

(NON-CONFIDENTIAL)



**Government of Pakistan
National Tariff Commission**

REPORT ON

**Newcomer Review of Definitive Antidumping Duties Imposed on
Dumped Imports of Polyester Filament Yarn Originating in and/or
Exported from Republic of Korea**

A.D.C No. 07/2005/NTC/PFY/NR/10

October 12, 2011

TABLE OF CONTENTS

<u>S.No</u>	<u>Description</u>	<u>Page No.</u>
	A. PROCEDURE	4
5.	Antidumping Duties in Force	4
6.	Receipt of Applications	5
7.	Evaluation and Examination of the Applications	5
8.	Applicant's Views	6
9.	Initiation of Newcomer Review	6
10.	Interested Parties	7
11.	Period of Review	7
12.	Product Under Review	8
13.	Information/Data Gathering	8
14.	Public File	8
15.	Hearing	8
16.	Confidentiality	9
17.	Verification of the information	9
18.	Views/Comments of the interested parties	9
	B COMMISSION'S DETERMINATION	10
19.	Issues to be Determined in Newcomer Review	10
20.	Exports of the Product Under Review by the Applicant	10
21.	Relationship of the Applicant with Exporters or Producers	11
22.	Whether Applicant was <i>Bone fide</i> Exporters and/or its Exports were <i>Bone fide</i> Exports	12
23.	Whether Applicant's Exports were in Commercial Quantities	12
24.	Determination of Individual Dumping Margin for the Applicant	15
25.	Dumping Margin	17
C	CONCLUSIONS	18
D	TERMINATION OF NEWCOMER REVIEW	18
E	ANTIDUMPING DUTY APPLICABLE TO APPLICANTS	19
F	RETROACTIVE APPLICATION OF ANTIDUMPING DUTY	19

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

2. On request of M/S from TK Chemical Corporation, 14th Floor Singsong Centre Building, 25-12 Yoido-dong, Youngdungpo, Seoul, South Korea (the “Applicant”) the Commission has conducted a newcomer review of definitive antidumping duties imposed on Polyester Filament Yarn (hereinafter referred to as the “PFY”), originating in and/or exported from the Republic of Korea (hereinafter referred to as “Korea”) in accordance with provisions of the Ordinance and the Rules. This report on conclusion of newcomer review has been issued in accordance with Section 39(5) of the Ordinance.

3. In terms of Section 60(2) of the Ordinance, a newcomer review shall normally be completed within six months from its initiation and, in any event, no later than twelve months. The newcomer review was initiated on September 27, 2010 (paragraph 9.4 infra), therefore, the Commission was required to conclude this review by September 26, 2011. However, on August 22, 2011 Pakistan Yarn Merchants' Association, Business Centre, 8th floor, Dunolly Road, Karachi, M/S Sohail Industry, Room # 207, Europa Center, Hasrat Mohani Road Karachi, M/S Yarn Solution, 81/6, 2nd floor, New Portion Cochinwala Market, Karachi, M/S Mohammad Salman, 266-B, Latif Cloth Market, 1st floor, M. A. Jinnah Road, Karachi and M/S Yarn Traders, 224-B, 1st Floor, Latif Cloth Market, M. A. Jinnah Road, Karachi (the “Petitioners”) filed a constitutional petition No. D-2854 of 2011 in the Honorable High Court of Sindh, Karachi challenging the Commission’s initiations of newcomer review of antidumping duty imposed on dumped imports of PFY from Korea and sunset review of antidumping duties imposed on dumped imports of PFY from the Republic of Indonesia, the Republic of Korea, Malaysia and the Kingdom of Thailand. On August 22, 2011 the Honorable High Court of Sindh, Karachi issued an injunction order in a constitutional petition No. D-2854 of 2011 and directed the Commission to maintain status-quo in these cases till September 5, 2011. On September 5, 2011, the Honorable High Court of Sindh disposed of this petition and passed following order:

“It seems to us that the only question that now needs to be considered is with regard to the limitation of initiation of review known as Sunset Review and as the petitioners

are being heard, we do not wish to give any finding on such aspect and will allow the Commission to decide the same in accordance with law. Petitioners will, however, be entitled to raise any or all other questions and arguments before the Commission as may be available to them in law. We, therefore, direct the Commission to hear and decide the question of limitation of initiation of review known as Sunset Review as preliminary objection from the side of petitioners and pass a proper speaking order. In case the petitioners are aggrieved by the order of Commission, they will be entitled to challenge the same in accordance with law. Until such an order is passed by the Commission, the Commission will maintain status quo."

