



**Government of Pakistan
National Tariff Commission**

REPORT

ON

**PRELIMINARY DETERMINATION AND LEVY OF PROVISIONAL
ANTI-DUMPING DUTIES ON DUMPED IMPORTS OF SODA ASH
INTO PAKISTAN ORIGINATING IN AND/OR EXPORTED FROM
THE REPUBLIC OF KENYA**

A.D.C No. 24/2010/NTC/SA

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The National Tariff Commission (hereinafter referred to as the “Commission”) having regard to the Anti-Dumping Duties Ordinance, 2000 (LXV of 2000) (hereinafter referred to as the “Ordinance”) and the Anti-Dumping Duties Rules, 2001 (hereinafter referred to as the “Rules”) relating to investigation and determination of dumping of goods into the Islamic Republic of Pakistan (hereinafter referred to as “Pakistan”), material injury to the domestic industry caused by such imports, and imposition of anti-dumping duties to offset the impact of such injurious dumping, and to ensure fair competition thereof and to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as the “Agreement on Antidumping”).

2. The Commission is conducting this investigation under the Ordinance and the Rules against dumped imports of Soda Ash originating in and/or exported from the Republic of Kenya (“Kenya”). The Commission has made this preliminary determination in this investigation under Section 37 of the Ordinance. This, report on preliminary determination, has been issued in accordance with Article 12.2 of the Agreement on Antidumping.

3. In terms of Section 37 of the Ordinance, the Commission shall make a preliminary determination of dumping and injury, if any, not earlier than sixty days and not later than one hundred and eighty days, after initiation of an investigation. The Commission initiated this investigation on September 26, 2011 and one hundred and eighty days from date of initiation was till March 24, 2012. However, Islamabad High Court (IHC) on March 9, 2012 on the writ petition of Tata Chemicals Magadi, Ltd. (exporter of Soda Ash from Kenya) in W.P 118 of 2012 ordered the Commission as follows:

“ In the circumstances, no coercive measures shall be adopted against the applicant till date fixed”

On May 10, 2012 Islamabad High Court disposed of the case and granted two weeks extension to Tata Chemicals Magadi, Ltd. for submission of information in response to the Exporter’s Questionnaire. Further, the Commission is allowed to proceed with the investigation. The Commission has adjusted the period for which IHC granted stay order in investigation time frame, which results in completion of one hundred and eighty days on June 8, 2012.

A. PROCEDURE

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

5. Receipt of Application

5.1 On December 29, 2010, the Commission received a written application under Section 20 of the Ordinance from ICI Pakistan Limited (Soda Ash Business), ICI House,

63 Mozang Road, Lahore (the "Applicant"). The Applicant has alleged that Soda Ash originating in and/or exported from Kenya is being dumped into Pakistan, which has caused and is causing material injury to the domestic industry producing Soda Ash.

5.2. Earlier this investigation was initiated on January 21, 2011. However, after initiation of investigation Ghani Glass Ltd. Lahore, an importer/ user of Soda Ash filed a writ petition in the Islamabad High Court, Islamabad ("IHC") on March 3, 2011 through writ petition No. 628 of 2011. On the same day, IHC issued an order of suspension of investigation till further orders. On June 29, 2011, the Applicant withdrew his petition. The Commission resumed its proceedings on June 30, 2011. The Commission's proceedings were again challenged in Lahore High Court Lahore ("LHC") through a writ petition No. 16038 of 2011 on July 12, 2011 by the Ghani Glass Ltd. On the same day LHC granted stay in the investigation. On August 23, 2011 the LHC disposed of writ petition No. 16038 of 2011 and passed following orders:

"in view of the matter , the complaint filed by respondent No. 2 (ICI Pakistan Ltd.) dated 09.12.2010 shall be taken up afresh by the National Tariff Commission and dealt with strictly in accordance with law. Any proceedings or steps taken on the basis of said complaint prior to the constitution of National Tariff Commission are set aside....."

5.3 To comply with the order of LHC the Commission decided to take application dated 09.12.2010, filed by the domestic industry, afresh. Accordingly, the investigation was initiated on September 26, 2011.

5.4 The Commission informed Embassy of Kenya in Islamabad through note *verbale* dated September 8, 2011, of the receipt of application in accordance with requirements of Section 21 of the Ordinance.

6. Evaluation and Examination of the Application

The examination of the application showed that it met requirements of Section 20 of the Ordinance as it contained sufficient evidence of dumping of Soda Ash into Pakistan from Kenya and material injury to the domestic industry caused therefrom. Requirements of Rule 3 of the Rules, which relate 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 Ordinance 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" shall mean the rest of the domestic producers".

7.2 Domestic industry of Soda Ash in Pakistan comprises of following two units:

Table-I

Unit Name	Installed Capacity
ICI Pakistan Limited (Soda Ash Business), Lahore	100
Olympia Chemicals Limited, Lahore	43

Thus, for the purposes of this investigation, the Commission has determined domestic industry comprises of the above-mentioned units in accordance with Section 2(d) of the Ordinance.

8. Standing of the Application

8.1 In terms of Section 24(1) of the Ordinance,

".... an application shall be considered to have been made by or on behalf of the domestic industry only if it is supported by those domestic producers whose collective output constitutes more than fifty percent of the total production of a domestic like product produced by that portion of the domestic industry expressing either support for or opposition to the application."

