



**Government of Pakistan
National Tariff Commission**

REPORT

ON

**Final Determination and Levy of Definitive Anti-dumping Duties on Imports of
Hydrogen Peroxide Originating in and/or Exported from Belgium, China, Indonesia,
South Korea, Taiwan, Thailand, and Turkey**

A.D.C No.20/2009/NTC/HP

July 02, 2011

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

2. The Commission has conducted this investigation under the Ordinance and the Rules on imports of Hydrogen Peroxide (“HP”), originating in and/or exported from Kingdom of Belgium, People’s Republic of China, Republic of Indonesia, Republic of Korea, Republic of China (Taiwan), Kingdom of Thailand and Republic of Turkey (hereinafter collectively referred to as the “Exporting Countries”). The Commission has made final determination in this investigation under Section 39 of the Ordinance. This report on final determination has been issued in accordance with Section 39(5) of the Ordinance and Article 12.2 of the Agreement on Antidumping.

3. In terms of Section 39(1) of the Ordinance, the Commission shall make a final determination of dumping and injury within one hundred and eighty days of publication of a notice of preliminary determination in the official Gazette. Notice of preliminary determination in this investigation was published on September 27, 2010 in official Gazette.

A. PROCEDURE

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

5. Receipt of Application

The Commission received a written application from Sitara Peroxide Limited, Faisalabad and Descon Oxychem Limited, Lahore (hereinafter referred to as the “Applicants”), on July 20, 2009. The Applicants alleged that HP, produced and/or exported from the Exporting Countries was/is being exported to Pakistan at dumped prices. The High Commissions/Embassies of the Exporting Countries in Islamabad were informed through note verbale dated July 28, 2009 of the receipt of application in accordance with requirements of Section 21 of the Ordinance and Article 5.5 of the Agreement on Anti-dumping.

6. Evaluation and Examination of the Application

The examination of the application showed that it met the requirements of Section 20 of the Ordinance and Article 5.3 of the Agreement on Anti-dumping as it contained sufficient evidence of dumping of HP from the Exporting Countries and injury to the domestic industry caused therefrom. The requirements of Rule 3 of the Rules, which relate to the submission of information prescribed therein were also found to have been met.

7. Domestic Industry

7.1 Domestic industry in terms of Section 2(d) of the Ordinance is defined 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 that product, except that when any such domestic producers are related to the exporters or importers, or are themselves importers of the dumped investigated product in such a case “domestic industry” shall mean the rest of the domestic producers.”

7.2 The domestic Industry manufacturing HP comprises of two units i.e., the Applicants. Their installed production capacity was/is 60,000 MT per annum on three shifts basis.

8. Standing of the Application

8.1 In order to determine whether the application was made by or on behalf of domestic industry and to assess the standing of the domestic industry on the basis of the degree of support for or opposition to the application expressed by the domestic producers of the like product, relevant provisions of Section 24 of the Ordinance have been considered. In terms of Section 24(1) of the Ordinance, an application shall be considered to have been made by or on behalf of the domestic industry only if it is supported by those domestic producers whose collective output constitutes more than fifty percent of the total production of a domestic like product produced by that portion of the domestic industry expressing opinion either support for or opposition to the application.

8.2 Furthermore, Section 24(2) of the Ordinance provides that no investigation shall be initiated when domestic producers expressly supporting an application account for less than twenty five percent of the total production of domestic like product produced by the domestic industry.

8.3 The application fulfils the requirements of Section 24 of the Ordinance and Article 5.4 of the Agreement on Anti-dumping, as the Applicants are the only two domestic producers of HP and thereby represents 100 percent of the total domestic production. Therefore, the application is considered to have been made by the domestic industry as it is supported by 100 percent of the total domestic production of the like product.

8.4 On the basis of the above information the Commission has determined that the application was made by the domestic industry as the Applicants represents 100 percent of the domestic production of HP.

9. Applicants’s Views

9.1 The Applicants, *inter alia*, raised the following issues in their application regarding dumping of HP and material injury as well as material retardation to the establishment of the domestic industry caused therefrom:

- i. HP imported from the Exporting Countries into Pakistan and HP produced by the domestic industry in Pakistan are like products;
- ii. the exporters/foreign producers from the Exporting Countries are exporting HP to Pakistan at dumped prices; and

- iii. export of HP by the exporters/foreign producers from the Exporting Countries to Pakistan at dumped prices has caused and is causing material injury to the domestic industry and material retardation to the establishment of domestic industry producing HP, mainly through:
 - a) price depression;
 - b) negative effect on ability to raise investment;
 - c) negative effect on wages and salaries;
 - d) magnitude of dumping margin.

9.2 The Applicants also claimed that there is threat of material injury and material retardation for the establishment of the domestic industry.

10. Initiation of Investigation

10.1 The Commission upon examining accuracy and adequacy of the evidence provided in application established that there is sufficient evidence of alleged dumping of HP from the Exporting Countries and consequent injury to the domestic industry, to justify initiation of an investigation in accordance with Section 23 of the Ordinance. Consequently, the Commission decided to initiate an investigation on August 26, 2009. In terms of Section 27 of the Ordinance, the Commission issued a notice of initiation, which was published in the Official Gazette¹ of Pakistan and in two widely circulated national newspapers² (one in English language and one in Urdu language) on August 31, 2009. Investigation concerning imports of HP into Pakistan (classified under PCT³ No. 2847.0000) contained in the First Schedule of Customs Act, 1969 (IV of 1969) originating in and/or exported from the Exporting Countries was thus initiated on August 31, 2009.

10.2 The Commission notified the Embassies of the Exporting Countries in Pakistan on August 31, 2009 with a request to forward notice of initiation to all exporters/foreign producers of HP in their respective countries. Copies of notice of initiation were also sent to the exporters/foreign producers of the Exporting Countries whose complete addresses were available with the Commission, the known Pakistani importers, and the Applicant on August 31, 2009, in accordance with the requirements of Section 27 of the Ordinance.

10.3 In accordance with Section 28 of the Ordinance, the Commission also sent copies of full text of the written application (non-confidential version) to the known exporters/foreign producers in the Exporting Countries and embassies of the Exporting Countries in Pakistan on September 02, 2009.

11. Exporters/Foreign Producers Involved in Alleged Dumping of the HP

11.1 The Applicants identified sixteen exporters/foreign producers involved in alleged dumping of the investigated product from the Exporting Countries. The Applicants stated that

¹ The official Gazette of Pakistan (Extraordinary) dated August 31, 2009.

² The dailiy "Dawn" and the 'Daily Express' of August 31, 2009 issue.

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

there may be other producers and exporters but the Applicants do not have the names and addresses of these exporters/foreign producers. Therefore, the Applicants requested that anti-dumping duty may be imposed on all imports of HP from the Exporting Countries.

11.2 Upon initiation of the investigation copy of the notice of initiation was sent to the exporters/foreign producers (identified by the Applicants) on August 31, 2009, whose complete postal addresses were available. For the other exporters/foreign producers from the Exporting Countries the Commission requested to the High Commissions/Embassies of the Exporting Countries in Islamabad to forward notice of initiation to all exporters/foreign producers of HP in their respective countries.

12. Investigated Product and Domestic Like Product

12.1 Section 2 of the Ordinance defines the “investigated product”, and the “domestic like product” as follows:

i. Investigated Product:

“a product, which is subject to an anti-dumping investigation as described in the notice of initiation of the investigation”.

ii. Domestic Like Product:

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

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

i. Investigated Product:

The investigated product is HP. It is classified under PCT Heading No. 2847.0000. HP is used as bleaching agent in textile industry, paper & pulp industry, for sterilization of packaging material of milk, fruit juices etc (aseptic packaging) industry and general purpose as oxidizing, detoxifying and deodorizing agent. It is also used for waste water treatment, soil remediation. The Applicant has submitted in the application that there is no difference between investigated product and the domestic like product.

ii. Domestic Like Product

The domestic like product is HP. It is used as bleaching agent in textile industry, paper & pulp industry, for sterilization of packaging material of milk, fruit juices etc (aseptic packaging) industry and general purpose as oxidizing, detoxifying and deodorizing agent. It is also used for waste water treatment, soil remediation. It is classified under PCT Heading No. 2847.0000.

12.3 In order to establish whether the investigated product and the domestic like product are like products, as contended by the Applicants, the Commission reviewed all the relevant information received/obtained from various sources including the Applicant in the following terms:

- i.** the basic raw materials used in the production of the investigated product and the domestic like product are identical i.e. natural gas, air, water and catalyst.

- ii. the two products (the investigated product and the domestic like product) are produced with a similar manufacturing process;
- iii. both the products have same/similar colour and appearance;
- iv. the two products are substitutable in use. They are mainly used in bleaching and sterilization process in textile and paper and pulp industry and general purpose as bleaching, oxidizing, detoxifying and deodorizing agent.
- v. both the products are classified under the same PCT/HS No. 2847.0000.

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

13. Period of Investigation

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

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

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

13.2 The POI selected for determination of dumping and injury, are, therefore, respectively, as follows:

For determination of dumping: from April 1, 2008 to March 31, 2009
For determination of injury: from April 1, 2006 to March 31, 2009

14. Information/Data Gathering

14.1 The Commission sent questionnaires on September 02, 2009 to sixteen exporters/foreign producers from the Exporting Countries (paragraph 9 supra), and asked to respond within 37 days of the dispatch of the questionnaires i.e by October 9, 2009. Questionnaire was also provided to the High Commissions/Embassies of the Exporting Countries in Islamabad with a request to forward it to all exporters/foreign producers of the investigated product based in their respective countries in order to submit information to the Commission.

14.2 The Commission has an access to 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 final determination the Commission has also used import data obtained from PRAL's database in addition to the information provided by the Applicants, importers and exporters/foreign producers from the Exporting Countries.

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

15. Questionnaire(s) Response by the Exporters/Foreign Producers from Exporting Countries

15.1 The Commission sent questionnaire to sixteen exporters/foreign producers from the Exporting Countries on September 02, 2009 with a request to respond within 37 days. The following exporters/foreign producers requested for extension in time period (beyond 37 days time period) for submission of information on Questionnaire:

- i) Evonik Degussa, Belgium;
- ii) Evonik Degussa, Gmbh, Germany;
- iii) PT Evonik Degussa Peroxide, Indonesia;
- iv) Evonik Degussa Korea Limited, Korea;
- v) Evonik Headwaters Korea Ltd., Korea;
- vi) OCI Company Limited, Korea;
- vii) OCI Corporation, Korea;
- viii) Hansol Chemical Company Limited, Korea;
- ix) Thai Peroxide Company Limited, Thailand and
- x) Pusula Ithalat Ihracat VE Pazarlama A.S., Turkey.

15.2 After considering the reasons given in their requests for extension in time period, the Commission granted extension in time period for submission of information.

15.3 In response to the Questionnaire the following exporters/foreign producers of HP provided requisite information:

- i. Evonik Degussa, Belgium;
- ii. Evonik Degussa, Gmbh, Germany;
- iii. PT Evonik Degussa Peroxide, Indonesia;
- iv. Evonik Degussa Korea Limited, Korea;
- v. Evonik Headwaters Korea Ltd., Korea;
- vi. OCI Company Limited, Korea;
- vii. OCI Corporation, Korea;
- viii. Hansol Chemical Company Limited, Korea and
- ix. Thai Peroxide Company Limited, Thailand.

15.4 None of the exporters/foreign producers of the investigated product from the China, Taiwan and Turkey provided requisite information. The Commission, after expiry of the time period given for submission of information on Questionnaire informed the exporters/foreign producers (who did not respond to Questionnaire) from the Exporting Countries through a letter dated October 29, 2009, that in case no information is provided in response to the Questionnaire, 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.

15.5 Questionnaire Response from Evonik Degussa, Belgium

15.5.1 The questionnaire was sent to Evonik Degussa, Belgium on September 02, 2009. Questionnaire response from Evonik Degussa, Belgium was received in the Commission on October 31, 2009.

15.5.2 Evonik Degussa, Belgium is a joint stock company, founded in September 12, 2007 as part of the renaming of RAG-Beteiligungs-AG to Evonik Industries AG. Its corporate headquarter is in Essen, Germany. Evonik is an industrial group, holding leading positions in the business areas including chemicals, energy, and real estate. The investigated product exported to Pakistan during the POI was produced by Evonik Degussa, Belgium and sold by Evonik Degussa, Germany in European Union (EU) as well as outside EU including Pakistan.

15.5.3 The Commission accepted the information supplied by Evonik Degussa, Belgium and Evonik Degussa, Germany for the purposes of this final determination and dumping margin is determined for Evonik Degussa, Belgium on the basis of that information.

15.6 Questionnaire Response by the PT Evonik Degussa Peroxide, Indonesia.

15.6.1 The Commission sent questionnaire to PT Evonik Degussa Peroxide, Indonesia (hereinafter referred to as "Evonik Degussa, Indonesia") on September, 02, 2009. Its response was received in the Commission on October 31, 2009. According to the information provided in response to the questionnaire, Evonik Degussa, Indonesia is a limited liability company, but it is not listed on the Stock Exchange Market of Indonesia. It belongs to Evonik Degussa Group, Germany. Evonik Degussa, Indonesia was established based on the Notarial Deed of Sutjipto, S.H dated January 28, 2004, and it acquired the assets of PT Risjad Brasali Peroxide Jakarta, Indonesia (an Indonesian company producing HP) in February 2004. The Company commenced its commercial operations on February 24, 2004. Evonik Degussa, Indonesia was incorporated in Indonesia for the manufacture and sale of HP. The Company has its production facility at Cikarang Industrial Estate I, Indonesia.

15.6.2 The information submitted by Evonik Degussa, Indonesia in response to the questionnaire was analyzed at the Commission and certain deficiencies were identified. Accordingly, those data deficiencies were communicated to it vide Commission's letter dated January 01, 2010.

15.6.3 Evonik Degussa, Indonesia was asked to provide the deficient information/data no later than January 07, 2010, so as to enable the Commission to consider and analyze the same for the purposes of this investigation. Evonik Degussa, Indonesia requested for extension in time to respond the deficiencies. Evonik Degussa, Indonesia responded to the deficiencies vide its letter dated January 08, 2010.

15.6.4 The Commission accepted the information supplied by Evonik Degussa, Indonesia for the purposes of this investigation and the dumping margin for Evonik Degussa, Indonesia is determined on the basis of that information.

15.7 Questionnaire Response by the Evonik Degussa Korea Limited, Korea.

15.7.1 The Commission sent questionnaire to Evonik Degussa Korea Limited, Korea (hereinafter referred to as "Evonik Degussa Korea") on September, 02, 2009. Its response was

received in the Commission on October 20, 2009. According to the information provided in response to the questionnaire, Evonik Degussa Korea (a trading company) was founded on October 1, 1985, which is owned by Evonik Degussa GmbH, Germany. Evonik Headwaters Korea Limited, Korea (hereinafter referred to as “Evonik Headwaters”) was incorporated on July 5, 2006, under the Commercial Code of the Republic of Korea to manufacture and sell HP. The company name was changed from Degussa Headwaters Korea Limited to Evonik Headwaters Korea Limited on December 06, 2007. The company was registered as foreign invested company under the Foreign Investment Promotion Act of the Republic of Korea.

15.7.2 The information submitted by Evonik Degussa Korea in response to the questionnaire was analyzed at the Commission and certain deficiencies were identified. Accordingly, those data deficiencies were communicated to it vide Commission’s letter dated January 01, 2010.

15.7.3 Evonik Degussa Korea was asked to provide the deficient information/data no later than January 07, 2010, so as to enable the Commission to consider and analyze the same for the purposes of this investigation. Evonik Degussa Korea requested for extension in time to respond the deficiencies. Evonik Degussa Korea responded to the deficiencies vide its letter dated January 08, 2010.

15.7.4 The Commission accepted the information supplied by Evonik Degussa Korea and Evonik Headwaters for the purposes of this investigation and the dumping margin for Evonik Degussa Korea and Evonik Headwaters is determined on the basis of that information.

15.8 Questionnaire Response by OCI Company Limited and OCI Corporation, Korea

15.8.1 The Commission sent questionnaire to OCI Company Limited (hereinafter referred to as “OCI”) and OCI Corporation, Korea (hereinafter referred to as “OCIC”) on September 02, 2009. Its response was received in the Commission on October 23, 2009. According to the information provided in response to the questionnaire, The previous name of OCI was Dongyang Chechal Chemical Company Limited (DC Chemical Company Limited). DC Chemical Company Limited setup its first plant for the manufacture of HP in May 1979, having production capacity of 10,000 MT per annum at 100 percent concentration. The factory is located at Iksan, Korea. The Company was listed on the Stock Exchange Market of Korea, in 1976. The company changed the name from DC Chemical Company Limited to OCI Company Limited in April 2009. OCI is producing and selling 16 organic and in-organic chemicals including Sodium Carbonate, Caustic Soda, Glacial Acetic Acid, Sodium Chloride, Hydrogen Peroxide, Soda Ash etc. OCIC is a trading corporation related to OCI.

15.8.2 The information submitted by OCI in response to the questionnaire was analyzed at the Commission and certain deficiencies were identified. Accordingly, those data deficiencies were communicated to it vide Commission’s letter dated December 12, 2009 and January 01, 2010. OCI responded to the deficiency letters vide its letters dated December 18, 2009 and January 07, 2010.

15.8.3 The Commission accepted the information supplied by OCI and OCIC for the purposes of this investigation and the dumping margin for OCI and OCIC is determined on the basis of that information.

15.9 Questionnaire Response by Hansol Chemical Company Limited, Korea

15.9.1 The Commission sent questionnaire to Hansol Chemical Company Limited, Korea (hereinafter referred to as "Hansol") on September, 02, 2009. Its response was received in the Commission on October 22, 2009. According to the information provided in response to the questionnaire, Hansol was incorporated on March 13, 1980 to engage in production and sale of various petrochemicals and chemical products. Hansol has production facilities in Wanju-gu, Jeollabuk-do Province and Ulsan Metropolitan City. Hansol listed on the Stock Exchange Market of Korea on May 20, 1989. On December 01, 1995, the company purchased the right of business of former Hansol Hwahak Company Limited and changed the name of the company from YoungWoo Chemical to Hansol Hwahak Company Limited and changed its name again to Hansol Chemience on January 25, 2000. Then on March 26, 2004, the company changed its name from Hansol Chemience to Hansol Chemical Company Limited.

15.9.2 The information submitted by Hansol in response to the questionnaire was analyzed at the Commission and certain deficiencies were identified. Accordingly, those data deficiencies were communicated to it vide Commission's letter dated December 12, 2009 and December 31, 2009. Hansol responded to the deficiency letters vide its letters dated December 18, 2009 and January 06, 2010.

15.9.3 The Commission accepted the information supplied by Hansol for the purposes of this investigation and the dumping margin for Hansol is determined on the basis of that information.

15.10 Questionnaire Response by Thai Peroxide Limited, Thailand

15.10.1 The Commission sent questionnaire to Thai Peroxide Limited, Thailand (hereinafter referred to as "Thai Peroxide") on September, 02, 2009. Its response was received in the Commission on October 21, 2009. According to the information provided in response to the questionnaire, Thai Peroxide is a joint venture between Aditya Birla Group and FMC Corporation, USA. Thai peroxide is group company of Aditya Birla Group which has operations over 40 manufacturing facilities and services in 18 countries including Thailand, India, Canada, Australia, Indonesia, Egypt, USA, China and Philippines etc. FMC Corporation, USA is the fourth largest producer of HP in the world is company having headquarters in USA.

15.10.2 The information submitted by Thai Peroxide in response to the questionnaire was analyzed at the Commission and certain deficiencies were identified. Those data deficiencies were communicated to it vide Commission's letter dated December 12, 2009 and December 31, 2009. Thai Peroxide responded to the deficiency letters vide its letters dated December 18, 2009 and January 06, 2010.

15.10.3 The Commission has accepted the information supplied by Thai Peroxide for the purposes of this investigation and the dumping margin for Thai Peroxide will be determined on the basis of that information.

16. Verification of the Information

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

16.2 In order to verify the information provided by the Applicants and to obtain further information (if any), on-the-spot-investigation was conducted at the offices and plant of the Applicants from October 05 to 10, 2009.

