

ADC No.001/2002/TP/SA

**Government of Pakistan
National Tariff Commission**

REPORT

ON

**FINAL DETERMINATION AND LEVY
OF DEFINITIVE ANTIDUMPING DUTY
ON ELECTROLYTIC TINPLATE PRODUCED
IN SOUTH AFRICA AND IMPORTED INTO PAKISTAN**

(NON-CONFIDENTIAL)

November 26, 2002

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Ministry of Commerce
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**FINAL DETERMINATION AND LEVY OF DEFINITIVE ANTIDUMPING DUTY
ON ELECTROLYTIC TINPLATE PRODUCED IN SOUTH AFRICA
AND IMPORTED INTO PAKISTAN**

The National Tariff Commission (hereinafter referred to as the "Commission") having regard to the Antidumping Duties Ordinance 2000 (LXV of 2000) (hereinafter referred to as the "Ordinance") and the Antidumping Duties Rules, 2001 (hereinafter referred to as the "Rules") relating to investigation and determination of dumping of goods into the Islamic Republic of Pakistan (hereinafter referred to as "Pakistan"), material injury to domestic industry from the imports thereof, and imposition of antidumping duties to offset the impact of such injurious dumping from other countries and to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as the "WTO Antidumping Agreement").

A. PROCEDURE

The procedure set out below has been followed with regard to this investigation. Please note that the terms defined in the Report of Preliminary Determination of this investigation will have the same meaning in this Report of Final Determination unless defined otherwise.

1. Receipt of Application

The Commission received, on February 2 2002, a written application from Siddiqsons Tin Plate Limited, D-53, Textile Avenue, S.I.T.E., Karachi (hereinafter referred to as the "Applicant"), a domestic tinsplate manufacturing industrial unit, on behalf of domestic industry, alleging dumping of Electrolytic Tinsplate (hereinafter referred to as "Tinsplate") of a thickness of less than 0.5 mm and of width of 600 mm or more (hereinafter referred to as the "investigated product") originating in and imported from the Republic of South Africa (hereinafter referred to as "South Africa"). The High Commission of South Africa in Islamabad was notified on February 13, 2002, of the receipt of the application in accordance with the requirements of Section 21 of the Ordinance.

2. Evaluation and Examination of the Application

2.1 The examination of the application showed that it met the requirements of Section 20 of the Ordinance as it contained evidence of dumping of the investigated product and injury to the domestic industry resulting therefrom as well as Rule 3 of the Rules which requires submission of information prescribed therein. The application also fulfilled the requirements of Section 24 of the Ordinance as the Applicant represents 100 percent of the total production of the domestic like product produced by the domestic industry.

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2.2 The Applicant identified Iscor Limited, Roger, Dyason Road, P.O. Box 450, Pretoria-West, Pretoria 0001, South Africa (hereinafter referred to as the "foreign producer"), as the South African producer and Macsteel International South Africa (Pty) Ltd., 187 Rivonia Road, Sandton, P.O.Box 8370, Johannesburg, South Africa, (hereinafter referred to as the "exporter"), as the South African exporter of the investigated product.

3. Initiation of Investigation

3.1 The Commission, upon examining the accuracy and adequacy of the evidence provided in the application, established that there is sufficient evidence of dumping and injury to justify initiation of an investigation. Consequently, the investigation was initiated on February 26, 2002 and in terms of Section 27 of the Ordinance, the Commission, on the same day, issued a notice ("notice of initiation") published in the official Gazette of Pakistan¹ and in two widely circulated national newspapers² (one English language and one Urdu Language) notifying initiation of investigation concerning imports into Pakistan of the investigated product {importable under PCT³ No. 7210.1200 contained in the First Schedule to the Customs Act, 1969 (IV of 1969)} originating in and exported from South Africa.

3.2 The Commission also sent the notice of initiation to the High Commission of South Africa in Islamabad, the foreign producer, the exporter, the Pakistani importers, the representative association of importers, the users, and the Applicant in accordance with the requirements of Section 27 of the Ordinance.

3.3 Thereafter, the Commission sent a non-confidential version of the application to the foreign producer, the exporter, the Pakistan Iron & Steel Merchants' Association (hereinafter referred to as "PISMA"), and the High Commission of South Africa in Islamabad. In addition to the non-confidential version of the application, the Commission sent a questionnaire for submission of data and information (hereinafter referred to as the "Questionnaire"), on February 28, 2002, to the foreign producer, the exporter, and PISMA and requested them to respond to the Commission within 37 days of the dispatch of the Questionnaire. This was followed by a letter dated March 12, 2002 from the Commission in which the period of investigation was more particularly defined; the time limit of 37 days was counted from March 12, 2002. The foreign producer as well as the exporter, vide their letters dated April 5, 2002 and April 2, 2002 respectively, requested for extension in the time limit for submission of their reply to the Questionnaires by a period of two weeks. A similar request was also received from PISMA vide their letter dated April 22, 2002. These requests were reviewed by the Commission and, upon good cause shown, extension of two weeks in the time period for submission of filled-out Questionnaire were granted to the exporter and the foreign producer through letters, both dated April 10, 2002. Similarly, PISMA was also granted extension through the Commission's letter dated April 23, 2002. Replies were received from the foreign producer and the exporter on May 3, 2002 within the extended time period, which were accepted by the Commission for examination.

¹ The official Gazette of Pakistan (Extraordinary) dated February 28, 2002.

² 'The Nation' and the 'Nawa-e-Waqt' of February 26, 2002 issue.

³ PCT is the abbreviation for Pakistan Customs Tariff.

1.4 The Commission also received a reply from the PISMA on May 4 2002. However, upon examination, it was found that it did not provide any information, which may have been relevant for the purposes of this investigation. Furthermore, a substantive part of the Questionnaire was left unanswered. This reply is placed on record for the purposes of this investigation.

1.5 A request was made to Pakistan Revenue Automation Limited ("PRAL"), the data processing arm of the Central Board of Revenue, Government of Pakistan, on March 2, 2002 to provide details of imports of Tinplate from all countries including South Africa, for the period of investigation more particularly defined in paragraph 7 below. These details were provided to the Commission and were taken into account for the purposes of this investigation.

1.6 The Commission, in accordance with Rule 7 of the Rules, established and maintained a public file at the offices of the Commission, which was available to the interested parties for review and copying from Monday to Thursday between 1100 hrs to 1300 hrs throughout the investigation.

1.7 The Commission sought, from all available sources, the relevant data and information deemed necessary for the purposes of determination of dumping and injury if any caused therefrom. In terms of Rule 12 of the Rules, the Commission, during the course of the investigation, satisfied itself as to the accuracy of information supplied by the interested parties upon which the findings in this final determination are based. In this connection, on-the-spot investigation was conducted at the premises of the Applicant from April 11 to 13, 2002 in order to verify the information provided by the Applicant and to obtain further details. Similarly, on-the-spot investigations were conducted at the premises of the foreign producer from July 29 to July 31, 2002 and at the premises of exporter from August 1 to August 2, 2002 in order to verify the data and information provided by them and to obtain further details.

4. Applicant's Views

The Applicant raised the following major issues in its application and subsequent clarifications regarding dumping of the investigated product and the material injury resulting therefrom:

- i) the exporter is exporting the investigated product to Pakistan at dumped prices;
- ii) the investigated product and the Tinplate produced domestically are 'like products';
- iii) the exporter is a major exporter of Tinplate to Pakistan. Its share in total imports of Tinplate to Pakistan is around 45 percent;
- iv) dumping of the investigated product is causing material injury to the domestic industry, mainly for the reasons given below:
 - price undercutting;
 - production and sales not reaching the projected level;

- build up of excessive stocks/inventories of finished product;
 - "negative" return on investments;
 - consequential difficulties in raising capital for its operations; and
 - losses on its production/sales.
- v) the domestic industry has enough production capacity to meet the entire demand of the country; and
- vi) dumping of the investigated product from South Africa started with the start of commercial production by the domestic industry.

5. Submissions by the Foreign Producer and the Exporter

The Commission received written replies/submissions from the foreign producer and the exporter, through their attorney, in which the allegations made by the Applicant were denied and rejected. The replies/submissions were intended essentially to establish the following:

- "i) the present antidumping proceedings have been initiated illegally;
- ii) the Pakistani producer of Tinplate is not suffering any material injury;
- iii) imports of Tinplate from South Africa did not cause any injury to the Pakistani producer; and
- iv) imposition of anti-dumping measures on imports of Tinplate originating in South Africa would not be in the interest of the user industry in Pakistan."

6. Views of the Other Interested Parties

Through the notice of initiation all interested parties (as defined in Section 2 of the Ordinance) were given an opportunity to submit their views concerning alleged dumping of the investigated product to the Commission in writing. In addition to the comments received by the Commission from the Applicant, the foreign producer and the exporter (please see paragraph 4 and 5 above), comments were received from the other interested parties which are summarized as follows:-

i) PISMA

PISMA stated that:

- a). no dumping of Tinplate from South Africa or any other country is taking place;
- b). "Conditions in Pakistan are not suitable for dumping a costly material as Tinplate";

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- c). more than 90% imports of Tinplate are of secondary¹ quality;
- d). the product of the Applicant has failed to capture the market in Pakistan;
- e). the Applicant is using secondary quality Tin Mill Black Plate (herein after referred to as "TMPB") to produce prime quality Tinplate; and
- f). prices of the Applicant's product are very high.

ii) Al Mumtaz International

The views and comments submitted by them were the same as those of PISMA.

iii) S.B. Steel Company

They stated that:

- a. no dumping of Tinplate is taking place from South Africa or any other country;
- b. conditions in Pakistan are not suitable for dumping Tinplate; and
- c. the Applicant wants to have a monopoly in the domestic Tinplate market.

iv) Hussain Can Co. (Pvt.) Ltd.

They stated that:

- a. Pakistan imports 75,000 MT to 100,000 MT of secondary quality Tinplate annually; the quantity imported from South Africa is negligible;
- b. the prices of Tinplate imported from South Africa are same as the prices of Tinplate imported from other countries;
- c. the major raw material of Tinplate i.e. TMBP is available in South Africa, so their cost to make and sell is lower than that of the Applicant; and
- d. prices of both Tinplate and TMBP in the international market have declined.

v) Hafeez Iqbal Oil & Ghee Industries (Pvt.) Ltd.

