ADC No.002/2003/SB

Government of Pakistan
National Tariff Commission

REPORT

ON

PRELIMINARY DETERMINATION AND LEVY OF PROVISIONAL ANTIDUMPING DUTY ON SORBITOL 70% SOLUTION ORIGINATING IN AND EXPORTED FROM THE REPUBLIC OF INDONESIA AND THE REPUBLIC OF FRANCE

(NON-CONFIDENIAL)

July 17, 2003

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PRELIMINARY DETERMINATION AND LEVY OF PROVISIONAL ANTIDUMPING DUTY ON SORBITOL (70% Solution) ORIGINATING IN AND EXPORTED FROM THE REPUBLIC OF INDONESIA AND THE REPUBLIC OF FRANCE

The National Tariff Commission (hereinafter referred to as the "Commission") having regard to the Antidumping Duties Ordinance, 2000 (LXV of 2000) (hereinafter referred to as the "Ordinance") and the Antidumping 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").

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 on January 30, 2003 from Messrs. Habib Arkady Ltd., Hub Chowki, Baluchistan (hereinafter referred to as the "Applicant"), a domestic producer of Sorbitol 70% Solution, on behalf of domestic industry, alleging dumping of Sorbitol 70% Solution originating in and exported from the Republic of Indonesia ("Indonesia") and the Republic of France ("France") (hereinafter referred to as the "investigated product"). The Embassies of Indonesia and France in Islamabad were notified on February 10, 2003, through the Ministry of Foreign Affairs, Pakistan, of the receipt of the application in accordance with the requirements of Section 21 of the Ordinance.

2. 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 evidence of dumping of the investigated product and injury to the domestic industry resulting therefrom as well as the requirements of Rule 3 of the Rules which relates to the submission of information prescribed therein. The application also fulfilled the requirements of Section 24 of the Ordinance, as the Applicant is the only domestic producer of Sorbitol, and it represents 100 percent of the total production of the domestic like product produced by the domestic industry.

3. Applicant's Views

The Applicant raised the following major issues in its application regarding dumping of the investigated product and the material injury resulting therefrom:

i) the investigated product and the Sorbitol 70% produced domestically are 'like products;

ii) the Indonesian Producer/Exporter and the French Producer/Exporter are exporting the investigated product to Pakistan at dumped prices;

iii) dumping of the investigated product is causing material injury to the domestic industry, mainly for the reasons given below:

- price undercutting;
- price depression;
- price suppression;
- decline in market share,
- decline in sales,
- losses,
- negative effect on cash flow;
- consequential difficulties in raising capital for its operations.

4. Exporters of the Investigated Product

The Applicant has identified M/s P.T Sorini Corporation TBK, Desa Ngerong, Kecamatan Gempol, Kabupaten Pasuruan, East Java, Indonesia as the Indonesian producer and exporter of the investigated product (hereinafter referred to as the "Indonesian Producer/Exporter") and M/s Roquette Freres, 62136 Lestrem, France as the French producer and exporter of the investigated product (hereinafter referred to as the "French Producer/Exporter").

5. Initiation of Investigation

5.1 The Commission examined the accuracy and adequacy of the evidence provided in the application, and satisfied itself that there is sufficient evidence of dumping and injury to justify initiation of an investigation. Consequently, the investigation was initiated on March 6, 2003. In terms of Section 27 of the Ordinance, the Commission, on the same day, issued a notice ("notice of initiation") which was published in the official Gazette of Pakistan[?] and in two widely circulated national newspapers[?] (one English language and one Urdu Language). Initiation of investigation concerning imports into Pakistan of the investigated product {importable under PCT[3]. No. 2905.4400 and 3824.6000 contained in the First Schedule to the Customs Act, 1969 (IV of 1969)} originating in and exported from Indonesia and France was thus notified.

5.2 The Commission also sent the notice of initiation to the Embassies of Indonesia and France in Islamabad, the Indonesian Producer/Exporter, the French Producer/Exporter, the known Pakistani importers, and the Applicant in accordance with the requirements of Section 27 of the Ordinance.

5.3 Thereafter, on March 11, 2003, the Commission sent a non-confidential version of the application to the Indonesian Producer/Exporter, the French Producer/Exporter and the Embassies of Indonesia and France in Islamabad. In addition to the non-confidential version of the application, the Commission sent questionnaires for submission of data and information (hereinafter referred to as the "Questionnaire(s)"), on March 12, 2003, to the Indonesian Producer/Exporter, the French Producer/Exporter, and Pakistani importers and requested them to respond to the Commission within 37 days of the dispatch of the Questionnaires. The Indonesian Embassy in Pakistan, on March 27, 2003, through letter No. 30/EK/III/03 requested the Commission for further information relating to the investigation to which the Commission responded appropriately, orally as well as through a letter dated April 4, 2003.

5.4 The Commission maintains a database of import statistics obtained from Pakistan Revenue Automation Limited (PRAL), the data processing arm of the Central Board of Revenue, Government of Pakistan, on quarterly basis. The Commission has used import data obtained from PRAL in addition to the information provided by the applicant for the purposes of this preliminary determination.