4. The Commission held a hearing on September 22, 2011. All interested parties including the petitioners of constitutional petition No. D-2854 of 2011 attended the hearing. The petitioner raised issue of limitation of initiation of sunset review as well as other issues including the newcomer review in the hearing. Interested parties were allowed to submit written arguments on the issue raised in the hearing within ten days after the hearing i.e. latest by October 3, 2011. After receipt of written arguments, the Commission issued a speaking order on the question of limitation of initiation of newcomer and sunset reviews on October 8, 2011. Therefore, the Commission has determined time frame for conclusion of this newcomer review after deducting time period in which injunction order was in place. Thus, the Commission was required to conclude this newcomer review latest by November 12, 2011.

A. PROCEDURE

5. Background

5.1 Antidumping Duties in Force

5.1.1 Upon request of the domestic industry producing PFY, the Commission conducted an antidumping investigation on imports of PFY originating in and/or exported from the Republic of Indonesia, Republic of Korea, Malaysia, and the Kingdom of Thailand in the year 2005 (A.D.C No. 07/2005/NTC/PFY). The Commission made an affirmative final determination of dumping of PFY and material injury to the domestic industry on March 17, 2006 and imposed antidumping duties on dumped imports of PFY originated in and/or exported from Indonesia, Korea, Malaysia and Thailand, ranging from zero percent to 29.68 percent for a period of five years effective from November 12, 2005.

5.1.2 The Applicant was liable to pay residual antidumping duty at the rate of 6.92 percent *ad valorem* on its exports of PFY to Pakistan.

5.2 Tongkook Corporation was an exporter from Korea who cooperated in original investigation and was awarded individual dumping margin. Individual dumping margin of Tongkook was at *de minimis* level, therefore, no antidumping duty was imposed on its exports of PFY to Pakistan. In year 2007, TK Chemicals Corporation was established and it took over operations of Tongkook Corporation including production and sales facilities of PFY.

5.3 TK Chemical filed a request for change of company's name with the Commission on May 07, 2008. The Commission vide its letter of June 07, 2008 informed the TK Chemical that it is not a case of simple change of company's name.

5.4 The Commission vide its letter dated September 14, 2009 informed that, since TK Chemicals Corporation was established after imposition of antidumping duties, it may file an application for a newcomer review under Section 60 of the Ordinance.

6. Receipt of Application

6.1 The Commission received an application on June 01, 2010, from TK Chemicals Corporation, 14th Floor Singsong Centre Building, 25-12 Yoido-dong, Youngdungpo, Seoul, South Korea (the "Applicant") under Section 60 of the Ordinance.

6.2 The Applicant requested the Commission for determination of individual dumping margin for its export of PFY to Pakistan. According to the Applicant, it did not export PFY into Pakistan during original POI (from January 1, 2004 to December 31, 2004) and that it is not related to any exporter or producer who is subject to antidumping duty.

6.3 The Applicant is/was liable to pay 6.92 percent anti-dumping duty on its exports of PFY to Pakistan.

7. Evaluation and Examination of the Application

7.1 If a product is subject to definitive anti-dumping duties, any exporter or foreign producer who did not export the product to Pakistan during the original period of investigation can request for determination of individual dumping margin under Section 60(1) of the Ordinance. However, such exporter or producer has to show that it is not related to any of the exporters or producers in the exporting country who are subject to the antidumping duties levied on the investigated product.

