

Non- Confidential



Government of Pakistan
National Tariff Commission

REPORT

ON

Preliminary Determination and Levy of Provisional Anti-dumping Duty on Imports
of Hydrogen Peroxide Originating in and/or Exported from Belgium, China,
Indonesia, South Korea, Taiwan, Thailand, and Turkey

A.D.C No.20/2009/NTC/HP
September 21, 2010

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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 anti-dumping 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 Anti-dumping") has conducted an investigation and made a preliminary determination under the above mentioned Ordinance and Rules.

2. In terms of Section 37 of the Ordinance, the Commission is required to "make a preliminary determination of dumping and injury, if any, not earlier than sixty days and not later than one hundred and eighty days, after initiation of an investigation. Such preliminary determination shall be based on the information available with the Commission at that time." However, preliminary determination in this case was not made within prescribed time period due to incomplete Commission. The preliminary determination in this investigation has been made on the basis of information available with the Commission. Report on preliminary determination is prepared in accordance with Article 12.2 of Agreement on Anti-dumping.

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 Sitara Peroxide Limited, Faisalabad and Descon Oxychem Limited, Lahore (the "Applicants"), through their attorney S.U. Khan Associates, Islamabad, on behalf of the domestic industry on July 20, 2009. The Applicants alleged that Hydrogen Peroxide ("HP"), produced in Kingdom of Belgium, People's Republic of China, Republic of Indonesia, Republic of Korea, Republic of China (Taiwan), Kingdom of Thailand and Republic of Turkey (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 July 28, 2009 of the receipt of application in accordance with the requirements of Section 21 of the Ordinance and Article 5.5 of the Agreement on Anti-dumping.

5. Evaluation and Examination of the Application

The examination of the application showed that it met the requirements of Section 20 of the Ordinance and Article 5.3 of the Agreement on Anti-dumping as it contained sufficient evidence of dumping of HP from the Exporting Countries and injury to the domestic industry caused therefrom. The requirements of Rule 3 of the Rules, which relate to the submission of information prescribed therein were also found to have been met.

6. Domestic Industry

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

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"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."

6.2 The domestic Industry manufacturing HP comprises of two units i.e., the Applicants. Its installed production capacity is 60,000 MT per annum on three shifts basis.

7. **Standing of the Application**

7.1 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 support for or opposition to the application.

7.2 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.

7.3 The application fulfils the requirements of Section 24 of the Ordinance and Article 5.4 of the Agreement on Anti-dumping, as the Applicants are the only two domestic producer of HP 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.

7.4 On the basis of the above information the Commission has determined that the application was made by the domestic industry as the Applicants represents 100 percent of the domestic production of HP.

8. **Exporters/Foreign Producers Involved in Alleged Dumping of the HP**

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

8.2 Upon initiation of the investigation copy of the notice of initiation was sent to the exporters/foreign producers (identified by the Applicants) on August 31, 2009, whose complete postal addresses were available. For the 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 HP in their respective countries.

9. Applicants's Views

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

- i. HP imported from the Exporting Countries into Pakistan and HP produced by the domestic industry in Pakistan are like products;
- ii. the exporters/foreign producers from the Exporting Countries are exporting HP to Pakistan at dumped prices; and
- iii. export of HP 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 HP, mainly through:
 - a) price depression;
 - b) negative effect on ability to investment;
 - c) negative effect on wages and salaries;
 - d) magnitude of dumping margin.

9.2 The Applicants have also claimed that there is threat of material injury and material retardation for the establishment of the domestic industry.

10. Initiation of Investigation

10.1 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 HP from the Exporting Countries and consequent injury to the domestic industry, to justify initiation of an investigation in accordance with Section 23 of the Ordinance. Consequently, the Commission decided to initiate an investigation on August 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 August 31, 2009. Investigation concerning imports of HP into Pakistan (classified under PCT³ No. 2847.0000) 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 August 31, 2009.

10.2 The Commission notified the Embassies of the Exporting Countries in Pakistan on August 31, 2009 with a request to forward notice of initiation to all exporters/foreign producers of HP 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

¹ The official Gazette of Pakistan (Extraordinary) dated August 31, 2009.

² The daily "Dawn" and the 'Daily Express' of August 31, 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.

available with the Commission, the known Pakistani importers, and the Applicant on August 31, 2009, in accordance with the requirements of Section 27 of the Ordinance.

10.3 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/foreign producers in the Exporting Countries and embassies of the Exporting Countries in Pakistan on September 02, 2009.

11. Investigated Product and Domestic Like Product

11.1 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 anti-dumping 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".

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

i. Investigated Product:

The investigated product is HP. It is classified under PCT Heading No. 2847.0000. HP is used as bleaching agent in textile industry, paper & pulp industry, for sterilization of packaging material of milk, fruit juices etc (aseptic packaging) industry and general purpose as oxidizing, detoxifying and deodorizing agent. It is also used for waste water treatment, soil remediation. The Applicant has submitted in the application that there is no difference between investigated product and the domestic like product.

ii. Domestic Like Product

The domestic like product is HP. It is used as bleaching agent in textile industry, paper & pulp industry, for sterilization of packaging material of milk, fruit juices etc (aseptic packaging) industry and general purpose as oxidizing, detoxifying and deodorizing agent. It is also used for waste water treatment, soil remediation. It is classified under Pakistan Customs Tariff ("PCT") Heading No. 2847.0000.

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

- i. the basic raw materials used in the production of the investigated product and the domestic like product are identical i.e. natural gas, air, water and catalyst.
- ii. the two products (the investigated product and the domestic like product) are produced with a similar manufacturing process;
- iii. both the products have same/similar colour and appearance;

- iv. the two products are substitutable in use. They are mainly used in bleaching and sterilization process in textile and paper and pulp industry and general purpose as bleaching, oxidizing, detoxifying and deodorizing agent.
- v. both the products are classified under the same PCT/HS No. 2847.0000.

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

12. Period of Investigation

12.1 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".

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

For determination of dumping:

from April 1, 2008 to March 31, 2009

For determination of material injury:

from April 1, 2006 to March 31, 2009

13. Information/Data Gathering

13.1 The Commission sent questionnaires on September 02, 2009 to sixteen exporters/foreign producers from the Exporting Countries (paragraph 8 supra), and asked to respond within 37 days of the dispatch of the questionnaires i.e by October 9, 2009. Questionnaire was also provided to the Embassies of the Exporting Countries in Islamabad with a request to forward it to all exporters/foreign producers of the investigated product based in their respective countries in order to submit information to the Commission.

13.2 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 preliminary determination the Commission has also used import data obtained from PRAL's database in addition to the information provided by the Applicants, importers and exporters/foreign producers from the Exporting Countries.

13.3 Thus the Commission has sought from all available sources, relevant data and information deemed necessary for the purposes of this preliminary 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.

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

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14.1 The Commission sent questionnaire to sixteen exporters/foreign producers from the Exporting Countries on September 02, 2009 with a request to respond within 37 days. The following exporters/foreign producers requested for extension in time period (beyond 37 days time period) for submission of information on Questionnaire:

- i) Evonik Degussa, Belgium;
- ii) Evonik Degussa, Gmbh, Germany;
- iii) PT Evonik Degussa Peroxide, Indonesia;
- iv) Evonik Degussa Korea Limited, Korea;
- v) Evonik Headwaters Korea Ltd., Korea;
- vi) OCI Company Limited, Korea;
- vii) OCI Corporation, Korea;
- viii) Hansol Chemical Company Limited, Korea;
- ix) Thai Peroxide Company Limited. Thailand and
- x) Pusula Ithalat Ihracat VE Pazarlama A.S., Turkey.

14.2 After considering the reasons given in their requests for extension in time period, the Commission granted extension in time period for submission of information.

14.3 In response to the Questionnaire the following exporters/foreign producers of HP provided requisite information:

- i. Evonik Degussa, Belgium;
- ii. Evonik Degussa, Gmbh, Germany;
- iii. PT Evonik Degussa Peroxide, Indonesia;
- iv. Evonik Degussa Korea Limited, Korea;
- v. Evonik Headwaters Korea Ltd., Korea;
- vi. OCI Company Limited, Korea;
- vii. OCI Corporation, Korea;
- viii. Hansol Chemical Company Limited, Korea and
- ix. Thai Peroxide Company Limited. Thailand

14.4 None of the exporters/foreign producers of the investigated product from the China, Taiwan and Turkey provided requisite information. The Commission, after expiry of the time period given for submission of information on Questionnaire informed the exporters/foreign producers (who did not respond to Questionnaire) from the Exporting Countries through a letter dated October 29, 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 of the Ordinance and Article 6.8 and Annex II of the Agreement on Anti-dumping.

14.5 Questionnaire Response from Evonik Degussa, Belgium

14.5.1 The questionnaire was sent to Evonik Degussa, Belgium on September 02, 2009. Questionnaire response from Evonik Degussa, Belgium was received in the Commission on October 31, 2009.

14.5.2 Evonik Degussa, Belgium is a joint stock company, founded in September 12, 2007 as part of the renaming of RAG-Beteiligungs-AG to Evonik Industries AG. Its corporate headquarter is in Essen, Germany. Evonik is an industrial group, holding leading positions in

the business areas chemicals, energy, and real estate. The investigated product exported to Pakistan during the POI was produced by Evonik Degussa, Belgium and sold by Evonik Degussa, Germany in European Union (EU) as well as outside EU including Pakistan.

14.5.3 The Commission accepted the information supplied by Evonik Degussa, Belgium and Evonik Degussa, Germany for the purposes of this preliminary determination and dumping margin is determined for Evonik Degussa, Belgium on the basis of that information.

14.6 Questionnaire Response by the PT Evonik Degussa Peroxide, Indonesia.

14.6.1 The Commission sent questionnaire to PT Evonik Degussa Peroxide, Indonesia (hereinafter referred to as "Evonik Degussa, Indonesia") on September, 02, 2009. Its response was received in the Commission on October 31, 2009. According to the information provided in response to the questionnaire, Evonik Degussa, Indonesia is a limited liability company, but it is not listed on the Stock Exchange Market of Indonesia. It belongs to Evonik Degussa Group, Germany. Evonik Degussa, Indonesia was established based on the Notarial Deed of Sutjipto, S.H dated January 28, 2004, and it acquired the assets of PT Risjad Brasali Peroxide Jakarta, Indonesia (an Indonesian company producing HP) in February 2004. The Company commenced its commercial operations on February 24, 2004. Evonik Degussa, Indonesia was incorporated in Indonesia for the manufacture and sale of HP. The Company has its production facility at Cikarang Industrial Estate I, Indonesia.

