



**Government of Pakistan
National Tariff Commission**

Report

of

Final Determination and Levy of Definitive Antidumping Duties on Dumped Imports of Phthalic Anhydride into Pakistan Originating In and / Or Exported from China, Chinese Taipei, South Korea and Russia

A.D.C No. 56/2019/NTC/PA

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Final Determination and Levy of Definitive Antidumping Duties on Dumped Imports of Phthalic Anhydride into Pakistan from China, Chinese Taipei, South Korea and Russia

The National Tariff Commission (the “Commission”) having regard to the Anti-Dumping Duties Act, 2015 (the “Act”) and the Anti-Dumping Duties Rules, 2001 (the “Rules”) relating to investigation and determination of dumping of goods into the Islamic Republic of Pakistan (hereinafter referred to as Pakistan), material injury, threat of material injury or material retardation 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 (the “Agreement on Anti-dumping”).

2. The Commission has conducted this investigation, against dumped imports of Phthalic Anhydride ("PA") into Pakistan originating in and/or exported from China, Chinese Taipei, South Korea and Russia (the “Exporting Countries”), under the Act and the Rules. The Commission has made final determination in this investigation under Section 39 of the Act. This report on final determination has been issued in accordance with Section 39(5) of the Act and Article 12.2 of the Agreement on Antidumping.

3. In terms of Section 29 of the Act, the Commission shall, except in special circumstances, conclude an investigation within twelve months, and in no case more than eighteen months, after its initiation. The Commission initiated this antidumping investigation on December 07, 2019. The Commission, in normal circumstances, was required to make a final determination of dumping and injury by December 06, 2020. On-the-spot investigation at the premises of cooperating exporters/producers from Chinese Taipei and South Korea was planned after preliminary determination and the exporters/producers gave their consent as well. However, the On-the-Spot-Investigation could not be conducted due to travel and quarantine restrictions imposed by the governments of Chinese Taipei and South Korea in the wake of COVID-19. Later, it was decided to conduct desk verification of the data/information provided by the exporters/producers of PA from Chinese Taipei and South Korea. Therefore, it was not possible to finalize the investigation within 12 months period, the Commission decided to conclude this investigation within eighteen months i.e. by June 06, 2021.

A. PROCEDURE

4. The following procedure has been adopted to undertake the investigation.

5. Receipt of Application

5.1 On October 08, 2019 (formal acceptance date), the Commission received a written application under Section 20 of the Act from Nimir Chemicals Pakistan Limited, Lahore (the “Applicant”) on behalf of the domestic industry. The application has been filed by the Applicant, who is the sole producer of Phthalic Anhydride (PA) in Pakistan.

5.2 The Applicant alleged that dumped imports of PA from the Exporting Countries has caused and is causing material injury and an imminent threat of injury in future to Pakistan’s domestic industry producing PA.

5.3 The Commission, informed the Embassies of the Exporting Countries in Islamabad and to Chinese Taipei’s Permanent Mission at the WTO through Pakistan’s Permanent Mission at the WTO through *note verbale* dated October 17, 2019 of the receipt of application in accordance with the requirements of Section 21 of the Act.

6. Evaluation and Examination of the Application

The examination of the application showed that it met the requirements of Section 20 of the Act as it contained sufficient evidence of dumping of PA into Pakistan from the Exporting Countries and consequent material injury caused by such imports and an imminent threat of injury in future to Pakistan's domestic industry producing PA. Requirements of Rule 3 of the Rules, which relates to the submission of information prescribed therein, were also found to have been met.

7. The Domestic Industry

7.1 Section 2(d) of the Act defines domestic industry as:

“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, except that when any such domestic producers are related to the exporters or importers or are themselves importers of the allegedly dumped investigated product in such a case “domestic industry” may mean the rest of the domestic producers”. Explanation.- For the purposes of this clause, producers shall be deemed to be related to exporters or importers only if;

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

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

7.2 The industry manufacturing PA in Pakistan comprises of only one unit i.e. Nimir Chemicals Pakistan Limited, Lahore (the Applicant). Accordingly, the domestic industry was determined to be the Applicant. The Applicant is a multi-product company producing Phthalic Anhydride, Maleic Anhydride, Unsaturated Polyester Resins, Alkyd Resin, and Plasticizers.

7.3 After preliminary determination Nan Ya Plastics Corporation, Chinese Taipei, an interested party submitted that:

“Nan Ya noted that the Pakistani company Nimir Resin Limited is a PA importer Nimir Resin was a sub-subsidiary of Nimir Chemical Industry Ltd, as page 58 of Nimir Chemical Industry 2019 Annual Report. On the same page, Applicant NCPL is marked as an associated company of Nimir Chemical Industry by sharing common directorship. A footnote further reads that the relationship has ceased on December 29, 2018 due to the retirement of the directors. POI of the present investigation ranges from July 2018 to June 2019. Therefore, at least during the first half of the POI, NCPL was related to the importer Nimir Resin and may be excluded from the domestic industry pursuant to Section 2(d) of the Act. Nan Ya urges the Commission to look into this issue during the remaining course of the investigation.”

7.4 The Applicant in its response to the above comment of Nan Ya stated that:

“There is no subsidiary company of the Applicant. The only associated Company of the Applicant was Nimir Industrial Chemicals Limited (NICL) by virtue of common directorship (Mr.

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Mohsin Tariq and Mr. Saqib Raza were directors in NICL) which ceased to be an associated company w.e.f September 25, 2018 after resignation of the above said two persons from directorship in NICL. The same is evident from the Annual Report of NICL for the year 2019, which does not contain the name of the Applicant. Here it is pertinent to mention that NICL is not a user of PA and the Applicant has not sold PA to its associated company (till September 25, 2018) during the POI. Transactions with NICL only included purchases of Glycerin, Sodium Hypo Chlorite and Hydrochloric acid, none of which is used as an input in manufacturing of PA. Glycerin is used in the production of Alkyd Resin and other products which are used in boiler.”

7.5 While issuing SEF, the Commission concluded that neither the Applicant nor the related company namely Nimir Industrial Chemicals Limited imported PA during the POI. The Applicant has submitted following comments regarding relationship of the Applicant and Nimir Industrial Chemicals Limited.

“As per the explanation provided in Section 2(d) of the Act, a company is deemed to be related with another company only if either of the company “controls” the other or is legally or operationally in a position to exercise restraint or direction over the later.

In this regard we would like to bring to the kind notice of the Commission that NCPL is not in a position to exercise restraint or give directions or control the policies of NICL either legally or operationally due to the fact that neither NICL is a subsidiary company of NCPL or vice versa. A company is deemed to have control over the other when the later is a subsidiary of the former.

In Pakistan, companies are incorporated, governed and liquidated under the Companies Act 2017. Hence, Companies Act 2017 is the best source to understand the relationship of control among companies. Moreover, in the absence of definition of control in the Antidumping Duties Act 2015, amongst the companies incorporated in Pakistan, the explanation given in the Companies Act 2017 is the most relevant.

Subsidiary company as defined in Section 2(68) of the Companies Act 2017 is read as follows:

“subsidiary company” or “subsidiary”, in relation to any other company (that is to say the holding company), means a company in which the holding company –

(a) controls the composition of the board; or

(b) exercises or controls more than one-half of its voting securities either by itself or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies shall not have layers of subsidiaries beyond such numbers, as may be notified,

Explanation – For the purposes of this clause –

(i) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (a) or sub-clause (b) is of another subsidiary company of the holding company;

(ii) the composition of a company’s board shall be deemed to be controlled by another company if that other company by exercise of power exercisable by it at its discretion can appoint or remove all or a majority of the directors;

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As provided in Annual Report of Nimir Industrial Chemicals for the year 2018, NCPL is an associated company of NICL by way of common directorship. There is no cross shareholding between NICL and NCPL. There are only two common directors in NICL and NCPL (which are independent/ non-executive directors) which is only 20% of the total 10 directors in NICL. Therefore, in the absence of 50% (more than one-half) shareholding and power to appoint majority of directors by one company in the other company, there is no parent-subsidary relationship between NICL and NCPL. This means there is no relationship of control between NICL and NCPL otherwise auditors of both the companies would have regarded both the companies as parent-subsidary companies.

Here it is pertinent to mention that common directorship in NICL and NCPL ceased to exist in September 2018. With only two directors and no cross shareholding, NCPL was not legally or operationally in a position to exercise any restraint or direction over NICL and therefore, there is no relationship of Control between NICL and NCPL and neither NCPL controls NICL nor NICL controls NCPL. Therefore, NCPL (Applicant) and NICL are not related to each other.”

7.6 The Commission has considered views/comments as well as explanations provided by the interested parties on the issues related to the domestic industry and standing of the application keeping in view relevant provisions of the Act, the Agreement on Antidumping and the practices of other investigating authorities in the same/similar situations. On the basis of following, the Commission has determined that the Applicant is a bona fide domestic PA industry and is eligible to file an application under Section 20 of the Act: -

- i. Neither the Applicant nor the associated company namely Nimir Industrial Chemicals Limited (NICL) imported PA during the POI. The concept of relationship in Section 2(d) of the Act revolves around the legal or operational control. As regards legal control, the Commission is of the view that relationship between the Applicant and NICL is not of the nature where one can exercise control over the other. The explanation given by the Applicant in this regard is sufficient to negate any legal control. As regards the operational control, it is stated that subsidiary company of Nimir Industrial Chemicals Limited i.e. Nimir Resins Limited (NRL), imported PA during the POI. As per record of this and previous antidumping investigations of PA, Nimir Resins Limited has vehemently opposed the applications for imposition of antidumping duties, which shows that Applicant has no control over NRL. It is therefore held that neither NICL nor NRL are related to the Applicant in terms of Section 2(d) of the Act.
- ii. Section 2(d) of the Act as well as Article 4.1 of the Agreement on Antidumping provides that, if domestic producers are related to exporters or are themselves importers of the investigated product the term “domestic industry” may be interpreted as referring to the rest of the producers. Thus, these provisions give an option and discretion to the investigating authority and do not impose an obligation to exclude, the domestic producer who is related to the exporter and/or a domestic producer who is itself an importer of the investigated product, from the definition of the domestic industry.
- iii. The WTO Panel in EC – Fasteners (China) found that "the use of the term 'may' in Article 4.1 makes it clear that investigating authorities are not required to exclude related producers or importing producers" and that "there is nothing in Article 3.1, or in Article 4.1, that limits the discretion of investigating authorities to exclude, or not, related or importing domestic producers."
- iv. Exclusion of any producer from the definition of the domestic industry is conditional i.e., dependent upon the behavior of the domestic producer concerned. Section 2(d) of the Act stipulates that the concerned producer may be excluded from domestic industry if it “behave

differently from non-related producers”. The question of different behavior does not arise as the producer itself is the Applicant in this case.

- v. The Applicant is the legitimate producer of PA in Pakistan and have made considerable investments for production of PA in the country. Therefore, their primary objective lies in domestic production and sales of the domestic like product.
- vi. The Applicant is the only unit who produces and sells the domestic like product in the domestic market. The Applicant, nor its associated company imported PA during the POI. Therefore, the Applicant’s interest lies in domestic production and sale of PA, instead of imports. Being the only producer in the industry, if the Applicant is denied to file the application under the Act, the right of the domestic industry will be deprived. However, antidumping law is to remedy the unfair trade practices of exporters/producers of PA.

8. Standing of the Application

8.1 The application fulfills the requirements of Section 24 of the Act, which enjoins upon the Commission to assess the standing of the application on the basis of the degree of support for or opposition to the application expressed by domestic industry.

8.2 In terms of Section 24(1) of the Act, 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 either support for or opposition to the application. Furthermore, Section 24(2) of the Act provides that no investigation shall be initiated when domestic producers expressly supporting an application account for less than twenty five percent of the total production of domestic like product produced by the domestic industry.

8.3 The application has been filed by the Applicant, who is the sole producer of the domestic like product and represents 100 percent of domestic production. The Applicant produced ***MT of domestic like product during the POI.

8.4 On the basis of the above information and analysis it is determined that the application has been made by or on behalf of domestic industry as it fulfills the requirements of Section 24 of the Act.

9. Applicants’ Views

9.1 The Applicant, *inter alia*, raised the following issues in application regarding dumping of PA causing material injury and an imminent threat of injury in future to Pakistan’s domestic industry producing PA.

9.2 Exports of PA by the exporters/producers from the Exporting Countries to Pakistan at dumped prices have caused material injury and an imminent threat of injury in future to Pakistan’s domestic industry producing PA mainly through: -

- a) volume of dumped imports;
- b) price undercutting;
- c) price suppression;
- d) production;

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- e) capacity utilization;
- f) market share;
- g) sales;
- h) profits/profitability;
- i) productivity per worker and salaries & wages/MT;
- j) return on investment; and
- k) magnitude of dumping margin.

9.3 The Applicant has also claimed that there is threat of material injury to the domestic industry due to continued dumping of PA.

9.4 The Applicant had made following requests to the Commission:

- i. Initiate an investigation against alleged dumping of PA from the Exporting Countries under Section 23 of the Act;
- ii. Impose provisional measures under Section 43 of the Act to prevent injury being caused during the investigation; and
- iii. Impose appropriate definitive antidumping duties on alleged dumped imports of PA in accordance with Section 50 of the Act.

10. **Exporters / Producers of PA involved in Dumping**

As per information available with the Commission, which has been provided by the Applicant and verified from the PRAL import data, there were 18 exporters/producers involved in alleged dumping of the investigated product from the Exporting Countries. However, the Applicant has requested for imposition of anti-dumping duty on all imports of the investigated product originating in and/or exported from the Exporting Countries as there may be other exporters which may not be known to it or the Commission.

11. **Initiation of Investigation**

11.1 The Commission, in accordance with Section 23 of the Act examined the accuracy and adequacy of the evidence provided in application and established that there was sufficient evidence of alleged dumping of PA into Pakistan from the Exporting Countries during the POI and such imports were causing material injury to the domestic industry. Accordingly, the Commission issued a notice of initiation in accordance with Section 27 of the Act, 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 December 07, 2019. Investigation concerning alleged dumped imports of PA into Pakistan classified under PCT No³. 2917.3500 originating in and/or exported from the Exporting Countries was thus initiated **on December 07, 2019**.