They stated that:

- a. Tinplate is not being dumped in Pakistan;

¹ The word 'secondary' has been used by some of the interested parties with the intent of denoting 'second'.

- b. Pakistan is not a big market for Tinplate. Only a few consumer goods are tinned;
- c. Tinplate is not imported in large quantities from South Africa; and
- d. the Applicant is availing a number of tax exemptions and now wants a monopoly in the domestic market.

7. Period of Investigation

7.1 In terms of Section 36 of the Ordinance, (a) for the purposes of investigation of dumping, period of investigation (hereinafter referred to as the "POI") shall normally cover twelve months preceding the month of initiation and in no case less than six months and (b) for the purposes of an investigation of injury, the POI shall normally cover thirty-six months. However, the Commission may select a shorter or longer period if it deems it appropriate in view of available information regarding domestic industry and an investigated product.

7.2 As the Applicant commenced commercial production in June 1999 and the relevant data available for the domestic industry at the time of submission of the application was up to September 30 2001, these two dates set the outer bounds for both periods and, therefore, the periods of investigation selected for dumping and injury, are, respectively, as follows:

Investigation of dumping	from October 01 2000 to September 30, 2001; and
Investigation of injury	from July 01 1999 to September 30, 2001.

8. Preliminary Determination

The Commission made a preliminary determination in this case on July 20, 2002. In terms of Section 37 of the Ordinance, the Commission issued a notice of preliminary determination ("notice of preliminary determination") which was published in the official Gazette of Pakistan¹ and in two widely circulated national newspapers² (one English language and one Urdu Language), also notifying the imposition of provisional antidumping duty at the rate of 23.91 percent of CIF³ value with effect from July 22, 2002 on the investigated product imported into Pakistan. The Commission also sent the notice of preliminary determination to the High Commission of South Africa in Islamabad, the exporter, the foreign producer and other interested parties. The findings of the Commission in the preliminary determination were as follows:

- i. the application is lodged by the domestic industry;
- ii. the investigated product and the domestic like product are like products;
- iii. the investigated product was exported to Pakistan from South Africa below its normal value during the POI;

¹ The official Gazette of Pakistan (Extraordinary) dated July 20, 2002.

² 'Dawn' and 'Jang' of July 21, 2002 issue.

³ In Pakistan CIF is taken as C&F.

- iv. the volume of dumped imports from South Africa and the dumping margin established provisionally are above the de-minimis level;
- v. the domestic industry suffered material injury during the POI;
- vi. a significant part of material injury to domestic industry is caused by dumped imports from South Africa;
- vii. the dumping margin on the basis of ex-factory export price works out to be 33.19 percent; and
- viii. imposition of provisional antidumping duty on investigated product is needed to prevent further injury to the domestic industry by dumped imports during the course of investigation.

9. Comments of the Interested Parties on the Preliminary Determination

The Commission received written submissions from the foreign producer, the exporter (through their attorney) and Pakistan Vanaspati Manufacturers' Association (hereinafter referred to as "PVMA") commenting on the preliminary determination made by the Commission in this investigation. Comments germane to the investigation under the Ordinance are summarized in section A below and the Commission's analysis and findings in respect of these comments are set out in section B as follows:

Section A

Comments of PVMA

Comment 1.

In the preliminary determination CIF price of imported Tinplate has been compared with the retail price of domestically produced Tinplate which is not correct. Imported Tinplate is liable to customs duty at the rate of 25%, withholding tax at the rate of 3% and sales tax at the rate of 15% while there are no such levies on import of raw materials used by the domestic industry for production of Tinplate. If price of imported Tinplate is taken as duty paid value and profit margin of the importer is added to it then there would be no injury to the domestic industry.

Section B

Commission's Findings

The Commission has not compared CIF prices of imported Tinplate with the retail prices of domestically produced Tinplate. Comparison has been made between duty paid value (landed cost) of the investigated product and the ex-factory price of the domestic like product. Therefore, PVMA's contention is not borne out by facts. (reference paragraph 20.1 of the Report of Preliminary Determination).

Comment 2.

"Apparently it seems that the Commission compared its price for second grade imported products to the price of first grade product sold by Pakistan industry. This is an incorrect calculation, as the product should be compared with the same product grade. Moreover, the antidumping agreement provides that adjustments should be made in advance for single characteristic which has not been done in this case."

In order to establish whether the investigated product and the domestic like product are "like products" the Commission analyzed all the relevant information received from various sources including the exporter, the foreign producer, the Applicant, and PRAL and found that the investigated product and the domestic like product are like products (reference paragraph 9.3 of the Report of Preliminary Determination). This was also confirmed, later, during the on-the-spot investigations.

Comment 3.

For determination of dumping and injury, the POI has been taken from October 2000 to September 2001 and from July 1999 to September 2001 respectively. It would have been better if this period had been assumed from July 1, 2001 to June 30, 2002 or at least a six months period.

The Commission selected POI for dumping calculations from October 1, 2000 to September 30, 2001 and for injury determination from July 1, 1999 to September 30, 2001. This POI was selected in accordance with Section 36 of the Ordinance. In terms of Section 36, an investigation period shall normally cover twelve months preceding the month of initiation for which data is available and for the purposes of investigation of injury, the investigation period shall normally cover 36 months; provided that the Commission may at its sole discretion, select a shorter or longer period if it deems appropriate in view of available information regarding domestic industry and an investigated product.

The reason for selection of this POI was that the domestic industry started its commercial production in June 1999 and data at the time of submission of application was available upto September 30, 2001 (please also see paragraph 7 above).

Comment 4.

The Commission has calculated normal Normal value has been determined on the

value on the basis of sales of all grades of Tinplate sold by the foreign producer in South African market during the POI while exports of Tinplate from South Africa to Pakistan are of second grade only. The normal value should have been calculated on the basis of sales made by the foreign producer of second grade Tinplate only.

basis of sales made by the foreign producer in its domestic market during the POI of grades A,B,C and D only, which were identical to the investigated product. (reference paragraph 11 of the Report of Preliminary Determination). This fact was also confirmed, later, during the on-the-spot investigations.

Comment 5.

The Commission has taken US\$ 24 per ton as internal freight (freight within South Africa) while calculating export price despite the fact that this freight is much lower i.e. US\$ 8.50 per ton. Moreover the Commission has deducted both the freight and import duties from CIF price of imported Tinplate. As these costs have not been included in CIF price, those should not have been deducted.

PVMA has not submitted any documentary evidence in support of their figure of US\$ 8.50/MT. The amount for internal freight was taken as it was provided by the foreign producer and the exporter. This information was verified during the 'on-the-spot investigations' conducted at the premises of the foreign producer and the exporter and it was found that it was correct.

For the purposes of fair comparison between the normal value and the export price, CIF export price was adjusted up to the level of ex-factory export price, as provided for in Article 2.4 of the Antidumping Agreement and Section 11 of the Ordinance.

Comment 6.

The Commission has incorrectly interpreted the injury factors. Article 3.2 of WTO Antidumping Agreement clearly states "With regard to the volume of the dumped imports, 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 in the importing Member". The Commission in its preliminary determination has stated that the share of South African dumped imports increased from 27.09 percent to 41.42 percent in total imports between

In the preliminary determination, the Commission examined all injury factors in accordance with the requirements of the applicable law (reference Part 'C' of the Report of Preliminary Determination).

The market share of the Applicant increased, during the POI, mainly as: (i) the domestic industry kept its prices at a level lower than the level where they should have been with a view to remaining competitive and gaining market share, (ii) increase in production and sales over the low production and sales volume in the first year, and (iii) decline in the share of total imports of Tinplate from

1999-2000 and July to September 2001. However, the application itself indicates that the South African exports of Tinplate to Pakistan decreased from more than 21000 tones in the year 1999-2000 to less than 14000 tones in the year 2000-2001, a decrease of market share from 22.80 percent to 17.30 percent. During the same period the market share of domestic industry increased from 15.80 percent to 43.30 percent. This indicates that imports from South Africa did not increase absolutely or relative to the domestic production or consumption in Pakistan.

other countries.

Although the total imports decreased during the POI but in terms of percentage, the share of South African imports increased in total imports. This means that the market share taken by the applicant was mostly from the imports from other countries.

Comment 7.

"The Commission has not addressed the issue of price depression and has indicated that price suppression was evident as the landed price of the imported product has increased by only 0.71 percent between 1999-2000 and 2000-2001 while the Pakistan Rupee depreciated by 13 percent during this period. Price suppression can only be found if the domestic industry could not increase prices in line with cost increases. The Commission's Report indicates under "cash flow" that the domestic industry reduced its cost of production. This confirms that no price suppression as defined in Article 3.2 of the WTO Antidumping Agreement took place."

It was found in preliminary determination that there was price suppression since the cost of materials of domestic like product increased, but its price did not increase accordingly. However, findings of the Commission on price suppression and depression are set out in the later part of this Report.

Comment 8.

Preliminary determination indicates that the price undercutting decreased from 39 percent in the year 1999-2000 to 26 percent in July-September 2001. The information should relate to full POI, which may not be less than six months. Thus the period assumed from July-

Price under cutting had been calculated for the entire POI i.e. for the years 1999-2000, 2000-2001 and July-September 2001, which is much more than six months (reference paragraph 20.1 of the Report of Preliminary Determination).

September 2001 is not in line with the provisions of WTO.

Comments of the Foreign Producer and the Exporter

Comment 1.

Regarding initiation of an investigation, the Ordinance is inconsistent with the WTO Antidumping Agreement. Article 5.2 of WTO Antidumping Agreement provides that an application shall include evidence of dumping, injury and causal link between dumped imports and the alleged injury. Whereas, Section 20 of the Ordinance refers to only two of the three elements i.e., dumping and injury, that an application must contain in order to justify the initiation of an investigation. Under Section 20(2)(b) of the Ordinance, an investigation can only be initiated by the Commission upon receipt of a written application, by or behalf of the domestic industry, containing evidence of the existence of only dumping and injury.

Comment 2.