Furthermore, Section 24(2) of the Ordinance provides that:

"..... no investigation shall be initiated when domestic producers expressly supporting an application account for less than twenty five percent of the total production of the domestic like product produced by the domestic industry."

8.2 As stated above (paragraph 7.2 supra) the domestic industry of Soda Ash comprises of the two units i.e. the Applicant and Olympia Chemicals Limited. Following was the production of the two units during the period from October 2009 to September 2010:

Table-II

Unit Name	Production
ICI Pakistan Limited (Soda Ash Business), Lahore	76%
Olympia Chemicals Limited, Lahore	24%

8.3 The above information shows that the Applicant produced about 76% of the total production of Soda Ash during the POI. Olympia Chemicals Limited has not responded to the Commission's initiation of this investigation and remained indifferent. In

addition to this ' other producer questionnaire' was also sent to Olympia Chemicals Limited on September 28, 2011 to which it has not responded.

8.4 In view of the above, the Commission has determined that the application has been made by the domestic industry that represents 76% of total domestic production of Soda Ash and the application fulfils requirements of Section 24 of the Ordinance.

9. **Applicant' Views**

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

- i. Soda Ash imported from Kenya into Pakistan and Soda Ash produced in Pakistan by the domestic industry are like products;
- ii. Exporter/producer from Kenya is exporting Soda Ash to Pakistan at dumped prices; and
- iii. Exports of Soda Ash by the exporter/producer from Kenya to Pakistan at dumped prices has caused and is causing material injury to the domestic industry producing Soda Ash mainly through:
 - a. Volume of dumped imports
 - b. Price undercutting;
 - c. Price suppression;
 - d. Decline in market share;
 - e. Negative effect on sales;
 - f. Decline in profit margin and operating profit;
 - g. Negative effect in capacity utilization;
 - h. Negative effect on cash flow; and
 - i. Negative effect on inventories;
 - j. Negative effect on return on investment; and
 - k. Negative effect on employment

10. **Exporter/Foreign Producer of Soda Ash**

The Applicant has identified one producer/exporter of Soda Ash from Kenya, Magadi Soda Company, involved in alleged dumping. However, the Applicant has stated that there may be other producers/exporters of Soda Ash in Kenya but it is not aware of them. Further, according to the Applicant "there is a risk that exports could be diverted through other exporters/traders and that producers/exporters could export under a different name". Therefore; the Applicant has requested for imposition of anti-

dumping duty on all imports of the investigated product originating in and/ or exported from Kenya to avoid circumvention.

11. Initiation of Investigation

11.1 The Commission, upon examining accuracy and adequacy of the evidence provided in application, established that there was sufficient evidence of alleged dumping of Soda Ash into Pakistan from Kenya and consequent material injury to the domestic industry to justify initiation of an investigation. Consequently, the Commission issued a notice of initiation in accordance with Section 27 of the Ordinance, 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 September 26, 2011. Investigation concerning alleged dumped imports of Soda Ash into Pakistan {classified under PCT No. 2836. 2000 contained in the First Schedule of Customs Act, 1969 (IV of 1969)} originating in and/or exported from Kenya was thus initiated on September 26, 2011.

11.2 In pursuance of Section 27 of the Ordinance, the Commission notified Embassy of Kenya in Islamabad of the initiation of investigation (by sending a copy of the notice of initiation) on September 26, 2011 with a request to forward it to all exporters/producers involved in production, sales and export of Soda Ash from Kenya. Copy of the notice of initiation was also sent to exporter/producer of Soda Ash (the "Tata Chemicals Magadi") from Kenya. Copies of the notice of initiation were also sent to known Pakistani importers and the Applicant on September 26, 2011.

11.3 In accordance with Section 28 of the Ordinance, on September 28, 2011 the Commission sent copy of full text of the written application (non-confidential version) and Exporter's Questionnaire to Tata Chemicals Magadi of Kenya, on its available address. On September 28, 2011, copy of the full text of the written application along with exporter questionnaire was also sent to Embassy of Kenya in Pakistan with a request to forward it to all exporters/producers involved in production and/or sale/export of Soda Ash from Kenya. The Importer's Questionnaire was also sent to the importers of Soda Ash on September 28, 2011. The other producer questionnaire was sent to the Olympia Chemicals Limited on September 28, 2011.

12. Investigated Product, Domestic Like Product and Like Product

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

i. Investigated Product:

¹ The official Gazette of Pakistan (Extraordinary) dated September 26, 2011.

² The 'Daily Express' and the 'Daily Dawn' of September 26, 2011 issue.

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

ii. **Domestic Like Product:**

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

iii. **Like Product:**

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

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

12.2.1 **Investigated Product:**

The investigated product is Soda Ash (Na_2CO_3) produced and/or exported from Kenya to Pakistan. It is classified under PCT No. 2836.2000. Investigated product is produced/extracted from Trona reserves i.e. natural Soda Ash. The investigated product is an essential ingredient in the manufacture of detergents, glass, paper, sodium silicate and industrial chemicals. It is also used in textiles, metallurgical industries, desalination plants, water purification, soaps and cleaning compounds along with use in a number of other industries.

12.2.2 **Domestic Like Product**

Domestic like product Soda Ash (Na_2CO_3) produced by the domestic industry. It is classified under PCT No. 2836.2000. Domestic industry uses Solvay process to produce Soda Ash from naturally occurring raw materials such as Salt and Limestone. The domestic like product is also an essential ingredient in the manufacture of detergents, glass paper, sodium silicate and industrial chemicals. It is also used in textiles, metallurgical industries, desalination plants, water purification, soaps and cleaning compounds along with use in a number of other industries.

