

(NON-CONFIDENTIAL)

**Government of Pakistan  
National Tariff Commission**

**Report**

**on**

**Conclusion of Sunset Review of Anti-dumping Duty Imposed on  
Dumped Imports of Tinplate Originating in and/or Exported  
from the Republic of South Africa**

**A.D.C No. 001/2002/TP/SA/SR/07  
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## A. INTRODUCTION

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 (herein after referred to as the "Rules") has conducted a review under Sections 58 of the Ordinance this relates to a determination whether expiry of an anti-dumping duty would likely lead to continuation or recurrence of dumping of goods into the Islamic Republic of Pakistan (herein after referred to as "Pakistan") and likely continuation or recurrence of injury to the domestic industry caused by such imports.

2. Section 58 of the Ordinance states that a definitive anti-dumping duty shall not expire if the Commission determines in a review that the expiry of such anti-dumping duty would be likely to lead to continuation or recurrence of dumping and injury.

3. Further regard has been made to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as the "Agreement on Anti-dumping") in this review.

## B. BACKGROUND

4. Following is a brief background of the original anti-dumping investigation in which the Commission imposed definitive anti-dumping duty on Tinplate originating in and/or exported from South Africa and a subsequent investigation conducted by the Commission regarding alleged dumped imports of Tinplate from other countries, which was terminated.

### 4.1 Imposition of Definitive Anti-dumping Duty

The Commission after investigation, imposed a definitive anti-dumping duty at the rate of 27.33 percent *ad val* on dumped imports of flat rolled products of iron or non-alloy steel, of width of 600 mm or more, coated with tin of a thickness of less than 0.5 mm (hereinafter referred to as "Tinplate"), produced by Iscor limited (now Arcelor Mittal Steel), Roger Dyson Road, Pretoria, South Africa (the "Foreign Producer") and exported by Macsteel International SA (Pty) Ltd., 187 Rivonia Road, Johannesburg, South Africa (the "Exporter") for a period of five years effective from 22 July 2002.

### 4.2 Other Anti-dumping Investigation

The domestic Tinplate manufacturing Industry (SiddiqSons Tin Plate Limited, Karachi) filed another application on October 18, 2005 with the Commission against alleged dumped imports of Tinplate from France, Germany, Italy, UK and USA. The Commission investigated the complaint and found that the domestic industry (i.e. Siddiqsons Tinplate Ltd) did not suffer material injury due to

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dumped imports of Tinplate during the period of investigation (July 01, 2002 to June 30, 2005) from the aforementioned countries. Accordingly, the investigation was terminated on June 03, 2006.

### C. PROCEDURE

5. For the purposes of this review, the procedure setout below has been followed.

#### 6. Notice of Impending Expiry of Definitive Anti-dumping Duty

6.1 In compliance with Section 58(2) of the Ordinance the Commission, on April 19, 2007, published a notice of impending expiry of anti-dumping duty in the official Gazette and in one issue each of a daily newspaper in the English language and a daily newspaper in the Urdu language having wide circulation in Pakistan.<sup>1</sup>

6.2 In the said notice, the Commission informed interested parties of their right to file an application for review under section 58(3) of the Ordinance.

#### 7. Receipt of Application

In response to the notice, on May 31, 2007, the Commission received a written application from domestic producer of Tinplate namely Siddiqsons Tin Plate Limited, D-53, Textile Avenue, S.I.T.E., Karachi-75700, Pakistan, (the "Applicant") on behalf of the domestic industry. The application was filed in accordance with Section 58(3) of the Ordinance which states that the expiry of anti-dumping duty on Tinplate would likely lead to recurrence of dumping of Tinplate and injury to the domestic industry producing Tinplate.

#### 8. Evaluation and Examination of the Application

The examination of the application showed that there was sufficient evidence to justify initiation of a review of likely recurrence of dumping of Tinplate and injury to the domestic industry in terms of Section 58(3) of the Ordinance.

#### 9. Domestic Industry

9.1 The Commission is also required to determine whether the request for a review has been made by or on behalf of domestic industry.

9.2 Section 2(d) defines the domestic industry as follows:

““domestic industry” means the domestic producers as a whole of the domestic like product or those of them whose collective output of that product constitutes a major proportion of the total domestic production of

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<sup>1</sup> Daily “Business Recorder” and Daily “Asas” of April 19, 2007 issue.

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that product, except that when any such domestic producers are related to the exporters or importers, or are themselves importers of the allegedly dumped investigated product in such a case “domestic industry” shall mean the rest of the domestic producers.”

9.3 The domestic Tinplate manufacturing industry comprises of only one unit i.e., the Applicant with installed production capacity of 120,000 MT per annum on three shifts basis.

#### **10. Standing of the Application**

10.1 In order to determine whether the review request has been made by or on behalf of the domestic industry, the relevant provision of Section 24 has been applied. The Section provides that, 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 opinion either in support for or opposition to the application.

10.2 Furthermore, Section 24(2) of the Ordinance states 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 domestic like product produced by the domestic industry.

10.3 The domestic Tinplate manufacturing industry comprises of only one unit i.e., the Applicant, therefore it constitutes 100 percent of domestic production of Tinplate.

10.4 On the basis of the above, the Commission determined that the application was made by the domestic industry as the Applicant represents 100 percent of the domestic production of Tinplate.

#### **11. Applicant's Views**

The Applicant, *inter alia*, raised the following issues in its application regarding likelihood of continuation or recurrence of dumping of Tinplate, and injury to the domestic industry caused there from:

- i. Tinplate imported from South Africa into Pakistan and Tinplate produced in Pakistan by the domestic industry are like products;
- ii. After imposition of definitive anti-dumping duty, the Exporter and the Foreign Producer from South Africa stopped exporting Tinplate to Pakistan, therefore, it is likely to result in recurrence of dumping if anti-dumping duty is terminated; and

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- iii. Likely recurrence of dumping of Tinplate by the Exporter and the Foreign Producer into Pakistan is likely to cause material injury to the domestic industry producing Tinplate, mainly through:
  - a) increased volume of dumped imports;
  - b) price undercutting;
  - c) decline in market share;
  - d) negative effect on sales and output;
  - e) negative effect on inventories;
  - f) decline in gross profit margin and operating profit;
  - g) negative effect on cash flow;
  - h) negative effect on capacity utilization;
  - i) negative effect on employment and wages; and
  - j) negative effect on growth, investment and ability to raise capital.

## **12. Initiation of Review Investigation**

12.1 Upon examination of application received under Section 58(3) of the Ordinance (paragraph 8 supra), the Commission initiated a review on July 07, 2007.

12.2 In terms of Section 27 of the Ordinance, the Commission issued a notice of initiation of review, which was published in the Official Gazette<sup>2</sup> of Pakistan and in two widely circulated national newspapers<sup>3</sup> (one in English language and one in Urdu Language) on July 07, 2007.

12.3 The Commission notified the High Commission of the Republic of South Africa (hereinafter referred to as the "South Africa") in Pakistan of the initiation of the Review (by sending a copy of the notice of initiation of review) on July 07, 2007. Copies of notice of initiation of review were also sent to the Exporter, the Foreign Producer, and the Applicant on July 07, 2007, in accordance with the requirements of Section 27 of the Ordinance.

12.4 In accordance with Section 28 of the Ordinance, on July 07, 2007, the Commission also sent copy of full text of the written application (non-confidential version) to the Exporter and the Foreign Producer.

## **13. Product under Review and Domestic Like Product**

### **Product under Review**

13.1 The product under review is flat rolled products of iron or non-alloy steel, of width of 600 mm or more, coated with tin of a thickness of less than 0.5 mm ("Tinplate"). The basic raw materials used for the production of Tinplate are Cold Rolled Coil("CRC"), commonly known as Tin Mill Black Plate ("TMBP"), tin and

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<sup>2</sup> The official Gazette of Pakistan (Extraordinary) dated July 07, 2007.

<sup>3</sup> The 'Daily Dawn' and the 'Daily Khabrain' of July 07, 2007 issue.

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chemicals. It is classified under PCT<sup>4</sup>/HS No. 7210.1200. Tinplate is used for packaging of edible oils, foodstuff, paints, petroleum products etc.

13.2 According to the information submitted by the Foreign Producer, it produced and sold Electrolytically Coated and DWI Electrolytic ally Coated Tinplate. The Foreign Producer produced Tinplate from continuously cast steel and consists of single reduced cold rolled. It is widely used by the packaging industry i.e., cans, containers etc. for packaging foodstuff, oils, paints etc.

### **Domestic like product**

13.3 The domestic like product, produced by the domestic industry is flat rolled products of iron or non-alloy steel, of width of 600 mm or more, coated with tin of a thickness of less than 0.5 mm ("Tinplate"). Major uses of the domestic like product are same as of the product under review. The domestic like product is also classified under PCT Heading No. 7210.1200. The Commission in its original investigation had determined that the investigated product and the domestic like product were like products.

### **Like products**

13.4 In order to establish whether the product under review 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, the Exporter and the Foreign Producer in the following terms:

- i. the basic raw materials used in the production of the product under review and the domestic like product are the same namely, CRC, tin and chemicals;
- ii. both the products (the product under review and the domestic like product) are produced with a similar manufacturing process;
- iii. both the products have similar appearance;
- iv. both the products are used for the same purpose as they are mainly used for packaging of edible oils, foodstuff, paints, petroleum products etc.; and

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<sup>4</sup> "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.

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- v. both the products are classified under the same PCT/HS No. 7210.1200.

13.5 In light of the above, the Commission has determined that the product under review and the domestic like product are like products.

#### **14. Period of Review**

The Commission gathered/obtained necessary information for the last six years i.e. from July 01,2001 to June 30, 2007 from the Applicant for determination of likelihood of recurrence of injury and from Exporter and the Foreign Producer to determine likelihood of recurrence of dumping. The Commission also obtained further data for the period of 1.7.2007 to 31.12.2007 from the Applicant.

#### **15. Interested Parties**

The Commission gave an opportunity (through notice of initiation of review) to all parties interested to participate in this review and to register themselves as interested party with the Commission. However, except the Exporter and Foreign Producer no other party registered itself as interested party for the purposes of this review.

#### **16. Information/Data Gathering**

16.1 The Commission sent questionnaires on July 07, 2007 to the Exporter and the Foreign Producer, and asked them to respond within 37 days of the dispatch of the questionnaires i.e. by August 15, 2007. Both the Exporter and the Foreign Producer responded to the questionnaire sent to them (paragraph 17 infra).

16.2 The Commission also accessed the 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 review the Commission also used import data obtained from PRAL's database in addition to the information provided by the Applicant, the Exporter and the Foreign Producer.

16.3 The Commission has thus sought from all available sources the relevant data and information deemed necessary for the purposes of determination of likelihood of continuation or recurrence of dumping of Tinplate and injury to the domestic industry. During the course of this review investigation, the Commission satisfied itself in terms of Rule 12 of the Rules, as to the accuracy of information supplied by the interested parties to the extent possible.

#### **17. Questionnaire(s)Response by the Foreign Producer and the Exporter**

##### **17.1 Arcelor Mittal Steel (SA) Limited, South Africa (the Foreign Producer)**

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17.1.1 Questionnaire response from the Foreign Producer was received at the Commission on August 15, 2007. According to the information provided in response to the questionnaire by the Foreign Producer, it is a public limited company with limited liability, incorporated in terms of the Companies Act, 1973 in South Africa. It has been involved in the manufacture and sale of Tinplate in its domestic market during the POR. The Foreign Producer is not directly involved in export of Tinplate to any country, rather it exports through its related company (MacSteel International SA (Pty) Ltd., South Africa).

17.1.2 The information submitted by the Foreign Producer in response to the questionnaire was analyzed at the Commission and certain deficiencies were identified. Accordingly, data deficiencies were communicated to it vide Commission's letter dated September 03, 2007.

17.1.3 The Foreign Producer was asked to provide the deficient information/data not later than September 10, 2007, so as to enable the Commission to consider and analyze the same for the purposes of this review. The Foreign Producer responded to the deficiencies vide its letter dated September 10, 2007.

17.1.4 The Commission accepted the information supplied by the Foreign Producer for the purposes of this review and the likelihood of recurrence of dumping is determined on the basis of that information along with the information supplied by the Exporter (paragraphs 23 to 31 infra).

## **17.2 MacSteel International SA (Pty) Ltd., South Africa (the Exporter)**

17.2.1 The Commission sent questionnaire to the Exporter on July 07, 2007 with a request to respond within 37 days. However, the exporter did not respond to the questionnaire within the stipulated time period.

17.2.2 The Commission, after expiry of the time period given to respond, informed the Exporter through a letter dated August 24, 2007 that in case of no response by September 05, 2007, the Commission would be constrained to make its determination based on the 'Best Information Available' in terms of Section 32 of the Ordinance and Article 6.8 and Annex II of the Agreement on Anti-dumping.

17.2.3 The Commission received a letter from the Exporter on September 12, 2007 showing keen interest to participate in this review and asked for extension in time period for submission of response to the questionnaire, which was granted by the Commission.

17.2.4 The questionnaire response from the Exporter was received at the Commission on September 25, 2007. The information submitted by the Exporter in response to the questionnaire was analyzed at the Commission and certain deficiencies were identified. Accordingly, data deficiencies were communicated to the Exporter vide Commission's letter dated October 20, 2007.

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17.2.5 The Exporter was asked to provide the deficient information/data not later than October 30,2007, so as to enable the Commission to consider and analyze the same for the purposes of this review. The exporter responded to the deficiencies vide its letter dated October 26, 2007.

17.2.6 According to the information provided by the Exporter, it is a private Ltd. company registered in South Africa with a 50/50 joint venture of Arcelor Mittal Steel (SA) (the Foreign Producer) and Nosm Investment Holding BV.

17.2.7 The Exporter is responsible for exports of the products produced by the Foreign Producer including the product under review.

17.2.8 The Commission accepted the information supplied by the Exporter for the purposes of this review and the likelihood recurrence of dumping is determined on the basis of that information along with the information supplied by the Foreign Producer (paragraphs 23 to 30 infra).

**18. Public File**

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

**19. 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. However, the Commission obtained non-confidential summaries of confidential information from the parties and the same are placed in the public file (see paragraph 18 supra).

**20. Hearing**

20.1 In terms of Rule 14 of the Rules, the Commission shall, upon request by an interested party, hold a hearing at which all interested parties may present information and arguments.

20.2 In this review, the interested parties were required to submit a request for hearing not later than forty-five days after publication of notice of initiation. No request for hearing was received from any interested party in this review.