In its application, the Applicant failed to provide any substantial evidence of dumping, injury and causal link. The Applicant provided to the Commission erroneous and misleading information concerning alleged dumping and injury. The Applicant calculated the supposed dumping margin using an incorrect methodology and determined the injury on the basis of "hypothetical projected"

Commission's Findings

Section 20 of the Ordinance stipulates the requirements of a written application. In terms of Sub section (2) of Section 20 of the Ordinance, an application shall:

- (a) be submitted to the Commission in such manner, number and form and with such fee as may be prescribed;
- (b) include evidence of dumping and injury within the meaning of this Ordinance as is reasonably available to the applicant; and
- (c) contain such further information as may be prescribed.

It may be noted that sub section (2) (c) mentioned above refers to the information prescribed in the Rules. Rule 3 of the Rules, which relates to the disclosure required in the application, categorically refers to injury factors and a causal link between dumped imports and the material injury to the domestic industry. Thus, the Ordinance is not inconsistent with the WTO Antidumping Agreement.

In terms of Section 23 of the Ordinance, the Commission examined the accuracy and adequacy of evidence submitted by the Applicant and found that there were sufficient grounds to initiate an investigation.

As regards the dumping calculations done by the Applicant, it may be noted that the Commission did not rely on the calculations done by the Applicant and has calculated the

figures.

Article 5.3 of WTO Antidumping Agreement requires the investigating authorities to determine that a complaint contains sufficient evidence prior to initiating an investigation. The information contained in the application lodged by the applicant was insufficient to allow an unbiased and objective determination of dumping, injury and causal link by the Commission.

Comment 3.

The Commission selected an investigation period ending four months before the initiation of the investigation. In this way the Commission has departed from the provisions of Section 36 (2) of the Ordinance and recommendation of WTO Committee on antidumping concerning the period of data collection for antidumping investigation. The requirements set forth in Section 36 of the Ordinance and the recommendation of WTO Committee on Antidumping are aimed at ensuring that the data collected reflect as much as possible the situation of the foreign producers and the exporters concerned. Selection of a POI ending too early before the initiation of the investigation would inevitably result in a determination which is not representative of the actual situation of the foreign producers and the exporters concerned. The Commission failed to justify for selection of POI. The period of data collection for dumping determination was arbitrarily selected by the Commission which fails to be representative of situation at the time of initiation of an investigation. As a result the preliminary dumping determination and measures resulting therefrom cannot be considered as appropriate and are inconsistent with

dumping margin itself in the preliminary determination. Further, the Commission did not accept the projected figures for production and sales submitted by the Applicant, and hence these projected figures are not the basis for injury determination (reference paragraph 25 of the Report of Preliminary Determination).

Disposed of in paragraph 7 and further clarified in the Commission's Findings on Comment 3 of PVMA in paragraph 9 above.

Sections 50 and 51 of the Ordinance and Article 9 of WTO Agreement.

Comment 4.

The investigation was initiated and carried out in violation of the principle of non-discrimination with respect to South Africa since only the South African imports were subject to investigation whereas it has been concluded by the Commission in the preliminary determination that the "imports from others countries were also at prices lower than the prices obtained in ordinary course of trade in international commerce even though these prices were significantly higher than those of investigated product".

This is a violation of Article 9.2 of WTO Antidumping Agreement. The investigating authority should have carried out an impartial and independent analysis of imports originating in all countries where dumping could have accrued.

In terms of Section 20 of the Ordinance, an investigation by the Commission shall only be initiated upon receipt of a written application by or on behalf of the domestic industry. Though, in terms of Article 5.6 of the WTO Antidumping Agreement and Section 25 of the Ordinance, the Commission is empowered to initiate an investigation without receiving a written application, it was noted by the Commission that it may only proceed, in terms thereof, (i) in "special circumstances", and (ii) if the Commission has sufficient evidence of dumping injury and a causal link to justify the initiation of investigation. The Commission initiated investigation against the South African exporter because the Applicant alleged dumping of the investigated product from South Africa only and provided evidence of injury caused therefrom.

In the preliminary determination, the Commission also examined, in accordance with Section 18 of the Ordinance, factors causing injury to domestic industry other than dumped imports of the investigated product. The Commission, in its preliminary determination, has quantified the amount of injury suffered by the domestic industry due to imports from the other countries. In the preliminary determination the Commission has not concluded that imports of other countries are at dumped prices. It is the view of the Applicant that prices of these imports are also lower than the prices obtained in ordinary course of trade in international commerce.

Article 9.2 of the WTO Antidumping Agreement deals with those imports which are found to be dumped after an investigation and the antidumping duty shall be collected in the appropriate amount in each case on

nondiscriminatory basis.

It is evident from the above that the Commission has not discriminated against South African imports because it conducted investigation only against South African imports.

Comment 5.

Under Article 12.2 of WTO Antidumping Agreement, the Commission has to forward all the notices and reports of determinations to all interested parties. Each such notice/report shall set forth in sufficient detail the findings and conclusions reached on all issues of fact and law considered material by the investigating authority. On July 22, 2002 the Commission sent a brief summary of preliminary determination. Having failed to receive a copy of the dumping calculations on which the Commission had based its preliminary determination, we requested the Commission on August 2, 2002 for provision of such calculations. On August 5, 2002, the Commission provided us a narrative of preliminary determination which also did not include a copy of preliminary dumping calculations. We were informed that these calculations could only be consulted at Commission's premises from Monday to Thursday between 11 a.m. to 1 p.m. Consultation requirements imposed in this regard are violations of Article 12.2 of WTO Antidumping Agreement. In failing to forward a copy of its preliminary dumping calculations, the Commission impeded our right to be fully informed of the preliminary determinations. Such a breach seriously restricted our right of defence specified in Article 6.2 of WTO Antidumping Agreement.

We were obliged to appoint a legal representative in Pakistan. It should be

Under Article 12.2 of WTO Antidumping Agreement and Section 37(4) of the Ordinance the Commission has to forward a copy of notice of preliminary determination to the exporting country and other interested parties. The notice of preliminary determination should contain (subject to the requirement of confidentiality) sufficient details of findings and conclusions reached on all issues of fact and law considered material and the information prescribed in Rule 10 of the Rules

The Commission finalized its preliminary determination on July 20, 2002 and the notice of preliminary determination was sent to the exporting country and all other interested parties on July 22, 2002. The notice of preliminary determination was issued in accordance with Section 37 of the Ordinance which contained sufficient details of findings and conclusions and other information which were considered material by the Commission. It may be noted that Article 12.2.1 of WTO Antidumping Agreement states that notice/report of preliminary determination shall, due regard being paid to the requirement for the protection of confidential information, contain in particular:

"(i) the names of the suppliers, or when this is impracticable, the supplying countries involved; (ii) a description of the product which is sufficient for customs duty purposes; (iii) the margin of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value; (iv) considerations relevant to the injury

noted, however, that despite its local presence, the appointed Pakistani law firm experienced substantial difficulties in having access to and obtaining a copy of the preliminary dumping calculation. On at least two occasions, our Pakistani counsel visited the Commission during the time specified but was unable to gain access to the preliminary determinations because all the responsible Commission's officials were unavailable. As a result of the requirements imposed by the Commission, our Pakistani counsel was not able to obtain a copy of the document supposed to contain the preliminary dumping calculations before 23 September 2002, i.e., less than one week before the deadline for submitting comments on the preliminary determination. This constitutes a clear violation of Article 6.10 of the WTO Antidumping Agreement which provides that a disclosure of the essential facts and consideration on which a determination is based should take place in sufficient time for interested parties to defend their interests.

determination as set out in Article 3; and (v) the main reasons leading to the determination."

In terms of Rule 11 of the Rules, the Commission shall hold disclosure meeting with exporter/producer, on request, to explain dumping calculation methodology, but neither the exporter nor the foreign producer requested for disclosure meeting. However, the foreign producer and the exporter, through their Attorney on July 26, 2002 requested for a copy of the dumping calculations. On July 30, 2002 the Commission replied to the Attorney that dumping calculations could be inspected and copied at the offices of the Commission from Monday to Thursday between 11 a.m. to 1 p.m. On July 31, 2002 the Attorney responded that they have appointed a Pakistani law firm (Khalid Anwar & Co., Karachi) for this purposes. The Commission replied to the Attorney that the nominee of the law firm may visit the offices of the Commission within the time period mentioned above and may inspect the public file and copy therefrom on presentation of an authority letter from the Attorney. A representative of Pakistani law firm came to the offices of the Commission on Saturday September 21, 2002. He was reminded that the file is open from Monday to Thursday. The representative again visited the offices of the Commission on September 23, 2002 (Monday) and inspected the public file as well as made photocopies of the documents considered relevant. Hence the contention conveyed is not borne out by facts.

As regards the disclosure of essential facts to interested parties in sufficient time to enable them to defend their interests under Article 6.9 of WTO Antidumping Agreement, (the Attorney has incorrectly referred to Article 6.10) it may be noted that in terms of Rule 14(8) of the Rules these essential facts were disclosed to all interested parties on October 15 and 16, 2002, well before the final determination.

Comment 6.

The document obtained from the Commission with respect to the preliminary dumping calculations is in fact only a table of, supposedly, export transactions. Neither explanations concerning the data reported nor calculations are provided therein. Consequently, the so-called preliminary "dumping calculations" obtained from the Commission do not permit a reasonable analysis and a comprehensive understanding of the methodology used by the Commission to calculate the dumping margin. This constitutes a clear contravention of Article 12.2.1 of the Antidumping Agreement.

Article 12.2.1 of the WTO Antidumping Agreement does not require that the details of dumping calculations be given in notice/report. Such notice/report is required to explain the reasons for the methodology used for dumping calculations. The methodology used for dumping calculations has been fully explained in the report of the preliminary determination. The methodology used for dumping calculations was also placed in the public file which was copied by the nominee of the Attorney of the exporter and the foreign producer on September 23, 2002.

Comment 7.

The preliminary determination is not based on verified evidence submitted by the foreign producer and the exporter in the context of the investigation.

Dumping calculations were done by using the data submitted by the exporter and the foreign producer for normal value and export price. The Commission had desired to verify data and information submitted by the foreign producer and the exporter by conducting the on-the-spot investigation at their premises prior to the preliminary determination. The Commission, in this connection, sent a request to the foreign producer and the exporter on May 16 2002. But the exporter requested for a postponement of the proposed on-the-spot investigation visit. Thus, the preliminary determination was made prior to the on-the-spot investigations.

On-the-spot investigations were conducted from July 29 to August 2, 2002 and the data and information were duly verified. These dates were suggested by the foreign producer and the exporter.