16.3 To verify the information/data provided by the exporters/producers from Indonesia, Korea and Thailand in response to the questionnaire and to obtain further information (if any), on-the-spot-investigation was conducted at their premises from January 11 to 22, 2010.

17. Public File

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

18. Confidentiality

18.1 In terms of Section 31 of the Ordinance, the Commission shall keep confidential any information submitted to it, which is by nature confidential, or determined by the Commission to be of confidential nature for any other reason, or provided as confidential by parties to an investigation, upon good cause shown to be kept confidential.

18.2 The Applicants and exporters/foreign producers requested to keep confidential the information, which is by nature confidential in terms of Section 31 of the Ordinance. This information includes data relating to sales, sale prices, cost to make and sell, inventories, production, profit/(loss), return on investment, cash flow, growth, investment, salaries & wages, number of employees and capacity. In addition to this, the Applicants, exporters/foreign producers and other interested parties also provided certain information on confidential basis, as its disclosure would cause adverse effect upon them.

18.3 Pursuant to requests made by the Applicants, exporters/foreign producers and other interested parties to treat certain information as confidential, the Commission has determined confidentiality in light of Section 31 of the Ordinance and for the reasons that disclosure of such information may be of significant competitive advantage to a competitor, or because its disclosure would have a significant adverse effect upon the interested parties providing such information.

18.4 However, in terms of Sub-Section (5) of Section 31, non-confidential summaries of all confidential information, which provides reasonable understanding of the substance submitted in confidence, were placed in public file.

19. Preliminary Determination and Levy of Provisional Antidumping Duty

19.1 The Commission initiated this investigation on August 31, 2009. In terms of Section 37(1) of the Ordinance, "the Commission shall make a preliminary determination not later than 180 days from the date of initiation of investigation" i.e. by February 26, 2010, however, it was delayed due to non-completion of composition of the Commission. The Commission made its preliminary determination in this investigation on September 21, 2010 (when its composition in

terms of Section 5 of the NTC Act 1990 was complete) and in terms of Section 37 of the Ordinance, the Commission issued a notice of preliminary determination, which was published in the official Gazette of Pakistan⁴ and in two widely circulated national newspapers⁵ (one English language and one Urdu Language) on September 27, 2010. The Commission imposed provisional antidumping duties on the investigated product as follows:

Table-I
Provisional Antidumping Duty Rate

Exporter/Foreign Producer	Provisional antidumping duty as %age of C&F price
Belgium	
Evonik Degussa, Germany and Evonik Degussa, Belgium	9.20
All others	84.48
South Korea	
Evonik Degussa, Korea and Evonik Headwaters	14.77
All others	14.77
Thailand	
Thai Peroxide	3.82
All others	25.04
Indonesia	
Evonik Degussa, Indonesia	25.20
All others	25.20
China- All exporters	71.93
Taiwan- All exporters	35.61
Turkey- All exporters	25.61

19.2 The provisional antidumping duties as mentioned in above table, were *ad valorem* of C&F price of imports of HP from above mentioned exporters from the Exporting Countries, and were for a period of four months effective from September 27, 2010.

19.3 The Commission besides sending the notice of preliminary determination to the High Commissions/Embassies of the Exporting Countries in Islamabad also sent the notice of preliminary determination to the known exporters/foreign producers, importers, and the Applicants in accordance with the requirements of Section 37(4) of the Ordinance. The findings of the Commission in the preliminary determination were as follows:

⁴ The official Gazette of Pakistan (Extraordinary) of September 27, 2010 issue.

⁵ 'Dawn' and 'Express' of September 27, 2010 issues.

- i. the application was filed by the domestic industry as the Applicants represent 100 percent of the production of domestic like product;
- ii. the investigated product and the domestic like product are alike products;
- iii. during POI, the investigated product was exported to Pakistan by the exporters/foreign producers from the Exporting Countries at prices below its normal value;
- iv. the volume of dumped imports of the investigated product and the dumping margins established for the exporters/foreign producers of the investigated product from the Exporting Countries are above the negligible and *de minimis* levels respectively except Hansol, OCI and OCIC;
- v. the dumping margins expressed as a percentage of weighted average adjusted export price at ex-factory level is ranging between 1.07 percent to 124.58 percent of ex-factory price of exporters/foreign producers from the Exporting Countries;
- vi. the domestic industry was materially retarded during the POI on account of volume of dumped imports, loss of market share, price suppression, decline in profits, decline in output, decline in capacity utilization, negative effect on cash flow, negative effect on employment, salaries and wages, negative effect on return on investment and negative effect on ability to raise capital in terms of Section 15 and 17 of the Ordinance; and
- vii. there is a causal relationship between dumped imports of the investigated product and the material retardation to the establishment of the domestic industry.

20. Hearing

20.1 In terms of Rule 14 of the Rules, the Commission shall, upon request by an interested party made not later than thirty days after publication of notice of preliminary determination, hold a hearing at which all interested parties may present information and arguments.

20.2 Hearing in this investigation was held on December 14, 2010 upon the request of the exporters/foreign producers and importers. The Applicants and other interested parties attended the hearing (List of participants is annexed at Annexure I). Record of hearing was placed on the public file (paragraph 17 supra).

21. Disclosure Meetings after Preliminary Determination

21.1 In terms of Rule 11 of the Rules, the Commission, upon request made by a foreign producer/exporter within fifteen days of the publication of notice of preliminary determination, shall hold disclosure meeting with the producers or exporters to explain dumping calculation methodology applied for those producers/exporters. The Commission shall also provide an opportunity to producers or exporters or their legal representatives to examine and receive copies of the dumping calculations done by the Commission for their exports.

21.2 All nine-exporters/foreign producers for whom individual dumping margins were determined requested the Commission for disclosure meetings/documents. Such disclosure meetings were held at the offices of the Commission and disclosure documents were provided to the exporters/foreign producers, in which methodology applied for dumping calculations was explained and copies of the detailed calculations for normal value, export price and dumping margin were also provided to the representatives of the exporters/foreign producers. The exporters/foreign producers have offered their comments on methodology used in dumping calculations. Those comments received on dumping methodology have been taken into account in the final determination

22. Written Submissions by the Interested Parties on the Preliminary Determination

22.1 The Commission received views/comments on its preliminary determination made in this investigation (paragraph 19 supra) from the following interested parties:

- i. Feroze Textile Industries (Pvt.) Limited;
- ii. All Pakistan Textile Processing Mills Association;
- iii. Adamjee Enterprises;
- iv. Interloop Private Limited;
- v. Undersecretariat of the Prime Ministry for Foreign Trade, Republic of Turkey;
- vi. Thai Peroxide Company Limited;
- vii. Trade Com Services, Karachi;
- viii. Lakshmikumaran & Sridharan Attorneys on behalf of their following clients:
 - a) Evonik Degussa Antwerpen NV, Belgium (Producer in Belgium)
 - b) Evonik Degussa GmbH, Germany (Exporter from Germany)
 - b) Evonik Headwaters Korea Ltd., Korea (Producer in Korea)
 - c) Evonik Degussa Korea Ltd. (Exporter from Korea)
 - d) PT Evonik Degussa Peroxide (Producer/Exporter from Indonesia)

22.2 The comments on preliminary determination received from interested parties and germane to this investigation under the Ordinance, and Commission's views/reference to determination thereto are annexed to this report in annotated form (Annex I). However, main issues raised by the interested parties in the comments on the preliminary determination are considered in this final determination and the Commission's analysis and judgment on said issues are given in the following paragraphs:

Issue raised by Interested Parties and Commission's analysis and judgment

(i) Issue relating to start of Commercial operations by units of domestic industry

22.2.1 One of the issue raised by the interested parties, in their comments, was relating to the fact that one of the two units comprising domestic industry started commercial operations in January 2008 and was in operation during the POI for material retardation, while the other unit started operations in the last month of the POI i.e. March 2009. The mere fact that one of the unit came into operation at the fag end of the POI, it cannot be determined that the domestic industry was not yet established.

Commission's analysis and judgment

22.2.2 The Commission has considered the issue in the light of date of coming into production of two units comprising domestic industry i.e. (i) Sitara Peroxide Limited and (ii) Descon Oxychem Limited. It may be mentioned that Siatra Peroxide started commercial operations in

January 2008 and Descon Oxychem in March 2009. The dates of coming into production of the Applicant units shows that one unit was in operation during last fifteen months of the POI whereas, the second unit remained in operation only during last one month of the POI i.e. March 2009. In Commission's opinion only dates of coming into production of two units comprising domestic industry (merely a single factor) is not sufficient to decide that the domestic industry is established or not established. The examination of other four factors (as is the practice of other WTO Member countries), would reveal that whether the domestic industry was established during the POI. In this regard the following other factors have been analysed in this final determination:

- i. whether production of the domestic industry is steady or start-and-stop;
- ii. the size of domestic production compared to size of the domestic market as a whole;
- iii. whether the domestic industry has reached a "break-even point"; and
- iv. whether the activities involve the establishment of a new industry or are merely a new product line of an established firm.

Detailed analysis of the above factors is given in paragraphs 22.2.4, 22.2.6, 22.2.8 and 22.2.9 infra.

(ii) Issue relating to monthly analysis of production data of domestic industry

22.2.3 The second issue raised by interested parties was that the Commission would have used the weekly or monthly production data of Sitara Peroxide to determine whether production of the domestic industry was steady or start-and-stop during the POI.

Commission's analysis and judgment

22.2.4 In order to determine whether the production of the domestic industry was steady or start-and-stop during the POI, quarterly production data of the domestic industry (i.e. Sitara Peroxide) has been examined and the analysis shows that its production during the period from January 2008 to March 2009 was steady and it did not experience start or stop production trend (reference para 32.4.3 infra). However, the domestic industry could not achieve a steady sales trend. Without a steady sales trend, production could not be considered as steady as it would result into piling up of its inventories.

(iii) Issue relating to market share gained by domestic industry

22.2.5 Third issue raised by the interested parties was that the domestic industry was able to gain a market share of 32.21 percent during the POI and therefore, was not materially retarded. It was also pointed out that market share of the domestic industry may have been lower due to other reasons like quality of product, timely delivery, already available stock of imported HP with users etc.

Commission's analysis and judgment

22.2.6 The Commission has also examined the size of domestic production compared to size of the domestic market of HP as a whole, during the POI. In this regard it would be pertinent to mention that before entry of Applicants into Pakistan's market, the entire domestic demand for HP was met through imports. The existing capacity of Sitara Peroxide is sufficient to cater 58 percent of total domestic market, against which it could only achieve 32.21 percent share. It may also be added that with coming into production of Descon Oxychem the domestic industry was capable to cater 100 percent of domestic demand for HP within a reasonable period of time.

Since the start of production of HP in Pakistan by the domestic industry in January 2008, its market share has not increased significantly, it could achieve 32.21 percent share of total domestic market, whereas, dumped imports were having major portion of the total domestic market i.e. 67.76 percent. Therefore, the Commission has determined that the domestic industry has not yet established.

(iv) Issue relating to achieving break-even point

22.2.7 The break-even point cannot be used as a standard for deciding whether the domestic industry is established or yet to be established, as in every loss making situation, break-even point is not achieved.

Commission's analysis and judgment

22.2.8 The Commission has analyzed the fixed and variable costs and sales prices of the domestic industry to calculate the contribution margin i.e. the unit sales price minus the unit variable costs. In this final determination the Commission has calculated break-even point of the domestic industry by dividing total fixed costs by the unit contribution margin. The domestic industry has a projected breakeven point at 58 percent of the capacity utilization in its feasibility studies, on the basis of contribution margin. However, due to lower contribution margin the breakeven point for the domestic industry producing HP was 98 percent of capacity utilization at the prices prevailed during POI. The domestic industry has not reached a break-even point even once since it started its operations and is not likely to achieve projected breakeven point with current sales prices and costs. Hence, the Commission has determined that the domestic industry did not reach a break-even point during the period for which the Commission has information. Thus the domestic industry is not yet established as its operations have not reached a break-even point.

(v) Issue relating to new production line of existing established firm

22.2.8 Another issue raised was that Sitara Peroxide is a group company of Sitara Group that is inter-alia producing Caustic Soda (another bleaching agent). Since it has set up another bleaching agent i.e. HP plant, therefore, it would be considered as a new product line of an established firm.

Commission's analysis and judgment

22.2.9 The Commission has also examined whether or not the nascent industry is truly a new industry or is more in the nature of a new product line introduced by an established industry. An established industry introducing a new product line, for example, might be able to promote sales of the new product line through its established distribution and marketing networks and industry contacts thereby hastening the establishment of the new product in the market. The Commission has analysed that one of the Applicant belongs to Sitara Group of Industries and other belongs to Descon Group of Industries, however, Sitara Peroxide Limited and Descon Oxychem Limited have not taken benefit from the established parent group of industries, as both the Applicants are new entities in high-tech industrial chemicals products. Therefore, the Commission has determined that the domestic industry is totally new industry, as it is not significantly aided by other existing and established product operations.

(vi) Issue relating to decrease in dumped imports

22.2.10 The interested parties have also commented on the decrease in the volume of dumped imports and domestic like product has replaced dumped imports during the POI. It would not

be factually correct to say that lower volume of imports has caused material retardation to the domestic industry.

Commission's analysis and judgment

22.2.11 The Commission's analysis of volume of dumped imports during the POI reveals that the dumped imports decreased as domestic production of newly set-up two units substituted imports. Although the volume of dumped imports decreased from 46,388 MT to 34,994 MT, (a decrease of 11,394 MT in 2008 over 2007). However, analysis of dumped imports during April 2008 to March 2009 on quarterly basis shows that volume of dumped imports has an increasing trend when compared to the first quarter of April 2008 to March 2009 period.

22.2.12 Further, the domestic industry has sold HP at prices lower than its ex-factory costs during three out of four quarters of April 2008 to March 2009. The volume of dumped imports on annual basis decreased due to domestic industry's policy of selling HP at prices lower than its ex-factory costs. Had the domestic industry not kept its sale prices lower than its ex-factory costs during three out of four quarters of April 2008 to March 2009, the volume of dumped imports would have been higher. However, the domestic industry could not achieve a steady sales trend during the POI. Therefore, the domestic industry was materially retarded on account of volume of dumped imports.

22.2.14 It may be added that the domestic industry was set up to cater 100 percent of domestic demand for HP with projections of certain economic factors within a reasonable period of time. The domestic industry could achieve a market share of 11.09 percent only in April 2007 to March 2008 inspite of the fact that there was no domestic producer of HP in April 2006 to March 2007. The market share of domestic industry further increased to 32.31 percent in April 2008 to March 2009, but it was not upto the projected share mentioned in the feasibilities of the Applicants (i.e. 34,200 MT or 66 percent of the total domestic market during 2008-09).

23. Disclosure of Essential Facts

23.1 In terms of Rules 14(8) of the Rules, and Article 6.9 of Agreement on Antidumping, the Commission disclosed essential facts, and in this context dispatched Statement of Essential Facts (hereinafter referred to as the "SEF") on January 08, 2011 to all interested parties including the known exporters/foreign producers, the Applicants, the known Pakistani importers, and to the embassies of the Exporting Countries in Pakistan.

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

- i. Interloop Private Limited, Faisalabad;
- ii. The Department of Foreign Trade, Ministry of Commerce, Thailand;
- iii. Undersecretariat of the Prime Ministry for Foreign Trade, Republic of Turkey;
- iv. Fairdeal Textiles Pvt. Limited, Karachi;
- v. Gul Ahmed Textile Mills Limited, Karachi.

23.3 The comments received on essential facts have been considered in this final determination and Commission's views/determinations thereto are annexed to this report in annotated form (Annex II).

B. DETERMINATION OF DUMPING

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

25.1 In terms of Section 5 of the Ordinance “normal value” is defined as follows:

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

25.2 However, Section 6 of the Ordinance states:

“(1) when there are no sales of like product in the ordinary course of trade in domestic market of an exporting country, or when such sales do not permit a proper comparison because of any particular market situation or low volume of the sales in the domestic market of the exporting country, the Commission shall establish normal value of an investigated product on the basis of either:

“(a) the comparable price of the like product when exported to an appropriate third country provided that this price is representative; or

“(b) the cost of production in the exporting country plus a reasonable amount for administrative, selling and general costs and for profits.

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

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

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

“(a) within an extended period of time which shall normally be a period of one year and in no case less than a period of six months;

“(b) in substantial quantities; and

“(c) at prices which do not provide for the recovery of all costs within a reasonable period of time.

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

“(a) a weighted average selling price of transactions under consideration for the determination of normal value is below a weighted average cost; or

“(b) the volume of sales below per unit cost represents twenty per cent or more of the volume sold in transactions under consideration for the determination of normal value.

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

26. **Export Price**

The “export price” is defined in Section 10 of the Ordinance as follows:

“a price actually paid or payable for an investigated product when sold for export from an exporting country to Pakistan”.

27. **Dumping Determination**

27.1 As stated earlier (paragraph 9.1 supra) the Applicants identified sixteen exporters/foreign producers from the Exporting Countries involved in alleged dumping of the investigated product. The Commission sent questionnaires to those exporters/foreign producers whose complete addresses were available with the Commission (paragraph 14.1 supra). A copy of the questionnaire was also provided to the Embassies of the Exporting Countries in Islamabad with a request to forward it to all exporters/foreign producers of the investigated product to submit information to the Commission.

27.2 In response to the questionnaire the following exporters/foreign producers of HP provided requisite information:

- i. Evonik Degussa, Belgium;
- ii. Evonik Degussa, GmbH, Germany;
- iii. PT Evonik Degussa Peroxide, Indonesia;
- iv. Evonik Degussa Korea Limited, Korea;
- v. Evonik Headwaters Korea Limited., Korea;
- vi. OCI Company Limited, Korea;
- vii. OCI Corporation, Korea;
- viii. Hansol Chemical Company Limited, Korea and
- ix. Thai Peroxide Chemical Company Limited, Thailand

Individual dumping margins in this investigation are determined for the above-mentioned exporters/foreign producers on the basis of the information provided by them. However, residual dumping margins/duty rates have been determined, on the basis of best information available to the Commission in terms of Section 32 of the Ordinance, and Article 6.8 and Annex II of the Agreement on Anti-dumping, for all other exporters/foreign producers who did not cooperate with the Commission in this investigation.

28. Determination of Export Price

The Commission received information on export sales of the investigated product from above mentioned exporters/foreign producers (paragraph 26.2 supra) in response to the questionnaires sent to various exporters/foreign producers (paragraph 14.1 supra). Export price of investigated product for these exporters/foreign producers in this final determination has been determined on the basis of the information provided by them. Export price for other exporters/foreign producers who did not cooperate with the Commission is determined on the basis of the information obtained from PRAL.

28.1 Determination of Export Price for Evonik Degussa, Belgium and Evonik Degussa, Germany

28.1.1 Evonik Degussa, Belgium produced the investigated product and sold it to Evonik Degussa, Germany, which sold HP to unrelated customers in Pakistan through an agent. Evonik Degussa, Belgium does not directly export HP to Pakistan. Evonik Degussa, Germany negotiates the sale contract with the customers in Pakistan. Once purchase order is confirmed by Evonik Degussa, Germany, L/C is established. Evonik Degussa, Germany make a sale order to Evonik Degussa, Belgium. The investigated product is sent to the customer by Evonik Degussa, Belgium. An internal invoice is issued to Evonik Degussa, Germany and commercial invoice is issued to the customer in Pakistan and delivery terms during POI were CFR Karachi. Evonik Degussa, Germany received payment from the customer on L/C at sight or cash against documents terms.

28.1.2 Evonik Degussa, Germany sold *** MT of HP having gross value of EUR *** to Pakistan during the POI, out of which it sold *** MT of HP 35 percent (OXTERIL® 350 MS-T) having gross value of EUR *** and sold *** MT of HP 50 (HYPROX ® 500) having gross value of EUR ***. All export sales transactions are based on L/C at sight or cash in advance.

