



**Government of Pakistan  
National Tariff Commission**

**REPORT**

**ON**

**FINAL DETERMINATION AND LEVY OF DEFINITIVE ANTIDUMPING DUTIES  
ON IMPORTS OF PHTHALIC ANHYDRIDE INTO PAKISTAN ORIGINATING IN  
AND/OR EXPORTED FROM THE ITALIAN REPUBLIC, ISLAMIC REPUBLIC OF  
IRAN AND KINGDOM OF THAILAND.**

**A.D.C No. 28/2012/NTC/PA  
August 1, 2013**

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From The Italian Republic, Islamic Republic Of Iran And Kingdom Of Thailand**

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

2. The Commission has conducted this investigation on imports of Phthalic Anhydride, (hereinafter referred to as "PA") into Pakistan originating in and/or Exported from the Italian Republic ("Italy"), Islamic Republic of Iran ("Iran") and Kingdom of Thailand ("Thailand") (hereinafter referred to as the "Exporting Countries") under the Ordinance and the Rules. The Commission has made final determination in this investigation under Section 39 of the Ordinance. This report on final determination has been issued in accordance with Section 39(5) of the Ordinance and Article 12.2 of the Agreement on Antidumping.

3. In terms of Section 39(1) of the Ordinance, the Commission shall make a final determination of dumping and injury within one hundred and eighty days of publication of a notice of preliminary determination in the Official Gazette. Notice of preliminary determination in this investigation was published in Official Gazette on February 7, 2013.

#### **A. PROCEDURE**

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

##### **5. Receipt of Application**

5.1 On July 6, 2012, the Commission received a written application under Section 20 of the Ordinance from Nimir Chemicals Pakistan Limited., Office No. 01, 7th Floor, Shaheen Complex, Egerton Road, Lahore (the "Applicant"). The Applicant has alleged that PA originating in and/or exported from the Exporting Countries is being dumped into Pakistan, which has caused and is causing material injury to the domestic industry producing PA.

5.2 The Commission informed the Embassies of the Exporting Countries in Islamabad through note verbale dated July 17, 2012, of the receipt of application in accordance with the requirements of Section 21 of the Ordinance.

### **5.3 Already Imposed Antidumping Duties:**

5.3.1 The PA is already subject to following antidumping measures in place for a period of five years from the date of Imposition and extension.

<b>Countries</b>	<b>Rates of Antidumping duties in Place</b>	<b>Date of imposition</b>
Brazil	6.17%	30-09-2010
China	11.84%	30-09-2010
Indonesia	5.87%	30-09-2010
South Korea	7.36%	30-09-2010
Taiwan	27.28%	30-09-2010
India	10.94%	13-02-2006 (Extended w.e.f February 13, 2011)

### **6. Evaluation and Examination of the Application**

The examination of the application showed that it met the requirements of Section 20 of the Ordinance as it contained sufficient evidence of dumping of PA into Pakistan from the Exporting Countries and material injury to the domestic industry caused there from. 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 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 domestic industry of PA comprises of only one unit, Nimir Chemicals Pakistan Limited.

7.3 Nimir Chemicals Pakistan Limited (previously Ravi Chemicals Ltd) was incorporated as a public limited company on November 30, 1989 under the Companies Ordinance, 1984. Nimir Chemicals Pakistan Limited is a chemical manufacturing company. Nimir Chemicals Pakistan Limited is neither related to importers or exporters nor did it import PA itself.

## **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 PA comprises of only one unit i.e. the Applicant. The application has been filed by the Applicant, which produced \*\*\* Tonnes of PA during April 2011 to March 2012. On the basis of this, it is determined that the application is made by or on behalf of domestic industry as it fulfills the requirements of Section 24 of the Ordinance

## **9. Applicant's Views**

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

- i. PA imported from Exporting Countries into Pakistan and PA produced in Pakistan by the domestic industry are like products;
- ii. Exporters/producers from Exporting Countries are exporting PA to Pakistan at dumped prices;
- iii. Exports of PA by the exporters/producers from Exporting Countries to Pakistan at dumped prices has caused and is causing material injury to the domestic industry producing PA mainly through:
  - a. Volume of dumped imports

- b. Price undercutting;
  - c. Decline in market share;
  - d. Negative effect on sales;
  - e. Decline in profit margin and operating profit;
  - f. Negative effect in capacity utilization;
  - g. Negative effect on cash flow; and
  - h. Negative effect on inventories;
  - i. Negative effect on return on investment; and
  - j. Negative effect on employment
- iv. the domestic industry has not only suffered material injury during the dumping POI because of increased dumped imports but at the same time it is facing threat of material injury due to dumped imports, which is imminent in the future.

#### **10. Exporters/Foreign Producers of PA**

10.1 The Applicant has identified 3 foreign producers and exporters involved in alleged dumping of the investigated product from the Exporting Countries. The Applicant has provided contact address of 1 foreign exporter/producer. List of exporters/producers, identified by the Applicant is placed at Annex-I. The Applicant has stated that there may be other producers and exporters of the investigated product, which are not known to it. Therefore, the Applicant has requested for imposition of antidumping duty on all imports of the investigated product originating in and/or exported from the Exporting Countries instead of imposition of anti-dumping duty on identified producers/exporters.

#### **11. Initiation of Investigation**

11.1 The Commission, in accordance with Section 23 of the Ordinance 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 Exporting Countries and consequent material injury to the domestic industry. Thus initiation of the investigation was justified. Consequently, the Commission issued a notice of initiation in accordance with Section 27 of the Ordinance, which was published in the Official Gazette<sup>1</sup> of Pakistan and in two widely circulated national newspapers<sup>2</sup> (one in English language and one in Urdu Language) on August 17, 2012. Investigation concerning alleged dumped imports of PA into Pakistan {classified under PCT No<sup>3</sup>. 2917.3500 contained in the First Schedule of Customs Act, 1969 (IV of 1969)} originating in and/or exported from Exporting Countries was thus initiated on August 17, 2012.

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<sup>1</sup> The official Gazette of Pakistan (Extraordinary) dated August 17, 2012.

<sup>2</sup> The 'Daily Express' and the 'Daily Express Tribune' of August 17, 2012 issue.

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

11.2 In pursuance of Section 27 of the Ordinance, the Commission notified Embassies of Exporting Countries in Islamabad of the initiation of investigation (by sending a copy of the notice of initiation) on August 27, 2012 with a request to forward it to all exporters/producers involved in production, sales and export of PA from the Exporting Countries. Copy of the notice of initiation was also sent to known exporter/producer of PA from Italy whose address was available with the Commission. Copies of the notice of initiation were also sent to known Pakistani importers and the Applicant on August 27, 2012.

11.3 In accordance with Section 28 of the Ordinance, on August 29, 2012 the Commission sent copy of full text of the written application (non-confidential version) and Exporter's Questionnaire to only one known exporter of Exporting Country, on its available address. On August 27, 2012, copy of the full text of the written application along with Exporter Questionnaire was also sent to Embassy of the Exporting Countries in Pakistan with a request to forward it to all exporters/producers involved in production and/or sale/export of PA from Exporting Countries. The Importer's Questionnaire was also sent to the importers of PA on August 29, 2012.

## **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:**  
*"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:**

12.2.1.1 The investigated product is Phthalic Anhydride ("PA") imported from the Exporting Countries. It is classified under Pakistan Customs Tariff<sup>1</sup> ("PCT") Heading Nos. 2917.3500. The investigated product is in form of white flakes, with mild odour, slightly soluble in ether and hot water.



**Specification:**

PA Contents	99.8 % (minimum 98%)
Colour index to hazen	20 APHA
Heat Stability	50 APHA
Boiling point	285 <sup>0</sup>
Solidification point	131 <sup>0</sup>

12.2.1.2 The primary use of investigated product is in the production of plasticizer used for production of plastics from vinyl chloride. PA is used in manufacturing of alkyd resins (Glyptal) and to modify physical properties of synthetic resins.

**12.2.2 Domestic Like Product**

12.2.2.1 The domestic like product is Phthalic Anhydride ("PA") manufactured by domestic industry. It is classified under Pakistan Customs Tariff<sup>1</sup> ("PCT") Heading No. 2917.3500. The domestic like product is in form of white flakes, with mild odour, slightly soluble in ether and hot water.

**Specification:**

PA Contents	99.8 % (minimum 98%)
Colour index to hazen	20 APHA
Heat Stability	50 APHA
Boiling point	285 <sup>0</sup>
Solidification point	131 <sup>0</sup>

12.2.2.2 Domestic like product is mainly used in production of plasticizer used for production of plastics from vinyl chloride. PA is used in manufacturing of alkyd resins (Glyptal) and to modify physical properties of synthetic resin.

**12.2.3 Like Product:**

PA produced by the domestic industry and imported from the Exporting Countries is comparable in terms of physical and chemical characteristics, raw materials, product specifications, chemical formulation, end uses and tariff classification of the goods etc. Investigated product and domestic like product are technically and commercially substitutable. Domestically produced PA and imported PA are classified under the same PCT/HS heading No. 2917.3500.

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:

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- 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 The Commission received the application on July 6, 2012 and initiated the investigation on August 17, 2012. The POI in Application was proposed for dumping was from April 1, 2011 To March 31, 2012 and for injury was from April 1, 2009 To March 31, 2012. Therefore, to fulfill the requirement of Section 36 of the Ordinance, the Commission extended one quarter in POI for dumping and injury.

13.3 The POI selected for dumping and injury are, therefore, as follows:

For determination of dumping:	From April 1, 2011 to June 30, 2012
For determination of injury:	From April 1, 2009 to June 30, 2012

#### **14. Information/Data Gathering**

14.1 The Commission sent Exporter’s Questionnaire to the Polynt S.P.A an exporter from Italy, whose complete address was available with the Commission on August 29, 2012 for collection of data and information. The exporter/foreign producer was asked to respond within 37 days of dispatch of the Questionnaire. On August 29, 2012 copy of the Questionnaire was also sent to the Embassies of Exporting Countries in Islamabad with a request to forward it to the producers/exporters identified by the Applicant, whose addresses were not available with Commission and all other producers/exporters of the investigated/like product in Exporting Countries.

14.2 The Commission received an email on October 4, 2012 from Polynt SPA after expiry of 37 days to response to the Exporter’s questionnaire. Polynt SPA, instead of providing data /information on exporter questionnaire, simply replied that Polynt SPA is not involved in dumping of PA to Pakistan. On October 15, 2012, Commission sent a letter to Polynt SPA with advice to submit data/information on prescribed questionnaire within 15 days of dispatch of this letter, otherwise the Commission would be constrained to make preliminary determination of dumping in this investigation on the basis of best information available including those contained in the application submitted by the domestic industry, in terms of Section 32 of the Ordinance.

14.3 The Commission also sent letter to the Embassies of Exporting Countries on October 15, 2012, (on expiry of 37 days period) stating that so far no response has been received from producers/exporters on the Exporter’s Questionnaire and therefore the producers/exporters

may be advised to submit the data on prescribed questionnaire otherwise the Commission would be constrained to make preliminary determination of dumping in this investigation on the basis of best information available including those contained in the application submitted by the domestic industry, in terms of Section 32 of the Ordinance.

14.4 However, the Commission has not received any response to these letters from any exporter from the Exporting Countries.

14.5 On August 29, 2012 Questionnaires were sent to 10 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. No importer submitted any data/information on prescribed questionnaire.

14.6 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.

14.7 Interested parties were also invited to make their views/comments known and submit information (if any) relevant to this investigation within 45 days of initiation of investigation. No interested party have made comments /submitted information.

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

## **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. Accordingly the Commission has satisfied itself to the accuracy and adequacy of information supplied by the interested parties to the extent possible for the purposes of this final determination.

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 from October 04, 2012 to October 06, 2012.

## **16. Public File**

16.1 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, 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 public file.