14.6.2 The information submitted by Evonik Degussa, Indonesia in response to the questionnaire was analyzed at the Commission and certain deficiencies were identified. Accordingly, those data deficiencies were communicated to it vide Commission's letter dated January 01, 2010.

14.6.3 Evonik Degussa, Indonesia was asked to provide the deficient information/data no later than January 07, 2009, so as to enable the Commission to consider and analyze the same for the purposes of this investigation. Evonik Degussa, Indonesia requested for extension in time to respond the deficiencies. Evonik Degussa, Indonesia responded to the deficiencies vide its letter dated January 08, 2010.

14.6.4 The Commission accepted the information supplied by Evonik Degussa, Indonesia for the purposes of this investigation and the dumping margin for Evonik Degussa, Indonesia is determined on the basis of that information.

14.7 Questionnaire Response by the Evonik Degussa Korea Limited, Korea.

14.7.1 The Commission sent questionnaire to Evonik Degussa Korea Limited, Korea (hereinafter referred to as "Evonik Degussa Korea") on September, 02, 2009. Its response was received in the Commission on October 20, 2009. According to the information provided in response to the questionnaire, Evonik Degussa Korea (a trading company) was founded on October 1, 1985, which is owned by Evonik Degussa GmbH, Germany. Evonik Headwaters Korea Limited, Korea (hereinafter referred to as "Evonik Headwaters") was incorporated on July 5, 2006, under the Commercial Code of the Republic of Korea to manufacture and sell HP. The company name was changed from Degussa Headwaters Korea Limited to Evonik Headwaters Korea Limited on December 06, 2007. The company was registered as foreign invested company under the Foreign Investment Promotion Act of the Republic of Korea.

14.7.2 The information submitted by Evonik Degussa Korea in response to the questionnaire was analyzed at the Commission and certain deficiencies were identified. Accordingly, those data deficiencies were communicated to it vide Commission's letter dated January 01, 2010.

14.7.3 Evonik Degussa Korea was asked to provide the deficient information/data no later than January 07, 2009, so as to enable the Commission to consider and analyze the same for the purposes of this investigation. Evonik Degussa Korea requested for extension in time to respond the deficiencies. Evonik Degussa Korea responded to the deficiencies vide its letter dated January 08, 2010.

14.7.4 The Commission accepted the information supplied by Evonik Degussa Korea and Evonik Headwaters for the purposes of this investigation and the dumping margin for Evonik Degussa Korea and Evonik Headwaters is determined on the basis of that information.

14.8 Questionnaire Response by OCI Company Limited and OCI Corporation, Korea

14.8.1 The Commission sent questionnaire to OCI Company Limited (hereinafter referred to as "OCI") and OCI Corporation, Korea (hereinafter referred to as "OCIC") on September 02, 2009. Its response was received in the Commission on October 23, 2009. According to the information provided in response to the questionnaire, The previous name of OCI was Dongyang Chechal Chemical Company Limited (DC Chemical Company Limited). DC Chemical Company Limited setup its first plant for the manufacture of HP in May 1979, having production capacity of *** MT per annum at 100 percent concentration. The factory is located at Iksan, Korea. The Company was listed on the Stock Exchange Market of Korea, in 1976. The company changed the name from DC Chemical Company Limited to OCI Company Limited in April 2009. OCI is producing and selling 16 organic and in-organic chemicals including Sodium Carbonate, Caustic Soda, Glacial Acetic Acid, Sodium Chloride, Hydrogen Peroxide, Soda Ash etc. OCIC is a trading corporation related to OCI.

14.8.2 The information submitted by OCI in response to the questionnaire was analyzed at the Commission and certain deficiencies were identified. Accordingly, those data deficiencies were communicated to it vide Commission's letter dated December 12, 2009 and January 01, 2010. OCI responded to the deficiency letters vide its letters dated December 18, 2009 and January 07, 2010.

14.8.3 The Commission accepted the information supplied by OCI and OCIC for the purposes of this investigation and the dumping margin for OCI and OCIC is determined on the basis of that information.

14.9 Questionnaire Response by Hansol Chemical Company Limited, Korea

14.9.1 The Commission sent questionnaire to Hansol Chemical Company Limited, Korea (hereinafter referred to as "Hansol") on September, 02, 2009. Its response was received in the Commission on October 22, 2009. According to the information provided in response to the questionnaire, Hansol was incorporated on March 13, 1980 to engage in production and sale of various petrochemicals and chemical products. Hansol has production facilities in Wanju-gu, Jeollabuk-do Province and Ulsan Metropolitan City. Hansol listed on the Stock Exchange Market of Korea on May 20, 1989. On December 01, 1995, the company purchased the right of business of former Hansol Hwahak Company Limited and changed the name of the company from YoungWoo Chemical to Hansol Hwahak Company Limited and changed its name again

to Hansol Chemience on January 25, 2000. Then on March 26, 2004, the company changed its name from Hansol Chemience to Hansol Chemical Company Limited.

14.9.2 The information submitted by Hansol in response to the questionnaire was analyzed at the Commission and certain deficiencies were identified. Accordingly, those data deficiencies were communicated to it vide Commission's letter dated December 12, 2009 and December 31, 2009. Hansol responded to the deficiency letters vide its letters dated December 18, 2009 and January 06, 2010.

14.9.3 The Commission accepted the information supplied by Hansol for the purposes of this investigation and the dumping margin for Hansol is determined on the basis of that information.

14.10 Questionnaire Response by Thai Peroxide Limited, Thailand

14.10.1 The Commission sent questionnaire to Thai Peroxide Limited, Korea (hereinafter referred to as "Thai Peroxide") on September, 02, 2009. Its response was received in the Commission on October 21, 2009. According to the information provided in response to the questionnaire, Thai Peroxide is a privately held company incorporated under the Company Law of Thailand on March 13, 1980 for production and sale of various petrochemicals and chemical products. Thai Peroxide is a joint venture between Aditya Birla Group and FMC Corporation, USA. Thai peroxide is group company of Aditya Birla Group which has operations over 40 manufacturing facilities and services in 18 countries including Thailand, India, Canada, Australia, Indonesia, Egypt, USA, China and Philippines etc. The Company was listed on the Stock Exchange Market of Thailand on May 20, 1989. FMC Corporation, USA is the fourth largest producer of HP in the world is company having headquarters in USA.

14.10.2 The information submitted by Thai Peroxide in response to the questionnaire was analyzed at the Commission and certain deficiencies were identified. Accordingly, those data deficiencies were communicated to it vide Commission's letter dated December 12, 2009 and December 31, 2009. Thai Peroxide responded to the deficiency letters vide its letters dated December 18, 2009 and January 06, 2010.

14.10.3 The Commission accepted the information supplied by Thai Peroxide for the purposes of this investigation and the dumping margin for Thai Peroxide is determined on the basis of that information.

15. Verification of the Information

15.1 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.

15.2 In order to verify the information provided by the Applicants and to obtain further information (if any), on-the-spot-investigation was conducted at the offices and plant of the Applicants from October 05 to 10, 2009.

15.3 To verify the information/data provided by the exporters/producers from Indonesia, Korea and Thailand in response to the questionnaire and to obtain further information (if any), on-the-spot-investigation was conducted at their premises from January 11 to 22, 2010.

16. 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.

17. Confidentiality

17.1 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.

17.2 The Applicants 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 Applicants and other interested parties also provided certain information on confidential basis, as its disclosure would cause adverse effect upon them.

17.3 Pursuant to requests made by the Applicants 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.

17.4 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 non-confidential file (public file).

18. Written Submissions by the Interested Parties

18.1 All interested parties were invited to make their views/comments known to the Commission and to submit information and documents (if any) not later than 45 days from the date of publication of notice of initiation. The Commission received written submissions/comments from the following:

- i. Feroze Textile Industries (Pvt.) Limited;
- ii. All Pakistan Textile Processing Mills Association;
- iii. Adamjee Enterprises;
- iv. Interloop Private Limited;
- v. Lakshmikumaran & Sridharan Attorneys on behalf of their following clients:
 - a) Evonik Degussa Antwerpen NV, Belgium (Producer in Belgium)
 - b) Evonik Headwaters Korea Ltd., Korea (Producer in Korea)
 - c) Evonik Degussa Korea Ltd. (Exporter from Korea)
 - d) PT Evonik Degussa Peroxide (Producer/Exporter from Indonesia)

18.2 Views/comments and the information submitted by the above-mentioned interested parties have been considered in making this preliminary determination.

B. DETERMINATION OF DUMPING

19. 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".

20. Normal Value

20.1 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".

20.2 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:".

20.3 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 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*

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"(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."

21. Export Price

The "export price" is defined in Section 10 of the Ordinance as follows:

"a price actually paid or payable for an investigated product when sold for export from an exporting country to Pakistan".

22. Dumping Determination

22.1 As stated earlier (paragraph 8.1 supra) the Applicants identified sixteen exporters/foreign producers from the Exporting Countries involved in alleged dumping of the investigated product. The Commission sent questionnaires to those exporters/foreign producers whose complete addresses were available with the Commission (paragraph 13.1 supra). A copy of the questionnaire was also provided to the Embassies of the Exporting Countries in Islamabad with a request to forward it to all exporters/foreign producers of the investigated product to submit information to the Commission.

22.2 In response to the questionnaire the following exporters/foreign producers of HP provided requisite information:

- i. Evonik Degussa, Belgium;
- ii. Evonik Degussa, GmbH, Germany;
- iii. PT Evonik Degussa Peroxide, Indonesia;
- iv. Evonik Degussa Korea Limited, Korea;
- v. Evonik Headwaters Korea Limited., Korea;
- vi. OCI Company Limited, Korea;
- vii. OCI Corporation, Korea;
- viii. Hansol Chemical Company Limited, Korea and
- ix. Thai Peroxide Chemical Company Limited, Thailand

Individual dumping margins in this investigation are determined for the above-mentioned exporters/foreign producers on the basis of the information provided by them. However, residual dumping margins/duty rates have been determined, on the basis of 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 Anti-dumping, for all other exporters/foreign producers who did not cooperate with the Commission in this investigation.