28.1.3 The weighted average CFR price of HP 35 percent (OXTERIL® 350 MS-T) was EUR ***/MT during the POI. To arrive at ex-factory export price adjustments on account of commission to agent, inland freight, ocean freight, bank charges and packing cost has been made. The commission was EUR ***/MT, inland freight was EUR ***/MT, ocean freight EUR ***/MT, bank charges EUR ***/MT and packing cost was EUR ***/MT. After making adjustments for commission, inland freight, ocean freight, bank charges and packing cost, the ex-factory export price works out to EUR ***/MT.

28.1.4 The weighted average CFR price of HP 50 percent (HYPROX ® 500) was EUR ***/MT during the POI. To arrive at ex-factory export price adjustments on account of commission to agent, inland freight, ocean freight, bank charges and packing cost. The commission was EUR ***/MT, inland freight was EUR ***/MT, ocean freight EUR ***/MT, bank charges EUR ***/MT and packing cost was EUR ***/MT. After making adjustments for commission, inland freight, ocean freight, bank charges and packing cost, the ex-factory export price for works out to EUR ***/MT.

28.2 Determination of Export Price for Other Exporters/Foreign Producers from Belgium

28.2.1 Export price for exporters/foreign producers from Belgium other than Evonik Degussa, Belgium, who did not cooperate with the Commission in providing information has been determined on the basis of best information available in accordance with Section 32 of the Ordinance. Information obtained from PRAL is used for the purposes of determination of export price for non-cooperating exporters from Belgium. This is the only information available with the Commission on export sales of the investigated product by the non-cooperating exporters.

28.2.2 Values in PRAL's information are reported at C&F level. The C&F export price has been adjusted to arrive at the ex-factory level. For this purpose same adjustments have been made which were claimed by Evonik Degussa, Belgium for its exports of the investigated product.

28.2.3 According to PRAL data the total exports from other exporters/foreign producers were *** MT having gross value of EUR *** and the weighted average gross price was EUR ***/MT. To arrive at ex-factory export price adjustments on account of commission to agent, inland freight, ocean freight, and bank charges. The commission was EUR ***/MT, inland freight was EUR ***/MT, ocean freight EUR ***/MT and bank charges EUR ***/MT. After making adjustments for commission, inland freight, ocean freight, and bank charges, the ex-factory export price for works out to EUR ***/MT.

28.3 Determination of Export Price for Evonik Degussa, Indonesia

28.3.1 Evonik Degussa, Indonesia is a limited liability company and belongs to Evonik Degussa Group. Evonik Degussa, Indonesia produced two types of HP i.e. HP 50 percent and 60 percent solution and sold only HP 50 percent to its unrelated customers in Pakistan textile industries, through an agent. Evonik Degussa, Indonesia receives indent order from its agent in Pakistan (i.e. Kay Chemicals) after negotiating sale contract with the customers in Pakistan. Once purchase order is confirmed by Evonik Degussa Indonesia, L/C is established. The investigated product is shipped to the customer by Evonik Degussa Indonesia and commercial invoice, shipping documents are sent to the customer in Pakistan. Delivery terms are C&F Karachi and payment terms are L/C at sight.

28.3.2 Evonik Degussa, Indonesia sold *** MT of HP 50 percent solution having gross value of US\$ *** to Pakistan during the POI. All export sales transactions were based on L/C at sight.

28.3.3 The weighted average CFR price was US\$ ***/MT during the POI. To arrive at ex-factory export price adjustments on account of commission to agent, inland freight, ocean freight, bank charges, L/C advising charges, courier charges, credit cost and packing cost has been made. The commission was US\$ ***/MT, inland freight was US\$ ***/MT, ocean freight US\$ ***/MT, bank charges US\$ ***/MT, L/C advising charges US\$ ***/MT, courier charges US\$ ***/MT, credit cost ***/MT and packing cost was US\$ ***/MT. After making adjustments for commission, inland freight, ocean freight, bank charges, L/C advising charges, courier charges, credit cost and packing cost, the ex-factory export price works out to US\$ ***/MT.

28.4 Determination of Export Price for Evonik Degussa, Korea and Evonik Headwaters

28.4.1 Evonik Degussa, Korea (exporter/trader) is a wholly owned subsidiary of Evonik Degussa Group. Evonik Headwaters (a related company) produced the investigated product i.e. HP of 35 percent, 50 percent, 60 percent and 70 percent solution. HP is produced by Evonik

Headwaters., and is sold directly by Evonik Headwaters in the domestic market as well as exported to other countries. Evonik Degussa, Korea (trader) sold HP in domestic market, to Pakistan and to other countries. Both Evonik Headwaters and Evonik Degussa, Korea belong to Evonik Degussa Group. The investigated product is shipped to the customer in Pakistan by Evonik Degussa Korea Limited, delivery terms were C&F Karachi and payment terms were L/C at sight.

28.4.2 Evonik Degussa Korea Limited sold *** MT of HP 50 percent having gross value of US\$ *** (KRW ***) to Pakistan during the POI. All export sales transactions were based on L/C at sight.

28.4.3 The weighted average C&F price was KRW ***/MT during the POI. To arrive at ex-factory export price adjustments on account of credit cost, commission to agent, inland freight, ocean freight, bank charges, inspection fee and courier charges has been made. The credit cost was KRW ***/MT, commission KRW ***/MT, inland freight KRW ***/MT, ocean freight KRW ***/MT, bank charges KRW ***/MT, inspection fee KRW ***/MT and courier charges KRW ***/MT. After making adjustments for credit cost, commission, inland freight, ocean freight, bank charges, inspection fee and courier charges, the ex-factory export price works out to KRW ***/MT.

28.5 Determination of Export Price for Hansol

28.5.1 Hansol produced the investigated product and sold it to unrelated customers in Pakistan through its agents, to whom it paid three percent of the total value as commission. Hansol negotiates the sale contract with the customers in Pakistan. Once purchase order is confirmed, L/C is established. The investigated product is sent to the customer and commercial invoice is issued by Hansol to the customer in Pakistan and delivery terms are CFR Karachi. Hansol receives the payment from its bank within 3 to 5 days after shipping HP to customer in Pakistan against L/C.

28.5.2 Hansol sold *** MT of HP 50 having gross value of KRW *** to its customers in Pakistan during the POI. All export sales transactions were based on L/C at sight.

28.5.3 The weighted average CFR price was US\$ ***/MT (KRW ***/MT) during the POI. To arrive at ex-factory export price adjustments on account of credit cost, commission to agents, inland freight, ocean freight, handling cost, bank charges, packing cost and others (which includes; inspection fee, DHL charges, document fee for certification of origin, insurance expenses for payment guarantee and labeling expenses), has been made. The credit cost was KRW ***/MT, commission was KRW ***/MT, inland freight KRW ***/MT, ocean freight KRW ***/MT, handling cost KRW ***/MT, bank charges KRW ***/MT, other (i.e. DHL charges, inspection fee, certificate of origin fee, insurance expenses for payment guarantee and labeling expenses) KRW ***/MT and packing cost was KRW ***/MT. After making adjustments for credit cost, commission, inland freight, handling cost, ocean freight, bank charges ,other charges and packing cost, the ex-factory export price works out to KRW ***/MT.

28.6 Determination of Export Price for OCI and OCIC

28.6.1 OCI produced the investigated product and sold it to its related company OCIC for export to Pakistan. OCIC sold HP to customers in Pakistan through its agents to whom it paid

US\$*** /MT to US\$ *** /MT as commission. OCIC negotiates the sale contract with the customers in Pakistan. Once purchase order is confirmed, L/C is established. The investigated product is sent to the customer and commercial invoice is issued by OCIC to the customer in Pakistan and delivery terms are CFR Karachi.

28.6.2 OCI sold *** MT of HP having gross value of KRW *** out of which *** MT was HP 35 percent (industrial usage) having gross value of KRW *** and *** MT was HP 50 percent (industrial usage) having gross value of KRW *** to OCIC during the POI. OCI claimed adjustment in its gross sales price to OCIC on account of packing cost and others (i.e. inspection fee).

28.6.3 OCIC exported *** MT of HP having gross value of KRW *** its customers in Pakistan during the POI, out of which *** MT was HP 50 percent (industrial usage) having gross value of KRW *** and *** MT (industrial usage) was HP 35 percent having gross value of KRW ***. OCIC does not grant discounts or rebates on export sales to Pakistan.

28.6.4 The weighted average CFR price of HP 35% of OCIC was KRW *** /MT) during the POI. To arrive at ex-factory export price adjustments on account of credit cost, commission to agents, inland freight, ocean freight, handling cost, bank charges, packing cost and others (which includes; inspection fee, DHL charges, document fee for certification of origin, insurance expenses etc), has been made. The credit cost was KRW *** /MT, commission was KRW *** /MT, inland freight KRW *** /MT, ocean freight KRW *** /MT, handling cost KRW *** /MT, bank charges KRW *** /MT, other (i.e. DHL charges, inspection fee, certificate of origin fee, insurance expenses for payment guarantee and labeling expenses) KRW *** /MT and packing cost was KRW *** /MT. After making adjustments for credit cost, commission, inland freight, handling cost, ocean freight, bank charges, other charges and packing cost, the ex-factory export price for HP 35% works out to KRW *** /MT.

28.6.5 The weighted average CFR price of HP 50 percent (industrial usage) was KRW *** /MT during the POI. To arrive at ex-factory export price adjustments on account of packing cost and others (inspection fee) has been made. The packing cost was KRW *** /MT and inspection fee was KRW *** /MT. After making adjustments for packing cost and inspection fee the ex-factory export price for HP 50 percent (industrial usage) works out to KRW *** /MT.

28.7 Determination of Export Price for Thai Peroxide

28.7.1 Thai Peroxide produced and sold HP 35 percent and HP 50 percent to it unrelated customers in Pakistan through its agent to whom it paid *** USD/MT for HP 50 percent and *** USD/MT for HP 35 percent as commission. Thai Peroxide negotiates the sale contract with the customers in Pakistan. Once purchase order is confirmed, L/C is established. The investigated product is sent to the customer and commercial invoice is issued by Thai Peroxide to the customer in Pakistan and delivery terms are CFR Karachi.

28.7.2 Thai Peroxide exported *** MT of HP having gross value of USD *** (Baht ***) to its customers in Pakistan during the POI, out of which *** MT was HP 35 percent having gross value of Baht *** and *** MT of HP 50 percent having gross value Baht ***. All export sales transactions are based on L/C at sight.

28.7.3 The weighted average CFR price for HP 35 percent was Baht ***/MT during the POI. To arrive at ex-factory export price adjustments on account of credit cost, commission to agents, inland freight, ocean freight, handling cost, bank charges, and courier charges, has been made. The credit cost was Baht ***/MT, commission was Baht ***/MT, inland freight Baht ***/MT, ocean freight Baht ***/MT, handling cost Baht ***/MT, bank charges Baht ***/MT, and courier charges was Baht ***/MT. After making adjustments for credit cost, commission, inland freight, handling cost, ocean freight, bank charges, and courier charges, the ex-factory export price works out to Baht ***/MT.

28.7.4 The weighted average CFR price for HP 50 percent was Baht ***/MT during the POI. To arrive at ex-factory export price adjustments on account of credit cost, commission to agents, inland freight, ocean freight, handling cost, bank charges, and courier charges, has been made. The credit cost was Baht ***/MT, commission was Baht ***/MT, inland freight Baht ***/MT, ocean freight Baht ***/MT, handling cost Baht ***/MT, bank charges Baht ***/MT, and courier charges was Baht ***/MT. After making adjustments for credit cost, commission, inland freight, handling cost, ocean freight, bank charges, and courier charges, the ex-factory export price works out to Baht ***/MT.

28.8 Determination of Export Price for Other Exporters/Foreign Producers from Thailand

28.8.1 Export price for Thai exporters/foreign producers other than Thai Peroxide who did not cooperate with the Commission in providing information has been determined on the basis of best information available in accordance with Section 32 of the Ordinance. Information obtained from PRAL is used for the purposes of determination of export price for non-cooperating exporters from Thailand. This is the only information available with the Commission on export sales of the investigated product by the non-cooperating exporters.

28.8.2 Values in PRAL's information are reported at C&F level. The C&F export price has been adjusted to the ex-factory level. For this purpose same adjustments have been made which were claimed by Thai Peroxide for its exports of the investigated product.

28.8.3 According to PRAL data the total exports from other Thai exporters/foreign producers were *** MT having gross value of Thai Baht *** and the weighted average gross price was Thai Baht ***/MT. To arrive at ex-factory export price adjustments on account of credit cost, commission to agents, inland freight, ocean freight, handling cost, bank charges, packing cost and courier charges, has been made. The credit cost was Baht ***/MT, commission was Baht ***/MT, inland freight Baht ***/MT, ocean freight Baht ***/MT, handling cost Baht ***/MT, bank charges Baht ***/MT, packing cost Baht ***/MT and courier charges was Baht ***/MT. After making adjustments for credit cost, commission, inland freight, handling cost, ocean freight, bank charges, packing cost and courier charges, the ex-factory export price works out to Baht ***/MT.

28.9 Determination of Export Price for Exporters/Foreign Producers from China, Taiwan and Turkey

Export price for the exporters/foreign producers from China, Taiwan and Turkey has been determined on the basis of their exports of HP to Pakistan, obtained from PRAL. Weighted average CIF prices have been calculated from PRAL imports data. To arrive at the ex-factory level, weighted average CIF export price has been adjusted on account of ocean freight, inland

freight and insurance cost. The Applicants provided average ocean freight rates per 20 feet container for each exporting country (quoted by Agility Logistics (Pvt) Limited, Lahore) and average ocean freight per MT has been worked out from freight of a container load. To arrive at FOB export price ocean freight has been deducted from CIF export price. The Commission has taken US\$ 5 as inland freight and insurance as 0.5 percent of C&F value to reach at ex-factory level. After making these adjustments, the Commission arrived at weighted average export price at ex-factory level for China, Taiwan and Turkey.

29. Determination of Normal Value

29.1 The Commission received information on domestic sales and cost of production etc. of the like product from the exporters/foreign producers mentioned at paragraph 22 supra in response to the questionnaire. Normal value in this final determination has been determined on the basis of that information. However, normal value for non-cooperative exporters/foreign producers have been determined, on the basis of best information available to the Commission in terms of Section 32 of the Ordinance, and Article 6.8 and Annex II of the Agreement on Anti-dumping, for all other exporters/foreign producers who did not cooperate with the Commission in this investigation.

29.2 Determination of Normal Value for Evonik Degussa, Belgium and Evonik Degussa, Germany

29.2.1 Evonik Degussa, Belgium produced the investigated product and sold it to Evonik Degussa, Germany and the later sold the investigated product in the domestic and export markets. Evonik Degussa, Germany sold *** MT HP having gross value of EUR *** in the European market during the POI to industrial end users. These sales were made at CFR prices and payment terms were 30 to 120 days from date of invoice.

29.2.2 In order to determine the normal value, the Commission has taken sales in the domestic market i.e Belgium only as the investigation is against alleged dumping of HP from Belgium. Evonik Degussa, Germany sold *** MT of HP having gross value EUR ***, out of which *** MT HP 35 percent (OXTERIL® 350 MS-T) having gross value of EUR *** and *** MT of HP 50 percent (HYPROX ® 500) having gross value EUR *** in Belgian market during the POI.

29.2.3 In order to determine whether the sales in the domestic market during the POI were made in the ordinary course of trade pursuant to Section 7 of the Ordinance, the Commission has examined the domestic sales in Belgian market by Evonik Degussa, Belgium during the POI and found that all sales were in the ordinary course of trade. Thus the Commission determined normal value on the basis domestic sales in Belgian market by Evonik Degussa, Belgium during the POI.

29.2.4 The weighted average gross domestic sales price of HP 35 percent (OXTERIL® 350 MS-T) was EUR ***/MT. Evonik Degussa, Belgium claimed adjustments in its domestic sales on account of credit cost, inland freight, and packing cost. To arrive at ex-factory domestic sales price, average credit cost of EUR ***/MT, inland freight of EUR ***/MT and packing cost EUR ***/MT have been deducted from weighted average gross domestic sales price. The ex-factory domestic sales price of HP 35 percent (OXTERIL® 350 MS-T) works out to EUR ***/MT.

29.2.5 The weighted average gross domestic sales price of HP 50 percent (HYPROX® 500) was EUR ***/MT. Evonik Degussa, Belgium claimed adjustments in its domestic sales on account of credit cost, and inland freight. To arrive at ex-factory domestic sales price, average credit cost of EUR ***/MT, inland freight of EUR ***/MT have been deducted from weighted average gross domestic sales price. The ex-factory domestic sales price of HP 50 percent (HYPROX® 500) works out to EUR ***/MT.

29.3 Determination of Normal Value for Other Exporters/Foreign Producers from Belgium

29.3.1 Normal value for exporters/foreign producers other than Evonik Degussa, Belgium, who did not cooperate with the Commission in providing information, is determined on the basis of best information available in accordance with Section 32 of the Ordinance

29.3.2 For the purposes of determination of normal value for other exporters/foreign producers, the information provided by Evonik Degussa, Belgium in response to the questionnaire on its cost of production plus admin, selling and general costs, financial expenses and profits is used. The Commission was of the view that this is the best available information for this purpose on the basis of following grounds:

- i. Evonik Degussa, Belgium is one of the major producers of HP in Belgium;
- ii. Evonik Degussa, Germany is the largest exporter of the investigated product to Pakistan during POI.

29.3.3 Construction of normal value for other exporters/foreign producers is as follows:

- i. the cost of production plus admin, selling and general costs, financial expenses of Evonik Degussa, Belgium on per MT basis was EUR ***.
- ii. the profit of Evonik Degussa, Belgium on per MT basis was EUR ***.
- iii. the constructed normal value for other exporter/foreign producers works out to be EUR ***/MT.

29.4 Determination of Normal Value for Evonik Degussa, Indonesia

29.4.1 PT Evonik Degussa, Indonesia produced the investigated product i.e. HP 50 percent and HP 60 percent and sold the investigated product in the domestic and export markets. Evonik Degussa, Indonesia sold *** MT HP having gross value of US\$ *** in the domestic market during the POI. Domestic sales were made at CFR prices and payment terms were TT *** days from date of invoice. Credit cost is charged for *** days.

29.4.2 Since Evonik Degussa Indonesia sold only HP 50 percent to Pakistan during the POI, the Commission has taken domestic sales of HP 50 percent only of Evonik Degussa Indonesia for determination of normal value during the POI. In the domestic market Evonik Degussa, Indonesia sold *** MT of HP 50 percent having gross value of US\$ ***. In order to determine whether the sales in the domestic market during the POI were made in the ordinary course of trade pursuant to Section 7 of the Ordinance, the Commission has examined the domestic sales of Evonik Degussa, Indonesia during the POI and found that out of total sales of *** MT of HP 50 percent, below cost sales were *** MT (which were sold over a period of more than six months). Sales below cost during the POI were *** percent of total domestic sales of HP 50 percent of Evonik Degussa, Indonesia. Thus the Commission has disregarded sales, which were

not in the ordinary course of trade in terms of Section 7 of the Ordinance. Domestic sales of HP 50 percent, in the ordinary course of trade, were *** MT having gross value of US\$ ***.

29.4.3 The weighted average gross domestic sales price of HP 50 percent was US\$ ***/MT. Evonik Degussa, Indonesia claimed adjustments in its domestic sales on account of credit cost, inland freight charges, packing cost and Iso-tanker charges. To arrive at ex-factory domestic sales price of HP 50 percent, average credit cost was US\$ ***/MT, inland freight US\$ ***/MT, packing cost US\$ ***/MT and Iso-tanker cost US\$ ***/MT have been deducted from weighted average gross domestic sales price of HP 50 percent. The ex-factory domestic sales price works out to US\$ ***/MT.