7.2 The examination of the application showed that it *prima facie* met requirements of Section 60 of the Ordinance.

8. Applicant's Views

8.1 The Applicant claimed following in its application that it:

- i. did not export PFY (the product under review) to Pakistan during the original POI (from January 01, 2004 to December 31, 2004); and
- ii. is not related to any exporter or producer in Korea who is subject to antidumping duty imposed by the Commission on imports of PFY from Korea.

8.2 In support of above-mentioned claims, the Applicant submitted affidavit duly notarized by the notary public in Korea and attested by the Embassy of Pakistan in Seoul, Korea. The Applicant also submitted information necessary to calculate individual dumping margin.

9. Initiation of Newcomer Review

9.1 In terms of Section 60(2) of the Ordinance, a newcomer review under Section 60(1) shall be initiated within thirty days following the date of receipt of an application for such review. However, in accordance with Section 60(2) of the Ordinance, the Commission may require an Applicant to fill in an additional questionnaire requiring such information and for such period as the Commission deems necessary before a review is initiated. In such case newcomer review shall be initiated within thirty days following the receipt of additional questionnaire/information.

9.2 As stated earlier (paragraph 6 supra) the Commission received application on June 01, 2010, however, due to incomplete quorum of the Commission in light of decision of the Honorable Supreme Court of Pakistan in Civil Petition No. 109 of 2009, this review was not initiated within prescribed time period of 30 days.

9.3 After completion of quorum of the Commission on September 09, 2010, upon examining accuracy and adequacy of the evidence provided in application, the Commission established that there is sufficient evidence to justify initiation of a newcomer review. Consequently, the Commission decided to initiate a newcomer review on September 21, 2010 to determine the following under relevant provisions of the Ordinance:

- i. weather the Applicant has not exported product under review to Pakistan during the original POI;
- ii. weather the Applicant is not related to any of the exporters or producers who are subject to the antidumping duty imposed by the Commission following the original investigation (paragraph 5.1 supra);
- iii. weather the Applicant is *bona fide* exporter and has exported product under review to Pakistan in commercial quantities after imposition of definitive antidumping duty on PFY originating in and/or exported from Korea to Pakistan; and
- iv. individual dumping margin for the Applicant.

9.4 The Commission issued a notice of initiation in terms of Section 27 of the Ordinance, which was published in the Official Gazette¹ of Pakistan and in two widely circulated national newspapers² (one in English language and one in Urdu Language) on September 27, 2010. Thus, this newcomer review was initiated on September 27, 2010.

9.5 The Commission notified the Embassy of Korea in Pakistan of the initiation of newcomer review by sending a copy of the notice of initiation on September 27, 2011. Copy of notice of initiation was also sent to exporters/producers from Korea (whose complete addresses were available with the Commission), known Pakistani importers, domestic producers and the Applicant on September 27, 2010, in accordance with the requirements of Section 27 of the Ordinance.

10. Interested Parties

Through notice of initiation, the Commission advised the interested parties to register themselves with the Commission for the purposes of this newcomer review. However, only one importer, M/S M. Usman, Latif Cloth Market, Karach registered itself as an interested party in this review. The interested parties were also provided opportunities to make oral and written submissions.

¹ The official Gazette of Pakistan (Extraordinary) dated September 27, 2010.

² The 'Daily Ash-Sharq' and the 'Business Recorder' of September 27, 2010 issue.

11. Period of Review ("POR")

For determination of individual dumping margin, the Applicant had submitted information/data from April 1, 2009 to March 31, 2010. However, the Commission decided to change POR for determination of individual dumping margin and in the notice of initiation POR was fixed from July 01, 2009 to June 30, 2010. After initiation of the review, the Applicant was asked to update information for the quarter (April to June 2010) on September 30, 2010, which it has provided.

12. Product under Review

The product under review is Polyester Filament Yarn produced and exported by the Applicant. The product under review is an industrial raw material, mainly used in the manufacturing of art silk fabrics and garments. The product under review is classified under Pakistan Customs Tariff ("PCT") Heading Nos. 5402.3300 and 5402.4700.

13. Information/Data Gathering

13.1 On initiation of this newcomer review, interested parties (importers, exporters and domestic producers) were requested for views/comments and information for the purposes of this review. However, no party responded to the Commission's request and did not provide any information for this purpose.

