



**Government of Pakistan
National Tariff Commission**

REPORT

ON

**PRELIMINARY DETERMINATION AND LEVY OF PROVISIONAL
ANTIDUMPING DUTY ON IMPORT OF FORMIC ACID 85% ORIGINATING
IN AND/OR EXPORTED FROM THE REPUBLIC OF FINLAND AND THE
FEDERAL REPUBLIC OF GERMANY**

A.D.C No.09/2005/NTC/FA

March 8, 2005

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

A. PROCEDURE

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

1. Receipt of Application

The Commission received a written application from Tufail Chemical Industries Limited, Mezzanine Floor, Progressive Center, 30-A, Block-6, P.E.C.H.S, Karachi (the "Applicant") on behalf of the domestic industry producing Formic Acid 85% ("FA 85%") on July 30, 2005. The Applicant alleged that FA 85% produced in the Republic of Finland (hereinafter referred to as "Finland") and the Federal Republic of Germany (hereinafter referred to as "Germany") is exported to Pakistan at dumped prices. The Embassies of Finland and Germany in Islamabad were informed through

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note verbale dated August 03, 2005, sent through the Ministry of Foreign Affairs, Pakistan, of the receipt of application in accordance with the requirements of Section 21 of the Ordinance.

2. Evaluation and Examination of the Application

2.1 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 FA 85% and injury to the domestic industry caused therefrom. The requirements of Rule 3 of the Rules, which relate to the submission of information prescribed therein were also found to have been met.

2.2 The application fulfils the requirements of Section 24 of the Ordinance which enjoins upon the Commission to assess the standing of the domestic industry on the basis of the degree of support for or opposition to the application expressed by the domestic producers of the like product. 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.

2.3 The Domestic industry manufacturing FA 85% consists of two units. Following are the details of domestic industry's capacity and production during the Financial Year ("FY") 2004-05 with regard to standing of this antidumping application:

Name of the Unit	Installed Capacity MT	Domestic Production MT	Percentage Share in Domestic Production	Status
Tufail Chemical Industries Limited.	7,200	5,239	81.36	Applicant

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Faras Combine Marketing (Pvt.) Ltd	1,200 (estimated)	1,200 (estimated)	18.64	Indifferent
Total	8,400	6,439		

2.4 It may be noted from the above table that the Applicant is the major domestic producer of FA 85% in Pakistan representing 81.36 percent of domestic production, whereas, the other unit represents 18.64 percent (estimated) of domestic production. The application has been filed by the Applicant. Faras Combine Marketing (Pvt.) Ltd, the other unit of the domestic industry is indifferent. Therefore, the application is considered to be made by the domestic industry as it is supported by 100 percent of the total production of the like product produced by that portion of the domestic industry expressing its opinion. The application, therefore, fulfils the requirement of Section 24(1) of the Ordinance.

2.5 The application also fulfilled the requirements of Section 24 (2) of the Ordinance, as the domestic producers expressly supporting this application account for 81.36 percent of total production of the domestic product produced by domestic industry.

3. Foreign Exporters of the FA 85%

The Applicant identified two exporters/producers i.e., (i) Kemira Chemicals Oyj, Helsinki, Finland (“Kemira”) and (ii) BASF, Ludwigshafen, Germany, (“BASF”) involved in alleged dumping of FA 85%. Upon initiation of investigation copy of the notice of initiation was sent to both the exporters/producers on September 08, 2005.

4. Applicant’s Views

The Applicant, *inter alia*, raised the following issues in its application regarding dumping of FA 85% and material injury to the domestic industry caused therefrom:

- i. FA 85% imported from Finland and Germany into Pakistan and the FA 85% produced in Pakistan by the domestic industry are like products;
- ii. exporters from Finland and Germany are exporting FA 85% to Pakistan at dumped prices; and

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- iii. exports of FA 85% by the Finish and German exporters to Pakistan at dumped prices has caused and is causing material injury to the domestic industry producing FA 85%, mainly through:
- a. price undercutting;
 - b. price suppression;
 - c. loss in market share;
 - d. negative effects on capacity utilization;
 - e. negative effects on employment ;
 - f. negative effects on productivity;
 - g. negative effects on cash flow;
 - h. decline in profits; and
 - i. increase in inventories.

5. Initiation of Investigation

5.1 The Commission upon examining the accuracy and adequacy of the evidence provided in the application established that there is sufficient evidence of alleged dumping and injury to justify initiation of an investigation. Consequently, the Commission decided to initiate an investigation on September 05, 2005. In terms of Section 27 of the Ordinance, the Commission issued a Notice of Initiation, which was published in the Official Gazette¹ of Pakistan and in two widely circulated national newspapers² (one in English language and one in Urdu Language) on September 08, 2005. Investigation concerning imports into Pakistan of FA 85% (classified under PCT³ No. 2915.1100) contained in the First schedule of Customs Act, 1969 (IV of 1969) originating in and/or exported from Finland and Germany was thus initiated on September 08, 2005 (pursuant to Commission's decision of September 05, 2005 to initiate).

5.2 The Commission notified the Embassies of Finland and Germany in Pakistan (by sending a copy of the Notice of Initiation through Ministry of Foreign Affairs,

¹ The official Gazette of Pakistan (Extraordinary) dated September 08, 2005.

² The 'Daily Express and the 'Business Recorder' of September 08, 2005 issue.

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

Pakistan on September 08, 2005). Copies of Notice of Initiation were also sent to Kemira and BASF, the known Pakistani importers, and the Applicant on September 08, 2005, in accordance with the requirements of Section 27 of the Ordinance.

5.3 In accordance with Section 28 of the Ordinance, on September 13, 2005, the Commission also sent copies of full text of the written application (non-confidential version) to the Embassies of Finland and Germany in Pakistan through the Ministry of Foreign Affairs, Pakistan.

6 Information/Data Gathering

6.1 The Commission sent questionnaires alongwith full text of written application (non confidential version) to Kemira and BASF for submission of data and information on September 13, 2005, and were asked to respond within 37 days of the dispatch of the questionnaires i.e by October 20, 2005.

6.2 Kemira requested for an extension in time period for submission of information till October 30, 2005. The Commission acceded to the request after taking into account the reasons given by Kemira in its request. Filled-in exporter questionnaire from Kemira was received at the Commission on October 29, 2005.

6.3 BASF also requested for an extension in the time period for submission of the required information till October 30, 2005. The Commission acceded to the request after taking into account the reasons given by BASF in its request. Filled-in exporter questionnaire from BASF was received at the Commission on November 01, 2005.

6.4 On September 27, 2005 questionnaires were sent to Pakistani importers known to the Commission and these importers were asked to respond to the Commission within 37 days of the dispatch of the questionnaires. None of the Pakistani importers responded.

