



**Government of Pakistan
National Tariff Commission**

REPORT

ON

Final Determination and Levy of Final Anti-dumping Duty On Import Of Phthalic Anhydride Originating in and/or Exported from Brazil, China, Indonesia, South Korea and Taiwan

**A.D.C No.17/2009/NTC/PA
September 22, 2010**

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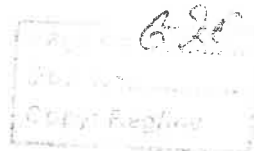
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The National Tariff Commission (hereinafter referred to as the "Commission") having regard to the Anti-Dumping Duties Ordinance, 2000 (LXV of 2000) (hereinafter referred to as the "Ordinance") and the Anti-Dumping Duties Rules, 2001 (hereinafter referred 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 the domestic industry caused by such imports, and imposition of antidumping duties to offset the impact of such injurious dumping, and to ensure fair competition thereof and to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as the "Agreement on Antidumping") has conducted an investigation and made final determination under the above mentioned Ordinance and Rules.

2. In terms of Section 39(1) of the Ordinance, the Commission shall make a final determination of dumping and injury within one hundred and eighty days of publication of a notice of preliminary determination in the official Gazette which was published in official Gazette on November 25, 2009. However, final determination in this case was not made within prescribed time period due to incomplete Commission.

A. PROCEDURE

3. The procedure set out below has been followed with regard to this investigation.

4. Receipt of Application

The Commission received a written application from Nimir Chemicals Pakistan Limited, 51-N, Industrial Area, Gulberg-II, Lahore, (the "Applicant") on behalf of the domestic industry producing Phthalic Anhydride (hereinafter referred to as "PA") on April 16, 2009. The Applicant alleged that PA produced in the Federal Republic of Brazil, (hereinafter referred to as "Brazil"), People's Republic of China, (hereinafter referred to as "China"), Republic of Indonesia, (hereinafter referred to as "Indonesia"), Republic of Korea (hereinafter referred to as "Korea"), and Republic of Taiwan (hereinafter referred to as "Taiwan"), hereinafter collectively referred to as the "Exporting Countries" is exported to Pakistan at dumped prices. The High Commissions/Embassies of the Exporting Countries in Islamabad were informed through note verbale dated April 23, 2009, sent through the Ministry of Foreign Affairs, Pakistan, of the receipt of application in accordance with the requirements of Section 21 of the Ordinance and Article 5.5 of the Agreement on Antidumping. However, final determination in this case was not made within prescribed time period due to incomplete Commission.

5. Antidumping duty already in force

Commission imposed a definitive anti-dumping duty @ 10.94 percent *ad val* on dumped imports of PA, originating in and/or exported from India for a period of five years effective from February 13, 2006.

6. Evaluation and Examination of the Application

Evaluation and examination of the application showed that it met the requirements of Section 20 of the Ordinance and Article 5.3 of the Agreement on Antidumping as it contained sufficient evidence of dumping of PA from the Exporting Countries and injury to the domestic industry caused therefrom. The requirements of Rule 3 of the Rules, which relate to

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the submission of information prescribed therein were also found to have been met.

7. **Domestic Industry**

7.1 Domestic industry in terms of Section 2(d) of the Ordinance is defined as follows:

"domestic industry" means the domestic producers as a whole of the domestic like product or those of them whose collective output of that product constitutes a major proportion of the total domestic production of that product, except that when any such domestic producers are related to the exporters or importers, or are themselves importers of the dumped investigated product in such a case "domestic industry" shall mean the rest of the domestic producers."

7.2 The domestic industry manufacturing PA comprises of only one unit i.e., the Applicant. Its installed production capacity is 24,000 MT per annum on three shifts basis.

8. **Standing of the Application**

8.1 In order to determine whether the application was made by or on behalf of domestic industry and to assess the standing of the domestic industry on the basis of the degree of support for or opposition to the application expressed by the domestic producers of the like product, relevant provisions of Section 24 of the Ordinance have been considered. In terms of Section 24(1) of the Ordinance, an application shall be considered to have been made by or on behalf of the domestic industry only if it is supported by those domestic producers whose collective output constitutes more than fifty percent of the total production of a domestic like product produced by that portion of the domestic industry expressing opinion either in support for or opposition to the application.

8.2 Furthermore, Section 24(2) of the Ordinance provides that no investigation shall be initiated when domestic producers expressly supporting an application account for less than twenty five percent of the total production of domestic like product produced by the domestic industry.

8.3 The application fulfils the requirements of Section 24 of the Ordinance and Article 5.4 of the Agreement on Antidumping, as the Applicant is the only domestic producer of PA and thereby represents 100 percent of the total domestic production. Therefore, the application is considered to have been made by the domestic industry as it is supported by 100 percent of the total domestic production of the like product produced by that portion of the domestic industry expressing its opinion.

8.4 On the basis of the above information the Commission has determined that the application was made by the domestic industry as the Applicant represents 100 percent of the domestic production of PA.

9. **Exporters/Foreign Producers Involved in Alleged Dumping of the PA**

9.1 The Applicant identified seventeen exporters/foreign producers involved in alleged dumping of the investigated product from the Exporting Countries. The Applicant stated that there may be other producers and exporters but the Applicant does not have the names and addresses of these exporters/foreign producers. Therefore, the Applicant requested that anti-dumping duty may be imposed on all imports of PA from the Exporting Countries.

9.2 Upon initiation of the investigation copy of the notice of initiation was sent to the exporters/foreign producers (identified by the Applicant) on May 29, 2009, whose complete postal addresses were available. For other exporters/foreign producers from the Exporting Countries the Commission requested to the High Commissions/Embassies of the Exporting Countries to forward notice of initiation to all exporters/foreign producers of PA in their respective countries.

10. Applicant's Views

10.1 The Applicant, *inter alia*, raised the following issues in its application regarding dumping of PA and material injury to the domestic industry caused therefrom:

- i. PA imported from the Exporting Countries into Pakistan and PA produced by the domestic industry in Pakistan are like products;
- ii. the exporters/foreign producers from the Exporting Countries are exporting PA to Pakistan at dumped prices; and
- iii. export of PA by the exporters/foreign producers from the Exporting Countries to Pakistan at dumped prices has caused and is causing material injury to the domestic industry producing PA, mainly through:
 - a. price suppression
 - b. decline in profits/profitability;
 - c. decline in output;
 - d. decline in capacity utilization;
 - e. decline in return on investment;
 - f. negative effect on employment;
 - g. negative effect on cash flows; and
 - h. negative effect on wages and salaries.

10.2 The Applicant has also claimed that there is threat of material injury to the domestic industry.

11. Initiation of Investigation

11.1 The Commission upon examining the accuracy and adequacy of the evidence provided in the application established that there is sufficient evidence of alleged dumping of PA from the Exporting Countries and consequent injury to the domestic industry, to justify initiation of an investigation. Consequently, the Commission decided to initiate an investigation on May 26, 2009. In terms of Section 27 of the Ordinance, the Commission issued a notice of initiation, which was published in the Official Gazette¹ of Pakistan and in two widely circulated national newspapers² (one in English language and one in Urdu Language) on May 29, 2009. Investigation concerning imports of PA into Pakistan (classified under PCT³ No. 2917.3500) contained in the First Schedule of Customs Act, 1969 (IV of 1969) originating in and/or exported from the Exporting Countries was thus initiated on May 29, 2009.

¹ The official Gazette of Pakistan (Extraordinary) dated May 29, 2009.

² The daily "Dawn" and the 'Daily Asas' of May 29, 2009 issue.

³ "PCT" is the abbreviation for Pakistan Customs Tariff. PCT heading in Pakistan is equivalent to Harmonized Commodity Description and Coding System up to six-digit level.

11.2 The Commission notified the High Commissions/Embassies of the Exporting Countries in Pakistan on May 29, 2009 with a request to forward notice of initiation to all exporters/producers of PA in their respective countries. Copies of Notice of Initiation were also sent to the exporters/foreign producers of the Exporting Countries whose complete addresses were available with the Commission, the known Pakistani importers, and the Applicant on May 29, 2009, in accordance with the requirements of Section 27 of the Ordinance.