12.2.3 **Like Product:**

Soda Ash produced by the domestic industry and imported from Kenya is comparable in terms of physical and chemical characteristics, product specifications, chemical formulation, functions and end uses, distribution and marketing, tariff classification of the goods etc. Investigated product and domestic like product are technically and commercially substitutable. Domestically produced Soda Ash and imported Soda Ash are classified under the same PCT/HS heading No. 2836.2000.

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

13. **Period of Investigation**

13.1 In terms of Section 36 of the Ordinance, 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 POI selected for dumping and injury are, therefore, as follows:

For determination of dumping: From October 01, 2009 to September 30, 2010
For determination of material injury: From October 01, 2007 to September 30, 2010

14. Information/Data Gathering

14.1 The Commission sent Exporter's Questionnaire to Tata Chemicals Magadi of Kenya (whose complete address was available with the Commission) on September 28, 2011 for submission of data and information. The exporter/foreign producer was asked to respond within 37 days of dispatch of the Questionnaire. On September 28, 2011 copy of the Questionnaire was also sent to the Embassy of Kenya in Islamabad with a request to forward it to all producers/exporters of the investigated/like product in Kenya.

14.2 The Commission sent a letter to Tata Chemicals Magadi on November 03, 2011 (on expiry of 37 days period) stating that so far no response has been received from them on the Exporter's Questionnaire and therefore, be constrained to make preliminary and final determination of dumping in this investigation on the basis of " Best available information) including those contained in the application submitted by the domestic industry, in terms of Section 32 of the Ordinance.

14.3 Tata Chemicals Magadi requested for an extension in time period for submission of information on November 23, 2011. After taking into account due causes shown by Tata Chemicals Magadi in their request, the Commission granted extension in time period for submission of information on Exporter's Questionnaire for two weeks till December 15, 2011. A letter was received from Tata Chemicals Magadi on December 14, 2011 requesting to give further extension in time period for submission of data/information. The Commission again gave another extension of further two weeks till December 30, 2011. Tata Chemicals Magadi again requested for extension of time on December 22, 2011. The Commission sent a letter to Tata Chemicals Magadi on January 02, 2012 stating that the Commission has to follow a specific schedule and no more

extension can therefore be granted and the Commission will make preliminary and final determination of dumping in this investigation on the basis of best information available in terms of Section 32 of the Ordinance. In response, the exporter filed a writ petition No. 118 of 2012 in Islamabad High Court against the National Tariff Commission for not granting further extension. The exporter also sought stay in proceedings from Islamabad High Court which was not granted. However, Islamabad High Court directed through its order dated January 19, 2011 as follows:

“ Notice in the meanwhile, the respondents may proceed with the evidence, however no final determination be made till next date”

14.4 The Islamabad High Court further directed the Commission on March 9, 2012: *“ In the circumstances, no coercive measures shall be adopted against the applicant till date fixed”*.

14.5 Islamabad High Court on May 10, 2012 disposed of the writ petition No. 118 of 2012 and allowed Tata Chemicals Magadi extension of two weeks from May 10 to May 24, 2012 to submit reply of the Exporter’s Questionnaire. However, no reply has been received.

14.6 However, on May 30, 2012, a person who claimed to be representative of Ghani Glass Limited and Tata Chemicals Magadi, has submitted response to Exporter's Questionnaire on behalf of Tata Chemicals Magadi Limited without any authorization or power of attorney from Tata Chemicals Magadi Limited. It is practice of the Commission that power of attorney duly authorized and notarized and attested from Pakistan's embassy must be submitted to the Commission in favour of the person representing any exporter or foreign producer, detailed circular is placed on the Commission’s website www.ntc.gov.pk

14.7. The Commission sent letters to Ghani Glass Ltd. and Tata Chemicals Magadi, requesting them to confirm legal authority of above mentioned representative to submit response to the Exporter's Questionnaire (Confidential and Non-Confidential Version) on behalf of Tata Chemicals Magadi Limited, to represent Ghani Glass Limited and Tata Chemicals Magadi Limited in the Commission and submit the power of attorney duly authorized and notarized and attested by Pakistan's Embassy in Kenya in favour of your representative.

14.8 However, the Commission has not received any response to these letters from Ghani Glass Ltd. and Tata Chemicals Magadi Limited till date, therefore, the Commission is unable to use the information provided on Exporter’s Questionnaire for the purposes of this preliminary determination, as it has not been owned by either by Ghani Glass Ltd. nor Tata Chemicals Magadi.

14.9 On September 28, 2011 Questionnaires were sent to 6 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. Progressive Traders, Murree Brewery Co.Ltd and Ghani Glass Ltd responded to the Commission importer's questionnaire. Deficiency letter was sent to Ghani Glass Ltd on December 29, 2011 but no response has been received.

14.10 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 preliminary determination the Commission has used import data obtained from PRAL in addition to the information provided by the Applicant and importers.

14.11 Interested parties were also invited to make their views/comments and submit information (if any) relevant to this investigation within 45 days of initiation of investigation. Some interested parties have made comments /submitted information. Information submitted by these parties is also considered for this preliminary determination.