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## **21. Written Submissions by the Interested Parties**

All interested parties were invited to make their views/comments and to submit information and documents (if any) not later than 45 days of the date of publication of notice of initiation of the review.

## **22. Disclosure of Essential Facts**

22.1 In compliance with the provisions of Rule 14(8)of the Rules, and Article 6.9 of Agreement on Anti-dumping, the Commission disclosed essential facts under consideration, and in this context dispatched a Statement of Essential Facts (hereinafter referred to as the "SEF") on January 24, 2008 to the Applicant, the Foreign Producer, the Exporter and to the High Commission of the South Africa in Pakistan.

22.2 Under Rule 14(9) of the Rules, interested parties were required to submit their comments (if any) on the facts disclosed in SEF, in writing, not later than fifteen days of such disclosure. The Commission received comments from following two interested parties:

- i. The Foreign Producer; and
- ii. The Applicant

22.3 Comments received on essential facts and germane to this review under the Ordinance are reproduced in Column A and the Commission's views/comments in response thereto are set out in Column B, which is annexed to this report as Annexure I.

22.4 Further factors disclosed to the Commission were also communicated to the Exporters and Foreign Producer on June 15, 2008 in which the Exporter offered its comments which have been taken into account while finalizing the Review.

22.5 The applicant has also offered views/rebuttals on the comments of the Foreign Producer on the SEF. A copy of the same was placed in the public file. While finalizing this review the Commission has taken these views into consideration.

## **D. LIKELY RECURRENCE OF DUMPING OF TINPLATE**

23.1 In accordance with Section 58 of the Ordinance, the Commission has examined whether or not the expiry of the measures (definitive anti-dumping duty) would likely to lead to continuation or recurrence of dumping of the product under review.

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23.2 In this connection, the Commission has analyzed the behavior of the Exporter with reference to its exports to Pakistan and to other countries along with the respective prices of the product under review after the imposition of anti-dumping duties in the original investigation. The Commission also obtained information from the Foreign Producer on the prices at which the product under review was sold in the domestic market of South Africa.

23.3 Since it is evident from the information available with the Commission that the Exporter stopped exporting the product under review to Pakistan shortly after the imposition of anti-dumping duty and has not exported the product under review after the year 2003-04, the Commission compared the normal value of the product under review with the Exporter's export price to other countries.

23.4 The essential purpose of such a comparison was to see whether the Exporter exported the product under consideration below its normal value to other countries and if so at what price. This gives rise to a possibility that if the Exporter is involved in dumping of the product under review in other countries, it may dump the product under review into Pakistan.

23.5 Following is the analysis of the Commission in this regard:

**24. 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".

**25. Normal Value**

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".

**26. 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".

**27. Data/Information used in Determination of Likely Recurrence of Dumping**

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27.1 As stated earlier (paragraph 17 supra) the Exporter and the Foreign Producer responded to the Commission's questionnaire and provided necessary information for the purposes of this review. The Commission accepted the information provided by the Exporter and Foreign Producer and likelihood of recurrence of dumping of the product under review is determined on the basis of that information.

27.2 As per information submitted by the Exporter in response to the questionnaire, Pakistan market for Tinplate is of secondary quality. Investigation of the Commission revealed that imports of Tinplate into Pakistan from all sources including the Exporter/Foreign Producer, during last eight and a half years, were of secondary quality Tinplate. To establish likelihood recurrence of dumping of the product under review, normal value and export price is determined for secondary quality Tinplate.

**28. Determination of Normal Value**

28.1 Normal value in this review for the product under review is determined on the basis of the information provided by the Foreign Producer on its domestic sales made during the last six years.

28.2 The Foreign Producer claimed that it grants following discounts/rebate to its domestic customers:

- i. **Strategic Rebates:** These rebates are granted to specific customers on an *adhoc* and discretionary basis to maintain or increase sales.
- ii. **Volume Discount:** It is granted according to a predetermined formula. This discount ranges between 0.25 percent to 0.75 percent.
- iii. **Value Added Steel Based Exports Discount:** The Foreign Producer adjusts prices for value added steel exports to the level of transport cost to enable them to compete in international market.
- iv. **Settlement Discount:** The Foreign Producer gives discount at 2.50 percent to certain customers if it pay back within 30 days.

28.3 As per information provided by the Foreign Producer, it sold 78 percent to 93 percent of its total sales in its domestic market during the last six years, which includes both prime and secondary quality of Tinplate. However, its major sales were of prime quality product. Sales of the secondary quality Tinplate by the Foreign Producer in its domestic market, during the last six years, were in the range of 17 to 48 percent of its total sales of the secondary quality Tinplate. Following table shows the Foreign Producer's quantity of sales and weighted average ex-factory prices of the secondary quality Tinplate in its domestic market during last

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six years. Analysis of this table reveals that domestic sales of \*\*\*<sup>5</sup> MT of secondary quality Tinplate in 2001-02 has reduced to \*\*\* MT in 2006-07:

**Table: I  
Domestic Sales of Secondary Quality Tinplate by the Foreign Producer**

<b>Year<sup>6</sup></b>	<b>Grade-A</b>		<b>Grade-B</b>		<b>Grade-C</b>		<b>Grade-D</b>	
	Quantity	Price	Quantity	Price	Quantity	Price	Quantity	Price
2001-02	0.00	--	10.47	400.60	275.33	225.57	100.00	100.00
2002-03	14.09	529.92	8.03	490.44	250.79	350.66	59.35	225.72
2003-04	1.80	678.26	0.26	643.55	101.24	452.09	65.25	298.76
2004-05	3.71	707.38	0.11	658.39	187.45	467.95	53.29	336.50
2005-06	12.54	745.08	0.00	--	132.05	525.45	36.98	393.89
2006-07	19.54	729.76	0.40	711.99	111.58	597.83	11.07	415.22

Note: Actual figures have been indexed with respect to the domestic sales of secondary quality grade D in the year 2001-02 by taking it equal to 100.

## **29. Determination of Export Price**

As stated above shortly after imposition of definitive anti-dumping duty on dumped imports of the product under review with effect from July 22, 2002, the Exporter stopped exporting to Pakistan. However, it exported product under review to number of countries including countries in this region. Quantity of secondary quality Tinplate exported during the last six years and its weighted average ex-factory price are given in the following table:

**Table:II  
Export Sales of Secondary Quality Tinplate by the Exporter**

<b>Year</b>	<b>Grade-A</b>		<b>Grade-B</b>		<b>Grade-C</b>		<b>Grade-D</b>	
	Quantity	Price	Quantity	Price	Quantity	Price	Quantity	Price
2001-02	117.01	189.98	216.08	215.52	1166.19	142.33	100.00	100.00
2002-03	274.94	253.42	126.15	248.25	856.94	209.47	0.00	--
2003-04	447.10	231.45	139.11	221.72	972.15	195.74	0.00	--
2004-05	700.24	295.57	141.15	261.25	978.91	242.63	0.00	--
2005-06	797.62	256.62	169.73	236.87	996.53	222.40	0.00	--
2006-07	890.02	320.77	322.60	296.90	1228.80	252.65	0.28	234.67

Note: Actual figures have been indexed with respect to the export sales of secondary quality grade D in the year 2001-02 by taking it equal to 100.

## **30. Conclusion of Likely Recurrence of Dumping**

30.1 It is evident from the comparison of the weighted average adjusted normal value and weighted average adjusted export price that the Exporter exported secondary quality Tinplate to other countries at a price less than its normal value during the last five years consecutively with dumping margin ranging from 1.31% to 43.41%. For the last year (2006-07) dumping margin has been determined as high

<sup>5</sup> Actual figures have been omitted for confidentiality reasons

<sup>6</sup> Year covers period from 1<sup>st</sup> July to 30<sup>th</sup> June

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as 30.49%, which is even higher than 27.33% determined for the Exporter in the original investigation.

30.2 This reason alone is substantial to conclude that the expiry of anti-dumping duty will result in recurrence of dumping of the product under review. It is likely that the Exporter will export Tinplate to Pakistan at a price less than its normal value as it has been charging price lower than its normal value to other countries.

30.3 Similarly, stoppage of exports to Pakistan soon after the imposition of anti-dumping duty also indicates that this was due to the imposition of anti-dumping duty and if the duty is removed, the Exporter is likely to again start at dumped prices to Pakistan.

#### **E. LIKELY CONTINUATION OR RECURRENCE OF MATERIAL INJURY TO DOMESTIC INDUSTRY**

As stated above, dumped imports from South Africa went to zero and have remained at this level except for a negligible quantity imported in the first two years of imposition of anti-dumping duty. Therefore, there is no continuation of material injury to the domestic industry caused by the imports from South Africa. The Commission has therefore focused its analysis on the likelihood of recurrence of injury. Although the Commission's main parameters of analysis were the possible export volumes and price of the product under review and the possible effect thereof on domestic industry of Pakistan, it has also analyzed the likelihood of recurrence of injury in terms of the factors and indices listed in Section 15 and 17 of the Ordinance.

#### **31. Volume of Dumped Imports**

##### **Facts:**

31.1 After imposition of definitive anti-dumping duty, the Exporter exported product under review to Pakistan up till the year (July to June) 2003-04. However, quantities exported during the years 2002-03 and 2003-04 were negligible indicating that the anti-dumping duty did have an effect at the time of its imposition, suggests that the removal of anti-dumping duty would lead to recurrence of dumped imports. Following table shows the quantities of the product under review exported by the Exporter to Pakistan during last eight and a half years.

**Table-III  
Exports by the Exporter**

Year	Quantity
1999-00	100.00

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2000-01	68.20
2001-02	40.48
2002-03	0.00
2003-04	0.00
2004-05	0.00
2005-06	0.00
2006-07	0.00
2007-08 (Jul-Dec)	0.00

Note: Actual figures have been indexed with respect to the exports by the Exporter in the year 1999-00 by taking it equal to 100.

31.2 The above table reveals that after imposition of antidumping duty, the Pakistani market did not remain competitive for the Exporter. But in case antidumping duty is terminated then there is every likelihood that it will resume exports to Pakistan. During the original POI (Oct 2000 to Sept 2001)- as evident from the above figures that the Exporter's exports to Pakistan were around 15000 MT. However, this quantum of exports may change if the Exporter starts re-exporting to Pakistan depending on the market conditions and pricing level introduced for the Pakistani market. According to the Applicant, the Exporter may export approximately 14000 MT of Tinplate into Pakistan at dumped prices in case anti-dumping duty is terminated. The Applicant has estimated this volume on the basis of imports of Tinplate from South Africa during the POI for original investigation. Although, according to the information supplied by the Exporter in the original investigation, it exported 17,688 MT of Tinplate during that period, the estimates of the Applicant being on the lower side can be taken as quantum of likely exports to Pakistan from the Exporter in case antidumping duty is terminated.

#### Analysis:

31.3 The above table shows that shortly after imposition of definitive anti-dumping duty with effect from July 22, 2002, the Exporter stopped exporting Tinplate into Pakistan. This indicates that the imposition of definitive anti-dumping duty on dumped imports of the product under review was the reason to stop its exports to Pakistan. If the anti-dumping duty is removed at this stage, the Exporter is likely to resume its exports to Pakistan at dumped prices as all its exports to other countries are at dumped prices for the last five years, as is evident from earlier analysis of likelihood of recurrence of dumping.

31.4 The Foreign Producer has submitted that it primarily focuses on supplying the product under review to the domestic market in South Africa and on servicing its longstanding markets in Africa, Eastern Asia and South Eastern Asia, for the marketing of its products. This is contrary to the period before imposition of the anti-dumping duties where the company's predecessor Iscor Limited made a concerted effort to maintain a continued marketing presence in Pakistan. In addition comment No. 1.20 of the Exporter that to continue with the imposition of antidumping duties against the Exporter, would result in the Exporter being

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penalized for exports from other exporters indicates that the Exporter is still interested in Pakistani market.

31.5 As per information submitted by the Exporter in response to the questionnaire, Pakistan market for Tinplate is of secondary quality. This fact is also supported by the information obtained from PRAL's data base, that the imports of Tinplate into Pakistan during the last eight and a half years were of secondary quality. After imposition of definitive anti-dumping duty by the Commission, the Exporter shifted its sales of the secondary quality Tinplate to East Asian and South East Asian countries. According to the Exporter, it has also developed new markets in East and West African countries. Table IV shows the sales of Tinplate by the Exporter/Foreign Producer during last six years:

**Table-IV**  
**Sales of Tinplate by the Exporter/Foreign Producer**

Year	Description of Sales	Primary	Secondary	Total
		Quality	Quality	
2006-07	Exports to Pakistan	0.00	0.00	0.00
	Exports to other Countries	3.79	9.06	11.84
	Sales in Domestic Market	86.00	1.96	88.96
	<b>Total</b>	89.79	10.02	100.00
2001-02	Exports to other Countries	89.08	10.90	100.00
	Sales in Domestic Market	83.64	5.07	88.77
	<b>Total</b>	88.81	11.18	100.00
2002-03	Exports to Pakistan	0.00	0.01	0.01
	Exports to other Countries	2.00	4.78	6.78
	Sales in Domestic Market	88.80	4.40	93.21
	<b>Total</b>	90.08	9.19	100.00
2003-04	Exports to Pakistan	0.00	0.00	0.00
	Exports to other Countries	11.87	5.67	17.55
	Sales in Domestic Market	80.28	2.16	82.45
	<b>Total</b>	92.16	7.84	100.00
2004-05	Exports to Pakistan	0.00	0.00	0.00
	Exports to other Countries	11.74	6.56	18.31
	Sales in Domestic Market	78.57	3.12	81.69
	<b>Total</b>	90.31	9.68	100.00
2005-06	Exports to Pakistan	0.00	0.00	0.00
	Exports to other Countries	14.51	7.53	22.04
	Sales in Domestic Market	75.63	2.33	77.96
	<b>Total</b>	90.14	9.86	100.00

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Note: Actual figures have been indexed with respect to the total sales for every year by taking it equal to 100.

31.6 Analysis of the above information shows that the Foreign Producer's major sales of Tinplate during 2001-02 and 2002-03 were in its domestic market. However, large part of the sales of secondary quality Tinplate was exported. Prior (in the year 2001-02) to the imposition of definitive anti-dumping duty on July 22, 2002, the exporter's major market for secondary quality Tinplate was Pakistan (24.35 percent of total sales and 44.53 of export sales). Due to the initiation of original investigation, these exports reduced to \*\*\* MT in 2001-02 as compared to \*\*\* MT in 2000-01. The imports of \*\*\* MT were 17.28% of Pakistan's total market as per para 32.1 infra. Furthermore, in 1999-00 when the domestic industry started its commercial production imports from the Exporter were \*\*\* MT, which were 22.8% of Pakistan's total market as per para 32.1 infra. With this background of dumping, one cannot assume that in case antidumping duty is terminated the Exporter will not export less than 14000 M.T. Hence, the Commission has taken this figure of exports of Exporter for analysis purposes.