11.3 In accordance with Section 28 of the Ordinance, the Commission also sent copies of full text of the written application (non-confidential version) to the known exporters/producers in the Exporting Countries and High Commissions/Embassies of the Exporting Countries in Pakistan on June 1, 2009.

12. Investigated Product, Like Product and Domestic Like Product

12.1 Section 2 of the Ordinance defines the "investigated product", and the "domestic like product" as follows:

i. **Investigated Product:**

"a product, which is subject to an antidumping investigation as described in the notice of initiation of the investigation".

ii. **Domestic Like Product:**

"the domestically produced product, which is a like product to an investigated product".

iii. **Like Product:**

"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".

12.2 For the purposes of this investigation and given the definitions set out above, the investigated product, like product and domestic like product are identified as follows:

i. **Investigated Product:**

The investigated product is PA originating in and/or exported from the Exporting Countries into Pakistan. It is classified under PCT No. 2917.3500. The investigated product is mainly used in the production of plasticizers, alkyd resins, polyester resins, dyes and pigments etc.

ii. **Domestic Like Product**

The domestic like product is PA produced by the domestic industry in Pakistan. The domestic like product is also classified under PCT No. 2917.3500. The domestic like product is mainly used in the production of plasticizers, alkyd resins, polyester resins, dyes and pigments etc.

iii. **Like Product:**

The like product is PA sold by the exporters/foreign producers of the Exporting Countries in their domestic markets and PA imported into Pakistan from the countries other than the Exporting Countries. The like product is classified under

PCT No. 2917.3500. Major uses of the like product are identical to those of the investigated product.

12.3 In order to establish whether the investigated product and the domestic like product are like products, as contended by the Applicant, the Commission reviewed all the relevant information received/obtained from various sources including the Applicant in the following terms:

- i. basic raw material used in the production of the investigated product and the domestic like product is identical i.e. Orthoxylene.
- ii. three products (the investigated product, like product and the domestic like product) are produced with a similar manufacturing process;
- iii. all three products have same/similar colour and appearance;
- iv. all three products are substitutable in use. They are mainly used in the production of plasticizers, alkyd resins, polyester resins, dyes and pigments etc.; and
- v. all three products are classified under the same PCT/HS No. 2917.3500

In light of the above, the Commission has determined that the investigated product and the domestic like are like products.

13. Period of Investigation

13.1 In terms of Section 36 of the Ordinance, period of investigation (hereinafter referred to as the "POI") is:

"a) for the purposes of an investigation of dumping, an investigation period shall normally cover twelve months preceding the month of initiation of the investigation for which data is available and in no case the investigation period shall be shorter than six months."

"b) for the purposes of an investigation of injury, the investigation period shall normally cover thirty-six months."

13.2 The POI selected for determination of dumping and injury, are, therefore, respectively, as follows:

For determination of dumping:	from January 1, 2008 to December 31, 2008
For determination of material injury:	from January 1, 2006 to December 31, 2008

14. Information/Data Gathering

14.1 The Commission sent questionnaires on June 1, 2009 to 17 exporters/producers from the Exporting Countries, and asked to respond within 37 days of the dispatch of the questionnaires i.e by July 7, 2009. Questionnaire were also provided to the High Commissions/Embassies of the Exporting Countries in Islamabad with a request to forward

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it to all exporters/foreign producers of the investigated product based in their respective countries in order to submit information to the Commission.

14.2 The Commission has an access to the import statistics of Pakistan Revenue Automation Limited ("PRAL"), the data processing arm of the Federal Board of Revenue, Government of Pakistan. For the purpose of this final determination the Commission has also used import data obtained from PRAL's database in addition to the information provided by the Applicant, and PT Petrowidada (a producer of investigated product in Indonesia).

14.3 Thus the Commission has sought information from all available sources, relevant data and information deemed necessary for the purposes of this final determination. In terms of Rule 12 of the Rules, during the course of this investigation, the Commission satisfied itself as to the accuracy of information supplied by the interested parties to the extent possible.

15. Questionnaire(s) Response by the Exporters/Foreign Producers from Exporting Countries

15.1 The Commission sent questionnaire to seventeen exporters/foreign producers from the Exporting Countries on June 01, 2009 with a request to respond within 37 days. Only one producer of PA from Indonesia responded to the questionnaire.

15.2 The Commission, after expiry of the time period given for submission of information on questionnaire informed the exporters/foreign producers from the Exporting Countries through a letter dated July 11, 2009, that in case no information is provided in response to the questionnaire, the Commission would be constrained to make its determination based on the 'Best Information Available' in terms of Section 32 and the schedule to the Ordinance and Article 6.8 and Annex II of the Agreement on Anti-dumping.

15.3 Only PT Petrowidada, Indonesia provided information in response to the questionnaire. None of the exporters/foreign producers from the Exporting Countries, other than Indonesia responded to the Commission's reminder letter of July 11, 2009.

15.4 Questionnaire Response from PT Petrowidada, Indonesia

15.4.1 Questionnaire was sent to PT Petrowidada (hereinafter referred to as Petrowidada) on June 1, 2009. Questionnaire response from Petrowidada, Indonesia was received in the Commission on July 14, 2009.

15.4.2 The information provided by Petrowidada in response to the questionnaire was examined and certain deficiencies were found. The data deficiencies were communicated to Petrowidada on July 19, 2009. Petrowidada provided the deficient data on August 10, 2009.

15.4.3 Petrowidada is a private limited company. It is the only manufacturer of PA in Indonesia, which set-up its first plant in 1989 with installed production capacity of *** MT per annum. Petrowidada doubled its production capacity to *** MT by adding another production line of *** MT per annum in 1998. Petrowidada expanded its production capacity by adding another advanced third PA plant having capacity of *** MT per annum, which started commercial production in 2001. However, presently only the third PA production plant of *** MT is in operation and two production lines of ***MT each severely damaged by

fire in 2004 are inoperative.

15.4.4 The Commission accepted the information supplied by Petrowidada for the purposes of this final determination except the information of total quantity exported to Pakistan and dumping is determined for Petrowidada from Indonesia on the basis of that information.

16. Verification of the Information

16.1 In terms of Section 35 of the Ordinance, during the course of an investigation, the Commission shall satisfy itself as to the accuracy of the information supplied by the Applicant and other interested parties through on-the-spot-investigation pursuant to Rule 12 of the Rules.

16.2 In order to verify the information provided by the Applicant and to obtain further information (if any), on-the-spot-investigation was conducted at the offices and plant of the Applicant from May 13, to 15, 2009.

16.3 To verify the information/data provided by Petrowidada, in response to the questionnaire and to obtain further information (if any), on-the-spot-investigation was conducted at the premises of Petrowidada in Indonesia from October 14 to 16, 2009.

17. Public File

The Commission, in accordance with Rule 7 of the Rules, has established and maintained a public file at its office. This file remains available to the interested parties for review and copying from Monday to Thursday between 1100 hours to 1300 hours throughout the investigation. This file contains non-confidential versions of the application, response to the questionnaires, submissions, notices, reports, correspondence, and other documents for disclosure to the interested parties.

18. Confidentiality

18.1 In terms of Section 31 of the Ordinance, the Commission shall keep confidential any information submitted to it, which is by nature confidential, or determined by the Commission to be of confidential nature for any other reason, or provided as confidential by parties to an investigation, upon good cause shown to be kept confidential.

18.2 The Applicant has requested to keep confidential the information, which is by nature confidential in terms of Section 31 of the Ordinance. This information includes data relating to sales, sale prices, cost to make and sell, inventories, production, profit/(loss), return on investment, cash flow, growth, investment, salaries & wages, number of employees and capacity. In addition to this, the Applicant has also provided certain information on confidential basis, as its disclosure would cause adverse effect upon the Applicant.

18.3 Pursuant to requests made by the Applicant and other interested parties to treat certain information as confidential, the Commission has determined the confidentiality in light of Section 31 of the Ordinance and for the reasons that disclosure of such information may be of significant competitive advantage to a competitor, or because its disclosure would have a significant adverse effect upon the interested parties providing such information.