Comment 8.

In its preliminary determination, the It has been established that the products sold

Commission failed to take into account the difference in physical characteristics of the products sold in South Africa and exported to Pakistan and decided to rely on the best information available.

It is submitted that the Commission acted inconsistently with Article 6.8 of the Anti-dumping Agreement in basing its preliminary dumping determination on the best information available. Article 6.8 provides as follows:

"In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available."

We cannot be considered to have impeded the investigation conducted by the Commission, since we provided the Commission with all the requested and necessary information within the deadlines set by it. Also, during the on-the-spot verification carried out at our premises, the Commission established that the information and data provided was accurate. Consequently, the use of the best information available is inconsistent with the provisions of the WTO Antidumping Agreement.

As result of the above, it is submitted that in failing to take into account the physical differences between the different types of products in its comparison of the normal value and the export price, the Commission acted inconsistently with the provisions of Article 2.4 of the Anti-dumping Agreement.

in South Africa and exported to Pakistan are like products. The Commission did not rely on the "best information available" for the dumping calculations. These have been done on the basis of the data submitted by the foreign producer and the exporter. Best available information was used in the preliminary determination in the context of decoding of product identification, quality/grade of the products and thickness of products (reference paragraph 9.4 of the Report of Preliminary Determination). This information was used as there was lack of clarity and mismatch regarding the codes provided for products by the foreign producer and the exporter in respect of the investigated product and Tinplate sold in South Africa. Both the foreign producer and the exporter were requested on May 16 2002 to supply data and information with actual descriptions instead of codes but they responded that the coding system has been explained fully. The full description of codes was obtained during the on-the-spot investigations and is used for the final determination.

Comment 9.

The information provided in preliminary determination shows that the Applicant has not suffered any material injury as a result of imports of tinplate from South Africa. All the economic indicators listed in the preliminary determination confirm that the Applicant is not suffering any injury because its production, sales, and market share have increased while imports from South Africa have decreased during the POI. Further, decline in profitability of the complainant is the consequences of its own marketing strategy and not due to the imports of tinplate from South Africa.

All factors relating to material injury due to dumped imports, including production, sales, market shares, and profitability of the domestic industry, as well as from other sources have been discussed in detail in the Report of Preliminary Determination. (reference Part C of the Report of Preliminary Determination). These factors are also discussed in the later part of this Report.

Comment 10.

The imposition of definitive antidumping measure on imports of Tinplate from South Africa is not in the interest of Pakistani economy. It would give monopolistic status to the Applicant because domestic industry comprises of only one unit. This would lead to an increase in prices of Tinplate. This has been also pointed out by a number of interested parties in their comments filed with the Commission. Further, all Pakistani interested parties have indicated that South African imports of tinplate are not being dumped and are not causing any injury to the Applicant. Three interested parties expressly stated that any antidumping measure on South African imports of tinplate would give monopoly to the Applicant. Further, the Commission has not provided any comments and analysis on the issues raised by the interested parties in connection with the monopolistic status of the Applicant.

The monopoly issue does not fall within the ambit of the Ordinance nor is there any reference to the issue in the WTO Antidumping Agreement. In Pakistan, anti-trust issues are dealt with by the Monopoly Control Authority under the Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance, 1970.

Comment 11.

The imposition of definitive antidumping See the Commission's Findings on Comment

September 26, 2002

Determination and Levy of definitive Antidumping Duty on Electrolytic Tinplate Produced in South Africa and Imported into Pakistan

measure on imports of Tinplate from 10 above. South Africa would have a negative impact on Pakistani user industries because it would lead to elimination of competition in Pakistani Tinplate market and would trigger a substantial price increase. Increase in the price of Tinplate would result in increase in prices of food products for which tin packaging is used.

10. Hearing under Rule 14 of the Rules

10.1 Initially the foreign producer, the exporter and PVMA requested for a hearing. Subsequently, the foreign producer and the exporter withdrew their request and requested for a period of thirty days to submit written comments, which was granted (comments of foreign producer and exporter are given at paragraph 9 above).

10.2 However, in terms of Rule 14 of the Rules, upon the request of PVMA, the Commission arranged a hearing which was held on September 16, 2002. All interested parties were requested to participate. The list of participants who attended the hearing is placed at Annexure I. Submissions were made by the participants during the hearing orally and/or in writing. Written submissions and the record of hearing were placed in the public file maintained by the Commission.

10.3 In terms of Rule 14(7) of the Rules, interested parties have the right to present information orally but such information shall only be taken into consideration by the Commission if it is confirmed in writing and made available to other interested parties (by placing it in the public file). Parties who attended the hearing (PVMA, the Applicant and PISMA representing several importers) made oral submissions. PISMA and the Applicant made their submissions available to the Commission in writing within the stipulated time period, while PVMA did not submit these in writing. The Commission, in terms of Rule 14 of the Rules, is unable to consider comments submitted by PVMA only orally during the hearing. Comments submitted in writing by PISMA and the Applicant were placed in the public file. Comments germane to the investigation under the Ordinance are summarized in section A below and the Commission's analysis of and findings on these comments are set out in section B as follows:

Section A

Comments of PISMA

Comment 1.

There is no reason for initiation of an antidumping investigation against one country i.e. South Africa because imports of Tinplate from all sources, including

Section B

Commission's Findings

The issue has been disposed of in the Commission's Findings on Comment 4 of the Comments of the Foreign Producer and the Exporter on the preliminary

South Africa, are at CIF prices, which are similar. Further, there is no dumping from South Africa because the South African exporter sells the product on the basis of open tender and the highest bidder is allowed to import the product.

determination.

During the 'on-the-spot investigations', the Commission found that the exporter is not selling Tinplate on the basis of open bidding.

Comment 2.

Data/figures submitted by the Applicant in support of their allegations may be released to all interested parties.

A non-confidential version of the application was sent to the exporter, the foreign producer, the South African High Commission in Islamabad and PISMA on February 28, 2002. Furthermore, non-confidential versions of the submissions made by interested parties were placed in the public file, maintained under Rule 7 of the Rules, which was open for inspection by the interested parties throughout the investigation.

Comment 3.

It should be verified as to why the Applicant is importing secondary material for production of prime quality Tinplate.

It is not for the Commission to decide what an importer should import.

Comment 4.

The Commission has calculated normal value on the basis of all types of material (both prime and secondary quality) sold by foreign producer in South Africa while imports of tinplate are of secondary quality only.

The Commission has calculated normal value on the basis of the sales of grades A, B, C and D made during the POI by the foreign producer in its domestic market. Grades A, B, C and D sold in South African market are identical to the investigated product.

Comment 5.

CIF prices of imported secondary quality Tinplate from South Africa has been compared with the retail price of locally produced prime quality Tinplate, which is incorrect.

The foreign producer and the exporter use grades to distinguish quality. Different grades of Tinplate constitute one like product as established in paragraph 14 below.

Wherever price comparisons are cited in

this report, these incorporate adjustment

Comment 6.

Imported Tinplate is subject to customs duty at the rate of 25%, income tax at the rate of 6% and sales tax at the rate of 20%. These taxes and duties are levied on Import Trade Price (ITP) of US\$ 315/MT. On this basis, the incidence of taxes and duties on imported Tinplate works out to US\$ 190/MT. While there is no such levy on import of raw materials for the domestic manufacturer of Tinplate i.e. the Applicant. It is obvious from the above that no one can dump when there is such a high rate of taxes and duties on the imported product.

The Applicant is availing certain tax/t concessions due to its location in a special industrial zone. This has not been allowed to affect the dumping margin calculation.

Comment 7.

POI is taken from October 2000 to September 2001 whereas it should have been from July 2001 to June 2002.

The issue has been disposed of in paragraph 7 and further clarified in the Commission's Findings on Comment 3 of PVMA paragraph 9 above.

Comment 8.

Capacity utilization by the domestic industry has increased from 18.52% during year 1999 – 2000 to 48 percent during the year 2000-2001 and in the subsequent year it would be much higher. This shows that there is no injury to domestic industry. The market share of domestic industry has increased from 15.85 percent to 43.29 percent; on the other hand market share of dumped imports has decreased from 61.35 percent to 39.43 percent. This shows that there is no dumping, as otherwise the share of domestic industry could not increase.

The production and sales of domestic like product, and the capacity utilization and market share of domestic industry increased during the POI due to:

- low production and sales volume in the initial year of establishment of domestic industry;
- decline in the share of total imports of Tinplate from other countries; and
- the domestic industry having kept its prices, with a view to remaining competitive and gaining market share, at a level lower than the level where they should have been.

Material injury was established and discussed in detail in Part C of the Report of Preliminary Determination.

Comment 9.

The Applicant's secondary quality Tinplate have different prices (in support of this PISMA has submitted the price list of the Applicant).

The price list submitted does not refer to "secondary quality Tinplate".

10.4 Arguments and Rebuttals presented by the Applicant

The Applicant's views, arguments, and rebuttals germane to the investigation under the Ordinance on the comments submitted by the interested parties during the hearing are summarized as follows:

- i) The Applicant has installed its plant in a Special Industrial Zone in which Government has given incentives to attract investment; hence the Applicant is exempt from paying taxes and duties on import of raw material.
- ii) The POI has been chosen in accordance with the Ordinance.
- iii) The use of second quality Tinplate by Ghee Manufacturer is a replacement of the Applicant's prime quality product. This means that both the imported Tinplate and domestically produced Tinplate are 'like products'.
- iv) Pakistan standards and quality control Agency has recently standardized Tinplate material to be used for the packing of foods items, which was duly agreed to by PVMA. Ghee Manufacturers must use Tinplate of that standard, which is prime quality. Since the investigated product is of "grade C & D", it is not clear as to how PVMA could be an affected party in this case.
- v) The Applicant is producing "prime quality and secondary quality tinplates for different users".
- vi) The Applicant's plant capacity is around 120000 MT per annum, but it has not been able to utilize even 50% of production capacity due to "dumping from South Africa and other countries". The increase in production and sales of the Applicant is due to the fact that it is a new industry established in 1999 and it has still not attained a reasonable production and sales level.
- vii) The foreign producer is selling its "secondary Tinplate" in South African market at a higher price than the prices charged by the Pakistani importers for the same products.