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

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[?] The official Gazette of Pakistan (Extraordinary) dated March 6 2003.
[?] 'Dawn' and the 'Nawa-e-Waqt' of March 6 2003 issue.
[3] PCT is the abbreviation for Pakistan Customs Tariff.

connection, on-the-spot investigation was conducted at the premises of the Applicant from April 10 to 12, 2003 in order to verify the information provided by the Applicant and to obtain further details.

5.6 The Commission, in accordance with Rule 7 of the Rules, has established and maintained a public file at its offices, which is available to the interested parties for review and copying from Monday to Thursday between 1100 hrs to 1300 hrs throughout the investigation. This file contains non-confidential versions of the application, responses to questionnaires, submissions, notices, correspondence and any other document that the Commission may deem appropriate for disclosure to the interested parties. 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 an investigation, be kept confidential.

6. Period of Investigation

6.1 In terms of Section 36 of the Ordinance:

(a) for the purposes of investigation of dumping, period of investigation (hereinafter referred to as the "POI") shall normally cover twelve months preceding the month of initiation and in no case less than six months and

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

However, the Commission may select a shorter or longer period if it deems it appropriate in view of available information regarding domestic industry and an investigated product.

6.2 The periods of investigation selected for dumping and injury, are therefore, respectively, as follows:

Investigation of dumping	from January 01, 2002 to December 31, 2002;
Investigation of injury	from July 01, 1999 to December 31, 2002.

7. Investigated Product, Domestic Like Product

7.1 Section 2 of the Ordinance defines "investigated product" to mean a product which is subject to an antidumping investigation as described in the notice of initiation of the investigation. The " like product" is defined to mean 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. The "domestic like product" means the domestically produced product, which is a like product to an investigated product.

7.2 For the purposes of this investigation and the definitions set out above, these products are identified as follows:

i. Investigated Product
The investigated product is Sorbitol 70% Solution classified and imported under Pakistan Customs Tariff ("PCT") Nos. 2905.4400 and 3824.6000. Its major input starch is obtained from Corn or Tapioca/Cassava. Sorbitol is used in food items, pharmaceuticals, cosmetics and textile industries. Sorbitol 70% Solution can be further processed to convert it into Sorbitol Powder. However, Sorbitol Powder is not subject to this investigation as there is no unit in Pakistan producing Sorbitol Powder.

Sorbitol 70% Solution as well as Sorbitol Powder is importable under PCT No. 2905.4400. Whereas, under PCT No. 3824.6000, only Sorbitol 70% Solution is importable.

ii. Domestic Like Product
Domestic like product is Sorbitol 70% Solution classified under H.S Code No. 2905.4400 and 3824.6000 produced by the domestic industry in Pakistan. Its major input is Dextrose syrup (liquid glucose), which is produced from starch obtained from rice. It is used in food items, pharmaceuticals, cosmetics and textile industries.

7.3 In order to ascertain 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 from various sources including the Indonesian Producer/Exporter, the French Producer/Exporter, the Applicant, and PRAL in the following terms:

i. Sorbitol is a sugar alcohol classified as a "polyhydric alcohol" (Polyol). Polyol is starch sugar hydrogenated under carefully controlled conditions to enable hydrogen atoms to bind with specific carbohydrates. Sorbitol 70% Solution is obtained by high-pressure hydrogenation of the dextrose fraction of starch sugars.

ii. The French Producer/Exporter uses Corn and the Indonesian Producer/Exporter uses Tapioca/Cassava as basic raw material to produce starch and hence the investigated product. The Applicant, however, uses rice as basic raw material to produce starch and hence the domestic like product. The resulting product (Sorbitol 70% Solution) from all these basic raw materials has same physical characteristics, tariff classification and uses and, therefore, the difference of use of basic raw materials has no impact on the resultant product.

iii. Both, the domestic like product and the investigated product have same uses i.e., used in food items, pharmaceuticals, cosmetics and textile industries.

iv. The investigated product is 70% Solution and is classified and imported under PCT heading No.2905.4400 and 3824.6000 contained in the First Schedule to the Customs Act, 1969 (Act IV of 1969). The domestic like product is also 70% Solution and is classified under the same PCT headings.

In light of the above, it is concluded that the investigated product and the domestic like product are like products.

8. De Minimis Level of Imports

8.1 In terms of Section 41(3) of the Ordinance the volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports of an investigated product is found to account for less than three percent of total imports of like product. In this regard, the data and information received from PRAL reveals that the total volume of dumped imports of the investigated product from French Producer/Exporter accounts for fifty-four percent (54%) of the total imports of the investigated product into Pakistan during the POI (which is above the de minimis level of three percent set out above).

8.2 Similarly the total volume of dumped imports of the investigated product from Indonesian Producer/Exporter accounts for twenty-six percent (26%) of the total imports of the investigated product into Pakistan during the POI (which is also above the de minimis level of three percent).

