15, and 4011.20.25).
- In ITAC Report 722, the AD Windscreens case, the Commission explicitly stated that it is their standard practice to allow adjustments for domestic delivery costs, as long as they are properly substantiated (i.e., supported by sufficient evidence). This suggests that the Commission recognizes the importance of considering delivery costs in determining dumping margins and is willing to make adjustments for these costs when appropriate.

### **Commission's consideration**

*The Commission communicates its requirements for allowing adjustments clearly in its exporter questionnaire, especially section F which states that adjustments should be properly substantiated by documentary proof and calculations and substantiated calculations of the allowances to be made for each of the differences on a transaction-by-transaction basis. It further states that the Commission will only consider adjustments that are directly related to the sale under consideration and that affected prices at the time of setting prices. In this instance the exporter merely provided overall transport costs it indicated it incurred, and such could not be attributable to a particular transaction, and neither were transport terms indicated in the invoice/contract. Therefore, the adjustment for transport costs was not substantiated with the required documentary evidence communicated in the questionnaire response and as required by the ADA.*

*In Egypt – Steel Rebar, the Panel read Article 2.4 as explicitly requiring a fact-based, case-by-case analysis of differences that affect price comparability: "[W]e read Article 2.4 as explicitly requiring a fact-based, case-by-case analysis of differences that affect price comparability. In this regard, we take note in particular of the requirement in Article 2.4 that '[d]ue allowance shall be made in each case, on its merits, for differences which affect price comparability' (emphasis added). We note as well that in addition to an illustrative list of possible such differences, Article 2.4 also requires allowances for 'any other differences which are also demonstrated to affect price comparability' (emphasis added). Finally, we note the affirmative information gathering burden on the investigating authority in this context, that it 'shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties' (emphasis added). In short, where it is demonstrated by one or another party in a particular case, or by the data itself that a given difference affects price comparability, an adjustment must be made. In identifying to the parties. The data that it considers would be necessary to make such a demonstration, the investigating authority is not to impose an unreasonable burden of proof on the parties.*

*Thus, the process of determining what kind or types of adjustments need to be made to one or both sides of the dumping margin equation to ensure a fair comparison, is*

*something of a dialogue between interested parties and the investigating authority and must be done on a case-by-case basis, grounded in factual evidence.*

*The Commission considered that the adjustments for delivery was only reflected on the sales schedule and not on the sales invoice. Based on this, the Commission considered that delivery charges were not demonstrated to have affected the price comparability at the time of setting prices. Therefore, the Commission made a final determination not to allow delivery charges adjustment to the normal value.*

**c) Selling, general and administrative expense; and**

It was explained that SG&A were for selling expenses which are exclusive to the domestic.

**Comments by interested parties to the essential facts.**

Interested parties reiterates their comments to the preliminary report that the limited equivalent functions for SACU sales to Aries are performed by the finance department and account for an immaterial portion of the functions performed by that department (less than 1%). The exporter stated that in an earlier version of the exporter questionnaire response it had also claimed an adjustment for third country export sales, and this was erroneously omitted in the last version of the questionnaire response. Interested parties stated that this adjustment is in line with the Commission's past practice and cited the following investigations:

- ITAC report 210 - the investigation into the alleged dumping of tyres originating in or imported from the People's Republic of China, where the Commission allowed adjustments for domestic selling expenses that included "salaries of domestic salespersons and commission" and "...salaries of sales staff..."
- ITAC report 706 - the investigation into the alleged dumping of frozen potato chips originating in or imported from Belgium, Germany and the Netherlands, the Commission allowed an adjustment to normal value for the cost of sales and marketing, and the cost of direct selling expenses.
- ITAC report 167 - the investigation into the alleged circumvention of the antidumping duty on flat rolled products of iron or non-alloy steel, painted varnished or coated with plastic (colour coated steel products) originating in or imported from Australia through imports from Malaysia, the Commission allowed

adjustments to the normal value for selling and administrative expenses.

- ITAC report in the investigation into the alleged dumping of articles of plaster or of compositions based on plaster faced or reinforced with paper or paperboard only, originating in or imported from Indonesia, the Commission allowed an adjustment for warehouse cost.

### **Commission's consideration**

*The exporter claiming the adjustment does not differentiate which of the sales costs are attributable to SACU sales, except for merely stating that they amount to less than 1%. The functions said to be performed for SACU sales, which are different to those in the domestic market and third country exports, were not clearly substantiated with documentary evidence and proof. The fact that the later version of the exporter questionnaire response did not have an adjustment for third country sales, also suggests that these sales expenses are not clear to which market they apply. The exporter is required to have submitted documentary proof of the domestic selling expenses, showing their differences with that related to third country sales, and the "1%" for SACU sales. The exporter cites cases where such was allowed by ITAC, without citing the merits of those cases, which were the basis of such determinations.*

*The Panel in EC – Fasteners (China) considered a claim that the antidumping authorities had violated Article 2.4 by denying certain adjustments. The Panel noted that "[t]here is no methodological guidance in Article 2.4 as to how due allowance for differences affecting price comparability is to be made. "It found that although the investigating authorities are obligated to make a fair comparison: "[U]nder Article 2.4, it is the investigating authorities, not the foreign exporters, that must ensure a fair comparison between the normal value and the export price. This does not, however, mean that the exporters have no obligation in this process. Although the obligation to make a fair comparison lies with the investigating authorities, it is for the exporters, who would be expected to have the necessary knowledge of the product in question, to make substantiated requests for adjustments in order to ensure such comparison. If it is not demonstrated to the authorities that there is a difference affecting price comparability, there is no obligation to make an adjustment. Moreover, the fair comparison obligation does not mean that the authorities must accept each request for an adjustment. The authorities 'must take steps to achieve clarity as to the adjustment claimed and then*

*determine whether and to what extent that adjustment is merited'. If no adjustment is requested, or if an adjustment is requested with respect to a difference that is not demonstrated to affect price comparability, or if the authority determines that an adjustment is not merited, no adjustment need be made. It follows that, in order to make a prima facie case of violation of Article 2.4 in this dispute, China has to demonstrate to the Panel that an adjustment should have been made with respect to (1) a difference (2) that was demonstrated to affect price comparability between the normal value and the export price, and that the Commission failed to make the adjustment.*

*The Commission noted that the adjustments of SG&A was substantiated, verified, however it was not demonstrated to have affected the price comparability at the time of setting prices. It was found that Lesaffre has a sales manager in Zambia. However, an adjustment for SG&A was not shown on the sales schedule to third country. The Commission considered that SG&A is an expense which cannot be attributed to a specific market as at any point of sales there should be personnel facilitating sales and administration either domestic or export market and that this adjustment is applicable in both domestic and export market, and it should be adjusted in both markets including for sales to the SACU market, which was not.*

*Based on the above the Commission maintains its preliminary determination of not allowing this adjustment and made a final determination not to allow an adjustment for SG&A.*

**d) Invoice in currencies difference**

It was explained that difference in currencies adjustment is to cover the rapid devaluation of the Zimbabwean dollar and that customers paying in Zimbabwean dollars are charged a higher price based on the exchange than sales in US dollars to also account for the currency depreciation and devaluation.

**Comments by interested parties to the essential facts.**

Interested parties reiterates their comments to the preliminary report that when determining prices for transactions made in Zimbabwean Dollars, sales representatives refer to a 'reference price' for the product. These prices appear on a reference price list, which sales representatives use the reference as the basis for negotiations. Prices are

then negotiated based on various factors, including client size and loyalty. The reference prices for transactions made in Zimbabwean Dollars are determined by multiplying a base price (in US Dollars) by the prevailing parallel exchange rate. The prevailing parallel exchange rate used is determined by Lesaffre with reference to rates published by ZimRates.com or other public sources and an internal discretionary adjustment. The extent to which Lesaffre adjusts the rate depends on its expectations of changes in the market and this is determined when the reference price list is determined. The rates used and the new reference price list are communicated internally, usually by the Lesaffre sales manager.

Interested parties further objected to the Commission's proposed final determination not to allow any of the adjustments claimed to the normal value.

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

*The Commission reiterates that during verification, the adjustment for invoice currency difference was explained. However, calculations on how it is determined was not provided, the only substantiation document provided is the Reserve Bank of Zimbabwe Monetary Policy statement which does not give any indication on how invoice currency difference is determined. The exporter could not provide the company policy, and or procedure and standards as a substantiation on how the invoice currency is determined, what percentage the exchange rate will be adjustment for and what percent is used to charge a higher price to the domestic customers. This is determined internally from time to time. This adjustment in its form also seems to be an economic policy adjustment, and at the time of setting prices, such monetary policy effects are unknown.*

*Based on the above the Commission maintains its preliminary determination of not allowing this and made a final determination not to allow an adjustment for invoice currency difference.*

#### **Comment by interested parties to the third essential facts letter.**

Lesaffre is objecting to the Commission's decision not to allow adjustments to the normal value of their exports. These adjustments were requested by Lesaffre and, were supported by substantiated, verifiable evidence that demonstrated their impact on price comparability.

### **Commission's consideration**

*The Commission emphasize that all the adjustments were not properly substantiated and therefore should not be allowed.*

#### **4.1.2 Export price**

It was found that the exporter and the importer are related. ADR 10.1(b) states that export price may be constructed where the exporter or foreign producer and the importer are related. In constructing the export price, ADR 1 states that the export price may be determined on:

- (a) The basis of the selling price to the first independent buyer in the SACU less
  - i) All actual or allocated costs incurred between the exporter's ex-factory price and the first independent resale price; and
  - ii) A reasonable profit, as determined according to section 10.3 or
- (b) Any other reasonable basis.

All costs between the exporter's ex-factory price and the first independent resale price were considered.

In terms of ADR 10.3, "[t]he reasonable profit may be determined by calculating:

- b) the total cost of the importer, including all costs from the ex-factory export point of the producer/exporter; and
- c) the total profit realised by both the producer/exporter and the importer, and by allocating the profit in the same ratio as the costs incurred by the two parties. The reasonable profit allocated shall not be less than zero".

#### **Comments by interested parties to the preliminary report.**

Interested parties note that the allocation of the profit by the Commission on the basis of volumes is incorrect and not consistent with ADR10.3 which provides clearly that the Commission must "[allocate] the profit in the same ratio as the costs incurred by the two parties".

#### **Response by the Applicant to the preliminary comments by the interested parties**

The Applicant stated what it finds interesting from the parties' comment regarding total

profit calculation is the likelihood that in a scenario where Lesaffre would have followed the Lesaffre Group price policy, the profits would have been realised.

**Commission's consideration**

*In preliminary determination, the Commission noted the error made on the calculation of reasonable profit which has since been addressed and is calculated according to ADR10.3.*

**Comments by interested parties to the essential facts.**

- a) Interested parties submit that they were not able to recreate the calculations employed by the Commission in the calculation of the margin of dumping in its preliminary determination, despite its requests to the Commission to provide the Commission's calculations. This is manifestly unfair.
- b) Lesaffre argues that using their overall profit margin across all markets is incorrect and contradicts the WTO Anti-Dumping Agreement and Anti-Dumping Regulations.

**Commission's consideration**

- a) *Interested parties were provided with a clear explanation of the calculations and were taken through the methodology used. They expressed satisfaction with the explanations and did not subsequently raise any concerns.*
- b) *The contention by the interested parties is that the use of Lesaffre's profit for the subject product in all markets instead of profit made on sales to SACU is improper. The ADR refers to total exporter profit and it is not specific on the market (domestic/export) the profit should be derived from. The company is making a loss on sales to SACU, therefore a reasonable profit in this instance is the profit of the subject product irrespective of the market.*

**4.1.3 Margin of dumping**

Based on the above information, the following dumping margin as a percentage of the ex-factory export price was calculated to be 113.14%

**Comments by interested parties to the essential facts.**

Interested parties reiterates their comments to the preliminary report that they disagree with the Commission's preliminary determination that the dumping margin as a percentage of the ex-factory export price was 144.02%.

***Commission's consideration***

*The initial dumping margin of 144.02% was erroneously calculated using an incorrectly determined ex-factory export price. Following the correction of the ex-factory export price, the revised dumping margin is 113.14%, expressed as a percentage of the corrected ex-factory export price.*

**4.2 Residual dumping margin**

Since there is only one producer/exporter in Zimbabwe who also responded and or cooperated with the investigation, and was verified, the Commission considered implementing a residual dumping margin that is the same as that of the verified exporter. The residual dumping margin was determined to be 113.14%.

**4.3 SUMMARY**

The Commission, after considering all the comments from interested parties, found that the subject product originating in or imported from Republic of Zimbabwe is being dumped onto the SACU market with 113.14% calculated dumping margins.

## 5. MATERIAL INJURY

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### 5.1 DOMESTIC INDUSTRY – MAJOR PROPORTION OF PRODUCTION

The material injury information was provided by Anchor Yeast, which represents 100% of the domestic production of the subject product in SACU from 01 January 2020 to 31 December 2022.

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

### 5.2 MATERIAL INJURY ANALYSIS

The injury information presented below relates to the evaluation of data for the period 01 January 2020 to 31 December 2022.

### 5.3 IMPORT VOLUMES AND EFFECT ON PRICES

#### 5.3.1 Import volumes

The following tables show the volume of the dumped imports of the subject products as sourced from SARS for the period 01 January 2020 to 31 December 2022.

**Table 5.3.1: Import volumes**

KG	2020	2021	2022
Dumped imports (BCY)	43 200	355 500	635 250
Other Imports (BCY)	0	0	0
Dumped imports as a % of total imports	100%	100%	100%
<b>Total Imports</b>	<b>43 200</b>	<b>355 500</b>	<b>635 250</b>

\*Excluding other imports regarded as not to be the subject product

The table above shows that the dumped imports from Zimbabwe increased by 722.92% from 2020 to 2021 and further increased by 78.69% from 2021 to 2022. During the POI, the dumped imports increased by 1 370.49%.

The Applicant stated that all active yeasts that were exported from other countries (excluding Zimbabwe) to SACU, will be dry yeast that is also commonly referred to imported dry yeast (“IDY” or “DAY”).

The Applicant further stated that from its market intelligence that is based on the ongoing monitoring of the trade activities in the SACU market, the only form of fresh yeast that

was found that did not originate within SACU, was the BCY that originates from Zimbabwe. In addition, based on its market intelligence, the forms of IDY (DAY), other than the Anchor Yeast product, that were found in the SACU market that did not originate within SACU and did not originate within Zimbabwe, were imported from other countries.

In conclusion, the Applicant stated that as per the SARS data, the imports from Zimbabwe would pertain to BCY only and the imports from other countries would be for IDY and not include BCY. Accordingly, there is no dumped subject product from other countries.

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

*The tariff subheading is inclusive of other forms of active yeasts which are not the subject product. The dumped product which originates from Zimbabwe subject to investigation is the BCY. The Commission made a preliminary determination and considered the Applicant's explanation to exclude imports (IDY/DAY) from other countries.*

### **Comments by interested parties to the essential facts.**

Interested parties reiterates their comments to the preliminary report that imports into SACU were minimal in 2020 (43 tonnes). While imports increased significantly in 2021 and 2022 (722.92% and 1370.49% respectively), the interested parties argue that these increases are misleading when viewed in absolute terms. The actual volumes imported in 2021 (312 tonnes) and 2022 (592 tonnes) are still relatively small compared to the overall market size (12,338 tonnes in 2021 and 11,613 tonnes in 2022).

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

*Commission considered that the percentage increases in dumped imports are not misleading, as they reflect a significant growth in imports, which is a relevant factor in the investigation. In absolute terms, the volumes of dumped imports, although small compared to the market size, still represent a notable increase that is causing material injury to the domestic industry and is threatening to cause further material injury if not addressed, and which do not only have such volume effects, but also price effects.*

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

The following table shows the effects of the dumped imports on production and consumption.

**Table 5.3.2: Growth of Subject Imports**

<u>BCY</u>	2020	2021	2022
BCY imports/domestic production: %	100	879	189
BCY imports/domestic consumption: %	100	856	183

Information in table 5.3.2 above indicates that the dumped imports relative to production and consumption increased by 879 and 856 index point from 2020 to 2021 and further increased by 189 and 183 index point from 2021 to 2022 respectively. During the POI, the dumped imports relative to production and consumption increased by 1 659 and 1 562 respectively.

### 5.4 Effect on Domestic Prices

#### Comments by Aries and Lesaffre (“interested parties”)

The Applicant has been accused of dividing the SACU BCY market into two submarkets: the contract market, which includes Chipkins Puratos (“Chipkins”), and the open market, which includes all other customers in the SACU BCY market. The Applicant's actions are alleged to increase the injury suffered by the Applicant in the open market by excluding the price effects of sales to Chipkins, particularly from price suppression, depression, and undercutting. The exclusion of sales to Chipkins also removes Chipkins as a cause of the injury suffered by the Applicant.