31.7 In 2001-02 the domestic sales of the Exporter in South Africa were \*\*\* MT of prime quality and \*\*\* MT of secondary quality Tinplate. In 2006 -07 its domestic sales were \*\*\*MT of prime quality and \*\*\* MT of secondary quality Tinplate. This shows that the usage of secondary quality in domestic market of South Africa reduced drastically whereas increase in usage of prime quality replaced the secondary quality Tinplate. All this excess secondary quality Tinplate was exported to other countries. After imposition of definitive anti-dumping duty by the Commission, Foreign Producer's/Exporter's sales of secondary quality Tinplate increased to Hong Kong and Philippines. Following table shows secondary quality Tinplate exports by the Exporter to Hong Kong, Philippines and to other countries during the last six years.

**Table-V**  
**Exporter's Exports of Secondary Quality Tin Plate**

Year	Export Sales to:	Secondary Quality
2003-04	Hong Kong	47.11
	Philippines	28.58
	Others	24.31
2001-02	Others	100.00
	Hong Kong	100.00
	Philippines	30.84
2004-05	Others	18.87
	Total	100.00
	Hong Kong	100.00
2002-03	Hong Kong	100.00
	Philippines	30.84
	Others	18.87

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2005-06	Philippines	29.64
	Others	19.85
	Total	100.00
2006-07	Hong Kong	34.33
	Philippines	30.82
	Others	34.84
	Total	100.00

Note: Actual figures have been indexed with respect to the total export sales for every year by taking it equal to 100.

31.8 The above information shows that export sales of secondary quality Tinplate to Hong Kong and Philippines increased from 26.83 percent and 12.81 percent in the year 2001-02 to 34.33 percent and 30.83 percent respectively in the year 2006-07. As Exporter's major focus for sale of secondary quality Tinplate is foreign markets, therefore after termination of antidumping duty it can regain its share in Pakistani market due to following reasons:-

- i) Pakistan is its old market where it had been selling substantial quantities before imposition of anti-dumping duty;
- ii) Due to economic growth, its domestic usage of secondary quality is being shifted to export markets and is likely to increase in future;
- iii) Due to further economic growth and holding of Soccer cup in 2010 it will increase its production as admitted by the Exporter, that will naturally produce additional secondary quality Tinplate which will need foreign market for its disposal; and
- iv) As per Table-IV supra its domestic usage of secondary quality Tinplate is just 17% as against its sales of 83% in foreign markets. So its disposable inventory of secondary quality Tinplate is available for

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export to foreign markets including Pakistan to the extent of at least 83% of its stocks.

31.9 The Foreign Producer has also stated that “the existing subject anti-dumping order has currently no effect on its production capacity, production, home market shipments, exports to Pakistan, other markets, and inventories.” To analyze this claim, Foreign Producer’s installed capacity and production for the last six years is reproduced in following table:

**Table-VI**  
**Installed Capacity and Capacity Utilization of the Foreign Producer**

Year	Installed Capacity (MT)	Capacity Utilization (%)
2001-02	432000	72.53
2002-03	432000	75.14
2003-04	432000	78.95
2004-05	432000	80.28
2005-06	432000	73.73
2006-07	432000	76.87

31.10 It appears from the above table that inspite of claimed economic growth in South Africa the Foreign Producer’s capacity utilization increased modestly after the imposition of definitive anti-dumping duty by the Commission. On the face of it, increase in production is just 4.34% in five years period from 2001-02 to 2006-07. Due to stoppage of exports to Pakistan after imposition of duty, it had to absorb \*\*\* MT of secondary quality Tinplate in other markets so its claim of no effect on its production is not valid. The Exporter has an excess capacity of \*\*\* M.T. to cater for additional demand. But as stated earlier (paragraph 27.2 supra), the entire imports of Tinplate into Pakistan is of secondary quality Tinplate, the Foreign Producer cannot directly use its excess capacity to feed the Pakistani market. As production is for prime quality product and secondary quality Tinplate is mostly an outcome of mishaps during production process of prime quality or rejected product on the basis of variation in specifications or left over production after satisfaction of an order. Further, according to the Foreign Producer, it produces Tinplate after receipt of an order from the buyer. In this case, extra quantity of the secondary quality Tinplate can only be produced/resulted if Foreign Producer receives sale orders. In future increase in production cannot be ruled out against the background of economic growth and hosting of World Cup Soccer in 2010 in South Africa as admitted by the Exporter in its comment No.1.18. Additionally inspite of modest increase in its capacity utilization (Table-VI) its exports of secondary quality Tinplate have increased almost more than 50% from around \*\*\* MT in 2001-02 to around \*\*\* MT in 2006-07 as apparent from Table-IV. The main reason is reduction in demand of secondary quality Tinplate in domestic market of South Africa due to healthy economic situation. Thus continued economic growth is likely to result in availability of more secondary quality Tinplate for export purposes.

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**Conclusion:**

31.11 On the basis of fore-going information and analysis the Commission has concluded that the Exporter will be able to export the product under Review to Pakistan at dumped prices in case definitive antidumping duty is revoked. However, it may not be able to export at the same level (17688 MT as per para 31.2 supra) as was prior to the imposition of definitive anti-dumping duty. Thus modest estimate of 14000 M.T. as given by the Applicant can safely be assumed for the Commission's subsequent analysis.

**32. Effects on Market Share**

**Facts:**

32.1 As per the information submitted by the Applicant, the Exporter, the Foreign Producer and obtained from PRAL's database, following was the market share of the product under review, domestic like product and the Tinplate imported from sources other than South Africa during last eight and a half years.

**Table-VII**  
**Market Share of Tinplate**

Year	Sales by domestic industry	Dumped imports	Imports from other sources	Total
1999-00	15.85	22.80	61.53	100.00
2000-01	43.29	17.28	39.43	100.00
2001-02	56.93	9.55	33.53	100.00
2002-03	47.79	0.04	52.17	100.00
2003-04	62.36	0.00	37.64	100.00
2004-05	69.96	0.00	30.04	100.00
2005-06	62.42	0.00	37.58	100.00
2006-07	74.47	0.00	25.53	100.00
2007-08(Jul-Dec)	49.43	0.00	50.57	100.00

**Analysis:**

32.2 The above table shows that total domestic market of Tinplate shrunk by 10.85percent over the last eight years from \*\*\* MT in the year 1999-00 to \*\*\* MT in the year 2006-07. The Applicant has alleged that this apparent shrinkage is due to mis-declaration and clearance of Tinplate under other PCT Heads.

32.3 In Pakistan the Tinplate manufacturing industry was established in the year 1999-00. Prior to establishment of the domestic industry, entire domestic demand of Tinplate was met through imports. Domestic industry's market share in its initial years of operation increased sharply from 15.85 percent in the year 1999-00 to 56.93 percent in the year 2001-02.

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32.4 The domestic industry's market share decreased from 56.93 percent in the year 2001-02 to 47.79 percent in the year 2002-03 after imposition of definitive anti-dumping duty with effect from July 22, 2002. Market share of imports from other sources increased from 33.53 percent in the year 2001-02 to 52.17 percent in the year 2002-03. However, the domestic industry gained its market share from other imports in the subsequent years, which shows that the domestic industry was finally able to take back the market share left by imports from dumped sources by competing with low priced imports of Tinplate from other sources.

32.5 The above table also shows an extra ordinary increase (21.00 percent) in sales of the domestic industry during the year 2006-07 as compared to its sales in the year 2005-06. The analysis of the information submitted by the Applicant showed that this increase was due to reduction in selling price of the domestic like product (paragraphs 34.3 and 34.7 infra), which the Applicant did to clear its stocks (paragraph 33 infra) before expiry of sales tax exemption. The Government of Pakistan granted an exemption to the Applicant from payment of sales tax on sales of the domestic like product for a period of eight years, which expired on July 01, 2007 (paragraphs 34.6.3 and 44.3 infra). In subsequent six months period ending 31.12.2007, share of imports have almost doubled. In such a situation if antidumping duty is revoked, dumped imports from South Africa can easily regain the share earlier held by it.

32.6 After imposition of definitive anti-dumping duty on dumped imports of the product under review, its market share decreased from 9.55 percent in the year 2001-02 to almost nil in the year 2002-03. The entire market share of dumped imports was initially taken by imports from other sources (paragraph 32.4 supra) but later captured by the domestic industry.

32.7 As stated earlier (paragraph 27.2 supra) the imports of Tinplate in Pakistan were/are of secondary quality. The domestic industry also manufactures and sells prime and secondary quality Tinplate. The Applicant was requested to provide information on production and sales of Tinplate for prime and secondary quality both. It provided separate information for last three and half years. Type-wise market share of domestically produced and imported Tinplate for the last three and a half years is given in the following table:

**Table-VIII**  
**Type wise Market Share of Tinplate**

Year	Sales by Domestic Industry		Imports from				Total Market		
			Dumped Source		Other Sources				
	Prime	Secondary	Prime	Secondary	Prime	Secondary	Prime	Secondary	Combined
2004-05	11.43	58.53	0	0	0	30.04	11.43	88.57	100.00
2005-06	16.66	42.43	0	0	0	35.58	16.66	78.01	94.67
2006-07	14.89	56.65	0	0	0	24.52	14.89	81.17	96.05
2007-08 (Jul-Dec)	12.37	7.43	0	0	0	20.25	12.37	27.68	40.05

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Note: Actual figures have been indexed with respect to the total market share in the year 2004-05 by taking it equal to 100.

32.8 The above table shows that major market in Pakistan is of secondary quality Tinplate. Major part of the domestic industry's sales during the last three years was also of secondary quality Tinplate. Domestic industry's sales of secondary quality Tinplate were 83.66 percent, 71.80 percent, 79.19 percent and 37.67 percent in the years 2004-05, 2005-06, 2006-07 and July-December 2007 respectively. Sales of secondary quality Tinplate of the domestic industry declined by 27.51 percent in the year 2005-06 as compared to the sales in the year 2004-05. This decline was due to decline (11.92 percent) in domestic market of secondary quality Tinplate coupled with an increase in imports by 18.44 percent from sources other than dumped source. Similar situation prevailed during the period from July to December 2007 in which sales of the domestic industry of secondary quality Tinplate decreased due to sharp increase in imports from other sources and sharp increase in sales of the domestic industry in the year 2006-07 to avail sales tax exemption (paragraph 33.3 infra).

### **Conclusion:**

32.9 On the basis of the above analysis, the Commission has concluded that the domestic industry suffered material injury on account of market share during last three and half years due to imports of the product from other sources as there were no imports from dumped sources owing to levy of antidumping duty. Further, the Commission is of the view that the domestic industry is likely to suffer on account of market share in case definitive anti-dumping duty imposed on the Exporter/Foreign Producer is revoked. However, the issue that may arise is whether imports of Tinplate from the Exporter would likely compete directly with the sales of the domestic industry or with imports from other countries. On the basis of the above information and analysis, the Commission has concluded that imports of the product under review are likely to first effect market share of the domestic industry and the effect on imports of Tinplate from other sources will depend on the pricing level of other imports if further reduced due to dumped imports by the South African Exporter.

### **33. Effects on Sales**

33.1 There was a mixed trend (increase and decrease) in sales of the domestic like product by the domestic industry during the last eight and a half years. Following table shows the sales of domestic like product in the domestic market:

**Table-IX**

**Sales of Domestic Industry**

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Year	Sales by domestic industry	Market Share
1999-00	100.00	15.85
2000-01	245.74	43.29
2001-02	346.96	56.93
2002-03	277.18	47.79
2003-04	327.68	62.36
2004-05	414.44	69.96
2005-06	350.09	62.42
2006-07	423.76	74.47
2007-08 (Jul-Dec)	117.27	49.43

Note: Actual figures have been indexed with respect to the sales of the domestic industry in the year 1999-00 by taking it equal to 100.

33.2 The above table shows that there was a sharp increase in sales of the domestic like product in initial years of operation of the domestic industry. Sales of the domestic industry increased by 145.75 percent and 41.19 percent in the years 2000-01 and 2001-02 respectively. This sharp increase in sales of the domestic industry was a result of aggressive marketing policy of the Applicant during its initial years of operation. As the domestic industry started commercial production in the year 1999-00, it was needed since the domestic industry had to establish its market share. To establish its market, the domestic industry in initial two years of its operation, produced and sold domestic like product at a loss (paragraph 37 infra) in order to compete with imported Tinplate.

33.3 After initiation of original investigation, the sales of domestic industry increased by 41.19% in 2001-02 over 2000-01. However, after imposition of definitive anti-dumping duty on product under review with effect from July 22, 2002, sales of the domestic industry decreased by 20.11 percent in the year 2002-03. Nonetheless these sales were still higher than the sales during 2000-01. Therefore sales of the domestic industry remained higher than the sales of 2000-01 till 2006-07 although fluctuating. There was 21.04 percent increase in sales of the domestic industry in the year 2006-07. This increase in sales was to clear stocks of the product under review before expiry of sales tax exemption (paragraph 44.3 infra). This fact is also highlighted in domestic industry's annual report for the year 2006-07. According to the report, "*..... as accumulated dead/slow moving stocks cleared to avoid additional price increase of 15% due to expiry of Sales Tax exemption on finished products w.e.f. 30<sup>th</sup> June 2007*". Sales of the domestic industry decreased by 44.66 percent during the period from July to December 2007. This decline of domestic industry's sales was, *inter alia*, a result of the following factors:

- i) additional sales by the Applicant during April to June 2007 to avoid payment of sales tax after June 30, 2007;
- ii) an increase in imports of Tinplate from other sources at a comparatively lower prices (Table XXIII infra);

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- iii) reduction in customs duty on imports of Tinplate from 25 percent to 20 percent with effect from July 1, 2007; and
- iv) imposition of sales tax on domestic like product with effect from July 1, 2007 (paragraph 44.3 infra).

### **Conclusion**

33.4 It is evident from the above information and analysis that initiation of the original investigation and consequent imposition of definitive anti-dumping duty on product under review increased the sales of the domestic industry. On the basis of the foregoing the Commission has concluded that the sales of the domestic industry are likely to be effected in case anti-dumping duty imposed on product under review is revoked, as the domestic industry took the share held in the domestic market by imports of the Tinplate from dumped source.