14.12 Thus, the Commission has sought from all available sources the relevant data and information deemed necessary for the purposes of preliminary determination of dumping and injury therefrom in this investigation. In terms Sections 32(4) and 35 of the Ordinance and Rule 12 of the Rules, the Commission has satisfied itself to the accuracy of information supplied by the interested parties to the extent possible for the purposes of this preliminary determination.

15. Verification of the Information

15.1 In terms of Sections 32(4) and 35 of the Ordinance and Rule 12 of the Rules, during the course of an investigation, the Commission shall satisfy itself as to the accuracy of the information and for this purpose verify the information supplied by the interested parties.

15.2 In order to verify information/data provided by the Applicant and to obtain further information (if any), officers of the Commission conducted on-the-spot investigation at the office and plant of the Applicant on January 04, 2012.

16. Public File

The Commission, in accordance with Rule 7 of the Rules, has established and maintains 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, responses to the questionnaires, submissions, notices, correspondence, and other documents for disclosure to the interested parties.

17. Confidentiality

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

17.2 The Applicant has requested to keep confidential the information, which is by nature confidential in terms of Section 31 of the Ordinance. This information includes data relating to sales, sale prices, cost to make and sell, inventories, production, profit/(loss), return on investment, cash flow, growth, investment, salaries & wages, number of employees and capacity.

17.3 On the basis of request made by the Applicant, the Commission has determined the confidentiality in light of Section 31 of the Ordinance and for the reasons that disclosure of such information may be of significant competitive advantage to a competitor, or because its disclosure would have a significant adverse effect upon the interested parties providing such information. Therefore, the Commission kept all such information confidential for which the Applicant made a request to keep it confidential.

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

18. Views/Comments of Interested Parties

18.1 The Commission received comments on the application from Ghani Glass Limited, on February 09, 2012, (after expiry of time period of 45 days of initiation of investigation) as mentioned in notice of initiation of investigation. However, the Commission has considered these comments in this investigation.

18.2 Annotated response to the issues raised in views/comments of Ghani Glass Limited is at Annexure-I:

B. DUMPING

19. Dumping

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

“an investigated product shall be considered to be dumped if it is introduced into the commerce of Pakistan at a price which is less than its normal value”.

20. Normal Value

20.1 In terms of Section 5 of the Ordinance “normal value” is defined as follows:

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

20.2 Further, Section 6 of the Ordinance states:

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

“a) the comparable price of the like product when exported to an appropriate third country provided that this price is representative; or

“b) the cost of production in the exporting country plus a reasonable amount for administrative, selling and general costs and for profits.

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

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

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

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

“(b) in substantial quantities; and

“(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.”

20.4. In case there is no cooperation from the exporter/foreign producer, the Commission may rely on best information available to reach preliminary or final determinations as in terms of Section 32 of the Ordinance. Section 32 of the Ordinance states:

(1) Subject to Sub-section (2), if, at any time during an investigation, any interest party
(a) refuses access to or otherwise does not provide, necessary information within the period of times as may be prescribed; or
(b) otherwise significantly impedes the investigation.

The Commission may reach preliminary and final determinations, whether affirmative or negative, on the basis of the best information available.

(2) The provisions of the Schedule to this Ordinance shall be followed in the application of sub-section (1).

(3) The Commission shall take due account of any difficulties experienced by interested parties, in particular, small companies, in supplying information requested by it and may, where it deems fit, provide such assistance as is practicable including, but not limited to, extension of any time period prescribed submission of information under this Ordinance.

(4) The Commission shall satisfy itself of the accuracy of the information supplied by interested parties during the course of an investigation in such manner as may be prescribed.

20.4 Determination of Normal Value

20.4.1 To collect information on the normal value, the Commission sent questionnaire to Tata Chemicals Magadi of Kenya and the Embassy of Kenya in Islamabad on September 28, 2011, as mentioned earlier in Para 14 supra. However, no response has been received from any exporter from Kenya. Therefore, the Commission has relied on Section 32 of the Ordinance for determination of normal value on the basis of best available information.

20.4.2 The Commission has established normal value of Soda Ash in the domestic market of Kenya on the basis of price at which the Soda Ash was exported from Kenya to India during the POI for dumping.

20.4.3 The Indian market for Soda Ash is comparable to the Pakistani Market for Soda Ash in all material aspects. The usage of Soda Ash in both countries is similar and in many cases unique to the region. For example, in both India and Pakistan, Soda Ash is used to make glass, detergents, paper, sodium silicate and industrial chemicals. In both countries, Soda Ash is produced using a synthetic process. Per capita usage of Soda Ash

is also same at 2 Kgs. Further, distance and freight rate from Kenyan port of Mombasa to Mumbai, India is similar to Karachi Port, Pakistan.

20.4.4 Import volumes and CFR prices for exports to India are based on data taken from Chemicals Explorer website (www.chemicalexplorer.com), which provides details of volume and CFR prices of imports of chemicals into India on a monthly basis. It has been assumed that costs from ex factory level to Mombassa Port, Kenya (e.g. costs of inland transportation, marine and inland insurance, agent's commission, wharfage etc.) will be the same for both exports to Pakistan and India. The normal value has been calculated at FOB level. For calculating FOB price, ocean freight has been deducted from exports to both Pakistan and India. The amount of ocean freight deduction is based on the quotation obtained from a shipping company. As per the quotation, ocean freight charges for 20 feet container to both Karachi Port and JNPT (Mumbai port) are the same.