Interested parties argued that the exclusion of one customer accounting for approximately 40% of the production by the domestic industry of BCY over the injury investigation period, from an analysis of injury, including price undercutting, price depression, and price suppression, is even more clearly a contravention of the WTO Anti-Dumping Agreement.

#### Comments by the Applicant

The Applicant argues that the dumped imports of the subject product do not affect the Anchor Yeast’s selling prices of the BCY to Chipkins, as there is no direct competition

between the two companies. The Applicant produces and sells the BCY to Chipkins in terms of a contract production agreement, and the subject product is also produced and sold by Anchor Yeast in an open SACU market where the dumped Lesaffre product, the Chipkins product, and the Anchor Yeast product directly compete for customers.

The Applicant argues that presenting the information separately does not amount to a determination of injury on the basis of a market segment as alleged by the parties. The relationship with Chipkins is one of contract manufacturing, and the ex-factory price at which it sold the subject product on contract to Chipkins in SACU and the BCY ex-factory price at which it sold the subject product to other clients in SACU cannot be compared.

The Applicant reiterates that the subject product it sells to Chipkins, which also competes with the Anchor Yeast in the open SACU BCY consumer market, does not undercut the Anchor Yeast prices and thus cannot be the cause of or contribute to the material injury suffered by Anchor Yeast. The harmful impact of the Zimbabwean subject product on Chipkins bears a threat to Anchor Yeast in the future, through reduced uptake of the subject product produced for Chipkins and future of Chipkins purchasing from Anchor Yeast.

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

*In calculating price effect, the Commission included Chipkins' information which had been excluded by the Applicant for analysis of price effects and its injury determination. The Commission agrees with interested parties that had it ignored such information it would have been inconsistent with the ADR and WTO rules, thus there was no such omission by the Commission.*

#### **5.4.1 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 of the imported product is determined based on the landed cost.

**Table 5.4.1: Price undercutting**

<b>R/Kg (Including Chipkins)</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
*Applicant's ex-factory selling price	100	104	103
**FOB import price	100	91	85
**Landed cost imported product	100	93	69
***Price undercutting	(100)	(46)	81
***Price undercutting as % of ex-factory selling price	(100)	(45)	79

\*Ex-factory selling price including Chipkins

\*\*Indexed due to confidentiality

\*\*\*the indexed base was a negative.

It was found that the imported product from Zimbabwe is undercutting the Applicant's selling price by 79 percent during the period of investigation.

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

Interested parties stated that if the contract production (Chipkins Puratos) is included, there was negative price undercutting and price disadvantage (i.e., the landed cost of the Zimbabwean imports calculated by the Applicant was higher than the Applicant's prices) in 2020 and 2021.

### **Commission's consideration**

*In determining the effect on domestic price (price undercutting), the Commission made a preliminary determination to take into consideration Chipkins' information.*

*Table 5.4.1 above shows that even with Chipkins' information taken into consideration, the Applicant is still experiencing price undercutting in and 2022. To calculate the FOB import price, the Commission used the ex-factory import price plus inland freight cost. The Commission noted the impact of the prices of the dumped product, undercutting the prices of the SACU producer.*

### **Comments by interested parties to the essential facts.**

Interested parties reiterate that the Commission should not make use of a landed cost based on the internal transfer price, instead the Commission should use the price paid in the SACU market by first independent buyers.

**Commission's consideration**

The Commission considered the two prices serve different purposes.

- a) To accurately account for dumping, the constructed ex-factory export price is essential for calculating the dumping margin, as it represents the "normal" value of the goods. Additionally, the constructed ex-factory export prices account for the relationship between the importer and the foreign producer/exporter. This constructed export price calculated for dumping is based on the importer's sales to a first independent buyer. This price by the importer is not the actual price of the imported product.
- b) The definition for price undercutting states that, "it 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.....", thus further giving credence to the notion that the price of the imported product or actual export price should be used. Furthermore, the IMF valuation of imports and exports of goods and the Anti-Dumping Training Module indicate that if the domestic price is on an FOB basis, no further adjustments are required. The FOB export price can be directly used for the price undercutting calculation. Adjustments are only needed if there are differences in trade levels, quality, etc.

*In essence, using the constructed ex-factory export price is a necessary measure for accurately determining the dumping margin. Meanwhile, the FOB export price is applied for assessing price undercutting to reflect the standard FOB pricing practices between the exporter and importer.*

*Therefore, in determining the price undercutting, the price that is undercutting the Applicant is the actual landed cost, which includes the price of the subject product as sold by the foreign producer, not the constructed export price, which is done for the purpose of calculating a dumping margin due to the unreliability of the foreign producer's export price for dumping margin purposes.*

*In China – HP-SSST (Japan) / China – HP-SSST (EU), the Appellate Body stated that a price undercutting analysis under Article 3.2 concerns pricing conduct that continues over time and that an isolated instance of dumped imports being sold at lower prices than domestic like products does not justify a conclusion that there is*

*price undercutting: "Rather, a proper reading of 'price undercutting' under Article 3.2 suggests that the inquiry requires a dynamic assessment of price developments and trends in the relationship between the prices of the dumped imports and those of domestic like products over the entire period of investigation (POI). An examination of such developments and trends include assessing whether import and domestic prices are moving in the same or contrary directions, and whether there has been a sudden and substantial increase in the domestic prices." This notion supports the use of the actual import price, as the importer's selling price in the SACU market is no longer an import price.*

In Morocco – Definitive AD Measures on Exercise Books (Tunisia), the Panel held that using constructed prices in a price undercutting analysis does not satisfy the requirements of Article 3.2: "[A]lthough Article 3.2 does not refer to 'actual' prices, the context of this article provides useful guidance as to the nature of the prices to be used for the undercutting examination. First, Article 3.1 of the Anti-Dumping Agreement provides that a determination of injury shall be based on an objective examination of 'the effect of the dumped imports on prices in the domestic market for like products'. As price undercutting is one of these effects, this provision indicates that, in its Article 3.2 analysis, the investigating authority must examine prices that are related to the domestic market conditions of the importing Member, i.e. the actual prices charged and not hypothetical prices. Second, with regard to the prevention of price increases, the investigating authority must consider whether the effect of the dumped imports is 'otherwise to prevent price increases, which otherwise would have occurred, to a significant degree'. The use of the conditional in this passage (in italics) suggests that the authority may have recourse to a counterfactual analysis of the domestic prices that would have been charged in the absence of dumped imports. Therefore, the possibility of recourse to a counterfactual analysis is expressly provided for in the text of the Agreement. But, as noted by Canada, such terms are not used in relation to the undercutting examination, and thus the wording of Article 3.2 regarding the price undercutting analysis does not permit the construction of a target price for the domestic product.

Lastly, we recall that Articles 3.1 and 3.2 require the investigating authority to examine the 'effects' of imports on the price of the domestic product in order to be able to subsequently determine whether such imports are causing injury to the

domestic industry by means of these effects. In the light of this objective, we agree with Tunisia's argument that 'if the investigating authority constructs the price of the domestic product, it will no longer be possible to identify the 'effect' that imports actually [sic] have on the price of the domestic product using the resulting ratio'. This confirms the interpretation that the investigating authority must examine the prices of the domestic product that are actually charged in the market and not hypothetical prices.

*This case involving Morocco and Tunisia, has similarities to the current matter as the Tunisian authorities had made adjustments to the normal value to account for the Applicant's inability to increase prices. The adjustments for inability to increase prices by the Tunisian domestic industry is provided for in the Agreement, but such cannot be applied in the price undercutting, as price undercutting involves "actual prices", which is the actual import price compared with the actual domestic price, in order to determine the effect of imports on the domestic market.*

*In light of the above, in calculating the landed cost, the Commission used the actual ex-factory export price plus inland transport cost plus clearing cost to determine the landed.*

*The Commission noted that interested parties suggests that a constructed export price should be used to calculate the landed cost. The Commission established that even when using the constructed export price to calculate the in determining the price undercutting, the investigation has found that price undercutting still exists. The landed cost was calculated by adding the constructed ex-factory export price, inland transport cost, and clearing cost, resulting in a landed cost. Despite using this constructed export price, the investigation has confirmed that price undercutting persists.*

#### **5.4.2 Price depression**

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

**Table 5.4.2: Price depression**

R/kg (Including Chipkins)	2020	2021	2022
BCY Yeast	100	104	103

The figures were indexed due to confidentiality using 2020 as a base year.

Table 5.4.2 above indicates that the Applicant's selling price for BCY increased by 4 index points from 2020 to 2021, then decreased by 1 index point from 2021 to 2022. During the POI the Applicant's selling price increased by 3 index points.

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

Interested parties stated that if the contract production (Chipkins) is excluded, there is price depression in 2022 relative to the base year of 2020. However, if contract production is included, there is no price depression. The selling price of BCY (total) increased from the base year of 2020, indicating that there was no price depression.

#### **Comments by the Applicant**

The Applicant stated that the dumped BCY imported from Zimbabwe does not directly compete with Anchor Yeast in selling the subject product to Chipkins. As the BCY is supplied on contract, the Anchor Yeast selling prices to Chipkins are determined based on the terms of the agreement, with Anchor Yeast's open SACU market competitive position being influenced by the dumped BCY product from Zimbabwe.

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

*The Commission noted the comments of interested parties. However, in determining the effect on domestic price (price depression), the Commission made a final determination to take into consideration Chipkins' information.*

*Table 5.4.2 above shows that when taking Chipkins information into consideration there is no price depression as the price increased over the investigation period. The Commission noted the Applicant slightly increased its selling prices during the POI.*

#### **5.4.3 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: Price suppression**

<b>BCY Yeast (including Chipkins)</b>		<b>2020</b>	<b>2021</b>	<b>2022</b>
Ex-factory selling price	R/kg	100	104	103
Cost of production	R/kg	100	106	117
Gross Profit	R/kg	100	100	70
Gross Profit %	%	100	96	68
<b>Cost of production % selling price</b>	<b>%</b>	<b>100</b>	<b>102</b>	<b>114</b>

The figures were indexed due to confidentiality using 2020 as a base year.

The table 5.4.3 above indicates that for BCY, year-on-year cost to price ratio increased,, which additionally was substantial over the POI.

The Applicant stated that increasing price suppression trends exist for the subject product that indicates that the cost of production increased at a quicker rate than what Anchor Yeast can increase its selling price, resulting in Anchor Yeast experiencing declining profit margins. The Applicant further stated that the continuation and increase in price suppression trends for the POI are indicative of the fact that material injury is being suffered by Anchor Yeast, based on pricing, as a result of the dumped imports from Zimbabwe.

**Comments by interested parties.**

The analysis of the Applicant's price suppression and the effects of contract production, including or excluding Chipkins, revealed that the gross profit margin was lower if contract production was included. The Applicant's contention that downward pricing pressure from Zimbabwean imports accounts for the price suppression it allegedly experienced has no basis. Any suppression of the selling prices alleged by the Applicant has been caused by factors other than Zimbabwean imports.

**Comments by the Applicant**

The Applicant stated that it was indicated in the Application that in 2020 SACU BCY open market selling price was already at a suppressed level, which was as a result of the dumping of the subject product from Zimbabwe that had already commenced in 2019.

**Commission's consideration**

*In determining the effect on domestic price (price suppression), the Commission made a preliminary determination to take into consideration Chipkins' information. The gross profit percent which included Chipkins' information and the cost of production as a percentage of selling prices shows that there is price suppression. The Commission noted the impact of the dumped products on the Applicant's inability to increase selling prices in line with the increase in costs.*

**Comments by interested parties to the preliminary report.**

The Applicant could raise its prices in the SACU market by at least 40% and still sell the like product at a lower price than Aries does. If the Applicant had done so, there would have been no price suppression. The fact that the Applicant did not raise its prices to this extent despite facing no price pressure from imports clearly shows that the price suppression is caused by factors other than the imports of the subject product from Zimbabwe.

**Response by the Applicant**

The Applicant stated that it was indicated in the Application that in 2020 SACU BCY open market selling price was already at a suppressed level, which was as a result of the dumping of the subject product from Zimbabwe that had already commenced in 2019. Anchor Yeast reiterates that the Chipkins information must not be taken into consideration to assess the price effect on domestic price (price suppression). Through the process of including the Chipkins price information in the calculations, it does not present a true reflection of the extent of the price suppression effect of the dumped imports, by playing down the true price suppression impact of the Zimbabwe BCY product on Anchor Yeast.

**Commission's consideration**

*The interested parties 2022 calculation for price suppression still reveal that there is price suppression as gross profit as a percentage of the cost of production is 20.57 percent and 79.43 percent of the cost of production as a percentage of selling price.*

## 5.5 CONSEQUENT IMPACT OF THE DUMPED IMPORTS ON THE INDUSTRY

### 5.5.1 Actual and potential decline in sales volumes

The following table shows the SACU sales volume of the subject product for the period of investigation:

**Table 5.5.1: Sales volumes**

(Kg)	2020	2021	2022
Sales volumes of BCY	100	94	89

The figures were indexed due to confidentiality using 2020 as a base year.

The table above indicates that the sales volume for BCY decreased by 6 index points from 2020 to 2021, and further decreased by 5 index points from 2021 to 2022 and overall decreased by 11 index points during the period of investigation.

The Applicant stated that the impact of the dumped Zimbabwean product on Anchor's BCY sales volume is clear in the declining sales volume over the POI. The Applicant stated that the decreasing SACU sales volume trend over the POI, caused Anchor Yeast to suffer material injury, as it was unable to retain or gain market share against the dumped imports from Zimbabwe.

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

Interested parties pointed out that the sales information submitted by the Applicant includes Chipkins' sales information and shows a decline in sales volume. They stated that when Chipkins' sales are excluded, the decline in sales volume over the same period is less. This again demonstrates the expedient nature of the Applicant's decision on whether to include Chipkins information.

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

*The Commission made a preliminary determination that the investigation is for BCY including BCY sales to Chipkins. Interested parties in some instances indicate that Chipkins' information should not be excluded, however when it comes to sales volumes their analysis is based on these sales being excluded.*

## 5.5.2 Profit

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

**Table 5.5.2: Gross and Net Profit**

	2020	2021	2022
Total Gross Profit (R)	100	93	62
Total Net Profit (R)	100	88	35

The figures were indexed due to confidentiality using 2020 as a base year.

The table above indicates that the Applicant's gross profit margin for BCY decreased by 7 index points from 2020 to 2021 and further decreased by 31 index points from 2021 to 2022. The net profit margin decreased by 12 index points from 2020 to 2021 and further decreased by 53 index points from 2021 to 2022. The table above shows that both the gross profit and the net profit decreased by 38 index points and 65 index points respectively over the POI.

The Applicant stated that the net and gross profit for BCY deteriorated year-on-year and that the impact of the dumped subject product on the profit of Anchor Yeast is a clear indication that material injury is being suffered by the SACU Industry.

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

Interested parties stated that a low or declining total profit can be caused by high costs, low volumes and or low prices.

### **Comments by the Applicant**

Anchor Yeast reiterates that due to the direct competition by the dumped subject product from Zimbabwe, it was prevented from increasing its sales to customers in the open SACU BCY market and negatively impacted on its profit.

### **Commission's consideration**

*The Commission considered that based on all information provided, the reduced profits are as a result of increased low-priced imports from Zimbabwe in a shrinking SACU market.*

### 5.5.3 Output

The following table shows the Applicants total output of the subject product:

**Table 5.5.3: Output**

KG	2020	2021	2022
BCY	100	94	89

The figures were indexed due to confidentiality using 2020 as a base year.

The table above shows that the Applicant's production volumes for BCY decreased by 6 index points from 2020 to 2021, decreased further by 5 index points from 2021 to 2022 and overall decreased by 11 index points during the period of investigation.

The Applicant stated that BCY total production volumes did experience year-on-year declines. The increasing dumped imports from Zimbabwe were applying pressure on Anchor Yeast, which led to a reduction in sales volume during the POI. The Applicant further stated that these sales volume reductions led to a forced reduction in Anchor Yeast' production, to prevent inventory increases beyond manageable levels and prevent losses, as the fresh active yeast products have a limited shelf time.

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

Interested parties stated that there is no correlation between the increase in the volume of Zimbabwean imports with the alleged changes in the Applicant's output. Interested parties further stated that the Application shows that the reduction in output attributed to Chipkins is greater than the reduction of production attributed to the Applicant's direct sales in the open SACU active yeast market. The interested parties stated that the Applicant mentioned that the imports from Zimbabwe do not compete with the Applicant's sales to Chipkins.