## **18. Preliminary Determination**

18.1 The Commission made its preliminary determination in this case on February 7, 2013, and in terms of Section 37 of the Ordinance, the Commission issued a notice of preliminary determination ("notice of preliminary determination") which was published on February 7, 2013 in official Gazette of Pakistan and in two widely circulated national newspapers (one English "The Nation" and one Urdu Language "Daily Jang") notifying preliminary determination without imposition of any provisional antidumping duty.

18.2 The Commission also sent notice of preliminary determination to the Embassies of Exporting Countries in Islamabad, the exporter, the importers and the Applicant in accordance with the requirements of Section 37(4) of the Ordinance. The findings of the Commission in the preliminary determination were as follows:

- i. the application was filed by the domestic industry as the Applicant is the sole producer of the domestic like product in domestic market;

- 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 Exporting Countries at prices below its normal value;
- iv. the volume of dumped imports of the investigated product and the dumping margins established for the exporters/producers of the investigated product from Exporting Countries 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, negative effect on cash flow and inventories in terms of Section 15 and 17 of the Ordinance;
- vi. however, there was a weak causal relationship between dumped imports of the investigated product and the material injury suffered by the domestic industry.
- vii. The Commission was of view that level of injury was not adequate to justify imposition of provisional measures. Therefore, no provisional measures were recommended, however the investigation was not terminated and has been carried on till the final determination of the investigation.

## **19. Disclosure after Preliminary Determination**

19.1 In terms of Rules 11 of the Rules, the Commission, upon request made by exporters/foreign producers within fifteen days of the publication of notice of preliminary determination, shall hold disclosure meeting with the producer or exporter to explain dumping calculation methodology applied for that producer/exporter. The Commission shall also provide an opportunity to producer or exporter or their legal representatives to examine and receive copies of the dumping calculation done by the Commission for their exports. However, Commission received no request for disclosure meeting from exporters/foreign producers after preliminary determination.

## **20. Hearing**

20.1 Upon request of the Applicant and Power Chemicals (Pvt) Ltd (an Importer), a hearing in this investigation was held on March 28, 2013 under Rule 14 of the Rules. List of participants who attended the hearing is placed at Annexure II. The information submitted by the participants during the hearing, whether orally (oral statements were subsequently confirmed

in writing as per Rules 14 of the Rules) or in writing and record note of the hearing prepared by the Commission are available in the public file (paragraph 5 supra).

**21. Views/Comments of the Interested Parties on the Preliminary Determination**

21.1 The Commission received comments on its preliminary determination made in this investigation from following interested parties:

- i. Nimir Chemicals Pakistan Limited
- ii. Power Chemicals Pvt Ltd
- iii. Qaiser LG Petrochemicals Pvt Ltd
- iv. Pakistan Paint Manufacturing Association

21.2 Comments received and germane to this investigation under the Ordinance are placed at Annexure - III.

**22. Disclosure of Essential Facts**

22.1 In terms of Rules 14(8) of the Rules, and Article 6.9 of Agreement on Antidumping, the Commission disclosed essential facts, and in this context dispatched Statement of Essential Facts (hereinafter referred to as the "SEF") on June 28, 2013 to all interested parties including the known exporters/foreign producers, the Applicant, the known Pakistani importers, and to the Embassies of the Exporting Countries in Islamabad.

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 received comments from following interested parties:

- i. Nimir Chemicals Pakistan Limited
- ii. Power Chemicals Pvt Ltd

22.3 The comments received on essential facts and germane to this investigation under the Ordinance are placed at Annexure - IV.

## **B. DETERMINATION OF DUMPING**

### **23. 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”.*

### **24. Normal Value**

24.1 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”.*

24.2 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:”.*

24.3 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.”*

## **25. Export Price**

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”.

### **Determination of Dumping**

26 As stated earlier the Applicant identified three exporters/foreign producers from the Exporting Countries involved in alleged dumping of the investigated product. The Commission sent questionnaire to the only one exporter/foreign producer whose address was available with it to gather information necessary for this investigation. For all other exporters/foreign producers Questionnaire were sent to Embassies of the Exporting Countries in Islamabad with a request to forward it to all exporters/foreign producers of the investigated product based in Exporting Countries to submit information to the Commission. However, no response was received from any exporter/ foreign producer of PA from the Exporting Countries.

## **27. Determination of Normal Value**

27.1 To collect information on the normal value, the Commission sent questionnaire to known exporters/foreign producers of the Exporting Countries and the Embassies of the Exporting Countries in Islamabad on August 29, 2012 as mentioned earlier in Para 14 supra. However, no response on the exporter’s questionnaire has been received from any exporter from the Exporting Countries. Therefore, the Commission has relied for determination of normal value on the basis of best available information in terms of Section 32 of the Ordinance.

27.2 The Commission has constructed normal values for the Exporting Countries on the basis of information provided by the Applicant. The Applicant relied upon the following methodology for construction of normal value; for raw material costs, the Applicant has used the price of locally purchased raw materials adjusted to ex-factory level. For calculation of labor



cost labor hours of domestic industry has been multiplied by labor rate<sup>1</sup> per hour applicable in these countries. Energy consumption of the Applicant is used to calculate energy cost by multiplying it with fuel rates<sup>2</sup> in the respective countries. Financial cost has been calculated on the basis of interest rates<sup>3</sup> applicable in these countries. Profit has been calculated as 5% of the total constructed cost to make and sell of each Exporting Country. The Commission feels that it is the best information available as the domestic prices for these countries are not reasonably available. The calculation of normal value has been placed at Annex-V.

## **28. Determination of Export Price**

28.1 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*”.

28.2 The weighted average export price of PA imported from Exporting Countries has been calculated on the basis of customs import data obtained from PRAL.

28.3 For fair comparison between normal value and export price, both have been compared at ex factory level. Export price has been calculated on the basis of information/data obtained from PRAL. The data obtained from PRAL shows prices at C & F level. These prices have been adjusted to reach at ex-factory level by deducting ocean freight and inland freight. Ocean freight has been calculated on the basis of quotation obtained from a shipping line. Calculation of export price has been placed at Annex-VI.

## **29. Dumping Margin**

29.1 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.

29.2 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 constructed on the basis of best available information with weighted average export price at ex factory level.

29.3 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.*”

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<sup>1</sup> Ministry of Labour Bangkok, High Council on Labour Iran, For Italy, [www. Italianfood.about.com/library/snip/blsip069.htm?p=1](http://www.Italianfood.about.com/library/snip/blsip069.htm?p=1).

<sup>2</sup> [www.numbeo.com](http://www.numbeo.com)

<sup>3</sup> <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2208rank.html>

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

**Table-I  
Dumping Margin**

Exporting Countries	Normal Value (US\$/MT)	W.A. C&F Export Price (US\$/MT)	W.A Adjusted Exports Price (US\$/MT)	Dumping Margin in		
				Absolute terms	Percentage terms (%)	Percentage on C&F Basis
Italy	100.00	92.55	88.05	11.95	13.57	12.91
Iran	95.40	91.43	88.43	6.97	7.88	7.62
Thailand	90.67	87.37	82.12	8.55	10.41	9.78

Note: To keep confidentiality, actual figures have been indexed w.r.t Italy's ex-factory normal price by taking it equal to 100.

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

30.1 In terms of Section 41(2) of the Ordinance “*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) 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 alleged dumped imports of the investigated product, set out in paragraph 29.4 supra, is above negligible (*de minimis*) level.

30.3 As regards the volume of dumped imports, Section 41(3) of the Ordinance provides that the volume of such imports shall normally be regarded as negligible if the volume of dumped imports of an investigated product is found to account for less than three percent of total imports of 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 alleged dumped imports of the investigated product and other imports of PA has been obtained from PRAL. Volume of alleged dumped imports of the investigated product and the PA imported from other sources during the POI (April 01, 2011 to June 30, 2012) is given in a table below:

**Table-II**  
**Volume of Imports of PA during POI for Dumping**

Country	Volume of Imports in:
	Percentage
Italy	61.27
Iran	19.79
Thailand	5.68
Other Sources	13.26
Total	100

Source: PRAL

30.3 The above table shows that the volume of dumped imports of the investigated product from Exporting Countries was well above the negligible threshold during POI.

### **C. INJURY TO DOMESTIC INDUSTRY**

#### **31. Determination of Injury**

31.1 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...”*

31.2 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”.*

31.3 The Commission has taken into account all factors in order to determine whether the 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.

#### **32. Domestic Industry**

33.1 For the purposes of this final determination, the Commission has determined that domestic industry manufacturing domestic like product consists of only one unit i.e. the

Applicant. Therefore, most of the analysis of the injury factors given in following paragraphs is based on Applicant's information.

**33. Cumulation of Dumped Imports**

Section 16 of the Ordinance states that:

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

*“(a) dumping margin in relation to an investigated product from each country is more than the negligible amount as specified...., and volume of dumped imports from each investigated country is not less than the negligible quantity as specified.....; 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”.*

33.2 Investigation by the Commission has revealed that the volume of dumped imports during the POI from the Exporting Countries was above the negligible quantity (paragraph 30 supra). Furthermore, dumping margins for each country was also more than the negligible amount.

33.3 Weighted average export price charged by the exporters from the Exporting Countries during the POI for dumping is given below which shows that there was a price competition between imports of the investigated product:

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

Country	Weighted Average C&F Price (US\$/MT)
Italy	100.00
Iran	98.79
Thailand	94.41

Sources: PRAL

Note: To keep confidentiality, actual figures have been indexed w.r.t Italy's C&F Price by taking it equal to 100.

33.4 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 34 to 42 infra.

33.5 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:-

**34. Volume of Dumped Imports**

**Facts**

34.1 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 domestic production or consumption of the domestic like product manufactured by the domestic industry during POI.

34.2 In order to assess the impact of the volume of the dumped imports of the investigated product in relation to production and consumption of the domestic like product, the information submitted by the Applicant, and information 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 April 01, 2009 to June 30, 2012 (POI for injury):

**Table-IV**  
**Imports of PA During POI (MT)**

<b>Year</b>	<b>Percentage Increase over Previous year</b>
2009-10	-
2010-11	100
2011-12	1336

Source: PRAL and Applicant

Year: April 1 to March 31

Note: To keep confidentiality, the absolute figures have been indexed w.r.t dumped imports during 2009-10 as 100.

**Analysis**

34.3 The above table shows that the volume of dumped imports in absolute terms increased from zero to \*\*\* MT showing 100% increase in 2010-11 as compared to 2009-10. The volume of dumped imports increased by 1336% in 2011-12 as compared to 2010-11, which shows a significant increase in volume of dumped imports in absolute terms.

34.4 The quarterly analysis of volume of dumped imports seems more intensive as 81% of total imports during the POI from dumped sources were in the last two quarters of POI as shown in table below.

**Table-V**  
**Imports of PA During POI (MT)**

Quarter	Percentage Increase/(Decrease) over Previous Quarter
Apr 11 - June 11	-
Jul 11 - Sep 11	(50)
Oct 11 - Dec 11	462
Jan 12 - Mar 12	385
Apr 12 - June 12	(64)

Source: PRAL and Applicant

34.5 The above table shows that out of total imports of \*\*\* MT during POI for dumping \*\*\* MT or 81% of the total imports were in last two quarters. This indicates that the domestic industry has not only suffered significant material injury but also faces an imminent threat of material injury, which aspect is covered in more detail in Para supra.

### **Conclusion**

34.6 On the basis of the above information and analysis, the Commission has concluded that the dumped imports of the investigated product increased significantly in absolute terms during POI indicating a material injury as well as threat of material injury on account of volume of dumped imports.

## **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 POI. Landed cost of the investigated/dumped product has been calculated from the information obtained from PRAL. Calculation of landed cost has been placed at Annex-VIII. 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-VI**  
**Calculation of Price Undercutting (Rs./MT)**

Year	Average ex- factory price of domestic like product	Average landed cost of dumped imports	Price undercutting	
			Absolute	Percentage (%)
2009-10	100.00	-	-	-
2010-11	117.41	144.34	-	-
2011-12	153.01	160.65	-	-

Sources: PRAL and Report of on the Spot Investigation in this case

Note: To keep confidentiality, average ex factory price of domestic like product during 2009-10 is indexed as 100.