23. Determination of Export Price

The Commission received information on export sales of the investigated product from above mentioned exporters/foreign producers (paragraph 22.2 supra) in response to the questionnaires sent to various exporters/foreign producers (paragraph 13.1 supra). Export price of investigated product for these exporters/foreign producers in this preliminary determination has been determined on the basis of the information provided by them. Export price for other exporters/foreign producers who did not cooperate with the Commission is determined on the basis of the information obtained from PRAL.

23.1 Determination of Export Price for Evonik Degussa, Belgium and Evonik Degussa, Germany

23.1.1 Evonik Degussa, Belgium produces the investigated product and sells it to Evonik Degussa, Germany, which sells HP to unrelated customers in Pakistan through an agent. Evonik Degussa, Belgium does not directly export HP to Pakistan. Evonik Degussa, Germany negotiates the sale contract with the customers in Pakistan. Once purchase order is confirmed by Evonik Degussa, Germany, L/C is established. Evonik Degussa, Germany make a sale order to Evonik Degussa, Belgium. The investigated product is sent to the customer by Evonik Degussa, Belgium. An internal invoice is issued to Evonik Degussa, Germany and commercial invoice is issued to the customer in Pakistan and delivery terms are CFR Karachi. Evonik Degussa, Germany receives the payment from the customer on L/C at sight or cash against documents terms.

23.1.2 Evonik Degussa, Germany sold *** MT of HP having gross value of EUR *** to Pakistan during the POI, out of which it sold *** MT of HP 35 percent (OXTERIL® 350 MS-T) having gross value of EUR *** and sold *** MT of HP 50 (HYPROX® 500) having gross value of EUR ***. All export sales transactions are based on L/C at sight or cash in advance.

23.1.3 The weighted average CFR price of HP 35 percent (OXTERIL® 350 MS-T) was EUR ***/MT during the POI. To arrive at ex-factory export price adjustments on account of commission to agent, inland freight, ocean freight, bank charges and packing cost has been made. The commission was EUR ***/MT, inland freight was EUR ***/MT, ocean freight EUR ***/MT, bank charges EUR ***/MT and packing cost was EUR ***/MT. After making adjustments for commission, inland freight, ocean freight, bank charges and packing cost, the ex-factory export price works out to EUR ***/MT.

23.1.3 The weighted average CFR price of HP 50 percent (HYPROX® 500) was EUR ***/MT during the POI. To arrive at ex-factory export price adjustments on account of commission to agent, inland freight, ocean freight, bank charges and packing cost. The commission was EUR ***/MT, inland freight was EUR ***/MT, ocean freight EUR ***/MT, bank charges EUR ***/MT and packing cost was EUR ***/MT. After making adjustments for commission, inland freight, ocean freight, bank charges and packing cost, the ex-factory export price for works out to EUR ***/MT.

23.2 Determination of Export Price for Other Exporters/Foreign Producers from Belgium

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23.2.1 Export price for exporters/foreign producers from Belgium other than Evonik Degussa, Belgium, who did not cooperate with the Commission in providing information has been determined on the basis of best information available in accordance with Section 32 of the Ordinance. Information obtained from PRAL is used for the purposes of determination of export price for non-cooperating exporters from Belgium. This is the only information available with the Commission on export sales of the investigated product by the non-cooperating exporters.

23.2.2 Values in PRAL's information are reported at C&F level. The C&F export price has been adjusted to arrive at the ex-factory level. For this purpose same adjustments have been made which were claimed by Evonik Degussa, Belgium for its exports of the investigated product.

23.2.3 According to PRAL data the total exports from other exporters/foreign producers were *** MT having gross value of EUR *** and the weighted average gross price was EUR ***/MT. To arrive at ex-factory export price adjustments on account of commission to agent, inland freight, ocean freight, bank charges and packing cost. The commission was EUR ***/MT, inland freight was EUR ***/MT, ocean freight EUR ***/MT and bank charges EUR ***/MT. After making adjustments for commission, inland freight, ocean freight, bank charges and packing cost, the ex-factory export price for works out to EUR ***/MT.

23.3 Determination of Export Price for Evonik Degussa, Indonesia

23.3.1 Evonik Degussa, Indonesia is a limited liability company and belongs to Evonik Degussa Group. Evonik Degussa, Indonesia produces two types of HP i.e. HP 50 percent and 60 percent solution and sold only HP 50 percent to its unrelated customers in Pakistan textile industries, through an agent. Evonik Degussa, Indonesia receives indent order from its agent in Pakistan (i.e. ***) after negotiating sale contract with the customers in Pakistan. Once purchase order is confirmed by Evonik Degussa Indonesia, L/C is established. The investigated product is shipped to the customer by Evonik Degussa Indonesia and commercial invoice, shipping documents are sent to the customer in Pakistan. Delivery terms are C&F Karachi and payment terms are L/C at sight.

23.3.2 Evonik Degussa Korea Ltd sold *** MT of HP 50 percent solution having gross value of US\$ *** to Pakistan during the POI. All export sales transactions were based on L/C at sight.

23.3.3 The weighted average CFR price was US\$ ***/MT during the POI. To arrive at ex-factory export price adjustments on account of commission to agent, inland freight, ocean freight, bank charges, L/C advising charges, courier charges, credit cost and packing cost has been made. The commission was US\$ ***/MT, inland freight was US\$ ***/MT, ocean freight US\$ ***/MT, bank charges US\$ ***/MT, L/C advising charges US\$ ***/MT, courier charges US\$ ***/MT, credit cost ***/MT and packing cost was US\$ ***/MT. After making adjustments for commission, inland freight, ocean freight, bank charges, L/C advising charges, courier charges, credit cost and packing cost, the ex-factory export price works out to US\$ ***/MT.

23.4 Determination of Export Price for Evonik Degussa, Korea and Evonik Headwaters

23.4.1 Evonik Degussa, Korea (exporter/trader) is a wholly owned subsidiary of Evonik Degussa Group. Evonik Headwaters (a related company) produces the investigated product i.e. HP of 35%, 50%, 60% and 70% solution. HP is produced by Evonik Headwaters., and is sold

directly by Evonik Headwaters in the domestic market as well as exported to other countries. Evonik Degussa, Korea (trader) sold HP in domestic market, to Pakistan and to other countries. Both Evonik Headwaters and Evonik Degussa, Korea belong to Evonik Degussa Group. The investigated product is shipped to the customer in Pakistan by Evonik Degussa Korea Limited, delivery terms were C&F Karachi and payment terms were L/C at sight.

23.4.2 Evonik Degussa Korea Limited sold *** MT of HP 50 percent having gross value of US\$ *** (KRW ***) to Pakistan during the POI. All export sales transactions were based on L/C at sight.

23.4.3 The weighted average C&F price was KRW ***/MT during the POI. To arrive at ex-factory export price adjustments on account of credit cost, commission to agent, inland freight, ocean freight, bank charges, inspection fee and courier charges has been made. The credit cost was KRW ***/MT, commission KRW ***/MT, inland freight KRW ***/MT, ocean freight KRW ***/MT, bank charges KRW ***/MT, inspection fee KRW ***/MT and courier charges KRW ***/MT. After making adjustments for credit cost, commission, inland freight, ocean freight, bank charges, inspection fee and courier charges, the ex-factory export price works out to KRW ***/MT.

23.5 Determination of Export Price for Hansol

23.5.1 Hansol produces the investigated product and sells it to unrelated customers in Pakistan through its agents, to whom it pays three percent of the total value as commission. Hansol negotiates the sale contract with the customers in Pakistan. Once purchase order is confirmed, L/C is established. The investigated product is sent to the customer and commercial invoice is issued by Hansol to the customer in Pakistan and delivery terms are CFR Karachi. Hansol receives the payment from its bank within *** days after shipping HP to customer in Pakistan against L/C.

23.5.2 Hansol sold ***MT of HP 50 having gross value of KRW *** to its customers in Pakistan during the POI. All export sales transactions were based on L/C at sight.

23.5.3 The weighted average CFR price was US\$ ***/MT (KRW ***/MT) during the POI. To arrive at ex-factory export price adjustments on account of credit cost, commission to agents, inland freight, ocean freight, handling cost, bank charges, packing cost and others (which includes; inspection fee, DHL charges, document fee for certification of origin, insurance expenses for payment guarantee and labeling expenses), has been made. The credit cost was KRW ***/MT, commission was KRW ***/MT, inland freight KRW ***/MT, ocean freight KRW ***/MT, handling cost KRW ***/MT, bank charges KRW ***/MT, other (i.e. DHL charges, inspection fee, certificate of origin fee, insurance expenses for payment guarantee and labeling expenses) KRW ***/MT and packing cost was KRW ***/MT. After making adjustments for credit cost, commission, inland freight, handling cost, ocean freight, bank charges, other charges and packing cost, the ex-factory export price works out to KRW ***/MT.

23.6 Determination of Export Price for OCI and OCIC

23.6.1 OCI produces the investigated product and sells it to its related company OCIC for export to Pakistan. OCIC sold HP to customers in Pakistan through its agents to whom it pays US\$***/MT to US\$ ***/MT as commission. OCIC negotiates the sale contract with the customers

in Pakistan. Once purchase order is confirmed, L/C is established. The investigated product is sent to the customer and commercial invoice is issued by OCIC to the customer in Pakistan and delivery terms are CFR Karachi.

23.6.2 OCI sold *** MT of HP having gross value of KRW *** out of which ***MT was HP 35 percent (industrial usage) having gross value of KRW *** and ***MT was HP 50 percent (industrial usage) having gross value of KRW *** to OCIC during the POI. OCI claimed adjustment in its gross sales price to OCIC on account of packing cost and others (i.e. inspection fee).

23.6.3 OCIC exported *** MT of HP having gross value of KRW *** its customers in Pakistan during the POI, out of which *** MT was HP 50 percent (industrial usage) having gross value of KRW *** and *** MT (industrial usage) was HP 35 percent having gross value of KRW *** OCIC does not grant discounts or rebates on export sales to Pakistan.