13.2 The Commission has access to database of import statistics of Pakistan Revenue Automation Limited ("PRAL"), the data processing arm of the Federal Board of Revenue, Government of Pakistan. For the purpose of this newcomer review the Commission has used import data obtained from PRAL in addition to the information provided by the Applicants.

14. Public File

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

15. Hearing

In terms of Rule 14 of the Rules, the Commission shall, upon request by an interested party made not later than forty five days after publication of notice of initiation, hold a hearing at which all interested parties may present information and arguments. None of the interested party requested for hearing in this newcomer review. Therefore, no hearing was held in this review investigation, however, a hearing was held in sunset review investigation of antidumping duties imposed on dumped imports of PFY originating in and/or exported from Indonesia, Korea, Malaysia and Thailand on September 22, 2011 (paragraph 4 supra) in which the interested parties also raised some issues of this newcomer review.

16. 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 review, be kept confidential. Furthermore, any information, which is by nature confidential in terms of Section 31 of the Ordinance, shall also be kept confidential. However, in accordance with Section 31(5) of the Ordinance, interested parties submitting confidential information are required to submit non-confidential summary(ies) of the confidential information, which shall permit a reasonable understanding of the substance of information submitted in confidence. Non-confidential summaries submitted by different interested parties have been placed in the public file and are available to all interested parties (paragraph 14 supra).

17. Verification of the Information

17.1 In terms of Sections 32(4) and 35 of the Ordinance, during the course of an investigation, the Commission shall satisfy itself as to the accuracy of the information supplied by the interested parties through on-the-spot-investigation pursuant to Rule 12 of the Rules.

17.2 In order to verify the information provided by the Applicant and to obtain further information (if any), on-the-spot-investigation was conducted at the offices and plant of the Applicant from July 25 to 26, 2011.

18. Views/Comments of Interested Parties

The Commission, through notice of initiation, advised the interested parties to submit views/comments (if any) on this newcomer review investigation. None of the

interested party has submitted written submissions/comments on initiation and conduct of this newcomer review.

B. COMMISSION'S DETERMINATION

19. Issues to be Determined in Newcomer Review

19.1 Section 60 of the Ordinance requires the Commission to determine whether or not the Applicant has exported product under review to Pakistan during POI of the original investigation and whether it is related to any of the exporters or producers who are subject to the antidumping duties imposed on the investigated product.

19.2 Keeping in view above provisions of the Ordinance, purpose of this newcomer review investigation was to determine the following under relevant provisions of the Ordinance and Rules (paragraph 8.1 supra):

- i. whether the Applicant has not exported product under review to Pakistan during the original POI;
- ii. whether the Applicant is not related to any of the exporters or producers who are subject to the antidumping duty imposed by the Commission following the original investigation (paragraph 3 supra);
- iii. whether the Applicant is a *bona fide* exporter and has exported product under review to Pakistan in commercial quantities after imposition of definitive antidumping duty on PFY originating in and/or exported from Korea to Pakistan; and
- iv. individual dumping margin for the Applicant.

19.2 The Commission's determination on these issues is given in following paragraphs

20. Exports of the Product under Review by the Applicant

20.1 Investigation of the Commission has shown that TK Chemicals produces, markets and sells different products including PFY (the product under review) in its domestic market as well as in international markets.

20.2 The Commission's investigation has revealed that the Applicant did not export product under review during POI of the original investigation. Evidence and information provided by the Applicant has proved that TK Chemicals Corporation was established in the year 2007 and it started exporting product under review to Pakistan in the year 2007. TK Chemicals exported 15.87 percent of its total sales of PFY to different countries including Pakistan During the POR. It exported 17.44 percent of its total exports of the product under review to Pakistan during the POR.

20.3 On the basis of the above, the Commission has concluded that the Applicant has not exported product under review to Pakistan during the POI of original investigation. It started exporting product under review to Pakistan after imposition of antidumping duties.