#### **Comments by the Applicant**

Anchor Yeast submits that as result of BCY sales being lost to the dumped subject product from Zimbabwe, therefore it had to reduce production to prevent loss and increase inventory beyond manageable levels, which resulted in a reduction in capacity utilisation.

**Commission’s consideration**

The Commission considered that the high import volumes of the subject product that Lesaffre exports into the SACU market are also contributing to the decline in output. The Commission noted that the overall production volume declined irrespective of whether the production is for the open market or contract market.

**5.5.4 Market share**

The following table gives a breakdown of market share for the subject products based on sales and import volumes:

**Table 5.5.4: Market share**

<b>Kg</b>	<b>2020</b>	<b>%</b>	<b>2021</b>	<b>%</b>	<b>2022</b>	<b>%</b>
BCY Total	100	100	94	97	89	95
Dumped imports	43 200	100	355 500	856	635 250	1 562
<b>Total SACU Market</b>	<b>100</b>	<b>100</b>	<b>96</b>	<b>100</b>	<b>94</b>	<b>100</b>

The figures were indexed due to confidentiality using 2020 as a base year.

\*\*Source: SARS

The table above shows that the Applicant’s market share for BCY decreased by 6 index points from 2020 to 2021, decreased by 5 index points from 2021 to 2022 and overall decreased by 11 index points during the period of investigation.

The Applicant stated that the total SACU market (volume) showed a decreasing trend over the POI. The Applicant further stated that the market share of the alleged dumped imports increased, on the other hand over the POI as a result of the export volumes that increased considerably.

**Comments by interested parties.**

Interested parties stated that the Applicant admitted that the SACU active yeast market contracted over the injury investigation period “as a result of the consumer demand for BCY that declined over the investigation period”. The interested parties further stated that the alleged dumped imports market shares in all of these markets are negligible and accordingly cannot be the cause of the alleged injury suffered by the Applicant.

### **Comments by the Applicant**

The Applicant stated that the dumped subject product from Zimbabwe that is directly competing with Anchor Yeast, did result in a further market share reduction due to the sales that were lost to the Zimbabwean subject product.

### **Commission's consideration**

*The Commission noted imports from other countries. However, they were not taken into consideration when conducting market share analysis as they are regarded as non-subject product.*

*The Commission considered that the SACU market for the subject product indeed shrunk during the POI, however, the increase in Zimbabwean dumped imports is exacerbating the situation of the SACU industry.*

*The Commission made a final determination that the volume of imports from Zimbabwe are above the negligibility level as they are above 3 percent.*

### **Contraction in demand**

#### **Applicant's comment on market shrinkage or change in demand.**

The Applicant stated that the contraction of the total South African Customs Union ("SACU") Baker's Compressed Yeast ("BCY") as a form of active yeast, over the period of investigation is clear. The dumped BCY imports from the Republic of Zimbabwe, which presents 100% of the BCY imports into SACU, is the single biggest reason for the reduction of the SACU Industry's BCY sales to the SACU market. Off the cuff, the Commission's suggestion of a possible change in demand due to consumer preference having an impact of significance, is highly unlikely.

#### **Contraction in demand or changes in the patterns of consumption**

The Commission must consider whether there has been a contraction in demand or changes in the patterns of consumption. Information provided by the Applicant and presumably verified by the Commission shows that demand for the subject product decreased by more than 700 tonnes during the investigation period for injury. By contrast, imports from Zimbabwe only increased by 592 tonnes. This shows that the majority

(more than 50%) of the decrease in sales volumes of the Applicant is attributable to a decline in SACU demand. This also applies to the decline in production volumes and other volume related factors.

**Commission’s consideration**

*The Commission considered that the domestic producer’s market share declined by more than 6 percentage point while the dumped imports market share increase by 1 562% during the POI.*

*This suggests that dumped imports are replacing a portion of the SACU producer’s sales volumes and market share, while also contributing to the decline in SACU production. Furthermore, the influx of dumped imports would likely result in depressed prices as the SACU producer would be attempting to compete with dumped prices.*

**5.5.5 Productivity**

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

**Table 5.5.5: Productivity**

	2020	2021	2022
BCY Total production volumes (Kg)	100	94	89
BCY Total number of direct employees	100	98	94
<b>BCY Productivity per employee</b>	<b>100</b>	<b>95</b>	<b>94</b>

The figures were indexed due to confidentiality using 2020 as a base year.

The table above indicates that productivity per employee decreased by 5 index points from 2020 to 2021, further decreased by 1 index point from 2021 to 2022 and overall decreased by 6 index points during the period of investigation.

**Comments by the Applicant**

The Applicant stated that it is clear that the total volume produced of BCY per employee deceased. The Applicant further stated that this declining productivity is as a result of BCY total production volumes experiencing a decreasing trend for the POI. The Applicant stated that the decreasing trend indicates that the Applicant suffered material injury.

**Comments by interested parties.**

Interested parties stated that the volume of BCY imports from Zimbabwe is small in absolute terms, and its increase over the injury investigation period was much smaller than the decline in the Applicant's sales, which clearly shows that the primary cause of the decline in volumes was the decline in demand.

**Commission's consideration**

*The Commission considered that although the volume of BCY imports from Zimbabwe is considered small by interested parties, the dumped imports from Zimbabwe have contributed to the decline in demand as consumers may have switched to cheap dumped imports from Zimbabwe. The Commission further considered that the import volumes in relative terms to both the production and sales volume declined by 5 index points during the POI. Therefore, there was a correlation between the increase in import volumes from Zimbabwe and the decline in sales and production volume of the Applicant.*

**5.5.6 Return on investment.**

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

**Table 5.5.6: Return on investment.**

(R)	2020	2021	2022
Net profit (BCY)	100	88	35
Net assets (BCY)	100	59	69
Return on net assets (BCY)	100	149	51

The figures were indexed due to confidentiality using 2020 as a base year.

The table above indicates that the return on net assets increased by 49 index points from 2020 to 2021, further decreased by 98 indexed points from 2021 to 2022 and overall decreased by 49 index points during the period of investigation.

The Applicant stated that the BCY return of investment on net assets, although positive during the POI, showed a declining trend over the POI.

**Comments by interested parties.**

Interested parties stated that the Applicant acknowledges that the data presented indicates that the BCY return on investment on net assets was positive during the injury investigation period which is inconsistent with the high profit levels of the Applicant throughout the injury investigation period. Interested parties further stated that the Applicant retained its investment levels constant throughout the injury investigation period which attests to the strength of its balance sheet.

**Comments by the Applicant**

The Applicant stated that even though its return on investment was positive during the POI, it shows a declining trend as a result of the impact of the dumped product.

**Commission’s consideration**

*The Commission considered that although the Applicant posted a positive net profit and as well as ROI, it is showing a declining trend over the POI.*

**5.5.7 Utilisation of production capacity**

The following table provides the Applicant’s capacity utilisation.

**Table 5.5.7: Utilisation of production capacity**

<b>SACU Anchor Yeast</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
BCY installed capacity (kg)	100	100	100
BCY actual production (kg)	100	94	89
<b>BCY Capacity utilisation %</b>	<b>100</b>	<b>94</b>	<b>89</b>

The figures were indexed due to confidentiality using 2020 as a base year.

The table above indicates that capacity utilisation for BCY decreased by 6 index points from 2020 to 2021, and further decreased by 5 index points from 2021 to 2022 and overall decreased by 11 index points during the period of investigation.

The Applicant stated that total installed capacity for BCY remained the same throughout the POI. The Applicant further stated that the capacity utilisation for BCY did experience a year-on-year decrease for the POI.

**Comments by interested parties to the preliminary report.**

Lesaffre stated that production process starts with cream (fermentation), which is then used to produce various yeast products (Liquid Yeast, BCY, Dry Yeast). The cream stage is the limiting factor, and increasing capacity would require significant capital expenditure. Currently, their installed capacity is insufficient to meet both domestic Zimbabwean demand and increased exports to SACU and other SADC countries.

**Applicant’s response**

There is no assurance or any undertaking from Lesaffre, that it will not replace its current dumped fresh yeast exports to SACU in BCY form, to fresh liquid or cream yeast in future, should anti-dumping duty only be imposed on fresh yeast in BCY form. It is not impossible to merely decant the fresh liquid or cream yeast into refrigerated tankers, from the production process that would eventually produce the BCY, and then export it to SACU in order to circumvent the payment of any definitive anti-dumping duty that might be imposed on BCY only.

**Commission’s consideration**

*Lesaffre increased its fermentation capacity substantially which is dedicated to cream production. This indicates a sufficient expansion to accommodate both domestic and export market demands, thereby demonstrating the capability to supply both markets simultaneously. Although the investigation is on BCY, the Commission determined that final duties be imposed on all active yeasts under tariff sub-heading 2102.10, to eliminate possibilities of future circumvention as anticipated by the Applicant, while also noting that Lesaffre only exports BCY to the SACU market.*

**5.5.8 The magnitude of the margin of dumping**

The following margin of dumping was calculated:

**Table 5.5.8: Margin of dumping**

Country of origin	Dumping margin as a % of ex-factory export price
Zimbabwe	113.14%

**5.5.9 Actual and potential negative effects on cash flow**

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

**Table 5.5.9: Cash flow situation**

BCY	2020	2021	2022
Cash flow: incoming	100	99	95
Cash flow: outgoing	100	102	107
Net cash flow	100	88	45

The figures were indexed due to confidentiality using 2020 as a base year.

The table above indicates that the Applicant's net cash flow for BCY decreased by 12 index points from 2020 to 2021, and further decreased by 43 index points from 2021 to 2022 and overall decreased by 55 index points during the period of investigation.

The Applicant stated that the subject product experienced decreasing net cash flow values for the POI. The Applicant stated that the dumped imports prevented it from increasing its selling prices to recover increasing costs, as any price increase would have resulted in further SACU sales volume losses, which would negatively impact on Anchor Yeast's market share.

The Applicant further stated that, should the current situation deteriorate even further, the sustainability of Anchor Yeast's operations will be under threat. Current market conditions that are caused by the dumped imports are impairing the required increase in sales and production volumes that Anchor Yeast requires to ensure a stable operational and employment environment.

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

Interested parties stated that the alleged downward trend in cash flow over the injury investigation period belies the fact that the applicant was profitable throughout the injury investigation period. Interested parties further stated that the data presented by the Applicant at company level shows that it continues to perform well. Interested parties stated that the volume of imports from Zimbabwe is too small to have had any impact on the Applicant.

#### **Comments by the Applicant**

Anchor Yeast affirms that as a result of the dumping of the subject product from Zimbabwe into the SACU market, Anchor Yeast was not able to increase its selling

prices to recover increasing costs and this impacted negatively on Anchor Yeast’s cash flow, while its profits, declined, causing Anchor Yeast to suffer material injury.

**Commission’s consideration**

*The Commission considered that the Applicant’s profitability and the net cash flow shows a declining trend during the POI, and that confirms the fact that the Applicant is suffering material injury as a result of dumped imports from Zimbabwe, notwithstanding the fact that interested parties deem this a small impact.*

**5.5.10 Inventories**

The following table provides the SACU industry’s inventory volumes for the subject product:

**Table 5.5.10: Inventories**

<b>Anchor Yeast</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
Volume (kg)	100	102	133
Value (R)	100	102	147
Value per kg (R/Kg)	100	100	111

The figures were indexed due to confidentiality using 2020 as a base year.

The table indicates that the inventory volumes for BCY increased by 2 index points from 2020 to 2021, then increased by 31 index points from 2021 to 2022 and overall increased by 33 index points during the period of investigation.

The Applicant stated that keeping inventory levels stable, is a priority goal of Anchor Yeast, especially in the case of fresh active yeast, which has limited sell-by date of 30-days from date of production. Accordingly, dumped imports have a major destabilising effect on the SACU market demand, resulting in the Anchor Yeast sales and production volumes being negatively affected.

The Applicant stated that the BCY product experienced an increasing inventory trend for the POI. The Applicant further stated that for the recent 12-month period, an increasing inventory volume trend is reflected for BCY, with a noticeable trend period existing in 2022, causing Anchor Yeast to suffer material injury.

**Comments by interested parties.**

Interested parties stated that dry yeast and liquid yeast are substitutable products for BCY and would affect the Applicant's inventory levels. The interested parties further stated that the Applicant's failure to take account of imports of dry yeast from third countries is a material flaw in its application.

**Comments by the Applicant**

The Applicant stated that fresh yeast is the raw material of choice for large commercial bakeries, and they will not substitute BCY with dry active yeast products. The Applicant further stated that the dumped subject product from Zimbabwe had an impact on Anchor Yeast’s sales reduction, which lead to inventory increases.

**Commission’s consideration**

*The Commission considered that the investigation is for the BCY, the only product manufactured in Zimbabwe and exported to SACU. The Commission also considered that during verification the exporter also indicated that they will not be able to export to SACU the only other product which they manufacture “liquid yeast”. Furthermore, the issue of dry yeast has been addressed on various sections of this report.*

**5.5.11 Employment**

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

**Table 5.5.11: Employment**

<b>SACU Anchor Yeast</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
Direct labour production	10	98	94
Indirect labour production	100	97	90
<b>Total production labour</b>	<b>100</b>	<b>98</b>	<b>92</b>

The figures were indexed due to confidentiality using 2020 as a base year.

The table above indicates that the total number of production employees for BCY decreased by 2 index points from 2020 to 2021, and further decreased by 6 index points percent from 2021 to 2022, and overall decreased by 8 index points during the period of investigation.

The Applicant stated that all these workers are utilised in the production of all substances and no worker is dedicated to produce a specific substance. The indicated direct labour units relate to the personnel component assigned to the actual manufacturing for all subject product, the allocation of which is done in accordance with a shift roster system. The indirect labour units relate to the personnel component allocated in support of and complimentary to the manufacturing process such as quality assurance, process technologist, and industrial engineering support and so forth.

The Applicant further stated that it has invested in the development and training of its work force and having to retrench production workers as result of the impact of the dumping on its operations, would be an option that Anchor Yeast would prefer to avoid. Average employment was calculated based on the number of labourers that were employed during the specific periods. The Applicant stated that it is participating in the Youth Employment Initiative of the government. However, if the dumping is not properly addressed, Anchor Yeast would have to look at the viability of further participating in this initiative and employee numbers would have to be reduced.

**Comments by interested parties.**

Interested parties argue that the impact of BCY imports on the Applicant's employment should be assessed relative to the total output. It is believed that the volume of BCY relative to the Applicant's total output and on BCY and dry yeast is negligible and would not have affected the Applicant's employee complement. The Applicant is threatening to withdraw from the Youth Employment service due to imports from Zimbabwe, which are irrelevant to the investigation. The Applicant's claim of an alarming rate of imports from Zimbabwe is not justified, as the growth of Zimbabwean imports is off a small base. The volume of imports from Zimbabwe during the injury investigation period was immaterial.

**Comments by the Applicant**

The Applicant stated that the likelihood of Anchor Yeast's no longer continuing to participate in the youth employment initiative is no idle threat as alleged by the parties. The Applicant further stated that should the dumping of BCY from Zimbabwe not be properly addressed, the viability of Anchor Yeast having to reduce employment numbers on a much larger scale will become a reality.

**Commission’s consideration**

*The Commission considered that irrespective of the Applicant’s threat to withdraw from youth employment initiative, the Applicant’s employment and production shows a decline trend over the POI, this will be worsened should duties not be imposed and the applicant further losses market share.*

**5.5.12 Wages and Salaries**

The following table provides the SACU industry’s total annual wages:

**Table 5.5.12: Wages and Salaries**

<b>Wages and salaries (R)</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
Total wages: Production of BCY	100	99	105
Wages per employee Production of BCY	100	101	115

The figures were indexed due to confidentiality using 2020 as a base year.

The table above indicates that total wages decreased by 1 index point from 2020 to 2021, increased by 6 index points percent from 2021 to 2022, and overall increased by 5 index points during the period of investigation.

The total wages per employee increased by 1 index point from 2020 to 2021, increased by 14 index points percent from 2021 to 2022, and overall increased by 15 index points during the period of investigation.

The Applicant stated that the wages show year-on-year increases and thus increasing trends for direct, indirect, and total production wages for the POI, which to some extent must be absorbed by Anchor Yeast, as it has to suppress its selling prices to compete with the dumped product in the SACU market.

**Comments by interested parties.**

Interested parties stated that the Applicant's wages per employee involved in the production of BCY increased over the injury investigation period and that despite such increase, the Applicant was profitable.

**Comments by the Applicant**

The Applicant stated that there is factual evidence of considerable threat of increasing BCY import volumes from Zimbabwe and also the importation of liquid yeast, if the

dumping duty is imposed on BCY and not fresh active yeast, which will apply pressure on Anchor Yeast’s employment and also wages and salaries.