23.6.4 The weighted average price of OCI is used to arrive at the ex-factory price. The weighted average CFR price of HP 35 percent (industrial usage) was KRW ***/MT during the POI. To arrive at ex-factory export price adjustments on account of packing cost and others (inspection fee) has been made. The packing cost was KRW ***/MT and inspection fee was KRW ***/MT. After making adjustments for packing cost and inspection fee the ex-factory export price for HP 35 percent works out to KRW ***/MT.

23.6.5 The weighted average CFR price of HP 50 percent (industrial usage) was KRW ***/MT during the POI. To arrive at ex-factory export price adjustments on account of packing cost and others (inspection fee) has been made. The packing cost was KRW ***/MT and inspection fee was KRW ***/MT. After making adjustments for packing cost and inspection fee the ex-factory export price for HP 50 percent (industrial usage) works out to KRW ***/MT.

23.7 Determination of Export Price for Other Exporters/Foreign Producers from Korea

23.7.1 Export price for Korean exporters/foreign producers other than Hansol, OCI and Evonil Degussa, Korea who did not cooperate with the Commission in providing information has been determined on the basis of best information available in accordance with Section 32 of the Ordinance. Information obtained from PRAL is used for the purposes of determination of export price for non-cooperating exporters from Korea. This is the only information available with the Commission on export sales of the investigated product by the non-cooperating exporters.

23.7.2 Values in PRAL's information are reported at C&F level. The C&F export price has been adjusted to the ex-factory level. For this purpose same adjustments have been made which were claimed by Hansol for its exports of the investigated product.

23.7.3 According to PRAL data the total exports from other Korean exporters/foreign producers were *** MT having gross value of KRW *** and the weighted average gross price was KRW ***/MT. To arrive at ex-factory export price adjustments on account of credit cost, commission to agents, inland freight, ocean freight, handling cost, bank charges, packing cost and others (which includes; inspection fee, DHL charges, document fee for certification of origin, insurance expenses for payment guarantee and labeling expenses), has been made. The credit cost was KRW ***/MT, commission was KRW ***/MT, inland freight KRW ***/MT, ocean freight KRW ***/MT, handling cost KRW ***/MT, bank charges KRW ***/MT, other (i.e.

DHL charges, inspection fee, certificate of origin fee, insurance expenses for payment guarantee and labeling expenses) KRW ***/MT and packing cost was KRW ***/MT. After making adjustments for credit cost, commission, inland freight, handling cost, ocean freight, bank charges, other charges and packing cost, the ex-factory export price works out to KRW ***/MT.

23.8 Determination of Export Price for Thai Peroxide

23.8.1 Thai Peroxide produced and sold HP 35 percent and HP 50 percent to its unrelated customers in Pakistan through its agent to whom it paid ***/MT for HP 50 percent and ***/USD/MT for HP 35 percent as commission. Thai Peroxide negotiates the sale contract with the customers in Pakistan. Once purchase order is confirmed, L/C is established. The investigated product is sent to the customer and commercial invoice is issued by Thai Peroxide to the customer in Pakistan and delivery terms are CFR Karachi.

23.8.2 Thai Peroxide exported *** MT of HP having gross value of USD *** (Baht ***) to its customers in Pakistan during the POI, out of which *** MT was HP 35 percent having gross value of Baht *** and *** MT of HP 50 percent having gross value Baht ***. All export sales transactions are based on L/C at sight.

23.8.3 The weighted average CFR price for HP 35 percent was Baht ***/MT during the POI. To arrive at ex-factory export price adjustments on account of credit cost, commission to agents, inland freight, ocean freight, handling cost, bank charges, packing cost and courier charges, has been made. The credit cost was Baht ***/MT, commission was Baht ***/MT, inland freight Baht ***/MT, ocean freight Baht ***/MT, handling cost Baht ***/MT, bank charges Baht ***/MT, packing cost Baht ***/MT and courier charges was Baht ***/MT. After making adjustments for credit cost, commission, inland freight, handling cost, ocean freight, bank charges, packing cost and courier charges, the ex-factory export price works out to Baht ***/MT.

23.8.4 The weighted average CFR price for HP 50 percent was Baht ***/MT during the POI. To arrive at ex-factory export price adjustments on account of credit cost, commission to agents, inland freight, ocean freight, handling cost, bank charges, packing cost and courier charges, has been made. The credit cost was Baht ***/MT, commission was Baht ***/MT, inland freight Baht ***/MT, ocean freight Baht ***/MT, handling cost Baht ***/MT, bank charges Baht ***/MT, packing cost Baht ***/MT and courier charges was Baht ***/MT. After making adjustments for credit cost, commission, inland freight, handling cost, ocean freight, bank charges, packing cost and courier charges, the ex-factory export price works out to Baht ***/MT.

23.9 Determination of Export Price for Other Exporters/Foreign Producers from Thailand

23.9.1 Export price for Thai exporters/foreign producers other than Thai Peroxide who did not cooperate with the Commission in providing information has been determined on the basis of best information available in accordance with Section 32 of the Ordinance. Information obtained from PRAL is used for the purposes of determination of export price for non-cooperating exporters from Thailand. This is the only information available with the Commission on export sales of the investigated product by the non-cooperating exporters.

23.9.2 Values in PRAL's information are reported at C&F level. The C&F export price has been adjusted to the ex-factory level. For this purpose same adjustments have been made which were claimed by Thai Peroxide for its exports of the investigated product.

23.9.3 According to PRAL data the total exports from other Thai exporters/foreign producers were *** MT having gross value of Thai Baht *** and the weighted average gross price was Thai Baht ***/MT. To arrive at ex-factory export price adjustments on account of credit cost, commission to agents, inland freight, ocean freight, handling cost, bank charges, packing cost and courier charges, has been made. The credit cost was Baht ***/MT, commission was Baht ***/MT, inland freight Baht ***/MT, ocean freight Baht ***/MT, handling cost Baht ***/MT, bank charges Baht ***/MT, packing cost Baht ***/MT and courier charges was Baht ***/MT. After making adjustments for credit cost, commission, inland freight, handling cost, ocean freight, bank charges, packing cost and courier charges, the ex-factory export price works out to Baht ***/MT.

23.10 Determination of Export Price for Exporters/Foreign Producers from China, Taiwan and Turkey

23.10.1 Export price for the exporters/foreign producers from China, Taiwan and Turkey has been determined on the basis of their exports of HP to Pakistan, obtained from PRAL. Weighted average CIF prices have been calculated from PRAL imports data. To arrive at the ex-factory level, weighted average CIF export price has been adjusted on account of ocean freight, inland freight and insurance cost. The Applicants provided average ocean freight rates per 20 feet container for 2008 for each exporting country (quoted by Agility Logistics (Pvt) Limited, 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 CIF export price. The Commission has taken US\$ *** 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 China, Taiwan and Turkey. The ex-factory export prices for exporters/foreign producers from China, Taiwan and Turkey are given in the table below:

Country	Exports of HP (MT)	Table-I (US\$/MT)		
		Weighted Average C&F Export Price	Adjustments	Ex-factory Export Price
China	3,762.24	***	***	***
Taiwan	3,669.12	***	***	***
Turkey	6,377.81	***	***	***

24. Determination of Normal Value

24.1 The Commission received information on domestic sales and cost of production etc. of the like product from the exporters/foreign producers mentioned at paragraph 22 supra in response to the questionnaire. Normal value in this preliminary determination has been determined on the basis of that information. However, normal value for non-cooperative exporters/foreign producers have been determined, on the basis of 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 Anti-dumping, for all other exporters/foreign producers who did not cooperate with the Commission in this investigation.

24.2 Determination of Normal Value for Evonik Degussa, Belgium and Evonik Degussa, Germany

24.2.1 Evonik Degussa, Belgium produces the investigated product and sells it to Evonik Degussa, Germany and the latter sells the investigated product in the domestic and export markets. Evonik Degussa, Germany sold *** MT HP having gross value of EUR *** in the European market during the POI to industrial end users. These sales were made at CFR prices and payment terms were *** days from date of invoice.

24.2.2 In order to determine the normal value, the Commission has taken sales in the domestic market i.e Belgium only as the investigation is against alleged dumping of HP from Belgium. Evonik Degussa, Germany sold *** MT of HP having gross value EUR ***, out of which *** MT HP 35 percent (OXTERIL® 350 MS-T) having gross value of EUR *** and *** MT of HP 50 percent (HYPROX® 500) having gross value EUR *** in Belgian market during the POI.

24.2.3 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 in Belgian market by Evonik Degussa, Belgium during the POI and found that all sales were in the ordinary course of trade. Thus the Commission determined normal value on the basis domestic sales in Belgian market by Evonik Degussa, Belgium during the POI.

24.2.4 The weighted average gross domestic sales price of HP 35 percent (OXTERIL® 350 MS-T) was EUR ***/MT. Evonik Degussa, Belgium claimed adjustments in its domestic sales on account of credit cost, inland freight, and packing cost. To arrive at ex-factory domestic sales price, average credit cost of EUR ***/MT, inland freight of EUR ***/MT and packing cost EUR ***/MT have been deducted from weighted average gross domestic sales price. The ex-factory domestic sales price of HP 35 percent (OXTERIL® 350 MS-T) works out to EUR ***/MT.

24.2.4 The weighted average gross domestic sales price of HP 50 percent (HYPROX® 500) was EUR ***/MT. Evonik Degussa, Belgium claimed adjustments in its domestic sales on account of credit cost, inland freight, and packing cost. To arrive at ex-factory domestic sales price, average credit cost of EUR ***/MT, inland freight of EUR ***/MT have been deducted from weighted average gross domestic sales price. The ex-factory domestic sales price of HP 50 percent (HYPROX® 500) works out to EUR ***/MT.

24.3 Determination of Normal Value for Other Exporters/Foreign Producers from Belgium

24.3.1 Normal value for exporters/foreign producers other than Evonik Degussa, Belgium, who did not cooperate with the Commission in providing information is determined on the basis of best information available in accordance with Section 32 of the Ordinance

24.3.2 For the purposes of determination of normal value for other exporters/foreign producers, the information provided by Evonik Degussa, Belgium in response to the questionnaire on its cost of production plus admin, selling and general costs, financial expenses and profits is used. The Commission was of the view that this is the best available information for this purpose on the basis of following grounds:

- i. Evonik Degussa, Belgium is one of the major producers of HP in Belgium;

- ii. Evonik Degussa, Germany is the largest exporter of the investigated product to Pakistan during POI.