II. Disclosure of Essential Facts

11.1 In terms of Rule 14(8) of the Rules, the Commission disclosed the essential facts, and in this context dispatched Statement of Essential Facts (hereinafter referred to as the "SEF") on

October 15 and 16 2002, to all interested parties including the foreign producer, the exporter, the South African High Commission in Islamabad.

11.2 Comments of the Interested Parties on Essential Facts

Under Rule 14(9) of the Rules, the interested parties were required to submit comments (if any) on the information disclosed to them, in writing, not later than fifteen days after such disclosure. The foreign producer and the exporter, through their attorney, requested an extension of one week to submit comments on essential facts, which was granted while the Applicant requested extension of two weeks. The Applicant was also granted extension of one week to submit comments on essential facts. Comments on SEF were received from the foreign producer, the exporter, PVMA and the Applicant. The comments germane to the investigation under the Ordinance are summarized in section A below and the Commission's analysis of findings on each of these is set out in section B:

Section A

Comments of the Foreign Producer and the Exporter

Comment 1.

SEF did not take into account their comments on the preliminary determination. Thus the SEF does not form the basis for a decision whether to apply definitive measure.

Comment 2.

An opportunity should be provided to comment on the Commission's final determination on the basis of which the decision whether to apply definitive measures will be taken.

Section B

Commission's Findings

The Commission received comments on the preliminary determination from the exporter and the foreign producer on September 27, 2002. These were analyzed (refer to paragraph 9 above) and are taken into account for the purposes of this final determination.

Furthermore, non-confidential versions of all such documents were placed in the public file maintained by the Commission under Rule 7 of the Rules for review and copying by interested parties.

In terms of Rule 16 of the Rules, after the final determination has been issued, on the request made within fifteen days of the publication of the notice of final determination, the Commission shall hold separate disclosure meetings with the exporter or producer requesting such meeting, to explain the dumping calculation.

methodology finally applied for that exporter or producer.

Furthermore, in terms of Section 64 of the Ordinance, any interested party may prefer an appeal to the appellate tribunal against an affirmative or a negative final determination by the Commission.

Comment 3.

The Commission selection of POI was arbitrary. The decisive factor for this selection was the availability of the Applicant's data. This justification constitutes a clear piece of evidence that the selection of POI which ends more than four months prior to the initiation of investigation was motivated by considerations other than to obtain fair and representative findings.

The issue has been disposed of in paragraph 7 and further clarified in the Commission's Findings on Comment 3 of PVMA in paragraph 9 above.

Comment 4.

We do in principle agree with the methodology used for determination of normal value and export price. However, we reserve the right to make comments upon disclosure of the level of weighted average ex-factory normal value and weighted average ex-factory export price.

The Commission, in SEF, has explained in detail the methodology used for the calculation of normal value and export price. However, in terms of Rule 16 of the Rules, the exporter or the foreign producer, within fifteen days of the publication of the notice of final determination, can make a request for separate disclosure meetings in which the Commission will explain the dumping calculation methodology finally applied. Further the Commission shall provide an opportunity to the exporter or producer or their legal representatives to examine and receive copies of the dumping calculations.

Comment 5.

The information provided in the SEF shows that the Applicant has not suffered any material injury due to imports of Tinplate from South Africa. In

Commission's response to the comments on material injury to domestic industry is as follows:

(i) The production and sales of domestic

this regard it is submitted that:

- (i) In the year 2000-2001 production of domestic like product increased more than 50 percent of its production in the year 1999-2000.
- (ii) Capacity utilization by the domestic industry increased from 18.52 percent in the year 1999-2000 to 28.82 percent in the year 2000-2001 and to 48.02 percent during the period July September 2001.
- (iii) During the year 2000-2001 sales by the domestic industry increased more than 145 percent over the sales in the year 1999-2000
- (iv) Imports of the investigated product during 2000-2001 decreased 32 percent over the imports of 1999-2000. Further the exporter and foreign producer ceased to export Tinplate to Pakistan from the beginning of the year 2002.
- (v) The market share of domestic industry increased from 15.85 percent in the year 1999-2000 to 43.29 percent in the year 2000-2001 and to 58.96 percent for the period July to September 2001.
- (vi) While calculating price undercutting, the sales prices of Applicant's prime material are compared with the sales prices of exporter's rejected Tinplate. The price undercutting calculations should take into account quality differences between Tinplate produced in Pakistan and Tinplate imported from South Africa. Further the Commission is required to re-calculate price undercutting for the POI and not for other periods such as July to September 2001.
- (vii) Stocks/inventories of the domestic like product decreased from 33 percent in the year 1999-2000 to 15 percent during the period October 2000 to September 2001.
- (viii) Cash flow of the Applicant became positive during the year 2000-

like product, capacity utilization and market share of domestic industry increased during the POI due to:

- a. low production and sales volume in initial year of establishment of domestic industry;
- b. decline in the share of total imports of Tinplate from other countries;
- c. the domestic industry having kept its prices, with a view to remaining competitive and gaining market share, at a level lower than the level where they should have been.

The market share of dumped imports of the investigated product decreased from 22.80 percent to 17.28 percent over the year 1999-2000 while imports from other countries decreased from 61.35 percent to 39.43 percent over the same period. Thus the market share taken by the domestic industry was mainly due to decline in imports from other sources. However the share of imports of investigated product in total imports increased from 27.09 percent in the year 1999-2000 to 30.46 percent in 2000-2001, and to 41.52 percent during the period July to September 2001. Furthermore, the claim that the exporter has ceased exports to Pakistan from the beginning of the year 2002 is not valid because as per record of PRAL about 4617 MT of Tinplate has been imported from South Africa during the period January to June 2002.

(ii) While calculating price undercutting, ex-factory prices of domestic like product have been compared with the duty paid value of the investigated product. The domestic industry produces different grades of Tinplate, which are like products (please see paragraph 14 below). Further the ex-factory prices of domestic like product, for the purposes of calculation of price undercutting, have been taken as average prices of all the grades being produced by the domestic industry.

2001.

(ix) Net employment in the domestic industry increased during the POI if contractual employees are taken into account.

(iii) Stocks/inventories of domestic like product decreased and cash flow of domestic industry improved during the POI because the domestic industry gained market share.

(iv) The Commission did not come to a finding of injury on account of employment.

(Please note that the injury factors are analyzed in detail in Part C of this Report).

Comment 6.

The Commission's analysis of the causal link between imports of Tinplate from South Africa and the alleged injury being suffered by the domestic industry is insufficient because:

(i) The SEF does not establish the existence of dumping. The Commission indicated that the Tinplate from South Africa was dumped into Pakistan but it failed to disclose whether dumping has taken place.

(ii) Report of on-the-spot investigation visit's of the Applicant shows that the prices of input (TMBP) have increased during the year 2000-2001, however while analyzing the causal link the Commission failed to take this point into due consideration. Thus the low profitability of the Applicant during the POI is due to an increase in raw material prices and inappropriate market strategy aimed to increase its market share at all costs.

SEF only states the facts of the case. In terms of Rule 14(8) of the Rules the Commission is required to disclose essential facts (subject to protection of confidential information) to all interested parties "provided that such information shall not indicate whether a final determination is affirmative or negative". Thus the information disclosed in the SEF is sufficient for the purposes of Rule 14(8) of the Rules.

The Commission took into account the increase in cost of raw and packing material.

Comment 7.

Imposition of antidumping measures on imports of Tinplate from South Africa is not in the interest of Pakistani economy. Further the opposing comments of Pakistani importers and users of Tinplate have not been reflected in the SEF.

Please see the Commission's Findings on Comment 10 of foreign producer/exporter at paragraph 9 above.

As regards the comments of Pakistani importers, these were placed in the public file to which all interested parties had

access. (see paragraph 7 of the SEF). However, the comments so offered were mostly not substantiated with evidence (please see paragraph 10 above). The SEF discloses the facts of the case and not comments of the interested parties.

Comments of PVMA

Comment 1.

The Commission has determined that the average cost of production of Tinplate under USS process is US\$ 530.84/MT whereas the cost of production of domestic like product is US\$ 581.37/MT in the year 2000-2001. The exporter is exporting Tinplate at an average export price of US\$ 255/MT which is even less than the price of a single direct raw material i.e. "TMBP US\$ 431/MT". "The raw material cost of the product as indicated by the Applicant works out at US\$ 383/MT which is much less than the raw material cost indicated by the Commission..." The PVMA therefore, feels that "there are flaws in the assumption of price of raw materials and CIF price of investigated product which can be of waste quality instead of prime quality investigated by the Commission".

Comment 2.

In the case summary the Commission has stated that the Applicant's sales remained very low thus resulting in material retardation to the domestic industry. However it has left blank the figures for the average per ton loss incurred by the Applicant and the figures for cumulative losses.

Comment 3.

The Commission has accepted the cost to The Commission has verified all the

make & sell for the domestic like product on the basis of the audited accounts of the applicant without any independent verification.

data/documents submitted by the Applicant (Please see paragraph 3.7 above)

Comment 4.

Since its start of commercial production, the domestic industry has produced 56814 M.T of Tinplate up to June 2001. The domestic industry has been provided massive incentives from the Government such as duty free import of raw materials, exemption from sales tax and income tax holiday. Despite these incentives, the domestic industry is carrying accumulated losses of Rs. 215.615 million.

This reflects the inefficiency of the domestic industry. The Government has so far lost sacrificed revenue of Rs. 308.97 million in the form of customs duty and sales tax etc. The Commission is protecting an inefficient unit. Any levy of duty would hurt the consumer industry as the prices of imported Tinplate will go up and the domestic industry will also raise its prices.

The domestic industry is availing certain concessions due to its location in a special industrial zone, which have been provided by the Government to attract investment in the area (see the Commission's Findings on Comment 6 of the Comments of PISMA at paragraph 10.3 above).

After investigation, the Commission has concluded that the domestic industry has been injured mainly due to dumped imports. (please see Part C below).

11.3 The Applicant commented on the SEF and on the submissions of the exporter and the foreign producer on the Commission's preliminary determination. The comments germane to the investigation under the Ordinance are summarized below in section A and the Commission's findings are set out in section B below:

Section A

Comments of the Applicant

Comment 1.