¹The official Gazette of Pakistan (Extraordinary) dated December 07, 2019.

² "Daily Jang" and Daily "The Nation" of December 07, 2019.

³ PCT heading in Pakistan is equivalent to Harmonized Commodity Description and Coding System up to six-digit level.

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11.2 In pursuance of Section 27 of the Act, the Commission notified Embassies of the Exporting Countries in Islamabad through Pakistan's Foreign Office and to Chinese Taipei's Permanent Mission to the WTO through Pakistan's Permanent Mission to the WTO, in Geneva of the initiation of investigation (by sending a copy of the notice of initiation) on December 13, 2019 with a request to forward it to all exporters/producers involved in production, sales and export of PA in their respective countries. Copy of the notice of initiation was also sent on December 13, 2019 to known exporters/producers of PA from the Exporting Countries whose addresses were available with the Commission with a request to be registered as an interested party in the investigation with-in 15 days of publication of the notice. Copy of the notice of initiation was also sent to the known Pakistani importers on December 13, 2019.

11.3 In accordance with Section 28 of the Act, on December 26, 2019, the Commission sent copy of full text of the written application (non-confidential version) and Exporter's Questionnaire to the known exporters/producers of the Exporting Countries. On December 26, 2019, copy of the full text of the written application (non-confidential version) along with Exporter's Questionnaire was also sent to the Embassies of the Exporting Countries in Pakistan and to the Chinese Taipei's Permanent Mission to the WTO in Geneva through Pakistan's Permanent Mission to the WTO in Geneva with a request to forward it to all exporters/producers involved in production and/or sale/export of PA in their respective countries.

12. Investigated Product, Domestic Like Product and Like Product

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

i. Investigated Product

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

ii. Domestic Like Product

"means a like product that is produced by the domestic industry".

iii. Like Product

a product which is alike in all respects to an investigated product or, in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the investigated product".

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

12.3 Investigated Product:

12.3.1 The investigated product is PA imported from the Exporting Countries. It is classified under Pakistan Customs Tariff ("PCT") Heading No. 2917.3500. Phthalic Anhydride (the investigated product) is an organic compound in white crystalline form, available in solid state, white flakes, with mild odour, slightly soluble in ether and hot water. It is obtained by catalytic oxidation process from Ortho xylene or Naphthalene. The Maleic Anhydride is its by-product in processing the PA.

Specification:

PA Contents

99.8 % (minimum 98%)

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Colour index to hazen	20 APHA
Heat Stability	50 APHA
Boiling point	2850
Solidification point	1310

12.3.2 It is an important industrial input, used in the manufacturing of Polyester Resins, Alkyd Resin, Plasticizers, certain dyes, and insecticides etc. It is also utilized as a retarder. The primary use of the investigated product is in the production of plasticizer used for production of plastics from vinyl chloride. PA is used in polyester resins, Di-octyl- Phthalate (DOP), dyestuffs, tyres and technical rubber products, a range of pharmaceuticals and other products. It is also used in Alkyd Resins (Glyptal) and to modify physical properties of Synthetic Resins.

12.3.3 During the course of investigation, importers of investigated product claimed that few Chinese exporters/producers are manufacturing PA from Naphthalene, which is not at par with PA produced by the domestic industry from Ortho-xylene. Upon query, it was clarified by the importers that there was no difference between PA produced from Naphthalene and Ortho-xylene in terms of end use applications. The Applicant was of the view that there is no difference between the PA produced from Naphthalene and the PA produced from Ortho-xylene. On the basis of reasons recorded at para 12.5 infra, the Commission has concluded that PA produced from Ortho-xylene and Naphthalene falls within the scope of investigated product.

12.4 Domestic Like Product

12.4.1 The domestic like product is PA, which is classified under Pakistan Customs Tariff (“PCT”) Heading No. 2917.3500. The domestic like product is an organic compound in white crystalline form, available in solid state, white flakes, with mild odour, slightly soluble in ether cold and hot water. It is obtained by catalytic oxidation process from Ortho xylene. The Maleic Anhydride is its by-product in processing the PA.

12.4.2 It is used in the manufacturing of Polyester resins, Alkyd resin, Plasticizers, certain dyes and insecticides etc. It is also utilized as a retarder. The primary use of the domestic like product is in the production of plasticizer as input for production of plastics from vinyl chloride. PA is used in Polyester resins, Di-octyl- Phthalate (DOP), dyestuffs, tyres and technical rubber products, a range of pharmaceuticals and other products. It is also used in Alkyd Resins (Glyptal) and to modify physical properties of Synthetic Resins. After preliminary determination one of the interested parties namely Nan Ya Plastics Corporation, Chinese Taipei submitted the following: -

“The Commission described the investigated product in paragraph 12.3.2 of the Preliminary Determination Report as, “Phthalic Anhydride (the investigated product) is an organic compound in white crystalline form, available in solid state, white flakes, with mild odour, slightly soluble in ether and hot water.” (emphasis added). This description somehow suggests that liquid PA is not within the scope of the investigation.”

12.4.3 During on-the-spot investigation at the premises of the Applicant it was verified by the officers of the Commission that Applicant has produced and consumed PA in liquid form. Its in-house consumption of liquid PA was for the manufacturing of DOP and Alkyd Resins. They clarified that both solid and liquid forms of PA are similar product, only difference is of physical form of the product. It is therefore, held that both liquid and solid PA are part of the domestic like product hence falls within the scope of domestic like product.

12.5 Like Product:

12.5.1 The like product is PA, produced and sold by the exporters/producers of the Exporting Countries in their domestic markets, and export markets to countries other than Pakistan and PA imported into Pakistan from countries other than the Exporting Countries. The like product is classified under PCT/ H.S heading No. 2917.3500. Major uses of the like product are identical to those of the investigated product and domestic like product.

12.5.2 In order to establish and verify the contention of the Applicant that the investigated product (PA produced from Naphthalene route and Ortho-xylene route) and the domestic like product are alike products, the Commission reviewed all the relevant information received/obtained from various sources including the Applicant, and the importers (i.e., Nimir Resins Limited, Lahore and Power Chemicals, Faisalabad) in the following terms: -

- i. The Applicant uses Ortho-xylene as basic raw material for the manufacture of the domestic like product (i.e., PA), while few Chinese exporters/producers use Naphthalene to produce investigated product (i.e., PA). Despite use of different raw materials, the manufactured finished product is the same i.e., PA. No exporter/ producer who produces PA from Naphthalene cooperated with the Commission in this investigation.
- ii. The PA produced from Naphthalene or Ortho-xylene is manufactured by similar process i.e., oxidation reaction. The product manufactured from these manufacturing processes is the same i.e., PA. The investigated product is mainly manufactured from Ortho-xylene in China too.
- iii. PA produced from Naphthalene or from Ortho-xylene have same uses. They are mainly used in polyester resins, dyestuffs, tyres and technical rubber products, a range of pharmaceuticals and other products. It is also used in Alkyd Resins (Glyptal) and to modify physical properties of Synthetic Resins. Major uses of the like product are identical to those of the investigated product and domestic like product.
- iv. Investigated product and domestic like product are classified under the same PCT/HS sub-heading 2917.3500.

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

12.6 Tariff Structure Applicable to PA industry:

The tariff structure applicable to the domestic PA industry is given in the Table-I below:

**Table-I
Customs Tariff Structure**

Description	PCT Heading	Customs Duty	2019-20		
			ACD	RD	FTA Duty Rates
Phthalic Anhydride	2917.3500	11%	2%	--	MY=20; LK=zero
Raw Material of PA					
Ortho-xylene	2902.4100	0%	2%	--	CN=0; MY=0; SAFTA=5; LK = zero

13. Period of Investigation

13.1 In terms of Section 36 of the Act, Period of Investigation (hereinafter referred to as “POI”) is:

- i. *“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.”*
- ii. *“for the purposes of an investigation of injury, the investigation period shall normally cover thirty-six months:*

“Provided that the Commission may at its sole discretion, select a shorter or longer period if it deems it appropriate in view of the available information regarding domestic industry and an investigated product”.

13.2 In terms of Section 36 of the Act, Period of Investigation (“POI”) fixed for the purposes of this investigation for dumping and injury are, as follows:

For determination of dumping:	From July 01, 2018 to June 30, 2019
For determination of injury:	From July 01, 2016 to June 30, 2019

14. Information/Data Gathering:

14.1 The Commission sent Exporter’s Questionnaire to all known exporters/producers from the Exporting Countries whose addresses were available with the Commission on December 26, 2019 for collection of data/information. The exporters/producers were asked to respond within 37 days of dispatch of the Questionnaire. On December 26, 2019, the Questionnaire was also sent to the Embassies of the Exporting Countries in Islamabad with a request to forward it to all exporters/ producers of the investigated product in the Exporting Countries.

14.2 The Commission received requests from two exporters namely Hanwha Solutions Corporation, South Korea, (Hanwha Solutions) and Panjin Read Chemical Co. Ltd, China (Panjin Chemical) on January 16, 2020 for extension in time-period for submission of data /information on Exporters Questionnaire till February 11, 2020. The Commission acceded to the requests of the exporters and granted them extension in time period for submission of information on Exporter’s Questionnaire till February 11, 2020. On February 17, 2020, the Commission received an email from Nan Ya Plastics Corporation, Chinese Taipei (Nan Ya Plastics) stating that it has received Exporter’s Questionnaire on February 04, 2020 and intends to cooperate with the Commission. The company further requested for a reasonable extension in time period for submission of data /information on the Exporter’s Questionnaire. The Commission granted extension till March 10, 2020.

14.3 The Commission received filled-in Exporter’s Questionnaires from Hanwha Solutions from South Korea, Panjin Chemical from China on February 11, 2020 and Nan Ya Plastics from Chinese Taipei on March 10, 2020. The Commission sent deficiency letters to Hanwha Solutions, Nan Ya and Panjin Chemical (details in para No.15).

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14.4 On December 24, 2019, questionnaire was also sent to Pakistani importers of the investigated product known to the Commission and these importers were asked to respond within 37 days of dispatch of the Questionnaires. Archroma Pakistan Limited, Nimir Resins Limited and Power Chemical Industries Limited, provided the data on importer questionnaire within the stipulated date i.e. January 30, 2020.

14.5 The Commission has access to database of import statistics of Pakistan Revenue Automation Limited (PRAL) the data processing arm of the Federal Board of Revenue, Government of Pakistan. For the purpose of this final determination, the Commission has used import data obtained from PRAL in addition to the information provided by the Applicant and the exporters/producers from the Exporting Countries.

14.6 The Commission invited the views/comments of the interested parties within 45 days of the initiation of investigation. Eight interested parties made comments /submitted information for the purposes of this investigation.

14.7 Thus, the Commission has sought from all available sources the relevant data and information deemed necessary for the purposes of determination of dumping and injury there from in this investigation.

15. Questionnaire(s) Response by Exporter /Producers from the Exporting Countries:

15.1 Questionnaire Response by M/s Hanwha Solutions Corporation, South Korea.

15.1.1 The Commission sent the Exporter's Questionnaire to Hanwha Solutions Corporation, South Korea on December 26, 2019 via email. It took over 15 months to get the final response along with documentary proof; detail is as under:

- i. On January 16, 2020, Hanwha Solutions requested for extension in time period for submission of data /information on Exporters Questionnaire till February 11, 2020. The Commission granted the extension to Hanwha Solutions till February 11, 2020 conveyed vide its letter dated January 20, 2020. Its response was received on February 11, 2020.
- ii. The information submitted by Hanwha Solutions in response to the questionnaire was analyzed at the Commission and certain deficiencies were identified. Accordingly, those data deficiencies were communicated to it vide the Commission's letter dated March 12, 2020.
- iii. Hanwha Solutions was asked to provide the deficient information/data no later than 10 days of issuance of the letter, to enable the Commission to consider and analyze the same for the purposes of this investigation. However, Hanwha Solutions requested for further extension of two-week time to provide the data. The Commission granted the extension for submission of data. The deficiency response was received on April 06, 2020. The information submitted by Hanwha Solutions in response to the questionnaire was analyzed at the Commission and again certain deficiencies were identified. Accordingly, those data deficiencies were communicated to it vide the Commission's letter dated April 20, 2020. The deficiency response was received on April 24, 2020. On March 03, 2021, Hanwha Solutions was asked to submit documentary evidence in support of information submitted. Hanwha Solutions requested for an extension of three weeks for submission of documentary evidence. The Commission granted extension till March 17, 2021. Documentary evidence was submitted by Hanwha Solutions on March 17, 2021. Information submitted by Hanwha Solutions has been used for determination of its individual dumping margin.

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- iv. According to the information provided in response to the questionnaire, presently, the legal name of the respondent is Hanwha Solutions Corporation. The legal form of Hanwha Solutions is joint-stock company on the basis of the commercial law of the Republic of Korea. However, legal name of the company was Hanwha Chemical. Hanwha Chemical has merged with Hanwha Q Cells and Advanced Materials on January 2, 2020. Hanwha Chemical was also a joint-stock company on the basis of the commercial law of the Republic of Korea.