21 Relationship of the Applicant with Exporters or Producers

21.1 The Applicant claimed that it is not related to any of the exporters or producers of the product under review, who are subject to antidumping duties. In support of this claim, the Applicant has submitted an affidavit duly notarized by the notary public in Korea, attested by the Embassy of Pakistan in Seoul, Korea and stamped in Pakistan in accordance with Stamp Act, 1899.

21.2 For the purposes of determining relationship with Korean producers and exporters of PFY (who are subject to definitive antidumping duties), the Applicant was asked to provide information on their related companies and details (name, address and telephone no. etc.) of all customers who purchased PFY either from the Applicant or from other exporters/producers of PFY during POI of original investigation.

21.3 The evidence and information provided by the Applicant and obtained during on-the-spot investigation/verification have shown that the Applicant is not related to any of the exporter and producer who is subject to definitive antidumping duty. It is worth mentioning that the Applicant took over Tangkook Corporation and the Tangkook Corporation was also not subject to any antidumping duty imposed on

dumped imports of PFY (paragraph 5.2 supra). Therefore, it qualifies to request for an individual dumping margin under Section 60 of the Ordinance.

22 Whether Applicant was *Bona fide* Exporter and/or its Exports were *Bona fide* Exports

22.1 To determine whether Applicant was *bona fide* exporter of the product under review and whether exports made by the Applicant were *bona fide* commercial exports, the Commission has examined and analysed quantity exported and pattern of exports of the Applicant in following paragraph.

22.2 Investigation of the Commission has indicated that:

- i. TK Chemicals has exported ████████ MT of the product under review to different importers and end users during POR and it exported PFY to Pakistan regularly after imposition of definitive antidumping duties.
- ii. TK Chemicals also exported PFY to Pakistan before POR and after June 2010 till finalization of this report, including the period in which no antidumping duty was applicable on its exports of the product under review (after initiation of this newcomer review).
- iii. Tongkook Corporation (the predecessor of TK Chemicals) was present in Pakistani market before/during original investigation. However, no antidumping duty was imposed on exports of the investigated product by Tangkook Corporation as its individual dumping margin was at *de minimis* level (paragraph 5.2 supra).
- iv. In order to determine whether TK Chemicals's export transactions were made at an arm's length and were resold at profit, the Commission analysed that there is no related exporter or importer of the Applicant in Pakistani market hence, it is concluded that its all transactions were at arm's length basis.

22.3 On the basis of the fore-going facts and analysis, the Commission has concluded that TK Chemicals was a *bona fide* exporter of the product under review and its exports were *bona fide* exports for the purposes of this review.

23. Whether Applicant's Exports were in Commercial Quantities

23.1 In determination of commercial quantities, the Commission *inter alia*, considered following factors:

- i. quantity of the product under review exported by the Applicant;
- ii. price of the product under review exported by the Applicant;
- i. timing of sales of the product under review;
- ii. expenses arising from export transactions of the product under review;
- iii. whether export transactions were made at arm's length basis; and
- iv. whether the product under review was resold at profit.

23.2 Quantities of the Product under Review Exported by the Applicant

23.2.1 Following table shows total imports of PFY into Pakistan and exports of product under review by the Applicant during POR:

Table-I
Imports of PFY during POR

Imports from:	Quantity (MT)
Korea	2.25%
Other sources	97.75%
Total	100.00%
The Applicant (TK Chemicals)	1.96%
Applicant imports as % of:	<u>TK Chemical</u>
Imports from Korea	87.17%
Total Imports	1.96 %

Source: PRAL and the Applicant

23.2.2 The above table shows that the Applicant exported 87.17 percent of imports of PFY from Korea and 1.96 percent of total imports during the POR.

23.3 Prices of the Product Under Review

23.3.1 Investigation of the Commission has revealed that prices of the product under review exported by the Applicant were in the same range of prices on which PFY was

imported into Pakistan during the POR from other sources. Following table shows weighted average C&F import prices of PFY imported into Pakistan from the Applicant and other sources during POR:

Table-II
Prices of Imports During POR

Imports from	C&F Price
The Applicant	103.94
China	100.74
Indonesia	109.11
Malaysia	94.33
Thailand	100.00

Source: The Applicant and PRAL

Note: Actual figures have been indexed with respect to weighted average price of imports from Thailand by taking it equal to 100 to maintain confidentiality

23.3.2 The above table shows that prices of the product under review exported by the Applicant were in the same range of prices of PFY imported from other sources.