6.5 The Commission maintains a database of import statistics, obtained on quarterly basis, from Pakistan Revenue Automation Limited ("PRAL"), the data processing arm of the Central Board of Revenue, Government of Pakistan. For the

purpose of this preliminary determination the Commission has used import data obtained from PRAL in addition to the information provided by the Applicant and the exporters (i.e., Kemira and BASF).

6.6 On-the-spot investigation was conducted at the premises of the Applicant from November 14 to 16, 2005 at Lahore, in order to verify the information provided by the Applicant and to obtain further information. On the spot investigations were also conducted at the premises of the producers/exporters from Finland (i.e Kemira) and Germany (i.e BASF) from January 30 to February 7, 2006, who responded to the Commission's request for data on exporter's questionnaire.

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

7. Public File

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

8. Confidentiality

In terms of Section 31 of the Ordinance, any information, which is marked confidential by the interested parties in their submissions and considered confidential by the Commission, shall, during and after the investigation, be kept confidential.

9. Period of Investigation

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

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

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

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

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

Investigation of dumping	from July 1, 2004 to June 30, 2005;
Investigation of injury	from July 1, 2002 to June 30, 2005.

10. **Investigated Product and Domestic Like Product**

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

Investigated Product:

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

Domestic Like Product:

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

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

i. Investigated Product:

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The investigated product is FA 85% originating in and/or exported from Finland and Germany into Pakistan. It is classified under PCT Heading No. 2915.1100. The investigated product is mainly used as an input by leather industry (for leather softening, tanning), in textile industry (as neutralizing agent in yarn & fabrics dyeing), in food industry (in antiseptic, disinfectants, preservatives), and in pharmaceutical industry (as synthesis of vitamin B, in alkaloids etc).

ii. Domestic Like Product

The domestic like product is FA 85% produced by the domestic industry in Pakistan. The domestic like product is also classified under PCT Heading No. 2915.1100. The domestic like product is mainly used as an input by leather industry (for leather softening, tanning), in textile industry (as neutralizing agent in yarn & fabrics dyeing), in food industry (in antiseptic, disinfectants, preservatives), and in pharmaceutical industry (as synthesis of vitamin B, in alkaloids etc). Major uses of the domestic like product are therefore, identical to those of the investigated product.

10.3 In order to establish whether the investigated product and the domestic like product are like products, as contended by the Applicant, the Commission reviewed all the relevant information received/obtained from various sources including the Applicant, and the exporters/producers from Finland (i.e. Kemira) and from Germany (i.e. BASF) in the following terms:

- i. The Applicant uses Sodium Formate and Sulphuric Acid as basic raw materials for the manufacture of the domestic like product (i.e. FA 85%), while the exporters/producers from Finland (i.e. Kemira) and from Germany (i.e. BASF) uses carbon monoxide and methanol for the manufacture of investigated product (i.e. FA 85%). Although different raw materials are used, the product manufactured is the same i.e. F.A 85%.
- ii. The Applicant manufactures domestic like product by using NaFo Acidolysis manufacturing process, whereas the exporter/producer

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from Finland manufactures investigated product through Carbonylation manufacturing process and exporter/producer from Germany manufactures investigated product by using Extraction manufacturing process. The product manufactured from these manufacturing processes is the same i.e. F.A 85%.

- iii. Both the products have same uses. These are mainly used as an input by leather industry (for leather softening, tanning), in textile industry (as neutralizing agent in yarn & fabrics dyeing), by food industry (in antiseptic, disinfectants, preservatives), and in pharmaceutical industry (as synthesis of vitamin B, in alkaloids etc).
- iv. Both the products are classified under the same PCT sub-heading 2915.1100.

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

11. Negligible Volume of Imports

In terms of Section 41(3) of the Ordinance, the volume of imports shall normally be regarded as negligible if the volume of imports of an investigated product is found to account for less than 3 percent of total imports of the like product. In this regard, data and information provided by the Applicant (which is based on PRAL data) and provided by the exporters/producers from Finland and Germany has been analyzed. The data reveals that imports from Finland were 1928.45 MT, and from Germany were 3964.80MT during the POI, which were 28% and 57% of total imports of the investigated product into Pakistan respectively. Thus this percentage is well above the percentage for “negligible” volume (less than three percent) of imports of the like product.

12. Submissions by the Exporters

(i) Questionnaire response by Kemira

12.1 Filled-in exporter questionnaire from Kamira was received at the Commission on October 29, 2005. It manufactures and markets Formic Acid 85% (the investigated product) and Formic Acid 99%.

12.2 Upon examination it was found that the questionnaire did not contain information on cost of production, domestic and export sales on transaction-by-transaction basis, transportation, insurance, handling, loading and ancillary costs, (information that is to be provided on all fields in C-3 and D-3 and Appendix-1 and Appendix-2 of the questionnaire). Letter containing data deficiencies was sent to Kemira on November 22, 2005 and were asked to provide the deficient data by November 29, 2005. Kemira in its email dated November 22, 2005 requested 6-days extension in time period to provide the requisite information/data. Kemira was allowed 6-days extension (i.e., upto December 05, 2005).

12.3 On December 8, 2005 the Commission received a response from Kemira to the data deficiency letter of November 22, 2005. Kemira submitted a revised questionnaire that contains information regarding its export sales to Pakistan and India during POI, its total domestic sales during three calendar years i.e. 2003, 2004 and 2005 and information in Appendix 1. Kemira did not provide complete information of its cost of production in Appendix 2.

(ii) Questionnaire response by BASF

12.4 Filled-in exporter questionnaire from BASF was received in the Commission on November 01, 2005. According to the information provided in response to the exporter questionnaire by BASF, it is a world leading chemical company, manufacturing chemicals, plastics, performance products, agricultural products etc. It manufactures and sells FA 85% (the investigated product), and Formic Acid 99% and other chemical products. BASF provided information of its domestic sales and export sales to Pakistan during POI in sections C and D of the questionnaire.

12.5 On December 17, 2005, BASF through a data deficiency letter was asked to explain the basis of allocation of each cost component to FA 85% and FA 99% and other products of chemical division separately. BASF was also asked to provide information on quantity and value of the investigated product sold in the domestic market and exports to each country including Pakistan and India for the period from

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July 1, 2002 to June 30, 2005 in the revised Appendix-1.

12.6 In response to the data deficiency letter of December 17, 2005, BASF in its letter dated December 20, 2005 submitted clarifications regarding packing cost, R&D cost in administrative expenses and informed that basis of allocation of cost can be given during on -the-spot-investigation. However, it provided information of its export sales to other countries in Appendix 1 of the exporter's questionnaire.