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18.4 However, in terms of Sub-Section (5) of Section 31, non-confidential summaries of all confidential information, which provides reasonable understanding of the substance, have been placed in public file.

19. Preliminary Determination

19.1 The Commission made preliminary determination in this investigation on November 23, 2009 and in terms of Section 37 of the Ordinance, the Commission issued a notice of preliminary determination, which was published in the official Gazette of Pakistan⁴ and in two widely circulated national newspapers⁵ (one English language and one Urdu Language) on November 25, 2009 notifying the preliminary determination in this investigation.

19.2 The Commission besides sending the notice of preliminary determination to the High Commissions/Embassies of Exporting Countries in Islamabad also sent the notice of preliminary determination to the exporters/foreign producers, the known Pakistani importers, and the Applicant in accordance with the requirements of Section 37(4) of the Ordinance.

19.3 The Commission had not imposed any provisional measure in this investigation due to certain issues relating to export sales of Petrowidada, Indonesia, volume of dumped imports and regarding information about threat of material injury to the domestic industry.

20. Hearing

In terms of Rule 14 of the Rules, the Commission shall, upon request by an interested party made not later than thirty days after publication of notice of preliminary determination, hold a hearing at which all interested parties may present information and arguments. None of the interested party requested for hearing in this investigation.

21. Disclosure Meetings after Preliminary Determination

In terms of Rule 11 of the Rules, the Commission, upon request made by a exporter/foreign producer within fifteen days of the publication of notice of preliminary determination, shall hold disclosure meeting with the producer or exporter to explain dumping calculation methodology applied for that producer/exporter. The Commission shall also provide an opportunity to producer or exporter or their legal representatives to examine and receive copies of the dumping calculations done by the Commission for their exports. Since the Commission did not impose any provisional anti-dumping duty, therefore, none of the exporters/foreign producers has requested the Commission for disclosure meeting.

22. Written Submissions by the Interested Parties on the Preliminary Determination

None of the interested party has submitted written submissions/comments on the preliminary determination made by the Commission in this investigation.

⁴ The official Gazette of Pakistan (Extraordinary) of November 25, 2009 issue.

⁵ 'Dawn' and 'Express' of November 25, 2009 issues.

23. Disclosure of Essential Facts

23.1 In terms of Rules 14(8) of the Rules, and Article 6.9 of Agreement on Antidumping, the Commission disclosed essential facts, and in this context dispatched Statement of Essential Facts (hereinafter referred to as the "SEF") on April 29, 2010 to all interested parties including the known exporters/foreign producers, the Applicant, the known Pakistani importers, and to the embassy of China in Pakistan.

23.2 Under Rule 14(9) of the Rules, the interested parties were required to submit their comments (if any) on the facts disclosed in SEF, in writing, not later than fifteen days of such disclosure. The Commission received comments from following interested parties:

- i. A.T.S Synthetic (Pvt.) Limited
- ii. AHN Colloids Chemicals (Pvt.) Limited
- iii. Qaiser LG Petrochemicals (Pvt.) Limited
- iv. FPR Services and Company

23.3 The comments received on essential facts and germane to the investigation under the Ordinance are reproduced in Column A below and the Commission's response thereto is set out in column B as follows:

Column A	Column B
Comments of (i) A.T.S Synthetic (Pvt.) Ltd., (ii) AHN Colloids Chemicals (Pvt.) Ltd., and (iii) Qaiser LG Petrochemicals (Pvt.) Ltd.	Commission's response
<p>Volume of dumped imports</p> <p>"As evident from Table II of the SEF in Para.34, the Applicant has suffered no injury on account of volume of PA originating from Exporting Countries. However, it has been noticed that the said Table provides the figures for Domestic Consumption but fails to mention figures for the Domestic Production from 2006 to 2008. It is pertinent to mention here that according to the <i>prima facie</i> view expressed by the Commission through Tables 5 and 7 of its Initiation Memo, the volume of alleged dumped imports constantly decreased from the years 2006 to 2008, in both absolute and relative terms, respectively. Therefore, it is requested that the Commission should into account figures for the domestic production, as well, in order to determine the allegation of injury with regard to changes in volume of PA originating from Exporting Countries, in relative terms".</p>	<p>In terms of Section 15 (2) of the Ordinance, the Commission shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in Pakistan. Reference para 33 for the analysis of volume of dumped imports.</p> <p>The analysis shows that in relative terms to the domestic consumption, the volume of dumped imports increased from 16.56 percent in 2006 to 18.14 percent in 2007 which further increased to 18.60 percent in 2008 (paragraph 33 <i>infra</i>).</p>
<p>Price Effect</p> <p>"With regard to Price Effects, it is an admitted fact, that there has been no injury due to price undercutting and price depression, and it is only an attempt by the Applicant to some how make out a case of price suppression.</p> <p>In this regard it needs to be noted that the rise in cost of production for PA as seen in Table V of the SEF has nothing to do with allegedly dumped imports of PA into Pakistan. The international prices of PA for the last few</p>	<p>The Commission has verified the information submitted by the Applicant during on-the-spot verification and found that the information provided by the Applicant is correct.</p> <p>According to the information and analysis thereof it is concluded that the domestic industry has suffered material injury on account of price suppression to the domestic</p>

<p>years reveal that the price of PA actually decreased in the year 2008, and evidence of it has already been provided by the Importers in their Injury Submission. Even the prices of basic raw material of PA, i.e. Ortho-xylene (OX) actually decreased during 2008, due to which the cost of production of the Applicant was also supposed to decrease. However, the increase in cost of production of the Applicant in 2008, against the international price trends and raw material costs, has something to do with its own productive and managerial inefficiency or miscalculation, rather than imports of PA from the Exporting Countries. Any miscalculation on the part of the Applicant in buying OX at a higher price and then not being able to sell the PA manufactured from it due to decline in international prices, cannot be linked with alleged dumped imports of PA for the purposes of injury”.</p>	<p>industry (reference para 36.3).</p>
<p>Inventories “With regard to the position of inventories as provided in Table IX of the SEF, it needs to be mentioned that the Applicant is a composite unit engaged in the manufacture of Phthalic Anhydride (PA), Di-octyl Phthalate (DOP) and Maleic Anhydride. So it is not possible to calculate the separate increase/decrease in the closing inventory of PA. However, there is no cumulative increase in terms of value of finished goods inventory as per Note 24 of the Financial Report of the Applicant for the year ended December 31, 2008, as compared with the previous year ended December 31, 2007. Besides, the Commission is requested to determine the position of inventories on the basis of the value of the finished goods rather than the quantity of the goods”.</p>	<p>The Commission has satisfied itself to the accuracy of the information provided by the Applicant regarding inventories of PA. It is concluded that the domestic industry has suffered material injury on account of increase in inventories (reference para 38 infra).</p> <p>Inventories are usually determined on the quantity of the product rather than the value, as the change in price of the product may change its value and hence the inventories position.</p>
<p>Financial Statement (Profit & Loss) “Furthermore, the Financial Statements for the year ended 31 December 2008, of the Applicant are for the composite unit engaged in the manufacture of Phthalic Anhydride (PA), Di-octyl Phthalate (DOP) and Maleic Anhydride, which do not segregate the figures pertaining to PA. In this scenario, the Importers are highly concerned that the Commission might be misled by figures of a composite nature and may not be able to make a correct determination of allegation of injury pertaining to the imports of PA. Furthermore, even if the Commission had the figures pertaining exclusively to the alleged imports of PA, they have not been brought into the knowledge of the Importers by the Commission so that their veracity could be explored and responded to”.</p>	<p>The Commission has satisfied itself to the accuracy of the information provided by the Applicant regarding profit and loss position during 2008 and found that the domestic industry has incurred losses during 2008 mainly due to price suppression (reference para 37 infra).</p>
<p>Other Factors “From the SEF it is evident that the Commission is not examining or analyzing, the ‘causation’ and the ‘other factors’, which were pointed out by the Importers in the Injury Submission filed earlier. The Commission is, therefore, requested to analyze the following ‘other factors’ as well so that injuries caused by such other</p>	<p>The Commission has also examined other factors in terms of Section 18(2) of the Ordinance and found that the domestic industry suffered material injury mainly due to dumped imports.</p>

