

## PRICE UNDERTAKING

This Price Undertaking (the "Price Undertaking") is hereby given by \_\_\_\_\_ (the "Company") to the National Tariff Commission (the "Commission") in terms of which, the Company has agreed as follows:

### GOVERNING LAW

2. This Price Undertaking shall be governed by Part XII of the Pakistan's Anti-Dumping Duties Ordinance, 2000 (hereinafter referred to as "the Ordinance"), and Article 8 of the Agreement on Implementation of Article VI of GATT 1994.

### DEFINITIONS

3. For the purpose of this Price Undertaking, the expressions used hereinafter shall have the following meaning:

"**Annex**" refers to the Annexes of this Undertaking.

"**CBR**" shall mean the Central Board of Revenue, Ministry of Finance, Government of Pakistan.

"**Commercial Invoice**" refers to a commercial sales invoice issued by the Company and which must accompany all goods exported to Pakistan subject to this Undertaking for which benefit from the exemption to the anti-dumping duty is sought.

"**commissions**" (not to be understood as National Tariff Commission referred to as the "Commission") shall mean commissions paid by the Company in respect of any sale(s) covered by this Undertaking. It shall also be understood to include the mark up received by a trader if the functions of a such trader are similar to those of an agent working on a commission basis.

"Company" refers to \_\_\_\_\_

"**Direct Sales**" or "**Sold Directly**" refers to the Investigated Product sold by the Company (i.e. invoiced and shipped) to the First Independent Customer acting as an importer and clearing the goods for free circulation in Pakistan.

It also refers to sales of the Investigated Product sold (i.e. invoiced and shipped) by the Company to any Related Party in Pakistan, acting as an importer and clearing the goods for free circulation in Pakistan.

"EXW" shall mean ex-works

"**First Independent Customer in Pakistan**" means the first customer in Pakistan which is not a related party.

"**Indirect Sales**" refers to sales of the Investigated Product made by the Company which are *not* Direct Sales (see above) made by the Company to the party acting as an importer and clearing the goods for free circulation into Pakistan.

“**Investigation**” refers to the anti-dumping investigation on imports into Pakistan of the Investigated Product originating in and/or exported from the Republic of Indonesia, the Republic of Korea, Malaysia and the Kingdom of Thailand, which was initiated by the Commission on May 12, 2005 ( A.D.C No. 07/2005/NTC/PFY).

“**Investigated Product**” refers to the Polyester Filament Yarn (“PFY”) originating in and/or exported to Pakistan from the Republic of Indonesia/the Republic of Korea/Malaysia/the Kingdom of Thailand<sup>1</sup> and classified under Pakistan Customs Tariff Heading Nos. 5402.3300 and 5402.4300 (or any amendments to these heading numbers adopted from time to time).

“**Minimum Export Price(s)**” or “**MEP(s)**” refers to the ex-works (“EXW”) price(s) of the investigated product worked out on the basis of the formula given in Annex I.

"**Net Sales Price**" means the sales price of the Company to the First Independent Customer in Pakistan after the deduction of any commissions paid and/or direct or deferred discounts, rebates or any other benefits or compensation granted.

In the case of any re-sales by a Related Party in Pakistan as defined below, it means not only deductions for any commissions paid and any direct or deferred discounts, rebates or any other benefits or compensation granted, but also deductions for the reasonable profit of the Related Party in Pakistan and all costs incurred by that party for sales of the Investigated Product between importation and resale including selling, general and administrative costs (SG&A), duties and taxes.

Such profit and SG&A costs shall be based on the findings of the Commission in the Preliminary Determination, which led to acceptance of the Price Undertaking.

“**Preliminary Determination**” refers to the preliminary determination of Commission published in the official Gazette and national newspapers on November 11, 2005.

“**Quarter**” refers to periods of three calendar months. "Quarter 1" of any given year is from 1 January to 31 March, "Quarter 2" from 1 April to 30 June, "Quarter 3" from 1 July to 30 September and "Quarter 4" from 1 October to 31 December.

"**Re-sale Invoice**" means a sales invoice issued to the First Independent Customer in Pakistan by a Related Party in Pakistan for the Investigated Product.