**Commission’s consideration**

*The Commission considered that in most instances in South Africa, salaries are increased in line with inflation and are also negotiated by union/s representing employees. This profitability assisted the Applicant in increasing wages of employees, but the profits are declining, and should the Applicant be in a loss-making situation, they will not be able to increase wages, thus will be forced to further reduce employees instead.*

**Growth**

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

**Table 5.5.13: Growth**

kg	2020	Growth (%)	2021	% Growth	2022	% Growth
BCY (SACU)	100		94	(100)	89	(72)
Dumped imports**	43 200		355 500	723	635 250	79
Total SACU Market	100		96	(100)	94	(55)

The figures were indexed due to confidentiality using 2020 as a base year.

\*\*source: SARS

The table above indicates that the size of the SACU market growth for BCY decreased by 4 index points from 2020 to 2021 and decreased by 2 index points from 2021 to 2022, and overall increased by 6 index points during the period of investigation.

The Applicant stated that the total SACU market experienced a negative growth for the POI, whilst the dumped imports experienced a substantial positive growth margin. The Applicant further stated that the alleged dumped imports sales market share in the SACU market is growing rapidly and stands to achieve an even higher significant portion, due to the import prices being well below the other countries’ import prices and the SACU industry’s selling prices in the SACU market.

**Commission’s consideration**

*The Commission noted imports from other countries are mainly for dry yeast, since the tariff subheading is for all active yeasts, which includes dry yeast, BCY and liquid yeast. The Commission final determined that dry yeast is the only other yeast which can be*

*imported from other countries, and it is not considered a subject product, it further determined that imports from other countries are zero.*

### 5.5.13 Ability to raise capital and investments.

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

**Table 5.5.14: Ability to raise capital and investments.**

(R)	2020	2021	2022
Total capital/investment: Subject product (BCY)	100	101	101
Capital expenditure during year: Subject product (BCY)	-	100	-

The figures were indexed due to confidentiality using 2020 as a base year.

The table above indicates that capital investment for BCY increased by 1 index point from 2020 to 2021, there was no change from 2021 to 2022, and overall increased by 1 index point during the period of investigation.

The Applicant stated that total capital/investment for BCY is more indicative of a stagnant trend for the POI, with a marginal increase with no additional investment occurring in 2022 as a result of the declining return on net assets. The Applicant further stated that there is currently no need to raise additional capital for increasing capacity, as there is an underutilisation of the existing production capacity for BCY at this stage as a result of decline in production.

### 5.5.14 Summary material injury

Based on the above information, the evaluation of the injury information of the SACU industry for the period 01 January 2020 to 31 December 2022 is summarised as follows:

- Price undercutting;
- Price suppression;
- Declining sales volume;
- Decrease in market share;
- Decline in output;
- Declining productivity;
- Declining employment;
- Declining profits;

- Declining net cash flow;
- Declining return on investment
- Increase in inventory’;
- Declining utilisation of production capacity; and
- Slowdown in growth

### **Commission’s consideration**

*The Commission considered that material injury must be based on positive evidence. According to WTO jurisprudence, positive evidence refers to the quality of evidence that the authority may rely upon in making a determination. Therefore, positive evidence refers to the facts justifying and underpinning the injury determination. The evidence and facts in this instance must be affirmative, objective, verifiable and credible. These facts and evidence must be objectively examined by the investigating authority, meaning that that they must be investigated in an unbiased manner.*

*According to Article 3.1 of WTO Anti-Dumping Agreement, a determination of material injury shall be based on positive evidence and involve an objective examination of both the following factors:*

- a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products; and*
- b) the consequent impact of these imports on domestic producers of such products.*

*Article 3.2 of WTO Anti-Dumping Agreement further states that the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption. With regard to the effect of the dumped imports on prices, the same Article states that the investigating authorities shall consider whether there has been a significant price undercutting, or whether the effect of such imports is otherwise to depress prices or prevent price increases.*

*Article 3.1 and Article 3.2 mentioned above, read together with ADR13.1 and ADR13.2, mean that the examination of positive evidence should be made on both a “price effect” and a “volume effect”. It should be noted that only “consideration” of both effects is mandatory, and not necessarily a positive finding of an effect on both volume and prices,*

*meaning that a positive finding on either (or both) will suffice for a positive finding on material injury.*

*The first examination of evidence before the Commission shows that in terms of a price effect the SACU industry experienced price undercutting and price suppression. The Commission noted that according to Article 3.2 referenced above, the price effects can be either on price undercutting or price depression/suppression. In this case, the effect is on price undercutting and price suppression.*

*The Commission also considered that price undercutting found for the final year of the POI was 22 index points. The significance of these numbers is also supported by consideration of the conditions of competition in the domestic BCY market, where sellers compete almost exclusively on price as there is little or no product differentiation in terms of quality or other criteria.*

*In arriving at the conclusion that subject imports can be linked to the observed significant increase in price suppression of 14 index points, the increasingly lower subject import prices were considered together with the circumstance that the subject imports alone were competing in the BCY marketplace with the applicant's BCY. This situation also needs to be seen in the context of the rapidly increasing level of subject imports throughout the POI, but particularly from 2021 to 2022 when subject imports nearly doubled, which was the same period that almost the entirety of the price suppression occurred.*

*The second examination of evidence the Commission considered shows that, in absolute terms, dumped imports increased by 722.92% from 2020 to 2021 and further increased by 78.69% from 2021 to 2022. During the POI, the dumped imports increased by 1 370.49%, and in relative terms (as percentage of domestic consumption) dumped imports increased by 856 index points from 2020 to 2021, further increased by 183 index points from 2021 to 2022 and increased by 1 652 index points between 2020 and 2022. The Commission considered the dumped imports increased significantly throughout the POI in absolute terms.*

*The third examination of evidence the Commission considered, namely the impact of the dumped imports, shows that the Applicant's sales volume declined by 11 index points over the POI, market share declined by 11 index points over the POI, negative growth of 6 index points over the POI, number of employees declined by 8 index points over the POI, inventory levels increased by almost 33 index points over the POI, capacity utilisation declined by 11 index points, output declined by 11 index points, net cash flow declined by 55 index points, net profit declined by 65 index points, and gross profit declined by 38 index points, return on investment declined by 49 index points, and productivity declined by 6 index points.*

*The Commission also considered that there is no threshold in terms of the minimum and/or maximum number of injury impact factors that should be negative/positive to make a finding of material injury.*

**Comments by interested parties to the essential facts.**

- a) Interested parties argue that Lesaffre's product sold by Aries is sold at a higher price than the Applicant's product in the open market, making it unlikely to cause material injury. The preliminary report failed to consider the price issue in the end-user market, which is the most relevant market for assessing price effects. The end-user market is crucial as it determines sales volumes and pricing for both parties. The Commission should have considered the price effects in the end-user market, where Lesaffre's product was sold at a significantly higher price than the Applicant's product by Aries. In essence, the interested parties contend that the investigation's focus on the import price understates the true competitive dynamics in the market, and that the end-user market price is a more appropriate benchmark to assess the competitive impact of Lesaffre's product on the Applicant.
- b) Interested parties stated that the Commission's preliminary determination of injury was not based on an objective examination of the impact of imports on domestic prices. Instead, the Commission relied on the "landed cost" of Lesaffre's product, which is an incorrect methodology. Using the "landed cost" approach, the Commission only found price undercutting in one year (2022) out of the three-year investigation period.
- c) The interested parties argue that the BCY market faced significant challenges due to Covid-19, hyperinflation, and load shedding in South Africa, leading to

small/medium-sized bakeries shutting down and industrial bakeries gaining market share. As industrial bakeries primarily use liquid yeast, this shift resulted in decreased BCY consumption and reduced sales for the Applicant. The Commission failed to consider these relevant factors in its analysis of causation, violating Anti-Dumping Regulations (Regulation 16) and WTO provisions (Section 3.5). In essence, they claim that the Commission's investigation was flawed by not accounting for the significant market changes and external factors that affected the BCY market, and therefore, the alleged dumping of Lesaffre's product is not the primary cause of the Applicant's decline.

### **Applicant's response to the preliminary comments by the interested parties**

- a) The Applicant reiterates that the Aries selling price in SACU to independent buyers is allegedly between 40 and 60 percent higher than the price paid to Anchor Yeast, which cannot be an accurate presentation of the actual nature of the trade between Aries and such buyers.

According to Van Bael & Bellis<sup>5</sup> the Belgian Competition Authority found that Algist Bruggeman NV ("AB") and its parent companies L.H.B. S.A. / N.V., Compagnie des Levures Lesaffre S.A. and Lesaffre et Compagnie S.A firstly *"[f]ixed the price that its distributors could charge for the resale of compressed fresh bakers' yeast to artisanal and semi-artisanal bakeries. Distributors could not deviate from AB's prices and had to ask for AB's prior approval if they wished to grant their customers a discount in individual cases. AB, in turn, only consented to a discount if the customers at issue considered switching to competing products. In addition, AB defined itself the level of such a discount. AB also engaged in customer allocation and concluded long-term purchasing agreements with bakeries: AB linked the sale of stabilised liquid bakers' yeast to the acquisition of a yeast dosing installation whose depreciation was included in the purchase price of the yeast for an abnormally long period. This was associated with non-compete clauses applicable to all kinds of yeasts (and thus not limited to stabilised liquid yeast)"*.

Secondly, it was found *"[t]hat AB had abused the dominant position which it holds on to the market for the supply of fresh bakers' yeast by offering individualised exclusivity and loyalty- inducing retroactive discounts to its artisanal and its semi-*

*artisanal customers aimed at foreclosing its competitors. AB notably offered rebates to its customers on the condition that they would not include the yeast of AB's competitors in their product range".*

**Commission's consideration**

- a) *The Commission's considered the price at which the product enters the market is the causing of the injurious dumping, and therefore the focus of this investigation.*

*The price difference between the Applicant's product and Lesaffre's product in the end-user market does not necessarily negate the possibility of material injury. The Commission's final findings indicate that Lesaffre's imports have had a significant impact on the market.*

- b) *The initial landed cost is correctly calculated based on an actual ex-factory export price.*
- c) *The Commission considered that while Covid-19, load shedding, and the July 2021 riots affected the SACU industry, they alone cannot explain the significant decline in the industry's performance. The analysis shows that the dumped imports from Lesaffre had a disproportionate impact on the industry, leading to significant losses in market share, sales, and revenue. The dumped imports had a sustained and devastating impact on the industry, even after the other factors had subsided. The findings are consistent with WTO guidance on causation, which considers all relevant factors but recognizes that other factors may not diminish the injury caused by dumped imports. In essence, the investigators believe that while external factors had some impact, the dumped imports from Lesaffre were the primary cause of the significant decline in the industry's performance, and the evidence supports this conclusion.*

*The Commission considered that the injury indicators listed above, and all material injury information is sufficient to make a final determination that the Applicant is experiencing material injury.*

Based on this information, the Commission made a final determination that the SACU industry is experiencing material injury.

## **6 THREAT OF MATERIAL INJURY**

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The Applicant provided the following information in its substantiation of the threat of material injury:

### **6.1 Freely Disposable Capacity**

The Applicant provided the following information regarding freely disposable capacity:

The Applicant stated that in 2015, Société Industrielle Lesaffre acquired a 60% stake in Zimbabwe's sole yeast manufacturing facility. Lesaffre invested USD3 million in the Zimbabwe facility, raising the production output of yeast per annum by a third and targeting to export 30% of its total production. Lesaffre also plans to inject USD1 million in additional capital and new equipment to increase production at its Gweru plant by 50%.

The Applicant further stated in 2019, Lesaffre announced plans to expand its operations into the regional market, following a USD10 million plant upgrade, which increased its production capacity. It was stated the company is pursuing expansion into South Africa and Mozambique, among other Southern African Development Community countries. The Applicant stated that it was announced that the company was operating at 80 percent of its production capacity of about 10 000 tons per annum, double the country's domestic annual yeast demand of 5,400 tons.

The Applicant stated that the export contribution of Lesaffre's production is estimated to be 2,600 tons, with a remaining free capacity of 2,000 tons per annum. The Applicant further stated that Lesaffre has channelled USD 13 million towards upgrading its plant and equipment, increasing its production capacity by 75 percent. The company has excess capacity for expansion and export, with weekly deliveries to Zambia and South Africa.

**Comments by interested parties.**

Interested parties stated that Lesaffre investment in Capex in the plant since 2015 is less than USD 13 million as alleged by the Applicant. It was further stated that the investment was in respect of extending capacity, namely fermenters, pipping, boilers and cooling towers. The interested parties stated that Capex was invested to upgrade the quality of the product, improve the process, reduce ratio consumption of raw materials and implement better packing. Interested parties further stated that installed capacity is less than 10,000 tons per annum as alleged by the Applicant. The installed capacity was increased by less than 20% over the period since the acquisition of the factory as result of the above and efficiencies brought to bear by Lesaffre's expertise and investment in technology and upgrades.

Interested parties stated that Lesaffre's capacity for BCY in 2022 is 112 index point and the BCY annual plant capacity utilisation is more than 75% as alleged by the Applicant. Interested parties further stated that Lesaffre estimates the Zimbabwean domestic market for BCY at less than 5,400 tons as alleged by the Applicant. Interested parties stated they it estimates that the Zimbabwean domestic market will increase, and its available capacity will be prioritized for the Zimbabwean domestic market.

**Comments by the Applicant**

The Applicant stated that is not privy to the confidential financial information of Lesaffre hence it relied on open-source information and articles published in the media. The Applicant further stated that Lesaffre should have rebuked the statement of its USD 13 million towards upgrading its plant and equipment made by the General manager from the onset. The Applicant stated that no effort was made by Lesaffre or the Lesaffre Group in 2022 to correct these alleged incorrect publications at the time, although it had ample opportunity to do so.

The Applicant stated that Lesaffre acknowledged that it expanded its capacity to above 10 000 tons, which is substantial, more than double the size of the Zimbabwean market, therefore there is ample capacity to produce and export to SACU. The Applicant stated that although Lesaffre estimates that the Zimbabwean domestic market will increase and its available capacity will be prioritized for the Zimbabwean domestic market, the

market will not double overnight and thus Lesaffre will be sitting with at least 5 000 tons that they will be dumping in SACU.

### **Commission's consideration**

*The Commission considered the capex investment which led to capacity increases of the exporter as a threat of material injury to the SACU industry.*

### **Comments by interested parties to the essential facts.**

Interested parties reiterates that the Commission failed to consider factors prescribed by Regulation 14.2(b), which only allows consideration of the exporter's freely available capacity or imminent substantial increase in capacity. Lesaffre stated that no capacity increase occurred, as the increase in 2021 was followed by a slight decrease in 2022. The capital expenditure (Capex) was not used to increase production capacity but rather for upgrades in various areas, aiming to improve product quality, processes, and efficiency. However, Lesaffre's 2022 fermentation capacity measurements show an 18% increase in production capacity.

Lesaffre does not have sufficiently freely available capacity and there is not going to be an imminent substantial increase in capacity so as to pose a threat of material injury as i) Lesaffre has no significant excess capacity that would allow it to significantly increase its market share in SACU; and ii) the purpose of the capital investment made by Lesaffre was not to increase its production capacity but to upgrade the quality of the products to meet Lesaffre standards.

### **Applicant response to the preliminary comments by the interested parties**

The Applicant reiterates its statement which was provided in the application regarding capacity investment. The Applicant stated that it wishes to advise the Commission that by making the referred capital investments, it will lead to an increase in production capacity and also productivity, even it applies to the improvements of existing underutilised capacity.

Anchor Yeast submits that the Zimbabwe BCY market is too small to accommodate a satisfactory increase in sales for investment that was made.

Hence, Lesaffre needs to rely on exports for the required sales increase. It thereof should come as no surprise or coincidence that following the capital investment that was made, which was allegedly not done to production capacity, the dumped BCY exports from Zimbabwe into SACU experienced significant growth.

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

*The Commission considered that Lesaffre's comments in the preliminary report are inconsistent with their initial submission. The initial submission stated that the installed fermentation capacity for 2022, representing a substantial increase from previous years and this increase was due to Lesaffre's expertise, technology investments, and upgrades in capacity. The Commission noted that capacity utilisation is increasing year on year. Production volume and that capacity utilization also increased substantially over the period of investigation (POI).*

*The Commission considered that there is still potential for further increase in production capacity, considering the substantial increase in 2022. Therefore, the Commission relied on Lesaffre's initial submission and disregard their contradictory comments to the preliminary report.*

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

The Applicant provided the following information regarding significant increase of alleged dumped imports:

The Applicant stated that there was a remarkable increase in the volume of the dumped imports from Zimbabwe over the POI, with the prices of the dumped imports into SACU from Zimbabwe were still well below the "Other Countries" prices and Anchor Yeast unsuppressed selling price. Such low prices create an opportunity for SACU importers to increase its volume uptake of the Zimbabwe product. Should Anchor Yeast increase its selling prices to be more commercially viable, it would most definitely lead to further sales volume losses and a further increase in the Zimbabwe subject product import volumes, as the low prices would be lucrative option for importers to capitalise on.