### **34. Price Effects**

34.1 The likely effect of dumped imports on sale prices of the domestic like product in the domestic market has been examined in the following paragraphs to determine whether there would be likely: (i) price under-cutting, (ii) price suppression and (iii) price depression in case of expiry of anti-dumping duty imposed on Tinplate.

34.2 According to the Applicant, "As there were no imports since 2003-04, no price effects can be given ..... However, keeping in view the price undercutting of 26% to 39% which prevailed during the POI as per the Commission's final determination, in case of resumption of imports from South Africa if anti-dumping duty is terminated, we assume that at the first instance we would have to reduce our prices at least by 5% initially....." The Applicant has not explained basis for this five percent reduction in the prices of domestic like product in application.

34.3 As per the information supplied by the Applicant following were ex-factory prices and cost to make and sell of the domestic like product during the last eight and a half years:

**Table-X**  
**Domestic Like Product (Prime + Secondary)**

Year	Ex-factory price	Cost to make & sell
1999-00	100.00	94.23
2000-01	100.80	104.73

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2001-02	99.71	85.47
2002-03	115.70	102.30
2003-04	132.11	102.82
2004-05	174.50	136.23
2005-06	180.29	147.82
2006-07	171.50	150.81
2007-08 (Jul-Dec)	171.45	156.43

Note: Actual figures have been indexed with respect to the ex-factory price in the year 1999-00 by taking it equal to 100.

34.4 Since there were no imports into Pakistan of the product under review after 2001-02 (paragraph 31.1 supra), no actual effect on price under cutting and price depression can be calculated. However, the Exporter exported Tinplate to number of other countries including the countries in this region after imposition of definitive anti-dumping duty (paragraph 31.5 supra). It is assumed that if the Exporter had exports of Tinplate to Pakistan, it should have been in the same range of prices at which the Exporter has exported to other countries. The basis for this assumption are as follows:

- i) Prior to imposition of anti-dumping duty, Exporter's major sales (45 percent of total export sales) of secondary quality Tinplate were to Pakistan. Probably, the Exporter sold Tinplate into Pakistan at a lower price to retain its market. However, after imposition of anti-dumping duty, the Exporter has developed other markets and now its major markets for exports of the secondary quality Tinplate are Hong Kong and Philippines. Following table shows Exporter's export sales of the secondary quality Tinplate during the last six years:

**Table-XI**  
**Exporter's Exports of Secondary Quality Tinplate**

<b>Year</b>	<b>Percentage</b>			
	<b>Pakistan</b>	<b>Hong Kong</b>	<b>Philippines</b>	<b>Others</b>
2001-02	44.81	26.83	12.81	15.56
2002-03	0.20	74.85	18.41	6.54
2003-04	0.01	47.11	28.58	24.31
2004-05	0.00	60.34	30.84	8.82
2005-06	0.00	50.51	29.64	19.85
2006-07	0.00	34.33	30.83	34.84

- ii) Although there were negligible imports of Tinplate from South Africa into Pakistan during the years 2002-03 and 2003-04 but price difference with prices of other exports was much less than the price difference of the year 2001-02. Price difference during the year 2002-03 was 23% when the exports to Pakistan were only \*\*\* MT

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Probably the Exporter was not able to export into Pakistan due to revision of its price pattern.

34.5 Thus, likely price under-cutting, price depression and price suppression are determined on the basis of weighted average export price of Tinplate exported by the Exporter to other countries.

#### **34.6 Price Under-Cutting**

##### **Facts:**

34.6.1 Imports of Tinplate into Pakistan were/are of secondary quality (paragraph 27.2 supra).The domestic industry is manufacturing and selling prime and secondary quality Tinplate. Thus the direct competition of imported Tinplate is/was with the secondary quality Tinplate produced by the domestic industry. The Applicant was requested to provide separate information on prices and cost to make and sell of the prime and secondary quality Tinplate produced and sold during the last eight and a half years, but it provided requisite information for last three and half years. During last three and half years the Exporter did not export product under review to Pakistan. However it exported 67.79 percent, 76.32percent and 82.98 percent of the total sales of secondary quality Tinplate of the Foreign Producer to other countries during the years 2004-05, 2005-06 and 2006-07 respectively. To know likely effect on prices of the domestic like product in case imports of the product under review recurs after expiry of the anti-dumping duty, it is assumed that the export price charged by the Exporter from importers of the other countries at FOB level would have also been charged from the Pakistani importers. Following table compares the ex-factory prices of secondary quality Tinplate sold by the domestic industry and the landed cost of the secondary quality Tinplate exported by the Exporter during the last three years. To calculate landed cost at Karachi port, sea freight @ US\$ 35/MT has been added in the weighted average FOB prices charged by the Exporter on its exports to other countries.

**Table-XII**  
**Calculation of Price Under-Cutting**

Year	Ex-factory price of domestic product	Landed cost with Anti-dumping Duty	Landed cost without Anti-dumping Duty	Price Under-Cutting	
				With AD	Without AD
2004-05	100.00*	117.98*	97.38*	--	2.62
2005-06	101.06*	105.62*	87.46*	--	13.60
2006-07	93.76*	124.72*	103.27*	--	(9.51)
2007-08 (Jul-Dec)	106.16	N.A.@	N.A.@	N.A.@	N.A.@

Note: Actual figures have been indexed with respect to the ex-factory price of domestic product in the year 2004-05 by taking it equal to 100.

\* Without sales tax as domestic industry was exempt from payment of sales tax up till June 30, 2007. As sales tax is adjustable, for fair comparison it has been excluded till 30.6.2007 from the landed cost of imported product.

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- @ Information is not available (N.A) with the Commission for export sales of the Exporter to other countries for the period 1.7.2007 to 31.12.2007.

**Analysis:**

34.6.2 The information in the above table shows that the domestic industry would have faced price under-cutting during the year 2004-05 and 2005-06 if anti-dumping duty were not in place. However, the domestic industry has not suffered on account of price under-cutting during the year 2006-07. The main reason for this is disposal of stocks by the domestic industry at reduced prices to avoid incidence of sales tax effective from 1.7.2007. Otherwise keeping in view its price increasing trend in 2005-06 over 2004-05, there were chances of price undercutting even during 2006-07. Regarding Jul-Dec 2007 period, there is no information available for Exporter's prices to other countries. However, to enter Pakistani market, the exporters will have to introduce comparatively lower prices of which it has the ability as it reduced its prices by Rs. \*\*\* MT in 2005-06 over 2004-05 which is evident from above table for its exports to other countries. In such a situation there is every likelihood of price undercutting as and when it enters into Pakistani market. This price undercutting would naturally cause material injury to the domestic industry, as landed cost of imports from other sources is much lesser (27% to 41% Table-XIII infra) than the prices of domestic like product.

34.6.3 Sales of the domestic like product by the domestic industry were exempted from the payment of 15 percent sales tax up till June 30, 2007 (paragraph 44.3 infra). From July 1, 2007 this exemption of sales tax has expired. The domestic industry was requested to submit information on sales and cost of sales of the domestic like product for the period from 1<sup>st</sup> July to 31<sup>st</sup> December 2007 so that the impact of imposition of sales tax on domestic industry may be assessed. Analysis of the information submitted by the Applicant showed that the domestic industry was not able to fully pass on the incidence of sales tax in price of the domestic like product. The above table shows that the weighted average selling price of the domestic industry after imposition of sales tax has increased from Rs. \*\*\*MT in the year 2006-07 to Rs. \*\*\* MT during July-Dec 2007-08 against likely price of Rs. \*\*\* MT (\*\*\*+15%). Since this increase of Rs. \*\*\* MT (Rs. \*\*\*) is based on specially reduced prices of 2006-07, its actual increase based on previous prices of 2005-06 should have been higher. It also shows that there is some price suppression effect which in this case are imports from other sources as there are no exports from the Exporter during the period due to levy of antidumping duty.

34.6.4 Calculations of landed cost of imports from other sources are at Annex-IV. Accordingly, price under-cutting suffered by the domestic industry due to imports of Tinplate from other sources is given in following table:

**Table-XIII**  
**Calculation of Price-Cutting due to Imports from Other Sources**

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Year	Ex-factory price of domestic product	Landed cost of other imports	Price Under-Cutting
2004-05	100.00*	58.56	41.44
2005-06	101.06*	67.27	33.79
2006-07	93.76*	70.15	23.61
2007-08 (Jul-Dec)	106.16	77.16	29.00

Note: Actual figures have been indexed with respect to the ex-factory price of domestic product in the year 2004-05 by taking it equal to 100.

\* Without sales tax as domestic industry was exempt from payment of sales tax up till June 30, 2007

34.6.5 The above table shows that the domestic industry suffered and is likely to suffer material injury on account of price under-cutting due to low priced imports of Tinplate from other sources. The domestic industry faced the highest (41%) price under-cutting due to these imports during the year 2004-05. There is no doubt that imports from other sources are at substantially low price which has resulted in under-cutting. In addition to price under-cutting, there is under invoicing factor involved in this as the customs authorities of Pakistan have recently issued valuation advice for assessment of secondary quality Tinplate. As per the customs valuation advice dated Feb. 14,2008, the under invoicing was to the extent of 18% of latest assessed values. Even if we raise the landed cost as a result of assessed value, price undercutting would still be significant. This also reveals the fact that whenever the South African Exporter enters this market, it is likely to first undercut the prices of domestic industry rather than to undercut the prices of imports from other countries.

### **Conclusion:**

34.6.6 On the basis of the above information and analysis, the Commission has concluded that the domestic industry is likely to suffer on account of price cutting from imports of the product under review in case definitive anti-dumping duty is revoked.

### **34.7 Price Depression**

#### **Facts:**

34.7.1 Following table shows the ex-factory prices of domestic like product and the appropriate landed cost of the product under review (secondary quality Tinplate) for the last three and a half years:

**Table-XIV**  
**Ex-factory Price of and Landed Cost**

Year	Ex-factory price of secondary quality Tinplate of Domestic Industry	Landed cost of secondary quality Tinplate if exported by the Exporter	
		With Anti-dumping duty	Without Anti-dumping duty
2004-05	100.00*	117.98*	97.38
2005-06	101.06*	105.62*	87.46

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2006-07	93.76*	124.72*	103.27
2007-08 (Jul-Dec)	106.16	N.A.@	-NA-@

Note: Actual figures have been indexed with respect to the ex-factory price of secondary quality of Tinplate by domestic product in the year 2004-05 by taking it equal to 100.

\* Without sales tax as domestic industry was exempt from payment of sales tax up till June 30, 2007. As sales tax is adjustable, for fair comparison it has been excluded till 30.6.2007 from the landed cost of imported product.

@ Information is not available (N.A) with the Commission for export sales of the Exporter to other countries for the period 1.7.2007 to 31.12.2007.

### Analysis:

34.7.2 The above table shows that the domestic industry reduced its prices in the year 2006-07 despite the fact that there were no imports of the product under review (paragraph 31.1 supra). The reason for this decrease in sales price as explained earlier was the expiry of the sales tax exemption on sales of the domestic like product (paragraphs 34.6.3 supra and 44.3 infra). Thus the domestic industry reduced its price on its own due to reason other than the imports of the product under review. Had the domestic industry maintained the trend of increase in its prices of 2005-06 its prices for 2006-07 should have not been less than Rs. \*\*\*MT for 2006-07 and Rs. \*\*\*MT for Jul-Dec 2007 (inclusive of 15% sales tax). Since domestic industry prices during 2006-07 and the period from Jul to Dec 2007 experienced price depression due to other imports, any imports from the Exporter at reduced prices are likely to depress the domestic industry prices by direct competition.

### Conclusion:

34.7.3 On the basis of the fore-going analysis, the Commission has concluded that the domestic industry is likely to suffer on account of price depression from imports of the product under review in case definitive anti-dumping duty is revoked.

## **34.8      Price Suppression**

### Facts:

34.8.1 Following were the ex-factory prices and cost to make and sell of the domestic like product (prime and secondary Tinplate) during the last eight and a half years:

**Table-XV**  
**Ex-factory price and cost to make and sell of Domestic Like Product**

Year	Ex-factory price	Cost to make & sell	Increase/(decrease) in:	
			Price	Cost
1999-00	100.00	94.23	--	--
2000-01	100.80	104.73	0.80	10.50

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2001-02	99.71	85.47	(1.09)	(19.26)
2002-03	115.70	102.30	15.99	16.83
2003-04	132.11	102.82	16.41	0.52
2004-05	174.50	136.23	42.39	33.41
2005-06	180.29	147.82	5.79	11.59
2006-07	171.50	150.81	(80.9)	2.99
2007-08 (Jul-Dec)	171.45	156.43	(0.05)	5.62

Note: Actual figures have been indexed with respect to the ex-factory price in the year 1999-00 by taking it equal to 100.

34.8.2 The above table shows that the increase in cost to make and sell during the years 2000-01, 2002-03 and 2005-06 was more than the increase in ex-factory price of the domestic like product. The domestic industry experienced suppression in its prices by 4.88 percent in the year 2006-07 and this suppression continued in the subsequent six months despite the fact that there was an increase in cost to make and sell by 2.02 percent in the year 2006-07 and by 3.77 percent during the period from 1<sup>st</sup> July to 31<sup>st</sup> December 2007. This decrease in price during 2006-07 was mainly due to increased sales to clear stocks before expiry of sales tax exemption (paragraph 34.6.3 supra), However, in Jul-Dec 2007 price suppression was mainly due to reduction in prices of imports from other sources plus reduction in customs duty @ 5% *ad val* on import of Tinplate.

34.8.3 As stated earlier imports of Tinplate in the country were/are of secondary quality Tinplate and the domestic industry is also producing and selling prime as well as secondary quality Tinplate (paragraph 32.7 supra). However, the actual competition of the imported Tinplate is with the secondary quality Tinplate produced and sold by the Applicant. Information provided by the Applicant on weighted average cost to make and sell and weighted average ex-factory price of the secondary quality Tinplate for the last three and half years is given in the table below:

**Table-XVI**  
**Cost to Make and Sell and Prices of Domestic Like Product**

Year	Cost to make and sell	Ex-factory Price	Increase/ (decrease) in	
			Costs	Price
2004-05	100.00	137.96	--	--
2005-06	93.96	139.42	(6.04)	1.44
2006-07	99.13	129.35	5.17	(10.07)
2007-08 (Jul-Dec)	122.74	127.35	23.61	(2.00)

Note: Actual figures have been indexed with respect to the cost to make and sell in the year 2004-05 by taking it equal to 100.