13. Submissions by the Importers/Industrial Users

None of the importers responded to the importer's questionnaire. However, the Commission received comments/views on application filed by the domestic industry from following importers and industrial users:

Importers

- i. Hafiz Tannery;
- ii. Souvenir Trading Company;
- iii. Hafeez Trading Company

14. Views/Comments of Hafiz Tannery:

Following are the comments received from Hafiz Tannery:

- i) "We are of the view that the allegations by M/s Tufail Chemicals are not justified as they are against world renowned companies, who have been in business since the past several decades and have businesses with almost all the major countries of the world. For such companies, selling a product, even at a higher price, is possible because of their reliability and quality of their products. To check anti-dumping their selling price worldwide can be compared. They are not selling to Pakistan at a cost lower than they are selling to the rest of the world.
- ii) "Formic Acid is an important chemical used in the leather industry. Out of the total quantity required by the leather industry, most of it is imported, not because of their price but due to the quality. Our company exports leather after tanning, for which we have to meet

international standards, which our customers desire. We are therefore, compelled to use the imported Formic Acid if we need to produce and sell leather internationally.

- iii) “One important point to note is that the question of anti-dumping does not arise in the current situation as this chemical is in shore supply in the market. The local manufacturers do not have enough capacity to produce and cater to the needs of the industry in terms of quality as well, thus, this chemical has to be imported. Currently, the prices in the market are artificially high due to the non-availability of formic acid in the market. We are of the view that some sort of subsidy should be given on import of formic acid so that the quantity needs of the industry are satisfied. Further, local consumers do not stock this chemical, which proves that the prices of imported formic acid are not lower and the point of anti-dumping is baseless”.

15. Views/Comments of Souvenir Trading Company

Following comments were received from Souvenir Trading Company:

- i) “From Korea this item is been supplied in US\$ 540 to US\$ 560 and at present BASF is supplying at US\$ 625 to US\$ 640/- which is the highest price and their normal price for our region”.
- ii) “Furthermore, Formic Acid produced by Pakistani Manufacturer is not up to the Quality Standards and is already in the slab of protective duty highest 25% custom duty, which is very very sufficient to protect local industry and if they want more profits there is no logic to impose Antidumping duty which will be against the spirit of CBR to give relief to Leather & Textile Industries it is a quite basic raw material for these both industries and it will cause damage to our own export oriented industries”.

16. View/Comments Hafeez Trading Company

Same comments as are mentioned in para 15.1 above were received from

Hafeez Trading Company.

17. Submissions by the Exporters/Foreign Producers

17.1 During on-the-spot-investigation at the premises of Kemira, it handed over views/comments on the non-confidential copy of the application sent to them by the Commission. Summarized below are the comments made by Kemira:

- i) Kemira produces and sells both grades FA 85% and 99% internationally, however, it sold only FA 85% to Pakistan. The Applicant, Tufail Chemical Industries Ltd., produces only the FA 85% grade.
- ii) Tufail Chemical Industries Ltd., has identified the product concerned to be the FA 85% only. Based on the Application, we have understood that the anti-dumping investigation only concerns the FA 85% grade. The FA 99% grade must be excluded from the concept of “the investigated product” and “a like product.”
- iii) Kemira’s US dollar based prices of FA 85% to Pakistan has been gradually and steadily increased reflecting the local market situation. The average price to Pakistan increased from US\$ 477/MT in 2002-03 to US\$ 521/MT in 2003-04 and to US\$ 552/MT in 2004-05.
- iv) Kemira holds the opinion, that there is no evidence on the injury for the local producer from allegedly dumped exports of FA 85% from Kemira. Firstly, Pakistani formic acid market is protected with a high import duty of 25%. Secondly, Kemira’s US dollar based prices of FA 85% to Pakistan have been gradually and steadily increased during the considered period. Therefore, no injury has been caused to the domestic industry in Pakistan.
- v) Kemira would like to emphasize the difference in manufacturing technologies. The domestic industry (Tufail) is using the sodium

formate acidulation process, based on imported sodium formate. This process was the main production process in the world upto 1970's, but has been abandoned completely in West Europe and most other markets. The modern carbonylation processes have clearly the lowest manufacturing variable costs. The cost competitiveness of the sodium formate process is very low because of the high raw material costs. It can be competitive only if sodium formate is available captively, e.g. from polyol processes. Today's sodium formate price is around US\$300/MT and it has risen significantly during the POI. This means, the manufacturing variable cost of the local producer Tufail is very high, 2-3 times higher than the manufacturing variable costs of the main global producers.

B. DETERMINATION OF DUMPING

18. Determination of 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”.

19. Normal Value

19.1 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”.

However, Section 6 of the Ordinance states:

“(1) when there are no sales of like product in the ordinary course of trade in domestic market of an exporting country, or when such sales do not permit a proper comparison because of any particular market situation or low volume

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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”.

19.2 Section 7 of the Ordinance provides circumstances in which certain sales may be disregarded in determining normal value:

“(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.”

19.3 As stated in paragraph 6.1 supra the Commission sent questionnaires to Kemira, and BASF, to gather information/data, including data relating to their sales in the domestic market, export sales and cost of production. Both the exporters (i.e. Kemira and BASF) provided information in response to the exporters questionnaire (paragraphs 12.1 & 12.6 supra). Normal value for these two exporters is determined on the basis of the information supplied by them.

19.4 **Determination of Normal Value for Kemira, Finland:**

19.4.1 According to the information provided by Kemira in exporter’s questionnaire and verified during on-the-spot-investigation, its total domestic sales of the investigated product were *****⁴ during the years 2003 to 2005. The domestic sales during POI would be less than this quantity. These domestic sales of Kemira are not in sufficient quantity for the determination of normal value in terms of Section 6(2) of the Ordinance, as these sales are much less than five per cent of its sales of the investigated product to Pakistan.

19.4.2 As stated in paragraph 18.1 supra, Section 6 of the Ordinance provides inter-alia that when sales in the domestic market of an exporting country do not permit a proper comparison because of low volume of the sales in the domestic market of exporting country, the Commission shall establish normal value of an investigated product on the basis of either ⁵

⁴ Actual figures have been omitted to maintain confidentiality.

⁵ Ordinarily the Commission’s approach is that normal value for an exporter/producer be determined on the basis of sales made by such exporter/producer in the domestic market during the POI. If normal value cannot be determined on the basis of sales made in the domestic market for reasons set out in Section 7(1) of the Ordinance,

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- (a) a 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.

19.4.3 Normal value for Kemira is therefore, determined on the basis of its cost of production of FA 85% during the POI provided during on-the-spot-investigation. The ex-factory cost to make and sell FA 85% of Kemira works out to *****⁶.