The facts and figures submitted by the Applicant to the Commission have been supported by documentary evidence but the Commission has not relied on the data and information provided by the Applicant alone; it has collected data

Section B

Commission's Findings

The Commission satisfied itself of the accuracy and adequacy of the data and documents submitted by the Applicant before initiation of the investigation.

The Commission has verified and accepted

from various quarters including the foreign producer, the exporter, and PRAL. The Commission calculated dumping margin on the basis of data supplied by the exporter and foreign producer and not on the basis of the data submitted by the Applicant. If data submitted by the Applicant had been used, the dumping margin should have been 47.82 percent instead of the 23.91 percent determined provisionally by the Commission.

the data submitted by the foreign producer and the exporter for the purposes of this investigation and calculation of normal value, export price and dumping margin has been done on the basis of their data. The data was verified during the on-the-spot investigation conducted at the premises of the exporter and the foreign producer.

Comment 2.

The investigated product and the Tinplate produced domestically are 'like products'.

After investigation the Commission has established that the Tinplate produced by the domestic industry and the investigated product are "like product" (please see paragraph 14 below).

Comment 3.

The domestic industry is injured materially as it is incurring losses on operations, and its production, capacity utilization and sales have not reached up to the projected level due to the dumping of Tinplate from South Africa.

The Commission, after investigation, has established that the domestic industry has been materially injured during the POI mainly due to dumped imports of the investigated product. The Commission has not accepted the projections of the Applicant (please see Part C below).

Comment 4.

It has been alleged that levy of antidumping duty would result in monopoly for the domestic industry which would not be beneficial for the Pakistan economy. Pakistan is a free market economy and there is no bar on any investor to set up another Tinplate manufacturing unit in the country. Further imports from other sources, which are about 70 percent of total imports, are not subject to any antidumping duty.

The issue has been disposed of in the Commission's Findings on Comment 10 of foreign producer and the exporter in paragraph 9 above.

Comment 5.

The Applicant is considering filing cases against imports from other sources as well. For this purpose, data and information is being collected at the moment.

Please see the Commission's Findings on Comment 4 of foreign producer and the exporter in paragraph 9 above.

12. Meeting with the Attorneys of the Foreign Producer and the Exporter

12.1 In terms of Rule 14(7) of the Rules, the attorneys of the exporter and foreign producer held a meeting with the officials of the Commission on November 5, 2002 and made oral submissions. No new facts or comments were submitted. What was said is summarized as follows:

- i. Comments offered on preliminary determination of the Commission by the foreign producer and the exporter be considered in terms of Article 6.9 of WTO Antidumping Agreement;
- ii. Their comments submitted on October 25, 2002 in response to the SEF should be considered by the Commission while making its final determination;
- iii. The Commission should provide calculations regarding normal value, export price and dumping margin to their clients by placing the same in the public file;
- iv. Their clients be given an opportunity to comment on the Commission's final determination.

The Attorneys confirmed their oral comments in writing on November 6, 2002, to the exclusion of the submission set out above in 12.1 (iv). These submissions contained some comments, which were not presented during the meeting.

12.2 The Commission's response, in seriatim, to the Attorney's comments is as follows:

- i. Comments on preliminary determination have been considered by the Commission (please see paragraph 9);
- ii. Comments submitted by the exporter and the foreign producer on the SEF have been considered by the Commission while making this final determination (Please see paragraph 11.2);
- iii. Detailed calculations of normal value and export price cannot be placed in public file. Public file is maintained under Rule 7 of the Rules. Rule 7 stipulates that the documents are to be placed in the public file, subject to the requirement to protect confidential information. Detailed calculations of normal value and export price contain prices and quantities on a transaction-to-transaction basis, which are

marked confidential by the exporter and the foreign producer. However, the foreign producer and the exporter, in terms of Rule 16 of the Rules can request the Commission for disclosure meetings within fifteen days of the publication of notice of final determination to explain the dumping calculation methodology. Furthermore, the Commission shall provide an opportunity to the exporter or the foreign producer or their legal representatives to examine and receive copies of their dumping calculations.

13. Examination of the Materials with the Commission

The submissions filed before the Commission by the Applicant, PISMA, the foreign producer, the exporter, other interested parties; data and information obtained during on-the-spot investigations, hearing, and meetings with the interested parties; and data received from PRAL have been examined and analyzed and, wherever appropriate, have been addressed.

14. Investigated Product, Like Product, Domestic Like Product

14.1 Section 2 of the Ordinance defines "investigated product" to mean a product which is subject to an antidumping investigation as described in the notice of initiation of the investigation. The "like product" is defined to mean a product, which is alike in all respects to an investigated product, or, in the absence of such a product, another product which although not alike in all respects, has characteristics closely resembling those of the investigated product. The "domestic like product" means the domestically produced product, which is a like product to an investigated product.

14.2 For the purposes of this investigation and the definitions set out above, these products are identified as follows:

i. Investigated Product

Flat rolled product of iron or non-alloy steel of a thickness of less than 0.5 mm and of a width of 600 mm or more, clad, plated or coated with tin, produced by foreign producer and exported by the exporter to Pakistan.

ii. Domestic Like Product

Flat rolled product of iron or non-alloy steel of a thickness of less than 0.5 mm and of a width of 600 mm or more, clad, plated or coated with tin, produced in Pakistan.

14.3 In order to ascertain whether the investigated product and the domestic like product are like products, as contended by the Applicant, the Commission reviewed and verified all the relevant information received from various sources including the exporter, the foreign producer, the Applicant, and PRAL in the following terms:

- i. The investigated product is Tinplate, produced from TMBP, coated with tin to protect it against corrosion.

- ii. Various grades of Tinplate are produced in South Africa. It is contended by the exporter and the foreign producer that the product can be of prime quality or second quality, in various grades. The investigated product comprises grades A, B, C and D. These are manufactured from the same raw materials, have the same basic physical characteristics and usage, and are, therefore, regarded for the purposes of this investigation as a single product. Similarly, various domestic like products produced by the Applicant are manufactured from the same raw materials and have the same basic physical characteristics and usage.
- iii. The foreign producer uses the "halogen" method to produce the investigated product, whereas the Applicant uses the "USS" method to produce the domestic like product. However, the resulting products from both the methods are manufactured from the same raw materials and have the same basic physical characteristics and tariff classification. Thus both the products are substantially similar to each other and the production method has no impact on the resulting product.
- iv. The investigated product is of less than 0.50 mm thickness and 600 mm width. It is classified under Pakistan Customs Tariff ("PCT") heading 7210.1200 contained in the First Schedule to the Customs Act, 1969 (Act 19 of 1969). The domestic like product is also of less than 0.5 mm thickness and 600 mm or more of width and is classified under the same PCT heading.
- v. Tinplate is used in the packaging of food items and non-food items e.g. oils, foodstuff, paints and petroleum products. Ideally, prime quality Tinplate is used in the packaging of foodstuff while second quality Tinplate is used in the packaging of non-food items. But this difference is not taken into account in the Pakistani market by most of the users and second quality Tinplate is also used for the purposes of food packaging.
- vi. The exporter and the foreign producer submitted that the Tinplate sold in South Africa and the Tinplate exported to Pakistan is physically different. However, such physical differences are not adequately elaborated to constitute a factor that could be taken into account. One prominent explanation given in regard is that the Tinplate sold in South Africa is of prime quality while the Tinplate exported to Pakistan is of grade 'C' which has a high percentage of oxide.
- vii. The claim of the exporter and foreign producer that the prime quality Tinplate was sold in South Africa and grade C was exported to Pakistan is misplaced since the data submitted by the foreign producer reveals that grades A, B, C and D of Tinplate were sold in South Africa and the data submitted by the exporter reveals that grades A, B, C and D of Tinplate were exported to Pakistan.
- viii. Both the foreign producer and the exporter claimed that the investigated product was not fit for packaging of food items and was used for shoelace eyes on calendar support, and other types of packaging of non-food items. However,

information obtained from PRAL (supported by documentary evidence) shows that the investigated product was imported during the POI by different kinds of importers including ghee/cooking oil manufacturing units, which implies that the investigated product was used for packaging of food as well as non-food items.

On these bases, it is concluded that the investigated product and the domestic like product are like products.

15. **De Minimis Level of Imports**

In terms of Section 41(3) of the Ordinance the volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports of an investigated product is found to account for less than three percent of total imports of like product. In this connection, the data and information received from PRAL reveals that the total volume of dumped imports of the investigated product accounts for thirty-four percent (34.45%) of the total imports of Tinplate into Pakistan during the POI which is above the de minimis level of three percent set out above.

B. **DUMPING**

16. In terms of Section 4 of the Ordinance an investigated product shall be considered to be dumped if it is introduced into the commerce of Pakistan at a price which is less than its normal value.

17. Section 12 of the Ordinance and Article 2.4.2 of the WTO Antidumping Agreement allows three methods for fair comparison of normal value and export price to establish the dumping margin. The Commission has established the dumping margin by comparing weighted average normal value with weighted average export price, which is the most widely used methodology for the purposes.

18. **Normal Value**

18.1 The normal value of the investigated product has been established on the basis of comparable price paid or payable, in the ordinary course of trade, for sales of a like product when destined for consumption in South Africa, in accordance with Section 5(1) of the Ordinance.

18.2 The data and information submitted by the exporter revealed that grades A, B, C, and D were exported to Pakistan during the POI. Whereas the data submitted by the foreign producer revealed that all grades of Tinplate including grades A, B, C, and D were sold in the South African market. The normal value of the investigated product has been established on the basis of comparable price paid or payable, in the ordinary course of trade, for sales of a like product (grades A, B, C, and D) when destined for consumption in South Africa, in accordance with Section 5(1) of the Ordinance. Normal value for the investigated product is determined on the basis of weighted average sale price of all the four grades (A, B, C and D) of Tinplate in South Africa during the POI.

18.3 The Commission also examined whether:

- a. the sales of like product in the domestic market of South Africa are representative of the sales of the investigated product to Pakistan; and
- b. the sales transactions are in the ordinary course of trade.

18.4 Section 6(2) of the Ordinance provides that the sales of like product in the domestic market of the exporting country are considered to be in sufficient quantity for the determination of normal value if such sales constitute five percent or more of the sales of an investigated product to Pakistan. In this case, during the POI domestic sales of like product in South Africa were 86 percent, well in excess of five percent of total sales of the investigated product to Pakistan.