**Analysis:**

34.8.4 The above table shows that the cost to make and sell of the domestic like product (secondary quality Tinplate) decreased by 6.04 percent in the year 2005-06

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and increased by 5.49 percent in the year 2006-07 and by 23.83 percent during the period from 1<sup>st</sup> July to 31<sup>st</sup> December 2007. The Applicant has not provided any reason and evidence for this sharp increase in cost to make and sell of the secondary quality Tinplate but the fact remains that it had to reduce its prices further during Jul-Dec 2007 mainly because of imports at reduced landed cost from other sources. In such a situation if there is resumption of dumped imports from the Exporter those are likely to further suppress the prices of domestic industry.

**Conclusion:**

34.8.5 On the basis of the above, the Commission has concluded that there is likelihood of injury of domestic industry on account of price suppression from imports of the product under review in case definitive anti-dumping duty is removed, as the expected landed cost of the product under review would be lower than the ex-factory price of the domestic like product. The domestic industry may also continue to face price suppression due to low priced imports of Tinplate from other countries (paragraph 34.6.4 supra)

**35. Effects on Production and Capacity Utilization**

**Facts:**

35.1 The installed production capacity of the domestic industry to produce domestic like product is 120,000 MT per annum. Quantity produced and the capacity utilized during the last eight and a half years are given in the table below:

**Table- XVII**  
**Production and Capacity Utilization**

<b>Year</b>	<b>Installed Capacity</b>	<b>Capacity Utilization</b>
1999-00	120000	19
2000-01	120000	29
2001-02	120000	49
2002-03	120000	32
2003-04	120000	55
2004-05	120000	47
2005-06	120000	47
2006-07	120000	39
2007-08 (Jul-Dec)	60000	35

**Analysis:**

35.2 It may be noted from the table above that the production of domestic like product increased during the initial years of operation of the domestic industry, which was natural. The domestic industry started commercial production in the year 1999-00 and utilized 19 percent of the installed production capacity. During the

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subsequent years (2000-01 and 2001-02) the sales of domestic industry increased (paragraph 33 supra), resulting in an increase in its production and capacity utilization.

35.3 After imposition of definitive anti-dumping duty with effect from July 22, 2002 on product under review, the sales of domestic like product declined while the market share of the imports from other sources increased (paragraph 32 supra), which resulted in decline in production and capacity utilization of the domestic industry from 49% in the year 2001-02 to 32% in the year 2002-03. The domestic industry gained its lost market share from imports of other countries in the year 2003-04 (paragraph 32.1 supra) due to which, its production and capacity utilization increased during that year. In 2003-04 market share of imports from other sources was 37.64% (paragraph 32.1 supra), which was reduced to 25.53% in 2006-07 as compared to 39.43% in 2000-01, which covered maximum period of POI of original investigation (Oct. 2000-Sept 2001). This reflects that not only the domestic industry was able to fully take over market share left by dumped sources but at the same time it took some market share of imports from other sources. However, during Jul-Dec 2007 due to abnormal conditions for the domestic industry (due to levy of sales tax from 1.7.2007, 5% duty reduction on imports and market saturation due to higher sales in period ending 30.6.2007) the market share of imports from other sources increased which also effected its capacity utilization. However, it is expected that the domestic industry will soon come out of this situation as soon as market saturation is over and it adjusts its prices as per its competitors. This will definitely, increase its capacity utilization. But this likely increase in capacity utilization is likely to decrease if imports to the extent of assumed quantity of 14000 MT starts coming from the dumped source in case antidumping duty is revoked.

35.4 Although, there was a sharp increase in sales and market share of the domestic industry in the year 2006-07 (paragraphs 32.1 and 33.1 supra), production and capacity utilization of the domestic industry decreased that year. The domestic industry produced less during the year 2006-07 to get rid of inventories (paragraph 36 infra) before expiry of the sales tax exemption (paragraphs 33.3 supra and 44.3 infra). The production and capacity utilization of the domestic industry declined from 39 percent in the year 2006-07 to 35 percent during the period from 1<sup>st</sup> July to 31<sup>st</sup> December 2007 due to increased imports of Tinplate from other countries (paragraph 32.1supra) for the reasons stated at paragraph 35.3 supra. Otherwise there are least chances of any noteworthy decrease in its capacity utilization. This also proves that imports left by the Exporter during 2000-01 have been fully taken over by the domestic industry. So any imports from dumped source can adversely affect the production capacity of domestic industry, as imports from other sources are already there since 2000-01.

### **Conclusion:**

35.5 On the basis of the above information and analysis, the Commission has concluded that the definitive anti-dumping duty if revoked is likely to effect the production and capacity utilization of the domestic industry. Further, domestic

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industry is likely to suffer material injury on account of lesser production and reduced capacity utilization, as the Commission has concluded that imports of the product under review would directly effect market share of the domestic industry as its prices will first compete with the prices of domestic industry for entering into Pakistani market.

### **36. Effects on Inventories**

#### **Facts:**

36.1 The data provided by the Applicant on the position of inventories for the last eight and a half years is as follows:

**Table-XVIII**  
**Opening and closing Inventory**

Year/Period	Opening inventory	Closing inventory
1999-00	100.00	1804.21
2000-01	1804.21	1004.21
2001-02	1004.21	2359.16
2002-03	2359.16	1332.67
2003-04	1332.67	5134.41
2004-05	5134.41	3225.99
2005-06	3225.99	3982.92
2006-07	3982.92	10.64
2007-08 (Jul-Dec)	10.64	824.26

Note: Actual figures have been indexed with respect to the opening inventory of the domestic like product in the year 1999-00 by taking it equal to 100.

#### **Analysis:**

36.2 The above table shows that closing inventory of the domestic like product decreased from \*\*\* MT in the year 2001-02 to \*\*\* MT in the year 2002-03. This decrease was due to reduction in production (paragraph 35.1 supra). However, there was a sharp increase in inventories of the domestic like product after the year 2002-03 till the year 2005-06 as capacity utilization during this period remained at reasonable level ranging from 47% to 55%. There was a sharp decrease in inventory level of the domestic like product during the year 2006-07. This decline in inventory was due to the lesser production by the domestic industry in the year 2006-07 with a view to clear its stocks of Tinplate before expiry of sales tax exemption (paragraph 33.3 supra). After adjusting with the new situation, the domestic industry may adjust its inventories accordingly. In case there are imports from dumped sources, there is likelihood of either increase in inventories or decrease in production.

#### **Conclusion:**

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36.3 On the basis of the above, the Commission has concluded that the domestic industry is likely to suffer material injury on account of increase in inventory level due to imports of the product under review if definitive anti-dumping duty is revoked.

### **37. Effects on Profits**

#### **Facts:**

37.1 The domestic industry incurred losses during initial two years of its operation. However, it earned net profits on production and sales of the domestic like product in subsequent six and a half years. Information submitted by the Applicant on its profits is given in the following table:

**Table-XIX**  
**Net Profits of Domestic Industry (Prime + Secondary)**

Year	Total Profit
1999-00	(100.00)
2000-01	(22.30)
2001-02	103.61
2002-03	96.88
2003-04	151.88
2004-05	281.64
2005-06	172.40
2006-07	131.68
2007-08 (Jul-Dec)	41.25

Note: Actual figures have been indexed with respect to the total profit in the year 1999-00 by taking it equal to 100.

#### **Analysis:**

37.2 The above table shows that the profitability of the domestic industry increased from Rs. \*\*\* MT in the year 2001-02 to the highest level of Rs. \*\*\* MT in the year 2004-05. Given the fact that year 2004-05 was the boom year for iron and steel products throughout the world. Profits of the Exporter, if analyzed, would also reveal this position (29.58% of sale price in 2004-05 as compared to 14.03% and 20.55% for 2001-02 and 2006-07 respectively). Thereafter, there was a decline in profits in the years 2005-06 and 2006-07.

37.3 Reason for sharp increase in profits during the years from 2002-03 to 2004-05 was a lesser increase in cost to make and sell as compared to increase in the selling price of domestic like product (paragraph 34.8.1 supra). The decrease in profitability in the year 2006-07 was due to reduction in prices by the Applicant to clear its stocks before expiry of the sales tax exemption coupled with an increase in cost to make and sell of the domestic like product. After imposition of sales tax with effect from 1<sup>st</sup> July 2007, although the overall profitability of the domestic industry has increased from Rs. \*\*\* per MT in the year 2006-07 to Rs. \*\*\* per M.T. profitability on sales of

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secondary quality Tinplate drastically reduced to the level of Rs. \*\*\* MT (Rs. \*\*\*Table XVI supra) during the period from 1<sup>st</sup> July to 31<sup>st</sup> December 2007. In terms of percentage, the profits on sale of secondary quality Tinplate during Jul-Dec 2007 comes to 2.76% of sale price. So as per the assumption if sale price is reduced by 5% after resumption of imports from dumped source in case antidumping duty is revoked, the decrease in sale price may result into net loss to the domestic industry due to reduced prices coupled with lesser market share.

**Conclusion:**

37.4 On the basis of the above, the Commission has concluded that the domestic industry is likely to suffer material injury on account of profitability after expiry of anti-dumping duty, as it would be required to reduce its price of secondary quality Tinplate to compete with Tinplate exported by the Exporter. In addition, any share that will be taken by the Exporter in the domestic market by competing with the domestic industry is likely to cause further injury to the Applicant.

**38. Effects on Investment and Return on Investment**

**Facts:**

38.1 As per the information supplied by the Applicant, following was the investment and return on investment of the domestic Tinplate industry during last eight and a half years:

**Table-XX**  
**Return on Investment**

Year	Total Investment	Return on Investment
1999-00	100.00	2.20
2000-01	136.01	26.09
2001-02	311.38	34.13
2002-03	308.25	25.91
2003-04	372.84	27.31
2004-05	350.52	51.23
2005-06	403.62	28.88
2006-07	453.73	20.23
2007-08 (Jul-Dec)	443.21	6.65

Note: Actual figures have been indexed with respect to the total investment in the year 1999-00 by taking it equal to 100.

**Analysis:**

38.2 The above table shows that there were upward and downward movements in return on investment of the domestic industry since its establishment. After

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imposition of anti-dumping duty on product under review, domestic industry's return on investment decreased from Rs. \*\*\* million in the year 2001-02 to Rs. \*\*\* million in the year 2002-03. However, after the year 2002-03 there was a continuous increase in return on investment and in the year 2004-05 it was at the highest level of 51%. After the year 2004-05, the return on investment declined. The return on investment was 20.23% in the year 2006-07, which the domestic industry could not maintain during first six months of 2007-08. Major reasons for this reduction as discussed earlier are levy of sales tax, reduction of 5% customs duty on imports and reduction in C&F prices of imports from other sources. Another cause is the saturated market for the time being (due to disposal of stocks by 30.06.2007). In such a situation likely dumped imports without antidumping duty are likely to cause additional material injury to the domestic industry on account of return on investment.

**Conclusion:**

38.3 On the basis of the above, the Commission has concluded that the domestic industry is likely to suffer material injury in case definitive anti-dumping duty is terminated on imports of the product under review and imports resume from the dumped source.

**39. Effects on Cash Flow**

**Facts:**

39.1 Following table shows net cash flow position of the domestic industry during last eight and half years:

**Table-XXI**  
**Net Cash Flow**

Year	Cash Flow
1999-00	(100.00)
2000-01	(54.34)
2001-02	29.73
2002-03	36.16
2003-04	(131.00)
2004-05	172.52
2005-06	46.16
2006-07	208.38
2007-08 (Jul-Dec)	(52.49)

Note: Actual figures have been indexed with respect to the cash flow in the year 1999-00 by taking it equal to 100.

**Analysis:**

39.2 The above table shows that net cash flow from operations of the domestic industry increased from Rs. \*\*\* million in the year 2001-02 to Rs. \*\*\* million in the year 2006-07, which is almost 700 percent increase. It appears that this sharp increase in net cash inflow was due to the high profitability (paragraph 37 supra)

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and higher sales. Unfortunately this trend could not be maintained by the domestic industry during Jul-Dec 2007 period. During Jul-Dec 2007 profits and sales of secondary quality Tinplate are especially much lower as compared to over all profitability and sales. Thus subsequent additional imports of secondary quality from dumped source are likely to further adversely effect the cash flow position.

**Conclusion:**

39.3 The Commission has determined that the domestic industry is likely to suffer material injury on account of cash flow in case of termination of anti-dumping duty, as the exports from the Exporters are likely to take reasonable share of domestic market.

**40. Effects on Employment, Productivity and Wages**

40.1 The data submitted by the Applicant on employment in the domestic industry and the wages paid during last eight years is given in following table:

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

Year	Number of Employees	Productivity per worker (MT)	Salaries & wages Rs. per MT
1999-00	100	100.00	100.00
2000-01	114	108.82	67.51
2001-02	143	184.69	35.02
2002-03	163	105.58	79.64
2003-04	243	122.28	33.49
2004-05	228	110.23	42.03
2005-06	211	120.92	44.93
2006-07	221	95.38	59.31

Note: Actual figures have been indexed with respect to the figures of the year 1999-00 by taking them equal to 100.

**Analysis:**

40.2 The above table shows that the employment in domestic industry increased from \*\*\* employees in the year 1999-00 to \*\*\* employees in the year 2003-04. There was a decrease in employment in the years 2004-05, 2005-06 and 2006-07 as compared to the employment in the year 2003-04. There was a mixed trend, decrease and increase, in productivity per worker during last eight years. This decrease in productivity was due to decrease in production and increase in employment.

40.3 Salaries and wages per MT for production of the domestic like product fluctuated upwards and downwards during the last eight years. The Commission is of the view that there should have been an increase in salaries and wages of the

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domestic industry in line with the inflation and Government policy for increase in salaries and wages. However, increase in salaries and wages for production of per MT of the domestic like product was higher than the increase which should have been. This is due to decrease in production of the domestic like product.

40.4 Despite of earlier mixed trends, after 2003-04 the position with regard to employment, productivity and salaries and wages is clear which shows adverse affect on domestic industry as apparent from following comparative position:

<b>Injury Factor</b>	<b>2003-4</b>	<b>2006-07</b>	<b>Remarks</b>
Employment	100 Numbers	91 Numbers	Decreased (Adverse)
Productivity	100.00 MT/Employee	77.96 MT/Employee	Decreased (Adverse)
Salaries & Wages	Rs.100 MT/Employee	Rs.177.08 MT/Employee	Increased (Adverse)

Note: Actual figures have been indexed with respect to the figures of the year 2003-04 by taking them equal to 100.