19.5 **Determination of Normal Value for BASF, Germany**

19.5.1 BASF provided information of its domestic sales of FA 85% (on transaction to transaction basis) made during the POI in Attachment D-3 of the questionnaire. The accounting year of BASF is from January to December (calendar year) and record of export sales is also maintained for calendar year. The POI for dumping is from July 2004 to June 2005. The total domestic sales of BASF during POI were *****⁷ having gross value of *****⁸. The gross domestic sales price works out to *****⁹.

19.5.2 The domestic sales made by BASF in Germany during the POI were in sufficient quantity, as these sales were more than 5 percent of its sales to Pakistan in terms of Section 6(2) of the Ordinance and were made in the ordinary course of trade in terms of Section 7 of the Ordinance¹⁰.

then normal value is determined on the basis of cost of production plus a reasonable amount for administrative, selling and general costs and for profits (provided by the exporter/producer) or construction of normal value. Determination of normal value on the basis of cost of production plus a reasonable amount for administrative, selling and general costs and for profits, provided by the exporter/producer concerned or constructed normal value brings determination more nearly in line with exporting country's relevant costs and prices for the foreign like product vis a vis determination of normal value on the basis of comparable price of the like product when exported to an appropriate third country.

⁶ Actual figures have been omitted to maintain confidentiality.

⁷ Actual figures have been omitted to maintain confidentiality.

⁸ Actual figures have been omitted to maintain confidentiality.

⁹ Actual figures have been omitted to maintain confidentiality.

¹⁰ ⁵ In order to determine whether sales made by BASF in the domestic market during the POI were in the ordinary course of trade, the domestic sales prices given in Attachment D-3 were compared with average cost to make and sell provided by BASF for the period from July to December 2004 and January to June 2005. This comparison showed that the sales made in the domestic market during the POI that were below the cost to make and sell were less than 20 % of BASF domestic sales. However, the weighted average cost of production (COP) worked out from COP given against each transaction by BASF does not reconcile with the average cost of production for the POI given in Appendix 2 of the exporter's questionnaire by BASF. This aspect is being clarified.

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19.5.3 BASF made some sales to its related parties, however, during on-the-spot-investigation it informed that in accordance with the BASF Inter Company Transfer Pricing (ICTP) Guidelines, business transactions between legal entities of the same group of companies are conducted as if those entities are unrelated parties. Therefore, ICTP between related entities are also based on market prices (“arm’s length principle”).

19.5.4 BASF sold FA 85% in the domestic market on carriage paid to (CPT) basis during the POI, which means freight is included in the BASF sales price. All expenses from ex-factory level, including transportation costs were borne by BASF. Inland freight of domestic sales of FA 85% as recorded in the computerized records maintained in SAP shows total domestic freight charges of *****¹¹.

19.5.5 Some sales of FA 85% in the domestic market were on credit during POI. The credit cost has been worked out on the basis of **% interest rate (at which BASF gets finances from its bank), which is lower than the prevailing market interest rate. The total credit cost of sales made on credit is *****¹².

19.5.6 BASF gives discount to its customers on the basis of early payment. Total discount paid during the POI was *****¹³.

19.5.7 BASF has an agreement with major customers in the domestic market that if they purchase a certain quantity of FA 85%, they will get rebate of *****¹⁴ percent.

19.5.8 BASF has mentioned in its questionnaire response and its letter of December 20, 2005 that:

- i) “there is a difference in packing material cost of domestic sales and export sales to Pakistan. The domestic sales are in bulk in container trucks, whereas, the product exported to Pakistan is filled into drums (35kg each). There is filling and packing cost of export sales to Pakistan and no cost of filling and packing of domestic sales;
- ii) “One major component of administrative cost in R&D expenses. R&D is carried out at BASF chemical complex in Germany and new applications of formic acid are undertaken. The new applications are

¹¹ Actual figures have been omitted to maintain confidentiality.

¹² Actual figures have been omitted to maintain confidentiality.

¹³ Actual figures have been omitted to maintain confidentiality.

¹⁴ Actual figures have been omitted to maintain confidentiality.

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for users of formic acid in Germany and are not related to sales to Pakistan, therefore, administrative cost of sales to Pakistan is different than administrative cost of sales made in Germany.

- iii) “Similarly the financial cost of sales made in Germany is different than financial cost of export sales to Pakistan.”

For fair comparison of domestic sales price and export price to Pakistan of BASF during the POI, it requested that packing cost, selling & distribution expenses, financial expenses and administrative expenses may be excluded from both the domestic sales price and export price to Pakistan to arrive at ex-factory price.

19.5.9 Packing cost of Euro*****¹⁵ has been deducted from the domestic sales price of BASF and Euro***** from its export price to Pakistan. Similarly administrative expenses¹⁶ of Euro *****¹⁷ has been deducted from the domestic sales price of BASF and Euro *****¹⁸ from its export price to Pakistan. Similarly financial cost of US\$*****¹⁹ has been deducted from domestic sales price and US\$*****¹⁹ from export price to Pakistan. Adjustments on account of selling and distribution expenses (i.e. inland freight, ocean freight, handling cost, filling cost, commission, discount, and credit cost) claimed in the domestic sales and export sales during the POI have also been made.

19.5.10 After making adjustments from gross domestic sales price of US\$*****²⁰ for inland freight of US\$*****²¹, packing cost of US\$*****²², discount of US\$*****²³, credit cost of US\$*****²⁴, rebate US\$*****²⁵, administrative cost of US\$*****²⁶ and financial charges of US\$*****²⁷ the weighted average domestic price works out to US\$*****²⁸ at the ex-factory level.

20. Export Price

¹⁵ Actual figures have been omitted to maintain confidentiality.

¹⁶ The allocation of all cost relating to R&D to sales made in Germany and administrative cost of sales in Germany is being clarified.

¹⁷ Actual figures have been omitted to maintain confidentiality.

¹⁸ Actual figures have been omitted to maintain confidentiality.

¹⁹ Actual figures have been omitted to maintain confidentiality.

¹⁹ Actual figures have been omitted to maintain confidentiality.

²⁰ Actual figures have been omitted to maintain confidentiality.

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²⁴ Actual figures have been omitted to maintain confidentiality.

²⁵ Actual figures have been omitted to maintain confidentiality.

²⁶ Actual figures have been omitted to maintain confidentiality.

²⁷ Actual figures have been omitted to maintain confidentiality.

²⁸ Actual figures have been omitted to maintain confidentiality.

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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”.

20.2 Determination of Export Price for Kemira, Finland:

20.2.1 To determine export price charged by Kemira from Pakistani importers during the POI, the Commission has used the information provided in Kemira’s response to the exporter’s questionnaire and further information obtained during on-the-spot investigation.