29.5 Determination of Normal Value for Evonik Degussa, Korea and Evonik Headwaters

29.5.1 Evonik Headwaters manufactured HP (all types) and sold it to Evonik Degussa Korea, who sells HP in the domestic and export markets. Evonik Headwaters sold *** MT of all types of HP (35 percent, 50 percent, 60 percent and 70 percent) having gross value of KRW *** to Evonik Degussa Korea and to another customer i.e SKC. Evonik Headwater sold *** MT of HP (100 percent concentration) having gross value of KRW *** to Evonik Degussa Korea. The average price at which Evonik Headwaters sold HP to Evonik Degussa Korea was KRW ***/MT. Evonik Degussa Korea sold *** MT of HP (all types) in the domestic market and total sales value was KRW ***. The average gross sales price charged in domestic market by Evonik Degussa Korea was KRW ***/MT during the POI. Domestic sales were made at CFR prices and payment terms were 30 to 120 days after monthly closing. Credit cost is charged for 30 to 120 days payment terms.

29.5.2 Since Evonik Degussa Korea sold only HP 50 percent to Pakistan during the POI, the Commission has taken domestic sales of HP 50 percent only of Evonik Headwaters and Evonik Degussa Korea for determination of normal value during the POI. In the domestic market Evonik Headwaters sold *** MT of HP 50 percent having gross value of KRW *** and Evonik Degussa Korea sold *** MT of HP 50 percent having gross value of KRW ***.

29.5.3 In order to determine whether the sales of HP 50 percent in the domestic market during the POI were made in the ordinary course of trade pursuant to Section 7 of the Ordinance, the Commission has examined the domestic sales of Evonik Headwaters and Evonik Degussa Korea during the POI and found that out of total sales of *** MT made by Evonik Headwaters in the domestic market, below cost sales were *** MT (which were 100 percent of total domestic sales). In case of Evonik Degussa Korea, it sold *** MT and sales below cost were *** MT (which were *** percent of total domestic sales) during the POI. Thus the Commission has disregarded sales, which were not in the ordinary course of trade in terms of Section 7 of the Ordinance. Domestic sales of HP 50 percent, in the ordinary course of trade, were *** MT having gross value of KRW ***.

29.5.4 The weighted average gross domestic sales price of Evonik Degussa Korea was KRW ***/MT. Evonik Degussa Korea claimed adjustments in its domestic sales on account of credit cost, duty drawback and inland freight. To arrive at ex-factory domestic sales price, average credit cost of KRW ***/MT, duty drawback KRW ***/MT and inland freight charges of KRW ***/MT. The ex-factory domestic sales price works out to KRW ***/MT.

29.6 Determination of Normal Value for Hansol

29.6.1 Hansol manufactured and sold HP in the domestic and export markets. Hansol sold *** MT HP (all types HP 32 percent, 35 percent, 50 percent, 54 percent, and 60 percent) having gross value of KRW *** in the domestic market during the POI. However, the Commission has taken only the domestic sales of HP 50 percent (industrial usage) (as it only exported HP 50 percent, industrial usage to Pakistan) during the POI to calculate normal value for Hansol.

29.6.2 Hansol sold *** MT of HP 50 percent in the domestic market having gross value of KRW *** during the POI. Domestic sales were made at CFR prices and payment terms were 30 to 120 days from date of invoice. Credit cost is charged for 30 to 120 days payment terms.

29.6.3 In order to determine whether the sales of HP 50 percent in the domestic market during the POI were made in the ordinary course of trade pursuant to Section 7 of the Ordinance, the Commission has examined the domestic sales of Hansol during the POI and found that out of total sales of ***MT, below cost sales were *** MT. Sales below cost during the POI were *** percent of total domestic sales of Hansol. Thus the Commission determined normal value on the basis domestic sales of Hansol during the POI.

29.6.4 The weighted average gross domestic sales price of HP 50 percent (industrial usage) was KRW ***/MT. Hansol claimed adjustments in its domestic sales on account of credit cost, rebate, duty drawback, inland freight, warehouse cost and packing cost. To arrive at ex-factory domestic sales price, average credit cost of KRW ***/MT, rebate KRW ***/MT, duty drawback KRW ***/MT, inland freight charges of KRW ***/MT, warehouse cost KRW ***/MT and packing cost KRW ***/MT and have been deducted from weighted average gross domestic sales price. The ex-factory domestic sales price of HP 50 percent works out to KRW ***/MT.

29.7 Determination of Normal Value for OCI and OCIC

29.7.1 OCI manufactured and sold HP in the domestic market. OCI sold *** MT HP (all types HP 30 percent, 35 percent, 50 percent, 60 percent, and 70 percent) having gross value of KRW *** in the domestic market during the POI. However, the Commission has taken only the domestic sales of HP 35 percent (industrial usage) and HP 50 percent (industrial usage) (as it exported HP 35 percent, industrial usage and HP 50 percent, industrial usage to Pakistan) during the POI to calculate normal value for OCI.

29.7.2 OCI sold *** MT of HP 35 and HP 50 industrial usage, out of which *** MT of HP 35 percent (industrial usage) in the domestic market having gross value of KRW *** during the POI and *** MT of HP 50 percent (industrial usage) in the domestic market having gross value of KRW *** during the POI. Domestic sales were made at CFR prices and payment terms were cash and 10 to 90 days from date of invoice. Credit cost is charged for 10 to 90 days payment terms.

29.7.3 In order to determine whether the sales of HP 35 percent (industrial usage) and HP 50 percent (industrial usage) in the domestic market during the POI were made in the ordinary course of trade pursuant to Section 7 of the Ordinance, the Commission has examined the domestic sales of OCI during the POI and found that out of total sales of *** MT, below cost sales were *** MT. Sales below cost during the POI were *** percent of total domestic sales of HP 35 and HP 50, industrial usage. Thus the Commission determined normal value on the basis domestic sales of OCI during the POI.

29.7.4 The weighted average gross domestic sales price of HP 35 percent (industrial usage) was KRW ***/MT. OCI claimed adjustments in its domestic sales on account of credit cost, billing adjustment, duty drawback, inland freight, and packing cost. To arrive at ex-factory domestic sales price, average credit cost of KRW ***/MT, billing adjustment KRW ***/MT, duty drawback KRW ***/MT, inland freight charges of KRW ***/MT and packing cost KRW ***/MT have been deducted from weighted average gross domestic sales price. The ex-factory domestic sales price of HP 35 percent (industrial usage) works out to KRW ***/MT.

29.7.5 The weighted average gross domestic sales price of HP 50 percent (industrial usage) was KRW ***/MT. OCI claimed adjustments in its domestic sales on account of credit cost, billing adjustment, duty drawback, inland freight, and packing cost. To arrive at ex-factory domestic sales price, average credit cost of KRW ***/MT, billing adjustment KRW ***/MT, duty drawback KRW ***/MT, inland freight charges of KRW ***/MT and packing cost KRW ***/MT have been deducted from weighted average gross domestic sales price. The ex-factory domestic sales price of HP 50 percent (industrial usage) works out to KRW ***/MT.

29.8 Determination of Normal Value for Other Exporters/Foreign Producers from Korea

29.8.1 Normal value for other Korean exporters/foreign producers other than Evonik Degussa, Korea who did not cooperate with the Commission in providing information is determined on the basis of best information available in accordance with Section 32 of the Ordinance

29.8.2 For the purposes of determination of normal value for other Korean exporters/foreign producers, the information provided by Evonik Degussa, Korea in response to the questionnaire on its cost of production plus admin, selling and general costs, financial expenses and profits is used. The Commission was of the view that this is the best available information for this purpose on the basis of following grounds:

- i. Evonik Degussa, Korea is one of the major producers of HP in Korea;
- ii. Evonik Degussa, Korea is the largest exporter of the investigated product to Pakistan during POI.

29.8.3 Construction of normal value for other Korean exporters/foreign producers is as follows:

- i. the cost of production plus admin, selling and general costs, financial expenses of Evonik Degussa, Korea on per MT basis was KRW ***.
- ii. the profit of Evonik Degussa, Korea on per MT basis was KRW ***.
- iii. the constructed normal value for other Korean exporter/foreign producers works out to be KRW ***/MT.

29.9 Determination of Normal Value for Thai Peroxide

29.9.1 Thai Peroxide manufactured and sold HP 35 percent and HP 50 percent, in the domestic market. Thai Peroxide sold *** MT HP having gross value of Thai Baht *** in the domestic market during the POI. The Commission has taken the domestic sales of HP 35

percent and HP 50 percent (as it exported the same to Pakistan) during the POI to calculate normal value for Thai Peroxide.

29.9.2 Thai Peroxide sold *** MT of HP having gross value of Thai Baht *** in the domestic market during the POI, out of which HP 35 percent was *** MT having gross value of Thai Baht *** and *** MT of HP 50 percent having gross value Thai Baht ***. Domestic sales were made at CFR prices and payment terms were 07 to 120 days after delivery. Some sales are made with immediate payment term while some others are made with credit.

29.9.3 In order to determine whether the sales of HP 35 percent and HP 50 percent in the domestic market during the POI were made in the ordinary course of trade pursuant to Section 7 of the Ordinance, the Commission has examined the domestic sales of Thai Peroxide during the POI and found that out of total sales of *** MT, below cost sales were *** MT. Sales below cost during the POI were *** percent of total domestic sales of Thai Peroxide. Thus the Commission determined normal value on the basis domestic sales of Thai Peroxide during the POI. Government of Thailand gave export subsidy to Thai Peroxide on export of HP at the rate of *** percent of FOB value of export, which is not available when Thai peroxide sells in the domestic market. Thai Peroxide has claimed adjustment on export incentive, which is accepted by the Commission for determination of normal value.

29.9.4 The weighted average gross price for HP 35 percent in the domestic market was Baht ***/MT during the POI. To arrive at ex-factory export price adjustments on account of credit cost, inland freight and export incentive, has been made. The credit cost was Baht ***/MT, inland freight Baht ***/MT and export incentive Baht ***/MT. After making adjustments for credit cost, inland freight, and export incentive the ex-factory domestic sales price of HP 35 percent works out to Baht ***/MT.

29.9.5 The weighted average gross price for HP 50 percent in the domestic price was Baht ***/MT during the POI. To arrive at ex-factory export price adjustments on account of credit cost, inland freight and export incentive, has been made. The credit cost was Baht ***/MT, inland freight Baht ***/MT and export incentive Baht ***/MT. After making adjustments for credit cost, inland freight, and export incentive the ex-factory domestic sales price of HP 50 percent works out to Baht ***/MT.

29.10 Determination of Normal Value for Other Exporters/Foreign Producers from Thailand

29.10.1 Normal value for other Thai exporters/foreign producers other than Thai Peroxide who did not cooperate with the Commission in providing information is determined on the basis of best information available in accordance with Section 32 of the Ordinance

29.10.2 For the purposes of determination of normal value for other Thai exporters/foreign producers, the information provided by Thai Peroxide in response to the questionnaire on its cost of production plus admin, selling and general costs, financial expenses and profits is used. The Commission was of the view that this is the best available information for this purpose on the basis of following grounds:

- i. Thai Peroxide is one of the major producers of HP in Thailand;
- ii. Thai Peroxide is the largest exporter of the investigated product to Pakistan during POI.

29.10.3 Construction of normal value for other Thai exporters/foreign producers is as follows:

- i. the cost of production plus admin, selling and general costs, financial expenses of Thai Peroxide on per MT basis was Thai Baht ***.
- ii. the profit of Thai Peroxide on per MT basis was Thai Baht ***.
- iii. the constructed normal value for other Thai exporter/foreign producers works out to be Thai Baht ***/MT.

29.11 Determination of Normal Value for Exporters/Foreign Producers from China, Taiwan and Turkey

29.11.1 As stated in paragraph 15.4 supra, none of the exporters/foreign producers of the investigated product from China, Taiwan and Turkey provided requisite information, therefore, normal value for the purposes of this final determination for the investigated product is determined on the basis of 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.

29.11.2 It is important to identify here that the Commission informed the exporters/foreign producers from China, Taiwan and Turkey of reliance on the Best Information Available in its letters of October 29, 2009.

29.11.3 To determine normal value for exporters/foreign producers from China, Taiwan and Turkey, the Commission relied on the “Bleaching Chemicals Report” by “Harriman Chemsult Limited” provided by the Applicants.

30. Dumping Margin

30.1 Section 2(f) of the Ordinance defines “dumping margin” in relation to a product to mean the amount by which its normal value exceeds its export price. Section 11 of the Ordinance requires the export price and normal value to be compared with the same characteristics in terms of level of trade, time of sale, quantities, taxes, physical characteristics, conditions and terms of sale and delivery at the same place.

30.2 In terms of Section 14(1) of the Ordinance the Commission shall determine an individual dumping margin for each known exporter or producer of an investigated product. However, Section 14(2) provides that if the Commission is satisfied that the number of exporters, producers or importers, or types of products involved is so large as to make it impracticable to determine an individual dumping margin for each known exporter or producer concerned of an investigated product, the Commission may limit its examination to a reasonable number of interested parties or investigated products by using samples which are statistically valid on the basis of information available to the Commission at the time of selection, or to the largest percentage of volume of exports from the country in question which can reasonably be investigated.

30.3 In response to the questionnaire the following exporters/foreign producers of HP provided requisite information:

- i. Evonik Degussa, Belgium;

- ii. Evonik Degussa, Gmbh, Germany;
- iii. PT Evonik Degussa Peroxide, Indonesia;
- iv. Evonik Degussa Korea Limited, Korea;
- v. Evonik Headwaters Korea Limited, Korea;
- vi. OCI Company Limited, Korea;
- vii. OCI Corporation, Korea;
- viii. Hansol Chemical Company Limited, Korea and
- ix. Thai Peroxide Chemical Company Limited, Thailand.

Individual dumping margins in this investigation are determined for the above-mentioned exporters/foreign producers on the basis of the information provided by them. However, residual dumping margins/duty rates have been determined for non-cooperative exporters/foreign producers, on the basis of best information available to the Commission in terms of Section 32 of the Ordinance, and Article 6.8 and Annex II of the Agreement on Anti-dumping, for all other exporters/foreign producers who did not cooperate with the Commission in this investigation.

30.4 As level of cooperation from Indonesia was very high (exporter who cooperated in this investigation exported 89.43 percent of imports of the investigated product from Indonesia during the POI). A residual dumping margin and antidumping duty rate for all other exporters from Indonesia is determined on the basis of best available information in terms of Section 32 of the Ordinance, which is the highest rate of dumping for individual exporter who cooperated from Indonesia among the investigated exporters/ foreign producers.

30.5 As level of cooperation from Korea was very high (exporters who cooperated in this investigation exported 98.22 percent of imports of the investigated product from Korea during the POI). A residual dumping margin and antidumping duty rate for all other exporters from Korea is determined on the basis of best available information in terms of Section 32 of the Ordinance, which is the highest rate of dumping for individual exporters who cooperated from Korea among the investigated exporters/ foreign producers.

30.6 As stated earlier (paragraphs 15.4 supra) none of the exporters/producers of the investigated product from China, Taiwan and Turkey provided requisite information, therefore, individual dumping margin has not been determined for any exporter/foreign producer from China, Taiwan and Turkey.

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

30.8 Taking into account all requirements set out above, the dumping margins have been determined as follows:

Table-II

Exporter/Foreign Producer	Dumping Margin as %age of Export Price	Dumping Margin as %age of C&F Price
Belgium		
Evonik Degussa, Germany and Evonik Degussa, Belgium	14.88	9.20
All others	124.58	84.48
South Korea		
Evonik Degussa, Korea and Evonik Headwaters	18.45	14.77
Hansol	1.07	0.58
OCIC and OCI	1.87	1.28
All others	18.45	14.77
Thailand		
Thai Peroxide	4.33	3.52
All others	31.57	25.04
Indonesia		
Evonik Degussa, Indonesia	43.48	25.20
All others	43.48	25.20
China- All exporters	96.22	71.93
Taiwan- All exporters	45.84	35.61
Turkey- All exporters	30.90	25.61

31. De minimis Dumping Margins and Negligible Volume of Alleged Dumped Imports

31.1 In terms of Section 41(3) of the Ordinance, dumping margin shall be considered to be negligible if it is less than two percent, expressed as a percentage of the export price. Prima facie dumping margins, set out in paragraph 25.6 supra, appear to be above the *de minimis* level except for Hansol, OCI and OCIC.

31.2 As regards the volume of dumped imports, Section 41(3) of the Ordinance provides that the volume of such imports shall normally be regarded as negligible if the volume of dumped imports of an investigated product is found to account for less than three percent of total imports of like product. The data obtained from PRAL of volume of dumped imports of HP from all sources during the POI (April 01, 2008 to March 31, 2009) is given in the table below:

Table-III

Country	Quantity (MT)	Percentage
Belgium	4,086.67	11.64
China	3,762.24	10.72
Indonesia	1,996.24	5.69
South Korea	1,599.96	4.56
Taiwan	3,669.12	10.46
Thailand	3,958.98	11.28
Turkey	6,377.81	18.18
Other sources*	9,630.61	27.45
Total	35,081.63	100.00

Source: PRAL

* imports of other sources include the imports of OCI, OCIC and Hansol

31.3 It appears from the above table that the volume of dumped imports of HP from the Exporting Countries during the POI was above the negligible threshold set-out in Section 41(3) of the Ordinance.

C. MATERIAL RETARDATION TO THE DOMESTIC INDUSTRY

32. Material Retardation

32.1 The Applicants have claimed all three injury standards (a) material injury (b) threat of material injury (c) material retardation to the establishment of domestic industry. First question before the Commission was whether the domestic industry producing HP is already established and second if the domestic industry is not established, whether the performance of the un-established industry appears to have been materially retarded by the dumped imports.

32.2 If it is determined that the domestic industry is established, the material retardation standard is not applicable, and the Commission focuses on the standards of material injury and/or threat of material injury.

32.3 As there are no clear provisions on how to apply material retardation standard in the Ordinance and the Agreement on Antidumping, the Commission has sought guidance from practices of traditional users of anti-dumping i.e. USA, EU and India.

32.4 The domestic industry producing HP is not yet established:

32.4.1 The domestic industry started producing HP in January 2008, so the Commission must determine whether the domestic industry has stabilized its operation and is an established industry or whether it is a nascent industry. To make this assessment, the Commission has taken guidance from the practices of other WTO Member countries who are traditional users of antidumping law and analysed the following factors to determine whether the domestic industry was an established industry during the POI:

- i. the date production began;
- ii. whether production of the domestic industry is steady or start-and-stop;
- iii. the size of domestic production compared to size of the domestic market as a whole;
- iv. whether the domestic industry has reached a “break-even point”; and
- v. whether the activities involve the establishment of a new industry or are merely a new product line of an established firm.

32.4.2 The Commission has considered the issue of date of coming into production of two units comprising domestic industry i.e. (i) Sitara Peroxide Limited and (ii) Descon Oxychem Limited. It may be mentioned that Sitara Peroxide started commercial operations in January 2008 and Descon Oxychem in March 2009. The dates of coming into production of the Applicant units shows that one unit was in operation during last fifteen months of the POI whereas, the second unit remained in operation only during last one month of the POI i.e. March 2009. In Commission’s opinion one unit remained in operation only for a month and is not established. As regards other unit it came into production during the POI for injury and only date of coming into production of the unit is not sufficient to decide that the domestic industry is established or not established. The examination of other four factors mentioned above would reveal whether the domestic industry was established during the POI. If analysis of other factors reveals that

Sitara Peroxide was an established unit during the POI, the domestic industry would be considered as established.

32.4.3 In order to determine whether the production of the domestic industry was steady or start-and-stop during the POI, quarterly production data of Sitara Peroxide has been examined. Following table shows quantity produced by the Applicants units during the POI:

Table-IV

Period	Quantity					
	Sitara		Descon		Total	
	Actual	Projected	Actual	Projected	Actual	Projected
Jan 08 – Mar 08	69.36 (24.56)*	100.00	--	--	69.36 (24.56)*	100.00
Apr 08 – Jun 08	54.65	100.00	--	--	54.65	100.00
Jul 08 – Sep 08	59.20	100.00	--	--	59.20	100.00
Oct 08 – Dec 08	58.12	100.00	(3.23)*	--	58.12 (3.23)*	100.00
Jan 09 – Mar 09	79.15	100.00	30.19 (34.43)*	33.33	109.34 (34.43)*	133.33

Source: the Applicants * Note: Includes trial production

Note: Actual figures have been indexed with respect to total projected production quantity in the period Jan 08-Mar 08 by taking it equal to 100.