18.5 It was established by the Commission that the sales of like product in the South African domestic market were in the ordinary course of trade. In this connection, two things were considered. First, whether sales were made to independent customers. In this respect the foreign producer stated that all domestic sales of the like product produced by them were to unrelated customers (i.e. to wholesalers, retailers and users). Second, whether the sales were made at a weighted average price equal to or above the weighted average cost as per Section 7 of the Ordinance. The data submitted by the foreign producer revealed that the weighted average sale price, during the POI, was above the weighted average cost.

18.6 Since the domestic sales in South Africa met the criteria listed above, the normal value of US\$ 226.62/MT was based on the actual sale price, calculated as a weighted average of the prices of all domestic sales of like product made during the POI, whether these sales were profitable or not.

18.7 The foreign producer claimed an adjustment in normal value at the rate of ****¹ percent on account of early payment discount. The Commission verified this claim and the normal value has been adjusted accordingly. The weighted average adjusted ex-factory normal value of the like product, during the POI, has now been worked out to be US\$ 221.10/MT.

19. Export Price

19.1 Export price has been worked out in accordance with Section 10(1) of the Ordinance which stipulates that an export price shall be a price paid or payable for an investigated product when sold for export from an exporting country to Pakistan. The investigated product was sold by the exporter to independent buyers in Pakistan and thus the export price for the investigated product has been established on the basis of export price actually paid or payable. Thus the weighted average export price established is US\$ 228.33/MT.

19.2 As with normal value, adjustments in export price have also been made to establish the weighted average ex-factory export price of the investigated product. The weighted average

¹ This sign denotes confidential information which is not part of this non-confidential version of the Report of Final Determination.

adjusted ex-factory export price works out to be US\$ 158.70/MT. after taking into account the adjustments, more particularly described in paragraph 20.3 below.

20. **Comparison of Normal Value and Export Price**

20.1 In order to ensure a fair comparison between the normal value and the export price, due allowance in the form of adjustments has been made for differences affecting price comparability in accordance with Section 11 of the Ordinance.

20.2 Initially the foreign producer claimed **** percent of ex-factory sales value as early payment discount and 30 days credit period with an interest rate of **** percent per annum. During the on-the-spot investigations, it was found that the adjustment claimed in respect of early payment discount was correct, but adjustment claimed on account of credit sales was not applicable as the foreign producer does not sell its products on credit. Thus, the Commission has not accepted the adjustment claimed on account of credit sales and the normal value has been adjusted for early payment discount only to arrive at the ex-factory price.

20.3 As regards the export price, the Commission examined the information submitted by the exporter on CIF export prices, ocean freight, inland freight, and selling and distribution expenses. During on-the-spot investigations the Commission found that the exporter charges commission at the rate of five percent of CIF price which was not reported by the exporter in his submissions. Thus, in order to arrive at the level of ex-factory export price, ocean freight, inland freight, and exporter's commission have been deducted from the CIF export price.

21. **Dumping Margin**

In terms of Section 14 of the Ordinance the Commission shall determine an individual dumping margin for each known exporter or producer of an investigated product. In this case, as there is only one exporter and one foreign producer, the dumping margin has been calculated in accordance with Section 12 (1) of the Ordinance by comparing the weighted average ex-factory normal value and weighted average ex-factory export price which works out to be 39.32 percent, and which is well above the de minimis level of two percent set out in Section 41 of the Ordinance.

C. **INJURY TO DOMESTIC INDUSTRY**

22. **Domestic Industry**

The Pakistan Tinplate manufacturing industry comprises of one unit i.e. Siddiqsons Tinplate (Pvt.) Limited., representing 100 percent of the domestic production of Tinplate and thus constitutes the domestic industry within the meaning of Section 2(d) of the Ordinance.

23. Determination of Injury

Section 15 of the Ordinance sets out the principles for determination of injury and provides as follows:

"A determination of injury shall be based on an objective examination of all relevant factors by the Commission which may include but shall not be limited to:

- a. volume of dumped imports;
- b. effect of dumped imports on prices in domestic market for like products; and
- c. consequent impact of dumped imports on domestic producers of such products..."

These factors are not exhaustive and the Commission may take into account such other factors as it considers relevant for the determination of injury. Thus the Commission took into account all factors known and relevant in order to determine whether the domestic industry suffered material injury during the POI.

24. Applicant's Views Regarding Injury

As set out in paragraph 4 above, the Applicant claimed that the dumped imports of the investigated product were causing material injury to the domestic industry. This claim was reviewed by the Commission along with other factors considered relevant to establish injury caused to the domestic industry due to imports of investigated product.

25. Domestic Market

25.1 Pakistan's domestic market of Tinplate was established by combining the volume of sales of the domestic industry in Pakistan and total quantity imported from all sources. For the purpose of volume of imports, the data compiled by PRAL was used.

25.2 Prior to the establishment of domestic industry, the entire demand in the domestic market of Tinplate was met through imports. The domestic market of Tinplate, since the establishment of domestic industry in the years 1999-2000, 2000-2001 and for the period of July-September 2001 was 96781MT, 87100MT and 20633MT, respectively.

26. Imports from Dumped Source and Other Sources

The share of imports of the investigated product in total imports increased from 27.09 percent in 1999-2000 to 30.46 percent in 2000-2001 and to 41.52 percent in July-September, 2001. The share of total imports from other countries declined from 72.91 percent to 58.48 percent over the period from 1999-2000 to July-September, 2001.

17. Price Trends

17.1 Price Undercutting

17.1.1 It was examined whether the dumped imports of the investigated product were undercutting the prices of domestic industry during the POI. For this purpose CIF prices of the dumped imports of the investigated product were adjusted to the level of duty paid value excluding sales tax (landed cost). These prices were compared with the ex-factory prices of domestic like product during the POI.

17.1.2 The Commission established that the dumped imports of investigated product significantly undercut the prices of domestic like product. The weighted average ex-factory prices of domestic like product were compared with the weighted average landed cost (excluding sales tax) of the investigated product for the POI. The undercutting margins found on this basis, expressed as a percentage of the ex-factory prices of domestic like product, are as follows:

Period	Price under-cutting Margin (%)
1999-2000	38.85
2000-2001	38.44
Jul-Sep, 2001	25.56

17.2 Price Suppression

17.2.1 The Applicant claimed that in order to cover the increase in the cost of materials, the Applicant wished to increase prices of his product but dumped imports prevented such an increase in prices.

17.2.2 For this purpose, the Commission examined and found that although there was an increase in the cost of raw and packing materials during 2000-2001 over the previous year, overall manufacturing cost of the domestic like product decreased from Rs. ****/MT to Rs. ****/MT. The Commission examined and established that, with increase in production, the financial charges, depreciation cost, selling and distribution cost and administrative cost of the Applicant declined substantially resulting in the reduction of manufacturing cost of the domestic like product. Thus no price suppression was evident.

17.3 Price Depression

The Commission examined and found that there was no price depression in prices of domestic like product due to dumped imports during the POI.

18. Quantity Produced by the Domestic Industry

The production of domestic industry increased from **** MT in the year 1999-2000 to **** MT in the year 2000-2001. During the last quarter of POI (July-September, 2001) the production of the domestic industry was **** MT. Though this increase in production prima

facie seems quite reasonable, it is mainly due to the low production volume in the initial year and sales made at a loss.

29. **Capacity and Capacity Utilization by the Domestic Industry**

The installed production capacity of the domestic industry was 120,000 MT per annum. The capacity utilization of the domestic industry increased from 18 to 48.02 percent during the POI.

30. **Sales by Domestic Industry in Domestic Market**

During the period from July 1999 to June 2000, the sales of the domestic industry were **** MT. However, in the following year they increased to **** MT. From July 2001 to September 2001 these sales were **** MT. The increase is mainly because the domestic industry, in order to remain competitive and gain a market share, kept its prices lower than where they should have been.

31. **Market Share**

31.1 The market share of the domestic industry increased from 15.85 percent to 43.29 percent in the year 2000-2001 over the previous year. The market share of dumped imports of the investigated product decreased from 22.80 percent to 17.28 percent while market share of the imports from other countries declined sharply from 61.35 percent to 39.43 percent over the same period. Thus the market share taken by the domestic industry was mainly from imports of other countries.

31.2 The increase in volume of production and sales of domestic like product is mainly due to:

- a. low production and sales volume in initial year;
- b. decline in the share of total imports of Tinplate from other countries;
- c. the domestic industry having kept its prices, with a view to remaining competitive and gaining market share, at a level lower than the level where they should have been.

32. **Projections by the Applicant**

32.1 The foreign producer and the exporter submitted that the projections for production and sales made by the Applicant were not based on reality and it was not clear as to how the Applicant made these projections.

32.2 The Commission did not take into consideration these projections whilst determining injury to the domestic industry.

33. Stocks and Inventories

At the end of the domestic industry's first year of operation, the inventory holdings of domestic like product were 33 percent of its total production. The inventory holding decreased to the level of 12 percent of production at the end of the second year of operation. However, at the end of the POI (September 30 2001) the ending inventory was around 15 percent of production of preceding twelve months (from October 2000 to September 2001).

34. Profitability

34.1 Domestic industry operated at a loss. The accumulated loss at the end of the POI was Rs. **** million.

34.2 The foreign producer and the exporter submitted that the profitability of the Applicant was deteriorating due to the heavy financial charges and not on account of imports from South Africa. In this connection, it is noted by the Commission that the profitability of the Applicant deteriorated because of low capacity utilization and price undercutting (mainly attributable to the dumped imports of the investigated product), which in turn resulted in higher financial charges.

35. Investment, Return on Investment and Growth

35.1 The paid up capital of the domestic industry was Rs.473.51 million. There was a "negative" return on investment during the POI due to which a significant part of the Applicant's paid up capital had been wiped out by the end of September 2001.

35.2 There was no growth in the domestic industry. No further investment can be reasonably expected in a situation where the existing industry is facing problems in its operations.

36. Cash Flow

Cash flow from the operations of the domestic industry was negative during the year 1999-2000. However, in the year 2000-2001 it was positive. This was because the domestic industry reduced its cost to make and sell and increased its sales.

37. Ability to Raise Capital

The domestic industry reported great difficulty in raising capital during the POI. The domestic industry incurred losses, which at the end of POI was Rs. **** million.