15.2 Questionnaire Response by Nan Ya Plastics Corporation, Chinese Taipei

15.2.1 The Commission sent the Exporter's Questionnaire to Nan Ya Plastics Corporation, Chinese Taipei on December 26, 2019 via email and the final response along with documentary proof was received from Nan Ya Plastics Corporation on April 09, 2021; detail is as under:

- i. On February 17, 2020, the company informed that it did not receive Exporter's Questionnaire. The company requested for electronic copy of the Exporter's Questionnaire and reasonable extension in time period for submission of data/information. On February 29, 2020, the Exporter's Questionnaire was sent to the company and extension till March 10, 2020 was granted as well. The company submitted its reply on March 11, 2020. The response was deficient and data deficiency was communicated on March 12, 2020. The reply to deficiency letter was received on March 27, 2020.
- ii. According to the information provided in response to the questionnaire, Nan Ya Plastics was incorporated on August 22, 1958. The company is engaged in the manufacture and sale of plastic products, polyester fibers, petrochemical products and electronic materials. The company has gone through several capital increases and established many divisions. Currently, the company has plastics, fiber, petrochemical, electronics and engineering divisions.
- iii. The information submitted by Nan Ya Plastics in response to the questionnaire was analyzed at the Commission and certain deficiencies were identified. Accordingly, those data deficiencies were communicated to it vide the Commission's letter dated April 07, 2020.
- iv. Nan Ya Plastics responded on April 10, 2020. The reply dated April 10, 2020 was analyzed and deficiencies were communicated to Nan Ya Plastics on April 17, 2020. Reply to deficiencies was received on April 22, 2020. On March 03, 2021 and March 12, 2021, Nan Ya Plastics was asked to submit documentary evidence in support of information submitted. On March 22, 2021, Nan Ya Plastics acknowledged the receipt of letter dated March 03, 2021 and requested the extension for submission of documentary evidence by April 10, 2021. The Commission granted extension till April 10, 2021. Documentary evidence was submitted by Nan Ya Plastics on April 09, 2021. Information submitted by Nan Ya Plastics is used for determination of its individual dumping margin.

15.3 Questionnaire Response by M/s Panjin Read Chemical Co. Ltd, China.

15.3.1 The Commission sent the Exporter's Questionnaire to M/s Panjin Read Chemical Co. Ltd, China on December 26, 2019 via email and the company could not provide complete information.

- i. Panjin Chemical applied to the Commission, in its letter dated January 16, 2020, for extension of time period for submission of response to the Exporter Questionnaire till February 11, 2020. The

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Commission granted the extension vide its letter dated January 20, 2020 after considering the reasons given in the request for extension till February 11, 2020. Its response was received in the Commission on February 11, 2020. Response was analyzed and certain data deficiencies were found, which were communicated to the company on March 12, 2020, giving it seven days for submission of reply. The company did not reply. On April 08, 2020, the Commission issued a reminder that in case the company does not provide information by April 13, 2020, it will be constrained to make preliminary and final determination on the basis of best information available. The company did not reply afterwards.

- ii. Therefore, the Commission has treated Panjin Chemical as non-cooperating exporter.

16. Verification of the Information

16.1 In terms of Sections 32(4) and 35 of the Act and Rule 12 of the Rules, during the course of an investigation, the Commission shall satisfy itself as to the accuracy of the information provided to it and for this purpose verify the information provided by mainly the Applicant as well as exporters/ producers from the Exporting Countries.

16.2 In order to verify the information/data submitted by the Applicant, the officers of the Commission conducted on-the-spot investigation at the office and the plant of the Applicant from August 11-13, 2020. Report of on-the-spot investigation was provided to the Applicant in confidential as well as non-confidential versions. Non-confidential version of on-the-spot investigation report was made available to other interested parties by placing the same in the public file.

16.3 On-the-spot investigation at the premises of cooperating exporters/ producers could not be conducted due to travel restriction imposed in the wake of COVID-19. However, as stated earlier, to determine the accuracy of the information, the Commission asked the cooperating exporters/ producers to submit documentary evidence in support of information submitted.

17. Public File

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

18. Confidentiality

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

18.2 The Applicant and other interested parties have requested to keep confidential the information, which

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is by nature confidential in terms of Section 31 of the Act. 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.

18.3 On the basis of requests made by the Applicant and interested parties, the Commission has determined the confidentiality in light of Section 31 of the Act 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. Therefore, the Commission kept all such information confidential for which the Applicant and other interested parties made a request to keep it confidential.

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

19. Preliminary Determination

19.1 The Commission made preliminary determination in this investigation on June 05, 2020 and in terms of Section 37 of the Act a notice of preliminary determination was published on June 05, 2020 in official Gazette of Pakistan and in two widely circulated national newspapers (one English “The Nation” and one Urdu Language “Daily Express”) notifying preliminary determination. The Commission concluded that the imposition of provisional antidumping duties on dumped imports of the investigated product from the Exporting Countries is not necessary to prevent injury being caused to the domestic industry during the course of investigation till final determination, in accordance with Section 43 of the Act.

19.2 The Commission sent copy of the notice of preliminary determination to all registered interested parties on June 08, 2020. The notice of preliminary determination along with non-confidential version of the report of preliminary determination was also posted on the Commission’s official website.

20. Disclosure Meetings after Preliminary Determination

The exporter/producer from South Korea and Chinese Taipei for whom individual dumping margins were determined in the preliminary determination requested for disclosure of dumping calculations in accordance with Rule 11 of the Rules. On July 27, 2020 and July 28, 2020, the Commission provided disclosure documents explaining dumping calculation and methodology to Nan Ya Plastics, Chinese Taipei and Hanwha Solutions, South Korea respectively. The exporter/ producer namely Nan Ya Plastics has submitted its views/ comments on dumping calculations, which have been duly considered by the Commission during dumping calculations in the final determination.

21. Hearing

In response to notice of preliminary determination dated June 05, 2020, interested party requested for a hearing in this investigation in accordance with Rule 14 of the Rules. The hearing was held on February 09, 2021 to obtain the views/comments of the interested parties. Submissions of the interested parties during the hearing and record note of the hearing are made available to the interested parties by placing them in the public file.

22. Disclosure of Essential Facts

22.1 In terms of Rules 14(8) of the Rules, and Article 6.9 of Agreement on Anti-dumping the Commission disclosed essential facts to the interested parties in this investigation. In this context a

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Statement of Essential Facts (“SEF”) was dispatched on April 21-22, 2021 to all interested parties including the known exporters/ producers from the Exporting Countries, the Applicant, known Pakistani importers, and to the Embassies of the Exporting Countries.

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

- i) The Applicant
- ii) Berger Paints Pakistan Limited.

22.3 The views/comments submitted by the interested parties in response to the SEF were duly considered by the Commission while making this final determination. The views/comments of the interested parties germane to this investigation and response of the Commission are provided at Annexure-I of this report.

B. DETERMINATION OF DUMPING

23. Dumping

In terms of Section 4 of the Act 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”.

24. Normal Value

24.1 In terms of Section 5 of the Act “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”.

24.2 Further, Section 6 of the Act 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:”.

24.3 Ordinary course of trade is defined in Section 7 of the Act as follows:

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

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

“(b) in substantial quantities; and

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

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

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

“(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.”

25. Export Price

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

26. Dumping Determination:

26.1 As stated earlier (paragraph 09 supra) the Applicant identified 18 exporters/producers from the Exporting Countries involved in alleged dumping of the investigated product. The Commission sent Exporter’s Questionnaire to all known exporters/producers of the Exporting Countries on December 26, 2019 for collection of data and information. Questionnaire was also provided to the respective Embassies of the Exporting Countries in Islamabad with a request to forward it to all exporters/producers of the investigated product based in their countries to submit information to the Commission.

26.2 Only three exporter/producers namely Hanwha Solutions, South Korea, Nan Ya Plastics, Chinese Taipei and Panjin Chemical, China replied in response to the exporter/producer questionnaire. The information provided by Panjin Chemical, China was not sufficient for calculation of individual dumping margin. Individual dumping margin in this investigation has been determined on the basis of the information provided by the other two cooperating exporters/producers. A residual dumping margin has been determined for all other non-cooperating exporters/producers of the Exporting Countries in terms of Section 32 of the Act and Schedule to the Act.

27. Determination of Normal Value:

27.1 The Commission received information on cost to make and sell of the like product from Hanwha Solutions, South Korea and Nan Ya Plastics, Chinese Taipei. The information submitted by these exporters/producers has been used for determination of normal value. Normal value for other non-cooperating exporters/producers has been determined on the basis of Best Information Available in accordance with Section 32 and Schedule to the Act.

27.2 Determination of Normal Value for Hanwha Solutions, Korea

27.2.1 Normal value for Hanwha Solutions Corporation is determined on the basis of the information provided by it on its domestic sales during the POI.

27.2.2 As per information provided by Hanwha Solutions, it exported PA to Pakistan during the months of July, December 2018 and January 2019 only. As the prices of PA fluctuated during the POI, the Commission determined normal value on the basis of monthly weighted average prices at which PA was sold in Korea to be compared with monthly weighted average export price.

27.2.3 Hanwha Solutions sold *** MT of PA in its domestic market during the aforementioned months of the POI. It sold like product to related and un-related customers in its domestic market. Out of total domestic sales, sales of *** MT were made through related party namely Hanwha Corporation. Sales to related party were at arm's length therefore, they were included in the calculation of normal value. For determination of arm's length, the Commission examined the per unit price charged to related and unrelated customers. Section 7 of the Act requires the Commission to determine ordinary course of trade for domestic sales to determine normal value. Investigation has revealed that out of total *** MT of domestic sales, *** MT were sold at loss, while ***MT were the profitable sales. Below cost sales were in substantial quantities in terms of Section 7(2) of the Act though below costs sales were over an extended period of time. Furthermore, its prices provided for recovery of all costs within a reasonable period of time. Thus, in determination of normal value the sales at loss were considered as made in ordinary course of trade and have been taken into account for calculation of normal value in terms of Section 7 of the Act.

27.2.4 According to Hanwha Solutions, during the POI, it sold like product in its domestic market on credit at delivered basis. To arrive at the ex-factory price, Hanwha Solutions has claimed adjustments on account of credit cost, inland freight and packing cost. The Commission asked Hanwha Solutions to submit documentary evidence regarding some selected domestic sales (sample) transactions and corresponding adjustments claimed to arrive at ex-factory level. Hanwha Solutions submitted requisite information and documentary evidence, which was examined by the Commission. The Commission has accepted these adjustments for the purposes this investigation. Normal value at ex-factory level for the like product has been worked out by deducting values of these adjustments. Summary calculation of normal value is placed at Annexure-II.

27.3 Determination of Normal Value for Nan Ya Plastics Corporation, Chinese Taipei

27.3.1 Normal value for Nan Ya Plastics has been determined on the basis of the information provided by it on its domestic sales during the POI.

27.3.2 As per information provided by Nan Ya, it exported PA to Pakistan during the months of July, August and September 2018 only. As the prices of PA fluctuated during the POI, the Commission determined monthly weighted average normal value for these months to be compared with monthly weighted average export price.

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27.3.3 Apart from that Nan Ya Plastics exported only solid PA to Pakistan, whereas it sold PA in solid as well as liquid form in its domestic market. Furthermore, liquid PA is sold in bulk while the transaction size of solid PA can be more flexible. On the basis of above, for like-to-like comparison of export price and normal value, only domestic sales of solid PA were used for determination of normal value. On the basis of above, the Commission determined normal value for the months in which PA was exported to Pakistan on the basis of solid PA sold in domestic sales.

27.3.4 Section 7 of the Act requires the Commission to determine ordinary course of trade for domestic sales to determine normal value. Investigation has revealed that all domestic sales of Nan Ya Plastics were profitable sales. Thus, while making determination of normal value all domestic sales made during July, August and September 2018 have been taken into account in terms of Section 7 of the Act.

27.3.5 According to Nan Ya Plastics, during the POI, it sold like product in its domestic market on credit at delivered basis. To arrive at ex-factory price, Nan Ya claimed adjustments on account of credit cost, rebate, inland freight and packing cost. Rebate is provided to those domestic customers who return packing material to the Company. The Commission asked Nan Ya Plastics to submit documentary evidence regarding some selected domestic sales (sample) transactions and corresponding adjustments claimed to arrive at ex-factory level. Nan Ya Plastics submitted requisite information and documentary evidence, which was examined by the Commission. Normal value at ex-factory level for the like product has been worked out by deducting values of these adjustments. Summary calculation of normal value for these types is placed at Annexure-III.

27.4 Determination of Normal Value for All Other Exporters/Producers from China, Chinese Taipei, South Korea and Russia

27.4.1 As stated earlier, none of the exporters/producers of the investigated product from China and Russia provided requisite information in response to the Exporter's Questionnaire, therefore, normal value of the investigated product for the purposes of this investigation has been determined on the basis of the Best Information Available in terms of Section 32 of the Act and Article 6.8 and Annex II of the Agreement on Antidumping.

27.4.2 It is important to point out here that the Commission informed the exporters/producers from China, Chinese Taipei, South Korea and Russia of reliance by the Commission on the Best Information Available in its letters of March 02, 2020, in case they do not provide the requisite information to the Commission.

27.4.3 Normal value for all non-cooperating exporters /producers from China and Russia has been constructed on the basis of cost of production in China and Russia plus a reasonable amount for administrative, selling and general costs and profits. The methodology used for construction of normal value is given below:

- a) For locally purchased raw and packing material, actual cost of raw/packing materials of the Applicant has been deflated to the C & F prices in International Market after deducting the import taxes/ charges/incidentals from the landed cost/purchase prices of the raw and packing material.
- b) For imported raw materials, export price of Ortho-xylene prevailing in China and Russia has been used by adjusting for ocean freight, insurance and handling cost. For obtaining the prices of Ortho-xylene, trade map data has been used.

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- c) Labor hours of domestic industry to produce one MT of PA have been multiplied by labor rate applicable in China and Russia.
- d) Electricity cost has been calculated by using actual energy consumption required to produce one MT of PA. The same has been multiplied with electricity rate prevailing in China and Russia.
- e) Variable overhead cost of domestic industry has been converted into equivalent fuel/petrol consumption. The same has been multiplied by fuel/petrol rate application in China and Russia to arrive at variable overhead cost in China and Russia.
- f) Other fixed charges including depreciation of domestic industry have been converted into US\$ on per ton basis.
- g) Methodology explained in Para (a) to Para (f) above gives the per ton production cost of PA.
- h) Selling and Admin expenses have been converted to US\$ on per ton basis.
- i) Financial charges are calculated by using actual financial charges of the Applicant and the same has been changed by difference between interest rate of China and Russia and Pakistan.
- j) Profit Mark up of 5% has been applied on cost to make & sell.