Analysis of the above data shows that production of the Sitara Peroxide during the period from January 2008 to March 2009 was steady and it did not experience start or stop production trend. However, the domestic industry could not achieve a steady sales trend. Without a steady sales trend, production could not be considered as steady as it would result into piling up of its inventories. The sales trend may be seen at Table X infra.

32.4.4 The Commission has also examined the size of domestic production compared to size of the domestic market of HP as a whole, during the POI. In this regard it would be pertinent to mention that before entry of Applicants into Pakistan’s market, the entire domestic demand for HP was met through imports. The existing capacity of Sitara Peroxide is sufficient to cater 58 percent of total domestic market, against which it could only achieve 28.08 percent share. It may also be added that with coming into production of Descon Oxychem the domestic industry was capable to cater 100 percent of domestic demand for HP within a reasonable period of time. Since the start of production of HP in Pakistan by the domestic industry in January 2008, its market share has not increased significantly, it could achieve 28.08 percent share of total domestic market, whereas, dumped imports were having major portion of the total domestic market i.e. 71.73 percent. Therefore, the Commission has determined that the domestic industry has not yet established as the size of its production compared to size of the domestic market of HP as a whole was much lower during the POI.

32.4.5 The Commission has analyzed the fixed and variable costs and sales prices of the domestic industry to calculate the contribution margin i.e. the unit sales price minus the unit variable costs. In this final determination the Commission has calculated break-even point of the domestic industry by dividing total fixed costs by the unit contribution margin. The domestic industry has a projected breakeven point at 58 percent of the capacity utilization in its feasibility studies, on the basis of contribution margin. However, due to lower contribution margin the breakeven point for the domestic industry producing HP was 98 percent of capacity utilization at the prices prevailed during POI. The domestic industry has not reached a break-even point even once since it started its operations and is not likely to achieve projected

breakeven point with current sales prices and costs. Thus the domestic industry is not yet established as its operations have not reached a break-even point during the POI.

32.4.6 The Commission has also examined whether or not the nascent industry is truly a new industry or is more in the nature of a new product line introduced by an established industry. An established industry introducing a new product line, for example, might be able to promote sales of the new product line through its established distribution and marketing networks and industry contacts thereby hastening the establishment of the new product in the market. The Commission has analysed that one of the units belongs to Sitara Group of Industries and other belongs to Descon Group of Industries. However, Sitara Peroxide Limited and Descon Oxychem Limited have not taken benefit from the established parent group companies, as both the Applicants are separate entities having separate production plants and sales network etc. These new entities in high-tech industrial chemicals products have not benefited from the existing companies of the concerned groups. Therefore, the Commission has determined that the domestic industry is totally new industry, as it is not significantly aided by other existing and established product operation sector.

Conclusion

32.4.7 One the basis of the analysis at paragraphs 32.4.2 to 32.4.6 supra, the Commission has determined that the domestic industry started producing HP in January 2008. The Commission has also determined that the domestic industry although achieved a steady production trend, however, it could not achieve a steady sales trend. Without a steady sales trend, production could not be considered as steady as it would result into piling up of its inventories. Further, the Commission has determined that the domestic industry has not yet reached a break-even point, and the size of its production compared to size of the domestic market of HP as a whole was much lower. The domestic industry has not gained significant share of the domestic market, whereas the dumped imports had major share of the total domestic market. Further, it does not appear from the information gather during the investigation that HP operations of the domestic industry were aided by those operations that are already established. For these reasons, the Commission has determined that there is reasonable indication that the domestic industry producing HP has not yet been established and is a nascent industry.

32.4.8 As the Commission has determined that the domestic industry has not yet established and was a nascent industry during the POI, the material retardation standard is applicable only, and the Commission will not use other standards of material injury and threat of material injury.

33. Whether the domestic industry was materially retarded

33.1 Having determined that the domestic industry producing HP is not yet established and was a nascent industry during the POI, the Commission has examined whether the establishment of this nascent industry has been materially retarded by reasons of dumped imports from the Exporting Countries.

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

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

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

The Commission has used same principles for determination of material retardation as laid down in Section 15 and 17 of the Ordinance for determination of material injury, because the Ordinance or Agreement on Antidumping are silent on factors to be taken into consideration for determination of material retardation.

33.3 Material retardation to the establishment of the domestic industry is summarized in the following paragraphs.

34. Cumulation of Dumped Imports

34.1 As per Section 16 of the Ordinance:

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

- (a) *dumping margin in relation to the investigated product from each countries is more than the negligible amount, and volume of dumped imports from each investigated country is not less than the negligible quantity; and*
- (b) *a cumulative assessment of the effects of the imports is appropriate in the light of*
 - (i) *the conditions of competition between the imports; and*
 - (ii) *the conditions of competition between the imports and a domestic like product.*

34.2 As mentioned in paragraph 30.2 supra, the volume of imports of HP from dumped sources during the POI was more than the negligible quantity (i.e. less than 3 percent of total imports of HP). The dumping margins established for the dumped sources are more than the negligible amount (i.e. less than 2 percent of export price) (paragraph 30 supra).

34.3 It is evident from the weighted average export prices of HP imported from dumped sources during POI (paragraph 28 supra) that there was a price competition between the imports of the HP from all dumped sources.

34.4 The conditions of competition between dumped imports of HP and the domestic like product are discussed in detail in paragraphs 35 to 46 infra.

34.5 For the reasons given above, the effects of dumped imports on the domestic industry have been cumulatively assessed in the following paragraphs.

35. Determination of Domestic Industry

35.1 In terms of Section 2(d) of the Ordinance domestic industry means the domestic producers as a whole of a domestic like product or those of them whose collective output of that product constitutes a major proportion of the total domestic production of that product.

35.2 As mentioned in paragraph 8.3 supra, the application is filed by the domestic industry producing 100 percent of the domestic production of domestic like product in Pakistan. Thus the Applicants are considered as domestic industry and material retardation analysis is based on the information/data of the Applicants.

**36. Volume of Dumped Imports
Facts**

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

Table-V

Year*	Imports from			Domestic Production
	Dumped Source	Other Sources	Total Imports	
2006-07	99.20	0.80	100.00	--
2007-08	90.90	0.40	91.30	8.67
2008-09	68.60	0.20	68.70	35.15
Quarterly 08-09				
Apr 08 - Jun 08	99.66	0.33	100.00	58.66
Jul 08 - Sep 08	222.29	--	222.29	63.55
Oct 08 - Dec 08	133.14	0.67	133.81	62.38
Jan 09 - Mar 09	134.13	0.47	134.60	117.38

* Year is from April 01 to March 31 Source: the Applicants and PRAL

Note: Domestic Production (commercial)

Note: Actual figures have been indexed with respect to total imports in the year 2006-07 and for the period Apr 08-Jun 08 by taking it equal to 100.

Analysis

36.2 It appears from the above table that the volume of dumped imports decreased as domestic production of newly set-up two units substituted imports. Furthermore, dumped imports decreased from *** MT to *** MT, a decrease of *** MT in 2008-09 over 2007-08. However, analysis of dumped imports during April 2008 to March 2009 on quarterly basis shows dumped imports increased from *** MT to *** MT during the quarter July 2008 to September 2008 as compared to previous quarter. In subsequent quarters also imports were more than April - June 2008 quarter, therefore, volume of dumped imports has an increasing trend when compared to the first quarter of April 2008 to March 2009 period.

36.3 According to the Applicants the decrease in the volume of dumped imports during April 2008 - March 2009 was due to the fact that it significantly decreased ex-factory sales prices from October 2008 to March 2009, (inspite of increase in cost of production) as shown in the table below:

Table-VI

Year	Ex-factory sales price	Cost to make and sell
Apr 08 - Jun 08	100.00	141.78

Jul 08 - Sep 08	148.16	145.56
Oct 08 - Dec 08	132.37	182.73
Jan 09 - Mar 09	84.47	131.70

Source: the Applicants

Note: Actual figures have been indexed with respect to ex-factory sales price of domestic like product for the period Apr 08-Jun 08 by taking it equal to 100.

36.4 The above table shows that the domestic industry has sold HP at prices lower than its costs to make and sell during three out of four quarters of April 2008 to March 2009. The volume of dumped imports decreased due to domestic industry's policy of selling HP at prices lower than its costs. Had the domestic industry not kept its sale prices lower than its costs during three out of four quarters of April 2008 to March 2009, the volume of dumped imports would have been higher. In order to gain market share domestic industry had to bear the losses in three out of four quarters of POI (i.e. April to June 2008, October to December 2008 and January to March 2009). However, the domestic industry could not achieve a steady sales trend during the POI. Therefore, the domestic industry was materially retarded on account of volume of dumped imports.

36.5 It may added that the domestic industry was set up to cater 100 percent of domestic demand for HP with projections of certain economic factors within a reasonable period of time. The domestic industry's market share increased by 11.09 percent in April 2007 to March 2008 due to the fact that there was no domestic producer of HP in April 2006 to March 2007. The market share of domestic industry further increased to 32.31 percent in April 2008 to March 2009, but it was not up-to the projected market share mentioned in the feasibilities of the Applicants (i.e. *** MT or 66 percent of the total domestic market during 2008-09).

Conclusion

36.6 On the basis of above the Commission has concluded that there was decrease in the volume of dumped imports in absolute terms during the POI. The decrease in volume of dumped imports is due to coming into production of two domestic producers and reduction in sales prices by the Applicants (reference paragraph 36.2 supra). However, the domestic industry could not sell as per the expected sales mentioned in the feasibilities due to increasing trend of dumped imports during April 2008 to March 2009. Therefore, the domestic industry is materially retarded on account of volume of dumped imports.

37. Price Effects

37.1 The effect of dumped imports on the prices of domestic like product has been examined in the following paragraphs. The information provided by the Applicants shows prima facie, that there has been significant price under-cutting (the extent to which the price of the investigated product was lower than the price of domestic like product) during 2007 and price suppression (the extent to which the increased cost to make and sell was not recovered by way of increase in price) during 2008.

37.2 Price Undercutting

Facts

37.2.1 Weighted average ex-factory price of the domestic like product and weighted average landed cost of the investigated product during the POI is given in the following table:

Table-VII

Year*	Average ex-factory price of domestic like product	Average landed cost of dumped imports	Price undercutting
2006-07	--	83.10	--
2007-08	100.00	96.40	(3.64%)
2008-09	130.82	149.80	--
Quarterly 08-09			
Apr 08-Jun 08	100.00	114.33	--
Jul 08-Sep 08	154.10	142.65	(8.03%)
Oct 08-Dec 08	137.68	162.17	--
Jan 09-Mar 09	88.90	101.68	--

* Year is from April 01 to March 31 Source: the Applicants, PRAL

Note: Actual figures have been indexed with respect to average ex-factory price of domestic like product in the year 2007-08 and for the period Apr 08-Jun 08 by taking it equal to 100.

Analysis

37.2.3 The above table shows that the dumped imports undercut the prices of domestic like product in 2007-08. Domestic Industry started production of HP in January 2008. In 2008-09 the average landed cost of dumped imports was higher than the average sales price of domestic industry. However, quarterly analysis of prices in 2008-09 shows that in the quarter i.e. July to September 2008 the dumped imports undercut the prices of domestic like product by 8.03 percent.

Conclusion

37.2.4 On the basis of above facts and analysis the Commission concludes that the domestic industry faced price undercutting in 2007-08 and in the period from July to September 2008.

37.3 Price Suppression

Facts

37.3.1 Weighted average cost of production and ex-factory price of the domestic like product during the POI is given in the following table:

Table-VIII

Year*	Average cost to make & sell of domestic like product	Average ex-factory price of domestic like product	Price Suppression	
			Increase/ (decrease) in cost to make & sell	Increase/ (decrease) in price
2006-07	--	--	--	--
2007-08	100.00	89.75	--	--
2008-09	152.53	117.40	52.53	27.6

Quarterly 08-09				
Apr 08 – Jun 08	100.00	69.82		
Jul 08 – Sep 08	105.72	107.60	5.72	37.78
Oct 08 – Dec 08	132.71	96.14	26.99	(11.46)
Jan 09 – Mar 09	95.65	62.08	(37.06)	(34.06)

* Year is from April 01 to March 31 Sources: the Applicants

Note: Actual figures have been indexed with respect to average cost to make & sell of domestic like product in the year 2007-08 and for the period Apr 08-Jun 08 by taking it equal to 100.

Analysis

37.3.2 The above table reveals that during the first year of production (i.e. 2007-08) average ex-factory price of domestic like product was lower than the cost to make and sell, whereas during 2008-09 the cost further increased by Rs.***/MT. The price was increased by Rs.***/MT in the year 2008-09. The domestic industry experienced price suppression in 2008-09 as it was not able to recover increased cost to make and sell by way of an increase in its selling price.

37.3.3 The above table also shows the quarterly information of average cost to make and sell and average ex-factory prices of domestic like product. This information reveals that the cost to make and sell in the period July to September 2008 increased by Rs.***/MT compared to April to June 2008, whereas the average price of domestic like product increased by Rs.***/MT. In the period October to December 2008, average cost to make and sell increased by Rs.***/MT, whereas the average price of the domestic like product decreased by Rs.***/MT, the reason of such price decrease was to gain market share in the domestic market.

Conclusion

37.3.4 On the basis of above facts and analysis the Commission has concluded that the domestic industry experienced price suppression in 2008-09.

37.4 Price Depression

Facts

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

Table-IX

Year*	Weighted Average ex-factory price of domestic industry	Price depression
2006-07	--	--
2007-08	100.00	--
2008-09	130.82	--
Quarterly 08-09		
Apr 08 – Jun 08	100.00	--
Jul 08 – Sep 08	154.10	--
Oct 08 – Dec 08	137.68	(16.42)
Jan 09 – Mar 09	88.90	(48.78)

Source: the Applicants * Year is from April 01 to March 31

Note: Actual figures have been indexed with respect to weighted average ex-factory price of domestic industry in the year 2007-08 and for the period Apr 08-Jun 08 by taking it equal to 100.

Analysis

37.4.2 The above table shows that the domestic industry increased its ex-factory sales price by 30.79 percent in 2008-09. However, by analyzing quarterly information, it was found that the weighted average price of domestic like product decreased by Rs.***/MT and Rs.***/MT during the period October to December 2008 and January to March 2009 respectively.

Conclusion

37.4.3 Analysis of the above facts shows that the domestic industry faced price depression during October 2008 to March 2009.

38. Market Share

Facts

38.1 The total domestic demand of HP in Pakistan is met through local production and imports after 2007-08, as the domestic industry started production in January 2008. To establish the size of the Pakistan market, the Commission used sales of domestic like product by the domestic industry, imports of the HP from dumped sources and imports of HP from other sources. Following table shows the market share from each source during the POI:

Table X

Year*	Sales by domestic industry**	Imports from		Total domestic market
		Dumped source	Other sources	
2006-07	--	99.18	0.82	100.00
2007-08	8.35	91.21	0.44	100.00
2008-09	28.02	71.75	0.18	100.00
Quarterly 08-09				
Apr 08 - Jun 08	40.00	59.79	.021	100.00
Jul 08 - Sep 08	22.00	78.00	--	100.00
Oct 08 - Dec 08	25.00	74.00	1.00	100.00
Jan 09 - Mar 09	32.25	67.08	0.25	100.00

* Year is from April 01 to March 31

Sources: the Applicants and PRAL

Note: Actual figures have been indexed with respect to total domestic market by taking it equal to 100.

Analysis

38.2 The above table shows that the domestic market of HP decreased by 0.33 percent during 2007-08 and decreased by 4.08 percent in 2008-09. The domestic industry was set up to fulfill 100 percent of domestic requirement of HP and with coming into production of Sitara Peroxide and Descon Oxychem it was capable to cater 100 percent of domestic demand for HP within a reasonable period of time. Since the start of production of HP in Pakistan by the domestic industry in January 2008, it was able to achieve market share of 11.09 percent in 2007-08. Its market share has not increased significantly, as it could achieve 28.08 percent share of total domestic market, whereas, dumped imports were having major portion of the total domestic market i.e. 71.73 percent. The share of dumped imports decreased and the reason for this decrease was natural as there was no domestic industry in 2006-07, whereas in 2008-09 the domestic industry has to take its share in the domestic market. However, the increase in market share of domestic industry in the total domestic market was due to reduction in the prices of HP (which were lower than total cost) by domestic industry (paragraph 36.3). It can also be

observed from the quarterly analysis of 2008-09 in the above table that after the decrease in the prices of domestic like product the share of the domestic industry increased in last two quarters of 2008-09.

Conclusion

38.3 On the basis of above facts and analysis the Commission has concluded that the share of domestic industry in domestic market increased, but this increase was not adequate and far below what has been projected in the feasibility studies by the Applicants. However, the increased share of domestic industry was due to reduction in prices by the domestic industry. Therefore, the Commission has determined that the domestic industry has materially retarded on account of market share.

39. Production and Capacity Utilization

Facts

39.1 The installed capacity, quantity produced and the capacity utilization of the Applicants during the POI, were as follows:

Table-XI

Year*	Capacity Utilization (percent)
2006-07	--
2007-08	35.38
2008-09	44.84
Quarterly 08-09	
Apr 08 - Jun 08	51.31
Jul 08 - Sep 08	50.32
Oct 08 - Dec 08	39.12
Jan 09 - Mar 09	46.47

* Year is from April 01 to March 31

Source: the Applicants

Analysis

39.2 It may be noted from the above table that the production and capacity utilization of the domestic industry increased during April 2008 to March 2009. Further, the domestic industry projected capacity utilization of 85.50 percent during April 2008 to March 2009, whereas, it could achieve the capacity utilization of 44.84 percent mainly because of dumped imports from the Exporting Countries. Quarterly analysis of the data for 2008-09 shows that the capacity utilization of domestic industry decreased from 51.31% to 39.12% during the quarters July to September 2008 and October to December 2008. However, in order to increase production and sales the Applicants decreased their ex-factory prices significantly during October 2008 to March 2009 to counter dumped imports, which resulted in higher capacity utilization of 46.47 in the quarter January to March 2009.

Conclusion

39.3 Based on above facts and analysis the Commission has concluded that the domestic industry was materially retarded on account of production and capacity utilization in during April 2008 to March 2009.

40. Profit and Loss

Facts

40.1 Information submitted by the Applicants on profitability position of the domestic industry is given in the following table:

Table-XII

Year*	Net Profit/(loss)		
	Sitara	Descon	Total
2006-07	--	--	--
2007-08	(100.00)	--	(100.00)
2008-09	(2,547.02)	(4.78.13)	(3,025.14)
Quarterly 08-09			
Apr 08 - Jun 08	(100.00)	--	(100.00)
Jul 08 - Sep 08	1.57	--	1.57
Oct 08 - Dec 08	(32.40)	--	(32.40)
Jan 09 - Mar 09	(36.99)	(31.50)	(68.50)

* Year is from April 01 to March 31

Source: the Applicants

Note: Actual figures have been indexed with respect to total net profit in the year 2007-08 and for the period Apr 08-Jun 08 by taking it equal to 100.

Analysis

40.2 It appears from the above table that the domestic industry suffered losses during April 2007 to March 2008 and April 2008 to March 2009. As per Applicants, the increase in net loss during April 2008 to March 2009 over last year was mainly because of dumped imports coupled with price suppression effects. Quarterly analysis of profit/(loss) data of domestic industry during April 2008- March 2009 reveals that the domestic industry incurred losses during three quarters out of four quarters.

Conclusion

40.3 On the basis of above facts and analysis the Commission has concluded that the domestic industry suffered losses during the POI, mainly on account of dumped imports of HP from the Exporting Countries.

41. Inventories

Facts

41.1 The data provided by the Applicants on the position of inventories is as follows:

Table-XIII

Year*	Opening Inventory	Closing Inventory
2006-07	--	--
2007-08	--	100.00
2008-09	100.00	2,522.16
Quarterly 08-09		
Apr 08 - Jun 08	475.68	100.00
Jul 08 - Sep 08	100.00	124.32

Oct 08 – Dec 08	124.32	3,443.24
Jan 09 – Mar 09	3,443.24	11,997.29

* Year is from April 01 to March 31 Source: the Applicants

Note: Actual figures have been indexed with respect to closing inventory in the year 2007-08 and for the period Apr 08-Jun 08 by taking it equal to 100.