38. Employment, Productivity and Wages

The number of permanent employees in the domestic industry decreased from 180 persons to 177 persons in the year 2000-2001 over the previous year. While the number of contract employees increased from 43 to 81 persons in the year 2000-2001 over the previous year. However, the Applicant in totality paid Rs. **** million as wages in the year 2000-2001 as compared to Rs. **** million in the previous year. Since there was an increase in production, as

discussed in paragraphs 28 and 29 above, there should have been a corresponding increase in employment. However, in this case productivity improved with increase in production and decrease in permanent employment. The Commission did not come to a finding of injury on account of employment.

39. Magnitude of Dumping Margin and its Impact

As regards the impact of the magnitude of dumping margin on domestic industry, this impact cannot be considered as negligible.

40. Tax Exemptions and Protections Availed by Domestic Industry

40.1 The exporter and the foreign producer submitted that the Applicant was over protected by 30% customs duty leviable on imported Tinplate. The industry also had a number of tax exemptions including exemption from 20% sales tax on imports during the POI.

40.2 These submissions were examined by the Commission. The rate of customs duty leviable on imports of Tinplate stands reduced to 25 percent from financial year 2002-2003. It is noted that these tax concessions/exemptions are being availed due to the location of the Applicant's unit in a special industrial zone; these have been provided to balance location and infrastructure constraints. As regards particular reference made to sales tax, the Commission noted that in any event this advantage stands neutralized as sales tax is recoverable from the end users. Furthermore, whilst arriving at the level of duty paid value of the investigated product in paragraph 27.1.1, sales tax has been excluded.

41. Fair Competition

The foreign producer and the exporter submitted that the imposition of antidumping duties on the investigated product would eliminate competition in the Pakistan domestic market and the prices of Tinplate would go up. This would lead to increase in prices of items using Tinplate as packing material. The Commission's view is that in the circumstances of the case, the imposition of anti-dumping duty would ensure fair competition of the domestic like product with the investigated product in the domestic market of Pakistan rather than eliminate competition. Furthermore, imports from other sources, which are about 70% of total imports (2000-2001 data), would not be subject to antidumping duty. The domestic industry has to compete with imports from other sources as well as from South Africa.

42. Conclusion on Material Injury due to Dumped Imports

42.1 The domestic industry was adversely affected during the POI. The domestic industry was prevented from better utilizing its capacity due to dumped imports. The market share gained by domestic industry was mainly because of reduction in imports from other countries rather than South Africa. The dumped imports significantly undercut prices of the domestic industry (in the range of 26-39 percent). Domestic industry has not been able to raise its selling price to the level where they should have been as the landed cost of the investigated product in Pakistan has been significantly lower than the ex-factory price of the domestic like product.

42.2 As a result of these adverse factors, the industry suffered "negative" return on investment and incurred losses on its operations. It also faced difficulties in raising capital for its operations during POI.

42.3 Based on the above analysis, it is concluded that the domestic industry suffered material injury on account of dumped imports of the investigated product during the POI.

D. CAUSATION OF INJURY

43. Dumping of Investigated Product

The domestic industry was materially injured during the POI. The domestic industry was prevented from better utilization of its capacity due to the dumping of investigated product. The market share gained by domestic industry was mainly because of reduction in imports from other countries rather than South Africa. The imports at dumped prices undercut prices of the domestic industry in the range of 26-39 percent. Domestic industry has not been able to raise its selling price to the level where they should have been as the landed cost of the investigated product in Pakistan has been significantly lower than the ex-factory price of the domestic like product. As a result of these adverse factors, the industry suffered "negative" return on investment and faced difficulties in raising capital for its operations during the POI. After investigation the Commission found that the main reason of material injury to domestic industry was the imports of the investigated product at dumped prices from South Africa.

44. Other Factors

In accordance with Section 18(2) of the Ordinance the Commission examined factors, other than dumped imports, which could at the same time cause injury to the domestic industry, in order to ensure that possible injury caused by other factors is not attributed to the injury caused by dumped imports. Factors other than those imputable to dumping of the investigated product, which contributed towards the material injury suffered by the domestic industry during the POI are set out as follows:-

i. Impairment Loss

The loss figure shown in the 1999-2000 audited accounts includes "impairment loss" of Rs. **** charged to the profit and loss account. This loss reflected downward adjustment in the value of fixed assets (being a fall in the price of electric generators). Thus Rs. **** million of the loss during POI, owing to this account, is not attributable to dumped imports.

ii. Water Treatment Plant

Water is essential in the production process of Tinplate. Water fit for industrial use is in scarce supply in the area where the Applicant's plant is situated. To overcome the shortage of water, the Applicant installed his own water treatment

plant. The Applicant incurred an extra cost of Rs.**** million during the POI on this account, which is not attributable to dumped imports.

iii. **Imports from Other Countries**

- a. A considerable volume of imports of Tinplate from other countries also took place during the POI. The Applicant is of the view that imports from other countries were also at prices lower than the prices obtaining in ordinary course of trade, even though these prices were significantly higher than those of the investigated product.
- b. The Applicant has not filed an application under the Ordinance alleging dumping of Tinplate from exporters based in countries other than South Africa. The Commission has found that the prices of these imports from other countries were higher than the prices of the investigated product but these prices were lower than the prices of the domestic like product. The effects of these imports are taken into account for the purposes of this investigation.

E. **CONCLUSIONS**

45. The conclusions that emerge after taking into account all these considerations are as follows:

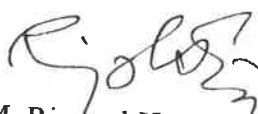
- i. the application was lodged by the domestic industry;
- ii. the investigated product and the domestic like product are like products;
- iii. the investigated product was exported to Pakistan from South Africa below its normal value during the POI;
- iv. the volume of dumped imports from South Africa and dumping margin established on the basis of the analysis above are above the de-minimis level;
- v. the domestic industry suffered material injury during the POI;
- vi. a significant part of material injury to domestic industry is due to dumped imports from South Africa; and
- vii. the dumping margin on the basis of ex-factory export price works out to be 39.32 percent.

F. **IMPOSITION OF DEFINITIVE ANTIDUMPING DUTY**

46. In terms of Section 50 of the Ordinance, when the Commission has established the existence of dumping and injury, it shall, by notification in the official Gazette, impose an anti-dumping duty in an amount equal to the dumping margin established. Thus in view of the

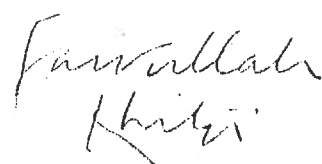
analysis and conclusions with regard to dumping, material injury, and causation, imposition of definitive antidumping duty on the investigated product is needed.

47. In terms of Section 55 of the Ordinance a definitive antidumping duty at the rate of 27.33 percent ad valorem of CIF price is imposed on dumped imports of Tinplate of a thickness of less than 0.5 mm and of a width of 600 mm or more, imported and/or importable under PCT No. 7210.1200, produced by the foreign producer and exported by the exporter to Pakistan, for a period of five years effective from July 22 2002. The definitive antidumping duty at the rate of 27.33 percent of CIF price is equivalent to the definitive dumping margin determined at ex-factory price (reference paragraph 21 above).
48. In accordance with Section 51 of the Ordinance, the definitive antidumping duty shall take the form of *ad valorem* duty by way of cash deposit in a non-lapsable personal ledger account established and maintained by the Commission for the purpose. Release of the investigated product for free circulation in Pakistan shall be subject to imposition of such antidumping duty.
49. Definitive antidumping duty levied would be in addition to other taxes and duties leviable on import of investigated product under any other law.
50. As the definitive antidumping duty levied on the exporter is higher than the provisional antidumping duty levied with effect from July 22 2002 vide Commission's order No. N-2(ADC NO. 001/2002/TP/SA), published in the official Gazette (extra-ordinary) on July 20 2002, the difference will not be collected from the importers who imported investigated product and had it cleared on payment of provisional antidumping duty in terms of Section 55(2) of the Ordinance.
51. The definitive antidumping duty would be collected in the same manner as customs duty is collected under Customs Act 1969 (IV of 1969) and would be deposited under the head 3501003 – Civil Deposits National Tariff Commission Non-lapsable PLA No. 187 with Federal Treasury Office Islamabad.


(M. Riyazul Haque)
Member

November 26, 2002.

26/11/02



(Faizullah Khilji)
Chairman

November 26, 2002.

List of Participant of the Hearing

NTC's Officers:

- | | | |
|-----|-----------------------------|------------------|
| 1. | Dr. Faizullah Khilji | Chairman |
| 2. | Mr. Riyazul Haque | Member |
| 3. | Mr. M. Siddiq Alvi | Member |
| 4. | Mr. Muhamad Saeed | Secretary |
| 5. | Mr. M. Abdul Khaliq Chishty | Director General |
| 6. | Mr. Abdul Khaliq | Director General |
| 7. | Mr. Naeem Anwar | Director |
| 8. | Mr. Khizar Hayat | Dy. Director |
| 9. | Mr. Imran Zia | Dy. Director |
| 10. | Mr. Mehboob Ahmed | Dy. Director |
| 11. | Mr. Hemood ur Rauf | Asstt. Director |
| 12. | Mr. Mazhar Bangash | Legal Adviser |

of Participants/Representatives from Private Sector:

Pakistan Vanaspati Manufacturers Association (PVMA)

- | | | |
|----|-------------------------|--------------------|
| 1. | Mr. Muhammad Tahir Gaba | Vice Chairman PVMA |
| 2. | Dr. Ghulam M. Smdani | Secretary, PVMA |

Other User of Tinplate

- | | | |
|----|-----------------|--|
| 3. | Mr. Yousaf Abid | General Manager, Hafeez Iqbal Oil & Ghee Industries Ltd. |
|----|-----------------|--|

Pakistan Iron & Steel Merchants' Association and Other Importers

- | | | |
|----|------------------------|----------------------------|
| 4. | Mr. Anwar Ali Jessani | Vice Chairman, PISMA |
| 5. | Mr. Barkat Ali Ebrahim | Diamond International Ltd. |

Siddiqsons Tinplate Limited (STPL)

- | | | |
|----|-----------------------|--------------------------------|
| 6. | Mr. S. Waliullah Shah | Chief Operating Officer, STPL. |
| 7. | Mr. Khalid Majid | Consultant, STPL. |