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<p>factors, as per the requirements of Section 18(2) of the Ordinance, are not attributed to alleged dumped imports:</p> <ol style="list-style-type: none"> Global Recession Contraction in Demand Variation in prices of crude oil during the POI, particularly in the year 2008 Variation in prices of OX, the basic raw material for manufacturing PA, particularly in the year 2008 International market prices of PA during POI, particularly in 2008 Rise in the cost of doing business Rise in power, electricity and gas costs Power Shortages Stiff competition in the international market High cost of financial charges Devaluation of Pak Rupee Enhancement of the minimum wage rates in 2008 Procedural and Managerial inefficiencies of the Applicant 	
<p>Threat of material injury "As far as the threat of injury to Domestic Industry is concerned, it has been noticed from the SEF that the Commission is indirectly extending the Period of Injury (POI) by giving figures for the 2009 in a quarterly manner for the different injury factors. This is not the correct approach being adopted by the Commission. Under the law, any threat or likelihood of injury is to be determined with reference to the Period of Investigation (POI) or the Period of Injury (POI) only and that determination cannot exceed such period in any manner in order to even establish a threat of likelihood of injury. Moreover, even otherwise, the figures for 2009 have nothing to do with the imports of PA from the Exporting Countries, as it was a period when the Safeguard Duty was imposed by India and which was likely to affect the Applicant".</p>	<p>The Commission has concluded that there is no threat of material injury to the domestic industry as the claim of domestic industry that the imposition of safeguard duty by India would divert the imports to Pakistan is already lapsed on December 2009.</p>
<p>Safeguard action by India "As far as the Safeguard action by India was concerned there were two notifications by India to the WTO pursuant to Article 12.1 (c) and Article 9, footnote 2 of the Agreement on Safeguards, respectively, along with the Notification No. 75/2009 – Customs dated 30.6.2009 by the Government of India regarding imposition of safeguard measure on imports of PA. According to the said notification, firstly, the imposition of definitive safeguard duty of 25% was only up to 30th June 2009 and thereafter the imposition was at the rate of 15% for the next six months, i.e., from 1st July 2009 to 31st December 2009. Therefore, the safeguard duty applicable till the end of 2009 was 15%. Secondly, the said notifications, clearly mentioned that the imposition of safeguard duty would not apply to imports of Phthalic</p>	<p>By checking the relevant safeguard duty notification, the Commission came to know that safeguard duty imposed by India has lapsed in December, 2009, therefore, the claim by the Applicant regarding threat of material injury cannot be substantiated as safeguard duty is no more in place. Therefore, the Commission has concluded that there is no threat of material injury to the domestic industry on account of safeguard duty imposed by India.</p>

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<p>Anhydride form developing countries, other than Pakistan, Indonesia and Thailand. This meant that Brazil and China, being among the Exporting Countries in this investigation, were expressly excluded from the list of those countries which are affected by the imposition of safeguard duty by India on PA. Therefore, the threat of likelihood of imports diverting to Pakistan because of safeguard measure by India was just exaggerated by the Applicant. It is worth mentioning here that in India there are more than 10 companies which are involved in the manufacturing of PA and there is fair competition within the country. Whereas in Pakistan Nimir Chemical Pakistan Ltd. (the Applicant) is a single company producing PA supported with 12.5% Tariff protection".</p> <p>"The argument of the likelihood of threat by the Applicant, even otherwise, does not have force, as imposition of a safeguard measure by India on imports of PA is no justification to establish a threat of material injury due to alleged dumped imports. This argument is fortified by the facts that the safeguard duty was 15% and that also only till 31st December 2009 and more important of all it does not affect Brazil and China from among the Exporting Countries. On the contrary, non-applicability of the safeguard measure on Brazil and China, gives these countries even more market access to India to divert their exports of PA to India, instead of Pakistan. Thus, this further decreases the chance of any increase in volume of imports from Brazil and China due to imposition of safeguard measure by India".</p>	
Comments of FPR Services and Company	Commission's response
<p>"As shown (Table I) that the cumulative volume of imported product during POI is 3,224 M.T which is 13.43% volume of the production capacity of Nimir Chemicals. It is the not so much higher volume that can affect the 80% market share holder (Nimir Chemicals), it is relatively acceptable volume to maintain the fair competition and avoid the monopoly of a single player in the market".</p>	<p>In terms of Section 41(3) of the Ordinance provides that the volume of dumped imports shall normally be disregarded as negligible if the volume of dumped imports of an investigated product is found to account for less than 3 percent of total imports of like product. The Commission found that volume of dumped imports from all dumped sources was above the negligible threshold setout in Section 41(3) of the Ordinance (reference para 30 infra).</p>
<p>"In table IV landed cost is higher then the ex-Factory price of domestic like product, however table V shows that the average selling price of domestic like product is lower then the average cost of production which means their cost of product or relatively organization expenses are higher enough that are affecting the profit margin".</p>	<p>The Commission's analysis shows that the domestic industry was not been able to increase its ex-factory price upto the level to recover increase in cost of production in 2008. Thus the domestic industry suffered injury on account of price suppression during 2008 only (reference para 35.3 infra).</p>
<p>"Table IX: It show the drastic increase the inventories level of Nimir Chemicals from 2006 to 2008, but they did not loose their market share and maintaining the sales volume with the same pace (As shown in Table</p>	<p>The Commission's analysis shows that the inventories of the domestic industry increased during POI whereas domestic sales by the</p>

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<p>"Table IX: It show the drastic increase the inventories level of Nimir Chemicals from 2006 to 2008, but they did not loose their market share and maintaining the sales volume with the same pace (As shown in Table III) as well as no signification increase in the import of PA during the same course".</p>	<p>The Commission's analysis shows that the inventories of the domestic industry increased during POI whereas domestic sales by the domestic industry has also decreased in 2008 (reference para 39 infra).</p>
<p>"Table VIII: Since in 2006 Nimir made expansion and double their production capacity which investment might be affected their profit and loss sheets, It is not necessary that alleged dumped imports affecting their margin which have 20% market size".</p>	<p>The Commission's analysis shows that the domestic industry increased its installed production capacity by 2,000 MT by modification in its existing plant in year 2007, therefore, it has not much affect on the</p>

B. DETERMINATION OF DUMPING

24. Dumping.

In terms of Section 4 of the Ordinance dumping is defined as follows:

"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".

25. Normal Value

25.1 In terms of Section 5 of the Ordinance "normal value" is defined as follows:

"a comparable price paid or payable, in the ordinary course of trade, for sales of a like product when destined for consumption in an exporting country".

25.2 However, Section 6 of the Ordinance states:

"(1) when there are no sales of like product in the ordinary course of trade in domestic market of an exporting country, or when such sales do not permit a proper comparison because of any particular market situation or low volume of the sales in the domestic market of the exporting country, the Commission shall establish normal value of an investigated product on the basis of either:

- "a) the comparable price of the like product when exported to an appropriate third country provided that this price is representative; or*
- b) the cost of production in the exporting country plus a reasonable amount for administrative, selling and general costs and for profits.*

(2) Sales of a like product destined for consumption in domestic market of an exporting country or sales to an appropriate third country may be considered to be a sufficient quantity for the determination of normal value if such sales constitute five per cent or more of the sales of an investigated product to Pakistan:".

25.3 Ordinary course of trade is defined in Section 7 of the Ordinance as follows:

"(1) The Commission may treat sales of a like product in domestic market of an exporting

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country or sales to a third country at prices below per unit, fixed and variable, cost of production plus administrative, selling and other costs as not being in the ordinary course of trade by reason of price and may disregard such sales in determining normal value only if the Commission determines that such sales were made" -

- "(a) within an extended period of time which shall normally be a period of one year and in no case less than a period of six months;
- "(b) in substantial quantities; and
- "(c) at prices which do not provide for the recovery of all costs within a reasonable period of time.