Analysis

41.2 The above table shows that inventories of the domestic industry of the domestic like product increased from *** MT during 2007-08 to *** 2008-09. Thus the domestic industry was materially retarded on account of inventories. The above table further reveals that the inventories of the domestic industry sharply increased in last two quarters of the period from 2008-09 (i.e. October 2008 to March 2009).

Conclusion

41.3 Based on above facts and analysis the Commission has concluded that the domestic industry was materially retarded on account of inventories.

42. Productivity and Wages

Facts

42.1 The data submitted by the Applicants on employment in the domestic industry and the salaries and wages paid during the POI is given in following table:

Table-XIV

Year*	Number of Employees	Total salaries and wages	Domestic production (commercial)	Productivity per worker	Salaries & wages Rs. per MT
2006-07	--	--	--	--	--
2007-08	100.00	100.00	100.00	100.00	100.00
2008-09	130.00	614.50	405.56	316.60	151.60

* Year is from April 01 to March 31

Source: the Applicants

Note: Actual figures have been indexed with respect to the year 2007-08.

Analysis

42.2 The above table shows that the employment in the domestic industry increased during the POI. Productivity per worker increased due to increase in production. However, total salaries and wages increased from Rs. *** million to Rs. *** million in 2008 which, negatively affected the Applicants as can be seen from increase in salaries & wages per MT.

Conclusion

42.3 Based on above facts and analysis the Commission has concluded that per MT salaries & wages of the domestic industry increased during 2008-09.

43. Return on Investment

Facts

43.1 As per the Applicants, return on investment realized by the domestic industry during the POI is given in following table:

Table-XV

Year*	Return on Investment
2006-07	--
2007-08	0.51%
2008-09	1.41%

* Year is from April 01 to March 31

Source: the Applicants

Analysis

43.2 The above table shows that the return on investment increased in the year 2008 as compared to year 2007. However, the return on investment is less than 2%, which is not encouraging by any standard. According to Applicants, this low return on investment is attributed to dumped imports of investigated product. There is likelihood that no new investment will be made by the Applicants due to low rate of return on investment.

Conclusion

43.3 Based on above facts and analysis the Commission has concluded that the domestic industry materially retarded on account of return on investment.

44. Cash Flow

Facts

44.1 According to the Applicants, its cash generation was also effected due to dumped imports of the investigated product. Information submitted by the Applicants on net cash flow is given below:

Table -XVI

Year *	Net cash flows from operations
2006-07	--
2007-08	(100.00)
2008-09	(183.10)

* Year is from April 01 to March 31

Source: the Applicants

Note: Actual figures have been indexed with respect to net cash flows from operations in the year 2007-08 and by taking it equal to 100.

Analysis

44.2 The above table shows that the domestic industry suffered on account of cash flow as net cash flow from operations as it was net cash outflow of Rs. *** million in 2007 which increased to Rs. *** million in 2008.

Conclusion

44.3 Based on above facts and analysis the Commission has concluded that the domestic industry materially retarded on account of cash flows during the POI due to dumped imports.

45. Growth and Investment

45.1 At present total installed production capacities of the domestic industry (paragraph 7.2 supra) are more than the domestic demand (paragraph 38 supra). In this situation no further investment in the industry cannot be expected. However in the annual report of one of the Applicants (i.e. Sitara Peroxide) has stated to increase its installed capacity by 60,000 MT in next two years. The abstract from the report is as follows:

“Keeping in view rapidly growing demand of Hydrogen Peroxide, management is also planning to double the capacity in next two to three years. Further, research and development work is carried out as ongoing continuous process, to identify other business areas/products in which Company can diversify its operation.”

Conclusion

45.2 Based on above facts and analysis the Commission has concluded that the domestic industry did not materially retarded on account of growth and investment.

46. Ability to Raise Capital

According to the Applicants, ability to raise capital is contingent upon financial results of the company. With losses and decreasing cash flow it would be difficult to raise equity through capital market. Investors will only be willing to inject more equity if the industry shows increasing sales and profits. However, due to the increase in dumped imports, the industry’s ability to raise capital is materially weakened.

47. Summing up of Material Retardation

On the basis of the information/data and analysis in forgoing paragraphs the Commission has determined that the domestic industry was not established, because of the fact that although it achieved a steady production trend, however, it could not achieve a steady sales trend; the size of domestic production compared to size of the domestic market as a whole was low and it could not reach a “break-even point” and its establishment was materially retarded during the POI on account of increasing trend in the volume of dumped imports, price suppression.

- i. volume of dumped imports
- ii. loss of market share
- iii. price suppression
- iv. decline in profits/profitability;
- v. decline in output;
- vi. decline in capacity utilization;
- vii. decline in return on investment;
- viii. negative effects on employment;
- ix. negative effects on cash flows;
- x. negative effects on wages and salaries; and
- xi. negative effects on ability to raise capital.

48. Other Factors

48.1 In accordance with Section 18(2) of the Ordinance, the Commission also examined factors, other than dumped imports of the investigated product, which could at the same time causing material retardation for the establishment of the domestic industry, in order to ensure that possible injury caused by other factors is not attributed to the dumped imports.

48.2 The investigation of the Commission revealed that the domestic industry is not materially retarded due to imports of HP from sources other than dumped sources during the POI, as its volume was negligible.

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

- i. There was no change in trade restrictive practices and competition between foreign producers other than producers from the Exporting Countries and domestic producers; and
- ii. There was no considerable change in technology;

49. Causal link

49.1 The Commission has determined in this final determination that the imports of the investigated product from the Exporting Countries were at dumped prices during POI. The volume of dumped imports decreased from 46,388 MT to 34,994 MT, a decrease of 11,394 MT in 2008-09 over 2007-08 as domestic production of newly set-up two units substituted imports. However, analysis of dumped imports during April 2008 to March 2009 on quarterly basis shows dumped imports increased from 5,919MT to 13,202 MT during the quarter July 2008 to September 2008 as compared to previous quarter and therefore, volume of dumped imports has an increasing trend when compared to the first quarter of April 2008 to March 2009 period. The dumped imports increased from 98.83 percent to 99.75 percent as percent of total imports during the POI i.e. from 2006-07 to 2008-09. Had the domestic industry not kept its sale prices lower than its ex-factory costs during three out of four quarters of April 2008 to March 2009, the volume of dumped imports would have been higher.

49.2 Due to increasing trend in the volume of dumped imports and adverse effects on prices of domestic like products, the domestic industry in order to gain market share had to bear losses in three out of four quarters of POI (i.e. April to June 2008, October to December 2008 and January to March 2009). The domestic industry achieved a steady production trend, however, it could not attain a steady sales trend due to dumped imports during the POI. Without a steady sales trend, production could not be considered as steady as it resulted into piling up of its inventories. Further, since the start of production of HP by the domestic industry in January 2008, its market share has not increased significantly, as it could achieve 28.08 percent share of total domestic market, whereas, dumped imports were having major portion of the total domestic market i.e. 71.73 percent. The Commission has also determined that the domestic industry has not yet reached a break-even point.

49.3 The main reason for material retardation of the establishment of domestic industry was increasing trend in the volume of dumped imports, price suppression and losses incurred during the POI.

D. CONCLUSIONS

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

- i. the application was filed by the domestic industry as the Applicants represent 100 percent of the production of domestic like product;
- ii. the investigated product and the domestic like product are alike products;
- iii. during POI, the investigated product was exported to Pakistan by the exporters/foreign producers from the Exporting Countries at prices below its normal value;
- iv. the volume of dumped imports of the investigated product and the dumping margins established for the exporters/foreign producers of the investigated product from the Exporting Countries are above the negligible and *de minimis* levels respectively except Hansol, OCI and OCIC;
- v. the dumping margins expressed as a percentage of weighted average adjusted export price at ex-factory level is ranging between 1.07 percent to 124.58 percent for exporters/foreign producers from the Exporting Countries;
- vi. the domestic industry was materially retarded during POI on account of volume of dumped imports, loss of market share, price suppression, suffering losses, decline in output, decline in capacity utilization, negative effect on cash flow, negative effect on employment, salaries and wages, negative effect on return on investment and negative effect on ability to raise capital in terms of Section 15 and 17 of the Ordinance; and
- vii. there is a causal relationship between dumped imports of the investigated product and the material retardation to the domestic industry.

E. IMPOSITION OF DEFINITIVE ANTIDUMPING DUTIES

51. In view of the analysis and conclusions with regard to dumping, material retardation to the establishment of the domestic industry and causation between dumped imports and material retardation to the establishment of the domestic industry, imposition of definitive antidumping duties on dumped imports of the investigated product is needed to offset material retardation to the establishment of the domestic industry by dumped imports.

52. Individual dumping margins have been determined for nine exporters/foreign producers of the investigated product, who supplied information necessary for this investigation and the definitive rate of antidumping duty for these exporters/foreign producers is determined on the basis of individual dumping margins (paragraph 32 supra).

53. A residual dumping margin and antidumping duty rate for all other exporters from the Exporting Countries, who did not cooperate, is determined on the basis of best available information in terms of Section 32 of the Ordinance (paragraph 32 supra).

54. In terms of Section 39(1) of the Ordinance, "the Commission shall normally make a final determination of dumping and injury not later than 180 days from the date of publication of notice of preliminary determination in the official Gazette". In this investigation the Commission published notice of preliminary determination on September 27, 2010 and would have made final determination by March 26, 2011, however, it was delayed due to non-

composition of the Commission in terms of Section 5 of the Ordinance. The Composition of the Commission was completed on June 20, 2011 after the joining of Chairman, NTC.

55. In terms of Section 50 of the Ordinance, definitive antidumping duties given in the following table are hereby imposed on the dumped imports of the investigated product importable from the Exporting Countries (except for the exporters/foreign producers mentioned at paragraph 56 infra) for a period of five years effective from September 27, 2010. The definitive antidumping duty rates are determined on C&F value in *ad val.* terms. The definitive antidumping duties at C&F value are equivalent to the final dumping margins determined at ex-factory price level. The investigated product is classified under PCT heading No. 2847.0000.

Table-XVII
Definitive Antidumping Duty Rate

Exporter/Foreign Producer	Definitive antidumping duty (%)
Belgium	
Evonik Degussa, Germany and Evonik Degussa, Belgium	9.20
All others	84.48
South Korea	
Evonik Degussa, Korea and Evonik Headwaters	14.77
All others	14.77
Thailand	
Thai Peroxide	3.52
All others	25.04
Indonesia	
Evonik Degussa, Indonesia	25.20
All others	25.20
China- All exporters	71.93
Taiwan- All exporters	35.61
Turkey- All exporters	25.61

56. Definitive anti-dumping duty has not been imposed on following exporters/foreign producers of the investigated product from the Exporting Countries as dumping margins for

these exporters/foreign producers were found to be *de minimis* (less than 2%) in terms of Section 41 of the Ordinance during the POI:

- i. OCI Company Limited, Korea;
- ii. OCI Corporation, Korea;
- iii. Hansol Chemical Company Limited, Korea

57. HP imported from sources, other than the Exporting Countries shall not be subject to this definitive antidumping duties.

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

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

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

61. The Commission had imposed provisional antidumping duties on the investigated product vide official gazette (extra ordinary) dated September 27, 2010 for a period of four months effective from September 27, 2010. In terms of Section 55(2) of the Ordinance, if the definitive antidumping duty is lower than the amount of provisionally determined antidumping duty, the difference shall be refunded by the Commission within forty-five days of the final determination.

62. In cases where the definitive anti-dumping duties imposed on the exporters/producers of Exporting Countries are lower than the amount of provisionally determined anti-dumping duties, the difference shall be refunded. The importers of HP are directed to send their requests for refund of antidumping duty (if any) that may have been paid (under the Commission's Provisional Determination) on imports of the investigated product from the Exporting Countries to the extent of the difference between the rate of definitive anti-dumping duty and the rate of provisional anti-dumping duty, to the Secretary, National Tariff Commission, State Life Building No. 5, Blue Area, Islamabad within a period of *thirty* days of the publication of notice of this final determination.

63. This report is being signed by all three members of the Commission in compliance of the directions of Honorable Supreme Court of Pakistan.

(Zamir Ahmed)
Member
July 02, 2011

(Niamatullah Khan)
Member
July 02, 2011

(Prince Abbas Khan)

Chairman

July 02, 2011

The comments on preliminary determination received from interested parties and germane to this investigation under the Ordinance are reproduced in Column A below, and Commission's views/reference to determination thereto are set out in Column B in the following table:

Column A

Column B

i. Views/comments of Evonik Degussa GmbH, Germany, Evonik Degussa Antwerpen NV, Belgium, Evonik Headwaters Korea Ltd., Korea, Evonik Degussa Korea Ltd., and PT Evonik Degussa Peroxide, Indonesia

Legal counsel of above-mentioned exporters/producers submitted following views/comments on preliminary determination:

"It may be observed that Section 37 uses the word "shall" which makes the provisions mandatory in nature. Therefore, NTC has no discretion in the matter and it is bound not to issue preliminary determination beyond the statutory period of 180 days. The current antidumping investigation was initiated on August 31, 2009. In terms of Section 37, preliminary determination should have been made on or before 27th February, 2010. However, the same has been made on 21st September 2010 with a delay of more than 5 months. In paragraph 2 of the preliminary determination, NTC has admitted that it was not made within the prescribed time period due to incomplete

The Commission was required to make preliminary determination within 180 days of the initiation of the investigation. However, in light of decision of the Honorable Supreme Court of Pakistan in civil petition No. 108 of 2009, the composition of the Commission was not complete, therefore preliminary determination in this investigation could not be made on time.

commission. Section 37 of the ordinance does not provide for such exceptions. Whether the commission is complete or incomplete, the preliminary determination can be made only within the time limit prescribed under Section 37. Merely because the commission was incomplete, provisions of Section 37 cannot be violated. Further, the section uses a mandatory language and in the case of mandatory provisions, if an act is required to be done in a specified manner, it shall be done in that manner only and it cannot be done in any other manner.”

“a) Domestic industry has been established and material injury standard should have been applied.”

“With regard to the first factor regarding date of beginning of production, NTC has factually determined that one of the two domestic producers had commenced production three months before the POI and the other domestic producer commenced production during POI. It has also been observed that one domestic unit was in operation only for a few months and the other unit for just around 2 years. Other traditional users of antidumping apply the material retardation standard in the event of an embryonic industry i.e. an industry which is yet to commence production or a nascent industry i.e. an industry which has commenced commercial production but is yet to be established. When one unit was in operation for around 2 years, there was no reason to come to a conclusion that the said industry to be either ‘embryonic’ or ‘nascent’. Only because one more unit started commercial production during POI, one cannot apply material retardation standard.”

“With regard to the second factor, NTC has observed that it is not able to determine whether the situation of production is steady or start and stop. Though one of the two domestic units had come into operation at the fag end of the POI, the other domestic unit was working for around 2 years. A weekly or monthly production data would have revealed whether the production was ‘steady’ or ‘start and stop’.”

“On the third factor, NTC has observed that the domestic industry is not yet established as it holds lesser market share of the total domestic market. Such a test appears to be inappropriate. The exact standard applied by NTC is not known. If NTC believes that a domestic industry is not yet established because they hold lesser share than the imports, such a standard is unheard of in any antidumping jurisdiction. A domestic industry may be in operation for several decades and yet they may not enjoy a higher share in the market as compared to the imports. There is no legal or economic or commercial basis to decide the question based on the market share achieved by the domestic producers.”

“The break-even-point cannot be used as a standard for deciding whether the domestic industry is established or

Reference paragraph 32.4 supra. Sitara has started its commercial production in January 2008, whereas Descon has started its commercial production in March 2009. The date of production of the Applicant units shows that one unit has been operating for the last one year and two months whereas second unit has just started its commercial production, therefore the Commission has determined that the domestic industry producing HP is a nascent industry and is not yet established.

Reference paragraph 39 supra. The Commission has analysed quarterly production data of two Applicant units and found that the production of the domestic industry is steady however, the domestic industry could not achieve a steady sales trend. Without a steady sales trend production could not be considered as steady as it would result into piling up of its inventories.

The domestic industry was set up to cater 100 percent of domestic demand for HP with projections of certain economic factors within a reasonable period of time. Since the start of production of HP in Pakistan by the domestic industry in January 2008, its market share has not increased significantly, it got 32.21 percent share of total domestic market, whereas, dumped imports were having major portion of the total domestic market i.e. 67.76 percent. The Commission has carried out the analysis of size of domestic production compared to size of domestic market as a whole as per the practice of other WTO Member countries considered traditional users of anti-dumping.

In this final determination the Commission has calculated break-even point of the domestic

yet to be established. For decades, domestic producers may not achieve break-even point. Many well-established industries that have made profits for several years may start suffering losses. In every loss making situation, break-even point is not achieved. Therefore, break-even point cannot be the standard for deciding the question.”

“b) Domestic industry has not suffered material retardation and hence no protective measure can be applied”

i). Volume of dumped imports:

“In paragraph 31.6, NTC had concluded that there was decrease in the volume of dumped imports in absolute terms and that the decrease was due to reduction in sales prices by the domestic industry. This conclusion does not appear to be correct. The evidence shows that there was no price undercutting at all. It is not factually correct to say that lower volume of imports at higher prices was the cause of lower domestic selling prices. The conclusion defies any commercial or economic logic.”

ii) Market Share:

“Firstly, NTC has observed that achieving 32.2% market share is inadequate. We submit that the conclusion is wrong as the domestic industry has managed to garner 32.2% within a short period of 1 year. During the POI, practically only one domestic producer- Sitara Peroxide Limited was offering the product in the domestic market and the other producer - Descon Oxychem Limited started its commercial production in March 2009 i.e. almost at the close of the period of investigation. Even with the presence of only one domestic producer/supplier of the subject goods, domestic industry was able to capture substantial market share in the domestic market. We submit that the Pakistani domestic producers have done exceedingly well in such a short period by capturing over 32% of the market share.”

“Secondly, NTC has observed that the market share achieved by domestic industry was far below the expectations made in the feasibility reports. There is nothing in the preliminary determination to show that the feasibility report was in fact feasible. If the projections made in the feasibility reports were unrealistic and highly exaggerated, the same cannot be achieved. We submit that inability to achieve certain overly ambitious projections cannot be considered to be material retardation. In any case,

industry by dividing total fixed costs and variable expenses by the unit contribution margin. The domestic industry has a projected breakeven point at 58 percent of the capacity utilization in its feasibility studies, on the basis of% contribution margin however, due to lower contribution margin the breakeven point for the domestic industry producing HP was 98 percent of capacity utilization at the prices prevailed during POI. The domestic industry has not reached a break-even point even once since it started its operations and is not likely to achieve projected breakeven point with current sales prices costs. Refer para 32.4.5 supra.

Prior to coming into the production of domestic industry, the domestic demand for HP was met through imports. The dumped imports decreased as domestic production of newly set-up two units substituted imports. The Commission’s

analysis shows that there was decrease in volume of dumped imports as the domestic industry decreased its prices below its cost to make and sell to gain market share. Reference paragraph 36 supra.

The Commission has determined that the domestic industry has gained market share because before the existence of the domestic industry, 100 percent share was of imports. However, this increase of share was due to reduction in prices by the domestic industry.

In making a determination regarding the existence of material retardation, feasibility studies, investment plans or market studies are considered by authorities around the world. Hence the feasibility studies are reliable sources to examine, *inter alia*, such factors as: capacity utilization, delays in start of reasonable commercial production and the amount of domestic production as compared to the size of the

merely because, actual was lower than projections, one cannot hold that the actual achievement of garnering 32.2% in just 1 year as a materially retarded one."

domestic market.

"Thirdly, NTC has observed that the 32.2% was achieved due to 'reduction in sales prices' by the domestic industry. They have not reduced the prices at all. The domestic selling prices had actually increased. Therefore, the conclusion is not factually correct."

Please refer to paragraph 38 supra for detailed analysis.

iii) **Price effects:**

"Re. Price suppression, NTC has observed that there was price suppression. However, as stated earlier, NTC has failed to examine why there was an exorbitant increase of 52.5% in the cost of the domestic industry. Without a proper examination of the reasons for such a huge increase in costs, price suppression cannot be evaluated properly."