**Analysis**

35.2.2 Above table shows that the prices of the domestic like product remained above the landed cost of the imports from dumped sources on yearly basis. However, on quarterly basis the domestic industry has suffered on account of price undercutting as shown below;

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

Period	Average ex- factory price of domestic like product	Average landed cost of dumped imports	Price undercutting	
			Absolute	Percentage (%)
Apr 11 - June 11	100.00	105.75	-	-
Jul 11 - Sep 11	99.24	106.47	-	-
Oct 11-Dec 11	114.39	121.79	-	-
Jan 12-Mar 12	124.32	118.13	6.19	4.98
Apr 12 - June 12	126.33	123.31	3.03	2.40

Sources: PRAL and Report of on the Spot Investigation in this case

Note: To keep confidentiality, average ex factory price of domestic like product during 1<sup>st</sup> quarter of POI is indexed as 100

**Analysis**

35.2.3 The quarterly analysis shows that domestic industry suffered price undercutting in the last 2 quarters of the POI, which is indicative of future price undercutting also. The significance of the price undercutting during last two quarters is magnified by the fact that major volume i.e. 81% of the total dumped imports were made during this period, which is a clear indicative of claimed threat of material injury (as the domestic industry may not be able to sell above landed cost of investigated product which may have price depressing effect)

**Conclusion**

35.2.4 On the basis of the above facts and analysis, the Commission has concluded that the domestic industry suffered on account of price undercutting during POI due to dumped imports of the investigated product.

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

35.3.1 Applicant's prices of the domestic like product during the last three years are given in table below

**Table - VIII**  
**Calculation of Price Depression (Rs./MT)**

Year/Period	Average ex- factory price of domestic like product	Price Depression	
		Absolute	Percentage (%)
2009-10	100.00	-	-
2010-11	117.41	-	-
2011-12	153.01	-	-

Source: Report of on the Spot Investigation in this case

Note: To keep confidentiality, average ex factory price of domestic like product during 2009-10 is indexed as 100.

35.3.2 The quarterly prices of domestic like product are given in the following table:

**Table - IX**  
**Calculation of Price Depression during POI (Rs./MT)**

Year/Period	Average ex- factory price of domestic like product	Price Depression	
Apr 11 - June 11	139.76	-	
Jul 11 - Sep 11	138.71	1.16	0.84
Oct 11-Dec 11	159.87	-	-
Jan 12-Mar 12	173.75	-	-
Apr 12 - June 12	176.57	-	

Source: Report of on the Spot Investigation in this case

Note: To keep confidentiality, average ex factory price of domestic like product during 2009-10 is indexed as 100.



**Analysis**

35.3.3 Above tables shows that the Applicant increased average prices of the domestic like product during the POI for injury except one quarter i.e. July-Sep 2011. .

**Conclusion**

35.3.4 The Commission has concluded on the basis of the above information and analysis that there was no significant price depression during POI.

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

35.4.1 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 - X**  
**Cost to Make and Sell and Ex-factory Price of the Domestic Like Product** (Rs./MT)

Year	Average cost of production of domestic like product	Average ex-factory price of domestic like product	Price Suppression		
			Increase/(decrease) in cost of production	Increase/(decrease) in price	Price suppression
2009-10	100.00	104.33	0.00	0.00	
2010-11	123.18	122.50	23.18	18.17	5.01
2011-12	153.81	159.63	30.63	37.14	

Source: Report of on the spot investigation in this case

Note: To keep confidentiality, average cost of production of domestic like product during 2009-10 is indexed as 100.

**Analysis**

35.4.2 Above table shows that cost to make and sell of the domestic like product increased by 23.2% and 24.9% in the years 2010-11 and 2011-12 respectively. However, Prices increased by 17.4% and 30.3% in the years 2010-11 and 2011-12 respectively. During 2010-11, the domestic industry experienced price suppression of 4.09% but in the year 2011-12, there was no price suppression as increase in price was more than increase in cost. Quarterly analysis reflects price suppression in the 2<sup>nd</sup> and last quarter of POI only, which is given in table below;

**Table - XI**  
**Cost to Make and Sell and Ex-factory Price of the Domestic Like Product** (Rs./MT)

Period	Average cost of production of domestic like product	Average ex-factory price of domestic like product	Price Suppression		
			Increase/(decrease) in cost of production	Increase/(decrease) in price	Price suppression
Apr 11 - Jun 11	140.61	145.82	0.00	0.00	
Jul 11 - Sep 11	145.47	144.71	4.86	-1.21	4.86
Oct 11-Dec 11	156.20	166.79	10.73	22.08	
Jan 12-Mar 12	152.21	181.28	-3.99	14.48	
Apr 12 - June 12	155.31	184.21	3.10	2.94	0.16

Source: Report of on the spot investigation in this case

Note: To keep confidentiality, average cost of production of domestic like product during 2009-10 is indexed as 100.

**Conclusion**

35.4.3 On the basis of the above information and analysis, the Commission has concluded that the domestic industry did not suffer material injury on account of price suppression during POI for dumping.

**36. Effects on Market Share**

**Facts**

36.1 The total domestic demand of PA in Pakistan is met through local production and imports. Following table shows the market share from imports and domestic production during the POI.

**Table - XII**  
**Market Share** (MT)

<u>Year</u>	Share of Applicant Industry in the Domestic Market	Share of Dumped Imports in Domestic market	Share of Other Imports in Domestic Market	Total Domestic Market
	M T	M T	M T	M T
2009-10	93.40	0.00	6.60	100.00
2010-11	91.35	0.48	2.64	94.47
2011-12	90.25	6.87	0.53	97.65

Sources: PRAL and the Applicant

Year: April 1 to March 31

Note: To keep confidentiality, Total domestic market in 2009-10 is indexed as 100.

**Analysis**

36.2 The above table reveals that during the year Apr 10-Mar 11, the share of domestic industry in the total domestic market was \*\*\* MT but in 2011-12, the share of domestic industry

decreased by 4.2% and came to the level of \*\*\* MT, inspite of the fact that the domestic market was increased during the same period. The quarterly analysis of POI is given below;

**Table -XIII**  
**Market Share** (MT)

<u>Period</u>	<u>Share of Applicant Industry in the Domestic Market</u>	<u>Share of Dumped Imports in Domestic market</u>	<u>Share of Other Imports in Domestic Market</u>	<u>Total Domestic Market</u>
Apr 11 - June 11	21.45	0.38	0.29	22.12
Jul 11 - Sep 11	20.55	0.19	0.00	20.74
Oct 11 - Dec 11	26.27	1.08	0.09	27.44
Jan 12 - Mar 12	21.97	5.22	0.16	27.35
Apr 12 - June 12	23.22	1.90	0.81	25.90

Sources: PRAL and the Applicant

Note: To keep confidentiality, Total domestic market in 2009-10 is indexed as 100.

36.3 Quarterly analysis shows that the share of the applicant was 96.98% in the quarter Apr 2011 to June 20 11 which decreased to 89.65% of the total domestic market in the last quarter of the POI. This reduction in share of the domestic industry is clearly because of increase in share of dumped imports.

### **Conclusion**

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

### **37. Effects on Sales**

#### **Facts**

37.1 The domestic industry comprises only one unit i.e. applicant. Sales of the domestic like product are given in the following table:

**Table - XIV**  
**Sales of the PA** (MT)

<b>Year</b>	<b>Sales by domestic industry</b>
2009-10	100.00
2010-11	97.81
2011-12	96.62

Source: Report of on the Spot Investigation in this case

Year: April 1 to March 31

Note: To keep confidentiality, sales during 2009-10 are indexed as 100

**Analysis**

37.2 The above table shows that the sales of domestic industry decreased by \*\*\* MT (2.2percent) in the year 2010-11 and decreased by \*\*\* MT (1.2 percent) in the year 2011-12. This decrease in sales of the domestic industry was due to decline in total market in 2010-11 and increase in share of dumped imports during the POI. Quarterly analysis of sales during POI is given below;

**Table - XV**  
**Sales of the PA during POI (MT)**

Period	Sales by domestic industry
Apr 11 - June 11	22.97
Jul 11 - Sep 11	22.00
Oct 11 - Dec 11	28.13
Jan 12 - Mar 12	23.52
Apr 12 - June 12	24.86

Source: Report of on the Spot Investigation in this case

Note: To keep confidentiality, sales during 2009-10 are indexed as 100.

37.3 The above table shows that the sales of the domestic industry decreased by 16.3% in the quarter Jan 2012 to Mar 2012 however increased by 5.69% during the extended last quarter of POI.

**Conclusion**

37.4 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 loss in sales due to dumped imports of the investigated product.

**38. Effects on Production and Capacity Utilization****Facts**

38.1 Quantity produced and the capacity utilized by the domestic industry during POI was as follows:

**Table-XVI**  
**Installed Capacity, Quantity Produced and Capacity Utilization**

Year	Percentage of Capacity Utilization
2009-10	76.96
2010-11	75.16
2011-12	77.35

Source: The applicant

Year: April 1 to March 31

**Analysis**

38.2 It may be noted from the above table that installed production capacity of the Applicant remained same over the period. The production of domestic like product increased during POI. This was primarily because of the fact that exports of investigated product increased during 2011-12. Its capacity utilization, which was 76.96 percent in the year 2009-10 increased to 77.35 percent in the year 2011-12. The quarterly analysis of the capacity utilization also shows that domestic industry increased its production over period and its capacity utilization also increased. Quarterly analysis of capacity utilization is given in table below;

**Table-XVII  
Installed Capacity, Quantity Produced and Capacity Utilization**

Year/Period	% of Capacity Utilization
Apr 11 - June 11	75.17
Jul 11 - Sep 11	62.5
Oct 11 - Dec 11	87.99
Jan 12 - Mar 12	83.72
Apr 12 - June 12	82.75

Source: The applicant

**Conclusion**

38.3 On the basis of the above information and analysis, the Commission has concluded that the Applicant did not suffer material injury on account of production and capacity utilization.

**39. Effects on Inventories**

**Facts**

39.1 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-XVIII  
Inventories of Domestic Like Product (MT)**

Year	Opening inventory	Production	Sales		Internal consumption	Closing inventory
			Local	Export		
2009-10	100.0	4908.7	3605.0	402.7	840.8	160.1
2010-11	160.1	4793.8	3697.5	393.6	650.8	212.1
2011-12	212.1	4933.3	3635.8	523.0	659.9	326.7

Source: The applicant

Year: April 1 to March 31

Note: To keep confidentially, actual figures have been indexed w.r.t opening inventory of the year 2009 by taking it equal to 100

**Analysis**

39.2 The data given in the table above shows that the closing inventory level of the domestic like product increased significantly in year 2010-11 and further increased in year 2011-12. The quarterly analysis also shows the same trend in the increase of the inventory level which is given below;

**Table-XIX**  
**Inventories of Domestic Like Product during POI (MT)**

Period	Opening inventory	Production	Sales		Internal consumption	Closing inventory
			Local	Export		
Apr 11 - June 11	212.1	1198.6	898.2	176.8	123.0	212.8
Jul 11 - Sep 11	212.8	996.6	867.2	199.5	110.9	31.7
Oct 11 - Dec 11	31.7	1403.0	1045.3		205.2	184.1
Jan 12 - Mar 12	184.1	1335.1	825.1	146.7	220.7	326.7
Apr 12 - June 12	326.7	1319.6	935.3	221.4	169.9	320.3

Source: The applicant

Note: To keep confidentially, actual figures have been indexed w.r.t opening inventory of the year 2009-10 by taking it equal to 100

**Conclusion**

39.3 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.