"(2) For the purposes of sub-clause (b) of sub-section (1), sales below per unit cost shall be deemed to be in substantial quantities if the Commission establishes that -

- "(a) a weighted average selling price of transactions under consideration for the determination of normal value is below a weighted average cost; or
- "(b) the volume of sales below per unit cost represents twenty per cent or more of the volume sold in transactions under consideration for the determination of normal value.

"(3) If prices which are below per unit cost at the time of sale are above the weighted average cost for the period of investigation, the Commission shall consider such prices as providing for recovery of costs within a reasonable period of time."

26. Export Price

26.1 The "export price" is defined in Section 10 of the Ordinance as "a price actually paid or payable for an investigated product when sold for export from an exporting country to Pakistan".

26.2 As stated earlier, none of the exporters/producers of the investigated product provided requisite information except a producer from Indonesia (paragraph 15.3 supra). Thus, the export price for investigated product for all non-cooperating exporters/producers is determined on the basis of the best information available to the Commission in terms of Section 32 of the Ordinance, and Article 6.8 and Annex II of the Agreement on Antidumping.

26.3 Export price for the exporters/foreign producers from the Exporting Countries (except for Indonesia) has been determined on the basis of their exports of PA to Pakistan, obtained from PRAL. Weighted average C&F prices have been calculated from PRAL imports data. To arrive at the ex-factory level, weighted average C&F export price has been adjusted on account of ocean freight, inland freight and insurance cost. The Applicant has provided average ocean freight rates per 20 feet container for 2008 for each exporting country (quoted by CEI Logistics (Pvt.) Ltd., Gulberg, Lahore) and average ocean freight per MT has been worked out from freight of a container load. To arrive at FOB export price ocean freight has been deducted from C&F export price. The Commission has taken US\$***/MT as inland freight and insurance as 0.5 percent of C&F value to reach at ex-factory level. After making these adjustments, the Commission arrived at weighted average export price at ex-factory level for the Exporting Countries (except Indonesia). The ex-factory export price for exporters/foreign producers from the Exporting Countries (except Indonesia) are given in table below:

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Table-I

	Exports of PA (MT) from the Exporting Countries	Weighted Average Gross Export Price	Adjustments	Weighted Average Net Export Price
Brazil	440	***	***	***
China	117	***	***	***
South Korea	940	***	***	***
Taiwan	198	***	***	***

26.4 Petrowidada's Sales to a Trader for Export to Pakistan

26.4.1 Petrowidada sold PA to Continental Chemical Corporation Private Limited (CCCPL), Singapore (a trading company) for sale to unrelated customers in Pakistan. Petrowidada does not directly export PA to Pakistan and has no direct customers in Pakistan. Petrowidada provided data showing *** MT export sales to Pakistan but during the investigation the Commission found that these exports sales figures do not match with import data obtained from PRAL. On November 04, 2009, the Commission asked Petrowidada to reconcile export figures and provide documentary evidence in support of export sales of PA to Pakistan during POI, latest by November 07, 2009. On November 05, 2009, Petrowidada agreed to provide the relevant information as soon as possible. Petrowidada failed to provide reconciled export sales data till November 07, 2009, the Commission reminded Petrowidada for provision of data on November 10, 2009. On December 23, 2009, the Commission again reminded Petrowidada to provide reconciled exports sales to Pakistan, Petrowidada again reiterated to provide the requisite data very soon. The Commission again reminded Petrowidada on January 13, 2010 to provide export sales to Pakistan by January 23, 2010 otherwise the Commission would be constrained to use best information available for this final determination, which may not be in the best interest of the company. After many reminders Petrowidada failed to provide the requisite information, therefore, the Commission has used best information available in this final determination, in pursuance of Section 32 of the Ordinance.

26.4.2 According to the best information available to Commission, Petrowidada sold *** MT of PA having gross value of US\$ *** to CCCPL, which was exported to Pakistan during the POI. Petrowidada sold PA to CCCPL at FOB prices on payment terms of T/T *** days. The sales to CCCPL are made at 60 days credit, the credit cost of 60 days is calculated on average annual interest rate of 5%. Inland freight from plant to Surayaba port is paid by Petrowidada. CCCPL places purchase order with Petrowidada at FOB price negotiated between the Petrowidada and CCCPL. Once product is packed for export, commercial invoice is issued in the name of CCCPL.

26.4.3 Petrowidada sold PA to CCCPL at FOB prices for export to Pakistan, and to arrive at ex-factory export price has been adjusted on account of inland freight, handling cost and credit cost for *** days. The gross FOB price of PA sold to CCCPL for export to Pakistan works out to US\$ ***/MT, inland freight and handling cost was US\$ ***/MT and credit cost was US\$ ***/MT. After making adjustments for inland freight, handling cost and credit cost, the ex-factory export price works out to US\$ ***/MT.

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27. Normal Value

27.1 In terms of Section 5 of the Ordinance, normal value is a "comparable price paid or payable, in ordinary course of trade, for sales of a like product when destined for consumption in an exporting country". However in terms of Section 6 of the Ordinance when there are no sales of a like product in the ordinary course of trade in domestic market of an exporting country, or when such sales do not permit a proper comparison because of any particular market situation or low volume of sales in the domestic market of the exporting country, the normal value of an investigated product would be determined on the basis of either:

- i) A comparable price of the like product when exported to an appropriate third country, provided that this price is representative; or
- ii) The cost of production in the exporting country, plus a reasonable amount for administrative, selling and general costs and for profits.

27.2 Petrowidada's Domestic Sales in Indonesia

27.2.1 Petrowidada sold *** MT PA having gross value of US\$ *** in the domestic market during the POI to industrial users. Domestic sales were made at CFR prices and payment terms were 14 days after delivery. Petrowidada explained that no credit cost is charged for 14 days payment terms, as these are considered sales on cash. Domestic sales transactions are made on the basis of ICIS weekly prices (ICIS pricing is an independent price benchmark for the global chemical industry) or at spot prices.

27.2.2 In order to determine whether the sales in the domestic market during the POI were made in the ordinary course of trade pursuant to Section 7 of the Ordinance, the Commission has examined the domestic sales of Petrowidada during the POI and found that out of total sales of ***MT, below cost sales were ***MT (which were sold over a period of three months i.e. October to December 2008).

Section 7 of the Ordinance states as follows:

"(1) The Commission may treat sales of a like product in domestic market of an exporting country or sales to a third country at prices below per unit, fixed and variable, cost of production plus administrative, selling and other costs as not being in the ordinary course of trade by reason of price and may disregard such sales in determining normal value only if the Commission determines that such sales were made -

(a) within an extended period of time which shall normally be a period of one year and in no case less than a period of six months;

(b) in substantial quantities; and

(c) at prices which do not provide for the recovery of all costs within a reasonable period of time."

"(2) For the purposes of sub-clause (b) of sub-section (1), sales below per unit cost shall be deemed to be in substantial quantities if the Commission establishes that -

(a) a weighted average selling price of transactions under consideration for the determination of normal value is below a weighted average cost; or

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(b) the volume of sales below per unit cost represents twenty per cent or more of the volume sold in transactions under consideration for the determination of normal value.

27.2.3 The Commission has determined the normal value for Petrowidada on the basis of its total domestic sales during the POI as only ***MT (i.e.11.46 percent) of its total domestic sales were below cost over a period of three months. The weighted average gross domestic sales price of Petrowidada was US\$***/MT. Petrowidada claimed adjustment in its domestic sales only on account of inland freight charges. To arrive at ex-factory domestic sales price, average inland freight charges of US\$***/MT have been deducted from weighted average gross domestic sales price. The ex-factory domestic sales price works out to US\$***/MT.

27.2.4 The normal value for exporters/foreign producers from Brazil, China, South Korea and Taiwan has been determined on the basis of constructed cost.

27.2.5 As stated in paragraph 15.3 supra, none of the exporters/producers of the investigated product from the Exporting Countries (except Indonesia) provided requisite information, therefore, normal value for the purposes of this final determination for the investigated product is determined on the basis of the best information available in terms of Section 32 of the Ordinance and Article 6.8 and Annex II of the Agreement on Antidumping.