21. Determination of Export Price

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

21.2 The weighted average FOB export price (Mombassa Port, Kenya) of Soda Ash imported from Kenya has been calculated on the basis of customs import data available with PRAL.

21.3 For fair comparison between normal value and export price, both have been compared at FOB level. It has been assumed that costs from ex-factory level to Mombassa Port, Kenya (e.g. costs of inland transportation, marine and inland insurance, agent's commission, wharfage etc.) will be the same for both exports to Pakistan and India, and hence are not material for this purpose. Even otherwise, information on these costs is not available with the Applicant. Cost of ocean freight has been deducted from export price on the basis of quotation obtained from a shipping line.

22. Determination of Dumping

22.1 As stated earlier the Applicant identified one exporter/foreign producer from Kenya involved in alleged dumping of the investigated product. The Commission sent questionnaire to that exporter/foreign producer to gather information necessary for this investigation. Questionnaire was also sent to Embassy of Kenya in Islamabad with a request to forward it to all exporters/foreign producers of the investigated product based in Kenya to submit information to the Commission. However, no response was received from any exporter/producer of Soda Ash from Kenya.

23. Dumping Margin

23.1 The Ordinance 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 Ordinance the Commission shall determine an individual dumping margin for each known exporter or producer of an investigated product.

23.2 Section 12 of the Ordinance provides three methods for fair comparison of normal value and export price in order to establish dumping margin. The Commission has established dumping margin by comparing normal value established on the basis of exports of Soda Ash from Kenya to India with weighted average export price at FOB level.

23.3 The Commission has also complied with the requirements of Section 11 of the Ordinance 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*”.

23.4 Taking into account all requirements set out above, the dumping margin has been determined as 22.25% as percentage of FOB export price.

24. Negligible Volume of Dumped Imports

24.1 In terms of Section 41(3) (b) of the Ordinance, volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports of an investigated product is found to account for less than 3 percent of total imports of the 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 percent of imports of a like product.

24.2 In this regard, data and information available with the Commission on volume of dumped imports of the investigated product from Kenya and like product from other sources during POI (from October 01, 2009 to September 30, 2010) is given in the following table:

**Table-III
Volume of Imports During POI**

Imports from:	Imports in:	
	Absolute quantity (MT)	% of total Imports
Kenya	28,584	96.63
Others	997	3.37
Total	29,581	100.00

Source: PRAL

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

C. INJURY TO DOMESTIC INDUSTRY

25. Determination of Injury

25.1 Section 15 of the Ordinance 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...”

25.2 Section 15 of the Ordinance 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”.

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

26. Domestic Industry

26.1 For the purposes of this preliminary determination, the Commission has determined domestic industry manufacturing domestic like product consists of two units i.e. the Applicant and Olympia Chemicals Limited. However, Olympia Chemicals Limited has not cooperated in this investigation. Therefore, most of the analysis of the injury factors given in following paragraphs is based on Applicant's information.

27 Volume of Dumped Imports

Facts

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

27.2 In order to ascertain the volume of dumped imports of the investigated product and production of the domestic like product, information submitted by the Applicant, and obtained from PRAL has been used. The following table shows imports of the investigated product and production of the domestic like product during the period October 01, 2007 to September 30, 2010 (POI for injury):

**Table-IV
Domestic Production and Imports**

Year*	Domestic production			Imports from	
	Applicant	Olympia**	Total	Dumped source	Other sources
2007-08	74	26	100	0.60	1.48
2008-09	72	27	99	1.50	2.21
2009-10	82	25	107	8.60	0.30

Note: Actual figures have been indexed with reference to the figure of the total domestic production in year 2007-08 by taking it equal to 100

* Year: October 1 to September 30 Sources: the Applicant and PRAL

** Olympia sales have been provided by the Applicant on its market research basis. Olympia sales are assumed to be its production.

Analysis

27.3 The above table shows that volume of dumped imports significantly increased in absolute terms in 2009-10 as compared to 2008-09. The dumped imports from Kenya increased by 470% in 2009-10.

27.4 Volume of dumped imports relative to domestic production was 0.60% in 2007-08, which increased to 1.5% in 2008-09 and to 8.6% in 2009-10.

Conclusion

27.5 On the basis of the above information and analysis, the Commission has preliminarily concluded that the dumped imports of the investigated product increased in absolute terms as well as relative to production of the domestic like product during POI.

28. Price Effects

28.1 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), and 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:

28.2 Price undercutting

Facts

28.2.1 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 POI. Landed cost of the investigated/dumped product has been calculated from the information obtained from PRAL. Comparison of weighted average ex-factory price of the domestic like product with the weighted average landed cost of the investigated product during POI is given in following table:

Table-V
Calculation Of Price Undercutting

Year/Period*	Applicant's price	Landed cost of alleged dumped	Price undercutting	
			Absolute	Percentage
2007-08	100	153	--	--
2008-09	117	106	11	8.55%
2009-10	121	101	20	16.53%

Note: Actual figures have been indexed with reference to the figure of Applicant's price of the year 2007-08 by taking it equal to 100

* Year: October.1 to September 30 Source: the Applicant

Source: Applicant and PRAL

Analysis

28.2.2 Above table shows that the prices of the domestic like product registered an increase during the last three years. Although there was a considerable decrease in landed cost of the investigated product during 2008-09 and 2009-10 and remained lower than price of domestic like product. Resultantly, it undercut price of the domestic like product during 2008-09 and 2009-10.