27.4.4 As stated earlier, exporters from Chinese Taipei and South Korea cooperated with the Commission by providing necessary information required for calculation of individual dumping margins. The Commission is of the view that information provided by the cooperating exporters is preferred, for the calculation of normal value for non-cooperating exporters of Chinese Taipei and South Korea, as compared to the information provided by the Applicant in the application. After taking into account the level of cooperation from Chinese Taipei and South Korea, the Commission has decided, to base calculation of normal value, on the cost information provided by the cooperating exporters. For the purposes of calculation of normal value, cost to make and sell of the cooperating exporters has been used. A reasonable profit of 5% of cost to make and sell has been added. Calculation of adjusted normal value is at Annexure – IV. After adjustments in case of China and Russia, Normal value at ex-factory level for the Exporting Countries works out as follows:

Table-II
Normal Value at Ex-factory Level

Country Name	US\$/MT
Russia	100.00
China	108.39
South Korea – excluding Hanwha Corporation	108.95
Hanwha Solutions Corporation, South Korea	96.06
Chinese Taipei – excluding Nan Ya Plastics	102.78
Nan Ya Plastics Corporation, Chinese Taipei	112.22

Note: For the purpose of confidentiality actual figures have been indexed w.r.t normal value at ex-factory level for Russia as base.

28. Determination of Export Price

28.1 The Commission received information on export sales of the investigated product from Hanwha Solutions, South Korea and Nan Ya Plastics, Chinese Taipei in response to the Exporter's Questionnaires sent to exporters/producers from the Exporting Countries. The information submitted by Hanwha Solutions and Nan Ya Plastics has been used for determination of export price as discussed below. Export price for non-cooperating exporters/producers has been determined on the basis of Best Information Available in accordance with Section 32 and Schedule to the Act.

28.2 Determination of Export Price for Hanwha Solutions, South Korea

28.2.1 Export price for Hanwha Solutions is determined on the basis of the information provided by it on its export sales of the investigated product to Pakistan made during the POI.

28.2.2 According to the information, Hanwha Solutions exported the investigated product to Pakistan during July, December 2018 and January 2019 of the POI. Its exports of the investigated product to Pakistan during the POI were ***MT. All export sales to Pakistan during the POI were to un-related customers.

28.2.3 During the POI, Hanwha Solutions exported investigated product mostly on FOB price basis. However, few sales were made on CFR terms. To arrive at the ex-factory level, it has reported adjustments on account of inland freight, ocean freight, handling charges and packing cost. The Commission asked Hanwha to submit documentary evidence regarding export sales to Pakistan and adjustments claimed to arrive at ex-factory level. Hanwha submitted requisite information and documentary evidence, which was examined by the Commission. It was noted that there were minor discrepancies in the amounts of handling cost and ocean freight reported in the questionnaire response. The amount of handling charges and ocean freight appearing on the copies of invoices (provided as documentary evidence of adjustments) were taken into account. The export price at ex-factory level has been worked out by deducting values reported for accepted adjustments from the gross value of sales transactions. Summary calculation of export price is Annexure-V.

28.3 Determination of Export Price for Other Non-cooperating Exporters from South Korea.

28.3.1 Export price for exporters from South Korea other than Hanwha Solutions, who did not cooperate with the Commission in providing information was determined on the basis of Best Information Available in accordance with Section 32 of the Act. Information obtained from PRAL has been used for the purposes of determination of export price for non-cooperating exporters from South Korea. This is the only information available with the Commission on export sales of the investigated product by the non-cooperating exporters from South Korea.

28.3.2 Values in PRAL's information are reported at C&F level. The C&F export price is adjusted to the ex-factory level. For this purpose, adjustments on account of inland freight, ocean freight, handling charges and packing cost have been made in the C&F price. Information submitted by Hanwha Solutions on these adjustments have been used for non-cooperating exporters/producers from South Korea. Calculation of export price for non-cooperating exporters/producers from South Korea is at Annexure-VI.

28.4 Determination of Export Price for Nan Ya Plastics Corporation, Chinese Taipei

28.4.1 Export price for Nan Ya Plastics is determined on the basis of the information provided by it on its export sales of the investigated product to Pakistan made during the POI.

28.4.2 According to the information, Nan Ya Plastics exported the investigated product to Pakistan during the months of July, August, September 2018 of the POI. Its exports of the investigated product to Pakistan during the POI were ***MT. All export sales to Pakistan during the POI, were made to un-related customers.

28.4.3 Nan Ya Plastics exported investigated product on LC basis during the POI. To arrive at the ex-factory level, it has reported adjustments on account of credit cost, rebate, inland freight, ocean freight, handling charges, harbor service fee, trade promotion fee, bank charges and packing cost. The Commission asked Nan Ya Plastics to submit documentary evidence regarding export sales to Pakistan and adjustments claimed to arrive at ex-factory export price. In response to Commission's letter, Nan Ya Plastics has provided the documentary evidence regarding adjustments claimed in export price. The export price at ex-factory level has been worked out by deducting values reported for adjustments from the gross value of sales transactions. Summary calculation of export price is at Annexure-VII.

28.5 Determination of Export Price for Other Non-cooperating Exporters from Chinese Taipei.

28.5.1 Export price for exporters from Chinese Taipei other than Nan Ya Plastics, who did not cooperate with the Commission in providing information was determined on the basis of Best Information Available in accordance with Section 32 of the Act. Information obtained from PRAL has been used for the purposes of determination of export price for non-cooperating exporters from Chinese Taipei. This is the only information available with the Commission on export sales to Pakistan of the investigated product by the non-cooperating exporters from Chinese Taipei.

28.5.2 Values in PRAL's information are reported at C&F level. The C&F export price adjusted to the ex-factory level. For this purpose, adjustments on account of credit cost, rebate, inland freight, ocean freight, handling charges, harbor service fee, trade promotion fee, bank charges and packing cost have been made in the C&F price. Information submitted by Nan Ya Plastics on these adjustments have been used for non-cooperating exporters/ producers from Chinese Taipei. Calculation of export price for non-cooperating exporters/producers from Chinese Taipei is placed at Annexure-VIII.

28.6 Determination of Export Price for All Other Non-Cooperating Exporters from China and Russia.

28.6.1 Export price for non-cooperating exporters from China and Russia has been determined on the basis of Best Information Available in accordance with Section 32 of the Act. Information obtained from PRAL has been used for the purposes of determination of export price for non-cooperating exporters from China and Russia. This is the only information available with the Commission on export sales to Pakistan of the investigated product by the non-cooperating exporters from China and Russia.

28.6.2 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, adjustments on account of credit cost, rebate, inland freight, ocean freight, handling charges, harbor service fee, trade promotion fee, bank charges and packing cost have been made in the C&F price. Information submitted by Nan Ya on these adjustments has been used for non-cooperating exporters/producers from China and Russia. Calculation of export price for non-cooperating exporters/producers from China and Russia is placed at Annexure-IX.

29. Dumping Margin

29.1 The Act defines “dumping margin” in relation to a product to mean “*the amount by which its normal value exceeds its export price*”. In terms of Section 14(1) of the Act the Commission shall determine an individual dumping margin for each known exporter or producer of an investigated product. In this final determination, the Commission has determined individual dumping margin for the exporters/producers who cooperated with the Commission and supplied necessary information and the antidumping duty rate for the exporters /producers has been calculated on the basis of individual dumping margin. However, residual dumping margins/antidumping duty rates have been determined for non-cooperating exporters/producers of the Exporting Countries.

29.2 Section 12 of the Act 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.

29.3 The Commission has also complied with the requirements of Section 11 of the Act, which states that “*the Commission shall, where possible, compare export price and normal value 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*”.

29.4 Taking into account all requirements set out above, the dumping margins have been determined as follows. Calculations of dumping margin are at Annexure-X:

**Table-III
Dumping Margin**

Country	Exporter Name	Dumping margin as % of	
		Export price	C & F price
South Korea	Hanwha Solutions	9.95	9.57
	All other exporters/producers	18.15	17.25
Chinese Taipei	Nan Ya Plastics	21.07	19.09
	All other exporters/producers	27.35	24.61
China	All exporters/producers	19.52	17.76
Russia	All exporters/producers	18.04	16.31

30. De minimis Dumping Margin and Negligible Volume of Dumped Imports

30.1 In terms of Section 41(2) of the Act “*an investigation shall be immediately terminated if Commission determines that the dumping margin is negligible or that volume of dumped imports, actual or potential, or injury is negligible.*”

30.2 Section 41(3) of the Act states that the dumping margin shall be considered to be negligible if it is less than two percent, expressed as a percentage of the export price. Dumping margins for the dumped imports of the investigated product, set out in paragraph 28.4 supra, appear to be above negligible (*de minimis*) level.

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30.3 As regards the volume of dumped imports, Section 41(3) of the Act 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 a like product unless imports of the investigated product from all countries under investigation, which individually account for less than three percent of the total imports of a like product collectively account for more than seven per cent of the imports of like product. The information/data on dumped imports of the investigated product and other imports of PA has been obtained from PRAL. Volume of dumped imports of the investigated product and PA imported from other sources during the POI (July 01, 2018 to June 30, 2019) is given in table below:

Table-IV
Volume of Imports of PA during the POI

Country	Volume of Imports in: Percentage
China	17.75
Chinese Taipei	10.36
Korea	45.10
Russia	17.75
Other Sources	9.04
Total	100.00

Source: PRAL and cooperating exporters

30.4 On the basis of above information, the Commission has determined that the volume of dumped imports of the investigated product from the Exporting Countries was well above the negligible threshold (less than three percent of volume of total imports of the like product) during the POI.

31. Cumulation of Dumped Imports

31.1 As per Section 16 of the Act:

where imports of a like product from more than one country are the subject of simultaneous investigation under this Act, 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*
- (b) a cumulative assessment of the effects of the imports is appropriate in the light of*
 - (i) the conditions of competition between the imports; and*
 - (ii) the conditions of competition between the imports and a domestic like product.*

31.2 Investigation by the Commission has revealed that the volume of dumped imports during the POI from the Exporting Countries was above the negligible quantity. Furthermore, dumping margins for each country under investigation was also more than the negligible amount.

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31.3 It is evident from the weighted average export price charged by the exporters during the POI that there was a price competition between the imports of the investigated product exported from the Exporting Countries. Weighted average export price of the investigated product during the POI from the Exporting Countries is given in a table below:

Table-V
Weighted Average C&F Price of the Investigated Product

Country	Weighted Average C&F Price (US\$/MT)
China	106.37
Chinese Taipei	100.44
South Korea	103.07
Russia	100.00

Sources: PRAL

Note: For the purpose of confidentiality actual figures have been indexed w.r.t weighted average C&F price for Russia as base.

31.4 The investigation revealed that there was a competition between investigated product and the domestic like product in terms of price, market share, and sales etc. Conditions of competition between imports of the investigated product and the domestic like product are discussed in detail in paragraphs 33 to 45 infra.

31.5 For the reasons given above, the Commission has cumulatively assessed the effects of dumped imports from the Exporting Countries on the domestic industry in following paragraphs:-

C. INJURY TO DOMESTIC INDUSTRY

32. Determination of Injury

32.1 Section 15 of the Act sets out the principles for determination of material injury to the domestic industry in the following words:

“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...”

32.2 Section 15 of the Act further provides that:

“No one or several of the factors identified shall be deemed to necessarily give decisive guidance and the Commission may take into account such other factors as it considers relevant for the determination of injury”.

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32.3 The Commission has taken into account all factors in order to determine whether the Applicant suffered material injury during the POI. Material injury to the domestic industry has been analyzed in the following paragraphs in accordance with Part VI of the Act.

33. Domestic Industry

33.1 Section 2(d) of the Act defines domestic industry as:

“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, except that when any such domestic producers are related to the exporters or importers, or are themselves importers of the allegedly dumped investigated product in such a case “domestic industry” may mean the rest of the domestic producers”. Explanation.- For the purposes of this clause, producers shall be deemed to be related to exporters or importers only if;

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

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

33.2 As stated in Para 7.3 supra, the domestic industry manufacturing PA comprises of one unit i.e. the Applicant. The Applicant is neither related to any importer or exporter, nor it imported PA itself during the POI. Therefore, the Applicant is eligible to apply for anti-dumping investigation.

33.3 The Applicant represents 100% of the domestic production of PA by the domestic industry. Thus, the standing requirements as given in section 24 of the Act are met and it has been determined that the application was made by or on behalf of the domestic industry.

33.4 On the basis of the above information and analysis, for the purposes of this investigation, the Applicant is considered as the “domestic industry” in terms of Section 2(d) of the Act.

33.5 The Commission has taken into account all factors in order to determine whether domestic industry suffered material injury during the POI. Material injury to the domestic industry has been analyzed in the following paragraphs in accordance with Part VI of the Act.

34. Volume of Dumped Imports

Facts

34.1 With regard to the volume of dumped imports, in terms of Section 15(2) of the Act, the Commission considered whether there has been a significant increase in volume of dumped imports, either in absolute terms or relative to the domestic production or consumption of the domestic like product manufactured by the domestic industry during the POI.

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34.2 In order to assess the impact of volume of dumped imports of the investigated product in absolute terms, the information obtained from PRAL and cooperating exporters has been used. Following table shows the change in imports of the investigated product in absolute terms during the POI:

Table-VI
Absolute change in Dumped Imports

Period	Volume of Dumped Imports (MT)	Increase/ (Decrease) (MT)	Increase/ (Decrease) (%)
2016-17	100	---	---
2017-18	98	-2	-1.7
2018-19	112	14	13.85

Source: PRAL and cooperating exporters. Year is from July to June

Note: For the purpose of confidentiality actual figures have been indexed w.r.t volume of dumped imports for 2016-17 as base.

Analysis

34.3 It appears from the above table that the dumped imports decreased by 1.70 percent in the 2017-18 over the imports of 2016-17. However, the imports of the investigated product increased by 13.85 percent during 2018-19 over 2017-18.

34.4 Above information shows that the volume of dumped imports of the investigated product increased in absolute terms during the last year of the POI. Although dumped imports slightly decreased by 1.70 percent during the second year of the POI, they increased significantly by 13.85 percent during 2018-19.