**Comments by interested parties.**

Interested parties stated that on the Applicant's version, the Zimbabwe subject product import volume increased over the injury investigation period from 43 200kg in 2020, to 355 500kg in 2021 and in 2022 to 635 250kg. In 2022, the Zimbabwe subject product import volume market share constituted 5.47% of the Total SACU BCY market and 1.4% of the total SACU active yeast market and slightly more than 1.4% of the SACU yeast market for baking. This negligible percentage can in no way be considered as meaningful.

Interested parties stated that there is no "likelihood of substantially increased importation" into South Africa as it has a limited "infrastructure" (i.e., distribution network). It stated that they (Lesaffre and Aries) only service a very small percentage of the SACU BCY market. An increase in infrastructure will require a considerable outlay in terms of sales team, technical team, cold storage, cold distribution, additional buildings. It further stated that Aries operates only in 4 provinces (Gauteng, Mpumalanga, part of Northwest, part of Limpopo). Interested parties further stated that Lesaffre is also planning to export, which would limit the volumes available to substantially increase imports to SACU.

**Comments by the Applicant**

The Applicant stated that it obtained SARS data for HS 2102.10 (active yeasts) for the period January to October 2023 and compared it to the SARS data for the period January to October 2022. The data reveal that at the end of October 2023 imports from Zimbabwe for active yeast were already at 688 840kg as compared to 499 050kg in 2022 which is an increase of 189 790kg.

The Applicant further stated that the alleged limited infrastructure that the parties have referred to is still sufficient to allow for a 38.03 percent volume increase for the period January to October 2023, compared to the same 2022-period. The Applicant submits that this increase is substantial and is already higher than the full 12-month period of 2022. It is expected that 2023 full period will also be substantially higher than in 2022.

**Commission's consideration**

*The imports volume from Zimbabwe shows a significant increase of 1 370.49 percent increase over the POI. Currently, between 2022 and 2023, imports volumes from Zimbabwe showed an increase of 38%, which is a significant growth of imports of the subject product from Zimbabwe with the potential of displacing the Applicant in the future. It is noted that these increases in import volumes are from a low base, however they are significant considering the declining SACU market.*

**Comments by interested parties to the essential facts.**

Interested parties reiterates their comments submitted in October 2023. They stated that Lesaffre import volume are negligible. Lesaffre and Aries have limited exports into SACU due to limited infrastructure and distribution network. They only serve a small percentage of the SACU BCY market, and an increase in infrastructure would require significant investments and that Aries operates in four provinces and lacks national coverage. Interested parties further stated that the 38 percent volume increase for the period January to October 2023, compared to the same 2022-period is insignificant.

There has not been a significant rate of increase of dumped imports into the domestic market of the SACU and Lesaffre's exports to SACU do not pose a threat of material injury as (i) the increase in imports from Zimbabwe is not significant in absolute terms or relative to SACU production or consumption; (ii) Lesaffre's exports into SACU are by their very nature constrained as Aries has limited "infrastructure" (i.e., distribution network) and Lesaffre and Aries only service a very small percentage of the SACU bakers compressed yeast market; and (iii) Lesaffre is also increasing its exports into the rest of the SADC region, which would limit the volumes available to substantially increase imports to SACU.

**Commission's consideration**

*The Commission's investigation found that Lesaffre's export volumes to SACU increased significantly over the injury investigation period, indicating a growing presence in the SACU market. Lesaffre's market share in 2022 was 1 562%, which is a significant increase from 2020 and 2021, showing a trend of expansion. Lesaffre's plans*

*to export to other SADC countries do not rule out increased imports to SACU. Aries' limited infrastructure and distribution network do not necessarily constrain Lesaffre's ability to expand its exports to SACU. The more than 30% import volume increase from January to October 2023 indicates a substantial expansion of Lesaffre's presence in the SACU market.*

*Therefore, the Commission established that Lesaffre's export volumes to SACU are not insignificant, and there is a likelihood of substantially increased exportation into South Africa. This suggests that Lesaffre's presence in the SACU market is growing, and the Commission considers this as a factor in its determination.*

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

The Applicant provided that price suppression and price depression for the subject product exists for the POI. Due to the increasing dumped imports from Zimbabwe, Anchor Yeast is unable to increase its subject product selling prices, in order to recover costs increases. Having the ability to further increase its production and export volume, Zimbabwe poses a further threat to Anchor Yeast in the SACU market adding further material injury, should there not be relief granted by addressing the dumped imports from Zimbabwe with the imposition of dumping duties the threat exist that the SACU industry will suffer additional material injury.

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

Interested parties stated that if the Applicant is suffering any material injury as a result of low profits, this is due to its choice to sell significant volumes (40.23% of its sales volume to Chipkins at low prices and other factors that are preventing price increases. Interested parties further stated that the Applicant's numbers reflect that there is only price depression (relative to the base year) because the Applicant has elected to exclude sales to Chipkins, which increased over the period.

**Commission's consideration**

*The Commission considered the price effect analysis including Chipkins information which shows that the Applicant is experiencing price undercutting and price suppression.*

**Comments by interested parties to the essential facts.**

Interested parties reiterate their comments to the preliminary report that the Applicant is dominant and a price setter in the SACU market and the subject product was sold at a higher price in the SACU market by Aries than it was sold by the Applicant. The price of imports will not therefore have any significant depressing or suppressing effect on domestic prices.

Exports from Lesaffre are not entering or and will not be entering the SACU market at prices that will have a significant depressing or suppressing effect on SACU prices as (i) the Applicant is dominant and a price setter in the SACU market; (ii) the volume of imports from Zimbabwe is insignificant and (iii) the Subject Product was sold at a higher price in the SACU market by Arie than it was sold by the Applicant.

**Commission's consideration**

*The assertion that the Applicant is a dominant price setter in the SACU market does not necessarily mean that imports from Lesaffre will not have an impact on local prices. Secondly, the volume of imports may be deemed insignificant now, but this could change over time. The cumulative effect of imports should also be considered. Thirdly, the fact that Aries sold the Subject Product at a higher price than the Applicant does not guarantee that Lesaffre's exports will not undercut, depress and suppress SACU prices. Prices can fluctuate, and new entrants can disrupt market dynamics.*

**6.4 Export inventories**

The Applicant stated that it is of the view that there exists sufficient inventory in Zimbabwe to service new export or domestic orders but is not aware of what the actual inventory volume is.

**Comments by interested parties.**

Interested parties stated that as the product has a limited shelf life and therefore any existing inventories do not pose any threat of injury.

***Commission's consideration***

*The Commission considered that given the six week's shelf lifespan of the subject product, inventory may pose a serious threat to the SACU industry. The exporter may sell their remaining stock to the SACU market at dumped prices in order to ensure that the stock does not stay beyond its shelf life.*

**Comments by interested parties to the preliminary report.**

Interested parties reiterates their statement that as the product has a limited shelf life of 28 days from date of production Lesaffre's normal inventories levels are kept at low levels in order to supply local demand in Zimbabwe, with a safety margin of less than a week of consumption. BCY produced for export, whether destined for SACU or other SADC states, is made to order and no inventories are kept for export markets. Accordingly, Lesaffre also does not hold any inventory of BCY for export.

Lesaffre's inventories of the product under investigation do not pose a threat of material injury to the Applicant as (i) both the Applicant and other interested parties have explained that the Subject Product has a limited shelf life; and (ii) bakers compressed yeast produced for export, whether destined for SACU or other SADC states, is made to order and no inventories are kept for export markets.

The interested parties stated that the Applicant's terms and conditions of sale provides that no claim may be made 14 days after production date. This confirms how delicate the product is and that no inventory can be kept past this period.

**Commission's consideration**

*The Panel in the Dominican Republic - AD on Steel Bars (Costa Rica) case emphasized the importance of considering all the factors listed in Article 3.7 of the Anti-Dumping Agreement in their totality, rather than in isolation. The Panel noted that while a single factor, such as inventory levels, may not necessarily indicate a threat of injury, it can still contribute to a finding of threat of injury when combined with other factors.*

*The investigating authority had found that "the exporting company did not, in fact, keep a large inventory owing to the nature of its production (in other words, 'ArcelorMittal manufacture[d] after price negotiations and the receipt of purchase orders'), but that this did not preclude reaching the conclusion that, on the basis of the company's freely disposable capacity, it could increase its production, and consequently its exports, within a short period of time." The Panel saw no error in this finding. According to the Panel, "the mere fact that the exporting company's inventory level was not, in itself, an indicator of a threat of injury does not, in our view, mean that, in combination with other factors, it could not serve as a basis for concluding that further dumped exports were imminent."*

*The above WTO panel case has resemblance to this case on yeast, the nature of the subject product is such that it cannot be stored for long as it is a fresh product, hence the low inventory volumes. The product can also be further processed to other yeast products.*

*In conclusion, despite Lesaffre's inventory kept at low level, import statistics reveal that the exporter has the capacity to ship smaller containers, indicating that their current inventory is sufficient to be redirected to the SACU market if the domestic market fails to absorb it.*

## **6.5 State of the economy of the country of origin/export and its influence on the operations of the producers/exporters**

The Applicant stated that Zimbabwe's economy is primarily based on the tertiary industry and has experienced an average growth rate of 12% from 2009 to 2013, making it one of the fastest-growing economies in the world. However, Zimbabwe faced challenges in 2000 when a land redistribution act was planned to collect white-owned commercial farms and return them to the black majority, leading to severe export losses and negatively affecting market confidence. The government spends 29.7% of GDP, with state enterprises strongly subsidized, high taxes and tariffs, and costly labour market regulations. Starting or closing a business is slow and costly, and unemployment has risen to 94% by 2008. Zimbabwe's 2014 report by the Africa Progress Panel found that the country fared worst in terms of doubling per capita GDP.

The government entered a second Staff Monitored Program with the IMF in 2014 and undertook other measures to reengage with international financial institutions. However, financial observers note that Zimbabwe is unlikely to gain new financing due to the government's lack of disclosure about its plans to repay more than USD1.7 billion in arrears to the World Bank and African Development Bank. International financial institutions want Zimbabwe to implement significant fiscal and structural reforms before granting new loans.

Macroeconomic volatility, high dependence on low-productivity agriculture, lack of high-productivity jobs, and intermittent shocks like droughts and the pandemic have increased vulnerability in urban and rural areas. The Central Bank has tightened monetary policy, raised interest rates, liberalized the forex market, and issued gold coins as a store of value to manage inflation.

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

Interested parties stated that the Applicant's use of Wikipedia is not reliable. Interested parties continued and stated that poor domestic market performance could incentivize exporters to increase exports, as local demand for bread is growing. Real GDP growth is projected to recover to

3.2% in 2023 and 2024, driven by agriculture, mining, and services. Tight monetary and fiscal policy is expected to increase macroeconomic stability. Inflation is projected to ease further to 132.2% in 2023 and 36.1% in 2024, supported by economic stability and evolving global dynamics. The fiscal deficit is expected to narrow to 0.2% of GDP in 2023, and the current account is projected to show a surplus of 0.8% of GDP in 2023 and 0.5% in 2024.

***Commission's consideration***

*The Commission considered the fact that that domestic market performance could incentivize exporters to increase exports is a serious threat of material injury to a SACU industry fighting against dumping.*

**Interested parties' comments to preliminary report.**

Interested parties state that the Commission considered the fact that domestic market performance could incentivize exporters to increase exports is a serious threat of material injury to a SACU industry fighting against dumping." There is no merit to this statement.

Interested party further stated that it was explained that a key driver of BCY demand in Zimbabwe is bread consumption which in turn is driven by population growth. The Applicant's economic arguments which the Commission refers to do not materially detract from this explanation, considering that bread is a staple item in Zimbabwe.

***Commission's consideration***

*It was found that Lesaffre is exporting to SACU and other markets at a loss, while selling at a profit in the domestic market. The cost and price build-up shows that sales to SACU result in a loss of approximately R5 per unit, sales to Zambia result in a loss of more than R10 per unit, and sales in the Zimbabwean domestic market result in a profit of more than R3 per unit. This pricing strategy supports the argument of dumping or anti- competitive behaviour, rather than purely commercial considerations.*

**6.6 Any other information relevant to your allegation that the infliction of material injury is imminent.**

The Applicant stated that the investment in the Zimbabwe production plant is aimed to increase Lesaffre's export capabilities, with the domestic market demand estimated at over 50% of Lesaffre's production capacity. However, Anchor Yeast argues that due to COVID-19, the Zimbabwe domestic market would not have experienced an increase in free capacity. The increase in product exports to SACU at dumped prices supports Lesaffre's surplus stock and its pursuit of increased exports, leading to unfair trade practices.

Zimbabwe can increase its SACU sales volume market share, but if the prices of dumped Zimbabwe products remain low or are reduced further, importers are likely to increase their uptake of these products, causing Anchor Yeast serious injury. The company cannot reduce its selling prices further, leading to the closure of its production plant.

Furthermore, if dumped products continue to enter the SACU market unaddressed at dumped prices, Chipkins sales in SACU would also come under further pressure, making it difficult for Chipkins to compete with Zimbabwean imports. This would result in Anchor Yeast losing a substantial portion of its sales to Chipkins, causing additional material injury.

***Commission's consideration***

*The Commission considered the fact that the installed capacity was increased and a rapid increase of imports from the Republic of Zimbabwe by 1 370% over the investigation period, a threat of material injury exists. The Zimbabwean imports of the subject product have been increasing yearly and if left unchecked they have a potential of further reducing the SACU industry's market share significantly.*

*Currently these imports only account for a small percentage of the SACU market, but a continued increase at the current rate may soon displace the SACU industry, resulting in loss sales, output, employment and investment. The increase in investment of the exporter, together with the relationship it has with the SACU importer may result in the SACU importer taking over the SACU market through imports, to the detriment of the SACU producer.*

**Comments by interested parties to the preliminary report.**

Interested parties stated that there is accordingly no merit to the Commission's concern that imports may result in Aries "taking over the SACU market through imports to the detriment of the SACU producer".

The Commission should note that even if Lesaffre exported all its excess capacity to SACU, the Applicant would retain its overwhelmingly dominant status in the SACU market. There is no basis to the Commission's preliminary determination that a threat of material injury to the SACU industry exists.

***Commission's consideration***

*Interested parties are reminded that the imports from Lesaffre are increasing year on year and are coming at dumped prices which eventually undercut the Applicant selling price. There would be no issue had Lesaffre's exports been at prices that are not dumped. Lesaffre exports their products to SACU, at dumped prices, possibly displacing the Applicant from the SACU market, and eventually taking over in the long run, considering that they are a multinational which may expand their operations to supply the SACU market should the Applicant cease its operations.*

Based on the information above, the Commission made a final determination that a threat of material injury to the SACU industry exists.

**SUMMARY ON THREAT OF MATERIAL INJURY**

***Commission's consideration***

*Based on the fact that the installed capacity increased by more than 15% and there was a rapid increase of imports from the Republic of Zimbabwe by 1 370% over the investigation period, a threat of material injury exists. The Zimbabwean imports of the subject product have been increasing yearly and if left unchecked they have a potential of further reducing the SACU industry's market share significantly. Currently these imports only account for 5% of the SACU market, but a continued increase at the current rate may soon displace the SACU industry, resulting in loss sales, output, employment, and investment. The increase in investment of the*

*exporter, together with the relationship it has with the SACU importer may result in the SACU importer taking over the SACU market through imports, to the detriment of the SACU producer.*

Based on the information above, as well as consideration of the impact factors analysed above, the Commission made a final determination that a threat of material injury to the SACU industry exists.

## 7 CAUSAL LINK

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### 7.1 GENERAL

In order for the Commission to initiate an investigation, it must be satisfied that there is sufficient evidence to indicate that the material injury and/or threat of material injury experienced by the SACU industry is as a result of the dumping of the subject product.

The following relevant factors are evaluated to establish whether there is a causal link between the dumped imports and material injury.