"**Related Party**" refers to the Company or the importer(s) only if:

- (i) one of them directly or indirectly controls the other;
- (ii) both of them are directly or indirectly controlled by the same third person;  
or
- (iii) together they directly or indirectly control a third person:

Provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause to behave differently from non-related parties and for that purpose one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter:

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<sup>1</sup> Only the country appropriate to the exporter/foreign producer providing this undertaking shall apply.

"**Transaction**" or "**Transactions**" means an item on a line on a Commercial Invoice.

"\$" This symbol stands for "US dollar".

### **SCOPE OF UNDERTAKING**

4. This Price Undertaking applies to all sales of the Investigated Product by the Company to its first unrelated customer(s) in Pakistan during the validity period of this Price Undertaking.
5. The Company understands that this Price Undertaking comprises three main elements, namely:
  - A. The respect of MEPs for **all** exports to Pakistan of the Investigated Product which would otherwise be subject to the anti-dumping duty. In this regard, the Company undertakes only to make Direct Sales of the Investigated Product to the First Independent Customer in Pakistan.
  - B. The respect of formal requirements for **all** exports to Pakistan of the Investigated Product, including the issue of export documentation
  - C. The respect of other obligations for export to Pakistan of the Investigated Product so that the Commission and CBR can effectively monitor this Price Undertaking. These include (i) the submission of detailed sales reports and (ii) the acceptance of verification visits by the Commission for the purpose of controlling such sales reports and (iii) the requirement to consult with the Commission.

### **PRICE**

6. The Company undertakes to ensure that the Investigated Product, after any direct or deferred discounts or rebates, credits or other benefits granted, whether directly or indirectly linked to a sale, on EXW price level is not sold below a MEP established on a monthly basis.
7. The Minimum Price will be based on the non-dumped EXW price level found during the Period of Investigation POI (please refer to Annex I), adjusted by a coefficient to take account of fluctuations in the prices of the principal raw materials used in the manufacture of the Investigated Product (i.e. RAW MATERIAL PTA and RAW MATERIAL MEG). In order to reflect the incidence of the raw materials in the EXW MEP, the coefficient would be 870 Kilograms ("Kgs") for PTA and 350 Kgs for MEG to produce one tonne of the investigated product. Prices of these raw materials will be determined in accordance with the formula set out in Annex I to this Price Undertaking
8. For each month of application of this Price Undertaking, the cost of coefficient shall be calculated by dividing the average raw material prices published by the CBR based on the information obtained from PRAL and Pakistan PTA Ltd., for the preceding month, weighted as above.
9. The Company understands that settling of the debt related to any export transaction to Pakistan should be made in cash, or by a cash equivalent method.
10. The Company understands that for the purposes of comparing the Net Sales Price of the Product Covered sold to Pakistan with the MEPs set out in [Annex I](#), the date the Commercial

Invoice is issued to the First Independent Customer in Pakistan and which appears thereon shall determine the quarter into which the Commercial Invoice or Re-sale Invoice is to be taken into consideration.

11. The Company is further aware that for the purpose of converting the sales prices of the Investigated Product to the First Independent Customer in Pakistan from the currency appearing on the Commercial Invoice or the Re-sale Invoice into \$, the exchange rate to be used is the average of that of the calendar month *prior* to the month in which the Commercial Invoice or Re-sale Invoice is issued. Exchange rate for this purpose would be the rate published by the Central Bank of ----- .

12. The Company is also aware that the MEPs set out in [Annex I](#) have been calculated based on "cash" or equivalent payment terms like LC at sight (i.e. with zero days credit granted to the customer). If the payment terms specified on the Commercial Invoice issued to the First Independent Customer in Pakistan or the Re-sale Invoice, or which are otherwise contractually agreed, differ from "cash" or equivalent payment terms, then the price to be compared with the MEPs will be reduced accordingly by 1% for each additional month of credit granted, on a *pro rata* basis.

13. Additionally, the Company accepts that if there is a *pattern* whereby the actual time taken by any customer to pay regularly exceeds the period specified for payment on the Commercial Invoice issued to the First Independent Customer in Pakistan or the Re-sale Invoice or otherwise contractually agreed, then the price to be compared with the MEPs will be reduced accordingly. In this regard, a reduction of 1% will be made from the Net Sales Price for each additional month of credit granted, on a *pro rata* basis for the total number of days actually taken by the customer to pay.