9. Submissions by the French Producer/Exporter

9.1 In response to its letter of March 12, 2003 (see paragraph 5.3 above) the Commission received partially filled Questionnaire along with submissions from the French Producer/Exporter on April 28, 2003. Although the Questionnaire and the submissions were received after the expiry of time period provided for the purpose, the Commission considered the same in good faith. The information submitted by the French Producer/Exporter was examined and it was found that the information was deficient in following respects:

a) Transaction-wise sales of Sorbitol 70% Solution in its domestic market during POI;
b) Transaction-wise export sales to Pakistan during POI; and
c) Cost of production during POI, were not provided.

9.2 Data deficiency was communicated to the French Producer/Exporter through a letter dated May 10, 2003 and the Commission requested it to provide the deficient data by May 25, 2003. The French Producer/Exporter did not remove the data deficiencies within the stipulated time period.

9.3 The Commission then, through a letter dated May 29, 2003, informed the French Producer/Exporter that it may make preliminary determination on the basis of "Best Information Available" (in terms of Section 32 of Antidumping Duties Ordinance, 2000 and Article 6.8 of Agreement on Antidumping), as data deficiencies conveyed to the French Producer/Exporter had not been removed within the extended time period (in total a period of 74 days, i.e., from March 12, 2003 to May 25,2003, as compared with the statutory period of 37 days in terms of Article 6.1 of Agreement on Antidumping and Rule 8 of the Rules). The French Producer/Exporter did not respond to this letter either.

9.4 Set out below are the comments received from the French Producer/Exporter, provided in the partially filled questionnaire received on April 28,2003:

a) "The raw material utilized by Habib Arkady and Roquette for the production of the investigated product are different. Habib Arkady utilizes rice and Roquette utilizes corn. Therefore, the Sorbitol of the two companies do not have the same criteria for the user."

b) "The only fundamental difference leading to a price difference between the investigated product sold in France and in Pakistan lies in the "Export Refunds" granted to the starch sector of the European Industry in the frame of the Common Agriculture Policy (CAP). These Export Refunds are admitted by the WTO and included in the reduction commitments made by the European Union pursuant to the WTO Agreement on Agriculture. The average amount of the Export Refund for the investigated product for 2002, is about Euros37.58/MT."

c) "Roquette Freres, as all the European starch producers, buy its raw material (i.e. corn) at a price higher than that prevails in the world market, Habib Arkady Ltd. buys its raw material at the world price i.e. at a lower cost in comparison with the European starch producers, meaning in comparison with Roquette Freres."

10. <u>Submissions by the Indonesian Producer/Exporter</u>

10.1 The Indonesian Producer/Exporter, vide letter dated April 10, 2003, requested for extension of 30 days in the time limit for submission of its reply to the Questionnaire. The request was reviewed by the Commission and, upon good cause shown, extension of two weeks in the time period for submission of filled-out Questionnaire was granted through letter No. 02/2003/SB-1032 dated April 14, 2003.

10.2 The Commission received partially filled Questionnaire along with submissions from the Indonesian Producer/Exporter on May 12, 2003. Although the Questionnaire and the submissions were received well after the expiry of extended time period (i.e. May 2, 2003) provided for the purpose, the Commission considered the same in good faith. The information submitted was examined and it was found that the information was deficient in the following respects:

a) Sales of Sorbitol 70% in its domestic market during POI; and
b) Export sales to Pakistan during POI were not provided.

10.3 Data deficiency was communicated to the Indonesian Producer/Exporter through letter dated May 13, 2003 and the Commission requested it to provide the deficient data by May 25, 2003.

10.4 The Indonesian Producer/Exporter through an e-mail dated May 26, 2003 requested for an extension in time period for the removal of deficiencies. The Commission reviewed the request and communicated an extension of two weeks in the time period through its letter No. 02/2003/SB-1032 dated May 28, 2003. Thus the Indonesian Producer/Exporter was allowed a time period, in total, of 88 days (from March 12, 2003 to June 8, 2003) to provide the requisite information (as compared with the statutory requirement of 37 days in terms of Article 6.1 of Agreement on Antidumping and Rule 8 of the Rules).

10.5 The Indonesian Producer/Exporter sent a revised Questionnaire on June 10, 2003 through e-mail. Upon review of the same, it was found that the data deficiencies, pertaining to details of sales in the domestic market and of export sales to Pakistan during POI, had not been removed. Nonetheless, the Indonesian Producer/Exporter has offered the Commission an opportunity to inspect its relevant record (relating to its domestic sales) directly maintained in its offices. The Commission may carry out on the spot investigation at the premises of the Indonesian Producer/Exporter as provided for in Rule 12(3) of the Rules and Article 6.7 of the Agreement on Antidumping.