40.5 As the continued adverse position with respect to number of employees, productivity and salaries & wages per MT is worsening year by year there seems every possibility of further deterioration in these factors if more imports enter into the domestic market from dumped source in case antidumping duty is revoked.

### **Conclusion**

40.6 Based on the above analysis, the Commission has concluded that the domestic industry is likely to suffer on account of employment, productivity and wages in case definitive anti-dumping duty is terminated on the product under review.

### **41. Effects on Growth and Investment**

41.1 The Applicant's production capacity is 120,000 MT per annum. The total domestic demand as per available figures (leaving aside misdeclaration) for Tinplate in the country during last eight years was around 87,000 MT to 97,000MT per annum (paragraph 32 supra). Therefore, neither the Applicant felt the need to enhance its plant capacity, nor any new plant can be set up by any other firm in such a situation. On the basis of above information, the Commission has concluded that the domestic industry is unlikely to suffer on account of growth and investment if definitive anti-dumping duty is removed on imports of the product under review.

### **42. Magnitude of dumping Margin:**

#### **Facts**

42.1 It reveals that as per exports of secondary quality Tinplate the Exporter has been selling at a price lower than its normal value in other countries consecutively for the last five years. The dumping margin in 2002-03 was *de minimus* at 1.3%,

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however, it remained at alarmingly high level ranging from 21.59% to 43.41% from 2004-05 onwards. During the year 2006-07 the Exporter's dumping margin was 30.49% as against 27.33% determined by the Commission in the original investigation (Oct 2000 Sep 2001) for its exports to Pakistan.

### **Analysis**

42.2 With Exporter's history of dumping for its exports to Pakistan coupled with the magnitude of present margin of dumping (30.49%) for its exports to other countries during the period 2006-07, there is every likelihood that it will export to Pakistan at dumped prices in case antidumping duty is revoked on its imports. As per Table-IV of the report, increase in Exporter's secondary quality Tinplate exports to other countries was more than 50% in 2006-07 over 2001-02. With sufficient available unutilized capacity, constant economic growth which results in availability of more secondary quality Tinplate coupled with price maneuvering ability and inventory stock of secondary quality, the Exporter is likely to export considerable volume of secondary quality Tinplate at dumped prices, which is likely to materially injure the domestic industry.

### **Conclusion**

42.3 It is concluded from the above facts and analysis that in case antidumping duty is revoked there is every likelihood that the Exporter would dump a considerable volume of Tinplate with higher dumping margin, which is likely to cause material injury to the domestic industry.

### **CONCLUSION OF LIKELIHOOD OF RECURRENCE OF MATERIAL INJURY**

43. Based on above analysis, the Commission has concluded that:

- i. it is likely that there would be a significant increase in import volumes.
- ii. significant dumping margins are likely to result.
- iii. in terms of price, the domestic industry is likely to suffer on account of prices undercutting, price suppression and price depression.
- iv. in terms of other economic factors, the domestic industry is likely to suffer material injury on account of negative effects on production and capacity utilization, loss in market share and sales; negative effects on productivity, negative effect of inventories, negative effect on cash flows, decline in profit, negative effect on employment, productivity and wages, decrease in return on investment.

43.1 Therefore, the domestic industry is likely to suffer material injury if the anti-dumping duty is removed.

**44. Other Factors**

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44.1 In accordance with Section 18 of the Ordinance, the Commission also examined factors, other than imports of the product under review, which could at the same time cause injury to the domestic industry, in order to ensure that possible likely injury caused by other factors is not attributed to the product under review.

#### **44.2 Imports of Tinplate from Other Sources**

44.2.1 The investigation by the Commission revealed that the domestic industry was adversely affected due to imports of the Tinplate from sources other than the Exporter. This is also highlighted in Applicant's annual report for the year 2007.

44.2.2 The investigation showed that there was significant volume of imports of Tinplate from other sources. Share of the imports from other sources was more than 50 percent of the total domestic market during the period from 1<sup>st</sup> July to 31<sup>st</sup> Dec 2007 as additional sales (by disposal of almost all the inventory) by the Applicant during last year ending 30.6.2007 to avoid incidence of sales tax effective from 1.7.2007 flooded the market with imported goods. Share of imports from other sources remained around 26 percent to 38 percent during the last four years (paragraph 32.1supra). Further, those imports were at lower weighted average C&F prices. Following table shows the volume, weighted average C&F prices of Tinplate imported from other sources and expected C&F price of the Exporter during last three and a half years.

**Table -XXIII**  
**Volume and C&F Prices of Tinplate**

Year	Imports from Other Sources		Expected C&F price of Exporter (US\$/MT)
	Volume (MT)	C&F Price (US\$/MT)	
2004-05	100.00	100.00	166.29
2005-06	118.44	113.91	148.10
2006-07	81.62	117.27	172.65
2007-08 (Jul-Dec)	67.41	102.66	*N.A

Note: Actual figures have been indexed with respect to the volume of imports from other sources in the year 2004-05 by taking it equal to 100.

\* Not available

44.2.3 The information given in the above table shows that the C&F prices of the Tinplate imported from other sources are much less than the expected C&F prices of the product under review. Thus, the domestic industry is presently suffering on account of price under-cutting due to imports from other sources (paragraph 34.6.4 supra). If domestic industry is suffering with low priced imports of other sources, there is every likelihood that it may not be able to compete with relatively low priced imports of the product under review, compared to the sale price of domestic

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industry as and when introduced in Pakistan's market by the Exporter if the antidumping duty is revoked.

#### **44.3 Sales Tax Exemption**

43.3.1 The Government of Pakistan provided sales tax exemption vide notification No. 77(I)/95 dated January 19, 1995 on production and sales of the domestic like product for eight years to attract investment in the underdeveloped areas.

43.3.2 The sales tax exemption has ended on July 1, 2007. Selling prices of the domestic like product was increased to incorporate incidence of sales tax. The information supplied by the Applicant for the period from 1<sup>st</sup>July to 31<sup>st</sup> December 2007 revealed that the Applicant has added 15percent sales tax in its ex-factory price of the domestic like product, which it had charged in the year 2006-07. Following table shows prices of the domestic like product before and after imposition of sales tax:

**Table-XXIV**  
**Price of the Domestic Like Product**

Year/Period	Weighted average price (Rs./MT)	
	Prime	Secondary
2004-05	100.00	80.49
2005-06	99.48	81.34
2006-07	94.62	75.47
2007-08 (Jul-Dec)	100.92*	85.45*

\* With sales tax

Note: Actual figures have been indexed with respect to the weighted average price of prime domestic like product in the year 2004-05 by taking it equal to 100.

44.3.3 The above table shows that after imposition of sales tax, the Applicant increased price of the prime quality by 6.67 percent and price of the secondary quality by 13.22 percent. This shows that the Applicant has shifted major part of the sales tax burden to secondary quality sales, yet it is lower than 15% what it should have been. Three possible reasons for shifting comparatively more burden on secondary quality Tinplate could be as under:

- The prices of prime quality Tinplate are higher by Rs. \*\*\* MT
- Decrease in prices of secondary quality in 2006-07 was higher at Rs. \*\*\* MT against Rs. \*\*\* MT for prime quality.
- Increase in cost of secondary quality Tinplate has compelled for comparatively higher increase in its prices which has already reduced its profits to lowest level of Rs. \*\*\* MT (Table-XVI Supra). Otherwise lesser increase in its price after levy of sales tax would have resulted in loss on its sales.

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44.3.4 Expiry of sales tax exemption on production and sales of the domestic like product has effected the Applicant on account of sales, market share, price undercutting, profits, cash flows, production and capacity utilization etc. This fact has also been highlighted in Applicant's quarterly report for the quarter July to September 2007. According to the report there was 49 percent decrease in sales revenue of this quarter as compared to the same period during the last year mainly due to the reasons that:

- "(i) Market was fully saturated during July and August and even September 2007,*
- (ii) Withdrawal of sales tax incentive on our sales w.e.f. July 2007 which has taken this quarter to settle down affecting our budgeted sales targets,*
- (iii) With the start of 15% GST on company's products, the management has reviewed the sales policy and revised price of the product in order to retain the existing customers and compete the uninterrupted imports of under invoiced and mis-declared material."*

#### **44.4 Customs Duty Exemption**

44.4.1 The Government of Pakistan allowed the domestic industry to import inputs for production of the domestic like product without payment of customs duty for a period of ten years vide notification no. 71(I)/95 dated January 19, 1995. The ten years period will end on June 30, 2009.

44.4.2 The major input to produce Tinplate is CRC (paragraph 14 supra). CRC is not produced in the country and the domestic industry is importing it for production of the domestic like product. As per the information supplied by the Applicant for the period from 1<sup>st</sup> July to 31<sup>st</sup> December 2007, share of the imported inputs in cost of production, in value terms, is 91.42 percent.

44.4.3 Currently the customs duty rate on import of CRC (PCT no. 7209.1810) is 20 percent *adval*. On expiry of the exemption of customs duty on import of inputs with effect from July 01, 2009, the cost of production of the domestic like product is likely to increase by 18.28 percent. The Commission is of the view that the likely increase in cost of production of the domestic like product due to expiry of customs duty exemption in near future would effect domestic industry's pricing policy and consequently, sales, market share, profitability etc.

#### **Conclusion of other factors:**

44.4.4 It is evident from the above that the domestic industry had been adversely affected due to factors other than dumped imports. These factors will continue to affect the domestic industry in the same manner regardless of whether or not the duty is removed. These factors are therefore clearly distinguishable from the injurious effects likely to arise should the duty be removed. It is pertinent to

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mention here that the Sales tax exemption given to the domestic industry has already expired on 30.6.2007 and exemption on duty input shall expire on 30.6.2009.

#### **F. CAUSALITY**

45. On the basis of the information, analysis and conclusions, the Commission has determined that there is a relationship between likely recurrence of dumping of the product under review and likely recurrence of material injury to the domestic industry. The injury likely to be suffered due to likely dumped imports would be quite significant and material in case antidumping duty is revoked. Stoppage of dumped imports from South African Exporter to Pakistan is only because of imposition of antidumping duty, which alone is sufficient evidence of likely dumping. Additionally, dumping history of the Exporter along with magnitude of dumping margin (30.49%) for the last year 2006-07 coupled with expected volume of imports (16% of domestic market) establishes that injury likely to be caused by likely dumped imports would in no case be insignificant and shall be due to resumed dumped exports from the Exporter.

#### **G. CONCLUSIONS:**

46. After taking into account all considerations for this review the conclusions, are as follows:

- i. The application was filed by the domestic industry as the Applicant accounts for 100 percent of the total production of the domestic like product;
- ii. The product under review and the domestic like product are alike products;
- iii. The Exporter stopped exporting product under review to Pakistan after imposition of definitive anti-dumping duty by the Commission with effect from July 22, 2002. So, as and when antidumping duty is terminated there is likelihood that the Exporter will start dumping in Pakistani market;
- iv. During last five years, the Exporter exported secondary quality Tinplate to other countries at a price less than its normal value with dumping margin ranging from 1.31% to 43.41%. For analysis purpose, dumping margin determined for last year 2006-07 comes to 30.49%, which is even higher than the original investigation margin of 27.33%. Thus, there is every likelihood of recurrence of dumping of the product under review if definitive anti-dumping duty imposed on the Exporter is terminated;

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- v. The Exporter increased its exports quantities of secondary quality Tinplate by more than 50% during last six years as against increase in its capacity utilization by only 4.34% during the same period. It has also sufficient maneuverability to reduce its export prices as it did in 2005-06 over 2004-05 by reduction of more than 10%;
- vi. The domestic industry is likely to suffer material injury due to the likely recurrence of dumping coupled with considerable volume of imports of the product under review;
- vii. The domestic industry is likely to suffer material injury from likely dumped imports from the Exporter in case of antidumping duty is revoked mainly on account of market share, price undercutting, price depression, price suppression, production and capacity utilization, profitability, return on investment, wages and productivity; and
- viii. The domestic industry suffered and is likely to suffer material injury due to factors other than imports of the product under review. The domestic industry brought an antidumping case against dumped imports from other sources with Jul-Jun 2004-05 as POI, which was boom year for iron and steel industry worldwide. So due to increased profitability and satisfactory position for its most of the injury factors that investigation was terminated. Alongwith the continuation of injury from other sources, material injury to be caused to the domestic industry by likely imports from dumped sources would be significant in case antidumping duty is terminated.

## **H. IMPOSITION OF DEFINITIVE ANTIDUMPING DUTY**

47. In terms of Section 58(3) of the Ordinance, a definitive anti-dumping duty shall not expire if the Commission determines in a review that the expiry of such anti-dumping duty would be likely to lead to continuation or recurrence of dumping and injury. In view of the analysis and conclusions with regard to likely recurrence of dumping, and material injury there is a need to continue imposition of definitive anti-dumping duty on imports of the product under review. Thus, the Commission hereby decides to continue the imposition of definitive anti-dumping duty imposed @ 27.33% on Tinplate produced by the Foreign Producer and exported by the Exporter for an other period of 5 years effective from July 22, 2007.

**(Mrs. Batool Iqbal Qureshi)**  
**Member**

**(Muhammad Ikram Arif)**  
**Chairman**

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**July 05, 2008**

**Annexure I**

<u><b>Column A</b></u>	<u><b>Column B</b></u>
<u><b>A. Views/Comments of the Foreign Producer</b></u>	<u><b>Commission's Response</b></u>
<p><b>"ii. Standard of Review</b></p> <p>"1.3 Article 11.3 of the Anti-dumping Agreement determines that any definitive anti-dumping duty shall terminate on a date not later than 5 years from its imposition, unless the authorities determine in a review initiated before that date that the expiry of the duty would likely lead to continuation or recurrence of dumping and injury.</p> <p>"1.4 Michael Moore (Professor of Economics and National Affairs), Elliot School Department of Economics, George Washington University and senior economist at the Executive Officer of the President of the United States ("Commerce Department Anti-dumping Sunset Review; a Major Disappointment") on page 1 appositely comments as follows in this regard:</p> <p><i>"The language of the Anti-Dumping Agreement purely implies that the presumptive outcome should be that the Anti-dumping order will be repealed after five years. Only if administering authorities could show that the dumping and material injury was likely to reappear or continue will it not be revoked. The authorities cannot simply assume that unfair pricing and injury would occur upon termination of an order</i></p>	<p>Section 58 of the Ordinance sets out similar conditions. The essential purpose of this review is to determine likelihood of recurrence of dumping of the product under review and material injury to the domestic industry. The Commission may have terminated the anti-dumping duty imposed, had it not received a request for review. Nonetheless, the review has been conducted strictly in accordance with the provisions of the Ordinance.</p> <p>In terms of Section 58(3) of the Ordinance, the anti-dumping duty shall not expire after five years if the Commission determines that the expiry of anti-dumping duty would be likely to lead to continuation or recurrence of dumping and injury. Further, Section 62 of the Ordinance sets out the procedural standard for review under Section 58 of the Ordinance.</p> <p>The Commission has gathered necessary information from all available sources (paragraph 17) and has conducted an unbiased and objective examination to determine likely or un-likely recurrence of dumping of the product under</p>

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*- a serious investigation must be undertaken."*

"1.5 The extension of an Anti-dumping Duty is an extraordinary measure that should not be done routinely and the Applicant should for extension of an order rely on persuasive, positive evidence of economic vulnerability."