### **INFORMATION AND EXPORT DOCUMENTATION**

14. The Company undertakes that every shipment of the Investigated Product to Pakistan will be accompanied by a production certificate that complies with the requirements mentioned in Annex II to this Price Undertaking. In addition, invoices & bill of lading, packing list, specifications certificate as well as certificate of origin, are to be provided for every sale transaction.

15. The Company shall provide information to the Commission for every shipment of the Investigated Product to Pakistan for the each quarter not later than by end of the first month of the subsequent quarter on the format provided at Annex III

16. The Company is aware that if it appears that it has issued production certificates for shipments of the product concerned that do not conform to the terms of this Price Undertaking, the Commission may require an explanation and in case of provision of false, misleading information take appropriate action, which may include termination of Price Undertaking.

17. The Company further undertakes to provide any other document in order to facilitate monitoring of this Price Undertaking by CBR including credit and debit notes for each shipment if the Commission so requires from time to time.

## **MONITORING**

18. The Company undertakes to provide the CBR with information about each shipment to its first independent customers in Pakistan on a quarterly basis. This information is to be provided by the Company to ensure that it is received by CBR no later than fifteen working days from the date of the end of each quarter.

19. The Company undertakes to cooperate in providing whatever related information and data is considered necessary by CBR and the Commission for the purposes of ensuring compliance with this Price Undertaking and to allow the officers of CBR and the Commission to access such information and data. This shall include the right of the Commission to conduct verifications at the premises of the Company to verify any information related to this Price Undertaking, following a request being made from the Commission.

20. The Company is aware that the Commission may issue further instructions for monitoring the implementation of this Price Undertaking after consultation with the Company.

## **CONSULTATIONS**

21. If the provision of this Price Undertaking proves to be impracticable or impossible to implement, the Company may request consultations on the relevant terms of the Price Undertaking. The Company may also consult with the Commission regarding any difficulties which may arise with regard to the interpretation or application of this Price Undertaking.

22. No party will take a decision about rescinding this Price Undertaking until a consultation is first held with the other party. Maximum time period provided for consultation under this Price Undertaking would be one month.

## **VIOLATION**

23. Not respecting the MEPs will be considered violation of this Price Undertaking.

24. Failure to provide information and export documentation to the Commission and CBR as agreed within the terms of this Price Undertaking will be considered violation of this Price Undertaking.

25. Circumvention of this Price Undertaking or failure to cooperate with the Commission within the terms specified in this Price Undertaking shall be considered as violation of this Price Undertaking.

26. Circumvention includes but is not limited to:

- Making compensatory agreements with its customers in Pakistan regarding sales of the Investigated Product.
- Failing to report discounts, rebates, sales cancellations, or in general any benefits granted to its customers.
- Giving misleading or incorrect descriptions of the types or quantities of the Investigated Product.

- Making misleading or incorrect declarations or reports regarding the nature, type or origin of the Investigated Product sold or the identity of the exporter or importer.
- The Company is aware that acceptance of the Price Undertaking by the Commission is based on trust and that any action(s) which would harm the relationship of trust established with the Commission shall justify the immediate withdrawal of acceptance of the Price Undertaking by the Commission and the imposition of anti-dumping duties.
- Any changes in circumstances which may occur during the implementation and application of this Price Undertaking from those circumstances prevailing at the time of acceptance of the Price Undertaking which were relevant to the decision to accept the Price Undertaking may also give rise to the withdrawal of acceptance of the Price Undertaking by the Commission.
- The Company is further aware that the Commission may also withdraw acceptance of this Undertaking at any time during its period of application if monitoring and enforcement prove to be impracticable and it is not possible to revise the Price Undertaking or find a solution which is acceptable to the Commission. In such a case, the Company undertakes to respect the MEPs set out in Annex I and to continue making reports of its sales to the Commission until such time as anti-dumping duties are imposed.
- The Company is aware that it may voluntarily withdraw this Price Undertaking at any time during its period of application and such withdrawal shall be made in writing to the Commission. In such circumstances, the Company undertakes to respect the MEPs set out in Annex I and to continue making reports of its sales to the Commission and CBR until such time as anti-dumping duties are imposed.