27.2.6 It is important to identify here that the Commission informed the exporters/foreign producers from the Exporting Countries (except Indonesia) of reliance on the Best Information Available in its letters of July 11, 2009 (paragraph 15.2 supra).

27.2.7 In order to determine the normal value on the basis of the cost of production, information/data submitted by the Applicant is used, in keeping with Paragraph 1 of Annex II of the Agreement on Antidumping. For this purposes, the cost of raw material (Ortho-Xylene) has been taken on the basis of actual C&F (Karachi) price paid by the Applicant in the year 2008. The actual cost incurred by the Applicant on: packing material, manufacturing salaries and wages, other factory overheads, administrative expenses, and selling and distribution expenses for production of the domestic like product in the year 2008 have been used for construction of the normal value. Normal profits @ 10 percent of cost to make and sell has been added to arrive at a constructed normal value.

27.2.8 On the basis of above, the normal value (ex-factory level) for the investigated product in the Exporting Countries (except Indonesia) is given in table below:

Table-II (US\$/MT)	
	Constructed Normal value
Brazil	***
China	***
South Korea	***
Taiwan	***

28. Dumping Margin

28.1 Section 2(f) of the Ordinance defines "dumping margin" in relation to a product to mean the amount by which its normal value exceeds its export price. Section 11 of the Ordinance requires the export price and normal value to be compared with the same characteristics in terms of level of trade, time of sale, quantities, taxes, physical characteristics, conditions and terms of sale and delivery at the same place.

28.2 In terms of Section 14(1) of the Ordinance the Commission shall determine an individual dumping margin for each known exporter or producer of an investigated product. However, Section 14(2) provides that if the Commission is satisfied that the number of exporters, producers or importers, or types of products involved is so large as to make it impracticable to determine an individual dumping margin for each known exporter or producer concerned of an investigated product, the Commission may limit its examination to a reasonable number of interested parties or investigated products by using samples which are statistically valid on the basis of information available to the Commission at the time of selection, or to the largest percentage of volume of exports from the country in question which can reasonably be investigated.

28.3 As stated earlier (paragraph 15.3 supra) none of the exporters/foreign producers of the investigated product from the Exporting Countries (except Indonesia) provided requisite information, therefore, individual dumping margin has not been determined for any exporter/producer (except Petrowidada from Indonesia).

28.4 Section 12 of the Ordinance provides three methods for fair comparison of normal value and export price in order to establish dumping margin. The Commission has established dumping margin by comparing weighted average normal value with weighted average export price at ex-factory level.

28.5 Taking into account all requirements set out above, a single dumping margin has been calculated for all exporters/producers from the Exporting Countries (including Indonesia as there is only one producer/exporter from Indonesia) as per the following table:

Table-III

	Net Normal Value (US \$/kg)	Net Export Price (US \$/kg)	Dumping Margin (US \$/kg)	Dumping Margin in % of ex-factory Export Price	Dumping Margin as % of C&F price
Brazil	***	***	***	6.75	6.17
China	***	***	***	12.39	11.84
Indonesia	***	***	***	8.94	5.87
South Korea	***	***	***	7.73	7.36
Taiwan	***	***	***	28.72	27.28

29. De minimis Dumping Margins and Negligible Volume of Alleged Dumped Imports

29.1 In terms of Section 41(3) of the Ordinance, dumping margin shall be considered to be negligible if it is less than two percent, expressed as a percentage of the export price. Dumping margins calculated for exporters/producers from the Exporting Countries are given in Table 3 supra. Dumping margins for exporters/foreign producers from Brazil, China, Indonesia, South Korea, and Taiwan are above *de minimis* level.

29.2 As regards the volume of dumped imports, Section 41(3) of the Ordinance provides that the volume of such 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. The data obtained from PRAL of volume of dumped imports of PA from all sources during the POI (January 01, 2008 to December 30, 2008) is given in the table below:

Table-IV

Country Name	Quantity (MT)	Percentage
Brazil	440	13.75
China	135	4.22
South Korea	1080	33.75
Taiwan	180	5.63
Other sources	1365	42.66
Total	3,200	100

29.3 It appears from the above table that the volume of dumped imports of PA from each dumped source i.e. Brazil, China, Indonesia, South Korea, and Taiwan during 2008 was above the negligible threshold set-out in Section 41(3) of the Ordinance.

C. INJURY TO DOMESTIC INDUSTRY

30. Material Injury to the Domestic Industry

30.1 Section 15 of the Ordinance sets out the principles for determination of material injury to the domestic industry 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..."*

30.2 Material injury to the domestic industry is summarized in the following paragraphs.

31. Cumulation of Dumped Imports

31.1 Section 16 of the Ordinance states that:

"where imports of a like product from more than one country are the subject of simultaneous investigation under this Ordinance, the Commission may cumulatively assess the effects of such imports on the domestic industry only if it determines that:

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- (a) *dumping margin in relation to investigated product imported from each country is more than the negligible amount as specified in, and volume of dumped imports from each investigated country is not less than the negligible quantity as; and*
- (b) *a cumulative assessment of the effects of the imports is appropriate in the light of*
- (i) *the conditions of competition between the imports; and*
 - (ii) *the conditions of competition between the imports and a domestic like product."*

31.2 Investigation of the Commission has revealed that the volume of dumped imports during the POI from each Exporting Countries individually was well above the negligible quantity (i.e. less than 3 percent of total imports of PA).

31.3 It is evident from the weighted average export prices of PA imported from dumped sources during POI (paragraph 35 infra) that there was a price competition between the imports of the PA from all dumped sources.

31.4 The investigation also revealed that there was competition between the investigated product and the domestic like product.

31.5 For the reasons given above, the Commission will cumulatively assess the effects of dumped imports from the Exporting Countries on the domestic industry in this investigation.

32. Determination of Domestic Industry

32.1 In terms of Section 2(d) of the Ordinance domestic industry means the domestic producers as a whole of a domestic like product or those of them whose collective output of that product constitutes a major proportion of the total domestic production of that product.

32.2 As mentioned in paragraph 8.3 supra, the application is filed by the domestic industry producing 100 percent of the domestic production of domestic like product in Pakistan. Thus the Applicant is considered as domestic industry and injury analysis is based on the information/data of the Applicant.

33. Volume of Alleged Dumped Imports

Facts

33.1 With regard to the volume of dumped imports, in terms of Section 15(2) of the Ordinance, it is considered whether there has been a significant increase in alleged dumped imports, either in absolute terms or relative to the consumption or production of the domestic like product by the domestic industry. The following table shows imports of the investigated product and consumption of the domestic like product by the domestic industry, during the POI:

Table-V (MT)

Year*	Imports from			Domestic Sales	Domestic Consumption
	Dumped Source	Other Sources	Total Imports		
2006	16.5	10.2	26.8	73.1	100.0
2007	17.5	--	17.5	79.0	96.6
2008	14.7	0.78	15.4	63.3	79.0

* Year is from January 01 to December 31

Source: Applicant and PRAL

Note: Domestic consumption for the year 2006 has been indexed as 100

Analysis

33.2 It appears from the above table that the dumped imports increased from *** MT to *** MT, an increase of *** MT (5.86 percent) in 2007 over 2006. Dumped imports decreased from *** MT to *** MT (16.09 percent) in 2008 over 2007. Thus dumped imports increased in 2007 and decreased in 2008 absolute terms during the POI.

33.3 It is evident from above table that in relative terms to the domestic consumption, the volume of dumped imports increased from 16.56 percent in 2006 to 18.14 percent in 2007 which further increased to 18.60 percent in 2008.

Conclusion

33.4 On the basis of above the Commission has concluded that there was a significant increase in the volume of dumped imports in relative terms to domestic consumption during the POI.