10.6 Set out below are the comments received from the Indonesian Producer/Exporter provided in partially filled questionnaire received on June 10, 2003, in response to Commission's letter of March 12, 2003 (see paragraph 5.3 above).

a) **<u>Unsuitable comparison</u>**

i) <u>Products</u>

"In this case the comparison was proved not suitable. The products exported to Pakistan are Sorbitol liquid 70% Solution, while the comparison goods are Sorbitol powder (not liquid). It also could draw a mistake since the HS code for both products are exactly same 2905.44 or 3824.60."

ii) Territory

"Again it was easily noted that the comparison is not match. The products exported to Pakistan should be compared with the products sold in the domestic markets (Indonesia). The comparison is based with products exported to United States in which P.T. Sorini NEVER exported the Sorbitol liquid (70% Solution)."

b) Competitive advantage

i) Starch

"As we all know that PT. Sorini raw material (major material) is from Tapioca /Cassava. This tapioca harvested and planted in Indonesia abundantly all over the region. Our starch cost sources locally is approximately 50% less than Pakistan waste broken rice starch at U.S.D 300/MT (year 2002). Even in this low season the cost of tapioca is still 30% less (year 2003)."

ii) Water

"There in Indonesia we are located on the Equa or line, which give only 2 (two) seasons with plenty of rain as a source of water. Meanwhile, Pakistan facing water scarcity. The resources are not adequate to fulfill the demand for production of Sorbitol liquid 70% Solution. (30% of Sorbitol contents are purified and sterilized water). Water in Habib Arkady's plant was delivered by tankers/lorry trucks which end-up for a high cost."

iii) Capacity

P.T Sorini Corporation

"The production capacity of IP is 100,000 MT per annum. With this capacity, we are able to push and reduce our fixed and overhead cost to the MOST competitive level as a world player. Our company has been established since 1987."

Habib Arkady Ltd

"Meanwhile the capacity of Habib Arkady is much less than PT. Sorini Corporation. And this company just being merged to the parent company within years and even without further products output."

11. Submissions by the Importers/Industrial Users

The Commission sent Questionnaires to seven importers of the investigated product (identified by the Applicant in the application) on March 12,2003. The Commission received filled Questionnaires along with submissions from four importers namely, (i) Abbott Laboratories (Pakistan) Ltd., on 12.4.2003, (ii) Unilever Pakistan Ltd., on 19.4.2003, (iii) GlaxoSmithKline Pakistan Ltd., on 21. 4. 2003 and (iv) Rhodia Pakistan (Pvt.) Ltd., on 23.4.2003. The remaining three importers did not respond. Extracts from the responses received from the importers of investigated product are set out as follows:

M/s Abbott Laboratories (Pakistan) Ltd:

i) "Our imports have been at the most competitive market prevailing prices and is not correct to state that they have been on the basis of dumping of Sorbitol 70% Solution in our region."

ii) "The C&F prices of Sorbitol 70% Solution of the French, Indonesian and also of third origin, i.e. Thailand, are within the range of US$ 300 to US$ 340 per MT during the last two years."

iii) "Possibility of dumping of Sorbitol 70% Solution by the major producing countries in this region does not exist as the products are from Europe and Asia."

iv) "We have in the past tried to source Sorbitol 70% Solution from M/s Habib Arkady (Pvt.) Ltd., but they refused to arrange audit of their facility, which is a GMP requirement and also essentially required as per policy of any multinational including Abbott Laboratories. Their sample was also not found as per our approved specifications."

v) "Habib Arkady (Pvt.) Ltd., the local producer of Sorbitol 70% Solution intends to create a monopolistic situation in this region and to increase their prices."

M/s Unilever Pakistan Ltd:

M/s Unilever stated that they use Sorbitol 70% Solution to manufacture toothpaste. They do not resell the imported Sorbitol in the market.

M/s GlaxoSmithKline Pakistan Ltd:

i) “Sorbitol is manufactured locally using rice as the raw material, whereas Sorbitol imported by us is manufactured from Corn/Maize.”

ii) “GlaxoSmithKline (GSK) is one of the largest pharmaceutical consumer of Sorbitol 70% Solution (approximately 800MT/annum). Due to the large volume, GSK is able to negotiate an attractive price for the award of annual contract. Award of the contract is based on competitive bids from potential approved suppliers received through sealed quotations.”

iii) “Being a Pharmaceutical/Healthcare manufacturer, GSK has strict quality standards, for which purpose GSK may conduct audits of the manufacturing facilities of the suppliers. Unfortunately, the local manufacturer does not allow access to its facilities to be technically audited for validation of process and quality. This is an essential corporate requirement in order to ensure quality of the life saving drugs manufactured by GlaxoSmithKline.”

M/s Rhodia Pakistan (Pvt.) Ltd:

i) “On behalf of Roquette Freres, France, we are marketing their range of products including Sorbitol 70% Solution in Pakistan market mainly to Pharmaceutical, Food and Personal Care Industries since early 1980’s.”

ii) “To meet the small end users requirements we are importing Sorbitol 70% Solution in our own account and sell it locally.”

iii) “Keeping in view the pressure on pharmaceutical industry by the Government of Pakistan and Ministry of Health to reduce the prices, most of the pharmaceutical units are looking for the cheapest sources of Sorbitol 70% Solution. The CRF prices of the product during last two years have come down in the range of US$310/MT to US$350/MT.”

iv) “As far as we understand, the locally produced product is based on broken rice, whereas, product supplied by Roquette Freres, France is based on Maize Starch.”