### **REMEDIES IN CASE OF VIOLATION**

27. The Commission shall, when it has reasons to believe that the Price Undertaking has been violated or is being violated, withdraw acceptance of the Price Undertaking and immediately impose antidumping duties on the basis of the facts established in the context of the original investigation (i.e., Preliminary Determination) and the Company will be given an opportunity to be consulted and justify its position.

28. Where the Price Undertaking is voluntary withdrawn by the Company, antidumping duties will be immediately imposed on the basis of facts established in the context of the original investigation.

### **APPLICATION OF UNDERTAKING**

28. This Price Undertaking should be applied and valid up till \_\_\_\_\_ unless otherwise terminated by the Commission or voluntary withdrawn by the Company.

29. The Company will provide a non-confidential version of this Price Undertaking and its Annexes, so that it may be made available to other interested parties where appropriate.

**Signed in Islamabad on this \_\_\_\_\_ day of \_\_\_\_\_ 2006**

**For (Name of the Company):**

**Mr.** \_\_\_\_\_  
**Title:** \_\_\_\_\_

**Signature:**

## ANNEX II

### Requirements for Production Certificate

I, the undersigned, certify that the product certified under this certificate is produced by \_\_\_\_\_ and exported by \_\_\_\_\_ to Pakistan within the scope and under the terms of the Price Undertaking. I declare that the information provided in this certificate is complete and correct.

(Signature of authorized company official)

(Name)

(Title)

(Date)

### Annex III

#### Format for the information to be provided to the Commission

The Company shall provide information to the Commission for every shipment of the Investigated Product to Pakistan for the each quarter not later than by end of the first month of the subsequent quarter on the following format. The information will also be provided in soft form in EXCEL format.

Column	Description of information
A	Serial No.
B	Product Description
C	Product code (if any)
D	Invoice No
E	Invoice Date
F	Bill of lading No
G	Dill of lading date
H	Quantity in MT
I	Gross value (with currency name)
J	Credit Note No. (if any)
K	Credited Quantity (if any)
L	Credited Value (if any)
M	Delivery Terms
N	Payment Terms
O	Interest rate
P	Payment receipt date
Q	Freight and other handling costs in exporting country
R	Ocean freight
S	Insurance
T	Commission, discount, rebate etc.
U	Exchange rate with US\$
V	Importer name and address
T	Relationship with importer (U for un-related and R for Related)

## Annex I

### Formula to Calculate MEP

The Minimum Export Price of the investigated product as provided in paragraphs 6 through 13 would be determined as follows:

A	Inputs (PTA and MEG) ratio to produce one tonne of PFY (PTA 870 Kgs and MEG 350 Kgs)	Polyester Filament DTY Yarn	Polyester Filament FDY Yarn	ITY/BSY/ Others
		1.22:1	1.22:1	1.22:1
B	Prices of inputs	CBR will publish prices of inputs based on the information obtained from PRAL and Pakistan PTA Ltd for the previous month of publication		
C	Value addition in less than 65 denier	US\$ 605/MT	US\$ 505/MT	US\$ 865/MT
D	Price of less than 65 denier per MT	(AxB)+C	(AxB)+C	(AxB)+C
E	Value addition in 65 to 85 denier	US\$ 555/MT	US\$ 455/MT	US\$ 815/MT
F	Price of 65 to 85 denier per MT	(AxB)+E	(AxB)+E	(AxB)+E
G	Value addition in 86 to 120 denier	US\$ 477/MT	US\$ 377/MT	US\$ 737/MT
H	Price of 86 to 120 denier per MT	(AxB)+G	(AxB)+G	(AxB)+G
I	Value addition in 121 to 175 denier	US\$ 400/MT	US\$ 300/MT	US\$ 660/MT
J	Price of 121 to 175 denier per MT	(AxB)+I	(AxB)+I	(AxB)+I
K	Value addition in more than 175 denier	US\$ 350/MT	US\$ 250/MT	US\$ 610/MT
L	Price of more than 175 denier per MT	(AxB)+K	(AxB)+K	(AxB)+K
M	Price of special yarns (e.g. Dope Dyed etc) per MT	(D or F or H or J or L) + US\$ 120	(D or F or H or J or L) + US\$ 120	(D or F or H or J or L) + US\$ 120