**40. Effects on Profits/Loss****Facts**

40.1 The applicant company is a multiproduct company and has consolidated financial statements. During on the spot investigation, applicant was asked to provide separate quarterly reconciled profit and loss statement for each product.[ Profit and loss position of the Applicant is calculated by the Commission the basis of its quarterly accounts.] Table below shows the profit of the applicant on production and sale of the investigated product during POI. This also includes the profit earned on export sales of PA:

**Table -XX**  
**Profit/(Loss) of the Applicant (Rs/Million)**

Year*	Net Profit/(Loss)
2009-10	100.00
2010-11	41.82
2011-12	123.88

Source: Report of on the Spot Investigation in this case

Year: April 1 to March 31

Note: To keep confidentially, actual figures have been indexed w.r.t profit/loss of the year 2009 by taking it equal to 100

### Analysis

40.2 The above table shows that the Applicant's net profit decreased in the year 2010-11 but increased the year 2011-12. Quarterly analysis of profit and loss position of domestic industry given below;

**Table -XXI**  
**Profit/(Loss) of the Applicant (Rs/Million)**

Period	Net Profit/(Loss)
Apr 11 - June 11	33.21
Jul 11 - Sep 11	-8.09
Oct 11 - Dec 11	51.70
Jan 12 - Mar 12	49.79
Apr 12 - June 12	47.36

Source: on the spot investigation report

Note: To keep confidentially, actual figures have been indexed w.r.t profit/loss of the year 2009 by taking it equal to 100

40.3 The above table shows that the profit remained in a narrow range in all the quarters except first two quarters. The profit increased as compared to first two quarters.

### Conclusion:

40.3 On the basis of the above facts, the Commission has concluded that the domestic industry did not suffer material injury on account of decline in profit.

## 41. Effects on Cash Flow

### Facts

41.1 The applicant company is a multiproduct company and has consolidated financial statements. During on the spot investigation, for the purpose of ascertaining cash flow for each product separately, applicant was asked to provide separate reconciled cash flow statement for each product. It was not possible for Applicant Company to provide the cash flow statement for

each product separately. Therefore, total cash flow position of the Applicant has been analyzed. Total net cash flow position of the Applicant during POI is given in the following table:

**Table -XXII**  
**Cash Flow Statement** (Rs. in Million)

<b>Year*</b>	<b>Net Cash flow</b>
2009	(100.0)
2010	6881.5
2011	5698.6

\* Year is from 1<sup>st</sup> January to 31<sup>st</sup> December

Note: To keep confidentially, actual figures have been indexed w.r.t absolute profit/loss figures of the year 2009.

### Analysis

41.2 It may be noted that company is manufacturing PA and MA in joint process and DOP as downstream product. Revenue derived from PA and MA during 2011 was 64% of the total revenue of the company. Therefore, the operation of manufacturing PA and MA is major contribution towards changes in cash flow. The above table shows that the net cash flow of the Applicant declined during the year 2011 (POI for injury ends in June, 2012).

### Conclusion

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

## 42. Effects on Employment, Productivity and Salaries & Wages

### Facts

42.1 Effects on domestic industry's employment, productivity and salaries & wages on yearly basis and on quarterly basis are ascertained in the following tables:

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

<b>Year</b>	<b>Number of Employees (Direct)</b>	<b>Salaries &amp; Wages (Rs. In Million)</b>	<b>Productivity Per Worker in MT</b>
2009-10	100.00	100.00	100.00
2010-11	98.59	89.75	99.05
2011-12	98.59	99.44	101.93

Source: on the spot investigation report in this case

Year: April 1 to March 31

Note: To keep confidentially, actual figures have been indexed w.r.t number of employees, salaries and productivity of the Year 2009-10 by taking it equal to 100



42.2 The quarterly analysis of industry's employment, productivity and salaries & wages for last five quarters of POI is given in table below;

**Table - XXIV  
Employment, Wages and Productivity during POI**

Period	Number of Employees (Direct)	Salaries & Wages (Rs. In Million)	Productivity Per Worker in MT
Apr 11 - Jun 11	100.00	100.00	100.00
Jul 11 - Sep 11	101.43	99.48	82.01
Oct 11 - Dec 11	100.00	107.81	117.11
Jan 12 - Mar 12	98.57	107.03	113.05
Apr 12 - June 12	98.57	103.65	111.74

Source: on the spot investigation report in this case

Note: To keep confidentially, actual figures have been indexed w.r.t number of employees, salaries and productivity of 1st quarter of POI by taking it equal to 100

### **Analysis**

42.3 The above data reveals that number of employees remained in the range of 70 during 2009-12. Similarly there were no significant changes in productivity and per unit salaries and wages.

### **Conclusion**

42.4 Based on the above information and analysis, the Commission has concluded that the domestic industry, did not suffer material injury on account of salaries and wages.

## **43. Effects on Return on Investment**

### **Facts**

43.1 The Applicant return of investment are given below in the table:

**Table XXV  
Return on Investment**

Year	Return on investment
2009-10	100.0
2010-11	44.6
2011-12	66.7

Source: The Applicant

Year: April 1 to March 31

Note: To keep confidentially, actual figures have been indexed w.r.t return on investment of year 2009 by taking it equal to 100

**Analysis**

43.2 The assets utilization for manufacturing of PA and MA (joint operation) account for 90% of the total assets of the company. The return on investment has been calculated by adding 90% of interest on long term loans to the profit of PA which has been divided by 90% of total investment. On this basis return on investment of the Applicant has increased in 2011-12 as compared to previous year 2010-11 but still remains lower than the base year 2009-10 .

**Conclusion**

43.3 On the basis of the above, the Commission has concluded that the Applicant did not suffer material injury on account of return on investment during POI.

**44. Effects on Growth**

44.1 The growth has been measured by increase in total assets of the domestic industry. Growth of the domestic industry as ascertained from the balance sheet of respective years is given in the following table;

**Table-XXVI  
GROWTH**

<b>Year</b>	<b>Growth (Rs.in Million)</b>
2009	(100.0)
2010	2321.4
2011	10885.7

Source: Applicant

\* Year is from 1<sup>st</sup> January to 31<sup>st</sup> December

Note: To keep confidentially, actual figures have been indexed w.r.t absolute figures of year 2009 by taking it equal to 100

**Analysis**

44.2 The above table shows that domestic industry observed significant growth in year 2011, which is reflective of positive growth.

**Conclusion**

44.3 On the basis of the above, the Commission has concluded that the Applicant did not suffer injury on account of growth during POI.

**45. Ability to Raise Capital**

**Facts**

45.1 The ability to raise capital has been measured by the increase in the long term loans and equity. The long term capitalization is shown below in the table:

**Table-XXVII  
INVESTMENT**

<b>Year*</b>	<b>Long term loan + Equity as at year end (Rs.in Million)</b>
2009	100.00
2010	96.18
2011	208.95

Source: Applicant

\* Year is from 1<sup>st</sup> January to 31<sup>st</sup> December

Note: To keep confidentially, actual figures have been indexed w.r.t figures of year 2009 by taking it equal to 100

### **Analysis**

45.2 The above table shows that the company capitalization has significantly increased (by 117%) in the year 2011 which is reflective of the company strength.

### **Conclusion**

45.3 On the basis of the above, the Commission has concluded that the Applicant did not suffer injury on account of ability to raise capital during POI.

### **46. Threat of material injury to the domestic industry:**

46.1. The Applicant in its Application, claimed that the domestic industry has not only faced material injury due to the dumped imports of PA, but also at the same time is facing a threat of material injury due to the following factors;

#### **a) Price Undercutting & alarming increase in volume of dumped imports:**

During the last quarter of dumping POI it has been observed that the dumped imports have undercut the prices of the domestic industry by a significant percentage of 4.89% which resulted in alarming increase of 385% over the previous quarter of Oct 11 - Dec 11.

#### **b) C&F prices of dumped imports lower than the prices of raw materials:**

It has been observed during the last quarter of dumping POI that the C&F prices of dumped imports are even lower than the C&F prices of major raw material of PA i.e. Orthoxylene, being imported by the domestic industry.

46.2 Section 19 of the ADD Ordinance, 2000 states that;

1. *in making a determination regarding existence of a threat of material injury, the Commission shall consider all relevant factors, including but not limited to, such factors as;*

- (a) *a significant rate of increase of dumped imports into domestic market indicating the likelihood of substantially increased importation;*
  - (b) *sufficient freely disposable, or an imminent and substantial increase in capacity of an exporter indicating the likelihood of substantially increased dumped exports to market in Pakistan, taking into account the availability of other export markets to absorb any additional exports;*
  - (c) *whether imports are entering at prices that shall have a significant depressing or suppressing effect on prices in Pakistan, and would likely increase demand for further imports; and*
  - (d) *inventories of an investigated product.*
2. *No one of the factors specified in sub-section (1) by itself shall be deemed to necessarily give decisive guidance and in making a determination regarding a threat of material injury the Commission shall, on the basis of the totality of the factors considered, satisfy itself that further dumped exports are imminent and that, unless protective action is taken, material injury shall occur.*

46.3 Threat of material injury has been analyzed on the basis of information furnished by the applicant and that obtained from secondary sources. It may be noted that none of the exporter furnished information on the exporters questioner which might have provided primary source information for determination of threat of material injury. The analysis reveals the following:-

- (i) As observed from table-IV the increase in dumped imports during the year 2011-12 was significant at 1336%. The major part of total imports during POI for dumping (81%) was in last two quarters. As a result of this the share of domestic industry reduced by 4.2 % in 2011-12 as compared to 2010-11 and the share of domestic industry was 96.98% in the quarter Apr 2011 to June 2011 which decreased to 89.65% of the total domestic market in the last quarter of the POI;
- (ii) Although no exporter cooperated in the investigation, the information on the world renowned journals ICIS notes as under;

*“there is 100,000 tonnes of oversupply in Europe, as long as that’s there, the PA market will be hard”<sup>1</sup>*

The journal further notes that;

*“margins were weak throughout 2011 because low demand prevented the rising cost of the feedstock OX from being passed on to customers”*

From the above it is clear that European market have excess supply. Regarding Asian market, the journal on 8<sup>th</sup> April, 2011 states that;

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1. [www.icis.com/articles/2012/01/02/9519335/intermediates+european+pa+markets+lam](http://www.icis.com/articles/2012/01/02/9519335/intermediates+european+pa+markets+lam)

*“Phthalic Anhydride spot trades for imports in the key China market continued to remain thin amid widening buy-sell gap, ample availability of competitively priced local material and depressed conditions in the downstream dioctyl phthalate (DOP) segment, suppressing buying appetite for regional parcels.”*

It further notes that;

*“Despite cutbacks in production of around 70-80%, several regional sellers lamented that they remained saddled with mounting loss and poor economics”*

The above information leads to the conclusion that there are possibilities that exporters have free capacities and free inventories that are likely to increase imports and a threat of material injury.

- (iii) No price suppression or depression of prices was observed during POI, however, significant price undercutting was observed during last two quarters of POI. This is reflective of the fact that applicant has not responded to the lower prices during POI. It is likely that the resistance of the domestic industry may not last for long and the dumped imports may lead to price depression as well as price suppression;
- (iv) No information is available on the inventories of the investigated product as no exporter cooperated in the investigation. However, the information available on the leading chemical journals ICIS the markets are sluggish. Unless some of the manufacturers curtail their capacities the inventories would likely to be built up leading to increased dumping.

46.4 The commission while analyzing the claim of the applicant regarding threat of material injury concluded that the domestic industry has not only suffered material injury during the POI because of increased dumped imports but at the same time it is facing threat of material injury which is imminent in future.

**47. Summing up of Material Injury**

47.1 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 following factors as well as threat of material injury:

- a. Volume of alleged dumped imports;
- b. Price undercutting;
- c. Decline in market share;
- d. Decline in sales;
- e. Negative effect on inventories;
- f. Negative effect on cash flows.