23.4 **Timing of Sales of the Product Under Review**

Investigation of the Commission has revealed that the Applicant exported product under review to Pakistan on regular basis after imposition of antidumping duties on its exports of PFY since 2007. The Applicant has exported commercial quantities of the product under review through out the POR. The Applicant also exported product under review after initiation of this newcomer review its till finalization.

23.5 **Expenses Arising from Export Transactions of the Product under Review**

23.5.1 The Applicant has reported expenses arising on its exports to Pakistan on account of credit cost, commission, inland freight, ocean freight, handling cost, bank less charges, bank charges (postage expense) and duty drawback.

23.5.2 The above mentioned expenses (adjustments) were verified during on-the-spot investigation conducted at premises of the Applicant (paragraph 17.2 supra). Analysis of the above facts showed that the expenses incurred by the Applicant on its exports to Pakistan were inline with the normal expenses to be incurred on such exports.

23.6 **Whether Export Transactions were made on Arm's Length Basis**

Investigation of the Commission has revealed that Applicant's exports of the product under review were made on arm's length basis, as its exports were to a verity of customers on similar terms and conditions and fetch similar prices from different customers during same period of sales.

23.7 Whether the Product under Review was Resold at Profit

The Commission was unable to determine whether product under review was resold at a profit, because importers of the product under review did not cooperate with the Commission in this review and did not provide necessary information (paragraphs 13.1 supra).

24. Determination of Individual Dumping Margin for the Applicant

24.1 Dumping

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

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

24.2 Normal Value

24.2.1 Section 5 of the Ordinance defines normal value as follows:

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

24.2.2 Section 6 of the Ordinance states that:

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

the sales in the domestic market of the exporting country, the Commission shall establish normal value of an investigated product on the basis of either:

- “a) the comparable price of the like product when exported to an appropriate third country provided that this price is representative; or
- “b) the cost of production in the exporting country plus a reasonable amount for administrative, selling and general costs and for profits.

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

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

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

- “(a) within an extended period of time which shall normally be a period of one year and in no case less than a period of six months;
- “(b) in substantial quantities; and
- “(c) at prices which do not provide for the recovery of all costs within a reasonable period of time.

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

- “(a) a weighted average selling price of transactions under consideration for the determination of normal value is below a weighted average cost; or
- “(b) the volume of sales below per unit cost represents twenty per cent or more of the volume sold in transactions under consideration for the determination of normal value.

“(3) If prices which are below per unit cost at the time of sale are above the weighted average cost for the period of investigation, the Commission shall consider such prices as providing for recovery of costs within a reasonable period of time.”

24.3 Export Price

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

24.4 Determination of Normal Value for the Applicant

24.4.1 Normal value for the Applicant is determined on the basis of the information provided by it on its domestic sales made during POR (provided in Attachment D-14 of the questionnaire).

24.4.2 The Applicant sold different types and grades of PFY in its domestic market including the types and grade, which were alike to the types and grade of PFY exported to Pakistan during POR. For the purposes of like to like comparison, normal value is determined for those types and grade, which were comparable to the types and grade of the product under review exported to Pakistan during POR.

24.4.3 All sales of the Applicant in its domestic market, during POR, were to un-related parties.

24.4.4 Analysis of the information revealed that some sales of the comparable types were not in ordinary course of trade in terms of Section 7(2) of the Ordinance, as these sales were in substantial quantities in terms of Section 7(2) of the Ordinance. Furthermore, the investigation also revealed that these below costs sales were in extended period of time and the prices did not provide for recovery of all costs within a reasonable period of time in accordance with Section 7 of the Ordinance (paragraph 24.2.3 supra). Thus the Commission has disregarded below costs sales of these types in determination of normal value.