The Commission has analysed the increase in cost of the domestic industry and found that it is inline with their books of account. The Commission's analysis further revealed that the cost of imported inputs increased by 98 percent during Apr 2008 to March 2009, besides increase in the cost of local inputs. Hence, the Commission determined that there is price suppression during POI.

iv. **Production and capacity utilization:**

"In paragraph 34.2, NTC has observed that domestic industry achieved a capacity utilization level of 52.26% as against the projected level of 85.5% during POI. By any standard, expecting to achieve 85.5% during the first year of operation itself is a tall order. The conclusion that domestic industry was materially retarded on this account is an unjust decision."

It is practice of traditional users to compare the actual performance with the projected performance of the domestic industry for determining material retardation to the establishment of the domestic industry. Market and feasibility studies prepared by the Applicants and the independent institution at the inception of its business operations provide a bench mark of expected performance against which actual performance is measured.

vii) **Inventories**

"Increase in inventory does not indicate that domestic industry is materially retarded. Merely comparing the inventories at the end-points of the selected periods do not indicate a reasonable position as they may be affected by temporary fluctuations in inventory levels. In order to evaluate this parameter, it is submitted that NTC should consider average or moving inventories at least on a monthly basis. The conclusions drawn on the basis of inventories at the end-points is highly unreliable."

The Commission has also analyzed the inventory position on quarterly basis, which also depicts that the domestic industry has suffered on account of increase in inventories. Reference paragraph 41 supra.

viii) **Return on Investment:**

"In evaluating this parameter, one should take into account the normal gestation period for the industry and see whether ROI in the first year of operations is less than average or significantly adverse than what is normally achieved by other producers of the product in the world. The analysis by NTC is sketchy and does not show a proper appreciation of the issues involved. Further, this factor has not been evaluated independently."

The domestic industry earned 1.41 percent return on investment, which is not appropriate by any standard. Had there been fairly traded imports, the domestic industry would have been able to charge price that covered all costs and could have increased its sales volume resulting in reasonable profits and hence higher return on investment.

i) **Causal link:**

“The causal link is absent in the present case since price undercutting is negative for the imports from subject countries. Therefore, any difficulties experienced by the domestic industry and any resultant variations in demand are due to other factors. In this case, the materials on record did not establish any causal link between the material injury and dumped imports as the landed value was found higher than domestic selling prices. No injury could be attributed to imports from these exporting countries whose prices were higher.”

“As demonstrated in the **Table V** of Preliminary determination, the volume of imports from subject countries has consistently declined from 2006 up to the POI, both in absolute terms and relative to growing/stable consumption. Therefore, there is clearly no injury from imports. Further, the volume of imports from subject countries declined while the domestic sales of petitioners increased. Therefore, by no stretch of imagination, it could be concluded that imports were causing injury to the domestic industry or pose threat of material injury post POI.”

“Further, the Commission did not examine ‘contraction in demand’ despite being expressly mentioned in Section 18(3)(b). The Commission has only examined market share of various segments such as domestic industry, imports from subject countries and imports from other countries. The Commission has not examined the total market size of the product concerned in Pakistan and whether the total market size (also referred to as ‘demand’) has increased or contracted. An evaluation of the market size would clearly portray that the market size did not expand to absorb the total production of the two new comers in the Pakistani domestic market.”

“The National Tariff Commission has not examined any of the above mentioned factors though these factors were available in the documents presented in the public file itself. It is submitted that all these factors shall be properly evaluated before arriving at the final determination. If the new industrial players are not able to establish themselves due to (a) lack of skilled workforce; (b) excessive interruption of gas and electricity supply; (c) non-availability of important segments of the market due to absence of environmental laws or their implementation, they cannot be attributed to imports from other countries. Admittedly, global recession was the factor that caused injury to the domestic producers. But for the global recession, the second unit had reached a stage where they were operating at the rated capacity. These factors have never been evaluated by NTC. It is submitted that import from other countries cannot be the cause of any of these other factors. Therefore, causal link between alleged dumped imports and the alleged material retardation is

The imports of the investigated product from the Exporting Countries were at dumped prices during POI. The main reason for material retardation of the establishment of domestic industry was volume of dumped imports, price suppression and profitability. Reference paragraph 48 supra.

It may be noted that the Commission has determined that the establishment of the domestic industry was materially retarded due to dumped imports and it has not carried out injury analysis in this case. The information with the Commission shows that prior to coming into the production of domestic industry the domestic demand for HP was met through imports. The dumped imports decreased as domestic production of newly set-up two units substituted imports. The Commission’s analysis shows that there was decrease in volume of dumped imports as the domestic industry decreased its prices below its cost to make and sell to gain market share.

The Commission has examined the total market size and found that there is not contraction in demand of HP rather it is almost static at 51,000 MT to 52,000 MT. Reference 38 supra.

The Commission has examined others factors and found that the global recession has not adversely affected the domestic industry of HP because the total market remained the same during the POI. Further an industry operating under market economy conditions can hire skilled workers from domestic as well as foreign sources, therefore, the issue of lack of skilled workers for the domestic industry is not a valid reason for material retardation of the establishment of domestic industry.

conspicuously absent.”

c) Even if ‘material injury’ standard were applied, no material injury could have been found

“Except the finding that domestic industry has suffered losses, there is nothing on record to show that domestic industry was suffering adverse effect on any other economic parameter. As stated earlier, loss had occurred despite a significant rise in the selling prices of the domestic industry. The loss could be attributed to the unprecedented increase of 52.5% in costs in a single year. NTC has not examined the reasons for such a high increase in costs. Under these circumstances, NTC could not have come to the conclusion that the domestic industry has suffered material injury”.

The Commission has determined that the domestic industry is not yet established, the material retardation standard is applicable only, therefore, the Commission has not used other standards of material injury and threat of material injury due to the fact that material injury or threat of material injury and material retardation are mutually exclusive standards.

[D] Other Issues

Confidentiality:

“Subsection (3) provides that information which is not publically available should not be disclosed to other parties. NTC has disclosed many details relating to payment terms in the preliminary determination. The release of confidential information resulted in breach of confidentiality by the commission.”

In order to provide opportunity to the interested parties in understanding the facts used by the Commission to arrive at certain conclusion, the Commission prepares a non-confidential version of its report, which provide the confidential information in indexed form.

“Similarly, in the annual report 2009 of Descon Oxychem Ltd, actual production quantities have been presented and thus, no confidential treatment can be given to the production quantities. From the publicly available documents, it is well known that Descon has produced 3945 MT during 2009 and Sitara has produced 9820 MT during 2008. The market size during 2008 was 50,454 MT. There is no need to keep such information as confidential.”

It may be noted that the time period of the annual reports of the Applicants and the POI selected for this investigation are different. Therefore, the production figures used in this investigation are not publically available.

“In the preliminary determination, NTC has treated quantities imported into Pakistan from the subject countries and other countries as ‘confidential’ information. A perusal of the published determinations of various countries such as EU, USA, India, etc would establish that ‘import quantities’ has never been treated as a ‘confidential’ data that may cause adverse effect to the domestic industry in the importing country. Therefore, there is no reason to treat import statistics as a confidential data.”

The Commission has disclosed the import quantities with its percentages at Table-IV of the report of preliminary determination (reference paragraph 31 supra).

ii. Representative of Interloop Limited, Faisalabad submitted following views/comments on preliminary determination:

“Period of Investigation (POI)

“Section 36(2) states that period of Investigation (POI) for Dumping shall normally cover 12 months preceding the month of initiation of the investigation for which data is available. In the present case, National Tariff Commission initiated proceedings on 26 August 2009 thus POI has to be

It may be noted that the Commission has taken POI for dumping which covers 12 months therefore, it is not a violation of Section 36(2) of the Ordinance. Secondly the Commission has selected POI for which data is available to it, therefore, it is not a violation of Section 36(2) of

12 months from August 2008 to July 2009 compared to April 2008 to March 2009 which is contrary to the law which renders the proceeding *ultra vires* the law (null and void)."

"Section 36(3) makes a normal period of 36 months mandatory for 'Investigation of Injury' with the option to the Commission to select a shorter or longer period for which date is available. Here, the Commission was not afforded the option of selecting a period as the data/information was not available as the industry being of age of about two years only. This renders the data unsteady and may be erratic due to initial period problems of the new industry. The investigation thus would not fair and equitable for the right decision."

"Section 37(1) makes it mandatory for the Commission to make preliminary determination of dumping and injury within minimum 60 days and maximum 180 days (simply 6 months) after initiation of the investigation on 26 August, 2009. The Commission was bound to complete it latest by 25 February, 2010 whereas it has issued the Report on 21 September, 2010 much beyond the stipulated time which renders this report invalid and of no value. Therefore, should be withdrawn and any orders passed need to be reversed."

Report Deficient of Objective Examination

"Section 15(1) of the Ordinance requires that the 'determination of injury shall be based on an objective examination of all the relevant factors', which shall not be limited to only the factors or guidelines enumerated. In the present report, the Commission has been unable to; Verify the data provided by the applicants but has relied on the data/information provided by the applicants. This fact is apparent at many places in the Report where conclusions have been drawn which usually read as 'the Commission is unable to determine the situation of production whether it is steady or start-and-stop' 'the data/info provided by the applicant show.....' etc., etc.,

Plant Age and Technology

"The Report is silent about the age, technology and process flow of the plant(s) installed by the applicants. Though it may be confidential but this factor must have been verified and addressed for a fair evaluation of the applicants claim for antidumping process."

"Steady or Start-and-Stop production

the Ordinance.

Section 36(3) suggest POI for injury i.e. 36 months but the Commission has discretion to make a shorter or longer POI for injury. However, in this investigation one Applicant Unit started its production in January 2008 and other Unit in March 2009, therefore, the Commission has no choice but to use a shorter POI for injury.

The Commission was required to make preliminary determination within 180 days of the initiation of the investigation. However, in light of decision of the Honorable Supreme Court of Pakistan in civil petition No. 108 of 2009, the composition of the Commission was not complete, therefore preliminary determination in this investigation could not be made on time.

It may be noted that the Commission has verified the data provided by the Applicants and found it correct. Verification reports of the domestic industry are placed in public file for all interested parties. The Commission has also verified the information provided by exporters/foreign producers and their verification reports are placed in public file as well. The Commission has used "best information available" in terms of Section 32 of the Ordinance, in cases where there were no information provided by the interested parties.

During on-the-spot verification, the Commission has verified all information regarding plants of the domestic industry and found that these plants are upgraded and of the same technology what the exporters/foreign producers have in Exporting Countries. Production process of the Applicants is discussed in the verification report of the domestic industry, which are placed in public file.

Since the start of commercial production the industry is constantly increasing production and plant capacity. The Commission's standpoint that it could not determine steadiness or start-and-stop situation is not understandable as this is very simple and verifiable process.

The start-and-stop situation can arise by the other factors like load shedding, plant breakdown, maintenance downtime, untrained workforce etc., but at least the HP industry had not enough energy resources to support continuous output. If it is so, it has not been caused by dumped HP."

"Lesser Market Share

Not attaining a certain market share for a product is in way a judgment criterion for determining that an industry has not been established. The fact could be that the domestic HP producers could not supply quality product and timely to the consumers and consumers/ market had already imported stocks of HP which had to take time to penetrate into the market. The commission does not seem to have verified this fact. The finding of the commission is therefore baseless."

"Not Achieving a Breakeven Point.

It is not a valid and acceptable criterion, as in case of, very well established industrial set ups, who have a long standing history, at times may not achieve the breakeven point. Especially in the case of Descon Oxychem Limited, Refer Note on plant capacity in the financial statements for the year ended on 30/06/2009, show plant working for 210 days (7 month) whereas commercial production started in March 2009 (less than months until 30/06/2009) Therefore, 12 months expenses/overheads have been charged on 4 months production; thus cost of production per ton was over burdened overwhelmingly. Therefore, it cannot reach the breakeven point, even if the plant had been run at full capacity for these 4 months time period. This is to explain the approach adopted by the applicants. It is understood that the Commission seems to have failed to comprehend the fact and the circumstances of the case."

"Nascent Industry

HP is new industry in Pakistan but Sitara Peroxide Limited is in the other bleaching agent Soda Caustic for the past decades, therefore it had customer base in the country. Lesser marketing effort was required but it had captured a sizeable market share in a short while despite nascent industry problems."

"Volume of Dumped Imports,(Table-V) decrease in the imports has been established which was replaced by the domestic like product from indexed value of zero (0) in 2006 to 68.7% in 2007 to 31.3% in 2008. The applicants have neither provided nor the Commission has made any comments on the change by numeric value of total imports

Reference paragraph 32.4.3 supra. The Commission has analysed quarterly production data of two Applicant units and found that the production of the domestic industry was steady. However, the production level during the period from January 2008 to March 2009 was lower than the projections made in the feasibility studies.

The Commission has verified that the domestic like product is of the same quality as of the investigated product.

The Commission has followed the practice of traditional users of anti-dumping and break even analysis is very important in material retardation cases because a nascent industry cannot be established if it does not achieve breakeven point.

The Commission has examined whether or not the nascent industry is truly a new industry or is more in the nature of a new product introduced by an established industry. The Commission has determined that the domestic industry is totally new industry as it is not significantly aided by other existing and established product operation sector. It may be clarified that the raw materials and technology/process of manufacturing of HP are different from that of Caustic Soda.

The Commission has determined that there was decrease in volume of dumped imports but this decrease was due to the fact that the domestic industry decreased its prices below its cost to make and sell to gain market share. Reference paragraph 36 supra.

which stood at about 50,000 M. tons and had reduced. So, domestic industry had grasped more share compared to total consumption in the country.”

“It is important to note that the data for the POI is missing in the table which might show the position that goes against the applicants, therefore not stated.”

“**Decrease in Sales prices.** The version of the applicants that to capture more share in the domestic market by reducing sales prices is grossly wrong as the landed cost of 149.80 in 2008-09 was much above the ex-factory price of 130.70 and by all means of business practices & prudence, the applicants had open opportunity of increasing prices. If price was not increased, there were other factors that should have been probed into,”

“**Cost of production;** The data given in Table VI shows such a variant cost of production data that calls for an in depth analysis of the data and the prevailing circumstances during the reported periods within POI that;

- i) the product quality and delivery behavior was not acceptable by consumers for which applicants had to depend upon price reduction.
- ii) the data is not trustworthy with so much variation in cost of production between short periods of 3 months while everything was not going smooth and production claimed was steady (Directors Report of Sitara peroxide for the year ended 30/06/2008 may be referred which says Manpower and Energy were the problems)
- iii) lesser production, due to multiple causes will definitely result in higher cost of production. Further data may be required for the correct analysis of their claim. It is astonishing and has a question mark on the management of the companies affairs. The seems erratic of which Commission must take notice.
- iv) The managements of the applicants seem to have attempted to distract and divert the focus of the Commission by mis-stating the facts. If mis-statement is proved at any level, it may be said that the whole case has been built up on wrong facts and misrepresentations.”

“**Feasibility Values** must not be followed by the Commission as the assumptions and circumstances must have changed since it was prepared a few years back, including;

- i) The economic and business scenarios have changed
- ii) Assumed cost factors have changed,
- iii) Gas and energy situation in the country has grossly deteriorated
- iv) Besides supply, the prices of energies have highly increased
- v) Availability of technically trained manpower for this new line of industry.
- vi) quality of product was not acceptable to consumers that lead to increase in production at a

Domestic production of 2006-07 is missing in the table because at that period no domestic industry was there and hence no domestic production.

The Commission has determined that due to reduction of prices even below its cost to make and sell, the domestic industry was able to gain market share.

The Commission has analysed the increase in cost of the domestic industry and found that it is inline with their books of account. The Commission’s analysis further revealed that the cost of imported inputs increased by 98 percent during Apr 2008 to March 2009, besides increase in the cost of local inputs. Hence, the Commission determined that there is price suppression during POI.

The Commission has followed the practice of traditional users of anti-dumping and it was found that the traditional users of antidumping use market and feasibilities studies prepared by the domestic industry and the independent institutions at the inception of its business operations provide bench mark of expected performance against which to measure actual performance.

- slower pace than projected,
- vii) global recession cannot be ruled out which adversely affected all the BIG global economies of which Pakistan is a very minor and negligible part which is affected more severely being export dependent on them and has very low absorbency to bear these shocks, and
 - viii) Law and Order situation in Pakistan which worked as deterrent for business community to work with Pakistan.
 - ix) Other factors which should be added and considered.

Therefore the conclusion drawn just on the basis of only the numbers and logic provided by the applicant cannot be just and right unless further probing and analysis of changed cost factors is carried out by the commission."

"Market Share; Table VII shows the facts that sales of domestic product in domestic market increased by 190.44% from 11.09% share in 2008 to 32.21% in 2009 whereas the share of imported product declined by 31.68% from 99.18% in 2007 to 67.76% in year 2009. The sales prices changes have been discussed earlier that landed cost was more than local prices where applicants had the big cushion and gap for increasing price but could not raise due to other reasons already discussed, including customers poor confidence in this product. The loss sustained was due to other factors like high cost of production for many other reasons but certainly not due to dumping. Conclusion drawn by the Commission is therefore completely incorrect and against the facts and the circumstances."

"Price Suppression: Table X; As discussed in the preceding paragraphs, the high cost of production is due to internal factors, mismanagement of the affairs on controlling costs, shortage of fuels & energies, low production causing high overheads application but in no way due to the dumped imports of the product which had decrease tremendously during this year/ period."

"Therefore, the analysis and conclusion derived by the Commission is grossly wrong and completely incorrect and seems biased."

"Capacity Utilization; Table XI The data seems erratic as the capacity utilized is shown as 47.90 % in the PO year 2007-2008 whereas per Financial Statements for the year ended 30 June, 2008, it works out to 27.51% based on the installed capacity of 30,000 tons and actual production of 8,254 tons of Sitara Peroxide, as Descon Oxychem had not started production by then. In the year ended 30/06/2009 the capacity utilization appeared at 60.15%, increase of 32.64% (or 218.65% over the year 2008). However, the numbers for the POI would not be different than capacity utilization per year-end audited financial statements."

"Regarding Descon it started Commercial Production in March, 2009 i.e., for less than a month in the POI but

The Commission has determined that the domestic industry has gained market share because before the existence of the domestic industry, 100 percent share was of imports. But this increase was not adequate and far below what has been projected in the feasibility studies by the Applicants. However, this increase of share was due to reduction in prices by the domestic industry.

The Commission has analysed the increase in cost of the domestic industry and found that it is inline with their books of account. The Commission's analysis further revealed that the cost of imported inputs increased by 98 percent during Apr 2008 to March 2009, besides increase in the cost of local inputs. Hence, the Commission determined that there is price suppression during POI.

It may be noted that the POI for injury is different than the period of financial statements of the domestic industry, therefore, the comparison of two different periods cannot be done.

The Commission has used production of Descon which includes the trial and commercial production, as Descon has started its trial

installed capacity has been taken for 210 days, which has increased the total available capacity but production included for period of less than one month which would definitely calculate to a lower actual utilization.”

“Again comparing the expected utilization with feasibility report is not a fair and good approach as discussed earlier as many other cost and economic factors are involved which ought to be considered.”

“Profit and Loss Account;

The big factor in overwhelming industry loss includes the loss of Rs.121.451 millions incurred by Descon Oxychem for the year ended 30/06/2009 per audited accounts of the company where the period of commercial activity is for less than four months in the Financial Year and for less than one month in the POI after start of Commercial Production on some date in March, 2009. Thus the overheads of 12 months were charged to production of about 4 months’ period, therefore loss is evident. Even if the company had run at full capacity for 4 months it could not make profits when 12 months overheads were applied to it.”

“Inventories; (Table III).

However, the comparative data available in the audited financial statements for the year ended on 30 June, 2009 shows that total inventories of both the companies including packing materials, stood at;

Year 2008	Rs.300 Mln.
Year 2009	Rs.400 mln.

Increased by Rs. 100 Millions, i.e.,33.33 % or 133.33 times when 2008 level is taken as index value of 100.