Conclusion

28.2.3 On the basis of the above facts and analysis, the Commission has concluded that the Applicant has suffered material injury on account of price undercutting during POI due to dumped imports of the investigated product.

28.3 Price Depression

Facts

28.3.1 Applicant's prices of the domestic like product during POI are given in the following table:

Table - VI
Ex-factory price of the domestic like product

Year*	Price
2007-08	100
2008-09	117
2009-10	121

Note: Actual figures have been indexed with reference to the figure of the year 2007-08 by taking it equal to 100

* Year: October 1 to September 31 Source: the Applicant

Analysis

28.3.2 Above table shows that the Applicant increased price of the domestic like product during POI. The domestic industry did not face price depression during POI.

Conclusion

28.3.3 The Commission has concluded on the basis of the above information and analysis that the domestic industry did not suffer material injury on account of price depression during POI.

28.4 Price Suppression

Facts

28.4.1 Weighted average cost to make and sell and ex-factory prices of the domestic like product for the POI, calculated on the basis of information provided by the Applicant, are given in the following table:

Table - VII
Cost to make and sell and ex-factory price of the domestic like product

Year*	Cost to make & sell	Ex- factory Price	Price suppression	
			Increase in cost	Increase in price
2007-08	100	100	--	--
2008-09	112	117	12	17
2009-10	119	121	7	5

Note: Actual figures have been indexed with reference to the figure of the year 2007-08 by taking it equal to 100

* Year: October 1 to September 31 Source: the Applicant

Analysis

28.4.2 Above table shows that cost to make and sell of the domestic like product increased by 12% and 7% in the years 2008-09 and 2009-10 respectively. However, Prices increased by 17% and 5% in the years 2008-09 and 2009-10 respectively. Therefore, increase in cost to make and sell in the year 2009-10 was more than the increase in price in that year. The domestic industry experienced price suppression in 2009-10 as it was not able to recover increased cost through increase in price.

Conclusion

28.4.3 On the basis of the above information and analysis, the Commission has concluded that the domestic industry suffered material injury on account of price suppression during the year 2009-10 (POI for dumping), due to dumped imports of the investigated product.

29. Effects on Market Share

Facts

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

**Table - VIII
Market Share**

Year*	** Sales by domestic industry	Imports from		Total domestic market
		Dumped source	Other sources	
2007-08	97.90	0.60	1.49	100
2008-09	97.24	1.52	2.24	101
2009-10	95.18	8.69	0.30	104

Note: Actual figures have been indexed with reference to the figure of total domestic market of the year 2007-08 by taking it equal to 100.

* Year: October 1 to September 30 Sources: the Applicant and PRAL

** Sales of the Applicant and Olympia

Analysis

29.2 The above table shows that the domestic market of Soda Ash increased by one percent and 4 percent in the years 2008-09 and 2009-10 respectively. Market share of domestic industry, which was 97.90 percent in the year 2007-08, decreased to 91.52

percent in the year 2009-10. Market share of the alleged dumped imports, which was 0.60 percent in the year 2007-08 increased to 8.35 percent in the year 2009-10. Market share of imports from other sources, which was 1.49 percent in the year 2007-08 decreased to 0.29 percent in the year 2009-10.

Conclusion

29.3 On the basis of above information and analysis, the Commission has concluded that the domestic industry suffered material injury on account of market share due to imports of the investigated product during POI.

30. Effects on Sales

Facts

30.1 The domestic industry comprises over two units. Domestic sales of both units are given in the following table:

Table - IX
Sales by the Domestic Industry

Year*	Applicant	Olympia**	Total
2007-08	100	100	100
2008-09	97	105	99
2009-10	97	98	97

Note: Actual figures have been indexed with reference to the figure of the year 2007-08 by taking it equal to 100

* Year: October 1 to September 30 Sources: the Applicant

** As provided by the Applicant.

Analysis

30.2 The above table shows that sales of the domestic like product by the domestic industry declined by 1 percent and 2 percent in the years 2008-09 and 2009-10 respectively.

Conclusion

30.3 On the basis of above information and analysis, the Commission has concluded that sales of the domestic like product decreased during POI, hence domestic industry suffered material injury on account of sales due to dumped imports of the investigated product.

31. Effects on Production and Capacity Utilization

Facts

31.1 The Applicant (i.e. ICI Pakistan) enhanced its production capacity of Soda Ash during 2008-09. Quantity produced and the capacity utilized by the domestic industry during POI were as follows:

Table-X
Installed capacity, quantity produced and capacity utilization

Year*	Capacity utilization on Production %
2007-08	86.54%
2008-09	75.17%
2009-10	77.99%

* Year: October1 to September 30 Sources: the Applicant

Analysis

31.2 It may be noted from the above table that installed production capacity of the Applicant and its production of domestic like product increased during POI. Its capacity utilization, which was 86.54 percent in the year 2007-08 declined to 75.17 percent in the year 2008-09 and increased to 77.99 percent in the year 2009-10. However, increase in capacity utilization in the year 2009-10 was due to increase in Applicant's exports of Soda Ash.

Conclusion

31.3 On the basis of the above information and analysis, the Commission has concluded that the Applicant suffered material injury on account of production and capacity utilization.