47.2 The domestic industry has a threat of material injury on the following factors;

- a. Significant increase in volume of dumped imports
- b. Sufficient freely disposable capacities indicating likelihood of increased imports
- c. The likely price suppressing and price depressing effects of dumped imports and;
- d. Likely increased inventories of IP.

**D. CAUSATION**

**48. Effect of Dumped Imports**

48.1 From the foregoing analysis it appears that the volume of the dumped imports significantly increased during the year 2011-12 which caused significant increase in market share of dumped imports, a reduction in domestic sales and increase in inventories. This also resulted in negative effect on cash flows.

48.2 if the trends are analyzed on quarterly basis it is found that the dumped imports significantly increased in quarter Jan-March 2012 in which there was significant increase in market share of dumped imports, significant price undercutting, significant reduction in domestic sales and significant increase in inventories.

48.3 It appears from analysis that there was a perfect time correlation between increase in dumped imports and injury to domestic industry. Therefore it is concluded that following happened simultaneously during POI:

- i. Volume of dumped imports of the investigated product increased significantly in absolute as well as relative to production and consumption of the domestic like product;

- ii. Domestic industry experienced price undercutting 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 declined simultaneously;
- iv. Inventories of the domestic like product relatively increased more than the increase in production;
- v. Domestic industry faced negative effect on sales and cashflow.
- vi. the domestic industry has not only suffered material injury during the POI because of increased dumped imports but at the same time it is facing threat of material injury which is imminent in future.

**49. Other Factors**

49.1 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.

49.2 The factors mentioned in Section 18(3) of the Ordinance were also examined and given below;

- i. 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 POI as imports from sources other than Exporting Countries were reducing. As evident from Table-XII pertaining to share in domestic market, there were imports of \*\*\* MT of the like product from other sources during 2009-10 which stand reduced to \*\*\* MT during the year 2011-12.
- ii. There was slight contraction in demand during 2010-11, which was restored almost to the level of base year of 2009-10 and thus there was no injury on this account to the applicant during the dumping POI.
- iii. No trade restrictive practices have been observed, neither any competition from the domestic producers is faced by the Applicant.

- iv. The domestic industry exports during 2011-12 were at the highest level which increased its productivity to some extent. So the export had positive effect on the performance of the domestic industry as in the absence of increased exports, the injury sustained by the domestic industry by dumped imports would have been much higher.

49.3 From the analysis given in the above paragraphs it appears that dumped imports caused material injury to domestic industry.

## **E. CONCLUSIONS**

50. After taking into account all the considerations mentioned above, the following conclusions are arrived at final determination,

- i. the application was filed by the domestic industry as the Applicant is the sole producer of the domestic like product in domestic market;
- 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 Exporting Countries at prices below its normal value;
- iv. the volume of dumped imports of the investigated product and the dumping margins established for the exporters/producers of the investigated product from Exporting Countries 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, negative effect on cash flow and inventories in terms of Section 15 and 17 of the Ordinance, and;
- vi. Domestic industry is facing and imminent threat of material of material injury.



**F. IMPOSITION OF DEFINITIVE ANTIDUMPING DUTY**

51. In view of the analysis and conclusions with regard to dumping, material injury, and causation, the Commission is required to impose antidumping duty on dumped imports of the investigated product equal to dumping margin under Section 50 of the Ordinance.

52. In terms of Section 50 of the Ordinance, definitive antidumping duties given in the following table are hereby imposed on the dumped imports of the investigated product importable from the Exporting Countries for a period of three years effective from the date of publication of final determination notice in the national press. The definitive antidumping duty rates are determined on C&F value in *ad val.* terms. Definitive antidumping duties at C&F value are equivalent to the final dumping margins determined at ex-factory price level. The dumped investigated product is classified under PCT heading Nos. 2917.3500.

**Table-XXX  
Definitive Antidumping Duty Rates**

<b>Exporting Countries</b>	<b>Definitive Antidumping Duty</b>
Italy	12.91%
Iran	7.62%
Thailand	9.78%

53. Save as provided earlier imposition of antidumping duty orders, PA imported from sources, other than the Exporting Countries shall not be subject to definitive antidumping duties.

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

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

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

(Dr. Allah Bakhsh Malik)  
Member  
August 1, 2013

(Naimatullah Khan)  
Member  
August 1, 2013

(Prince Abbas Khan)  
Chairman  
August 1, 2013

Final Determination and levy of Definitive antidumping duties on import of Phthalic Anhydride Into Pakistan Originating In And/Or Exported  
From The Italian Republic, Islamic Republic Of Iran And Kingdom Of Thailand

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**Annexure-I**

**List of Exporters**

<b>S#</b>	<b>Name</b>	<b>Address</b>	<b>Tel &amp; Fax</b>	<b>E-mail</b>
<b>Producers/Exporters of IRAN</b>				
1	HAZEL MIDDLE EAST FZE			
<b>Producers/Exporters of ITALY</b>				
1	POLYNT S.P.A	Via Enrico Fermi 51 24020 Scanzorosciate (BG) Italy	Tel. +39 035 65 21 11 Fax +39 035 65 24 21	<a href="http://www.polynt.com">http://www.polynt.com</a>
<b>Producers/Exporters of THAILAND</b>				
1	HARESH PETROCHEM PTE			

**Annexure-II**

**List of Participants of the Public Hearing, held on dated 28.03.2013**

1.	Mr. Mohsin Tariq	Director, Nimir Chemicals Pakistan Limited (Applicant)
2.	Mr. Saqib Raza	Chief Financial Officer, Nimir Chemicals Pakistan Limited (Applicant)
3.	Mr. Shoaib Anwar	Senior Account Manager, Nimir Chemicals Pakistan Limited (Applicant)
4.	Mr. Abdul Khaliq	Executive Director, S.U Khan Associates Management Consultants (Representative of Applicant)
5.	Mr. Jabar Hussain	Assistant Manager, S.U Khan Associates Management Consultants
6.	Mr. Mubashar Zaheem	Chief Operating Officer, Power Chemicals Pvt Ltd (importer)
7.	Mr. Mazhar Bangash	Partner RIAALAW, (Representative of Importer)
8.	Ms. Tess Lambourne	Senior Associates, RIAA LAW (Representative of Importer)
9.	Mr. Muhammad Ahmad	Associate, RIAA LAW (Representative of Importer)
10.	Mr. Irfan Qaiser Sheikh	Director, Qaiser LG Petrochemicals Pvt Ltd. (importer)

**Annexure-III**

The comments received on the preliminary determination and germane to this investigation under the Ordinance are reproduced in Column A below and the Commission's response thereto is set out in Column B in the following table:

**Comments of Interested Parties**

<b>Column - A (Comments of Interested Parties)</b>	<b>Column - B (Commission's Response)</b>
<p><b>Comments of:</b></p> <ul style="list-style-type: none"><li>i. Nimir Chemicals Pakistan Limited</li><li>ii. Power Chemicals Pvt Ltd</li><li>iii. Qaiser LG Petrochemicals Pvt Ltd</li><li>iv. Pakistan Paint Manufacturing Association</li></ul> <p>Representative of the above mentioned parties made following comments/views:</p>	
<p><b><u>Nimir Chemicals Pakistan Limited</u></b></p> <p>"Despite of Commission's findings of dumping, material injury as well as threat of material injury and causality between dumping and injury sustained by the domestic industry, the Commission did not levy provisional antidumping duties on imports of PA from the subject countries. The Non-levy of provisional antidumping duties has increased the confidence of the exporters who are now exporting bulk quantities in Pakistan."</p>	<p>The imposition of final antidumping duty would counter dumping of the investigated product.</p>
<p>"The Commission considered capacity utilization for total sales instead of domestic sales due to production and capacity utilization shows an increasing trend. It needs to be reconsidered as all the factors like sales, market share, price undercutting; price depression and price suppression are considered with reference to performance of the domestic industry in the domestic market."</p>	<p>Capacity of any firm and utilization thereof is dependent upon the plant capacity and production and not to the target markets. .</p>
<p>"The quarterly analysis of profit and loss position needs to be re-considered by the Commission as during the quarters in which dumped imports undercut the prices of the domestic industry, profitability of the domestic industry decreased."</p>	<p>The domestic industry faced price undercutting during last two quarter of the POI and profit of the domestic industry decreased marginally during the same period.</p>

**Final Determination and levy of Definitive antidumping duties on import of Phthalic Anhydride Into Pakistan Originating In And/Or Exported From The Italian Republic, Islamic Republic Of Iran And Kingdom Of Thailand**

<p>“The return on investment also needs to be re-considered by the Commission on quarterly basis. During the quarters when major volume of imports was made from dumped sources, profitability and hence return on investment of the domestic industry reduced.”</p>	<p>The commission has determined that domestic industry did not suffer material injury on account of return on investment during POI for dumping</p>
<p>“The Commission in its analysis of salaries, wages and productivity, concluded that the domestic industry did not face material injury. The Commission should have analyzed salaries and wages on per MT basis to assess injury on account of salaries and wages.”</p>	<p>The Commission has analyzed the salaries and wages on the basis of per MT. the fluctuation in salaries and wages per MT reflects normal business ups and downs.</p>
<p>“The Commission also ignored injury on account of employment of the domestic industry which also needs to be reconsidered on yearly basis.”</p>	<p>Number of employees remained in range of 70 during the POI so there is no injury to domestic industry on account of employment.</p>
<p>“While summing up the material injury, the Commission ignored the magnitude of dumping margin which is itself an injury factor specified in the Ordinance.”</p> <p>“In an antidumping investigation, it is not necessary that all the injury factors specified in the Ordinance should be present to justify the levy of provisional antidumping duties. We feel that the Commission should have levied provisional antidumping duties on imports of PA from the subject countries since it had already levied provisional antidumping duties in cases where injury factors were less than the present investigation. However, we request the Commission for early finalization of this investigation and levy of definitive antidumping duties on imports of PA from the subject countries.”</p>	<p>The commission has finalized this investigation with in the timelines as envisaged under the Antidumping Ordinance 2001.</p>
<p><b><u>Power Chemicals (Pvt) Ltd:</u></b></p> <p>“The Respondent is engaged in manufacturing of adhesives, paints, and textiles chemicals. It is also a leading importer of raw materials from chemical suppliers across the world. The Respondent is a major producer of alkyd resin and heavily relies on the use of Phthalic Anhydride as a raw material in its production processes ”</p>	<p>Power chemicals Pvt Ltd, has been recognized as an importer of PA and registered interested party in this investigation.</p>

<p>"The Commission set the period of investigation (the "POI") as under:</p> <ul style="list-style-type: none"><li>(i) For investigation of dumping: 1 April 2011 to 30 June 2012</li><li>(ii) For investigation of injury: 1 April 2009 to 30 June 2012</li></ul> <p><b><u>Incomplete Data:</u></b></p> <p>"Without prejudice to our right to challenge the initiation of this Investigation, the Respondent requested the Commission to procure data for the missing period from 1 April 2012 to 30 June 2012 as an addendum to the Application (the "Additional Data") from the Applicant."</p> <p>"As per the non-confidential documents available in the public file, established and maintained by the Commission pursuant to Rule 7 of the Rules, the Applicant submitted an improperly indexed version of the Additional Data on 12 December 2012. This aforementioned version of the Additional Data do not permit a reasonable understanding of the substance of the information contained therein and is incomprehensible for the purposes of a meaningful analysis thereof"</p> <p><b><u>Illegal Concealment of Annual Reports:</u></b></p> <p>"Under the garb of confidentiality, the Commission has been misled to understand that the Annual Reports of the Applicant are confidential under Section 31 of the Ordinance. The same were requested by the Respondent to be able to comment on the state of the Domestic Industry"</p> <p>"The Commission declined the Respondent's request on the pretext that the same have been claimed "confidential" by the Applicant."</p> <p><b><u>Preliminary Determination:</u></b></p> <p>"The Commission made its preliminary determination on 4 February 2013 ."</p> <p>"the Commission rightly imposed no provisional measures. However, instead of terminating, it has continued the Investigation and will reach a final determination in accordance with the provisions of the Governing Laws"</p>	<p>The Commission issued report of preliminary determination which contained the verified original data as submitted by the applicant plus the data for last quarters of POI. This disclosure by the Commission provided ample opportunity to all the interested parties to defend their interests. The Commission considered all the points submitted by the interested parties while finalizing this investigation.</p> <p>Power Chemicals obtained the copies of annual reports of the Applicant from other sources and used information contained in annual reports while submitting its arguments during the course of investigation.</p> <p>Needs no comments.</p>
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“While analysing the state of the domestic industry vis-à-vis imports from the Exporting Countries, the Commission has determined that the level of injury is not *adequate* to warrant impose anti-dumping duties even during the interim period i.e., till finalization of this investigation. Accordingly, since the past injury claimed by the domestic industry is not adequate, the anti-dumping duties cannot be imposed on the basis thereof.”