"1.6 The Applicant therefore needs to provide the National Tariff Commission with substantive information as to not only whether dumping will recur, but also whether injury will recur. For this purpose it is required that at least some positive evidence be adduced to the National Tariff Commission to make a right and justifiable decision. Mere speculative allegations lacking detail fail to comply with this requirement."

review (section D of the report) and material injury to the domestic industry (section E of the report).

The Commission has strictly followed provisions of the Ordinance in this review, which lays down a due procedure to be followed before extending the antidumping duty.

The Commission initiated this review on an application filed by the Applicant after determining that the application contained sufficient evidence to justify initiation of review of likely recurrence of dumping and injury (paragraph 12). However, during the course of the review, the Commission obtained information from all available sources including the Exporters and Foreign Producers and the determination of likely/ unlikely recurrence of dumping of the product under review and material injury to domestic industry is based on the totality of the information obtained from all sources (sections D and E).

**"iii The Applicant failed to submit any evidence of injury being suffered and all likelihood of injury in future"**

"1.7 Article 3.1 of the Anti-dumping Agreement provides that any injury determination shall be based on positive evidence and involves an objective examination of the following evidence:

- The volume of the dumped imports;
- Its impact on prices in the domestic markets;
- Consequent impact of those dump imports on the domestic producers of the like products."

The Commission has conducted an objective and unbiased examination of all injury factors listed in Article 3 of the Agreement on Anti-dumping and Sections 15 and 17 of the Ordinance to determine likelihood of recurrence or continuation of material injury to the domestic industry (section E).

Nonetheless, it may be appreciated that in a review investigating agencies are required to determine the likelihood of continuation or recurrence of injury as opposed to actual injury.

"1.8 This was confirmed in the WTO dispute concerning anti-dumping duties on imports in *Grey Portland Cement from Mexico* where the panel observed:

*"... the accuracy and adequacy of the evidence is relevant to the investigating authorities determination*

The Commission initiated this review investigation after determining accuracy and adequacy of the evidence provided in the application

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*whether there is sufficient evidence to justify initiation of any investigation."*

"1.9 In the *United States Anti-dumping Duty on Dynamic Random Access Memory Semiconductors ("DAMS") of One Megabit or Above from Korea: (Panel decision WT/DS99/R 19 March 1999)* it is again appositely stated that:

*"Mathematical certainty is not required, but the conclusion should be demonstrable on the basis of the evidence adduced."* (My emphasis)"

"1.10 It is clearly evidenced above that the WTO Panels place the onus to demonstrate by means of positive evidence that the continued protection is justified on a petitioner and mere allegations and conjecture are simply deemed to be inadequate. Although the Panels judgments refers to interpretation of article 3.2, it is argued by Exporter that useful instruction can be found in this approach, as the consideration by the Commission in this matter also requires that it be determined whether the petitioners complied with the evidential burden as discussed herein."

"1.11 The onus of proof is, therefore, placed on the Applicant to establish a *prima facie* case i.e. to present evidence that indicates, on a balance of probabilities, that the Sunset Review Investigation should be initiated and implemented by the National Tariff Commission."

"1.12 Despite the fact that the nature of a Sunset Review Investigation is prospective and even counter-factual, it is still necessary that all relevant economic factors be examined, including those listed in Article 3.4 of the Anti-dumping Agreement as well as other factors not listed in Article 3.4 but relevant to the investigation under consideration. (See WTO Appellate Body Report *United States Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan; WT/DS184/AB/R* 24 July 2001 at para 194 (et seq.)"

"1.13 The SEF clearly contains insufficient positive evidence of any material injury that will recur, should the anti-dumping duties be repealed. The injury information in the petition is, at best, dodgy and based mostly on general unfounded and apparent unsubstantiated allegations, dispositive to any conclusion that the Applicant is suffering material injury or will suffer material injury in future. The WTO

In this review, the Commission has determined likelihood of recurrence of dumping and injury on the basis of positive evidence and not on mere allegations and conjecture (sections D and E).

To determine likelihood of recurrence of material injury to domestic industry, the Commission has conducted an objective and unbiased examination of all injury factors listed in Article 3.4 and "other factors" as required under Article 3.5 of the Agreement on Anti-dumping and Sections 15, 17 and 18(2) of the Ordinance (paragraphs 31 to 45).

In terms of Rule 14(8) of the Rules, "the Commission shall inform all interested parties, ......., of the essential facts under consideration which shall form the basis of a decision whether to apply definitive measures under the Ordinance: Provided that such information shall not indicate whether a final determination is affirmative or

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Appellate Body in *United States - Sunset Reviews of Anti-dumping Measures on Oil Country Tubular Goods from Argentine* WT/DS268/AB/RB 12 April 2007 accepts the following argument concerning requirements pertaining to Article 11.3 by stating that:

*"... an investigating authority [should] exercise diligence and rigour in carrying out investigatory and adjudicatory functions and reason to conclusions on the basis of information gathered as part of the process of reconsideration and examination."*

“1.14 The apparent lack of reasoned conclusions on the basis of information gathered in the SEF is apparent where reference is made to the submissions presented on behalf of the Applicant. The National Tariff Commission is respectfully requested to take this into account in final determination of this matter.”

“1.15 Of specific significance is the lack of any evidence incorporated in the SEF to support the so-called injurious factors alleged by the Applicant to recur, should the dumping duties against the Exporter be terminated. Other than a general observation to that effect, the only allegations in regard to injurious factors are those factors listed at par. 13(iii) of the SEF. The SEF however does not expand how any of these factors will manifest, should exports from the Exporter be resumed with or motivate any submissions made in support of the allegations by the Applicant.”

“1.16 Moreover, it is reasonable to conclude that the Applicant is unable to adduce any evidence in this regard that reflects the suffering of injury or the likelihood of recurring injury. The Appellate Body in *United States - Sunset Review of Anti-dumping Duties on Corrosion Resistant Carbon Steel Flat Products from Japan* (WT/DS/244/AB/R page 41) states in this regard: “*In view of the use of the word “likely” in Article 11.3 an affirmative likely determination may be made only if the evidence demonstrates that dumping would be probable if the duty were terminated – not simply if the evidence suggests that such result might be possible or plausible.*”

#### **‘iv Analysis of the Evidence Adduced in the SEF’**

“1.17 It is apparent from the contents of para 13(ii) that the essence of the case of the Applicant evolve around the allegation that a likely

negative.”

Thus the SEF issued by the Commission contained only the essential facts and not any analysis, conclusion or evidence on likelihood of recurrence or continuation of dumping and material injury. However, this report contains all the relevant information, analysis and conclusions on the basis of which the Commission has determined likely/ unlikely recurrence of dumping of the product under review and injury to the domestic industry (sections D and E).

The Commission has conducted examination of all factors including other factors responsible for likely injury. (Section E).

The Commission has examined objectively this allegation of the Applicant (section D)

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recurrence of dumping exist, should the current anti-dumping duty be terminated."

"1.18 It is apparent that this allegation is not supported by any substantive evidence and is in fact refuted by the evidence adduced by the exporter in this matter. It is further apparent from the submissions made that the Exporter has over the past years identified and established alternative markets than the Pakistani market in accordance with its marketing strategies highlighted in its submissions made. It is to this end, common cause that it would be difficult for the Exporter to establish a marketing presence in Pakistan considering its virtual absence from the market as from 2003 until 2007. It is also necessary to note that clear evidence was adduced to the fact that no extra capacities to produce the subject goods are being planned by the Exporter. It is further necessary to take note of the fact that the domestic economic situation in South Africa is very healthy and it is contemplated that exports of tin plate products would decline in the future, as the requirements of the domestic injury continue to increase against the background of the economic growth in the South African market. The hosting of the World Soccer Cup in 2010 in South Africa will increase the demand for subject goods even further in the domestic market with less products available for exports."

Investigation of the Commission revealed that prior to imposition of definitive anti-dumping duty on the product under review, Pakistan was the largest market for exports of secondary quality Tinplate of the Exporter. Shortly after imposition of definitive anti-dumping duty, the Exporter stopped exporting Tinplate into Pakistan and developed other markets (paragraph 31.5). The Commission is of the view that it may not be difficult for the Exporter to re-enter into Pakistan's Tinplate market and gain its market share again.

Investigation further showed that the Foreign Producer has extra capacity to produce Tinplate (paragraph 31.9). The Commission is of the view that idle capacity of the Foreign Producer cannot be directly utilized to feed Pakistan's market as mostly the import is of secondary quality Tinplate (according to the information provided by the Foreign Producers) which is a result of production of the prime quality Tinplate. However, due to continued economic growth in South Africa (as admitted by the Exporter) sufficient quantity of secondary quality Tinplate will be available for export as in domestic market of South Africa usage of secondary quality is being replaced by prime quality Tinplate. (Table-IV)

"1.19 The allegation by the Applicant that the Exporter will approximately export 14 000 metric tons of tin plate Pakistan, should the anti-dumping duties be terminated, is void of any substantive proof and speculative considering the above noted factors, i.e. the lack of market presence in Pakistan during the past five years; the obligation to service existing export markets established during the past five years in terms of the new marketing strategies of the Exporter; the lack of extra capacities or any plans to expand on the current capacities to produce extra tin plate; the healthy state of the domestic market in South Africa and the fact that current suppliers of the

The Applicant's basis for expected volume of imports of Tinplate from the Exporter is the quantity of Tinplate exported by the Exporter during POI of original investigation. Investigation of the Commission showed that prior to imposition of anti-dumping duty, the Exporter was a major source of import of Tinplate into Pakistan. The Exporter stopped exporting Tinplate into Pakistan shortly after imposition of antidumping duty and developed other markets (paragraph 31.5). In this situation, the Commission is of the view

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market will need to be replaced. To simply assume that the Exporter would direct all exports to Pakistan under these circumstances, simply ignores reality."

that although the Exporter may not be able to export Tinplate to Pakistan at the same level, which it had prior to imposition of antidumping duty, yet it may be able to export considerable quantity of secondary quality Tinplate to Pakistan as it exported increased quantity of 67.79%, 76.32 and 82.32% of total secondary quality Tinplate to other countries without corresponding increase in its capacity utilization.

"1.20 Pursuant to the above it is notable in the graph Table 4 (par 24) of the SEF that the Applicant has established a firm market presence over the past five years that have replaced imported products. This table reflects the healthy state of the Applicant with a significant decline in imports from 2006 to 2007. It is apparent that the imposition of Anti-Dumping Duties has served its purpose and that to continue with the imposition of Anti-Dumping Duties against the Exporter, would result in the Exporter being penalized for exports from other exporters which would defy the purpose of Article 11 of the Anti-Dumping Agreement."

The Commission's investigation revealed that after imposition of anti-dumping duty on the product under review with effect from July 22, 2002 its market share in Pakistan fell sharply in the year 2002-03, which was taken by the imports of Tinplate from other sources. However, the domestic industry gained market share from other imports in the subsequent years (paragraph 32.1).

"1.21 It is significant that the Applicant reduced production of the product concerned according to Table 6 significantly from years 2006 to 2007 for reasons not disclosed in the SEF. The discrepancy between Table 4 and Table 6 is questionable, as it appears that the Applicant was able to increase its market share from 62.42 in year 2006 to 74.47 in 2007 whilst it reduced production from 96.71 to 79.66 over the same period. These tables appear to be at odds and no explanation is provided for this apparent discrepancy."

The possible reasons for decline in production and increase in market share and sales of the domestic industry have been discussed and analyzed at paragraphs 32 and 33.

"1.22 What is however clear in Table 7 is that the Applicant enjoyed a healthy profit of approximately 27% on average over the past five years on the product concerned which indicates that any further protection is not required by the Applicant."

The investigation showed that the domestic industry earned reasonable profits during last five years. However, its profits declined over the last three years. (paragraph 37).

"1.23 The contention in para 25.5 of the SEF that the exporter would export tin plate to Pakistan in view of the fact that it exported 67.76%, 76.32% and 82.89% (see Table 2) of total sales of secondary products to other destinations, are for the reasons already above noted simply

The Commission's investigation revealed that the major part of domestic demand is of secondary quality Tinplate and entire imports (including the imports from the Exporter) during the last eight years were also of secondary

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not valid. It is necessary to note that in context of the Exporter's total production, total exports of subject goods represent only 18% of total sales in 2004/5; 22% in 2005/6 and 12% in 2006/7. The balance of products were all sold on Exporter's domestic market. To allege that the Exporter would direct the diminishing amounts of subject goods available for exports to Pakistan, is simply unfounded and does not make any sense. The long term marketing strategies of the Exporter further prevents such search of products into the Pakistan market and reality obviously demands that a market presence first be established over time before exports can be made. In view of this, it is respectfully submitted that the assumption that the Exporter would market its products at the prices indicated in Table 9, should the duties be terminated is purely speculative considering the differences in markets and the strict marketing discipline being applied by the Exporter in so far as exports are concerned. To this end, it is again necessary to advise that the exporter has over the past years engaged in a conscientious effort to export products in a controlled manner in foreign markets and to regulate all exports to foreign markets to a below the de minimums margin levels. The United States Department of Commerce and the Canadian dumping authorities have recognized these factors in several findings where anti-dumping duties were terminated against exports from the Exporter on other related products."

"1.24 Table 10 of the SEF indicates a drop in capacity utilization from 2006 to 2007 despite the increased market share enjoyed by the Applicant as noted in Table 4 above. Again, no explanation is given for this apparent discrepancy. This situation is again reflected in the alleged affects on net profit in table 11 where it is alleged that the Applicant suffered a reduction in total profit from 166 in 2006 to 127 in 2007, without any clear explanation for this."

"1.25 The impact of this situation is again questioned with reference to Table 13, where despite the drop in apparent net profit, the Applicant still deems it necessary to increase employment for the period concerned."