“Analysis; the analysis by the Commission is not true and correct as the change in inventory data for the new industry which is increasing production and plant utilization over the two (2) periods, will be different than the industry who has the history and has reached maximum level or resource utilization where inventories are at stable level except inflation factor or minor changes in quantities etc. Due to some strategic buying/ processing, it may increase the inventories disproportionately.”

“In the case of new industry as of the applicants, the industry has to prepare for more production in the ensuing periods, for which materials inventories have to be arranged before hand (Materials planning in current period) that might lead to major increase in inventory levels. When Sitara was to increase production from 8,254 tons in 2008 to 20,000 tons in 2009 (both financial year), it had to arrange materials/ Work in Process accordingly.”

“Causal Link; As a result of the arguments and strong logic submitted to prove that the reducing volume of

production in December 2008, therefore number of days for calculating installed capacity included the period of trial production. Capacity utilization of Descon has also been calculated including trial production.

Comparing actual performance with the expected performance is a practice of traditional users of anti-dumping and the Commission has followed the same.

The Commission has calculated the profit & loss figures of Descon for the period from January to March 2009 from its annual audited accounts, instead of using losses of the whole year (reference paragraph 40 supra).

POI for injury is different than the period of financial statements of the domestic industry, therefore, the comparison of two different periods cannot be done.

The level of inventories kept by an industry varies from industry to industry and there is no common standard practice in this regard.

As above

The Commission has concluded that the imports of the investigated product from the Exporting

dumped imports of HP, increase in market share of the domestic industry despite reduction in overall demand of the country due to global recession coupled with in-competitiveness of Pakistani products, non-existence of price undercutting, price suppression and other factors have not materially retarded the domestic industry and therefore, no injury has been caused to it at all. It therefore, calls for withdrawal of any actions on this account.”

Countries were at dumped prices during POI. The main reason for material retardation of the establishment of domestic industry was volume of dumped imports, price suppression and profitability (reference paragraph 48 supra).

iii. Undersecretariat of the Prime Ministry for Foreign Trade, Republic of Turkey submitted following comments

i. “Remarks on the material Retardation of the Domestic Industry”

“The Commission assessed the period from April 1, 2006 to March 31, 2009 for determination of injury suffered by the two applicants in this investigation. However, when taking into account the fact that Descon Oxychem Limited has started its commercial production on March 2009, it is understood that the injury findings in the report just covered one of the complainants, the Sitara Peroxide Limited.”

It is true that Descon has started commercial production in March 2009. It may be noted that material retardation standard may also apply to embryonic industries (industries that have not started production).

ii. Remarks on increase in dumped imports and market share of the complainant

“According to the Article 3.2 of the ADA, with regard to the volume of the dumped imports, the Commission shall consider whether there has been a significant increase in dumped imports, either in absolute term or relative to production or consumption in Pakistan. Table V of the report clearly shows that the alleged dumped imports have been a downward trend in the injury period in absolute terms and relative to the consumption or production of the domestic industry as well. Furthermore, according to the Table VII of the report; sales by domestic industry have been increasing while imports from alleged dumped sources have been decreasing.”

The Commission has concluded that there was decrease in the volume of dumped imports in absolute terms during the POI. The decrease in volume of dumped imports is due to reduction in sales prices by the Applicants. However, the domestic industry could not sell as per the expected sales mentioned in the feasibilities due to dumped imports. Had there been no dumping the imports would have decreased further. Before the start up of production by the Applicants, the entire domestic demand was met by imports. Thus after coming into production of domestic industry, the imports would definitely decrease, as some share of market is taken by the domestic industry.

iii. Remarks on Economic Factors of the Domestic Industry

“According to the report of the Commission; below mentioned factors of the domestic industry have been increasing in the period of April 01, 2006- March 31, 2009.

- Sales, output, market share
- Capacity utilization
- Productivity
- Employment
- Return on investment
- Growth and investment

With this framework, Turkey is of the view that the domestic industry is in a sound financial position instead of suffering injury caused by alleged dumped imports in

On the basis of the information/data and analysis paragraphs 36 to 46 supra, the Commission has determined that the domestic industry has materially retarded during the POI on account of:

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- i. volume of dumped imports
- ii. loss of market share
- iii. price suppression
- iv. decline in profits/profitability;
- v. decline in output;
- vi. decline in capacity utilization;
- vii. decline in return on investment;
- viii. negative effects on employment;
- ix. negative effects on cash flows;
- x. negative effects on wages and

terms of provisions of the ADA.”

- salaries; and
- xi. negative effects on ability to raise capital.

v. Remarks on Complainant in the Domestic Industry

“The current investigation covered 99% of the Pakistan’s hydrogen peroxide imports in 2008 and in 2009, according to the “trademap figures”. In that sense, any possible anti-dumping measure against the hydrogen peroxide imports will likely damage the competitive environment in the domestic industry and adversely affect the domestic industry in long run. In fact, possible harmful effects of an anti-dumping measure over the upstream and downstream industries of Pakistan were also stressed by the representatives of these industries.”

It may be noted that 27.45 percent of total imports are not under anti-dumping duty because of *de-minimis* dumping margin for some exporters. Furthermore, there are other sources from which HP can be imported by the user industry without anti-dumping duty. There is still competition between non-dumped imports and the domestic industry, which will not harm the domestic consumer of HP in Pakistan. Reference paragraph 31 supra.

C. Remarks on Imports from Turkey

“According to the “trademap figures”; Turkey had a negligible share in Pakistan’s hydrogen peroxide imports with 1.9% in 2009 and it has not exported the product concerned to Pakistan after the IP. In this regard, it is obvious that this volume can not affect Pakistani producer’s prices, sales or profitability within the meaning of price erosion, undercutting or suppression. When taking into account these factors, it is not likely to determine even a threat of material injury caused by Turkish origination product concerned imports in terms of the Article 3.7 of the ADA.”

According to the information with the Commission, the imports from Turkey were 18.18 percent of total imports of HP in Pakistan during POI for dumping. Reference paragraph 31 supra. Therefore, 18.18 percent imports from Turkey has caused material retardation to the establishment of the domestic industry of HP.

“In the light of the forgoing, Turkey is of the opinion that any possible injury, threat of injury or material retardation of the establishment of the domestic industry should not be linked to Turkey’s exports.”

V. Views/Comments of Feroze Textile Industries (Pvt.) Limited; All Pakistan Textile Processing Mills Association; Adamjee Enterprises;

Attorney of above-mentioned interested parties presented following comments/views

“Subject to Section 31 of Anti-Dumping Duties Ordinance, 2000, the name of chemical journal alleged to be the root cause of complaint, has to be non-confidential so as to examine veracity and standing of the said chemical journal in the world of science and technology.”

The name of the chemical journal is “Bleaching Chemicals Report” by “Harriman Chemsult Limited”.

“Paragraph 23.10 appearing at pages 21 and 22 of the report qua Table-I depicts volume of import of H₂O₂ in Pakistan in relation to the POI only from China, Taiwan and Turkey to be 13809.17 MT. As to other countries, the report is silent. Now if this volume is compared to total production of the complainants domestic production of H₂O₂ during POI incorporated in a table qua paragraph 2.1 pp 3 of the applicant’s questionnaire/complaint i.e. production to be 126.09 Tons and selling to be 100.56 Tons only. This proves fact that production of H₂O₂ in Pakistan is just a fraction of total consumption of H₂O₂ in Pakistan.”

It may be noted that the figures given at Table-I of report of preliminary determination are actual numbers and the figures of production given in the non-confidential version of the application are indexed. Therefore, comparing these two numbers is incorrect.

“All the comparative analysis of dumping of H₂O₂ in

The domestic industry started commercial

Pakistan qua the report starts from the year 2006 i.e. period wherein injury to the domestic producers of H₂O₂ took birth. Amusingly, the complainants who are no doubt producers of 100% of domestic production of H₂O₂, admittedly, started marketing H₂O₂ post November 2007. Reference is made to page 24 of the Complaint wherein it has been admitted that M/s Sitara Peroxide Limited started production/sales from November 2007. As to M/s Descon Oxychem Ltd., through Annual Report, 2008 pp. 30 item 20.1 it has been admitted that the company has not commenced production as at 30 June, 2008."

"As submitted above, the major factor of so called injury to the domestic producers is their production to be pea nuts as to total consumption and overall situation of electric generation as well as supply of gas in Pakistan. It may be noted that w.e.f. 12th Instant gas supply to all industrial units in the Province of Punjab have been declared to be suspended for a unspecified period by the Sui Northern Gas Pipeline Ltd. (SNGPL)"

VI. Views/comments of Trade Com Services, Karachi

"Local manufactures produced Technical/Textile grade of HP whereas Trade com imports food/Aseptic packaging grade HP and these two products **ARE NOT SUBSTITUTABLE IN USE**. Technical grade HP cannot be used in Food, Dairy & Beverage Industry where the safety and purity of HP are of utmost concern."

"Our import prices are higher than the import prices of another manufacturer from Thailand, namely Thai Peroxide Ltd., hereinafter referred as TPL But, TPL has been subjected to a 3.82% anti-dumping duty whereas we have been put with all others at 25.04% duty, which is discriminatory and unjust. The Commission can verify this fact from the record submitted by us and from the import statistics of PRAL available with the Commission. This is a glaring anomaly to subject imports into Pakistan from one manufacturer with lower price to a 3.82% anti-dumping duty and another from the same country with a higher price to be placed in the category of 25.04% anti-dumping duty."

V. Views/comments of Thai Peroxide Company Limited, Thailand

"Attenuating Circumstances relating to injury"

"As can be seen in Article 31.5 of the Preliminary Determination Report, the domestic industry set a target of holding almost two-thirds (66 percent of total market share indexed) of total market share for the product concerned in only its second year of production. This appears to be an

production from January 2008, however, for determination of material retardation of the establishment of the domestic industry normally data/information of a period three years is used.

The Commission has analysed the information of POI and no such decision by SNGPL happened during POI.

The Commission has verified during on-the-spot verification that the domestic industry has produced food grade HP and sold it to different customers.

The Commission sent questionnaire to sixteen exporters/foreign producers (including Solvay Peroxythai) from the Exporting Countries on September 02, 2009. But Solvay Peroxythai did not provided information on the exporter questionnaire. The Commission, after expiry of the time period given for submission of information on Questionnaire informed the exporters/foreign producers (who did not respond to Questionnaire) from the Exporting Countries through a letter dated October 29, 2009, that in case no information is provided in response to the Questionnaire, 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. Therefore, the Commission used best information available to calculate residual dumping margin for all exporters who did not provided information (Solvay Peroxythai) to the Commission.

Had there been no dumping, the domestic industry producing HP would have gain more market share.

overly ambitious goal for a start-up company in an infant industry, especially when compared to foreign exporters that have been engaged in such production for a longer period of time. The domestic industry was able to increase its sales of total consumption to 32.21 percent between April 2008 and March 2009 showing impressive performance of the domestic industry.”

“In addition, it is not uncommon that any start-up company would undergo difficulties in making profit in its early operation years, since there are a number of expenses that start-up companies are responsible for. Hence, the reason why the domestic industry could not earn profit could be attributable to its own business policies, lack of experience in this business and cost management. As a result, it may be too early to decide whether the establishment of domestic industry has been retarded by the imported products. “

The main reason for incurring losses was lower than expected decrease in volume of dumped imports coupled with price suppression effects.

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

Column A

Column B

i. The Department of Foreign Trade, Ministry of Commerce, Thailand submitted following views/comments on SEF:

"First, Article 3.4 of the Agreement provided that the examination of the impact of the dumped imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having bearing on the state of the industry. Out of such fifteen factors mentioned in this Article, the following essential economic factors have not been evaluated on SEF.

- The actual and potential decline in output
- The magnitude of the margin of dumping"

"Second, Article 3.5 of the Agreement and Section 18(2) of the Ordinance provided that the authorities shall also examine any known factors other than dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports. The DFT found that the other factors have not been examined."

The Commission has evaluated the actual and potential decline in output at paragraphs 32.4.2 and 39 supra. The magnitude of the margin of dumping is from 4.33 percent to 124.58 percent (reference Table-II).

The Commission has analysed other factors and found that there were no other factors which were causing injury to the domestic industry (reference paragraph 49 supra).

ii. Gul Ahmed Textile Mills Limited, Karachi submitted following comments on SEF

"When calculating the value of the product, one should take into consideration that exporting countries manufacturing hydrogen peroxide are mostly running their plant for more than 20 years and most of the plant may have avail full depreciation and also full interest cost has been paid off on their investments, their fixed cost as such is lower. We need to consider the information related to plant life before the final conclusion on the Anti-Dumping duties on Hydrogen Peroxide."

"We need to compare operating cost of the plant, there may be technology differences, So we need to consider that the technology exporting countries are using to produce hydrogen peroxide and what are their input ratios of different cost factors."

"We also need to consider the financial/Interest cost of exporting countries that are very low compared with Pakistan. They have less impact in connection with financial/Interest cost on investment and as well as on working capital. That will again cause the lower cost of production of Hydrogen peroxide in exporting countries."

The Commission, while determining normal value for the exporters/foreign producers, has used the cost to make and sell and taken all relevant factors into consideration. The plant related costs are part of cost to make and sell and benefits of an old plant costs (i.e. lesser depreciation or no financial cost) are reflected in normal value and export price. Dumping occurs when an exporter sells a product at a price (export price) lower than his home market price (normal value). While calculating the dumping margin this concept is used (normal value minus export price).

During on-the-spot verification, the Commission has found that the technology used by the exporters/foreign producers is same as is used by the domestic industry. Any benefits of technology must be reflected in both normal value and export price.

It may be noted that the cost of production of exporters/foreign producers is not compared with the cost of production of the domestic industry.

iii. Fairdeal Textiles Pvt. Limited, Karachi submitted following comments on SEF

“For your kind information the worldwide prices of Hydrogen Peroxide have jumped. It is commonly believed that the producers are not in a position to meet the increasing demand of consumers.

At present the imported Hydrogen Peroxide is being quoted at US\$ 650/MT to US\$ 700/MT The availability is uncertain.

You will observe that the price of imported material has increased from US\$355/MT- in 2009 to US\$650/MT & 700/MT in January 2011.

Similarly the price of locally produced product has risen from Rs.33/kg- in 2009 to Rs.69/kg in January 2011.

Certainly they are following the prices of Imported Material. Thus the end user are the worst sufferers.”

ix) Return on Investment:

“In evaluating this parameter, one should take into account the normal gestation period for the industry and see whether ROI in the first year of operations is less than average or significantly adverse than what is normally achieved by other producers of the product in the world. The analysis by NTC is sketchy and does not show a proper appreciation of the issues involved. Further, this factor has not been evaluated independently.”

ii) Causal link:

“The causal link is absent in the present case since price undercutting is negative for the imports from subject countries. Therefore, any difficulties experienced by the domestic industry and any resultant variations in demand are due to other factors. In this case, the materials on record did not establish any causal link between the material injury and dumped imports as the landed value was found higher than domestic selling prices. No injury could be attributed to imports from these exporting countries whose prices were higher.”

“As demonstrated in the **Table V** of Preliminary determination, the volume of imports from subject countries has consistently declined from 2006 up to the POI, both in absolute terms and relative to growing/stable consumption. Therefore, there is clearly no injury from imports. Further, the volume of imports from subject countries declined while the domestic sales of petitioners increased. Therefore, by no stretch of imagination, it could be concluded that imports were causing injury to the domestic industry or pose threat of material injury post POI.”

“Further, the Commission did not examine ‘contraction in demand’ despite being expressly mentioned in Section 18(3)(b). The Commission has only examined market share of various segments such as domestic industry, imports from subject countries and imports from other countries. The

The increase in the prices of imported HP in January 2011 is because of recovery from economic recession. The Commission does not have the information of prices of domestic like product and investigated product of post POI, therefore, cannot comment on it. The Commission investigation pertains to assessment of facts relating to predefined period that is POI. Commission can not take into consideration any changes in prices etc outside the POI.

The domestic industry earned 1.41 percent return on investment which is not appreciable in any standard. Had there been fairly traded imports, the domestic industry would have been able to charge higher price and could increase its sales volume resulting in reasonable profits and hence higher return on investment.

The imports of the investigated product from the Exporting Countries were at dumped prices during POI. The main reason for material retardation of the establishment of domestic industry was volume of dumped imports, price suppression and profitability. It is incorrect to say that the causal link has been established only on the basis of price undercutting. The Commission has carried out a detailed analysis to establish a causal link between dumped imports and material retardation of the domestic industry. Reference paragraphs - supra.

The Commission has found that there was decrease in the volume of dumped imports in absolute terms during the POI. The decrease in volume of dumped imports is due to reduction in sales prices by the Applicants. If the domestic industry did not decrease the prices, the volume of dumped imports would have not gone down.

The Commission has examined the total market size and found that there is not contraction in

Commission has not examined the total market size of the product concerned in Pakistan and whether the total market size (also referred to as 'demand') has increased or contracted. An evaluation of the market size would clearly portray that the market size did not expand to absorb the total production of the two new comers in the Pakistani domestic market."

"The National Tariff Commission has not examined any of the above mentioned factors though these factors were available in the documents presented in the public file itself. It is submitted that all these factors shall be properly evaluated before arriving at the final determination. If the new industrial players are not able to establish themselves due to (a) lack of skilled workforce; (b) excessive interruption of gas and electricity supply; (c) non-availability of important segments of the market due to absence of environmental laws or their implementation, they cannot be attributed to imports from other countries. Admittedly, global recession was the factor that caused injury to the domestic producers. But for the global recession, the second unit had reached a stage where they were operating at the rated capacity. These factors have never been evaluated by NTC. It is submitted that import from other countries cannot be the cause of any of these other factors. Therefore, causal link between alleged dumped imports and the alleged material retardation is conspicuously absent."

ci) Even if 'material injury' standard were applied, no material injury could have been found

"Except the finding that domestic industry has suffered losses, there is nothing on record to show that domestic industry was suffering adverse effect on any other economic parameter. As stated earlier, loss had occurred despite a significant rise in the selling prices of the domestic industry. The loss could be attributed to the unprecedented increase of 52.5% in costs in a single year. NTC has not examined the reasons for such a high increase in costs. Under these circumstances, NTC could not have come to the conclusion that the domestic industry has suffered material injury".

[D] Other Issues

Confidentiality:

"Subsection (3) provides that information which is not publically available should not be disclosed to other parties. NTC has disclosed many details relating to payment terms in the preliminary determination. The release of confidential information resulted in breach of confidentiality by the commission."

"Similarly, in the annual report 2009 of Descon Oxychem Ltd, actual production quantities have been presented and thus, no confidential treatment can be given to the production quantities. From the publicly available documents, it is well known that Descon has produced 3945 MT during 2009 and Sitara has produced 9820 MT during 2008. The market size during 2008 was 50,454 MT. There is

demand of HP rather it is almost static at 51,000 MT to 52,000 MT.

The Commission has examined others factors and found that the global recession has not adversely affected the domestic industry of HP because the total market remained the same during the POI. The Commission has also examined and found that there is no shortage of skilled workforce in the market.

The Commission has determined that the domestic industry is not yet established, the material retardation standard is applicable only, therefore, the Commission has not used other standards of material injury and threat of material injury due to the fact that material injury or threat of material injury and material retardation are mutually exclusive standards.

The Commission has not disclosed the confidential information of exporters in the report of preliminary determination. Wherever payment terms are disclosed, those were given in a range rather than specific days.

It may be noted that the time period of the annual reports of the Applicants and the POI selected for this investigation are different. Therefore, the production figures used in this investigation are not publically available.

no need to keep such information as confidential.”

“In the preliminary determination, NTC has treated quantities imported into Pakistan from the subject countries and other countries as ‘confidential’ information. A perusal of the published determinations of various countries such as EU, USA, India, etc would establish that ‘import quantities’ has never been treated as a ‘confidential’ data that may cause adverse effect to the domestic industry in the importing country. Therefore, there is no reason to treat import statistics as a confidential data.”

The Commission has disclosed the import quantities with its percentages at Table-IV of the report of preliminary determination (reference paragraph 31 supra).