12. <u>Examination of the Materials with the Commission</u>

12.1 The Questionnaires and submissions filed before the Commission by the Applicant, the French Producer/Exporter, the Indonesian Producer/Exporter, and the importers; data and information obtained during on-the-spot investigation; and data obtained from PRAL have been examined and analyzed for the purposes of making this preliminary determination, and wherever appropriate, have been considered for this preliminary determination.

12.2 In the absence of complete and sufficient response from French Producer/Exporter and the Indonesian Producer/Exporter, the Commission has made its preliminary determination based on the best information available in terms of Section 32 of the Ordinance.

B. DUMPING

13.1 In terms of Section 4 of the Ordinance "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".

13. In terms of Section 5 of the Ordinance "normal value" means "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". Whereas, the "export price" is defined in terms of Section 10 of the Ordinance to mean "a price actually paid or payable for an investigated product when sold for export from an exporting country to Pakistan".

13.3 Based on the available information, the Commission has established the normal value and the export price as follows:

14. Normal Value

14.1 As stated earlier, the Commission sent Questionnaires to the French Producer/Exporter and the Indonesian Producer/Exporter to gather information including data relating to their sales in their domestic markets. The French Producer/Exporter did not provide requisite data pertaining to its sales of like product in domestic market neither did it provide requisite data on its export sales to Pakistan during POI. However, it did state in the partially filled Questionnaire that the "Normal Value" of Sorbitol 70% Solution in its domestic market during POI was Euro 634.01/MT. The Commission has assumed, for the purposes of this preliminary determination, that this figure is the "weighted average normal value" and the normal value has been established accordingly. In this context, the Commission has sent a letter to the French Producer/Exporter for clarification. The French Producer/Exporter did not claim any adjustment to the domestic sales price. The weighted average ex-factory normal value of French Producer/Exporter has, therefore, been taken as Euro 634.01/MT or US$ 623.47/MT (at an exchange rate of US$1= Euro 1.0169 prevailing during POI).

14.2 The Indonesian Producer/Exporter was also requested to provide data pertaining to its sales of like product in Indonesia as well as export sales to Pakistan during the POI. The

Indonesian Producer/Exporter did not provide the requisite data despite the fact that data deficiency letter dated May 10, 2003 was communicated to it by the Commission specifically referring to such information (see Paragraph 10.2 above) and extensions in time period were also allowed (in total 88 days i.e. from March 12, 2003 to June 8, 2003 were provided) for the submission of the required information. The Commission had no option but to rely on the best information available in terms of Section 32 of the Ordinance for the determination of normal value in this preliminary determination.

14.3 The normal value for Indonesian Producer/Exporter of the investigated product has been determined on the basis of prices at which the Indonesian Producer/Exporters has exported like product to an appropriate third country in terms of Section 6 (1)(a) of the Ordinance. To determine normal value of dumped exports of investigated product from Indonesia, the price of the like product exported to United States of America (US) has been used. The Applicant provided import statistics obtained from the United States International Trade Commission **("**USITC") that show import of Sorbitol from Indonesia.

14.4 The relevant import statistics of USITC provided by the Applicant relate to imports of "Sorbitol" by the US from Indonesia under the HS. Code No. 2905.4400; this HS code covers Sorbitol 70% Solution as well as Sorbitol Powder. The Applicant has asserted that the data provided by it in this regard relates entirely to Sorbitol 70% Solution. However, the Indonesian Producer/Exporter (P.T.Sorini Corporation) has claimed that it has never exported Sorbitol 70% Solution to US, but has exported Sorbitol Powder.

14.5 However, the Indonesian Producer/Exporter has shown diffidence in providing any data to substantiate its allegation. It is, therefore, assumed for the purposes of this preliminary determination that the USITC import statistics represents imports of Sorbitol 70% Solution. However, the Commission may clarify this during on the spot investigation in terms of Rule 12 of the Rules, before making its final determination.

14.6 The weighted average C&F price at which Indonesia exported Sorbitol to the US during POI works out to be US$ 790.88/MT. The ocean freight from Indonesia to the US is around US$ 129.19/MT (as given by the Applicant in the application). By deducting ocean freight from C&F price, the FOB price works out to be US$ 661.69/MT. To arrive at ex-factory price, the inland freight and handling charges, which are assumed to be 9 percent of FOB price, come to US$ 59.55/MT. By deducting US$ 59.55/MT from FOB price, the weighted average ex-factory normal value of the Indonesian Producer/exporter is established, which comes to US$ 602.14/MT.

15. <u>Export Price</u>

15.1 To determine the export price charged by the French Producer/Exporter from Pakistani customers during POI, the Commission has used the "Export Price" of Euro 343.30/MT provided by the French Producer/Exporter in the partially filled questionnaire.

The Commission has assumed, for the purposes of this preliminary determination, that this figure is the "weighted average export price" and the export price has been established accordingly. In this context, the Commission has sent a letter to the French Producer/Exporter for clarification and confirmation. In order to arrive at weighted average ex-factory export price for the purposes of fair comparison, appropriate deductions have been made for ocean and inland freight charges. Ocean freight from a French port to Karachi port is Euro 51.91/MT (This information is provided by French Producer/Exporter). By deducting ocean freight charges of Euro 51.91/MT from weighted average export price, the weighted average FOB export price is established, which comes to Euro 291.39/MT.