32. Effects on Inventories

Facts

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

Table-XI
Inventories of Domestic Like Product

Year	Opening Inventory	Closing Inventory
2007-08	100	20
2008-09	20	40
2009-10	40	114

Note: Actual figures have been indexed with reference to the figure of opening inventory of the year 2007-08 by taking it equal to 100

* Year is from 1st October to 30th September

Analysis

32.2 The data given in the table above shows that the closing inventory level of the domestic like product increase in year 2008-09 and further increased in year 2009-10.

Conclusion

32.3 On the basis of the above facts and analysis, the Commission has concluded that the Applicant suffered material injury on account of increase in inventories of the domestic like product during POI for injury and dumping.

33. Effects on Profits/Loss

Facts

33.1 Profit and loss position of the Applicant is on the basis of its audited account. Table below shows the profit and loss position of the Applicant during POI:

**Table -XII
Profit/(Loss) of the Applicant**

Year*	Net Profit/(Loss)
2007-08	100
2008-09	118
2009-10	106

Note: Actual figures have been indexed with reference to the figure of the year 2007-08 by taking it equal to 100

* Year is from 1st October to 30th September

Analysis

33.2 The above table shows that the Applicant's net profit increased in the year 2008-09 and decreased the year 2009-10.

Conclusion:

33.3 On the basis of the above facts, the Commission has concluded that the domestic industry has suffered material injury on account of decline in profit.

34. Effects on Cash Flow

Facts

34.1 Total cash flow position of the Applicant has been analyzed, as it was not possible to separate cash flow for Soda Ash. Total net cash flow position of the Applicant during POI is given in the following table:

**Table -XIII
Cash Flow of the Applicant**

Year*	Net cash flow
2007-08	100
2008-09	142
2009-10	88

Note: Actual figures have been indexed with reference to the figure of the year 2007-08 by taking it equal to 100

* Year: October1 to September 30

Source: the Applicant

Analysis

34.2 The above table shows that the net cash flow of the Applicant declined during the year 2009-10. Therefore, it suffered on account of cash flows in 2009-10.

Conclusion

34.3 On the basis of the above, the Commission has concluded that the Applicant has suffered material injury on account of cash flows.

35. Effects on Employment, Productivity and Salaries & Wages

Facts

35.1 Effects on domestic industry’s employment, productivity and salaries & wages are ascertained in the following table:

**Table - XIV
Employment, Wages and Productivity**

Year*	No. of Employees	Staff Cost	Productivity
2007-08	100	100	100
2008-09	98	124	99
2009-10	97	135	114

Note: Actual figures have been indexed with reference to the figure of the year 2007-08 by taking it equal to 100

* Year from October.1 to September. 31 Source: the Applicant

Analysis

35.2 The above table shows that Applicant's employment decreased during POI while its staff cost increased. Productivity per worker increased due to reduction in employment and increase in production. The Applicant suffered on account of employment.

Conclusion

35.3 Based on the above information and analysis, the Commission has concluded that the domestic industry suffered injury on account of employment.

36. Effects on Return on Investment

Facts

36.1 The Applicant has continued to invest in its Soda Ash business. This is evident from the fact that the applicant has enhanced its production capacity. The Applicant return of investment are given below in the table:

Table XV
Return on Investment

Year*	Return on Investment
2007-08	100
2008-09	115
2009-10	107

Note: Actual figures have been indexed with reference to the figure of the year 2007-08 by taking it equal to 100

* Year is from 1st October to 30th September

Analysis

36.2 The return on investment of the Applicant has decreased in 2009-10 due dumping, due to loss of profit.

Conclusion

36.3 On the basis of the above, the Commission has concluded that the Applicant suffered injury on account of return on investment during POI.

37. **Summing up of Material Injury**

37.1 Facts and analysis in the preceding paragraphs shows that the domestic industry has suffered material injury due to dumped imports of the investigated product during POI on account of:

- a. Volume of alleged dumped imports;
- b. Price Undercutting;
- c. Price suppression;
- d. Decline in market share;
- e. Decline in profit margin and operating profit;
- f. Decline in sales;
- g. Negative effect in capacity utilization;
- h. Negative effect on inventories;
- i. Negative effect on cash flows;
- j. Negative effect on employment, productivity; and
- k. Negative effect on return on investment;

D. CAUSATION

38. **Effect of Dumped Imports**

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

- i. Volume of dumped imports of the investigated product increased significantly in absolute as well as relative to production of the domestic like product;
- ii. Domestic industry experienced price undercutting and price suppression due to dumped imports of the investigated product;
- iii. Market share of dumped imports of the investigated product increased significantly and market share of the domestic like product declines simultaneously; and

- iv. Inventories of the domestic like product increased despite decline in production.
- v. Domestic industry faced negative effect on sales, profit margin and operating profit.
- vi. The domestic industry materially injured during POI due to negative effect on cash flow, negative effect on employment, productivity, and negative effect on return on investment in terms of Section 15 and 17 of the Ordinance.