20.2.2 According to the information provided by Kemria in its questionnaire response, it exported ****²⁹MT of investigated product packed in 30 liters can (36kg) to Pakistan having gross value of US\$****³⁰ during the POI. The accounting year of Kemira is from January to December (calendar year) and record of export sales is also maintained on a calendar year basis. The POI for dumping is from July 2004 to June 2005. During on-the-spot-investigation Kemira provided a revised copy of all its export sales to Pakistan during POI, from the computerized records maintained by Kemira in SAP. According to which its export sales of investigated product to Pakistan were ****³¹MT having gross value of US\$****³². Kemira also provided summary report of its exports sales to Bangladesh, Pakistan, India, South Africa, Turkey and Uruguay. The summary report shows export sales to Pakistan of ****³³MT. In its comments on the report of on-the-spot-investigation, Kemira has clarified that the correct figure of its export sales to Pakistan is ****³⁴MT having sales value of Euro****³⁵. The reason for difference in the volume of export sales mentioned in Attachment C-3 and Appendix 1 of Questionnaire was because of Kemira’s reporting system for transactions, which did not take into account all the cancelled invoices. The gross export price on CFR basis works out to US\$****³⁶.

²⁹ Actual figures have been omitted to maintain confidentiality.

³⁰ Actual figures have been omitted to maintain confidentiality.

³¹ Actual figures have been omitted to maintain confidentiality.

³² Actual figures have been omitted to maintain confidentiality.

³³ Actual figures have been omitted to maintain confidentiality.

³⁴ Actual figures have been omitted to maintain confidentiality.

³⁵ Actual figures have been omitted to maintain confidentiality.

³⁶ Actual figures have been omitted to maintain confidentiality.

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20.2.3 Kemira has made all export sales to Pakistan through its agent Pacific Multi Product (pvt) Ltd. and paid ** percent commission of the transaction value to its agent. Kemira does not have a written agreement with Pacific Multi Product showing a commission of ** percent of transaction value. However, Kemira provided copy of its record of sales to Pakistan during the period from January to March 2005, showing payment of **percent commission to Pacific Multi Product. The commission to Pacific Multi-Product works out to Euro ****³⁷.

20.2.4 According to the information provided by Kemira, Euro****³⁸ was paid as ocean freight for exports of the investigated product to Pakistan, for every 20 feet container (which contained around 20.736MT of the investigated product). Thus, ocean freight works out to Euro****³⁹ for exports of the investigated product to Pakistan during the POI.

20.2.5 Kemira also paid Euro ****⁴⁰ on account of inland freight charges. The handling cost was Euro ****⁴¹ and documentation fee was Euro ****⁴² during the POI.

20.2.6 After making adjustments from weighted average gross export price of US\$****⁴³ for commission US\$****⁴⁴, ocean freight US\$****⁴⁵, inland freight US\$****⁴⁶, handling cost US\$****⁴⁷and documentation fee US\$****⁴⁸, the adjusted weighted average export price (ex-factory) works out to US\$ ****⁴⁹.

20.3 **Determination of Export Price for BASF, Germany**

20.3.1 To determine export price charged by BASF from Pakistani importers during the POI, the Commission has used the information provided in BASF's response to

³⁷ Actual figures have been omitted to maintain confidentiality.

³⁸ Actual figures have been omitted to maintain confidentiality.

³⁹ Actual figures have been omitted to maintain confidentiality.

⁴⁰ Actual figures have been omitted to maintain confidentiality.

⁴¹ Actual figures have been omitted to maintain confidentiality.

⁴² Actual figures have been omitted to maintain confidentiality.

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⁴⁵ Actual figures have been omitted to maintain confidentiality.

⁴⁶ Actual figures have been omitted to maintain confidentiality.

⁴⁷ Actual figures have been omitted to maintain confidentiality.

⁴⁸ Actual figures have been omitted to maintain confidentiality.

⁴⁹ Actual figures have been omitted to maintain confidentiality.

the exporter's questionnaire and further information obtained during on-the-spot investigation.

20.3.2 BASF exported ****⁵⁰ MT of the investigated product to Pakistan during the POI, packed in 35kg per plastic can. The accounting year of BASF is from January to December (calendar year) and record of export sales is also maintained for calendar year. The POI for dumping is from July 2004 to June 2005. The export sales to Pakistan were verified from the computerized records maintained by BASF in SAP and this record showed exports of ****⁵¹MT having gross value of Euro ****⁵² during July to December 2004 and ****⁵³MT having gross value of Euro****⁵⁴ during January to June 2005. The total quantity exported to Pakistan during POI comes to ****⁵⁵MT and its gross value works out to Euro****⁵⁶. The weighted average cost & freight ("CFR") export price of the investigated product works out to Euro ****⁵⁷.

20.3.3 Sales to Pakistani customers are made through BASF Pakistan, which receives ** percent of sales value (CFR) as commission on export of the investigated product to Pakistan. BASF also has an agent in Singapore (through which all sales to Asia are made) and it gets a commission ** of sales value. The commission⁵⁸ paid by BASF works out to US\$****⁵⁹.

20.3.4 All the export sales to Pakistan are shipped from Germany, the ocean freight during July to December 2004 was Euro****⁶⁰ and during January to June 2005 was Euro****⁶¹, which was verified from computerized records maintained by BASF in SAP. The total ocean freight cost during POI works out to Euro****⁶². Thus ocean freight for exports of the investigated product to Pakistan works out to Euro ****⁶³ during the POI.

20.3.5 BASF did not provide information regarding handling cost and filling cost in the Attachment C-3 of the questionnaire. However, during on-the-spot-investigation the record of

⁵⁰ Actual figures have been omitted to maintain confidentiality.

⁵¹ Actual figures have been omitted to maintain confidentiality.

⁵² Actual figures have been omitted to maintain confidentiality.

⁵³ Actual figures have been omitted to maintain confidentiality.

⁵⁴ Actual figures have been omitted to maintain confidentiality.

⁵⁵ Actual figures have been omitted to maintain confidentiality.

⁵⁶ Actual figures have been omitted to maintain confidentiality.

⁵⁷ Actual figures have been omitted to maintain confidentiality.

⁵⁸ The amount of commission paid to BASF agents in Pakistan and Singapore, details of which were provided during on-the-spot-investigation does not reconcile with that given by BASF in Attachment C-3 of exporter's questionnaire. This matter needs to be clarified with BASF.

⁵⁹ Actual figures have been omitted to maintain confidentiality.

⁶⁰ Actual figures have been omitted to maintain confidentiality.

⁶¹ Actual figures have been omitted to maintain confidentiality.

⁶² Actual figures have been omitted to maintain confidentiality.

⁶³ Actual figures have been omitted to maintain confidentiality.