### 7.2 VOLUME OF IMPORTS AND MARKET SHARE

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

#### 7.2.1 Import volumes

The following tables show import volumes of the subject products:

**Table 7.2.1: Import volumes**

(Kg)	2020	2021	2022	Change 2020-2022
Dumped imports (BCY)**	43 200	355 500	635 250	1 370%
Other Countries**	0	0	0	0%
<b>Total</b>	<b>43 200</b>	<b>355 500</b>	<b>635 250</b>	<b>1 370%</b>
Dumped net imports (BCY) as a % of total imports:	100%	100%	100%	Not applicable
Other net imports as a % of total imports	0%	0%	0%	Not applicable
<b>Total Imports</b>	<b>100</b>	<b>100</b>	<b>100</b>	

\*Source: SARS

\*\* Commission considered that there are no imports from other countries.

**Table 7.2.2: Market share**

	<b>2020 (Kg)</b>	<b>%</b>	<b>2021 (Kg)</b>	<b>%</b>	<b>2022 (Kg)</b>	<b>%</b>
Total BCY Yeast (SACU)	100	100	94	97	89	95
Dumped imports*	43 200	100	355 500	856	635 250	1 562
Non-dumped imports**	0	0	0	0	0	0
<b>Total SACU Market</b>	<b>100</b>	<b>100</b>	<b>96</b>	<b>100</b>	<b>94</b>	<b>100</b>

\*Source: SARS

\*\* Commission considered that there are no imports from other countries.

The table above shows that the Applicant's market share for BCY decreased by 6 index points from 2020 to 2021, and further decreased by 5 index points from 2021 to 2022, resulting in an overall decline of by 11 index points during the period of investigation.

### **Commission's consideration**

*The Commission considered that the dumped imports market share constitutes not only a significant portion of imports but also imports of the subject product entering the SACU market.*

### **7.3 EFFECT OF DUMPED IMPORTS ON PRICES**

It has already been shown in section 5 of this report that the applicant experienced price undercutting and price suppression but did not experience price depression.

### **7.4 CONSEQUENT IMPACT OF DUMPED IMPORTS**

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

- Price undercutting;
- Price suppression;
- Declining sales volume;
- Decrease in market share;
- Decline in output;
- Declining productivity;
- Declining employment;
- Declining profits;
- Declining net cash flow;

- Declining return on investment;
- Increase in inventory;
- Declining utilisation of production capacity; and
- Slowdown in growth

## 7.5 FACTORS OTHER THAN THE DUMPING CAUSING INJURY

Table 7.5: Examination of causality under Regulation 16 of the ADR

Period	2020	2021	2022	Change 2020-2021
FOB prices for imports not sold at dumped prices (R/kg)	0	0	0	0%
Volume of imports not sold at dumped prices (kg)	0	0	0	0%
<b>Changes in demand or patterns of consumption</b>	The Anchor Yeast BCY sales volume did experience a decreasing trend for the POI while the dumped subject product imports from Zimbabwe showed an aggressive increase into the SACU market. Anchor Yeast submits that it would not have lost BCY sales to fair priced Zimbabwe imports and therefore as a result of the increase in the dumped import volumes from Zimbabwe at decreasing prices, sales were lost.			
<b>Trade-restrictive practices of foreign and domestic producers</b>	None that Anchor Yeast is aware of, but in fact as a result of the SADC Agreement, Zimbabwe enjoys the privilege of exporting duty free to SACU from behind a high tariff wall and as a result, the South African product is subject to a 40 percent customs duty and permit requirement if exported to Zimbabwe.			
<b>Developments in technology</b>	There were no known recent developments in technology that would place Anchor Yeast at a disadvantage compared with the technology of the exporters.			
<b>Export performance of the domestic industry</b>	The BCY that Anchor Yeast produces is only supplied for consumption in the SACU domestic market and not exported. Please note that the material injury data as supplied relates only to the SACU market.			
<b>Productivity of the domestic industry</b>	Anchor Yeast believes that its productivity compares favourably with its competitors. However, as a result of the dumped imports, the productivity of Anchor Yeast is affected as these imports impact on the production of Anchor Yeast.			

<p><b>Any strikes, go-slows or lock-outs?</b></p>	<p>Anchor Yeast did not experience any labour actions that impacted negatively on production during the POI.</p>
<p><b>Effect of the changing exchange rate has been on:</b></p> <ul style="list-style-type: none"> <li>- <b>Your production cost</b></li> <li>- <b>Your selling price; and</b></li> <li>- <b>The price of the imported product</b></li> </ul>	<p>The exchange rate does impact on the Anchor Yeast's production cost and selling price as a portion of the input costs pertain to soda ash, phosphoric acids and potato starch, which cannot be sourced in South Africa. As a result, the exchange rate fluctuation will impact on the production cost, selling price as well as the imported products price.</p> <p>The weakening ZAR exchange rate had increased the ZAR based cost of Anchor Yeast's products. Subject Product is sold predominantly in SACU and is priced in ZAR. Limited Subject Product (other Active Yeasts) is sold to the SADC region that would be exposed to exchange rate fluctuations. That said, the imported Zimbabwe Subject Product is priced ex-works in USD and a weakening ZAR/USD relationship should increase the ZAR based pricing, yet the calculated Zimbabwe FOB prices experienced a decreasing trend for the POI.</p>
<p><b>Indicate any other factors affecting the SACU prices</b></p>	<p>None that Anchor Yeast is aware of, except for the volume of dumped imports and their prices from Zimbabwe in the SACU market.</p>

**Commission's consideration**

*There are no imports of the subject product from other countries hence the FOB prices for imports not sold at dumped prices and volume of imports not sold at dumped prices are recorded as zero in the table above.*

- *Over the POI, the dumped imports from Zimbabwe increased from 43 200 kg to 635 250kg an increase of 1 370.49 percent.*
- *During the same POI, the Applicant's sales volume and market share decreased, while the dumped imports increased by 1 370.49 percent over the same period. The SACU market for the subject product indeed shrunk during the POI, however, the increase in Zimbabwean dumped imports is exacerbating the situation of the SACU industry, which can be seen in the fact that the contraction in the domestic market was less than the overall loss in sales of the Applicant.*

- *Over the POI, production volumes decreased by 11 index points. The Commission considered that the high import volumes of the subject product imports which Lesaffre exported into the SACU market also contributed to the decline in output. The overall production volume declined irrespective of whether the production is for the open market or contract market, and these markets are not considered separate by the Commission for the purposes of this investigation.*
- *The dumped imports are priced lower than the Applicant's subject product. During the POI for dumping, the dumped imports undercut the Applicant's price.*
- *The Commission considered that although the volume of BCY imports from Zimbabwe is not immense in absolute terms and relative to production, the dumped imports from Zimbabwe have contributed to the decline in the SACU industry's market share, in a declining SACU market, and to some extent reflecting a shift from the SACU product to the relatively cheap dumped imports from Zimbabwe. Therefore, there was a correlation between the increase in imports volume from Zimbabwe and the decline in sales and production volume of the Applicant.*
- *The Zimbabwean imports are growing in the SACU market and definitely are threatening to cause material injury to the SACU industry, and if they are allowed to continue unchecked, the threat will adversely impact the existence or viability of the SACU industry.*

*Therefore, the Commission is of the view that there is a causal link between the dumped imports and the material injury suffered by the SACU industry and the threat of material injury experienced by the SACU industry. There are also no other factors that sufficiently detract from the material injury and threat of material injury.*

**Comments by interested parties to essential facts.**

Interested parties reiterates that:

- a) There is no basis for the Applicant to claim that it requires a level playing field in which there is steadiness in demand as the Applicant is the sole SACU producer and its market share in respect of BCY over the injury investigation period ranged from 99.65% in 2020 to 95.46% in 2022.
- b) The Applicant alleges that imports from other countries constitute dry yeast only and that they do not relate to the subject product and do not compete directly in the SACU BCY market segment and are thus irrelevant. Interested parties further stated that BCY, Dry yeast and Liquid yeast as commercial forms of active yeast are substitutable, at least where they are consumed by industrial and semi-industrial bakeries. The interested parties further stated that the claim that liquid yeast does not compete with BCY is inconsistent with the remedy which the Applicant seeks, which implies BCY, and liquid yeast are substitutable and competing products which supports the wider definition of the market, namely the SACU active yeast market.
- c) The Applicant provide the basis for the unsuppressed selling price and how it was calculated.
- d) The contraction in the SACU BCY market was driven by the switch in the market away from yeast consuming staple products such as bread and rolls to non-yeast consuming products such as maize. The interested parties further stated that the higher inflation rate on bread relative to maize over the injury investigation period caused hard-pressed consumers seeking price relief, to change their consumption from bread to maize. The change affected BCY consumption in SACU, as BCY is a key ingredient in bread production and resulted in the contraction of the demand for BCY.
- e) The Applicant's selling prices to Chipkins are deliberately set lower than the prices which the Applicant charges in respect of its sales in "the open SACU market". The interested parties further stated that the inclusion of Chipkins sales lowers the Applicant's average selling prices resulting in the decline in the Applicant's profitability.
- f) The South African economy was shut down due to Covid-19 human infections in February/March 2020. The economy was gradually reopened after the state of national disaster was lifted on 5 April 2022. However, it took time for

economic activity to recover to pre-pandemic levels, and the entire injury investigation period falls within the period where Covid-19 negatively affected economic activity.

Riots and looting in Kwa-Zulu Natal and Gauteng have led to a nationwide bread shortage, causing critical supply issues for bakeries in the economic hubs of SACU.

The N3 closures have posed challenges in obtaining yeast from Durban to Gauteng bakeries and riots at Durban harbour have hindered wheat imports to KwaZulu-Natal millers for flour production.

Tiger Brands, the owner of Albany bread, is facing challenges in delivering bread in KwaZulu-Natal and Gauteng, particularly in gaining safe access to riot-hit areas.

- g) Load-shedding, increasing input costs, poor infrastructure, and high labour costs have led to significant losses and increased production costs for the active yeast market, including bakeries. The inability of Eskom to provide reliable energy has negatively affected energy users, businesses, and consumers, resulting in losses and increased production costs.

Power outages due to load shedding caused loaves to be damaged and lost, and disposing of many loaves after a power loss was not uncommon. The modern plant bakery is fully automated, with time-sensitive environments, forcing plant bakeries to invest in massive generators at a significant capital expense. The diesel cost to run the generator is a significant concern, as electricity production from a generator is eight times more expensive than Eskom power. Small to medium bakeries have been severely affected by load shedding due to their inability to obtain finance for generators. They need to plan and time their production carefully to shut down their operation before load shedding commences to eliminate loaf damages.

- h) The insignificant increase in the volume of imports, both in absolute terms and relative to SACU consumption, cannot be considered a material cause of any material injury suffered by the Applicant.

### **Comments by the Applicant**

- a) The Applicant stated that the application relates to the dumped subject product contribution of the total SACU BCY market, which is where the focus should remain. The Applicant further stated that the total SACU active yeast market is irrelevant to the Application. The Applicant further stated that the dumped BCY product from Zimbabwe contribution of the total SACU BCY market is not of a *de minimis* nature.
- b) The Applicant stated that there is no record of BCY being imported into SACU from other countries apart from the BCY imports from Zimbabwe. The Applicant submits that at no point did it claim liquid yeast does not compete with BCY. The Applicant further stated that as there is a high level of substitutability between active yeast in fresh liquid, which is a product the pre-production stage before BCY, it would be possible for Lesaffre to also export liquid yeast to SACU. Hence the request to the Commission to impose the duty on fresh active yeasts, which will also include liquid active yeast in addition to the BCY.
- c) The Applicant stated that in 2020, the landed price of the dumped imported product from Zimbabwe did not undercut the Anchor Yeast BCY selling price on the level where it was directly competing with Anchor Yeast in the SACU market. The Applicant's cost of production was approximately 60 percent of the selling price and was able to set its price and sell without having to compete with a dumped imported BCY product from Zimbabwe.

The Applicant further stated that in 2021 the dumped import volume from Zimbabwe increased, with the BCY product that was more regularly offered at low prices in the SACU market, and it was directly competing with Anchor Yeast. Therefore, as a result of the increasing dumped imports that followed in 2021 and 2022, Anchor Yeast could not increase its selling prices to the required level, to maintain the 59 percent cost to price ratio of 2020, to adequately recover costs increases in 2021 and 2022.

The Applicant stated that the indicated unsuppressed selling prices are the calculated results of each respective year's cost of production (ex-factory) of the Anchor Yeast BCY product that were directly competing with the dumped imported product from Zimbabwe, following the cost of production being divided by 59 percent. These respective calculated results indicate each year's unsuppressed selling price, with the 59 percent cost price ratio principle being applied.

In 2022 the cost of production was more than R10, which was expected to present an approximately 60 percent, but did not as it was more than 65 percent. If the more than R10 is to present a cost of production margin of approximately 60 percent, then the unsuppressed selling price had to be more than R18.

- d) The Applicant stated that the interested parties' narrative is that the bakery consumers buy BCY from Zimbabwe at higher prices than the Anchor Yeast prices, which would amount to bread being even more expensive. The applicant further stated that following the interested parties' 'logic', these higher prices should have a further SACU BCY market reducing effect, yet the low-priced imported BCY being sold at much higher prices than the SACU Industry's BCY, is increasing in volume.
- e) The Applicant stated that the pricing at which Anchor Yeast is selling BCY on contract to Chipkins and the profit in relation thereto have no bearing on the Anchor Yeast BCY selling prices into the open market, where it directly competes with the dumped subject product from Zimbabwe.
- f) The Applicant stated that during Covid-19 ("C-19") it continued to serve all bakeries and only quick serve customers (such as the fast foods retail) were impacted through the restriction on prepared meals that were not allowed for a 6-week period. The Applicant further stated that all its other clients continued to bake through C-19 as the nature of the baking was considered an essential service. Anchor Yeast submits that its sales did not decline much in the time as Parties would like to suggest. In fact, all bakeries supplying essential goods were allowed to continue throughout C-19 in terms of the South African Government ("Government") regulations.

The Applicant further point out that during C-19, the supply of maize, potatoes and other starched were impacted more than bread, in terms of pricing increasing as well as supply chain challenges and people bought the cheapest product as they couldn't work.

The Applicant stated that during the riots and looting it continued to supply all plant bakeries as well as retail and independent bakeries throughout the period. Product was rationed by delivering lower quantities, but with more frequent deliveries, so customers did not run out.

The Applicant further stated that the Government provided assistance to transport yeast with flights to Johannesburg and Cape Town and armed support was present to provide security to Anchor Yeast vehicles from Durban to other locations and alternative routes were used. The Applicant stated that there was collaboration with significant customers for security coordination and delivery vehicles within the food industry travelled in convoys and with route alternations.

The Applicant further stated that lower availability of bread occurred in KwaZulu-Natal due to the risk of delivery and looting of stores for only a few days in the risk areas, but then quickly went back to normal. Anchor Yeast submits that a shrinkage in BCY sales that relate to the riots did not occur, as claimed by the Parties.

- g) The Applicant confirms that Covid-19, July 2021 riots and loadshedding each had a minimal impact on its operations and supply to its clients. These factors did provide challenges to the baking industry as a whole and played a role in the contraction of the SACU Total BCY SACU market. However, the Zimbabwean import products continued to increase in volume.

***Commission's consideration***

- a) *The Commission considered that businesses should compete fairly on a level playing field, irrespective of market share or dominance. The dumped imports also meet the negligibility level and are sufficient to be considered for dumping.*

*Also, at issue in this investigation is whether the increase in subject imports is causing or threatening to cause material injury to the domestic industry.*

- b) The comments relating to substitutability are noted, however these do not affect the current matter as the like product from Zimbabwe is only BCY, and no other product. If there were other types of yeasts imported from Zimbabwe, the issue of ignoring those other yeasts would arise, had the Commission done so. In this instance there are no such yeasts from Zimbabwe. Furthermore, in considering whether BCY may be substituted, the Commission considered the response by the exporter during verification when asked if it is able to export liquid yeast (which is another yeast it manufactures). The exporter clearly stated that based on the transportation required for such product it, there is no way that it would export liquid yeast into SACU, hence it only exports BCY. The like product which was determined in this investigation is BCY, therefore interested parties constantly mentioning other yeasts and indicating that BCY is a submarket is misleading. There only market which is affected by this investigation is the market of BCY, all other yeasts although falling in the same tariff subheading are not being imported into the SACU from Zimbabwe, and therefore are not subject to this investigation. The matter of submarkets which they cite in WTO panels, referred to the subject products being only assessed either only for the wholesale or retail market, which is not the case in this investigation.*
- c) The Applicant provided the basis and calculations for the unsuppressed selling price. However, the Applicant's unsuppressed selling price excluded Chipkins information. Interested parties cannot be provided with the relevant calculations as they contain confidential information of the Applicant.*
- d) The issue related to contraction in SACU demand or market is noted, however, the Commission noted that irrespective of the SACU market declining, the dumped imports market share rose from 0% to above 5%, in a declining SACU market.*
- e) The Commission considered the information at its disposal that shows that the Applicant is experiencing material injury and threat of material injury with or without Chipkins information. The prices charged to Chipkins are confidential and based on an agreement the Applicant has with Chipkins, and Chipkins has been a customer during the POI, even when profits were*

high in 2020 during Covid. Therefore, the allegations that profits are declining due to the prices charged to Chipkins are without merit.