35. Price Effects

35.1 Effect of dumped imports on sales price of domestic like product in the domestic market has been examined to establish whether there was significant price undercutting (the extent to which the price of the investigated product was lower than the price of the domestic like product), price depression (the extent to which the domestic industry experienced a decrease in its selling prices of domestic like product over time), or price suppression (the extent to which increased cost of production could not be recovered by way of increase in selling price of the domestic like product). Effects of dumped imports on price of the domestic like product are analyzed in following paragraphs:

35.2 Price Undercutting

Facts

35.2.1 Weighted average ex-factory price of the domestic like product has been calculated from the information submitted by the Applicant on quantity and value of sales during the POI. Landed cost of the investigated product is calculated from the information obtained from PRAL and the cooperating exporters. Comparison of weighted average ex-factory price of the domestic like product with the weighted average landed cost of the investigated product during the POI is given in following table:

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Table-VII
Calculation of Price Undercutting (Rs./MT)

Period	Average Domestic Price	Average Landed Cost of Dumped Imports	Price Undercutting	Price Undercutting (%)
2016-17	100	98	3	2.81%
2017-18	116	111	4	3.71%
2018-19	142	136	5	3.83%

Source: the Applicant and PRAL.

Year is from July to June.

Note: For the purpose of confidentiality actual figures have been indexed w.r.t average domestic price for 2016-17 as base.

Analysis

35.2.2 The above table shows that weighted average landed cost of the investigated product imported from the Exporting Countries was lower than ex-factory price of the domestic like product during the POI i.e. 2016-17, 2017-18, and 2018-19. Resultantly, the landed cost of investigated product undercut prices of the domestic like product at the rate of 2.81 percent, 3.71 percent and 3.83 percent respectively. The price undercutting has an increasing trend during the POI.

35.3 **Price Depression****Facts**

35.3.1 The weighted average ex-factory price of the domestic like product of the PA for the POI is given in the following table:

Table-VIII
Ex-factory Price (Rs./MT)

Period	Domestic Average Price (Rs/MT)	Price Depression (%)
2016-17	100	---
2017-18	116	---
2018-19	142	---

Source: The Applicant. Year is from July to June.

Note: For the purpose of confidentiality actual figures have been indexed w.r.t domestic average price for 2016-17 as base.

Analysis

35.3.2 The above table shows that ex-factory sales price of the domestic like product increased by Rs.***/MT in 2017-18 and by Rs.***/MT in 2018-19. It appears from the above facts that the domestic industry has not faced price depression during the POI.

35.4 **Price Suppression****Facts**

35.4.1 Information/data submitted by the Applicant on weighted average cost to make and sell and ex-factory price of the domestic like product during the POI is given in the following table:

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Table-IX
Cost to Make and Sell and Ex-factory Price of the Domestic Like Product

Period	Average Cost to Make & Sell (Rs/MT)	Domestic Average Price (Rs/MT)	Increase/ (Decrease) in Average Cost to Make and Sell	Increase/ (Decrease) in Average Domestic Price	Price Suppression	Price Suppression (%)
2016-17	100	114	---	---	---	---
2017-18	103	131	3	18	---	---
2018-19	155	161	52	30	23	14.21

Source: the Applicant. Year is from July to June.

Note: For the purpose of confidentiality actual figures have been indexed w.r.t average cost to make and sell for 2016-17 as base.

Analysis

35.4.2 As evident from the table above, the Applicant’s average Cost to Make & Sell increased significantly by Rs.***/MT in 2018-19. Primary reason for increase in cost to make and sell during the year 2018-19 over 2017-18 is increase in price of Ortho-xylene which is major raw material for manufacturing of PA. As per figures obtained from PRAL data, import prices of Ortho-xylene increased from US\$ ***/MT in the year 2017-18 to US\$ ***/MT in the year 2018-19. Average C&F price at which the Applicant imported Ortho-xylene increased from US\$***/MT in 2017-18 to US\$***/MT in 2018-19. Therefore, the Applicant suffered price suppression during 2018-19, as it was not able to recover the increase in cost by way of increase in price.

36. Effects on Market Share

Facts

36.1 The total domestic demand of the PA in Pakistan is met through local production and imports. The sales made by the domestic industry and the market share of domestic industry in the domestic market during the last three years are given in the table below:

Table-X
Market Share

Year	Share of Local Industry in Domestic Market				Share of Dumped Imports in Domestic Market		Share of Other Imports in Domestic Market		Total Domestic Market	
	External Sales		In house Consumption							
	MT	%	MT	%	MT	%	MT	%	MT	% Change
2016-17	100	56.46	36	20.6	34	19.09	7	3.84	177	--
2017-18	118	59.85	38	19.25	33	16.81	8	4.09	198	11.65
2018-19	90	53.38	37	21.96	38	22.43	4	2.23	169	-14.69

Source: the Applicant and PRAL. Year is from July to June

Note: For the purpose of confidentiality actual figures have been indexed w.r.t external sales of domestic industry for the year 2016-17 as base.

Analysis

36.2 The analysis of the above table reveals that the domestic market of PA expanded by 11.65 percent (***) during the 2017-18 as compared to 2016-17. However, domestic market of PA shrunk by 14.69 percent (***) during 2018-19 as compared to 2017-18, due to reduction in the production of PA user industries i.e. DOP, Plasticizers & Resins, Synthetic leather etc. in 2018-19. It may be noted that there was contraction in total domestic market, but that contraction hurt the external sales of the domestic industry and imports from other countries. It is evident from the table above that share of dumped imports increased whereas share of imports from other sources decreased. It appears that burden of contraction was borne, primarily, by domestic industry. In house consumption and imports from dumped sources were not affected by such contraction. It may also be noted that share of domestic industry decreased during the POI for dumping.

37. Effects on Sales

Facts

37.1 Sales of the domestic like product are given in the following table:

Table-XI
Sales of the Applicant (MT)

Year	Sales of the Applicant		Internal consumption	Increase/ (Decrease)
	Domestic	Exports		
2016-17	100	1	36	---
2017-18	118	---	38	18
2018-19	90	---	37	-28

Source: the Applicant. Year is from July to June
Note: For the purpose of confidentiality actual figures have been indexed w.r.t domestic sales of domestic industry for the year 2016-17 as base.

Analysis

37.2 The above table shows that the domestic sales of the Applicant increased by 18.36 percent during the year 2017-18 as compared to year 2016-17. However, domestic sales of the Applicant decreased by 23.91 percent in 2018-19 as compared to previous year. It may be noted that internal consumption of the Applicant did not fluctuate considerably during the POI for injury.

38. Effects on Production and Capacity Utilization

Facts

38.1 The installed capacity, quantity produced and the capacity utilization of the Applicant during the POI are provided in following table:

Table-XII
Installed Capacity and Capacity Utilization

Year*	Capacity Utilization (%)
2016-17	83.31
2017-18	88.86
2018-19	74.13

Source: the Applicant. Year is from July to June.

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Analysis

38.2 The capacity of Applicant unit remained the same during the POI i.e. ***MT per annum. The above table shows that the production of the Applicant increased by ***MT during 2017-18 as compared to 2016-17 and capacity utilization increased by 5.55 percent. However, production of the Applicant decreased by ***MT during the year 2018-19 as compared to 2017-18 and consequently the capacity utilization decreased by 14.73 percent.

39. Effects on Inventories

Facts

39.1 The Applicant provided data relating to its inventories of the domestic like product during the POI. Data for opening and closing inventories for the domestic like product of the POI is given in the following table:

**Table-XIII
Inventories (MT)**

Year	Opening Inventory	Production	Sales		Internal Consumption	Loss due to fire	Closing Inventory	Change in Inventory
			Domestic	Export				
2016-17	100	9,467	6,646	80	2,425	-	415	315
2017-18	415	10,098	7,866	-	2,530	6	111	(304)
2018-19	111	8,423	5,985	-	2,462	-	88	(23)

Source: the Applicant. Year is from July to June

Note: For the purpose of confidentiality actual figures have been indexed w.r.t opening inventory for the year 2016-17 as base.

Analysis

39.2 The above table shows that domestic industry did not suffer material injury on account of inventories as inventories of the domestic like product decreased during the POI for injury.

40. Effects on Profit/Loss

Facts

40.1 Profit/loss during the POI has been worked out by adding up the profit from sale of by product i.e. Maleic Anhydride (MA) into operating profit of PA. Furthermore, the internal transfers of PA to other unit have been valued at cost to make and sell minus selling & distribution expenses and packing cost. This treatment is made due to the reason that internal transfer of PA to other products has been made through pipelines installed in the factory. There are no packing and selling expenses incurred on internal transfer of PA. The profit/(loss) position of domestic like product during the POI works out to the following figures:

**Table-XIV
Profit/(Loss) from PA (Rs. millions)**

Year	*Net profit/(loss)
2016-17	100
2017-18	243
2018-19	39

Source: the Applicant. Year is from July to June

*Profit earned from sale of Maleic Anhydride has been added in the profit of PA.

Note: For the purpose of confidentiality actual figures have been indexed w.r.t net profit for the year 2016-17 as base.

Analysis

40.2 It appears from the above table that the Applicant was making profits of Rs.*** million in 2016-17, which increased to Rs. *** million during 2017-18. However, this profit drastically decreased to Rs. *** million in 2018-19, due to increase in cost to make and sell, which was not recovered by way of increase in price of domestic like product. On the basis of above, the domestic industry faced negative effect on its profit.

41. Effects on Cash Flow

Facts

41.1 The Applicant in the application took the cash inflow/cash outflow on the basis of net profit/(loss) and adding it to depreciation for the year. Such an approach towards cash flow was adopted for the reason that cash flow cannot be measured with the products i.e. PA, MA, DOP and Alkyd Resins separately. However, such approach towards cash flow ignores the substantial effect of dumping on the elements of cash flow like debtors, stocks, stores and spares etc. The Commission has adopted the cash flow from operating activities as appearing in the audited reports may be taken as verified figures using the approach given in proviso to Section 17 of the Act in terms of which, if separate identification is not possible, the Commission shall assess the effects of dumped imports by examination of production of narrowest group or range of products which includes a domestic like product for which necessary information is available. Cash flow from operating activities of the Applicant during POI is given in the following table:

Table-XV
Cash Flow from Operating Activities (Rs. millions)

Year	Cash Flow
2016-17	100
2017-18	186
2018-19	(114)

Source: the Applicant Year is from July to June

Note: For the purpose of confidentiality actual figures have been indexed w.r.t cash flow for the year 2016-17 as base.

Analysis

41.2 The cash flow of the Applicant increased during the year 2017-18 as compared to the previous year. However, cash outflow increased during the period 2018-19. As stated earlier, cash flow of the Applicant is reported on consolidated basis for all business segments. Therefore, it is not possible to calculate cash flow for PA business segment separately. On the basis of overall cash flow, the domestic industry faced negative effect on its cash flow.

42. Effects on Employment, Productivity and Salaries & Wages

Facts

42.1 The Applicant’s employment, production, productivity per worker and salaries and wages paid during the POI is given in following table:

Table-XVI
Employment, productivity and wages

Year	No. of Employees	Salaries & Wages Amount	Production (MT)	Productivity per worker (MT)	Salaries & Wages per (Rs. /MT)
2016-17	100	100	100	100	100
2017-18	97	109	107	110	102
2018-19	95	184	89	93	207

Source: the Applicant Year is from July to June

Note: For the purpose of confidentiality actual figures have been indexed by taking figures of respective columns for 2016-17 as base.

Analysis

42.2 The above table shows that the employment in the domestic industry did not fluctuate substantially during the POI. Productivity per worker decreased during the POI whereas salaries and wages per MT increased during the POI.

43. Effects on Return on Investment

Facts

43.1 Figures for consolidated profit after tax and equity were obtained from annual financial statements of the Applicant. Return on investment realized by the domestic industry for all the products during the POI is given in following table:

Table-XVII
Return on Investment

Year*	Return on Investment (%)
2016-17	16.22
2017-18	36.70
2018-19	6.29

* Year is from 1st July to 30th June.

** Total Investment = (Fixed Assets+ long term liabilities) *.87

*** Total Return= Profit for PA for the year+(financial cost of long-term liabilities) *.87

Analysis

43.2 The above table shows that the return on investment remained positive during the POI for injury. Furthermore, the return on investment first increased in the second year of the POI and then decreased during the last year of the POI for injury.

44. Ability to Raise Investment

Dumped imports have adversely affected the profitability of the domestic industry which is evident from the fact that its profits of Rs.*** million during the year July 2017 – June 2018 decreased to Rs.*** million during the POI for dumping i.e. July 2018 – June 2019. In such a situation, the investors' confidence over the domestic industry has reduced and ability to raise investment of the domestic industry-seems to be impaired. As the Applicant has not provided convincing evidence in this regard, the Commission is inconclusive about the effects of dumped imports on ability to raise investment.

45. Effect on Growth

There is need of growth in the PA industry, as the total market of PA was more than the installed production capacity of the Applicant in 2016-17 and 2017-18. As the GDP growth of Pakistan decreased in 2018-19, the total demand for PA decreased in 2018-19. In 2017-18 the domestic demand for PA increased by 11% and if there is a forecast of annual increase in demand for PA in future, there would be need to either increase the installed production capacity of the Applicant or another unit is to be set up to cater the growing domestic demand. Dumped imports have the potential to negatively affect the growth of domestic industry.

46. Magnitude of Dumping Margin

As regards the impact on the domestic industry of the magnitude of definitive dumping margins set out above, given the volume and the prices of the imports from the countries concerned, this impact cannot be considered to be negligible.