24.3.3 Construction of normal value for other exporters/foreign producers is as follows:

- i. the cost of production plus admin, selling and general costs, financial expenses of Evonik Degussa, Belgium on per MT basis was EUR ***.
- ii. the profit of Evonik Degussa, Belgium on per MT basis was EUR ***.
- iii. the constructed normal value for other exporter/foreign producers works out to be EUR ***/MT.

24.4 Determination of Normal Value for Evonik Degussa, Indonesia

24.4.1 PT Evonik Degussa, Indonesia produces the investigated product i.e. HP 50 percent and HP 60 percent and sells the investigated product in the domestic and export markets. Evonik Degussa, Indonesia sold *** MT HP having gross value of US\$ *** in the domestic market during the POI. Domestic sales were made at CFR prices and payment terms were TT 30 days from date of invoice. Credit cost is charged for *** days.

24.4.2 Since Evonik Degussa Indonesia sold only HP 50 percent to Pakistan during the POI, the Commission has taken domestic sales of HP 50 percent only of Evonik Degussa Indonesia for determination of normal value during the POI. In the domestic market Evonik Degussa, Indonesia sold *** MT of HP 50 percent having gross value of US\$ ***. 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 Evonik Degussa, Indonesia during the POI and found that out of total sales of *** MT of HP 50 percent, below cost sales were *** MT (which were sold over a period of more than six months). Sales below cost during the POI were 20.67 percent of total domestic sales of HP 50 percent of Evonik Degussa, Indonesia. Thus the Commission has disregarded sales, which were not in the ordinary course of trade in terms of Section 7 of the Ordinance. Domestic sales of HP 50 percent, in the ordinary course of trade, were *** MT having gross value of US\$ ***.

24.4.3 The weighted average gross domestic sales price of HP 50 percent was US\$ ***/MT. Evonik Degussa, Indonesia claimed adjustments in its domestic sales on account of credit cost, inland freight charges, packing cost and Iso-tanker charges. To arrive at ex-factory domestic sales price of HP 50 percent, average credit cost was US\$ ***/MT, inland freight US\$ ***/MT, packing cost US\$ ***/MT and Iso-tanker cost US\$ ***/MT have been deducted from weighted average gross domestic sales price of HP 50 percent. The ex-factory domestic sales price works out to US\$ ***/MT.

24.5 Determination of Normal Value for Evonik Degussa, Korea and Evonik Headwaters

24.5.1 Evonik Headwaters manufactures HP (all types) and sells it to Evonik Degussa Korea, who sells HP in the domestic and export markets. Evonik Headwaters sold *** MT of all types of HP (35%, 50%, 60% and 70%) having gross value of KRW *** to Evonik Degussa Korea and to another customer i.e SKC. Evonik Headwater sold ***MT of HP (100 percent concentration) having gross value of KRW *** to Evonik Degussa Korea. The average price at which Evonik Headwaters sold HP to Evonik Degussa Korea was KRW ***/MT. Evonik Degussa Korea sold

*** MT of HP (all types) in the domestic market and total sales value was KRW ***. The average gross sales price charged in domestic market by Evonik Degussa Korea was KRW ***/MT during the POI. Domestic sales were made at CFR prices and payment terms were 30 to 120 days after monthly closing. Credit cost is charged for 30 to 120 days payment terms.

24.5.2 Since Evonik Degussa Korea sold only HP 50 percent to Pakistan during the POI, the Commission has taken domestic sales of HP 50 percent only of Evonik Headwaters and Evonik Degussa Korea for determination of normal value during the POI. In the domestic market Evonik Headwaters sold *** MT of HP 50 percent having gross value of KRW *** and Evonik Degussa Korea sold *** MT of HP 50 percent having gross value of KRW ***.

24.5.3 In order to determine whether the sales of HP 50 percent 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 Evonik Headwaters and Evonik Degussa Korea during the POI and found that out of total sales of ***MT made by Evonik Headwaters in the domestic market, below cost sales were *** MT (which were 100 percent of total domestic sales). In case of Evonik Degussa Korea, it sold *** MT and sales below cost were *** MT (which were 25.16 percent of total domestic sales) during the POI. Thus the Commission has disregarded sales, which were not in the ordinary course of trade in terms of Section 7 of the Ordinance. Domestic sales of HP 50 percent, in the ordinary course of trade, were *** MT having gross value of KRW ***.

24.5.4 The weighted average gross domestic sales price of Evonik Degussa Korea was KRW ***/MT. Evonik Degussa Korea claimed adjustments in its domestic sales on account of credit cost, duty drawback and inland freight. To arrive at ex-factory domestic sales price, average credit cost of KRW ***/MT, duty drawback KRW ***/MT and inland freight charges of KRW ***/MT. The ex-factory domestic sales price works out to KRW ***/MT.

24.6 Determination of Normal Value for Hansol

24.6.1 Hansol manufactures and sells HP in the domestic and export markets. Hansol sold *** MT HP (all types HP 32%, 35%, 50%, 54%, and 60%) having gross value of KRW *** in the domestic market during the POI. However, the Commission has taken only the domestic sales of HP 50 percent (industrial usage) (as it only exported HP 50 percent, industrial usage to Pakistan) during the POI to calculate normal value for Hansol.

24.6.2 Hansol sold *** MT of HP 50 percent in the domestic market having gross value of KRW *** during the POI. Domestic sales were made at CFR prices and payment terms were *** days from date of invoice. Credit cost is charged for *** days payment terms.

24.6.3 In order to determine whether the sales of HP 50 percent 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 Hansol during the POI and found that out of total sales of *** MT, below cost sales were *** MT. Sales below cost during the POI were 1.34 percent of total domestic sales of Hansol. Thus the Commission determined normal value on the basis domestic sales of Hansol during the POI.

24.6.4 The weighted average gross domestic sales price of HP 50 percent (industrial usage) was KRW ***/MT. Hansol claimed adjustments in its domestic sales on account of credit cost, rebate, duty drawback, inland freight, warehouse cost and packing cost. To arrive at ex-factory

domestic sales price, average credit cost of KRW ***/MT, rebate KRW ***/MT, duty drawback KRW ***/MT, inland freight charges of KRW ***/MT, warehouse cost KRW ***/MT and packing cost KRW ***/MT and have been deducted from weighted average gross domestic sales price. The ex-factory domestic sales price of HP 50 percent works out to KRW ***/MT.

24.7 Determination of Normal Value for OCI and OCIC

24.7.1 OCI manufactures and sells HP in the domestic market. OCI sold *** MT HP (all types HP 30%, 35%, 50%, 60%, and 70%) having gross value of KRW *** in the domestic market during the POI. However, the Commission has taken only the domestic sales of HP 35 percent (industrial usage) and HP 50 percent (industrial usage) (as it exported HP 35 percent, industrial usage and HP 50 percent, industrial usage to Pakistan) during the POI to calculate normal value for OCI.

24.7.2 OCI sold *** MT of HP 35 and HP 50 industrial usage, out of which *** MT of HP 35 percent (industrial usage) in the domestic market having gross value of KRW *** during the POI and *** MT of HP 50 percent (industrial usage) in the domestic market having gross value of KRW *** during the POI. Domestic sales were made at CFR prices and payment terms were cash and *** days from date of invoice. Credit cost is charged for *** days payment terms.

24.7.3 In order to determine whether the sales of HP 35 percent (industrial usage) and HP 50 percent (industrial usage) 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 OCI during the POI and found that out of total sales of *** MT, below cost sales were *** MT. Sales below cost during the POI were 4.93 percent of total domestic sales of HP 35 and HP 50, industrial usage. Thus the Commission determined normal value on the basis domestic sales of OCI during the POI.

24.7.4 The weighted average gross domestic sales price of HP 35 percent (industrial usage) was KRW ***/MT. OCI claimed adjustments in its domestic sales on account of credit cost, billing adjustment, duty drawback, inland freight, and packing cost. To arrive at ex-factory domestic sales price, average credit cost of KRW ***/MT, billing adjustment KRW ***/MT, duty drawback KRW ***/MT, inland freight charges of KRW ***/MT and packing cost KRW ***/MT and have been deducted from weighted average gross domestic sales price. The ex-factory domestic sales price of HP 35 percent (industrial usage) works out to KRW ***/MT.

24.7.5 The weighted average gross domestic sales price of HP 50 percent (industrial usage) was KRW ***/MT. OCI claimed adjustments in its domestic sales on account of credit cost, billing adjustment, duty drawback, inland freight, and packing cost. To arrive at ex-factory domestic sales price, average credit cost of KRW ***/MT, billing adjustment KRW ***/MT, duty drawback KRW ***/MT, inland freight charges of KRW ***/MT and packing cost KRW ***/MT and have been deducted from weighted average gross domestic sales price. The ex-factory domestic sales price of HP 35 percent (industrial usage) works out to KRW ***/MT.

24.8 Determination of Normal Value for Other Exporters/Foreign Producers from Korea

24.8.1 Normal value for other Korean exporters/foreign producers other than Thai Peroxide who did not cooperate with the Commission in providing information is determined on the basis of best information available in accordance with Section 32 of the Ordinance

24.8.2 For the purposes of determination of normal value for other Korean exporters/foreign producers, the information provided by Evonik Degussa, Korea in response to the questionnaire on its cost of production plus admin, selling and general costs, financial expenses and profits is used. The Commission was of the view that this is the best available information for this purpose on the basis of following grounds:

- i. Evonik Degussa, Korea is one of the major producers of HP in Korea;
- ii. Evonik Degussa, Korea is the largest exporter of the investigated product to Pakistan during POI.

24.8.3 Construction of normal value for other Korean exporters/foreign producers is as follows:

- i. the cost of production plus admin, selling and general costs, financial expenses of Evonik Degussa, Korea on per MT basis was KRW ***.
- ii. the profit of Evonik Degussa, Korea on per MT basis was KRW ***.
- iii. the constructed normal value for other Korean exporter/foreign producers works out to be KRW ***/MT.

24.9 Determination of Normal Value for Thai Peroxide

24.9.1 Thai Peroxide manufactures and sells HP 35 percent and HP 50 percent, in the domestic market. Thai Peroxide sold *** MT HP having gross value of Thai Baht *** in the domestic market during the POI. The Commission has taken the domestic sales of HP 35 percent and HP 50 percent (as it exported the same to Pakistan) during the POI to calculate normal value for Thai Peroxide.