- f) *The Commission is in agreement with the Applicant that their service was regarded as essential during Covid-19, and this is supported by the fact that there was no shortage of bread during that period.*
- g) *The Applicant explained to the Commission during verification that it is not affected by load shedding as it is located in an area which is exempted from load shedding. Furthermore, the Applicant explained that it has also invested in solar power. The Commission also considered that it is common knowledge that there is load shedding. However, some if not most of the industrial areas are exempted from load shedding.*
- h) *In absolute terms, the volumes of dumped imports, although small compared to the market size, still represent a notable increase that is causing material injury to the domestic industry and is threatening to cause further material injury if not addressed, and which do not only have such volume effects, but also price effects.*

*The concept of "cause of material injury" is a crucial element in anti-dumping investigations. The WTO Agreement on dumping states that a dumping investigation must determine whether the dumped imports are a cause of material injury, or threat thereof, to the domestic industry.*

*The WTO Appellate Body has clarified that the phrase "cause of material injury" implies a causal link between the dumped imports and the material injury suffered by the domestic industry.*

*In the US-Wheat Gluten case, the Appellate Body upheld the finding that dumped imports were a cause of material injury to the domestic industry, even though other factors, such as decreased demand and competition from other domestic producers, also contributed to the injury. This ruling reinforced the principle that dumping need not be the sole or main cause of injury, but only "a" cause of injury, to justify anti-dumping measures.*

*Additionally, the volume of imports has been rising steadily each year during the period of investigation (POI) from 2020 to 2022, with a remarkable surge of 1,370% during that time. Moreover, the threat posed by imports from Zimbabwe to the SACU industry is further evident in the 38% increase in import volume between 2022 and 2023, indicating a consistent upward trend in imports. Capacity utilization and production volume is substantially increasing year on year. The installed fermentation capacity for 2022 represents a substantial increase in capacity. All these are a clear indication for threat of material injury.*

*Therefore, there is a causal link between the dumped imports and the material injury suffered by the SACU industry and the threat of material injury experienced by the SACU industry. There are also no other factors that sufficiently detract from the material injury and threat of material injury.*

#### **Other factors contributing to material Injury.**

- It is significant that the investigation period for injury covered a very significantly challenging period for the baking industry, which included the Covid-19 period with significant supply chain challenges and lockdowns, the KZN and Gauteng riots, and loadshedding.
- Exchange rates - is yet another significant factor which caused the harm to the Applicant. It also detracts from the causal link between the harm suffered by the Applicant and bakers compressed yeast imports from Zimbabwe.
- Covid-19 was therefore a key and material cause of the Applicant's injury. The Applicant's denial of this fact is inconsistent with evidence.

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

*The Commission considered that while Covid-19, load shedding, and the July 2021 riots affected the SACU industry, they alone cannot explain the significant decline in the industry's performance. The analysis shows that the dumped imports from Lesaffre had a disproportionate impact on the industry, leading to significant losses in market share, sales, and revenue. The dumped imports had a sustained and devastating impact on the industry, even after the other factors had subsided. The findings are consistent with WTO guidance on causation, which considers all relevant factors but recognizes that*

*other factors may not diminish the injury caused by dumped imports. In essence, the investigators believe that while external factors had some impact, the dumped imports from Lesaffre were the primary cause of the significant decline in the industry's performance, and the evidence supports this conclusion.*

*The Commission also agree with the Applicant that their service was regarded as essential during Covid-19, and this is supported by the fact that there was no shortage of bread during that period.*

*The Commission further considered shrinkage in market and change in demand on its determination. While dumped imports have had a notable impact on the domestic market, it is not possible to conclusively attribute the entire decline in the domestic market solely to dumped imports. The overall domestic demand also declined from 2020 to 2022, suggesting that there may be other factors at play, such as changes in consumer preferences, economic conditions, or other external market conditions.*

*On the other hand, the decline in domestic supply from 2020 to 2022, which is more than the increase in dumped imports also indicates that some supply side challenges such as high production costs and other supply chain disruptions may have also contributed to the decline.*

*In conclusion, while dumped imports have exerted pressure on the domestic market for BCY which led to declines in sales and market share for domestic producers, the overall decline in the market cannot be attributed solely to dumped imports. The decline in domestic demand and supply suggests that multiple factors including dumped imports volume, market contraction and lost sales are likely contributing to the observed changes in the BCY market for the period under review.*

Based on the information above, the Commission made a final determination that there is a causal link between the dumped imports and material injury and a threat of material injury experienced by the SACU industry and there were no other factors sufficiently detracting from causal link.

## **8. SUMMARY OF FINDINGS**

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### **8.1 Dumping**

The Commission made a final determination that dumping of active yeasts (baker's compressed yeast) originating in or imported from the Republic of Zimbabwe is taking place. A dumping margin of 113.14 percent was determined.

### **8.2 Material Injury**

The Commission found that the Applicant was experiencing material injury in the form of:

- Price undercutting;
- Price suppression;
- Declining sales volume;
- Decrease in market share;
- Decline in output;
- Declining productivity;
- Declining employment;
- Declining profits;
- Declining net cash flow;
- Declining return on investment;
- Increase in inventory;
- Declining utilisation of production capacity; and
- Slowdown in growth.

Based on this information, the Commission made a final determination that the SACU industry is experiencing material injury.

### **8.3 Threat of Material Injury**

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

### **8.4 Causal Link**

The Commission made a final determination that there is a causal link between the dumped imports and material injury and a threat of material injury experienced by the SACU industry and there were no other factors sufficiently detracting from causal link.

## 9 FINAL ANTI-DUMPING DUTIES

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### 9.1 Price disadvantage

In considering the level of the Anti-Dumping duty to be imposed, the Commission will take into consideration the lesser duty rule. The lesser duty is the provisional payment or antidumping duty imposed at a lesser of the margin of dumping or the margin of injury and which is deemed to be sufficient to remove the injury caused by the dumping. To determine whether to apply the lesser duty rule, the price disadvantage must be calculated, and the cooperation of the exporter/producer and its SACU importer must be examined.

It is the Commission's practice to apply a lesser duty if both a cooperating exporter/producer and its SACU importer responded to the investigation. In this investigation, Aries, which is an importer, responded to the investigation.

Price disadvantage is the extent to which the imported product (landed cost) is lower than the unsuppressed and undepressed ex-factory selling price of the SACU product. The calculated price disadvantage as a percentage of FOB export price is 39.13 percent.

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

*Commission considered that during verification it was explained that the importer began importing from its Zimbabwean related company after its major customer that was a direct importer from Zimbabwe ceased importing from Zimbabwe, citing high transport costs associated with importing the subject product from Zimbabwe. Therefore, it is clear that to mitigate such high costs and the to avoid losing such customer, the importer started importing in large quantities, at reduced prices to account for the high costs of transportation. It is clear that the relationship between the importer and exporter is such that the exporter can afford to reduce prices significantly in order to move its products which have a short shelf life and keep its export customers. Should a lesser duty be applied, the exporter may also decide to reduce its prices further to account for such lesser duty, thus making it ineffective.*

*The Commission considered not applying a lesser duty as the exporter and importer are related. The relationship is in such that they are applying transfer pricing when making sales to each other. Should such transfer pricing be used in connection with a lesser duty, it has the potential of making the duty irrelevant or not removing injury.*

**Comments by interested parties to the essential facts.**

- a) Interested parties stated that the description of the product in the Provisional Payment Notice is incorrect and requesting that the Commission urgently take the necessary steps to correct the notice. The Initiation Notice described the subject product as "active yeasts (baker's compressed yeast) classifiable under tariff subheading 2102.10". The Preliminary Determination described the imported product as "a type of Active Yeast, commonly known as fresh yeast or Baker's compressed yeast ('BCY')".
- b) Interested parties stated that Regulation 17 states that "*[t]he Commission shall consider applying the lesser duty rule if both the corresponding importer and exporter have cooperated fully*" and Regulation 1 defines 'Lesser duty' as "*the provisional payment or anti-dumping duty imposed at the lesser of the margin of dumping or the margin of injury, and which is deemed to be sufficient to remove the injury caused by the dumping.*"

Interested parties further stated that Article 9 of The WTO Anti-Dumping Agreement deals with the lesser duty and provides that: "*The decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled, and the decision whether the amount of the anti-dumping duty to be imposed shall be the full margin of dumping or less, are decisions to be made by the authorities of the importing Member. It is desirable that the imposition be permissive in the territory of all Members, and that the duty be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry.*" [own emphasis].

- c) Interested parties stated that although Lesaffre currently exports the subject product to SACU at a loss, the internal transfer price is above the variable cost of production, which means that the sales to SACU contribute towards the cost of overheads.

- d) Interested parties stated that in terms of Article 15 of the WTO Anti-Dumping Agreement, "*[i]t is recognized that special regard must be given by developed country Members to the special situation of developing country Members when considering the application of antidumping measures under this Agreement. Possibilities of constructive remedies provided for by this Agreement shall be explored before applying anti-dumping duties where they would affect the essential interests of developing country Members.*"
- e) They also claim that the Commission's reason for not applying the lesser duty rule is unreasonable and incorrect.

### **Applicant's response to the preliminary report comments by the interested parties**

#### **Lesser duty**

The Applicant pointed out that the calculation of its unsuppressed selling price was based on the ex-factory selling price of the BCY Yeast product competing with imported product only and the Chipkins information was not taken into consideration.

As stated above, as the Commission had no basis to include the Chipkins information the price effect analysis, which information must be removed from the Commission's final determination, Anchor Yeast will not comment on the Parties' flawed and opportunistic recalculation of the unsuppressed selling price.

#### **Special regard must be given to Zimbabwe, due to its level of development vis-à-vis South Africa**

The Applicant submits that it is opportunistic for Lesaffre to try and claim sympathy in terms of the AD Agreement as a developing country and as a G6 country under the Agreement Establishing the African Continental Free Trade Area, yet it has a total disregard for the stipulations of SADC Agreement that should allow for the free movement of goods amongst member countries.

In this regard the Government of Zimbabwe implement both tariff and non-tariff barriers to protect Lesaffre and prevent SADC member business from fairly competing in Zimbabwe.

It further needs to be noted that the Applicant has approached the South African Department of Trade, Industry and Competition to address and resolve the non-compliance of Zimbabwe of the SADC Agreement prior to applying for remedial action. However, Zimbabwe has to date turned a blind eye. It is thus clear that Zimbabwe is abusing its "status" and does not care for neighbouring states, such as those in SACU.

The Applicant stated that the Application and investigation was submitted on behalf of SACU, which consist of five Southern African countries, which are at different levels of economic development and have different economic structures. The Republic of Botswana, Republic of Namibia, and South Africa are upper middle-income countries, the Kingdom of Eswatini is lower middle- income country and the Kingdom of Lesotho is a Least Developing Country.

Clearly, there is no requirement that SACU must accommodate Zimbabwe in applying a "constructive remedy". Anchor Yeast is anyway of the view that the final Dumping Duty as currently calculated and to be imposed, would be constructive enough to make Zimbabwe aware that it cannot just join trade pacts, "one-sidedly" reaping the benefits and then act in an unfair trade manner with regard to its trading partners. Therefore, Anchor Yeast requests the Commission to not grant form of relief to Lesaffre in light of the fact that it is already an unfair beneficiary of preferential treatment with the SADC through the measures that the Government of Zimbabwe have implemented.

### **Commission's consideration**

- a) *The Commission considered that the subject product was described as "active yeast" to avoid creating loopholes, as there is no separate tariff heading/subheading for the specific type of yeast. The South African Revenue Service (SARS) is aware of this and has a report that provides guidance on the specific product that attracts duty. Investigators would also like to add that Lesaffre only produces and exports Baker's Compressed Yeast (BCY) to SACU and has confirmed that they do not have the capacity to produce other types of yeast for export to SACU. Therefore, imposing a dumping margin on all active yeast originating from Zimbabwe would not disadvantage any interested party. In the event that other types of yeasts are*

*produced and exported to SACU, the Commission may consider rebates and other mechanisms to account for such eventualities.*

- b) The interested parties accurately reference Regulations 17 and 1 pertaining to the lesser duty rule but fail to recognize a critical proviso: the lesser duty must effectively eliminate the injury resulting from dumping. As articulated in Article 9 of the WTO Anti-Dumping Agreement, the lesser duty is only permissible if it is deemed sufficient to remove the injury to the domestic industry. In this instance, the lesser duty is deemed insufficient to mitigate the injury caused by dumping to the domestic industry.*
- c) The fact that the internal transfer price exceeds variable costs does not negate the reality of the loss-making exports. The Commission must consider the actual financial performance of Lesaffre exports to SACU, rather than relying on an internal transfer price that does not reflect market realities. This further substantiates the inference that exporting at a loss is not a commercially rational decision, and instead suggests that the exporter is intentionally incurring losses in the export market with the ultimate goal of undercutting and displacing the domestic industry. The willingness to absorb losses in the export market implies a strategic attempt to gain market share and drive out domestic competition.*
- d) Article 18 of the Protocol on Trade in the Southern African Development Community (SADC) on Anti-Dumping Measures states: "Nothing in this Protocol shall prevent any Member State from applying anti-dumping measures which are in conformity with the WTO provisions." This article essentially affirms that SADC member states are free to implement anti-dumping measures, as long as they are consistent with the WTO rules and ADR. This ensures that member states can take necessary measures to protect their domestic industries from unfair trade practices, while also adhering to international trade agreements.*
- e) The fact that the Commission did not apply a lesser duty, does not mean that it was not considered. It should be noted that applying the lesser duty is not mandatory, and it may be implemented provided that it will remove injury. The Commission considered that the exporter is prepared to make a loss of more than R10 per unit. The calculated 39.13% lesser duty would not be sufficient to remove injury to the Applicant.*

Based on the information above and the Commission not applying a lesser duty the Commission made a determination to applies the final anti-dumping duties as follows:

**Table 9.1 Final antidumping duties**

HS codes and description	Country of origin	Producer/exporter	Final duties
2102.10 Active yeast	Zimbabwe	Lesaffre Zimbabwe (Pvt) Ltd	118.88% <i>Ad Valorem</i>
		All other producers/exporters	118.88% <i>Ad Valorem</i>

**Comments by interested parties to the essential facts.**

Unlike, for example, Canada, the European Union, and Australia, SACU does not have a public interest requirement to determine the level of duties in anti-dumping investigations. Despite this, past practice indicates that SACU does consider the effect of anti-dumping duties on the consumer. For example, in the investigation into the alleged dumping of frozen bone-in portions of fowls of the species *Gallus Domesticus* originating in or imported from Brazil, Denmark, Ireland, Poland and Spain, the Minister of Trade, Industry and Competition considered the rate of food inflation and the significant impact that this has on consumers and suspended the imposition of the anti-dumping duties for one year.

Interested parties claims that anti-dumping duties will allow the Applicant to increase prices significantly, harming consumers. They calculated an "unsuppressed selling price" 34.65% higher than their 2022 price. However, the provisional payment based on the margin of dumping could lead to a 125% price increase. Interested parties argues that such high duties will harm consumers and requests the Commission to consider the impact on consumers by terminating the investigation and not impose anti-dumping measures.

**Comments by the Applicant to the essential facts letter**

Further, the allegation by the Parties that the effect of anti-dumping duties will enable Anchor Yeast to significantly increase its price in the SACU market, to the detriment of the consumer is unsubstantiated. Anchor Yeast submits that any business has the right to recover its cost of production at a reasonable rate and will

do so in a responsible manner and to that effect the Applicant history of selling prices in SACU bear testimony of its integrity and that it will not be abuse a trade remedy measure.

Finally, the Applicant noted that the Parties firstly claim that they sell their products for 40 to 60 percent higher than the Applicant selling price in SACU and now claims that the Applicant would increase its selling price with 34.65% if a final dumping duty is imposed, which is not in favour of the consumer. Clearly, based on this flawed allegation, the Applicant selling price would still be below the Lesaffre product if the dumping duty is imposed.

The Applicant is requesting the Commission to consider that instead of imposing Anti- Dumping duty on an ad valorem basis against Zimbabwe, the duty should be imposed on a specific basis, meaning a Rand per kilogram (“kg”) basis. This request is based on the fact that as Lesaffre and Aries are related parties, there is a real risk that through the application of transfer pricing practices, that the pricing of the dumped Subject Product can be lowered (under-invoiced), which will result in the reduction of the effectiveness of the much needed protection required by the SACU Industry, if the Anti- Dumping duty is imposed on an ad valorem basis of duty.