47. Summing up of Material Injury

47.1 It appears from above that volume of dumped imports has increased in 2018-19 i.e. last year of the POI for injury. Dumped imports of PA slightly decreased during the second year of the POI i.e. 2017-18. However, as noted earlier, it significantly increased in absolute terms during the last year of the POI surpassing the figures of 2016-17. It is important to note that imports from dumped sources increased at a time when imports from other sources and sales by the domestic industry were decreasing. Imports from dumped sources have replaced the domestic like product. Dumped imports are undercutting prices of the domestic industry by 2% to 4% during the POI for injury. Price undercutting has recorded an increasing trend during the POI for injury. The Applicant faced price suppression in 2018-19 due to increase in the cost to make & sell of PA. Domestic market of PA increased by 11.65 percent (***) MT during 2017-18 as compared to previous year, however, it contracted by 14.69 (***) MT during the year 2018-19. Similarly, the production of the domestic like product has declined in 2018-19 partly because of contraction in demand and partly due to increase in the volume of dumped imports. This led to decline in capacity utilization of the domestic industry. As capacity utilization declined, productivity of the domestic industry also declined which led to negative effects on salaries and wages/MT.

47.2 As a consequence, market share of the domestic industry declined during 2018-19. Profit of the domestic industry showed mix trends during the POI. It increased during 2017-18 as prices charged by the domestic industry increased by a greater margin as compared to first year of the POI. However, profit of the domestic industry decreased during the last year of the POI for injury, because of price suppression. Decline in sales volume, price undercutting and price suppression were the main factors for decrease in the profits of the domestic industry during last year of the POI for injury. Negative effects on return on investment and cash flow were same as were on profit.

D. CAUSATION**48. Effect of Dumped Imports**

48.1 The investigation has revealed that the following happened simultaneously during the POI:

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- i. Volume of dumped imports of the investigated product increased in absolute terms 2018-19 i.e. last year of the POI for injury;
- ii. Domestic industry experienced price undercutting and price suppression due to dumped imports of the investigated product;
- iii. Market share of domestic industry declined;
- iv. Sales of the domestic industry declined;
- v. Domestic industry faced decline in profits;
- vi. Domestic industry faced decline in production and capacity utilization; and
- vii. Domestic industry faced negative effect on cash flow, return on investment, productivity, wages and salaries/MT.

48.2 On the basis of the analysis and conclusions, the Commission is of the view that there is a causal link between dumped imports of the investigated product and material injury suffered by the domestic industry during the POI.

49. Other Factors

49.1 In accordance with Section 18(2) of the Act, the Commission also examined factors, other than dumped imports of the investigated product, which could at the same time cause material injury to the domestic industry, in order to ensure that possible injury caused by other factors is not attributed to the dumped imports.

49.2 The Commission’s investigation showed that the domestic industry did not suffer injury due to imports of the like product from sources other than the Exporting Countries during the POI for dumping. The imports from sources other than the Exporting Countries were in lesser quantities. The landed cost of such imports was higher than ex-factory price of the domestic like product and landed cost of investigated product except for the second year of POI for injury. Following table shows volume and landed cost of PA imported from other sources during the POI:

**Table-XVIII
Imports from Other Sources**

Year	Volume of Dumped Imports (MT)	Imports from Other Sources (MT)	Landed Cost from dumped source (Rs./MT)	Landed cost from other sources (Rs./MT)
2016-17	100	20	100	108
2017-18	98	24	114	111
2018-19	112	11	139	182

Note:- Year is from July – June

Note: For the purpose of confidentiality actual figures of columns “volume of dumped imports and imports from other sources indexed by taking volume of dumped imports for 2016-17 as base while actual figures of columns “Landed cost from dumped sources and “Landed cost from other sources have been indexed by taking landed cost from dumped sources for 2016-17 as base.

49.3 The factors mentioned in Section 18(3) of the Act were also examined and it was determined that:

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- i. There was contraction in demand for PA, however, such decrease had negative effect on the sales of domestic industry and imports from other sources. It may also be noted that sales of the domestic like product declined more than the decline in total market whereas market share of the dumped imports of the investigated product increased during the POI;
- ii. There was no change in technology to produce PA;
- iii. The Applicant exported only 1.20 percent of its sales during the first year of the POI. However, it did not export during the next two years of the POI. Hence, there was no effect on export performance of the domestic industry during the POI; and
- iv. During the POI there was no change in trade restrictive practices.

49.4 The Commission is of the view that the dumped imports are the only factor that caused injury to the domestic industry.

E. CONCLUSIONS

50. After taking into account all considerations for this final determination, the Commission has reached to the following conclusions:

- i. the application was filed by the domestic industry as the Applicant represented 100 percent of the production of the domestic like product during the POI;
- ii. the investigated product and the domestic like product are alike products;
- iii. during POI, the investigated product was exported to Pakistan by the exporters/ 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 investigated product from the Exporting Countries are above the negligible and *de minimis* levels respectively;
- v. the domestic industry suffered material injury on account of volume of dumped imports of the investigated product, price undercutting, price suppression, decline in: market share, sales, production, capacity utilization, profits, return on investment, employment, productivity; negative effects on cash flows in terms of Sections 15 and 17 of the Act;
- vi. there is a causal relationship between dumped imports of the investigated product and the material injury to the domestic industry.

F. IMPOSITION OF DEFINITIVE ANTI-DUMPING DUTIES

51. In view of the analysis and conclusions with regard to dumping of the investigated product, material injury to the domestic industry and causal link between dumping and injury, the Commission is required to impose antidumping duties on dumped imports of the investigated product under Section 50(1) of the Act.

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52. As exporter/foreign producer of the investigated product from South Korea and Chinese Taipei has provided requisite information in this investigation, therefore, individual dumping margins have been determined from the cooperating exporters/ producers. As no exporter/ producer from China and Russian Federation has provided the requisite data/information in this investigation, therefore, individual dumping margins have not been determined for the exporters/producers of the investigated product from these countries. Individual dumping margin have been calculated for the cooperating exporters/producers and country wide single dumping margin has been determined for non-cooperating exporters of China, Chinese Taipei, South Korea and Russia. Dumping margins and anti-dumping duty rates for the non-cooperating exporters/producers is determined on the basis of best available information in terms of Section 32 of the Act.

53. For the purpose of imposition of lesser duty in accordance with Section 50(2) of the Act, the Commission has calculated injury margin to ascertain whether a lower duty would be adequate to remove injury being suffered by the domestic industry due to dumped imports of investigated product. Following table shows a comparison of the injury margin and dumping margin of the Exporting Countries:

Table-XIX
Injury Margin

Exporting Country	Injury Margin	Dumping margin as % of C&F price
China	11.12	17.76
Chinese Taipei		
Nan Ya Plastics Corporation	14.94	19.09
All other exporters	25.15	24.61
Korea		
Hanwha Solutions Corporation	17.07	9.57
All other exporters	14.82	17.25
Russian Federation	19.17	16.31

54. It may be observed from the above table that, on certain occasion, injury margin calculated for the exporters/foreign producers of the investigated product from the Exporting Countries is less than the respective dumping margin at C&F level. Therefore, the definitive antidumping duty will be equal to the injury margin or dumping margin of the respective source, whichever is lower. The definitive anti-dumping duty is imposed at the rates mentioned in the following table on imports of the investigated product (Phthalic Anhydride) for a period of five years effective from the date of publication of notice of final determination in the Official Gazette and in the press on June 05, 2021. The investigated product is classified under PCT heading No. 2917.3500.

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Table-XX
Definitive Antidumping Duty Rates

Exporting Countries	Definitive Antidumping Duty Rate (%)
China	11.12
Chinese Taipei	
Nan Ya Plastics Corporation	14.94
All other exporters	24.61
Korea	
Hanwha Solutions Corporation	9.57
All other exporters	14.82
Russian Federation	16.31

55. PA imported from other sources (other than the Exporting Countries) shall not be subject to the definitive antidumping duties.

56. In accordance with Section 51 of the Act, the definitive antidumping duty shall take the form of *ad valorem* duty to be held in a non-lapsable personal ledger account established and maintained by the Commission for the purposes of antidumping duties. Release of the investigated product for free circulation in Pakistan shall be subject to the imposition of such antidumping duty.

57. The definitive antidumping duty 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.

(Mr. Muhammad Saleem)
Member

(Mrs. Anjum Assad Amin)
Member

(Mrs. Robina Ather)
Chairperson

DISSENT

I am constrained to dissent with my worthy colleagues because in my view the case relevant law has been ignored/omitted by the majority opinion. The detailed reasoning is elaborated below.

1. While determining ‘injury’ caused by dumping (PART VI, Section 15 of the Anti-Dumping Duties Act, 2015, hereinafter referred to as ADD Act), the two most emphasized factors to be looked at by the National Tariff Commission (hereinafter referred to as the “Commission”) are:
 - i) Volume of dumped imports, and, ii) Prices of dumped imports.

2. On ‘volume’, Section 15(2) states: “...the Commission shall consider whether there has been a SIGNIFICANT INCREASE in dumped imports, either in absolute terms or relative to production or consumption in Pakistan.” (Capitalization is for emphasis)

At para 34, of the Investigation Report by the Commission, the following table (Table-VI) is shown:

Table-VI
Absolute change in Dumped Imports

Period	Volume of Dumped Imports (MT)	Increase/ (Decrease) (MT)	Increase/ (Decrease) (%)
2016-17	100	---	---
2017-18	98	-2	-1.7
2018-19	112	14	13.85

Source: PRAL and cooperating exporters. Year is from July to June

Note: For the purpose of confidentiality actual figures have been indexed w.r.t volume of dumped imports for 2016-17 as base.

3. Analyzing the above Table-VI, the Report, at para 34.3 infers: “It appears from the above table that the dumped imports decreased by 1.70 percent in the 2017-18 over the imports of 2016-17. However, the imports of the investigated product increased by 13.85 percent during 2018-19 over 2017-18.”

4. While Section 15(2) explicitly mentions that “significant increase” has to be found “either in absolute terms or relative to production or consumption”, the Report ignores these crucial requirements of the law. In absolute terms, it finds (in one year out of the 3 years of the POI) an absolute increase of *** tons of dumped imports in 2018-19. It does not go on to discuss whether *** tons is a “significant increase” in absolute terms, which it is obviously not in terms of volumes of this product in international trade. Further, the Report omits the crucial test of comparing the ***tons increase “relative to the production” (averaging around *** tons annually) or “relative to consumption” (averaging around ***tons annually). In both measures, the increase in volume of dumped imports is 2.5% and 3.2%, relative to consumption or production respectively, and that too only in one of the 3 years of the POI, which is not a “significant increase” by any standards. To deflect the reader however, the Report uses another measure – comparing one year’s increase in volume of dumped imports by the previous year (see last column of the Table-VI above)- and comes up with a larger number, and merrily concludes in para 34.4, “that the volume of dumped imports..... increased in absolute terms during the last year of the POI.” The

Report completely omits the crucial test of SIGNIFICANT INCREASE, and instead casually states the obvious – that the volume “increased in absolute terms”. The test for injury through volume increase is not that it “increased in absolute terms” (as the Report states) but whether there was a “significant increase” in dumped volumes in terms of Section 15(2) of the AD Act. The Report ignores this crucial requirement of the law, and instead cooks this improvised measure -of comparing dumped imports increases to itself- which is not in line with the letter or the spirit of the relevant law, as stated in para 2 above.

5. On ‘prices’, Section 15(3) of the AD Act states: “...the Commission shall consider whether—(a) there has been a SIGNIFICANT price undercutting by the dumped imports as compared with prices of a domestic like product;...” (Capitalization is for emphasis)

6. Table-VII

Calculation of Price Undercutting (actual prices not shown due to confidentiality)

Period	Average Domestic Price	Average Landed Cost of Dumped Imports	Price Undercutting	Price Undercutting (%)
2016-17	XXXXXXXXXX	XXXXXX	XXXX	2.81%
2017-18	XXXXXXXXXX	XXXXXX	XXXX	3.71%
2018-19	XXXXXXXXXX	XXXXXX	XXXX	3.83%

7. Analyzing the above Table-VII, in para 35.2.2, the Report concludes that “the landed cost of the investigated product undercut prices of the domestic like product..... .The price undercutting has an increasing trend during the POI.”
8. While Section 15(3)(a) of the Act explicitly mentions that “significant price undercutting” has to be found to establish ‘injury’, the Report completely ignores this critical requirement of the law. Instead, the Report cooks up another measure- of “increasing trend”- and implicitly concludes that 2.8% to 3.8% price undercutting in successive years of POI caused ‘injury’. The Report fails to discuss whether this so-called “increasing trend” in price undercutting is “significant price undercutting” as described in the said law, which it is obviously not. It also ignores the possibility that this miniscule price undercutting could be attributed to exchange rate fluctuations, or general market price gyrations, and that “average landed cost of dumped imports” (column 3 in the above Table-VII) is not a sacrosanct number written in stone, but is a broad, weighted average price of cumulated imports of the product from four(4) allegedly dumping countries. Still, even as per the numbers determined in the Table-VII above, it certainly does not indicate “significant price undercutting” required by law to determine ‘injury’, as stated in para 5 above.
9. In a similar pre-judged manner, other measures to find ‘injury’ are determined in the Report. While the Report could find no Price Depression, it found all other measures- Price

Suppression, Sales & Market Share, Capacity Utilization, Profits, Cash Flow, ROI – to be pointing towards ‘injury’. At para 47 of the Report, while “Summing up of Material Injury”, it thus explicitly concludes injury during the POI, by conveniently ignoring a glaring fact in all these measures of injury: Why is it that injury appears only in one of the three years of the POI, and that too the last year (2018-19) of the POI, for all the factors determined above, namely volume effect, price effects, sales & market share, capacity utilization, Profits, etc.? (See para 12 below for a plausible explanation)

10. On ‘Causation’, the Report, once it finds ‘dumping’ and ‘injury’ (no matter how weak the symptoms of injury are, as analyzed in paras 1 to 8 above), it has no need for a thorough, careful analysis of whether dumping has caused this injury. In other words, in one short para, wherein after simply reiterating the factors (volume effect, price effects, etc.) the Report concludes, through a one sentence analysis(?) at para 48.2 of the Report that “On the basis of the analysis and conclusions, the Commission is of the view that there is a causal link between dumped imports of the investigated product and material injury suffered by the domestic industry”!! There is absolutely no effort, nor due labor exerted to establish ‘causation’ between ‘dumping’ and ‘injury’ in para 48 titled CAUSATION. In a very casual manner, like where there is smoke, fire is assumed, the Report ASSUMES that where there is ‘dumping’ and ‘injury’, CAUSATION is automatically established, and no effort is expended to ascertain such causality.
11. While CAUSATION is already concluded between dumping and injury in para 48 of the Report, ‘Other Factors’, as per Section 18(3) of the AD Act, are perfunctorily then discussed in para 49. The key ‘Other Factor’, specifically needed to be thoroughly examined in this case, as per Section 18(3)(b), namely, “contraction in demand” is summarily dismissed in one sentence, in para 49.3 (i) of the Report by stating: “There was contraction in Demand for PA, however such decrease had negative effect on the sales of domestic industry and imports from other (non-dumped) sources.” Incredibly, the most important ‘coincidence’ was not considered worthy of discussion at all.
12. That most important coincidence is: WHY IS IT THAT THE INJURY APPEARS ONLY IN ONE SPECIFIC YEAR OF THE POI, 2018-19, for all the factors, namely volume effect, price effects, sales & market share, capacity utilization, profits, etc.?? If a thorough examination was done it would have clearly emerged that the very significant “contraction in demand” occurred in the year 2018-19. The reason was economic slowdown as LSM (large scale manufacturing) indices showed negative growth that year, including consumer goods. The total domestic market for PA contracted from ***tons to *** tons, a contraction of *** tons. Yes, the dumped imports increased by ***tons in 2018-19, but 84% of the ‘injury’ was caused by contraction in demand ($(***-***)/***= 84\%$), and only 16% ($***/***= 16\%$) of ‘injury’ was caused by the dumped imports. Thus attributing complete CAUSATION of INJURY to DUMPING here, is not justified. At best, it could be causing a weak injury, and contraction in demand causing significant injury to the PA industry. On checking from SECP for the Company’s financials for year closing on December 2020, this fact was confirmed that the sales, profits, cash flows, etc. had more than made up for

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the sudden fall off in profits in year 2018-19, a year of economic contraction all around for domestic industry in Pakistan.