“With regards to any threat of injury, the Applicant already exercises a dominant position in the domestic market and charges prices which are substantially higher than the prices prevailing in the major international markets. Therefore, the Applicant charges a sizeable premium on the prices prevailing internationally.”

**Existing Structure of Duties on Imports of Phthalic Anhydride:**

“The investigated product is subject to 15% custom duty and other antidumping duties which Commission has already imposed on different countries. In the subject investigation by imposing duties on PA from exporting countries the Applicant wants to eradicate all imports of PA be that dumped or otherwise and create absolute monopoly which in turn would allow applicant to charge premium prices”

**Investigation is Contrary to Governing Laws:**

“The Commission set the POI from 1 April 2011 to 30 June 2012, however, the Applicant has only provided figures for between 1 April 2009 and 31 March 2012 in the non-confidential version of the Application. Since the data for the period from 1 April 2012 to 30 June 2012 was not provided in the Application, therefore, the information contained in the Application was not representative of the entire POI. Accordingly, the requirements of a written application in terms of Section 20(2) of the Ordinance were not satisfied.”

Imposition of antidumping duties are aimed to provide level playing field to domestic industry rather than to eradicate imports of investigated product. The antidumping duties have been imposed only on those sources which were found to be dumping. Appropriate other forums are available for redressal of complaints against monopoly by a producer in a market.

The applicant in application is required to furnish prima facie evidence of dumping and injury which was there at the time of initiation of investigation. As regards addition of another quarter in POI, it was done in order to meet requirements of section 36 of the Ordinance.



**Concealment of Essential Information and Breach of Natural Justice:**

“The Applicant is also obliged to furnish non-confidential summaries of all confidential information such that the said summaries permit a reasonable understanding of the substance of the information provided therein, as set out in Section 31(5) of the Ordinance read in conjunction with Article 6.5.1 of the Anti-Dumping Agreement.

Despite repeated requests by the Respondent, the Applicant has failed to provide a non-confidential version of the Additional Data which permits a reasonable understanding of the substance of the confidential data contained therein and has also illegally concealed its Annual Reports, which are otherwise publically available. It is further contended that the Applicant has not provided any reasons justifying the withholding of such information.”

**POI for Investigation of Dumping is Longer than Prescribed:**

“The Commission has set the POI for investigation of dumping from 1 April 2011 to 30 June 2012, i.e. 3 months longer than prescribed which is not only inconsistent with the Commission’s past practices but it is also contrary to the views of the WTO Committee on Anti-Dumping Practices. The Commission is required to base its assessments of dumping upon the data relating to the POI for investigation of dumping. Pursuant to Section 36(2) of the Ordinance, this period is normally set to cover the twelve months preceding the month of initiation of an investigation.”

**Non-Disclosure of Export Price:**

“The Commission has determined the weighted-average of the export price of the Investigated Product being imported from Exporting Countries on the basis of the customs import data obtained from Pakistan Revenue Automation Limited, however, the same has not been disclosed by the Commission in the Preliminary Determination.”

**Inaccurate Construction of Normal Value:**

“the Applicant has misled the Commission in adopting the methodology for constructing the

The Applicant provided non-confidential summary of the information submitted to the Commission as required under Section 31(5) of the Ordinance Including the non-confidential version of the information for the additional quarter. With regard to Annual Report of the Applicant, applicant requested the Commission to treat the Annual Reports as confidential because such reports are not publically available. Since the Applicant is a non-listed company, it is not mandatory for it to circulate its annual reports for the general public by way of provision on its website.

As per Section 36(3) of the Ordinance, the Commission may at its sole discretion, select a shorter or longer period if it deems it appropriate in view of available information regarding domestic industry and an investigated product.

The Commission has provided the weighted average export prices of the investigated product being imported from exporting countries in its preliminary determination in indexed form. As an importer of the investigated product it must be available with the respondent but it was not shared with the Commission.

The Commission has taken average prices of OX

normal value based on the price of locally purchased raw materials adjusted to ex-factory level as the same are not representative of the actual prices prevailing internationally.

The normal value constructed on the basis of the price of locally purchased raw materials adjusted to ex-factory level which is not representative of the actual prices prevailing internationally. The Commission is requested to consider the internationally available prices of ortho- xylene in major Asian markets.”

**Internationally Accepted Formula for Prices of Phthalic Anhydride:**

“Generally, the price of phthalic anhydride is 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, naturally this reduces the cost of production for phthalic anhydride.”

**Volume of Dumped Imports**

“the volume of imports from the Exporting Countries did not increase significantly during POI. Rather, imports of the Investigated Product merely substituted imports from other sources as the latter were driven-out by the imposition of anti-dumping duties.

The absolute increase of 1,347.83% for 2011-12 as compared to 2010-11 is because imports of the Investigated Product only commenced in 2009-10 to fill the vacuum in the market left behind by the departure of exports from other sources. This does not suggest dumping, it shows the market trying to correct itself as competitors have valid opportunities for expansion in Pakistan.”

**Necessity of Imports of Phthalic Anhydride:**

“The Respondent invites the Commission’s attention to the fact that the domestic industry’s production capacity is not sufficient to satisfy the demand of consumption in the domestic market. The Respondent also strongly contends that there is room for further imports of phthalic anhydride as

prevailing in the major Asian markets during the POI and used this information for construction of normal value after due adjustments.

Generally price of a product is negotiated between seller and buyer. Buyer is not bound to buy from a specific source likewise seller can not be forced to reduce its prices. Further Power Chemicals has not provided any evidence to substantiate its claim about any generally accepted pricing formula.

Volume of the alleged dumped imports increased as determined by the Commission in its preliminary as well as final determination. It is a fact that imports shifts from one source to another after imposition of antidumping duties on dumped imports as imposition of antidumping duties remove unfair advantage. However the increase in dumped imports at 1336% in 2011-12 over the imports in 2010-11 is significant.

Total installed capacity of the applicant is well above the market size existed during the POI for injury. This means that domestic industry has the capacity to meet entire domestic demand.

the domestic demand far exceeds the available supply. The domestic industry (through the Applicant alone) is not in a position to satisfy domestic demand, nor has it made public any plans to enhance its production capacity of the Domestic Like Product in the near future.

Having cunningly removed competition from the major phthalic anhydride producers of Brazil, China, Indonesia, South Korea, Taiwan and India, the Applicant is now seeking to eliminate imports from the Exporting Countries to re-establish and perpetuate its control over the domestic market.”

**Price Effects**

i. Price Undercutting

“As can be seen from the figures in Table IV/A of the Preliminary Determination, the price of Phthalic anhydride decreased for the quarter from January 2012 to March 2012 by a margin of 3.66, the Applicant strangely increased the prices of the Domestic Like Product by a margin of 9.93 in the corresponding period. In our view, this is the reason for the self-inflicted price undercutting, the effects of which were felt for the subsequent quarter from April 2012 to June 2012 as well, albeit on a less pronounced basis.”

ii. Price Suppression

“The Applicant did not face price suppression on yearly basis rather it faces suppression only in one quarter which was also not due to the alleged dumped imports.”

“The lack of price undercutting and price suppression and the determination by the Commission of no price depression supports our contention that the Applicant did not suffer injury account of price effects attributable to the presence of the Investigated Product imports from the Exporting Countries.”

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**Market Share**

“The domestic industry in no way suffered material injury on account of decrease in the market share due to imports of the Investigated Product as

The Commission calculated price undercutting as envisaged in the Ordinance and determined that domestic industry suffered material injury during last two quarters of POI. The assertion of the respondent is not supported by any evidence.

Market share of the domestic industry decreased during POI for dumping as dumped imports increased during the same period.

Applicant increased its export sales at the expense of its domestic sales in 2011-12, which led to a reduction in its market share in the domestic market.”

**Sales:**

“Applicant did not suffer material injury on account of sales as its overall production and aggregate sales remained relatively constant in 2011-12 relative to 2009-10 (as per figures provided in the Preliminary Determination) rather sales increased (as per the figures provided in the on spot verification report).”

**Inventories:**

“The Applicant’s production of the Domestic Like Product is sold to domestic consumers, exported to foreign consumers and consumed internally by the Applicant itself as well. the Applicant did not suffer any injury on account of negative effects on inventories due to the imports of the Investigated Product as change in inventory was mainly due to decrease in the applicant’s internal consumption of PA ”

**Cash Flow**

“It is stated that in claiming injury on account of cash flow, the Applicant has furnished data that contradicts the figures expressed in its Annual Reports.”

**Effects of Other Known Factors on Domestic Industry:**

“The marginal adverse effects suffered by the domestic industry can only be attributed to other factors, *inter alia*, global recession, financial losses, supply chain interruptions, inflation, deteriorating economy, electricity crisis, devaluation of rupee, sharp escalation in oil prices and higher lending rates as specifically attributed to these factors by the Applicant in its Annual Reports.

Sales of the domestic industry decreased during POI for dumping as determined by the Commission.

Inventories of the domestic like product increased during the POI for dumping. Positive export performance was seen during POI for dumping and that too could not offset negative effects on inventories.

The cashflow analysis is based on the data in annual reports.

These factors might be effecting equally to both imports and local production. The impact on the domestic industry was because of significant increase in dumped imports.

<p><b><u>Qaiser LG Petrochemicals (PVT) Limited:</u></b></p> <p>“Qaiser LG Chemicals is the largest manufacturer of DOP and an importer of PA which is a direct raw material of DOP.”</p> <p>“It is requested the Commission not to impose any antidumping duty on PA from exporting countries as antidumping duties has already been imposed on many countries and Applicant is already enjoying a huge custom duty protection of 12.5% which is already the highest protection in any petrochemical industry in Pakistan because the only raw material required to produce PA is OX and duty on OX is 0% whereas the duty on PA is 12.5.”</p>	<p>The purpose of the imposition of the antidumping duties is not to protect the domestic industry rather it is to remove the unfair advantage being enjoyed by the exporters/foreign producers from the exporting countries which are exporting the investigated product at dumped prices.</p>
<p><b><u>Pakistan Paint Manufacturers Association (PPMA):</u></b></p> <p>“These written submissions are being submitted on behalf of Pakistan Paint Manufacturers Association (hereinafter, referred to as, the “PPMA”), which is a representative body of the companies and organizations engaged in the manufacturing of paint products in Pakistan; it is duly recognized by the Government of Pakistan in this regard.”</p> <p>“The PPMA’s members, being paint manufacturers, consume over 400 Metric Tons of PA per annum; the same is procured from domestic as well as international sources.”</p> <p><b><u>Non - Disclosure of Information:</u></b></p> <p>“The Non - Confidential Version of the Application (hereinafter, referred to as, the “NCV Application”) contains ‘factual assertions’, which assertions are purportedly justified on basis of the tables and charts, provided therein; these tables and charts, from any importers perspective, are hypothetical. The NCV Application fails to provide even a single entry, representing the ‘actual’ figure, in the relevant units. If the Commission proceeds to impose an anti - dumping duty on the Investigated Product, without first disclosing the data, values and calculations on which its factual findings would be based, the same would amount to denial of Constitutional rights of any and all of Interested Parties in the instant Investigations..”</p>	<p>Non confidential version of the applications contains the figures in indexed form and these figures provide reasonable understanding to the interested parties of the material provided to the Commission in confidence. In case the figures are incorrect, the respondent must provide the counter data.</p>

**PERIOD OF INVESTIGATION (POI):**

“The POI fixed by the Commission exceeds the period for which data has been provided by the Application, by three months. This not only constitutes a violation of the multiple provisions of ADD Ordinance, 2000, but also amounts to breach of Constitutional rights of the Interested Parties. It is well settled law, enumerated in numerous judgments of Pakistan’s Superior Judiciary that any executive or public authority, while exercising power of judicious or quasi – judicious nature, shall be bound to by the Constitutional principles regulating such exercise of power. The Commission, therefore, cannot legally proceed with the instant Investigations without first disclosing certain parts of the information marked as ‘Confidential’, by the Applicant.”