#### ***Commission’s consideration***

*The Commission rejected the Applicant's request to impose anti-dumping duties on a specific basis (Rand per kilogram) instead of the standard ad valorem basis. The concern about potential transfer pricing practices and under-invoicing by related parties, Lesaffre and Aries, is noted but not deemed sufficient to warrant a departure from the usual ad valorem method.*

*The ad valorem basis is a well-established and widely used method for imposing anti- dumping duties, and it is considered an effective and fair way to address dumping. Currently the provisional measure is at ad valorem and changing to the rand per kilogram at this stage may create an administrative complexities and potential disputes.*

## 10. PRICE UNDERTAKING

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### 10.1 Price undertaking

The exporter has offered a price undertaking to resolve the anti-dumping investigation and avoid protracted litigation. The undertaking includes:

- a) Revising the export price of the subject product to ensure a landed cost in SACU not less than the applicant's calculated unsuppressed selling price (R17.94-R18.07/kg).
- b) Annual adjustments to the price undertaking based on the headline consumer price index, capped at 8%.
- c) Quarterly submissions of sales and landed cost information to the Commission.
- d) Verification of submitted information by arrangement with the Commission, to be conducted in South Africa.
- e) Review of the undertaking terms and effectiveness, 5 years after implementation.

#### **The exporter emphasizes that:**

- a) The undertaking is offered without admitting any basis for anti-dumping duties.
- b) Acceptance of the undertaking will maintain and increase employment and investment in SACU and Zimbabwe.
- c) The undertaking is practical and won't impose an undue administrative burden on the Commission.
- d) The exporter is willing to consider additional requirements or modifications to the undertaking as needed.

#### **Applicant's comments to price undertaking by the exporter**

- a) The Applicant alleges that the parties are intentionally delaying the investigation to avoid provisional payments and exceed the 18-month WTO investigation limit.
- b) There is a global trend moving away from price undertakings due to difficulty in monitoring and potential circumvention and ineffectiveness in removing dumping practices and injurious effects. Additionally, the Applicant claims that price undertakings are generally ineffective and can have anti-competitive effects.
- c) The Applicant argues that the Price Undertaking (PU) Offer is invalid because it was submitted by multiple parties, whereas only the exporter is allowed to do so.

- d) Aries and Lesaffre's related-party relationship makes their export price unreliable due to potential transfer pricing issues, making it difficult to monitor and vulnerable to manipulation.

**Commission's consideration on Applicant's comments**

- a) *The Commission is keeping a close eye on the investigation timeline to ensure it is completed within the 18-month limit stipulated by regulation 20 of the ADR.*
- b) *While some countries may be moving away from price undertakings, they can still be an effective tool in specific cases, providing a direct and immediate solution to unfair pricing. Particularly when combined with regular monitoring and reviewing mechanisms. A blanket rejection of price undertakings ignores their potential benefits in addressing dumping practices and promoting fair trade.*
- c) *The Commission acknowledges that the price undertaking was jointly submitted by the importer and exporter but finds no grounds to reject the offer solely on the basis of it being a multi-party submission.*
- d) *The related-party relationship between Aries and Lesaffre will be effectively managed through auditing and monitoring mechanisms, ensuring the export price is accurate and transparent, and minimizing the risk of manipulation.*

**10.2 Price undertaking discussion**

1. In terms of ADR 39.1, “[p]roceeding may be suspended or terminated following the receipt of a satisfactory price undertaking from any exporter to revise its prices ... so that the Commission is satisfied that dumping or injurious effect thereof is eliminated, provided it has made at least a preliminary determination in the matter”.

ADR 39.3 and Article 8.3 of the WTO Anti-Dumping Agreement (“ADA” or “AD”) provide that undertakings being offered need not be accepted if the authorities consider their acceptance impractical, for example, if the number of actual or potential exporters is too great, or for other reasons, including reasons of general policy.

Article 8.3 goes further and states that, should the case arise and where practicable, the authorities shall provide to the exporter the reasons which have

led them to consider acceptance of an undertaking as inappropriate, and shall, to the extent possible, give the exporter an opportunity to make comments thereon.

2. The Panel in *US – Offset Act (Byrd Amendment)* considered the extent of the obligation under Article 8.3 of the ADA and Article 18.3 of the WTO Agreement on Subsidies (“SCM Agreement”) concerning price undertakings. According to the Panel:

*AD Article 8 and SCM 18 provide that when offered, the investigating authority need not accept the undertaking if it considers it impractical or if for other reasons it does not want to accept the undertaking.*

*The decision to accept an undertaking or not under the Agreements is one the investigating authority to take, and it may reject an undertaking for various reasons, including reasons of general policy. The fact that domestic producers may or may not be influenced by the CDSOA to suggest to the authority not to accept the undertaking, does not affect the possibility for interested parties concerned to offer an undertaking or for that undertaking to be accepted, in light of the non-decisive role of the domestic industry in this process. In addition, we note that the text of ADA Article 8.3 and SCM Article 18.3 does not require the authority to examine objectively any undertaking offered. Rather, it stresses that undertakings offered need not be accepted and that the reasons for rejecting an undertaking may be manifold and include reasons of general policy. In our view, the CDSOA cannot be found to impede the objective examination of the appropriateness of accepting an undertaking, in the absence of any such obligation under AD Article 8 and SCM 18.*

### **Constructive remedies provided for by this Agreement.**

3. ADA Article 15 provides, with regard to developing country Members, that, “*It is recognized that special regard must be given by developed country Members to the special situation of developing country Members when considering the application of anti-dumping measures under this Agreement. Possibilities of constructive remedies provided for by this Agreement shall be explored before applying anti-dumping duties where they would affect the essential interests of developing country Members*”.

4. Discussing what might be encompassed by the phrase "constructive remedies provided for by this Agreement", *the Panel in EC – Bed Linen mentioned the examples of the imposition of a "lesser duty" or a price undertaking:*

*The Agreement provides for the imposition of anti-dumping duties, either in the full amount of the dumping margin, or desirably, in a lesser amount, or the acceptance of price undertakings, as means of resolving an anti-dumping investigation resulting in a final affirmative determination of dumping, injury, and causal link. Thus, in our view, imposition of a lesser duty, or a price undertaking would constitute 'constructive remedies' within the meaning of Article 15. We come to no conclusions as to what other actions might in addition be considered to constitute 'constructive remedies' under Article 15, as none have been proposed to us.*

5. The Panel in *EC – Bed Linen*, in interpreting the term "explore", stated that: "while the concept of "explore" does not imply any particular outcome, the developed country authorities must actively undertake the exploration of possibilities with a willingness to reach a positive outcome":

*In our view, while the exact parameters of the term are difficult to establish, the concept of 'explore' clearly does not imply any particular outcome. We recall that Article 15 does not require that 'constructive remedies' must be explored, but rather that the 'possibilities' of such remedies must be explored, which further suggests that the exploration may conclude that no possibilities exist, or that no constructive remedies are possible, in the particular circumstances of a given case. Taken in its context, however, and in light of the object and purpose of Article 15, we do consider that the 'exploration' of possibilities must be actively undertaken by the developed country authorities with a willingness to reach a positive outcome. Thus, in our view, Article 15 imposes no obligation to actually provide or accept any constructive remedy that may be identified and/or offered. It does, however, impose an obligation to actively consider, with an open mind, the possibility of such a remedy prior to imposition of an anti-dumping measure that would affect the essential interests of a developing country.*

The Panel in *EC – Bed Linen* concluded that: "[p]ure passivity is not sufficient, in our view, to satisfy the obligation to 'explore' possibilities of constructive remedies, particularly where the possibility of an undertaking has already been broached by the developing country concerned." The Panel consequently regarded the failure of a Member "to respond in some fashion other than bare rejection particularly once the desire to offer undertakings had been communicated to it [as a failure to] explore constructive remedies".

### **EU practice**

An examination of the reasons for the declining relevance of price undertakings reveals that there is generally no legal constraint upon the Commission to dismiss offers of price undertakings. Indeed, considering both the EU and the WTO rules, the Commission is left with wide discretion on whether it considers price undertakings a suitable alternative to anti-dumping duties. However, within this broad scope of discretion the EU Commission has developed a decisional practice that clearly underscores the practical and substantive advantages of *ad valorem* duties over minimum prices.

One major reason for the declining relevance of price undertakings is the accession of EEC to the EU. Price undertakings were the preferred instrument to conclude anti-dumping proceedings between the EU and EEC prior to their accession. Additionally, from 2002, with China becoming the subject of anti-dumping measures more frequently, price undertakings were used less often than before. The case-law indicates that monitoring and circumvention issues are often referred to as grounds to reject price undertakings offered by Chinese exporters.

The panel ruling in **US – Offset Act** (Byrd Amendment). Domestic producers may share their thoughts, but they do not get to decide whether a price undertaking is accepted by an investigating authority. Rather, the investigating authority will evaluate the undertaking based on its merits, regardless of the domestic industry's input.

**The Commission consideration to accept the price undertaking are as follows:**

- a) *Promote Competition:* Accepting a price undertaking can help remove monopolies in the industry, fostering a more competitive market.
- b) *Regional Cooperation:* Considering the exporter is from a SADC country and a less developed country, a price undertaking is a constructive remedy that supports regional cooperation and development.
- c) *Market Access:* By agreeing to a price undertaking, the exporter will provide information and access to the market, promoting transparency and trade.
- d) *Prevents Injury:* By ensuring that imported goods are sold at a minimum price, a price undertaking can prevent injury to domestic industries caused by dumping.
- e) *Employment and Investment:* Accepting a price undertaking can help maintain employment and investment in the domestic industry, as well as in the exporter's country and promoting economic stability and growth.
- f) *Market Monitoring:* The price undertaking provides an opportunity to monitor the pricing trend of the subject product, building on existing experience with wheat price monitoring and enhancing market oversight.
- g) *Flexibility:* Price undertakings can be tailored to specific circumstances and can be adjusted over time to reflect changes in market conditions.
- h) *WTO Compliance:* Accepting a price undertaking can demonstrate compliance with WTO rules and agreements, avoiding potential disputes and trade tensions.
- i) *Industry Growth:* By ensuring fair competition, a price undertaking can promote healthy growth and development of the domestic industry.

**Conditions to price undertaking:**

**Relationship Between the Exporter and Importer**

The relationship between the exporter and the importer played a significant role in the feasibility of the price undertaking agreement considered by the Commission. The Commission carefully considered the relationship of the exporter and importer, which could facilitate easier monitoring and compliance with the agreed-upon prices, and the entire price undertaking agreement. The relationship is also deemed conducive to the implementation of the price undertaking, as it allows for streamlined communication and enforcement of the agreement's terms.

### **Monitoring and Compliance**

Effective monitoring is essential to ensuring that the price undertakings are adhered to and that the objectives of the agreement are met. The Commission has outlined specific information requirements that the exporter and importer must meet on a quarterly basis. The Commission also considered its available resources and the fact that this investigation involves only one importer and one exporter that will form part of the price undertaking agreement being considered for monitoring, thus its decision.

### **Anti-Circumvention Measures**

The Commission has considered the possibility of circumvention and other breaches of the price undertaking agreement. To prevent such circumvention, the Commission will put in place stringent measures as part of the price undertaking agreement.

### **Market Competition and Monopoly Concerns**

The Commission has also taken into account the competitive dynamics within the SACU market. While the SACU producer has a dominant position, the competition provided by Zimbabwean imports is essential in preventing monopolistic pricing and ensuring fair market conditions. The competition provided by the Zimbabwean imports does not mean that such imports must be dumped into the SACU market, causing material injury to the SACU industry and/or threatening to cause material injury to the SACU industry. Therefore, price undertaking agreement is designed to balance the need for protecting the SACU industry with the benefits of competition, ultimately serving the interests of consumers.

### **Zimbabwe's Status as a Developing Country and SADC Member**

Zimbabwe's status as a developing country was also considered in accordance with Article 15 of the Anti-Dumping Agreement, together with it being a member of the SADC. The Commission has recognised the importance of exploring constructive remedies such as a price undertaking to address the issue of injurious dumping in this investigation.

### **Strategic Importance of BCY Yeast**

BCY yeast is a strategic product with widespread use in food production and other consumable goods. The availability of this product at fair prices is critical to maintaining

the stability and sustainability of various industries within the SACU region and ensuring that food security is not affected in relation to goods that require the subject product.

The Commission noted that for the effective implementation of price undertakings and the relevant agreement, ADR 39.2 empowers it to be provided with information to use to effectively monitor whether the price undertaking terms and conditions agreed upon are adhered to, which will allow effective monitoring by the Commission. As noted above, that in its decision to consider price undertaking, the relationship between exporter and the importer was considered and their pricing arrangement. Therefore, to effectively monitor the price undertakings, the following information which form part of the price undertaking agreement must be provided by the importer and exporter, quarterly (every 3 months) from date of implementing such price undertaking:

- Monthly management accounts of the exporter and importer in a format consistent with the current anti-dumping proceeding.
- Monthly data on domestic sales, third-country sales, and SACU sales of the exporter, in a format consistent with the current anti-dumping proceeding.
- Monthly sales data of the importer, in a format consistent with the current anti-dumping proceedings, including but not limited to invoices, contracts, etc.
- Monthly/Quarterly cost and price build-ups of the importer and exporter, in similar formats as those provided for the current anti-dumping proceedings.
- Audited annual financial statements, to be provided within 30 days of approval by independent auditors.

The Commission wishes to further indicate that it may verify all the information provided should it deem this necessary.

Including the above required information and conditions, the following outlines additional conditions form part of the price undertaking agreement:

#### **Sales Channel Restriction**

The exporter is required to ensure that all sales to SACU are made exclusively through its related importer, that is also part of this anti-dumping investigation. Any sales made

through another trader would constitute a violation of the price undertaking agreement, as per ADR 39.4.

### **Additional Conditions for Termination of the Agreement**

- (i) Any form of circumvention of the price undertaking agreement in whatever form or condition will be considered a breach of the agreement.
- (ii) The entry of a new exporter of the subject product from Zimbabwe into the SACU market will be considered a breach of the agreement.
- (iii) A decrease in the SACU producer's capacity utilization below two-thirds of its current installed capacity, will result in the termination of the agreement.
- (iv) The Commission may terminate the price undertaking agreement in the event that SACU export sales of the subject product originating in or imported from the Republic of Zimbabwe increases by more than 50% of the current export volumes, or they account for more than 10% of SACU market share.

The Commission has decided that in the event that terms and conditions of the price undertaking are agreed upon timeously, the price undertakings will be based on the unsuppressed selling price determined by the Commission. The Commission will adjust the unsuppressed selling price with PPI index every 12 months after its implementation.

In the event that the price undertaking agreement is violated during the period the investigation is suspended or prior to the termination of the investigation, the Commission may request the SARS Commissioner to impose definitive anti-dumping duties as contained in table 9.1 of this report.

The price undertaking agreement is valid for five years from the date of implementation. After the five-year period, the agreement may be reviewed and renewed if necessary to ensure the continued protection of the SACU industry from injurious dumping. The price undertaking agreement is valid in its entirety and may not be accepted in part or amended for any purposes without any prior agreement with the Commission.

## 11. FINAL DETERMINATION

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After considering all the responses and comments received from interested parties, the Commission made a final determination that the subject product originating in or imported from Zimbabwe was being imported into the SACU market at dumped prices, thereby causing material injury and threat of material injury to the SACU industry.

The Commission further made a final determination to:

- Finalise the anti-dumping investigation.
- Recommend to the Minister of Trade, Industry and Competition to impose definitive anti-dumping duties on imports of active yeasts (baker's compressed yeast), classifiable under tariff subheading 2102.10, originating in or imported from Zimbabwe by Lesaffre Zimbabwe (Pvt) Ltd., and those duties be suspended for a period of five years, provided that prior to the suspension a price undertaking agreement between ITAC and the exporter is in effect and that no violation of the price undertaking agreement occurs during this period.
- Recommend to the Minister of Trade, Industry and Competition that in the event that the price undertaking agreement is violated, definitive anti-dumping duties be imposed as per table 9.1, to address the violation.
- Recommend to the Minister of Trade, Industry and Competition that definitive anti-dumping duties be imposed on imports of active yeasts (baker's compressed yeast) produced by all other producers in Zimbabwe as per table 9.1.
- The recommended anti-dumping duties on active yeasts (baker's compressed yeast) be listed in the "rebate item" column in Schedule No. 2 of the Customs and Excise Act and therefore may not be imported under rebate of customs duty without payment of anti-dumping, countervailing and safeguard duties without a recommendation from ITAC.