In view of the above detailed reasons, there was a weak case of ‘injury’ to the PA industry; however, whatever injury did occur was not caused by dumping, but by economic contraction adversely affecting the industry in the year 2018-19. If negative effects on domestic industry originate from decrease in customer demand, and not caused by dumped imports, dumping measures cannot be imposed. As stated in Section 18(2) of the AD Act,”..... injury caused by such other factors (like contraction in demand) shall not be attributed by the Commission to the dumped imports.” Thus, the Anti-dumping measures should not have been imposed on PA.

Tipu Sultan

Member

Dated: June 7, 2021

DISSENT

From the report it is not clear as to how the injury margin has been calculated. However, from the following table and the discussion in the meeting on this report, it is clear that the injury margin, for implementation of lesser duty rule i.e. second proviso to the Section 43 (1) and Section 50(2) of the Act., has been calculated using the average exchange rate for 2018-19, the last year of POI for injury. The reason being that if the current exchange rate is used, it would go outside the POI (Section 36 of the Act.). From argument it is clear that underlying assumption is that the Anti-Dumping Duty is to Compensate the dumping occurred in the past that caused injury to the domestic industry. However, in my humble opinion the Anti-Dumping Duty is not to compensate the dumping occurred in the past but to remove future expected injury. The Section 57 of the Act clearly states that any Anti-Dumping Duty imposed under this Act would **remain in force only as long as and to the extent necessary to counteract the impact (injury) of dumping** which is causing injury. Certainly, this provisions speaks about a post final determination scenario, which at present time can be considered as future.

Exporting Country	Injury Margin (actual data)	Injury Margin (average exchange rate)	Injury Margin (Exchange Rate June 03, 2021)	C&F dumping margin	C&F Export Price US\$ (PRAL)
China	8.01	11.12	5.18	17.76	100.0
<u>Chinese Taipei</u>					
Nan Ya Plastics	24.9	14.94	11.96	19.09	97.1
All other exporters	18.2	25.15	21.93	24.61	90.0
<u>Korea</u>					
Hanwha Corporation	27.52	17.07	14.04	9.57	95.5
All other exporters	15.68	14.82	11.84	17.25	97.1
Russian Federation	19.69	19.17	16.59	16.31	94.0

Note:- For the purpose of confidentiality, actual figures of C&F price have been indexed w.r.t China C&F export price.

As regards the interpretation of the law in this regard, first, I would start with an analysis of second proviso to Section 43(1) and Section 50(2) of the Act, the basic provisions of lesser duty Rule. The two provisions are similar, therefore, I would quote only Section 50(2).

*50.(2) The amount of the Anti dumping duty shall not exceed the margin of dumping established but it may be less than the margin if such lesser duty **would be adequate to remove injury to Domestic Industry.** (Emphasis added)*

The use of word **would be** is an indicative of future action that is likely to occur. Similarly past injury to an industry can be in the form of losses or negative effects which cannot be removed, as they are part of record. The past losses can only be compensated but **future expected losses** can be removed or curtailed.

The next question is whether injury margin can be seen occurring in the POI. First is that POI is for determination of dumping and injury and not the injury margin as evident from Section 36 of the Act as shown below.

36. Assessment is to be on the basis of data relating to defined periods.- (1) The Commission shall base its assessments of dumping and injury on data relating to defined period for which information is required by the Commission.

(2) *For the purpose of an investigation of **dumping** an investigation period shall normally cover twelve months preceding the month of initiation of investigation for which data is available and in no case the investigation period is less than six months*

(3) *For the purpose of an **investigation of injury** the investigation period shall normally cover thirty six months. (Emphasis is added)*

It is clear from the above that investigation period (POI) is for dumping and injury only and not for injury margin. The argument that injury includes injury margin also is not correct. It can be rebutted on the basis of Section 2(i). It may also be added that had it been necessary for injury margin to lie in the POI, it might have been covered in Section 36. It is also added that details of dumping and injury are covered in Sub-Sections (2) and (3). The injury margin is not covered in any sub sections.

Now I would dare to say something about practice of some of the traditional users of lesser duty rule.

The draft Guideline on the determination of profit margin to be used in the determination of injury margin notes as under:

*According to the Court, the profit margin to be used when calculating **the target price that will remove the injury** in question must be limited to the profit margin that the Union industry could reasonably count on under normal conditions of competition, in the absence of dumped imports. (emphasis is added)*

The Guidelines further note that:

*The **determination of the non-injurious price, and in particular the target profit, implies the assessment of a complex economic situation. The complexity results from a number of elements. In particular, identifying the profit that the Union industry could expect to obtain in the absence of injurious dumping/subsidisation is an analysis involving hypotheses. Indeed, injurious dumping or subsidisation can have different effects on the Union industry's sales and profit margin. It can have price effects (i.e. the Union industry's sales prices decrease as a result of injurious dumping/subsidisation), it can have volume effects (i.e. the Union industry's sales volumes decrease) or it can be a combination of both. Therefore, the determination of the target profit margin is more than a mathematical exercise. The emphasis is on achieving a reasonable result that takes account of the particular circumstances of the case.***

The guide further goes on and state:

- *Where none of these methods can be used, **the Commission will use any other reasonable method, taking into account the particular circumstances of a given case.** (Emphasis added)*

The quotations are sufficient to demonstrate that EU takes injury margin on the basis of target profits or futuristic injury margins and NOT the injury margin that occurred during POI.

Trade Remedies Investigations Directorate (TRID) dumping, subsidization and safeguarding investigations guidance of UK in the context of injury margins notes as under:

*The injury-based measure should look to counteract the effects of dumped or subsidised imports, or unforeseen surges in imports, **going forward. It should not try to compensate for past losses. (emphasis added)***

When the dumping and injury has been determined, the injury margins are not to compensate the losses of the past, and it is also not necessary to look as to what was the injury margin in the POI but it would necessary to look into as to which level injury would be removed and which one level is preferable.

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There are no guidelines in the Anti-Dumping Agreement and the Act of or calculation of injury margin. However, keeping in view the peculiar circumstances and the fact that the domestic industry is in competition with user industries in downstream products, I would prefer a duty rate at the minimum if it removes injury to the domestic industry. The effect of increasing exchange rates must also be considered in **determining the Target Profit**.

Abdul Khaliq

Member

Dated: June 7, 2021

Annexure-I

Interested Parties' Comments	Commission's response
<p><u>Chawla Chemical and Metal Industries Pvt. Limited, Power Chemical Limited, Qaiser LG Petrochemicals (Pvt.) Limited and Berger Paints Limited:</u></p>	
<p>1. Worldwide Phthalic Anhydride deals are done based on scan prices issued by ICIS or PLATTS, both companies are world renowned and provide realistic market data for determination of prices. Deals are finalized within the price range issued in these reports. During hearing, Nimir Chemical accepted that they also follow the scan prices issued by ICIS then how can they claim that the material is being dumped in Pakistan.</p>	<p>Dumping occurs when an exporter sells a product to another country at price less than its home market price. It is an exporter specific unfair trade practice. It is the comparison of normal value with export price of an exporter from an alleged dumped source, rather than comparison of ICIS or PLATTS price with the price at which Pakistani importers imported the product.</p> <p>Prices provided in ICIS or PLATTS are for the region or country, rather than that of an exporter /producer.</p>
<p>2. If a customer buys Phthalic from Nimir Chemical Limited, they calculate how much DOP we are producing by using the conversion formula and adapt market strategies accordingly. They even limit the supply of PA or delay deliveries on purpose at times to monopolize the market. That is the reason we prefer importing the product then buying from them.</p> <p>Nimir Chemicals always seek the market share of other competitors in Finished good (DOP) just to blackmail and to maintain their monopoly and they use maximum of the raw material (Phthalic Anhydride) by themselves for DOP. It also sells Phthalic Anhydride to its sister concern ATS Synthetic for manufacturing of DOP at a price below cost of its production enabling them to undercut the prices of downstream products.</p>	<p>Importer was asked to provide evidence in support of its claim that the Applicant sold limited quantity of PA on certain occasions. However, Chawla chemical and metal industries did not provide requisite documentary evidence.</p> <p>As regards availability of PA to customers, it was observed that the Applicant has sufficient unutilized capacity to fulfill domestic orders. Regarding price charged to ATS synthetics and internal consumption:</p> <ul style="list-style-type: none"> • Customer-wise sales prices of the Applicant have been analyzed, which shows that sales to all customers including ATS were at arm's length. The same fact was also certified by the auditors of the Applicant in the financial statements. • PA has been charged to internal consumption on the total cost to make and sell minus selling and distribution expenses.
<p>3. Nimir Chemicals and ATS are same family and they are single face behind the two doors.</p>	<p>As per financial statements of the Applicant, which are made in compliance of Companies Act, 2017, ATS Synthetics is not the related company of the Applicant. Nimir Chemical Pakistan Limited and ATS Synthetics are two separate companies. According to Form-29 submitted to Securities and Exchange Commission of Pakistan, there is no common directorship between Nimir Chemical Pvt. Limited (NCPL) and ATS Synthetics Pvt. Limited. The interested parties who raised the point that NCPL and ATS Synthetics are related</p>

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	<p>companies were asked by the Commission to submit documentary evidence in support of their claim. None of the interested party was able to produce documentary evidence in support of its claim.</p>
<p>4. The Commission can verify Nimir chemicals Financial Statements as previous investigation was also evidence of same that their financial statements show their higher profitability and PA was not imported on dumped pricing if dumping had taken place, then profits should go down.</p>	<p>Nimir Chemicals Pakistan (Pvt.) Limited is a multiproduct company which produces PA, MA, DOP and Alkyd Resins, and its financial statements shows the consolidated results. Thus, the consolidated results do not depict the situation/condition of a particular segment of the company. During on-the-spot investigation at the office of NCPL, the company was asked to produce product-wise management accounts, which were provided. The Commission has verified cost to make and sell and profit/loss earned from Phthalic Anhydride and other products separately</p>
<p>5. Power Chemicals requested the Commission to take into account that investigated product i.e. "Phthalic Anhydride" varies in quality on the basis of indigenous Raw Materials and production process. There are two processes for the production of Phthalic Anhydride. Ortho-Xylene Route and Naphthalene Route (In China). Phthalic Anhydride is produced from Naphthalene (indigenous raw material), which is cheaper in price and available in ample quantity. Phthalic Anhydride of Chinese origin is not a like product in true sense because it is inferior in quality and normally used for low grade applications for customers who are not quality conscious. Price of Chinese origin Phthalic Anhydride is comparatively lower and not comparable with Phthalic Anhydride, which is being imported from other countries, produced through Ortho Xylene route.</p>	<p>In order to establish whether the investigated product (PA produced from Naphthalene route or Ortho-xylene route), and domestic like product are alike products, as contended by the Applicant, the Commission reviewed all the relevant information received/obtained from various sources including the Applicant, and the importers (i.e., Nimir Resins Limited, Lahore and Power Chemicals, Faisalabad). The Commission concluded that:</p> <ul style="list-style-type: none"> i. The Applicant uses Ortho-xylene as basic raw materials for the manufacture of the domestic like product (i.e., PA), while reportedly few Chinese exporters use Naphthalene to produce investigated product (i.e., PA). Although different raw materials are used, the finished product manufactured is the same i.e., PA. It is worth mentioning that no exporter/producer who produces PA from Naphthalene has cooperated with the Commission in this investigation. ii. The PA produced from Naphthalene and Ortho-xylene is manufactured by similar process i.e., oxidation reaction. Further, the product manufactured from these manufacturing processes is the same i.e., PA. iii. PA produced from Ortho-xylene or produced from Naphthalene have same uses. These are mainly used in polyester resins, dyestuffs, tyres and technical