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BASF showed an expense of Euro****⁶⁴ as handling cost and Euro****⁶⁵ as filling cost (filling the investigated product into plastic cans) during the POI. The handling and filling cost of export sales to Pakistan works out to Euro****⁶⁶ and Euro****⁶⁷ respectively. The evidence of these costs has been obtained from the computerized records maintained by BASF in SAP.

20.3.6 BASF has made some export sales to Pakistan at credit, the total credit cost of these sales is US\$****⁶⁸ and works out to US\$****⁶⁹. The credit cost has been worked out on the basis of ** interest rate (at which BASF gets finances from its bank), which is lower than the prevailing market interest rate.

20.3.7 After making adjustment from gross export price of US\$****⁷⁰ for commission US\$****⁷¹, ocean freight US\$****⁷², credit cost US\$****⁷³, handling cost US\$****⁷⁴, filling cost US\$****⁷⁵, administrative expenses US\$****⁷⁶, packing cost US\$****⁷⁷ and financial cost US\$****⁷⁸ the weighted average export price works out to US\$****⁷⁹ at the ex-factory level.

21. Dumping Margin

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

21.2 Section 2(f) of the Ordinance defines “dumping margin” in relation to a product as “the amount by which its normal value exceeds its export price”. In terms

⁶⁴ Actual figures have been omitted to maintain confidentiality.

⁶⁵ Actual figures have been omitted to maintain confidentiality.

⁶⁶ Actual figures have been omitted to maintain confidentiality.

⁶⁷ Actual figures have been omitted to maintain confidentiality.

⁶⁸ Actual figures have been omitted to maintain confidentiality.

⁶⁹ Actual figures have been omitted to maintain confidentiality.

⁷⁰ Actual figures have been omitted to maintain confidentiality.

⁷¹ Actual figures have been omitted to maintain confidentiality.

⁷² Actual figures have been omitted to maintain confidentiality.

⁷³ Actual figures have been omitted to maintain confidentiality.

⁷⁴ Actual figures have been omitted to maintain confidentiality.

⁷⁵ Actual figures have been omitted to maintain confidentiality.

⁷⁶ Actual figures have been omitted to maintain confidentiality.

⁷⁷ Actual figures have been omitted to maintain confidentiality.

⁷⁸ Actual figures have been omitted to maintain confidentiality.

⁷⁹ Actual figures have been omitted to maintain confidentiality.

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of Section 14 of the Ordinance the Commission shall determine an individual dumping margin for each known exporter or producer of an investigated product.

21.3 Taking into account all requirements set out above, the dumping margin of 16.49% and 6.16% for Kamira and BASF respectively has been calculated.

C. INJURY TO DOMESTIC INDUSTRY

22 Determination of Injury

22.1 Section 15 of the Ordinance sets out the principles for determination of material injury to the domestic industry and provides as follows:

“A determination of injury shall be based on an objective examination of all relevant factors by the Commission which may include but shall not be limited to:

- a. volume of dumped imports;
- b. effect of dumped imports on prices in domestic market for like products; and
- c. consequent impact of dumped imports on domestic producers of such products...”

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

23 Domestic Industry

23.1 In terms of Section 2(d) of the Ordinance, domestic industry is defined as follows:

“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.”

23.2 The domestic industry manufacturing domestic like product presently consists of two operative units with installed capacity of 8,400/MT per annum. The Applicant set up its plant to manufacture domestic like product in 1993 with an installed capacity of 5400MT per annum. At present, the Applicant’s installed capacity is 7,200 MT per annum. The Applicant is engaged in manufacture and sale

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of domestic like product and its by products sodium sulphate etc. The Applicant represents 81.36 percent of total domestic production.

23.3 Faras Chemical Company (the other domestic producer of domestic like product) who is indifferent represents 18.64 percent of total domestic production.

24. Cumulation of Dumped Imports

24.1 Section 16 of the Ordinance states that:

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

“(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”.

24.2 As mentioned in paragraph 11 supra, the volume of imports of the investigated product from Finland and Germany individually during the POI was well above the negligible quantity (i.e. less than 3 percent of total imports of investigated product). Furthermore, the weighted average dumping margin for Kemira from Finland and BASF from Germany is also more than the de-minimus (i.e. less than 2 percent of export price). Following table shows the weighted average dumping margin determined for the Kemira and BASF:

Dumping Margin

Exporter/Country	Dumping Margin
Kemira, Finland	16.49%
BASF, Germany	6.16%

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

Country	Weighted Average CFR Price (US\$/MT)
Finland	****80
Germany	****80

Sources: (i) information provided by the exporters/producers from Finland and Germany.

24.4 The investigation revealed that there was a competition between the investigated product imported from both the sources. Conditions of competition between imports of the investigated product and the domestic like product are given in detail in paragraphs 26 and 27 infra.

24.5 For the reasons given above, the Commission has cumulatively assessed the effects of dumped imports from Finland and Germany on the domestic industry in the following paragraphs.

25 Volume of Alleged Dumped Imports

Facts

25.1 In order to ascertain the volume of dumped imports of the investigated product, the Commission obtained import data from PRAL, Kemira, BASF and the Applicant.

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

(MT)

Year	Imports from dumped sources	Imports from other Countries	Total Imports
FY 2003	100.00	18.22	118.22

⁸⁰ Actual figures have been omitted to maintain confidentiality.

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FY 2004	94.44	23.22	117.66
FY 2005	181.10	41.09	222.19

Actual figures of imports from dumped sources have been indexed by taking figures of 2003 equal to 100.

Analysis

25.3 The imports from dumped sources decreased from by 5.56 percent in FY 2004. It increased by 91.76 percent in FY 2005. Nonetheless during the POI 81% to 85% of total imports were from dumped sources.

25.4 Imports from other countries also increased by 24 percent in FY 2004 and further increased by 100.84 percent in FY 2005. Thus during the POI 15% to 19% imports were from non-dumped sources.

Conclusion

25.6 On the basis of the above analysis, the Commission has concluded that the dumped imports increased in absolute terms substantially in FY 2005.

26. Price Effects

The effect of dumped imports on the sales price of domestic like product in the domestic market has been examined to establish whether there has been significant price undercutting (the extent to which the price of the imported product is lower than the price of the Applicant industry), price depression (the extent to which the Applicant industry experiences a decrease in its selling prices over time), and price suppression (the extent to which increases in the cost of production cannot be recovered in selling price).

26.1 Price undercutting

Facts

26.1.1 Following data relating to the weighted average ex-factory price of the domestic like product and weighted average landed cost of investigated product was submitted by the Applicant. Comparison of weighted average ex-factory price of the domestic like product with the weighted average landed cost of the investigated product during the POI is given in the following table:

(Rs./MT)			
Period	Weighted Average ex-	Weighted Average	Price under-cutting in

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			Absolute terms	Percent-age
FY 2003	100.00	88.47	11.53	(11.53%)
FY 2004	106.89	99.88	7.01	(6.56%)
FY 2005	119.49	110.42	9.07	(7.59%)

Actual figures of weighted average ex-factory price of the domestic like product have been indexed by taking figures of 2003 equal to 100.