24.9.2 Thai Peroxide sold *** MT of HP having gross value of Thai Baht *** in the domestic market during the POI, out of which HP 35 percent was *** MT having gross value of Thai Baht *** and *** MT of HP 50 percent having gross value Thai Baht ***. Domestic sales were made at CFR prices and payment terms were *** days after delivery. Some sales are made with immediate payment term while some others are made with credit.

24.9.3 In order to determine whether the sales of HP 35 percent and HP 50 percent 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 Thai Peroxide during the POI and found that out of total sales of *** MT, below cost sales were *** MT. Sales below cost during the POI were 3.11 percent of total domestic sales of Thai Peroxide. Thus the Commission determined normal value on the basis domestic sales of Thai Peroxide during the POI.

24.9.4 The weighted average gross price for HP 35 percent in the domestic price was Baht ***/MT during the POI. To arrive at ex-factory export price adjustments on account of credit cost, inland freight and packing cost, has been made. The credit cost was Baht *** /MT, inland freight Baht *** /MT and packing cost Baht *** /MT. After making adjustments for credit cost, inland freight, and packing cost the ex-factory domestic sales price of HP 35 percent works out to Baht ***/MT.

24.9.5 The weighted average gross price for HP 50 percent in the domestic price was Baht ***/MT during the POI. To arrive at ex-factory export price adjustments on account of credit cost, inland freight and packing cost, has been made. The credit cost was Baht ***/MT, inland freight Baht ***/MT and packing cost Baht ***/MT. After making adjustments for credit cost, inland freight, and packing cost the ex-factory domestic sales price of HP 50 percent works out to Baht ***/MT.

24.10 Determination of Normal Value for Other Exporters/Foreign Producers from Thailand

24.10.1 Normal value for other Thai exporters/foreign producers other than Thai Peroxide who did not cooperate with the Commission in providing information is determined on the basis of best information available in accordance with Section 32 of the Ordinance

24.10.2 For the purposes of determination of normal value for other Thai exporters/foreign producers, the information provided by Thai Peroxide in response to the questionnaire on its cost of production plus admin, selling and general costs, financial expenses and profits is used. The Commission was of the view that this is the best available information for this purpose on the basis of following grounds:

- i. Thai Peroxide is one of the major producers of HP in Thailand;
- ii. Thai Peroxide is the largest exporter of the investigated product to Pakistan during POI.

24.10.3 Construction of normal value for other Thai exporters/foreign producers is as follows:

- i. the cost of production plus admin, selling and general costs, financial expenses of Thai Peroxide on per MT basis was Thai Baht ***.
- ii. the profit of Thai Peroxide on per MT basis was Thai Baht ***.
- iii. the constructed normal value for other Thai exporter/foreign producers works out to be Thai Baht ***/MT.

24.11 Determination of Normal Value for Exporters/Foreign Producers from China, Taiwan and Turkey

24.11.1 As stated in paragraph 14.4 supra, none of the exporters/foreign producers of the investigated product from China, Taiwan and Turkey provided requisite information, therefore, normal value for the purposes of this preliminary 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 Anti-dumping.

24.11.2 It is important to identify here that the Commission informed the exporters/foreign producers from China, Taiwan and Turkey of reliance on the Best Information Available in its letters of October 29, 2009.

24.11.3 To determine normal value for exporters/foreign producers from China, Taiwan and Turkey, the Commission relied on the renowned chemical journal "****" by "****" provided by

the Applicants. The normal value (ex-factory level) for the investigated product in China, Taiwan and Turkey is given in the table below:

Table-II (US\$/MT)	
Country	Normal value
China	***
Taiwan	***
Turkey	***

25. Dumping Margin

25.1 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.

25.2 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.

25.3 In response to the questionnaire the following exporters/foreign producers of HP provided requisite information:

- i. Evonik Degussa, Belgium;
- ii. Evonik Degussa, GmbH, Germany;
- iii. PT Evonik Degussa Peroxide, Indonesia;
- iv. Evonik Degussa Korea Limited, Korea;
- v. Evonik Headwaters Korea Limited, Korea;
- vi. OCI Company Limited, Korea;
- vii. OCI Corporation, Korea;
- viii. Hansol Chemical Company Limited, Korea and
- ix. Thai Peroxide Chemical Company Limited, Thailand.

Individual dumping margins in this investigation are determined for the above-mentioned exporters/foreign producers on the basis of the information provided by them. However, residual dumping margins/duty rates have been determined for non-cooperative exporters/foreign producers, on the basis of 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 Anti-dumping, for all other exporters/foreign producers who did not cooperate with the Commission in this investigation.

25.5 As level of cooperation from Indonesia was very high (exporter who cooperated in this investigation exported 89.43 percent of imports of the investigated product from Indonesia during the POI). A residual dumping margin and antidumping duty rate for all other exporters from Indonesia is determined on the basis of best available information in terms of Section 32 of the Ordinance, which is the highest rate of dumping for individual exporter who cooperated from Indonesia among the investigated exporters/ foreign producers.

25.6 As level of cooperation from Korea was very high (exporters who cooperated in this investigation exported 98.22 percent of imports of the investigated product from Korea during the POI). A residual dumping margin and antidumping duty rate for all other exporters from Korea is determined on the basis of best available information in terms of Section 32 of the Ordinance, which is the highest rate of dumping for individual exporters who cooperated from Korea among the investigated exporters/ foreign producers.

25.7 As stated earlier (paragraphs 14.4 supra) none of the exporters/producers of the investigated product from China, Taiwan and Turkey provided requisite information, therefore, individual dumping margin has not been determined for any exporter/foreign producer from China, Taiwan and Turkey.

25.8 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.

25.9 Taking into account all requirements set out above, the dumping margins have been determined as follows:

Table-III

Exporter/Foreign Producer	Dumping Margin as %age of Export Price	Dumping Margin as %age of C&F Price
Belgium		
Evonik Degussa, Germany and Evonik Degussa, Belgium	14.88	9.20
All others	124.58	84.48
South Korea		
Evonik Degussa, Korea and Evonik Headwaters	18.45	14.77
Hansol	1.07	0.58
OCIC and OCI	1.87	1.28
All others	18.45	14.77
Thailand		
Thai Peroxide	4.72	3.82
All others	31.57	25.04
Indonesia		
Evonik Degussa, Indonesia	43.48	25.20
All others	43.48	25.20
China- All exporters	96.22	71.93
Taiwan- All exporters	45.84	35.61
Turkey- All exporters	30.90	25.61

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

26.1 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. Prima facie dumping margins, set out in paragraph 25.6 supra, appear to be above the *de minimis* level except for Hansol, OCI and OCIC.

26.2 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 HP from all sources during the POI (April 01, 2008 to March 31, 2009) is given in the table below:

Table-IV

Country	Quantity (MT)	Percentage
Belgium	4,086.67	11.64
China	3,762.24	10.72
Indonesia	1,996.24	5.69
South Korea	1,599.96	4.56
Taiwan	3,669.12	10.46
Thailand	3,958.98	11.28
Turkey	6,377.81	18.18
Other sources	9,630.61.	27.45
Total	35,081.63	100.00

26.3 It appears from the above table that the volume of dumped imports of HP from the Exporting Countries during the POI was above the negligible threshold set-out in Section 41(3) of the Ordinance.

C. **INJURY TO DOMESTIC INDUSTRY**

27. **Material Retardation**

27.1 The Applicants have claimed all three injury standards (a) material injury (b) threat of material injury (c) material retardation for the establishment of domestic industry. First question before the Commission was whether the domestic industry producing HP is already established and second if the domestic industry is not established, whether the performance of the un-established industry appears to have been materially retarded by the dumped imports.

27.2 If it is determined that the domestic industry is established, the material retardation standard is not applicable, and the Commission focuses on the standards of material injury and/or threat of material injury.

27.3 As there are no clear provisions on how to apply material retardation standard in the Ordinance and the Agreement on Antidumping, the Commission has sought guidance from practices of traditional users of anti-dumping.

27.4 **The domestic industry producing HP is not yet established:**

27.4.1 The domestic industry has been producing HP for two years, so the Commission must determine whether the domestic industry has stabilized its operation or whether it is a nascent industry. To make this assessment, the Commission has taken guidance from the practices of traditional users of antidumping and looked at several aspects of domestic industry operations including:

- i. the date production began;
- ii. whether production of the domestic industry is steady or start-and-stop;
- iii. the size of domestic production compared to size of the domestic market as a whole;
- iv. whether the domestic industry has reached a "break-even point"; and
- v. whether the activities involve the establishment of a new industry or are merely a new product line of an established firm.

27.4.2 As it is already mentioned at paragraph 6 supra that domestic industry producing HP consists of two units: (i) Sitara Peroxide Limited and (ii) Descon Oxychem Limited. Siatra Peroxide has started its commercial production on January 2008 and Descon has started its commercial production on March 2009. The Commission is unable to determine the situation of production whether it is steady or start-and-stop as one unit of domestic industry is operation only for few months and other unit operated for just around 2 years. It covers such a short period of time that the Commission does not believe these numbers to be indicative of any stable domestic production trend.

27.4.3 Before the entry of Applicants into the production of HP in Pakistan's market, the imported product held 100 percent of the total domestic market. Since the introduction of HP in Pakistan by the domestic industry, its market share has not increased significantly, it just got hold of 28.91 percent of total domestic market, whereas dumped imports are still having major portion of 51.54 percent of the total domestic market. Therefore, the Commission has determined that the domestic industry has not yet established as it holds lesser market share of the total domestic market.

27.4.4 The other factor which indicates that the domestic industry is not yet established is that the domestic industry's operations have not reached a break-even point. In this preliminary determination the Commission has calculated break-even point of the domestic industry by dividing total fixed costs and expenses by the unit contribution margin i.e. the unit sales price minus the unit variable costs. The Commission has determined that the domestic industry did not reach a break-even point during the latest period for which the Commission has information.

27.4.5 The Commission has also examined whether or not the nascent industry is truly a new industry or is more in the nature of a new product introduced by an established industry. An established industry introducing a new product line, for example, might be able to promote sales of the new product line through its established distribution and marketing networks and industry contacts thereby hastening the establishment of the new product in the market. The Commission has determined that the domestic industry is totally new industry as it is not significantly aided by other existing and established product operation sector.