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	<p>rubber products, a range of pharmaceuticals and other products. It is also used in Alkyd Resins (Glyptal) and to modify physical properties of Synthetic Resins.</p> <p>iv. PA produced from Ortho-xylene, PA produced from Naphthalene and the domestic like product are classified under the same PCT/HS sub-heading 2917.3500.</p> <p>v. Prices of PA imported from Chinese origin are in fact more than the other Exporting Countries.</p>
<p>6. As compared to the production capacities of exporters/international producers of Phthalic Anhydride and demand of our domestic industry, Pakistan is very insignificant market to any exporter of Phthalic Anhydride for dumping of its product. The maximum export to Pakistan by any exporter/supplier is not more than 1,000 MT per annum on average during last four years.</p>	<p>Domestic PA market is relatively small market (around ***per annum) as compared to other regional PA markets like China and India, so even an import of 1000 MT by an exporter can have an impact on the domestic industry's prices, sales and market share. Applicant's total installed capacity is *** MT. Further, the law requires that volume of imports from the Exporting Countries during the POI shall be above the <i>de minimis</i> level and the same was determined to be above <i>de minimis</i> by the Commission. Exporters have keen interest in Pakistani market and that's why they have cooperated in this antidumping investigation.</p>
<p>7. Internationally prices of Phthalic Anhydride are pegged with the price of its essential raw material, ortho-xylene, which constitutes 93 % of its total price. Generally, the price of Phthalic Anhydride is understood to be determined and accepted in the industry by establishing a formula based on 10% value addition to the cost of the raw material. Further, maleic anhydride is a by-product produced during the manufacturing of Phthalic Anhydride. Since the selling price of maleic anhydride is higher than the selling price of Phthalic Anhydride, and it naturally reduces the cost of production for Phthalic Anhydride.</p>	<p>For injury analysis in this investigation, the Commission added profit earned by NCPL from Sales of maleic anhydride (by-product) in the profit of PA.</p>
<p>8. The Applicant being single producer of Phthalic Anhydride, is enjoying monopolistic position and over protection by way of; difference in Customs duties of Ortho-Xylene and Phthalic Anhydride up to 11% and imposition of Anti-Dumping duties on import of Phthalic Anhydride ranging from 6.17% to 27.28%. The Unit has already completed its useful life of 30-40 years. Local Management of Company has not only recovered its cost of acquisition but has also earned profits on their investments. The applicant, using 30 years old</p>	<p>The monopolistic position purportedly enjoyed by the Applicant can be raised at relevant forums, i.e. Competition Commission of Pakistan. In case, it is felt that PA is overly protected, the aggrieved parties can raise this issued under the relevant law. At present there are no antidumping duties imposed on imports of PA from any source. The Commission requested M/s Power Chemicals to provide the documentary material regarding the new developments in the manufacturing of Phthalic Anhydride and how it is efficient from the</p>

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<p>production technology-process, is protected from more than a decade.</p>	<p>Applicant’s Plant. How the new developments in the technology impact the quality of the final product. However, no such data/information has been provided to the Commission which depicts that these claims were baseless.</p>
<p>9. Process of manufacturing of Phthalic Anhydride is self-reliant on energy. Phthalic Anhydride is produced through process Exothermal process. It generates heat while its raw material Ortho Xylene is partially oxidized. The process generates sufficient heat to meet the internal heating requirements of process as well as generate electricity of production of Phthalic Anhydride.</p>	<p>The Commission has taken into account the fact that production of PA is an exothermic process and steam generated from excess heat is used to produce electricity. However, steam and electricity generated during the production process is not sufficient to meet the energy/electricity requirements for production of PA. The Applicant was asked to provide screenshots of the system which provides the energy generation and consumption. As per screenshots, energy requirement to product PA is greater than the energy generated during the production process. To verify the energy cost, the Commission obtained copies of bills of diesel, electricity and gas consumed. The Applicant’s energy cost was 2.2%, 2.4% and 3.1% only of its total cost to make and sell during the years 2016-17, 2017-18 and 2018-19 respectively.</p>
<p>10. PA consumers are forced to import PA to counter dominant position of NCPL. NCPL charge premium and sell PA at higher prices in comparison to the international prices. NCPL consumed PA in house for the manufacturing of downstream products i.e. DOP.</p>	<p>Imposition of the antidumping duties does not prohibit import of product from a specific source, importers can import the investigated product at fair prices from any source. Needless to say that importers can import from non-dumped sources without paying antidumping duties.</p>
<p><u>Ministry of Economic Development, Russian Federation:</u></p>	
<p>11. According to the Preliminary Determination in this investigation, the Pakistani side calculated normal value of the Russian Product based on information on the cost of the main raw material value of the main raw material for the production of phthalic anhydride- Orth xylene. Meanwhile it is not clear what C&F prices in International Market and what deducted import taxes were used in the methodology for construction of normal value for Russian Product.</p>	<p>In order to calculate the “normal value” of PA imported from Russia, the Commission has used Russian’s export price of ortho-xylene to the world as reported on the trade map. The export data for Russia is reported by trade map on FOB basis. Adjustment was made in FOB price so that it is at ex-factory level.</p>
<p>12. The data on the labor hours, electricity cost, variable overhead cost, depreciation, selling and administrative expenses, financial charges destined for the calculation of normal value of Russian product was received from the Nimir Chemical Pakistan Limited (hereinafter – the Applicant). Some of these costs “multiplied by rates” of these costs in Russia. However, the source of Information on the cost of these overheads in</p>	<p>The data on the labour hour rate, electricity, fuel and other variable overhead costs etc in Russia have been taken from the website: tradingeconomics.com by the Applicant. The same information has been placed in public file.</p>

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<p>Russia is not indicated. The NTC also did not clarify why the Applicant had made this information confidential. At the same time, According to Article 31.5 of the Anti-Dumping Duties Act,2015 (hereinafter-Law) and Article 6.5.1 of the WTO Anti-dumping Agreement, the party submitting confidential information should provide its non-confidential summary which should be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In accordance with 31.4 of the Law, a party wishing to keep information confidential justify the confidentiality of information. Neither non-confidential summary nor justification were provided in violation of above-mentioned articles.</p>	
<p>13. The Russian side emphasize that calculations of normal value, export price and dumping margin are presented in Annexes IV, IX and X of Preliminary Determination, respectively. However, the Russian side had received the non-confidential version of the Preliminary Determination without the referred Annexes.</p>	<p>In terms of Rules 11 and 16 of Anti-Dumping Duties Rules, 2001, disclosure of dumping margin calculations (including determination of Normal Value and Export Price) is provided to only those exporters/ producers who have cooperated with the Commission and submit the requisite information for calculation of the dumping margin.</p>
<p>14. It should also be noted that the increase of imports to Pakistan of product happened due to increase of imports from traditional exporters, which enjoy duty-free treatment based on Bilateral Free Trade Agreements with China, South Korea.</p>	<p>The Commission notes that there is no concession available under any FTA or PTA on the import of Phthalic Anhydride in Pakistan.</p>
<p>15. Volume of Russian imports is insignificant (in 2019 it constitutes about 13% of total imports of the product by Pakistan) and could not have caused the injury to the Pakistan industry.</p>	<p>Volume of imports from Russia is 13% of total imports is more than the <i>de minimis</i> level which is 3% of total imports defined in Section 41(3)(b) of the Act. The effect of dumped is assessed cumulatively in terms of Section 16 of the Act.</p>
<p>16. We suppose it is essential to analyze the impact of the general economic situation in Pakistan on the Domestic industry, including inflation (5,08%) devaluation of the national currency at the end of 2018 (34,9P%),reduction in the demand .We would like to emphasize that any injury caused by factors other than increased imports should not be attributed to increased imports in accordance with Article 3.2of the Anti-Dumping Agreement .Thus, we believe that there is no evidence of the casual link between the imports of Russian Product and the alleged injury to the Domestic industry.</p>	<p>The impact of devaluation is considered by the Commission in the landed costs of the investigated product i.e. PA imported during the POI from the Exporting Countries. Devaluation has made purchases of inputs expensive for both the manufacturing industry (as the major raw material i.e. Ortho-xylene is imported) as well as for the user industry of PA. If due to devaluation, cost of the domestic industry increases, then, at the same time, devaluation creates a room for domestic industry to increase its prices because of increase in prices of imported finished product i.e. increase in PA (finished product) price will be more than the cost of domestic industry. It may be noted that the law does not require causation analysis for each exporting country. Rather it is required for dumped imports as a whole.</p>

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<p>17. According to the Preliminary Determination Applicant's profit during the POI has been worked out by adding up the profit from sale of another type of product (Maleic Anhydride) into operating profit of product. Cash flow of the Applicant is reported on consolidated basis for all business segments. We would like to point that interested parties have no information about the allocation of profit amongst different segment of Applicant.</p>	<p>Maleic Anhydride (MA) is a by-product of the production process of Phthalic Anhydride thus profit earned from the sale of MA has been added to the profit of PA. The non-confidential copy of on- the-spot investigation report is placed in public file maintained by the Commission. Any interested party can get copy of this on-the-spot investigation report and can understand the allocation of different cost and profit amongst different segment of the Applicant's operations.</p>
<p><u>Comments made by Nan Ya Plastics Corporation</u></p>	
<p>18. Nan Ya's Dumping Margin Should Be Based on <u>Monthly Comparison</u> of the Domestic Sales of <u>Solid PA to its Pakistani Sales</u>. In its preliminary determination, the Commission calculated Nan Ya's dumping margin by comparing the yearly weighted-average price of all Nan Ya's domestic sales to the yearly weighted-average price of all its Pakistani sales. Nan Ya requests the Commission Section 11(1) of the Anti-Dumping Duties Act, 2015 to consider the following adjustments to the comparison of Nan Ya's export price and normal value. First, due to the significant fluctuation of price of PA during the POI, the comparison should be made between monthly weighted-average export price to monthly normal value. Second, due to the difference in physical characteristics between solid and liquid PA, Nan Ya's normal value should take into account only the domestic sales of solid PA.</p>	<p>As Nan Ya exported investigated product to Pakistan during the months of July, August and September 2018, so monthly comparison has been made between domestic sales and export sales to Pakistan. Further, as all exports sales consist of PA in solid form, domestic sales of PA in solid form during the above mentioned months has been taken into account while calculating normal value.</p>
<p>19. Moreover, the Commission described the investigated product in paragraph 12.3.2 of the Preliminary Determination Report as, "Phthalic Anhydride (the investigated product) is an organic compound in white crystalline form, available in solid state, white flakes, with mild odour, slightly soluble in ether and hot water." (emphasis added). This description somehow suggests that liquid PA is not within the scope of the investigation.</p>	<p>During on-the-spot investigation it was verified by the officers of the Commission that Applicant has produced and consumed PA in liquid form. Its in-house consumption of liquid PA was for the manufacturing of DOP and Alkyd Resins. Thus, both solid and liquid forms of PA are similar product, only difference is of physical form of the product. Both have same PCT heading and use. As PA has been exported in solid form, for dumping calculations the Commission has taken into account sales of solid PA where the interested party demonstrated the differences by as required by Section 11 of the Act</p>
<p>20. At the paragraph 7.3 of the Preliminary Determination Report, the Commission indicated that, "[t]he Applicant is, neither related to any importer or exporter, nor did it import PA during the past three years. Therefore, the Applicant is eligible to apply for the anti-dumping</p>	<p>i. Please refer to para 7 of the report of final determination.</p>

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<p>investigation.” The Commission stated the same at paragraph 30.2. However, Nan Ya noted that the Pakistani company Nimir Resin Limited is a PA importer. Nimir Resin was a sub-subsubsidiary of Nimir Chemical Industry Ltd, as page 58 of Nimir Chemical Industry 2019 Annual Report so indicates (Exhibit-6). On the same page, Applicant NCPL is marked as an associated company of Nimir Chemical Industry by sharing common directorship. A footnote further reads that the relatedness has ceased on December 29, 2018 due to the retirement of the directors. POI of the present investigation ranges from July 2018 to June 2019. Therefore, at least during the first half of the POI, NCPL was related to the importer Nimir Resin and may be excluded from the domestic industry pursuant to Section 2(d) of the Act.</p>	
<p>21. According to State Bank of Pakistan, during 2018-19, Pakistani Rupee devalued (against US Dollar) by 34%. In paragraph 32.4.2 of the Preliminary Determination Report, the Commission seems to suggest that most of Ortho-xylene that Applicant used for the production of PA were imported so that the change of source of import largely affected Applicant’s cost to make and sell. The Commission should also take into account the effects of the PKR devaluation on Applicant’s costs.</p>	<p>As above.</p>
<p>22. Nan Ya submits that Applicant’s shift of supply sources or the devaluation of PKR, or the both, has caused Applicant’s costs to soar in 2018-19, which in turn resulted in less production (Table-XII) and sales (Table-XI), and then fewer profits (Table-XIV). Nan Ya submits that those injurious effects should not be attributed to the investigated imports in the Commission’s analysis.2</p>	<p>Comment regarding devaluation has been replied at para-16above. With regard to Applicant’s shift of source of supply of ortho-xylene, it is stated that the Applicant purchased ortho-xylene from India, Chinese Taipei and United States of America. Major source of supply of ortho-xylene was India as it accounted for 74.06% of total raw material purchased whereas, Chinese Taipei and USA’s share was 13.88% and 12.05% respectively. The Applicant submitted monthly prices at which it purchased ortho-xylene from Chinese Taipei and USA were in at par with the prices published in ICIS Scan prices.</p>
<p>23. Nan Ya notes that according to Table-VIII, the average price of the investigated imports is 2.24%-4.04% lower than the domestic price of PA. In this regard, we request the Commission to apply the rule set for in Section 50(2) in the case that it decides to impose definitive anti-dumping duties in the present investigation.</p>	<p>The Commission has determined injury margin while making final determination. Obligations set forth in Section 50(2) have been met while imposing anti-dumping duties.</p>

Annexures Detail

(Annexure -II withheld as confidential.)

(Annexure -III withheld as confidential.)

(Annexure -IV withheld as confidential.)

(Annexure -V withheld as confidential.)

(Annexure -VI withheld as confidential.)

(Annexure -VII withheld as confidential.)

(Annexure -VIII withheld as confidential.)

(Annexure -IX withheld as confidential.)

(Annexure -X withheld as confidential.)