24.4.5 Investigation showed that total sales of two comparable types of PFY were at loss during POR, therefore normal value for these types is determined on the basis of cost of production plus admin, selling, general costs and profit in accordance with Sections 6(1)(b) and 8 of the Ordinance.

24.4.6 To arrive at the ex-factory level, the Applicant has reported adjustments on account of credit cost, bank charges and freight. The Commission has accepted these

adjustments and the normal value at ex-factory level is worked out by deducting values reported for these adjustments from the gross value of sales transactions.

24.5 Determination of Export Price

24.5.1 Export price for the Applicant is determined on the basis of the information provided by it on its export sales to Pakistan made during the POR (provided in Attachment C-3 of the questionnaire).

24.5.2 The Applicant exported four types of the product under review to Pakistan during POR. Its total exports of the product under review to Pakistan during POR were ████████ MT. All export sales to Pakistan, during POR, were to un-related parties.

24.5.3 To arrive at the ex-factory level, the Applicant has reported adjustments on account of, credit cost, commission, inland freight, ocean freight, handling cost, bank less charges and bank charges (postage expense). The Commission has accepted these adjustments and the export price at ex-factory level is worked out by deducting values reported for these adjustments from the gross value of the sales transactions.

25. Dumping Margin

25.1 The Ordinance defines “dumping margin” in relation to a product as “the amount by which its normal value exceeds its export price”.

25.3 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.

25.4 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”.

25.5 Taking into account all requirements set out above, the dumping margin for the Applicant works out to - 0.78 percent

C. CONCLUSIONS

26. On the basis of fore-going facts and analysis, the Commission has concluded the following:

- i. The application filed by the Applicant fulfills requirements of Section 60 of the Ordinance.
- ii. The Applicant did not export product under review during period of investigation.
- iii. The Applicant is not related to any producer and/or exporter who are subject to definitive antidumping duty imposed on product under review.
- iv. Applicant was *bona fide* exporter of the product under review.
- v. Applicants exported product under review in commercial quantities during POR.
- vi. Individual dumping margin for Applicant works out -0.78 percent of export price at ex-works level.

D. CONCLUSION OF NEWCOMER REVIEW

27. The Commission initiated this newcomer review to determine individual dumping margin for the Applicant, which according to it, was to be different from the current residual dumping margin/antidumping duty applicable to the imports of the product under review. After this review investigation, the Commission has determined individual dumping margin for the Applicant i.e. -0.78 percent. This newcomer review thus stands concluded with no anti-dumping duty imposed on the Applicant.

E. ANTIDUMPING DUTY APPLICABLE TO APPLICANT

28. As the dumping margin determined for the Applicant is at *de minimis* level, therefore, no antidumping duty is imposed on the exports of product under review of the Applicant.

F. RETROACTIVE APPLICATION OF ANTIDUMPING DUTY

29. In terms of Section 60(3) of the Ordinance, no anti-dumping measures shall be imposed on imports of the product under review while the newcomer review is being carried out. However, the Commission imposed a cash deposit equal to the residual antidumping duty rate (6.92 percent) vide notice of initiation of the newcomer review published in Official Gazette and in national press on September 27, 2010 to ensure that,

should the newcomer review result in a determination of dumping in respect of the Applicant, anti-dumping duty can be levied retroactively to the date of initiation of the review in accordance with Section 60(3) of the Ordinance.

30. As individual dumping margin for the Applicant is at *de minimis* level, no antidumping duty is imposed on its exports of the product under review into Pakistan with effect from September 27, 2010 under Section 60(3) of the Ordinance. The importers who have imported the product under review after September 27, 2010 from the Applicant (TK Chemicals Corporation, Korea) and have paid cash deposit equal to the residual antidumping duty rate (6.92 percent) are directed to send their requests for refund of the cash deposit (if any), to the Secretary, National Tariff Commission, State Life Building No. 5, Blue Area, Islamabad within a period of *thirty* days of the publication of notice of conclusion of this review.

(Zamir Ahmed)
Member
October 12, 2011

(Niamatullah Khan)
Member
October 12, 2011

(Prince Abbas Khan)
Chairman
October 12, 2011