Analysis

26.1.2 The landed cost of the investigated product was lower than the average ex-factory price of the domestic like product by 11.53 percent in FY 2003, by 6.56 percent in FY 2004 and by 7.59 percent in FY 2005. Thus price undercutting ranged from 6.56% to 11.53% during the POI.

Conclusion

26.1.3 On the basis of the above, the Commission has concluded that the prices of the investigated product significantly undercut the prices of domestic like product during the POI.

26.2 Price Depression

Facts

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

Period	Weighted Average ex-factory price of domestic like product	Price depression
FY 2003	100.00	--
FY 2004	106.89	6.89%
FY 2005	119.49	12.60%

* Actual figures of weighted average ex-factory price of the domestic like product have been indexed by taking figures of 2003 equal to 100.

Analysis

26.2.2 The weighted average ex-factory price of domestic like product increased by 6.89 percent in FY 2004 and further by 12.60 percent in FY 2005.

Conclusion

26.2.3 The Commission has concluded on the basis of the above analysis that the domestic industry did not experience any price depression throughout the POI. The

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domestic industry, therefore, did not suffer injury on account of price depression.

26.3 Price Suppression

Facts

26.3.1 The following table shows the weighted average cost of production (“COP”) and the weighted average ex-factory sales price of the domestic like product during the POI:

Period	Weighted Average COP of domestic like product	Weighted Average ex-factory price of domestic like product	(Rs./MT)		
			Increase in COP	Increase in price	Price suppression
FY 2003	100.00	96.72	--	--	--
FY 2004	103.22	103.38	3.22	6.66	--
FY 2005	116.98	115.59	13.76	12.21	1.55

*Actual figures weighted average COP of domestic like product have been indexed by taking figures of 2003 equal to 100.

Analysis

26.3.2 The above table shows that the weighted average COP of domestic like product increased by 3.22 percent in FY 2004 vis-à-vis previous year’s COP. It further increased by an increase of 13.31 percent in FY 2005 over FY 2004.

26.3.3 The weighted average ex-factory price of the domestic like product also increased by 6.89 percent during FY 2004 and in FY 2005 it further increased by 11.79 percent over the last year.

Conclusion

26.3.4 In FY 2004 the COP increased over the previous year by 3.22%, and selling price of the domestic like product also increased over the same period by 6.89%, thus the domestic industry did not suffer price suppression during FY 2004. In FY 2005, the COP increased by 13.31% over the FY 2004 and selling price of the domestic like product only increased by 11.79% over FY 2004 causing the domestic to suffer injury in terms of price suppression because in this year the increase in COP is greater than the increase in price of the domestic like product. On the basis of the above analysis, the Commission has, therefore, concluded that the domestic industry suffered injury on account of price suppression during later part of the POI due to dumped imports.

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27. Market Share

Facts

27.1 During the POI, domestic demand for FA 85% in Pakistan was met through sales by the domestic industry and by imports. The domestic consumption of FA 85% is ascertained by combining the domestic industry's sales and total imports, and this is referred to here as the total domestic market. The total domestic market for FA 85% during the POI is given in following table:

Year	(MT)				
	Quantity sold by domestic industry	Imports from Dumped Sources	Imports from other countries	Total Imports	Total domestic market
FY 2003	47.19	44.67	8.14	52.81	100
FY 2004	43.57	42.18	10.10	52.28	95.85
FY 2005	52.70	80.89	18.31	99.20	151.90

Actual figures of total domestic market have been indexed by taking figures of 2003 equal to 100.

Analysis

27.2 The above table shows that the total domestic market of FA 85% decreased by 4.15 percent during FY 2004 over FY 2003 and grew by 58.47 percent during FY 2005 over FY 2004.

27.3 The above table shows that the market share of domestic industry decreased from 47.19 in FY 2003 to 43.57 in FY 2004 and increased to 52.70 during FY 2005. Market share of dumped imports decreased from 44.67 in FY 2003 to 42.18 in FY 2004 and increased to 80.89 in FY 2005. The market share of imports from all other sources increased from 8.14 in FY 2003 to 10.10 in FY 2004 and to 18.31 in FY 2005.

Conclusion

27.4 On the basis of the above analysis, the Commission has concluded that the domestic industry suffered a significant loss of 12% of market share during the POI. Imports from dumped sources gained market share by 8% during the POI, whereas increase in market share by non-dumped sources was also to the extent of 4%. It is therefore, concluded that the domestic industry suffered loss in market share mainly due to imports from dumped sources.

28. Production and Capacity Utilization

Facts

28.1 The installed production capacity of the Applicant to produce domestic like product is 7,200 MT per annum. The quantity produced and the capacity utilized during the POI are

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given in the table below:

(MT)

	FY 2003	FY 2004	FY 2005
Installed Capacity	100.00	116.67	133.33
Capacity Utilization	77.20%	65.79%	72.76%

Actual figures indexed by taking figures of 2003 equal to 100.

Analysis

28.2 It may be noted from the table above that the production of domestic like product increased throughout the POI but the capacity utilization level decreased from 77.20% in FY 2003 to 66.79% in FY 2004 due to increase in capacity. The Applicant has stated that the market of FA 85% increased around 30% between FY 2003 and FY 2005 and it managed to increase its production around 26% during the same period. However, the Applicant could not increase its production with the same pace. The Applicant further stated that had there been no dumping, it could have increased its production and capacity according to the expanded size of the domestic market.

Conclusion

28.3 On the basis of the above analysis, the Commission has concluded that the domestic industry has suffered injury on account of capacity utilization mainly due to dumped imports.

29. Effects on Inventories

Facts

29.1 The Applicant provided data relating to accumulation of inventories during the POI. The data for opening and closing inventories for the domestic like product is given in the table below:

(MT)

Year	Opening Inventory	Production	Sales/ Consumption	Closing inventory	Changes in Inventory
FY 2003	3.72	100	99.64	4.08	--
FY 2004	4.08	99.42	95.03	8.47	107.60%
FY 2005	8.47	125.66	121.37	12.76	50.65%

Actual figures of production have been indexed by taking figures of 2003 equal to 100

Analysis

29.2 The data given in table above shows that the inventory level of the domestic like product increased from 4.08 in FY 2003 to 12.76MT in FY 2005.

Conclusion

29.3 The Commission has concluded that the domestic industry suffered material

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injury on account of increase in inventories during the POI mainly owing to increase in dumped imports.