**Submissions on Factual Assertions:**

“The Commission, vide section 20.5, of its PD Report, determined that in light of failure of foreign producers / exporters, to provide the solicited information, the information provided by the Applicant constitute the ‘best information available’, under the above referred section 32 of the ADD Ordinance. Although, as per the OSI Report, the ‘data’ provided by the Applicant had purportedly been verified by the Commission, however, the Commission completely overlooked the merits of the methodology adopted by the Applicant.”

“The methodology, adopted by the Applicant for determination of ‘normal value’ is based on presumptions; the same thus represent a ‘hypothetical’ value, rather than a ‘factual’ one.”

“the Commission has erred in law, by making ‘factual determinations’, in its PD Report, on basis of ‘presumed facts’. The normal value, as determined by the Applicant does not reflect the true value of Investigated Product when destined to be used in exporting country.”

The Commission extended the POI and asked the applicant for provision of data for extended period. The applicant provided the additional data. The Commission placed the data/information in public file for review and copy of interested parties.

The calculation of dumping margin is on the basis of data provided by the applicant. However, due to non cooperation of the exporters the dumping margins have been calculated on the basis of best available information in accordance with law.

The applicant calculated the prices of raw material on basis of well known journal while constructing the normal value. The applicant provided the documentary evidence in support of its calculation and Commission also verified figures from available resources. This means that prices of raw material used in construction of normal value were based on evidence rather than on assumptions.

**Whether or not, the alleged dumping has caused Injury to the Domestic Industry, which Injury is likely to continue:**

“the Commission gave a Preliminary Determination in favour of the Applicant, by holding that material Injury has been suffered by the domestic industry. Furthermore, it needs to be re-iterated at this stage, that the Applicant is the sole manufacturer of Investigated Product in Pakistan. Thus, the Injury to domestic industry, for the present purposes, has been tried to be established on basis of injury to the Applicant.”

**Volume of Dumped Imports:**

“The Commission was required by Section 15(2) of the ADD Ordinance, 2000, to consider, whether there has been a significant increase in the 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 PoI. However, this requirement has to be read in light of the provisions of Sub - Section 15(1) of the ADD Ordinance, which inter alia, provides that *“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..., volume of dumped imports”*.

“On a combined reading of Sub - Sections 15(1), and 15(2), of the ADD Ordinance, 2000, it becomes patently clear that, although volume of dumped imports is a relevant factor while determining the extent of injury, the same is to be based on an objective examination of relevant factors, which factors include the ‘volume of dumped imports’. Furthermore, a determination that the volume of dumped product has increased does not imply that injury has been caused to the domestic industry. This ‘Injury’ has to be caused by the dumping of product, and the same is to be established on basis of ‘objective examination’ of the relevant factors.”

“the share of dumped imports had increased during the PoI, this increase did not have substantial effect on the domestic market. The ‘dumped imports’ had taken over market share from ‘other imports’ and not from the domestic market. Thus, the Commission has erred in determining that the increase in volume of dumped imports has resulted

The domestic industry of PA comprises of only one unit i.e. the Applicant. The application has been filed by the Applicant and the applicant is the only producer of the PA in the domestic market. The injury caused to the applicant is an injury to the domestic industry.

There was significant increase in volume of dumped imports at 1236% in 2011-12 as compared to 2010-11

The Commission determined that volume of dumped imports has increased in absolute terms and relative to domestic production and domestic consumption. Other injury factors have been individually examined separately.

in 'substantial injury' to the domestic market.

**Price Effects:**

"it is submitted that the Commission has itself fixed the PoI for *determination of Injury*, to be for the period starting from April 1<sup>st</sup>, 2009 till June 30<sup>th</sup>, 2012. However, its findings in relation to Injury caused to the domestic industry, as a result of Price Undercutting, are only based on last two quarters of the POI. Moreover, as represented in the Table IV, reproduced hereinabove, the domestic industry does not appear to face any Price Undercutting, when the analysis is based on annual figures, as opposed to the quarterly ones."

"the Commission's preliminary findings, to the effect that the alleged dumping of the Investigated Product, has caused Injury to the domestic industry due to price undercutting, are not substantiated."

**Market Share:**

"It is submitted that the data and figures provided in the Table - VII, while highlighting the cross elasticity of demand between the 'dumped imports' and the domestic production, fails to provide any basis, whatsoever, whereupon the factual determination of "*material injury on account of loss of market share due to imports of the Investigated Product*".

"Furthermore, it also becomes apparent that the Applicant's exports increased substantially in 2011 - 2012. Thus the decline in the Applicant's market share may very well have resulted due to its increased exports. The consistent increase in total sales of the Applicant over the PoI, makes it patently clear that the Applicant is not suffering an 'Injury' in terms of the ADD Ordinance. "

**Sales:**

"In relation to the effect on sales, the Commission gave its preliminary determination to the effect that "*sales of domestic like product decreased during POI, hence domestic industry suffered material injury on account of loss in sales due to dumped imports of the investigated produce*"

"As PPMA has not been provided with the workings on which sales calculations are based, it is not in a position to comment as to which figures are

The Commission concluded that domestic industry suffered injury on account of price undercutting during the last two quarters of POI for dumping. The Commission concluded so because this was the period when the dumped imports were at the maximum level.

During the POI for injury though domestic market increased however at the same time the sales of the domestic industry and imports from other sources decreased. This was because of the fact that share of imports from dumped sources increased. Even after the improved export performance of the domestic industry, the domestic industry's inventories kept on rising as it could not sell the IP in domestic market because of dumped imports.

The Commission provided the verified figures of sales of the Applicant in indexed form in on the spot investigation report and its preliminary determination report.



correct. However, in light of the patent contradiction in the material on which the Commissions preliminary determination is based, the same is could not be substantiate.”

**EFFECT ON INVENTORIES & CASH FLOW:**

“it is submitted that the Applicant has failed to relate these alleged injuries with the dumping of the Investigated Product. The data provided by the Applicant, as well as that provided in the PD Report only relates to the domestic industry / Applicant. It is re-iterated that in absence of the comparable data relating to ‘dumped imports’, the Commission is not justified to indulge into factual findings pertaining to the Applicant’s inventories and cash flow; any such finding would be entirely unrelated to the instant Investigations and would fall outside the scope of the same. The ADD Ordinance only requires the Commission to evaluate these factors in the “examination of impact of dumped imports on domestic industry.”

**Submissions on Legal Issues:**

**i) Confidentiality:**

“in the instant Investigation, the Commission has simply failed to determine whether the information was confidential or not. It is the Commission, which has to give its findings on confidentiality of information provided, and not the Applicant. However, in the instant Investigations, the Commission has simply failed to comply with this duty.”

“Moreover, the Commission has failed to appreciate the peculiar circumstances of the instant Investigation. It needs to be noted that the Applicant constitutes the entire of the relevant domestic industry. Thus, there being no other manufacturer of the Investigated Product in Pakistan, neither can an Interested Parties properly assist the Commission, nor can the Commission itself procure relevant information from alternate sources.”

The Commission has provided the figures of dumped imports in the relevant section in absolute terms and relative to domestic production and domestic consumption. On the basis of this comparison Commission concluded that volume of dumped imports increased in the domestic market and inured the domestic industry on different accounts i.e. inventories, sales, cashflow etc.

The Commission has dealt with the confidentiality issue in terms of Section 31 of the Ordinance. The Commission required all the interested parties to submit non confidential version of the information submitted in confidence with the Commission. Non confidential version used to be placed in public file for other interested parties to get copies of these documents. All interested parties were invited to make their view/comments known to the Commission throughout the investigation. A public hearing was also held and all interested parties were given an opportunity to present their view/comments in front of the Commission.

**Annexure - IV**

**Comments of Interested Parties on Statement of Essential Facts**

<b>Column A (Views/comments of interested parties)</b>	<b>Column B (Commission's response)</b>
<p><b><u>Comments of Power Chemicals Pvt Ltd.</u></b></p> <p>Representative of the Power Chemicals made following comments/ views on SEF:</p>	
<p>"The Commission is required to objectively examine whether there has been a <u>significant increase</u> in the volume of the alleged dumped imports of the Investigated Product from the Exporting Countries, either in absolute terms or relative to the production or consumption of the Domestic Like Product by the domestic industry, in accordance with 15(1)(a) and 15(2) of the Anti-Dumping Duties Rules, 2001.</p> <p>Neither the Ordinance nor the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 define the word „significant“"</p>	<p>Volume of dumped imports increased substantially during the year 2011-12 as determined in preliminary determination.</p>
<p>"Table-1 of the SEF provides that the volume of alleged dumped imports during the POI from:</p> <p>(i) Italy stood at 61.27 (in indexed terms);                      (ii) Iran stood at 19.79 (in indexed terms); and                      (iii) Thailand stood at 5.68 (in indexed terms).</p> <p>The Respondent is pleased to attach herewith as Annexure-A, the import statistics with respect to the phthalic anhydride (Pakistan Customs Tariff Code No. 2917.3500) readily available in the public domain, i.e. the data retrieved for the period between January 2013 and June 2013 (both months exclusive) from the website of the Federal Board of Revenue of Pakistan, which reveals that the alleged dumped imports from Italy have virtually ceased post the preliminary determination"</p>	<p>In terms of section 36 (1) of the Ordinance, the assessment of dumping and injury is to be based on a defined period i.e. POI. The reduction in imports post POI is irrelevant. The figures seem incorrect.</p>
<p>"From the data on the injury factors in the SEF, it is flagrantly evident that the Applicant has sustained marginal adverse effects during the solitary quarter from July 2011 to September 2011. The Applicant has, thus far, failed to produce any evidence on the record that would illustrate that the injury suffered by the same during this quarter was as a direct and inevitable consequence of the alleged dumped imports from the Exporting Countries. The situation is in fact the other way round, i.e. the volume of the alleged dumped imports from the Exporting Countries, as per the data relied provided in Table III/A of the Preliminary</p>	<p>In quarterly analysis of volume of dumped imports, it is glaringly clear that dumped imports were at highest in the last two quarters of POI.</p>

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Determination, decreased by 50% during the quarter from July 2011 to September 2011 in absolute terms.”	
“We believe that the „domestic industry did not sustain „material injury (within the meaning of the Ordinance), however, to the extent that the Applicant experienced difficulties during the POI, the same cannot be attributed to the alleged dumped imports of the Investigated Product but would have been caused directly on account of the “other known factors””	In accordance with Section 18(2) of the Ordinance, the commission has also examined the 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 and concluded that that dumped imports caused material injury to domestic industry.
“Imports of the Investigated Product have not affected the prices of the Applicant. It is yet another attempt by the Applicant to impose unnecessary anti-dumping duties on all imports to offset competition and charge premium prices from users.”	It is evident that domestic industry faced price undercutting during the period in which imports of dumped product registered sharp increase.
“The Applicant has not only retained its market share in the domestic market but has also increased its export sales. However, the reduction in supply due to imposition of anti-dumping duties on imports and the Applicant’s reduced supply in the local market was borne by the importers.”	The Commission has determined that domestic industry lost its share in domestic market due to dumped imports.
“The Applicant has exhibited an consistent increase in its rate of sales, profits, return on investment and overall the Applicant has been and still is performing remarkably well.”	The Commission has analyzed all these factors and rightly concluded wherever the domestic industry faced the material injury due to dumped imports. The commission has determined that domestic industry did not face material injury on account of profit, and return on investment but it faced material injury in case of domestic sales. .
“The Application has been filed as a threat to users who resorted to imports only upon refusal by the Applicant of supplying Domestic Like Product on the basis on internationally accepted price formula linked to the prices of major raw material, i.e. ortho-xylene.”	There is no evidence of internationally accepted price formula.
“We further emphasize that if the injury claimed by the Applicant was inadequate, in the Commission’s abundant wisdom, to justify imposition of provisional anti-dumping duties for the duration of the interim period till the final determination, we are confident that the Commission will reach a conclusion that the circumstances have not changed between the preliminary determination and now to warrant the imposition of longer and definitive anti-dumping duties as desired by the Applicant.”	Needs no comments.