34. Market Share

Facts

34.1 The total domestic demand of PA in Pakistan is met through local production and imports. To establish the size of the Pakistan market, sales of domestic like product by the domestic industry, imports of the investigated product from dumped sources and imports of PA from other sources have been used. Following table shows the market share from each source during the POI:

Table-VI

Year*	Sales by domestic industry + internal consumption	Imports from		Total domestic market
		Dumped source	Other sources	
2006	73.15%	16.56%	10.29%	100
2007	81.86%	18.14%	--	100
2008	80.15%	18.60%	1.00%	100

* Year is from January 01 to December 31

Note: Total domestic market has been indexed as 100.

Source: Applicant and PRAL

Analysis

34.2 The above table shows that the domestic market of PA decreased by 3.38 percent during 2007 and decreased by 18.18 percent in 2008. The domestic industry's market share increased by 7.60 percent in 2007, but decreased by 1.71 percent in 2008. Meanwhile market share of the alleged dumped imports increased by 1.58 percent in 2007 and further increased

by 0.19 percent in 2008. If compared with base year of 2006 the share of dumped imports in domestic market has increased from 16.56 percent to 18.60 percent in 2008 against decrease in market share of imports from other sources from 10.29 percent to 01 percent in the same period.

Conclusions

34.3 On the basis of above facts and analysis the Commission concludes that the share of domestic industry in domestic market decreased during the POI for dumping over last year and the share of dumped imports increased during the POI. Therefore, it is concluded that the domestic industry suffered material injury on account of share held by dumped imports in the domestic market.

35. Price Effects

35.1 The effect of alleged dumped imports on the prices of domestic like product has been examined in the following paragraphs. The information provided by the Applicant shows prima facie, that there has been significant price under-cutting (the extent to which the price of the investigated product is lower than the price of domestic like product) during 2006 and price suppression (the extent to which the increased cost to make and sell was not recovered by way of increase in price) during 2008.

35.2 Price Undercutting

Facts

35.2.1 Weighted average ex-factory price of the domestic like product and weighted average landed cost of the investigated product during the POI is given in the following table:

Table-VII

Year*	Average ex-factory price of domestic like product	Average landed cost of alleged dumped imports	Price under-cutting
2006	100	96.4	8.10%
2007	113.3	120.3	(6.85%)
2008	124	144.3	(11.57%)

* Year is from January 01 to December 31

Source: Applicant and PRAL

Note: Average ex-factory price of domestic like product for 2006 has been indexed as 100.

Analysis

35.2.3 The above table shows that imports undercut the prices of domestic like product only in 2006. In the years 2007 and 2008 the average landed cost of dumped imports was higher than the average sales price of domestic industry.

Conclusion

35.2.4 On the basis of above facts and analysis the Commission concludes that the domestic industry did not face price undercutting during the POI.

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35.3 Price Suppression

Facts

35.3.1 Weighted average cost of production and ex-factory price of the domestic like product during the POI is given in the following table:

Table-VIII

Year*	Average cost to make & sell of domestic like product	Average ex-factory price of domestic like product	Price Suppression	
			Increase/ (decrease) in cost to make & sell	Increase/ (decrease) in price
2006	100.0	100.0	-	-
2007	106.1	113.3	6.1	13.3
2008	131.1	124.0	25.0	10.7

* Year is from January 01 to December 31

Source: Applicant

Note: Data for the year 2006 has been indexed as 100.

Analysis

35.3.2 The above table shows that the cost to make and sell of the domestic industry increased by 6.12 percent and domestic industry increased its ex-factory sales price by 13.36 percent in 2007. The cost to make and sell of the domestic industry increased by 23.52 percent while it was able to increase its ex-factory sales price by 9.38 percent in 2008, thus it experienced price suppression, as it was not able to recover increased cost to make and sell by way of an increase in its selling price.

Conclusion

35.3.3 On the basis of above facts and analysis the Commission has concluded that the domestic industry experienced price suppression in 2008.

35.4 Price Depression

Facts

35.4.1 The weighted average ex-factory price of the domestic like product during the POI is given in the table below:

Table-IX

Year*	Weighted Average ex-factory price of domestic like product	Price depression
2006	100	-
2007	113.3	-
2008	124	-

* Year is from January 01 to December 31

Source: Applicant

Note: Data for the year 2006 has been indexed as 100.

Analysis

35.4.2 The above table shows that the domestic industry increased its sales price by 13.36 percent in 2007 and by 9.38 in 2008.

Conclusion

35.4.3 On the basis of above facts and analysis the Commission concludes that the domestic industry did not faced price depression during the POI due to dumping.

36. Production and Capacity Utilization

Facts

36.1 The installed capacity, quantity produced and the capacity utilization of the Applicant during the POI were as follows:

Table-X

Year*	Capacity Utilization
2006	71.50
2007	86.75
2008	84.69

* Year is from January 01 to December 31

Source: Applicant

Note: Data for the year 2006 has been indexed as 100

Analysis

36.2 It may be noted from the above table that the production of domestic like product and capacity utilization of the domestic industry increased during 2007, however, the production decreased in 2008 and capacity utilization also decreased marginally by 2.06 percent.

Conclusion

36.3 Based on above facts and analysis the Commission concludes that the domestic industry suffered material injury on account of production of domestic like product and capacity utilization in 2008.

37. Profit and Loss

Facts

37.1 Profitability position of the domestic industry is given in the following table:

Table-XI

Year*	Profit/(loss) (Rs. Million)	Profit/(loss) as % of sales value
2006	100	4.79%
2007	231.5	9.05%
2008	(150)	(6.72%)

* Year is from January 01 to December 31

Source: Applicant

Note: Data for the year 2006 has been indexed as 100

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Analysis

37.2 It appears from the above table that the domestic industry's profit increased from Rs.*** million to Rs.*** million in 2007. However, it incurred loss of Rs.*** million in 2008 mainly because of increase in cost of production and price suppression during 2008.

Conclusion

37.3 On the basis of above facts and analysis the Commission concludes that the domestic industry suffered losses during 2008 mainly on account of volume of dumped imports of PA from the Exporting Countries.

38. Inventories

Facts

38.1 The position of inventories level of the domestic industry is given below:

Table-XII

Year*	Opening Inventory	Closing Inventory
2006	100	179.1
2007	179.1	669.5
2008	669.5	1025.2

* Year is from January 01 to December 31

Source: Applicant

Note: Opening inventory for the year 2006 has been indexed as 100.

Analysis

38.2 The above table shows that inventories of the domestic industry increased during 2007 and 2008, despite decrease in production during 2008.

Conclusion

38.3 Based on above facts and analysis the Commission concludes that the domestic industry suffered material injury on account of higher inventories.

39. Productivity and Wages

Facts

39.1 Figures of employment in the domestic industry and the salaries and wages paid during the POI are given in following table:

Table-XIII

Year*	Number of Employees	Total salaries and wages (Mill. Rs.)	Domestic production (MT)	Productivity per worker in MT	Salaries & wages Rs. Per MT
2006	100	100	100	100	100
2007	97.2	118.1	132.3	136.2	89.2
2008	98.6	138.3	129.2	130.7	107.5

* Year is from January 01 to December 31

Source: Applicant

Note: Data for the year 2006 has been indexed as 100.

Analysis

39.2 The above table shows that the employment in the domestic industry marginally declined during the POI. However, productivity per worker increased due to decline in employment and additional production for export purposes. Salaries and wages per MT increased during the POI. Thus the domestic industry suffered on account of employment and salaries & wages.

Conclusion

39.3 Based on above facts and analysis the Commission concludes that the domestic industry suffered injury on account of productivity and salaries & wages per MT in 2008.

40. Return on Investment

Facts

40.1 Return on investment realized by the domestic industry during the POI is given in following table:

Table-XIV

Year*	Return on Investment
2006	9.46%
2007	14.67%
2008	(12.64%)

* Year is from January 01 to December 31

Source: Applicant

Analysis

40.2 The above table shows that the return on investment increased in 2007 while investment increased. Return on investment decreased and became negative in 2008 and investment in the industry also declined in the same year.

Conclusion

40.3 Based on the above facts and analysis the Commission concludes that return on investment declined drastically in 2008 owing to dumping.