Conclusion

27.4.6 One the basis of the analysis at paragraphs 27.4.2 to 27.4.5 supra, the Commission has determined that the domestic industry is producing HP since January 2008. The Commission is unable to determine whether the domestic production is steady or start-and-stop, as one unit of

the domestic industry just started its production, therefore, the numbers of production are not indicative because of the limited period of production. The Commission has also determined that the domestic industry has not yet reached a break-even point. The domestic industry has not gained significant share of the domestic market, whereas the imports have the lion's share of the total domestic market. Further, it does not appear that HP operations were aided by those operations that are already established. For these reasons, the Commission has determined that there is reasonable indication that the domestic industry producing HP has not yet been established.

27.4.7 As the Commission has preliminary determined that the domestic industry is not yet established, the material retardation standard is applicable only, and the Commission will not use other standards of material injury and threat of material injury due to the fact that material injury or threat of material injury and material retardation are mutually exclusive standards.

28. Whether the domestic industry is being materially retarded

28.1 Having preliminary determined that the domestic industry producing HP is not yet established, the Commission has examined whether the establishment of this nascent industry has been materially retarded by reasons of dumped imports from the Exporting Countries.

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..."*

The Commission has used same principles for determination of material retardation as laid down in Section 15 of the Ordinance, because the Ordinance or Agreement on Antidumping are silent on factors to be taken into consideration for determination of material retardation.

28.2 Material retardation to the establishment of the domestic industry is summarized in the following paragraphs.

29. Cumulation of Dumped Imports

29.1 As per Section 16 of the Ordinance:
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:

- (a) dumping margin in relation to the investigated product from each countries is more than the negligible amount, and volume of dumped imports from each investigated country is not less than the negligible quantity; and

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- (b) a cumulative assessment of the effects of the imports is appropriate in the light of
- the conditions of competition between the imports; and
 - the conditions of competition between the imports and a domestic like product.

29.2 As mentioned in paragraph 26.2 supra, the volume of imports of HP from dumped sources during the POI was more than the negligible quantity (i.e. less than 3 percent of total imports of HP). The dumping margins established for the dumped sources are prima-facie more than the negligible amount (i.e. less than 2 percent of export price) (paragraph 25 supra).

29.3 It is evident from the weighted average export prices of HP imported from dumped sources during POI (paragraph 24 supra) that there was a price competition between the imports of the HP from all dumped sources.

29.4 The conditions of competition between dumped imports of HP and the domestic like product are discussed in detail in paragraphs 31 to 41 infra.

29.5 For the reasons given above, the effects of dumped imports on the domestic industry have been cumulatively assessed in the following paragraphs.

30. Determination of Domestic Industry

30.1 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.

30.2 As mentioned in paragraph 7.3 supra, the application is filed by the domestic industry producing 100 percent of the domestic production of domestic like product in Pakistan. Thus the Applicants are considered as domestic industry and injury analysis is based on the information/data of the Applicants.

31. Volume of Dumped Imports

Facts

31.1 With regard to the volume of alleged dumped imports, in terms of Section 15(2) of the Ordinance, it is considered whether there has been a significant increase in 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 production of the domestic like product by the domestic industry, provided by the Applicants, during the POI:

Year*	Table-V Imports from			(MT) Domestic Production
	Dumped Source	Other Sources	Total Imports	
2006	99.2	0.8	100	--
2007	90.9	0.4	91.3	11.7
2008	68.6	0.2	68.7	40.9

* Year is from April 01 to March 31

Sources: the Applicants and PRAL

Note: Actual figures have been indexed with respect to total imports in the year 2006 by taking it equal to 100.00

Analysis

31.2 It appears from the above table that the dumped imports decreased as domestic production of newly established two units substituted the imports. Furthermore, dumped imports decreased from *** MT to *** MT, a decrease of *** MT in 2008 over 2007. Thus dumped imports decreased during 2008 in absolute terms. According to the Applicants the decrease in dumped imports is due to the fact that it significantly decreased sales prices from October 2008 to March 2009, (inspite of increase in cost of production) as shown in the table below:

Table-VI

Year	Ex-factory sales price	Cost to make and sell
Apr 08 - Jun 08	100	139.5
Jul 08 - Sep 08	145.8	143.2
Oct 08 - Dec 08	130.3	179.8
Jan 09 - Mar 09	84.1	129.6

Sources: the Applicants

Note: Actual figures have been indexed with respect to ex-factory sales price in Apr 08 - Jun 08 by taking it equal to 100.00

31.3 The above table shows that in order to gain market share the Applicants decreased its sales price during October 2008 to March 2009 during this period price was lower then cost, whereas, its cost to make & sell increased during the period from April to December 2008 in order to gain market share domestic industry had to bear the losses and its cost to make & sell decreased during the period from January to March 2009. Thus volume of dumped imports, decreased in absolute terms during 2007 and 2008. Although cost decreased during January to March 2009 over 2008 even then price was too low to gain profit. The domestic industry suffered losses in three out of four quarters of POI (i.e. April to June 2008, October to December 2008 and January to March 2009).

31.4 The dumped imports increased from 98.83 percent to 99.75 percent as percent of total imports from 2006 to 2008 during the POI.

31.5 According to the feasibility studies of the two Applicant units, the Applicants have projected sales of *** MT (66 percent of total market), but in actual the domestic industry sold *** MT (32.21 percent) during the dumping POI. This indicates loss of sales of *** MT due to dumped imports. Had there been no dumping the imports would have decreased further. Before the start up of production by the Applicants, the entire domestic demand was met by imports. Thus after coming into production of domestic industry, the imports would definitely decrease, as some share of market is taken by the domestic industry. Moreover, to gain market share, the domestic industry had to reduce its prices below the landed cost dumped imports and even below its cost to make and sell which has affected its profitability (paragraph 33.4 infra).

Conclusion

31.6 On the basis of above the Commission has concluded that there was decrease in the volume of dumped imports in absolute terms during the POI. The decrease in volume of dumped imports is due to reduction in sales prices by the Applicants (reference paragraph 30.2

supra). However, the domestic industry could not sell as per the expected sales mentioned in the feasibilities due to dumped imports. Therefore, the domestic industry is materially retarded on account of volume of dumped imports.

32. Market Share

Facts

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

Table VII (MT)

Year*	Sales by domestic industry	Imports from		Total domestic market
		Alleged dumped source	Other sources	
2006-07	-----	99.18%	0.82%	100
2007-08	11.09%	88.49%	0.42%	100
2008-09	32.21%	67.76%	0.17%	100

* Year is from April 01 to March 31

Sources: the Applicants and PRAL

Note: Actual figures have been indexed with respect to total domestic market by taking it equal to 100.00

Analysis

32.2 The above table shows that the domestic market of HP increased by 14.98 percent during 2007 and decreased by 1.57 percent in 2008. The domestic industry's market share increased by 11.09 percent in 2007 due to the fact that there was no sales or production of HP by the domestic industry in 2006. The market share of domestic industry further increased to 32.31 percent in 2008, but it was not upto the projected share mentioned in the feasibilities of the Applicants (i.e. *** MT or 66 percent of the total domestic market during 2009-09). The share of dumped imports decreased from 99.18 percent of the total domestic market in 2006 to 67.76 percent in 2008, the reason for this decrease was natural as there was no domestic industry in 2006 whereas in 2008 the domestic industry has to take its share in the domestic market. However, the increased share of domestic industry in the total domestic market was due to reduction in the prices of HP by domestic industry to take its share in the domestic market.

Conclusion

32.3 On the basis of above facts and analysis the Commission has concluded that the share of domestic industry in domestic market increased but this increase was not adequate and far below what has been projected in the feasibilities studies by the Applicants. However, the increased share of domestic industry was due to reduction in prices by the domestic industry. Therefore, the Commission has determined that the domestic industry has materially retarded on account of market share.

33. Price Effects

33.1 The effect of dumped imports on the prices of domestic like product has been examined in the following paragraphs. The information provided by the Applicants shows prima facie, that there has been significant price under-cutting (the extent to which the price of the

investigated product was lower than the price of domestic like product) during 2007 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.

33.2 Price Undercutting

Facts

33.2.1 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 VIII

Year*	Average ex-factory price of domestic like product	Average landed cost of dumped imports	Price undercutting
2006-07	----	83.1	
2007-08	100	96.4	(3.64%)
2008-09	130.7	149.8	

* Year is from April 01 to March 31

Source: the Applicants

Note: Actual figures have been indexed with respect to average ex-factory price of domestic like product for the year 2007-08 by taking it equal to 100.00

Analysis

33.2.3 The above table shows that the dumped imports undercut the prices of domestic like product only in 2007. Domestic Industry started production of HP in 2007. In the year 2008 the average landed cost of dumped imports was higher than the average sales price of domestic industry.

Conclusion

33.2.4 On the basis of above facts and analysis the Commission concludes that the domestic industry faced price undercutting in 2007.

32.3 Price Suppression

Facts

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

Table IX

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
2006-07	----	----	----	----
2007-08	100	89.7	----	----
2008-09	152.5	117.3	52.5	27.6

* Year is from April 01 to March 31

Sources: the Applicants

Note: Actual figures have been indexed with respect to average cost to make & sell of domestic like product in 2007-08 by taking it equal to 100.00

Analysis

33.3.2 The above table reveals that during the first year of production (i.e. 2007) price was lower than the cost to make and sell whereas during 2008 the cost further increased by Rs. ***. The price increased by Rs. *** in the year 2008-09. The domestic industry experienced price suppression in 2008 as it was not able to recover increased cost to make and sell by way of an increase in its selling price.

Conclusion

33.3.3 On the basis of above facts and analysis the Commission has concluded that the domestic industry experienced price suppression in the year 2008-09.

33.4 Price Depression

Facts

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

Table-X

Year*	Weighted Average ex-factory price of domestic like product	Price depression
2006-07	--	-
2007-08	100	-
2008-09	130.7	-

* Year is from April 01 to March 31

Source: the Applicants

Note: Actual figures have been indexed with respect to weighted average ex-factory price domestic like product in the year 2007-08 by taking it equal to 100.00

Analysis

33.4.2 The above table shows that the domestic industry increased its ex-factory sales price by 30.79 percent in 2008 and thus did not face price depression during the POI.