30. **Profit and Loss**

Facts

30.1 The Applicant provided Profit and Loss Account Statement for the domestic like product. The table below shows the profit and loss figures of the Applicant for the POI:

(Million Rs.)

	Profit/(Loss)
FY 2003	(100)
FY 2004	9.27
FY 2005	(429.09)

Actual figures have been indexed by taking figures of 2003 equal to 100

Analysis

30.2 The Applicant suffered loss in FY 2003, it, however, earned a marginal profit of 9.27 in FY 2004 and again suffered loss a huge of 429.09 in FY 2005.

Conclusions:

30.3 On the basis of available facts, the Commission has concluded that the Applicant suffered material injury on account of decline in profit in FY 2003 and FY 2005 due to price undercutting, price suppression and volume of dumped imports.

31. **Cash Flow**

Facts

31.1 The Applicant has submitted following information regarding its cash flow positions during POI.

(Rs. In Million)

Year	Cash Flow from operations
FY 2003	100.00
FY 2004	53.71
FY 2005	N.A

Actual figures have been indexed by taking figures of 2003 equal to 100

31.2 The above table shows that cash generated from operations decreased by 46.29 in FY 2004.

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Conclusions

31.3 On the basis of the above, the Commission has concluded that the Applicant has suffered material injury on account of cash flow during the POI.

32. Employment, Productivity and Wages

32.1 Following is the information regarding employment, productivity and wages as given below in the table:

	Number of Employees	Wages in Rs. 000	Production MT	Productivity MT
FY 2003	100.00	100.00	100	100.00
FY 2004	127.92	151.74	99.42	77.72
FY 2005	125.97	145.44	125.66	99.78

Actual figures have been indexed by taking figures of 2003 equal to 100

32.2 The above table shows that the number of employees increased by 27.92 percent in FY 2004 but it decreased by 1.52 percent FY 2005. During the same period wages also increased from 100.00 to 151.74 and then reduced to 145.44. Productivity of the employees slightly declined during POI.

Conclusion

32.3 The domestic industry suffered on account of productivity during FY 2005 as compared to FY 2003 due to increased dumped imports during this period.

33. Investments

Facts/analysis

33.1 The Applicant has stated that during the FY 2004, there was improvement as new investment was made in this industry to cater to the needs of expanding domestic market.

Conclusions

33.2 On the basis of the above, the Commission has concluded that the Applicant did not suffer material injury on account of its ability to invest.

34. Growth

Facts/Analysis

34.1 According to the Applicant the total demand for FA 85% grew by 30% in FY 2005 over FY 2003. The Applicant increased its installed production capacity by 33% in FY 2005 as compared to FY 2003.

Conclusion

34.2 On the basis of above facts, it is concluded that the Applicant did not suffer material injury on account of growth, however, this growth is not being utilized fully as major portion of domestic market is taken by dumped imports.

35. Summing up of Material Injury

35.1 The analysis in the preceding paragraphs shows that:

- i) there was significant increase in volume of dumped imports in absolute terms;
- ii) there was a significant price under cutting and price suppression.

35.2 As a result, the domestic industry suffered material injury on account of:-

- i. loss in market share;
- ii. negative effects on capacity utilization;
- iii. negative effects on production;
- iv. negative effects on productivity;
- v. decline in profits; and
- vi. increase in inventories

36. Other Factors

36.1 In accordance with Section 18(2) of the Ordinance, the Commission also examined factors, other than dumped imports, 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 injury caused by dumped imports.

36.2 The investigation of the Commission revealed that the domestic industry also suffered some injury due to imports of FA 85% from sources other than dumped sources during the POI. However, injury caused by imports from other sources cannot be considered as significant as its volume was far less than the volume of dumped imports, even though the weighted average C&F price was less than the weighted average C&F price of the investigated product. Following table shows the volume and weighted average C&F prices of imports from other sources and from dumped sources:

(MT)

Year	Imports from dumped sources	Imports from other sources
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	Quantity (MT)	C&F price (US\$/MT)	Quantity (MT)	C&F price (US\$/MT)
FY 2003	100.00	100.00	18.22	102.19
FY 2004	94.43	117.74	22.62	95.14
FY 2005	181.10	124.53	40.99	111.74

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

- i) There is no contraction in demand for FA 85% in Pakistan during the POI;
- ii) There was no change in trade restrictive practices and competition between foreign producers, and domestic producers; and
- iii) There has been no considerable change in technology.

E. CONCLUSIONS

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

- i. the application was filed on behalf of domestic industry as the Applicant Unit represents major proportion of the production of domestic like product;
- ii. the investigated product and the domestic like product are like products;
- iii. during the POI, the investigated product was exported to Pakistan by the exporters/foreign producers, from Finland and Germany, at prices below its normal value;
- vi. the volume of dumped imports of the investigated product and the dumping margins established on the basis of the foregoing analysis, are above the negligible and *de minimis* levels respectively;
- vii. the domestic industry suffered material injury during the POI on account of, volume of dumped imports, price undercutting, price suppression, loss in market share, decline in profit, negative effects on production and capacity utilization, negative effects on productivity and increase in inventories (in terms of Section 15 and 17 of the

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Ordinance); and

- viii there is a causal relationship between dumped imports and the material injury suffered by the domestic industry.

F. IMPOSITION OF PROVISIONAL ANTIDUMPING DUTY

38. In view of the analysis and conclusions with regard to dumping, material injury, and causation, imposition of provisional antidumping duty on the investigated product is needed to offset injury to the domestic industry by dumped imports. Separate dumping margins have been determined for each exporter from both the sources.

39. In terms of Section 43 of the Ordinance and Article 7 of Agreement on Antidumping, provisional antidumping duties as given in the following table are hereby imposed on the investigated product (FA 85%) produced and imported from Kemira, Finland and BASF, Germany for a period of four months effective from March 9, 2006.

40. FA 85% imported from sources, other than the two specified in paragraph 39 above shall not be subject to provisional antidumping duty. The antidumping duty rates are determined on C&F value in *ad val.* terms. The investigated product is classified under PCT heading No.2915.1100:

Provisional Antidumping duty

Exporter/producer	Provisional antidumping duty rate
Kemira, Finland	16.49 %
BASF, Germany	6.16 %

41. In accordance with Section 44 of the Ordinance, the provisional antidumping duties shall take the form of security by way of cash deposit and be held in a non-lapsable personal ledger account established and maintained by the Commission for the purpose. Release of the investigated product for free circulation in Pakistan shall be subject to imposition of such antidumping duty.

42. Provisional antidumping duties levied would be in addition to other taxes and

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duties leviable on import of the investigated product under any other law.

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

(Muhammad Ikram Arif)
Member
March 6, 2006

(Faizullah Khilji)
Chairman
March 6, 2006