15.2 The inland freight and handling charges are assumed to be 9 percent of FOB price amounting to Euro 26.23/MT. After deducting the inland freight and handling charges from weighted average FOB export price, the weighted average ex-factory export price works out to be Euro 265.16/MT.

15.3 The French Producer/Exporter has stated that under the Common Agriculture Policy (CAP) of the EU, the Government provides them Export Refund of Euro 37.58/MT on account of buying corn (basic raw material of Sorbitol) at prices higher than that prevailing in the world market. To establish adjusted weighted average ex-factory export price the amount of export refund of Euro 37.58/MT has been added to the weighted average ex-factory export price of Euro 265.16/MT. The adjusted weighted average ex-factory export price comes to Euro 302.74/MT or US$ 297.71/MT.

15.4 To determine the export price charged by the Indonesian Producer/Exporter from Pakistani customers during the POI, import data submitted by the Applicant as well as import data obtained from PRAL has been used. The weighted average export price of investigated product imported from Indonesia during POI comes out to US$ 343.77/MT. The average ocean freight from an Indonesian port to Karachi port is US$ 26.31/MT (This information is provided by M/s Uniliver Pakistan Ltd., an importer/industrial user of the investigated product). By deducting ocean freight charges of US$26.31/MT from the weighted average export price, the weighted average FOB export price comes out to US$ 317.46/MT. Inland freight and handling charges are assumed to be 9 percent of FOB price amounting to US$ 28.57/MT. By deducting inland freight and handling charge from the weighted average FOB export price, the weighted average ex-factory export price works out to US$ 288.89/MT.

16. <u>Dumping Margin</u>

16.1 Section 12 of the Ordinance and Article 2.4.2 of the Agreement on Antidumping gives three methods for fair comparison of normal value and export price in order to establish the dumping margin. The Commission has established the dumping margin for both, the Indonesian Producer/Exporter and the French Producer/Exporter by comparing weighted average normal value with weighted average export price.

16.2 The Ordinance defines "dumping margin" in relation to a product to mean "the amount by which its normal value exceeds its export price". 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".

16.3 In terms of Section 14 of the Ordinance the Commission shall determine an individual dumping margin for each known exporter or producer of an investigated product. In this case, since there are only two foreign producers/exporters, the dumping margin has been calculated individually for both.

16.4 Taking into account all the requirements set out above the dumping margin has been calculated by comparing weighted average ex-factory normal value with weighted average ex-factory export price, for France and Indonesia as follows:

	France	**Indonesia**
Weighted average ex-factory normal value	US$623.47/MT	US$ 602.14/MT
Weighted average ex-factory export price	US$297.71/MT	US$ 288.89/MT
Dumping Margin	**US$325.76/MT**	**US$ 313.25/MT**
Dumping margin as percentage of weighted average C&F export price	**96.50%**	**91.12%**

C. INJURY TO THE DOMESTIC INDUSTRY

17. Determination of Injury

17.1 Section 15 of the Ordinance sets out the principles for determination of injury 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

a. consequent impact of dumped imports on domestic producers of such products…"

Section 15 further asserts that these factors are not exhaustive and the Commission may take into account such other factors, as it considers relevant for determination of injury. The Commission has taken into account all factors known and relevant in order to determine whether the domestic industry suffered material injury during the POI.

17.2 Injury to the domestic industry has been analyzed in the following paragraphs in accordance with Part VI of the Ordinance.

18. <u>Cumulative Assessment of the Effects of Dumped Imports on the Domestic Industry</u>

18 .1 In terms of Section 16 of the Ordinance, where imports of a like product from more than one country are the subject of simultaneous investigation, the Commission may cumulatively assess the effects of dumped 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.

18.2 As mentioned in paragraph 16 the margin of dumping from France and Indonesia is more than the required amount (i.e. 2%) and the volume of dumped imports from France and Indonesia is not less than the negligible quantity (i.e. 3% of total imports)**.**

18.3 It is evident from the weighted average export price charged by the French Producer/Exporter and weighted average export price charged by the Indonesian Producer/Exporter during POI (as discussed in paragraph 15) that there is competition between the imports of dumped product. The weighted average C&F export price charged by the French Producer/Exporter was US$ 337.59/MT (Euro 343.30/MT) and by the Indonesian Producer/Exporter was US$ 343.77/MT during the POI. Due to competition between imports, the difference between the weighted average C&F export prices charged by the exporters of dumped product was only US$ 6.18/MT.

18.4 The domestic industry producing like product has experienced price undercutting, price depression and price suppression due to dumped imports (see paragraph 21 below). The domestic industry reduced its sales price during the period from July to December 2002 to compete with dumped imports and to retain its market share.

18.5 For the above reasons, the Commission has cumulatively assessed the effects of dumped imports on the domestic industry in the following paragraphs.

19. <u>Domestic Industry</u>

Pakistan Sorbitol 70% Solution manufacturing industry comprises of one unit i.e. Habib Arkady (Pvt.) Ltd., representing 100 percent of the domestic production of Sorbitol

70% Solution and thus constitutes the domestic industry within the meaning of Section 2(d) of the Ordinance.