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<p><b><u>Comments of Nimir Chemicals Pakistan Pvt Ltd (Applicant).</u></b></p> <p>Representative of the Power Chemicals made following comments/ views on SEF:</p>	
<p>Inspite of the Commission’s conclusions with respect to dumping and consequent material injury to the domestic industry, the Commission decided not to impose provisional measures on imports from the dumped sources. This decision of the Commission was based on a finding that there was weak causal relationship between the dumped imports of the investigated product and material injury suffered by the domestic industry. This decision of the Commission had rather weak basis since:-</p> <p>i) As per para 18.2 (v) of the SEF, the Commission has already determined that “the domestic industry suffered material injury during the POI on account of significant increase in volume of dumped imports, price undercutting, price suppression, decline in market share, sales, negative effect on cash flows and inventories in terms of Section 15 and 17 of the Ordinance”.</p> <p>ii) As per para 42 of the SEF, the Commission also determined that the domestic industry did not suffer material injury during the POI due to other factors.</p>	<p>Needs no Comments.</p>
<p>Since the Commission did not impose provisional measures, this encouraged the exporters from the subject countries to dump bulk quantities of the investigated product in Pakistan. Subsequent import data shows that around 648M of PA was imported during the quarter January – March 2013 out of which 548 MT (38.16% of the volume of dumped imports during the POI) was imported from the dumped sources. Whereas, sales of the domestic industry during the said quarter was 3,070MT which is only 15.30% of its sales during the dumping POI.</p>	<p>In terms of section 36 (1) of the Ordinance, the assessment of dumping and injury is to be based on a defined period i.e. POI. The reduction in imports post POI is irrelevant.</p>
<p>As per preliminary determination the dumping margin worked out by the Commission ranged from 8.37% to 13.69%. Now the Commission has determined dumping margins ranging from 7.62% to 12.91% for the Exporting Countries which are still not only significant but at the same time are well above the de minimis level of 2%. Such significant dumping margins are sufficient to justify the levy of</p>	<p>Appropriate changes were made in calculations of normal value in light of comments made by the interested parties after preliminary determination.</p>

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<p>antidumping duties on dumped imports of PA from the Exporting Countries.</p>	
<p>It was rightly concluded that the dumped imports of the investigated product increased significantly in absolute terms as well as relative to production and consumption of the domestic like product. We would like to further add here that apart from the current injury sustained by the domestic industry, such huge increase i.e. 1336% in absolute terms and 1281% as percentage of domestic production, in volume of dumped imports also poses a threat that the exporters from the Exporting Countries will offer more unfair intense competition to the domestic industry and try to dump more quantities of the investigated product in Pakistan.</p>	<p>Needs no Comments.</p>
<p>Apparently there seems to be no price depression to the domestic industry mainly because of increase in cost of production which was 23.18% in 2010-11 over 2009-10 and 24.87% in 2011-12 over 2010-11 as apparent from Table IX of the SEF. However, the presence of price undercutting during the last two quarters of the POI and increased volume of dumped imports during the same quarters makes it clear that if this situation continues, the domestic industry will have to reduce its prices to retain its share in the domestic market and will consequently have to face price depression. Hence there is a threat that the domestic industry is likely to face injury due to price depression in future.</p>	<p>The Commission has determined that price depression in terms of ADDO, 2000. Furthermore, the analysis of the Commission is based on defined periods.</p>
<p>we would like to mention that in its analysis of effect on market share of the domestic industry due to dumped imports, the Commission has observed that share of the domestic industry decreased by 4.2% and came to the level of 92.42% during 2011-12 as compared with 96.7% during 2010-11 inspite of the fact that the domestic market increased during the same period. The Commission also observed in its quarterly analysis that the share of applicant was 96.98% in the quarter Apr 11 - Jun 11 which stands decreased to 89.65% of the total domestic market in the last quarter of the POI. This reduction in share of the domestic industry is clearly because of dumped imports.</p> <p>When the quarterwise information of sales and market share of the domestic industry during the POI for dumping is seen in comparison with the price undercutting and increase in volume of dumped imports, it becomes quite clear that the volume of dumped imports increased due to its lesser price than the sale price of the domestic industry. Consequently,</p>	<p>The Commission determined in its report of final determination that domestic industry suffered material injury on account of market share.</p>

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<p>the dumped imports snatched the share of the domestic industry in the domestic market and reduced the sales &amp; market share of the domestic industry. This clearly establishes the causal link between the increase in dumped imports and injury sustained by the domestic industry on account of market share. Therefore, the domestic industry requests the Commission for early finalization of this investigation and levy of definitive antidumping duties against dumped imports of the investigated product</p>	
<p>On the face of it, it seems as if the domestic industry managed to increase its production and capacity utilization and thus did not suffer material injury. However, we are of the view that here that the Commission considered the total capacity utilization of the domestic industry which also includes the effect of production for the domestic sales as well as production for the export sales. In fact, during the POI the exports of the domestic industry increased which shows higher capacity utilization. The domestic industry in order to utilize its idle capacity, exported more quantities of the investigated product to other countries due to which its production and hence capacity utilization increased. Since all the factors such as effect on sales &amp; market share, price undercutting, price depression and price suppression are considered with reference to the domestic performance of the domestic industry, production and capacity utilization also need to be analyzed keeping in view the domestic performance of the domestic industry</p>	<p>Production Capacity installed by the domestic industry was utilized for domestic sales, export sales and internal consumption. An injury factor has its own dynamics and the basis of evaluation for one injury factor can not be applied on other without consideration.</p>
<p>Table X and X/A of the SEF shows that there was considerable increase in inventories throughout the POI. Hence, it can easily be concluded that the domestic industry suffered injury on account of increase in inventories during the POI. Increase in volume of dumped imports during the POI coupled with the effect of price under cutting clearly establishes a causal link between dumped imports and injury to the domestic industry.</p>	<p>The Commission determined in its report on final determination that domestic industry suffered material injury on account of increase in inventories.</p>
<p>On the face of it, table XI of the SEF shows improvement in profits during 2011-12 over the year 2010-11. However, as per table XI/A of the SEF, the quarterly data shows that profits of the domestic industry are decreasing. This was the period when the domestic industry faced price undercutting and at the same time during this period 76% of the total dumped imports were made, as also observed by the Commission in para 28.2.3 of its preliminary determination. Hence it is very much clear that during</p>	<p>The profit of the domestic industry decreased marginally during last two quarters of POI.</p>

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<p>last two quarters of the dumping POI, the domestic industry faced injury on account of reduction in profits due to dumped imports.</p> <p>In addition to the above, major portion of the profits of the domestic industry includes profits of the by-product Maleic Anhydride (MA). If we exclude the profits of the by-product, profit for PA becomes very minimal. It is also worth mentioning here that MA is not automatically produced as a by-product of PA. Separate equipment is required to be installed for the extraction of MA from waste gases evolved during the production of PA which requires separate electricity and other overhead costs. Without installation of extraction equipment and without incurrance of additional overhead costs, MA cannot be extracted from the waste gases of PA. Had the Applicant not installed separate equipment for extraction of MA, it would have been wasted in air like other waste gases. Hence, there would have been no return from the sale of MA.</p>	
<p>It is apparent from Table-XII of the SEF that the Applicant suffered material injury on account of cash flows during the dumping POI (2011-12).</p>	
<p>In table XXII of the SEF, the Commission has indexed total salaries &amp; wages (Rs. In million) whereas as per its practice, it should have worked out salaries &amp; wages on per MT basis to assess injury on account of increase in salaries &amp; wages. salaries and wages per MT of the domestic industry increased from Rs. 682 per MT during Apr 10 – Mar 11 to Rs. 734/ MT during Apr 11 – Mar 12. Although there was some increase in total production due to increase in exports during the POI but such production was not sufficient to result in decrease in salaries and wages on per MT basis. This consequently resulted in higher salaries and wages per MT. Hence, the domestic industry suffered injury on account of salaries and wages. We therefore, request the Commission to re-consider injury on account of salaries and wages keeping in view salaries and wages on per MT basis.</p>	<p>Salaries and wages per MT are still less than the base year i.e. 2009-10. Changes in salaries and wages per MT in POI for dumping are not significant.</p>
<p>The Commission has given return on investment on yearly basis which apparently shows that the domestic industry did not suffer material injury on account of return on investment. We request the Commission to also analyze the return on investment on quarterly basis to see the impact of increased volume of dumped imports on return on investment.</p>	<p>Investments and thereby return on investments is a long term phenomena and it is not appropriate to analyze it on short term basis.</p>

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<p>we would like to mention that the magnitude of dumping margin is itself an injury factor as specified in the Ordinance. All the above mentioned factors alongwith the magnitude of dumping margin clearly establishes a <u>strong causal link</u> between the dumped imports and injury sustained by the domestic industry. Hence the domestic industry very much deserves a relief in the shape of levy of definitive antidumping duties.</p>	<p>The dumping margins have been calculated in the determination of dumping margins which reflect the magnitude of dumping margins.</p>
<p>with the current injury factors, levy of provisional antidumping duties was and now definitive antidumping duties are very much warranted for the domestic industry. In an antidumping investigation it is not necessary that all the factors of injury identified in the Ordinance must be present to justify injury to the domestic industry. Here, we would also like to refer to another investigation carried out by the Commission in the year 2005, concerning Import of PVC Resin (Suspension Grade) into Pakistan Originating in and/or Exported from the Republic of Korea and the Islamic Republic of Iran, <u>in which the Commission levied provisional as well as definitive antidumping duties with lesser injury factors as compared to the present investigation.</u></p> <p>In this regard we would also like to refer to WTO Panel observation in a Dispute Settlement Case relating to the dumped imports of footwear from China into European Union (EU). The Panel observed that:</p> <p><i>“While all listed factors must be considered in every investigation, this does not mean that each of those factors will be relevant to the investigating authority’s determination in a given case, as the relevance, and significance, of each factor will vary depending on the nature of the product and industry in question. <u>In addition, we consider it clear that it is not necessary that all relevant factors, or even or majority of them, show negative developments in order for an investigating authority to make a determination of injury.</u> Finally, as the text of Article 3.4 explicitly states, no one or several factors necessarily give decisive guidance. In our view, this means that an overall evaluation of the information, in context, is necessary, as well as an explanation of how the facts considered by the investigating authority supports its determination.”</i></p>	<p>Needs no comments.</p>



**Annex-V**

**(Omitted as it contained confidential information)**

**Annex-VI**

**(Omitted as it contained confidential information)**

**Annex-VII**

**(Omitted as it contained confidential information)**

**Annex-VIII**

**(Omitted as it contained confidential information)**