**"v. Causality"**

"1.26 It is as stated above necessary for the Applicant to adduce evidence that there is a likelihood of a dumping in future and

quality Tinplate (paragraphs 32.1 and 32.7). The investigation also showed that major part (ranging between 52 percent to 83 percent during last six years) of the Foreign Producer's sales of secondary quality tinplate comprises of exports. As the Exporter did not export Tinplate to Pakistan during last five years, the Commission is of the view that it will charge similar price from Pakistani importers which it is charging from importers of other countries in case imports from the Exporter resumes (paragraph 34.4). Though this assumption is speculative considering the difference in markets yet if this difference in markets, which was observed in the POI of original investigation is taken into account, is likely to result in further reduced export prices for Pakistani market.

The Commission has determined in this review that there is likelihood of recurrence of dumping of the product under review in case definitive anti-dumping duty imposed is terminated (paragraphs 23 to 30) based on its export of secondary quality tinplate.

The reason of decline in capacity utilization, profits, inventories and increase in market share of the domestic industry are discussed and analyzed in section E.

The effect on employment and productivity is analyzed at paragraph 40.

In terms of Section 18(1) of the Ordinance, the Commission is required

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subsequently also injury, should the duties be terminated. It is however necessary to prove that a causal link exist between the imports or expected imports and the injury to be allegedly suffered. Where causality cannot be proven, it would be irresponsible to speculate on the causes of a future injury expected to be suffered. It is to this end, already clear that in terms of para 33.1 of the SEF that the sales tax exemption plays a significant part in the alleged reduction in net profits allegedly experienced by the Applicant and which effects cannot be attributed to any possible future exports from the Exporter. Moreover, it is apparent from para 32 that the Applicant's production capacity of 120 000 metric ton is excessive considering the market demands of Pakistan and to penalize the Exporter for this apparent lack of prudent planning, would also be inappropriate. It is reasonable to conclude from the SEF data that Applicant's fixed costs, as a result of under utilization is a primary cause of the situation that the Applicant finds itself in. This situation developed in the absence of any imports from the Exporter. To blame the Exporter for the situation is inappropriate as the Applicant is clearly the writer of its own misfortune."

"1.27 Article 3.5 of the Anti-Dumping Agreement requires that it be demonstrated that the effects of dumping are causing injury within the means of this Agreement. It is respectfully submitted that causality is also required where the likelihood of future dumping or injury to be determined. Where the Applicant relies on an adverse economic situation to substantiate the continued imposition of a dumping duty, it is reasonable to expect that such situation arose from imports of products at dumped prices and not from some other factor, as is the case with the Applicant. The Exporter can lastly, not be punished for exports by other producers to Pakistan."

#### **B. Views/Comments of the Applicant**

"b) In our anti-dumping application against France, Italy, Germany, UK and USA we mentioned about the ongoing material injury as well as threats of material injury. The Commission concluded that there was no material injury

to determine causal relationship between dumped imports and material injury to the domestic industry.

In an anti-dumping investigation, the Commission is also required to examine factors other than dumped imports, which are causing injury to the domestic industry in accordance with Section 18(2) of the Ordinance.

In this review, the Commission has examined factors other than the dumped imports of the product under review and has concluded that the domestic industry suffered in the past injury due to other factors (section E) as there were no imports from South Africa due to anti-dumping duty. However if antidumping duty is terminated as a result of this review, there is every, likelihood of dumping from the Exporter and likely material injury from these dumped imports. The domestic industry has no excess capacity as it is norm of business to have somewhat higher capacity to meet further growth. Even the Exporter has excess capacity ranging from 20% to 27% as can be seen from Table-VI.

The Commission has demonstrated the causal relationship between likely recurrence of dumping of the product under review and likelihood of material injury to the domestic industry in this review.

The comment of the Applicant does not relate to this review. The Commission has conducted this review under the Ordinance to determine likely/unlikely recurrence of dumping

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during the POI, which ended on 30.6.2005, but it did not touch upon the allegation of threat of injury. Satisfactory performance by the applicant industry was considered the major reason for no material injury. It is noteworthy that in the absence of dumping, applicant industry would have performed more satisfactorily. That aspect was altogether ignored by the Commission in our case in assessing the material injury sustained by the domestic industry. Secondly no attention was paid to our request for threat of material injury. After going through all the data now shown in SEF, it has become more evident that the earlier identified threat to the domestic industry has materialized. After POI (ending June 2005) all the economic indicators are showing adverse situation. This testifies that our allegation of threat of injury was correct which was somehow ignored by the Commission. Similarly in present investigation when the Commission is to determine the likely dumping and likely injury some crucial facts pertaining to likely situation have not been clearly given in the SEF, which will be pointed out while commenting on relevant facts in following paragraphs."

**"Para 10:**

It has been admitted that the evaluation and examination of the application showed that it contains sufficient evidence of likely recurrence of dumping and injury to the domestic industry. But nowhere in the SEF likely recurrence of dumping and consequent injury to the domestic industry has been examined based on data obtained from the Producer/Exporter from South Africa."

"a) This Para deals with questionnaire response by the exporter and foreign producer. As per sub-Para 19.1.9 whatever said by the producer has been accepted by the Commission. In sub-Para 19. 1.7 the foreign producer says that in case anti-dumping duty is terminated it does not have any plans to export to Pakistan has not been even questioned. Generally in situations where imports from dumped sources are stopped after levy of anti-dumping duty, occurrence of dumping is assumed by antidumping authorities like USA"

of the product under review and likely/unlikely recurrence of material injury to the domestic industry due to imports of the product under review. The Commission in this review has reached the conclusion that the domestic industry suffered injury due to the factors other than imports of the product under review. And one such other factor is low priced imports of Tinplate from sources other than the Exporter (paragraphs 34.6.4 and 44.2.2) as the Exporter did not export during this period due to levy of antidumping duty.

The Ordinance sets out different standards for initiation of an investigation and determination of likely or unlikely recurrence or continuation of dumping of the product under review and material injury to domestic industry. This review was initiated by the Commission after determining that there is sufficient evidence submitted in the application, which justifies initiation of a review. Likely recurrence of dumping of the product under review is determined in accordance with the relevant provisions of the Ordinance on the basis of the information submitted by the Exporter/Foreign Producer after initiation of the review. Likely recurrence of material injury to domestic industry is determined on the basis of the information submitted by the domestic industry in accordance with the relevant provisions of the Ordinance.

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"b) Against Commission's acceptance of producers information as per sub-para 19.1.9, under the head price effects at sub-para 25.2 the assumption of 5% reduction in prices by the domestic industry at the first instance in case of resumption of imports from South Africa (in original investigation price undercutting ranged from 26% to 39%) has been questioned in the shape of basis and evidence for this assumption. This shows clear cut discrimination to the readers against the domestic industry which needs to be corrected."

"c) In sub-para 19.2.8 it has been shown that after imposition of anti-dumping duty, the exporter has shifted his sales to other countries. It implies from this statement that perhaps now exporter does not need any new market for its exports like Pakistan especially after removal of anti-dumping duty. This in fact is wrong signal. Here under para 19, the installed capacity and existing capacity of the producer should have been given which gives ample proof that the producer has enough spare capacity which can be utilized to direct its exports to Pakistani market in case of removal of anti-dumping duty."

"d) Based on foreign producer's information available on its website we have already informed the Commission that its steel production was 4.863 million tones during 2006 at 82% capacity utilization. With huge unutilized capacity of 18% as compared to Pakistani market, which for tinplate is less than 0.1 million tones per annum and with producer/exporter stated plans of pushing to maximum capacity from June, 2007 onwards, serving both the domestic and export market there is every likelihood of dumping to Pakistani market in case of removal of anti-dumping duty has not been touched upon in the SEF. We do not expect any sun-set review investigation where installed and existing capacity utilization of the foreign producer(s) is not discussed. This lacks particularly in this SEF."

"Para 23:

Here volume of dumped imports has been given which shows that after levy of anti-dumping duty imports from dumped source reduced to nil. Instead of discussing this situation it has been stated that according to the applicant the exporter will export approximately 14000 tones of tinplate into Pakistan based on imports of tinplate from South Africa during the POI. It has been further

The Commission has provided full opportunity to all interested parties, including the Applicant, to defend their interests in this review investigation. The Commission has satisfied itself as to the accuracy and adequacy of the information submitted by different interested parties.

In the SEF, the Commission disclosed only the facts and did not provide any analyses or conclusion in accordance with Rule 14(8) of the Rules. However, this report contains facts, analysis, conclusion and determination on all relevant factors including the Exporters exports to Pakistan and other destinations (paragraphs 31 onwards).

The Foreign Producer produces a number of steel products including the product under review. Its website does not contain the information on installed production capacity and production of the product under review. However, the Commission has obtained information on installed production capacity and capacity utilization for product under review of the Foreign Producer. Analysis and conclusion of the Commission on Foreign Producer's installed production capacity and capacity utilization of the product under review are given at paragraph 31.9 infra.

The Commission does not discriminate between different interested parties and has provided full opportunity to all interested parties to defend their interests in this review.

The Commission has gathered necessary information from all available sources including the

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stated that as per exporter, it exported 17688 tones of tinplate during the POI. Apparent message from these statements is perhaps the applicant has not taken 100% correct assumption. Firstly the applicant's assumption is based on imports to Pakistan and not exports to Pakistan by the exporter, which may differ. Secondly the assumption is not higher than actual exports. Thirdly the Commission has not given the actual imports during the POI as per customs data available with the Commission. This also shows somewhat discrimination against the applicant domestic industry which in a way is not fair."

**"Para 24:**

Here in table 6, production of domestic industry is at the lowest level in 2007 from FY 2005 onwards. This if compared with lowest share held by imports in 2007 given in table 5 does not reflect the true comparison. Here the fact should have been disclosed that by end of June 2007 the domestic industry disposed off its entire inventory due to levy of sales tax effective from 1.7.2007, otherwise share of imports in domestic market is well above 24.52%. Here average inventory held during previous years if deducted from sales by domestic industry during 2007 would have reflected the true picture."

**"Para 25:"**

"b) For indexed figures given in table-9, in sub-para 25.6 it has been assumed that average export price charged by the exporter from importers of the other countries at FOB level would have also been charged from the Pakistani importers. This assumption is not correct as:

"i) Landed cost worked out for secondary quality in table-9 is shown either higher or equivalent to domestic prices as compared to much lower landed cost of secondary quality imports from other sources shown in table-8 than the domestic prices. Here unless the exporter enters into this market at -reduced prices which may be lesser than the prices of tinplate from other sources he would not be able to sell his product."

"ii) As per sub-para iii(b) of para 44 of the non-confidential version of the NTC final determination of original investigation it was found by the Commission that the prices of

Applicant, the Foreign Producer, the Exporter and PRAL (paragraph 17). The Commission has satisfied itself of the accuracy and adequacy of the information submitted or obtained from different interested parties/sources and has conducted an unbiased and objective examination of all available information in this review.

The Commission issued SEF strictly in accordance with the provisions of Rule 14(8) of the Rules and disclosed essential facts only.

Commission's analysis and conclusions on domestic industry's production, market share, sales, inventories are given in section E.

The Commission has also analyzed other factors, which caused injury to domestic industry

The Commission assumed that the Exporter would charge similar price of the product under review if it export to Pakistan on basis of the information obtained from the Exporter, which is discussed at paragraph 34.4

If assumption of the Applicant is accepted that the Exporter will reduce its price less than the price of Tinplate imported from other sources to enter in Pakistan's market, then, imports of the product under review, if any, will also effect market share of the imports of other countries in addition to the market share and prices of the domestic like product.

Prices of the products change over time due to a number of factors, and usually same business behavior cannot be predicted for a longer period of

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imports from other countries were higher than the prices of the investigated product. Against these facts how it can be assumed now that the prices of exporter from South Africa would be higher than the prices of imports from other countries."

"iii) It has also not been shown that what was the comparative position of prices of exporter of South Africa to other countries and Pakistan during POI of original investigation. Even that comparison would lead to an assumption nearest to reality and based on proper evidence."

"iv) Product mix for exports to other countries and Pakistan was not necessarily the same by the South African exporter during the original investigation. So product mix now sold to other countries cannot be made the basis for assumed exports to Pakistan"

"c) As sales tax has been made effective on domestic industry from 1.7.2008 its likely impact with sales tax should also have been disclosed here as all price comparisons in table 8 and 9 are without sales tax on domestic industry, which was exempted from sales tax until 30.6.2007. So any edge to the domestic industry until 30.6.2007 was due to other reason i.e. exemption of sales tax and now comparison should be made based on actual situation on ground, which is very much needed to be discussed with respect to likely injury to the domestic industry."

"Paras 26, 27, 29, 30:

All tables given under above paragraphs clearly show that performance of the domestic industry with respect to capacity utilization, profitability, salary/wages and return on investment are showing drastic down fall. With sales tax impact added to this scenario and likely dumping from South Africa if anti-dumping duty is removed would adversely affect the domestic industry. These facts need to have been reflected clearly in the SEF. This deserves Commissions' consideration while finalizing this review."

"2 The domestic industry has already given the relevant data for each factor of injury for the

time.

In the original investigation, normal value of the product under review was determined on the basis of prices which prevailed in the domestic market of the Exporter. Thus there is no need to disclose prices of Tinplate exported to other countries by the Exporter.

The Exporter exported grades A, B, C and D (secondary quality Tinplate) of the investigated product to Pakistan during the POI of the original investigation. For comparison purposes in this review, prices and volume of grades A, B, C and D of secondary quality Tinplate exported by the Exporter to other countries have been used.

The impact of expiry of sales tax concession on prices of the domestic like product has been discussed at paragraphs 34.6.3 and 44.3.

In this review, the Commission has examined all injury factors listed under Sections 15 and 17 of the Ordinance to determine likelihood of recurrence of injury. The Commission also analyzed and determined other factors, which caused injury to domestic industry in accordance with Section 18(2) of the Ordinance. (Section E). The points raised by the Applicant have been considered by the Commission in this review.

The information submitted by the Applicant for the period from 1<sup>st</sup> July

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six months ending 31.12.2007. It reveals further dismal performance by the domestic industry due to sales tax impact. We would request the Commission to consider this data and discuss the same under each factor of injury. Just mentioning the same, as done in SEF under the head other factor does not amount to disclosing the essential facts with respect to each factor of injury. We earnestly request the Commission to take our comments on the SEF positively and consider the same in its final determination."

to 31<sup>st</sup> December 2007 has also been taken into account in determination of likelihood of recurrence of material injury to domestic industry (section E).