20. <u>Volume of Dumped Imports</u>

In order to ascertain the total volume of imports of Sorbitol 70% Solution from all sources, data was obtained from PRAL. Sorbitol 70% Solution as well as Sorbitol Powder are importable under PCT Nos. 2905.4400 and 3824.6000. While compiling the table below imports of Sorbitol Powder have been excluded from the imports data. The following table shows total imports of Sorbitol 70% Solution from France, Indonesia and imports of the like product from other countries during POI:

(MT)

Year	Imports from France	Imports from Indonesia	Imports from other Sources	Total Imports
1999-00	2,902 (88%)	124 (4%)	268 (8%)	3,294
2000-01	2,455 (80%)	215 (7%)	404 (13%)	3,074
2001-02	1,290 (57%)	829 (36%)	155 (7%)	2,274
July-Dec. 2002	1,227 (56%)	421 (19%)	552 (25%)	2,200

The share of dumped imports of the investigated product in total imports of like product was 92 percent, 87 percent, and 93 percent for financial year ("FY") 2000, FY 2001 and FY 2002 respectively. However, it decreased to 75 percent during first six months of FY 2003. The market share of dumped imports of the investigated product was 40 percent of total domestic market during FY 2002, whereas, it rose to around 48 percent during first six months of FY 2003.

21. Price Trends

21.1. Price Undercutting

The price undercutting margins on account of dumped imports from France, expressed as a percentage of the ex-factory prices of domestic like product, work out to 9.14 percent in FY 2000. There was no price undercutting during FY 2001, and FY 2002 as the landed cost of dumped imports from France was higher than the ex-factory sales price of the domestic industry. Price undercutting margin was 12.91 percent for first six months of FY 2003 on account of dumped imports from France. Whereas, the price undercutting margins, on account of dumped imports from Indonesia come to 15.19 percent in FY 2000, 8.68 percent in FY 2001, 0.01 percent in FY 2002 and 13.14 percent for first six months of FY 2003.

21.2. Price Suppression

The average cost of production of the domestic industry increased by 4.71 percent per MT in FY 2001, by 8.04 percent per MT in FY 2002 and by 2.27 percent per MT during first six months of FY 2003. However, the domestic industry was not able to fully recover the increase in its cost of production in FY 2001 and FY 2002 respectively. However, during first six months of FY 2003 the domestic industry instead of increasing its ex-factory price, decreased the same by 1.57 percent per MT due to the dumped imports of investigated product, inspite of increase in cost of production by 2.27 percent per MT.

21.3 Price Depression

The average ex-factory price of domestic like product increased during the FY 2000 to FY 2002. However, it decreased by Rs.467/MT during first six months of FY 2003. The domestic industry reduced its average ex-factory sales price, during first six months of FY 2003, to compete with the reduced landed cost of dumped products and consequently experienced a price depression in this period only.

22. Production of Domestic Industry

The production of domestic industry increased by 65.82 percent in FY 2001 and by 16.18 percent in FY 2002. Though this increase in production during FY 2000 to FY 2002 prima facie seems quite reasonable, it is mainly because of low production volume in the initial year. During first six months of FY 2003 the production of the domestic industry decreased by 52.86 percent.

23. Capacity Utilization by the Domestic Industry

The installed production capacity of the domestic industry is 7,500MT per annum. The capacity utilization of the domestic industry increased by 65.82 percent in FY 2001 and increased by 16.18 percent in FY 2002. However, it decreased by 52.86 percent during first six months of FY 2003.

24. Domestic Market and Market Share

The domestic consumption/demand for Sorbitol 70% Solution is around 5,000 - 6000 MT per annum. The total domestic demand of Sorbitol 70% Solution in Pakistan is met through local production and imports. Market share of the domestic industry increased from 37 percent in FY 2000, to 46 percent in FY 2001 and to 57 percent in FY 2002. However, the market share of the domestic industry decreased to 36 percent during first six months of FY 2003. Market share of dumped imports of the investigated product decreased from 58 percent in FY 2000, to 47 percent in FY 2001 and to 40 percent in FY 2002; however, it increased to 48 percent during first six months of FY 2003. The domestic industry has the ability to take higher share of domestic market, but it failed in doing so mainly because of dumped imports of investigated product.

25. Sales

The sales of the domestic industry increased by 31.21 percent in FY 2001 and by 16.72 percent in FY 2002. The increase in sales of domestic like product is mainly due to:

- low production and sales volume in initial year;
- the domestic industry having increased its market share by incurring large losses; and
- the domestic industry, with a view to remaining competitive and to gain market share, kept its prices at a level lower than the level where they should have been.

The sales of the domestic industry decreased by 17.89 percent during first six months of FY 2003.

26. Stocks/Inventories

The inventory holdings of domestic like product were 6.88 percent of the total production of the domestic industry in FY 2000, the inventory holding increased to 11.45 percent of production in FY 2001 and to 16.73 percent of production in FY 2002. However, during first six months of FY 2003 the inventory decreased to 8.76 percent of production.

27. Profitability

The domestic industry has been operating at a loss during the POI.