41. Cash Flow

Facts

41.1 Cash flow position of domestic industry during the POI is given below:

Table-XV

Year *	Net cash inflow/ (outflow) from operations
2006	100
2007	150.7
2008	5.5

* Year is from January 01 to December 31

Source: Applicant

Note: Data for the year 2006 has been indexed as 100.

Analysis

41.2 The above table shows that cash flow from operations of the domestic industry suffered increased in 2007, however, it decreased in 2008. Thus the domestic industry suffered injury on account of cash flow from operations in 2008.

Conclusion

41.3 On the basis of above facts and analysis the Commission concludes that the domestic industry suffered injury on account of negative effect on cash flow during 2008.

42. Growth and Investment

At present total installed production capacities of the domestic industry (paragraph 32.5.1 supra) are more than the domestic demand (paragraph 30.1 supra). In this situation no further investment in the industry cannot be expected.

43. Ability to Raise Capital

According to the Applicant, ability to raise capital is contingent upon financial results of the company. With losses and decreasing cash flow it would be difficult to raise equity through capital market. Investors will only be willing to inject more equity if the industry shows increasing sales and profits. Due to the increase in dumped imports and the industry's ability to raise capital is materially injured.

44. Summing up of Material Injury

44.1 The analysis in paragraphs 33 to 34 supra shows that there has been an increase in the volume of dumped imports in relative to domestic consumption during the POI. The Applicant was able to increase its sales volume by 8.11 percent in 2007 however, its sales decreased by 19.88 percent in 2008. Market share of the Applicant also increased from 73.15 percent to 81.86 percent in 2007, but decreased to 80.15 percent in 2008. The domestic market of PA was also shrinking during the POI.

44.2 The injury factors analyzed in paragraphs 30 to 43 supra further show that the domestic industry faced price suppression throughout the POI due to dumped imports.

44.3 The domestic industry has suffered material injury during the POI on account of: -

- i. volume of dumped imports
- ii. price suppression
- iii. decline in output;
- iv. decline in capacity utilization;
- v. decline in return on investment;
- vi. decline in profits;
- vii. negative effect on employment;
- viii. negative effect on cash flows;
- ix. negative effects on wages and salaries; and
- x. ability to raise capital.

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45. Threat of Injury to Domestic Industry

45.1 The Applicant claimed that India has imposed safeguard duty ranging from 25 percent to 15 percent on PA in January 2009 and exporters from Korea, Indonesia and Taiwan (who are allegedly dumping PA into Pakistan) are also subject to safeguard duty in India. After the imposition of final safeguard duty on PA by India, the Applicant feels imminent threat of material injury to the domestic industry from increased volume of dumped imports from Korea, Indonesia and Taiwan. It is likely that the exporters from Korea, Indonesia and Taiwan would divert their exports from Indian market to Pakistan, which would cause further injury to the domestic industry.

45.2 By checking the relevant safeguard duty notification, the Commission came to know that safeguard duty imposed by India has lapsed in December, 2009, therefore, the claim by the Applicant regarding threat of material injury cannot be substantiated as safeguard duty is no more in place. Therefore, the Commission has concluded that there is no threat of material injury to the domestic industry on account of safeguard duty imposed by India.

D. CAUSATION

46. Effect of Dumped Imports

On the basis of the analysis and conclusions, the Commission has concluded that there was a causal link between dumped imports of the investigated product from the Exporting Countries and the material injury suffered by the domestic industry. The investigation revealed that the following happened simultaneously during the POI:

- i. volume of dumped imports of the investigated product increased significantly relative to domestic consumption while production and sales of the domestic like product decreased;
- ii. The domestic industry experienced price suppression as it was not able to recover its increased costs by increasing prices;
- iii. domestic industry lost its market share while market share of dumped imports increased significantly;
- iv. profits and profitability of the domestic industry decreased during the POI, which resulted in decline in return on investment;
- v. domestic industry faced decrease in productivity;
- vi. domestic industry faced accumulation of inventories during POI; and
- vii. domestic industry faced negative cash flow during POI.

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47. Other Factors

47.1 In accordance with Section 18(2) of the Ordinance, the Commission also examined factors, other than dumped imports of the investigated product, 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 dumped imports.

47.2 The investigation of the Commission revealed that the domestic industry did not suffered injury due to imports of PA from sources other than dumped sources during the POI, as its volume was negligible. There was also contraction in demand of PA during POI in Pakistan however volume of dumped imports increased relative to the domestic consumption, whereas the sales of the domestic industry decreased, therefore, it is concluded that the domestic industry suffered some injury on account of contraction of demand but it is not significant.

47.3 The factors mentioned in Section 18(3) of the Ordinance were also analyzed and it was found that:

- i. There was no change in trade restrictive practices and competition between foreign producers other than producers from the Exporting Countries and domestic producers; and
- ii. There was no considerable change in technology;

E. CONCLUSIONS

48. The conclusions, after taking into account all considerations for this final determination, are as follows:

- i. the application was filed on behalf of domestic industry as the Applicant represent 100 percent of the total production of domestic like product;
- ii. the investigated product and the domestic like product are alike products;
- iii. during the POI, the investigated product was exported to Pakistan by the exporters/foreign producers, from the Exporting Countries, at prices below its normal value;
- iv. the volume of dumped imports of the investigated product and the dumping margins established for the Exporting Countries on the basis of the foregoing analysis, are above the negligible and *de minimis* levels respectively;
- v. the dumping margins expressed as a percentage of weighted average adjusted export is ranging between 5.87 percent to 28.72 percent for exporters/foreign producers from the Exporting Countries;
- vi. the domestic industry suffered material injury during the POI on account of, volume of dumped imports, price suppression, loss in market share, decrease in sales, decline in return on investment, decrease in profits, decline in

production and capacity utilization and decline in productivity, negative effect of cash flow (in terms of Section 15 and 17 of the Ordinance); and

- vii. there was a causal relationship between dumped imports of the investigated product and the material injury suffered by the domestic industry during the POI.

F. IMPOSITION OF DEFINITIVE ANTIDUMPING DUTY

49. In view of the analysis and conclusions with regard to dumping, material injury, threat of material injury and causation, imposition of definitive antidumping duty on the investigated product is needed to offset injury to the domestic industry by dumped imports.

50. Individual dumping margin has been determined for one exporter/ foreign producer (Petrowidada) from Indonesia who supplied the information necessary for this investigation and the definitive rate for antidumping duty for Petrowidada is determined on the basis of individual dumping margin.

51. Dumping margin and antidumping duty rate for all other exporters from the Exporting Countries who did not cooperate, is determined on the basis of best available information in terms of Section 32 of the Ordinance.

52. In terms of Section 50 of the Ordinance, definitive antidumping duties given in the following table are hereby imposed on the dumped imports of the investigated product importable from the Exporting Countries for a period of five years effective from June --, 2010. The definitive antidumping duty rates are determined on C&F value in *ad val.* terms. The definitive antidumping duties at C&F value are equivalent to the final dumping margins determined at ex-factory price level. The dumped investigated product is classified under PCT heading No. 2917.3500:

Table-XVI
Definitive Antidumping Duty Rates

S. No.	Country	Anti-dumping duty rate
1	Brazil	6.17
2	China	11.84
3	Indonesia i. Petrowidada ii. All others from Indonesia	5.87 5.87
4	South Korea	7.36
5	Taiwan	27.28

53. PA imported from sources, other than the Exporting Countries and India shall not be subject to definitive antidumping duties.

54. In accordance with Section 51 of the Ordinance, the definitive antidumping duty shall take the form of *ad valorem* duty and be held 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.

55. Definitive antidumping duties levied would be in addition to other taxes and duties leviable on import of the investigated product under any other law.

56. The definitive antidumping duties would be collected in the same manner as customs duty is collected under the Customs Act, 1969 (IV of 1969) and would be deposited in Commission's Non-lapsable PLD account No. 187 with Federal Treasury Office, Islamabad.



(Zamir Ahmed)
Member
September 22, 2010



(Niamatullah Khan)
Member
September 22, 2010



(Bilal Khan)
Chairman
September 22, 2010