39. Other Factors

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

E. CONCLUSIONS

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

- i. the application was filed by the domestic industry as the Applicant represents 76 percent of total domestic production of the domestic like product;
- ii. the investigated product and the domestic like product are like products;
- iii. during POI, the investigated product was exported to Pakistan by the exporters/foreign producers from Kenya at prices below its normal value;
- iv. the volume of dumped imports of the investigated product and the dumping margins established for the exporter/producer of the investigated product from Kenya were above the negligible and *de minimis* levels respectively.
- v. the domestic industry suffered material injury during POI on account of significant increase in volume of dumped imports price undercutting, price suppression, decline in market share, sales, capacity utilization, productivity and employment, profit margin and operating profit,

negative effect on cash flow, inventories and return on investment in terms of Section 15 and 17 of the Ordinance; and

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

F. IMPOSITION OF PROVISIONAL ANTI-DUMPING DUTY

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

42. Provisional anti-dumping duty @ 19.82 % is hereby imposed on the dumped imports of the investigated product importable from Kenya for a period of four months effective from June 08, 2012 under Section 43 of the Ordinance. The investigated product is classified under PCT heading No. 2836.2000.

43. In accordance with Section 51 of the Ordinance, the provisional anti-dumping duty shall take the form of *ad valorem* duty and be held in a non-lapsable personal ledger account established and maintained by the Commission for the purpose. Release of the investigated product for free circulation in Pakistan shall be subject to imposition of such provisional anti-dumping duty.

44. Provisional anti-dumping duty levied would be in addition to other taxes and duties livable on import of the investigated product under any other law.

45. The provisional anti-dumping 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.

(Zamir Ahmed)
Member
June 07, 2012

(Naimatullah Khan)
Member
June 07, 2012

(Prince Abbas Khan)
Chairman
June 07, 2012

Annexure-I

<u>Column-A (Views/Comments of Interested Parties)</u>	<u>Column-B (Commission's Response)</u>
<u>I. Views/Comments of Ghani Glass Limited</u> 1. The share of M/s Olympia Chemicals is 31.86% in domestic production. They request the Commission to ask for its views on this issue and obtain production, pricing and profit and loss data to see the injury impact.	The Commission requested to M/s Olympia Chemicals on September 28, 2011 to provide information relating to it. However, no response was received. A letter was again sent on January 04, 2012 to cooperate, otherwise the Commission would rely on the best available information but no response was received. Therefore, the Commission has relied on information provided in the application.
2. The ICI Pakistan Limited was previously itself importing Soda Ash from the alleged dumped source. As per Section (d) of the Ordinance, the importers of the allegedly dumped investigated product shall be excluded from the domestic industry	The PRAL's data for POI shows that Applicant has not imported any Soda Ash from the dumped source.
3. Normal value has not been established as per Section 5 and 6 of the Ordinance.	The normal value has been determined in accordance with Section 6 of the Ordinance

Column-A (Views/Comments of Interested Parties)	Column-B (Commission's Response)
	i.e. the comparable price of the like product when exported to an appropriate third country i.e. India
4. India cannot be taken as appropriate country for establishing the normal value as Applicant himself admitted that there is an anti-dumping application pending in India against dumping of Soda Ash from Kenya to India.	It has been discussed in the Para 20.4 of the report that why India can be considered an appropriate country for the purpose of calculation of normal value.
5. The Commission may examine that while calculating dumping margin like for like comparison (light and dense type) has been made by the Applicant or not.	There was no cooperation from the exporter. Therefore, the Commission has relied on best available information for calculation of dumping margin in terms of Section 32 of the Anti-Dumping Duties Ordinance 2000.
6. Market share held by the Applicant was just reduced by 0.47% (97.50-97.03) is not a highly significant volume and cannot be considered material injury. Moreover, 97.03 (indexed points) are still held by the Applicant.	Market share has been discussed in Para 29 of the report.
7. The Applicant sales show a decrease of 0.47% during dumping period is insignificant by all standards.	Sales have been discussed in Para 30 of the report.
8. Price suppression calculated is based on the comparison between increase in variable cost and increase in sales price which is not the correct method to ascertain price suppression in accordance with practice followed by the Commission.	The Commission has analyzed price suppression on the basis of total cost to make and sale. Price suppression has been discussed in Para 28.4 of the report.
9. The price undercutting claimed by the Applicant based on calculation of comparing gross sales price with the landed cost is not correct. The Applicant claim for price undercutting ranging from 20% to 30 % is baseless as the Applicant sales just reduced by 0.47% (very insignificantly)	The Commission has analyzed price undercutting on the basis of actual price charged by the Applicant as discussed in Para 28.2 of the report.
10. The quantum of alleged dumped imports is 28,171MT during the dumping POI which is just 6.6% of total domestic market of around 425,000 MT. It is impossible that such a small percentage of imports (which has mostly replaced other imports) can have any significant adverse affect on the operations of the Applicant, which could be termed as material injury.	Volume of dumped imports has been discussed in Para 27 of the report.
12. The prices of imports from Magadi are in accordance with the international prices. This can also be checked by comparing the import prices of Magadi with the export prices of the Applicant as it has made exports of around 15,000 MT to 20,000 MT of Soda Ash during the dumping POI.	The normal value has determined in accordance with Section 6 of the Ordinance i.e. the comparable price of the like product when exported to an appropriate third country i.e. India
13. The deterioration in profitability, cash flows and return on investment claimed by the Applicant are mainly on account of other factors (including impact of enhancement in installed capacity and substantial increase in exports which were admittedly less profitable than domestic sales), therefore it cannot solely be attributed to alleged dumped imports which as per its own admittance reduced its sales only by 0.47% (1,200 MT against sales of around 250,000 MT).	Causality has been discussed in Section D of the report.