28. Return on Investment

There was a negligible return on investment in FY 2000, and in FY 2001, and during the remaining period of POI there was "negative" return on investment to the domestic industry.

29. Cash Flow

Cash flow from the operations of the domestic industry was "negative" during the POI.

30. Investment and Growth

The domestic industry was not able to invest in planned expansion of its existing plant to include production of Sorbitol Powder, as it was incurring losses continuously and such losses kept on accumulating during the POI.

31. Employment

Employment in the domestic industry remained static because it suffered large losses during the POI and could not afford to hire more employees.

32. Magnitude of Dumping Margin

As concerns the impact on the domestic industry of the magnitude of the provisional dumping margins set out in paragraph 7 above, given the volume and the prices of the imports from the countries concerned, this impact cannot be considered to be negligible.

D. CONCLUSION OF MATERIAL INJURY ANALYSIS

33. The domestic industry has suffered material injury in terms of Section 15 and 17 of the Ordinance on account of dumped imports of investigated product during POI, with regard to the following factors:

i) Price undercutting;
ii) Price suppression;
iii) Decline in capacity utilization;
iv) Decline in market share;
v) Decline in profits/increase in losses;
vi) Decline in productivity;
vii) Negative effect on inventories;
viii) Decline in return on investment;
ix) Negative effect on cash flow;

x) Negative effect on growth and ability to raise investment;
xi) Magnitude of dumping margin.

34. It has been found for the purposes of this preliminary determination that the material injury suffered by the domestic industry is due to dumped imports of the investigated product from Indonesia and France during the POI.

E. CAUSATION OF INJURY

35. Other Factors

35.1 In accordance with Section 18(2) of the Ordinance the Commission 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. Factors other than those imputable to dumping of the investigated product, which contributed towards the material injury suffered by the domestic industry during the POI are set out as follows:

35.2 Excess installed Capacity

The installed capacity of the domestic industry is 7500MT per annum, whereas, total market demand of Sorbitol 70% Solution during the POI was in the range of 5268 to 5674MT per annum. The injury suffered by the domestic industry on account of low capacity utilization is partly due to the fact that the installed capacity of the domestic industry was higher than the total domestic demand.

35.3 Imports from other sources

Sorbitol 70% Solution is being imported from other sources (other than dumped sources). In FY 2000 the quantum of imports from other sources was 268MT, which was 8 percent of total imports. The imports from other sources increased to 542MT or 25% of total imports during first six months of FY 2003. The share of imports from other sources in the total domestic market was 5% in FY 2000, and this share increased to 16% for first six months of FY 2003.

35.4 However, where the share of these factors in overall material injury caused to the domestic industry has been established, it is comparatively small.

F. CONCLUSIONS

36. The conclusions after taking into account all these considerations are as follows:

i. the application was lodged by the domestic industry producing like product;

ii. the investigated product and the domestic like product are like products;

iii. the investigated product was exported to Pakistan from France, and from Indonesia, at prices below its normal value during the POI;

iv. the volume of dumped imports of investigated product from France and from Indonesia, and the respective dumping margins established on the basis of the forgoing analysis, are above the de-minimis level;

v. the domestic industry suffered material injury during the POI;

vi. material injury to domestic industry is due to dumped imports of investigated product from France and from Indonesia; and

vii. the dumping margin expressed as a percentage of average C&F export price works out to be 96.50 percent for French Producer/Exporter and 91.12 percent for Indonesian Producer/Exporter of the investigated product.

G. IMPOSITION OF PROVISIONAL ANTIDUMPING DUTY

37. In view of the analysis and conclusions with regard to dumping, material injury, and causation, imposition of provisional antidumping duty on investigated product is needed to prevent further injury to the domestic industry by dumped imports.

38. In terms of Section 43 of the Ordinance, a provisional antidumping duty is imposed on Sorbitol 70% Solution @ 96.50 percent ad val of C&F price importable from the French Producer/exporter and @ 91.12 percent ad val of C&F price importable from the Indonesian Producer/Exporter, for a period of four months effective from July 19, 2003. The investigated product is importable under PCT No. 2905.4400 and 3824.6000. The provisional antidumping duties at the rate of 96.50 percent and 91.12 percent of C&F price are equivalent to the provisional dumping margin determined at ex-factory price level.

39. Producers/Exporters of Sorbitol 70% Solution from France and from Indonesia other than those specified in paragraph 4 above would not be subject to these provisional antidumping duties. Sorbitol Powder importable under PCT Nos. 2905.4400 and 3824.6000 shall not be subject to antidumping duties specified in paragraph 38 above.

40. In accordance with Section 44 of the Ordinance, the provisional antidumping duty shall take the form of security by way of cash deposit 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 provision of such security by way of cash deposit.

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

42. The provisional antidumping duty would be collected in the same manner as customs duty is collected under Customs Act 1969 (IV of 1969) and would be deposited under the head 3501003 – Civil Deposits, for further deposit in National Tariff Commission’s Non-lapsable PLA No. 187 with Federal Treasury Office Islamabad.

(Faizullah Khilji)
Chairman
July 17, 2003