Conclusion

33.4.3 Analysis of the above facts shows that the domestic industry did not face price depression during the POI from dumping.

34. Production and Capacity Utilization

Facts

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

Table-XI

Year	Capacity Utilization (%)
2006-07	----
2007-08	47.90
2008-09	52.26

* Year is from April 01 to March 31

Source: the Applicants

Analysis

34.2 It may be noted from the above table that the production of domestic like product and capacity utilization of the domestic industry increased during 2008. However, in order to gain market share, the Applicants decreased its ex-factory price significantly during October 2008 to March 2009 due to dumped imports which resulted in price suppression. Further, the domestic industry projected capacity utilization of 85.50 percent in the year 2008-09 whereas in actual, the capacity utilization was 52.26 percent due to dumped imports.

Conclusion

34.3 Based on above facts and analysis the Commission has concluded that the domestic industry materially retarded on account of production of domestic like product and capacity utilization in 2008.

35. Profit and Loss

Facts

35.1 Information submitted by the Applicants on profitability position of the domestic industry is given in the following table:

Table-XII

Year*	Profit/(loss)
2006-07	----
2007-08	(100)
2008-09	(222.3)

* Year is from April 01 to March 31

Source: the Applicant

Note: Actual figures have been indexed with respect to profit/(loss) in the year 2007-08 by taking it equal to 100.00

Analysis

35.2 It appears from the above table that the domestic industry suffered losses during 2007 and 2008. As per Applicants, the increase in net loss during the year 2008-09 over last year was overwhelming mainly due to dumped imports coupled with price suppression effects.

Conclusion

35.3 On the basis of above facts and analysis the Commission concludes that the domestic industry suffered losses through out the POI, mainly on account of dumped imports of HP from the Exporting Countries.

36. Inventories

Facts

36.1 The data provided by the Applicants on the position of inventories is as follows:

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Table-XIII

Year*	Opening Inventory	Closing Inventory
2006-07	----	----
2007-08	----	100
2008-09	100	250.5

* Year is from April 01 to March 31

Source: the Applicants

Note: Actual figures have been indexed with respect to closing inventory in the year 2007-08 by taking it equal to 100.00

Analysis

36.2 The above table shows that inventories of the domestic industry of the domestic like product increased during the POI and thus it materially retarded on account of inventories.

Conclusion

36.3 Based on above facts and analysis the Commission has concluded that the domestic industry materially retarded on account of inventories.

37. Productivity and Wages

Facts

37.1 The data submitted by the Applicants on employment in the domestic industry and the salaries and wages paid during the POI is given in following table:

Table-XIV

Year*	Number of Employees	Total salaries and wages (Mill. RS)	Domestic production (commercial) (MT)	Productivity per worker in MT	Salaries & wages Rs. per MT
2006-07	----	----	----	----	----
2007-08	100	100	100	100	100
2008-09	130	614.5	418.45	316.6	146.9

* Year is from April 01 to March 31

Source: the Applicants

Note: Data for 2007-08 has been indexed as 100.

Analysis

37.2 The above table shows that the employment in the domestic industry increased during the POI. Productivity per worker increased due to increase in production. However, total salaries and wages increased from Rs. *** million to Rs. *** million in 2008 which negatively affected the Applicants as can be seen from increase in Salaries & wages per MT.

Conclusion

37.3 Based on above facts and analysis the Commission has concluded that the domestic industry materially retarded on account of salaries & wages per MT in 2008.

38. Return on Investment

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Facts

38.1 As per the Applicants, return on investment realized by the domestic industry during the POI is given in following table:

Table-XV

Year*	Total Investment	Return	Return on Investment
2006-07	***	----	----
2007-08	***	***	0.51%
2008-09	***	***	1.41%

* Year is from April 01 to March 31
Source: the Applicants

Analysis

38.2 The above table shows that the return on investment increased in the year 2008 as compared to year 2007. However, the return on investment is less than 2%, which is not encouraging by any standard. According to Applicants, this low return on investment is attributed to dumped imports of investigated product. There is likelihood that no new investment will be made by the Applicants due to low rate of return on investment.

Conclusion

38.3 Based on above facts and analysis the Commission has concluded that the domestic industry materially retarded on account of return on investment.

39. Cash Flow

Facts

39.1 According to the Applicants, its cash generation was also effected due to dumped imports of the investigated product. Information submitted by the Applicants on net cash flow is given below:

Table -XVI (Million Rs.)

Year *	Net cash flows from operations
2006-07	----
2007-08	(100)
2008-09	(183.1)

* Year is from April 01 to March 31

Source: the Applicants

Note: Actual figures have been indexed with respect to net cash flows from operations in 2007-08 by taking it equal to 100.00

Analysis

39.2 The above table shows that the domestic industry suffered on account of cash flow as net cash flow from operations as it was net cash outflow of Rs. *** million in 2007 which increased to Rs. *** million in 2008.

Conclusion

39.3 Based on above facts and analysis the Commission has concluded that the domestic industry materially retarded on account of cash flows during the POI due to dumped imports.

40. Growth and Investment

40.1 At present total installed production capacities of the domestic industry (paragraph 19 supra) are more than the domestic demand (paragraph 17 supra). In this situation no further investment in the industry cannot be expected. However in the annual report of one of the Applicants (i.e. Sitara Peroxide) has stated to increase its installed capacity by 60,000 MT in next two years. The abstract from the report is as follows:

"Keeping in view rapidly growing demand of Hydrogen Peroxide, management is also planning to double the capacity in next two to three years. Further, research and development work is carried out as ongoing continuous process, to identify other business areas/products in which Company can diversify its operation."

Conclusion

40.2 Based on above facts and analysis the Commission has concluded that the domestic industry did not materially retarded on account of growth and investment.

41. Ability to Raise Capital

According to the Applicants, 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. However, due to the increase in dumped imports, the industry's ability to raise capital is materially weakened.

42. Summing up of Material Retardation

On the basis of the information/data and analysis in forgoing paragraphs the Commission has preliminary determined that the domestic industry has materially retarded during the POI on account of: -

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

43. Causal link

The imports of the investigated product from the Exporting Countries were at dumped prices during POI. The main reason for material retardation of the establishment of domestic industry was volume of dumped imports, price suppression and profitability. There was little increase in volume of dumped imports of the investigated product in 2007, in absolute terms, however, dumped imports decreased during the POI relative to domestic consumption

(paragraph 16.4 supra). The Commission has also determined that the domestic industry has not yet reached a break-even point: The domestic industry has not gained significant share of the domestic market, whereas the imports have the lion's share of the total domestic market.

44. Other Factors

44.1 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 causing material retardation for the establishment of the domestic industry, in order to ensure that possible injury caused by other factors is not attributed to the dumped imports.

44.2 The investigation of the Commission revealed that the domestic industry is not materially retarded due to imports of HP from sources other than dumped sources during the POI, as its volume was negligible.

44.3 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;

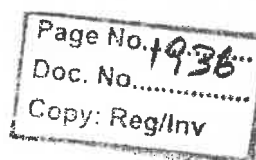
D. CONCLUSIONS

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

- i. the application was filed by the domestic industry as the Applicants represent 100 percent of the production of domestic like product;
- ii. the investigated product and the domestic like product are alike products;
- i. during 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 exporters/foreign producers of the investigated product from the Exporting Countries are above the negligible and *de minimis* levels respectively except Hansol, OCI and OCIC;
- v. the dumping margins expressed as a percentage of weighted average adjusted export price at ex-factory level is ranging between 1.07 percent to 124.58 percent for exporters/foreign producers from the Exporting Countries;
- vi. the domestic industry materially retarded during POI on account of volume of dumped imports, loss of market share, price suppression, decline in profits, decline in output, decline in capacity utilization, negative effect on cash flow,

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negative effect on employment, salaries and wages, negative effect on return on investment and negative effect on ability to raise capital in terms of Section 15 and 17 of the Ordinance; and

- vii. there is a causal relationship between dumped imports of the investigated product and the material retardation to the domestic industry.

E. IMPOSITION OF PROVISIONAL ANTIDUMPING DUTY

45. In view of the analysis and conclusions with regard to dumping, material retardation, and causation, imposition of provisional antidumping duty on dumped imports of the investigated product is needed to prevent injury being caused to the domestic industry during the course of this investigation in accordance with Section 43 of the Ordinance.

46. Individual dumping margins have been determined for nine exporters/foreign producers of the investigated product who supplied information necessary for this investigation and the provisional rate for antidumping duty for these exporters/foreign producers is determined on the basis of individual dumping margins (paragraph 25 supra).

47. A residual 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 (paragraph 25 supra).

48. In terms of Section 43 of the Ordinance, provisional 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 four months effective from September 27, 2010. The provisional antidumping duty rates are determined on C&F value in *ad val.* terms. Provisional antidumping duties at C&F value are equivalent to the preliminary dumping margins determined at ex-factory price level. The dumped investigated product is classified under PCT heading No. 2847.0000.

Table-XIX
Provisional Antidumping Duty Rate

Exporter/Foreign Producer	Provisional antidumping duty
Belgium	
Evonik Degussa, Germany and Evonik Degussa, Belgium	9.20
All others	84.48
South Korea	
Evonik Degussa, Korea and Evonik Headwaters	14.77
All others	14.77
Thailand	
Thai Peroxide	3.82
All others	25.04
Indonesia	
Evonik Degussa, Indonesia	25.20
All others	25.20
China- All exporters	71.93
Taiwan- All exporters	35.61
Turkey- All exporters	25.61

49. Provisional anti-dumping duty has not been imposed on following exporters/foreign producers of the investigated product from the Exporting Countries as dumping margins for these exporters/foreign producers were found to be *de minimis* (less than 2%) in terms of Section 41 of the Ordinance during the POI:

- i. OCI Company Limited, Korea;
- ii. OCI Corporation, Korea;
- iii. Hansol Chemical Company Limited, Korea


50. HP imported from sources, other than the Exporting Countries shall not be subject to this provisional antidumping duties.

51. In accordance with Section 51 of the Ordinance, the provisional 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.

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

53. The provisional 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.

54. This report is being signed by all three members of the Commission in compliance of the directions of Honorable Supreme Court of Pakistan.


(Zamir Ahmed)

Member

September 21, 2010


(Niamatullah Khan)

Member

September 21, 2010


(Bilal Khan)

Chairman

September 21, 2010